Exclusion of Metro Rail from the EIA Notification, 2006: Article 21 and the Precautionary Principle

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***Abstract*—Metro rail is central to India's response to urban congestion, air pollution and the demand for affordable public transport, yet building it places stations, depots, tunnels and elevated viaducts on trees, aquifers, drainage lines and river floodplains. Metro rail has no dedicated entry in the Schedule to the Environmental Impact Assessment Notification, 2006, and the Union government's position that metro projects need no prior environmental clearance has not been settled by any conclusive appellate ruling. The debate has tended to follow individual controversies and to run together three separate questions: non-inclusion in a Schedule, express exemption, and constitutional duty. This paper aims to separate them and to assess the legal consequences of non-inclusion. It uses a doctrinal method, analysing the Notification, the parent statute, decisions of the Supreme Court and the National Green Tribunal, and documentary records of lenders and project proponents. The paper finds that non-inclusion is not an express exemption; that an administrative memorandum cannot amend the Notification; that Article 21 and the precautionary principal demand reasoned, upstream assessment but cannot by themselves insert a scheduled entry; and that litigation has reached metro projects only after alignment and site choices were made. It concludes that a dedicated, risk-based entry for metro and urban rail, with its own consultation provision, would protect mobility and ecology better than either blanket clearance or blanket exclusion.**

***Index Terms*—Metro rail, environmental impact assessment, Article 21, precautionary principle, delegated legislation, urban ecology.**

I. INTRODUCTION

Urban India must move people and also protect the ecological systems on which its cities depend. Metro rail is one of the principal instruments by which governments pursue the first aim, and its environmental case is strong: a well-planned system can displace private vehicle trips, reduce tailpipe emissions and make daily travel more reliable. Yet the same system is built through trees, drainage lines, aquifers and river floodplains, and its construction consumes land, materials and years of urban disruption. The legal question is therefore not whether metro rail is desirable, but how the environmental costs of building it are to be identified and weighed before they become irreversible.

India's principal instrument of prior environmental appraisal is the Environmental Impact Assessment Notification, 2006, issued under the Environment (Protection) Act, 1986.[1,2] It requires prior environmental clearance for the projects listed in its Schedule. Metro rail has no dedicated entry in that Schedule. The Union government has treated metro projects as not requiring clearance, relying, as reported, on office memoranda of May and June 2009,[3] and the project documents of international lenders continue to describe metro rail as outside the

[1] Ministry of Environment and Forests, Government of India, Environmental Impact Assessment Notification, S.O. 1533(E), dated September 14, 2006, preamble and para 2 (hereinafter "EIA Notification, 2006").

[2] The Environment (Protection) Act, 1986 (Act 29 of 1986), ss. 3(1) and 3(2)(v); the Environment (Protection) Rules, 1986, r. 5(3)(d).

[3] Press Trust of India, "SC stays environment clearance requirement for Railway, metro rail projects", Housing News, September 19, 2016, available at: https://housing.com/news/sc-stays-environment-clearance-requirement-railway-metro-rail-projects/ (last visited on October 21, 2026) (reporting an affidavit of the Delhi Metro Rail Corporation before the National Green Tribunal).

clearance requirement.[4] Construction itself is enabled by the Metro Railways (Construction of Works) Act, 1978, which provides the powers needed to build the works.[5]

The problem is a three-way ambiguity. Non-inclusion in a Schedule may mean that a project is outside the regime by design, that it has been overlooked, or that it is covered by an existing entry on a particular reading. The government has treated the first as settled; the National Green Tribunal in 2016 adopted the third; the Supreme Court has so far resolved neither. Large urban projects therefore proceed on an uncertain legal footing, and environmental scrutiny depends on litigation, lender conditions or voluntary practice rather than on a rule.

The debate has tended to follow controversies as they arose: the Noida proceedings, the felling of trees at Aarey, the alignment through the Mutha riverbed at Pune. What is less often done is to separate the distinct legal questions those disputes raise: whether non-inclusion amounts to exemption; what weight an administrative memorandum can carry against a statutory notification; what Article 21 and the precautionary principle require of decision-making as distinct from outcomes; and what reform follows from each answer. Without that separation, arguments for and against clearance talk past one another.

The evidence that the gap matters are documentary. The Tribunal held in May 2016 that the Noida–Greater Noida metro required clearance under item 8(b) of the Schedule; the Supreme Court stayed that order within months and, in January 2023, disposed of the appeals with the questions of law left open.[6,7,8] At Pune, a lender's data sheet records both that metro rail needs no clearance under the Notification and that the promoter nonetheless prepared an environmental impact assessment, for a line that includes a stretch along the Mutha riverbed.[9] At Aarey, the Supreme Court was asked to rule on tree felling for a car shed when the project had already begun.[10]

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[4] European Investment Bank, Environmental and Social Data Sheet: Pune Metro Rail Project (Project No. 2016-0327), November 13, 2018, available at: https://www.eib.org/attachments/registers/85503465.pdf (last visited on October 21, 2026) (hereinafter "EIB Data Sheet"); Asian Infrastructure Investment Bank, India: Bangalore Metro Rail Project – Line R6, Environmental and Social Information, available at: https://www.aiib.org/en/projects/details/2017/approved/India-Bangalore-Metro-Rail-Project-Line-R6.html (last visited on October 21, 2026); Japan International Cooperation Agency, Mumbai Metro Line 11 (Anik Depot to Gateway of India): Supplementary Document of Environmental Impact Assessment, November 18, 2025, available at: https://www.jica.go.jp/english/about/policy/environment/id/asia/south/a_b_fi/india/__icsFiles/afieldfile/2025/11/18/EIA_Supplementary_document_(November_18_2025).pdf (last visited on October 21, 2026).

[5] The Metro Railways (Construction of Works) Act, 1978 (Act 33 of 1978).

[6] *Vikrant Tongad v. Noida Metro Rail Corporation*, Original Application No. 478 of 2015, decided on May 31, 2016 (NGT, Principal Bench). The decision is reported in Press Trust of India, "Metro rail projects need environmental clearance: NGT", Business Standard, May 31, 2016, available at: https://indiaenvironmentportal.org.in/news-clippings/metro-rail-projects-need-environmental-clearance-ngt (last visited on October 21, 2026).

[7] Press Trust of India, *supra* note 3 (reporting that a Bench headed by the Chief Justice of India stayed the Tribunal's order on appeals by the Dedicated Freight Corridor Corporation of India Ltd. and metro rail authorities).

[8] Press Trust of India, "Cannot put clock back: SC refuses to stop operations of Noida metro", Outlook, January 7, 2023, available at: https://www.outlookindia.com/national/cannot-put-clock-back-sc-refuses-to-stop-operations-of-noida-metro-news-251743 (last visited on October 21, 2026).

[9] EIB Data Sheet, *supra* note 4, under "Environmental Assessment".

[10] *In Re: Felling of Trees at Aarey Forest*, Diary No. 36650 of 2019, order dated April 17, 2023 (SC), available at: https://api.sci.gov.in/pdfdate/index1.php?filename=supremecourt/2019/36650/36650_2019_1_8_43576_Judgement_17-Apr-2023.pdf&dno=366502019&dt=2023-04-17 (last visited on October 21, 2026); "SC reprimands Mumbai Metro on its bid to fell additional trees in Aarey, imposes Rs 10 lakh fine", Sabrang India,

Maharashtra supplies the local context. The first phase of the Pune system comprises two lines of about 31 kilometres, of which about 26 kilometres are elevated, with two depots and a permanent conversion of about 23.6 hectares of open land and the felling of about 685 trees; 1.45 kilometres of the east–west corridor run along the Mutha riverbed.[11] In Mumbai, the Aarey car shed became a national dispute over trees and urban green space. In each city, the legal contest arrived after alignment and site choices had been made. These facts show that the environmental stakes are not marginal even where a project is, on balance, environmentally beneficial.

This paper has three objectives. First, to determine the legal consequences of the absence of a dedicated metro entry in the Schedule. Secondly, to assess how far Article 21 and the precautionary principle support prior assessment without rewriting the Schedule through interpretation. Thirdly, to propose a regulatory design that protects ecological interests without imposing needless delay on public transport.

The aim of the paper is to offer a doctrinal account that distinguishes exemption from omission, and interpretation from reform, so that the debate can proceed on firmer ground. The method is doctrinal. The paper analyses the Notification and its parent legislation, decisions of the Supreme Court and the Tribunal, and documentary records of lenders and proponents. It does not evaluate the emissions performance or engineering safety of any metro system, and it treats press reports of proceedings as secondary evidence of orders whose full text governs. Part II sets out the regulatory framework; Part III addresses statutory interpretation; Part IV the constitutional principles; Part V the litigation record; Part VI the case for exclusion; Part VII a reform model; and Part VIII concludes.

II. THE REGULATORY FRAMEWORK AND THE ABSENCE OF A METRO ENTRY

The Notification was issued under section 3 of the Environment (Protection) Act, 1986, read with rule 5 of the Environment (Protection) Rules, 1986.[12] Under it, new projects listed in the Schedule, and expansions or modernisations above specified thresholds, require prior environmental clearance, with Category A projects appraised at the Central level and Category B projects by State Level Environment Impact Assessment Authorities.[13] The Schedule has no entry for metro rail, urban rail or mass rapid transit. The nearest entries are item 8(a), for building and construction projects with built-up area of 20,000 square metres or more and below 1,50,000 square metres, and item 8(b), for townships and area development projects covering 50 hectares or more or with built-up area of 1,50,000 square metres or more.[14] Whether any part of a metro development falls within item 8 is a question of classification and threshold, and those thresholds were framed for areal development, not linear infrastructure. A viaduct several kilometres long may disturb a floodplain while occupying little built-up area; a depot may meet a threshold on its own. This mismatch explains why the same project can be argued to lie inside or outside the Schedule.

Two opposite mistakes are possible. The first is to assume that an unscheduled activity is unregulated. A metro project may still need permissions under forest, wildlife, pollution-control, coastal and municipal tree-protection laws, depending on its location and components.[15] The second is to assume that

available at: https://www.sabrangindia.in/article/sc-reprimands-mumbai-metro-its-bid-fell-additional-trees-aarey-imposes-rs-10-lakh-fine (last visited on October 21, 2026).

[11] EIB Data Sheet, *supra* note 4, under "Environmental Assessment" and "Social Assessment".

[12] The Environment (Protection) Act, 1986, *supra* note 2, ss. 3 and 5; the Environment (Protection) Rules, 1986, r. 5. Section 5 confers a separate power to issue directions.

[13] EIA Notification, 2006, *supra* note 1, paras 2, 3 and 4.

[14] *Id.*, Schedule, item 8(a) and 8(b), and the accompanying footnotes to the Schedule.

[15] The Forest (Conservation) Act, 1980 (Act 69 of 1980) (now styled the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980); the Wild Life (Protection) Act, 1972 (Act 53 of 1972); the Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974); the Air (Prevention and Control of Pollution) Act, 1981 (Act 14 of 1981); the Coastal

environmental significance alone allows an authority to bring any activity within an existing entry, which would stretch delegated legislation beyond its text.

Administrative practice has filled the space. As reported, the Ministry of Urban Development's Metro Rail Cell sent a cabinet note to the Ministry of Environment and Forests in May 2009, and the Ministry replied by office memorandum dated June 2, 2009 that metro projects were not required to seek clearance under the Notification.[16] The Ministry later told the Tribunal that railway and metro projects were outside the Notification, and the same reports record that the 2009 communication contemplated certain environmental measures to avoid adverse impact.[17] These documents are known to this paper through reports of proceedings, and the text of the memorandum should be consulted before firm conclusions are drawn about its terms.

Financiers have treated the position as settled and have imposed their own safeguards. The EIB's data sheet for Pune records that metro rail is not in the Schedule and that the promoter voluntarily prepared an assessment consistent with the Notification; the AIIB and JICA documents for Bengaluru and Mumbai describe their projects in similar terms.[18] The framework thus contains neither a lawful exemption nor an unambiguous inclusion. It contains silence, filled by administrative interpretation and by lender conditions that bind only some projects. The author has located no amendment adding a metro entry up to the date of writing.

III. STATUTORY INTERPRETATION AND ITS LIMITS

The strongest legal argument is not that every omission is unlawful. Schedules draw boundaries, and rule-making authorities have latitude to adopt categories and thresholds. The relevant question is whether the chosen boundary bears a defensible relationship to the statute's protective purpose and whether foreseeable risks have been addressed.

The doctrine of casus omissus counsels' restraint. A court does not ordinarily supply words that the legislature or rule-maker omitted merely because a broader provision would produce a better policy.[19] Reading a whole metro corridor into an entry framed for townships and area development therefore raises genuine difficulty: a railway line is not obviously a township. The Tribunal's view in 2016 was arguable, but it was an interpretive choice, and the Supreme Court's later disposal left the question open.[20]

Restraint cuts both ways. The Ministry's reading, that metro rail lies wholly outside the Schedule, is also not compelled by the text. If a station or depot meets the threshold in item 8(a), the Notification's own words suggest that it requires clearance whatever the character of the wider system. A component-wise reading of this kind is more faithful to the text than either the Tribunal's project-wide approach or the Ministry's blanket exclusion, although it risks fragmenting assessment of a connected undertaking.

Administrative memoranda need equally careful treatment. A memorandum may explain how the Ministry understands the Notification, but subordinate legislation and executive instructions are subject to different rules. Subordinate legislation may be challenged where it conflicts with the parent Act or is manifestly arbitrary,[21] and administrative instructions may supplement a statutory instrument where it is silent but cannot supplant it.[22] A memorandum that merely records the Ministry's view that no entry applies may therefore be defensible as an explanation, but one that purports to exempt an activity the Notification covers would be open to challenge.

Regulation Zone Notification, 2019, S.O. 5333(E), dated December 18, 2019; the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975.

[16] Press Trust of India, *supra* note 3.

[17] "Environmental clearance not must for Metro projects, Govt tells NGT", Elets Smart Cities, available at: https://smartcity.eletsonline.com/no-need-of-environmental-clearance-for-metro-projects-moef-tells-ngt/ (last visited on October 21, 2026).

[18] *Supra* note 4.

[19] *Union of India v. Deoki Nandan Aggarwal*, 1992 Supp (1) SCC 323. *See generally* G.P. Singh, Principles of Statutory Interpretation (LexisNexis, Gurgaon, 14th edn., 2016).

[20] *Vikrant Tongad v. Noida Metro Rail Corporation*, *supra* note 6; Press Trust of India, *supra* note 8.

[21] *State of T.N. v. P. Krishnamurthy*, (2006) 4 SCC 517.

[22] *Sant Ram Sharma v. State of Rajasthan*, AIR 1967 SC 1910.

Before attacking any alleged exemption, a researcher must identify the exact instrument, its enabling authority and whether it clarifies an omission or overrides an existing requirement.

These are distinct legal routes and should not be collapsed. A claim that an existing entry already covers a project is resolved by text and context. A claim that the framework inadequately addresses environmental risk raises a different issue, whether the Government should reconsider the Schedule, and its proper remedy is an express amendment following the procedure in rule 5(3) of the 1986 Rules, which provides for a draft notification and for public objections.[23]

Uncertainty itself carries a cost. Proponents cannot know whether to apply, objectors cannot know whether to challenge, and authorities cannot know whether to insist on compliance. Each act on its own reading, and the dispute surfaces at the point of greatest sunk cost. An express provision would remove that uncertainty for every future project; however, the interpretive question is eventually resolved.

IV. CONSTITUTIONAL ENVIRONMENTAL OBLIGATIONS

Article 21 gives the debate its constitutional weight. In Subhash Kumar v. State of Bihar, the Supreme Court treated the enjoyment of pollution-free water and air as part of the right to life.[24] Articles 48A and 51A(g) reinforce the commitment to protect and improve the environment, although they operate differently from an enforceable fundamental right.[25] These provisions require public authorities to take environmental consequences seriously. They do not, without further reasoning, prescribe an identical clearance procedure for every infrastructure project. The constitutional argument is strongest when aimed at the quality of decision-making: has the authority identified significant risks, gathered relevant information, considered feasible alternatives and given reasons?

The precautionary principle supplies a related benchmark. Vellore Citizens Welfare Forum v. Union of India recognised it as part of Indian environmental law and placed on the developer the onus of showing that an activity is environmentally benign.[26] A.P. Pollution Control Board v. Prof. M.V. Nayudu examined the principle against the difficulty of scientific uncertainty and of judicial assessment of technical evidence.[27] M.C. Mehta v. Union of India applied it to industries operating near the Taj Mahal.[28] Parliament has also directed the Tribunal to apply sustainable development, the precautionary principle and the polluter-pays principle.[29] Read together, these authorities support preventive inquiry where serious harm cannot be dismissed with confidence.

Precaution is not a direction to halt every project whenever concern is voiced. It requires credible risks to be examined while harmful choices can still be changed, and its practical value lies in moving inquiry upstream, before expenditure and construction make alternatives costly. Hanuman Laxman Aroskar v. Union of India illustrates the point: the Court treated the clearance process as a substantive safeguard that fails when material information is withheld or ignored.[30] The Court has also accepted that sustainable development involves balancing, and has generally been reluctant to second-guess policy choices on infrastructure.[31] A constitutional argument for metro assessment must therefore concern process and information, not a claim that metro rail is itself harmful.

Non-regression, the idea that levels of environmental protection should not be reduced, calls for greater caution. French law has codified it, and in 2019 the Conseil d'État held that it does not prevent case-by-case assessment in place of systematic assessment but does prevent a regulation from exempting from all environmental assessment a project likely to have

[23] The Environment (Protection) Rules, 1986, r. 5(3).
[24] *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598.
[25] The Constitution of India, arts. 21, 48A and 51A(g).
[26] *Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647.
[27] *A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.)*, (1999) 2 SCC 718.
[28] *M.C. Mehta v. Union of India*, (1997) 2 SCC 353.
[29] The National Green Tribunal Act, 2010 (Act 19 of 2010), s. 20.
[30] *Hanuman Laxman Aroskar v. Union of India*, (2019) 15 SCC 401.
[31] *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664.

significant effects.[32] That is a foreign authority and Indian courts have not adopted the principle in this form. Excluding an activity that was never clearly covered also does not obviously reduce an established level of protection. Non-regression is therefore better used here as a supporting evaluative principle than as an independent ground of invalidity.

V. WHAT THE LITIGATION AND THE RECORD REVEAL

The metro clearance dispute should begin with the direct litigation. In Vikrant Tongad v. Noida Metro Rail Corporation, the Tribunal's decision of May 31, 2016 held that the Noida–Greater Noida metro fell under item 8(b) and directed the project proponent to obtain clearance from the State authority within three months.[33] The project's land requirement was stated to be about 2,84,762 square metres, no assessment had been prepared, and the petitioner feared that piers on the Hindon riverbed would harm aquatic habitat; the Tribunal's order came although, as one report put it, metro projects had until then been treated as exempt from the clearance norm.[34] The Tribunal added that if irretrievable harm had been caused, the authority could even direct demolition of the constructed portion.[35] The Supreme Court stayed the order in September 2016, and in January 2023 refused to stop operations of the completed line, saying that the Tribunal's order could not be acted upon in the peculiar facts of the case and disposing of the appeals with the questions of law kept open.[36,37]

These stages must not be conflated. An interim stay does not settle the correct reading of the Notification. Equally, refusal to halt an operating service cannot be treated as approval of every aspect of its original authorisation. Only the final order and the appeal record could support a definitive proposition about precedent, and on the reported account the Court expressly declined to adjudicate the question.

The Aarey controversy raises different issues: depot location, tree permissions and the status of urban green space. On April 17, 2023 the Supreme Court imposed a penalty of Rs 10 lakh on the Mumbai Metro Rail Corporation for overreaching its earlier order on tree felling, yet permitted felling of 177 trees on the footing that a stay would halt a public project already under way.[38] The order concerned compliance and the conduct of the project authority. It is not a holding that metro projects are constitutionally exempt from assessment, and its reasoning illustrates how late-stage litigation pushes courts towards protecting expenditure.

The Pune record is the most instructive because it is documentary. The lender's data sheet records that the Tribunal's order of August 3, 2018 declined to prohibit the project in the public interest, on the basis of an expert committee's finding that the piers' effect on river hydrology was insignificant, subject to strict compliance with the environmental management plan.[39] The same sheet lists as residual impacts the conversion of open land to depots, the felling of trees and building within the river's flood line.[40] In 2021 the lender's complaints mechanism, responding to a complaint, found grounded an allegation of non-compliance with two of the Bank's environmental and social standards and of deficient due diligence and monitoring, found another ungrounded, and suggested

[32] Code de l'environnement (France), art. L. 110-1(II); Conseil d'État, October 9, 2019, No. 420804, discussed in Laura Gazzarin, "Nouvelle application du principe de non-régression par le Conseil d'État", Gazette du Palais, January 21, 2020, No. 3, p. 38.

[33] *Supra* note 6.

[34] *Supra* note 6; "Green trouble for Metro as NGT wants clearance", India Environment Portal news clipping, June 2, 2016, available at: https://indiaenvironmentportal.org.in/news-clippings/green-trouble-for-metro-as-ngt-wants-clearance (last visited on October 21, 2026).

[35] "NGT asks NMRC to get green nod for Noida-Gr. Noida line", Realty n More, available at: https://www.realtynmore.com/ngt-asks-nmrc-to-get-green-nod-for-noida-gr-noida-line/ (last visited on October 21, 2026).

[36] *Supra* note 7.

[37] *Supra* note 8.

[38] *Supra* note 10.

[39] *Sarang Yadwadkar v. Pune Municipal Corporation*, order dated August 3, 2018 (NGT, Western Zonal Bench, Pune), as recorded in EIB Data Sheet, *supra* note 4, under "Environmental Assessment".

[40] *Supra* note 11.

that flood risks from piers in the prohibitive zone be adequately addressed in the assessment.[41] Such reports are useful context, but they are not substitutes for the holdings of Indian courts.

The common institutional concern is timing. Once construction is advanced, courts face pressure to protect public expenditure and service continuity. That does not show that environmental claims lack merit. It shows why assessment before alignment and site selection is preferable to ecological repair through litigation afterwards. The Pune example also shows that rigorous assessment is feasible: a voluntary study did not prevent the project from proceeding.

VI. ANSWERING THE CASE FOR EXCLUSION

The strongest defence of a lighter regime is that metro expansion serves environmental and social purposes. Law officers argued before the Supreme Court in 2016 that requiring such projects to seek clearance was unreasonable because they reduce dependence on cars.[42] Delay in public transport has real costs for commuters, and environmental regulation should acknowledge those costs rather than treat delay as inconsequential. The environmental benefits of metro rail operation, however, answer a different question from the one asked here, namely how the costs of construction are to be assessed.

But a choice between lengthy assessment and no assessment is a false choice. Clear screening criteria, coordinated applications and fixed decision periods can reduce delay without eliminating scrutiny. Early assessment may also prevent later redesign, litigation and remedial expenditure, although whether it does so in a given project is an empirical question that this paper does not claim to answer. A project's benefits also do not tell us whether a specific depot site or riverbed crossing was the best available. Nor would the burden be novel: the Notification already provides a Category B path for item 8 projects, with appraisal by State authorities and no public hearing, which shows that a proportionate procedure exists within its architecture.[43]

Specialised oversight is a further defence. Metro construction legislation, engineering supervision and local permissions perform important functions, and a project-level assessment should not duplicate safety approvals that another competent authority has already given. But their purposes differ from integrated environmental appraisal. A tree permission does not necessarily examine alternative alignments, and a structural approval does not necessarily evaluate catchment-wide drainage. Reform should identify what is missing and integrate it, rather than add another layer.

VII. A PROPORTIONATE REFORM MODEL

A dedicated entry for metro and urban rail would make the framework clearer. Screening should consider corridor length and land requirement, but ecological sensitivity should carry independent weight: a short stretch through a vulnerable floodplain may warrant closer examination than a longer alignment in an already developed corridor. Depots and stations should have their own triggers, since these often cause the largest land and tree impacts.

Higher-risk projects should require detailed assessment of alternatives, hydrology, biodiversity, cumulative effects and construction management. Lower-risk projects could follow a shorter procedure supported by baseline information and enforceable environmental conditions. Any exemption should be precisely defined and should preserve obligations under other laws. Appraisal should run to a fixed timetable, and the clearance should be coordinated with forest, tree and flood-zone permissions so that the promoter faces one integrated decision in place of a sequence of separate ones. Conditions should be published and monitored, and independent

[41] European Investment Bank Group Complaints Mechanism, Pune Metro Rail Project, Complaint SG/E/2020/16, Conclusions Report, November 19, 2021, available at: https://www.eib.org/attachments/complaints/sg-e-2020-16-pune-metro-rail-project-conclusions-report-19-11-2021.pdf (last visited on October 21, 2026); case summary available at: https://www.eib.org/en/about/accountability/complaints/cases/pune-metro-rail-project-sg-e-2020-16 (last visited on October 21, 2026).

[42] *Supra* note 3.

[43] EIA Notification, 2006, *supra* note 1, paras 4 and 7(i), III, Stage (3)(i).

monitoring, already used for lender-financed projects, should become the norm for sensitive sites.[44] The framework should assess a project as a connected undertaking, so that stations, depots and access roads do not escape cumulative consideration because they are submitted separately, while assessment boundaries remain tied to effects reasonably attributable to the project.

Public participation needs deliberate design. The Notification exempts item 8 projects from its ordinary public-consultation stage, so reclassification under that item alone would not secure the participatory process proposed here.[45] A dedicated metro provision should state its consultation requirements expressly, including accessible disclosure of route alternatives and of significant later changes. The entry should be introduced by amendment under rule 5(3), so that affected citizens and project authorities can be heard.[46] Finally, network-level strategic assessment can supplement project appraisal by comparing corridors and depot options before engineering choices become entrenched. This is a proposed reform, not a claim that Indian law already imposes a universal strategic-assessment duty on metro networks.

VIII. CONCLUSION

The central message of this paper is that scrutiny of metro construction does not depend on denying the benefits of public transport. It depends on recognising that beneficial infrastructure can still be badly located, inadequately assessed or poorly implemented. Environmental responsibility concerns how a project is built as well as what it is meant to achieve.

The paper's findings are fourfold. First, non-inclusion in the Schedule is not an express exemption from every environmental law, and metro projects remain subject to forest, wildlife, pollution, coastal and tree-protection regimes. Secondly, an administrative memorandum can explain but cannot amend the Notification, and the Supreme Court has left the interpretive question open. Thirdly, Article 21 and the precautionary principle support reasoned, upstream assessment, but they do not automatically supply a missing scheduled category. Fourthly, the Noida, Aarey and Pune records show that scrutiny has come late, through litigation or lender conditions, rather than at the stage when alignment and site choices were still open.

The broader implications extend beyond metro rail. Any class of public infrastructure that is both beneficial and unscheduled, such as other urban transit or linear projects, invites the same ambiguity, and the same distinctions between omission, exemption and constitutional duty will apply. How India treats metro rail will signal how it reconciles climate-friendly infrastructure with the ecological protection that Article 21 requires.

The main contribution of the paper is analytical. It separates three questions that the debate has run together, treats the component-wise reading of item 8 as an option the existing text allows, and ties the case for reform to a documented pattern of late scrutiny rather than to an assumption that public transport is harmless or harmful.

Future research should be empirical. Studies of metro projects that undertook voluntary assessments could test whether early assessment reduced redesign, litigation and cost, and comparative work could examine how other jurisdictions screen urban rail. The full text of the 2009 memoranda and of the Supreme Court's order of January 2023 should be examined in any such work.

The call to action is addressed to the Ministry as the rule-making authority. It should publish the 2009 memoranda, issue a draft notification introducing a dedicated, risk-based metro entry with express consultation provisions, and integrate existing permissions into a single timetable. The aim is not more procedure for its own sake, but better decisions before avoidable ecological damage becomes a completed fact.

[44] EIB Data Sheet, *supra* note 4, under "Other Environmental and Social Aspects".

[45] EIA Notification, 2006, *supra* note 1, para 7(i), III, Stage (3)(i).

[46] The Environment (Protection) Rules, 1986, *supra* note 2, r. 5(3).