IUCN Academy of Environmental Law
eJournal
ISSUE 2011 (1)

Country Report – India

Kavitha Chalakkal*

Introduction

Independent India's history of comprehensive environmental regulation began with the Stockholm Conference in 1972. Pioneering laws such as the *Water Act* (1974) and the *Air Act* (1981) were a direct outcome of the conference. Later, the *Environmental (Protection) Act* (1986) (*EPA*) became the umbrella legislation under which most of the environmental policies are currently made in India. The *EPA* empowers the Government of India to take measures to protect and improve the environment. The diverse forest ecosystems of the country are governed by the Indian *Forest Act* (1927), *Wild Life (Protection) Act* (1972) and the *Forest Conservation Act* (1980). Flagship projects such as Project Tiger and Project Elephant were started during the 1970's. The system is guarded, protected and managed by the various state forest departments, headed by the Indian Forest Service officers under the Union Ministry of Environment and Forests (MoEF). India is also a signatory to most multilateral environmental agreements and has concluded many bilateral agreements with neighbouring countries such as Nepal and Bangladesh. The Indian environmental sector has been extremely dynamic in recent times, especially after the liberalization of India's economy in the 1990's, and the rapid industrialization and wealth-production that followed. The legislature, the judiciary and the executive have been involved in many landmark actions, legislation and decisions.

* PhD Candidate, Jawaharlal Nehru University, New Delhi, India. Email: Kavithachalakkal@gmail.com.

Forest Management, Coastal Management and Species Protection

The MoEF, under Minister Jairam Ramesh, has become very proactive in recent years. The ministry had taken many actions, including the formation of a Compensatory Afforestation Management and Planning Authority to accelerate afforestation activities. In 2010, it drafted comprehensive amendments to the *Coastal Regulation Zone Notification (CRZ)* (1991) to improve the protection, regulation and use of the land within 500 meters of the sea-line and 100 meters of tide-influenced water bodies. In the draft *CRZ 2010*, special protection status has been given to Navi Mumbai, Greater Mumbai, Kerala, the Sunderbans and Goa, covering many critical coastal ecosystems in India. The MoEF has also issued a draft *Island Protection Zone Notification* (2010) for the islands of Andaman, Nicobar and Lakshadweep.

The Ministry has also constituted a task force for conserving of Dugongs, with a view to implementing the *Memorandum of Understanding on the Conservation and Management of Dugongs* under the *Convention on Migratory Species*. The MoEF have also implemented efforts to protect elephants through multi-level integrated governance. In 2010, it gave the elephant National Heritage Animal status aimed at boosting its conservation.

Creation of the National Green Tribunal

One of the major legislative steps taken in recent months has been the promulgation of the *National Green Tribunal Act* (2010). It provides for expeditious remedies in environmental cases. It also provides for the development of laws regarding liability and compensation for the victims of pollution and other environmental damage. A National Green Tribunal, consisting of a chairperson, 20 judicial officers and 20 environmental experts will be formed under the Act. The Tribunal will address about 5000 environmental cases currently filed in the country, and will deal with all laws on pollution and environment, including the *Biodiversity Act*. With this effort, India joined Australia and New Zealand, which have such specialized environment tribunals.

India is facing a growing backlog of environmental cases with rapid industrialization leading to disputes with traditional stakeholders. In this context, the ‘Green Benches’

established at the Supreme Court (SC) and state High Courts gain relevance. In the SC, an additional 'Forest Bench' was established in 2010 to hear forest and mining related cases. The states of West Bengal, Tamil Nadu, Madhya Pradesh, Punjab and Haryana, Karnataka and Kerala have formed such Benches. These structural and functional changes are critical, as the Green Bench is the final arbiter on a number of critical environmental issues from mining rights, forest and national parks and conservation, to hanging of billboards in public areas.

Recent Decisions of the Supreme Court of India

The Supreme Court of India has long been known as a proactive environmental judiciary and it has decided many cases that have served as precedents within India and internationally. It has interpreted the *Indian Constitution*'s guarantee of the right to life as including a right to a wholesome and pollution-free environment and held that a litigant may assert his or her right to a healthy environment against the State.

The Central Empowered Committee (CEC), constituted according to the SC's order, has a broad task to monitor and ensure the compliance of the Court's orders regarding forests, wildlife and related issues. It investigates various issues and directly reports to the Court. In 2010, the CEC recommended that the intensive collection of Kendu leaves by people from three wildlife sanctuaries in Orissa, should be disallowed in the Satkosia sanctuary unless appropriate safeguards are put in place to mitigate the environmental impacts caused by this activity. In *Siel Foods and Fertilizers Industries v Union of India*,[1] the SC expressed its concern about the pollution in Delhi, and affirmed the need to create 'green belts' in the land surrendered by industrialists.

Although the SC has been proactive for environmental protection in many cases, at times it also pays heed to the calls of developers. In *Nizamudeen M. v M/s. Chemplast Sanmar Limited and Others,*[2] which concerned the laying of pipelines for carrying hazardous chemical substances through a protected Coastal Regulation Zone, the SC, considering the $130-million investment and the fact that the developer had all the necessary government approvals, did not interrupt the project.

[1] Decided on 25 March 2010, available at http://judis.nic.in/supremecourt/imgs.aspx.
[2] Decided on 10 March 2010, available at http://judis.nic.in/supremecourt/helddis.aspx.

Another instance is the recent *Sterlite Copper Smelter Case*[3] in Tamil Nadu, where the SC extended the stay of the Madras High Court order to close down a smelter on the grounds of environmental damage associated with its operation.

A four-member panel set up by the MoEF investigated the bauxite mining proposal over Niyamgiri in Orissa, and reported in August 2010 that the Vedanta company involved in the project: colluded with government officials; 'consistently violated' all major laws; and undermined the rights of the tribal groups residing in the area. The panel recommended that the SC prohibit mining in such an ecologically-sensitive area.

Climate Change Policy and Action

India's take on climate change is being closely watched by the international community, as it has become one of the fastest-growing and rapidly industrialised economies. A signatory to the *Kyoto Protocol*, India has been at odds with the developed world regarding emission reduction requirements. It fears that these may curtail the country's industrialization. Just before the 2009 Copenhagen United Nations Climate Change Conference, Indian policy-makers stated that, '… action on Climate Change must enhance, not diminish the prospects for development. It must not sharpen the division of the world between an affluent North and an impoverished South, and justify this with a green label'. It is furthermore recorded as stating that 'India can, by no stretch of imagination, be described as a so-called "major emitter"'.

Although India hasn't introduced any legislation on climate change, plenty of proactive policy-level actions have been taken. In 2008, India released its first *National Action Plan on Climate Change*. Addressing climate mitigation and adaptation, the plan emphasizes eight National Missions: (1) solar; (2) enhanced energy efficiency; (3) sustainable habitat; (4) water; (5) sustaining the Himalayan ecosystem; (6) 'greening India'; (7) sustainable agriculture; and (8) strategic knowledge for climate change. India also launched the *Indian Network on Climate Change Assessment* (*INCCA*) in October 2009. It comprised of a grid of about 220

[3] Decision on 28 September, 2010, available on http://www.elaw.org/system/files/Sterlite+Closure+Order+September+28%2C+2010+OCR+Version.pdf. ;

scientists from 127 research bodies and its purpose is to promote climate change research. India has also introduced a *National Policy on Biofuels*.

In Copenhagen, India agreed for a voluntary reduction of carbon dioxide emissions of 20-25 per cent by 2020 (2005-base). It however rejected any international monitoring and legally binding commitments. The failure of the Copenhagen summit, the 'Climate-gate' issue and the revealing of unsupported projections on glacier-melts in the Inter-Governmental Panel for Climate Change's (IPCC) reports has had an effect on the Indian stance. In February 2010, while announcing India's plan to set up a National Institute of Himalayan Glaciology, the Minister Ramesh publicly expressed his dissatisfaction on the IPCC's handling of facts. He has stated that, 'A country like India cannot depend on only IPCC'. In the introduction to the first major *INCCA* report in November 2010, he stated that: 'We should not be dependent on external studies to tell us for example about the impact of climate change on our glaciers, on our monsoons, and indeed even on sea level rise'. This shows India's strong stance to have its policies based on its own findings. Many states have started working along these in lines, and Delhi became the first to release a *Climate Change Action Plan*.

Several tangible actions have also been taken on the climate change front in the last year. These are briefly listed below. Firstly, an Expert Group on A Low Carbon Strategy for Inclusive Growth has been formed to develop a road-map for low-carbon development in the electricity, transport, industry, oil and gas, buildings and forestry sectors. This strategy will be incorporated into the country's *Twelfth Five-Year Plan*. Secondly, the Government has announced the introduction of a carbon tax of $1 per ton on coal, which will be paid into the National Clean Energy Fund to support research and clean-energy projects. Thirdly, the Government has approved the formation of a *National Mission on Enhanced Energy Efficiency, including a Perform, Achieve and Trade Mechanism* for annual carbon dioxide emission reductions of 25 million tons by 2014-15. Fourthly, in May 2010, the Government of India released its *GHG Emissions Inventory* for 2007. Fifthly, in April 2010, the Government, along with fellow members of the South Asian Association for Regional Cooperation, adopted the *Thimphu Statement on Climate Change*, which recommends an Intergovernmental Expert Group on Climate Change for better policies in the region. Sixthly, India and Bangladesh agreed to create a joint forum to conserve the Sunderbans Delta, one of the most globally vulnerable regions to climate change.

The UN Climate Change Conference held in Cancun in November-December 2010, is also crucial with respect to India's position on Climate Change. In April 2010, Minister Ramesh in a statement on Cancun, stated, 'I would stress that the voluntary actions of developing countries which are the subject of such international consultations and analysis should, under no circumstances, be seen as taking on internationally legally binding commitments by these countries'. In a meeting of BASIC countries held in April 2010, members noted that internationally-binding legal agreements existing under the *UN Framework Convention on Climate Change* and *Kyoto Protocol* 'must follow two tracks and include an agreement on quantified emission reduction targets under a second commitment period for Annex I Parties under the Kyoto Protocol, as well as a legally binding agreement on long-term cooperative action under the Convention'.

Recently-Formed Environmental Institutions

Ganga Authority - The Government of India constituted the National Ganga River Basin Authority (NGRBA) under section 3(3) of the *EPA* in 2009. The River Ganga was afforded the status of a 'National River'. The Ganga Authority was formed to sustainably tackle pollution, and was given regulatory and developmental functions, including formulating a river-basin management plan and conducting research. The Authority was allocated $111 million for 2009-10. It launched a 'Mission Clean Ganga' Initiative in October 2009 to prevent the flow of sewage and industrial effluents into the river by 2020. Memoranda of Understanding were signed with all riparian states.

CITES Cell 2010 **–** Although India has been a signatory to the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* since 1976, it was only in August 2010 that it managed to form an institution to fulfill its commitments under the *Convention*. The Cell, which falls under the central Ministry of Environment and Forests, will 'assist in the technical, administrative and legal functioning of CITES implementation in India'. India has also recently banned the hunting of pangolins under CITES.

GM Appraisal Panel **-** Following a major controversy regarding genetically modified (GM) organisms, the Government of India has renamed the Genetic Engineering

Approvals Committee, an apex body set up in 1990 under the *Rules for Manufacture, Use, Import, Export and Storage of Hazardous Microorganisms/Genetically Engineered Organisms or Cells* (1989) published under the EPA. It has powers to regulate and permit the production and use of GM organisms and products. In 2010, the Committee's approval of GM brinjal (*Solanum melongena*) for agricultural purposes created much controversy. The Supreme Court of India raised questions on the accountability and transparency of the Committee. As a result, the Government amended the *1989 Rules*, changing the name of the Committee to the 'Genetic Engineering Appraisal Committee'. No change has however been made to the mandate of the Committee. Nevertheless, a moratorium has been placed on the release of GM brinjal for agricultural purposes.

Forthcoming Laws, Regulations and Actions

National Biotechnology Regulatory Bill - This Bill, conceived to regulate the research, production, import and use of biotechnology products in the country, has become controversial in recent times. It has come under fire from environmentalists and many scientist groups. They allege that the clauses of the Bill are environmentally disastrous, non-democratic, oppressive, non-scientific, and aid the business interests of biotechnology corporations.

Western Ghats Ecology Expert Panel - In March 2010, the Government of India constituted the panel as a precursor to a Western Ghats Ecology Authority. It will act as a regulatory body for the sustainable management of this biodiversity hotspot.

National Environment Assessment and Monitoring Authority - In November 2010, the Government of India proposed forming a National Environment Assessment and Monitoring Authority, as an appraisal and monitoring agency for environment impact assessments and coastal regulatory zone management.

National Elephant Conservation Authority - The MoEF envisages the creation of such an authority, along the lines of the National Tiger Conservation Authority. It is furthermore anticipating declaring ten areas as 'Elephant Landscapes'.

Reintroduction of Cheetah in India - The MoEF is planning the reintroduction of Cheetah, the only large mammal declared extinct in India in recent history.

National Wetlands Conservation Programme – This Programme, which currently provides financial support to 115 wetlands, will cover six more sites shortly.

Challenges and Opportunities

India's booming economy demands intensive exploitation of natural resources, and thus more innovative and scientific legislation. Although climate change has emerged as the biggest international environmental concern, loss of ecosystems and biodiversity should be seen as the most important issue on the Indian sub-continent. The new power projects, especially hydroelectric projects developed for supplying energy to satisfy growing industrial demand, could constitute a major destructive force for the mountain ecosystems in the Himalayas and the Western Ghats, two regions of significant biological importance. The same holds true for the mining projects arising in various regions of the country. India's liberalized government policies have attracted national and international mining corporations, posing a grave threat to many forested regions. Illegal actions from such companies have already attracted legal attention, such as in the Nyamgiri case mentioned above. Huge construction projects such as an ambitious project to link major rivers through irrigation canals and the Sethusamudram shipping-canal project through the Gulf of Mannar Biosphere Reserve, demand better legislative, executive and judicial intervention to protect and conserve these crucial ecosystems. Even renewable energy projects such as wind energy projects have attracted recent controversy owing their potential to disturb they hold mountain ecosystems and usurp tribal lands. Strong legislation based on sound biological and ecological scientific knowledge can be crucial in such cases. Another issue demanding innovative legislative attention is the case of GM and potential genetic contamination of wild relatives of crop plants. Considering the fact that India is the 'centre of origin' of many crop plants, including rice and brinjal, two crops in the centre of the recent controversy, any chance of genetic contamination through cross-breeding can affect the critical wild genetic pool forever. Laws based on sound and comprehensive scientific studies are required, and organizations such as the IUCN can contribute tremendously in providing

authentic scientific data, especially taxonomic and ecological data. The IUCNAEL could play a significant role in assisting India to develop legal protections for ensuring a sustainable coexistence of the new world order with the natural environment.