



COUNTRY REPORT: INDIA Mixed Results on Many Fronts

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Introduction

In 2011, India witnessed many administrative and policy changes with great significance for its natural environment. The historic Green Tribunal became functional, and important rules for wetland conservation and e-waste management were promulgated. Many progressive statutes are in process, and some have already become subject to intense discussions and debates at public and policy-making levels. The country is expanding endangered species protection by introducing new conservation policies and initiatives, for example for gharial conservation. The nation's climate change stance did not shift from its earlier position of not committing to serious emission cuts, though the country continues to be proactive at the policy level. The judiciary revealed its interpretative power through many judgments and directives, and the courts emphasized the importance of environmental impact assessment, taking the activity to a more prominent level.

Statutes

The Indian Parliament has not created any new Acts related to environment since late 2010. However, some rules have been created to strengthen various Acts.

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National Green Tribunal Rules

The *National Green Tribunal Act* 2010 that came in to force last year has been strengthened through the issuance of various rules and notifications for its proper implementation.¹ Rules on the procedures and practices of the National Green Tribunal (NGT) and the financial and administrative status of its Chairperson have been published. The Rules envisage the establishment of four regional benches. Delhi has been set as the principal place of sitting for the Tribunal, and necessary technical and administrative appointments have been made. The NGT had its first hearing on July 4, 2011. With the establishment of NGT, the Supreme Court's Central Empowerment Committee's (CEC) role has been reduced to cases on the violation of the Court's order in the Godavarman case.

The Wetlands (Conservation and Management) Rules (2010)

The Central Government published the *Wetlands (Conservation and Management) Rules*² in December 2010. These *Rules* constituted the Central Wetland Regulatory Authority, with representatives from the Ministries of environment and forestry, water resources, tourism, agriculture, social justice, members from the pollution control board, and experts in ornithology, limnology, hydrology and ecology. The *Rules* have critical significance in India's conservation history, as it is for the first time that such eco-sensitive areas have secured legally enforceable protection. A party of the *Ramsar Convention*, India has been running its National Wetlands Conservation Programme since 1985-86. To date, 115 wetlands have been identified for conservation and management. The *National Environment Policy* (2006) also recognizes the importance of the country's wetlands, of which 25 feature in the Ramsar list of wetlands of international importance.

The *Rules* cover: wetlands in the Ramsar list; wetlands in ecologically important and sensitive regions such as protected areas (national parks and wildlife sanctuaries) and reserved forests; wetlands in UNESCO World Heritage sites; all high-altitude wetlands (more than 2,500-m high); wetlands of more than or equal to 500 ha area; mangroves and coral reefs and wetlands in areas of historic, bio-diversity, and heritage importance; and wetlands of significant natural beauty. Acknowledging the

¹ See further: <http://moef.nic.in/modules/recent-initiatives/NGT/>.

² The *Wetlands (Conservation and Management) Rules* (2010) can be accessed at: <http://moef.nic.in/downloads/public-information/Wetlands-Rules-2010.pdf>.

current threats of drainage, landfill, pollution, hydrological alterations and overexploitation of the wetlands in India, the *Rules* prohibit wetland-reclamation and the creation or expansion of industries within wetlands. It also prohibited solid-waste-dumping, discharge of untreated waste and industrial effluent, and manufacturing, handling, storage or disposal of hazardous materials in wetlands. The *Rules* also prohibit permanent construction within 50 meters of the mean flood level. Water-harvest, diversion, interruption and agriculture within wetlands have also been regulated.

E-waste (Management & Handling) Rules (2011)

The *E-waste (Management & Handling) Rules*³ (2011) will come into effect on May 2012. The *Rules* makes the producer of any electrical and/or electronic equipment responsible for the collection and management of the e-waste generated in the process. It stipulates that the producer must provide contact information for collection centers to the consumers to facilitate the return of used electronic equipment. The producer is obliged to inform the public about hazardous constituents and the handling of such substances. The *Rules* also list: (a) the responsibilities of the consumer, dismantler and recycler; (b) the procedures for seeking authorization and registration for handling e-waste with the State Pollution Control Board; and (c) reduction of hazardous substances in the manufacture of electrical and electronic equipment.

Acts in the Pipeline

The following Bills with direct environmental implications are under consideration at various levels of government and Parliament. Of this, the *Biotechnology Regulatory Authority Bill* has already drawn much criticism from the public, media, scientists and activists.

- *Agriculture Bio-Security Bill* (2011).
- *National Food Security Bill* (2011).
- *Nuclear Regulatory Authority Bill* (2011).
- *Biotechnology Regulatory Authority of India Bill* (2011).

³ The *E-waste (Management & Handling) Rules* (2011) can be accessed at: http://www.moef.nic.in/downloads/rules-and-regulations/1035e_eng.pdf.

- *Wildlife (Protection) Amendment Bill (2011).*
- *Draft Animal Welfare Act (2011).*
- *Mines and Minerals (Development and Regulation) Bill (2011).*
- *Land Acquisition, Rehabilitation and Resettlement Bill (2011).*

Policy

Minister Jairam Ramesh was replaced by Ms. Jayanthi Natarajan in July 2011 as the Minister for the Environment. Many view this as a move from the ruling political coalition to control the pro-environmental stance of the Ministry of Environment and Forests (MoEF) under the reign of Minister Ramesh.

Valuing Natural Resources

In February 2011, the MoEF initiated a major programme to value India's natural resources, biodiversity and ecosystem services. This programme formed part of the Economics of Ecosystems and Biodiversity (TEEB) study, initiated by the G8 and the Ministries of many developing countries. In initiating the programme, Minister Ramesh stated, 'We are committed to developing a framework for green national accounts that we can implement by 2015, and we are confident that the 'TEEB for India' study will be the key facilitator'. India's intention to borrow from TEEB's vision of creating a new form of economy, which quantifies natural capital and makes nature a new item in the market, might strongly influence the country's future policies and laws on natural resources. The MoEF will lead the programme, with private participation. An India-TEEB Implementation Taskforce will conduct a survey of biodiversity and ecosystem services, and calculate the "Green Domestic Product" of the country, so as to create a framework for the state governments to pursue.

Tiger Conservation

In January 2011, the Union Cabinet created four Inspector-General posts in the three regional offices of the National Tiger Conservation Authority (NTCA).⁴ The NTCA, formed in 2006 based on the recommendations of the Tiger Task Force, covers 17 states (39 tiger reserves). The NTCA will now be able to improve its functioning by

⁴ See further: <http://moef.nic.in/downloads/public-information/Press%20Brief-Cabinet%20Decision-NTCA.pdf>.

monitoring the status of the animal and addressing the ecological and administrative concerns relating to their conservation at regional level.

Gharial Conservation

In February 2011, Minister Ramesh announced the formation of a National Tri-State Chambal Sanctuary Management and Coordination Committee for gharial conservation. Once abundant, the gharial (*Gavialis gangeticus*) has less than 200 breeding individuals left in the wild. Listed as *Critically Endangered* in the IUCN Red List, the reptile's largest remaining habitat is the National Chambal Sanctuary. The Committee, represented by various ministries and departments, research institutions such as the Wildlife Institute of India, the Madras Crocodile Bank Trust's Gharial Conservation Alliance, and non-governmental organizations, will develop strategies for research and protection of the animal and its habitat. The project will evaluate the biological, ecological and socio-economic status of dependent riparian communities. Minister Ramesh ruled out further construction of dams in the Chambal River.

National Ganga River Basin Authority

The Union budget allocation to the National Ganga River Basin Authority in 2010–2011 was doubled to Rs5 billion. In June 2011, the Government of India also signed an agreement with the World Bank for \$1 billion to be invested in cleaning the Ganga River.

Forest Clearance

Through a notification issued in May 2011, the MoEF decided to allow state governments to clear up to five hectares of forest land for public infrastructure projects in 60 left-wing extremist-affected districts. The earlier threshold for such diversion was two hectares. This move could be seen as a strategic move to accelerate infrastructure development in regions which had become breeding grounds for extremists.

The past year didn't see India moving towards concrete legislation for climate change regulation or mitigation. But as in 2010, India emphasized its planning and policy-level moves at various international negotiations on the subject.

At the 16th Conference of Parties (COP16) to the United Nations Framework Convention on Climate Change (UNFCCC) in Cancun (Mexico), India emphasized its point on equitable access to carbon 'space'. Minister Ramesh noted at the Conference that, '[e]quity is key to the climate change negotiations'. He continued stating that, '[t]he phrase equitable access is not the right to pollute, but the right to sustainable development'. India clearly pointed out that developing countries require development which cannot be impeded by commitments on emission cuts. Similar to the stance of the BASIC (Brazil, South Africa, India and China) countries on equitable access being the pre-requisite for any climate change agreement, India clearly wanted to take the discussions to the developed nations, who dominate available atmospheric carbon space.

Minister Ramesh announced in Cancun that India will reduce the emissions intensity of the country's GDP by 20-25 percent by 2020 at a 2005 reference level, through proactive policies. India will push a low-carbon strategy as a key element for its *Twelfth Five Year Plan (2012-2017)*.⁵ India has taken steps to diversify its energy-fuel use. It will set up 20,000 MW of solar power by 2022 and increase its share of nuclear power from three percent to six percent in the coming decade. Another strategy will be the Green India Mission to increase the quality and quantity of forest cover in the country. India will also engage in partnerships with neighboring countries to deal with global change. In short, in Cancun, India reiterated its stance on technological cooperation and pro-active policy/planning-level action, but gave no commitments on new carbon cuts that would impede its growth.

In February 2011, the Indian Council of Forestry Research and Education (ICFRE) became India's first Designated Operational Entity (DOE) accredited by the Clean Development Mechanism of the *United Nations Framework Convention on Climate Change* to validate and certify functions under 'afforestation and reforestation'.

⁵ See further: http://planningcommission.nic.in/reports/genrep/Inter_Exp.pdf.

National Mission for a Green India

India launched in February 2011, a *National Mission for a Green India*, under the *National Action Plan on Climate Change*.⁶ The goal of the *Mission* is to respond to climate change through adaptation and mitigation by enhancing carbon sinks in sustainably managed forests and other ecosystems; adaptation of vulnerable species/ecosystems to the changing climate; and adaptation of forest-dependent communities. As part of the *Mission*, five million hectares of new forest/tree cover will be achieved and another five million hectares will be improved in quality, which will in turn enhance ecosystem services such as biodiversity, hydrological services and carbon sequestration. The success of the *Mission* will increase the livelihood-income for three million forest-dependent households with annual carbon dioxide sequestration reaching 50-60 million tons by 2020.

Collaboration with the World Bank

In January 2011, India and the World Bank entered into discussions aimed at further strengthening their 'partnership to advance India's green-growth agenda'. The World Bank will provide two-year support to sustainable development, focusing on better environmental safeguards for infrastructure projects, improved environmental governance, air and water quality standards, and climate change.

Renewable Energy Certificates

In November 2010, India's Central Electricity Regulatory Commission introduced a new *Scheme for Renewable Energy Certificates (REC)* to enable distributors to meet their Renewable Purchase Obligation and also to encourage green energy generation. Under the *Scheme*, producers are granted a certificate (solar and non-solar) per megawatt of renewable energy they contribute to the electricity grid. Entities and states can buy and sell these tradable RECs to meet their targets.

⁶ See further: <http://moef.nic.in/downloads/public-information/GIM-Report-PMCCC.pdf>.

Case Law

The Supreme Court of India

In the case of *Anand Arya and Another vs. Union of India and Others*, decided in December 2010, the construction of a park at Noida (State of Uttar Pradesh) was contested by the applicants as causing harm to the ecological balance of the Okhla Bird Sanctuary. The applicants argued that the Uttar Pradesh Government was cutting down a forest without the permission of the Central Government and the Apex Court, in breach of the *Environment Protection Act* (1986) and the *Forest (Conservation) Act* (1980). The Central Empowerment Committee of the Court found that the project site was not a forest area, according to available government records, but the panel criticised the Uttar Pradesh Government for not identifying ecologically sensitive zones, as in this case the project site fell adjacent to a bird sanctuary. The Supreme Court did not stop the construction, but directed oversight of the project by an expert committee.

In *Kalyaneshwari vs. Union of India and Others*, the petitioner sought a writ of mandamus to ban the use of asbestos and for the constitution of an expert panel for identifying the victims suffering from asbestos-induced diseases. The Court ruled, in the absence of existing law banning asbestos in the country, despite its adverse health effects, it could not ban the substance or its use. While dismissing the petition, the Apex Court highlighted the need to follow the guidelines of the International Labour Organization as a safety measure to be complied with by the industries, and asked the governments to ensure safe and controlled use of asbestos.

In *Krishnadevi Malchand Kamathia and Others vs. Bombay Environmental Action Group and Others*, decided in January 2011, contempt of court petitions were filed against the appellant for destroying mangrove areas through the construction of a new bund wall. This violated previous orders issued by the Court and the District Collector. The Supreme Court ruled that the appellants were guilty of wilful defiance of earlier court orders, and that they purposely damaged the mangroves and other vegetation of the wetland of the Coastal Regulation Zone-I area. The Court ordered restoration of the height and width of the old bund, failing which the District Collector could recover the costs of doing so from the appellants as arrears of land revenue.

In *Jagpal Singh and Others vs. State of Punjab and Others*, the Supreme Court criticised the action of state authorities in allotting public utility land in favour of a

person or in permitting an encroacher to occupy such land. This decision was followed by the Allahabad High Court in *Ram Naumee vs. State of U.P. and Others*, decided in April 2011, where the respondents were directed not to allot or lease out public pasture or any such plot to any person.

Cases Highlighting the Crucial Role of Environmental Impact Assessment

In several judgments by the High Courts of various states, the judiciary has highlighted the environmental impact assessment (EIA) requirements for clearing land for industrial and mining projects. This is significant as the role and credibility of EIAs has been under public scrutiny.

In *M/s Vedanta Aluminium Ltd vs. Union of India and Another*, the High Court of Orissa held in July 2011, that the Vedanta Company had carried out construction of a bauxite refinery without the required environment clearance.⁷ Although the petitioner argued that it had not violated any pollution parameters, the High Court ruled that continuing construction work without obtaining environmental clearance violated the *EIA Notification (2006)*.

In a combined judgment in *Court on its own Motion vs. State of Himachal Pradesh and others* and *Lafarge India Pvt. Ltd. vs. Union of India and others*, the Himachal Pradesh High Court (in August 2011) set aside the environmental clearance of a cement factory and adjoining mining site as the environmental authorities had not visited the mining site prior to issuing the authorisation.⁸ The matter was referred back to the environmental authorities, who were asked to submit a report within two months and after following the prescribed procedure.

In *Talaulicar & Sons Pvt. Ltd vs. Union of India*, decided by the Bombay High Court at Goa in August 2011, the court observed that in the absence of a renewal or extension to an expired environment clearance, the developers were restrained from carrying out any mining activities until obtaining a further environment clearance.⁹

⁷ The judgment can be accessed at:
http://www.ercindia.org/files/OHC_Judgement_WPC%2019605%20OF%202011.pdf.

⁸ The judgment can be accessed at:
<http://www.ercindia.org/files/HP%20High%20Court%20Lafarge%20Judgment.pdf>.

⁹ The judgment can be accessed at:
<http://www.ercindia.org/files/Judgement%20by%20High%20Court.PDF>.

In other cases, judicial decisions have broadened the scope of EIA beyond the concept of 'projects'. In *Mohd Kausar Jah vs. Union of India and others* and *Shyam Bahadur Sakhya vs. Union of India and Others*, decided by the Allahabad High Court in April 2011, the court equated the 'activity' of sand mining to the concept of a 'project' in the *EIA Notification* (2006). It accordingly held that an environmental clearance was required to carry out the activity.

Challenges and Opportunities

As India continues to boost its industrial development domestically by opening up more of its resources for commercial exploitation and internationally by resisting commitments on emission cuts, environmental laws face new challenges. Loss of biodiversity still ranks highest among the threats faced by the nation's environment. Species such as the river dolphin, gharial and Indian lion are on the verge of extinction. Mining and industrial projects, legally and illegally, have been encroaching forest regions. Ironically, it is the resistance from the forest-dwelling communities and environmentalists - and not the agencies meant to enforce law - that frequently keeps these activities in check. Moreover, the penalties under the current environmental laws often fail to stop environmental crime (be it pollution, habitat destruction or poaching), as there is huge disparity between penalties and the economic benefits of non-compliance.¹⁰ No new legislation, for the protection of biodiversity, which faces rapid degradation, has been introduced in 2011. The issue of genetically modified (GM) food crops is still intensely contested. The new *Biotechnology Bill* and the removal of Minister Ramesh (who had been cautious regarding the need of the biotechnology in food production) has triggered debate in the public domain about moves favouring corporations selling GM technology.

Given these circumstances, the need of India's legislative, executive and judiciary for high quality scientific data cannot be overstated. The move of the MoEF towards a TEEB study takes the country's environmental discourse more towards the market, where nature is accorded an economic value. Further legislative, judicial and policy developments should however be based on solid scientific information, and not on market demands and trade negotiations. Even where such data is available it requires innovative and sound jurisprudence to interpret the information.

¹⁰ C. Abraham, *Environmental Jurisprudence in India* (1999) Martinus Nijhoff Publishers, 74.