

# Trend of Community's Participation in Environmental Decision-making Process Under EIA: A Study

**Madhuri Parikh\*, Bishwa Kalyan Dash and Deba Ranjan Hota**

Institute of Law, Nirma University, Ahmedabad, India  
✉ maparikh73@gmail.com

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**Abstract:** The present study highlights the plight of public participation in the environmental decision-making process in the state of Gujarat as per the Environment Impact Assessment Notification, 2006. The scope of the study is restricted to people's participation in public hearing sessions as part of the public consultation process under the notification conducted at different places in Gujarat. The tools and techniques used for the empirical data collection include observation method, schedule, interview and focussed group discussions. The observations and recommendations are given based on the actual data collected from the field through visits to public hearing sessions, interactions with stakeholders and analysis of the minutes of the meeting of the public hearing sessions. Approximately 68 public hearings were held in the year 2020 in Gujarat, out of which 13 were visited covering various geographic locations in the State from February to December 2020.

**Key words:** Environmental impact assessment (EIA), public participation, procedural rights, procedural justice, environmental decision-making process.

## Introduction

The right to participate in the decision-making process enhances the better implementation of the decisions and minimises conflicts. Public participation plays a crucial role in developmental activities, due to which the Environmental Impact Process includes public participation and consultation as one of the important steps of the process. The concept of Environment Impact Assessment ["EIA"] implements the precautionary principle by measuring probable impacts of any project or activity in advance and taking mitigating measures to avoid the harms. The first part of the paper discusses the concept of public participation and its justification. The second part analyses the legal provisions to participate in the environmental decision-making process under the Environment Impact Notification in India. The next part analyses the observations made from the field.

The fourth part shares the conclusions drawn based on the data collected through empirical study and the recommendations to make the participation process more effective.

## The Concept of Public Participation in EIA Process and its Justification

The inclusion of the public in decision-making processes is a manifestation of a decentralised democracy. The sharing of power with the diverse groups of the society for a meaningful decision-making process ensures a better and an effective process of taking environmentally and socially sound decisions through the inclusion of diverse perspectives for the development activity and its impacts (International Association Public Participation Report, 2007). Public participation has instrumental value in improving democratic decision-making that supports sustainability (Carcasson, 2019). The

\*Corresponding Author

importance of people's participation is also recognised in many international declarations and conventions. The United Nations Declaration on the Rights to Development unequivocally establishes development as a right and puts people at the centre of the development process (25<sup>th</sup> Anniversary of the Declaration on the Right to Development) (Available at Declaration on the Right to Development at 25 (un.org).

The Declaration on Right to Development, clearly depicts **Article 2** focusses on active participation, responsibility for the development, the duty of the state to form apt opportunities for the aforementioned [available at <http://www.ohchr.org>], of all stakeholders in development programs.

The Rio Declaration on Environment & Development (1992) (available at <https://www.cbd.int/doc/ref/rio-declaration.shtml>) emphasises the importance of participation (of women), access to Public Participation, Information & Justice (Principle 10, 11, 13). The Aarhus Convention 1998 (available at <https://aarhus.osce.org/about/aarhus-convention>) also states the importance of the effective participation of the people in environmental decision-making. The very spirit and soul of Article 21 read in conjunction with Articles 12, 39, 39A thus making it a necessary committable of distributive justice promised in the preamble. Some of the Directive Principles of State Policy show a minute inclination towards environmental protection, i.e., Articles 39(b), 47, 48 and 49 which individually and collectively impose a duty on the State to take measures for improving the general health of the environment and provide a clean environment to the country (See the Constitution of India, 1950).

#### *Why Public Hearing/Public Consultation*

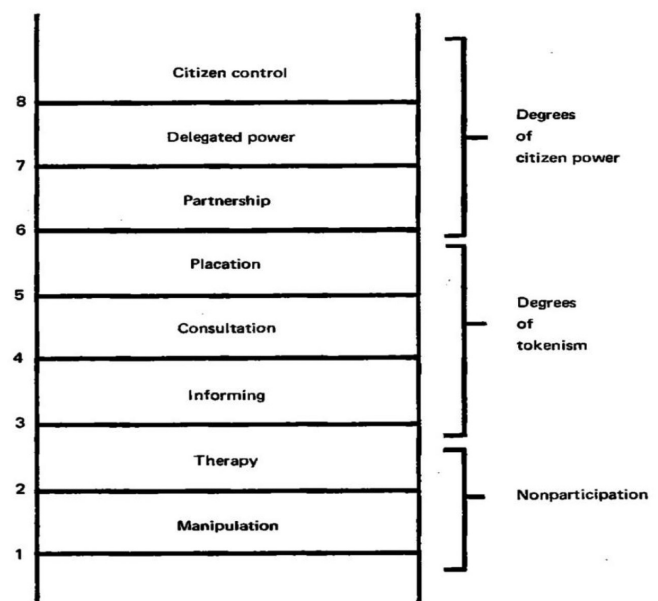
A systematic examination while considering the consequences and identifying possible effects while addressing ways to mitigate the same, reduction of conflicts, are few of the requirements in many. The EIA Notification (2006) had divided the projects into two categories namely A and B, making public participation a mandate on stakeholders and focussing on the effectiveness of the process.

#### **The Types and Levels of Public Participation**

Public participation is classified as Organic (organised without govt. intervention) and Induced participation (govt. induced) (Ghazala and Rao, 2013). As per White (1996), participation is of four types i.e., nominal, instrumental, representative, and transformative.

- **Nominal participation** is often used by more powerful actors to give legitimacy to development plans.
- **Instrumental participation** sees community participation being used as a means towards a stated end.
- **Representative participation** involves giving community members a voice in the decision-making and implementation process of projects or policies that affect them.
- **Transformative participation** results in the empowerment of those involved, and as a result alters the structures and institutions that lead to marginalisation and exclusion.

A ladder of citizen participation, developed by Arnstein, which can be seen in Figure 1 depicts different levels of participation through eight rungs model (Arnstein, 1969). The first two rungs are manipulation and therapy wherein people would be allowed to participate in the decision-making but it is an illusory form of participation that is mainly influenced by the power holders. The third rung depicts one way flow of information from officials to the citizens and the fourth rung involves the people in consultation but the modes of consultation are limited which restricts the complete participation. At the stage of placation, the participants will be demonstrated but it reaches real partnership in the decision-making process at the sixth rung of participation. The rungs seven and eight depict



**Figure 1: Arnstein's ladder of citizen participation.**  
**Source: Arnstein, S. (1969). 'Eight rungs on a ladder of Citizens' Participation'.<sup>1</sup>**

effective participation of people where the power to take the decision is delegated to the citizens and they have complete control over the decision-making process.

The right to information is a weapon that has not been used to extract information from the industries or Government for that matter which clearly involves the active involvement of NGOs and civil society operating in that area.

The question of representing and asking the question also goes hand in hand with the locally dominant caste and class composition, political influence, social status and authority structure located in the community dynamics.

### **Process of Public Participation under Environment Impact Assessment Notification in India**

EIA was first introduced in India under Environmental Protection Act (EPA) 1986. But formally it came into effect when the Ministry of Environment and Forest (MoEF) on 27 January 1994, under the provision of EPA 1986 promulgated the EIA notification making environmental clearance mandatory for expansion or modernisation of any activity or for setting up new projects. Although this notification did not have provisions for involving the public in the decision-making process through a process of consultation, the concept of Public Hearing was introduced with the first amendment to the Notification (S.O. 356 E dated 4<sup>th</sup> May, 1994), which was later strengthened in a further amendment (S.O. No. 318 E dated 10<sup>th</sup> April, 1997). Subsequently, EIA processes have been strengthened by MoEF by a series of amendments while currently in practice in EIA Notification 2006 (<http://envfor.nic.in/legis/eia/se1533.pdf>) and its amendments.

Although the EIA Notification (2006), had no provisions for involving the public in the decision-making process through consultation, the concept of Public Hearing was introduced with the first amendment to the Notification (S.O. 356 E dated 4<sup>th</sup> May, 1994), which was later strengthened in a further amendment (S.O. No. 318 E dated 10<sup>th</sup> April, 1997). The EIA Notification amended on 1<sup>st</sup> December, 2009 has prescribed an elaborate procedure for conducting a public hearing. The requisite document for the conduct of public hearing is made available 30 days prior to the date of the public hearing and is covered under the EIA Notification and for compliance by the concerned State Pollution Control Boards. The systematic EIA process started with EIA

notification in 1994 and environmental public hearing became a mandatory step of the EIA process with the amendment of 1997. The EIA notification of 1994 was re-engineered in 2006 and the process of public consultation was defined precisely. Schedule I of EIA notification 2006 provides a list of activities for which the EIA process is mandatory. As per the EIA Notification 2006, the EIA process has a maximum of four stages, i.e. Screening, Scoping, Public Consultation and Appraisal; all of which may not be applicable to all projects. However, in the EIA process, the public hearing (or public consultation) stage is the only stage where there is some scope for intervention by local communities, where comes our role. Further, the consultation process has been divided into two, public hearing for local people and submission in writing from other plausible stakeholders. So NGOs/civil society organisation (unless locally situated) have been excluded to take part in the public hearing, but can send their written representations/comments as plausible stakeholders.

The four-stage process is as follow:

1. Screening

The screening process is limited to the industries listed in the B category in the notification. The notification empowers the State Environment Appraisal Committee to make screening and decide whether a particular industry mentioned in Category B needs EIA or not i.e whether it is B1 or B2.

2. Scoping

At this stage, the key issues of the projects or proposed development activity are identified to be addressed in the EIA report.

3. Public Consultation/Public Hearing

In this, the stakeholders can interact directly with government officials and the project proponent about the concerns regarding the upcoming project. After analysing the probable impacts of the proposed activity and its mitigating measure, the EIA report would be prepared and submitted for review.

The stage of public consultation is applicable to the industries/activities falling in Category A and B1 of the notification. The process of public consultation starts with the submission of the draft EIA report and application for conducting the public hearing by the Project Proponent to the State Pollution Control Board [hereafter referred as SPCB] or the Union Territory Pollution Control Committee [hereafter referred as UTPCC] of the concerned state or Union Territory. If the project falls in more than one state or district then in each state or district the hearing

will be conducted. The entire process of public hearing should be completed within 45 days from the date.

The information related to the date, time and venue of the public hearing and the summary of the draft report are uploaded on the website of the SPCB or UTPCC and the details for the knowledge of the people advertised through two newspapers: one national daily and one local daily before 30 days of the hearing.

A copy of the summary of the draft report in vernacular language is also made available to the local offices which can be accessed by the people during office hours. These offices are also required to give wide publicity about the information related to the draft summary and details of the public hearing in their concerned jurisdiction.

The venue of the public hearing is kept in close proximity to the project site. The details regarding the project and its impacts with technical details are presented in the local language before the people in the public hearing session soliciting their concerns related to the same. The affected people can ask questions and submit their concerns regarding the project. The entire process is documented and video graphed. The signature of all the participants in the meeting is taken and attached with the proceedings. The concerns shared through written submission are also read in the meeting. The minutes are signed by the presiding officers and submitted to the SPCB or UTPCC. Copy of the same is given to the applicant also. Within 8 days of the hearing, a copy of the proceedings will be submitted to the regulating authorities. The summary of the proceedings of the public hearing is displayed in the office of the panchayat in whose jurisdiction the project is falling, the office of the zila parishad/district collector and the website of UTPCC or SPCB.

#### 4. Appraisal

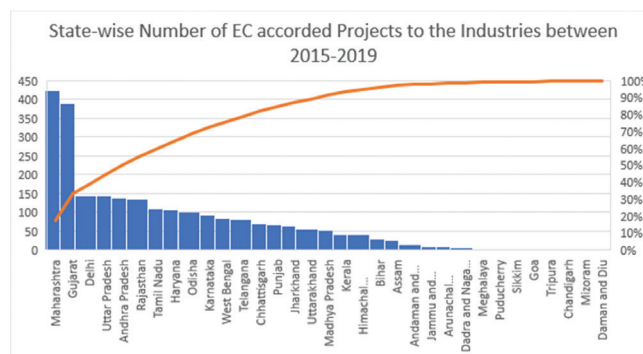
The fourth stage is the appraisal of the projects. After receiving the final reports from the project proponent, it is scrutinised and the decision is taken to approve or reject it with reasons.

### Current Trend of Public Participation in Gujarat

For the present research, the field study has been made after attending 13 environmental public hearing sessions in Gujarat covering diverse geographic areas in the year 2020 to understand the current trend of participation

- The industrial policy of 2020 of Gujarat focusses on industrial growth and investment. Gujarat is in the

second position in terms of the total environmental clearances granted for the projects as per the data of the year 2015-2019 (Annual Report, 2018-19). The chart shown in Figure 2 indicates that a total of 390 clearances was granted to industries in Gujarat out of 2468 total Environmental clearances accorded to industries in India which is the second-highest after Maharashtra. As per the Annual Report of year 2018-2019, published by the Gujarat State Pollution Control Board, a total of 82 public hearings as part of the EIA process were conducted from the period of 11<sup>th</sup> April to 22<sup>nd</sup> March 2019 (Annual Report, Gujarat Pollution Control Board, 2018-19). This led to inquiry about the stakeholders' views and concerns related to the development activities in the State. To analyse the trend of public participation in the EIA process, this study was carried out. The details of the date of hearing, place, type of industries, number of villages impacted by the proposed industrial activity and the total number of participants who remained present in hearings are mentioned in Figure 3. It shows that the total number of people who participated in a public hearing in proportion to the total number of affected villages is very less.



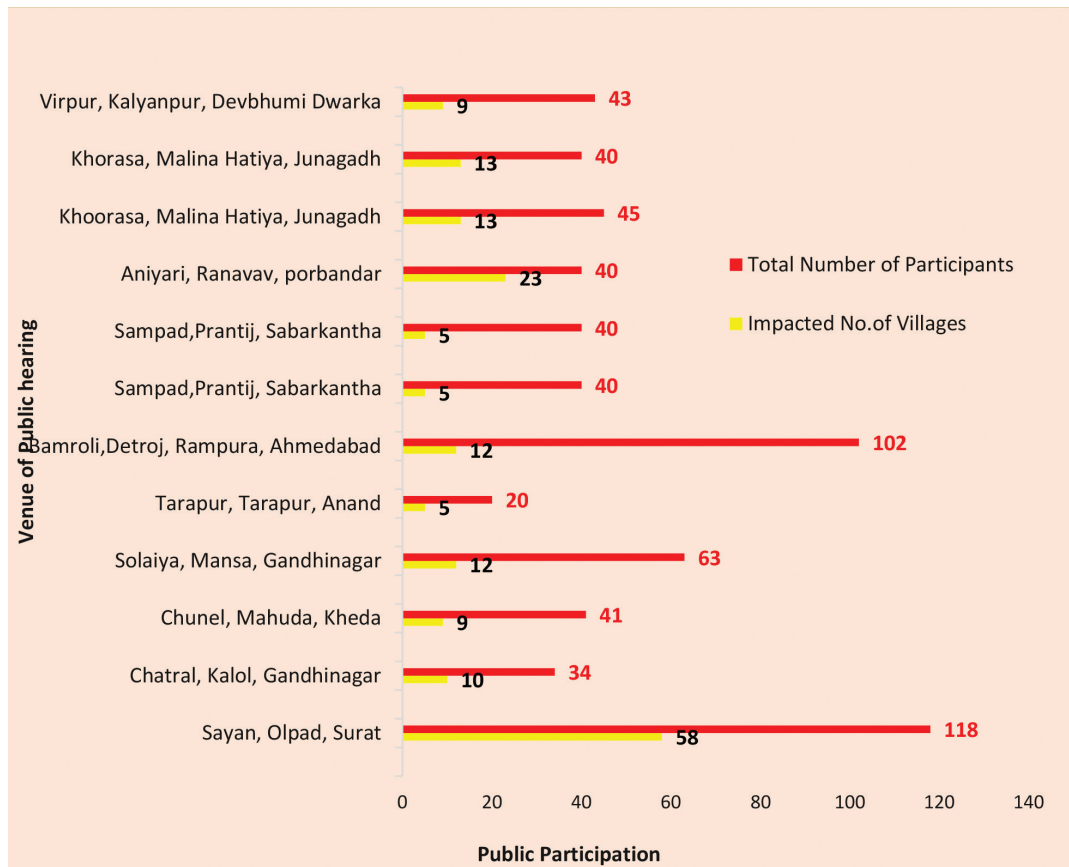
**Figure 2: Status of Environmental Clearance granted to industries between 2015-2019 in India.**

**Source:** <https://www.indiastat.com> (State Environment Impact Assessment Authority, Gujarat, 2019).

Figure 4 suggests the types of industries for which the above-mentioned public hearing sessions took place. The analysis of the Figure 4 suggests that industry-wise maximum participation was witnessed in Oil and Natural Gas Company [ONGC], followed by limestone and sugar industry's hearing. The lowest participation can be seen in Dye and bauxite industry. Moderate participation was observed in the sand industry.

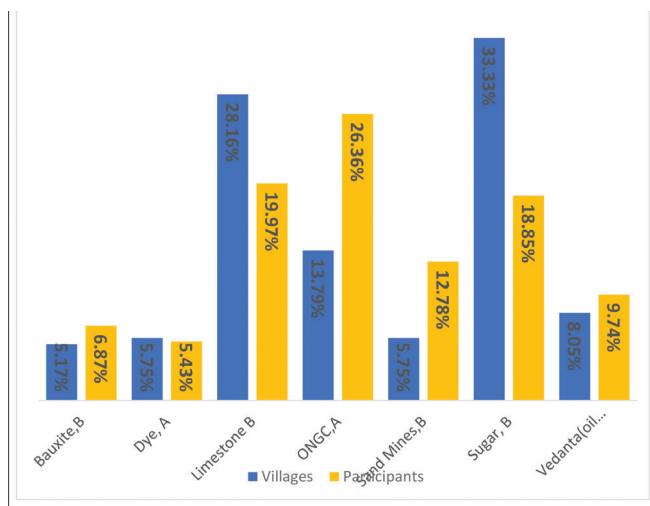
Figure 5 suggests that the visits to the public hearing almost cover every region of the State. About 32% of





**Figure 3: Public hearing processes visited from January-December 2020 for the study.**

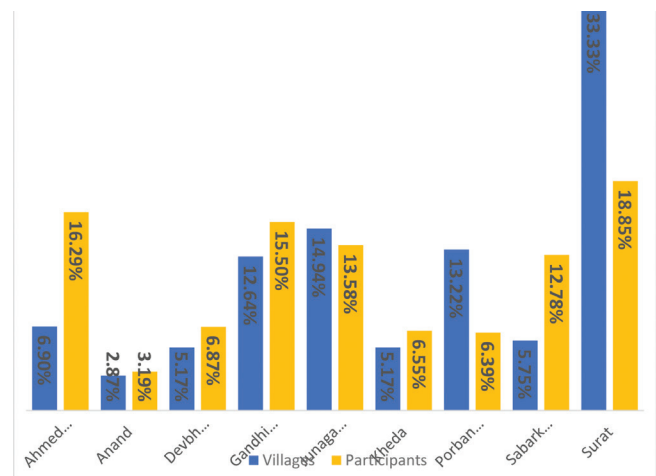
Source: Based on the empirical data collected through visit to public hearings in 2020.



**Figure 4: The type of industries and the affected villages.**

Source: Based on the empirical data collected through visit to public hearings in 2020.

regions of Saurashtra, 33% region of South Gujarat, about 7% of Central Gujarat and around 21% of North



**Figure 5: District wise coverage of the Public Hearing sites.**

Source: Based on the empirical data collected through visit to public hearings in 2020.

Gujarat have been covered for the study if we include Ahmedabad district in this zone.

The number of participants sometimes hits as low as 35 to as high as 300 depending on the kind, category of industry and the region of the state. It has been observed that there are regions in the state which are well aware of the impact and opportunities of the industrial set-up which directly contributes to the effective and meaningful participation in the public hearing processes.

It has been noticed that the main challenge to organising public hearing during a pandemic is a tough challenge for the administration. But all the hearings strictly maintained the covid protocol and follow the rules with letter and spirit. The main barrier for the people is to understand the techno-scientific language of the project though it is presented in the local language. The lack of sufficient time to understand the issue at stake finds rare mention in their objections and suggestion during a meeting.

Discrepancies like omitting certain questions that the authority thinks non-environmental are quite prevalent when minutes of the meeting were analysed. The authority completely misses the cultural context of livelihood in most cases.

## Conclusions and Recommendations

### Conclusions

After going through the public hearings in person and analysing the minutes, it was observed that; procedural requirements of the public consultation process are taken care of in holding the public hearings and, on average, the public hearings are of one hour to one and half hours in duration. The summary of the report is presented in 15 to 25 minutes in the majority of the cases observed during the visits. As observed in the attended public hearings for this study, a total of three to five written submissions are found in the majority of the hearings.

**The Scope for Participation:** The EIA Notification of 2006 provides scope for stakeholders' participation after submission of the draft EIA report by the project proponents to the State Pollution Control Board. A total 30 days period is available to the stakeholders before the public hearing and for submission of written comments. The time period is relatively less as the EIA report used technical jargon which is difficult for a layman to understand. The scope of participation is limited to entertaining concerns and is not extended to involving local place-based knowledge of the population in the environmental decision-making process. There is an absence of provision for post-hearing participation that limits the scope of participation and does not provide

the opportunity to cross check the action taken on the concerns raised by them during a public hearing.

**The Trend of Participation:** The procedure does not lay down the provision of the presence of a minimum number of participants for a successful public hearing. The absence of the requirement of quorum dilutes the purpose of the provision. The study reveals the local population in villages were mostly found ignorant about the time and date of hearing, the importance of the process and their role. This condition was not found to be uniform throughout all public hearing sessions visited. The livelihood issues and economic interests were found to be the main motivating factors at places where comparatively stakeholders' participation was more in a public hearing. It was also found that the local heads of the villages play a pivotal role in motivating villagers to participate. The study shows relatively very less participation of women in this process due to social set up and traditions.

### Access to information about the draft EIA report:

The summary of the draft EIA report is kept at local offices which can be accessed on request by the people during office hours. The information regarding details of public hearings is provided through newspapers and announcements. This information is also kept on the website of the Gujarat Pollution Control Board. The people were found to be less aware of it. A copy of the final EIA report is not kept available at the local offices. The videography of the entire public hearing session is also not kept for open access to the people through local offices or keeping the information on the website.

**Access to Justice:** In case of any conflict related to the public hearing process and procedural lacuna, people can approach the National Green Tribunal. But there are limited benches of the National Green tribunal. The process of dispute resolution consumes a lot of time in regular court and tribunal so it is not preferred by the people.

### The Following Recommendations are Made to Strengthen the Process of the Public Consultation under Environment Impact Assessment Process

1. The scope for 'stakeholders' participation should be increased and the opportunity is to be provided to engage them at the early stage of preparing the EIA report. The various modes of engaging the stakeholders in the environmental decision-making process should be adopted. The local people should be engaged and consulted before the EIA report is prepared, at the time of scoping

and screening and at the post-monitoring level. The people should be engaged through various modes and methods in the decision-making process. The focused group discussion method, survey method, through the representation of the stakeholders in decision-making committees and evaluation of the report, will help in the effective involvement of the stakeholders. Instead of entertaining concerns, the local knowledge should be included in the sound environmental decision-making process.

2. The handbook should be prepared to orient and educate the people about the public participation process, their role and importance. The local non-governmental organisations and educational institutions should be engaged in educating people about the process of hearing and their role.
3. The access to information regarding the project and EIA report, videography should be provided through local offices as well as circulating the information on how to access it.
4. The social media platforms should be used to notify the date, time and venue of the public hearing.
5. An authority should be created to resolve the dispute related to public participation at the local level. At the district level, an authority should be created, which should consist of the Collector of the District, Regional officer of the Pollution Control Board, the Heads of the local panchayats of the affected people where the project is proposed. The objective of this authority is to resolve the disputes related to public hearings and the public consultation process.

The process of EIA needs meaningful and sold participation of the affected people.

### Acknowledgement

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### Conflict of Interest

This research work is a work in progress sponsored by the Indian Council of Social Science Research ICSSR] IMPRESS. As per the terms of the research project, the research outputs could be produced for circulation. Data should be re-produced with acknowledgement to ICSSR IMPRESS.

**Note:** The present empirical study is conducted in the State of Gujarat. Situated in the western part of India

with longest coastal area of 1600 km., Gujarat is one of the industrially developed states in India. Since its re-organisation in 1960, the state of Gujarat has made remarkable economic progress. It has 33 districts and approximately 6.03 crore total population which is 4.99% of Indian Population (State demography profile, 2011). The Literacy rate is 79.31% in the state as per 2011 Census with Male literacy rate on the higher side than the female literacy rate (Census India, 2011).

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