

**HANDBOOK ON
LEGAL AND
ADMINISTRATIVE
REMEDIES FOR
COMMUNITY LEVEL
ENVIRONMENT JUSTICE
PRACTITIONERS**

**सामुदायिक पर्यावरणीय
न्याय कार्यकर्ताओं
के लिए कानूनी
और प्रशासनिक
समाधानों
की पुस्तिका**



**July 2016
India
जुलाई 2016
भारत**

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सैन्टर फॉर पॉलिसी रिसर्च (सी.पी.आर.) भारत में वर्ष 1973 से, सार्वजनिक नीतियों के विषय पर प्रबुद्ध विशेषज्ञों का समूह रहा है। यह एक गैर-मुनाफा, स्वतंत्र संस्था है जो भारत में जीवन को प्रभावित करने वाले ढांचों और प्रक्रियाओं पर सार्वजनिक चर्चा में योगदान के लिए अध्ययन करने के प्रति समर्पित है।
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एक ऐसे विश्व में जहां करोड़ों लोगों को कानूनी सुरक्षा उपलब्ध नहीं है, नमति लोगों के हाथ में कानून सौंपने के प्रति समर्पित है। यह ज़मीनी स्तर पर काम करने वाले कानूनी पैरवीकारों का एक वैश्विक आंदोलन तैयार कर रहा है, जो स्थानीय समुदायों के साथ मिलकर न्याय प्राप्त करने का काम करते हैं। यह पैरवीकार आगे बढ़कर संघर्ष कर रहे हैं, जिससे कि स्थानीय लोग अपनी ज़मीनें बचा सकें, ज़रूरी सेवाओं तक पहुंच सकें, और उन निर्णयों में भागीदार बन सकें जो उनके जीवन को प्रभावित करते हैं।
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संपर्क

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इस प्रकाशन के लिए आर्थिक सहयोग एन.आर. मैनेजमेंट कन्सल्टेंट्स इंडिया प्राइवेट लिमिटेड, नई दिल्ली से प्राप्त हुआ।

अस्वीकरण

इस प्रकाशन पर कोई कॉपीराइट नहीं है।

आप इसकी सामग्री का अनुवाद कर, लोगों के साथ बांट या वितरण कर सकते हैं। हमारा अनुरोध है कि यदि आप इसे पुनः प्रकाशित करते हैं, या इसका अनुवाद करते हैं, तो इस प्रकाशन को आभार देते हुए, उसकी एक प्रति सी.पी.आर.—नमति पर्यावरणीय न्याय कार्यक्रम को ज़रूर भेजें।

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हिंदी अनुवाद: निधि अग्रवाल

रूपरेखा: यशवंत रावत

मुद्रण: गैलेक्सी

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**Centre for Policy Research (CPR)
Namati Environmental Justice Program**

**सैन्टर फॉर पॉलिसी रिसर्च (सी.पी.आर.)
नमति पर्यावरणीय न्याय कार्यक्रम**

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LIST OF ABBREVIATIONS

CEPI	Comprehensive Environmental Pollution Index	MoEF	Ministry of Environment & Forests
CGWA	Central Ground Water Authority	MoEFCC	Ministry of Environment, Forests & Climate Change
CGWB	Central Ground Water Board	NBWL	National Board for Wildlife
CPCB	Central Pollution Control Board	NGT	National Green Tribunal
CRZ	Coastal Regulation Zone	NOC	No Objection Certificate
CVCA	Critically Vulnerable Coastal Area	OE	Over-exploited
CZMA	Coastal Zone Management Authority	PESA	Panchayat (Extension in Scheduled Areas) Act
DLCC	District Level Coastal Committee	SBWL	State Board for Wildlife
EC	Environment Clearance	SC	Supreme Court
EIA	Environment Impact Assessment	SEIAA	State Environment Impact Assessment Authority
EPA	Environment Protection Act	SPCB	State Pollution Control Board
ES	Environment Statement	TSDF	Transport, Storage and Disposal Facility
ESA	Ecologically Sensitive Area	UT	Union Territory
FCA	Forest Conservation Act		
FRA	Forests Rights Act		

BACKGROUND AND CONTEXT

A problem can occur, no matter where we live, pass by everyday or cross occasionally. One could be living next to an industrial site, which is polluting the nearby river, a power plant, which lands up dumping fly ash on an agricultural field or a beach, where the municipality is dumping the town's solid waste. A friend or a fellow resident of one's village might point us to an instance of river bed sand mining causing flooding or a tourist resort blocking access to a drinking water source or even a grazing ground.

Each such activity is more often than not, governed by a legal clause, if approval is required or a condition where an approval is already granted. There could also be a court judgment or order which is so generic in nature that it has a bearing on all activities of a particular kind e.g permissions for sand mining or tree felling, change of land use of common lands, no matter where you are located in the country. It is possible that the problems you notice or are affected by are only occurring because someone, somewhere is not adhering to the provisions of law, conditions or approval, or court directions are not complied with. If this is the case, there is likely to be a clear institutional framework and defined administrative agencies that would be mandated to restrict this activity, monitor non-compliance, and also take penal or remedial action as required by a particular situation.

More often than not, people affected by a problem are not even aware that the problem they are facing has any connection with adherence to or non-compliance of law. If the mandatory requirements had been adhered to, the problem might not have occurred in the first place. This is not a surety but a distinct possibility. Understanding whether a difficulty one is facing is legal or illegal, is one way of attempting to find a resolution. It does not require one to qualify as a lawyer, know how to draft court petitions or speak legal language. Basic knowledge of applicable legal clauses and which institution would be best suited for remedy can be important allies in trying to solve real time problems with people dealing with a range of environmental and social impacts discussed further in this handbook.

One of the most critical components of such problem-solving with law (both in court and outside) is the requirement of evidence or proof. Once the problem is identified and defined and the affected party clarifies what remedy is being sought, community level legal practitioners would need to prepare robust evidence to back the claims. For instance, if it were ascertained that a construction activity is being carried out in contravention to the provisions of any of the laws, it would be important to gather specific evidence before filing a complaint or approaching a relevant institution. A range of documents can be included as proof of illegality, which includes government documents, responses to Right to Information (RTI) applications, photographs, maps and complaint letters. One could also

पृष्ठभूमि और संदर्भ

समस्या कहीं भी आ सकती है, चाहे हम कहीं भी रहते हों, उस रास्ते से रोज गुजरते हों, या कभी-कभी। कोई व्यक्ति किसी औद्योगिक क्षेत्र के पास रहता हो, जो पास की नदी को प्रदूषित कर रहा है, कोई विद्युत परियोजना जो किसी खेत पर या समुद्र के किनारे पलाई ऐश फेंक रही हो, जहां नगरपालिका भी शहर का सारा कूड़ा फेंकती है। हो सकता है कि हमारा कोई दोस्त या हमारे ही गांव में रहने वाला व्यक्ति बताए कि नदी से रेत का खनन चल रहा है, जिसके कारण बाढ़ आने का खतरा है, या किसी पर्यटक रिसोर्ट ने किसी पानी के स्रोत या चारागाह तक पहुंचने का रास्ता बंद कर दिया है।

अक्सर ऐसी हर गतिविधि से जुड़े कुछ कानूनी प्रावधान होते हैं, किसी प्रकार की स्वीकृति की आवश्यकता होती है या जहां स्वीकृति मिल चुकी है, वहां कोई शर्त होती है। इससे संबंधित कोर्ट का कोई फैसला हो सकता है जो आम तौर पर किसी विशेष प्रकार की गतिविधियों पर लागू किया जा सकता है, चाहे आप देश के किसी भी हिस्से में क्यों न हों जैसे कि, रेत के खनन या पेड़ कटान के लिए स्वीकृतियां, सार्वजनिक भूमि के भू-उपयोग में बदलाव करना। ऐसा भी हो सकता है कि आप को जिन समस्याओं का सामना करना पड़ रहा है, या जिससे आप प्रभावित हो रहे हैं, वो इसलिए हो रही है क्योंकि कहीं पर कोई है, जो कानूनी प्रावधानों, शर्तों या स्वीकृति, या कोर्ट के आदेश का पालन नहीं कर रहा। अगर ऐसा है तो इस स्थिति के लिए जरूर एक स्पष्ट संस्थागत तंत्र और प्रशासनिक एजेंसी होगी जो इस प्रकार की गतिविधियों को रोक सकती हैं, शर्तों की अनुपालना की जांच कर सकती हैं, और दंडात्मक या सुधारात्मक कार्यवाही कर सकती हैं।

अक्सर, किसी समस्या से प्रभावित लोगों को यह पता नहीं होता कि वे जिस समस्या का सामना कर रहे हैं, उसका जुड़ाव किसी कानून की अनुपालना या गैर-अनुपालन से है। अगर अनिवार्य शर्तों को पूरा किया गया होता, तो शायद यह समस्या पैदा ही नहीं होती। जरूरी नहीं है कि ऐसा ही हो, लेकिन ऐसा संभव है। अगर आप समझ सकें कि आप जिस समस्या का सामना कर रहे हैं, वह कानूनी है या गैर-कानूनी, तो उसका समाधान निकालने के तरीके मिलना आसान हो जाता है। इसके लिए आपको वकील होने, या कोर्ट में याचिका दायर करने या कानूनी भाषा की जानकारी की जरूरत नहीं है। अगर आप को इस स्थिति पर लागू होने वाले मूल कानूनी प्रावधानों की जानकारी है और आप जानते हैं कि आपको किन संस्थानों से मदद मिल सकती है, इसी से कई प्रकार के पर्यावरणीय और सामाजिक प्रभावों का सामना कर रहे लोगों की समस्याओं का हल निकाला जा सकता है। इन पर्यावरणीय और सामाजिक प्रभावों के बारे में आगे चर्चा की गई है।

कानूनी स्तर पर (कोर्ट में या उससे बाहर) इस प्रकार समस्या का समाधान निकालने के लिए सबसे महत्वपूर्ण है साक्ष्य या सबूत। एक बार समस्या की पहचान करके उसे परिभाषित कर लिया जाए और प्रभावित लोग स्पष्ट कर दें कि उन्हें किस प्रकार का समाधान चाहिए, तो सामुदायिक स्तर के कानूनी कार्यकर्ताओं को दावों को साबित करने के लिए पक्के सबूत इकट्ठे करने होंगे। उदाहरण के लिए, अगर यह साबित किया जा सके कि कोई निर्माण कार्य किसी कानून का उल्लंघन करके किया जा रहा है, तो जरूरी है कि शिकायत दर्ज करने या संबंधित संस्थान के पास जाने से पहले, उसके स्पष्ट सबूत इकट्ठे किए जाएं। इन सबूतों में कई प्रकार के दस्तावेज हो सकते हैं जैसे कि सरकारी

check if the information disclosed by the project proponent at the time of project appraisal is complete and true. Records of public hearing could also be checked to find out if they reflect the mentioned concerns.

This handbook is an attempt to present scenarios where community level environment justice practitioners can use/employ tools of legal empowerment and work with affected communities to seek legal remedies through an administrative route. Each scenario presents a problem type, what the complaints could be and then goes on to suggest some legal clauses through which a remedy can be pursued. It draws from several cases currently being pursued by enviro-legal coordinators (paralegals) associated with the Centre for Policy Research-Namati Environmental Justice Program.

There are two clear caveats while using this handbook. First, the legal clauses listed with the problem are indicative in nature and do not claim to be exhaustive in nature. This does not imply that a practitioner using this handbook does not look out for additional legal remedies for the problem in hand, which would not be listed here. Second, we encourage practitioners to as far as possible, share the legal knowledge and try to interpret the same. This will encourage collective learning and help achieve legal empowerment through practice.

The handbook does not specifically list judicial and court related remedies to any of these problems. In case the problem does not get resolved through the administrative route, clients and community practitioners have the option of accessing avenues such as the National Green Tribunal (NGT) and Courts which are accessed through lawyers. In such instances, the evidence collected, complaints filed and other documentation could form an important basis and support for any legal intervention.

दस्तावेज़, सूचना के अधिकार के आवेदन, फोटो, मानचित्र और शिकायत पत्र। आप यह भी जांच कर सकते हैं कि परियोजना प्रस्तावक ने परियोजना की समीक्षा के समय जो जानकारी जमा की थी, वो पूरी और सच है कि नहीं। जन सुनवाई के रिकार्ड की जांच करके देखा जा सकता है कि उसमें सुनवाई में उठाए गए सभी मुद्दे दर्ज किए गए हैं या नहीं।

इस पुस्तिका में प्रयास किया गया है कि समुदाय स्तर के पर्यावरण न्याय कार्यकर्ता कानूनी सशक्तिकरण के उपकरणों का उपयोग कर सकें और प्रभावित समुदायों को प्रशासनिक माध्यम से कानूनी समाधान दिलवाने के लिए काम कर सकें। यहां दी गई हर स्थिति में समस्या का प्रकार, उससे जुड़ी किस प्रकार की शिकायतें सामने आ सकती हैं, और फिर किन कानूनी प्रावधानों के अंतर्गत उनका समाधान निकाला जा सकता है, इसका विवरण दिया गया है। यह स्थितियां सैंटर फॉर पॉलिसी रिसर्च-नमति पर्यावरणीय न्याय कार्यक्रम के साथ जुड़े पर्यावरण-कानूनी कार्यकर्ताओं (पैरालीगल कार्यकर्ता) द्वारा जिन मामलों का समाधान निकालने का प्रयास किया जा रहा है, उनमें से ली गई हैं।

इस पुस्तिका के इस्तेमाल से जुड़ी दो चेतावनियां हैं। पहली, कि समस्या के साथ दिए गए कानूनी प्रावधानों की सूची सांकेतिक है, यह सभी लागू होने लायक प्रावधानों की पूरी सूची नहीं है। इसका मतलब यह नहीं है कि इस पुस्तिका का उपयोग कर रहे कार्यकर्ता समस्या के समाधान के लिए अन्य कानूनी प्रावधानों का इस्तेमाल ना करें, जो यहां नहीं दिए गए हैं। दूसरी, हम कार्यकर्ताओं को यह जानकारी अन्य लोगों के साथ बांटने और इसकी व्याख्या करने के लिए प्रोत्साहित करते हैं। इससे सामूहिक स्तर पर जानकारी के स्तर में बढ़ावा होगा और कानूनी सशक्तिकरण में मदद मिलेगी।

इस पुस्तिका में इन समस्याओं के समाधानों से जुड़े न्यायिक और कोर्ट आदेश नहीं दिए गए हैं। अगर प्रशासनिक तरीकों से समस्या का समाधान नहीं होता है, तो समुदाय के लोगों और कानूनी कार्यकर्ताओं के पास नेशनल ग्रीन ट्राइब्यूनल और कोर्ट जाने का विकल्प है, जहां वकीलों के माध्यम से मामला दर्ज करना होता है। ऐसे मामलों में, इकट्ठे किए गए सबूत, दर्ज की गई शिकायतें और अन्य दस्तावेज़ किसी कानूनी कार्यवाही के लिए महत्वपूर्ण हो जाते हैं।

PROBLEM STATEMENT AND LEGAL REMEDY

[Note: An index of specific clauses and sections included in the scenarios below is available in Section II of this Handbook.]

SCENARIO 1

What is the complaint?

A paralegal is approached by a few representatives of the fishing community with news that a railway line is being constructed across an inter-tidal area. They have witnessed that the construction of the railway line involves bunding and filling up of the creek with mud, which is going to impact the flow of water and thereby the availability of fish. It will also impact their undeterred access to the creek and inter-tidal area. They have seen local contractors working in the area who are not very forthcoming with information or open to dialogue.

Is a law or legal condition being violated?

The construction of a railway line in a coastal area is likely to require some legal and statutory permission before which construction activity can be initiated. These could either be site specific permissions or those which are applicable to railway lines irrespective of their location. There are some questions which would need to be asked with regard to the legality of the construction. These include:



Photo credit: Kanchi Kohli / चित्र का श्रेय: कान्ची कोहली

समस्या और कानूनी समाधान

[नोट: नीचे दी गई स्थितियों में शामिल कानूनों की धाराओं की सूची इस पुस्तिका के खंड 2 में दी गई है।]

स्थिति 1

शिकायत क्या है?

मछुआरा समुदाय के लोग एक पैरालीगल के पास यह खबर ले कर आते हैं कि ज्वार-भाटा क्षेत्र से गुजरती हुई एक रेल लाइन बनाई जा रही है। उन्होंने देखा है कि रेल लाइन के निर्माण के दौरान खाड़ी में बांध बना कर उसमें मिट्टी भरी जाती है, जिससे पानी के बहाव पर प्रभाव पड़ेगा और मछली की उपलब्धता भी प्रभावित होगी। इसके अलावा वे लोग खाड़ी और ज्वार-भाटा क्षेत्र में आसानी से आ-जा भी नहीं पाएंगे। उन्होंने स्थानीय ठेकेदारों को वहां काम करते देखा है, लेकिन वे कोई भी जानकारी नहीं दे रहे हैं और ना ही इस विषय पर कोई चर्चा करने को तैयार हैं।

क्या किसी कानून या कानूनी प्रावधान का उल्लंघन हो रहा है?

समुद्र तटीय क्षेत्र में रेल लाइन के निर्माण से पहले कुछ कानूनी और संवैधानिक स्वीकृतियां लेना तो ज़रूरी होगा। यह स्वीकृतियां या तो स्थल-विशिष्ट हो सकती हैं, या किसी भी स्थान पर रेल लाइन बनने संबंधित आम स्वीकृतियां। निर्माण के कानूनी रूप से वैध होने से संबंधित कुछ सवाल पूछने ज़रूरी हैं। यह हैं:

Law	Corresponding Institution and Officials	Clauses
Site specific laws		
1. Coastal Regulation Zone (CRZ) Notification, 2011: Check whether this is a permissible activity in any of the CRZ zones.	1. State Coastal Zone Management Authorities (CZMA) located at the state capital 2. District Level Coastal Committee (DLCC) [under the District Collector]	Section 3; Section 4 and Section 7
2. Forest Conservation Act (FCA), 1980: Check whether the construction is being carried out on forestland and if permission for forest diversion is required.	1. Divisional Forest Officer 2. Ministry of Environment, Forest and Climate Change (MoEFCC) (Regional and New Delhi office)	Section 2 of the FCA, 1980
3. Wild Life Protection Act (WLPA), 1972: Check whether the activity is being carried out around an area declared as protected under the WLPA (e.g. National Park, Sanctuary etc).	1. Divisional Forest Officer (Wild Life) 2. Conservator of Forests (Wild Life) 3. State Board for Wild Life (SBWL)	Section 29; Section 35 (6)
4. ESA, CVCA, CEPI: Check whether any special orders, notifications or guidelines have been issued to protect, conserve this area or restrict activity like ESA, CVCA, Critically Polluted Area and so on.	1. Ministry of Environment, Forests and Climate Change (MoEFCC) 2. Coastal Zone Management Authority 3. Pollution Control Board	1. Section 3 (2) v of the EPA, 1986 2. Section 4 of the CRZ Notification, 2011 3. Section 19 of Air Act, 1981 or Water Act, 1974
Permissions, Rights and Consents related laws		
5. No Objection from Panchayat or Municipality: Check whether a No Objection Certificate (NoC) has been sought from the concerned Panchayat or Municipality.	1. Sarpanch/ Head of Panchayat 2. Elected Municipal Corporator/ Municipal Commissioner	Each state has its own Panchayat Act
6. Coastal Regulation Zone (CRZ) Notification, 2011: Check whether this is a permissible activity in any of the CRZ zones.	1. State Coastal Zone Management Authorities (CZMA) located at the state capital 2. District Level Coastal Committee (DLCC) [under the District Collector]	Section 3; Section 4 and Section 7
7. Forest Rights Act, 2006: Check whether there are any pending individual or community forest rights claims and if the consent of a gram sabha has been sought prior to forest diversion.	1. Forest Rights Committee 2. Gram Panchayat 3. District Collector	3.8.2009 circular issued by MoEFCC

कानून	संबंधित विभाग व अधिकारी	कानून की धाराएं
स्थल विशिष्ट कानून		
1. तटीय विनियमन क्षेत्र अधिसूचना, 2011 (CRZ): जांच करें कि सी.आर.ज़ेड क्षेत्र में इस प्रकार के निर्माण की अनुमति है या नहीं।	1. राज्य तटीय क्षेत्र प्रबंधन प्राधिकरण (CZMA) 2. ज़िला स्तरीय तटीय कमिटी (DLCC), ज़िला कलेक्टर के अंतर्गत	धारा 3; धारा 4 और धारा 7
2. वन संरक्षण अधिनियम, 1980 (FCA): जांच करें कि निर्माण कार्य वन भूमि पर हो रहा है या नहीं और क्या इसके लिए वन भूमि हस्तांतरण की स्वीकृति लेना ज़रूरी है।	1. वन मण्डल अधिकारी 2. पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय (MoEFCC) (क्षेत्रीय और नई दिल्ली)	FCA, 1980 की धारा 2
3. वन्यजीव संरक्षण अधिनियम, 1972 (WLPA): जांच करें कि जो गतिविधि हो रही है, वह WLPA के अंतर्गत घोषित किसी संरक्षित क्षेत्र के आसपास तो नहीं है (जैसे कि राष्ट्रीय उद्यान, अभ्यारण्य आदि)।	1. वन मण्डल अधिकारी (वन्यजीव) 2. वन संरक्षक (वन्यजीव) 3. राज्य वन्यजीव बोर्ड (SBWL)	धारा 29; धारा 35 (6)
4. ESA, CVCA, CEPI: जांच करें कि क्या इस क्षेत्र के संरक्षण के लिए कोई विशेष आदेश या दिशानिर्देश जारी किए गए हैं या नहीं, जैसे कि ESA, CVCA, गंभीर रूप से प्रदूषित क्षेत्र आदि के अंतर्गत।	1. पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय (MoEFCC) 2. तटीय क्षेत्र विनियमन प्राधिकरण (CZMA) 3. प्रदूषण नियंत्रण बोर्ड	1. EPA, 1986 की धारा 3(2)v 2. CRZ अधिसूचना, 2011 की धारा 4 3. वायु अधिनियम, 1981 या जल अधिनियम, 1974 की धारा 19
स्वीकृतियां, अधिकार और सहमति संबंधित कानून		
5. पंचायत या नगरपालिका से अनापत्ति: जांच करें कि संबंधित पंचायत या नगरपालिका से अनापत्ति प्रमाण पत्र लिया गया है या नहीं।	1. सरपंच/पंचायत प्रमुख 2. निर्वाचित नगर निगम पार्षद/नगर निगम आयुक्त	हर राज्य का अपना पंचायत अधिनियम होता है।
6. तटीय विनियमन क्षेत्र अधिसूचना, 2011 (CRZ): जांच करें कि CRZ क्षेत्र में इस गतिविधि को करने की अनुमति है या नहीं।	1. राज्य तटीय क्षेत्र प्रबंधन प्राधिकरण (CZMA), जो राज्य की राजधानी में स्थित होते हैं। 2. ज़िला स्तरीय तटीय कमिटी (DLCC) (ज़िला कलेक्टर के अंतर्गत)	धारा 3; धारा 4 और धारा 7
7. वन अधिकार अधिनियम, 2006: जांच करें कि कोई व्यक्तिगत या सामुदायिक वन अधिकार दावे बाकी तो नहीं हैं और वन भूमि हस्तांतरण से पहले ग्राम सभा की सहमति प्राप्त की गई है या नहीं।	1. वन अधिकार कमिटी 2. ग्राम पंचायत 3. ज़िला कलेक्टर	MoEFCC द्वारा जारी किया गया 3.8.2009 का परिपत्र

SCENARIO 2

What is the complaint?

During a visit to a local village, the grassroots legal advocate or community paralegal took a walk to a river adjoining the area. The villagers had been inviting her to come there because they had noticed that a pipeline had been regularly dumping foul smelling effluent into the river. While the pipeline had been constructed a year back, the villagers had only begun noticing its impact recently when their customers rejected the fish catch when they found that it tasted of chemicals. The discharge had not smelled earlier and had been only a recent occurrence over the last three months or so.

Is a law or legal condition being violated?

In the present scenario it would first need to be understood if the pipeline is attached to any industry or effluent treatment facility. If yes, then does the industry of the facility have the necessary permissions related to the discharging of effluent in the river? If there is a permission then what quantum of discharge is allowed and whether it is to be treated or untreated in its form?



Photo credit: Kanchi Kohli / चित्र का श्रेय: कांची कोहली

स्थिति 2

शिकायत क्या है?

एक गांव में जाकर ज़मीनी स्तर पर काम करने वाले कानूनी कार्यकर्ता या सामुदायिक पैरालीगल नदी के किनारे सैर करने जाता/जाती है। गांव वाले उसे काफी समय से गांव में बुला रहे थे, क्योंकि उन्होंने देखा था कि एक पाइपलाइन द्वारा नियमित रूप से नदी में बदबूदार गंदा पानी बहाया जा रहा है। हालांकि पाइपलाइन एक साल पहले बिछाई गई थी, लेकिन गांव वालों ने उसका प्रभाव हाल ही में महसूस किया जब उनके ग्राहकों ने कैमिकल का स्वाद होने के कारण उनकी पकड़ी हुई मछलियां खरीदना बंद कर दिया। पहले इस पाइपलाइन के पानी से इतनी बदबू नहीं आती थी, जो कि पिछले कुछ तीन महीने से आने लगी है।

क्या किसी कानून या कानूनी प्रावधान का उल्लंघन हो रहा है?

इस मामले में पहले यह समझना ज़रूरी है कि यह पाइपलाइन किसी उद्योग से या गंदे पानी के उपचार के प्लांट से जुड़ी है या नहीं। अगर हां, तो क्या उस उद्योग के पास नदी में गंदा पानी बहाने से संबंधित स्वीकृतियां हैं? अगर उसके पास स्वीकृति है, तो उसमें कितनी मात्रा की स्वीकृति दी गई है, और क्या उसमें शर्त है कि इस गंदे पानी का उपचार करके ही उसे नदी में बहाया जा सकता है?

Law	Corresponding Institution and Officials	Clauses
Site specific laws		
1. Coastal Regulation Zone (CRZ) Notification, 2011: Check whether this is a permissible activity in any of the CRZ zones.	1. State Coastal Zone Management Authorities (CZMA) located at the state capital 2. District Level Coastal Committee (DLCC) [under the District Collector]	Section 3; Section 4 and Section 7
2. Forest Conservation Act (FCA), 1980: Check whether the construction is being carried out on forestland and if permission for forest diversion is required.	1. Divisional Forest Officer 2. Ministry of Environment, Forests and Climate Change (MoEFCC) (Regional and New Delhi office)	Section 2 of the FCA, 1980
3. Critically Polluted Area under Air or Water Act: Check whether the area has been declared a Critically Polluted Area and if any special safeguards have been issued.	Pollution Control Board(s)	1. Chapter IV of Air Act, 1981; 2. Section 19 of Air Act, 1981 or Water Act, 1974
4. Wild Life Protection Act (WLPA), 1972: Check whether the activity is being carried out around an area declared as protected under the WLPA (e.g. National Park, Sanctuary etc).	1. Divisional Forest Officer (Wild Life) 2. Conservator of Forests (Wild Life) 3. State Board for Wild Life (SBWL)	Section 29; Section 35 (6)
Permissions, Rights and Consents related laws		
5. No Objection from Panchayat or Municipality: Check whether a No Objection Certificate (NoC) has been sought from the concerned Panchayat or Municipality.	1. Sarpanch/Head of Panchayat 2. Elected Municipal Corporator/ Municipal Commissioner	Each state has its own Panchayat Act
6. Environment Impact Assessment (EIA) Notification, 2006: Check whether environment clearance for industry, treatment facility or the pipeline or violation of a specific condition of an environment clearance letter.	1. State Environment Impact Assessment Authority (SEIAA) if Category B project 2. MoEFCC if Category A project	Schedule of the EIA Notification and specifically Sections 7 (d); 7 (h) Section 2 of the EIA Notification, 2006 and related procedures
7. Water (Prevention and Control of Pollution) Act, 1974: Check whether consent to establish and operate the pipeline is obtained as part of the industry or independently.	1. State Pollution Control Board and its Regional Offices	Section 25 (1); Section 25 (4)

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स्थल विशिष्ट कानून		
1. तटीय विनियमन क्षेत्र अधिसूचना, 2011 (CRZ): जांच करें कि सी.आर.ज़ेड क्षेत्र में इस प्रकार के निर्माण की अनुमति है या नहीं।	1. राज्य तटीय क्षेत्र प्रबंधन प्राधिकरण (CZMA) 2. ज़िला स्तरीय तटीय कमिटी (DLCC), ज़िला कलेक्टर के अंतर्गत	धारा 3; धारा 4 और धारा 7
2. वन संरक्षण अधिनियम, 1980 (FCA): जांच करें कि निर्माण कार्य वन भूमि पर हो रहा है या नहीं और क्या इसके लिए वन भूमि हस्तांतरण की स्वीकृति लेना ज़रूरी है।	1. वन मण्डल अधिकारी 2. पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय (MoEFCC) (क्षेत्रीय और नई दिल्ली)	FCA, 1980 की धारा 2
3. वायु या जल अधिनियम के अंतर्गत गंभीर रूप से प्रदूषित क्षेत्र: जांच करें कि इस क्षेत्र को गंभीर रूप से प्रदूषित क्षेत्र घोषित किया गया है या नहीं और कोई विशिष्ट सुरक्षा उपाय जारी किए गए हैं या नहीं।	प्रदूषण नियंत्रण बोर्ड	1. वायु अधिनियम, 1981 का अध्याय IV 2. वायु अधिनियम, 1981 या जल अधिनियम, 1974 की धारा 19
4. वन्यजीव संरक्षण अधिनियम, 1972 (WLPA) जांच करें कि जो गतिविधि हो रही है, वह WLPA के अंतर्गत घोषित किसी संरक्षित क्षेत्र के आसपास तो नहीं है (जैसे कि राष्ट्रीय उद्यान, अभ्यारण्य आदि)।	1. वन मण्डल अधिकारी (वन्यजीव) 2. वन संरक्षक (वन्यजीव) 3. राज्य वन्यजीव बोर्ड (SBWL)	धारा 29; धारा 35 (6)
स्वीकृतियां, अधिकार और सहमति संबंधित कानून		
5. पंचायत या नगरपालिका से अनापत्ति: जांच करें कि संबंधित पंचायत या नगरपालिका से अनापत्ति प्रमाण पत्र लिया गया है या नहीं।	1. सरपंच/पंचायत प्रमुख 2. निर्वाचित नगर निगम पार्षद/नगर निगम आयुक्त	हर राज्य का अपना पंचायत अधिनियम होता है।
6. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006: जांच करें कि उद्योग खड़ा करने, गंदे पानी के उपचार केन्द्र या पाइपलाइन के लिए पर्यावरण मंजूरी ली गई है या नहीं। या फिर वे पर्यावरण मंजूरी की किसी शर्त का उल्लंघन कर रहे हैं या नहीं।	1. राज्य पर्यावरण प्रभाव आंकलन प्राधिकरण (SEIAA), यदि बी श्रेणी की परियोजना है 2. MoEFCC, अगर ए श्रेणी की परियोजना है	EIA अधिसूचना की अनुसूची और धारा 7 (d); 7 (h) EIA अधिसूचना, 2006 की धारा 2 और संबंधित प्रक्रियाएं
7. जल (प्रदूषण पर प्रतिबंध और नियंत्रण) अधिनियम, 1974: जांच करें कि पाइपलाइन बिछाने और चलाने के लिए ली गई स्वीकृति उद्योग के अंश के रूप में ली गई है, या स्वतंत्र रूप से।	राज्य प्रदूषण नियंत्रण बोर्ड और उसके क्षेत्रीय कार्यालय	धारा 25 (1); धारा 25 (4)

SCENARIO 3

What is the complaint?

Residents of a village settlement have approached a paralegal with news related to construction of a godown by a private company. The residents have found out that the godown will be used for storing toxic chemicals. The location of the storage terminal is very close to the village school and within a range one km from the village boundary. They are worried about the harmful effects of toxic chemicals on their health once the godown is constructed. Villagers also fear that in event of an accident or a leakage in the terminal, their lives and those of their children would be at risk. They have raised all these concerns before the government officials and yet the construction activity has continued.

Is a law or legal condition being violated?

In this case it needs to be understood: (a) if the godown has the necessary permissions for construction; if yes, what is the exact location and (b) whether approvals for the storage and handling of hazardous chemicals have been granted. Since the local people have raised these issues before government bodies in the past, it can be checked if these were through a legal forum like a public hearing and whether they are reflected anywhere in the project appraisal process. It can also be checked if the conditions on which the permissions were granted, are complied with.



Photo credit: Kanchi Kohli / चित्र का श्रेय: कांची कोहली

स्थिति 3

शिकायत क्या है?

एक गांव के निवासियों ने पैरालीगल से मिलकर उसे खबर दी कि एक निजी कंपनी एक गोदाम बना रही है। गांव वालों को पता चला है कि वे उसमें जहरीले रसायन रखेंगे। यह गोदाम गांव के स्कूल के बहुत नज़दीक बना है और गांव की सीमा के 1 कि.मी. परिधि में है। उन्हें चिंता है कि इन जहरीले रसायनों से उनके स्वास्थ्य पर असर पड़ेगा। गांव वालों को यह भी डर है कि कोई दुर्घटना होने पर या गोदाम से अगर रिसाव हुआ तो उनके और उनके बच्चों के जीवन के लिए खतरा पैदा हो जाएगा। उन्होंने यह सभी मुद्दे सरकारी अफसरों के सामने भी उठाए हैं, लेकिन फिर भी निर्माण जारी है।

क्या किसी कानून या कानूनी प्रावधान का उल्लंघन हो रहा है?

इस मामले में यह समझना होगा कि: (क) गोदाम के निर्माण के लिए सभी ज़रूरी स्वीकृतियां मिल चुकी हैं या नहीं; और अगर हां, तो स्वीकृति के अनुसार उसका निर्माण कहाँ होना चाहिए और (ख) खतरनाक रसायन के भंडारण के लिए स्वीकृति दी गई है या नहीं। चूंकि गांव वालों ने सरकारी अफसरों के सामने पहले भी यह मुद्दे उठाए हैं, तो यह पता लगाया जा सकता है कि यह मुद्दे किसी कानूनी मंच, जैसे कि जन सुनवाई में उठाए गए और परियोजना की समीक्षा की प्रक्रिया में इन मुद्दों का जिक्र है या नहीं। यह भी जांच की जा सकती है कि जिन शर्तों पर स्वीकृति दी गई थी, उनकी अनुपालना की जा रही है या नहीं।

Law	Corresponding Institution and Officials	Clauses
Permissions, Rights and Consents related laws		
1. Coastal Regulation Zone (CRZ) Notification, 2011: Check whether this is a permissible activity in any of the CRZ zones.	1. State Coastal Zone Management Authorities (CZMA) located at the state capital 2. District Level Coastal Committee (DLCC) [under the District Collector]	Section 3; Section 4 and Section 7
2. No Objection from Panchayat or Municipality: Check whether a No Objection Certificate (NoC) has been sought from the concerned Panchayat or Municipality.	1. Sarpanch/ Head of Panchayat 2. Elected Municipal Corporator/Municipal Commissioner	Each state has its own Panchayat Act
3. Environment Impact Assessment (EIA), Notification, 2006: Check whether the activity has obtained the environment clearance. If yes, check if there is a violation of a specific condition of an environment clearance letter.	1. State Environment Impact Assessment Authority (if category B project) 2. MoEFCC (if category A project)	Schedule of the EIA Notification and specifically Section 6 (b) Section 2; Section 8; Appendix IV
4. Hazardous Material (Management, Handling and Trans-boundary Movement) Rules, 2016	State Pollution Control Board	Section 4
Other Site specific laws		
5. Wild Life Protection Act (WLPA), 1972: Check whether the activity is being carried out around or within an area declared as protected under the WLPA (e.g. National Park, Sanctuary etc).	1. Divisional Forest Officer (Wild Life) 2. Conservator of Forests (Wild Life) 3. State Board for Wild Life (SBWL)	Section 29; Section 35 (6)
6. ESA, CVCA, CEPI: Check whether any special orders, notifications or guidelines have been issued to protect, conserve this area or restrict activity like, ESA, CVCA, Critically Polluted Area and so on.	1. Ministry of Environment, Forests and Climate Change 2. ESA Management Committee 3. State Coastal Zone Management Authority 4. Pollution Control Board	1. Section 3 (2) v of the EPA, 1986 2. Section 4 of the CRZ Notification, 2011 3. Section 19 of Air Act, 1981 or Water Act, 1974

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
स्वीकृतियां, अधिकार और सहमति संबंधित कानून		
1. तटीय विनियमन क्षेत्र अधिसूचना, 2011 (CRZ): जांच करें कि सी.आर.जेड क्षेत्र में इस प्रकार के निर्माण की अनुमति है या नहीं।	1. राज्य तटीय क्षेत्र प्रबंधन प्राधिकरण (CZMA) जो राज्य की राजधानी में होता है 2. ज़िला स्तरीय तटीय कमिटी (DLCC), ज़िला कलेक्टर के अंतर्गत	धारा 3; धारा 4 और धारा 7
2. पंचायत या नगरपालिका से अनापत्ति: जांच करें कि संबंधित पंचायत या नगरपालिका से अनापत्ति प्रमाण पत्र लिया गया है या नहीं।	1. सरपंच/पंचायत प्रमुख 2. निर्वाचित नगर निगम पार्षद/नगर निगम आयुक्त	हर राज्य का अपना पंचायत अधिनियम होता है।
3. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006: जांच करें कि इस गतिविधि के लिए पर्यावरण मंजूरी ली गई है या नहीं। या फिर वे पर्यावरण मंजूरी की किसी शर्त का उल्लंघन कर रहे हैं या नहीं।	1. राज्य पर्यावरण प्रभाव आंकलन प्राधिकरण (SEIAA), यदि बी श्रेणी की परियोजना है 2. MoEFCC, अगर ए श्रेणी की परियोजना है	EIA अधिसूचना की अनुसूची और धारा 6(b) EIA अधिसूचना, 2006 की धारा 2; धारा 8; परिशिष्ट IV
4. खतरनाक पदार्थ (प्रबंधन, संचालन और सीमा पारगमन) नियम, 2016	राज्य प्रदूषण नियंत्रण बोर्ड	धारा 4
अन्य स्थल-विशिष्ट कानून		
5. वन्यजीव संरक्षण अधिनियम, 1972 (WLPA): जांच करें कि जो गतिविधि हो रही है, वह WLPA के अंतर्गत घोषित किसी संरक्षित क्षेत्र के आसपास तो नहीं है (जैसे कि राष्ट्रीय उद्यान, अभ्यारण्य आदि)।	1. वन मण्डल अधिकारी (वन्यजीव) 2. वन संरक्षक (वन्यजीव) 3. राज्य वन्यजीव बोर्ड (SBWL)	धारा 29; धारा 35 (6)
6. ESA, CVCA, CEPI: जांच करें कि क्या इस क्षेत्र के संरक्षण के लिए कोई विशेष आदेश या दिशानिर्देश जारी किए गए हैं या नहीं, जैसे कि ESA, CVCA, गंभीर रूप से प्रदूषित क्षेत्र आदि के अंतर्गत।	1. पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय (MoEFCC) 2. ESA प्रबंधन कमिटी 3. राज्य तटीय क्षेत्र विनियमन प्राधिकरण 4. प्रदूषण नियंत्रण बोर्ड	1. EPA, 1986 की धारा 3(2)v 2. CRZ अधिसूचना, 2011 की धारा 4 3. वायु अधिनियम, 1981 या जल अधिनियम, 1974 की धारा 19

SCENARIO 4

What is the complaint?

Villagers have approached a paralegal with the complaint that the common village land has been leased out for mining to private companies. The residents of the village have been using this land for grazing their cattle for three generations. From a written response they received from the District Collector's office, it appears that several small mining leases have been issued parceling the grazing land. If this land is lost, the villagers will be deprived of their livestock related livelihoods.

Is a law or legal condition being violated?

The first question that needs to be asked here is if there is a national or state specific law or ministry or department, which governs the use of common village lands? It is based on this information that the next steps can be planned. The location of the grazing land might also attract other site specific laws.

Law	Corresponding Institution and Officials	Clauses
Court Judgments and Administrative Procedures		
1. SC Judgment (dated 28.01.11) Civil Appeal No. 1132/2011 @ SLP(C) No. 3109/2011: (Related to the protection of common lands)	1. State Government (Development Commissioner) 2. Sarpanch/ Head of Panchayat	Directions to the State Governments to evict illegal occupants of common village Panchayat lands. Directions on restricting conversion of common lands to other purposes
2. State Panchayat Act: Check whether Panchayat has any special powers to protect common village lands under their jurisdiction.	1. Sarpanch/Head of Panchayat	Each state has its own Panchayat Act
Permissions, Rights and Consents related laws		
3. No Objection from Panchayat: Check whether a No Objection Certificate (NoC) has been sought from the concerned Panchayat.	1. Sarpanch/Head of Panchayat	Each state has its own Panchayat Act
Site specific laws		
4. Coastal Regulation Zone (CRZ) Notification, 2011: Check whether this is a permissible activity in any of the CRZ zones.	1. State Coastal Zone Management Authorities (CZMA) located at the state capital 2. District Level Coastal Committee (DLCC) [under the District Collector]	Section 3; Section 4 and Section 7
5. ESA: Check whether any special orders, notifications or guidelines have been issued to protect, conserve this area or restrict activity like ESA.	1. Ministry of Environment, Forests and Climate Change 2. ESA Management Committee	1. Section 3 (2) v of the EPA, 1986

स्थिति 4

शिकायत क्या है?

गांव वाले पैरालीगल के पास एक शिकायत लेकर आए हैं कि गांव की संचायती भूमि को खनन के लिए निजी कंपनियों को लीज़ पर दे दिया गया है। गांव वाले पिछली तीन पीढ़ियों से इस ज़मीन पर अपने मवेशी चराते आए हैं। ज़िला कलेक्टर से मिले एक लिखित जवाब से लगता है कि इस चारागाह पर कई छोटी-छोटी खनन की लीज़ दे दी गई हैं। अगर यह ज़मीन खत्म हो जाती है, तो गांव वाले अपनी पशु-आधारित आजीविकाओं से हाथ धो बैठेंगे।

क्या किसी कानून या कानूनी प्रावधान का उल्लंघन हो रहा है?

यहां पहला सवाल यह उठता है कि क्या कोई राष्ट्रीय या राज्य स्तरीय कानून या कोई मंत्रालय या विभाग है जो गांव की संचायती ज़मीनों के मामले देखता हो? इस सवाल के जवाब के आधार पर ही अगले कदम तय किए जा सकते हैं। चारागाह ज़मीन कहां पर स्थित है, उस के आधार पर अन्य कानून भी काम में लिए जा सकते हैं।

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
कोर्ट के आदेश और प्रशासनिक प्रक्रियाएं		
1. सर्वोच्च न्यायालय आदेश (तारीख 28-01-11) सिविल अपील संख्या 1132/2011 @SLP(C) संख्या 3109/2011: (संचायती ज़मीनों से संबंधित)	1. राज्य सरकार (विकास आयुक्त) 2. सरपंच/पंचायत प्रमुख	राज्य सरकारों को निर्देश कि गांव की पंचायती संचायती ज़मीनों पर से अनाधिकृत कब्जे हटाए जाएं। संचायती ज़मीनों के अन्य उपयोगों पर प्रतिबंध लगाने के निर्देश
2. राज्य पंचायत अधिनियम: जांच करें कि पंचायत को अपने क्षेत्र की संचायती ज़मीनों की सुरक्षा के लिए कोई विशेष अधिकार दिए गए हैं या नहीं।	1. सरपंच/पंचायत प्रमुख	हर राज्य का अपना पंचायत अधिनियम है
स्वीकृतियां, अधिकार और सहमति संबंधित कानून		
3. पंचायत से अनापत्ति: जांच करें कि संबंधित पंचायत से अनापत्ति प्रमाण पत्र लिया गया है या नहीं।	1. सरपंच/पंचायत प्रमुख	हर राज्य का अपना पंचायत अधिनियम होता है।
स्थल-विशिष्ट कानून		
4. तटीय विनियमन क्षेत्र अधिसूचना, 2011 (CRZ): जांच करें कि सी.आर.ज़ेड क्षेत्र में इस प्रकार की गतिविधि की अनुमति है या नहीं।	1. राज्य तटीय क्षेत्र प्रबंधन प्राधिकरण (CZMA) जो राज्य की राजधानी में होता है 2. ज़िला स्तरीय तटीय कमिटी (DLCC), ज़िला कलेक्टर के अंतर्गत	धारा 3; धारा 4 और धारा 7
5. ESA: जांच करें कि क्या इस क्षेत्र के संरक्षण के लिए कोई विशेष आदेश, अधिसूचना या दिशानिर्देश जारी किए गए हैं या नहीं, जैसे कि ESA के अंतर्गत।	1. पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय (MoEFCC) 2. ESA प्रबंधन कमिटी	1. EPA, 1986 की धारा 3(2) v

SCENARIO 5

What is the complaint?

There has been a spill in a Treatment, Storage and Disposal Facility (TSDF) leading to leakage of hazardous waste. The TSDF site is linked to a nearby cluster of industries and the waste from at least 4-5 chemical industries is stored and treated here. The spill is reported due to the collapse of the retainer wall around the TSDF site. The hazardous chemical waste has spilled into nearby agricultural fields and also contaminated the ground water. The farmers suspect that the wall of the facility collapsed due to an overload of waste against it. The impact was aggravated because the waste was not covered, and with recent rains in the area, it ran over into the nearby farm lands. This contamination has rendered the farm lands unfit for agriculture. The farmers are upset and are demanding compensation. They approached a community based legal practitioner or paralegal to help them.

Is a law or legal condition being violated?

There are three clear aspects of violation to be considered here: First, liability for negligence; second, understanding the mandatory legal requirements for TSDF sites and third, the manner in which compensation will be calculated. Understanding the liability for negligence or compensation might take us beyond the realm of environment or pollution related laws. The legal compliance of a TSDF site might have specific guidelines or might be embedded within the air and water pollution related legislations.



Photo credit: Kanchi Kohli / चित्र का श्रेय: कांची कोहली

स्थिति 5

शिकायत क्या है?

उपचार, भंडारण और निपटान संयंत्र (TSDF) से खतरनाक अपशिष्ट का रिसाव हो गया है। यह TSDF संयंत्र आसपास के उद्योगों से जुड़ा है और इन उद्योगों में से कम-से-कम 4-5 रासायनिक उद्योगों के अपशिष्ट का यहां भंडारण और उपचार किया जाता है। रिसाव का कारण TSDF स्थल के आसपास बनी दीवार का टूटना बताया जा रहा है। यह खतरनाक अपशिष्ट आसपास के खेतों में फैल गए हैं और इनसे वहां का पानी भी दूषित हो गया है। किसानों को शक है कि संयंत्र की दीवार पर अत्यधिक भार होने के कारण वह गिर गई। उसका प्रभाव और भी ज्यादा इसलिए हो गया क्योंकि अपशिष्ट को ढक कर नहीं रखा गया था, और हाल में बारिशों के कारण वह आसपास के खेतों में फैल गया। इस प्रदूषण के कारण खेत अब खेती करने लायक नहीं रहे। किसान नाराज़ हैं और मुआवज़े की मांग कर रहे हैं। वे यह समस्या लेकर सामुदायिक कानूनी कार्यकर्ता/पैरालीगल के पास आए हैं।

क्या किसी कानून या कानूनी प्रावधान का उल्लंघन हो रहा है?

इस स्थिति में स्पष्ट रूप से तीन तरह के उल्लंघनों की जांच की जा सकती है: पहला, लापरवाही की ज़िम्मेदारी; दूसरा, TSDF स्थलों के लिए कानूनी रूप से अनिवार्य आवश्यकताएं और तीसरा, मुआवज़े का हिसाब लगाने के लिए क्या तरीका अपनाया जाएगा। लापरवाही या मुआवज़े की ज़िम्मेदारी समझने के लिए हो सकता है हमें पर्यावरण और प्रदूषण संबंधी कानूनों से आगे जाना पड़े। TSDF स्थल की कानूनी अनुपालना के लिए हो सकता है कि विशिष्ट मार्गदर्शिका जारी की गई हो या फिर वे वायु और जल प्रदूषण संबंधी कानूनों का भी हिस्सा हो सकती हैं।

Law	Corresponding Institution and Officials	Clauses
Permission and Consent		
1. EIA Notification, 2006: Check whether the environment clearance is for the industry, treatment facility or the pipeline or if there is a violation of a specific condition of an environment clearance letter	1. State Environment Impact Assessment Authority (SEIAA) if Category B project 2. MoEFCC if Category A project	Schedule of the EIA Notification and specifically Sections 7 (d) Section 2 of the EIA Notification, 2006 and related procedures
2. Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2016	1. State Pollution Control Board 2. Central Pollution Control Board	Section 16 esp. Clause 16 (2) and 16 (4) Clause 23 (1)
3. Reports to CPCB/SPCB	1. State Pollution Control Board 2. Central Pollution Control Board	Test Reports and Environment Statements (ES) to be provided by operator to SPCB
Negligence and Compensation		
4. The Public Liability Insurance Act, 1991 (for determining damage and compensation)	1. District Collector 2. MoEFCC	Section 3, 5, 6, 8 and Schedule
5. Environment Protection Act, 1986 (Fine or imprisonment for offence)	MoEFCC or its designated agency like it SPCB	Section 15

SCENARIO 6

What is the complaint?

During a visit to a hilltop village adjoining a bustling coastal town, a community worker noticed a heap of garbage at the outskirts of the village. The dump was close to a forest patch. When she spoke to the residents, they mentioned to her that this was a routine occurrence effected by the municipality itself. They had been troubled by this and had told the officials that it is difficult for them to live next to the stench. They also shared that the open and untreated garbage was attracting flies and they feared impacts on their health due to spread of disease. The garbage was also being blown into the houses when the wind was strong on the hilltop. During monsoons, there had also been one instance of the garbage running over into the water stream flowing towards the downhill villages.

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
स्वीकृति और सहमति		
1. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006: जांच करें कि पर्यावरण मंजूरी उद्योग के लिए दी गई है या उपचार संयंत्र या पाइपलाइन के लिए। यह भी कि वे पर्यावरण मंजूरी की किसी शर्त का उल्लंघन कर रहे हैं या नहीं।	1. राज्य पर्यावरण प्रभाव आंकलन प्राधिकरण (SEIAA), यदि बी श्रेणी की परियोजना है 2. MoEFCC, अगर ए श्रेणी की परियोजना है	EIA अधिसूचना की अनुसूची और धारा 7(d) EIA अधिसूचना, 2006 की धारा 2 और संबंधित प्रक्रियाएं
2. खतरनाक पदार्थ (प्रबंधन, संचालन और सीमा पारगमन) नियम, 2016	1. राज्य प्रदूषण नियंत्रण बोर्ड 2. केन्द्रीय प्रदूषण नियंत्रण बोर्ड	धारा 16, अनुच्छेद 16(2) और 16(4) अनुच्छेद 23(1)
3. केन्द्रीय/राज्य प्रदूषण बोर्ड को दी गई रिपोर्ट	1. राज्य प्रदूषण नियंत्रण बोर्ड 2. केन्द्रीय प्रदूषण नियंत्रण बोर्ड	परीक्षण रिपोर्ट और राज्य प्रदूषण बोर्ड को संयंत्र चलाने वाले द्वारा दिए जाने वाले पर्यावरण वक्तव्य
लापरवाही और मुआवज़ा		
4. सार्वजनिक ज़िम्मेदारी बीमा अधिनियम, 1991 (नुक्सान और मुआवज़ा निर्धारित करने के लिए)	1. ज़िला कलेक्टर 2. MoEFCC	धारा 3, 5, 6, 8 और अनुसूची
5. पर्यावरण सुरक्षा अधिनियम, 1986 (अपराध के लिए जुर्माना तय करने या सज़ा के लिए)	MoEFCC या उसके द्वारा अधिकृत किया गया विभाग, जैसे कि SPCB	धारा 15

स्थिति 6

शिकायत क्या है?

एक तटीय नगर के पास की पहाड़ी पर स्थित एक गांव में जाने पर सामुदायिक कार्यकर्ता देखता/देखती है कि गांव के बाहर कूड़े का ढेर पड़ा है। यह ढेर जंगल के पास पड़ा है। जब उसने गांव वालों से बात की तो उन्होंने बताया कि यह तो नगरपालिका का रोज़ का काम है। उन्हें इससे परेशानी हुई थी और उन्होंने अधिकारियों को भी इस के बारे में बताया कि इस बदबू के कारण उनका जीना मुश्किल हो गया है। उन्होंने यह भी बताया कि इस तरह खुले और बिना उपचार किए कूड़े के ढेर पर मक्खियां आने से, उन्हें डर है कि कहीं बीमारियां न फैलने लगें। जब पहाड़ी से तेज़ हवाएं चलती हैं, तो यह कूड़ा उड़ कर उनके घरों में भी आ जाता है। मानसून में तो एक बार यह कूड़ा पानी के नाले के साथ बह कर नीचे के गांवों तक चला गया था।



Photo credit: Aubrey Wade

Photo credit: Aubrey Wade / चित्र का श्रेय: आब्रे वडे

Is a law or legal condition being violated?

The immediate legal avenue to look into in this case would be the laws and guidelines related to management of municipal solid waste. However, some site-specific laws can also be applied to see if there are any specific provisions concerning waste disposal on the sites.

Law	Corresponding Institution and Officials	Clauses
Site specific laws		
1. Coastal Regulation Zone (CRZ) Notification, 2011: Check whether this is a permissible activity in any of the CRZ zones.	1. State Coastal Zone Management Authorities (CZMA) located at the state capital 2. District Level Coastal Committee (DLCC) [under the District Collector]	Section 3; Section 4 and Section 7
2. Wild Life Protection Act (WLPA), 1972: Check whether the activity is being carried out around or within an area declared as protected under the WLPA (e.g. National Park, Sanctuary etc).	1. Divisional Forest Officer (Wild Life) 2. Conservator of Forests (Wild Life) 3. State Board for Wild Life (SBWL)	Section 29; Section 35 (6)

क्या किसी कानून या कानूनी प्रावधान का उल्लंघन हो रहा है?

इस मामले में सबसे पहले नगरपालिका के अपशिष्ट संबंधी कानूनों और मार्गदर्शिकाओं में हल ढूंढना होगा। लेकिन कई स्थल-विशिष्ट कानूनों में भी देखा जा सकता है कि उनमें कूड़ा फेंकने के स्थलों से संबंधित प्रावधान हैं या नहीं।

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
स्थल-विशिष्ट कानून		
1. तटीय विनियमन क्षेत्र अधिसूचना, 2011 (CRZ): जांच करें कि सी.आर.ज़ेड क्षेत्र में इस प्रकार की गतिविधि की अनुमति है या नहीं।	1. राज्य तटीय क्षेत्र प्रबंधन प्राधिकरण (CZMA) जो राज्य की राजधानी में होता है 2. ज़िला स्तरीय तटीय कमिटी (DLCC), ज़िला कलेक्टर के अंतर्गत	धारा 3; धारा 4 और धारा 7
2. वन्यजीव संरक्षण अधिनियम, 1972 (WLPA) जांच करें कि जो गतिविधि हो रही है, वह WLPA के अंतर्गत घोषित किसी संरक्षित क्षेत्र के आसपास तो नहीं है (जैसे कि राष्ट्रीय उद्यान, अभ्यारण्य आदि)।	1. वन मण्डल अधिकारी (वन्यजीव) 2. वन संरक्षक (वन्यजीव) 3. राज्य वन्यजीव बोर्ड (SBWL)	धारा 29; धारा 35 (6)

3. Forest Conservation Act, 1980: Check whether the activity is being carried out on forestland and if permission for forest diversion is required.	1. Divisional Forest Officer 2. Ministry of Environment, Forests and Climate Change (MoEFCC) (Regional and New Delhi office)	Section 2 of the FCA, 1980
4. ESA, CVCA, CEPI: Whether any special orders, notifications or guidelines have been issued to protect, conserve this area or restrict activity like, ESA, CVCA, Critically Polluted Area and so on.	1. Ministry of Environment, Forests and Climate Change 2. ESA Management Committee 3. State Coastal Zone Management Authority 4. Pollution Control Board	1. Section 3 (2) v of the EPA, 1986 2. Section 4 of the CRZ Notification, 2011 3. Section 19 of Air Act or Water Act, 1974
Permissions, Rights and Consents related laws		
5. Municipal Solid Waste (Management and Handling Rules), 2000 Check whether the activity has obtained the authorisation to set up waste processing and disposal facility by the SPCB. If yes, check if there is a violation of any of the clauses of the rules.	1. State Pollution Control Board 2. District Magistrate/Deputy Commissioner 3. Secretary-in charge, State Urban Development Department	Clause 4 (2), Section 5, Schedule II esp. point 3

SCENARIO 7

What is the complaint?

A community worker reads an article on environment and social impacts of sand mining in the morning newspaper. He immediately recalls that residents of a nearby village had casually mentioned when they met at the local tea shop, that rampant mining of sand from the riverbed was taking place. They had complained that the riverbank was eroding and had impacted the flow of the river because truckloads of material were being transported out every day. They were concerned that the panchayat might be hand in glove with the sand mining contractors. People were also worried that sand from the river, which had traditionally been used for construction of their houses, was just not available for local use. This was done occasionally and in small quantities, after taking permission from the panchayat.

Is a law or legal condition being violated?

Sand mining is regulated by site-specific laws, environment regulations as well as local panchayat laws. In order to ascertain the nature of violation, it would be of help to first understand if the mining is being carried out in an area where it is otherwise restricted or regulated. Second, whether any impact assessment studies have been carried out in the operation. It would also be useful to understand if there are any court judgments, which have a bearing on a controversial issue like sand mining.

3. वन संरक्षण अधिनियम, 1980 (FCA): जांच करें कि यह गतिविधि वन भूमि पर हो रही है या नहीं और क्या इसके लिए वन भूमि हस्तांतरण की स्वीकृति लेना ज़रूरी है।	1. वन मण्डल अधिकारी 2. पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय (MoEFCC) (क्षेत्रीय और नई दिल्ली)	FCA, 1980 की धारा 2
4. ESA, CVCA, CEPI: जांच करें कि क्या इस क्षेत्र के संरक्षण के लिए कोई विशेष आदेश या दिशानिर्देश जारी किए गए हैं या नहीं, जैसे कि ESA, CVCA, गंभीर रूप से प्रदूषित क्षेत्र आदि के अंतर्गत।	1. पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय 2. ESA प्रबंधन कमिटी 3. राज्य तटीय क्षेत्र प्रबंधन प्राधिकरण 4. प्रदूषण नियंत्रण बोर्ड	1. EPA, 1986 की धारा 3(2) v 2. CRZ अधिसूचना, 2011 की धारा 4 3. वायु अधिनियम, 1981 या जल अधिनियम, 1974 की धारा 19
स्वीकृतियां, अधिकार और सहमति संबंधित कानून		
5. नगरपालिका अपशिष्ट (प्रबंधन और संचालन) नियम, 2000: जांच करें कि इस गतिविधि के लिए अपशिष्ट उपचार और निपटान संयंत्र स्थापित करने के लिए SPCB से स्वीकृति ली गई है या नहीं। अगर हां, तो जांचें कि नियमों की किसी धारा का उल्लंघन हो रहा है या नहीं।	1. राज्य प्रदूषण नियंत्रण बोर्ड 2. ज़िला मैजिस्ट्रेट/उप कमिश्नर 3. अधिकारिक सचिव, राज्य शहरी विकास विभाग	अनुच्छेद 4(2), धारा 5, अनुसूचि II का बिंदु 3

स्थिति 7

शिकायत क्या है?

एक सामुदायिक कार्यकर्ता अखबार में रेत खनन के पर्यावरण और सामाजिक प्रभावों के विषय पर एक लेख पढ़ती/पढ़ता है। उसे तुरंत याद आता है कि पास के एक गांव के लोगों ने उसे चाय की दुकान पर बातों-बातों में बताया था कि नदी के तल से बहुत ज़्यादा रेत का खनन हो रहा है। उन्होंने शिकायत की कि इससे नदी के तल का विनाश हो रहा है और नदी के बहाव पर भी प्रभाव पड़ा है क्योंकि रोज़ कई ट्रक रेत निकाली जा रही है। उन्हें चिंता है कि पंचायत भी रेत के ठेकेदारों से मिली हुई है। उन्हें यह भी चिंता थी कि नदी की रेत, जिसे वे पारंपरिक रूप से अपने घर बनाने के लिए इस्तेमाल करते आए थे, अब उनके लिए उपलब्ध नहीं होगी। इसके लिए उन्हें पंचायत की स्वीकृति लेनी पड़ती है, और फिर भी वे बहुत कम रेत ला पाते हैं।

क्या किसी कानून या कानूनी प्रावधान का उल्लंघन हो रहा है?

रेत के खनन के लिए स्थल-विशिष्ट कानून, पर्यावरण नियम और पंचायत नियम होते हैं। किस कानून/नियम का उल्लंघन हो रहा है, यह स्थापित करने के लिए पहले यह पता लगाना ज़रूरी है कि रेत का खनन क्या किसी प्रतिबंधित क्षेत्र से हो रहा है। दूसरा, कि इस गतिविधि को शुरू करने से पहले कोई प्रभाव आंकलन अध्ययन किया गया है या नहीं। यह भी पता लगाएं कि रेत के खनन जैसे विवादास्पद मुद्दे से जुड़े कोई कोर्ट के फैसले हैं या नहीं।



Photo credit: Kanchi Kohli/ चित्र का श्रेय: कांची कोहली

Law	Corresponding Institution and Officials	Clauses
Site specific laws		
1. Coastal Regulation Zone (CRZ) Notification, 2011: Check whether this is a permissible activity in any of the CRZ zones.	1. State Coastal Zone Management Authorities (CZMA) located at the state capital 2. District Level Coastal Committee (DLCC) [under the District Collector]	Section 3; Section 4 and Section 7
2. Forest Conservation Act, 1980: Check whether the activity is being carried out in a forest area and through which the river is flowing.	1. Divisional Forest Officer 2. Ministry of Environment, Forests and Climate Change (Regional and New Delhi office)	Section 2 of the FCA, 1980
3. ESA, CVCA: Check whether any special orders, notifications or guidelines have been issued to protect, conserve this area or restrict activity like, ESA or CVCA.	1. Ministry of Environment, Forests and Climate Change 2. ESA Management Committee 3. State Coastal Zone Management Authority	1. Section 3 (2) v of the EPA, 1986 2. Section 4 of the CRZ Notification, 2011

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
स्थल विशिष्ट कानून		
1. तटीय विनियमन क्षेत्र अधिसूचना, 2011 (CRZ): जांच करें कि सी.आर.ज़ेड क्षेत्र में इस प्रकार की गतिविधि की अनुमति है या नहीं।	1. राज्य तटीय क्षेत्र प्रबंधन प्राधिकरण (CZMA) जो राज्य की राजधानी में होता है। 2. जिला स्तरीय तटीय कमिटी (DLCC), जिला कलेक्टर के अंतर्गत	धारा 3; धारा 4 और धारा 7
2. वन संरक्षण अधिनियम, 1980 (FCA): जांच करें कि यह गतिविधि जिस भूमि पर हो रही है, और जहां से नदी बहती है, वह वन भूमि है या नहीं।	1. वन मण्डल अधिकारी 2. पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय (MoEFCC) (क्षेत्रीय और नई दिल्ली)	FCA, 1980 का धारा 2
3. ESA, CVCA: जांच करें कि क्या इस क्षेत्र के संरक्षण के लिए कोई विशेष आदेश या दिशानिर्देश जारी किए गए हैं या नहीं, जैसे कि ESA, CVCA, गंभीर रूप से प्रदूषित क्षेत्र आदि के अंतर्गत।	1. पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय (MoEFCC) 2. ESA प्रबंधन कमिटी 3. राज्य तटीय क्षेत्र विनियमन प्राधिकरण	1. EPA, 1986 की धारा 3(2)v 2. CRZ अधिसूचना, 2011 की धारा 4

Permissions, Rights and Consents related laws		
<p>4. No Objection from Panchayat or Municipality: Check whether a No Objection Certificate (NoC) has been sought from the concerned Panchayat or Municipality.</p>	<p>1. Sarpanch/Head of Panchayat 2. Elected Municipal Corporator/Municipal Commissioner</p>	<p>Each state has its own Panchayat Act</p>
<p>5. Coastal Regulation Zone (CRZ) notification, 2011: Check whether this is a permissible activity in any of the CRZ zones.</p>	<p>1. State Coastal Zone Management Authorities (CZMA) located at the state capital 2. District Level Coastal Committee (DLCC) [under the District Collector]</p>	<p>1. Section 3 (x) 2. MoEFCC Office Memorandum dated 18.11.2011</p>
<p>6. Environment Impact Assessment Notification, 2006 Check whether the activity has obtained the environment clearance. If yes, check if there is a violation of a specific condition of an environment clearance letter. A mining activity including that of sand, even on 5 ha of land has to take an environment clearance.</p>	<p>1. State Environment Impact Assessment Authority (if category B project) 2. MoEFCC (if category A project)</p>	<p>1. Schedule of the EIA Notification 2. Appendix IV 3. MoEFCC Office Memorandum dated 2.7.2007</p>
<p>7. Mines and Minerals (Development and Regulation) Act, 1957 Check whether the activity has obtained the mining lease.</p>	<p>1. State Mining and Geology Department</p>	<p>States have their own mining acts and policies for minor minerals and get copy of mining lease agreement</p>
Court Orders		
<p>Supreme Court order in Deepak Kumar v. State of Haryana, (2012) 4 SCC 629 for mining of minor minerals under 5 ha requiring EIA approval.</p>	<p>1. Ministry of Environment Forests and Climate Change</p>	<p>Refer to section on EIA Notification, 2006</p>
<p>National Green Tribunal Order in (OA No.171 of 2013) for sand mining requiring environment clearance.</p>	<p>1. Ministry of Environment Forests and Climate Change 2. State Environment Departments</p>	<p>Stay on all sand mining operations till environment approval obtained</p>

स्वीकृतियां, अधिकार और सहमति संबंधित कानून		
<p>4. पंचायत या नगरपालिका से अनापत्ति: जांच करें कि संबंधित पंचायत या नगरपालिका से अनापत्ति प्रमाण पत्र लिया गया है या नहीं।</p>	<p>1. सरपंच/पंचायत प्रमुख 2. निर्वाचित नगर निगम पार्षद/नगर निगम आयुक्त</p>	<p>हर राज्य का अपना पंचायत अधिनियम होता है।</p>
<p>5. तटीय विनियमन क्षेत्र अधिसूचना, 2011 (CRZ): जांच करें कि सी.आर.ज़ेड क्षेत्र में इस प्रकार के निर्माण की अनुमति है या नहीं।</p>	<p>1. राज्य तटीय क्षेत्र प्रबंधन प्राधिकरण (CZMA) जो राज्य की राजधानी में स्थित होता है 2. ज़िला स्तरीय तटीय कमिटी (DLCC), ज़िला कलेक्टर के अंतर्गत</p>	<p>1. धारा 3 (x) 2. MoEFCC का 18.11.2011 को जारी किया गया आफिस मेमोरेन्डम</p>
<p>6. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006: जांच करें कि इस गतिविधि के लिए पर्यावरण मंजूरी ली गई है या नहीं। अगर हां, तो वे पर्यावरण मंजूरी की किसी शर्त का उल्लंघन कर रहे हैं या नहीं। किसी भी प्रकार की खनन गतिविधि, जिसमें रेत का खनन भी शामिल है, चाहे वह 5 हैक्टेयर की भूमि पर भी हो, उसके लिए पर्यावरण स्वीकृति लेना अनिवार्य है।</p>	<p>1. राज्य पर्यावरण प्रभाव आंकलन प्राधिकरण (SEIAA), यदि बी श्रेणी की परियोजना है 2. MoEFCC, अगर ए श्रेणी की परियोजना है</p>	<p>1. EIA अधिसूचना की अनुसूची 2. EIA अधिसूचना, 2006 परिशिष्ट IV 3. MoEFCC द्वारा जारी किया गया 2.7.2007 का ऑफिस मेमोरेन्डम</p>
<p>7. खान और खनिज (विकास और विनियमन) अधिनियम, 1957: जांचें कि इस गतिविधि के लिए खनन लीज़ ली गई है या नहीं।</p>	<p>1. राज्य खनन और भूगोल विज्ञान विभाग</p>	<p>राज्यों के सूक्ष्म खनिजों के लिए अपने खनन अधिनियम और नीतियां होती हैं और खनन लीज़ अनुबंध की प्रति भी प्राप्त करें</p>
कोर्ट आदेश		
<p>दीपक कुमार बनाम. हरयाणा राज्य, (2012) 4 SCC 629 सर्वोच्च न्यायालय आदेश: 5 हैक्टेयर से कम क्षेत्र से सूक्ष्म खनिजों के खनन के लिए EIA स्वीकृति की ज़रूरत संबंधित</p>	<p>1. पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय</p>	<p>EIA अधिसूचना, 2006 के अंश को देखें</p>
<p>नैशनल ग्रीन ट्राइब्यूनल आदेश (2013 की OA संख्या 171) जो रेत खनन के लिए पर्यावरण स्वीकृति के विषय में है</p>	<p>1. पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय 2. राज्य पर्यावरण विभाग</p>	<p>रेत खनन की सभी गतिविधियों पर रोक, जब तक कि वे पर्यावरण स्वीकृति प्राप्त नहीं कर लेते</p>

SCENARIO 8

What is the complaint?

A group of people has approached a community worker regarding a mine near their village which is pumping out water from a stream to use within a factory premises. They don't know what the nature of the use within the premises is and whether the owners have the permission to do this. For the last eight months or so they have seen a pipeline constructed to draw this water. Since the same stream irrigates the rice fields in the area, they are worried that the water in the stream will deplete and won't be available for cultivation. They say that they have already noticed some signs of the water flow being reduced, despite good rains in the current year.

Is a law or legal condition being violated?

Mining, power generation and industrial operations require specific permissions to draw both surface as well as ground water. In the present case since the water is being drawn from a stream, it will attract the legal provisions related to surface water. Each state might also have its defined limits for drawing water for agriculture, domestic or industrial purposes, which would be important to ascertain.

Law	Corresponding Institution and Officials	Clauses
Permissions, Rights and Consents related laws		
1. Environment Impact Assessment Notification, 2006: Check whether the activity has obtained the environment clearance. If yes, check if there is a violation of a specific condition of an environment clearance letter.	1. State Environment Impact Assessment Authority (if category B project) 2. MoEFCC (if category A project)	Section 2 Environmental Clearance letters mention the amount of water to be required by the industry and the source. It would also have specific condition related to drawl of water and destruction of water sources.
2. Water (Prevention and Control of Pollution) Act, 1974, as amended (under which consent to operate is sought, for which the project has to disclose the sources of water)	State Pollution Control Board or its nearest regional office	Section 26 (in case the company has not complied with condition of the consent to operate). Section 33A where the SPCB can give directions for closure or stopping water, electricity supply in case of violation. Conditions of the Consent to Operate where specifics of the water source would be mentioned.

स्थिति 8

शिकायत क्या है?

सामूदायिक कार्यकर्ता के पास कुछ लोग अपने गांव की एक खान का मुद्दा लेकर आते हैं, जो अपनी फैक्ट्री में उपयोग के लिए एक झरने से पानी पंप कर रही है। उन्हें नहीं पता कि फैक्ट्री में वे पानी का किस लिए उपयोग करते हैं और इसके लिए उन्होंने किसी से इजाजत ली है या नहीं। पिछले करीब 8 महीनों से वे देख रहे हैं कि यह पानी लाने के लिए पाइपलाइन बिछाई जा रही है। गांव वाले इसी झरने के पानी से अपने धान के खेतों की सिंचाई करते हैं, ओर उन्हें डर है कि पाइपलाइन के कारण झरने में पानी कम हो जाएगा और उन्हें सिंचाई के लिए पर्याप्त नहीं रहेगा। उनका कहना है कि वर्तमान वर्ष में बारिश अच्छी होने के बावजूद, अभी से पानी में कमी आने लगी है।

क्या किसी कानून या कानूनी प्रावधान का उल्लंघन हो रहा है?

खनन, विद्युत परियोजनाएं और औद्योगिक उपक्रमों में ज़मीन से पानी निकालने के लिए कुछ विशिष्ट स्वीकृतियां लेनी पड़ती हैं। इस मामले में चूंकि एक झरने से पानी लिया जा रहा है, यहां पर सतह पर बहने वाले पानी संबंधित कानूनी प्रावधान लागू होते हैं। हर राज्य के खेती, घरेलू या औद्योगिक उपयोग के लिए पानी लेने की अपनी निर्धारित सीमाएं भी हो सकती हैं, जिन्हें देखना भी ज़रूरी होगा।

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
स्वीकृतियां, अधिकार और सहमति संबंधित कानून		
1. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006: जांच करें कि इस गतिविधि के लिए पर्यावरण मंजूरी ली गई है या नहीं। अगर हां, तो वे पर्यावरण मंजूरी की किसी शर्त का उल्लंघन कर रहे हैं या नहीं।	1. राज्य पर्यावरण प्रभाव आंकलन प्राधिकरण (SEIAA), यदि बी श्रेणी की परियोजना है 2. MoEFCC, अगर ए श्रेणी की परियोजना है	धारा 2 पर्यावरण मंजूरी के पत्र में स्पष्ट लिखा होता है कि उद्योग के लिए कितने पानी की जरूरत है और वह कहाँ से आएगा। उसमें पानी लेने और स्रोत के विनाश संबंधी विशिष्ट शर्तें भी दी होंगी।
2. जल (प्रदूषण पर प्रतिबंध और नियंत्रण) अधिनियम, 1974, संशोधित: जिसके अंतर्गत उद्योग चलाने की स्वीकृति ली जाती है, जिसके लिए परियोजना को अपने पानी के स्रोतों की जानकारी देनी पड़ती है।	राज्य प्रदूषण नियंत्रण बोर्ड और उसके क्षेत्रीय कार्यालय	धारा 26 (अगर कंपनी ने उद्योग चलाने के लिए स्वीकृति लेने की शर्त का उल्लंघन किया है) धारा 33 A, जहां राज्य प्रदूषण नियंत्रण बोर्ड कानून का उल्लंघन करने पर पानी और बिजली की आपूर्ति बंद करने के आदेश दे सकती है। उद्योग चलाने के लिए अनुमति में दी गई शर्तें जिनमें पानी के स्रोत के बारे में लिखा होगा।

Site specific laws		
3. ESA, CVCA, CEPI: Whether any special orders, notifications or guidelines have been issued to restrict drawl of water activity in a notification for SA, CVCA, Critically Polluted Area	1. Ministry of Environment, Forests and Climate Change 2. ESA Management Committee 3. State Coastal Zone Management Authority 4. Pollution Control Board	1. Section 3 (2) v of the EPA, 1986 2. Section 4 of the CRZ Notification, 2011 3. Section 19 of Air Act, 1981 or Water Act, 1974
State Specific Laws (Example)		
4. Odisha Pani Panchayat Act, 2002: The panchayat can levy fine if any damage to the irrigation system or water is caused.		Clause 23

SCENARIO 9

What is the complaint?

A group of artisanal fishermen has contacted a paralegal with the issue that mechanized bull trawlers are being used in an area, which is otherwise used by artisanal and small boats. The practice of 'bull trawling' is both, restricting the space for the small boats, as well as reducing the fish catch in the area where these boats can fish. For the last few years, their numbers are only on the rise. Small and marginal fisher folk want a restriction on the practice of bull trawling, especially in areas where they are coming in conflict with the small boats.

Is a law or legal condition being violated?

The main legislation, which comes into play here, is the Fisheries Act, which differs in each state. There are also orders from the Department of Fisheries in each state demarcating the zones (through nautical miles into the sea), where different kinds of fishing practices will operate or be banned. The clauses of CRZ Notification, 2011 could also be looked into as it regulates the use of water areas as well.

Law	Corresponding Institutions and Officials	Clauses
1. State Marine Fisheries Act: Check whether it regulates movement of bull trawlers and mechanized boating in certain areas.	State Department of Fisheries	Karnataka Marine Fisheries Act, 1986: section 3, 4, 5, 7, 11 and 13 Karnataka State Govt. Order of 1994

स्थल-विशिष्ट कानून		
3. ESA, CVCA, CEPI: जांच करें कि क्या पानी निकलने के लिए ESA, CVCA, गंभीर रूप से प्रदूषित क्षेत्र आदि के अंतर्गत कोई विशेष आदेश या दिशानिर्देश जारी किए गए हैं या नहीं	1. पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय 2. ESA प्रबंधन कमिटी 3. तटीय क्षेत्र विनियमन प्राधिकरण 4. प्रदूषण नियंत्रण बोर्ड	1. EPA, 1986 की धारा 3(2)v 2. CRZ अधिसूचना, 2011 की धारा 4 3. वायु अधिनियम, 1981 या जल अधिनियम, 1974 की धारा 19
राज्य-विशिष्ट कानून (उदाहरण)		
4. ओडिशा पानी पंचायत अधिनियम, 2002: पंचायत किसी सिंचाई व्यवस्था या पानी के स्रोत को नुकसान होने पर जुर्माना लगा सकती है।		धारा 23

स्थिति 9

शिकायत क्या है?

कुछ पारंपरिक मछुआरों ने पैरालीगल से मिलकर उसे बताया कि जहां वे अपनी छोटी नावों के साथ मछली पकड़ा करते थे, उस क्षेत्र में अब मशीनी बुल ट्रॉलर आकर मछली पकड़ने लगे हैं। बुल ट्रॉलरों की वजह से न सिर्फ उनकी छोटी नावों के लिए जगह कम पड़ गई है, बल्कि वहां से उन्हें पर्याप्त मछली की मात्रा भी नहीं मिलती। पिछले कुछ सालों से, इन ट्रॉलरों की संख्या बढ़ती ही जा रही है। छोटे और हाशिए के मछुआरे चाहते हैं कि बुल ट्रॉलरों पर प्रतिबंध लगाया जाए, खासकर उन क्षेत्रों में जहां वे छोटी नावों के रास्ते में आ रहे हैं।

क्या किसी कानून या कानूनी प्रावधान का उल्लंघन हो रहा है?

इस स्थिति में सबसे महत्वपूर्ण कानून है मत्स्य अधिनियम, जो हर राज्य के लिए अलग है। इसके अलावा, हर राज्य के मत्स्य विभाग के विभिन्न आदेश हैं, जिनमें अलग अलग प्रकार के मछली पकड़ने के तरीकों के लिए क्षेत्रों का सीमांकन (समुद्र में नॉटिकल माइल्स के आधार पर) किया गया है, जहां पर किसी तरीके के लिए इजाजत है या किसी पर प्रतिबंध है। CRZ अधिसूचना, 2011 को भी देखा जा सकता है क्योंकि उसमें भी पानी के क्षेत्रों के विनियमन संबंधी प्रावधान हैं।

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
1. राज्य समुद्री मत्स्य अधिनियम: जांच करें कि उसमें कुछ क्षेत्रों में बुल ट्रॉलरों के आवागमन और मशीनी नावों पर नियंत्रण है या नहीं।	राज्य मत्स्य विभाग	कर्नाटक समुद्री मत्स्य अधिनियम, 1986 : धारा 3,4,5,7,11 और 13 कर्नाटक राज्य सरकार का 1994 का आदेश

2. Department of Fisheries Circulars/Directions	State Department of Fisheries	Look for circulars or directions within each state's marine fisheries regulations to see if there are restrictions on particular fishing practices or horse power of particular boats used for bull trawling
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2. मत्स्य विभाग के परिपत्र/ दिशानिर्देश	राज्य मत्स्य विभाग	हर राज्य के समुद्री मत्स्य विनियमन कानूनों के अंतर्गत जारी किए गए परिपत्रों या दिशानिर्देशों में देखें कि किसी एक प्रकार के मछली पकड़ने के तरीके पर कोई प्रतिबंध है या नहीं, या फिर बुल ट्रॉलरों की मशीन के हॉर्स पावर पर।
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SCENARIO 10

What is the complaint?

A group of tribal people has been approached by a nearby manufacturing plant to purchase agricultural land for the purpose of expanding their operations and constructing a captive power plant within the premises. On one hand the tribal people don't want to sell their land; on the other, they don't want the premises to expand its operations, as it will be much closer to the human settlement than it is currently. They have approached a community worker or paralegal to understand the legalities and their options for remedy.

Is a law or legal condition being violated?

There are constitutional protections for the sale of land owned by a tribal person to a non-tribal. In this case the project authority might be a non-tribal and therefore cannot directly purchase this land. It would need to be seen if they are doing it in partnership with other tribals from the area, or have used them as a medium of purchase.



Photo credit: Kanchi Kohli / चित्र का श्रेय: कांची कोहली

स्थिति 10

शिकायत क्या है?

पास के एक उत्पादन उद्योग ने आदिवासियों के एक समूह से अपना उद्योग बढ़ाने और उसके अंदर ही एक विद्युत योजना बनाने के लिए उनकी खेती की ज़मीन खरीदने के लिए बात की है। एक तरफ तो आदिवासी लोग अपनी ज़मीन बेचने के लिए तैयार नहीं हैं, और दूसरी ओर, वे नहीं चाहते कि यह उद्योग अपनी सीमा बढ़ाए, क्योंकि फिर वह उनकी बस्ती के और भी पास आ जाएगा, जो वे नहीं चाहते। उन्होंने एक सामुदायिक कार्यकर्ता/पैरालीगल से मिलकर कानूनी प्रावधानों को समझने और हल निकालने के विकल्पों के बारे में बात की।

क्या किसी कानून या कानूनी प्रावधान का उल्लंघन हो रहा है?

किसी भी आदिवासी की ज़मीन को किसी गैर-आदिवासी को बिक्री से रोकने के लिए संवैधानिक प्रावधान उपलब्ध हैं। इस मामले में उद्योगपति गैर-आदिवासी हो सकता है, अतः वह कानूनी तरीके से यह ज़मीन नहीं खरीद सकता। यह समझना होगा कि क्या वह क्षेत्र के अन्य आदिवासियों के साथ मिलकर यह कर रहे हैं, या यह ज़मीन खरीदने के लिए उनका इस्तेमाल कर रहे हैं या नहीं।

Law	Corresponding Institution and Officials	Clauses
Special Protection Laws		
1. Panchayat (Extension in Scheduled Areas) Act (PESA), 1996 Check if the permission of the Gram Sabha has been obtained for the Schedule Areas for setting up of the unit and its expansion.	1. Gram Sabha 2. Sarpanch	Section 4 (i), Section 4 (m) (i), Section 4 (d)
2. PESA Act, 1996 (Provides constitutional protection and restricts purchase of land owned by a tribal by a non-tribal).	District Collector	Clause m (iii)
Permissions, Rights and Consents related laws		
3. Environment Impact Assessment Notification, 2006 Check whether the project authority has initiated a process for expansion. Also check if the conditions for the existing unit have been complied with.	1. State Environment Impact Assessment Authority (if category B project) 2. MoEFCC (if category A project)	Section 2 Schedule of the EIA Notification depending on the nature of the manufacturing unit Appendix IV on Public Hearing
4. Forest Conservation Act, 1980: Check whether the construction is being carried out on forestland and if permission for forest diversion is required.	1. Divisional Forest Officer 2. Ministry of Environment and Forests (Regional and New Delhi office)	Section 2 of the FCA, 1980
5. Forest Rights Act, 2006: Check whether there are any pending individual or community forest rights claims and if the consent of a gram sabha has been sought prior to forest diversion.	1. Forest Rights Committee 2. Gram Panchayat 3. District Collector	3.8.2009 circular issued by MoEFCC

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
विशिष्ट सुरक्षा कानून		
1. पंचायत (अनुसूचित क्षेत्रों के लिए विस्तारित) अधिनियम (PESA), 1996: जांच करें कि अनुसूचित क्षेत्र में उद्योग लगाने और उसके विस्तारीकरण के लिए ग्राम सभा से स्वीकृति ली गई है या नहीं।	1. ग्राम सभा 2. सरपंच	धारा 4 (i), धारा 4 (m)(i), धारा 4 (d)
2. पेसा अधिनियम, 1996 (गैर-आदिवासी को आदिवासी की ज़मीन बेचे जाने पर प्रतिबंध और संवैधानिक सुरक्षा)	ज़िला कलेक्टर	धारा m (iii)
स्वीकृतियां, अधिकार और सहमति संबंधित कानून		
3. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006: जांच करें कि उद्योग के विस्तारीकरण की प्रक्रिया शुरू कर दी गई है या नहीं। यह भी जांच करें कि पहले से बने उद्योग के लिए दी गई शर्तों की अनुपालना की गई है या नहीं।	1. राज्य पर्यावरण प्रभाव आंकलन प्राधिकरण, यदि बी श्रेणी की परियोजना है 2. MoEFCC, अगर ए श्रेणी की परियोजना है	धारा 2 EIA अधिसूचना की उत्पादन उद्योग की किस्म के अनुसार अनुसूचि जन सुनवाई संबंधित परिशिष्ट IV
4. वन संरक्षण अधिनियम, 1980 (FCA): जांच करें कि निर्माण कार्य वन भूमि पर हो रहा है या नहीं और क्या इसके लिए वन भूमि हस्तांतरण की स्वीकृति लेना ज़रूरी है।	1. वन मण्डल अधिकारी 2. पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय (MoEFCC) (क्षेत्रीय और नई दिल्ली)	FCA, 1980 की धारा 2
5. वन अधिकार अधिनियम, 2006: जांच करें कि कोई व्यक्तिगत या सामुदायिक वन अधिकार दावे बाकी तो नहीं हैं और वन भूमि हस्तांतरण से पहले ग्राम सभा की सहमति प्राप्त की गई है या नहीं।	1. वन अधिकार कमिटी 2. ग्राम पंचायत 3. ज़िला कलेक्टर	MoEFCC द्वारा जारी किया गया 3.8.2009 का परिपत्र

SCENARIO 11

What is the complaint?

The youth group from a village living next to a coal-based plant has been in an argument with the managers working at the unit. It claims that fumes from the cooling stacks are impacting the horticultural produce and causing respiratory difficulty for people living close to the fertilizer plant. In a recent training program conducted by a local NGO, they have learnt that the power plant has been asked to do a full study on air quality modeling and report it to the Pollution Control Board. The youth group does not really know what to do with this information and what it really implies. They have approached a community paralegal for help.

Is a law or legal condition being violated?

Thermal Power plants have to take permissions related to environmental impacts and pollution control from different regulatory agencies. Once granted, these permissions list out the technological input the plant would require in order to reduce emissions. It would also have specific provisions related to how air quality monitoring should be carried out and how many monitoring stations should be set up. Other than emissions, power plants can also cause air pollution through the indiscriminate dumping of fly ash generated in the process of power generation.



Photo credit: Kanchi Kohli / चित्र का श्रेय: कांची कोहली

स्थिति 11

शिकायत क्या है?

एक कोयला-आधारित संयंत्र के पास के गांव के युवा समूह का उसके प्रबंधकों के साथ झगड़ा चल रहा है। समूह का कहना है कि कूलिंग स्टैक से उठने वाले धुंए से उनके फलों के बगीचों के उत्पादन पर प्रभाव पड़ रहा है और फर्टिलाइज़र प्लांट के पास रहने वाले लोगों को सांस की बीमारियां हो रही हैं। एक स्थानीय संस्था द्वारा हाल में आयोजित प्रशिक्षण कार्यक्रम के द्वारा उन्हें पता चला कि इस विद्युत परियोजना से वायु गुणवत्ता पर विस्तृत अध्ययन करने के लिए कहा गया है और इसकी रिपोर्ट प्रदूषण नियंत्रण बोर्ड को देनी है। युवा समूह को पता नहीं है कि वे इस जानकारी का क्या करें और इसका मतलब क्या है। उन्होंने सामुदायिक पैरालीगल से मदद मांगी है।

क्या किसी कानून या कानूनी प्रावधान का उल्लंघन हो रहा है?

ताप विद्युत संयंत्रों को अलग-अलग एजेंसियों से पर्यावरणीय प्रभावों और प्रदूषण नियंत्रण संबंधी स्वीकृतियां लेनी पड़ती हैं। एक बार यह स्वीकृति मिल जाने के बाद, इनमें तकनीकी बिंदु दिए जाते हैं, जिनके आधार पर संयंत्र से होने वाले उत्सर्जन को कम किया जा सके। इसमें कुछ विशिष्ट प्रावधान भी होते हैं, जिनके आधार पर संयंत्र वायु गुणवत्ता पर निगरानी रखता है और यह भी कि कितने निगरानी स्टेशन बनाने ज़रूरी हैं। उत्सर्जन के अलावा, विद्युत संयंत्रों से पलाई ऐश को जगह जगह फेंके जाने के कारण भी वायु प्रदूषण फैलता है।

Law	Corresponding Institution and Officials	Clauses
Permissions, Rights and Consents related laws		
1. EIA Notification, 2006: Environment clearance for thermal power plants.	1. State Environment Impact Assessment Authority (SEIAA) if Category B project 2. MoEFCC if Category A project	Schedule of the EIA Notification and specifically Sections 1 (d) Section 2 of the EIA Notification, 2006 and related procedures Specific conditions related to setting up of air quality monitoring stations
2. Air (Prevention and Control of Pollution) Act was enacted in 1981 (for consent to establish and operate)	State Pollution Control Board	Section 17 (1) (e); Section 17 (1) (f) (for inspections and monitoring); Section 18 (on power to give directions against violations) Specific conditions related to technology for pollution control and setting up of air quality monitoring stations
3. Fly ash Notification, 1999 (amendments discussed in 2014 meeting)	1. State Pollution Control Board 2. Ministry of Environment, Forests and Climate Change	Notification regulating the disposal of fly ash to minimize impact
Site Specific Laws		
4. ESA, CVCA, CEPI: Whether any special orders, notifications or guidelines have been issued to protect, conserve this area or restrict activity like, ESA, CVCA, Critically Polluted Area and so on	1. Ministry of Environment, Forests and Climate Change 2. Coastal Zone Management Authority 3. Pollution Control Board	1. Section 3 (2) v of the EPA, 1986 2. Section 4 of the CRZ Notification, 2011 3. Section 19 of Air Act, 1981

SCENARIO 12

What is the complaint?

On her way to office, a community worker stops at a village well and joins the conversation of a group of women who have come there to collect water. The conversation veers to the declining level of water in the well. This is despite a good monsoon that they witnessed

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
स्वीकृतियां, अधिकार और सहमति संबंधित कानून		
1. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006: ताप विद्युत संयंत्र के लिए पर्यावरण मंजूरी।	1. राज्य पर्यावरण प्रभाव आंकलन प्राधिकरण (SEIAA), यदि बी श्रेणी की परियोजना है 2. MoEFCC, अगर ए श्रेणी की परियोजना है	EIA अधिसूचना की अनुसूची और धारा 1 (d) EIA अधिसूचना, 2006 की धारा 2 और संबंधित प्रक्रियाएं वायु गुणवत्ता निगरानी स्टेशन स्थापित करने के लिए विशिष्ट शर्तें
2. वायु (प्रदूषण पर प्रतिबंध और नियंत्रण) अधिनियम वर्ष 1981 में बनाया गया (स्थापित करने और संयंत्र चलाने की सहमति के संबंध में)	राज्य प्रदूषण नियंत्रण बोर्ड	धारा 17(1)(e)(धारा 17 (1)(f) (जांच और निगरानी के लिए) धारा 18 (उल्लंघनों के खिलाफ निर्देश देने के अधिकार) प्रदूषण नियंत्रण और वायु गुणवत्ता निगरानी स्टेशन स्थापित करने संबंधी विशिष्ट शर्तें
3. फलाई ऐश अधिसूचना, 1999 (2014 की बैठक में संशोधनों पर चर्चा की गई)	1. राज्य प्रदूषण नियंत्रण बोर्ड 2. पर्यावरण, वन एवं जलवायु मंत्रालय	प्रभावों को न्यूनतम रखने के लिए फलाई ऐश फेंकने से संबंधित अधिसूचना
स्थल-विशिष्ट कानून		
4. ESA, CVCA, CEPI: जांच करें कि क्या इस क्षेत्र के संरक्षण के लिए कोई विशेष आदेश या दिशानिर्देश जारी किए गए हैं या नहीं, जैसे कि ESA, CVCA, गंभीर रूप से प्रदूषित क्षेत्र आदि के अंतर्गत।	1. पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय (MoEFCC) 2. तटीय क्षेत्र विनियमन प्राधिकरण (CZMA) 3. प्रदूषण नियंत्रण बोर्ड	1. EPA, 1986 की धारा 3(2) v 2. CRZ अधिसूचना, 2011 की धारा 4 3. वायु अधिनियम, 1981 की धारा 19

स्थिति 12

शिकायत क्या है?

एक सामुदायिक कार्यकर्ता अपने दफ्तर जाते समय गांव के कुएं पर रुक कर, वहां पानी भरने आई औरतों की बातों में जुड़ जाती है। बातों-बातों में कुएं के पानी का स्तर गिरने की बात सामने आती है। हालांकि इस साल मानसून में अच्छी बारिश रही, उसके बावजूद पानी का स्तर गिरा। औरतों में

this year. One of them laments about the fact that a nearby chemical plant has dug several borewells in its premises, which she believes might be impacting the level of water in the well. Upon being asked whether she is sure of this, she affirms but is not able to prove it. The community worker probes further, but the women are not able to give any specifics except refer to information from one of their family members who works at the plant as an electrician.

Is a law or legal condition being violated?

Industrial operations such as the above often require specific permissions to draw both, surface as well as groundwater. In the present case since ground water is being drawn, it will attract the legal provisions that relate to ground water extraction. Permissions to draw ground water are granted by the central groundwater authority's regional office in the state. One could also check how the project area is categorized in the Ground Water Resource Estimation done in 2011 (or the latest estimation done by the Central Ground Water Board). This estimation categorises areas as safe, semi-critical, critical and over-exploited. Consent to operate issued by the State Pollution Control Board and Environment Clearance letters issued by the MoEFCC to the plant usually have conditions related ground water drawl, which could be referred to.

Law	Corresponding Institution and Officials	Clauses
Permissions, Rights and Consents related laws		
1. Environment Impact Assessment Notification, 2006 Check whether the activity has obtained the environment clearance. If yes, check if there is a violation of a specific condition of an environment clearance letter.	1. State Environment Impact Assessment Authority (if category B project) 2. MoEFCC (if category A project)	Section 10 on monitoring and compliance. Environmental Clearance letters mention the amount of water to be required by the industry and the source. It would also have specific condition related to withdrawal of water and the number of bore wells allowed for the same.
2. Water (Prevention and Control of Pollution) Act, 1974, as amended (under which consent to operate is sought, for which the project has to disclose the sources of water)	State Pollution Control Board or its nearest regional office	Section 26 (incase the company has not complied with condition of the consent to operate) Section 33A where the SPCB can give directions for closure or stopping water, electricity supply in case of violation Conditions of the Consent to Operate where specifics of the water source would be mentioned

से एक ने कहा कि पास के रासायनिक उद्योग ने अपने प्रांगण में कई बोरवेल खोद रखे हैं, और उसे लगता है कि इसी कारण से उनके कुएं के पानी का स्तर गिर गया है। उससे जब पूछा गया कि उसे यह पक्की जानकारी है, तो उसने कहा कि जानकारी पक्की है लेकिन उसके पास सबूत नहीं हैं। सामुदायिक कार्यकर्ता उससे और जानकारी लेने की कोशिश करती है, पर उसके पास और कोई जानकारी नहीं है और वह कहती है कि उसे यह जानकारी उसके परिवार के एक सदस्य से मिली है, जो कैमिकल प्लान्ट में बिजली का काम देखता है।

क्या किसी कानून या कानूनी प्रावधान का उल्लंघन हो रहा है?

ऐसे औद्योगिक संयंत्रों के लिए सतह से या ज़मीन का पानी निकालने संबंधी विशिष्ट स्वीकृतियां लेनी होती हैं। इस मामले में, चूंकि ज़मीन से पानी निकाला जा रहा है, इसके लिए ज़मीनी पानी संबंधित कानूनी प्रावधान लागू होंगे। ज़मीन से पानी निकालने के लिए केन्द्रीय भूजल प्राधिकरण के राज्य में स्थित क्षेत्रीय कार्यालय से स्वीकृति लेनी होती है। जांच करनी होगी कि वर्ष 2011 में की गई भूजल संसाधन अनुमान प्रक्रिया (या फिर केन्द्रीय भूजल बोर्ड द्वारा तैयार किए गए हाल के अनुमान) में इस क्षेत्र को किस श्रेणी में श्रेणीबद्ध किया गया था। इस श्रेणीबद्धता में क्षेत्रों को सुरक्षित, अर्ध-गंभीर, गंभीर और अति-शोषित श्रेणियों में बांटा जाता है। राज्य प्रदूषण बोर्ड द्वारा दी गई संयंत्र चलाने की अनुमति और MoEFCC द्वारा जारी किए गए पर्यावरण स्वीकृति पत्रों में आम तौर पर भूजल निकालने संबंधी शर्तें होती हैं, जिन्हें देखा जा सकता है।

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
स्वीकृतियां, अधिकार और सहमति संबंधित कानून		
1. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006: जांच करें कि इस गतिविधि के लिए पर्यावरण मंजूरी ली गई है या नहीं। अगर हां, तो फिर वे पर्यावरण मंजूरी की किसी शर्त का उल्लंघन कर रहे हैं या नहीं।	1. राज्य पर्यावरण प्रभाव आंकलन प्राधिकरण, यदि बी श्रेणी की परियोजना है 2. MoEFCC, अगर ए श्रेणी की परियोजना है	जांच और अनुपालना संबंधित धारा 10 पर्यावरण स्वीकृति पत्र में स्पष्ट लिखा होता है कि संयंत्र को कितने पानी की ज़रूरत है और वह उसे कहां से मिलेगा। उसमें पानी निकालने के संबंध में भी शर्तें दी गई होंगी और यह भी कि वह पानी निकालने के लिए कितने बोरवैल खोद सकते हैं।
2. जल (प्रदूषण पर प्रतिबंध और नियंत्रण) अधिनियम, 1974, संशोधित (जिसके अंतर्गत संयंत्र चलाने की अनुमति ली जाती है, जिसके लिए परियोजना को पानी के स्रोतों की जानकारी देनी पड़ती है)	राज्य प्रदूषण नियंत्रण बोर्ड या उसका नज़दीकी क्षेत्रीय कार्यालय	धारा 26 (अगर संयंत्र चलाने के लिए दी गई शर्तों की अनुपालना नहीं हुई है) धारा 33 A, जहां SPCB पानी, बिजली आपूर्ति बंद करने के निर्देश दे सकती है, अगर संयंत्र चलाने की शर्तों (जिनमें पानी के स्रोत की जानकारी दी गई होगी) का उल्लंघन हुआ है।

<p>3. Guidelines/Criteria for evaluation of proposals/ requests for groundwater abstraction: Check whether the industry is categorised as water intensive. Whether the industry is allowed in that category of the site. If yes, check whether it has an appropriate NoC to draw water. Also check if there is a specific violation of any condition of the NoC.</p>	<ol style="list-style-type: none"> District Collector/ Municipality head. Regional office of Central Ground Water Board 	<p>Section 3, 7 & 8 Issuance of NoC for drawl of water Section 6 (b) (in case the industry has not complied with the conditions mentioned in the NoC)</p>
<p>Site specific laws</p>		
<p>4. ESA, CVCA, CEPI: Whether any special orders, notifications or guidelines have been issued to restrict drawal of water activity in a notification for ESA, CVCA, Critically Polluted Area</p>	<ol style="list-style-type: none"> Ministry of Environment, Forests and Climate Change ESA Management Committee State Coastal Zone Management Authority Pollution Control Board 	<ol style="list-style-type: none"> Section 3 (2) v of the EPA, 1986 Section 4 of the CRZ Notification, 2011 Section 19 or Air Act, 1981 or Water Act, 1974

<p>3. भूजल निकासी के लिए दिशानिर्देश/ प्रस्तावों की जांच करने के मापदंड/ अनुमति के अनुरोध: जांच करें कि क्या उद्योग गहन पानी उपयोग के अंतर्गत श्रेणीबद्ध है या नहीं। क्या उस उद्योग को उस स्थल पर लगाए जाने की अनुमति है या नहीं। अगर हां, तो जांच करें कि पानी निकालने के लिए उनके पास उचित अनापत्ति प्रमाण पत्र हैं या नहीं। यह भी जांचें कि अनापत्ति प्रमाण पत्र की किसी शर्त का उल्लंघन हो रहा है या नहीं।</p>	<ol style="list-style-type: none"> ज़िला कलेक्टर/ नगरपालिका अध्यक्ष केन्द्रीय भूजल बोर्ड का क्षेत्रीय कार्यालय 	<p>धारा 3,7 और 8 पानी निकालने के लिए अनापत्ति प्रमाण पत्र धारा 6 (b) (अगर अनापत्ति प्रमाण पत्र की शर्तों का उल्लंघन हुआ है)</p>
<p>स्थल-विशिष्ट कानून</p>		
<p>4. ESA, CVCA, CEPI: जांच करें कि क्या पानी लेने को प्रतिबंधित करने के लिए कोई विशेष आदेश या दिशानिर्देश जारी किए गए हैं या नहीं, जैसे कि ESA, CVCA, गंभीर रूप से प्रदूषित क्षेत्र आदि के अंतर्गत।</p>	<ol style="list-style-type: none"> पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय ESA प्रबंधन कमिटी तटीय क्षेत्र विनियमन प्राधिकरण प्रदूषण नियंत्रण बोर्ड 	<ol style="list-style-type: none"> EPA, 1986 की धारा 3(2)v CRZ अधिसूचना, 2011 की धारा 4 वायु अधिनियम, 1981 या जल अधिनियम, 1974 की धारा 19

LAWS AND LEGAL CLAUSES

This section attempts to highlight some clauses of environment, forest and other laws, which have been referred to in the handbook. It does not claim to be a comprehensive list of the legal hooks available for users of this handbook, environmental paralegals and community organisers in addressing environment and social impacts of non-compliance.

1. The Environment (Protection) Act, 1986 (EPA 1986)

This is as an umbrella act that extends to water, air and land and the inter-relationship of these with each other and with human beings, other living creatures, plants, animals, microorganisms and property. The act provides for the protection and improvement of environment and prevention of hazards to and living beings and property.

- ◆ **Sections 3 (1) and 3 (2) (v) empower the Central Government to take any measure to control pollution and protect and improve the environment.**

Section 3 (1): "Subject to the provisions of this Act, the Central Government shall have powers to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution."

Section 3 (2) (v): "In particular, and without prejudice to the generality of the provisions of the sub-section (i), such measures may include measures with respect to all or any of the following matters, namely:-

(v) restriction of areas in which any industries, operations, of processes, or class of industries, operations, or processes shall not be carried out or shall be carried out subject to certain safeguards;"

- ◆ **Section 5 empowers the Central Government to direct closure or stoppage of any activity or cutting of electricity, water, or any other supply to it.**

Section 5: "Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

Explanation: For the avoidance of doubts, it is hereby declared that the power to issue directions under this section, includes the power to direct:

- (a) the closure, prohibition or regulation of any industry, operation or process; or
- (b) stoppage or regulation of the supply of electricity or water or any other service."

- ◆ **Section 7** prohibits the discharge or emission of any environmental pollutant in excess of the prescribed standards.
- ◆ **Section 8** prohibits handling of any harmful substances unless in accordance with the procedure and safeguards specified.

- ◆ **Section 15** relates to the penalties for the contravention of any provisions of the EPA or Rules, Guidelines Notifications issued under it. Violation of any of these can lead to imprisonment up to five years or fine of Rs. 1 lakh. If violation continues the fine can extend to five thousand rupees for each day the violation has taken place.

2. The Environment Impact Assessment (EIA) Notification, 2006

This notification lays out the process of seeking prior environment clearance for any new projects or activities, or the expansion or modernization of existing projects and projects seeking capacity addition with change in process and or technology, to obtain environmental clearance prior to start of the activity/project. It elaborates on the four stages in the prior environment clearance process for new projects: Screening, Scoping, Public Consultation and Appraisal.

- ◆ **Requirements for prior environment clearance for industrial, extractive and infrastructure projects either from a state or national level regulatory agency.**

Section 2: "Requirements of prior Environmental Clearance (EC):- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule*** and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

- (i) All new projects or activities listed in the Schedule to this notification;
- (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;
- (iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range."***

The Schedule contains a list of projects categorized as 'A', requiring environment clearance from the Ministry of Environment & Forests and those categorized as 'B', requiring clearance from the State Environment Impact Assessment Authority. For instance, a Thermal Power Plant with a capacity of and more than 500 MW falls under 'A' category and a Thermal Power Plant with a capacity of less than 500 MW but more than 50 MW falls under 'B' category. For the complete list, see the schedule of the notification

- ◆ **Cancellation of an environment clearance based on deliberate non disclosure of information**

Clause 8 (vi) provides for cancellation of an already granted environment clearance to a project on the grounds of deliberate non-disclosure of information critical for decision making on the project application.

*** For the schedule, see the EIA Notification, 2006 and amendments to notification.

Section 8 (vi): “Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of the natural justice.”

◆ **EIA notification lays out the procedure for conduct of public hearing**

Point 6.4 of appendix 4: “The summary of the public hearing proceedings accurately reflecting all the views shall be recorded by the representatives of the SPCB or UTPCC”, has been violated because our views as expressed in the public hearing have not been recorded in the proceedings.

◆ **Monitoring and Compliance of Environmental Clearances**

Each time an approval under the EIA notification is granted, it is done so with a set of conditions. These might be related to discharge of effluent, dumping of muck, transportation of raw material, carrying out additional studies, ensuring livelihood related access, controlling air quality and encroachments. There is a specific monitoring and compliance protocol, which has been prescribed in Section 10 in the EIA notification.

Section 10 (i): “It shall be mandatory for the project management to submit half yearly compliance reports in respect of the stipulated prior environmental clearance terms and conditions in hard and soft copies to the regulatory authority concerned, on 1st June and 1st December of each calendar year.”

Section 10 (ii): “All such compliance reports submitted by the project management shall be public documents. Copies of the same shall be given to any person on application to the concerned regulatory authority. The latest such compliance report shall also be displayed on the website of the concerned regulatory authority.”

The responsibility of post-clearance monitoring for all projects approved by the ministry of environment lies with the ten regional offices of the MoEFCC.. They are located at Bangalore, Bhopal, Bhubaneswar, Chandigarh, Chennai, Dehradun, Lucknow, Nagpur, Ranchi and Shillong. All project authorities are to submit six monthly compliance reports and all regional offices are to generate six monthly monitoring reports for all projects as well as carry out site visits. The State Environment Impact Assessment Authorities (SEIAAs) have the jurisdiction for monitoring the compliance of projects, which they have approved (S.O. 637(E) notification dated 28th February 2014]

3. Coastal Regulation Zone Notification, 2011 (CRZ 2011)

The CRZ Notification regulates the setting up and expansion of any industry, operations and processes in the coastal stretches and water area up to the territorial limits of the country called the Coastal Regulation Zone.

◆ **Activities and operations that are prohibited in the Coastal Regulation Zone**

Section 3: “Prohibited activities within CRZ- The following are declared as prohibited activities within the CRZ:

- (i) setting up of new industries and expansion of existing industries, except*
- (ii) Manufacture or handling oil storage or disposal of hazardous substance.
- (iii) Setting up and expansion of fish processing units including warehousing except hatchery and natural fish drying in permitted areas.
- (iv) Land reclamation, bunding or disturbing the natural course of seawater, except*
- (v) Setting up and expansion of units and mechanism for disposal of waste and effluents
- (vi) Discharge of untreated waste and effluents from industries, cities or towns and other human settlements. The concerned authorities shall implement schemes for phasing out existing discharge of this nature, if any, within a time period not exceeding two years from the date of issue of the this notification.
- (vii) Dumping of city or town waste including construction debris, industrial solid wastes, fly ash for the purpose of land filling and the like and the concerned authorities shall implement schemes for phasing out existing practice, if any, within a time period not exceeding two years from the date of issue of the this notification.
- (ix) Reclamation for commercial purposes such as shopping and housing complexes, hotels and entertainment activities.
- (x) Mining of sand, rocks and other sub-strata materials except those rare minerals that are not available outside the CRZ.
- (xi) Drawl of water and construction thereto within 200 m of HTL, except
 - (a) in the areas which are inhabited by the local communities and only for their use.
 - (b) in the areas between 200m – 500 m zone the drawl of ground water shall be permitted only when done manually through ordinary wells for drinking, horticulture, agriculture and fisheries and where no other source of water is available.
- (xi) construction activities in CRZ I, except*
- (xiii) dressing or altering the sand dunes, hills, natural features including landscape changes for beautification, recreation and other such purposes.
- (xiv) facilities required for patrolling and vigilance activities of marine/coastal police stations.”

◆ **Activities and operations that are regulated in the CRZ**

Section 4: “Regulation of permissible activities in CRZ area.- The following activities shall be regulated except those prohibited in Para 3 above, -

- (i) (a) clearance shall be given for any activity within the CRZ only if it requires waterfront and foreshore facilities.
- (b) for those projects which are listed under this notification and also attract EIA notification 2006, for such projects clearance under EIA notification only shall be required subject to being recommended by the concerned State Union Territory Coastal Zone Management Authority.
- (c) Housing schemes in CRZ as specified in para 8 of this notification

- (d) Construction involving more than 20,000 sq mts built up area in CRZ II shall be considered for approval in accordance with EIA notification, 2006 and in case of projects less than 20,000 sq mts built up area shall be approved by the concerned State or Union territory Planning authorities in accordance with this notification after obtaining recommendations from the concerned CZMAs and prior recommendations of the concern CZMA shall be essential for considering the grant of environmental clearance under EIA notification, 2006 or grant of approval by the relevant planning authority.
- (e) MoEF may under a specific or general order specify projects, which require prior public hearing of project-affected people.
- (f) Construction and operation for ports and harbours, jetties, wharves, quays, slipways, ship construction yards, breakwaters, groynes, erosion control measures and salt works.
- (g) Construction of road by way of reclamation in Coastal Regulation Zone area shall be only in exceptional cases, to be recommended by the concerned Coastal Zone Management Authority and approved by the MoEFCC, and in case the construction of such roads is passing through mangroves or likely to damage the mangroves, three times the number of mangroves destroyed or cut during the construction process shall be replanted.
- (ii) The following activities shall require clearance from the MoEF, after being recommended by the concerned CZMA, namely:
 - (a) those activities listed under category 'A' in the EIA notification 2006 and permissible under the said notification.
 - (b) Construction activities relating to projects of Department of Atomic Energy or Defence requirements for which foreshore facilities are essential such as, slipways, jetties, wharves, quays; except for classified operational component of defence projects in terms of EIA notification, 2006. Residential buildings, office buildings, hospital complexes, workshops of strategic and defence projects in terms of EIA notification, 2006.;
 - (c) Construction, operation of lighthouses;
 - (d) Laying of pipelines, conveying systems, transmission line;
 - (e) Exploration and extraction of oil and natural gas and all associated activities and facilities thereto;
 - (f) Foreshore requiring facilities for transport of raw materials, facilities for intake of cooling water and outfall for discharge of treated wastewater or cooling water from thermal power plants. MoEF may specify for category of projects such as at (f), (g) and (h) of Para 4;
 - (g) Mining of rare minerals as listed by the Department of Atomic Energy;
 - (h) Facilities for generating power by non-conventional energy resources, desalination plants and weather radars;

- (i) Demolition and reconstruction of (a) buildings of archaeological and historical importance, (ii) heritage buildings, and buildings under public use which means buildings such as for the purpose of worship, education, medical care and cultural activities.

Section 8 (i): "The development and construction activities in different categories of CRZ shall be regulated by the concerned CZMA in accordance with the following norms."**

◆ **Procedure of clearance for approval under in the CRZ notification.**

Section 4.2 says:-

"(ii) The concerned CZMA shall examine the above documents in accordance with the approved CZMP and in compliance with CRZ notification and make recommendations within a period of sixty days from date of receipt of complete application,-

- (a) MoEF or State Environmental Impact Assessment Authority (hereinafter referred to as the SEIAA) as the case may be for the project attracting EIA notification, 2006;
- (b) MoEF for the projects not covered in the EIA notification, 2006 but attracting para 4(ii) of the CRZ notification;
- (c) SEIAA, for the projects specified under paragraph 4 (i) (except with respect to item (d) thereof relating to building projects with less than 20,000 sq. mts of built-up area) and for the projects not attracting EIA notification, 2006"

◆ **Powers of State and National Coastal Zone Management Authorities to take action against violations**

Section 6 (a): "For the purpose of implementation and enforcement of the provisions of this notification and compliance with conditions stipulated thereunder, the powers either original or delegated are available under Environment (Protection) Act, 1986 with the MoEF, State Government or Union Territory Administration NCZMA and SCZMAs."

◆ **Constitution and Role of District Level Coastal Committees (DLCC)**

Section 6 (c): "the State Government and Union territory CZMAs shall primarily be responsible for enforcing and monitoring of this notification and to assist in the task, the State Government and Union territory shall constitute District level Committee under the chairmanship of District Magistrate concerned containing at least three representatives of local traditional coastal communities including from fisherfolk."

◆ **Identification and management of Critically Vulnerable Coastal Areas (CVCAs)**

Section 7 (v): "Areas requiring special consideration for the purpose of protecting the critical coastal environment and difficulties faced by the local communities...(B) Critically Vulnerable Coastal Areas (CVCAs) which includes Sundarbans and other identified Ecologically Sensitive areas identified as under Environment (Protection) Act and managed with the involvement of coastal communities including fisher folk."

Section 8(i) (V) (4) (b): identifies the areas, which will be notified as CVCA "...through a process of consultation with local fisher and other communities inhabiting the area and depend on its resources for their livelihood.."

** For regulations refer to the notification

- ◆ **Section 8 (i)** is concerning the regulation of activities to be carried out in different categories of CRZ

4. Wildlife Protection Act, 1972 (WLPA 1972)

The Wildlife Protection, 1972 is an act to provide for the protection of wild animals, birds and plants. It provides for declaration of national parks and sanctuaries and prohibits hunting and harm of wild animals and uprooting of specified plants in general.

- ◆ **Prohibition of any destructive activity in a sanctuary or a national park**

Section (IV) 29: "Destruction, etc., in a sanctuary prohibited without permit.-No person shall destroy, exploit or remove any wild life including forest produce from a sanctuary or destroy or damage or divert the habitat of any wild animal by any act whatsoever or divert, stop or enhance the flow of water into or outside the sanctuary, except under and in accordance with a permit granted by the Chief Wild Life Warden, and no such permit shall be granted unless the State Government being satisfied in consultation with the Board that such removal of wild life from the sanctuary or the change in the flow of water into or outside the sanctuary is necessary for the improvement and better management of wild life therein, authorises the issue of such permit:

Provided that where the forest produce is removed from a sanctuary the same may be used for meeting the personal bonafide needs of the people living in and around the sanctuary and shall not be used for any commercial purpose."

- ◆ **Ban on use of injurious substances within an area protected under the WLPA**

Section (IV) 32: "No person shall use, in a sanctuary, chemicals, explosives or any other substances which may cause injury to or endanger, any wild life in such sanctuary."

- ◆ **Restrictions on destruction, exploitation and removal of any wild life from the National Park. This can be done with permission of the Chief Wild Life Warden**

Section (IV) 35. (6) "No person shall destroy, exploit or remove any Wild Life including forest produce from a National Park or destroy or damage or divert the habitat of any wild animal by any act whatsoever or divert, stop or enhance the flow of water into or outside the National Park, except under and in accordance with a permit granted by the Chief Wild Life Warden, and no such permit shall be granted unless the State Government being satisfied in consultation with the National Board that such removal of wild life from the National Park or the change in the flow of water into or outside the National Park is necessary for the improvement and better management of wild life therein, authorises the issue of such permit:

Provided that where the forest produce is removed from a National Park, the same may be used for meeting the personal bona fide needs of the people living in and around the National Park and shall not be used for any commercial purpose."

- ◆ **Powers of Chief Wildlife Warden or any forest officer or police officer to take action against any person for committing an offence under the Act**

Section VI (50)(3)(1) "...the Director of Preservation of Wildlife in the state or Chief Wildlife Warden or the authorised officer or any forest officer or any police officer not below the rank of a sub-inspector, may, if he has reasonable grounds for believing that any person has committed an offence against this Act,- to stop and detain any person, whom he sees doing any act for which a licence or permit is required under the provisions of this Act, for the purposes of requiring such person to produce the licence or permit and if such person fails to produce the licence or permit, as the case may be, he may be arrested without warrant, unless he furnishes his name and address, and otherwise satisfies the officer arresting him that he will duly answer any summons or other proceedings which may be taken against him."

5. Forest Conservation Act, 1980

The Forest Conservation Act, 1980 regulates the diversion of forestland for non-forest purposes. The Act mandates that the state government cannot de-reserve the forest land or allow felling of trees without the prior permission of the Central Government, i.e. MoEFCC. A detailed process for this has been laid out under the Act and its corresponding Rules (1981 (suppressed), 2003 and 2014 (amendment)). Through this Act and various guidelines, penalties were put in place for committing offences (e.g. Felling of trees, setting/kindling a fire in a forest, stripping the bark off a tree) in reserved and protected forests.

- ◆ **User agencies and state governments to seek permission from the Central Government before de-reserving any reserve forest land, felling of trees or diverting any forestland for non-forest use.**

Section 2: "Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-

- that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;
- that any forest land or any portion thereof may be used for any non-forest purpose;
- that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;
- that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reforestation.

Explanation- For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-

- the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;
- any purpose other than reforestation; but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications

and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.”

The Act also has penalties for any department or authority or head of the department or person in charge of the authority, at the time when the process of diversion of forestland is not complied with (or the land is diverted without due permission of the Central Government). The penalty includes an imprisonment extending up to 15 days.

◆ **No diversion of forest land till the process of recognition of forest rights is complete**

MoEFCC Circular dated 3.8.2009: A circular from the MoEF dated 3rd August 2009 (F No. 11-9/ 1998-FC (pt)) directed all state and union territory governments to complete the procedure of recognition of forest rights under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (FRA, 2006) prior to allowing for diversion of forest land for non forest use under the FCA. The circular requires the state governments to provide evidence of initiating and completing the process of settlements of while sending the proposals for the diversion of forestland. The circular also refers to the requirement of the consent of the Gram Sabhas (village assemblies) prior to any permission of diversion.

The Ministry of Environment & Forests (MoEF) through a circular in 2013 did away with requirement of the consent of Gram Sabha for linear projects (Projects that need a linear diversion of forestland (e.g.) construction of roads, canals, laying of pipelines/optical fibres and transmission lines, etc.). Since 2015, the work on linear projects including tree felling can be initiated after the first level approval for forest diversion from the MoEFCC, subject to compliance of all conditions related to compensation including identification of land, payments towards diversion, etc [F. No. 11-30fl 2014-EC Utt. Dated 28th August 2015].

6. Water (Control and Prevention of Pollution) Act, 1974

The main purpose of this Act is to prevent and control water pollution. The Act also aims to maintain the quality of water and water bodies. The Act provides for setting up of standards for discharge of effluents and sewage in the water bodies. The Act is to be enacted by the pollution control boards to ensure that no water body (river, lake, well, creek, etc.) is contaminated by industrial effluents or sewage.

◆ **Prohibition of the discharge of poisonous, noxious or polluting matter beyond permissible standards**

Section 24: “PROHIBITION ON USE OF STREAM OR WELL FOR DISPOSAL OF POLLUTING MATTER, ETC.

(1) Subject to the provisions of this section –

- (a) no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any stream or well or sewer or on land; or

(b) no person shall knowingly cause or permit to enter into any stream any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water of the stream in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences.

(2) A person shall not be guilty of an offence under sub-section (1), by reason only of having done any of the following acts, namely;--

(a) constructing, improving a maintaining in or across or on the bank or bed of any stream any building, bridge, weir, dam, sluice, dock, pier, drain or sewer or other permanent works which he has a right to construct, improve or maintain;

(b) depositing any materials on the bank or in the bed of any stream for the purpose of reclaiming land or for supporting, repairing or protecting the bank or bed of such stream provided such materials are not capable of polluting such stream;

(c) putting into an stream any sand or gravel or other natural deposit which has flowed from or been deposited by the current of such stream;

(d) causing or permitting, with the consent of the State Board, the deposit accumulated in a well, pond or reservoir to enter into any stream.

(3) The State Government may, after consultation with, or on the recommendation of, the State Board, exempt, by notification in the Official Gazette, any person from the operation of sub-section (1) subject to such conditions, if any, as may be specified in the notification and any conditions so specified may by a like notification and be altered, varied or amended.”

◆ **Requirement for a prior consent to establish an industry or operation**

Section 25 (1): “Subject to the provisions of this section, no person shall, without the previous consent of the State Board,--

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or an extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlets for the discharge of sewage; or

(c) begin to make any new discharge of sewage;

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.”

Section 25 (4): “The State Board may –

(a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being--

(i) in cases referred to in clauses (a) and (b) of sub-section (1) of section 25, conditions

as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

- (ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and
 - (iii) that the consent will be valid only for such period as may be specified in the order, and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system or extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or
- (b) refuse such consent for reasons to be recorded in writing.”

Section 27 (1): “A State Board shall not grant its consent under sub-section (4) of section 25 for the establishment of any industry, operation or process, or treatment and disposal system or extension or addition thereto, or to the bringing into use of a new or altered outlet unless the industry, operation or process, or treatment and disposal system or extension or addition thereto, or the outlet is so established as to comply with an conditions imposed by the Board to enable it to exercise its right to take samples of the effluent.”

◆ **Powers of the state pollution control boards (SPCB) to control and regulate water pollution**

Section 20 (1): “For the purpose of enabling a State Board to perform the function conferred on it by or under this Act, the State Board or any officer empowered by it in that behalf, may make surveys of any area and gauge and keep records of the flow or volume and other characteristics of an stream or well in such area, and may take steps for the measurement and recording of the rainfall in such area or any part thereof and for the installation and maintenance for those purposes of gauges or other apparatus and works connected therewith, and carry out stream surveys and may take such other steps as may be necessary in order to obtain any information required for the purposes aforesaid.”

Section 20 (2): “A State Board may give directions requiring any person who in its opinion is abstracting water from any such stream or well in the area in quantities which are substantial in relation to the flow or volume of that stream or well or is discharging sewage or trade effluent into any such stream or well, to give such information as to the abstraction or the discharge at such times and in such form as may be specified in the directions.”

Section 20 (3): “Without prejudice to the provisions of sub-section (2), a State Board may, with a view to preventing or controlling pollution of water, give directions requiring any person in charge of any establishment where any industry, operation or process, or treatment and disposal system is carried on, to furnish to it information regarding the construction, installation or operation of such establishment or of any disposal system or of any extension or addition thereto in such establishment and such other particulars as may be prescribed.”

Section 21 (1): “A State Board or any officer empowered by it in this behalf shall have power to take for the purpose of analysis samples of water from any stream or well or

samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into any such stream or well.”

◆ **Powers of the state pollution control boards (SPCB) to take action**

Section 23 (1): “Subject to the provisions of this section, any person empowered by a State Board in this behalf shall have a right at any time to enter, with such assistance as he considers necessary, any place –

- (a) for the purpose of performing any of the functions of the Board entrusted to him;
- (b) for the purpose of determining whether and if so in what manner, any such functions are to be performed or whether any provisions of this Act or the rules made thereunder of an notice, order, direction or authorisation served, made, given, or granted under this Act is being or has been complied with;
- (c) for the purpose of examining any plant, record, register, document or any other material object or for conducting a search of any place in which he has reason to believe that an offence under this Act or the rules made thereunder has been or is being or is about to be committed and for seizing any such plant, record, register, document or other material object, if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder:

Provided that the right to enter under this sub-section for the inspection of a well shall be exercised only at reasonable hours in a case where such well is situated in any premises used for residential purposes and the water thereof is used exclusively for domestic purposes.

(2) The provisions of the Code of Criminal Procedure, 1973, or, in relation to the State of Jammu and Kashmir, the provisions of any corresponding law in force in that State, shall, so far as may be, apply to an search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code, or, as the case may be, under the corresponding provisions of the said law.

Explanation– For the purposes of this section, “place” includes vessel.”

Section 32: “EMERGENCY MEASURES IN CASE OF POLLUTION OF STREAM OR WELL

- (1) Where it appears to the State Board that any poisonous, noxious or polluting matter is present in any stream or well or on land by reason of the discharge of such matter in such stream or well or on such land or has entered into that stream or well due to any accident or other unforeseen act or event, and if the Board is of opinion that it is necessary or expedient to take immediate action, it may for reasons to be recorded in writing, carry out such operations as it may consider necessary for all or any of the following purposes, that is to say –
 - (a) removing that matter from the stream or well or on land and disposing it of in such manner as the Board considers appropriate;
 - (b) remedying or mitigating any pollution caused by its presence in the stream or well;

(c) issuing orders immediately restraining or prohibiting the persons concerned from discharging any poisonous, noxious or polluting matter 18[into the stream or well or on land] or from making insanitary use of the stream or well.

(2) The power conferred by sub-section (1) does not include the power to construct any works other than works of a temporary character which are removed on or before the completion of the operations.”

Section 25 (5): “Where, without the consent of the State Board, any industry operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.”

Section 27 (2): “A State Board may from time to time review–

(a) any condition imposed under section 25 or section 26 and may serve on the person to whom a consent under section 25 or section 26 is granted a notice making any reasonable variation of or revoking any such condition.

(b) the refusal of any consent referred to in sub-section (1) of section 25 or section 26 or the grant of such consent without any condition, and may make such orders as it deemed fit.”

Section 30: “POWER OF STATE BOARD TO CARRY OUT CERTAIN WORKS

(1) Where under this Act, any conditions have been imposed on any person while granting consent under section 25 or section 26 and such conditions require such person to execute any work in connection therewith and such work has not been executed within such time as may be specified in this behalf, the State Board may serve on the person concerned a notice requiring him within such time (not being less than thirty days) as may be specified in the notice to execute the work specified therein]

(2) If the person concerned fails to execute the work as required in the notice referred to in sub-section (1), then, after the expiration of the time specified in the said notice, the State Board may itself execute or cause to be executed such work.

(3) All expenses incurred by the State Board for the execution of the aforesaid work, together with interest, at such rate as the State Government may, by order, fix, from the date when a demand for the expenses is made until it is paid, may be recovered by that Board from the person concerned, as arrears of land revenue, or of public demand.”

Section 31 (1): “if at any place where any industry, operation or process, or any treatment and disposal system or any extension or addition is being carried on, due to accident or other unforeseen act or event, any poisonous, noxious or polluting matters is being discharged, or is likely to be discharged into a stream or well or sewer or on land and, as

a result of such discharge, the water in any stream or well is being polluted, or is likely to be polluted, then the person incharge of such place shall forthwith intimate the occurrence of such accident, act or event to the State Board and such other authorities or agencies as may be prescribed.”

Section 33: “POWER OF BOARD TO MAKE APPLICATION TO COURTS FOR RESTRAINING APPREHENDED POLLUTION OF WATER IN STREAMS OF WELLS.

(1) Where it is apprehended by a Board that the water in any stream or well is likely to be polluted by reason of the disposal or likely disposal of any matter in such stream or well or in any sewer, or on any land, or otherwise, the Board may make an application to a court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class, for restraining the person who is likely to cause such pollution from so causing.

(3) Where under sub-section (2) the court makes an order restraining any person from polluting the water in any stream or well, it may in that order–

(i) direct the person who is likely to cause or has caused the pollution of the water in the stream or well, to desist from taking such action as is likely to cause pollution or, as the case may be, to remove such stream or well, such matter, and

(ii) authorise the Board, if the direction under clause (i) (being a direction for the removal of any matter from such stream or well) is not complied with by the person to whom such direction is issued, to undertake the removal and disposal of the matter in such manner as may be specified by the court.

(4) All expenses incurred by the Board in removing any matter in pursuance of the authorisation under clause (ii) of sub-section (3) or in the disposal of any such matter may be defrayed out of any money obtained by the Board from such disposal and any balance outstanding shall be recoverable from the person concerned as arrears of land revenue or of public demand.”

◆ **Powers of the state pollution control boards to issue notices, penalties and fines**

Section 33 A: “Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer, authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation- For the avoidance of doubts it is hereby declared that the power to issue directions under this section includes the power to direct–

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service.”

Section 42: “PENALTY FOR CERTAIN ACTS

(1) Whoever –

(a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board, or

- (b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or
 - (c) damages any works or property belonging to the Board, or
 - (d) fails to furnish to any officer or other employees of the Board any information required by him for the purpose of this Act, or
 - (e) fails to intimate the occurrence of an accident or other unforeseen act or even under section 31 to the Board and other authorities or agencies as required by that section, or
 - (f) in giving any information which he is required to give under this Act, knowingly or wilfully makes a statement which is false in any material particular, or
 - (g) for the purpose of obtaining any consent under section 25 or section 26, knowingly or wilfully makes a statement which is false in any material particular shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both.
- (2) Where for the grant of a consent in pursuance of the provisions of section 25 or section 26 the use of a meter or gauge or other measure or monitoring device is required and such device is used for the purposes of those provision, any person who knowingly or wilfully alters or interferes with that device so as to prevent it from monitoring or measuring correctly shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both.”

Section 44: “PENALTY FOR CONTRAVENTION OF SECTION 25 OR SECTION 26

Whoever contravenes the provision of section 25 or section 26 shall be punishable with imprisonment for a term which shall not be less than 4[two years] but which may extend to six years and with fine.”

Section 45: “ENHANCED PENALTY AFTER PREVIOUS CONVICTION

If any person who has been convicted of any offence under section 24 or 25 or section 26 is again found guilty of an offence involving a contravention of the same provision, he shall, on the second and on every subsequent conviction, be punishable with imprisonment for a term which shall not be less than one and half years but which may extend to seven years and with fine:

Provided that for the purpose of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.”

Section 45 A: “Whoever contravenes any of the provisions of this Act or fails to comply with any order or direction given under this Act, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment which may extend to three months or with fine which may extend to ten thousand rupees or with both and in the case of a continuing contravention or failure, with an additional fine which may extend to five thousand rupees for every day during which such contravention or failure continues after conviction for the first such contravention or failure.”

Section 19 (3): “The State Government may, by notification in the Official Gazette-

- (a) alter any water pollution prevention and control area whether by way of extension or reduction; or
- (b) define a new water pollution, prevention and control area in which may be merged one or more water pollution, prevention and control areas, or any part or parts thereof.”

Critically Polluted Areas

The Central Pollution Control Board (CPCB), based on a Comprehensive Environmental Pollution Index (CEPI) and through a nationwide environmental assessment of Industrial Clusters, regularly identifies areas as being critically polluted and publishes its CEPI index. At the time this handbook was being prepared there were 43 such industrial clusters that had CEPI greater than 70, on a scale of 0 to 100. Each of the identified areas would need to prepare an action plan to improve the environmental quality.

7. Air (Control and Prevention of Pollution) Act, 1981

The objective of the Air Act, 1981 is to prevent, control and reduce air pollution including noise pollution. The Act has the provision for declaration of Air Pollution Control Areas, in which industrial plants cannot be set up without due permissions. It also provides for putting in place air pollution emission standards for the industries.

◆ **Requirement of compliance with consent from the State Pollution Control Board**

Section 21 (1): “Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area, immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.”

Section 22: “Persons carrying on industry, etc., and to allow emission of air pollutants in excess of the standard laid down by State Board.

No person operating any industrial plant, in any air pollution control area shall discharge or cause or permit to be discharged the emission of any air pollutant in excess of the standards laid down by the State Board under clause (g) of sub-section (1) of section 17.”

Section 21 (5): “Every person to whom consent has been granted by the State Board under sub-section (4), shall comply with the following conditions, namely-

- (i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;
- (ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;
- (iii) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;
- (iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises; .and
- (v) such other conditions as the State Board, may specify in this behalf,
- (vi) the conditions referred to in clauses (i), (ii) and (iv) shall be complied with within such period as the State Board may specify in this behalf-

Provided that in the case of a person operating any industrial plant in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months:

Provided further that-

- (a) after the installation of any control equipment in accordance with the specifications under clause (i), or
- (b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or
- (c) after the erection or re-erection of any chimney under clause (iv), no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-created except with the previous approval of the State Board.”

◆ **Powers of the state pollution control boards (SPCB) to control and regulate air pollution**

Section 21 (6): “If due to any technological improvement or otherwise the State Board is of opinion that all or any of the conditions referred to in sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.”

Section 25: “For the purposes of carrying out the functions entrusted to it, the State Board or any officer empowered by it in its behalf may call for any information (including information regarding the types of air pollutants emitted into the atmosphere and the level of the emission of such air pollutants) from the occupier or any other person carrying on any industry or operating any control equipment or industrial plant and for the purpose of verifying the correctness of such information, the State Board or such officer shall have the right to inspect the premises where such industry, control equipment or industrial plant is being carried on or operated.”

Section 26: “Power to take samples of air or emission and procedure to be followed in connection therewith.

- (1) A State Board or any officer empowered by it in this behalf shall have power to take, for the purpose of analysis, samples of air or emission from any chimney, flue or duct or any other outlet in such manner as may be prescribed.
- (2) The result of any analysis of a sample of emission taken under subsection (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3) and (4) are complied with.
- (3) Subject to the provisions of sub-section (4), when a sample of emission is taken for analysis under sub-section (1), the person taking the sample shall-
 - (a) serve on the occupier or his agent, a notice, then and there, in such form as may be prescribed, of his intention to have it so analysed;
 - (b) in the presence of the occupier or his agent, collect a sample of emission for analysis;
 - (c) cause the sample to be placed in a container or containers which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent;
 - (d) send, without delay, the container to the laboratory established or recognised by the State Board under section 17 or, if a request in that behalf is made by the occupier or his agent when the notice is served on him under clause (a), to the laboratory established or specified under sub-section (1) of section 28.
- (4) When a sample of emission is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent, a notice under clause (a) of sub-section (3), then,-
 - (a) in a case where the occupier or his agent willfully absents himself, the person taking the sample shall collect the sample of emission for analysis to be placed in a container or containers which shall be marked and sealed and shall also be signed by the person taking the sample, and
 - (b) in a case where the occupier or his agent is present at the time of taking the sample but refuses to sign the marked and sealed container or containers of the sample of emission as required under clause (c) of subsection (3), the marked and sealed container or containers shall be signed by the person taking the sample,

and the container or containers shall be sent without delay by the person taking the sample for analysis to the laboratory established or specified under sub-section (7) of section 28 and such person shall inform the Government analyst appointed under sub-section (1) of section 29, in writing, about the willful absence of the occupier or his agent, or, as the case may be, his refusal to sign the container or containers.”

◆ **Powers of the State Pollution Control Board to take action**

Section 24 (1): "Subject to the provisions of this section, any person empowered by a State Board in this behalf shall have a right to enter, at all reasonable times with such assistance as he considers necessary, any place-

- (a) for the purpose of performing any of the functions of the State Board entrusted to him;
- (b) for the purpose of determining whether and if so in what manner, any such functions are to be performed or whether any provisions of this Act or the rules made thereunder or any notice, order, direction or authorization served, made, given or granted under this Act is being or had been complied with;
- (c) for the purpose of examining and testing any control equipment, industrial plant, record, register, document or any other material object or for conducting a search of any place in which he has reason to believe that an offence under this Act or the rules made has been or is being or is about to be committed and for seizing any such control equipment, industrial plant, record, register, document or other material object if he has reasons to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made there under."

Section 23 (1): "Where in any area the emission of any air pollutant into the atmosphere in excess of the standards laid down by the State Board occurs or is apprehended to occur due to accident or other unforeseen act or event, the person in charge of the premises from where which emission occurs or is apprehended to occur shall forthwith intimate the fact of such occurrence or the apprehension of such occurrence to the State Board and to such authorities or agencies as may be prescribed."

Section 23 (2): "On receipt of information with respect to the fact or the apprehension of any occurrence of the nature referred to in sub-section (1), whether through intimation under that sub-section or otherwise, the State Board and the authorities or agencies shall, as early as practicable, cause such remedial measure to be taken as are necessary to mitigate the emission of such air pollutants."

◆ **Powers of the state pollution control boards (SPCB) to issue notices/directions/penalty**

Section 21 (4): "Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse consent:

Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first provision, a reasonable opportunity of being heard shall be given to the person concerned."

Section 22 A: "Power of Board to make application to court for restraining person from causing air pollution.

- (1) Where it is apprehended by a Board that emission of any air pollutant, in excess of the standards laid down by the State Board under clause (g) of sub-section (1) of section 17, is likely to occur by reason of any person operating an industrial plant or otherwise in any air pollution control area, the Board may make an application to a court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class for restraining such person from emitting such air pollutant.
- (2) On receipt of the application under sub-section (1), the court may make such order as it deems fit.
- (3) Where under sub-section (2), the court makes an order restraining any person from discharging or causing or permitting to be discharged the emission of any air pollutant, it may, in that order,-
 - (a) direct such person to desist from taking such action as is likely to cause emission;
 - (b) authorise the Board, if the direction under clause (a) is not complied with by the person to whom such direction is issued, to implement the direction in such manner as may be specified by the court.
- (4) All expenses incurred by the Board in implementing the sections of the court under clause (b) of sub-section (3) shall be recoverable from the person concerned as arrears of land revenue or of public demand."

Section 37 (1) and (2): "Failure to comply with the provisions of section 21 or section 22 or with the directions issued under section 31A.

- (1) whoever fails to comply with the provisions of section 21 or section 22 or directions issued under section 31 A, shall, in respect of each such failure, be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.
- (2) If the failure referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine."

Section 38: "*Penalties for certain acts.*

Whoever-

- (a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board, or
- (b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or

- (c) damages any works or property belonging to the Board, or
- (d) fails to furnish to the Board or any officer or other employee of the Board any information required by the Board or such officer or other employee for the purpose of this Act, or
- (e) fails to intimate the occurrence of the emission of air pollutants into the atmosphere in excess of the standards laid down by the State Board or the apprehension of such occurrence, to the State Board and other prescribed authorities or agencies as required under sub-section (1) of section 23, or
- (f) in giving any information which he is required to give under this Act, makes a statement which is false in any material particular, or
- (g) for the purpose of obtaining any consent under section 21, makes a statement which is false in any material particular shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both.”

Section 39: “Penalty for contravention of provisions of the Act.

Whoever contravenes any of the provisions of this Act or any order or direction issued thereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both, and in the case of continuing contravention, with an additional fine which may extend to five thousand, rupees for every day during which such contravention continues after conviction for the first such contravention.”

Section 31 A: “Power to give directions

Notwithstanding anything contained in any other law, subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation- For the avoidance of doubts, it is hereby declared that the power to issue directions under this section, includes the power to direct-

- (a) the closure, prohibition or regulation of any industry, operation or
- (b) the stoppage or regulation of supply of electricity, water or any other service.”

8. Hazardous Material (Management, Handling and Transboundary Movement) Rules 2008*

Hazardous Waste Management Rules were notified to set procedures for safe handling, generation treatment, processing treatment, packaging, storage, transportation, use, collection, reprocessing, conversion, sale and disposal of such materials that possess potential

*The Draft Hazardous Material (Management, Handling and Transboundary Movement) Rules 2015 have been issued but were not finalized till the time of writing this handbook.

threat to public health and environment. The rules set the duties of various authorities (MoEF, CPCB, SPCBs, Port Authority, etc.) with wider responsibilities falling with the SPCBs.

◆ Storage, transportation and disposal

Clause 4 (2): “The hazardous wastes generated in the establishment of an occupier shall be sent or sold to a recycler or re-processor or re-user registered or authorized under these rules or shall be disposed of in an authorized disposal facility.”

Clause 4 (3): “The hazardous wastes transported from an occupier's establishment to a recycler for recycling or reuse or reprocessing or to an authorized facility for disposal shall be transported in accordance with the provisions of these rules.”

Clause 5 (1): “Every person who is engaged in generation, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of the hazardous waste shall require to obtain an authorization from the State Pollution Control Board.”

Clause 5 (9): “The State Pollution Control Board shall maintain a register containing particulars of the conditions imposed under these rules for management of hazardous waste, and it shall be open for inspection during office hours to any person interested or affected or a person authorized by him on his behalf.”

Clause 7: “Storage of Hazardous Waste.

- (1) The occupiers, recyclers, re-processors, re-users, and operators of facilities may store the hazardous wastes for a period not exceeding ninety days and shall maintain a record of sale, transfer, storage, recycling and reprocessing of such wastes and make these records available for inspection:

Provided that the State Pollution Control Board may extend the said period in following cases, namely:-

- (i) small generators up to ten tones per annum;
- (ii) recyclers, re-processors and facility operators up to six months of their annual capacity;
- (iii) generators who do not have access to any Treatment, Storage, Disposal Facility in the concerned State; or
- (iv) the waste which needs to be specifically stored for development of a process for its recycling, reuse.”

◆ Establishment and Management of a TSDF Site

Clause 18 (2): “The operator of common facility or occupier of a captive facility, shall design and set up the Treatment, Storage and Disposal Facility as per technical guidelines issued by the Central Pollution Control Board in this regard from time to time and shall obtain approval from the State Pollution Control Board for design and layout in this regard from time to time.”

Clause 18 (4): “The operator of the Treatment, Storage and Disposal Facility shall be responsible for safe and environmentally sound operation of the Treatment, the Storage

and Disposal Facility and its closure and post closure phase, as per guidelines issued by the Central Pollution Control Board from time to time. Clause 19 (1) requires that the operator or occupier of the TSDF facility ensures that the hazardous waste is packaged and labeled and based on its composition for safe handling, storage and transport as per the guidelines of the CPCB.”

◆ Power of State Pollution Control Board to monitor and take action

Schedule VII of the Hazardous Material (Management, Handling and Transboundary Movement) Rules 2008 makes the SPCB is responsible for monitoring of compliance of various provisions and conditions of authorizations under the rules and taking action against violations of the rules.

Clause 6: “Power to suspend or cancel an authorization.

- (1) The State Pollution Control Board, may, if in its opinion the holder of the authorization has failed to comply with any of the conditions of the authorization or with any provisions of the Act or these rules and after giving him a reasonable opportunity of being heard and after recording reasons thereof in writing cancel or suspend the authorization issued under rule-4 for such period as it considers necessary in the public interest.
- (2) Upon suspension or cancellation of the authorization the State Pollution Control Board may give directions to the person whose authorization has been suspended or cancelled for the safe storage of the hazardous wastes, and such person shall comply with such directions.”

9. Municipal Solid Wastes (Management and Handling) Rules, 2000

Municipal Solid Wastes (Management and Handling) Rules, 2000 set the procedure for collection, segregation, storage, transportation, processing and disposal of solid waste. The rules apply to all municipal authorities.

◆ Requirement of authorization before handling waste

Clause 4 (1): “Every municipal authority shall, within the territorial area of the municipality, be responsible for the implementation of the provisions of these rules, and for any infrastructure development for collection, storage, segregation, transportation, processing and disposal of municipal solid wastes.

Clause 4 (2): The municipal authority or an operator of a facility shall make an application in Form-I, for grant of authorization for setting up waste processing and disposal facility including landfills from the State Board or the Committee in order to comply with the implementation programme laid down in Schedule I.”

◆ Responsibility of District Collector for enforcement of rules

Section 5: “Responsibility of the State Government and the Union territory Administratio.–

- (1) The Secretary-in-charge of the Department of Urban Development of the concerned State or the Union territory, as the case may be, shall have the overall responsibility for the enforcement of the provisions of these rules in the metropolitan cities.

- (2) The District Magistrate or the Deputy Commissioner of the concerned district shall have the overall responsibility for the enforcement of the provisions of these rules within the territorial limits of their jurisdiction.”

◆ Procedure for the management of solid wastes

Section 7: “Management of municipal solid wastes–*

- (1) Any municipal solid waste generated in a city or a town, shall be managed and handled in accordance with the compliance criteria and the procedure laid down in Schedule-II.
- (2) The waste processing and disposal facilities to be set up by the municipal authority on their own or through an operator of a facility shall meet the specifications and standards as specified in Schedules III and IV.”

10. Panchayat Acts

This section explores and explains some clauses of state level panchayat acts, which could be exercised in remedying environment and social impacts caused due to legal non-compliance. For exact clauses of these Acts in the local languages, it would be important to read the specific Panchayat laws.

10.1 Panchayat Act, Gujarat, 1993

- Clause 104 (1) of the Panchayat Act of Gujarat, 1993, makes it mandatory for erecting or re-erecting any building within the limits of a village, to obtain permission from the gram panchayat.
- Clause 104 (3) of the Panchayat Act of Gujarat, 1993, states that commencement of work for erection or re-erection of a building cannot be carried out after the expiry of one year of obtaining permission from the gram panchayat to carry out such task.
- Clause 104 (4) of the Panchayat Act of Gujarat, 1993, provides for levying a fine by the panchayat, on a person who carries out erection or re-erection of any building without the permission of the panchayat.
- Clause 104 (5) grants powers to the panchayats to order stoppage of work of any such construction or demolition of any such structures (if constructed).
- Clause 105 (1) of the Panchayat Act of Gujarat, 1993 grants powers to the gram panchayat to levy a fine on any person who, without its permission, uses public spaces (streets, open sites, etc.), or common grazing land in an unauthorized manner. Clause 105 (2) of the Act authorizes the panchayat to remove (after serving a notice of a prescribed period) any such construction or encroachment of an open site (not private property).

However, if the land belongs to the state, permission from the collector needs to be obtained before carrying out removal/demolition

- Clause 105 (5) of the Panchayat Act of Gujarat, 1993 grants powers to the gram panchayat to levy fine on any person who removes earth or sand from or encroaches on an open site.

*With Schedule II, III and IV

- Clause 105 (7) of the Panchayat Act of Gujarat, 1993 states that if the panchayat is unable to remove the unauthorized activity, it will inform the Taluka Development Officer, who will then take action on behalf of the panchayat.

10.2. Karnataka Panchayat Act, 1993

- Clause 64 (1) makes it mandatory for erecting or re-erecting any building within the limits of a village, to obtain permission from the gram panchayat.
- Clause 68, states that no place in the jurisdiction of a gram panchayat can be used as a hotel, restaurant, eating house, coffee house, sweetmeat shop, bakery, boarding or lodging house, dharamshala, ice or aerated water manufacturing plant without a license for the same from the gram panchayat.
- Clause 64 (3) grants powers to the panchayats to order (through a notice) stoppage of work of any construction commenced without the permission of panchayat or in non-compliance to any condition imposed by the panchayat, or alteration or demolition of any such structures (if constructed).
- Clause 64 (4) states that if a notice by the panchayat is not complied with in the specified period, the panchayat may take necessary action to ensure completion of the Act.
- Clause 66, restricts the (a) construction or establishment of any factory, workshop or workplace with the use of any kind of power (steam, water or electrical) without the permission of the panchayat; (b) installation of any machinery or manufacturing plant (except those exempted) driven by any power in any premises without the permission of the panchayat.
- Clause 72 (1) states that the gram panchayat has the power to levy a fine on any encroachment, obstruction or deposition (of any box, bale, package or merchandise) in any public street or open site (not private property). Clause 72 (2) authorizes the gram panchayat to remove any such obstruction or encroachment.
- Clause 72 (3) of the Karnataka Panchayat Raj Act, 1993, states that the gram panchayat has powers to levy fine on unauthorized removal of sand, earth (other than sand used for domestic purpose by residents of the panchayat area).
- Clause 107 of the Karnataka Panchayat Raj Act, 1993, grants powers to the gram panchayat to discontinue (by written notice) operation of any quarry which it opines to be dangerous to persons residing in or having legal access to the neighbourhood, or creates or is likely to create a nuisance.

If the activity is vested in the Government, consent from Director of Mines and Geology is required

10.3. Odisha Panchayati Raj Act, 1964

- Section 44 (e) states removal of unauthorized obstruction, projection and encroachment in or public streets and public places as one of the functions of the gram panchayat.
- Clause 44 (l) of the Odisha Panchayati Raj Act, 1964 makes the gram panchayat responsible for establishment, management and maintenance of common grazing grounds and lands for common benefits.

11. Panchayat (Extension in Schedule Areas) (PESA) Act, 1996

The Act extends the provisions of Part IX of the Constitution relating to the panchayats to the Scheduled Areas (referred in clause (1) of Article 244 of the Constitution). The Act requires amendments to the State Panchayat Acts to align them with the PESA Act, 1996.

◆ Applicability of PESA

Clause 4: “Notwithstanding anything contained under part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely:

- (a) A State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;”
- (b) every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution;”

◆ Definition of a Gram Sabha

Clause 4 (c): “every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level:”

◆ Consultation with Gram Sabha before undertaking activity in a PESA area

Clause 4 (j): “planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;”

Clause 4 (i): “the Grama Sabha or the Panchayat at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;”

Clause 4 (k): “the recommendations of the Grama Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas;”

Clause 4 (l): “the prior recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction;”

Clause 4 (m) (ii): “While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Grama Sabha are endowed specifically with-

(iii) the power to prevent alienation of land in the Scheduled areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;”

12. Fisheries Acts

This section explores some clauses of state level Marine Fisheries acts, which could be exercised in remedying environment and social impacts caused due to legal non-compliance.

12.1 The Karnataka Marine Fisheries (Regulation) Act, 1986

The Karnataka Marine Fisheries (Regulation) Act (MFRA), 1986 is a legislation that regulates the use of fishing vessels in the fishing zones of the state. The purpose of the Act is to avoid conflict between traditional fisher folk and mechanized boat owners.

◆ Power of the State Government to pass orders on fishing in certain areas

Section 3: “(1) The Government may, having regard to the matters referred to it in sub-section (2), by notification, regulate, restrict or prohibit,-

- (a) the fishing in any specified area by such class or classes of fishing vessels as may be prescribed; or
 - (b) the number of fishing vessels which may be used for fishing in any specified areas; or
 - (c) the catching in any specified area of such species of fish and for such period as may be specified in the notification; or
 - (d) the use of such fishing gear in any specified area as may be prescribed.
- (2) In making an order under sub-section (1), the Government shall have regard to the following matters, namely:
- (a) the need to protect the interest of different sections of persons engaged in fishing particularly those engaged in fishing using traditional fishing craft such as country craft or canoe;
 - (b) the number of fishing vessels which may be used for fishing in any specified area;
 - (c) the need to maintain law and order in the sea; and
 - (d) any other matter that may be prescribed.”

◆ Requirement for vessels to comply with the orders

Section 4: “No person including the owner or master of a fishing vessel shall use or cause or allow to be used, such fishing vessel for fishing in any manner which contravenes the order made under section 3:

Provided that nothing in such notification shall be construed as preventing the passage of any fishing vessel from or to the shore through any specified area to or from any area other than specified area, for the purpose of fishing in such other area or for any other purpose:

Provided further that the passing of such fishing vessel through any specified area shall not in any manner cause any damage to any fishing nets or tackles belonging to any person who engages in fishing in the specified area by using any fishing vessel.”

◆ Requirement of license for vessels to be used for fishing

Section 5: “Licensing of fishing vessels: (1) The owner of a registered fishing vessel may make an application to the authorized officer for the grant of a license for using any fishing vessel for fishing in any specified area.

Section 6: “No person shall after the commencement of this Act carry on fishing in any specified area using a fishing vessel which is not licensed under section 5:

Provided that nothing in this section shall apply to any fishing vessel, which was being used for fishing before the commencement of this Act for such period as the Government may by notification specify.”

◆ Power of the authorised officer to cancel/amend the license

Section 7: “(1) If the authorised officer is satisfied either on a reference made to him in this behalf or otherwise, that-

- (a) a licence granted under section 5 has been obtained by misrepresentation as to an essential fact, or
 - (b) the holder of a licence has, without reasonable cause, failed to comply with any of the condition subject to which the licence has been granted or has contravened any of the provisions of this Act or any order of rule made thereunder, then without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the Licensing Officer may, after giving the holder of the licence a reasonable opportunity of showing cause, cancel or suspend the licence or forfeit the whole or any part of the security if any, furnished for the due performance of the conditions subject to which the licence has been granted.
- (2) Subject to any rules that may be made in this behalf, the Licensing Officer may vary or amend a licence granted under section 5.”

◆ Power of the authorised officers to verify violation and take action

Section 11: “(1) The authorised officer may, if he has reasons to believe that any fishing vessel is being or has been used in contravention of any of the provisions of this Act, or of any order or rule made thereunder or any of the conditions of the licence, enter and search such vessel and impound such vessel and seize any fish found in it,

- (2) The authorized officer shall keep the fishing vessel impounded under sub-section (1), in such place and in such manner as may be prescribed,
 - (iii) dispose of the fish so seized and deposit the proceeds there of in such manner as may be prescribed, and
 - (iv) make a report of the contravention to the Court if the offence is punishable under clause (b), (c), (d) or (e) of sub-section (1) of section 21 and in other cases, to the Police Officer in charge of a police station.”

◆ Offences and Penalties

Section 13: “Penalty- (1) The arbitrator shall, after the enquiry under section 12 decide whether any person who has used, or caused or allowed to be used, any fishing vessel in contravention of any of the provisions of this Act, or of any order or rule made thereunder

or any of the conditions of the licence and any such person on being found guilty by the arbitrator, shall be liable to such penalty not exceeding, -

- (a) five thousand rupees, if the value of the fish involved is one thousand rupees or less;
 - (b) five times the value of the fish, if the value of the fish involved is more than one thousand rupees; or
 - (c) five thousand rupees, in any other case, being a case not involving fish, -as may be determined by the arbitrator.
- (2) In addition to any penalty that may be imposed under sub-section (1), the arbitrator may direct that,-
- (a) the registration certificate of the fishing vessel which has been used, or cause or allowed to be used, in the manner referred to in sub-section (1) or the licence, any condition of which has been contravened, shall be,-
 - (i) cancelled or revoked, as the case may be; or
 - (ii) suspended for such period as the arbitrator deems fit; or
 - (b) the fishing vessel or fish that may have been impounded or seized, as the case may be, under section 11 shall be forfeited to the Government:

Provided that no fishing vessel shall be forfeited under clause (b), if the arbitrator after hearing the owner of such vessel or any person claiming any right thereto, is satisfied that the owner or such person had exercised due care for the prevention of the commission of such offence.”

In 1994, the State Government passed a circular reserving 10 kms from HTL of the sea for traditional fishermen.

12.2. The Gujarat Fisheries Act, 2003

Gujarat Fisheries Act, 2003 regulates fishing in marine and inland waters (except private waters). It provides for the State Government to issue notification regulating fishing in specified areas.

◆ Powers to the State Government to make rules for the protection of fish in inland waters

Clause 6 (1) (a): “The State Government may, by notification in the Official Gazette, make rules for any water other than private waters for all or any of the following matters, namely:-

- (a) Prohibiting or regulating:-
 - (i) the erection or use of fishing gear,
 - (ii) the construction of weirs, dam and bunds,
 - (iii) the release of any industrial waste sewage or effluent to the inland waters which may harmful to species of fish or the food of fish.”

◆ Power of the State Government to issue a notification for specified areas

Section 7: “(1) The State Government may, having regard to the matters referred to in sub-section (2), by notification in the Official Gazette, regulate, restrict or prohibit in any specified area,-

- (a) the fishing by such class or classes of fishing vessels and for such period as may be specified in the notification;
 - (b) the catching of such species of fish and for such period as may be specified in the notification,
 - (c) the use of such fishing gears as may be specified in the notification,
 - (d) the mariculture,
 - (e) the collection of biological specimen, and
 - (f) the number of fishing vessels which may be used for fishing.
- (2) In issuing a notification under sub-section (1), the State Government shall have regard to the following matters, namely:-
- (a) The need to protect the interest of the different sections of persons engaged in fishing particularly of those engaged in fishing with traditional fishing craft such as catamaran, country craft or canoes.”

◆ Requirement for vessels to comply with the notification

Section 8: “No owner or master of a fishing vessel shall use or cause or allow to be used, a fishing vessel for fishing in contravention of the notification issued under section 7: Provided that nothing in such notification shall be construed as preventing the passage of any fishing vessel from or to the shore through any specified area to or from any area other than specified area, for the purpose of fishing in such other area or for any other purpose:

Provided further that the passing of such fishing vessel through any specified area shall not in any manner cause any damage to any fishing nets or tackles belonging to any person who engages in fishing in the specified area by using any traditional fishing craft such as catamaran, country crafts or canoe.”

◆ Requirement of license for vessels to be used for fishing

Section 9: “No fishing vessel which is not licensed under section 10 shall, after the date of commencement of this Act (hereinafter referred to as “the said date”), be used for fishing in any specified area:

Provided that nothing in this section shall apply to any fishing vessel existing on the said date for a period of six months from the said date or such longer period as the State Government may, by notification in the Official Gazette, specify.”

◆ Power of the Licensing officer to cancel/amend the license

Section 11: “(1) If the Licensing Officer is satisfied either on a reference made to him in this behalf or otherwise, that-

- (a) a licence granted under section 10 has been obtained by misrepresentation as to an essential fact, or

- (b) the holder of a licence has, without reasonable cause, failed to comply with any of the condition subject to which the licence has been granted or has contravened any of the provisions of this Act or the rules made or any notification issued thereunder, then without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the Licensing Officer may, after giving the holder of the licence a reasonable opportunity of being heard, suspend or cancel the licence.
- (2) Subject to any rules that may be made in this behalf, the Licensing Officer may vary or amend a licence granted under section 10.”

◆ Power of the Enforcement Officers to verify violation and take action

Section 15: “If the Enforcement Officer has reasons to believe that any fishing vessel is being or has been used in contravention of any of the provisions of this Act, or of any rule or order made or any notification issued thereunder or of any condition of the license issued under section 10, then he may –

- (i) enter and search such vessel and impound such vessel and seize any fish found in it,
- (ii) keep the impounded fishing vessel in such place and in such manner as may be prescribed,
- (iii) dispose of the fish so seized and deposit the proceeds there of in such manner as may be prescribed, and
- (iv) make a report of the contravention to the Court if the offence is punishable under clause (b), (c), (d) or (e) of sub-section (1) of section 21 and in other cases, to the Police Officer in charge of a police station.”

◆ Offences and Penalties

Section 21: “(1)(a) Whoever contravenes the provisions of section 3, 4 or 5 shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine not exceeding ten thousand rupees or with both.

- (b) Whoever use any fishing vessel for fishing in contravention of section 8 shall, on conviction, be punished with fine not exceeding fifty thousand rupees.
- (c) Whoever use any fishing vessel which is not licensed for fishing in any specified area in contravention of section 9 shall, on conviction, be punished with fine not exceeding fifty thousand rupees.
- (e) Any person who commits a breach of any of the provisions of the rules or the order made under this Act shall be punishable with fine which may extend to ten thousand rupees and when breach is continuing one, with a daily fine not exceeding one hundred rupees during the period of continuance of such breach.”

13. Guidelines/Criteria for evaluation of proposals/requests for groundwater abstraction (with effect from 16/11/2015)

The guidelines were issued with the purpose to manage the groundwater resources while ensuring the water sustainability. The guidelines are based on the latest assessment of state wise groundwater resources done in March 2011. The guidelines are for the areas where the groundwater development is regulated. Central Ground Water Authority (CGWA),

from time to time, notifies areas where the groundwater extraction is regulated. Currently there are 162 such areas. The updated list as applicable to these guidelines can be found at www.cgwa-noc.gov.in.

Section 1: “Scope & Objective...The District Administrative Heads (Deputy Commissioner/ District Magistrate/District Collector) in case of Administrative Block or Taluka, or the Head of the Municipality (in case of Municipal Area) of the notified areas in the country have been appointed as ‘Authorized Officers’ by Central Ground Water Authority under Section 4 of the Environmental Protection Act (EPA) (1986).

Regulation of Ground Water development in Notified areas is through district administrative heads assisted by Advisory Committees under the provisions of Section 4 of the EPA, 1986. All issues pertaining to granting of NOC's for ground water withdrawal, checking violations, sealing of ground water abstraction structures, launching of prosecution against offenders, attending to complaints, etc., are to be addressed by the Authorized Officers.”

◆ Notified Areas

Section 2: “Permission to abstract ground water through any energized means will not be accorded for any purpose other than drinking water. The permission would be granted by the Authorised Officer in consultation with the advisory committee constituted for this purpose. The list of notified areas, is given in Annexure II and also available on the web-site (www.cgwb.gov.in).”

Section 2.1: “NOC can be accorded for construction of ground water abstraction structures/ replacement of existing defunct well for drinking and domestic purposes only. Government Water supplying agencies can be accorded NOC as per their requirement. NOC for infra-structure projects will be considered after issue of completion certificate from competent Authority as per Govt. norms for drinking and domestic purposes. NOC for ground water withdrawal will be considered only if Water Supplying Department is not providing adequate water in the area/premises. Proof for this is to be produced from the concerned authority by the applicant.”

◆ Non-notified Areas

Section 3: “NOC for ground water withdrawal will be considered for Industries/ Infrastructure/Mining projects as per the criteria given below*.”

Section 3.1.1. (b) “Water intensive industries- Industries using ground water as raw material/water intensive industries# shall not be granted NOC for ground water withdrawal in Over-Exploited Areas¹. A list of different industries categorised as water intensive is given in Annexure V. In Safe, Semi-Critical & Critical areas NOC for ground water withdrawal is mandatory for these industries as per Section 3,1. However, ground water withdrawal will be limited.”#

*For the criteria see the guidelines

#A list of industries categorised as water intensive is provided in Annexure V of the Guidelines (packaged drinking water, mineral water plant, tannery, distillery, brewery, soft drink, paper & pulp, fertilizer, textile dyeing, textile printing, textile spinning, sugar, dairy product, water park & amusement center)

¹The Assessment done on Ground Water Resource Estimation conducted in 2011 categorises areas as safe, semi-critical, critical and over-exploited.

Section 3.1.2 (b) “The quantum of ground water for usage other than drinking/ domestic shall not exceed 25% of total ground water abstraction in case of Housing projects/ Residential Townships.”

Section 3.1.3. (d) “Wherever the mines/de-watering project is situated in the coastal area special care should be taken to prevent sea water ingress. This should be supported by a technical evaluation report.”

Section 5: “Industries/Infrastructure/Mining projects coming up in agricultural land or any other land after change in land use shall have to submit all documents endorsing the change of land use from competent authority. Withdrawal of ground water from existing abstraction structures, if any, after change in land use in the area can be done only after approval from the Central Ground Water Authority. Cases would be processed as per changed land use.”

◆ Issuance and Renewal of NoC

Section 6 (e): “No application for NOC shall be entertained without referral letters from the statutory authority (Central and State Govt. Departments and Agencies like State Pollution Control Board, Industries Department, Industrial Development Authority).”

Section 6 (f): “The referral letter shall contain verification on the quantum of water for the industry/project with detailed break up of ground water consumption, recycle & reuse of the waste water, so that the wastage of the precious resource can be avoided. In case this is not given by the referral authority, applicant should obtain a letter from the Industries Dept/Project Sanctioning Authority/ local municipal authority in urban areas on the same lines.”

Section 6 (j): “Relaxation in the quantity of ground water withdrawal in over-exploited areas, and/or quantity of recharge being affected by the firm can be permitted by CGWA if it feels it absolutely necessary in national interest.”

Section 6(m): “NoC issued is non-transferable.”

Section 7 Issuance and renewal of NoC

- (a) NOC will be accorded in non notified areas for a period of two years initially and will be renewed for a period of three years, subject to compliance of conditions mentioned in the NOC. Thereafter, NOC's shall be renewed every five years subject to the compliance of the conditions mentioned in the renewed NOC.
- (b) Renewal of NOC's issued earlier to industries/projects in non-notified areas and where the area has subsequently become notified, will be done by CGWA for every two (2) years. The Authorized officer will forward the application to the concerned Regional Director of CGWB with his recommendations for processing and forwarding to CGWA.
- (c) In case of change in category of the area, renewals would be granted with conditions as laid down for such new category areas. In case it is difficult to comply with the conditions the applicant should satisfy the authority for granting exemption/alternative measure. The condition of recharge may be relaxed for OE blocks at par with Critical blocks and for Critical blocks at par with semi-critical blocks.

- (e) Categorization of certain industries as 'Water intensive industry' have been made with effect from 15.11.2012. Since then ground water withdrawal by such industries is not permitted in OE areas. Renewal of NOC for those water intensive industries to which NOC was issued for ground water withdrawal prior to 15.11.2012 and are now falling in Over-exploited and Notified areas will be done by CGWA initially for two years and subsequently for every three years. For Notified areas, the authorized officer shall forward his recommendations to the Regional Director who in turn would send the same alongwith his recommendations to CGWA. The renewal would be limited to 50% of the recharge quantity or the earlier permitted quantity whichever is less.”

Section 8: “All existing Industries/projects which are drawing ground water and have not obtained NOC for ground water withdrawal from Central Ground Water Authority, either due to its coming into existence prior to formation of CGWA or due to exemption from obtaining NOC as per earlier guidelines, shall apply to CGWA for NOC for ground water withdrawal with immediate effect. This would be applicable to States/UT's in which regulation of ground water withdrawal is being done by CGWA. The application has to be submitted online. The grant of NOC would be considered as per prevailing guidelines. It would be mandatory for these industries/projects to submit water quality report of effluents, if any, vetted by competent authority. The industry/project should have valid EC or 'consent to operate' under water act or referral letter issued by the State/ Central regulatory authority.”

◆ Cancellation of NoC

Section 6 (b): “Non-compliance of conditions mentioned in the NOC may be taken as sufficient reason for cancellation of NOC accorded/non-renewal of NOC.”

◆ Power of the CGWA to waive off the conditions of NoC

Section 7 (d): “In case it is found that some of the conditions stipulated during the issuance NOC have not been implemented in certain localities it may be relaxed by CGWA based on the recommendations of the concerned Regional Director for specific areas as per site specific condition.”

14. Public Liability Insurance Act, 1991

To provide immediate relief to the persons affected by accident due to handling of any hazardous substances, the Act makes the owner of such a facility responsible for the same.

◆ Responsibility of providing relief in case of any harm to life or property due to an accident while handling hazardous wastes on the owner.

In such cases a claimant does not have to prove that the damage occurred due to any fault of any person.

- **Section 3 (1):** “Where death or injury to any person (other than a workman) or damage to any property has resulted from an accident, the owner shall-be liable to give such relief as is specified in Schedule for such death, injury or damage.”²

²Schedule to the Act specifies the amount of compensation in cases of injury, death or damage to property.

- **Section 3 (2):** “In any claim for relief under sub-section (l) (hereinafter referred to in this Act as claim for relief), the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person.”

◆ **Need for procuring an insurance before initiating any hazardous substances’ handling facility**

Section 4 (1): “Every owner shall take out, before he starts handling any hazardous substance, one or more insurance policies providing for contracts of insurance thereby he is insured against liability to give relief under sub-section (1) of section 3;”

◆ **Claims in event of an accident, damage or injury**

Section 5: “Whenever it comes to the notice of the Collector that an accident has occurred at any place within his jurisdiction, he shall verify the occurrence of such accident and cause publicity to be given in such manner as he deems fit for inviting applications under sub-section (1) of section 6”

Section 6: “(1) An application for claim {or relief} may be made-

- (a) by the person who has sustained the injury;
- (b) by the owner of the property to which the damage has been caused;
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
- (d) by any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for relief, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application.

- (2) Every application under sub-section (l) shall be made to the Collector and shall be in such form, contain such particulars and shall be accompanied by such documents as may be prescribed.
- (3) No application for relief shall be entertained unless it is made within five years of the occurrence of the accident.”

Section 7: “(1) On receipt of an application under sub-section (l) of section 6, the Collector shall after giving notice of the application to the owner and after giving the parties an opportunity of being heard, hold an inquiry into the claim or, each of the claims, and may make an award determining the amount of relief which appears to him to be just and specifying the person or persons to whom such amount of relief shall be paid.

- (2) The Collector shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.
- (3) When an award is made under this section,-

- (a) the insurer, who is required to pay any amount in terms of such award and to the extend specified in sub-section (2B) of section 4, shall, within a period of thirty days of the date of announcement of the award, deposit that amount in such manner as the Collector may direct;

- (b) the Collector shall arrange to pay from the Relief Fund, in terms of such award and in accordance with the scheme made under section 7A, to the person or persons referred to in sub-section (l) such amount in such manner as may be specified in that scheme;

- (c) the owner shall, within such period, deposit such amount in such manner as the Collector may direct.]

- (4) In holding any inquiry under sub-section (1), the Collector may, subject to any rules made in this behalf, follow such summary procedure as he thinks fit.

- (5) The Collector shall have all the power of the Civil Court for the purpose of taking evidence on oath and that of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Collector shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure 1973 (2 of 1974).

- (6) Where the insurer or the owner against whom the award is made under sub-section (l) fails to deposit the amount of such award within the period specified under sub-section (3), such amount shall be recoverable from the owner, or as the case may be, the insurer as arrears of land revenue or of public demand.

- (7) A claim for relief in respect of death of, or injury to, any person or damage to any property shall be disposed of as expeditiously as possible and every endeavour shall be made to dispose of such claim within three months of the receipt of the application for relief under sub-section (l) of section 6.

- (8) Where an owner is likely to remove or dispose of his property with a view to evading payment by him of the amount of award, the Collector may, in accordance with the provisions contained in rules 1 to 4 of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908, (5 of 1908), grant a temporary injunction to restrain such act.]”

◆ **Powers of the Central Government or an authorized officer to regulate and restrict a hazardous substance handling facility in case of non compliance**

Section 11: “(1) If a person, authorised by the Central Government in this behalf, has reason to believe that handling of any hazardous substance is taking place in any place premises or vehicle, in contravention of subsection (l) of section 4, he may enter into and search such place, premises or vehicle for such handling of hazardous substance.

- (2) Where, as a result Of any search under sub-section (l) any handling of hazardous substance has been found in relation to which contravention of sub-section (l) of section 4 has taken place, he may sieze such hazardous substance and other things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act:

Provided that where it is not practicable to seize any such substance or thing he may serve on the owner an order that the owner shall not remove, part with, or otherwise deal with, the hazardous substance and such other things except with the previous permission of that person.

- (3) He may, if he has reason to believe that it is expedient so to do to prevent an accident dispose of the hazardous substance seized under sub-section (2) immediately in such manner as he may deem fit.
- (4) All expenses incurred by him in the disposal of hazardous substances under sub-section (3) shall be recoverable from the owner as arrears of land revenue or of public demand."

Section 12: "Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in exercise of its powers and performance of its functions under this Act, issue such directions in writing as it may deem fit for the purposes of this Act to any owner or any person, officer, authority or agency and such owner, person, officer, authority or agency shall be bound to comply with such directions.

Explanation- For the removal of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct:

- (a) prohibition or regulation of the handling of any hazardous substance; or
- (b) stoppage or regulation of the supply of electricity, water or any other service"

15. The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (FRA, 2006)

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 aims at recognising rights to manage, use and conserve forest land for tribal and other forest dwelling communities. Once the rights are clarified the law also grants powers to protect and conserve areas.

Section 5 grants the holders of any forest rights, gram sabha and village level institutions in areas where there are holders of any forest rights the power to:

- protect the wild life, forest and biodiversity
- ensure that the adjoining catchment area, water sources and other ecological sensitive areas are protected
- ensure that the habitat of forest dwellers is preserved from any destructive practices affecting their cultural and natural heritage

16. Commons Judgment: Supreme Court of India- Civil Appeal No. 1132/2011 @ SLP(C) No. 3109/2011 {arising out of Special Leave Petition (Civil) CC No. 19869 of 2010; Jaspal Singh & Others V/s State of Punjab & Others}

Point 22 of the Supreme Court judgment directs all the state governments to take steps to remove any encroachments on village common land.

Point No. 22: "We give directions to all State Governments in the country that they should prepare schemes of eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose chief secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments...Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land."

Following the Supreme Court Judgment (1132/2011) dated January 28, 2011, the office of the Development Commissioner, Gujarat, passed a circular on March 4, 2011 "Removal of encroachment on land vested including Gauchar". The circular states that according to Section 105 of Gujarat Panchayat Act, 1993, "the village panchayat has the powers to remove unauthorised encroachments, encroachments without permission and on Gauchar land or any crop grown unauthorisedly on any other land". The circular adds that the under the above-mentioned clause powers have been delegated to the panchayat to remove any unauthorised obstruction or encroachment on any open site which is not a private property. The circular was sent to the District development Officers and District Collectors asking them to remove all encroachments and give notice at the village panchayat level. The circular stated that the panchayats may not be able to do so due to "vested local level interest." Village and taluka panchayat are to make sure that no encroachment takes place in future

A.T. Ramaswamy Committee submitted two reports on February 1, 2007 and July 26, 2006 before the State Assembly of Karnataka that suggested (among other things) effective implementation of the existing laws against land grabbers, protection of public properties and initiating legal action against government and public servants for creating false documents or destruction of records.

Community level environment justice practitioners or grassroots environment paralegals use the legal empowerment approach to assist affected communities to seek legal remedies through an administrative route. This handbook is a guide to help them in the use of the legal clauses and institutional routes in this work. The handbook presents some scenarios that include problem types, the likely complaints the practitioner could come across and the legal clauses and institutions through which a remedy could be pursued for those complaints. The scenarios presented in the handbook are illustrative and draw from the several cases currently being piloted for remedies by the enviro-legal coordinators associated with the Centre for Policy Research-Namati Environmental Justice Program.

सामुदायिक स्तर पर पर्यावरणीय न्याय के लिए काम करने वाले या ज़मीनी स्तर पर पर्यावरणीय पैरालीगल लोग प्रभावित समुदायों को प्रशासन के माध्यम से कानूनी हल निकालने में मदद करने के लिए कानूनी सशक्तिकरण दृष्टिकोण से काम करते हैं। इस पुस्तिका में ऐसे उपयोगी कानूनी प्रावधान और प्रणालियों का विवरण दिया गया है, जो इस काम में मदद कर सकते हैं। इसमें कुछ ऐसे उदाहरण दिए गए हैं जिनमें अलग अलग प्रकार की समस्याएं, पैरालीगल के सामने आने वाली स्थितियां और वह कानूनी प्रावधान और प्रणालियां दी गई हैं, जिनसे इन स्थितियों के हल निकाले जा सकते हैं। जो स्थितियां यहां दी गई हैं, वे उदाहरण के तौर पर ऐसे मामलों से ली गई हैं, जिनका सेंटर फॉर पॉलिसी रिसर्च-नमति पर्यावरणीय न्याय कार्यक्रम से जुड़े पर्यावरण-कानून समन्वयक समाधान निकालने का प्रयास कर रहे हैं।

