



सत्यमेव जयते

**Report**  
**HIGH LEVEL COMMITTEE**  
to review various Acts administered

by

**Ministry of Environment, Forest & Climate Change,  
Government of India  
November 2014**



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## List of Abbreviations

IF Act	The Indian Forest Act, 1927
WLP Act	The Wildlife (Protection) Act, 1972
FC Act	The Forest (Conservation) Act, 1980
Air Act	The Air(Prevention & Control of Pollution) Act, 1981
Water Act	The Water (Prevention and Control of Pollution) Act, 1974
EP Act	The Environment (Protection) Act, 1986
WC Act	The Water (Prevention and Control of Pollution) Cess Act, 1977
DFO	Divisional Forest Officer
NEMA	National Environment Management Authority
SEMA	State Environment Management Authority
PCCF	Principal Chief Conservator of Forests
CCF	Chief Conservator of Forests
CWLW	Chief Wildlife Warden
UA	User Agency
EAC	Expert Appraisal Committee
RO	Regional Office
ELMA	Environment Law (Management) Act
EIA	Environment Impact Assessment
EMP	Environment Management Plan
ICT	Information and Communication Technology
CPCB	Central Pollution Control Board

SPCB	State Pollution Control Board
GIS	Geographical Information System
MOEF&CC	Ministry of Environment, Forests & Climate Change
NBWL	National Board for Wildlife
SBWL	State Board for Wildlife
NGT	National Green Tribunal
FAC	Forest Advisory Committee
MOTA	Ministry of Tribal Affairs
WII	Wildlife Institute of India
DoPT	Department of Personnel & Training
UPSC	Union Public Service Commission
NIC	National Informatics Centre
NEP	National Environment Policy, 2006
CA	Compensatory Afforestation
PA	Protected Area
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
NPV	Net Present Value (in terms of CA)
CRZ	Coastal Regulation Zone
ERF	Environmental Reconstruction Fund

## COMPOSITION OF THE COMMITTEE

Vide OM No. 22-15/2014-IA.III dated 29<sup>th</sup> August, 2014, Ministry of Environment, Forests & Climate Change, Government of India

- 1. Shri T.S.R. Subramanian**  
Former Cabinet Secretary, Government of India  
Chairman
- 2. Shri Vishwanath Anand**  
Former Secretary to Government of India  
Member
- 3. Justice (Retd.) Shri A.K. Srivastava**  
Former Judge of Delhi High Court  
Member
- 4. Shri K.N. Bhat**  
Senior Advocate, Supreme Court of India  
Member
- 5. Shri Bishwanath Sinha**  
Joint Secretary,  
MoEF&CC, Government of India  
Secretary
- 6. Shri Hardik Shah**  
Member Secretary,  
Gujarat Pollution Control Board, Gandhinagar  
Secretary

## TERMS OF REFERENCE :

Vide OM No. 22-15/2014-IA.III dated 29<sup>th</sup> August, 2014, Ministry of Environment, Forests & Climate Change, Government of India

The Terms of Reference of the Committee as stated in the OM is reproduced below :-

- (i) To assess the status of implementation of each of the aforesaid Acts\* vis-à-vis the objectives;
- (ii) To examine and take into account various court orders and judicial pronouncements relating to these Acts;
- (iii) To recommend specific amendments needed in each of these Acts so as to bring them in line with current requirements to meet objectives; and
- (iv) To draft proposed amendments in each of the aforesaid Acts to give effect to the proposed recommendations.

### \* Aforesaid Acts:-

- (i) Environment (Protection) Act, 1986 (EP Act)
- (ii) Forest (Conservation) Act, 1980 (FC Act)
- (iii) Wildlife (Protection) Act, 1972 (WLP Act)
- (iv) The Water (Prevention and Control of Pollution) Act, 1974 (Water Act)
- (v) The Air (Prevention and Control of Pollution) Act, 1981 (Air Act)
- (vi) The Indian Forests Act, 1927 (IF Act)#

# Added on 18<sup>th</sup> September, 2014

## CHAPTER 1 : PREAMBLE

**“Nature is the source of all material things: the Maker, the means of making, and the things made. All actions take place in time by the intervening of the forces of Nature; but the man, lost in selfish delusion thinks that he himself is the actor. (*Isha Upanishad*)**

**“Environmental conservation is about negotiating the transition from past to future in such a way as to secure the transfer of maximum significance.” *Holland and Rawles (1930)***

- 1.1** The Committee appointed by Ministry of Environment, Forests & Climate Change (MoEF&CC), Government of India has interpreted the Terms of Reference to include the task of aligning the relevant current statutes with present ground realities, towards redesigning the policy space for administering environment, forest and wildlife related laws – conducive to a multi-dimensional ecosystem-driven structure, focusing upon inter-generational equity. The Committee notes that the totality of management of the environment is currently undertaken through the Acts, concurrently with the subordinate legislation, rules and procedures, along with executive instructions, which are all integrally inter-connected; a mere tinkering with the Acts would not be adequate to provide a coherent approach to enhance the quality of management of environmental issues. Accordingly suggestions for the necessary improvements/amendments as required in the guidelines and procedures have also been covered in the ambit of work of the Committee.
- 1.2** The major national Statutes on the conservation of Forest, Protection of Wildlife & Environment, and Pollution Control derive their postulates from isolated and monochromic regulatory milieus which were legislated in the backdrop of specific elements and circumstances prevailing at the relevant period. Over the past decades, national and regional economic space has become more energy-intensive, also impacting on the environment. Some indicators of prosperity have shown positive signs, though patchy; however regional disparity and individual inequities still loom large leaving a substantial segment of the population below poverty line – many informed estimates indicate that more than half the population is in severe distress. Livelihood issues still dominate the social and political manifestoes. A plethora of institutional responses have emerged to mitigate the adverse impacts of development on the state of the environment. There is now an urgent necessity for integration of environment, economic and social issues in the development paradigm. Changing drivers such as population growth, economic development and

consumption patterns have mounted pressure on environment, while serious and persistent barriers to sustainable development loom large. Environmental management is currently seen as an anti-thesis to development; development is seen as inimical to the habitat, natural assets, and in certain circumstances undermining peoples' livelihood.

- 1.3** The present legal instruments have demonstrated varied impact – be it arresting or minimising diversion of forest land, or adding to more geographies in the protected environment for wildlife, or regulating industrial growth through an imperfect regime of licensing and approvals. Often triggered in the implementation phase by rent-seeking impulses, these piecemeal and sectoral legislations with their subordinate instruments, have failed to comprehend the need to address the holistic nature of the environment.

In the race for development, which ideally ought to improve the quality of life of the citizen, the relationship with environment is often lost sight of. That environment is sacrosanct; that the knowledge and application of science warrants harmonious use of natural resources without destabilising the cycles of nature; that the purity of air, water and land has been inherited by a generation in mortgage for children of tomorrow; that it is implicitly imperative for each generation to leave the environment to the next generation in a better state than they found it.

Forest Conservation Act, 1980 (FC Act) has minimised the diversion of forest land – however, statistics indicate decline in the quality of forest cover; protected areas have expanded in bigger geographies, but number of wildlife animals have declined; numerous regulatory notes have been gazetted to minimise air, water and land pollution – normative standards of emission and effluents have been put in place – but human well-being index is deteriorating with rampant health hazards, at times leading to catastrophes; rivers are getting dirtier – are we going to see with increasing frequency and intensity a Kedarnath or a Srinagar valley disaster, somewhere or the other ? Already Delhi is rated as one of the most polluted cities in the world; and many other Indian cities appear in the same list. We need to take heed of the very recent Intergovernmental Panel on Climate Change (IPCC) call from Copenhagen that the earth is flirting with danger – the alarm flag has been hoisted. A reliable mechanism is required to be put in place to audit the effectiveness of afforestation plans and other programmes to assess the growth of forest cover in the

country; equally to set in place systemic audit to ensure that water and air pollution is not only contained, but reversed. A knee-jerk attitude in governance, flabby decision-making processes, ad hoc and piecemeal environmental governance practices have become the order of the day. The legal framework has not delivered.

**1.4** The lasting impression has remained that the Acts and the appurtenant legal instruments have really served only the purpose of a venal administration, at the Centre and the States, to meet rent-seeking propensity at all levels. This impression has been further strengthened by waves of large scale ‘clearances’, coupled with major delays in approvals in individual cases. It should also be added that our businessmen and entrepreneurs are not all imbued in the principles of rectitude – most are not reluctant, indeed actively seek short-cuts, and are happy to collaboratively pay a ‘price’ to get their projects going; in many instances, arbitrariness means that those who don’t fall in line have to stay out.

**1.5** The Committee finds uneven application of the principle of separation of powers as established by the Constitution of India, in the administration of environmental laws. The state – arbitrary, opaque, suspiciously tardy or in-express-mode at different times, along with insensitivity – has failed to perform, inviting the intervention of the judiciary. Judicial pronouncements frequently have supplanted legislative powers, and are occupying the main executive space. The administrative machineries in the Government in the domain of Environment & Forests at all the levels, authorized to administer by Parliament’s statutory mandate, appear to have abdicated their responsibilities. The doctrine of proportionality, principles of sustainable development and inter-generational equity, doctrine of margin of appreciation – these have been the basis of judicial orders in the matters of environment and forests laws. However, the perceived role of ad-hoc committees in decision-making and implementation appears to have reduced the MoEF&CC to a passive spectator, with little initiative except waiting for the Court to say what next. The Committee’s aim is to restore to the Executive the will and tools to do what it is expected to do by the statutes.

The Executive, as pointed out has not covered itself with glory – indeed it has invited the attention of the judicial branch through lack of basic care. The statutes are primarily aimed at enhancing the environmental components, be it forest cover or wildlife population or keeping air and water clean. Who pays for pollution? Who

suffers? Who enforces? Who monitors? Who punishes? The legislations are weak, monitoring is weaker, and enforcement is weakest.

- 1.6** All the Acts under review of this Committee fail the litmus test. Either penal provisions are lacking, or not sufficient, or not proportionate; or the criminal justice system is not appropriately aligned. The Committee notes the tardy implementation of even the current penal provisions, which is by itself a catastrophe. The failure to manage the sector is symbolised by the fact that till date the executive has not been able to define the term 'forest', despite attempting to do so for decades, leading to much vexatious litigation. The time has come requiring replacement of the present ad-hocism and piecemeal approach, by a systemic, comprehensive, non-arbitrary, transparent and accountable procedure for environmental conservation and management practices aimed at demonstrable and empirical enhancement in the quality of forest cover, air and water quality standards, through credible technology-aided mechanisms.
- 1.7** The principal aim of Environmental Laws should be to ensure enhancement of environmental quality parameters and maintenance of ecological balance. Conservation management postulates intertwining of natural sciences with an awareness of social science perspective. Global warming, environmental degradation, loss of biodiversity and potential for conflict growing out of competition over dwindling natural resources are the current focus of humanity and should occupy the centre stage in policy formulation.
- 1.8** The Committee takes note of the fact that the dynamic equilibrium between environment conservation and development for inter-generation equity is the need of hour. There is a need to review the situation and to evolve, for the future, a strategy of conservation including preservation, maintenance, sustainable utilisation, restoration and enhancement of the natural environment.

The efforts of the Committee were primarily focussed in line with the philosophy as spelt out above to secure the transfer to the maximum for future generations.

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## CHAPTER 2: EXECUTIVE SUMMARY

1. The management of the forest/environmental issues is a continuum with interlocking relationship between legislation, rules, regulations and executive instructions. Overall, forest and environment policy is inextricably intertwined with implementation issues in all its dimensions. The Committee covered the entire gamut of issues, with consultations to the best extent possible, on matters including laws, procedures, regulations, implementation issues and monitoring. While India has a strong environmental policy and legislative framework, much of the problem relates to weak implementation of the various acts and the rules thereunder. Conservation advocates, project proponents and judiciary – none is satisfied with current environmental governance and the policy tools currently deployed in the management of the sector. The basic principles applied by the Committee, inter alia, included primacy to conservation of the environment; reconstruction of degraded environment; transparency in the management of environment; technology-aided speedy and accountable decision making for project approval; effective monitoring; capacity building in environmental management; and elimination of ambiguity and reduction in litigation. The recommended framework relies primarily upon the principle of integration of development with environmental concerns, transparent institutional governance, accountability; effective deterrent and punitive action, and governance with the aid of technology to the extent feasible. Accordingly, the Committee has not just suggested new legislation, it has also provided a road map for amendment of existing rules, regulations, procedures and executive directions; it has also called for review of current policy, for the consideration of the MoEF&CC.
2. The primary focus of environmental and forest governance in the country needs to be re-aligned through a series of structural and process-oriented changes. While the pace of diversion of forest land has decreased in recent years, the target of 33% of land area as forest cover is a long way off; the more disturbing aspect is that the quality of forest cover has seen a secular decline. New forestation policies to attract investment of growing forests in private land, and providing a statutory safeguard – a classification of ‘treelands’ as distinct from ‘forest’ has been recommended. Early definition of the term ‘forest’, to remove ambiguity and minimise litigation has also been suggested. A revision in the Compensatory Afforestation (CA) Policy has been outlined with the following key features – double CA area in revenue land, three times CA area in degraded forest land, encouragement to industry associations and

other holders of private land to participate in CA; clarity in procedures, as well as delinking the project proponent from CA obligations after he fulfils the necessary financial commitments, are some features in the proposed approach; the Committee also recommends that the net present value (NPV) of forest land is currently underestimated, and should be increased at least five times.

3. The Committee also has recommended identification of ‘no go’ areas, which are in forest areas or inviolate zones – primarily with the criteria of over 70% canopy cover and ‘Protected Areas’ which should not be disturbed except in exceptional circumstances, and that too only with the prior approval of the Union Cabinet.
4. The Committee has recommended revisions in ‘Wild Life Protection Act and Rules’; and sought obligatory preparation of wild life plans. Enhanced punishment for offences under the WLP Act, with a stronger process for registration and prosecution has also been suggested. Eco sensitive zones around protected areas need to be demarcated unambiguously at an early date.
5. A new project clearance mechanism, based on the ‘single window’ concept, with a unified, integrated, transparent and streamlined process, which would also significantly reduce the processing time, has been elaborated. Use of GIS reference maps, combined with use of multilayer data captured through satellite imagery for relief and topography, hydrology including underground water resources, soil characteristics and settlement patterns etc. would be used for preliminary screening and speedy process of project clearance applications using available technology. Newly proposed full time expert body National Environmental Management Authority (NEMA) at the Centre, and State Environmental Management Authority (SEMA) would be the premier institutions to evaluate project clearance, using technology and expertise, in a time bound manner, providing for single window clearance (the existing Central Pollution Control Board and corresponding State agencies would be subsumed respectively in NEMA and SEMA when they come into existence). A ‘fast track’ procedure for ‘linear’ projects which provide benefit to community at large, as well as power/ mining projects, as also projects of national importance has been recommended.

A new concept of ‘utmost good faith’ has been inducted, through a new legislation, to ensure that the applicant for clearance is responsible legally for his statements, but would be severely penalized, as prescribed, for any deliberate falsehood,

misrepresentation or suppression of facts. While this would throw the responsibility primarily on the project proponent, this would also significantly reduce 'Inspector Raj'.

6. Environmental Management policies and programmes, and environmental mapping of the country, will facilitate pre-identification of locations for industries. The Committee recommends that the 'environmental reconstruction cost' of a project should be estimated and dovetailed with the project; the cost being recovered to be realised as a cess or duty during the life of the project. Noting that current procedures for monitoring conditions imposed are ineffective, a regime based on technology, along with deterrent penal action has been outlined by the Committee. The framework of penal provision includes financial burden as well as imprisonment in appropriate cases.
7. Some of the new institutional arrangements proposed include creation of an Environment Reconstruction Fund (ERF); establishment of a high quality National Environment Research Institute; creation of a new All India Service – Indian Environment Service; regular review of quality of forest cover and forest management; creation of a national 'data base' etc. Attention has also been drawn to the need to deal effectively with urban waste, as also air-pollution in cities, primarily caused by motor vehicles.
8. A new model 'umbrella' law, ELMA, to give a statutory cover to the above has been recommended, incorporating inter-alia the concept of utmost good faith, as also the proposed national institutions and agencies. ELMA will, inter alia, strengthen the process of dealing with and penalising/ prosecuting non-performance of conditions of project clearance. As decisions are taken on the above, including the proposed new legislation by government, at the next stage the Air Act and the Water Act could be clubbed and merged with the EP Act.

ELMA also provides for an appellate mechanism against the decision of SEMA/ NEMA/ MoEF&CC as the case may be, in respect of project clearance, prescribing a three-month time limit for disposal of appeals.

9. The specific recommendations are listed, ad seriatim, in Chapter 10.

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## CHAPTER 3: INTRODUCTION

**“Everything in the universe belongs to the Supreme God. Therefore, take only what you need, that is set aside for you. Do not take anything else for you do not know to whom it belongs” (Isha Upanishad)**

**3.1** The Government of India, in the Ministry of Environment Forests, Climate Change vide its order No.22-15/2014-IA.III dated 29<sup>th</sup> August, 2014 has constituted this Committee to undertake a retrospection exercise in the functioning of the following forest, wildlife and environment related statutes with the objective of aligning the current legal framework with the requirements of the future :

- I. Environment (Protection) Act, 1986
- II. Forest (Conservation) Act, 1980
- III. Wildlife (Protection) Act, 1972
- IV. The Water (Prevention and Control of Pollution) Act, 1974
- V. The Air (Prevention and Control of Pollution) Act, 1981
- VI. The Indian Forests Act, 1927 (added on 18<sup>th</sup> September, 2014)

The Members of the Committee consisted of :

1. Shri T.S.R. Subramanian, Chairman
2. Shri Vishwanath Anand, Member
3. Shri K.N. Bhat, Member
4. Justice (Retd.) A.K. Srivastava, Member

Shri Bishwanath Sinha and Shri Hardik Shah were Secretaries to the Committee.

The stated terms of references of the Committee are:

- (i) To assess the status of implementation of each of the aforesaid Acts vis-à-vis the objectives;
- (ii) To examine and take into account various court orders and judicial pronouncements relating to these Acts;
- (iii) To recommend specific amendments needed in each of these Acts so as to bring them in line with current requirements to meet objectives; and
- (iv) To draft proposed amendments in each of the aforesaid Acts to give effect to the proposed recommendations.

**3.2** The Committee, early in the process of its examination noted that the multiple guidelines issued under the authorisation of subordinate legislations of these Acts have strayed into the policy domain, and influenced the totality of management of the multitudinal issues concerning the environment. The continuum in the legal space comprises enactments, rules, executive guidelines – all intertwined; in the spirit of the exercise, the Committee notes that mere suggestions for amendments to the Acts would fall short of a coherent and sound approach to enhance the quality of governance in this field. Accordingly, the Committee has approached the task from a holistic perspective to address the basic issues, to find a route to an integrated legal and administrative framework for the future. Since policy and implementation aspects are intertwined, the Committee has also not hesitated to make strategic as well as tactical recommendations for the management of the sector.

**3.3.1 Brief History of Environmental Legislation** – In India, the need to integrate environmental concerns into the process of economic development was voiced as far back as in the late 1960s, during the formulation of the 4<sup>th</sup> Five-Year Plan (1969-74), which stated that “Planning for harmonious development is possible only on the basis of a comprehensive appraisal of environmental problems”. Integration of environmental resource management with national economic planning started with the 6<sup>th</sup> Five Year Plan (1980-85). The 7<sup>th</sup> and 8<sup>th</sup> Five Year Plans recognized the issues of environmental resource preservation and sustainability as being as important as many other developmental objectives. The policies, enunciated in the National Conservation Strategy and Policy Statement on Environment and Development, and the Policy Statement on Control of Pollution, both established in 1992, were pursued in the 9<sup>th</sup> Five Year Plan. Assigning conservation a high priority both at the Central and State levels, the 10<sup>th</sup> Five Year Plan (2002-07) also sought to tackle environmental degradation in a holistic manner in order to ensure both economic and environmental sustainability.

**3.3.2** The Constitution of our country spells out the responsibilities and duties with regard to environmental protection under various Articles as stated below:

- a) The State's responsibility with regard to environmental protection has been laid down under Article 48-A of our Constitution, which reads as follows: "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country".

- b) Environmental protection is a fundamental duty of every citizen of this country under Article 51-A(g) of our Constitution which reads as follows: "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures."
- c) The principle of sustainable development has been linked to 'right to life' under Article 21 of the Constitution which is a Fundamental Right.
- d) The State's responsibility with regard to raising the level of nutrition and the standard of living and to improve public health has been laid down under Article 47 of the Constitution which reads as follows: "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties ....."
- e) The subjects related to environment in the 7<sup>th</sup> Schedule of the Constitution have been tabulated below:

**Table - 1**

<b>Union List Entries</b>	
52	Industries.
53	Regulation and development of oil fields and mineral oil resources.
54	Regulation of mines and mineral development.
56	Regulation and development of inter-State rivers and river valleys.
57	Fishing and fisheries beyond territorial waters.

<b>State List Entries</b>	
6	Public health and sanitation.
14	Agriculture, protection against pest and prevention of plant diseases.
18	Land, colonisation, etc.
21	Fisheries.
23	Regulation of mines and mineral development subject to the provisions of List-I.
24	Industries subject to the provisions of List-I.

Common or Concurrent List Entries	
17A	Forests.
17B	Protection of wild animals and birds.
20	Economic and social planning.
20A	Population control and family planning

### Forest Governance

**3.3.3** Forest governance in India, as a theme emerged in late 19<sup>th</sup> century as a tool in exploration, demarcation, reservation and exploitation of forests for timber as enunciated in Forest Act, 1865. Indian Forest Act, 1927 (IF Act) which is still the bulwark of forest governance in India provides for settlement processes and regulation of forest. Independent India's first Forest Policy in 1952 envisaged deployment of 1/3<sup>rd</sup> of land resources for forest. The constitutional framework vested state governments with the responsibility of legislation and administration of forests. The forest area which stood at 40.48 million ha. in 1950-51 had increased to 67.47 million ha. in 1980<sup>1</sup> but the total diversion of forest land for non-forest purpose during this period was recorded at 4.3 million ha<sup>2</sup>. The FC Act, 1980, in this backdrop, was enacted to regulate and restrict the diversion of forest land for non-forest purpose. The 1988 Forest Policy was a paradigm shift, with directives on afforestation, farm forestry, management of forests, diversion of forest land, wildlife conservation, education, research, personnel management, and legal and financial support. The document envisaged a management plan for the environment with enforcement regulations. In line with the policy statements, the forest conservation programmes since 1990s have witnessed emergence of public partnership in form of Joint Forest Management Committees (JFMCs).

The land under 'forest' has increased from 40.48 million ha. in 1951 to 77.18 million ha. till date<sup>3</sup>; the position on tree cover, with significant qualitative decline during this period, is disheartening. The reported diversion of forest land since 1980 enactment is 1.19 million ha.<sup>2</sup>, but 'compensatory afforestation' has not kept pace in acreage or

<sup>1</sup> Ministry of Statistics & Programme Implementation, GoI

<sup>2</sup> MoEF&CC

<sup>3</sup> FSI

quality. Since independence, the framework of IF Act, 1927 has not been successful in proper settlement of newly delineated forest areas, bringing misery to many, as well as not contributing to sound forest management. Rampant ravaging of forest cover due to mining and industrial operations over the years, coupled with weak enforcement of compensatory afforestation programmes have led to judicial intervention in the administration of forest and environment laws. The settlement processes of forest areas as well as rights of the people require revision, based on current trends and available technology. Simultaneously, the major concerns for conserving the ecosystem have now necessitated effective deterrence, and instruments to maintain inviolability of the forest areas.

The implementation of FC Act, 1980 has witnessed plethora of overlapping executive directions, often contradictory and confusing. The procedure for approval for diversion of forest land has been seen as tardy and time-consuming, delaying the development projects. The authorities vested with powers for diversion of forest land are not currently armed with holistic information on the extent and quality of forest cover. A comprehensive approach for forest conservation, indeed management, is seen to be missing – these need to be mounted on a platform based on satellite imageries and technology-aided IT-enabled services. The rampant ravaging of forest in ecologically fragile areas has catalysed public protests from the 80s & 90s, inviting the attention of the judicial forums which have backed the cause of conservation of forestry. The major lacunae in country's forest governance have been pointed out by judiciary, without adequate policy response from the executive.

**3.3.4** The judiciary has been in the forefront of the policy formulation in the field of forest and environment over the recent decades, inter-alia declaring environment and ecology as national assets; the principle of 'sustainable development' has now been rendered as a part of Article 21 of Constitution of India. Forest governance is under stress to comply with court orders, issued on a day-to-day basis at times, with the state having largely abdicated the responsibility of timely policy formulation and implementation.

### Wildlife Conservation

**3.3.5** 'Protected Areas' for wildlife conservation in the country is a spatial subset of the forest area. The network of protected areas is classified as wildlife sanctuary, national

parks, biosphere reserve, and corridors. The WLP Act, 1972 is the sole legal instrument for governance in wildlife matters. The National Wildlife Action Plan recognises the delineated protected areas as repositories of valuable biodiversity, provider of watershed services and a buffer to mitigate the effects of climatic changes. The administrative structure of wildlife governance in India is bi-focal – wherein state governments have a prime role in management of protected areas, with the policy formulation role vested with the Central Government. The Act mandates constitution of statutory bodies at national as well as state level.

WLP Act, 1972 provides for creation of protected areas; prohibits all acts of hunting; classifies the animals into 6 schedules according to status of protection; provides for constitution of NBWL and SBWL; and punitive action in case of violations. The National Wildlife Action Plan emphasises *in situ* conservation, with people's support, for effective management of protected areas and protection of wildlife. It places special emphasis for conservation of wild and endangered species and their habitats; control command for poaching and illegal trade in wild animals and plant species; and aims at enhancing conservation and education. 4.83% of the geographical area of the country is under wildlife management spread over in 668 protected areas. The major impediments in wildlife conservation relate to hunting and poaching, man-animal conflict and absence of optimal corridors. The policy requires harmonious eco-development activities; strict enforcement through intelligence gathering and networking; and stringent punitive action through speedy trial and deterrent conviction through better enforcement machinery for crime detection and investigation.

### Environmental laws

**3.3.6** Stockholm Declaration of 1972 was the first real foundation for environmental protection. Enactment of the Water Act, 1974 provided for the institutionalization of pollution control machinery by establishing Boards for prevention and control of pollution of water. The State Water Pollution Control Boards were to initiate proceedings against infringement of environmental law, without waiting for the affected people to launch legal action. The WC Act, 1977, supplemented the Water Act, 1974 by requiring specified industries to pay cess on their water consumption.

With the passing of the Air Act, 1981, the need was felt for an integrated approach to pollution control. The Water Pollution Control Boards doubled up to deal with air pollution as well, and were renamed the CPCB and the SPCBs. The Bhopal Gas leak disaster of December 1984 precipitated the consolidation of environmental regulation with enactment of an umbrella legislation - The EP Act, 1986. The EP Act vested powers with the central government to initiate measures to control pollution and protect the environment. This umbrella law empowers the central government to regulate emission and effluent standards, restrict sites for industrial use, prescribe procedures and safeguards for prevention of accidents, and handling of hazardous waste, investigate and research pollution issues, conduct on-site inspections, establish laboratories, and collect and disseminate information. The Environment (Protection) Rules, 1986, were subsequently notified to facilitate the exercise of powers conferred on the SPCBs by the Act. The EP Act in 1986 and the amendments to the Air Act and Water Act in 1987 and 1988 respectively, expanded the ambit of the SPCBs functions.

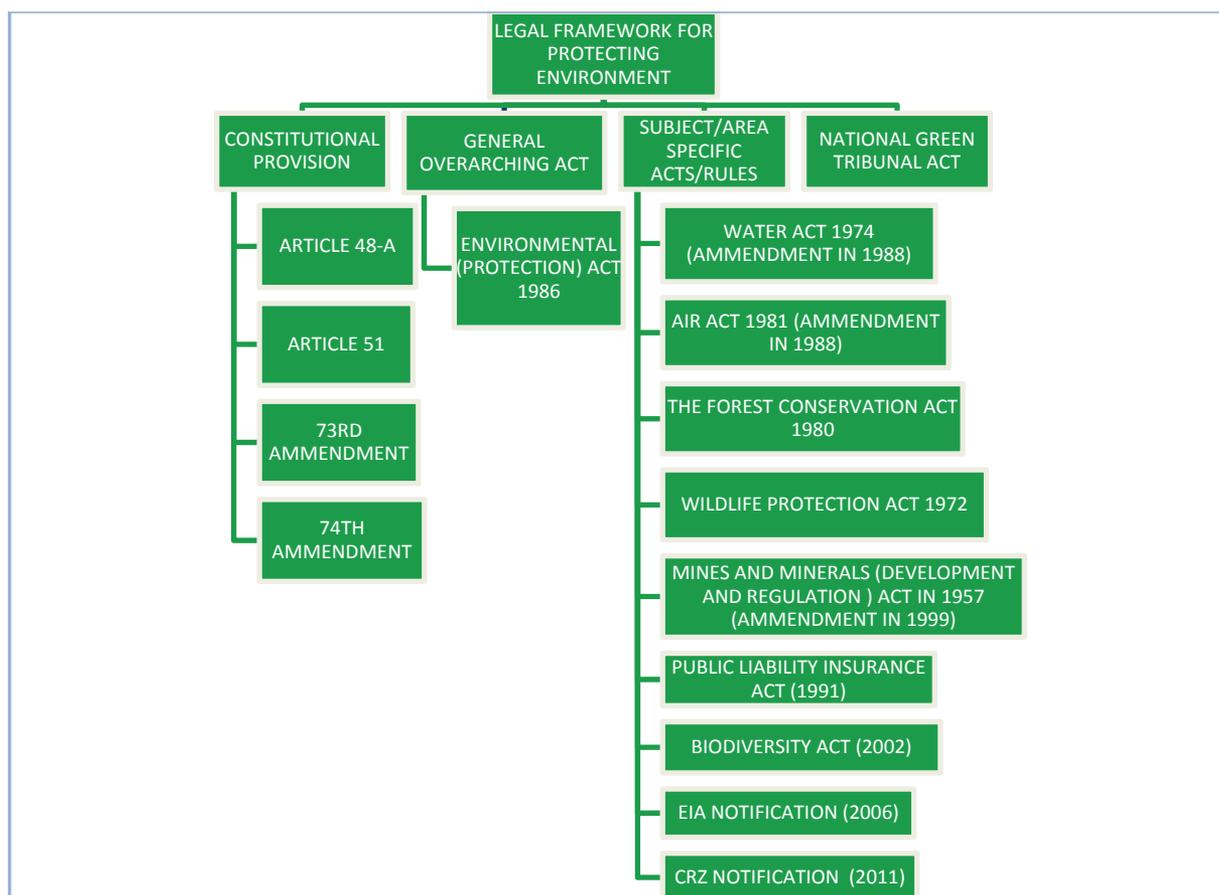
After enactment of the EP Act, 1986, a large number of statutes and subordinate legislations came into existence as the issues became better identified – for example, Handling and Management of Hazardous Waste Rules in 1989 and 2008, Public Liability Insurance Act, 1991, EIA Notification 1994 & 2006, CRZ Notification, 1991 and 2011, Biodiversity Act, 2002, National Green Tribunal Act, 2010, etc., which have further strengthened and expanded the environmental governance process in the country.

The seven-fold objectives of NEP 2006 include conservation of critical environment resources, inter-and intra-generational equity, integration of environmental concerns in economic and social developments, efficiency in environmental resources use, environmental governance and enhancement of resources for environmental conservation. The policy recognises that environmental protection is an integral part of the development process, requiring a precautionary approach through economic efficiency on the basis of the concept of polluter pays, equity, legal liability and integration of environmental consideration in sectoral policy. The policy sets the stage for carrying out regulatory reforms through revisiting policy and legislation; process related reforms for eliminating delays in the clearances contemplated under

various legislations, and to realise decentralisation of environmental functions by way of ensuring greater transparency and accountability.

**3.4 Present Legal Framework** – For the sake of convenience, the general legal framework now available in India for the protection of the environment has been presented below in the form of a chart.

**Table - 2**



**3.5 Summary of growth parameters over past decades**

India houses 18% of the world’s population in 2.3% of land area, with 1.7% of world’s forest. 85% of the country’s cultivable land was brought under agriculture in late 90s. Foodgrain production in 1951 stood at 50 million tonne from 112 million ha. of land; the basket has reached 264 million tonne from 126 million ha.<sup>4</sup>; which includes

<sup>4</sup> Handbook on Statistics of the Indian Economy (RBI)

increased fertilizer use from 1.31 lakh tonne in 1950s to 255 lakh tonne in 2013-14<sup>5</sup>; during the corresponding period the use of pesticides increased 5 times and touched a figure of 44,000 tonne<sup>4</sup>. The area under forest has increased from 40.48 million ha. in 1951 to 77.18 till date<sup>6</sup>. The proportion of Indians living in cities increased to 360 million in 2011, making a quantum jump from 62 million in 1951<sup>7</sup>. In independent India's quest for development, total power generation has jumped from 6.6 billion KWH in '50s reaching to a current level of 961 billion KWH<sup>5</sup>; large segments of the country still have pathetically inadequate, irregular power supply, to meet even current requirements. Since 1952-53, GDP size has grown from 2942.7 Billion rupees to 57417.9 Billion rupees<sup>4</sup> in 2013-14, and accompanied growth of industry during the same period from 336.17 Billion rupees to 10735.6 Billion rupees, and that of mining and quarrying from 59.05 Billion rupees to 1068.3 Billion rupees<sup>4</sup> (at constant price on factor cost). Domestic consumption of petroleum products increased from 3.3 million tonne in 1951 to 158.2 million tonnes in 2012-13<sup>5</sup>. Our country is one of the fastest growing economies of the world; the growth momentum is still to get accelerated, to raise standards of living of crores currently in misery and poverty. The engines of growth have depleted the natural resource base and impacted our environment. This is the challenge for sustainable development.

**3.6** India has a strong environmental policy, legislative framework and well established institutions at national and state level. Simultaneously, India's growing prosperity is leading to increase in public demand for great environmental quality. The observed gap between enhanced demand for environmental protection and lack of implementation of the legislations and rules is driving reforms in environmental governance.

An alternate stream of law is seen emanating from judicial intervention wherein the principle of sustainable development has been rendered as a part of article 21 of constitution of India. The courts have become the first resort to resolve environmental conflicts, rather than the final forum for protection of rights because of perceived inability of the regulatory agencies. Judicial initiatives guiding the policy framework and implementation module started with Supreme Court directive in 1985

<sup>5</sup> Economic Survey, Ministry of Finance

<sup>6</sup> FSI

<sup>7</sup> Census of India

for closure of limestone quarries and have continued with landmark stewardship in providing air ambient quality in Delhi, the Matheran case, Aravali mining, Dehradun Mining, Shriram Gas Leak, Ganga Pollution Case, Bicchri Pollution Case, Taj Trapezium case, Deepak Kumar Vs. State of Haryana, Lafarge case, forest conservation matters, Godhavarman case, wildlife policy among others. Continued lack of credible policy and implementation response by the executive has now seemingly rendered the judicial system appearing to intervene at the slightest and first pretext – appearing at first sight not to provide solutions but to complicate the issues further. Informal regulations including the activities of community action, social media, civil societies, NGOs and others have helped revive the call for renaissance in environmental governance regime, which is currently hindered by population pressure, weak institutions, rights of local residents, and above all weakness in the executive machinery.

- 3.7** The judicial pronouncements in India have drawn heavily upon the principles of sustainable development, doctrine of proportionality, margin of appreciation and the eternal principle of polluter must pay. The overarching provisions of environmental governance, as noted and considered by Committee takes note of the current state of economic development and environmental entities. In desperate pursuit of economic prosperity for poverty alleviation, livelihood security and restoration of justice, the development action plan confronts environmental challenges. Population growth, inappropriate technology, consumption choices, absence of harmonious relationship of co-existence between people and eco-systems, proliferation of polluting industries, unplanned urbanisation etc. are the chief drivers of environmental degradation and ecological imbalances. The institutional failures include lack of enforcement, flawed regulatory regime, poor management of resources, inadequate use of technology; absence of a credible, effective enforcement machinery; governance constraints in management; policy gaps; disincentives to environmental conservation, and so on.
- 3.8** The Committee has outlined a suggested framework of policy and legal provisions in the following chapters, premised on the principle of integration of development with environmental concerns, postulating transparent institutional governance through accountable mechanisms, with effective deterrent, punitive action based on swift criminal justice procedures; and governance with the aid of technology – where ecosystem services remain at the core of mankind’s march to growth, leaving the earth safe for generations to come.

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## CHAPTER 4: APPROACH & METHODOLOGY

### The path (of rectitude or dharma) is as difficult as walking on a razor's edge (Katopanishad)

- 4.1** In undertaking its work, the Committee applied the following principles, as applicable in each situation :
- a. Primacy to conservation of the environment. Wherever possible, to enhance the quality of environment, including in the forest, air and water pollution contexts.
  - b. Transparency, to the extent feasible in all aspects of management of the environment, particularly in the context of providing approvals and clearances.
  - c. To provide more freedom to private actors to function within well-laid down boundaries but subject them to close monitoring; and severe exemplary punishment for deliberate mis-statement/ transgression/ suppression of material facts.
  - d. Ease the process of approvals, without compromising the sanctity of the environment.
  - e. Bring more predictability and certainty into the examination processes; bring clarity and lack of ambiguity in definitions and decisions.
  - f. Define the various terms, leading to elimination of avoidable litigation.
  - g. Provision for effective monitoring of implementation of conditions and providing adequate teeth to regulators to check the violations.
  - h. Wherever possible bring technology and science into play in the decision-making processes, to reduce the scope for discretion, and usher in predictability; as well in on-going monitoring.
  - i. Improvement in the quality of management of all elements of environment, in an integrated form.
  - j. Capacity building for management of the sector.
- 4.2** “Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering environment. ....environmental conflicts are ineradicable and environmental protection is always a

matter of degree, inescapably requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated. This aspect is recognised by the concept of ‘sustainable development’..Setting the standards of environmental protection involves mediating conflicting visions of what is of value in human life”. – Chief Justice Kapadia in ‘Lafarge’ case.

The dictum was taken note of by the Committee.

**4.3** During the various meetings many participants pointed out, correctly, that two months given to the Committee are not adequate for a thorough examination, revamping and redesigning of the various Acts and rules. The Committee agrees with these views. However, the Committee felt that it was better to address a very substantial part of the pending issues in a practical and pragmatic way in the time prescribed by Government, rather than prolonging the process in pursuit of ‘perfection’. The Committee feels that most pending issues have been addressed constructively, and equally a roadmap has been suggested for continuous monitoring of the legal, legislative and management framework in this field.

**4.4** Broad Study Phase

Key methods applied for data gathering and analysis as well sources of information are as below:

**Table - 3**

Methods	Description	Key Informants/ Source
Desk review of existing literature/data	Profile	Land mark Judgments of Courts on Environmental laws of the advance countries Other committee reports
	Acts / Regulations and guidelines	Review of Acts / Notifications/ Amendments/ circulars issued.
Consultation of Stakeholders	Public	NGO / Civil Society/ Think Tanks/ Industry Associations/ Academia / Public Institutes
	Regulators	MoEF&CC/ Department of Environment & Forests, Other relevant Ministries at central level and Departments at the State level, etc.

Rapid assessment	Understanding the issues of different parts of country	Visits of various parts of country, viz. Bhubaneshwar, Patna, Bangalore, Mangalore, Hyderabad, Ahmedabad, Chennai. Discussions with Governments and interest groups
	Understanding the issues at Central level.	Collection of information from MoEF&CC, stakeholders, etc.
Analysis	-Identification of key issues of existing laws and clearance processes.  -Evaluation of adequacy / effectiveness of the existing laws	Clear assessment of current situation
Recommendations	-Addressing issues / constraints / challenges of current system.  - Tenets / Principles / Philosophy for the proposed changes, including amalgamation of Acts / Rules  - Expediting processes.  - Required changes: Legal, Procedural, Administrative & Institutional  - Preparing a draft report	Documentation & Draft Report
Review and Finalization	- Evaluation of the proposed changes from legal and institutional perspectives  -Finalization of the Report for MoEF&CC, Gol.	Final Report

**4.5** The Committee noted that among the most important gaps in the present regime, the issue of enforcement of conditions of approval remains nearly totally unattended and needs to be addressed effectively. The present monitoring regime is heavily dependent on field verification through ‘inspectors’. The Committee has separately addressed the need for bringing technology in for generating data for effective

monitoring. The Committee noted that the cause of environment preservation is not adequately met by the present monitoring methods.

The concept of 'good faith' has been inducted into the management regime for clearance and monitoring of conditions of projects, wherein the project proponent and his team are not only required to tell the whole truth but also not to suppress any material facts, from the initial stage. If at any time after the clearance is given it is discovered that the proponent had concealed some vital information or given wrong information, severe consequences will follow which may include revocation of the clearance, heavy fine, penalties, and possible imprisonment. The concept is detailed in Chapter 8.

- 4.6** At first sight it may appear that the Committee has strayed far beyond its given mandate, to 'dabble' in issues far removed from the scope of work entrusted to it. The Committee is conscious of this potential criticism. However, as has been referred to elsewhere, the management of the forest/ environmental issues is a continuum with interlocking relationship between legislation, rules, regulations and executive instructions. Overall, forest and environment policy is inextricably intertwined with implementation issues in all its dimensions. The Committee covered the entire gamut of issues, with detailed consultations to the best extent possible, including matters relating to procedures, regulations, implementation issues and monitoring. Accordingly, the Committee has not just suggested new legislation, it has also given pointers for amendment of existing rules, regulations, procedures and executive directions; it has also called for review of aspects of current policy, for the consideration of the MoEF&CC.
- 4.7** The Committee also noted that there is need to rationalise and amalgamate many of the existing Acts, noting the holistic nature of 'environment'. There has also been demand for a 'single window' to deal with the clearances under different Acts. This has been prescribed/ elaborated in Chapter 7.
- 4.8** The objectives of the various Acts, the Committee felt, could not be achieved through executive orders. A separate legislation has been proposed, which would have overriding effect on all other relevant laws. Inter alia, the new proposed legislation prescribes that the application for environmental clearances expects the applicant to

be honest and truthful – the concept of ‘utmost goodfaith’ is statutorily introduced, and the consequences of breach are also set out.

- 4.9** The Committee could not address all the laws, regulations, rules and executive instructions comprehensively within the time span available to it. Besides, merging of the various laws without diluting the objectives, and revamping the relevant rules and procedures would be contingent on the decisions taken by Government on the proposals and recommendations made in this Report. Thus, while a new framework has been recommended, rationalisation and compilation of the various appurtenant procedures and regime would have to be a follow up exercise; once the basic decisions are taken, this should not be a daunting task.
- 4.10** Due to paucity of time, the Committee could not visit more States, and have more field visits; however, all State Governments were addressed to give their suggestions, which many did – these have been taken into account.

The Committee also noted that many ‘environmentalists’ and NGOs were professional and thorough in their approach. Contrary to prior expectations, most environmentalists/ organisations were positive in their presentation, contributed generously in terms of ideas and suggestions to improve the environment, consistent with the need for ‘development’ and provide expeditious project clearances (barring one meeting, where a small minority of participants would not allow the proceedings to continue, thus depriving others present from expressing their views on the matter and making constructive suggestions). The Committee also noted that the agencies and organisations representing Industry and Commerce, by and large, were well conscious of the need for preservation of the environment; their suggestions included practical ways for expeditious clearance of projects, without adverse impact on the environment. All suggestions received were examined by the Committee, and many have been incorporated in the report, if not in the exact wording of the original suggestion. The Committee thanks all the participants who came to the various meetings, and generously gave advice and suggestions.

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## CHAPTER 5: FORESTS

### Forest Legislation

- 5.1.** Three major statutes, the IF Act, 1927; FC Act, 1980 ; and WLP Act, 1972 provide the legal mandate for growth and protection of forests and wildlife in the country. The IF Act, 1927 which is the earliest of these legislations was enacted to consolidate forest laws existing prior to 1927. A subsequent milestone was the transfer in 1976 of the subject 'forest' from the State to the Concurrent List, enabling the Government of India to legislate in these matters.<sup>8</sup>
- 5.2.** The FC Act was enacted in 1980 to regulate and restrict the diversion of forest land for non-forest purposes; the impact of this legislation has been positive, as only 1.19 million ha. of forest land has been diverted since 1980 compared to diversion of 4.3 million ha between 1951-1980<sup>9</sup>. The issue of increasing forest cover in the country is central to the National Forest Policy of 1988 which envisages having a minimum of one-third of the total land area of the country under forest or tree cover. It was expected that amongst other measures this goal of afforestation would be supplemented by social and farm forestry, wildlife conservation and better management of State forests. While there has been an increase in overall forest cover the results in acreage or quality have not been commensurate with expectations.

### Strategic milestones

- 5.3** In this context a strategy is proposed which should focus on the following milestones:
- Notify forest areas with 70% or more canopy cover and PAs as 'no go' areas.
  - Finalise statutory definition of what should be construed as a 'forest'.
  - Encourage wide scale farm forestry on poor quality agricultural land and on peripheries of land holdings.
  - Streamline the process for forestry clearance.
  - Facilitate compensatory afforestation.
  - Use ICT, GIS and other advanced technologies as a tool in forestry management

<sup>8</sup> The Constitution (forty-second amendment) Act, 1976

<sup>9</sup> MoEF&CC

**5.4 Notification of ‘no go’ areas** – With 2.3% of the world’s land area, India accounts for 7.8% of recorded species. It has 668 protected areas, 15 biosphere reserves and 26 Ramsar Convention sites. There are four biodiversity hotspots; the Western and Eastern Himalayas, North East India, parts of the Western Ghats and Nicobar.<sup>10</sup> In addition there are other areas of rich biological diversity along parts of the coastline and elsewhere.

It is the view of the Committee that areas which are rich in biodiversity must be strongly protected and activity allowed in these areas only when there is an overwhelming advantage in terms of economic development.

It is the Committee’s view that looking at the parameters indicated above a list of ‘no go’ areas, comprising ‘protected areas’, in addition to forest with over 70% canopy, along with their geographical co-ordinates should be notified for public information. It should be made clear that no activity will be permitted which threatens the environment and biodiversity of these areas. This will exclude such areas from expressions of interest by user agencies (UA) thus saving valuable time and litigation.

There will however be one exception. Where there are considerations of national interest and issues relating to safeguarding the territorial integrity of the country, activities may be permitted in such areas subject to the prior and specific approval of the union Cabinet.

**Recommendations:** Identify and pre-specify ‘no go’ forest areas, mainly comprising PAs and forest cover over 70% canopy.

**5.5. Formulating a statutory definition of ‘forest’** – Currently this is an unresolved issue. The definition of ‘forest’ as is now applicable<sup>11</sup> also includes the definition of forest as understood in the dictionary sense of the word leading often to varying interpretation. The question of the extent of tree cover on a certain piece, hitherto seen as non-forest land to bring it into the ambit of ‘forest’ is not defined or understood. It is note-worthy that at the time of enactment of The FC Act 1980, the term forest land was intended to denote what had been notified as a ‘forest’ under the IF Act.

<sup>10</sup> India's fifth national report to the Convention on Biological Diversity 2014

<sup>11</sup> Hon’ble Supreme Court in T.N. Godavarman Thirumpulad Vs GoI WP(C)No.202/1995 dated 12.12.1996

The MOEF&CC is currently engaged in formulating a suitable definition of the term 'forest' taking all aspects into account, including the relevant directions from the Hon'ble Supreme Court<sup>12</sup>. In this regard, the Committee makes the following observations:

- Forest cover has regional variations in terms of density and ecological value; it may be advisable to incorporate State specific parameters instead of uniform national criteria.
- 'Forest' should not include any plantation raised on private land by any individual or agency.
- Plantations on the sides of roads, canals and other linear structures carried out on State government land which has been kept in reserve for expansion purposes should be de-notified. It may be recalled that social forestry was encouraged on such lands to derive ecological value until the land was actually ready for the originally intended use. In many instances these lands were notified as forests on the request of the user departments so that they would obtain a degree of protection from encroachment and lopping. Similarly after acquisition, land was kept aside for expansion purposes by public sector undertakings. In many instances plantations were raised on such land which were to be removed at the time of expansion. Such plantations may also be kept out of the definition of forest.
- Till 'forest' is defined, an explanatory note may be considered for insertion before Section 2(ii) of the Indian Forest Act i.e., "Forest" means any forest notified under the IF Act, 1927 and any land recorded as forest and not used / broken before 25<sup>th</sup> October, 1980.
- The Committee observes that citizens and private institution are reluctant to invest in forestry or plantations, apprehending loss of their land being declared as 'forest'; on the other hand, there is a need to encourage non-forest, non-government land holders to engage in plantations in land owned by them (this includes public sector units also who keep large tracts fallow). The Committee suggests that even if afforested, such land may not be treated as 'forest' falling under the definition of Act.

<sup>12</sup> Ibid

**Recommendation:** It is suggested that the Ministry may define the term ‘forest’ at an early date.

- 5.6 Farm and social forestry** – The Committee feels that if there is economic incentive for increased community participation in farm and social forestry programmes this will help increase tree cover and also reduce the biotic pressure on forests for timber, fodder and fuel wood. This will also help bring about a friendlier interface between the people and extension officials of the Forest Department. The Committee suggests that a simple set of compliance norms should be introduced, which will encourage plantation of trees on private land, and on land owned by state owned entities with permission to allow felling, transit and sale of timber and transaction of afforested land. While there is no bar on raising plantations of poplar or eucalyptus, this should be extended to include some other indigenous species also. Farm forestry is not likely to crowd out agricultural crops due to its longer gestation period; in the case of farmers this is likely to be carried out on the outer peripheries or bunds of their land. If this is encouraged there is likely to be considerable accretion to tree cover.

While defining the term ‘forest’ as recommended elsewhere, care has to be ensured that the new definition would not inhibit private citizens, groups or corporates from encouraging tree plantations in their lands. In short, the policy should be for encouragement to all, to plant trees wherever they find land for it without fear of its being declared a ‘forest’, even when the plantations have a commercial intent.

**Recommendation:** To offer economic incentives for increased community participation in farm and social forestry by way of promoting and proving statutory safeguards to ‘treelands’ as distinct from ‘forest’.

- 5.7** It has been suggested that plantation of approved species which are consistent with local ecology and biodiversity should be permitted on private lands. These can then constitute tradable units which can be purchased by UAs and transferred to the State Forest Department in fulfillment of CA obligations.

This should be considered for acceptance, provided the parcels of land so identified are not disparate in nature, and large enough to have beneficial impact on the local environment. Suitable guidelines in this regard would need to be framed about the minimum size for such parcels of land. Such afforestation should not be considered eligible for being a tradable unit if it is monoculture plantation and does not have a

preponderance of endemic species. A nomenclature of 'tree lands' has been suggested for this kind of cover.

**Recommendation:** Plantation of approved species on private lands could be considered for compensatory afforestation with facility for 'treeland' trading.

**5.8 Streamline process for according clearance for diversion of forest land** – The Committee noted that existing procedures for the diversion of forest land clearances take considerable time. Apart from field level issues, one major reason appears to be the existence of a large number of guidelines which at times seem to lose linkages with each other, or at times are ambiguous – no holistic restructuring of procedures has taken place. Under the existing guidelines a time line of 210 days has been prescribed for processing applications at the State government level. In actual practise the time taken at this level is much more. The situation is not much better at the level of the MOEF&CC. The Committee has been led to believe that at times it takes over three years to obtain a clearance under the FC Act, 1980.

**5.9** As indicated in another section of the report the Committee has suggested putting in place an environmental information system that would contain attributes of what has been prepared by the United Nations Environmental Programme as well as a set of systems that would cover the national level down to the regional and metropolitan levels. It has been proposed that the FSI will be strengthened to play the role of a pivotal agency in collating data from various ministries and institutions and layering this into a valuable data base which can be easily accessed through NEMA (proposed in Chapter 7). The use of this will be particularly useful in the processing of forestry clearances both at the level of the DFO and the MOEF&CC, and enable verification of data furnished by a UA with respect to distances from ecologically sensitive zones, richness of biodiversity and hydrological and geological attributes.

**5.10** The Committee gives below some suggestions to help speed up the clearance process, in a tabular format, in broad terms, in so far as the forest clearance is concerned :-

**Table – 4**  
**Procedure for clearance under the FC Act, 1980**

1.	Procedure for forestry clearance	Suggestions
a	Application received by Nodal Officer in State Govt If found complete is required to be sent to concerned DFO within 10 days	
b.	In actual practice, application is sent to DFO who examines it for completeness etc. Some of the time lags encountered in the application include the obligation of UA to provide along with the application a top sheet in the scale of 1/150,000. As this is treated as classified by the Survey of India, it takes time to obtain this.	Geo-referenced maps in the scale of 1/50,000 are available online from the Forest Survey of India. These can replace topo sheets and as they are geo referenced they will make the job of the DFO easier in relating these to the forest maps available at the divisional level.
c.	The preparation of a wild life plan requires considerable time and it is difficult for a UA to prepare this on his own. Invariably official assistance from the field level is required for its preparation. This process takes at the least a period of two months, which is an ideal time line.	<p>1 .It is suggested that regional wild life plans should be prepared by State governments, which will help efforts for conservation of wild life and assist UA's in aligning their project proposals in line with these regional plans.</p> <p>2. A wild life approval may not be required if the project site is at a distance of more than 10km from a PA or wild life corridor and there is no indication of any endangered species in the area. It is understood that this can be verified from the working plan for the forest land within which the project is proposed to be located.</p>
d.	Physical verification of forest area to be diverted is normally delegated by the DFO to the Ranger. This involves inventorisation, enumeration and marking of trees so that illicit felling does not take place.	As this process of field verification involving ground truthing appears unavoidable, it is suggested that enumeration could be done at a later stage and should not hold up processing of the application. Once first stage approval is received enumeration of trees to can be taken up. This process could be speeded up by out sourcing this function to an agency under the supervision of the DFO.

e	The DFO is given 60 days to examine the application which is unrealistic given the requirements indicated above.	The DFO would have access to detailed geo referenced maps of the FSI and this coupled with working plans and other information available should facilitate processing of the application. If the suggested amendments are accepted this will speed up the process and the DFO may well be in a position to give his report within the stipulated time period.
f.	From the DFO the papers move to the PCCF through the Chief Conservator. From there papers are in many instances sent to MOEF&CC through the Nodal Officer while another file goes up to the State Government for approval	With the above suggestions it should be possible to adhere to the time line prescribed. As already stated it is vital that the State government prepares regional wild life plans which are intrinsically necessary for effective wild life conservation.
g.	The forwarded application is then examined by the MOEF&CC and first stage clearance given, with final clearance being given after the UA has complied with the conditions of the first stage. It appears that a large number of cases are pending in the MOEF&CC as applications are not accompanied by a certificate under the FR Act and presentation of information in an ambiguous manner which needs verification.	It is suggested that for the purpose of according first stage clearance a certificate under the FRA may not be insisted upon. The certificate under the FR Act can be provided/ obtained during the prescribed period for compliance with the conditions of 1 <sup>st</sup> stage clearance. As regards verification of information given in the application this task will be much easier and quicker after central environment information GIS is put in place.
h	It is learnt that at times there are site visits by both EAC and FAC officials at separate points of time. This puts unnecessary stress on both the UA and officials at the field level	Consequent to creation of NEMA such a situation need not occur. It has also been suggested that a unique identification number should be given to an application where more than one approval is required for a single project. This will help in achieving greater co-ordination.

i.	Proposals for diversion of forest land require certification from concerned authority to the effect of settlement of rights under Forest Rights Act. The process requires approval of Gram Sabhas.	In the matters of linear projects which benefit community at large, including forest dwellers the Committee recommends that the provisions of FR Act be amended to dispense the obligation of approval of gram sabha.
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**Recommendation:** Revise procedure for clearance under FC Act as above, which is intended to reduce the time taken, without compromising the quality of examination. For linear projects, it is recommended that FR Act needs amendment to consider removal of the condition of Gram Sabha approval.

**5.11 Compensatory Afforestation (CA)** – The present policy envisages 1:1 CA on private land. At best, this would result in no diversion for projects if implemented perfectly; in actual practice there would be some diversion at least. Noting that the country is far away from the 33% area under forest cover, and also that on-going erosion of forest area is non-sustainable, CA on private land should be at least of the proportion of 2:1. Correspondingly, the CA on degraded forest land, in appropriate cases, should be of the order of 3:1 rather than 2:1 at present.

The project proponent in general is not an expert on afforestation, nor on locating CA land nearby or elsewhere in the State. His primary focus will be on implementing the project on hand. So long as other parameters are met consistent with environmental considerations, the project proponent should be allowed to focus on his project, after meeting his obligations towards CA. Towards this, after the approvals are processed, the project proponent should be allowed to deposit the amount computed into an account, specially created for CA, (not to the Consolidated Fund). A mechanism needs to be established in NEMA/ SEMA (referred to in Chapter 7) for managing this Fund and ensuring that CA, commensurate with liability in each approval, is ensured on the ground.

Some additional suggestions in this regard are given below:

**Table - 5**

Compensatory Afforestation issues		Suggestions
a.	<p>A condition of the forestry clearance is that the UA will pay the NPV of the land diverted as well as deposit money for equivalent afforestation on degraded revenue land. Where revenue land is not available then afforestation on twice the area of degraded forest land is permissible, subject to a certificate from the Chief Secretary about non availability of non-forest land.</p> <p>This dispensation is available only for States which have at least 33% of forest cover.</p>	<ol style="list-style-type: none"> <li>1. The Committee recommends that this condition that there must be at least 33% forest cover in a State before approval is given for CA on degraded forest land should be done away with.</li> <li>2. It is also suggested that a UA should not need to obtain a certificate to this effect on a case to case basis.</li> <li>3. The state government should identify degraded revenue land that is available for CA and where not available this should be stated explicitly with this information being in the public domain.</li> <li>4. Location of available revenue land should comply with conditions such as contiguity or proximity of a Reserved or Protected Forest to enable the Forest Department to effectively manage the newly planted area. The quantum of CA on revenue land should be revised upwards to double the area, as against the present norm of equivalent of diverted area.</li> <li>5. If revenue land is not available then CA on thrice the amount of degraded forest land should be permitted.</li> <li>6. Where there are abandoned mining sites in all likelihood they are likely to be on forest land, these should be given preference over other degraded lands for the purpose of CA.</li> </ol>

b.	The NPV for compensation for CA purposes was fixed around 2006.	Taking into account the inflation related factors, as well as noting that the value of forests has generally been underestimated in the past, the Committee recommends that the NPV should immediately be fixed at least 5 times of the present rates; the NPV should also be periodically reviewed and revised.
c.	Encouragement to industry associations to undertake CA on behalf of their members	The Committee during consultations with various responsible industry associations understood that these are willing to take responsibility to afforest large tracts of land, on behalf of their members towards CA. A scheme may be worked out for this.

The above suggestions would certainly increase the project costs; the Committee believes that such increase will not significantly impact the major project parameters. The suggested revised procedures would speed up project implementation, concurrently tending to add to forest cover, simultaneously ensuring smooth CA implementation.

**Recommendation:** The Compensatory afforestation guidelines be revised; CA on revenue land to be enhanced to 2:1 as against 1:1 at present; CA in degraded forest land be now fixed at 3:1; the NPV should be at least 5 times the present rates fixed. An appropriate mechanism to be created to ensure receipt of the CA funds, and their proper utilisation, delinking the project proponent from the CA process, after he obtains other approvals, and discharges his CA financial obligations.

**5.12** The Committee is well aware that there is a strong view point that freeing up compensatory afforestation on degraded forest land will not result in any accretion to area of forest land which goes against the tenets of the National Forest Policy 1988 which envisages a forest and tree cover over one third of the land area of the country. While forest cover has increased this is not significant.<sup>13</sup> On the other hand

<sup>13</sup> Forest Survey of India (2013)

there has been a worrisome rate of degradation of forest land.<sup>14</sup> The Committee understands that a large proportion of forest land is in degraded or double-degraded stage; leaving aside grassland, wetlands and other areas of biodiversity, there are large tracts still available for afforestation – at present rates of availability of funding, it is unlikely that these tracts can be covered for afforestation at least for decades to come. There is no reason why such land, suitably identified by the forest Department, cannot be used for compensatory afforestation utilising endemic species, all under the supervision of the Forest Department. A suitable mechanism for this needs to be created, wherein the quality of the forest cover is also increased, using the mechanism of CA.

The concept is that the project proponent will pay a higher amount for afforestation; he will also finance afforestation of at least twice the amount of forest land that he has utilised. However, the actual mechanism of ensuring reliable and quality CA should be through a separate mechanism; leaving the project proponent to focus on his project.

**Recommendation:** The quantum of NPV for compensatory afforestation needs to be sharply increased. A reliable mechanism for ensuring that CA is actually implemented, utilising either private or forest land, needs to be put in place.

**5.13** In sum, it is felt that if we are to conserve our rich forest areas we should declare as soon as possible ‘no go’ areas and at the same time open the window for making compensatory afforestation possible on severely degraded forest lands. In addition as stated earlier, farm and social forestry should be encouraged on private lands. Funding for such an activity will be generated by the concerned entities including farmers, if there are suitable economic incentives. This should result in reducing biotic pressure on state forests as well as the clandestine demand for illicitly felled timber from organised sources.

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<sup>14</sup> Forest Survey of India (2012)



## CHAPTER 6: WILDLIFE

**6.1** The Wildlife Act, 1972 (WLP Act) is the first national comprehensive legislation whose objective is to protect wild animals, birds and plants, 'with a view to ensuring ecological and environmental security of the country.' The Act provides for creation of protected areas; prohibits hunting; classifies animals into 6 Schedules which envisage different levels of protection and has provision for the constitution of National and State level Boards for Wild Life. It is noteworthy that presently 4.83% of the geographical area of the country is under wildlife management consisting of 668 protected areas.

**6.2 Schedules of the WLPA and harmonization with CITES** – The Act has six Schedules in which various species of living forms have been listed. The Committee understands that there is a perception that the criteria adopted for this listing does not come out very clearly. It also appears that some of the Schedules have not been reviewed in the recent past. The Committee understood that there has been no review of plant species under the Act since 1977; since then a number of species are likely to have been depleted. Schedule I needs to be updated to include species which are threatened by illegal trade. There is a long standing suggestion for creating a new Schedule for including the Appendices of CITES. This would also necessitate incorporating a separate Chapter on CITES in the Act.

**Recommendation:** Schedule 1 to be amended to include species likely to be threatened by illegal trade. An expert group should review the existing Schedules and address discrepancies relating to several species and sub species.

**6.3 Depredation of standing crops by wild animals** – The Committee was informed that in many localized areas, significant damage to agriculture, horticulture and floriculture and to the land is often caused by the nilgai or wild boar or monkeys, with no recourse available with the local authorities to contain the hardship. Since there are some sentimental issues attached to these animals, these have to be balanced with the need to control their local population in specified local areas, where they assume unmanageable proportions

The Committee considered whether such a purpose could not be served by transferring such non Schedule II animals to Schedule V at least temporarily till the

problem persists in a particular area or district. However it was learnt from the MOEF&CC that the power to take action under such circumstances already vests in the State governments through section 11(b) of the WLP Act. In view of this the Committee felt that the use of section 11 (b) would be a more appropriate method rather than transferring such animals to list V. States are empowered to take necessary action in the matter keeping in view local socio economic conditions by utilizing the authority already vested in them.

**Recommendation:** Regarding the issue of tackling damage to agriculture and farmland by amendments in Schedule 3, the MoEF&CC may issue circulars to all States apprising them of the legal position, suggesting that they may take appropriate action based on legal provisions.

**6.4 Giving statutory recognition in the WLP Act to Wild Life Management Plans –** Preparation of Wild Life Management Plans is a sine qua non of effective wild life management. While certain State Governments have prepared regional wild life management plans, this is not being done by all the States. Availability of such a plan will also be of immense use when examining the need for a project linked wild life plan in respect of proposals for diversion of forest land. Important data from this plan would be added to the proposed national GIS based environmental information system.

**Recommendation :** Preparation of Wildlife Management plans should be made mandatory and a provision to this effect inserted in the WLP Act.

**6.5 Alteration in the boundaries of protected areas –** Section 26(3) and Section 35(5) of the WLP Act require that prior permission of the Central Government is needed for alteration of any boundary of a Sanctuary or National Park. The wording of these sections as it stands requires that even where the boundaries are proposed to be enlarged this would require the permission of the Central Government. The reason for mandating permission of the Central Government for reducing the boundaries of a PA is understandable. However, the logic of this is not apparent where it is proposed to enlarge the boundaries of the PA. This becomes an unnecessary restriction, which may cause avoidable delay.

**Recommendation:** It is proposed that section 26A sub section (3) and section 35(5) should be amended so that permission from the Central Government would only be necessary when the State Government proposes to reduce the boundaries of an existing PA.

- 6.6 Prohibition on manufacture and possession of mouth and leg hold traps found outside protected areas** – Leg and mouth hold traps are cruel devices used by poachers to trap animals. These are clandestinely used for catching tigers and leopards. While their possession in a PA is illegal, this does not apply to their manufacture and possession outside the boundary of a PA. If their possession and manufacture is not made illegal it will be difficult to ensure that they do not find their way into the hands of poachers. Permission for possessing these traps should be given by an officer not below the rank of a CCF and possession of leg and mouth traps should be completely prohibited, except where they are required for visual display for educational purposes. A suitable definition of what constitutes a trap should also be included under section 2 of definitions in the WLP Act.

**Recommendation:** It is proposed that manufacture and possession of leg and mouth traps should be completely prohibited, except where they are required for visual display for educational purposes.

- 6.7 Settlement of rights- proceedings** – Section 25 A of the WLP Act stipulates a period of two years for completion of settlement proceedings. The time taken is usually much longer and causes unnecessary distress to concerned persons as it adversely affects their rights over their land. Where there has been negligence or unexplained delay then the concerned official should be held accountable.

An officer entrusted with the task of settlement should be given adequate tenure, at least of two years, to enable him to complete the proceedings within the stipulated time. Where proceedings take longer than two years, such cases should be reviewed at a higher level in the State Government to determine the reasons for the delay.

**Recommendation :** Officers entrusted with the task of settlement should be given minimum tenure of 2 years. Regular review of such work should be done to ensure completion within time.

**6.8 Expert status for the Wildlife Institute of India (WII)** – The forensic facility of the Wildlife Institute of India has the capability of determining as to what species of animal a particular body part has been derived from. This information forms an important part of evidence in a court during proceedings against a person accused of a wildlife crime. The WII has to provide its opinion in a large number of references as to the specie which a seized body part belongs to. Frequently, courts may require an official of the WII to appear in person to verify the nature of the animal part when this is challenged by the defence. This increases the work burden of the forensic facility of the WII which is short staffed. It is proposed that officers of the forensic facility should be recognised as experts under s 293 of the CrPC which will reduce the frequency of their having to appear in Court in respect of such cases.

**Recommendation:** ‘Expert’ status may be given to the forensic facility of WII, after suitably strengthening it.

**6.9** There is need to enable officers of the Wildlife Crime Control Bureau (WLCCB) under the MOEF&CC to file complaints in Courts. It is also difficult for state police and forest authorities to keep adequate control across national borders to check trans-boundary smuggling of wildlife parts. It is proposed that agencies stationed at the borders be empowered under the Act to intercept wildlife & their parts/ products/ derivatives and detain the criminals involved.

**Recommendation:** Section 50 and 55 of the WLP Act may suitably provide for adequate and purposeful delegation appropriate for faster and better prosecution in respect of a wildlife crime.

**6.10** A suitable proviso should be inserted after section 55 (ac) of the WLP Act authorizing an officer of the Wildlife Crime Control Bureau to file a complaint before a court in respect of a wildlife crime.

**Recommendation:** There is need to authorise officers of the Wildlife Crime Control Bureau under the MOEF&CC to file complaints in Courts.

**6.11 Restrictions on pollutants in PA’s** – Under section 32 of the WLP Act (Ban on the use of injurious substances) chemicals, explosives or any other substances, which may cause injury to, or endanger, any wildlife in a sanctuary are listed. Most visitors to PAs carry polythene bags and plastic bottles which many carelessly discard after use.

Animals try to ingest these plastics and at times this can cause internal injury and fatalities. It is therefore recommended that polythene bags and plastic bottles may be added to the list in section 32 and visitors should not be allowed to carry these articles into a PA.

**Recommendation:** Polythene bags and plastic bottles may be added to the banned list in Section 32.

**6.12 Delineation and demarcation of Eco-sensitive Zones** – There is a felt necessity for creating a buffer zone between protected areas and geographies of human settlements and activities. This is necessary to ensure safe and harmonised wildlife conservation. This is aimed at reducing/ eliminating man-animal conflict as well as to ensure safety of human life and property. The apex court as early as in December 2006 has taken note of putting in place eco-sensitive zones for this purpose. However, the proposals have not been received from many State Governments for demarcation and notification of such eco-sensitive zones in respect of all the protected areas located in the States. This has resulted in the normative application of 10 km boundary from PAs which is being considered as eco-sensitive zones. It is understood that many States have already sent proposals in this regard to MoEF&CC, on which a final decision needs to be taken early. It is also recommended that MoEF&CC takes the initiative to ask all the other States to submit proposals for demarcation of eco-sensitive zones for all the Protected Areas.

**Recommendation:** MoEF&CC to take immediate steps for demarcation of eco-sensitive zones around all the protected areas; States may be asked to send proposals in a time-bound manner.

**6.13 Permission for observational research** – Section 12 of the WLPA regulates permissions for entry into a PA for the purpose of conducting scientific research on wild animals. Permission for such research is currently given by the Chief Wildlife Warden (CWLW). The Committee has heard complaints that there are issues of delay in granting such permissions. The Committee was informed that where permission was sought only for observational research through use of photography, permission for this should be delegated to the level of Park Director who was a responsible and senior officer. Forwarding such an application all the way to the CWLW resulted in delays and acted as a damper for such research.

**Recommendation:** Powers to approve applications for bona fide observational research, through photography, including videography may be delegated to the level of Park Director, after verifying the credentials.

**6.14 Respect for cultural traditions :** India has a varied and glorious cultural tradition; while there are many national festivals, there are also localised festivals which are of great local importance in different States. Nature and animal worship has been part of the national culture. Thus, for example Nag Panchami in many States is celebrated and snakes worshipped during 5 days in Shravan month, as a thousands years-old tradition. It is to be noted that the snakes are never harmed – indeed are worshipped during this period. A dispensation in the various Schedules should be permitted to take into account such local practices, and reflect them in their approved schedules, through gazette notification.

**Recommendation:** The Schedules should provide appropriate provision for taking into account the needs of local festivals, subject to no harm or injury to animals.

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## CHAPTER 7: ENVIRONMENTAL GOVERNANCE

**7.1** Apart from segmental legislation brought into force from time to time, the major initiatives in the matter of protection and management of environment have been driven through isolated policy statements and elements of strategy announced from time to time. While the thrust of the various acts are quite clear, the issues predominantly relate to aspects of implementation. Forest land diversion and clearance from pollution point of view, constituting the approval processes for project clearances are largely non-transparent, involving multiple approvals with overlapping processes, based on insufficient application of technology and reliable information, significantly dependent on data provided by the project proponent, to name a few weaknesses. The present system is procedure-oriented, with insufficient focus on the need to safeguard environmental considerations. From the analysis of the data seen by the Committee, the average time taken for clearances works out to significantly longer than specified in most cases, whereas most projects sooner or later obtain approval; one analysis indeed indicated that the percentage of approved projects works out to 99.1% – clearly the focus is not on substance.

**7.2 Roles, Functions, Duties and Powers of Various Authorities for Environment Protection at Present**

**Table - 6**

Sr.	Functions / Authorities	MoEFCC	CPCB	SDoE	SPCB	Remarks
1	Law/Rules Making	√ <sup>1</sup>	--	√ <sup>2</sup>	--	1 WA – SEC 63, AA – SEC 53, EPA – SEC 6 2 WA – SEC 64, WA – SEC 54
2	Policy and Guidelines	√ <sup>3</sup>	√ <sup>4</sup>	√ <sup>5</sup>	√ <sup>6</sup>	3 4 5 6
3	Permits / clearances	√ <sup>7</sup>	√ <sup>8</sup>	√ <sup>9</sup>	√ <sup>10</sup>	7 EPA, EIA 8 HWR 9 EIA, CRZ 10 WA – SEC 25, AA – SEC 21 ,HWR
4	Inspection & Monitoring	√ <sup>11</sup>	√ <sup>12</sup>	√ <sup>13</sup>	√ <sup>14</sup>	11 EPA – SEC 10, EIA 12 EPA – SEC 10 13 EPA – SEC 10 14 WA – SEC 23, AA – SEC 24, EPA – SEC 10
5	Setting Standards	√ <sup>15</sup>	√ <sup>16</sup>	√ <sup>17</sup>	√ <sup>18</sup>	15 EPA – SEC 3 16 WA – SEC 16, AA – SEC 16, 17(1)(g) 17 WA – SEC 16 (2)(g) 18 WA – SEC 17. AA – SEC 17

Sr.	Functions / Authorities	MoEFCC	CPCB	SDoE	SPCB	Remarks
6	Appellate Authority	√ <sup>19</sup>	--	√ <sup>20</sup>	√ <sup>21</sup>	19 20 WA – SEC 28, AA – SEC 31 21 WA – SEC 6
7	Revision	--	--	√ <sup>22</sup>	--	22 WA – SEC 29
8	Establishment / service	√ <sup>23</sup>	√ <sup>23A</sup>	√ <sup>24</sup>	√ <sup>24A</sup>	23 WA – SEC 3, 12, AA – SEC 3 23A WA – SEC 12, AA – SEC 14 24 WA – SEC 4, 12, AA – SEC 4 24A WA – SEC 12, AA – SEC 14
9	Education & Awareness	√ <sup>25</sup>	√ <sup>26</sup>	√ <sup>27</sup>	√ <sup>28</sup>	25 26 WA – SEC 16, AA – SEC 16 27 28 WA – SEC 17, AA – SEC 17
10	Powers to Fines	--	--	--	--	
11	Powers to issue Closure Directions and to take up with Court of Law for Cognizance	√ <sup>29</sup>	√ <sup>30</sup>	√ <sup>31</sup>	√ <sup>32</sup>	29 EPA – SEC 5, 15 30 WA – SEC 33, 33A, AA – SEC 22A, 31A, EPA – SEC 5, 15 31 EPA – SEC 5 32 WA – SEC 33, 33A, AA – SEC 22A, 31A, EPA – SEC 5, 15
12	Research & Development	--	√ <sup>33</sup>	--	--	33 WA – SEC 16, AA – SEC 16
13	Data Repository	--	√ <sup>34</sup>	--	--	34 WA – SEC 16, AA – SEC 16
14	Collection of Cess	--	--	--	√ <sup>35</sup>	35 WC
15	Establish / Recognize Laboratories	√ <sup>36</sup>	√ <sup>37</sup>	√ <sup>38</sup>	√ <sup>39</sup>	36 WA – SEC , AA – SEC , EPA – SEC 12 37 WA – SEC 16, AA – SEC 16 38 WA – SEC , AA – SEC 28, EPA – SEC 12 39 WA – SEC 17, AA – SEC 16
16	Constitution of Authorities	√ <sup>40</sup>	--	--	--	40 EPA – SEC 6, 25

Note : WA – Water(Prevention and Control of Pollution) Act, 1974

AA – Air (Prevention and Control of Pollution) Act, 1981,

EPA – Environment (Protection) Act, 1986

WC – Water Cess Act

HWR – Hazardous Waste (M, H & TBM) Rules,

EIA – EIA Notification

**7.3** The Committee noted that the current administrative structure suffers from infirmities, inconsistencies and inefficiencies as listed below:

1. Duplication of work by different authorities
2. Shared Jurisdiction
3. Absence of deterrent penal provisions on transgressions.
4. Ineffective monitoring in the field.
5. Inefficient, flaccid enforcement machinery
6. Non-exhaustive abatement provisions
7. Non-accountable institutions.
8. Weak financial powers.
9. Non-professional manpower.
10. Limited application of science & technology in the pollution control systems.

**7.4** The current environment clearance procedures for a project envisage a four-stage scrutiny for 39-types of scheduled economic activities. The screening, scoping, public consultation and appraisal stages are overlapping with parallel applications required, often with each clearance dependent on a collateral clearance on another aspect. At the end of the process, a designated EAC (Expert Appraisal Committee) takes a final view on the final clearances. There is a separate procedure for CRZ clearance, which runs parallel with the procedures mentioned above.

A two-stage process is deployed by the State Pollution Control Boards to obtain 'consent' for commencement and operation of an industry/ project, in pursuance of the provisions of the Water Act, Air Act and EP Act.

The existing procedure has the following limitations:

- a. Multiplicity of agencies for processing the applications and according clearances for same projects
- b. Absence of a robust system to ensure Compliance and Monitoring
- c. Existing Monitoring Agencies viz. CPCB and SPCB have no role to play in the Environmental and CRZ Clearance, Compliance and Monitoring.
- d. Ministry has made it compulsory to have compliance report as pre-requisite for project expansion applications, without any substantive ground verification and without adequate infrastructure.

**7.5** The procedure for diversion of forest land under the FC Act, 1980 involves a three-level delegation, with the state governments, regional office of MoEF&CC and the Ministry itself being authorized to allow diversion in different categories for specified general and development purposes. (Also refer to Chapter 5).

**7.6** The Committee takes note of the elaborate laid down procedures for all the types of clearances and consents by various government authorities. There is over-dependence on the information provided by the project proponents – it should be noted that in the current dispensation, the consultant is remunerated by the project sponsor, and has no incentive to bring out all the relevant facts, some of which may be adverse to the interest of the project proponent. The most important task of conservation of environment has been lost in the present approval process in GoI as well as at the level of SPCBs. Little effort is made to assess damage to environment; there is no prescription for environmental reconstruction; there is no costing imposed for environmental degradation and subsequent reconstruction programmes; the cumulative impact of the project output on depleting natural resources and/ or polluting the environment is not taken into account in an integrated manner in the decision making process for project clearance.

**7.7** The Committee had noted that the following key areas need to be effectively addressed, among others, in formulating a new approval procedure

- The need for a national GIS enabled environmental information data base which would assist both a project proponent and the scrutinising agency in obtaining authentic data vital for decision making on an application.
- While the provisions of the Acts do not pose any great difficulty, it is the operative instructions which need to be reviewed because of the inordinate time taken in clearing project proposals especially when composite approvals are required.
- The punishment required under the Acts does not always act as a deterrent to violators. Where charge sheets are filed these rarely come to successful fruition because of lack of manpower and adequate capacity to pursue them effectively. The Committee has made some suggestions in this regard.
- There is need for a single window clearance mechanism; this is not a new suggestion. Admittedly, an operational mechanism for this would require some effort in the beginning but it would certainly pay dividends. The Committee has made a recommendation in this.

It is proposed to revamp the clearance examination/ approval process, to define a new arrangement, using science and technology to the extent feasible, reducing the discretion currently allowed at various levels, to lead to a more rational process of environmental clearance which is more focussed on the reconstruction of degraded environment and holistic conservation of environmental entities.

**Recommendation:** Proposal to revamp the project clearance/ approval process.

- 7.8** It is proposed to create agencies, viz. National Environment Management Authority (NEMA) at national level and State Environment Management Authority (SEMA) for each State as the pivotal authorities to process applications for composite environmental clearance (one window), for category A cases through NEMA and for category B projects through SEMA. These would be standing technical organizations, manned with professionals, supported by appropriate technology, which will have the primary responsibility for processing all environmental clearance applications, in a strictly time-bound manner. The NEMA and SEMA (details given later) would also be responsible for formulating the conditions to be imposed on project components before 'consent' is accorded, along with assessment of quantum/nature of potential environmental damage. These would be agencies responsible for monitoring the compliance of the conditions imposed, ensuring that transgressions are addressed effectively, and for effective follow up of punitive measures.

**Recommendation:** Create NEMA at Central Level and SEMA at the State level as full time processing / clearance / monitoring agencies.

- 7.9** A National Environment Management Authority (NEMA) may be created under the aegis of the Ministry vested with suitable powers and functions. The responsibility of NEMA will extend to centralised databank development, Research & Development, standard setting, monitoring of the state of environment and conditions for project approval, technology hunting, environmental reconstruction programmes, legal functions including prosecution and any other matter related to effective management of environment. NEMA at the Centre will be the designated body for processing approval of all projects under the Acts administered by the Ministry
- 7.9.1** NEMA, will have a full time Board, with a maximum strength of 15. The Chairperson would have administrative experience and be at least of the rank of Additional Secretary in the GoI. The members would be technically qualified in different fields relating to various aspects of the environment, including forest, air, water and allied issues; at least two members would have minimum 15 years experience in a high level academic institution. The maximum age limit for Chairman and Members of NEMA shall not exceed 65 years.
- 7.9.2** There would be specialised technical cells in NEMA in specified and related subject matters in the administration of environmental management. These cells should be manned by specialists drawn from the fields of pollution control, pollution prevention, environmental management, hydrology, forest and wildlife matters, satellite imagery and remote sensing, agriculture, biodiversity, thermal power and others.
- 7.9.3** The functions and responsibility of NEMA will include consideration for approval of all the projects under its mandate.
- i. Development and regular updation of a technical database on topography, hydrological features, biodiversity, soil system, forest & vegetation, agronomic practices, settlement patterns, and related other elements.
  - ii. Developing standards for emission and effluents.
  - iii. Process all applications for approval required under laws of category A cases, based on prescribed parameters and present them with their recommendations to the MoEF&CC for final decision.

- iv. Research and development in efficient green and pollution controlled technologies.
- v. Specifying standards for recognition of laboratories in pollution level monitoring.
- vi. Developing standards for technologies to be employed in pollution control/ mitigation measures.
- vii. Monitor the compliance of specifications and enforce all the conditions of project clearances.
- viii. Advise the Ministry in the matters of pollution control and environmental management, technology development, green technology adoption and policy on economic incentivisation.
- ix. NEMA may give advice and direction to SEMA as required in respect of monitoring of projects, including advisories on technology, as well as administrative matters.
- x. NEMA will put in a mechanism to monitor the progress of compensatory afforestation programmes including devising innovative and sustainable methods to improve the extent of forest covers as well as quality of forest covers.
- xi. NEMA will have a special professional legal enforcement cell for monitoring of compliance conditions through various enforcement measures.
- xii. NEMA will, in course of time, prepare environmental map of the country incorporating the details on forest cover, wildlife protected areas, eco-sensitive zone, pristine and fragile zone including biodiversity, sensitive zone, CRZ, high pollution areas and the mapping will be used as a tool in the project approval process.

**Recommendation:** Proposed composition, functions and responsibilities of NEMA.

**7.10** There shall be a State Environment Management Authority (SEMA) for each State.

**7.10.1** SEMA shall consist of a full-time Chairman and maximum 15 members; five of whom shall be ex-officio, to be nominated by the State Government; the remaining to be full-time professionals, with expertise and experience in various aspects of environmental management. The Chairman shall have administrative experience at least of 25 years.

**7.10.2** The Chairman and Members, other than ex-officio Members of SEMA shall be appointed by MoEF&CC, GoI based on recommendations of the State Government concerned.

**7.10.3** Age Limit – The maximum age limit for Chairman and the Members of SEMA shall not be more than 65 years.

**7.10.4** The functions of SEMA to act as the implementation arm of the State Government in respect of environmental approvals (to the extent delegated by the Centre), monitoring of implementation, processing punitive action for transgressions; to provide a data base, and keep on going relevant information to enable decision making purposes. A detailed list of proposed functions of SEMA is given below:

- a) to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells and air pollution and environment protection in the State and to secure the execution thereof;
- b) to advise the State Government on any matter concerning the prevention, control or abatement of water and air pollution and environment protection;
- c) to collect and disseminate information relating to water and air pollution and the prevention, control or abatement thereof;
- d) to encourage, conduct and participate in investigations and research relating to problems of water and air pollution and prevention, control or abatement of water and air pollution and environment protection;
- e) to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;
- f) to evolve methods of utilisation of sewage and suitable trade effluents in agriculture;
- g) to lay down effluent standards to be complied with by persons while causing discharge of sewage or sullage or both and to lay down, modify or annul effluent standards for the sewage and trade effluents;
- h) to advise the State Government with respect to the location of any industry the carrying on of which is likely to pollute a stream or well;
- i) to decide on Category B and C Integrated Permit applications;

- j) to organise public consultation for Integrated Permit application requiring public consultation;
- k) to undertake the functions related to monitoring of the specified standards of pollution and the conditions adjunct to the project clearance;
- l) to undertake enforcement and prosecution function as laid down in ELMA;
- m) to perform such other functions as may be prescribed or as may, from time to time be entrusted to it by the National Authority or the State Government.

**7.10.5** SEMA shall be under the administrative control of State Government, except in the matters of project clearances.

**Recommendation:** Proposed composition, functions and responsibilities of SEMA.

**7.11** For each Union Territory, an Environment Management Authority (UTEMA) may be created, with appropriate modifications from the SEMA model suggested above.

**7.12.1** A reference to NEMA and SEMA has been made in the proposed new ELMA (Chapter 8), to give them a statutory status. This would empower NEMA and SEMA to deal with the relevant provisions of the various Acts administered by the Ministry.

**7.12.2** The Union Government shall have the powers to give directions to NEMA and SEMA in the matters of project clearances. All such directions shall be binding on NEMA and SEMA.

**7.12.3** NEMA shall have powers to give directions to SEMA in all the matters except project clearances which shall be binding on SEMA

**7.12.4** State Government shall have powers to give directions to SEMA except in the matters of project clearances, which shall be binding on SEMA

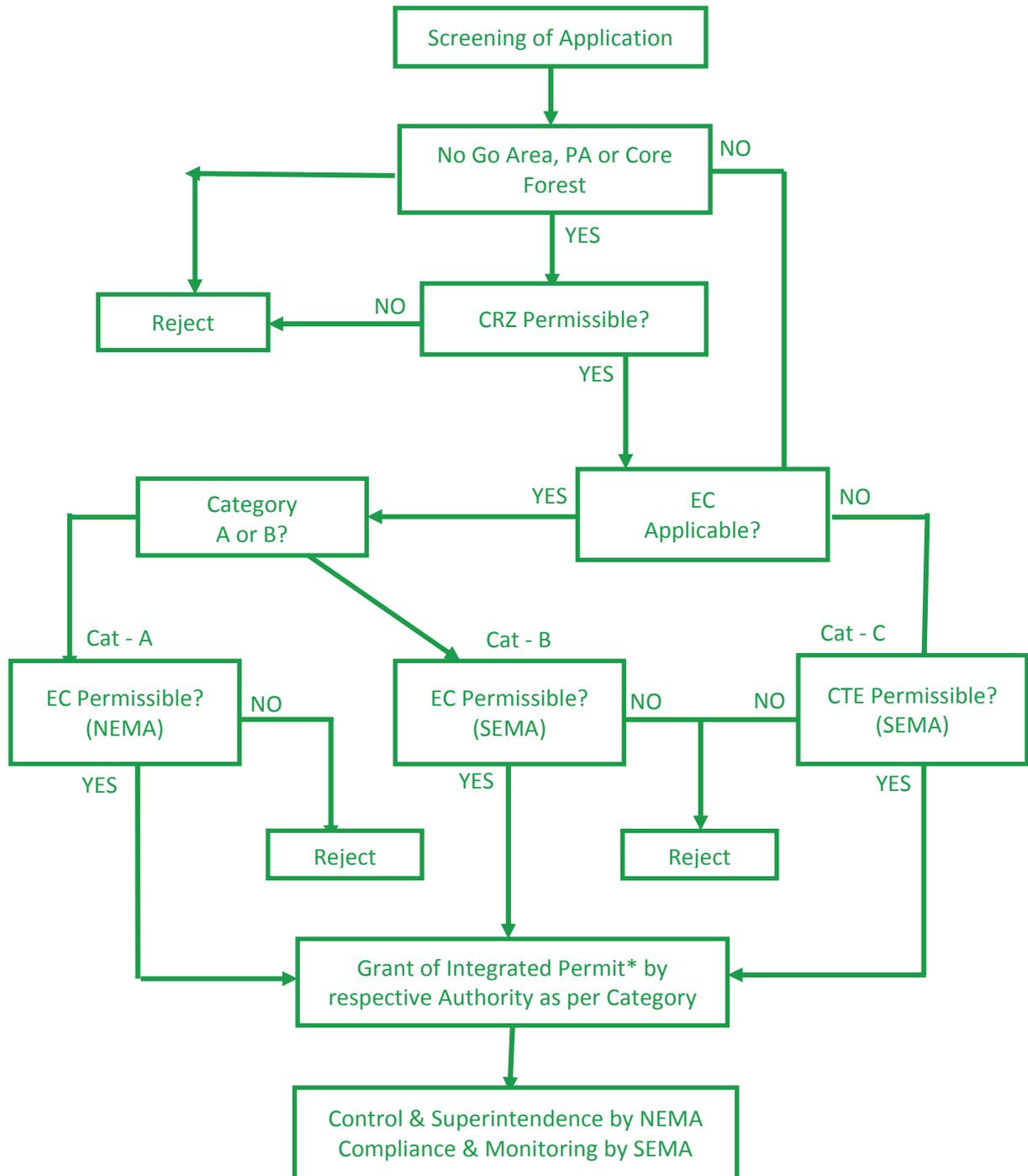
**7.12.5** In case of dichotomy in the directions between NEMA to SEMA and State Government to SEMA the matter shall be referred to GoI for a final decision

**7.12.6** The assets and liabilities of CPCB shall stand vested in NEMA. The assets and liabilities of SPCB shall stand vested in respective SEMA.

**7.13** The creation of the NEMA and SEMA would also meet in letter and spirit the guideline given in part 2 of the Lafarge case that the central government should appoint an 'appropriate Authority', with adequate powers and capacity for implementation of the relevant forest and environment Acts. In the view of the Committee, the MoEF&CC ought to have complied with these salutary directions many years back, which would have drastically improved the quality of decision making in respect of environment/ forest approvals.

**7.14 Project Approval process** – The proposed revised application process for environmental clearance is shown in diagrammatic form below:

**Flow chart for proposed project clearance mechanism**



In aid of environmental reconstruction programme for conservation and speedy approval of the projects in a transparent accountable system, the following procedure is recommended:

- i. An applicant seeking approval for one or more clearances should submit an integrated web-based online application which should be communicated through IT-enabled system to the designated authorities as vested with the powers for approval in the matters of forest diversion, wildlife clearance and environmental clearance for concurrent processing.
- ii. At the preliminary stage itself, NEMA or SEMA should take a decision on rejection of the application depending on geo-coordinates of the project utilising the master database, if the project is found located in 'no go' area or inviolate area in terms of pollution load, forest cover, pristine eco-sensitive zone or wildlife protected area.
- iii. There should be sector-specific model TOR for EIA study. The model TOR should have a component for incorporating relevant information-sharing with the local area/ people where the project is proposed to be located. The project proponents upon submission of application should begin EIA study.
- iv. NEMA/ SEMA should carry out a preliminary scrutiny of the application and within 10 days should prescribe a location specific requirement in the terms of reference of a project, failing which the project proponent will develop the EIA/ EMP on model TOR.
- v. At the initial application stage itself, the project proponent is expected to furnish all relevant information about the project, including likely environmental impact as well as scope of utilisation of local resources in terms of land, water, agro resources along with likely waste generation and disposal methods.
- vi. The method of public consultation prescribed in the existing notification should continue with the modification that only environmental, rehabilitation and resettlement issues are captured in the public hearing. A mechanism should be put in place to ensure that only genuine local participation is permitted
- vii. The extant provision of dispensing with public hearing should be continued only in respect of situations when it is reported that local conditions are not

- conducive to the conduct of hearing, or in the matters of projects of strategic importance and national importance.
- viii. The public hearing may be dispensed within the locations where the optimum pollution load or the cumulative pollution load is pre-determined, such as in a planned industrial zone or manufacturing zone.
  - ix. There is no necessity for public hearing in locations where settlements are located away from the project sites.
  - x. The projects along with EIA and EMP should be appraised in NEMA by designated sub-groups of accountable and professional officials. The project approval unit of NEMA/ SEMA should have sub-groups comprising officials, vested with varied expertise. There should be a provision to avail the services of external experts by co-opting them as members in such groups as and when required to seek their technical advice. The project approval unit of NEMA/ SEMA should have designated sub-groups for each major sector. There should be a separate sub-group for considering projects of national importance, strategic importance, inter-state projects.
  - xi. The appraisal sub-group of NEMA/ SEMA should prescribe the specific monitorable conditions, for compliance.
  - xii. The appraisal sub-group of NEMA should fix the environmental reconstruction cost and prescribe the method of payment into Environmental Reconstruction Fund.
  - xiii. NEMA should submit its final recommendations to either for grant (with conditions) or reject (with reasons) within two months to the MoEF&CC; on which a final decision normally would be taken within 15 days by MoEF&CC – in case of rejection, with reasons thereof. Similarly, SEMA to decide the matters within two months.
  - xiv. All decisions in the appraisal process, including ongoing interim findings and approval should be placed in public domain, within 24 hours of finality.
  - xv. A tight time schedule should be prepared for each step in the process, with strict monitoring to ensure timely decisions. The Chairperson of NEMA/ SEMA, as the case may be, would be accountable for adherence to the timelines.

- xvi. The entire clearance process should be through a web-based ICT tool to enable the project proponent to file and track their application as well as obtain the decision online.

**The Committee considers that the recommended project approval process will bring in a simplified, streamlined, unified and transparent regime which will accord the utmost priority to the matters of environmental conservation and simultaneously will speed up the process of project approval with the help of heightened application of technology, making doing business easier in the country.**

**Recommendation:** The proposed revised project approval process envisages 'single-window' unified, streamlined, purposeful, time-bound procedures.

**7.15** Certain types of projects would require special treatment as listed below :-

- i. Linear projects including transportation lines, gas pipelines, irrigation canals, transmission lines are generally for the benefit of the community at large. Such projects should be accorded priority. Diversion of forest land for linear projects, except in 'inviolable' area should be appraised through a special cell in NEMA/SEMA. A separate fast-track mechanism should be laid down by NEMA/SEMA for approval of linear projects. In the core area of forests and wildlife protected areas no approval should ordinarily be given for construction of any projects including linear projects except, re-laying of the existing roads limited to the existing width. In the matters of forest land diversion where the rights under forests Rights Act have not been settled and a proposal for linear project as mentioned above is considered for approval, the Committee recommends that the provisions of FR Act which make it mandatory to seek the approval of gram sabha should be amended to dispense with this condition in general to ensure that the benefit of such linear projects are available to the recipient population including the ones having habitat in forest areas as well.
- ii. All the strategic border projects (border roads, fencing, Border Out Posts, floodlighting, surveillance infrastructure, power infrastructure) falling within 20 km. from the International Border, Line of Actual Control, Line of Control; and the projects in power sector and coal mining which are the growth engines for national economy may be given a fast-track treatment through special procedures.

**Recommendation:** Special treatment for linear projects, power/ mining sector and strategic border projects.

**7.16** In the context of paragraph 7.14 (xiii) as to whether NEMA ought to have final authority to confer approvals, or should refer their findings for a final decision to the MoEF&CC, the Committee considered the matter in depth. It was noted that the mandate for implementing the environmental laws, and by implication give environment/ forest approvals has been conferred by the Parliament to the Executive, in this case represented by MoEF&CC. While all technical aspects of an application/ proposal for clearance would be examined on merits by the NEMA, it was felt that the final approval or rejection powers should be retained by the MoEF&CC. This is because there may be many other factors, relating to relationship with neighbouring countries, need to address regional disparity issues, dealing with areas and regions with special problems and issues, and need to take national security issues into account etc. etc, which may singly or in combination add a further politico-economic-strategic dimension in the decision making process. The NEMA may not always be privy to such considerations; besides the GoI may not also like to share sensitive information in some instances with subordinate formations. Taking these factors into account, the Committee felt that the authority for final decision should be with the MoEF&CC, with the proviso that specific reasons need to be assigned when the Ministry disagrees with the findings/ recommendations of the NEMA in a particular instance. In addition, it is entirely conceivable in certain circumstances that the Ministry may not be in a position to give detailed reasons for its decisions, which may be couched in generic terms. This has been the rationale used by the Committee to arrive at the recommendation indicated at paragraph 7.14 (xiii).

It would be useful to review the present set of classification of projects as A or B category wherein approximately 8000 cases are filed for clearance at MoEF&CC level. In order to reduce the number of cases at NEMA to a more reasonable level, as also to increase delegation further for SEMA/ State level consideration, it is proposed that the Ministry may review A & B category classification, and revise it accordingly. The Committee feels necessary to increase the stake of State level authority (SEMA) in the clearance mechanism by delegating more powers to them through revision of EIA Notification and keeping only larger and strategic projects only under A category.

**Recommendation:** Review of A/B category units, to delegate a large number brought under the purview of SEMA.

**7.17** The Committee has inducted into the application/ approval process another mechanism, hitherto applicable in the field of insurance law. Under this discipline the proponent and his team are not only required to tell the whole truth, but also not to suppress any material facts. The features of this principle are elaborated in Chapter 8.

**7.18** The monitoring process of the conditions of approved project should be put in place by NEMA, to be followed by SEMA, in the following manner:-

- i) The project proponent should be required to submit a six-monthly compliance report on the conditions imposed through the said web-based ICT tool.
- ii) The voluntary self-disclosure on compliance should be put on public domain for scrutiny. This should be a mandatory provision.
- iii) The monitoring institutions should be consolidated by enhancing the technology-aided reporting system on emission levels, effluent discharge, afforestation status and others.
- iv) The primary responsibility of monitoring of compliances will be vested to the State level authority (SEMA) whereas the control and superintendence will be the responsibility of NEMA.
- v) Use of updated technology for measurement of pollution parameters, to ensure that prescribed conditions are met by project proponent at every stage; while physical inspections may be required, increasingly measuring instruments (non-tamperable) need to be inducted in the monitoring process.
- vi) The services of a network of laboratories should be utilised in enforcement and monitoring of the compliance conditions.
- vii) Wilful default in non-furnishing of voluntary disclosure or misrepresented information or false information or suppression of material information, non-compliance should be treated seriously and to be dealt with in accordance with the prescribed penal provisions.

**Recommendations:** The present monitoring processes, exclusively based on physical inspection should be strengthened by induction of technology, measuring instruments incorporating latest improvements; the standard setting and verification systems need to be tightened, to ensure all violators are identified.

### 7.19 Administrative mechanism for project approval process

- i. The amended EIA Notification should be gazetted to incorporate the changes made so far and which are being administered through the regime of OMs.
- ii. The Committee notes that OMs have been issued redefining the scope of EIA Notification, 2006 cutting across various provisions of the appraisal process and attendant conditions. Many of these OMs are not notified in the gazette and some have overriding effect on the provisions of 2006 gazetted EIA Notification. This is legally untenable and non-enforceable. As and when the proposed Environment Laws (Management) Act (ELMA) comes into force, other notifications may have to be issued from time to time. The Ministry should put in place a mechanism to bring out OMs only through IA Policy Division by way of gazette notifications.
- iii. OMs should not become the order of the day. Environmental governance should be streamlined to avoid knee-jerk reactions – a comprehensive document should be put in place as a manual which should be reviewed/ amended only annually through gazette notification.
- iv. The condition on the ownership and the physical possession of the land by the project proponent at the time of submission of application should be dispensed with, and be replaced as the ownership and possession before the construction or enabling activity thereof is started. However, the responsibility for acquiring the land should remain that of the project proponent and the Government shall remain indemnified for any liability on account of acts of the project proponent in this regard.

The recommended institutional mechanism and process for approval is aimed at integrating environmental concerns into development strategies of the nation. The country is poised for higher levels of growth in decades to come which will necessitate resource mobilisation at a faster rate and heightened economic activity. This is bound to have impact on the state of environment. This is an appropriate time to bring in environmental policies which rely increasingly on science and technology in decision support systems, as well as to assist in reduction in 'inspector raj'. In aid of achieving growth through conservation, the instruments as recommended viz., environmental mapping, environmental reconstruction programmes, conservation of fragile and eco-sensitive areas, use of advanced technology in capturing and controlling emission and effluent levels, setting objective and achievable standards,

putting in place accountable, transparent and speedy project approval processes along with required institutions, effective monitoring platforms, integrating economics in pollution control systems by incentivising green technologies and others is expected to harmonise policy decisions of the requisite order.

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## CHAPTER 8: LEGAL FRAME WORK

**8.1 Introduction** – The proponent of a project today is not liable to any consequence if his representation in the application for clearance turns out to be false or a careless act. With a view to eliminating the current time consuming and ineffective scrutiny process, and to bind the proponent to his statements and assurances, the Committee has adopted a method hitherto applicable in the field of insurance law. Under this discipline, the proponent and his supporting experts are required by law not only to tell the whole truth but also not to suppress any material facts. Apart from the ineffectiveness of the current processes, project proponents have also been stressing the need for a single window for clearance under the different laws.

The law of insurance supposes that the insurer knows everything about himself or about his activity to be insured; and the insurance company cannot be expected to know anything about the insured nor will it be able to verify all that is stated, speed being the essence. Thus, the concept of ‘utmost goodfaith’ got legal recognition under the English Common law during the 18<sup>th</sup> Century – eventually to be made part of statutes. If the statements made by the insured turn out to be incorrect or if material facts were suppressed or concealed, the insurance company could avoid its liability. The law in India is the same.

**8.2 Proposal for new law** – Drawing inspiration from this concept under the insurance law and to meet the desirability of a ‘single window’, the committee being alive to the legal position that the lacunae noted could not be addressed through executive orders, has decided to recommend the following course of action:

- (i) Parliament to enact a law that would constitute ‘National Environment Management Authority’ (NEMA) at the Centre and ‘State Environment Management Authority’ (SEMA) in states – both comprising experts in the different fields – which will deal with applications for clearances and permissions under environment related laws at the Central and State level respectively – thus a single window.
- (ii) The new law – Environmental Laws (Management) Act (ELMA) would oblige an applicant to disclose everything about his proposed project, especially its possible potential to pollute and the proposed solution thereto– in short all that would be relevant to making a decision on granting or refusing the clearance applied for. The proponent and the experts who support his case will be required by law to certify that ‘the facts stated are true and that no information that would be relevant to the clearance has been concealed or suppressed’.

- (iii) On the basis of this application and certifications, the matter will be examined either by the Central authority NEMA or the state level authority SEMA – depending on the category of the project as notified. The inspector, as a rule, has limited role to play in the proposed clearance process – in any given case the option of site inspection at any time is always reserved to the authorities. In respect of recommendations of NEMA for grant of clearance or rejection, the final decision will be by the Central Government.
- (iv) Introducing the concept of ‘utmost goodfaith’, if at any time after the application is received – even after the project takes off – it is discovered that the proponent had in fact concealed some vital information or had given wrong information or that the certificates issued by the experts suffer from similar defects, severe consequences will follow under the new Act ELMA; and they include heavy fine, penalties including imprisonment and revocation of the clearance, – and in serious cases arrest of the polluter.

(The principles of natural justice will be observed strictly).

- (v) The NEMA and SEMA, when established under ELMA, shall replace Central Pollution Board and State Pollution Boards.
- (vi) NEMA shall have control and superintendence over SEMA.

Amending different statutes and harmonizing them will be cumbersome and time consuming. But the problem at hand brooks no delay. Hence this umbrella law is devised – a suggested model Bill is attached for guidance. Other aspects as may be found necessary can be accommodated within it.

**Recommendation:** (i) To create a new ‘umbrella’ law – Environmental laws (Management) Act (ELMA) – to enable creation of the institutions NEMA and SEMA.

- (ii) To induct the concept of ‘utmost goodfaith’, holding the project proponent responsible for his statements at the cost of possible adverse consequences; thus also contributing to reduction in ‘inspector raj’.

**8.3** The committee is aware of the fact that the subject “water” is in List II (state list) of the VII schedule to the Constitution. However the Water Act of 1974 was enacted by the Parliament – Act 6 of 1974 – pursuant to Article 252 by consent of two or more states. All the states have adopted this Act, but have made Rules to meet the local needs. However, the new law seeks to legislate in respect of ‘Environment’, which is within the legislative competence of Parliament. Even if the law may incidentally deal with ‘water’, in ‘pith and substance’ the subject matter of the new law is ‘environment’ and it comes in the residuary powers of the Centre. In addition the subject of environment has been part of many decisions at international conferences

and conventions to which India was a party (Article 253)– hence power of the Parliament to enact the law is beyond reproach.

- 8.4** The proposed new Act deals primarily with management of applications for clearances and matters connected or incidental there to. However, it prescribes new offences and punishments and for establishing of special courts to be presided over by Sessions judges. Serious types of offences under the existing environmental laws may be shifted to the ambit of the new law to secure speedy attention. It will be permissible for the Parliament to identify and define new offences with enhanced punishment.

The individual environmental Acts have continued parts to play on areas other than matters dealt with under the new Act. With the coming in force of the new Act the corresponding provisions under the different laws will yield to ELMA. Doubts and difficulties if any will be resolved through notifications by GOI.

**Recommendation:** The new law prescribes new offences, as also for establishing special courts presided over by session judge. ‘Serious offences’ as defined to attract heavy penalties, including prosecution/ arrest.

- 8.5** The pollution control boards should be subsumed under NEMA and SEMA as the case may be in order to avoid duplication of authorities; the employees will be suitably absorbed. Since the new authorities, will function under the respective governments, the roles of the State Governments are preserved. It is suggested that ideally all the laws relating to environment should be integrated – the sooner the better. In the first instance Water Act and Air Act and all the subordinate legislations under them can and should be harmonized.

**Recommendation:** Abatement of central and State Pollution Control Boards on creating of NEMA/ SEMA.

- 8.6** **Noise Pollution** – Presently there is no statute dealing with noise pollution, though Rules made under the Air Act deal with it. This has resulted in inability to control bursting of crackers, use of microphones from places of worship and the like. Control over manufacturers of fireworks has also not been possible. Hence it is suggested that a comprehensive provision may be added to the Environmental Protection Act.

**Recommendation:** Suggestion for incorporation of noise pollution as an offence in EP Act.

- 8.7** **Appeals** – Against any decision of the Government on recommendations by NEMA, or on decisions of SEMA an appeal is provided to a Board constituted by the GOI presided over by a retired judge of any High Court with two senior officers of the rank

of Additional Secretary to the GOI or above having knowledge of the subjects involved. The Board will be required to dispose off the appeal within three months after it is lodged and will have all powers of a first appellate forum including power to reject the appeal summarily and to impose heavy costs against appellants pursuing frivolous matters.

**Recommendation:** Procedure for appeals – creation of an Appellate Tribunal.

- 8.8 National Green Tribunals:** ELMA proposes that the decisions of the Appellate Boards will be subject to judicial review by the NGT.

**Recommendation:** Judicial Review role for NGT.

- 8.9 Lafarge decision directives:** The Supreme Court in the Lafarge case has recommended the appointment of an appropriate ‘authority, preferably in the form of a regulator’ at the State and Central level for ensuring implementation of the National Forest Policy, 1988. ----- with the power conferred upon it *to frame statutory rules and regulations.*” – it may be mentioned that a subordinate body could not possibly be conferred with powers to frame ‘statutory’ rules. Further, the court said, “The Central Government should appoint a national regulator for appraising projects, enforcing environmental conditions for approvals and to *impose penalties* on polluters.” A ‘regulator’ as understood in legal parlance is to ensure a level playing field where competing interests are involved. The dictionary meaning of the term includes a ‘supervising authority’ – which appears to be appropriate to the context. The guidelines, valuable as they are, forming part of Part-II in the Lafarge judgment are sought to be implemented through the new Act.

The new law aims at constituting statutory agencies comprising of experts to manage all aspects of environment, including forest in a transparent manner. The law provides checks, balances and forums for dealing with grievances. Hopefully it will also obviate the situation that compelled the judiciary to manage forests and environment with the help of ad hoc committees.

**The following is only a draft model - Once the suggested course is found acceptable, at the time of drafting of the Bill conflicting provisions in the other Acts like Air Act and Water Act may be identified for repealing.**

## **The Environmental Laws (Management) Act,2014**

(Act ...of 2014)

An Act to provide for better management of environmental laws and for matters connected therewith.

WHEREAS the Govt. of India by Notification dated 29.8.2014 as amended by Office Order dated 18<sup>th</sup> September 2014 constituted a High Level Committee to review the named environmental legislations, and requested the Committee to inter-alia make suggestions for amendments to the named laws so as to bring them in line with current requirements to meet their objectives.

AND WHEREAS the Committee after interacting with diverse groups of people in different parts of the country concerned with the subject and with officials at various levels has come out with recommendations and suggestions; and to give effect to the same and to deal with other aspects of environment protection.

BE it enacted by Parliament in the .....year of the Republic of India as follows:-

### **CHAPTER I**

#### **PRELIMINARY**

**1.** Short title, extent and commencement. –

- (1) This Act may be called The Environmental Laws (Management) Act, 2014.
- (2) It extends to the whole of India (Except the State of Jammu and Kashmir).
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and for different areas.

**2. Definitions.** - In this Act, unless the context otherwise requires, -

- (a) “Appellate Board” means the Appellate Board constituted under section 14.
- (b) “Environmental Authorities” means, the authorities constituted pursuant to Section 5 of this Act.

- (c) “Environmental clearance” shall mean any permission required under all the environmental laws to commence, set up or expand any activity or project.
- (d) “Environmental laws” mean Environment (Protection) Act, 1986, The Forest (Conservation) Act 1980, The Wildlife(Protection) Act, 1972, The Water(Prevention and Control of Pollution)Act, 1974, The Air(Prevention and Control of Pollution)Act, 1981 and The Indian Forest Act, 1927 and the Rules, Regulations or Notifications under these Acts having the force of law.
- (e) “Forest” means -----
- (f) “Government” means the Government of India.
- (g) “notified” with its grammatical variations shall mean information or directions issued by government and published in official gazette.
- (h) “Prescribed” means as prescribed under the Rules made under this Act.
- (i) “Project Proponent” shall mean the applicant who or for whom the clearance is sought and shall include every project adviser, consultant or expert by whatever name called who supported the project through their opinions or advices that would have been relevant to granting of clearance; in the case of a proponent or the consultant or expert being a body corporate every person who at the relevant time was in charge of, and was responsible to the body corporate for the conduct of the business shall be deemed to be ‘project proponents’.
- (j) “Serious offences” shall mean violations of the utmost good faith obligations of the project proponent and of conditions imposed by the order granting environmental clearance that resulted in or likely to result in serious damage to the environment and or to public health. The acts and omissions mentioned in **Schedule 1** here to shall be deemed to be serious offences.
- (k) “Utmost Good faith” shall have the same meaning as understood in the law relating to Insurance; and the principles underlying s.20 of the Marine Insurance Act 1993 (Act 11of 1963) shall apply.
- (l) “Writing” or in writing shall include communications by e-mail or any other mode of communication through electronic means.

Words and phrases used hereunder and not defined, shall have the same meaning as given under the different environmental laws, to the extent they are not inconsistent with the context and objects of this Act.

**3. Act to have overriding effect:** The provisions of this Act shall prevail over anything to the contrary contained in any judgment or order of any court or tribunal and other enactments including the environmental laws dealt with under this Act.

**4. Constitution of Environmental Authorities:** The Government shall constitute

(1) A ***National Environment Management Authority (NEMA)*** which shall be a full time Board consisting of a Chairperson and minimum of ten and not more than fifteen other members meeting the following qualifications as nearly as possible to exercise the powers and perform the functions assigned to it under this Act.

a. Chair: Person with administrative experience and of the rank of an Additional Secretary to the government or above or persons with unblemished record of service under any government of not less than twenty five years in the field of pollution control or environmental management.

b. Secretary: A serving officer not below the rank of a joint Secretary to the Government appointed for a term as may be prescribed.

c. Members -

i. They shall be qualified in different fields relating to forest, wildlife, air, water, environmental management and allied issues.

ii. not less than two members shall be academicians having a minimum of fifteen years of teaching experience in technical institutions of national repute.

The retirement age of all members of NEMA other than officers on deputation may extend up to sixty five years. The tenure of non-official members shall be three years with other terms and conditions as may be prescribed;

(2) **State Environmental Authority (SEMA):**

(i) for every state which shall be a full time Board consisting of a chairperson and ten other members having experience in various aspects of management. In addition there shall be five ex-officio members of the rank of secretaries to the

State Government to be nominated by the State Government. The chairperson shall have administrative experience of at least twenty five years

- (ii) The tenure and other terms and conditions of chairperson and members (other than ex-officio members) shall be as may be prescribe
- (iii) The chairperson and other members shall be appointed by the government on the recommendations of the state government. In case of urgency, for reasons to be recorded the government may fill up the vacancies pending recommendation by the state government.
- (iv) Every SEMA shall have a Secretary who will be a serving officer having such qualifications as may be prescribed. The tenure of Secretary shall be as may be prescribed.
- (iv) A SEMA appointed in respect of one state may be asked by the government to be in charge of any other state or states with ex-officio members from the respective states

For the purpose of this clause the expression 'state' shall include a Union Territory

- (v) The retirement age of all members of SEMA other than officers on deputation may extend up to sixty five years. The tenure of non-official members shall be three years with such other terms and conditions as may be prescribed.

#### **5. Powers and responsibilities of NEMA and SEMA:**

- (1) NEMA shall be the sole authority to deal with applications for environmental clearances in respect of category A projects, as notified from time to time, and recommend to the Government rejection or grant of environmental clearance with such conditions relating environmental aspects as it deems fit. The recommendation of the majority of members of NEMA participating in the process of decision-making, if not unanimous, shall be at least two thirds of the participating members. The quorum and the procedure to be adopted including the matters to be dealt with at meetings and those that can be disposed of through circulation - shall be as may be prescribed.

- (2) NEMA and SEMA may levy and collect such fees or compensatory charges as may be notified by government from time to time;
- (3) Subject to the provisions of this Act and the Rules framed there under, to frame regulations to regulate its own proceedings including constitution of panels to examine the applications.
- (4) NEMA may create technical cells consisting of specialists drawn from the fields of pollution control and related fields as prescribed.
- (5) NEMA may at any time issue clarifications or directions in writing to SEMA either as response or 'suo-moto' for maintaining uniformity of standards or for any other reason to be recorded in writing and clarifications and directions shall be binding on SEMA.
- (6) NEMA may authorize SEMA to name any person or authority, including one among them to be in charge of investigation in to any offence under this Act. It may in a given case entrust the investigation to any other authority.
- (7) With effect from the date NEMA is constituted, it will replace Central Pollution Control Board and will perform all its functions. The Government will take suitable steps for relocating its employees by framing Rules.
- (8) NEMA or SEMA may deal with any other matters relating to environment as may be prescribed.
- (9) Subject to the powers of NEMA set out under this Act, SEMA shall have the authority to deal with applications for environmental clearances required in respect of category B projects as may be notified from time to time and to reject or grant environment clearance with such conditions relating environmental aspects as it deems fit. The order granting or refusing environmental clearances shall be supported by reasons.
- (10) All powers of NEMA enumerated under sub- sections (2), (3) and (4) of this section shall mutatis mutandis apply to the respective SEMA within its jurisdiction.
- (11) NEMA shall normally make its recommendations, with reasons, for grant or refusal on applications for clearances within six months of the receipt of the

application complete in all respects. However, NEMA may grant to itself more time not exceeding one month.

- (12) SEMA shall normally dispose of applications for environmental clearances within six months from the date of receipt of applications on the prescribed format with all the required papers. However, SEMA may grant to itself more time not exceeding one month.
- (13) SEMA shall be the designated agency to monitor, on a continuing basis, the compliance of conditions imposed at the time of approval in respect of A, B & C categories; subject to superintendence and directions of NEMA.
- (14) With effect from the date SEMA is constituted, it shall replace State Pollution Control Board and take over all its functions under Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act 1981. The respective State Governments shall take suitable steps for relocating its employees by framing Rules.
- (15) Any project, which is neither covered under category A projects nor under category B projects notified under section 6, shall be dealt with by the respective SEMA.

**6.1 Power of the Government:** The recommendations of NEMA on an application for environmental clearance shall be forward to the Ministry of Environment, Forests and Climate Change who will record a final decision as expeditiously as may be possible.

6.2 The MoEF&CC shall have the powers to issue directions in all matters to NEMA and SEMA in all matters.

**7. Exclusive Power of the Environmental authorities:** Notwithstanding any judgment, decree or order of any court, the subject of permission to cut trees or to deal with forest, forest product or forest land in connection with any project that has received environmental clearance under this Act, or in connection with road building or any other activity of public importance as declared by the Government and approved by the Cabinet specifically or generally, shall be dealt with only by the Environmental authorities concerned who shall decide the amount needed for compensatory afforestation and collect the same before granting permission. The decision of the authority, subject to the decision of the Government in revision, shall be final.

## CHAPTER II

### 8. Application for clearance.-Requirement of Utmost Good Faith

- (1) Every application shall be made in the format and with all the attachments as may be prescribed. The Government may by notification, published in official gazette, make changes to the format and other requirements from time to time.

This is without prejudice to the power of NEMA and SEMA to seek additional clarifications or material found necessary to deal with individual applications.

- (2) **Utmost Good Faith:** The subject of application for environmental clearance is based on the principle of utmost good faith and if the project proponent is in the opinion of the NEMA/SEMA or person authorized by them found acting or having acted in violation of this principle, all or any of the following consequences may follow:
  - (a) A spot fine may be imposed and collected at the rates and manner that may be prescribed along with a warning against further or continued violation.
  - (b) In addition, the proponent may be called upon to deposit double the amount of the estimated cost of restoration of the environment determined by NEMA or SEMA as the case may be.
  - (c) In the event of continued violation and or failure to rectify the defects after the warning under(a) above the clearance granted may be revoked,
  - (d) Additionally the project proponent may be liable for punitive or preventive action permissible in respect of serious offences.

### 9. Penalties

- (1) Without prejudice to the other provisions of this Act, whoever commits any serious offence is liable to be punished with imprisonment of either description for a period of 4 years that may extend up to seven years in addition to fine which may extend up to three times the amount needed to rectify the damage caused or up to ₹ one crore in case the amount needed cannot be reasonably assessed:

Provided that for hunting of animals notified by the central or state government as endangered or for unauthorized cutting of trees numbering five or more of the species notified, the fine may extend up to ₹ one crore– or equivalent to

one year's gross income of the person who or on whose behest the offence was committed, whichever is lower.

NOTE: The figures given in this clause are just illustrative. The government has to ultimately decide the figures.

- (2) The special environmental courts designated under this Act shall take cognizance of the serious offences only on a complaint by the officers authorized by the NEMA or SEMA, as the case may be, either specifically or generally. A member of the public may also file a complaint provided that the complainant satisfies the court that the authority concerned failed to act on his complaint lodged during three clear working days before approaching the court and provides credible evidence of his bonafides. Until the designated Courts are established a court of a Sessions Judge having territorial jurisdiction over the place of the alleged offence shall be competent to take cognizance of the complaints made under this Act. As soon as the designated courts are established the pending cases under this Act with the respective Session Judges shall stand transferred to the respective designated environment courts.
- (3) Except the offences placed in the appended Sch.1, all offences under the environmental laws, shall continue to be dealt with under the respective laws.
- (4) The offences under this Act shall be cognizable and non bailable.
- (5) Notwithstanding anything contained in Environmental Laws, no Court shall take cognizance of any offence under Environmental Laws or continue with the trial thereof if a Court has taken or takes cognizance of that offence under this Act, being a serious offence.

#### **10. Power to arrest**

In the event of commission of a serious offence or continuing with the polluting activity or continued violation of environmental laws after three written warnings or in the event of situations requiring in the opinion of the Chairperson of NEMA or SEMA, as the case may be, immediate preventive action is needed to be taken, the accused may be arrested without warrant by the police station having jurisdiction on a complaint by the officer authorized in that behalf.

**11. Modified application of Code of Criminal Procedure:**

- (a) Nothing in Section 438 of the Code of Criminal Procedure shall apply in relation to any case that may lead to the arrest of any person on an accusation of having committed an offence punishable under this Act.
- (b) Notwithstanding anything contained in the Code of Criminal Procedure, no person accused or convicted of a contravention of this Act or Rules made thereunder shall, if in custody, be released on bail or his own bond unless-
  - (i) The NEMA or The SEMA, as the case may be, has been given an opportunity to oppose the application for such release, and
  - (ii) Where the NEMA/ SEMA opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such contravention."

**12. Special Environmental Courts**

- (1) In every district a judge of the rank of a sessions or additional sessions judge shall be designated as a Special Environmental Court to entertain complaints and try offences under this Act.
- (2) These designated Special Environment Courts shall dispose of cases expeditiously and normally within six months of receipt of complaints.

**CHAPTER III**

**13. Appeals**

- (1) A party aggrieved by a final decision of the Ministry of Environment and Forest and Climate Change or of the final decision of SEMA may prefer an appeal to an Appellate Board constituted by the Government presided over by a retired judge of a High Court and also consisting of two officers of the rank of Secretaries to the Government of India retired or serving.
- (2) The appellate Board shall not entertain appeal against the final decision after the expiry of thirty days from the date of the receipt order of final decision of the government. The Board may, however, in its discretion and for reasons to be recorded, extend the period of filing appeal by fifteen days.

- (3) The principal seat of the Appellate Board shall be in New Delhi with seats in such other place or places as may be notified. More than one Appellate Board may be constituted by the government for different areas, if needed.
  - (4) The Chairperson and members of the Appellate Board shall be entitled to such terms and conditions as may be prescribed.
  - (5) The appeal may be lodged on such format with such fee as may be prescribed
  - (6) The Appellate Board shall dispose of the appeal normally within three months of its lodging. However, the Board may for reasons to be recorded reject the appeal summarily after providing one opportunity of hearing to the appellant and may impose costs against person found to be abusing the process.
- 14. Ceasing of certain powers and jurisdiction of Existing Appellate or Revision Authorities:** All appellate or revising authorities under the Environmental Laws shall, from the date of commencement of this Act, cease to have power or jurisdiction conferred on them under those laws in respect of matters covered under this Act.
- 15. Bar of Jurisdiction:** Subject to the powers of the National Green Tribunal (constituted under Act 19 of 2010) reserved under the succeeding provision the decisions of the Government, NEMA or SEMA under this Act or matters related there to shall not be questioned before nor enquired in to by any court or tribunal either suomoto or at any ones behest on any ground what so ever.
- 16. Jurisdiction of NGT:** Notwithstanding anything contained in any other law the National Green Tribunal may entertain applications by parties aggrieved by the decisions in appeals under S.12- 14 above for review on grounds permissible and subject to limitations applicable to judicial review of administrative actions by the High Courts and the Supreme Court of India.

#### CHAPTER IV

- 17. Environmental Fund:** The Central Government may authorize generally or specifically Environmental authorities to levy and collect compensatory afforestation charges in cases where trees are to be cut in connection with the project at the rates notified from time to time and to create a fund for depositing the same. The government may also authorize the environmental authorities to levy and collect compensatory payments in addition to imposition of fine by courts on conviction. All amounts collected shall be deposited in to a special fund to deal with environmental matters. The Government may devise appropriate mode of utilizing this fund for achieving the

goal of afforestation. The fund is subject to audit by the Comptroller and Auditor General of India

**18. Power to delegate**

Without prejudice to the powers of the NEMA or SEMA conferred under this Act the Government may by Notification delegate subject to such conditions and limitations, as may be specified such of its powers and functions under this Act as it may deem necessary or expedient to any entity, officer, the State Government, or any authority under it.

**19. Power to remove difficulties.-**

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Government, may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be necessary for removing the difficulty; provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.
- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

**20. Power to make rules**

- (1) The Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-
  - (a)
  - (b)

Etc. (As may deem fit by MoEF&CC)

- (3) Every rule made under this Act by the Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule shall not

be made, the rule shall thereafter have effect only in such modified form or to be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule.

- (4) Rules made under the environmental laws shall continue to be in operation except to the extent they are not in conflict with the rules made under this Act.

**21. Punishment for false or frivolous complaints – (optional)** (3) Rules made under the environmental laws shall continue to be in operation except to the extent they are not in conflict with the rules made under this Act.

**22. Protection of officials acting in good faith -- (optional)**

**23. Repeal and Savings:**

- (1) In Water (Prevention and Control of Pollution) Act, 1974, Chapters II, III, IV and VI and in Air (Pollution and Control) Act, 1981, Chapters II, III and V shall be repealed.
- (2) Notwithstanding such repeal, the proceedings initiated under the aforesaid Chapters shall continue and the same will be processed by NEMA or SEMA, as the case may be, and the pending prosecutions under the repealed laws shall continue.

#### **Schedule I (Serious Offences Section 2 (h))**

- 1.** Offences under both the Provisos S. 51 of the Wild Life (Protection) Act 1972.
- 2.** Hunting of animals notified by the state governments as endangered
- 3.** Hunting for the purpose of trading the animal or its parts
- 4.** Unauthorised cutting of trees numbering 5 or more of the species as have been notified.

***The above list is only by way of illustration – It is recommended that MoEF&CC may prepare a list of serious offences in the matters of pollution taking into consideration the gravity and impact and put in schedule 1***

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## CHAPTER 9: INSTITUTIONAL REFORMS

Environmental Issues and concerns, integrated with all aspects of development will play a significant role in the economy and society. The necessary institutional framework needs to be created, building on the existing systems, to meet future needs. Some recommendations in this regard are given below :

**9.1 Environment Research Institute** – A national research institution sponsored by the MoEF&CC needs to be established, which will act as the premier research and innovation centre in the field of environment sciences. This state-of-the-art research institution would sponsor regular degree/ diploma/ post graduate courses on various aspects of environment sciences and applicable practices, including standard-setting; as well as short-term courses on specific topics. This institute would also act as the apex technical advisory national agency on all matters relating to management of the environment, and will coordinate with other designated national laboratories in the field of environment management.

It is also recommended that MoEF&CC may identify a number of technical institutions, including some IITs, private and public engineering colleges, as well as laboratories of the CSIR and other agencies nationally, to act as technical reference agencies on specific areas relating to air, water pollution and related areas. This will assist in identifying technical certification requirements in the process of monitoring the implementation of approval conditions, and verifying emission/ discharge levels by industries; would also facilitate in providing credible and acceptable evidence in the course of prosecuting defaulters.

### **Recommendation:-**

- (i) Establish a National Environment Research Institute, through an Act of Parliament.
- (ii) Identify specific technical institutions/ universities in India to act as technical advisors to the proposed NEMA/ SEMA and other environmental enforcement agencies, to provide credible technical back-stopping for management of the environment.

**9.2 Creation of a new All India Service – Indian Environment Service** – Issues relating to the management of the environment are acquiring increasing significance.

‘Environment’ will play a large role in the overall governance paradigm. The public sector, including the Central and State Governments, and various other quasi-official bodies, such as corporations, municipal boards, enforcement agencies, as well as the industrial sectors will require reliable expertise of a high order in the management of environmental issues. Current approval systems and monitoring mechanism function in a quasi-amateurish manner, leading to sub-optimal management of environmental issues.

It is now proposed that a new Indian Environment Service be created, as an All India Service, which will act as an expert group to man positions in this field in the public and quasi-governmental sectors over the next decades. It is suggested that an expert committee may examine the entry qualifications and other details, preferably for recruitment through open competition in consultation with the MoEF&CC, the DoPT and UPSC.

**Recommendation:** An Indian Environment Service may be created, as an All India Service, based on qualifications and other details prescribed by MoEF&CC/ DoPT/ UPSC.

**9.3 Expertise in the Indian Forest Service** – The Indian Forest Service (IFS) enjoys a good reputation and has managed the forest wealth of India reasonably well. However, the issues of forest management are no more generalist in nature. It is recommended that existing members of the IFS, particularly in the junior levels be encouraged to specialise in specific areas of forestry (such as forest conservation, protection, harvesting and sale of forest produce; extension forestry, joint forest management, grassland and watershed management and eco-development outside reserve forest; wildlife management including all its aspects; and research, training/ working plans, technical support to agro and farm forestry). Noting that issues of environment are now to be seen holistically to include forest, wildlife as well as air/ water and other pollution issues, the training and work experience of the Indian Forest cadre may also now be designed to include familiarisation and work experience of the totality of environmental management.

**Recommendation:-** The Indian Forest Service may encourage specialisation in various aspects of forestry and wildlife management, among the members of the service, as well as familiarity with all aspects of management of environment.

**9.4 Need for enhancing the quality of forest cover, and periodical review of quality of forest management** – The Committee during its visit to various States had occasion to discuss the quality of forest cover in departmental forests, as it obtains today. On the basis of cursory research and hearsay evidence, it may not be fair to come to a conclusion; however, the feeling appears inescapable that the existing area under forest cover is not managed in an optimal fashion. Apart from much evidence that poachers and other intruders are not dealt with effectively, there appears to be no in-built incentive for improvement of quality of forest management in the country. While this may not be interpreted as adverse comments on the work of the Ministry, or the State Governments, or the forest services, the Committee wishes to highlight the need for greater focus on quality improvement in forest management.

The primary focus of the Department appears to be to increase the Departmental forest area, and bring it to the level of 33% of total landmass. This is laudable. But the equally important aspects of improvement in quality of forest cover, including biodiversity, have been lost sight of. In the operation of the State Forest Corporations, a significant current focus appears to be ‘profitability’ of operations, essentially relating to choice of quick yielding species, without adequate diversity, which may not have optimal long-term benefits.

It has also been noticed that there is little technical interaction between the forest department in most States and the adjoining rural communities to provide advice and technology for the improvement in the quality of social forestry, as well as in ‘Joint Forest Management’. Lack of imaginative, collaborative efforts is costing the country dear. This is a serious gap that needs to be filled. The interface between the Department and the adjoining communities appears to be, from the Department’s point of view, one of ‘peaceful coexistence’. Department needs to actively engage itself in social forestry, overall contributing to the quality of forest cover in the country.

The issue of repeated forest fires in nearly every region is a serious matter. It does not appear clear that these have been addressed adequately in terms of prevention, control, management and punishment; the forest authorities seem to have no accountability in this regard.

The feeling has persisted that there is inadequate specialisation in the forestry services, to meet the diverse requirements for today and tomorrow. While prima facie the Committee may appear to be straying far beyond its brief, and even its competence to raise these issues may be questioned, the Committee feels that it is their duty to bring attention of these matters to the appropriate authorities.

**Recommendation:-** The MoEF&CC may like to undertake a comprehensive review of departmental forest management policies, practices and procedures, to initiate wide-ranging improvements and reforms. This preferably should not be an internal exercise, and should include independent knowledgeable experts from India and abroad, as well as qualified researchers.

**9.5 Issue of new Notification to replace the EIA Notification, 2006** - over the past 8 years more than 150 circulars, Office Memoranda and amendments have been issued by the MoEF&CC to provide clarity on the various aspects of the assessment process, making it difficult to take an accurate comprehensive view on the current position. These notifications may now be summarised in a new notification, rationalising and updating all these, to provide one single updated comprehensive set of directions. The Committee could have attempted this work except for paucity of time; besides, such an exercise would have to await the decision of MoEF&CC on the recommendations of this Committee; thereafter, also taking into account ELMA, the MoEF&CC may arrange to consolidate the present position within the next three months. Any new circulars thereafter or regulations or amendments, unless found imperatively urgent, may be issued or revised only once a year, at a specified period.

**Recommendation:-** MoEF&CC may consolidate all existing Notifications/ circulars/ instructions into one comprehensive set of instructions. Amendments or additions may normally be done only once a year. (Naturally, this will depend on decisions taken by Government on the recommendations of this Committee)

**9.6 Legal Reforms** – The Committee has elsewhere (Chapter 8) recommended the enactment of a new ‘Environment Laws (Management) Act’. Ideally, if there had been time, the Committee would have also recommended detailed revisions to the existing Water and Air related Acts.

After decisions are taken on the structure based on the recommendations of the Committee, it is recommended that the Water Act, 1974, The WC Act, 1977, The Air Act, 1981 may be subsumed into the EP Act, 1986. All the enabling provisions of the amalgamated Acts could be incorporated in EP Act, 1986. This task could be accomplished through a special committee within 3 months.

For the present, it is not envisaged that forest/ wildlife related acts need to be integrated with the revamped Environment Protection Act.

**Recommendation:-** The MoEF&CC may arrange to revamp the EP Act, by inducting relevant provisions of the Water Act, 1977 and the Air Act, 1981 ; the latter two could be repealed, when the revamped EP Act, 1986 comes into force. This exercise may be done keeping in view the provisions of the proposed Environment Management Act.

**9.7 Environment Reconstruction Fund** – An ERF may be created as a public fund, managed directly by the Ministry or the proposed NEMA. This Fund shall receive its inflow from a variety of sources, including from water cess, air pollution cess, proposed vehicle pollution surcharge, proposed surcharge on units discharging effluents; environmental reconstruction cost from project proponents; fees for various services rendered by agencies including process fees etc.; as well as other levies, also including penalties and punitive fines on polluters and offenders.

The Fund, referred to in the proposed ELMA, will be primarily ploughed back into the management of the environment – in particular in items like development of database, research in setting of standards, compensating or sponsoring research projects through the participating national laboratories and institutions; and also for education of the public on environmental related matters, and so on. A Board to administer the Fund may be established by the MoEF&CC.

**Recommendation:-** Create an Environment Reconstruction Fund for facilitating research, standard setting, education and related matters.

**9.8 Repositioning federal relationship in the matters of environmental management** – The existing constitutional arrangement in the matters of environment and forests is tilted towards federal governance. Forest and wildlife are subjects in Concurrent List whereas Environment is a residual matter and is within the competence only of

Parliament for legislation. There are a few apparent inconsistencies in this regard, even though the subject of environment falls within the purview of the Centre. Environmental conservation and concerns for integrating environment into development strategies are policy requirements, but the instruments for implementation are few and ineffective. The main issues today relate to enforcement and implementation. The Committee recommends delineation of the following roles for the three levels of Government in policy formulation, implementation and enforcement. These are referred to in Chapter 7, and summarised below :-

- a. **Union Government** – The primary responsibility of the Central Government should remain legislation in the field of environment along with the administration of environment management laws prescribing for standard setting for pollution levels, project approvals, administration of Environmental Reconstruction Fund, research and development for enhancement of environmental quality, environmentally sustainable technology hunting, supporting and sponsoring pollution control methods at local levels, environmental policy formulation. All the development and central sector projects must have an environmental component to undertake environmental mitigation measures on the similar lines as Special Component Plan or Tribal Sub-Plan or North-Eastern Region existing today. Every Ministry of GoI where relevant needs to have an Internal Environment Division (IED) to scrutinise the programmes and schemes from environmental management point of view.
- b. **State Governments** would be closely associated with the functioning of the State Environment Management Authority (SEMA), which will act as the implementing arm of the State Government's policies in the field of environment. SEMA would be vested with all the requisite powers under ELMA. The Body should be professionalised by way of recruitment of relevant types of manpower in sufficient number. The SEMA should be empowered to levy and collect the charges for environmental services proportionate to the environmental reconstruction necessity. There should be a special legal cell in SEMA, trained in evidence collection and prosecution for the violation cases in environmental laws. There should be provision for apportionment of central Environmental Reconstruction Fund to SEMA. SEMA would be the designated agency for monitoring of the functioning of all units and verifying the

compliance of all conditions imposed, in respect of all units, including A, B & C. SEMA has a significant role in monitoring the continuing fulfilment of the conditions imposed at the time of approval; the State Government would be closely associated with this process and give directions from time to time. SEMA should equip itself to be able to provide professional advice to industry in respect of better environmental practices and technology replacement. SEMA should identify and induct latest technology in monitoring of conditions imposed on individual units.

The State Government is expected to supervise the functioning of SEMA in so far as monitoring, as well as processing penal actions against transgression of conditions. Apart from overall control over garbage collection and pollution control in urban and semi-urban areas, the State Government is expected to guide the SEMA to ensure effective implementation of the monitoring process.

- c. **Local Government** – District Collector/ District Magistrate should be declared as District Environmental Manager. Every district must have an environmental management plan. There should be a capacity building programme for local bodies including municipalities and Panchayats.

**Recommendation:** a) While overall responsibility vests with the Ministry, it is expected that the State Governments and the local bodies will play an effective role in management of the environment.

b) The Governments should provide dedicated budgetary support for environmental programmes as a part of each development project in all the sectors.

**9.9 The Central database** - NEMA should develop a central database through capturing, collating, classifying the inventories for geo-referenced master database. The reliance on geo-referenced database captured through satellite imagery for topography, hydrological features, vegetation, settlement patterns, and related other elements having a scientifically driven exercise will aid in effective environmental management including project clearances in a transparent, accountable matter, relying upon scientific principles, and sharply reducing delay. NEMA should utilise the database to delineate the specific locations and areas in the country to preclude environmental clearances in 'no go' area or inviolate areas at the inception stage

itself. The real-time database on air emission and water quality which is being collected through hundreds of stations could be integrated with this platform. This database will also help EIA study and help preparation of EMPs in a more reliable manner. Simultaneously, the pollution mitigation measures will become more effective through a strong monitoring mechanism. The database will usher in the benefit of reliable and factual data, will reduce the scope for fudging data by consultants, will quicken decisions, will help pre-designate inviolate areas, will assist in studies of carrying capacity of each location from the pollution load point of view; and not the least, a location specific emission and effluent standards will also be developed utilising this data along with dynamic real time monitoring systems. The database will be under the control of NEMA with, FSI or any other nodal agency nominated as custodian to coordinate with other organisations like NRSC, M/o Earth Sciences, NIC etc. for compilation and regular update. There should be a cost parameter for data mining and accessibility from the centre which will provide for the cost of regular updation in terms of technology and manpower.

**Recommendation:** There is urgent need for creation of a comprehensive database, using all instruments available, on an on-going basis, in respect of all parameters relating to environment.

**9.10 Environmental mapping** - Development strategies have to be part of environmental conservation. Policy formulation must take note of this postulate. The country needs to grow in terms of economic services provisioning through multiple models in the fields of agriculture, manufacturing and services. There is a necessity to sponsor environmental reconstruction programmes concurrently with development programmes.

In furtherance of these, the Committee recommends that there should be an environmental mapping of the country through geo-referenced satellite imagery, realtime data collection on pollution emissions, and on-field direct physical collection of data. These maps should be used as a primary tool to delineate the inviolate or 'no go' areas for development projects in the matter of utmost importance of environmental conservation and should include forest cover areas of more than 70% density, wildlife protected areas, eco-sensitive zones, biodiversity hotspots and ecologically fragile zones. The delineation of the last two categories require on the spot verification. The environmental maps should aim at 'carrying capacity' studies

of pollution load of each area in totality as well as the carrying capacity of rivers in terms of damming and hydro-power generation capacities. A strategic impact analysis of the projects need to be undertaken. A separate and independent assessment for mining activities along with its ecological impact should be part of the environmental mapping to suggest the extent of permissibility in view of the fact that many of the mining areas are co-terminal with forest areas. Strategic environmental impact study of various regions of the country should be carried out to prepare a master document to assess the existing pollution load and permissibility for further location of economic activities in the zone.

**Recommendation:** Environmental mapping of the country, using technology, should be undertaken as an on-going process.

- 9.11 Environmental reconstruction cost** – Each development project must indicate the extent of environmental degradation, reconstruction programmes and the indicative cost thereto. This amount should be borne by the development projects beyond a specific size as a part of project life cycle and to be realised as a cess or a tax or a levy. The proceeds of this fund should be devoted to reconstruction and regeneration programmes in the local areas. The development projects should have the option of executing such programmes under the supervision of a responsible designated authority and/ or, alternatively financial credit programmes should be developed as a traded commodity to provide flexibility and encourage environment friendly technology incorporation.

**Recommendation:** Identification & recovery of environmental reconstruction cost relating to each potentially polluting unit should be in-built in the appraisal process.

- 9.12 Project consultants** - The central database available with NEMA can be used on payment basis, by the project proponents in preparation of EIA report/ EMP through the accredited consultants. The process of enlisting of such consultants should be revamped exhaustively and NEMA should develop objective parameters to enlist and empanel the consultants in a manner to focus upon the competence, technical knowhow and expertise and experience for such empanelment. The present system of borrowing the list from Quality Council of India and National Accreditation Board for Education and Training (NABET) is marred with multiple controversies. Even exceptionally high quality research and education institutions often do not qualify to be enlisted as consultants in the current process. Any misrepresentation of facts or

furnishing of incorrect data or information by the consultants in any of the documents in the approval process of the projects will make consultants and project proponent both liable for prosecution, including black-listing of such consultants from having any engagement or transaction with Governments for a period of 10 years, including the Directors and employees of the consultant company and/ or partners and employees in consultant firms. A similar debarment provision need to be considered upon any outsourced independent professional having association in document preparation found fabricated or having incorrect data or misrepresentation of data.

**Recommendation:** The system of empanelment of ‘consultants’ needs to be reworked.

### **9.13 Generation of awareness of ecology and environment among the general public –**

The Indian tradition worships nature, and our scriptures are replete with references to the need to respect the environment. The theme of forest or green cover is repeatedly seen in the Vedas and Upanishads.

The Committee feels that considering the important role that environment will play in the future, the children of the country who represent the future generations should be familiarised with issues relating to environment, interwoven into the school curriculum, in a manner that generates interest, communicates information and fosters responsibility. The Committee noted that in many States, ‘Eco Clubs’ have been established, through private initiative of schools, often with the support of the State Government. The MoEF&CC may consider ways of expanding this movement, to provide inter-connectivity between schools within and among States, to create national awareness on the issue, much as the Prime Minister now is sponsoring the ‘Swachh Bharat Abhiyan’. Competitions, TV programmes on nature and other innovative suggestions like ‘green schools’ and the like may be encouraged.

**Recommendation :** A ‘green awareness’ programme need to be sponsored, including interweaving issues relating to environment in the primary and secondary school curriculum.

### **9.14 Environmental Remediation of polluted sites –** In the process of development there are many spaces which have been ecologically degraded. Effective legal framework

and institutional mechanism should be put in place with financing tie-up to provide remediation of such sites. The enabling provisions should be inserted in EP Act empowering Government to generate funds through levy/ cess and take over such polluted sites to carry out cleaning exercises directly/ through State Government or local body in PPP mode or in association with industry associations. The environmental reconstruction cost for new projects must incorporate a component for remediation. The regional development policies for industrial development and manufacturing zones must be modified to include institutions and finance for remediation of sites – land, air and water.

**Recommendation:** MoEF&CC should prepare regional plan for carrying out remediation of polluted sites in consultation with the State Governments and enabling provisions should be incorporated in EP Act for financing the remediation task.

**9.15 Municipal Solid Waste (MSW)** – India has an urban population of 377 million which constitutes 31% of the country's population. Indian urban system network comprises 7935 towns out of which 4041 are statutory towns having local municipal administration. The number of class-1 towns having population of more than one lakh is 468, housing 70% of India's urban population. In the pyramidal urban concentration there are 53 cities accounting for 42.6% of Indian urban population. Three most urbanised States are Maharashtra, Uttar Pradesh and Tamil Nadu.

The city landscape has become replete with the agglomeration of waste sites. Urbanisation generates solid waste from industrial, household and institutional consumption patterns; majority of residue material are toxic in nature which causes health problems. Solid waste generation and accumulation in an urban area is an outcome of concentrated settlement patterns without commensurate infrastructure. Unplanned cities lacking sewerage and waste disposal add to the accumulation of solid waste. Inefficient and weak city administrations lack finances, technology and manpower to keep cities clean. The cities in our country have a sizeable presence of slums, informal sector and poor, illiterate migrants. The morphological characteristics of slums lead to generation of solid waste and prohibit/ restrict waste handling mechanism.

Safe disposal of city solid waste (Municipal Solid Waste-MSW) has become a major challenge for urban administration in our country. Municipal Solid Wastes

(Management and Handling) Rules, 2000 notified under EP Act, 1986 is the sole legal instrument prescribing responsibilities and procedures for safe disposal of the municipal wastes. The rules require the respective municipal authority to establish infrastructure development for collection, storage, segregation, transportation and process of MSW. Simultaneously, the overarching responsibility has been vested with State Governments, CPCB and SPCB having been empowered to ensure the compliance of standards in the matters of impact of MSW on ground water, ambient air, lechete and compost quality. Solid waste in municipal areas mainly comprises plastic waste, bio-medical waste. CPCB has reported a generation of 1.33 MT of MSW per day in Indian urban areas in the year 2012-13 out of which only 91,000 TPD was collected and 25,884 TPD was treated. In addition, approximately 4.16 lakh kg per day of bio-medical waste generation is also reported in 2012, majority of which is in urban areas.

Indian city administrations have deployed multiple approaches and strategies to regulate, control and safe disposal of solid waste. These include collection, separation, recycle and reuse, incineration, landfills among others. The issues MSW handling is faced with include near-absence of segregation of the wastes which hampers recycling and reuse; absence of appropriate methods and infrastructure for collection, gaps in PPP models; financial weakness of municipal bodies; paucity of appropriate land parcels for land filling among others. There are few functional successful models in some towns where the financial tie-up for collection and segregation has provided financial returns.

The Committee considers MSW as a looming catastrophe contributing to urban decay. It is recommended that following strategies should be put in place in this subject matter:

- i. Urban local bodies should be empowered to levy cess for collection of solid waste from all the sources in their administrative limit.
- ii. Urban local bodies should be empowered to levy fines in case of violation of the rules prescribed/ standard specified.
- iii. Enabling provisions in State Government legislation for municipal administration should be amended for devolving/ budgetary grant to urban local bodies for the management of solid waste.

- iv. Policy instruments should be put in place for incentivising generation of green power from municipal waste; for subsidy on waste compost; and utilisation of MSW as a fuel in cement and steel plants.
- v. The focus on MSW should be heightened, to be integrated with health concerns; every hospital must have an institutional set up for bio-medical waste handling.
- vi. Rag-pickers and the informal contractual system operational in urban areas should be integrated in solid waste handling system.
- vii. Regulations should be framed for strict compliance of bio-medical waste segregation and safe disposal by placing the responsibility on the generator.
- viii. Extended generator responsibility should be prescribed for all the institutions in the urban areas, strict penal provision for violations.
- ix. A systematic 'green rating' of 53 million-plus cities needs to be undertaken over the next year or so, through competent national agencies. A target needs to be set to reach, say 20% of current levels of solid waste, over a 3 year period, which should be the goal for which the municipal bodies should work on; to be monitored by State Governments. A system of rewards and punishment, including accountability of the Chief Executive of the municipal authority needs to be built into the system.
- x. The responsibility and accountability of State Governments should be incorporated in the handling rules for coordinating the efforts of urban local bodies, locating and approving the landfill sites.
- xi. The accountability of urban local bodies is required to be elaborated in handling of MSW and municipal laws need to be amended to keep local bodies responsible for this purpose. The provisions for appropriate action against urban local bodies who fail in the performance of keeping city clean should also be prescribed in the law.

**Recommendation:** Municipal Solid Waste (MSW) management has not been given requisite attention hitherto. New systems and procedures for handling MSW need to be in place early, for effective management of MSW and with accountability. Cities should set a target of reaching 20% of current levels in 3 years time to work out a mitigation plan.

**9.16 Air Pollution-Vehicular emission** – Air pollution and its resultant impact in India could be broadly attributed to the emissions from vehicular, industrial and domestic sources. India's urban air quality ranks amongst the world's worst. On discussion with National Environment Engineering Research Institute and other technical agencies, the Committee understood that currently somewhere between 65 to 70% of the air pollution in metropolitan cities are attributable to motor vehicles. The informal estimates also did not envisage any reduction, despite Euro-III, Bharat-IV norms being introduced – the assumption is that any benefit out of the newer technologies will be more than offset by the rapidly increasing population of motorised vehicles.

The Committee notes that air pollution in cities cannot be effectively addressed, without dealing with the issue of emission from motor vehicles. Noting that the overall policy initiatives taken in this regard have been inadequate, the Committee urges a new set of effective initiatives to be brought in place. Most policy decisions in this regard would fall outside the ambit of the MoEF&CC; however, the Ministry is required to have a say on these issues. A concerted effort from different Ministries would be required in this regard. These need to include major new emphasis on public transportation to curb rapid increase of private motor vehicles, a revised system of taxation to inhibit increase in vehicle population, improved management of urban traffic including zones where strong 'entry fees' are to be imposed (like many cities of the world), and also effective policies for reduction of vehicle emission and monitoring thereof.

**Recommendation:** Noting that vehicle emissions are the major cause of deterioration of air quality in urban areas, a concerted multi-pronged effort needs to be launched to not only to contain it, but to improve the situation in relatively short time.

**9.17 Application of science and technology** – Science has been a companion in the quest of mankind's advancement and growth. Over centuries the application of science and innovative technology has been used as a tool for expansion of resource base. However, except stand-alone scientific methods and applications, available technology is often not currently applied in the management of natural resources like forest and ecosystem services. The Committee lays high stress on high value geo-referenced database captured through satellite imagery and analysed by IT

applications which should be put to use for scientific management of forest and environment.

- i. The outdated practice of using cadastral maps should be replaced by GIS maps in forest, wildlife and environment administration, as mentioned elsewhere.
- ii. IT-enabled services should be deployed to analyse the multi-layer data captured through satellite imagery for relief & topography, hydrology including underground water resources, soil characteristics, vegetation patterns, agronomic practices, settlement patterns, transport network, coast lines, state of the purity of air and others.
- iii. Objective decision making should be based on technology-aided tools that are value-neutral to maintain the ecological pristinity and fragility of eco-sensitive zones and 'no go' area by super-imposing such geo-referenced maps in the matters of environmental governance.
- iv. Use of technology, and latest equipment on an on-going basis to monitor emission/ pollution levels from individual units, rather than solely depending on field level local inspections.
- v. An efficient and responsive decision making should put a mechanism in place that provides for inflow of information and data including application for project approval and resources for appraisal of projects for effective and faster decision making.
- vi. Where pollution parameters of individual units are required to be monitored, the use of self-driven tamper-free technology is required to be put in place for capturing emission and discharge levels for rectification, recuperation and penal action where required.
- vii. Use of technology in managing protected areas for wildlife.
- viii. Restoration and remediation of critically polluted areas and environmentally degraded sites should rely upon modern technology-aided process to continuously ensure reduction in emission and discharge level in air, water and land as well as monitoring of the improvement made in the state of environment.

While recommending the use of technology in the management of the environment, it may also be useful to remember that use of science and

technology needs to be done with appropriate discretion and care; the role of human intervention and application of expertise cannot always be dispensed with. It is thus, of utmost importance to create a cadre of experts in forestry/ wildlife/ air/ water pollution, and other relevant areas, to manage this sector which will be of vital importance in the future. The NEMA and SEMA referred to earlier should be encouraged to use latest technology wherever feasible, particularly in monitoring of conditions imposed.

The Committee also would like to sound a note of caution that while utilising science and technology their limitations as well as the need for appropriate human intervention should not be lost sight of. The potential consequences of mindless use of science and technology could possibly be illustrated by referring to the potential for medium/ long-term adverse affects through unprepared introduction of Genetically Modified (GM) food crops. While other Ministries naturally would aggressively push for early field trials and induction, the role of the MoEF&CC may have to be one of being a Devil's Advocate to advise due caution. Noting that Europe does not permit field trials, and that the average Indian farm is of very small size (which could lead to severe adverse impact on biodiversity through gene-flow) also noting that there are no independent expert agencies in the country, perhaps the MoEF&CC may ask for greater assurance in respect of potential adverse effects in the medium and long run. This is not to argue that use of science or technology should be limited; more to highlight the fact that appropriate caution needs to be taken.

**Recommendation:** Use of science and technology, wherever possible and appropriate should be encouraged; approval and enforcement agency should use latest technology to the maximum possible.

- 9.18 Coastal Regulation Zone** – There is much confusion among the general public as well as the entrepreneurs about the actual demarcation/ line of the CRZ, which is based on the concept of HTL (High Tide Line), which varies from time to time. The Committee understands that the Ministry has appointed a competent technical group to examine the matter, and recommend the delineation of an appropriate demarcation line, which identifies the CRZ, unambiguously. The Committee recommends that this task should be done early, and once the CRZ line is notionally

identified, incorporate this information in the GIS information system, so that no ambiguity persists on individual cases.

**Recommendation:** The MoEF&CC may finalise the CRZ demarcation, and bring it into public domain to pre-empt ambiguity.

**9.19.1 Mining operations** – The Committee notes that increased pace of mining for every mineral is inevitable with the growth aspirations of the country, as also that most mining sites are located in forest belts. The effort should be to minimise the damage to the environment, contain the adverse effects, and wherever possible re-forest and bring back the green in a planned manner in mining areas. Some suggestions are made below:-

- i. A Perspective Coal Plan, updated over time needs to be prepared for the coal mining sector. The Plan would address the evacuation of coal through environmentally sustainable mechanisms which should take into account the recuperation and reconstruction of degraded mine areas. The mine development plans should have staggered phasing for design of infrastructure for evacuation of coal along with recovery of mined area to be greened simultaneously. This strategy should aim at reconstruction and rejuvenation of the land in a sustainable manner.
- ii. The mine development plan should have an afforestation component and for this purpose the mining should be carried out in phases – each of these should not be for more than 5 years.
- iii. The operational mine plan should be drawn providing for open spaces for dumping over-burden removed in the mining process which should be afforested with forest crop of the next exploitation phase of the mine, to be repeated with each phase.
- iv. A special cell in NEMA would, with appropriate expertise deal with mining cases of all minerals, to facilitate early environment clearance with appropriate remediation.

9.19.2 Regular reliable power supply is of critical importance to national development, power projects need speedy appraisal, and clearance where warranted. These need to be examined on a fast-track basis, without compromising environmental considerations.

**Recommendation:** In view of the key role played by the power sector, as also mining of various minerals in national development, NEMA may have a suitable cell, with specialisation, to speedily deal with environmental approvals in these sectors, with due regard to environmental considerations.

**9.20 Trained manpower development** – From the information received, the Committee notes that most industries, including those which have potential for air/ water pollution, do not in most cases, have technically qualified personnel to manage their pollution control equipment, and to monitor internally that the committed pollution levels are not breached. It is proposed that every type of industry, to be specified, should employ technically qualified pollution control/ management of pollution control equipment personnel, for their internal supervision and maintenance purposes. NEMA/ SEMA shall prescribe the qualifications in different relevant fields.

**Recommendation:** All specified type of units would employ fully qualified technical personnel to manage their pollution control/ management equipment, and to keep the emission levels within prescribed limits.

**9.21 Incentives for compliant units** – Currently there is no incentive for industrial units which fulfil the norms or achieve results better than the stipulated norms. There is a provision of rebate in water cess for such units though this is not substantial. Further, many Boards have initiated various schemes to promote compliance, but these are not linked to financial incentives – there is no effective mechanism in place that motivates industry to strive for continual improvement. Much as non-compliant units are to be penalised, those that perform well need to be financially incentivised. There is also need to look into technical avenues like load based standards and assimilative-capacity-based standards instead of concentration-based national standards. This will imply a paradigm shift in the tenet of pollution control from present ‘Command and Control’ to Market Based Instruments like ‘Cap & Trade’. This concept can also enhance overall compliance at lower cost, inducting economic instruments in environmental management. MoEF&CC may formulate a scheme for incentivising ‘green projects’.

**Recommendation:** MoEF&CC may consider reworking standard-setting and revising a system of financial penalties and rewards to proceed to a market-related incentive system, which encourages ‘green projects’.

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## CHAPTER 10: SUMMARY OF RECOMMENDATIONS

### (As these appear serially in the report)

1. Identify and pre-specify 'no go' forest areas, mainly comprising PAs and forest cover over 70% canopy. (Para 5.4).
2. It is suggested that the Ministry may define the term 'forest' at an early date. (Para 5.5).
3. To offer economic incentives for increased community participation in farm and social forestry by way of promoting and proving statutory safeguards to 'treelands' as distinct from 'forest'.(Para 5.6)
4. Plantation of approved species on private lands could be considered for compensatory afforestation with facility for 'treeland' trading. (Para 5.7).
5. Revise procedure for clearance under FC Act as above, which is intended to reduce the time taken, without compromising the quality of examination. For linear projects, it is recommended that FR Act needs amendment to consider removal of the condition of Gram Sabha approval. (Para 5.10).
6. The Compensatory afforestation guidelines be revised; CA on revenue land to be enhanced to 2:1 as against 1:1 at present; CA in degraded forest land be now fixed at 3:1; the NPV should be at least 5 times the present rates fixed. An appropriate mechanism to be created to ensure receipt of the CA funds, and their proper utilisation, delinking the project proponent from the CA process, after he obtains other approvals, and discharges his CA financial obligations. (Para 5.11)
7. The quantum of NPV for compensatory afforestation needs to be sharply increased. A reliable mechanism for ensuring that CA is actually implemented, utilising either private or forest land, needs to be put in place. (Para 5.12).
8. Schedule 1 to be amended to include species likely to be threatened by illegal trade. An expert group should review the existing Schedules and address discrepancies relating to several species and sub species.(Para 6.2)
9. Regarding the issue of tackling damage to agriculture and farmland by amendments in Schedule 3, the MoEF&CC may issue circulars to all States apprising them of the legal position, suggesting that they may take appropriate action based on legal provisions.(Para 6.3)

10. Preparation of Wildlife Management plans should be made mandatory and a provision to this effect inserted in the WLP Act.(Para 6.4)
11. Section 26A sub section (3) and section 35(5) should be amended so that permission from the Central Government would only be necessary when the State Government proposes to reduce the boundaries of an existing PA.(Para 6.5)
12. Manufacture and possession of leg and mouth traps should be completely prohibited, except where they are required for visual display for educational purposes.(Para 6.6)
13. Officers entrusted with the task of settlement should be given minimum tenure of 2 years. Regular review of such work should be done to ensure completion within time.(Para 6.7)
14. 'Expert' status may be given to the forensic facility of WII, after suitably strengthening it.(Para 6.8)
15. Section 50 and 55 of the WLP Act may suitably provide for adequate and purposeful delegation appropriate for faster and better prosecution in respect of a wildlife crime. (Para 6.9)
16. There is need to authorise officers of the Wildlife Crime Control Bureau under the MOEF&CC to file complaints in Courts.(Para 6.10)
17. Polythene bags and plastic bottles may be added to the banned list in Section 32.(Para 6.11)
18. MoEF&CC to take immediate steps for demarcation of eco-sensitive zones around all the protected areas; States may be asked to send proposals in a time-bound manner. (Para 6.12)
19. Powers to approve applications for bona fide observational research, through photography, including videography may be delegated to the level of Park Director, after verifying the credentials. (Para 6.13)
20. The Schedules should provide appropriate provision for taking into account the needs of local festivals, subject to no harm or injury to animals. (Para 6.14)
21. Proposal to revamp this project clearance/ approval process. (Para 7.7)

22. Create National Environment Management Authority (NEMA) at Central Level and State Environment Management Authority (SEMA) at the State level as full time processing / clearance / monitoring agencies.(Para 7.8)
23. Proposed composition, functions and responsibilities of NEMA. (Para 7.9)
24. Proposed composition, functions and responsibilities of SEMA.(Para 7.10)
25. The proposed revised project approval process envisages 'single-window' unified, streamlined, purposeful, time-bound procedures.(Para 7.14)
26. Special treatment for linear projects, power/ mining and strategic border projects. (Para 7.15)
27. Review of A/B category units, to delegate a large number brought under the purview of SEMA.(Para 7.16)
28. The present monitoring processes, exclusively based on physical inspection should be strengthened by induction of technology, measuring instruments incorporating latest improvements; the standard setting and verification systems need to be tightened, to ensure all violators are identified. (Para 7.18)
29. (i) To create a new 'umbrella' law – Environmental laws (Management) Act (ELMA) – to enable creation of the institutions NEMA and SEMA.(Para 8.2)  
(ii) To induct the concept of 'utmost goodfaith', holding the project proponent responsible for his statements at the cost of possible adverse consequences; thus also contributing to reduction in 'inspector raj'.(Para 8.2)
30. The new law prescribes new offences, as also for establishing special courts presided over by session judge. 'Serious offences' as defined to attract heavy penalties, including prosecution/ arrest.(Para 8.4)
31. Abatement of central and State Pollution Control Boards on creating of NEMA/ SEMA.(Para 8.5)
32. Suggestion for incorporation of noise pollution as an offence in EP Act. (Para 8.6)
33. Procedure for appeals – creation of an appellate tribunal.(Para 8.7)
34. Judicial Review role for NGT.(Para 8.8)

35.

- i) Establish a National Environment Research Institute, through an Act of Parliament. (Para 9.1) – SEMA
- ii) Identify specific technical institutions/ universities in India to act as technical advisors to the proposed NEMA/ SEMA and other environmental enforcement agencies, to provide credible technical back-stopping for management of the environment. (Para 9.1)

36. An Indian Environment Service may be created, as an All India Service, based on qualifications and other details prescribed by MoEF&CC/ DoPT/ UPSC. (Para 9.2)

37. The Indian Forest Service may encourage specialisation in various aspects of forestry and wildlife management, among the members of the service, as well as familiarity with all aspects of management of environment. (Para 9.3)

38. The MoEF&CC may like to undertake a comprehensive review of departmental forest management policies, practices and procedures, to initiate wide-ranging improvements and reforms. This preferably should not be an internal exercise, and should include independent knowledgeable experts from India and abroad, as well as qualified researchers. (Para 9.4)

39. MoEF&CC may consolidate all existing EIA Notifications/ circulars/ instructions into one comprehensive set of instructions. Amendments or additions may normally be done only once a year. (Para 9.5)

40. The MoEF&CC may arrange to revamp the Environment Protection Act, by inducting relevant provisions of the Water Act, 1977 and the Air Act, 1981 ; the latter two could be repealed, when the revamped EP Act, 1986 comes into force. This exercise may be done keeping in view the provisions of the proposed Environment Management Act. (Para 9.6)

41. Create an Environment Reconstruction Fund for facilitating research, standard setting, education and related matters. (9.7)

42.

- a) While overall responsibility vests with the Ministry, it is expected that the State Governments and the local bodies will play an effective role in management of the environment.

- b) The Governments should provide dedicated budgetary support for environmental programmes as a part of each development project in all the sectors. (Para 9.8)
43. There is urgent need for creation of a comprehensive database, using all instruments available, on an on-going basis, in respect of all parameters relating to environment. (Para 9.9)
44. Environmental mapping of the country, using technology, should be undertaken as an on-going process. (9.10)
45. Identification & recovery of environmental reconstruction cost relating to each potentially polluting unit should be in-built in the appraisal process.(9.11)
46. The system of empanelment of 'consultants' needs to be reworked. (9.12)
47. A 'green awareness' programme need to be sponsored, including interweaving issues relating to environment in the primary and secondary school curriculum. (9.13)
48. MoEF should prepare regional plan for carrying out remediation of polluted sites in consultation with the State Governments and enabling provisions should be incorporated in EP Act for financing the remediation task.(Para 9.14)
49. Municipal Solid Waste (MSW) management has not been given requisite attention hitherto. New systems and procedures for handling MSW need to be in place early, for effective management of MSW and with accountability. Cities should set a target of reaching 20% of current levels in 3 years time to work out a mitigation plan. (Para 9.15)
50. Noting that vehicle emissions are the major cause of deterioration of air quality in urban areas, a concerted multi-pronged effort needs to be launched to not only to contain it, but to improve the situation in relatively short time.(Para 9.16)
51. Use of science and technology, wherever possible and appropriate should be encouraged; approval and enforcement agency should use latest technology to the maximum possible.(Para 9.17)
52. The MoEF&CC may finalise the CRZ demarcation, and bring it into public domain to pre-empt ambiguity.(Para 9.18)
53. In view of the key role played by the power sector, as also mining of various minerals in national development, NEMA may have a suitable cell, with specialisation, to

speedily deal with environmental approvals in these sectors, with due regard to environmental considerations.(Para 9.19)

54. All specified type of units would employ fully qualified technical personnel to manage their pollution control/ management equipment, and to keep the emission levels within prescribed limits. (Para 9.20)
55. MoEF&CC may consider reworking standard-setting and revising a system of financial penalties and rewards to proceed to a market-related incentive system, which encourages 'green projects'. (Para 9.21)

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**No.22-15/2014-IA.III**  
**Government of India**  
**Ministry of Environment, Forests & Climate Change**  
**Impact Assessment Division**

Indira Paryavaran Bhawan  
Jor Bagh Road, Aliganj  
New Delhi-110 003

Dated the 29<sup>th</sup> August, 2014

**OFFICE ORDER**

**Subject: Constitution of High Level Committee under the Chairmanship of Shri T.S.R. Subramanian, Former Cabinet Secretary to review various Acts administered by Ministry of Environment, Forests & Climate Change**

The Ministry of Environment, Forests & Climate Change administers a number of statutes enacted by the Parliament. These statutes *inter-alia* include the following:

- i. Environment (Protection) Act, 1986
- ii. Forest (Conservation) Act, 1980
- iii. Wildlife (Protection) Act, 1972
- iv. The Water (Prevention and Control of Pollution) Act, 1974
- v. The Air (Prevention and Control of Pollution) Act, 1981

2. Based on experience gained in the implementation of aforesaid Acts, it has been decided to constitute a High Level Committee to review these Acts and suggest appropriate amendments to bring them in line with their objectives. The Terms of Reference of the High Level Committee will be as follows:

- (i) To assess the status of implementation of each of the aforesaid Acts vis-à-vis the objectives ;
- (ii) To examine and take into account various court orders and judicial pronouncements relating to these Acts;
- (iii) To recommend specific amendments needed in each of these Acts so as to bring them in line with current requirements to meet objectives, and
- (iv) To draft proposed amendments in each of the aforesaid Acts to give effect to the proposed recommendations.

2/-

3. The High Level Committee will comprise of the following:

- (1) Sh. T.S.R. Subramanian : Chairman  
Former Cabinet Secretary  
Government of India  
'Guru Kripa' House No.74,  
Sector 15-A,  
NOIDA 201 301  
Uttar Pradesh
- (2) Sh. Viswanath Anand : Member  
Former Secretary,  
Ministry of Environment and Forests  
B-312, NEW Friends Colony, New Delhi
- (3) Justice (Retd.) Sh. A.K. Srivastav : Member  
Retired Judge of Delhi High Court  
16B, Ashoka Marg, Lucknow, 226001  
Uttar Pradesh
- (4) Sh. K.N. Bhat : Member  
Senior Advocate of Supreme Court  
and Former Additional Solicitor  
General of India  
House No.9, Sector 15-A,  
NOIDA 201 301  
Uttar Pradesh

Shri Bishwanath Sinha, Joint Secretary, MoEF&CC, Room No.361, Agni Wing, Indira Parayvaran Bhavan, Jor Bagh Road, Aliganj, New Delhi-110 003 and Shri Hardik Shah, Member Secretary, Gujarat SPCB, Paryavarana Bhavan, Sector-10A, Gandhinagar-382010, Gujarat would serve as the Secretaries of the Committee.

4. The meeting of the Committee shall be held normally at Delhi but could also be held elsewhere in the country as per requirements.

5. The TA/DA of non official Members for attending meetings of the Committee will be met by the Ministry of Environment, Forests and Climate Change as per their entitlements under Government of India Rules.

6. The non officials Members of the Committee shall also be paid sitting fee/honorarium @Rs.3000 per day per Member for each of the meetings.

 3/-

7. The Committee will submit its report to this Ministry within two months from the date of issue of this order.

8. This issues with the approval of Competent Authority and with the concurrence of IFD vide Additional Secretary & Financial Advisor's Diary No.1080 dated 28.08.2014.

 ( Dr. Satish C.Garkoti)  
Scientist 'F'  
29/8/2014

**Copy to:**

1. Chairman and all Members of the Committee (by name)
2. PS to MOS (I/C) EF&CC
3. PPS to Secretary (E&F)
4. PPS to DG&SS
5. PPS to AS(SS)
6. PPS to AS&FA

No.4(8)/2014-PL  
Government of India  
Ministry of Environment, Forests and Climate Change  
Policy and Law Section

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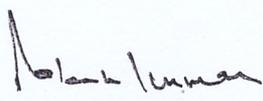
Indira Paryavaran Bhavan,  
Jor Bagh, Road, New Delhi-03  
Dated the 18<sup>th</sup> September, 2014

OFFICE ORDER

**Subject:** Constitution of High Level Committee under the Chairmanship of Shri T.S.R. Subramanian, Former Cabinet Secretary to review various Acts administered by Ministry of Environment, Forests and Climate Change – Inclusion of Indian Forests Act, 1927 regarding.

In partial modification of this Ministry's Office Order No.22-15/2014—IA.III dated 29.8.2014, it has been decided to include The Indian Forest Act, 1927 into the Terms of Reference of the High Level Committee.

2. The other contents of the Office Order under reference would remain unaltered.

  
( Dr. R.K. Agrawal )  
Director  
24695372

To:

1. Chairman, Members and Secretaries of the Committee (by name).
2. PS to MOS(I/C) EF&CC
3. PPS to Secretary (E&F)
4. PPS to DG&SS
5. PPS to AS(SS)
6. PPS to AS&FA

F. No. 4(8)/2014-PL

भारत सरकार / Government of India

Ministry of Environment Forests and Climate Change

नीति एवं विधि अनुभाग/Policy and Law Division

Indira Paryavaran Bhavan, Jal Wing,

Jor Bagh, New Delhi-03

Dated : 28/10/2014

OFFICE ORDER

**Subject:** Constitution of High Level Committee under the Chairmanship of Sh. T. S.R. Subramanian, Former Cabinet Secretary to review various Acts administered by Ministry of Environment, Forest & Climate Change – Extension of Tenure for one month – reg.

In continuation of this Ministry's Office Order No. 22015/2014-IA.III dated 29/08/2014, it has been decided with the approval of the Competent Authority to extend the tenure of High Level Committee for a further period of One month i.e. from 29/10/2014 to 28/11/2014.



(S.S. Negi)

Under Secretary to the Govt. of India

Tel:- 24695302.

Copy to:

1. Chairman and all Members of the Committee ( by name)
2. PS to MoS (I/C) EF&CC
3. PPS to Secretary (EF&CC)
4. PPS to DG&SS
5. PPS to AS(SS)
6. PPS to AS&FA