

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

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

**Version 2**



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## Citation:

Centre for Policy Research and Namati. 2017. Handbook on Legal and Administrative Remedies for Community Level Environment Justice Practitioners. CPR-Namati Environmental Justice Program, New Delhi

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Design : Yashwant Rawat  
Print : PRINTFORCE

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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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## उद्धरण:

सैन्टर फॉर पॉलिसी रिसर्च और नमति। 2017। सामुदायिक पर्यावरणीय न्याय कार्यकर्ताओं के लिए कानूनी और प्रशासनिक समाधानों की हैंडबुक। सी.पी.आर.—नमति पर्यावरणीय न्याय कार्यक्रम, नई दिल्ली।

## 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 आप यदि इसे पुनः प्रकाशित करते हैं, या अनुवाद करते हैं, तो इस प्रकाशन का आभार देते हुए, उसकी एक प्रति सी.पी.आर.—नमति पर्यावरणीय न्याय कार्यक्रम को ज़रूर भेजें।

हिंदी अनुवाद: निधि अग्रवाल  
प्रूफरीडिंग (हिंदी): बिपाशा पॉल  
रूपरेखा: यशवंत रावत  
मुद्रण: प्रिन्टफोर्स

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

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

**September 2017**

**India**

**सितम्बर 2017**

**भारत**

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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
CPR	Centre for Policy Research	NOC	No Objection Certificate
CRZ	Coastal Regulation Zone	OE	Over-exploited
CVCA	Critically Vulnerable Coastal Area	PESA	Panchayat (Extension in Scheduled Areas) Act
CZMA	Coastal Zone Management Authority	RTI	Right to Information
DLCC	District Level Coastal Committee	SBWL	State Board for Wildlife
EC	Environmental 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	SWGB	State Ground Water Board
ESA	Ecologically Sensitive Area	TSDF	Transport, Storage and Disposal Facility
FCA	Forest Conservation Act	ULB	Urban Local Body
FRA	Forests Rights Act	UT	Union Territory
IPC	Indian Penal Code	WLPA	Wildlife Protection Act
KSPCB	Karnataka State Pollution Control Board		

## 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 is 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 and a grazing ground. Even if none of these problems are near where you live, your everyday access road could be the main route transporting coal, bauxite, iron ore or any other mineral, which would still make living conditions difficult.

Each such activity is more often than not, governed by a law. This could be both for prior approval and post approval compliance, based on specific safeguards or conditions. Safeguards or conditions are not just limited to environmental approvals, but can exist in lease documents or land transfer agreements. There could also be a court judgment or order which is generic in nature and has a bearing, no matter where you are located in the country, on particular issues like permissions for sand mining, tree felling or change of land use of common lands. It is possible that problems you notice or are directly affected by are occurring because someone, somewhere is not adhering to provisions of legal directions, be it by way of laws or court directions. If this is the case, there is likely to be a clear institutional framework and defined administrative agencies who would be mandated to restrict this activity, monitor non-compliance, as well as take action to remedy the situation and issue penalties. There could also be instances where an impact is not the result of a legal violation, but it may still be causing a hindrance to everyday living and affecting access to clean air or water. In such cases, there is also a possibility of invoking the authority of an administrative official to intervene and resolve the matter.

However, people affected by a problem are often not aware that it is because of non-compliance with the law or that there is an institutional remedy available for the same. Maybe, 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 the difficulty one is facing is due to legal or illegal actions can be 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 be fluent in legalese. Basic knowledge of applicable legal clauses and which institution would be best suited to approach 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.

## पृष्ठभूमि और संदर्भ

समस्या कहीं भी आ सकती है, चाहे हम कहीं भी रहते हों, उस रास्ते से रोज़ गुज़रते 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 फलाई 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 कोई पर्यटक रिसोर्ट जिसने किसी पानी के स्रोत या चारागाह तक पहुंचने का रास्ता बंद कर दिया है। चाहे इनमें से कोई भी समस्या आप के घर के पास न हो रही हो, लेकिन हो सकता है कि आप रोज़ जिस सड़क से आते-जाते हैं, वह सड़क कोयला, बॉक्साइट, लौह खनिज या किसी अन्य खनिज को लाने-ले जाने के लिए उपयोग की जाती हो, जिससे आपका जीना दुष्पार हो रहा हो।

ज्यादातर ऐसी हर गतिविधि को नियंत्रित करने के लिए कुछ कानून होते हैं। यह कानून पूर्व स्वीकृति के लिए भी हो सकते हैं और ऐसे भी जहां स्वीकृति मिल चुकी है, लेकिन कुछ विशिष्ट शर्तों या सुरक्षा नियमों के पालन के आधार पर। यह शर्तें केवल पर्यावरणीय स्वीकृतियों के लिए ही नहीं, बल्कि लीज़ दस्तावेज़, या भू-हस्तांतरण अनुबंध दस्तावेज़ों का भी हिस्सा हो सकती हैं। 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 कटाई 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 ज़रूर 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। ऐसा भी हो सकता है कि प्रभाव किसी कानून के उल्लंघन के कारण न हो रहे हों, लेकिन रोज़मर्रा के जीवन को प्रभावित कर रहे हों और स्वच्छ वायु या पानी मिलने में अवरोध पैदा कर रहे हों। ऐसे मामलों में, किसी प्रशासनिक अफसर के अधिकारक्षेत्र के अंतर्गत समस्या का समाधान करने की कोशिश भी की जा सकती है।

लेकिन 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। ज़रूरी 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 ज़रूरत 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।



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 along with them 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 law, 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), photographs, maps and complaint letters. One could also check if the information disclosed by the project proponent at the time of project appraisal was 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 environmental justice practitioners can apply and use law to work with affected communities and seek desired 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 associated with the Centre for Policy Research (CPR)-Namati Environmental Justice Program. It also draws from the resolutions being pursued by implementing partners like Janabhivakti (Chhattisgarh) and Keonjhar Integrated Rural Development and Training Institute (KIRDTI) (Odisha).

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. This implies that it is advisable that practitioners using this handbook look out for additional legal remedies for the problem in hand, which may not be listed here.
- Second, we encourage practitioners to as far as possible share the legal knowledge with affected communities and try to jointly work towards seeking institutional response. This will encourage collective learning and help achieve legal empowerment through practice.

The handbook does not specifically list judicial and court related processes of any of these problems. In case the problem does not get resolved through the administrative route, affected people and community practitioners have the option of accessing avenues such as the National Green Tribunal (NGT) and courts. For this, the assistance of a lawyer is likely to be required. In such instances, the evidence collected, complaints filed and other documentation could form an important basis and support for any legal intervention.

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 दस्तावेज, 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 हैंडबुक 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 के 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 सेंटर 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 कार्यक्रम के क्रियान्वयन में भागीदार संगठनों जैसे कि जनभिव्यक्ति (छत्तीसगढ़) और केओन्झार इंटीग्रेटेड रूरल डेवलपमेंट एंड ट्रेनिंग इंस्टिट्यूट (KIRDTI) (ओडिशा) द्वारा जिन स्थितियों और उससे जुड़े समाधान के लिए कार्य किया जा रहा है उन्हें भी इसमें शामिल किया गया है।

इस हैंडबुक 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 हैंडबुक 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 के लिए मदद मिलेगी।

इस हैंडबुक 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 राष्ट्रीय हरित ट्राइब्यूनल और कोर्ट जाने का विकल्प है, जहां वकीलों के माध्यम से मामला दर्ज करना होता है। इसके लिए आपको किसी वकील की मदद लेनी होगी। ऐसे मामलों में, इकट्ठे किए गए सबूत, दर्ज की गई शिकायतें और अन्य दस्तावेज किसी कानूनी कार्यवाही के लिए महत्वपूर्ण हो जाते हैं।

## SECTION I

### PROBLEM STATEMENT AND LEGAL REMEDY

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

#### SCENARIO 1

##### What is the complaint?

A group of people has approached a community worker to say that a mine near their village is pumping out water from a stream to use within a factory's premises. They do not know what the nature of the use within the premises is or whether or not the owners have 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 get depleted and will not 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 being violated?

Mining, power generation or 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 may also have its own defined limits for drawing water for agriculture, domestic or industrial purposes, which would be important to ascertain.

Law	Corresponding Institutions/ Officials	Section/Clause
<b>Permissions, Rights and Consents related laws</b>		
<b>1. Environment Impact Assessment (EIA) Notification, 2006:</b> Check whether the activity has obtained the environmental clearance. If yes, check if there is a violation of a specific condition of the environmental clearance letter.	1. State Environment Impact Assessment Authority (SEIAA) (if Category B project) 2. Ministry of Environment, Forest and Climate Change (MoEFCC) (if Category A project)	Section 2 Environmental clearance letters mention the amount of water required by the industry and the source. They would have a specific condition related to drawing of water and deterioration of water sources. They would also have a reference to the agency from whom permissions needs to be taken.

## खंड 1

### 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?

सामुदायिक कार्यकर्ता के पास कुछ लोग अपने गांव के नजदीक 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, और 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 झरने में कमी आने लगी है।

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

खनन, विद्युत परियोजनाएं और औद्योगिक उपक्रमों में जमीन 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 जरूरी होगा।

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
<b>स्वीकृतियां, अधिकार और सहमति संबंधित कानून</b>		
<b>1. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006:</b> 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।	1. राज्य स्तरीय पर्यावरणीय समाघात निर्धारण 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 कहां से आएगा। उसमें पानी लेने और स्रोत के विनाश संबंधी विशिष्ट शर्तें भी दी होंगी। उसमें यह भी लिखा होगा कि यह मंजूरी कौन सी एजेंसी देगी।

<b>2. Water (Prevention and Control of Pollution) Act, 1974:</b> (under which consent to operate is sought, for which the project has to disclose the sources of water)	State Pollution Control Board (SPCB) or its nearest regional office	Section 26 (in case the company has not complied with conditions of the consent to operate) Section 33A whereby in case of any violation, the SPCB can give directions for closure or stopping water or electricity supply. Conditions of the consent to operate where specifics of the water source would be mentioned
<b>Site specific laws</b>		
<b>3. Ecologically Sensitive Areas (ESAs), Critically Vulnerable Coastal Areas (CVCA), Critically Polluted Area, etc.:</b> Check whether any special orders, notifications or guidelines have been issued to restrict the drawing of water in a notification for an ESA, CVCA, Critically Polluted Area, etc.	1. MoEFCC 2. ESA Management Committee 3. State Coastal Zone Management Authority (SCZMA) 4. Pollution Control Board (PCB)	1. Section 3 (2) (v) of the Environment (Protection) Act (EPA), 1986 2. Section 4 of the Coastal Regulation Zone (CRZ) Notification, 2011 3. Section 19 of the Air Act, 1981 or the Water Act, 1974
<b>State specific Laws (example)</b>		
<b>4. Odisha Pani Panchayat Act, 2002:</b> Check if the Panchayat has used its powers to imprison and/or levy a fine in case of any unlawful damage to the irrigation system		Section 23

### RELATED CONDITIONS IN AN ENVIRONMENTAL CLEARANCE LETTER OF A COAL MINE

- The project proponent shall obtain necessary prior permission of the competent authorities for drawl of the requisite quantity of surface water.
- Necessary prior clearance from the Central Ground Water Authority (CGWA) shall be obtained for working below the water level and for pumping of ground water.
- Rainwater harvesting and also other measures for conservation of water and augmentation of ground water resources shall be taken in consultation with the State Ground Water Board (SGWB).
- The project authority shall implement suitable conservation measures to augment ground water resources in the area in consultation with the Regional Director, Central Ground Water Board (CGWB).

<b>2. जल (प्रदूषण पर प्रतिबंध और नियंत्रण) अधिनियम, 1974, संशोधित :</b> 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।
<b>स्थल-विशिष्ट कानून</b>		
<b>3. ESA, CVCA, CPA :</b> 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) अ 2. CRZ अधिसूचना, 2011 की धारा 4 3. वायु अधिनियम, 1981 या जल अधिनियम, 1974 की धारा 19
<b>राज्य-विशिष्ट कानून (उदाहरण)</b>		
<b>4. उड़ीसा पानी पंचायत अधिनियम, 2002 :</b> पंचायत किसी सिंचाई व्यवस्था या पानी के स्रोत को नुकसान होने पर जुर्माना लगा सकती है।		धारा 23

### कोयला खदान के लिए पर्यावरणीय स्वीकृति पत्र में शामिल होने वाली अन्य शर्तें

- परियोजना प्रस्तावकर्ता को ज़मीनी पानी निकालने के लिए पानी की मात्रा के संबंध में सक्षम प्राधिकारी से पूर्व स्वीकृति लेनी होगी।
- केन्द्रीय भू-जल प्राधिकरण से पानी के स्तर से नीचे काम करने और भू-जल पम्प करने के लिए पूर्व-स्वीकृति लेनी होगी।
- प्राधिकरण से पानी के स्तर से नीचे काम करने और भू-जल पम्प करने के लिए पूर्व-स्वीकृति लेनी होगी।
- जल संरक्षण के लिए बारिश के पानी का संग्रहण व अन्य तरीकों का उपयोग और राज्य भूजल बोर्ड/केन्द्रीय भूजल प्राधिकरण के साथ विमर्श करके भूजल बढ़ाने के लिए काम करना।
- परियोजना प्राधिकारी क्षेत्रीय निर्देशक, केन्द्रीय भूजल बोर्ड से विमर्श करके, क्षेत्र में भूजल बढ़ाने के लिए उपयुक्त संरक्षण प्रयास करेंगे।



## SCENARIO 2

### What is the complaint?

Villagers have approached a paralegal with the complaint that common village land has been leased out for mining to private companies. The residents of the villages 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 these lands are lost, the villagers will not be able to continue their livestock related livelihoods, as the land for grazing will be lost.

### Is a law being violated?

The first question that needs to be asked here is if there is a national or state specific law or government department or agency 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 may also attract other site specific laws.

Law	Corresponding Institutions/ Officials	Section/Clause
<b>Court judgments and Administrative Procedures</b>		
<b>1. SC Judgment (dated 28.01.11) in Civil Appeal No. 1132/2011 @ SLP(C) No. 3109/2011:</b> 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 lands under the Panchayat Directions restricting conversion of common lands to other purposes
<b>2. State Panchayat Act:</b> Check whether the Panchayat has any special powers to protect common village lands under its jurisdiction	Sarpanch/Head of Panchayat	Each state has its own Panchayat Act
<b>Permissions, Rights and Consents related laws</b>		
<b>3. No Objection Certificate (NOC) from the Panchayat:</b> Check whether an NOC has been sought from the concerned Panchayat	Sarpanch/Head of Panchayat	Each state has its own Panchayat Act

## स्थिति 2

### 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 गांव वालों के हाथ से निकल जाती है, तो गांव वाले अपनी पशु-आधारित आजीविकाओं से हाथ धो बैठेंगे, क्योंकि चारागाह की पूरी ज़मीन खत्म हो जाएगी।

### 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
<b>कोर्ट के आदेश और प्रशासनिक प्रक्रियाएं</b>		
<b>1. सर्वोच्च न्यायालय आदेश (तारीख 28-01-11) सिविल अपील संख्या 1132/2011 @SLP(C) संख्या 3109/2011:</b> (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
<b>2. राज्य पंचायत अधिनियम:</b> 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
<b>स्वीकृतियां, अधिकार और सहमति संबंधित कानून</b>		
<b>3. पंचायत से अनापत्ति:</b> जांच करें कि संबंधित पंचायत से अनापत्ति प्रमाण पत्र लिया गया है या नहीं।	1. सरपंच/पंचायत प्रमुख	हर राज्य का अपना पंचायत अधिनियम है

Site specific laws		
<p><b>4. Coastal Regulation Zone (CRZ) Notification, 2011:</b> Check whether this is a permissible activity in the concerned CRZ sub-zone(s)</p>	<p>1. SCZMA 2. District Level Coastal Committee (DLCC) (under the District Collector)</p>	<p>Section 3; Section 4 and Section 7</p>
<p><b>5. ESA:</b> Check whether any special orders, notifications or guidelines have been issued to protect or conserve this area, or restrict activity like ESA,</p>	<p>1. MoEFCC 2. ESA Management Committee</p>	<p>Section 3 (2) (v) of the EPA, 1986</p>

स्थल-विशिष्ट कानून		
<p><b>4. तटीय विनियमन क्षेत्र अधिसूचना, 2011 (CRZ):</b> जांच करें कि सी.आर.ज़ेड क्षेत्र में इस प्रकार की गतिविधि की अनुमति है या नहीं।</p>	<p>1. राज्य तटीय क्षेत्र प्रबंधन प्राधिकरण (CZMA) जो राज्य की राजधानी में होता है 2. जिला स्तरीय तटीय कमिटी (DLCC), जिला कलेक्टर के अंतर्गत</p>	<p>धारा 3; धारा 4 और धारा 7</p>
<p><b>5. ESA :</b> 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।</p>	<p>1. पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय (MoEFCC) 2. ESA प्रबंधन कमिटी</p>	<p>1. EPA, 1986 की धारा 3 (2) अ</p>

### SCENARIO 3

#### 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. This 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 only seen local contractors working in the area who are not very forthcoming with information or open to dialogue.

#### Is a law being violated?

The construction of a railway line in a coastal area is likely to require some legal and statutory permissions 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 legality of the construction.

### स्थिति 3

#### 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 :



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

Law	Corresponding Institutions/Officials	Section/Clause
<b>Site specific laws</b>		
<b>1. CRZ Notification, 2011:</b> Check whether this is a permissible activity in the concerned CRZ sub-zones	1. SCZMA 2. DLCC (under the District Collector)	Section 3; Section 4 and Section 7
<b>2. Forest (Conservation) Act (FCA), 1980:</b> Check whether the construction is being carried out on forest land and if permission for forest diversion is required	1. Divisional Forest Officer 2. MoEFCC (Regional and New Delhi office)	Section 2
<b>3. Wildlife (Protection) Act (WLPA), 1972:</b> 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 (Wildlife) 2. Conservator of Forests (Wildlife) 3. State Board for Wildlife (SBWL)	Section 29 and; Section 35 (6)
<b>4. ESA, CVCA or Critically Polluted Area:</b> Check whether any special orders, notifications or guidelines have been issued to protect or conserve this area or restrict activity under the declaration of an ESA, CVCA or a Critically Polluted Area	1. MoEFCC 2. CZMA 3. PCB	1. Section 3 (2) (v) of the EPA, 1986 2. Section 4 of the CRZ Notification, 2011 3. Section 19 of the Air Act, 1981 or the Water Act, 1974
<b>Permissions, Rights and Consents related laws</b>		
<b>5. NOC from the Panchayat or Municipality:</b> Check whether an 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
<b>6. CRZ Notification, 2011:</b> Check whether this is a permissible activity in the concerned CRZ sub-zone(s)	1. SCZMA 2. DLCC(under the District Collector)	Section 3; Section 4 and Section 7
<b>7. Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA, 2006):</b> 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
<b>स्थल विशिष्ट कानून</b>		
<b>1. तटीय विनियमन क्षेत्र अधिसूचना, 2011 (CRZ):</b> जांच करें कि सी.आर.जेड 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
<b>2. वन संरक्षण अधिनियम, 1980 (FCA):</b> 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
<b>3. वन्यजीव संरक्षण अधिनियम, 1972 (WLPA)</b> 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)
<b>4. ESA, CVCA :</b> 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) अ 2. CRZ अधिसूचना, 2011 की धारा 4 3. वायु अधिनियम, 1981 या जल अधिनियम, 1974 की धारा 19
<b>स्वीकृतियां, अधिकार और सहमति संबंधित कानून</b>		
<b>5. पंचायत या नगरपालिका से अनापत्ति:</b> जांच करें कि संबंधित पंचायत या नगरपालिका से अनापत्ति प्रमाण पत्र की आवश्यकता है या नहीं।	1. सरपंच/पंचायत प्रमुख 2. निर्वाचित नगर निगम पार्षद/नगर निगम आयुक्त	हर राज्य का अपना पंचायत अधिनियम होता है।
<b>6. तटीय विनियमन क्षेत्र अधिसूचना, 2011 (CRZ):</b> जांच करें कि क्या यह गतिविधि किसी CRZ क्षेत्र में हो रही 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
<b>7. वन अधिकार अधिनियम, 2006:</b> 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 4

### 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 stream. 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, finding that it tasted of chemicals. The discharge had not smelled earlier and this 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 or the facility have the necessary permissions related to the discharging effluent in the river? If there is a permission, then what is the allowed quantum of discharge and is to be treated or untreated?



## स्थिति 4

### शिकायत क्या है?

एक गांव में जाकर ज़मीनी स्तर पर काम करने वाले कानूनी कार्यकर्ता या सामुदायिक पैरालीगल नदी के किनारे टहलने जाता/जाती है। गांव वाले उन्हें 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। हांलाकि 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 उनके 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 Institutions/ Officials	Section/Clause
<b>Site specific laws</b>		
<b>1. CRZ Notification, 2011:</b> Check whether this is a permissible activity in the concerned CRZ sub-zone(s)	1. SCZMA 2. DLCC (under the District Collector)	Section 3; Section 4 and Section 7
<b>2. FCA, 1980:</b> Check whether the construction is being carried out on forest land and if permission for forest diversion is required	1. Divisional Forest Officer 2. MoEFCC (Regional and New Delhi office)	Section 2
<b>3. Critically Polluted Area under the Air or Water Act:</b> Check whether the area has been declared a Critically Polluted Area and if any special safeguards have been issued	PCB(s)	1. Chapter IV and Section 19 of the Air Act, 1981 2. Section 19 of the Water Act, 1974, 3. Section 19 of Air Act, 1981
<b>4. WLPA, 1972:</b> 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 (Wildlife) 2. Conservator of Forests (Wildlife) 3. State Board for Wildlife (SBWL)	Section 29; Section 35 (6)
<b>Permissions, Rights and Consents related laws</b>		
<b>5. NOC from the Panchayat or Municipality:</b> Check whether an 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
<b>6. EIA Notification, 2006:</b> Check whether the industry/facility has obtained the environmental clearance. If yes, check if there is a violation of a specific condition of the environmental clearance letter.	1. SEIAA (if Category B project) 2. MoEFCC (if Category A project)	Section 2 and related procedures Schedule of the EIA Notification and specifically Sections 7 (d); Section 7 (h)

कानून	संबंधित विभाग व अधिकारी	कानून की धाराएं
<b>स्थल विशिष्ट कानून</b>		
<b>1. तटीय विनियमन क्षेत्र अधिसूचना, 2011 (CRZ):</b> जांच करें कि सी.आर.जेड क्षेत्र में इस प्रकार के निर्माण की अनुमति है या नहीं।	1. राज्य तटीय क्षेत्र प्रबंधन प्राधिकरण (CZMA) 2. जिला स्तरीय तटीय कमिटी (DLCC), जिला कलेक्टर के अंतर्गत	धारा 3; धारा 4 और धारा 7
<b>2. वन संरक्षण अधिनियम, 1980 (FCA):</b> 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
<b>3. वायु या जल अधिनियम के अंतर्गत गंभीर रूप से प्रदूषित क्षेत्र:</b> 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
<b>4. वन्यजीव संरक्षण अधिनियम, 1972 (WLPA)</b> 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)
<b>स्वीकृतियां, अधिकार और सहमति संबंधित कानून</b>		
<b>5. पंचायत या नगरपालिका से अनापत्ति:</b> जांच करें कि संबंधित पंचायत या नगरपालिका से अनापत्ति प्रमाण पत्र की आवश्यकता है या नहीं।	1. सरपंच/पंचायत प्रमुख 2. निर्वाचित नगर निगम पार्षद/नगर निगम आयुक्त	हर राज्य का अपना पंचायत अधिनियम होता है।
<b>6. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006:</b> 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 अनुसूचि और विशिष्ट रूप से धारा 7 (d); 7 (h) EIA अधिसूचना, 2006 की धारा 2 और संबंधित प्रक्रियाएं

<b>7. Water (Prevention and Control of Pollution) Act, 1974:</b> Check whether the consents to establish and operate the pipeline as part of the industry/facility or independently have been obtained and if there is any violation of the same	1. SPCB and its regional offices	Section 25 (1); Section 25 (4)
<b>Public nuisance under criminal law</b>		
<b>8. The Indian Penal Code (IPC), 1860</b>	District Collector	Section 19 which gives every person empowered by law the powers of a judge  Section 268 which defines a public nuisance

### CONDITIONS IN A CRZ APPROVAL LETTER OF AN INDUSTRY ON THE WEST COAST

- There shall be disposal of solid and liquid wastes in the coastal areas.
- Sewage Treatment facility should be provided in accordance with the CRZ Notification. Chlorination shall be adopted and treated sewage should be reused.
- Adequate measures should be taken to prevent odour problems from the solid waste processing plant and sewage treatment plant.

<b>7. जल (प्रदूषण पर प्रतिबंध और नियंत्रण) अधिनियम, 1974:</b> 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। और क्या स्वीकृति की किसी शर्त का उल्लंघन हो रहा है।	राज्य प्रदूषण नियंत्रण बोर्ड और उसके क्षेत्रीय कार्यालय	धारा 25 (1); धारा 25 (4)
<b>अपराधिक कानून के अंतर्गत सार्वजनिक उपद्रव</b>		
<b>8. भारतीय दंड संहिता 1860</b>	ज़िला कलेक्टर	धारा 19 जिसमें कानून के अंतर्गत अधीकृत हर व्यक्ति के पास जज की शक्तियाँ हैं। धारा 268 जिसके अंतर्गत सार्वजनिक उपद्रव को परिभाषित किया गया है।

### पश्चिमी तट पर एक उद्योग को दिए गए स्वीकृति पत्र की शर्तें

- तटीय क्षेत्रों में ठोस और तरल कचरे का निपटान होगा।
- CRZ अधिसूचना के अनुरूप सीवेज उपचार संयंत्र उपलब्ध कराना होगा। क्लोरीन उपचार करना होगा और उपचार किए हुए सीवेज का पुनः उपयोग किया जाएगा।
- ठोस कचरे के निपटान के संयंत्र और सीवेज उपचार संयंत्र से पैदा होने वाली बदबू की समस्या के समाधान के लिए उपयुक्त कदम लेने होंगे।

## SCENARIO 5

### What is the complaint?

Residents of a village settlement 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 of one kilometre from their 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 the event of an accident or a leakage in the terminal, their lives and their children's lives will be at risk. They have raised all these concerns before the government officials and yet the construction activity has continued.

### Is a law 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 obtained. Since the local people have raised these issues before government bodies in the past, it can be checked if this was 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.

## स्थिति 5

### 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 कैमिकल रखेंगे। यह गोदाम गांव के स्कूल के बहुत नजदीक बना है और गांव की सीमा के 1 कि.मी. परिधि में है। उन्हें चिंता है कि इन जहरीले कैमिकल 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 कहां होना चाहिए और (ख) खतरनाक कैमिकल 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 या 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, उनका अनुपालन किया जा रहा है या नहीं।



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



Law	Corresponding Institutions/ Officials	Section/Clause
<b>Permissions, Rights and Consents related laws</b>		
<b>1. EIA Notification, 2006:</b> Check whether the activity has obtained the environmental clearance. If yes, check if there is a violation of a specific condition of an environmental clearance letter.	1. SEIAA (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
<b>2. Hazardous and Other Wastes (Management and Trans-boundary Movement) Rules, 2016:</b>	SPCB	Section 4
<b>3. NOC from the Panchayat or Municipality:</b> Check whether an 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
<b>4. CRZ Notification, 2011:</b> Check whether this is a permissible activity in any of the concerned CRZ sub-zone(s).	1. SCZMA located at the state capital 2. DLCC (under the District Collector)	Section 3; Section 4 and Section 7
<b>Other Site specific laws</b>		
<b>5. WLPA, 1972:</b> 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 (Wildlife) 2. Conservator of Forests (Wildlife) 3. State Board for Wildlife (SBWL)	Section 29; Section 35 (6)
<b>6. ESA, CVCA, Critically Polluted Area, etc.:</b> Check whether any special orders, notifications or guidelines have been issued to protect or conserve this area or restrict activity under the declaration of an ESA, CVCA, Critically Polluted Area or so on	1. MoEFCC 2. ESA Management Committee 3. SCZMA 4. PCB	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
<b>स्वीकृतियां, अधिकार और सहमति संबंधित कानून</b>		
<b>1. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006:</b> 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
<b>2. खतरनाक पदार्थ (प्रबंधन, संचालन और सीमा पारगमन) नियम, 2016</b>	राज्य प्रदूषण नियंत्रण बोर्ड	धारा 4
<b>3. पंचायत या नगरपालिका से अनापत्ति:</b> 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।
<b>4. तटीय विनियमन क्षेत्र अधिसूचना, 2011 (CRZ):</b> जांच करें कि सी.आर.ज़ेड 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
<b>अन्य स्थल-विशिष्ट कानून</b>		
<b>5. वन्यजीव संरक्षण अधिनियम, 1972 (WLPA)</b> 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)
<b>6. ESA, CVCA:</b> 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) अ 2. CRZ अधिसूचना, 2011 की धारा 4 3. वायु अधिनियम, 1981 या जल अधिनियम, 1974 की धारा 19

## SCENARIO 6

### What is the complaint?

The new community worker in the village noticed that there was a constant flow of trucks into the village every day from the nearby coal mines. These trucks were usually carrying some sort of minerals from nearby companies and left behind a trail of dust every time. A layer of dust always covered the houses and shops that were on the roadside. Asking the villagers about this, she came to know that this had been going on for years and that overspeeding of the trucks has even caused deaths in the area. The villagers said that at several occasions they had pleaded with the company owners to do something about this situation.

### Is a law being violated?

Mines have to take permissions related to siting of the operations (e.g., in forest areas) mitigating environmental impacts and pollution control from different regulatory agencies. These permissions once granted list out the conditions to minimise the environmental and social impact while transporting the ore. Alternatively, one can also approach the District Collector under the Indian Penal Code (IPC). As dust generated while transporting causes a nuisance to the public, a complaint can be made citing public nuisance.

*(Note: While the provisions below are responding to the specific scenario of coal transportation, they would also be applicable to the transportation of other minerals and even fly ash, especially where the law is not coal centric.)*



## स्थिति 6

### शिकायत क्या है?

गांव में अभी नए नए आए सामुदायिक कार्यकर्ता ने ध्यान दिया कि पास की कोयले की खदान से रोज़ लगातार ट्रकों का आना-जाना लगा रहता है। यह ट्रक आम तौर पर पास की कंपनियों से कोई-न-कोई खनिज ले जा रहे होते हैं और रास्ते में धूल उड़ाते हुए जाते हैं। सड़क के नज़दीक के घरों और दुकानों पर हर समय धूल की एक परत चढ़ी रहती है। इसके बारे में गांव वालों से पूछने पर उसे पता चला कि यह सिलसिला कई सालों से चल रहा है और तेज़ गति से आने वाले ट्रकों के कारण क्षेत्र में कई लोगों की मृत्यु भी हो चुकी है। गांव वालों ने बताया कि उन्होंने कई बार कंपनी वालों से इस स्थिति का हल निकालने की दलील की है।

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

खदानों को अपने कार्यस्थल की साइट (जैसे कि वन क्षेत्रों के लिए), पर्यावरणीय प्रभावों के उपचार और प्रदूषण नियंत्रण के संबंध में विभिन्न नियामक एजेंसियों से कई स्वीकृतियां लेनी होती हैं। इन स्वीकृतियों के साथ, कच्चे लोहे के परिवहन के दौरान पर्यावरणीय और सामाजिक प्रभावों को न्यूनतम करने के लिए शर्तों की सूची दी जाती है। इसके अलावा भारतीय दंड संहिता के अंतर्गत ज़िला कलेक्टर से भी मिल जा सकता है। चूंकि परिवहन के दौरान उड़ने वाली धूल के कारण सार्वजनिक उपद्रव की स्थिति पैदा होती है, तो इसके संबंध में शिकायत की जा सकती है।

*(नोट: हांलाकि नीचे दिए गए कानूनी प्रावधान कोयले के यातायात के संबंध में दिए जा रहे हैं, वे अन्य खनिजों के यातायात के मामलों में भी लागू होते हैं और प्लाइवैश के संबंध में भी, खासकर जहां पर कानून केवल कोयले से संबंधित नहीं है।)*



Law	Corresponding Institutions/Officials	Section/Clause
<b>Permissions, Rights and Consents related laws</b>		
<b>1. EIA Notification, 2006</b> Check whether the activity has obtained the environmental clearance. If yes, check if there is a violation of a specific condition.	1. SEIAA (if Category B project) 2. MoEFCC (if Category A project)	Section 10 on monitoring and compliance Check whether the environmental clearance letter has any specific conditions related to transportation.
<b>2. Air (Prevention and Control of Pollution) Act, 1981:</b> Check whether the consents to establish and operate have been sought and if their conditions are being complied with (for consent to establish and operate)	SPCB or its nearest Regional Office	Section 21 (in case the company has not complied with conditions of the consent to operate) Section 31 A whereby in case of any violation, the SPCB can give directions for closure or stopping water or electricity supply Specific conditions of the consent to operate related to transportation
<b>Public nuisance under criminal law</b>		
<b>3. IPC, 1860</b>	District Collector	Section 19 which gives every person empowered by law the powers of a judge Section 268 which defines public nuisance
<b>State specific guidelines (example)</b>		
<b>4. Guidelines for Coal Handling Units, 2010</b>	Gujarat Pollution Control Board	Check for conditions related to transportation of coal

### Guidelines for Coal Handling Units (issued by the Gujarat Pollution Control Board)

The Gujarat Pollution Control Board in 2010 issued guidelines specifically to deal with the environmental impacts arising out of storage, transportation and handling of coal. These guidelines lay down criteria regarding the following:

- Location- it specifies the distance at which a coal handling unit should be situated from areas like agricultural land, human habitations and ecological sensitive areas.
- Storage and handling- it gives the maximum height for stored coal heaps, the distance between them, and states that there should be mechanised loading and unloading
- Transportation- it has conditions like the trucks carrying the coal should be covered with tarpaulin, the trucks should not be overloaded, etc.
- Pollution prevention- it has conditions like water sprinkling should be conducted at every point of handling, there should be a 9 m compound wall at the periphery of the unit, etc.

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
<b>स्वीकृतियां, अधिकार और सहमति संबंधित कानून</b>		
<b>1. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006:</b> 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	निगरानी और अनुपालना पर धारा 10 जांच करें कि पर्यावरण स्वीकृति पत्र में यातायात के संबंध में कोई विशिष्ट शर्त दी गई है या नहीं।
<b>2. वायु (प्रदूषण रोकथाम एवं नियंत्रण) अधिनियम को 1981 में अधिनियमित किया गया</b> (स्थापित करने और चलाने की स्वीकृति के लिए) और जांच करने की क्या इन स्वीकृतियों में दी गई शर्तों का पालन हो रहा है।	राज्य प्रदूषण नियंत्रण बोर्ड या उसका सबसे नज़दीकी क्षेत्रीय कार्यालय	धारा 21 (यदि कंपनी ने कारखाना चलाने के लिए स्वीकृति की शर्त की अनुपालना नहीं की है) धारा 31 ए, जहां SPCB उल्लंघन के मामले में कारखाना बंद करने या पानी और बिजली की सप्लाई बंद करने के आदेश दे सकती है। यातायात के संबंध में कारखाना चलाने की स्वीकृति में दी गई विशिष्ट शर्तें
<b>अपराधिक कानून के अंतर्गत सार्वजनिक उपद्रव</b>		
<b>3. भारतीय दंड संहिता, 1860</b>	ज़िला कलेक्टर	धारा 19, जिसमें कानून द्वारा अधीकृत हर व्यक्ति के पास जज के बराबर शक्तियां हैं धारा 268 जिसमें सार्वजनिक उपद्रव को परिभाषित किया गया है।
<b>राज्य विशिष्ट दिशानिर्देश</b>		
<b>4. कोयला संचालन इकाइयों के लिए दिशानिर्देश</b>	गुजरात प्रदूषण नियंत्रण बोर्ड	कोयले के यातायात के संबंध में विशिष्ट शर्तें देखें

### कोयला संचालन इकाइयों के लिए दिशानिर्देश (गुजरात प्रदूषण नियंत्रण बोर्ड द्वारा जारी)

गुजरात प्रदूषण नियंत्रण बोर्ड ने कोयले के भंडारण, यातायात और संचालन के कारण होने वाले पर्यावरणीय प्रदूषण से निपटने के संबंध में विशिष्ट दिशानिर्देश जारी किए हैं। इन दिशानिर्देशों में नीचे दिए गए पहलुओं के लिए मानदंड स्पष्ट किए गए हैं :

- स्थल— इसमें खेतों, मानवीय बस्तियों, पारिस्थितिकीय रूप से संवेदनशील क्षेत्रों आदि से कोयला संचालन इकाई की दूरी स्पष्ट की गई है।
- भंडारण और संचालन — इसके अंतर्गत कोयले के ढेर की ऊंचाई और दूरी के बारे में बताया गया है और यह भी कि कोयले को चढ़ाना और उतारना मशीनों के माध्यम से होना चाहिए।
- यातायात— इसमें यातायात संबंधी शर्तें दी गई हैं, जैसे कि कोयले को ले जाने वाले ट्रकों को तिरपाल से ढाका होना चाहिए, ट्रकों की भार क्षमता से ज़्यादा उनको भरा नहीं जाना चाहिए आदि।
- प्रदूषण रोकथाम— जैसे कि संचालन के हर स्थल पर पानी का छिड़काव हो, इकाई की सीमा पर 9 मीटर ऊंची दीवार बनाई जाए आदि।

### When do guidelines become legally enforceable?

Guidelines are generally not legally binding, and function as a document that could be referred to for directions. Administrative bodies in India acquire delegated power to issue directions, rules and guidelines through legislations.

The Air and Water Act give powers to the State Governments to issue guidelines. In Gujarat for example, the Gujarat Pollution Control Board has issued the Guidelines for Coal Handling Units that lay down how the transportation, storage and handling of coal should be done. In Odisha, the Odisha Pollution Control Board has formulated the Railway Siding Guidelines.

While stand alone, these documents are merely directory and not mandatory, when they are added on to the legally enforceable documents like the Environmental Clearance letter, Consent to Operate (CTO) or Consent to Establish (CTE), the guidelines also automatically become legally enforceable. For example, if in the CTO of a project, a condition is included which says that, "The applicant shall comply with Guidelines for Handling of Coal Handling Units", then it makes it mandatory for the project to follow the conditions of the Guidelines.

### दिशानिर्देशों को कानूनी रूप से कब लागू किया जा सकता है?

दिशानिर्देश आमतौर पर कानूनी रूप से बाध्य नहीं होते, और उन्हें केवल निर्देश देने के लिए उपयोग किया जाता है। भारत की प्रशासनिक संस्थाओं को विभिन्न कानूनों के अंतर्गत निर्देश देने, नियम बनाने और दिशानिर्देश देने की शक्ति सौंपी जाती है।

वायु और जल अधिनियम राज्य सरकारों को शक्ति देते हैं कि वे दिशानिर्देश जारी कर सकती हैं। उदाहरण के लिए, गुजरात में प्रदूषण नियंत्रण बोर्ड ने कोयला संचालन दिशानिर्देश जारी किए हैं, जिनमें कोयले का यातायात, भंडारण और संचालन कैसे किया जाना चाहिए, वह बताया गया है। उड़ीसा में प्रदूषण नियंत्रण बोर्ड ने रेल साइडिंग दिशानिर्देश जारी किए हैं।

अपने आप में परिपूर्ण, यह दस्तावेज़ केवल निर्देशात्मक हैं, अनिवार्य नहीं। जब इन्हें कानूनी रूप से अनिवार्य दस्तावेज़ों, जैसे कि पर्यावरण मंजूरी पत्र, कारखाना चलाने की स्वीकृति (CTO) या कारखाना स्थापित करने की स्वीकृति (CTE) के साथ जोड़ दिया जाता है, तब ये भी कानूनी रूप से लागू करने योग्य बन जाते हैं। उदाहरण के लिए, यदि किसी परियोजना की CTO में शर्त दी गई है कि, "प्रार्थी कोयले के संचालन के लिए दिशानिर्देशों का पालन करेगा", तो फिर परियोजना के लिए दिशानिर्देश में दी गई शर्तों का पालन करना अनिवार्य हो जाता है।



## SCENARIO 7

### What is the complaint?

The youth group from a village living next to a coal-based power plant has been in an argument with the managers working at the unit. They claim that fumes from the cooling stacks are impacting the horticultural produce as well as causing breathing difficulties for people living close to the plant. In a recent training programme 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 the same to the PCB. The youth group does not really know what to do with this information and what it really implies. They have approached a community organiser for help.

### Is a law being violated?

Coal or gas based thermal power plants have to take permissions related to environmental impacts and pollution control from different regulatory agencies. These permissions, once granted, list out the technological input the plant would require, to reduce fumes (known as emissions). They 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. This can also pollute the air in the area.



## स्थिति 7

### 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 कार्यकर्ता से मदद मांगी है।

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

कोयला या गैस आधारित 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 वायु गुणवत्ता पर निगरानी रखी जाती है और ये भी निर्धारित किया जाता है कि कितने निगरानी स्टेशन बनाने की जरूरत है। उत्सर्जन के अलावा, विद्युत संयंत्रों से फलाई ऐश को जगह-जगह फेंके जाने के कारण भी वायु प्रदूषण फैलता है।

Law	Corresponding Institutions/ Officials	Section/Clause
<b>Permissions, Rights and Consents related laws</b>		
<b>1. EIA Notification, 2006:</b> Check whether the plant has obtained the environmental clearance required for thermal power plants. If yes, check if there is a violation of a specific condition.	1. SEIAA (if Category B project) 2. MoEFCC (if Category A project)	Section 2 and related procedures Schedule of the EIA Notification and specifically Section 1 (d) Specific conditions related to setting up of air quality monitoring stations and following emission standards
<b>2. Air (Prevention and Control of Pollution) Act, 1981:</b> Check whether the consents to establish and operate have been sought and if their conditions are being complied with.	SPCB	Section 17 (1) (e); Section 17 (1) (f) (on inspections and monitoring) and 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
<b>3. Fly Ash Notification, 1999 (with the latest amendments up to 2016):</b>	1. SPCB 2. MoEFCC	Notification regulating the disposal of fly ash to minimise impact
<b>State specific guidelines</b>		
<b>4. Guidelines for Handling Coal Units, 2010 (Gujarat)/ Guidelines for Mineral Stacks and Railway Siding Guidelines</b>	SPCBs	Check whether specific guidelines have been issued which has conditions related to storage, transportation and handling of minerals
<b>Site Specific Laws</b>		
<b>5. ESA, CVCA, Critically Polluted Area, etc.:</b> Check whether any special orders, notifications or guidelines have been issued to protect or conserve this area or restrict activity under the declaration of an ESA, CVCA, Critically Polluted Area or so on	1. MoEFCC 2. CZMA 3. PCB	1. Section 3 (2) v of the EPA, 1986 2. Section 4 of the CRZ Notification, 2011 3. Section 19 of the Air Act, 1981
<b>Public nuisance under criminal law</b>		
<b>6. The Indian Penal Code 1860</b>	District Collector	Section 19 which gives every person empowered by law the powers of a judge Section 268 which defines a public nuisance

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
<b>स्वीकृतियां, अधिकार और सहमति संबंधित कानून</b>		
<b>1. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006:</b> 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 अनुसूचि और धारा 1 (d) EIA अधिसूचना, 2006 की धारा 2 और संबंधित प्रक्रियाएं वायु गुणवत्ता निगरानी स्टेशन स्थापित करने के लिए विशिष्ट शर्तें
<b>2. वायु (प्रदूषण पर प्रतिबंध और नियंत्रण) अधिनियम वर्ष 1981</b> में बनाया गया (स्थापित करने और संयंत्र चलाने की सहमति के संबंध में जांच करने की क्या ये स्वीकृतियां ली गई हैं और इनमें दी गई शर्तों का पालन हो रहा है।	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
<b>3. प्लाई ऐश अधिसूचना, 1999 (2016 तक के संशोधनों के साथ)</b>	1. राज्य प्रदूषण नियंत्रण बोर्ड 2. पर्यावरण, वन एवं जलवायु मंत्रालय	प्रभावों को न्यूनतम रखने के लिए प्लाई ऐश फैकने से संबंधित अधिसूचना
<b>राज्य विशिष्ट दिशानिर्देश</b>		
<b>4. राज्य विशिष्ट दिशानिर्देश जैसे कि कोयला इकाई संचालन दिशानिर्देश, खनिज के ढेरों के लिए दिशानिर्देश और रेलवे साइडिंग दिशानिर्देश</b>	राज्यों के प्रदूषण नियंत्रण बोर्ड	जांच करें कि खनिजों के भंडारण, यातायात और संचालन के लिए कोई विशिष्ट दिशानिर्देश जारी किए गए हैं या नहीं।
<b>स्थल-विशिष्ट कानून</b>		
<b>5. ESA, CVCA, CPA:</b> जांच करें कि क्या इस क्षेत्र के संरक्षण के लिए कोई विशेष आदेश या दिशा. निर्देश 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) अ 2. CRZ अधिसूचना, 2011 की धारा 4 3. वायु अधिनियम, 1981 की धारा 19
<b>अपराधिक कानून के अंतर्गत सार्वजनिक उपद्रव</b>		
<b>6. भारतीय दंड संहिता, 1860</b>	ज़िला कलेक्टर	धारा 19, जिसमें कानून द्वारा अधिकृत हर व्यक्ति के पास जज के बराबर शक्तियां हैं धारा 268 जिसमें सार्वजनिक उपद्रव को परिभाषित किया गया है।



## CONDITIONS FROM AN ENVIRONMENTAL CLEARANCE LETTER OF A THERMAL POWER PLANT

- Adequate Ambient Air Quality Monitoring Stations (at least 4) shall be established in the core as well as in the buffer zone and locations shall be decided in consultation with the Regional Officer (RO), SPCB. Monitoring of parameters shall be done.
- Monitoring of the Ambient Air Quality of the mine shall be done once in a fortnight (24 hourly) and data shall be submitted to the SPCB once in six months.
- Continuous real time Ambient Air Quality monitoring shall be conducted at two appropriate locations. Location of continuous online monitoring stations with data transfer facility to the SPCB server shall be decided keeping in view the impact of the coal mine and in consultation with the RO, SPCB
- Ambient Air Quality monitoring data shall be electronically displayed at the entry point of the mine or at a suitable location in the mine.

## ताप विद्युत संयंत्र के लिए पर्यावरण स्वीकृति पत्र में दी जाने वाली शर्तें

- कोर तथा बफर ज़ोन में तथा कारखानों के स्थलों पर पर्याप्त संख्या में व्यापक वायु गुणवत्ता निगरानी स्टेशन (कम-से-कम 4) स्थापित किए जाएं, जिनके बारे में राज्य प्रदूषण नियंत्रण बोर्ड के क्षेत्रीय अधिकारी से विमर्श किया जाए। सभी मापदंडों की निगरानी रखी जाए।
- खान की व्यापक वायु गुणवत्ता की हर पखवाड़े में (24 घंटों की) निगरानी रखी जाए और यह आंकड़े छः माह में एक बार राज्य प्रदूषण नियंत्रण बोर्ड में जमा किए जाएं।
- दो उचित स्थलों पर व्यापक वायु गुणवत्ता की निरंतर वास्तविक समय निगरानी रखी जाए। इन ऑनलाइन निगरानी स्थलों, जो SPCB के सर्वर पर आंकड़े भेजते हों, का चयन कोयले की खान के प्रभावों और SPCB के क्षेत्रीय अधिकारी से विमर्श करके किया जाए।
- खदान के प्रवेश स्थल, या अन्य उपयुक्त जगह पर व्यापक वायु गुणवत्ता के आंकड़े इलेक्ट्रॉनिक रूप से प्रदर्शित किए जाएं।



## SCENARIO 8

### 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 four to five chemical industries is stored and treated here. The spill is reportedly due to the collapse of the retainer wall around the TSDF site. The hazardous chemical waste has spilt 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. The impact was aggravated because the waste was not covered, and with recent rains in the area, it easily made its way 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 being violated?

There are three clear aspects of violation to be considered here. Firstly, liability for negligence; secondly, understanding the mandatory legal requirements for TSDF sites and thirdly 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 may have specific guidelines or may be embedded within air and water pollution related legislations.

## स्थिति 8

### 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 कैमिकल 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 भूजल 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 ज़्यादा 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।



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

Law	Corresponding Institutions/Officials	Section/Clause
<b>Permissions, Rights and Consents related laws</b>		
<b>1. EIA Notification, 2006:</b> Check whether environmental clearances have been obtained with respect to the industries and the TSDF. If yes, check the status of compliance with their conditions.	1. MoEFCC (if Category A project) 2. SEIAA (if Category B project)	Section 2 and related procedures Schedule of the EIA Notification and specifically Sections 7 (d)
<b>2. Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016:</b>	1. SPCB 2. Central Pollution Control Board (CPCB)	Sections 23 (1) and Section 16 (esp. Clause 16 (2) and 16 (4) )
<b>3. Reports to CPCB/SPCB</b>	1. CPCB 2. SPCB	Test Reports and Environment Statements (ES) provided by the operator to the SPCB
<b>Negligence and Compensation</b>		
<b>4. Public Liability Insurance Act, 1991:</b> Check whether damage and compensation can be determined	1. District Collector 2. MoEFCC	Sections 3, 5, 6 and 8 and the Schedule
<b>5. EPA, 1986:</b> Check whether a fine or imprisonment for an offence apply	MoEFCC or its designated agency such as the SPCB	Section 15

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
<b>स्वीकृतियां, अधिकार और सहमति संबंधित कानून</b>		
<b>1. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006:</b> 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. MoEFCC, अगर ए श्रेणी की परियोजना है 2. (SEIAA), यदि बी श्रेणी की परियोजना है राज्य पर्यावरण प्रभाव आंकलन प्राधिकरण	EIA अधिसूचना की अनुसूचि और धारा 7 (d) EIA अधिसूचना, 2006 की धारा 2 और संबंधित प्रक्रियाएं
<b>2. खतरनाक पदार्थ (प्रबंधन, संचालन और सीमा पारगमन) नियम, 2008</b>	1. राज्य प्रदूषण नियंत्रण बोर्ड 2. केन्द्रीय प्रदूषण नियंत्रण बोर्ड	धारा 18, अनुच्छेद 18 (2) और 18 (4) अनुच्छेद 25 (1)
<b>3. केन्द्रीय/राज्य प्रदूषण बोर्ड को दी गई रिपोर्ट</b>	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
<b>लापरवाही और मुआवज़ा</b>		
<b>4. सार्वजनिक ज़िम्मेदारी बीमा अधिनियम, 1991</b> (नुक्सान और मुआवज़ा निर्धारित करने के लिए)	1. ज़िला कलेक्टर 2. MoEFCC	धारा 3, 5, 6, 8 और अनुसूचि
<b>5. पर्यावरण सुरक्षा अधिनियम, 1986</b> (अपराध के लिए जुर्माना तय करने या सज़ा के लिए)	MoEFCC या उसके द्वारा अधिकृत किया गया विभाग, जैसे कि SPCB	धारा 15





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

## SCENARIO 9

### 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 and done by the municipality itself. They were 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 feared impacts on their health due to the spread of diseases. The garbage was also being blown into their houses when the wind was strong on the hilltop. During monsoons, there had also been one instance of run off of the garbage into the water stream flowing towards the villages downhill.

### Is a law being violated?

The immediate legal avenue to look into, in this case, would be the laws and guidelines related to the management of solid waste. However, there could be some site-specific laws too that could be looked into to see if there are any specific provisions concerning waste disposal. Since the waste that is being dumped is causing a nuisance to the public, provisions under the IPC can also be examined.

## स्थिति 9

### 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।

### 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 ढूँढना होगा। लेकिन कई स्थल-विशिष्ट कानूनों में भी देखा जा सकता है कि उनमें कूड़ा फेंकने के स्थलों से संबंधित प्रावधान हैं या नहीं। इसके अतिरिक्त, चूंकि कूड़ा फेंकने के कारण आम लोगों को परेशानी हो रही है, इसलिए यहां भारतीय दंड संहिता के प्रावधान भी लागू होते हैं।

Law	Corresponding Institutions/ Officials	Section/Clause
<b>Permissions, Rights and Consents related</b>		
<b>1. Solid Waste Management Rules, 2016</b> 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. SPCB 2. District Magistrate/Deputy Commissioner 3. Secretary in charge, State Urban Development Department	
<b>2. EIA Notification, 2006</b>	SEIAA	Section 2 and specifically Section 7 (d) of the Schedule
<b>Site specific laws</b>		
<b>3. FCA, 1980:</b> Check whether the activity is being carried out on forest land and if permission for forest diversion is required	1. Divisional Forest Officer 2. MoEFCC (Regional and New Delhi office)	Section 2
<b>Public nuisance under criminal law</b>		
<b>4. IPC, 1860</b>	District Collector	Section 19 which gives every person empowered by law the powers of a judge Section 268 which defines a public nuisance
<b>Judgments/Judicial Orders</b>		
<b>5. National Green Tribunal order in Almitra H. Patel &amp; Anr vs Union of India &amp; Ors (O.A. No 199 of 2014):</b>		Directions regarding the management (including disposal, transportation) of waste can be looked into

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
<b>स्वीकृतियां, अधिकार और सहमति संबंधित कानून</b>		
<b>1. अपशिष्ट प्रबंधन नियम, 2016:</b> 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	
<b>2. पर्यावरणीय प्रभाव आंकलन अधिसूचना, 2006</b>	1. SEIAA	EIA की धारा 2 और विशिष्ट रूप से धारा 7 (d)
<b>स्थल-विशिष्ट कानून</b>		
<b>3. वन संरक्षण अधिनियम, 1980 (FCA) :</b> 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 का धारा 2
<b>अपराधिक कानून के अंतर्गत सार्वजनिक उपद्रव</b>		
<b>4. भारतीय दंड संहिता, 1860</b>	ज़िला कलेक्टर	धारा 19, जिसमें कानून द्वारा अधीकृत हर व्यक्ति के पास जज के बराबर शक्तियां हैं धारा 268 जिसमें सार्वजनिक उपद्रव को परिभाषित किया गया है।
<b>न्यायिक फैसले/कोर्ट आदेश</b>		
<b>5. राष्ट्रीय हरित ट्राइब्यूनल का अल्मित्रा एच. पटेल व ए.एन.आर. बनाम भारत सरकार व अन्य मामले में आदेश (2014 की आदेश सं. 199)</b>		अपशिष्ट प्रबंधन संबंधी निर्देशों को देखा जा सकता है (जिसमें निपटान और यातायात शामिल है)।



## SCENARIO 10

### What is the complaint?

A community worker reads an article on environmental and social impacts of sand mining in the morning newspaper. He immediately recalls that when they met at the local tea shop, residents of a nearby village had casually mentioned that there was rampant mining of sand from the riverbed taking place. They had complained that the riverbank was eroding and the flow of the river was impacted 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 people had traditionally 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 being violated?

Sand mining is regulated by site specific laws, environmental regulations, as well as local Panchayat laws. In order to ascertain the nature of violation, it would be good to 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.

## स्थिति 10

### 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 ज्यादा 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 रोज 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 जरूरी 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 लगाना 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 Institutions/Officials	Section/Clause
<b>Permissions, Rights and Consents related laws</b>		
<b>1. NOC from the Panchayat or Municipality:</b> Check whether an 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
<b>2. CRZ Notification, 2011:</b> Check whether this is a permissible activity in the concerned CRZ sub-zone(s).	1. SCZMA 2. DLCC (under the District Collector)	1. Section 3 (x), Section 4 and Section7 2. MoEFCC Office Memorandum dated 18.11.2011
<b>3. EIA Notification, 2006</b> Check whether the activity has obtained the environmental clearance. If yes, check if there is a violation of a specific condition of an environment clearance letter. Any mining activity, including that of sand, must obtain an environmental clearance, even if it spans an area of less than five hectares.	1. District Environment Impact Assessment Authority (if Category B2 project) 2. SEIAA (if Category B project) 3. MoEFCC (if Category A project)	1. Schedule of the EIA Notification and specifically 1(a) in the Schedule 2. Appendix IV 3. MoEFCC Office Memorandum dated 2.7.2007
<b>4. Mines and Minerals Regulation and Development Act, 1957:</b> Check whether the activity has obtained the mining lease. If yes, check compliance with the mining lease agreement.	State Mining and Geology Department	States have their own mining Acts and Policies for minor minerals
<b>Site specific laws</b>		
<b>5. FCA, 1980:</b> Check whether the area including the river, where the sand mining is taking place falls under forest area or not	1. Divisional Forest Officer 2. MoEFCC (Regional and New Delhi office)	Section 2
<b>6. ESA, CVCA:</b> Whether any special orders, notifications or guidelines have been issued to protect, conserve this area or restrict activity like, ESA or CVCA	1. MoEFCC 2. ESA Management Committee 3. SCZMA	1. Section 3 (2) (v) of the EPA, 1986 2. Section 4 of the CRZ Notification, 2011
<b>Court Orders</b>		
<b>7. NGT Order in OA No. 171 of 2013</b>	1. MoEFCC 2. State Environment Departments	Order states no sand mining till environmental clearance. Stay on all sand mining operations till approval obtained

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
<b>स्वीकृतियां, अधिकार और सहमति संबंधित कानून</b>		
<b>1. पंचायत या नगरपालिका से अनापत्ति:</b> 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।
<b>2. तटीय विनियमन क्षेत्र अधिसूचना, 2011 (CRZ):</b> 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 स्थित होता है 2. जिला स्तरीय तटीय कमिटी (DLCC), जिला कलेक्टर के अंतर्गत	1. धारा 3 (x) 2. MoEFCC का 18.11.2011 को जारी किया गया आफिस मेमोरेन्डम
<b>3. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006:</b> 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 हेक्टेयर की भूमि पर भी हो, उसके लिए पर्यावरण स्वीकृति लेना अनिवार्य है।	1. जिला पर्यावरण प्रभाव आंकलन प्राधिकरण (यदि श्रेणी बी2 की परियोजना है) 2. राज्य पर्यावरण प्रभाव आंकलन प्राधिकरण (SEIAA), यदि बी श्रेणी की परियोजना है 3. MoEFCC, अगर ए श्रेणी की परियोजना है	1. EIA अधिसूचना की अनुसूची, खासकर 1(a) 2. EIA अधिसूचना, 2006 परिशिष्ट IV 3. MoEFCC द्वारा जारी किया गया 2.7.2007 का ऑफिस मेमोरेन्डम
<b>4. खान और खनिज (विकास और विनियमन) अधिनियम, 1957:</b> जांचें कि इस गतिविधि के लिए खनन लीज ली गई है या नहीं।	1. राज्य खनन और भूगोल विज्ञान विभाग	राज्यों के सूक्ष्म खनिजों के लिए अपने खनन अधिनियम और नीतियां होती हैं और खनन लीज अनुबंध की प्रति भी प्राप्त करें
<b>स्थल विशिष्ट कानून</b>		
<b>5. वन संरक्षण अधिनियम, 1980 (FCA):</b>	1. वन मण्डल अधिकारी 2. पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय (MoEFCC) (क्षेत्रीय और नई दिल्ली)	FCA, 1980 का धारा 2
<b>6. ESA, CVCA :</b> 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) अ 2. CRZ अधिसूचना, 2011 की धारा 4
<b>कोर्ट आदेश</b>		
<b>7. राष्ट्रीय हरित ट्राइब्यूनल आदेश (2013 की OA संख्या 171)</b>	1. पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय 2. राज्य पर्यावरण विभाग	रेत खनन की सभी गतिविधियों पर रोक, जब तक कि वे पर्यावरण स्वीकृति प्राप्त नहीं कर लेते। स्वीकृति प्राप्त कर लेने तक सभी रेत खनन गतिविधियों पर रोक।

## SCENARIO 11

### What is the complaint?

A group of artisanal fisherfolk has contacted a paralegal with an issue that mechanised bull trawlers are being used in an area which is otherwise used by artisanal and small boats. 'Bull trawling' is a method of fishing in which two marginally big sized boats tie a fishing net between them and pull it through the water. The practice of bull trawling is restricting the space for the small boats, as well as reducing the fish catch in the area where these boats can fish. Since the last few years, the number of bull trawlers are only on the rise. Small and marginal fisherfolk want a restriction on the practice of bull trawling, especially in areas where it is coming into conflict with the small boats.

### Is a law 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 restricted. The clauses CRZ Notification could also be looked into as it regulates the use of water areas as well.

Law	Corresponding Institutions/ Officials	Section/Clause
<b>1. State Marine Fisheries Act:</b> Check if it regulates movement of bull trawlers and mechanised boating in certain areas	State Department of Fisheries	<i>For example:</i> Karnataka Marine Fishing (Regulation) Act, 1986: Sections 3, 4, 5, 7, 11 and 13 Karnataka State Government Order of 1994
<b>2. Department of Fisheries Circulars/Directions</b>	State Department of Fisheries	Look for circulars or directions within each state marine fisheries regulations to see if there are restrictions on particular fishing practices or horse power of particular boats used for bull trawling
<b>3. Check whether it is an Exclusive Economic Zone</b>		Central Government letter dated 12.11.2014

## स्थिति 11

### 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 ट्रॉलिंग मछली पकड़ने का ऐसा तरीका है, जिसमें दो बड़ी नावें जाल को बांध कर पानी के अंदर खींचती 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 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
<b>1. राज्य समुद्री मत्स्य अधिनियम:</b> जांच करें कि उसमें कुछ क्षेत्रों में बुल ट्रॉलरों के आवागमन और मशीनी नावों पर नियंत्रण है या नहीं।	राज्य मत्स्य विभाग	<i>उदाहरण:</i> कर्नाटक समुद्री मत्स्य अधिनियम, 1986: धारा 3,4,5,7,11 और 13 कर्नाटक राज्य सरकार का 1994 का आदेश
<b>2. मत्स्य विभाग के परिपत्र/ दिशानिर्देश</b>	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।
<b>3. जांच करें कि यह विशिष्ट आर्थिक क्षेत्र तो नहीं है</b>		केन्द्रीय सरकार का 12-11-2014 का पत्र

### CONDITION IN A CENTRAL GOVERNMENT LETTER

In the letter dated 12.11.2014 from the Central Government it is said that as per the "New guidelines for conduct of fishing operation in India, Exclusive Economic Zone" bull trawling is not permitted in EEZ. Therefore, as per the provisions under Section 3 (1) (d) of the Karnataka Marine Fishing (Regulation) Act, 1986, it been requested to issue order to prohibit bull trawling fishing up to 12 nautical miles in territorial waters of Karnataka state.

### केन्द्रीय सरकार के पत्र में दी गई शर्तें

12-11-2014 को जारी किए गए पत्र में, केन्द्रीय सरकार ने कहा है कि "भारत में मछली पकड़ने के संचालन के संबंध में दिए गए नए दिशानिर्देश, विशिष्ट आर्थिक क्षेत्र" में बुल ट्रॉलिंग की अनुमति नहीं है। अतः कर्णाटक समुद्री मछली पकड़ने के नियमन, 1986 की धारा 3, उपधारा (1)(d) के प्रावधानों के अनुसार, प्रार्थना की जाती है कि कर्णाटक राज्य के क्षेत्रीय जल की 12 नॉटिकल माइल्स तक बुल ट्रॉलिंग को प्रतिबंधित करने का आदेश जारी किया जाए।



## SCENARIO 12

### What is the complaint?

A group of tribal people has been approached by a nearby manufacturing plant to purchase agricultural land. They need the land for expanding their operations and constructing a captive power plant within the premises. On one hand they do not want to sell their land, on the other, they do not 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 what the legalities are and what are their options for remedy.

### Is a law being violated?

There are constitutional protections for the sale of land owned by a tribal person to a non-tribal. In this case, if the project authority is non-tribal it cannot directly purchase this land. It would need to be seen if the project authority is wanting to do this in partnership with other tribals from the area, or is using them as mediums for purchase.

## स्थिति 12

### 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।



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

Law	Corresponding Institutions/Officials	Section/Clause
<b>Special Protection Laws</b>		
<b>1. Provisions of the Panchayats (Extension to the Scheduled Areas) (PESA) Act, 1996:</b> Check if the permission of the Gram Sabha has been obtained in the Scheduled Area(s) for setting up of the unit and its expansion. Also check whether a non-tribal wants to purchase land owned by a tribal.	1. Gram Sabha 2. Sarpanch 3. District Collector	Section 4 (i), Section 4 (m) (i), Section 4 (d)
<b>Permissions, Rights and Consents related laws</b>		
<b>2. EIA Notification, 2006:</b> 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. SEIAA (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
<b>4. FCA, 1980:</b> Check whether the construction is being carried out on forest land and if permission for forest diversion is required	1. Divisional Forest Officer 2. MoEFCC (Regional and New Delhi office)	Section 2
<b>5. FRA, 2006:</b> Check whether there are any pending individual or community forest rights claims pending 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 the MoEFCC

### What is PESA?

PESA or the Provisions of the Panchayats (Extension in the Scheduled Areas) Act is a legislation that governs the Scheduled Areas of the Constitution. Scheduled Areas are defined in the Fifth Schedule of the Constitution and consists of predominantly tribal areas. The Governor is the administrative head of these areas and reports directly to the President.

The Gram Sabhas or the Panchayats are required to be consulted before the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas.

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
<b>विशिष्ट सुरक्षा कानून</b>		
<b>1. पंचायत (अनुसूचित क्षेत्रों के लिए विस्तारित) अधिनियम (PESA), 1996:</b> 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 3. ज़िला कलेक्टर	धारा 4 (i), धारा 4 (m) (i), धारा 4 (d)
<b>स्वीकृतियां, अधिकार और सहमति संबंधित कानून</b>		
<b>2. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006:</b> 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
<b>3. वन संरक्षण अधिनियम, 1980 (FCA):</b> 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 का धारा 2
<b>4. वन अधिकार अधिनियम, 2006:</b> 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

### पंचायत (अनुसूचित क्षेत्रों के लिए विस्तारित) अधिनियम (PESA) क्या है?

PESA या पंचायत (अनुसूचित क्षेत्रों के लिए विस्तारित) अधिनियम वह कानून है जो संविधान के अनुसूचित क्षेत्रों को नियंत्रित करता है। अनुसूचित क्षेत्रों को संविधान के पांचवें शिड्यूल में परिभाषित किया गया है, और इनमें मुख्य तौर से आदिवासी क्षेत्र आते हैं। इन क्षेत्रों का प्रशासनिक मुखिया राज्यपाल होता है, जो कि सीधा राष्ट्रपति को रिपोर्ट करता है।

अनुसूचित क्षेत्रों में विकास परियोजनाओं के लिए भूमि अधिग्रहण करने, और इन परियोजनाओं से विस्थापित होने वाले लोगों के पुनर्स्थापन से पहले ग्राम सभा या पंचायत से चर्चा करना अनिवार्य है।



## SCENARIO 13

### What is the complaint?

A community worker on her way to office stops at a village well and joins the conversation of a group of women who had come there to collect water. The conversation veers to the declining level of water in the well. This was despite a good monsoon that they witnessed this year. One of the women, 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 they were unable to give any specifics except reference to information from one of their family members who worked in the plant as an electrician.

### Is a law being violated?

Industrial operations such as the above often require specific permissions to draw both surface as well as ground water. In the present case, since ground water is being drawn, it will attract the legal provisions related to ground water extraction. Permissions to draw ground water are granted by the CGWA's regional offices<sup>1</sup>. It would have to be seen how the project area is categorised in the Ground Water Resource Estimation done in 2011 (or the latest estimation done by the CGWB). This estimation categorises areas as safe, semi-critical, critical and over-exploited. Consent to operate issued by the SPCB and environmental clearance letters issued by the MoEFCC to chemical plants usually have conditions related to the drawing of ground water, which could be referred to. It can also be checked if there is a state law regarding ground water that is applicable.

Law	Corresponding Institutions/Officials	Section/Clause
<b>Permissions, Rights and consents related laws</b>		
<b>1. NOC from the Panchayat or Municipality:</b> Check whether an NOC has been sought from the concerned Panchayat or Municipality	1. Sarpanch 2. Elected Municipal Corporator/Municipal Commissioner	Each state has its own Panchayat Act
<b>2. Guidelines/Criteria for evaluation of proposals/requests for ground water abstraction</b> (Check if the industry is categorised as water intensive. Check if the industry is allowed in that category of the site. If yes, check if it has an appropriate NOC to draw water. Also check if there is a specific violation of any condition of the NOC.)	1. District Collector/ Municipality head. 2. Regional office of the CGWB	Sections 3, 7 and 8 Issuance of NOC issued for drawl of water Section 6 (b) (in case the industry has not complied with the conditions mentioned in the NOC)

<sup>1</sup>The CGWB has its regional offices in Jammu, Dharamsala, Chandigarh, Dehradun, Lucknow, Jaipur, Patna, Kolkata, Guwahati, Ahmedabad, Nagpur, Bhopal, Raipur, Bhubaneswar, Hyderabad, Bengaluru, Chennai and Thiruvananthapuram

## स्थिति 13

### शिकायत क्या है?

एक सामुदायिक कार्यकर्ता अपने ऑफिस 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। हांलाकि इस साल मानसून में अच्छी बारिश रही, उसके बावजूद पानी का स्तर गिरा। औरतों में से एक ने कहा कि पास के कैमिकल 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 जमीन का पानी निकालने संबंधी विशिष्ट स्वीकृतियां लेनी होती हैं। इस मामले में, चूंकि जमीन से पानी निकाला जा रहा है, इसके लिए जमीनी पानी संबंधित कानूनी प्रावधान लागू होंगे। जमीन से पानी निकालने के लिए केन्द्रीय भूजल प्राधिकरण के राज्य में स्थित क्षेत्रीय कार्यालय से स्वीकृति लेनी होती है।<sup>1</sup> 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
<b>स्वीकृतियां, अधिकार और सहमति संबंधित कानून</b>		
<b>1. पंचायत या नगरपालिका से अनापत्ति प्रमाणपत्र:</b> जांच करें कि संबंधित पंचायत या नगरपालिका से अनापत्ति प्रमाणपत्र लिया गया है या नहीं	1. सरपंच/पंचायत का मुखिया 2. निर्वाचित नगरपालिका कॉरपोरेटर, नगरपालिका कमिश्नर	हर राज्य का अपना पंचायत अधिनियम है
<b>2. भूजल निकासी के लिए स्वीकृति:</b> 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।	1. जिला कलेक्टर/नगरपालिका अध्यक्ष 2. केन्द्रीय भूजल बोर्ड का क्षेत्रीय कार्यालय	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)

<sup>1</sup>CGWB के क्षेत्रीय ऑफिस जम्मू, धर्मशाला, चंडीगढ़, देहरादून, लखनऊ, जयपुर, पटना, कोलकाता, गुवाहाटी, अहमदाबाद, नागपुर, भोपाल, रायपुर, भुवनेश्वर, हैदराबाद, बंगलूरु, चेन्नई, त्रिवेन्द्रम में हैं।



<b>3. EIA Notification, 2006</b> Check whether the activity has obtained the environmental clearance. If yes, check if there is a violation of a specific condition.	1. SEIAA (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. They would also have a specific condition related to drawing of water and the number of borewells allowed for the same.
<b>Site specific laws</b>		
<b>4. ESA, CVCA, Critically Polluted Area, etc. CEPI:</b> Check whether any special orders, notifications or guidelines have been issued to restrict drawing of water activity in a notification for an ESA, CVCA, Critically Polluted Area	1. MoEFCC 2. ESA Management Committee 3. SCZMA 4. PCB	1. Section 3 (2) (v) of the EPA, 1986 2. Section 4 of the CRZ Notification, 2011 3. Section 19 of the Air Act, 1981 or the Water Act, 1974
<b>5. CRZ Notification, 2011:</b> Check whether this is a permissible activity in the concerned CRZ sub-zone(s).	1. SCZMA 2. DLCC (under the District Collector)	Section 3

### CONDITIONS FROM AN ENVIRONMENTAL CLEARANCE LETTER OF A CHEMICAL PLANT

- Permission to draw ground water shall be obtained from the competent authority prior to construction/operation of the project.
- The ground water level and its quality should be monitored regularly in consultation with Central Ground Water Authority.

<b>3. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006:</b> 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।
<b>स्थल-विशिष्ट कानून</b>		
<b>4. ESA, CVCA, CPA:</b> 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।	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) अ 2. CRZ अधिसूचना, 2011 की धारा 4 3. वायु अधिनियम, 1981 या जल अधिनियम, 1974 की धारा 19
<b>5. तटीय विनियमन क्षेत्र अधिसूचना, 2011 (CRZ):</b> 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	CRZ अधिसूचना की धारा 3

### कैमिकल प्लांट के लिए पर्यावरणीय मंजूरी पत्र में दी जाने वाली शर्तें

- परियोजना के निर्माण/काम शुरू करने से पहले भूजल निकालने के लिए अधिकारयुक्त प्राधिकारी से मंजूरी
- केन्द्रीय भूजल प्राधिकरण के साथ परामर्श करके भूजल स्तर और गुणवत्ता की नियमित निगरानी

## SCENARIO 14

### What is the complaint?

A group of agricultural workers in the village were encountering a strange problem in their paddy fields; a pipeline from under the ground had been lifted up during the monsoons. It was obstructing their way and the flow of water. They had to climb the huge pipeline every time they had to move around in the fields. They now had to also make arrangements for water to be sprinkled on one side of the field. One of the workers remembered that the pipeline had been laid years before for carrying water for the power plant in their village. They approached the local community worker who worked on environmental issues for advice.

### Is a law being violated?

While laying pipelines for industrial operations, permission has to be taken for acquiring the land needed for this. There are state specific laws that deal with the acquisition of right of user in land for laying underground pipelines for carrying of water and gas. The permissions regarding this could be checked. The permissions that the power plant has taken for the environmental impacts can also be looked at.



## स्थिति 14

### शिकायत क्या है?

एक गांव के खेत मजदूर अपने धान के खेतों में एक अजीब समस्या का सामना कर रहे थे: बारिश के मौसम में उनके खेतों के नीचे से गुजरने वाली एक पाइपलाइन को ऊपर उठाया जा रहा था। इससे उनके रास्ते और खेतों में पानी के बहाव में रुकावट आ रही थी। उन्हें अपने खेतों में आने-जाने के लिए हर बार एक बड़ी पाइपलाइन के ऊपर चढ़कर जाना पड़ रहा था। इसके अलावा, अब उन्हें खेत की एक तरफ पानी का छिड़काव करने की भी व्यवस्था करनी पड़ी। उनमें से एक मजदूर को याद आया कि कई साल पहले यह पाइपलाइन उनके गांव में बने विद्युत प्लांट में पानी पहुंचाने के लिए बिछाई गई थी। उन्होंने पर्यावरणीय मुद्दों पर काम करने वाले स्थानीय सामुदायिक कार्यकर्ता से सलाह मांगी।

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

किसी भी औद्योगिक काम के लिए पाइपलाइन बिछाने के लिए, इसके लिए भूमि अधिग्रहण करने की स्वीकृति लेनी होती है। हर राज्य में पानी व गैस ले जाने वाली पाइपलाइन के लिए अधिग्रहीत भूमि का उपयोग करने वाले के अधिकारों के संबंध में विशिष्ट कानून होते हैं। इसके लिए ली गई स्वीकृतियों की भी जांच की जा सकती है। पर्यावरणीय प्रभावों के संबंध में कंपनी द्वारा ली गई स्वीकृति को भी देखा जा सकता है।

Law	Corresponding Institutions/ Officials	Section/Clause
<b>Permissions, Rights and Consents related laws</b>		
<b>1. EIA Notification, 2006:</b> Check whether the activity has obtained the environmental clearance. If yes, check if there is a violation of a specific condition.	1. SEIAA (if Category B project) 2. MoEFCC (if Category A project)	Section 10 on monitoring and compliance Environmental clearance letters mention the amount of water required by the industry and the source. They would also have a specific condition related to drawing of water and the number of borewells allowed for the same.
<b>State specific laws</b>		
<b>2. Chhattisgarh Underground Pipeline Act, 2004</b>	State Government	Check the provisions in case of disturbance of user rights of the land
<b>3. Orissa Irrigation Rules, 1961</b>	Water Resources Department	Section 23-A

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
<b>स्वीकृतियां, अधिकार और सहमति संबंधित कानून</b>		
<b>1. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006:</b> 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 जरूरत 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।
<b>राज्य विशिष्ट कानून</b>		
<b>2. छत्तीसगढ़ भूमिगत पाइपलाइन अधिनियम, 2004</b>	राज्य सरकार	भूमि पर उपयोगकर्ता के अधिकारों में अवरोध पैदा करने वाले प्रावधानों को देखें
<b>3. उड़ीसा सिंचाई नियम, 1961</b>	जल संसाधन विभाग	धारा 23 A



## SCENARIO 15

### What is the complaint?

A new highway was being constructed near a village. This had led to a couple of stone crusher units being set up in the village. One of the stone crusher units was situated in between two villages. The stone crusher unit operates through the day and night. Near the unit there are houses, agricultural fields and drinking water wells. There is also a primary school located right next to the stone crusher. The large amount of dust generated every-day was entering these spaces and the noise too was a big bother. The villagers began to notice that the health issues were increasing. The mango, cashew and vegetable crops produced last year were also damaged.

### Is a law being violated?

Stone crushing units before being set up require permissions and consents to be taken from various avenues. These permissions and consents come with specific conditions to reduce the environmental impact of these units. It is quite likely that a specific environmental or forest clearance for the establishment of a stone crusher will not be found. Rather, there would be a reference to its siting and safeguards in the approval letter for the highway project. There are also state laws regulating the functioning of stone crusher units, which could be looked into to see whether the required permissions have been obtained. Further, since the dust generated and pollution caused is a nuisance to the public, provisions under the IPC can also be applied.

## स्थिति 15

### शिकायत क्या है?

गांव के पास एक नया हाइवे बन रहा है। इसके परिणामस्वरूप, गांव में कुछ पत्थर की गिट्टी बनाने वाले प्लांट लगाए गए। इनमें से एक को दो गांवों के बीच में लगाया गया था। यहां दिन रात काम चलता है। इस प्लांट के पास घर, खेत और पीने के पानी के कुएं हैं। इसके पास ही एक प्राथमिक स्कूल भी है। प्लांट से उड़ने वाली धूल इन सभी जगहों के अंदर जाती है और आवाज़ भी परेशान करती है। गांव वालों ने देखा कि गांव में स्वास्थ्य समस्याएं बढ़ रही हैं, पिछले साल आम, काजू, सब्जियों की फसलें भी खराब हो गईं।

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

पत्थर की गिट्टी बनाने वाले उद्योग लगाने से पहले विभिन्न जगहों से स्वीकृतियां और सहमति लेनी होती है। यह स्वीकृतियां और सहमतियां अपनी शर्तों के साथ आती हैं, जिससे कि इन उद्योगों के पर्यावरणीय प्रभावों को कम किया जा सके। अक्सर आपको इन उद्योगों के लिए कोई विशिष्ट पर्यावरणीय या वन मंजूरी नहीं मिलेगी। उसके स्थल और उद्योग से जुड़ी सुरक्षाओं के बारे में हाइवे के स्वीकृति पत्र में लिखा होगा। इसके अलावा, इन उद्योगों के कामकाज को नियंत्रित करने के लिए राज्यों के अपने कानून हो सकते हैं, जिन्हें देखा जा सकता है, कि सभी संबंधित स्वीकृतियां ले ली गई हैं या नहीं। इसके अतिरिक्त, चूंकि धूल और प्रदूषण के कारण लोगों को परेशानी हो रही है, तो भारतीय दंड संहिता के प्रावधान भी लगाए जा सकते हैं।



Law	Corresponding Institutions/ Officials	Section/Clause
<b>Permissions, Rights and Consents related</b>		
<b>1. EIA Notification, 2006:</b> Check whether the activity has obtained the environmental clearance. If yes, check if there is a violation of a specific condition.	MoEFCC	Section 10 on monitoring and compliance Section 2 related to Schedule 7 (f) of the EIA Notification requires environmental clearance for highway projects Check whether the environmental clearance letter has any specific conditions related to distance of the stone crusher unit from habitations
<b>2. Air (Prevention and Control of Pollution) Act, 1981:</b> Check whether the consents to establish and operate have been sought and if their conditions are being complied with	SPCB or its nearest regional office	Section 21 (incase the company has not complied with condition of the consent to operate) Section 31 A where the SPCB can give directions for closure or stopping water, or electricity supply in case of violation
<b>State specific laws</b>		
<b>3. Karnataka Regulation of Stone Crushers Act, 2011:</b>	District Stone Crushers Licensing and Regulation Authority	Section 3 where it is specified that a license has to be obtained by stone crushers Section 9 which specifies the duties of the Authority
<b>Public nuisance under criminal law</b>		
<b>4. IPC, 1860</b>	District Collector	Section 19 which gives every person empowered by law the powers of a judge Section 268 which defines a public nuisance

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
<b>स्वीकृतियां, अधिकार और सहमति संबंधित कानून</b>		
<b>1. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006:</b> 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।	MoEFCC	जांच और अनुपालना संबंधित धारा 10 EIA अधिसूचना की अधिसूचि 7 (f) से संबंधित धारा 2 के अंतर्गत हाइवे परियोजना के लिए पर्यावरण मंजूरी लेनी होती है। जांचें कि पर्यावरण स्वीकृति पत्र में आबादी से गिट्टी बनाने वाले संयंत्र की दूरी के बारे में कोई शर्त दी गई है या नहीं।
<b>2. वायु (प्रदूषण रोकथाम एवं नियंत्रण) अधिनियम को 1981 में अधिनियमित किया गया (स्थापित करने और चलाने की स्वीकृति के लिए)</b>	राज्य प्रदूषण नियंत्रण बोर्ड या उसका सबसे नज़दीकी क्षेत्रीय कार्यालय	धारा 21 (यदि कंपनी ने कारखाना चलाने के लिए स्वीकृति की शर्त की अनुपालना नहीं की है) धारा 31 ए, जहां SPCB उल्लंघन के मामले में कारखाना बंद करने या पानी और बिजली की सप्लाई बंद करने के आदेश दे सकती है।
<b>राज्य विशिष्ट कानून</b>		
<b>3. कर्नाटक पत्थर क्रशर अधिनियम 2011</b>	1. ज़िला पत्थर क्रशर विनियमन कमिटी	धारा 3, जिसमें स्पष्ट है कि पत्थर क्रशर के लिए लाइसेंस लेना होता है। धारा 9 में कमिटी की शक्तियां दी गई हैं
<b>अपराधिक कानून के अंतर्गत सार्वजनिक उपद्रव</b>		
<b>4. भारतीय दंड संहिता, 1860</b>	ज़िला कलेक्टर	धारा 19, जिसमें कानून द्वारा अधिकृत हर व्यक्ति के पास जज के बराबर शक्तियां हैं धारा 268 जिसमें सार्वजनिक उपद्रव को परिभाषित किया गया है।



### CONDITIONS RELATED TO CONSENT TO OPERATE A STONE CRUSHING UNIT

- In case of any public complaint due to operations of the unit in respect to air pollution, the industry shall stop its operations immediately.
- Whenever the stone crushing unit is in the vicinity of the water body, the unit must have a restraining wall between the premises and the water body to prevent carryover of fine dust to the water body in the rainy season.
- The solid wastes collected in the factory premises shall be disposed off scientifically, to the satisfaction of the Board, so as to not cause fugitive emissions, dust pollution or water pollution problems through leaching etc. of any kind.
- The applicant shall plant and maintain adequate number of trees like Eucalyptus, Subadul, etc. in and around the industry with a density not less than 1000 trees per acre which can arrest the dust emissions escaping into the surrounding area and improve the environment and aesthetic appearance of the industry and surroundings.

### CONDITIONS FROM THE ENVIRONMENTAL CLEARANCE OF A HIGHWAY PROJECT

- The hot mix plant shall be located at least 500 m away from habitation and on the barren land to avoid its adverse impact on the human population.
- It is noted that the impact zone is 50-200 m and the nearby habitation is at 600 m. However, the project proponents shall intimate the local authority before carrying out the blasting. If there is any damage caused due to blasting, the project proponent shall compensate 100% under the notice of the local authority.
- The blasting shall be restricted- only from 8 am to 6 pm.

### पत्थर क्रशर चलाने के लिए स्वीकृति पत्र में दी जाने वाली शर्तें

- किसी भी इकाई द्वारा होने वाले वायु प्रदूषण के बारे में शिकायत दर्ज होने पर उस उद्योग को तुरंत अपना कामकाज बंद करना होगा।
- यदि पत्थर क्रशर इकाई किसी जलस्रोत के पास हो, तो इकाई और जलस्रोत के बीच एक निरोधक दीवार होनी चाहिए जिससे कि बारिश के मौसम में बारीक धूल के कण जलस्रोत में न मिलें।
- इकाई में एकत्रित होने वाले ठोस कचरे का निपटान बोर्ड की संतुष्टि होने तक वैज्ञानिक रूप से किया जाना चाहिए, जिससे कि उत्सर्जन न फैले, धूल से प्रदूषण न हो या लीचिंग आदि के कारण किसी भी प्रकार का पानी का प्रदूषण न हो।
- प्रार्थी को इकाई के इर्द-गिर्द उचित संख्या में पेड़ लगाने और उनकी देखरेख करनी होगी, जैसे कि नीलगिरी, सुबबूल आदि के पेड़, जो कि कम-से-कम प्रति एकड़ 1000 पेड़ों की संख्या हो और जो आसपास के वातावरण में धूल फैलने से रोक सकें और उनके कारण इकाई और उसके आसपास के वातावरण और सुंदर हो सके।

### हाइवे परियोजना के लिए मिलने वाली पर्यावरण स्वीकृति में दी जाने वाली शर्तें

- हॉट मिक्स प्लांट को आबादी क्षेत्र से कम-से-कम 500 मीटर दूर होना किसी बंजर भूमि पर बना हो, जिससे कि आबादी पर उसके नकारात्मक प्रभाव न पड़ें।
- यहां नोट किया जा रहा है कि प्रभाव क्षेत्र की सीमा 50-200 मी. है और आबादी से दूरी की सीमा 600 मी. है। लेकिन, परियोजना प्रस्तावक ब्लास्टिंग करने से पहले स्थानीय प्राधिकरण को सूचित करेगा। यदि ब्लास्टिंग के कारण कोई क्षति होती है, तो परियोजना प्रस्तावक स्थानीय प्राधिकरण के नोटिस के अंतर्गत उसकी 100 प्रतिशत क्षतिपूर्ति करेगा।
- ब्लास्टिंग प्रातः 8 बजे ससे सांय 6 बजे तक ही की जाएगी।



## SCENARIO 16

### What is the complaint?

For the last couple of years since a mine has been operational, the large dump near it would always have flames on it. The people living in the area had noticed that it was because coal pieces were dumped there along with soil. Sometimes the dump would get so large that it would fall onto the common land surrounding it. Of late, the fires were getting more frequent, leading to a lot of smoke being generated. Those living nearby found it really troublesome and some even complained of breathing problems. They approached a community worker to ask for a solution.

### Is a law being violated?

Before a coal mine is operational, permissions and consents are required to be taken from various avenues. These permissions and consents come with specific conditions that deal with the disposal of coal and where and how the overburden from these mines should be dumped. They even give the angle at which the overburden should be stacked. These conditions also provide for separation of the top soil, and backfilling using the overburden during the closure of the mines.



## स्थिति 16

### शिकायत क्या है?

पिछले कुछ सालों से एक खान का काम चल रहा है, और उसके पास लगे ढेर में अक्सर आग लगती है। इस क्षेत्र में रहने वाले लोगों ने देखा है कि मिट्टी के साथ-साथ वहां पर कोयले के टुकड़े भी फेंके जाते हैं। कभी-कभी तो यह ढेर इतना बड़ा हो जाता है कि वह पास के चारागाह में फैलने लगता है। हाल में, आग लगने के मामले बढ़ते जा रहे हैं, जिसके कारण बहुत धुंआ फैलता है। आसपास रहने वालों को इससे बहंत परेशानी होती है, कुछ लोगों ने तो सांस लेने में समस्या के बारे में भी शिकायत की। उन लोगों ने इस समस्या के समाधान के लिए सामुदायिक कार्यकर्ता से बात की।

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

कोयले की खान चलाने से पहले, विभिन्न जगहों से स्वीकृतियां और सहमतियां लेनी होती हैं। इन स्वीकृतियों और सहमतियों के साथ कुछ शर्तें भी दी जाती हैं, जिनमें कोयले को फेंकने और इन खानों से निकलने वाले अत्यधिक मलबे को कहां और कैसे फेंकना है, इससे संबंधित शर्तें होती हैं। इसमें यह भी स्पष्ट होता है कि यह मलबा कितने ऎंगल पर रखा जाना चाहिए। इन शर्तों में यह भी बताया जाता है कि ऊपरी मिट्टी को अलग किया जाए, और खदान के समापन के कार्य में खदान को भरने के लिए ओवरबर्डन का उपयोग किया जाना चाहिए।

Law	Corresponding Institutions/ Officials	Section/Clause
<b>Permissions, Rights and Consents related</b>		
<b>1. EIA Notification, 2006:</b> Check whether the activity has obtained the environmental clearance. If yes, check if there is a violation of a specific condition. of an environmental clearance letter.	1. MoEFCC	Section 10 on monitoring and compliance Check whether the Environmental clearance letter has any specific condition related to overburden dumps Section 2 Schedule 1 (a) of the EIA Notification
<b>2. Air (Prevention and Control of Pollution) Act, 1981:</b> Check whether the consents to establish and operate have been sought and if their conditions are being complied with	SPCB or its nearest regional office	Section 21 (incase the company has not complied with condition of the consent to operate) Section 31 A whereby in case of any violation, the SPCB can give directions for closure or stopping water or electricity supply
<b>Public nuisance under criminal law</b>		
<b>3. IPC, 1860</b>	District Collector	Section 19 which gives every person empowered by law the powers of a judge Section 268 which defines a public nuisance

### CONDITIONS FROM A CONSENT TO OPERATE LETTER OF A COAL MINE

- Maximum height of overburden dump should be restricted as per the Mine Act. Benched off adequate width should be provided and slope should be maintained below 28 degree.
- Overburden and top soil should be dumped separately in the earmarked areas using techniques and precautions.
- The overburden should not be kept active for long period. The inactive dumps should be reclaimed and suitably planted over.

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
<b>स्वीकृतियां, अधिकार और सहमति संबंधित कानून</b>		
<b>1. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006:</b> 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. MoEFCC	जांच और अनुपालना संबंधित धारा 10 जांचें कि पर्यावरण स्वीकृति पत्र में कचरे के ढेर को क्षमता से ज्यादा भर देने के बारे में कोई शर्त दी गई है या नहीं। धारा 2 EIA अधिसूचना की अनुसूचि 1 (a)
<b>2. वायु (प्रदूषण रोकथाम एवं नियंत्रण) अधिनियम को 1981 में अधिनियमित किया गया</b> (स्थापित करने और चलाने की स्वीकृति के लिए)	राज्य प्रदूषण नियंत्रण बोर्ड या उसका सबसे नज़दीकी क्षेत्रीय कार्यालय	धारा 21 (यदि कंपनी ने कारखाना चलाने के लिए स्वीकृति की शर्त की अनुपालना नहीं की है) धारा 31 ए, जहां SPCB उल्लंघन के मामले में कारखाना बंद करने या पानी और बिजली की सप्लाई बंद करने के आदेश दे सकती है।
<b>अपराधिक कानून के अंतर्गत सार्वजनिक उपद्रव</b>		
<b>3. भारतीय दंड संहिता, 1860</b>	ज़िला कलेक्टर	धारा 19, जिसमें कानून द्वारा अधीकृत हर व्यक्ति के पास जज के बराबर शक्तियां हैं धारा 268 जिसमें सार्वजनिक उपद्रव को परिभाषित किया गया है।

### कोयले की खान चलाने के स्वीकृति पत्र में दी जाने वाली शर्तें

- कचरे के ढेर की अधिकतम ऊंचाई को खान अधिनियम के अनुसार सीमित रखा जाना चाहिए। उचित चौड़ाई की बैंचें दी जानी चाहिए और उसकी ढलान को 28 डिग्री से कम रखा जाना चाहिए।
- अधिभार और मिट्टी की ऊपरी परत को अलग-अलग, निर्धारित जगह पर, तकनीकों और सावधानी के साथ रखा जाए।
- अधिभार को बहुत ज्यादा समय तक सक्रिय अवस्था में नहीं रखा जाना चाहिए। निष्क्रिय हो चुके ढेर को वापस सुधार कर उन पर पौधारोपण किया जाना चाहिए।



## CONDITIONS FROM A ENVIRONMENTAL CLEARANCE LETTER OF A COAL MINE

- Top soil should be stacked properly with proper slope at earmarked site(s), with adequate measures and should be used for reclamation and rehabilitation of mined out areas.
- OB dumps should be stacked at earmarked dump site(s) only and should not be kept active for a long period. The total height of the dumps should not exceed 90 m, each stage should be preferably be of 15 m but should not exceed 20 m. Overall slope of the dump should not exceed 28 degrees. Concurrent back-filling should be started from the fourth year of operation. Monitoring and management of rehabilitated should continue until the vegetation becomes self-sustaining. Compliance status should be submitted to the Ministry of Environment & Forests on a yearly basis.
- Catch drains, and siltation ponds of appropriate size should be constructed to arrest silt and sediment flows from soil, OB and mineral dumps. The water so collected should be utilized for watering the mine area, roads, green belt development, etc.
- Dimension of the retaining wall at the toe of dumps and OB benches within the mine to check run-off and siltation should be based on the rainfall data.
- A green belt of adequate width should be raised by planting the native species around the ML area, coal handling plant, roads, OB dump sites, etc. in consultation with the local DFO/Agriculture Department.

## कोयले की खान चलाने के लिए पर्यावरण स्वीकृति पत्र में दी जाने वाली शर्तें

- मिट्टी की ऊपरी परत को ठीक से, उपयुक्त ढलान के साथ, निर्धारित जगह पर पर्याप्त उपायों के साथ रखा जाना चाहिए और उन्हें खनन क्षेत्रों के सुधार और पुनर्वास के लिए उपयोग किया जाना चाहिए।
- अधिभार ढेरों को कचरे के ढेर के लिए निर्धारित जगह पर ही रखा जाए और उन्हें बहुत देर तक सक्रिय नहीं रहने देना चाहिए। ढेर की कुल ऊंचाई 90 मी. से ज्यादा न हो, और हर स्तर की उचित ऊंचाई 15 मी. है, लेकिन वह 20 मी. से ज्यादा न जाए। ढेर की ढलान 28 डिग्री से ज्यादा नहीं होनी चाहिए। खनन शुरू होने के चार साल के बाद खनन को वापस भरने की शुरुआत हो जानी चाहिए। पुनर्स्थापित खान की जांच व प्रबंधन तब तक किया जाना चाहिए जब तक कि उस पर पेड़-पौधे उगने न लगें और वह अपने आप सुधरने की स्थिति में न आ जाए। अनुपालना की स्थिति रिपोर्ट वार्षिक रूप से MoEFCC को जमा की जानी चाहिए।
- उचित माप के मलबे को ले जाने वाली नालियां और सिल्टेशन तालाब बनाए जाने चाहिए, जिससे कि मिट्टी, अधिभार और खनिज ढेरों में गाद और तलछट न मिले। इस प्रकार से एकत्रित किए गए पानी को खनन में पानी की आपूर्ति करने, सड़कों, हरित पट्टियों के विकास आदि के लिए उपयोग किया जाना चाहिए।
- ढेरों के नीचे से बनने वाली रीटेनिंग दीवारों और अधिभार बैंचों का माप उस क्षेत्र में बारिश के आंकड़ों के अनुसार तय किया जाना चाहिए।
- खनन क्षेत्र, कोयला संभारण इकाई, सड़कों, अधिभार ढेरों आदि के आसपास के क्षेत्र की देशी प्रजातियों के पौधारोपण के माध्यम से उचित चौड़ाई की हरित पट्टी बनाई जानी चाहिए, जिसके लिए स्थानीय वन मंडल अधिकारी/कृषि विभाग से सलाह ली जाए।



## SCENARIO 17

### What is the complaint?

A beach resort has been in operation in a coastal village for the last two years. During a training programme on environmental laws, some residents of the village shared that because of the construction of the resort, they have lost the access to the beach as well as to public wells. There was also a high wall that was built around the resort which has blocked the cool sea breeze; something the villagers enjoyed before the resort was built. They had approached the resort owners several times, asking for access to the beach and public wells, and complained about the sea breeze no longer reaching them. During the training they specifically asked how all these problems can be addressed.



## स्थिति 17

### शिकायत क्या है?

एक तटीय गांव में कई सालों से एक बीच रिसोर्ट चल रहा है। पर्यावरणीय कानूनों पर एक प्रशिक्षण कार्यक्रम के दौरान, गांव के कुछ लोगों ने बताया कि रिसोर्ट के कारण वे समुद्र तट पर नहीं जा पाते और सार्वजनिक कुओं का भी रास्ता बंद हो गया है। इसके अलावा, रिसोर्ट के चारों ओर एक ऊंची दीवार भी बनाई गई है जिससे समुद्र की ठंडक भी गांव तक नहीं पहुंच पाती, जिसकी गांव वालों को रिसोर्ट के बनने से पहले से आदत है। उन्होंने रिसोर्ट के मालिक से कई बार कहा कि गांव वालों का समुद्र तट पर जाने और सार्वजनिक कुओं का रास्ता छोड़ दे और उससे समुद्री हवा में रुकावट पैदा होने के बारे में भी शिकायत की। प्रशिक्षण के दौरान उन्होंने विशेष रूप से पूछा कि वे इन समस्याओं का हल कैसे निकाल सकते हैं।

## Is a law being violated?

It can be checked whether the resort owner had obtained an environmental clearance for building the resort, and what conditions and safeguards the owner needs to follow. The provisions of the CRZ Notification, 2011 can also be checked to see if the activities undertaken are permissible in the coastal area. These approvals will also indicate the amount of land area allocated for the resort. The District Collector can be approached to see if s/he can address part of the problem through powers to address 'public nuisance', under the IPC. There are also specific land improvement orders and notices that are state specific that can be referred to for safeguards and remedies.

Law	Corresponding Institutions/ Officials	Section/Clause
<b>Permissions, Rights and Consents related</b>		
<b>1. EIA Notification, 2006</b> Check whether the activity has obtained the environmental clearance. If yes, check if there is a violation of a specific condition of the environmental clearance letter.	MoEFCC	Section 10 on monitoring and compliance. Section 2 Schedule 1(a)
<b>2. CRZ Notification, 2011:</b> Check whether this is a permissible activity in the concerned CRZ sub-zone(s).	1. SCZMA 2. DLCC (under the District Collector)	Section 3; Section 4 and Section 7
<b>Public nuisance under criminal law</b>		
<b>3. IPC, 1860</b>	District Collector	Section 19 which gives every person empowered by law the powers of a judge Section 268 which defines a public nuisance

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

यह देखा जा सकता है कि रिसोर्ट ने पर्यावरणीय स्वीकृति ली है या नहीं, और उसके अनुसार रिसोर्ट को किन शर्तों और सुरक्षा नियमों का पालन करना है। तटीय विनियमन क्षेत्र के प्रावधानों को भी देखा जा सकता है कि उसके अंतर्गत रिसोर्ट की गतिविधियों की अनुमति है या नहीं। यह विशेषकर तटीय क्षेत्रों के लिए है। इन स्वीकृतियों से यह भी पता लगाया जा सकता है कि रिसोर्ट को कितनी ज़मीन दी गई है। ज़िला कलेक्टर से मिलकर भारतीय दंड संहिता के 'सार्वजनिक उपद्रव' प्रावधान के माध्यम से भी इस समस्या का हल किया जा सकता है। इसके अतिरिक्त, कुछ विशिष्ट भूमि सुधार आदेश और सूचनाएं भी हैं, जो कि राज्य-विशिष्ट हैं और उनमें सुरक्षाओं और समाधानों के प्रावधान दिए गए हैं।

कानून	संबंधित विभाग और अधिकारी	कानून की धाराएं
<b>स्वीकृतियां, अधिकार और सहमति संबंधित कानून</b>		
<b>1. पर्यावरण प्रभाव आंकलन (EIA) अधिसूचना, 2006:</b> 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. MoEFCC	जांच और अनुपालना संबंधित धारा 10 धारा 2 EIA अधिसूचना की अनुसूची 1 (a)
<b>2. तटीय विनियमन क्षेत्र अधिसूचना, 2011 (CRZ):</b> 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
<b>अपराधिक कानून के अंतर्गत सार्वजनिक उपद्रव</b>		
<b>3. भारतीय दंड संहिता, 1860</b>	ज़िला कलेक्टर	धारा 19, जिसमें कानून द्वारा अधिकृत हर व्यक्ति के पास जज के बराबर शक्तियां हैं धारा 268 जिसमें सार्वजनिक उपद्रव को परिभाषित किया गया है।

## SECTION II

# LAWS AND LEGAL CLAUSES

This section highlights some sections 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 environmental and social impacts of non-compliance.

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

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

- o **Sections 3 (1) and 3 (2) (v) empower the Central Government to take any measure to control pollution and protect and improve the quality of 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;"

- o **Section 5 empowers the Central Government to direct closure or stoppage of any activity or cutting off services to it such as electricity, water, etc.**

**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."

- o **Section 7 prohibits the discharge or emission of any environmental pollutant in excess of the prescribed standards.**

- o **Section 8 prohibits handling of any harmful substances unless in accordance with the procedure and safeguards specified.**
- o **Section 15 relates to the penalties for the contravention of any provisions of the EPA or Rules, Guidelines or Notifications issued under it. Violation of any of these can lead to imprisonment up to five years or a fine of Rs. 1,00,000. If the violation continues, the fine can extend to Rs. 5,000 for each day the violation has taken place.**

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

The Notification lays out the process of seeking prior environmental clearance for any new or existing projects or activities. For existing projects/activities, prior clearance is required for expansion, modernisation, or capacity addition with change in process and/or technology. The Notification elaborates the four stages in the prior environmental clearance process for new projects- Screening, Scoping, Public Consultation and Appraisal.

- o **Requirements for prior environmental 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<sup>1</sup> 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 categorised as 'A', requiring environmental clearance from the Ministry of Environment, Forest and Climate Change (MoEFCC) and those categorised as 'B', requiring clearance from the State Environment Impact Assessment Authority (SEIAA). For instance, a thermal power plant with a capacity of 500 MW or more falls under category 'A', while a thermal power plant with a capacity of less than 500 MW but more than 50 MW falls under category 'B'. For the complete list of projects, see the Schedule of the Notification.

- o **Cancellation of an environmental clearance based on deliberate non-disclosure of information**

<sup>1</sup>For the Schedule, see the EIA Notification, 2006 and its amendments.



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

**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."

**o The procedure for conduct of public hearing**

**Point 6.4 of Appendix IV:** "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.

**o 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, encroachments, etc. There is a specific monitoring and compliance protocol which has been prescribed in Section 10 of 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 MoEFCC lies with its ten regional offices. These are located in Bangalore, Bhopal, Bhubaneswar, Chandigarh, Chennai, Dehradun, Lucknow, Nagpur, Ranchi and Shillong. All project authorities are to submit six-monthly compliance reports. All regional offices are to generate six monthly monitoring reports for all projects, as well as carry out site visits. The SEIAAs have the jurisdiction for monitoring the compliance of projects which they have approved [S.O. 637(E) notification dated 28.02.2014].

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

The Coastal Regulation Zone (CRZ) Notification, 2011 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 in an area demarcated as the CRZ Zone.

**o Activities and operations that are prohibited in the CRZ:**

**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<sup>2\*</sup>
- (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.
- (xii) 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."

**o 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, -

<sup>2\*</sup>For exceptions refer to the CRZ Notification, 2011 with the latest amendments.

- (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 paragraph 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 concerned 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 waste water 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."<sup>3</sup>

o **Approval procedure for CRZ clearance**

**Section 4.2 (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."

o **Powers of State and National Coastal Zone Management Authorities (CZMAs) 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."

o **Constitution and role of District Level Coastal Committees (DLCCs)**

**Section 6 (c):** "the State Government or the 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 Committees under the Chairmanship of the District Magistrate concerned containing at least three representatives of local traditional coastal communities including from fisherfolk."

o **Identification and management of Critically Vulnerable Coastal Areas (CVCA)**

<sup>3</sup>For regulations refer to the notification

**Section 7 (v):** "Areas requiring special consideration for the purpose of protecting the critical coastal environment and difficulties faced by local communities...(B) Critically Vulnerable Coastal Areas (CVCA) such as Sundarbans region of West Bengal and other ecologically sensitive areas identified as under Environment (Protection) Act, 1986 and managed with the involvement of coastal communities including fisherfolk." **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..."

- o **Section 8** (i) is concerned with the regulation of activities to be carried out in different categories of the CRZ.

#### 4. Wildlife Protection Act (WLPA), 1972

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

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

**Section 29:** "Destruction, etc., in a sanctuary prohibited without a permit.- No person shall destroy, exploit or remove any wildlife 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 Wildlife Warden, and no such permit shall be granted unless the State Government being satisfied in consultation with the Board that such removal of wildlife 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 wildlife 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."

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

**Section 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."

- o **Restrictions on destruction, exploitation and removal of any wildlife from the National Park. This can be done with permission of the Chief Wildlife Warden.**

**Section 35 (6):** "No person shall destroy, exploit or remove any wildlife 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 Wildlife Warden, and no such permit shall be granted unless the State Government being satisfied in consultation with the National Board that such removal of wildlife 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 wildlife 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."

- o **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 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 (FCA), 1980

The Forest Conservation Act (FCA), 1980 regulates the diversion of forest land 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.

- o **User agencies and State Governments to seek permission from the Central Government before de-reserving any reserved forest land, felling of trees or diverting any forest land 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-

- (a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;
- (b) 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 forest land is not complied with** (or the land is diverted without the due permission of the Central Government). The penalty includes an imprisonment extending up to 15 days.

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

**MoEF Circular dated 3.8.2009:** A circular from the MoEF dated 3.8.2009 [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 proposals for diversion of forest land. The circular also refers to the requirement of the consent of the Gram Sabhas (village assemblies) prior to any permission of diversion.

The 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 forest land, 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 28.8.2015).

## 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. It is to be enacted by the Pollution Control Boards (PCBs) to ensure that no water body (river, lake, well, creek, etc.) is contaminated by industrial effluents or sewage.

- o **Prohibition of 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."

- o **Requirement of 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.”

o **Powers of the State Pollution Control Boards (SPCBs) 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.”

o **Powers of the SPCBs 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) 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 [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 thereto 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."

o **Powers of the SPCBs 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 willfully 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 willfully 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 1 year & 6 months 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. As per the 2009 CEPI, there were 43 Industrial Clusters that had an index greater than 70, on a scale of 0 to 100. Each of the identified areas were to prepare an action plan to improve the environmental quality.

The CEPI was revised in 2016 to include only those factors which can be measured precisely and it eliminated subjective factors like impact on human health and environmental degradation.

### 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 to declare 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 industries.

- o **Requirement of compliance with the consent from the SPCB**

**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."

o **Powers of the SPCBs 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 that 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 wilful absence of the occupier or his agent, or, as the case may be, his refusal to sign the container or containers."

o **Powers of the SPCBs 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 of he has reasons to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder."

**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."

o **Powers of the SPCBs to issue notices/directions/penalties**

**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 terms 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. The Indian Penal Code, 1860

19. “Judge”.—The word “Judge” denotes not only every person who is officially designated as a Judge, but also every person,— who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment. Illustrations

(a) A Collector exercising jurisdiction in a suit under Act 10 of 1859, is a Judge.

268. Public nuisance.—A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage.

## 9. Hazardous Material and Other Wastes (Management and Trans-boundary Movement) Rules, 2016

Hazardous Material and Other Wastes Rules were notified to set procedures for safe handling, generation, treatment, processing, treatment, packaging, storage, transportation, use, collection, reprocessing, conversion, sale and disposal of material that poses potential threat to public health and environment. The Rules set the duties of various authorities such as the MoEFCC, CPCB, SPCBs, Port Authority, etc., with wider responsibilities falling with the SPCBs.

### o **Storage, transportation and disposal**

**Section 4 (3):** “The hazardous and other wastes generated in the establishment of an occupier shall be sent or sold to an authorised actual user or shall be disposed of in an authorised disposal facility.”

**Section 4 (4):** “The hazardous and other wastes shall be transported from an occupier’s establishment to an authorised actual user or to an authorised disposal facility in accordance with the provisions of these rules.”

**Section 6 (1):** “Every occupier of the facility who is engaged in handling, generation, collection, storage, packaging, transportation, use, treatment, processing, recycling, recovery, pre-processing, co-processing, utilisation, offering for sale, transfer or disposal of the hazardous and other wastes shall be required to make an application in Form 1 to the State Pollution Control Board and obtain an authorisation from the State Pollution Control Board within a period of sixty days from the date of publication of these rules.”

**Section 6 (6):** “The State Pollution Control Board shall maintain a register containing particulars of the conditions imposed under these rules for management of hazardous and other wastes and it shall be open for inspection during office hours to any interested or affected person.”

**Section 8 (1):** “Storage of hazardous and other wastes.-

The occupiers of facilities may store the hazardous and other wastes for a period not exceeding ninety days and shall maintain a record of sale, transfer, storage, recycling, recovery, pre-processing, co-processing and utilisation of such wastes and make these records available for inspection: Provided that the State Pollution Control Board may extend the said period of ninety days in following cases, namely:-

(i) small generators (up to ten tonnes per annum) up to one hundred and eighty days of their annual capacity; (ii) actual users and disposal facility operators up to one hundred and eighty days of their annual capacity, (iii) occupiers 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, recovery, pre-processing, co-processing or utilisation; (v) in any other case, on justifiable grounds up to one hundred and eighty days.”

o **Establishment and management of a Treatment, Storage and Disposal Facility (TSD) Site**

**Section 16 (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.”

**Section 16 (4):** “The operator of common facility or occupier of a captive facility shall be responsible for safe and environmentally sound operation of the facility and its closure and post closure phase, as per guidelines or standard operating procedures issued by the Central Pollution Control Board from time to time.”

o **Power of SPCB to monitor and take action**

Schedule VII of the Hazardous Material and Other Wastes (Management and Transboundary Movement) Rules, 2016 makes the SPCB responsible for monitoring of compliance with various provisions and conditions of authorisations under the Rules, and for taking action against violations of the Rules.

**Section 7:** “Power to suspend or cancel an authorisation

- (1) The State Pollution Control Board, may, if in its opinion the holder of the authorisation has failed to comply with any of the conditions of the authorisation 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 authorisation issued under rule 6 for such period as it considers necessary in the public interest.
- (2) Upon suspension or cancellation of the authorisation, the State Pollution Control Board may give directions to the person whose authorisation has been suspended or cancelled

for the safe storage and management of the hazardous and other wastes, and such occupier shall comply with such directions.”

## 10. Solid Waste Management Rules, 2016

Solid Waste Management Rules, 2016 applies to every urban local body, outgrowths in urban agglomerations, census towns, notified areas, notified industrial townships, areas under the control of Indian Railways, airports, airbases, ports and harbours, defence establishments, Special Economic Zones, State and Central Government organisations, places of pilgrims, religious and historical importance, every domestic, institutional, commercial and any other non residential solid waste generator situated in the areas [except industrial waste, hazardous waste, hazardous chemicals, bio medical wastes, e-waste, lead acid batteries and radio-active waste which are covered under separate rules framed under the Environment (Protection) Act, 1986].

o **Duties and responsibilities of local authorities and village Panchayats**

**Section 15 (v):** “The local authorities and Panchayats shall facilitate construction, operation and maintenance of solid waste processing facilities and associated infrastructure on their own or with private sector participation or through any agency for optimum utilisation of various components of solid waste adopting suitable technology including the following technologies and adhering to the guidelines issued by the Ministry of Urban Development from time to time and standards prescribed by the Central Pollution Control Board. Preference shall be given to decentralised processing to minimize transportation cost and environmental impacts such as

- a) bio-methanation, microbial composting, vermi-composting, anaerobic digestion or any other appropriate processing for bio-stabilisation of biodegradable wastes;
- b) waste to energy processes including refused derived fuel for combustible fraction of waste or supply as feedstock to solid waste based power plants or cement kilns;”

**Section 15 (w):** “The local authorities and Panchayats shall undertake their own or through any other agency construction, operation and maintenance of sanitary landfill and associated infrastructure as per Schedule 1 for disposal of residual wastes in a manner prescribed under these rules;”

o **Requirement of authorisation before handling waste**

**Section 15 (y):** “The local authorities and Panchayats shall make an application in Form-I for grant of authorisation for setting up waste processing, treatment or disposal facility, if the volume of waste is exceeding five metric tones per day including sanitary landfills from the State Pollution Control Board or the Pollution Control Committee, as the case may be;”

o **Implementation of the Rules**

**Section 16:** “Duties of State Pollution Control Board or Pollution Control Committee.- (1) The State Pollution Control Board or Pollution Control Committee shall,-

- (a) enforce these rules in their State through local bodies in their respective jurisdiction and review implementation of these rules at least twice a year in close coordination

with concerned Directorate of Municipal Administration or Secretary-in-charge of State Urban Development Department;

- (b) monitor environmental standards and adherence to conditions as specified under the Schedule I and Schedule II for waste processing and disposal sites;
- (c) examine the proposal for authorisation and make such inquiries as deemed fit, after the receipt of the application for the same in Form I from the local body or any other agency authorised by the local body.”
- (g) suspend or cancel the authorization issued under clause (a) any time, if the local body or operator of the facility fails to operate the facility as per the conditions stipulated:  
provided that no such authorization shall be suspended or cancelled without giving notice to the local body or operator, as the case may be;”

**Section 11 (d):** “The Secretary, Urban Development Department in the State or Union territory through the Commissioner or Director of Municipal Administration or Director of local bodies shall ensure implementation of provisions of these rules by all local authorities;”

- o **Maintenance of the solid waste processing and treatment facility**

**Section 19:** “Criteria for Duties regarding setting-up solid waste processing and treatment facility.

- (1) The department in- charge of the allocation of land assignment shall be responsible for providing suitable land for setting up of the solid waste processing and treatment facilities and notify such sites by the State Government or Union territory Administration.
- (2) The operator of the facility shall design and set up the facility as per the technical guidelines issued by the Central Pollution Control Board in this regard from time to time and the manual on solid waste management prepared by the Ministry of Urban Development.
- (3) The operator of the facility shall obtain necessary approvals from the State Pollution Control Board or Pollution Control Committee.
- (4) The State Pollution Control Board or Pollution Control Committee shall monitor the environment standards of the operation of the solid waste processing and treatment facilities.
- (5) The operator of the facility shall be responsible for the safe and environmentally sound operations of the solid waste processing and or treatment facilities as per the guidelines issued by the Central Pollution Control Board from time to time and the Manual on Municipal Solid Waste Management published by the Ministry of Urban Development and updated from time to time.
- (6) The operator of the solid waste processing and treatment facility shall submit annual report in Form III each year by 30th April to the State Pollution Control Board or Pollution Committee and concerned local body.”

## 11. Panchayat Acts

This section explores and explains some clauses of state level Panchayat Acts, which could be exercised in remedying environmental 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.**

### 11.1 Gujarat Panchayats Act, 1993

- **Section 104 (1)**, makes it mandatory to obtain permission from the Gram Panchayat for erecting or re-erecting any building within the limits of a village.
- **Section 104 (3)** states that commencement of work for erection or re-erection of a building cannot be carried out after the expiry of one year from obtaining permission from the Gram Panchayat to carry out such a task.
- **Section 104 (4)** provides for levying a fine by the Panchayat on a person who carries out erection or re-erection of any building without the Panchayat's permission.
- **Section 104 (5)** grants powers to the Panchayats to order stopping of work of any such construction or demolition of any such structures (if constructed).
- **Section 105 (1)** grants powers to the Gram Panchayat to levy a fine on any person who, without its permission, uses public spaces (streets, open sites, etc.)and common grazing land in an unauthorised manner.
- **Section 105 (2)** authorises 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.
- **Section 105 (5)** grants powers to the Gram Panchayat to levy a fine on any person who removes earth or sand from or encroaches on an open site.
- **Section 105 (7)** states that if the Panchayat is unable to remove the unauthorised activity, it will inform the Taluka Development Officer who will then take action on behalf of the Panchayat.

### 11.2. Karnataka Panchayat Raj Act, 1993

- **Section 64 (1)** makes it mandatory to obtain permission from the Gram Panchayat for erecting or re-erecting any building within the limits of a village,.
- **Section 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 house/ lodging house/dharamshala or for manufacturing rice or aerated water manufacturing plant without a license for the same from the Grama Panchayat.
- **Section 64 (3)** grants powers to the Panchayats to order (through a notice) stopping of any construction work that has commenced without its permission. The Panchayat may also exercise such powers in the case of non-compliance with any condition imposed by it and demand the alteration or demolition of certain constructed structures..



- **Section 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 mandated act.
- **Section 66** restricts (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.
- **Section 72 (1)** states that the Gram Panchayat has the powers 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).
- **Section 72 (2)** authorises the Gram Panchayat to remove any obstruction or encroachment referred to in the previous sub-section (1).
- **Section 72 (3)** states that the Gram Panchayat has powers to levy a fine on unauthorised removal of earth or sand, (other than sand used for domestic purposes by residents of the Panchayat area).
- **Section 107** grants powers to the Gram Panchayat to discontinue (by written notice) operation of any quarry which it opines is dangerous to persons residing in or having legal access to the neighbourhood or creates or is likely to create a nuisance. However, if the activity is vested in the Government, consent from Director of Mines and Geology is required.

### 11.3. Odisha Grama Panchayati Raj Act, 1964

- **Section 44 (e)** states removal of unauthorised obstruction, projection and encroachment in or public streets and public places as one of the functions of the Gram Panchayat.
- **Section 44 (l)** makes the Gram Panchayat responsible for the establishment, management and maintenance of common grazing grounds and lands for common benefits.

### 11.4. Jharkhand Panchayat Raj Act, 2001

- **Section 10 (1) (a) (xi)** gives the Gram Sabha the power to manage natural resources such as land, water and forest falling within the limits of the village area according to the Constitution and other relevant laws in force.
- **Section 10 (1) (a) (xiv)** states that sanitation and conservancy as well as prevention and solution of nuisance is a function of the Gram Sabha.
- **Section 10 (1) (a) (xvi)** states that making available and maintaining water sources for bathing, washing and drinking purposes for domestic animals is a function of the Gram Sabha.
- **Section 10 (5)** gives additional powers to the Gram Sabha in Scheduled Areas. Sub-section (ii) states that the Gram Panchayat should not only manage the natural resources

including land, water and forest within the village areas according to its tradition, but also in accordance with the provisions of the Constitution. It also states that spirit of other relevant laws in force must be duly kept in mind.

## 12. Provisions of the Panchayats (Extension to the Scheduled 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.

### o **Applicability of PESA**

**Section 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;”
- (d) 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;”

### o **Definition of a Gram Sabha**

**Section 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;”

### o **Consultation with Gram Sabha before undertaking activity in a PESA area**

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

**Section 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;”

**Section 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;”

**Section 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;”

**Section 4 (m) (iii):** “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 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;"

### 13. Fisheries Acts

This section explores some sections of state level marine fisheries Acts, which could be exercised in remedying environmental and social impacts caused due to legal non-compliance.

#### 13.1 The Karnataka Marine Fishing (Regulation) Act, 1986

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

##### o **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."

##### o **Requirement for vessels to comply with the orders**

**Section 4:** "Prohibition of use of fishing vessel in contravention of any order made under section 3: 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."

##### o **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 authorised 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."

##### o **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 or 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."

##### o **Power of the authorised officers to verify violations and take action**

**Section 11:** "(1) The authorised officer may, if he has reason to believe that any fishing vessel is being, or has been used in contravention of any of the provisions of this Act or 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 authorised 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 thereof 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."

o **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."

Under this Act, in 1994, the Karnataka State Government put out an Order reserving a belt from the sea shore up to 10 km for traditional fishing operations.

### 13.2. 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 notifications for regulating fishing in specified areas.

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

**Section 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 be harmful to species of fish or the food of fish."

o **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."

o **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."

o **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."



o **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."

o **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."

o **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."

## 14. Guidelines/criteria for evaluation of proposals/requests for ground water abstraction (with effect from 16.11.2015)

These guidelines are for the areas where the ground water development is regulated and they were issued with the purpose to manage ground water resources while ensuring water sustainability. They are based on the latest assessment of state wise ground water resources done in March 2011. The Central Ground Water Authority (CGWA), from time to time, notifies areas where the ground water 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](http://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 Environment 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."

o **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](http://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 infrastructure 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."

o **Non-notified areas**

**Section 3:** "NOC for ground water withdrawal will be considered for Industries/Infrastructure /Mining projects as per the criteria given below<sup>4\*</sup>."

<sup>4</sup>For the criteria see the guidelines

**Section 3.1.1. (b)** "Water intensive industries- Industries using ground water as raw material/water intensive industries<sup>5</sup> shall not be granted NOC for ground water withdrawal in Over-Exploited Areas.<sup>6</sup> 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."

**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."

o **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.

<sup>5</sup>The 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 and pulp, fertiliser, textile dyeing, textile printing, textile spinning, sugar, dairy product, water park and amusement centre).

<sup>6</sup>The Assessment done on Ground Water Resource Estimation in 2011 categorises areas as safe, semi-critical, critical and over-exploited.

- (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."

o **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."

o **Power of the CGWA to waive off the conditions of the 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."

## 15. 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.

- o **Responsibility on the owner to provide relief in case of any harm to life or property due to an accident while handling hazardous wastes**

In such cases a claimant does not have to prove that the damage occurred due to any default 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."<sup>7</sup>

**Section 3 (2):** "In any claim for relief under sub-section (1) (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."

- o **Need for procuring an insurance cover 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;"

- o **Claims in the 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 (1) 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."

<sup>7</sup>The Schedule to the Act specifies the amount of compensation in cases of injury, death or damage to property.

**Section 7:** "(1) On receipt of an application under sub-section (1) 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 extent 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 (1) 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 (1) 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 (1) 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."

- o **Powers of the Central Government or an authorised officer 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"

## 16. 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 tribal and other forest dwelling communities' rights to manage, use and conserve forest land . 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 wildlife, forest and biodiversity
- ensure that adjoining catchment area, water sources and other ecological sensitive areas are protected
- ensure that habitat of forest dwellers is preserved from any destructive practices affecting their cultural and natural heritage

## 17. Karnataka Regulation of Stone Crushers Act, 2011

The Karnataka Regulation of Stone Crushers Act prescribes the policy for regulating the business related to the crushing of stones by prescribing reasonable conditions including guidelines and licenses and their periodical renewals.

**Section 3:** "Stone crushers to obtain license.- (1) No person shall carry on the business of stone crushing in the State except under and in accordance with the terms and conditions of a license issued under this Act. (2) Any person who is carrying on the business of stone crusher on the date of commencement of this Act with a license issued by any authority shall apply to the Licencing Authority [with a declaration in the prescribed form that the existing area conforms to the condition stipulated in Section 6 or any other suitable area conforming to the conditions stipulated under section 6, within three months from the date of commencement of the Karnataka Regulation of Stone Crushers (Amendment) Act, 2013 for a license under section 4 of the Act]"

**Section 9:** "Duties of the Authority.- (1) The Authority shall meet once in a month and meeting shall be called by the member secretary. If for any reason it is necessary, the member secretary may with the approval of the chairman, convene the meeting at any time. One third of the total members shall form the quorum for the meetings. (2) The duties of the Authority shall be,- (i) to cause Joint Inspection of stone crushers and obtain report by the concerned officers of Mines and Geology, Revenue, Forest departments and KSPCB to verify the conditions stipulated for declaring the safer zone; (ii) to declare the safer zone, which are conforming the norms; (iii) to issue Certificate of compliance of safer zone in such form as may be prescribed to the applicants having stone crusher located in declared safer zone;"

**Section 10:** "Cancellation of license.- The license issued under this Act may be cancelled suo-moto for the reasons to be recorded in writing by the Licensing Authority or on considering any complaint or application filed by any person to the effect that the license granted is not in accordance with the provisions of this Act and rules or that the licensee has violated the conditions of license: Provided that no order of canceling the license shall be made under this section without giving an opportunity of being heard to the licensee or a person aggrieved by such cancellation."

**Section 11:** "Power to issue directions.- Subject to the provisions of this Act and to any directions that the Central Government or State Government may give in this behalf, the Licensing Authority 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.-

The power to issue directions under this section shall include, the power to direct,- (a) the closure, prohibition or regulation of any stone crusher; or (b) the stoppage or regulation of supply of electricity, water or any other service to the stone crusher.”

**Section 12:** “Victim Relief Fund.- (1) The Authority shall have and maintain a separate fund called Victim Relief Fund, to which all money received by it as application fee, licence fee, fines and penalties levied shall be credited. It shall be, applied and disbursed in accordance with such rules as may be prescribed. (2) The Chairman and the member secretary of the Authority shall jointly operate the Victim Relief Fund in accordance with the procedure as may be prescribed. (3) The Victim Relief Fund shall be kept in any of the Nationalized Banks in such manner as may be prescribed. (4) The Authority shall receive complaints or applications or claim from the victims regarding the health hazards caused by the stone crushers within a period of three months from the date of cause of action and decide the relief or amount of compensation to be granted to the victim or their legal representatives within a period of three months from the date of receipt of such application. The Authority while determining the amount of relief or compensation shall invite one representative of the registered association of stone crusher and one representative of the stone crusher labourers. The Authority is at liberty to condone the delay of filing complaint or application or claim for good and sufficient reasons. (5) The Authority may also direct the license holder to pay such amount to such of the victims as determined under sub-section (4) in addition to the amount paid by it, within the time specified by the Authority in its order. Failing which, the amount specified in the order shall be recovered as arrears of Land Revenue and license shall be cancelled. Provided that the order so passed shall be communicated to all parties concerned, immediately.”

### 18. 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; Jagpal Singh and Others vs 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 28.1.2011, the office of the Development Commissioner, Gujarat, passed a circular on 4.3.2011-“Removal of encroachment on land vested including Gauchar”. The circular states that according to

Section 105 of Gujarat Panchayats 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 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.

The A.T. Ramaswamy Committee submitted two reports on 26.7.2006 and 1.2.2007 and before the State Assembly of Karnataka. They 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.

### 19. Almitra H. Patel and Another vs Union of India and Others

This judgment was passed on 22.12.2016. The petition was filed seeking for orders and directions for urgently taking steps to improve the practices presently adopted for collection, storage, transportation, disposal, treatment and recycling of Municipal Solid Waste generated in various cities across India. The tribunal passed several directions strengthening and clarifying provisions of the Solid Waste Management Rules, 2016 as well as general directions with regard to solid waste management.

#### **Direction for action against authorities responsible for non-compliance**

**Point 3:** “Any State or Union Territory which now fails to comply with the statutory obligations as afore indicated shall be liable to be proceeded against in accordance with Section 15 of the Environment (Protection) Act, 1986. Besides that, it would also be liable to pay environmental compensation, as may be imposed by this Tribunal. In addition to this, the senior most officer in-charge in the State Government/Urban Local Body shall be liable to be personally proceeded against for violation of the Rules and orders passed by this Tribunal.”

#### **Directions regarding buffer zone**

**Point 7:** “It shall be mandatory to provide for a buffer zone around plants and landfill sites whether they are geographically integrated or are located separately. The buffer zone necessarily need not be of 500 meters wherever there is a land constraint. The purpose of the buffer zone should be to segregate the plant by means of a green belt from surrounding areas so as to prevent and control pollution, besides, the site of the project should be horticulturally beautified. This should be decided by the authorities concerned and the Rules are silent with regard to extent of buffer zone. However, the Urban Development Manual provides for the same. Hence, we hold that this provision is not mandatory, but is directory. We make it clear that buffer zone and green belt are essential and their extent would have to be decided on a case-to-case basis.”

### **Directions regarding landfill sites**

**Point 13:** “The landfill sites shall be subjected to bio-stabilisation within six months from the date of pronouncement of the order. The windrows should be turned at regular intervals. At the landfill sites, every effort should be made to prevent, leachate and generation of Methane.”

**Point 14:** “Landfills should preferably be used only for depositing of inert waste and rejects. However, if the authorities are compelled to use the landfill for good and valid reasons, then the waste (other than inert) to be deposited at such landfill sites be segregated and handled in terms of clause-12.”

**Point 15:** “The non-biodegradable waste and non-recyclable plastic should be segregated from the landfill sites and be used for construction of roads and embankments in all road projects all over the country. To this effect, there should be a specific stipulation in the contract awarding work to concessionaire/operator of the facility.

### **Directions regarding burning of wastes**

Point 19: “We specifically direct that there shall be complete prohibition on open burning of waste on lands, including at landfill sites. For each such incident or default, violators including the project proponent, concessionaire, ULB, any person or body responsible for such burning, shall be liable to pay environmental compensation of Rs. 5,000/- (Rs. Five Thousand only) in case of simple burning, while Rs. 25,000/- (Rs. Twenty Five Thousand only) in case of bulk waste burning.”

## **20. Orissa Irrigation (Amendment) Rules, 2010**

**Section 23-A:** “Drawal of water from Government water source.- (1) When any industrial, commercial or other establishment proposes to draw or lift water from a Government water source,—

- (a) the Executive Engineer may earmark the bed and off-shore lands of the said water source free from encumbrances and set it apart for that purpose;
- (b) the Executive Engineer shall order installation of a Flow Meter or a suitable measuring device within a period of ninety days from the date of such order at the cost of the concerned industrial, commercial or other establishment to measure the quantum of water to be drawn from the water source and the Flow Meter or measuring device, as the case may be, shall be installed under the direct supervision of the Executive Engineer or an Engineer not below the rank of an Assistant Engineer to be specifically authorised by him, failing which, the water-supply shall not be made;
- (c) the Flow Meter or measuring device, as the case may be, will be certified and checked about its accuracy from time to time by the Weights and Measures Organisation of the State Government or any other organization as the State Government may, by notification, specify from time to time to ensure accurate measurement of quantum of water for the purpose of collection of fee; and

- (d) the industrial, commercial or other establishment shall be responsible for smooth maintenance and up-keeping of the Flow Meter system under the general supervision of the Executive Engineer, who may, for cross-checking of the Flow Meter or suitable measuring device, install an additional Flow Meter or suitable measuring device, as the case may be, at a suitable place along the pipe line in the premises of the concerned establishment.
- (2) The Government in its Water Resources Department shall be the competent authority to grant licence under the provisions of the Act to industrial, commercial and other establishments on application and in the following manner, namely :—
  - (a) the application shall be submitted in Form ‘J’ by the industrial, commercial or other establishment personally or by registered post to the Secretary of the Water Resources Department or any other officer authorized by the said Secretary for drawing and lifting of water from Government water source, alongwith a processing fee of one thousand rupees in the shape of Bank draft drawn in favour of Secretary or any other officer of the Water Resources Department authorized by the Secretary in writing;”



## Annexure 1

### BUILDING EVIDENCE FOR ENVIRONMENT JUSTICE (EJ) CASES

The most stringent standard of resolving legal cases is that of “beyond reasonable doubt”. This is the standard used in criminal proceedings. This means that in order to convict or prosecute another party, a complainant has to prove that there is almost no element of doubt about who committed a criminal act, how and when.

In civil cases like EJ cases, we need to at the very least provide evidence that passes the test or standard of “balance of probabilities”. It means it is most important for a plaintiff (or the person making the claim) to prove that the activity identified is the most probable cause of an impact that has occurred in an area. When such a standard is used, the case is decided in favour of the party whose claims are more likely to be true. Though the actual truth may never be known, the case is decided on the basis of weight of evidence or proof.

There are two important elements in building evidence in environment justice cases. These would ensure government bodies, the erring party, other affected people in an area or the media, take the complaints seriously.

#### 1. RELEVANCE: PROOF FOR THE PROBLEM STATEMENT AND ATTRIBUTION

What this simply means is that every complaint being filed needs to be backed up with clear and most persuasive proof that an impact has occurred due to non-compliance of law. Proof can include photographs of the site or impacts, maps of the site of impact, GPS coordinates of the location of impact, government circulars or notices that have already identified such impacts in the past, newspaper/TV reports stating the problem and when or how it took place, scientific reports and studies that state how such activities cause impacts.

Proof needs to be shown for:	
What is the problem statement	Who caused the impact
When it was caused	How it was caused
When your evidence answers all these questions, it is called attribution.	

#### 2. RELIABILITY: QUALITY OF EVIDENCE

Evidence presented to official forums should be as reliable and accurate as possible if the complaint is to be taken seriously. To collect reliable evidence, the following two methods are used:

## परिशिष्ट 1

### पर्यावरणीय न्याय (EJ) के मामलों के लिए प्रमाण एकत्रित करना

कानूनी मामलों में समाधान पाने का सबसे कड़ा नियम है “उचित संदेह से परे”। यही नियम है जो आपराधिक कानूनों में इस्तेमाल किया जाता है। इसका मतलब है कि किसी को सज़ा दिलवाने के लिए, दूसरी पार्टी को साबित करना होगा कि अपराध करने वाले, उसके तरीके और समय में कोई शक की गुंजाईश नहीं है।

नागरिक मामलों में, जैसे कि EJ मामलों में, हमें कम-से-कम ऐसे सबूत देने होते हैं जो “संभावनाओं के संतुलन” के नियम पर खरे उतरते हों। इसका मतलब है कि दावा करने वाले के लिए यह महत्वपूर्ण है कि वह साबित करे कि उसके द्वारा पेश की जा रही स्थिति के पीछे, उसके क्षेत्र में हुए प्रभाव ही सबसे ज़्यादा संभावित कारण हैं। जब इस प्रकार के नियम का उपयोग किया जाता है, तो मामले का निर्णय उसके पक्ष में जाता है जिसके दावे सच होने की सबसे ज़्यादा संभावना है। हालांकि असली सच शायद कभी सामने न आए, लेकिन मामले का निर्णय सबूत के वज़न के आधार पर लिया जाता है।

पर्यावरणीय न्याय के मामलों में सबूत एकत्रित करने के दो महत्वपूर्ण पहलू हैं। इसमें सुनिश्चित करना होगा कि सरकारी संस्थाएं, गलती करने वाले, क्षेत्र के अन्य प्रभावित लोग या मीडिया आदि शिकायत को गंभीरता से लें।

#### 1. संबद्धता: समस्या के बयान और आरोपण के सबूत

इसका मतलब है कि हर दर्ज की गई शिकायत के पीछे स्पष्ट और ठोस सबूत होना चाहिए कि प्रभाव कानून की अनुपालना न किए जाने के कारण हुआ। सबूत में प्रभावों या प्रभाव स्थल के फोटो, प्रभाव स्थल के मानचित्र, प्रभाव स्थल के GPS निर्देशांक, सरकारी परिपत्र या नोटिस जहां पहले ही इन प्रभावों को स्वीकार किया गया हो, अखबार/टी.वी. की खबरें जहां समस्या और वह कैसे पैदा हुई इसका विवरण दिया गया हो, वैज्ञानिक रिपोर्टें और अध्ययन जो दर्शाते हों कि किस प्रकार इन गतिविधियों के कारण प्रभाव हो रहे हैं— यह सब शामिल हो सकते हैं।

जिसके लिए सबूत दिखाना है	
समस्या का बयान क्या है	प्रभाव किसके कारण हुआ
प्रभाव कब हुआ	प्रभाव कैसे हुआ
जब आपका सबूत इन सभी सवालों का जवाब दे सके, तो इसे आरोपण कहते हैं	

#### 2. विश्वसनीयता: सबूत की गुणवत्ता

अगर शिकायत करने वाले को गंभीरता से लिया जाना है, तो उसे अधिकारिक फोरम में, जहां तक हो सके उतने विश्वसनीय और सही सबूत जमा करने चाहिए। विश्वसनीय सबूत इकट्ठे करने के लिए नीचे दिए जा रहे दो तरीकों का इस्तेमाल किया जा सकता है:

- **Groundtruthing**

This method relies on comparing facts stated in official documents with the actual site of impact. For instance, if an environmental approval or license of an industry states that effluent should not be discharged in a nearby river, photographic evidence with date/time/location details can be created to show if this specific condition is being complied with or not. You can also provide a photographic series of photos taken at different times during a week to show the frequency/time table of discharge.

Groundtruthing is effective to create evidence with easily observable activities that are illegal or prohibited. e.g. destruction of mangroves, dumping of fly ash in an agricultural field etc.

- **Triangulation**

In most cases, no single piece of evidence might be enough to establish cause of problem and for a regulatory agency to take action. In such cases it is useful to establish the link between impact and legal non-compliance through at least three pieces of evidence. For instance, a photograph of effluent discharge can be supported by an earlier show cause notice of a regulatory agency or an approval condition along with media reports attributing the action to a particular industrial operation. If an official notice is not available, then a study indicating the impacts of effluent discharge by an industry is a possible generic addition. Triangulation is most important in cases where clear attribution is a challenge.

One important practice for paralegals engaged in collecting evidence of impacts due to non-compliance is to test all the evidence collected for the case on the basis of their relevance and reliability before presenting it to government or anyone else.

- **ज़मीनी सच्चाई निर्धारित करना**

इसके अंतर्गत आप अधिकारिक दस्तावेजों में दिए गए तथ्यों की असली प्रभावित क्षेत्र के तथ्यों से तुलना करते हैं। उदाहरण के लिए, अगर किसी पर्यावरणीय स्वीकृति या उद्योग को दिए गए लाइसेंस में कहा गया है कि गंदे पानी को पास की नदी में नहीं छोड़ा जाना चाहिए, तो तिथि/समय/स्थल की जानकारी देती हुई फोटो खींची जा सकती हैं जो दर्शाती हों कि इस शर्त की अनुपालना हो रही है या नहीं। आप अलग अलग समय पर लिए गए फोटो की श्रृंखला भी सबूत के रूप में पेश कर सकते हैं जो दिखाती हों कि किस-किस समय पर गंदा पानी नदी में डाला जाता है।

ज़मीनी सच्चाई निर्धारित करना सबूत तैयार करने का एक प्रभावी तरीका है, जिसके माध्यम से आसानी से साबित किया जा सकता है कि गैर कानूनी या प्रतिबंधित गतिविधियां की जा रही हैं। उदाहरण के लिए, मैंग्रोव का विनाश, खेतों में फलाई ऐश डंप करना आदि।

- **ट्राइएंगुलेशन**

कई मामलों में, कोई एक सबूत समस्या को स्थापित करने के लिए काफी नहीं होता और उसके आधार पर कोई नियामक एजेंसी कार्यवाही नहीं कर पाती। ऐसे मामलों में यदि आप तीन सबूतों के माध्यम से हो रहे प्रभावों और किसी कानून की अनुपालना न किए जाने को साबित कर सकें, तो यह आपके लिए मददगार हो सकता है। उदाहरण के लिए, गंदे पानी को नदी में डाले जाने की फोटो के साथ आप किसी नियामक एजेंसी द्वारा दिए गए कारण बताओं नोटिस की प्रति या स्वीकृति में दी गई शर्त की प्रति लगा सकते हैं, और किसी औद्योगिक गतिविधि के कारण होने वाले प्रभावों की मीडिया रिपोर्टें लगा सकते हैं। यदि कोई अधिकारिक नोटिस उपलब्ध न हो, तो उद्योग द्वारा गंदा पानी नदी में डाले जाने के प्रभावों के विषय में किए गए किसी अध्ययन को शामिल कर सकते हैं। ट्राइएंगुलेशन ऐसे मामलों में बहुत महत्वपूर्ण है जहां स्पष्ट रूप से आरोपण करना मुश्किल हो।

पैरालीगल द्वारा किसी कानून या शर्त की अनुपालना न किए जाने के सबूत इकट्ठे करने में एक अहम कदम लिया जाना चाहिए कि वे सभी सबूतों का उनकी संबद्धता और विश्वसनीयता के आधार पर परीक्षण करें और उसके बाद ही सरकार या किसी और को पेश करें।

## Annexure 2

### THE INDIAN LEGAL SYSTEM

#### 1. Historical Roots:

The Indian Legal System is based on the Common Law system.

- **The Common Law System:**

Judicial Pronouncements are based on pre-existing legal precedents set by competent courts of law.

#### 2. Sources of Law:

- a. Primary Sources of Law: The law as is laid down in the statute.
- b. Secondary Sources of Law: Interpretation of the law done by way of judgments.

#### 3. Subject matters under Indian Law:

- Civil
- Criminal

	Civil	Criminal
Parties involved	Harm between two parties	Offence against the State, the State being the prosecutor.
Mens rea (guilty mind)	Not required	Required
Standard of proof	Balance of probability	Beyond reasonable doubt
Remedies	Liable to-injustice relief, compensation	Guilty-imprisonment, criminal fine to state

#### 4. Frequently Asked Questions:

- **Where to go?**

Jurisdiction: The authority vested in a court of law to try and hear cases of a particular type and pertaining to a particular subject matter.

- **Who can go?**

Locus standi: It refers to whether or not someone has a right to be heard in the court. It decides the question of who can file an a case in which forum.

- **What is cause of action?**

Cause of action is the ground on which an action may be sustained.

## परिशिष्ट 2

### भारतीय कानून प्रणाली

#### 1. ऐतिहासिक जड़ें:

भारतीय कानून प्रणाली सामान्य कानून व्यवस्था पर आधारित है।

- सामान्य कानून व्यवस्था :

न्यायिक घोषणाएं सक्षम न्यायालयों में पहले से मौजूद कानूनी उदाहरणों पर आधारित होती हैं।

#### 2. कानून के स्रोत:

क. कानून के प्राथमिक स्रोत: कानून जैसा कि विधान में निर्धारित किया गया है।

ख. कानून के द्वितीय स्रोत: विभिन्न निर्णयों के माध्यम से कानून की व्याख्याएं।

#### 3. भारतीय कानून के अंतर्गत विषय:

- सिविल
- अपराधिक

	सिविल	अपराधिक
शामिल पार्टियां	दो पार्टियों के बीच क्या नुकसान हुआ है	राज्य के विरुद्ध हुए अपराध, राज्य ही अभियोक्ता होता है
मैन्स रिया (दोषी मन)	आवश्यकता नहीं	आवश्यक
सबूत के लिए मानक	संभावनाओं का संतुलन	उचित संदेह से परे
समाधान	इसमें अन्याय से राहत, मुआवज़ा मिल सकता है	दोषी को सज़ा, राज्य को आपराधिक जुर्माना

#### 4. अक्सर पूछे जाने वाले सवाल:

- **कहां जाएं?**

अधिकार क्षेत्र: कानूनी न्यायालय को दिए गए अधिकार जहां पर विशिष्ट प्रकार के मामलों और किसी विशिष्ट विषय पर सुनवाई होती है।

- **कौन जा सकता है?**

हस्तक्षेप का अधिकार: इसका मतलब है कि किस को न्यायालय में सुनवाई पाने का अधिकार है। इससे यह तय किया जाता है कि किस फोरम में कौन केस दर्ज कर सकता है।

- **कार्रवाई का कारण क्या है?**

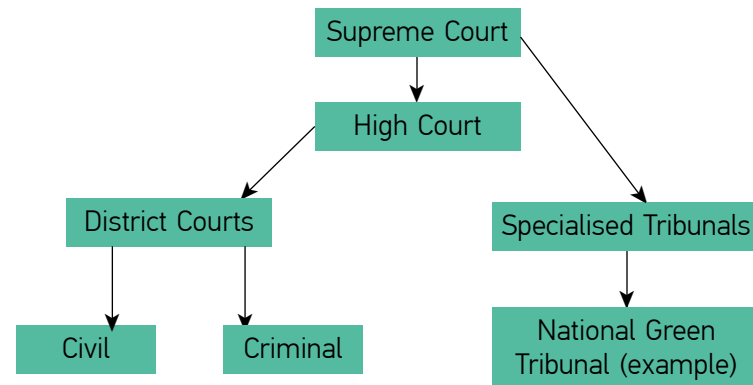
कार्रवाई का कारण वह होता है जिसके आधार पर किसी कार्रवाई को चालू रखा जाता है।



## 5. Types of judicial forums in India:

- Courts
- Specialised Tribunals

## 6. Structure of Courts:



### A. Civil Courts:

Hierarchy: Munsif's Court—Sub-ordinate Judge's Court—District Court—High Court—Supreme Court.

- When the value of the suit is less than Rs.1, 00,000: Suit will be filed with Munsif's Court
- Appeal from the Munsif's Court is filed before the District Court.
- When the value of the suit is more than Rs.1, 00,000: Suit shall be filed before the Sub-ordinate Judge's Court (Sub Court).
- Appeal from the Sub Court is filed before the District Court if the amount is less than Rs.2, 00,000.
- Appeal from Sub Court is filed before the High Court if the amount is more than Rs. 2, 00,000.

### B. Criminal Courts:

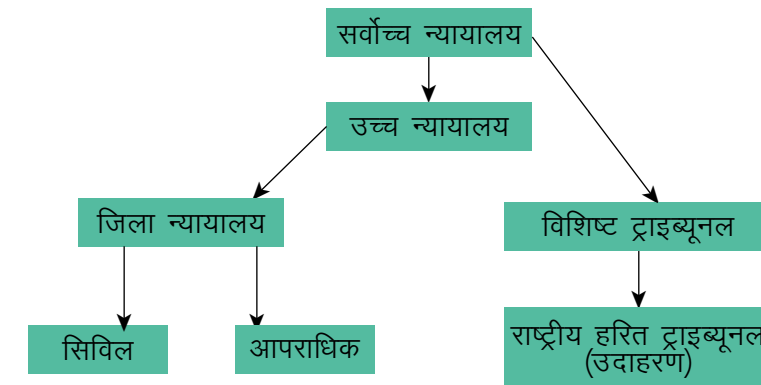
Hierarchy: Judicial Magistrate of the Second Class—Judicial Magistrate of the First Class—Chief Judicial Magistrate—Additional Sessions Judge—Sessions Judge—High Court—Supreme Court

- If the offence is punishable with imprisonment for a term not exceeding one year, or with fine not exceeding five thousand rupees, or with both, the jurisdiction lies with the Judicial Magistrate of the Second Class.
- If the offence is punishable with imprisonment for a term not exceeding three years or with fine up to ten thousand rupees, jurisdiction lies with the Judicial Magistrate of the First Class.

## 5. भारत में न्यायिक फोरम के प्रकार:

- न्यायालय
- विशिष्ट ट्राइब्यूनल

## 6. न्यायालयों का ढांचा:



### क. सिविल न्यायालय:

पदानुक्रम: मुनिसिफ न्यायालय— अधीनस्थ न्यायाधीश अदालत – ज़िला न्यायालय – उच्च न्यायालय – सर्वोच्च न्यायालय

- जब मुकदमे का मूल्य रु. 1,00,000 से कम हो तो उसे मुनिसिफ न्यायालय में दर्ज किया जाता है।
- मुनिसिफ न्यायालय के आगे की अपील ज़िला न्यायालय में की जाती है।
- जब मुकदमे का मूल्य रु. 1,00,000 से अधिक हो, तो उसे अधीनस्थ न्यायाधीश अदालत (सब-कोर्ट) में दर्ज किया जाता है।
- सब कोर्ट से आगे की अपील को ज़िला न्यायालय में दर्ज किया जाता है, यदि मुकदमे का मूल्य रु. 2,00,000 से कम हो।
- यदि मुकदमे का मूल्य रु. 2,00,000 से अधिक हो तो सब कोर्ट की अपील को उच्च न्यायालय में दर्ज किया जाता है।

### ख. आपराधिक न्यायालय:

पदानुक्रम: दूसरे दर्जे के न्यायिक मजिस्ट्रेट – पहले दर्जे के न्यायिक मजिस्ट्रेट – प्रमुख न्यायिक मजिस्ट्रेट – अतिरिक्त सत्र न्यायाधीश – सत्र न्यायाधीश – उच्च न्यायालय – सर्वोच्च न्यायालय

- यदि जुर्म की सज़ा एक साल तक की जेल है, या जुर्माना पांच हजार रुपए से अधिक नहीं है, तो मामला दूसरे दर्जे के न्यायिक मजिस्ट्रेट के पास दर्ज किया जाता है।
- यदि जुर्म की सज़ा तीन साल तक की जेल से ज़्यादा नहीं है, या जुर्माना दस हजार रुपए से अधिक नहीं है, तो मामला पहले दर्जे के न्यायिक मजिस्ट्रेट के पास दर्ज किया जाता है।

- If the offence is punishable with imprisonment for a term not exceeding 7 years, the Chief Judicial Magistrate shall have jurisdiction.
- If the offence is punishable with imprisonment for a term not exceeding 10 years, the Additional Session's Judge shall have jurisdiction.
- If the offence is punishable with imprisonment for a term exceeding 10 years, the Sessions Judge would have jurisdiction. However, a death sentence cannot be pronounced in this Court without confirmation by the High Court.

- यदि जुर्म की सज़ा सात साल तक की जेल से ज़्यादा नहीं है, तो मामला प्रमुख न्यायिक मजिस्ट्रेट के पास दर्ज किया जाता है।
- यदि जुर्म की सज़ा दस साल तक की जेल से ज़्यादा नहीं है, तो मामला अतिरिक्त सत्र न्यायाधीश के पास दर्ज किया जाता है।
- यदि जुर्म की सज़ा दस साल तक की जेल से अधिक है, तो मामला सत्र न्यायाधीश के पास दर्ज किया जाता है। लेकिन इस न्यायालय में मौत की सज़ा उच्च न्यायालय की पुष्टि के बिना नहीं दी जा सकती।

Forum	High Court and Supreme Court (through public interest litigation)	National Green Tribunal	Lokayuktas
Locus standi	Any public spirited Individual	Aggrieved person	Aggrieved person
Jurisdiction	The Supreme Court and High Court under Article 32 and 226 can hear petitions filed on matters of 'public interest'	Civil cases where a substantial question relating to the environment is involved and such question arises out of the implementation of Water (Prevention & Control of Pollution) Act 1974, Water Cess (Prevention & Control) Act 1977, Air (Prevention & Control of Pollution) Act 1981, Forest Conservation Act 1980, Biodiversity Act 2002, Public Insurance Liability Act 1991, Environment Protection Act 1986	Inquire into allegations of corruption against public functionaries
Remedies that can be provided	Injunctions, compensation, restitution of property etc	Compensation to victims, restitution of property etc	Public servant be asked to vacate office, initiate prosecution against the public servant, recommend to competent authority to take action etc

फोरम	उच्च न्यायालय एवं सर्वोच्च न्यायालय (जनहित याचिका के माध्यम से)	राष्ट्रीय हरित ट्राइब्यूनल	लोकायुक्त
हस्तक्षेप का अधिकार	कोई भी व्यक्ति जो जनहित में काम करना चाहता हो	पीड़ित व्यक्ति	पीड़ित व्यक्ति
अधिकार क्षेत्र	धारा 32 और 226 के अंतर्गत, सर्वोच्च न्यायालय और उच्च न्यायालय 'जनहित' में दायर की गई याचिकाओं की सुनवाई कर सकते हैं।	सिविल मामले जहां पर्यावरण के संबंध में कोई ठोस सवाल शामिल हो और यह सवाल जल (प्रदूषण की रोकथाम और नियंत्रण) अधिनियम 1974, जल उपकरण (रोकथाम और नियंत्रण) अधिनियम 1977, वायु (प्रदूषण की रोकथाम और नियंत्रण) अधिनियम 1981, वन संरक्षण अधिनियम 1980, जैवविविधता अधिनियम 2002, सार्वजनिक बीमा दायित्व अधिनियम 1991, पर्यावरण सुरक्षा अधिनियम 1986 को लागू करने के संबंध में उठते हों।	सार्वजनिक अधिकारियों के खिलाफ भ्रष्टाचार के आरोपों की जांच करने के लिए
क्या समाधान उपलब्ध कराए जा सकते हैं	मनाही का आदेश, मुआवज़ा, संपत्ति वापस दिया जाना आदि	पीड़ितों को मुआवज़ा, संपत्ति वापस दिया जाना आदि	सार्वजनिक अधिकारी को कार्यालय छोड़ने के लिए कहा जा सकता है, उसके खिलाफ मुकदमा चलाया जा सकता है, सक्षम अधिकारी से उचित कदम उठाने का अनुग्रह किया जा सकता है आदि

### Annexure 3



# ground truthing

a note on methodology

### परिशिष्ट 3

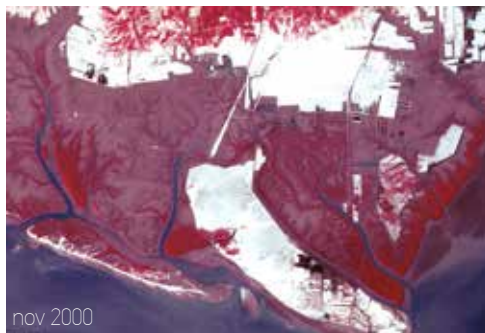


# तथ्य सत्यापन

प्रक्रिया पर एक नोट



## legal empowerment for environmental compliance: using the method of groundtruthing



### what is groundtruthing?

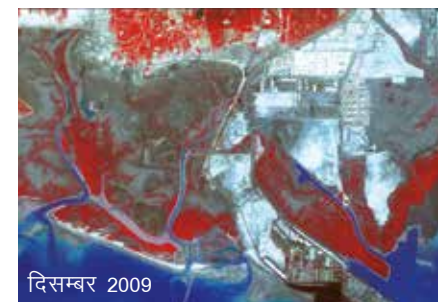
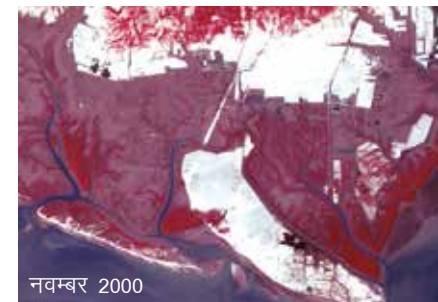
Groundtruthing broadly means to compare facts stated in official documents and maps with the ground realities at a site or in a place. As a method of physical verification of statements made on paper, groundtruthing can act as an effective tool to create evidence by collecting easily observable facts about operations that might be illegal, prohibited or causing harm. The evidence can be used in complaints directed to the relevant regulatory authority, appellate mechanism or judicial body. This method is useful for one-time investigations or the ongoing monitoring of impacts.

For instance, if an environmental approval or license of an industry states that effluents should not be discharged in a nearby river, photographic evidence with date/time/location details can be created to show if this specific condition is being complied with or not. Visual evidence can be prepared with photos taken at different times during a week to show the frequency/time table of discharge.

### why is groundtruthing required?

In several countries, there are regulatory procedures in place for the setting up of industry and infrastructure projects. These procedures aim

## पर्यावरणीय अनुपालना के लिए कानूनी सशक्तिकरण : तथ्य सत्यापन प्रक्रिया का उपयोग



### तथ्य सत्यापन क्या होता है?

तथ्य सत्यापन का मतलब है कि आधिकारिक दस्तावेजों और नक्शों में दिए गए तथ्यों की किसी स्थल या जगह पर मौजूद वास्तविकताओं से तुलना करना। दस्तावेजों में दी गई जानकारी की भौतिक जांच के रूप में, तथ्य सत्यापन प्रक्रिया एक प्रभावकारी उपकरण बन सकती है। इसके उपयोग से गैर-कानूनी, निषिद्ध या हानि पहुंचाने वाले क्रियाकलापों के आसानी से दिखने वाले तथ्यों के आधार पर सबूत इकट्ठे किए जा सकते हैं। इन सबूतों को फिर उपयुक्त नियंत्रण अधिकरण, अपीलीय तंत्र या न्यायिक संस्थान को भेजा जा सकता है। यह तरीका एक बार में जांच करके सबूत इकट्ठा करने या परिणामों की निरंतर निगरानी के लिए उपयोगी है।

उदाहरण के लिए, किसी उद्योग को दी गई पर्यावरणीय मंजूरी या लाइसेंस में यदि यह कहा गया है कि आसपास की नदी में उसका मलबा/अपशिष्ट नहीं डाला जाना चाहिए, तो इस शर्त की अनुपालना हो रही है या नहीं, उसके सबूत में तारीख/समय/स्थल की जानकारी के साथ तस्वीरें खींच कर पेश की जा सकती हैं। इसी प्रकार, सप्ताह के अलग-अलग दिनों में अलग-अलग समय पर तस्वीरें ले कर अपशिष्ट/मलबे के निस्तारण की आवृत्ति/समय-सारिणी भी दर्शाई जा सकती है।

### तथ्य सत्यापन की क्या ज़रूरत है?

कई देशों में उद्योग और बुनियादी ढांचागत निर्माण की परियोजनाओं को स्थापित करने के लिए नियामक प्रक्रिया स्थापित की गई है। इन प्रक्रियाओं का उद्देश्य इन परियोजनाओं के पर्यावरणीय और सामाजिक प्रभावों

to reduce or mitigate the environmental and social impacts of these projects. This is done through a system of conditional approvals or by binding the project to a list of mandatory safeguards that are to be implemented by them. Groundtruthing is required to assess if these conditions and safeguards are being complied with and resulting in better outcomes.

There are also MoUs (Memorandum of Understanding), lease agreements and contracts that are agreed upon and signed between a project developer, governments and communities. These documents may also contain several commitments made by various parties. Groundtruthing is useful to monitor if these commitments are being upheld and to what effect.

### who can groundtruth?

The groundtruthing method can be used at three different levels:

- **Public spirited individual or small teams:** E.g. environmental or rights based organisations along with key local “informants”.
- **Group of Community representatives:** E.g. affected people or village council members.
- **Legal Empowerment/Paralegal programs for Environmental Justice (EJ):** E.g. affected communities with paralegals collect evidence of impacts and seek remedies.

### at what stage to groundtruth?

- **Pre approval:** To confirm the facts and baselines presented to obtain approvals E.g. Environment Impact Assessment report and compliance with consent provisions.
- **During construction:** Corroborating the safeguards and conditions under which a project should be built. E.g. damages to households or sacred sites, dumping in rivers or agricultural

fields, construction of retaining walls, restricting encroachments and rehabilitation plans.

- **Post approval:** Monitoring the compliance of legal conditions of a license, approval and agreements even as operations are underway, E.g. preventing water pollution, safeguards related to transportation of raw materials, functional emission control devices and regulating withdrawal of groundwater.

### what to groundtruth?

Identification of items for groundtruthing is an essential component of the method. The items need to be selected carefully. Some general principles, which could help with selection, include:

- **Availability of official data:** This method can be most effective when approval letters, impact assessment reports and safeguard plans are available to compare conditions with said impacts.
- **Access to site:** The method is also dependent on the possibility of access to the sites of impact to collect observable evidence like photographs, water samples, and GPS (Global Positioning System) coordinates.
- **Knowledge of institutional links:** The method also requires a person involved in evidence collection to have knowledge on the institution to which the proof will be presented. Different institutions might require their own formats or stringency of evidence types and complaints.
- **Multiple evidence:** It is best to groundtruth those statements for which multiple pieces of evidence can be provided. A thumb rule to persuade a regulatory agency or remedial body is to collect three pieces of evidence per violation, illegality or impact. This is called triangulation. E.g. a photograph of effluent discharge can be supported by an earlier show-cause notice of a regulatory agency or an approval condition along with media reports attributing the action to particular activity/agency/project.

को कम या न्यूनतम करना है। इसके लिए शर्तों के आधार पर स्वीकृतियां दिए जाने की प्रक्रिया अपनाई जाती है या फिर परियोजना को कुछ अनिवार्य सुरक्षा कदमों की सूची लागू करने के लिए दी जाती है। तथ्य सत्यापन का उपयोग यह जांचने के लिए किया जाता है कि इन शर्तों और सुरक्षा कदमों की अनुपालना की जा रही है या नहीं, और उससे परिणामों में सुधार हुआ है कि नहीं।

इसके अतिरिक्त, सहमति अनुबंध (MoU), लीज अनुबंध और ठेके के अनुबंध भी होते हैं, जिनकी शर्तों पर सहमति के बाद परियोजना निर्माता, सरकार और समुदाय के लोग उन पर हस्ताक्षर करते हैं। इन दस्तावेजों में कई प्रतिबद्धताएं होती हैं, जिनको पूरा करने की जिम्मेदारी अलग-अलग लोग लेते हैं। तथ्य सत्यापन की प्रक्रिया से निगरानी रखी जा सकती है कि इन प्रतिबद्धताओं को पूरा किया जा रहा है या नहीं और इसके क्या परिणाम हो रहे हैं।

### तथ्य सत्यापन कौन कर सकता है?

तथ्य सत्यापन को तीन स्तरों पर उपयोग किया जा सकता है:

- **जनहित में किसी व्यक्ति या छोटे समूह द्वारा:** जैसे कि, पर्यावरणीय या अधिकारों के मुद्दों पर काम करने वाली संस्थाएं, जिनमें कुछ प्रमुख स्थानीय लोग सूचना देने वाले हों।
- **सामुदायिक प्रतिनिधियों का समूह:** जैसे कि प्रभावित लोग या ग्राम पंचायत के सदस्य
- **पर्यावरणीय न्याय कानूनी सशक्तिकरण/पैरालीगल कार्यक्रम:** जैसे कि प्रभावित समुदाय पैरालीगल के साथ मिलकर प्रभावों के सबूत इकट्ठे करें और उनके हल निकालें।

### किस चरण पर तथ्य सत्यापन करना चाहिए?

- **स्वीकृति मिलने से पहले:** स्वीकृति के लिए जमा की गई जानकारी और तथ्यों के सत्यापन के लिए। उदाहरण के लिए, पर्यावरण प्रभाव आंकलन रिपोर्ट और लोगों की सहमति संबंधी प्रावधानों की जांच करने के लिए।
- **निर्माण के दौरान:** सुरक्षा प्रावधानों और परियोजना निर्माण की शर्तों की पुष्टि के लिए। जैसे कि, मकानों या धार्मिक स्थलों को नुकसान, नदियों या खेतों में

अपशिष्ट प्रवाह, पुश्ते की दीवारें बनाना, अतिक्रमण रोकना और पुनर्स्थापन योजनाएं।

- **स्वीकृति मिलने के बाद:** लाइसेंस, स्वीकृति और अनुबंधों में दी गई कानूनी शर्तों की अनुपालना की जांच करने के लिए, चाहें कामकाज चालू हो चुका हो, तब भी। जैसे कि, जल प्रदूषित होने से बचाना, कच्चे माल को लाने-ले जाने संबंधी सुरक्षा प्रावधान, उत्सर्जन नियंत्रण उपकरण काम कर रहे हैं या नहीं और जमीन से पानी खींचने का विनियमन।

### किस का तथ्य सत्यापन होना चाहिए?

इस प्रक्रिया में सबसे महत्वपूर्ण है तथ्य सत्यापन करने लायक पहलुओं की पहचान करना। इन पहलुओं का चुनाव करने में बहुत सावधानी की ज़रूरत है। कुछ बातें जिनका आम तौर पर ध्यान रखा जा सकता है, वे हैं:

- **आधिकारिक जानकारी की उपलब्धता:** यह तरीका तब असरदार होता है जब स्वीकृति पत्र, प्रभाव आंकलन रिपोर्ट और सुरक्षा योजनाएं उपलब्ध हों, जिससे कि हो रहे प्रभावों की उनमें दी गई जानकारी से तुलना की जा सके।
- **स्थल तक पहुंच:** यह तरीका अपनाने के लिए जिस जगह पर प्रभाव हो रहे हैं, वहां तक पहुंच होना बहुत ज़रूरी है, जिससे कि स्पष्ट सबूत, जैसे कि तस्वीरें, पानी के नमूने, और जी.पी.एस. जानकारी इकट्ठी की जा सके।
- **संस्थागत कड़ियों की जानकारी:** इस तरीके में यह पता होना चाहिए कि सबूत किस संस्थान को देने हैं। अलग-अलग संस्थाओं के अपने अलग-अलग फॉर्मेट हो सकते हैं, या वे किस प्रकार के सबूत और शिकायतों स्वीकार करेंगे यह भी अलग-अलग हो सकता है।
- **कई प्रकार के सबूत:** सबसे अच्छा है कि ऐसे तथ्यों का सत्यापन किया जाए, जिनके लिए अलग-अलग सबूत पेश किए जा सकें। अनुभव के आधार पर कहा जा सकता है कि किसी भी नियामक एजेंसी या उल्लंघन पर कार्यवाही करने वाली संस्था को यकीन दिलाने के लिए उल्लंघन, गैर-कानूनी कृत्य या प्रभाव के तीन सबूत तो इकट्ठे करने ही चाहिए। इसे त्रिकोण-मापना (Triangulation) कहते हैं। उदाहरण के लिए, मलबा फेंके जाने की तस्वीर के सहयोग में उससे पहले किसी नियामक संस्था द्वारा दिए गए कारण बताओ नोटिस या स्वीकृति की शर्त के साथ किसी विशिष्ट गतिविधि/एजेंसी/परियोजना द्वारा गैर कानूनी कृत्य की मीडिया रिपोर्ट पेश की जा सकती है।

## groundtruthing as a process and outcome in legal empowerment?

Groundtruthing can be an important component in the process of legal empowerment as well as an outcome of imparting legal knowledge to communities. While implementing community paralegal programs related to social or environmental justice, the groundtruthing method can be used for collecting reliable and relevant evidence.

It is also possible to undertake this at a community level only if legal knowledge has been shared with them. It can be an exercise done to assess the effectiveness of legal trainings on environmental compliance. Community organisers and paralegals can include this method as part of their cases to seek remedies (see references below). It can be recommended as a method of monitoring of impacts by local government agencies and village councils.

### for more information

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### references

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- Calling the Bluff: Revealing the state of Monitoring and Compliance of Environmental Clearance Conditions by Kanchi Kohli and Manju Menon, Kalpavriksh, New Delhi/Pune

## कानूनी सशक्तिकरण में एक प्रक्रिया और परिणाम के रूप में तथ्य सत्यापन

तथ्य सत्यापन कानूनी सशक्तिकरण की प्रक्रिया का भी एक अहम भाग हो सकता है। और साथ ही यह समुदायों को कानूनी जानकारी देने का परिणाम भी हो सकता है। सामाजिक या पर्यावरणीय न्याय संबंधी कानूनी जानकारी देने वाले कार्यक्रम में, तथ्य सत्यापन विश्वसनीय और संबद्ध सबूत इकट्ठे करने का एक तरीका हो सकता है।

इसे सामुदायिक स्तर पर करना भी संभव है, लेकिन तभी जब उनके साथ कानूनी जानकारी बांटी गई हो। इसे कानूनी जानकारी देने के कार्यक्रमों की प्रभावशीलता मापने के लिए भी उपयोग किया जा सकता है। सामुदायिक आयोजक और पैरालीगल इसे अपने मामलों में हल खोजने के लिए भी इस्तेमाल कर सकते हैं (नीचे दी गई संदर्भ सूची देखें)। इसे स्थानीय सरकारी एजेंसियां और ग्राम पंचायतें प्रभावों की जांच करने के लिए भी उपयोग कर सकती हैं।

### और अधिक जानकारी के लिए संपर्क करें :

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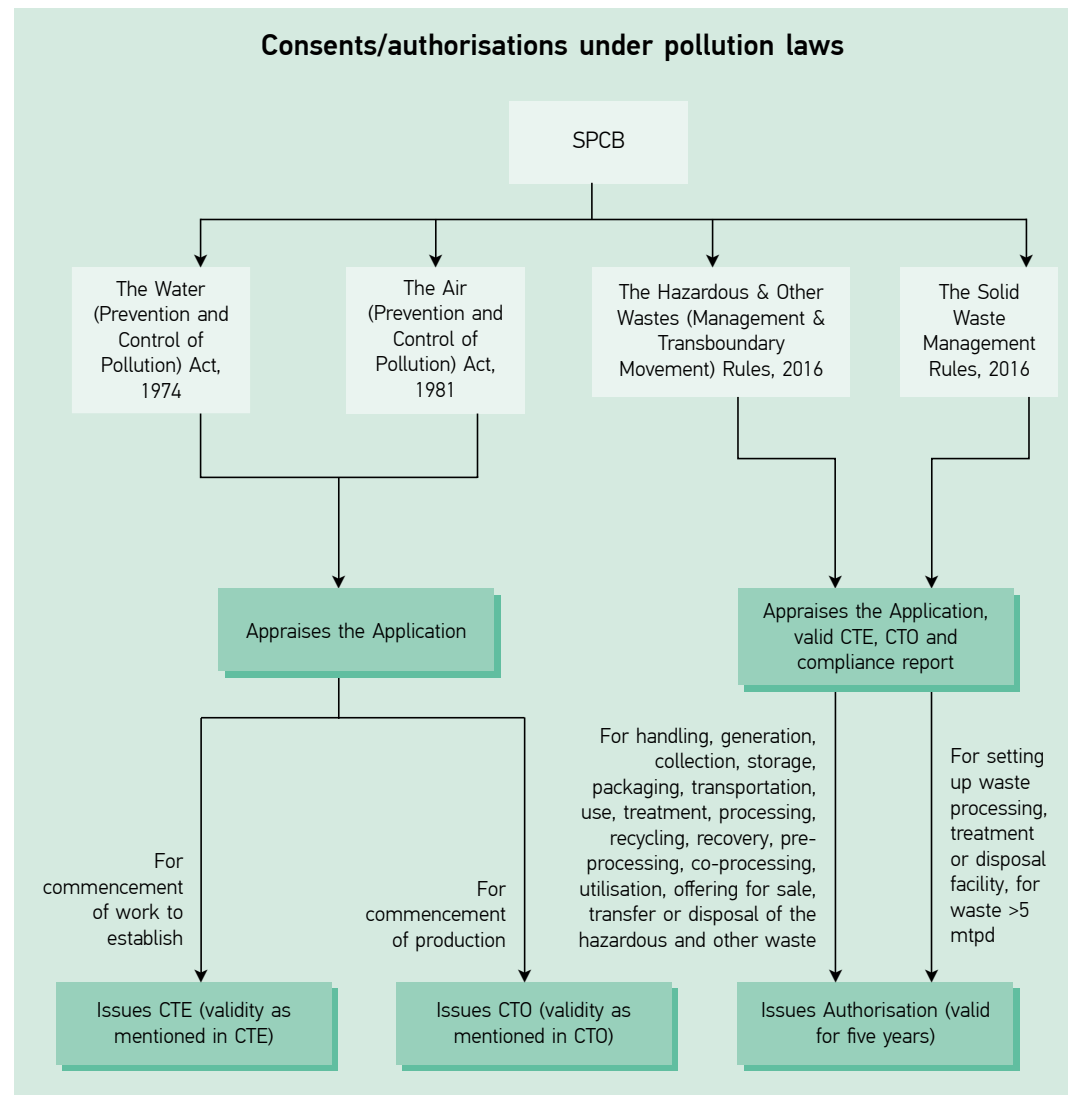
### संदर्भ

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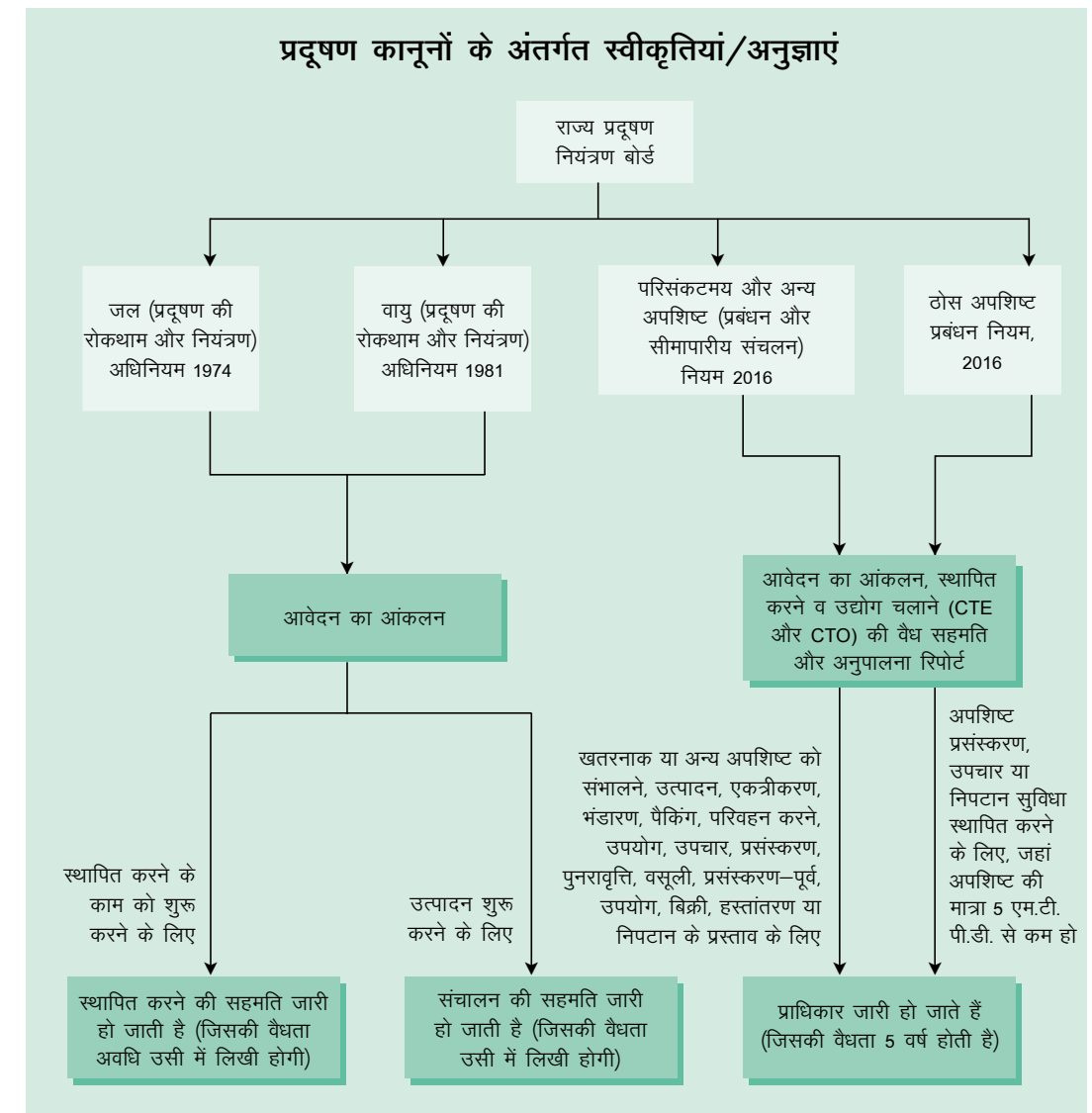
# Annexure 4

## INSTITUTIONAL MAPPING

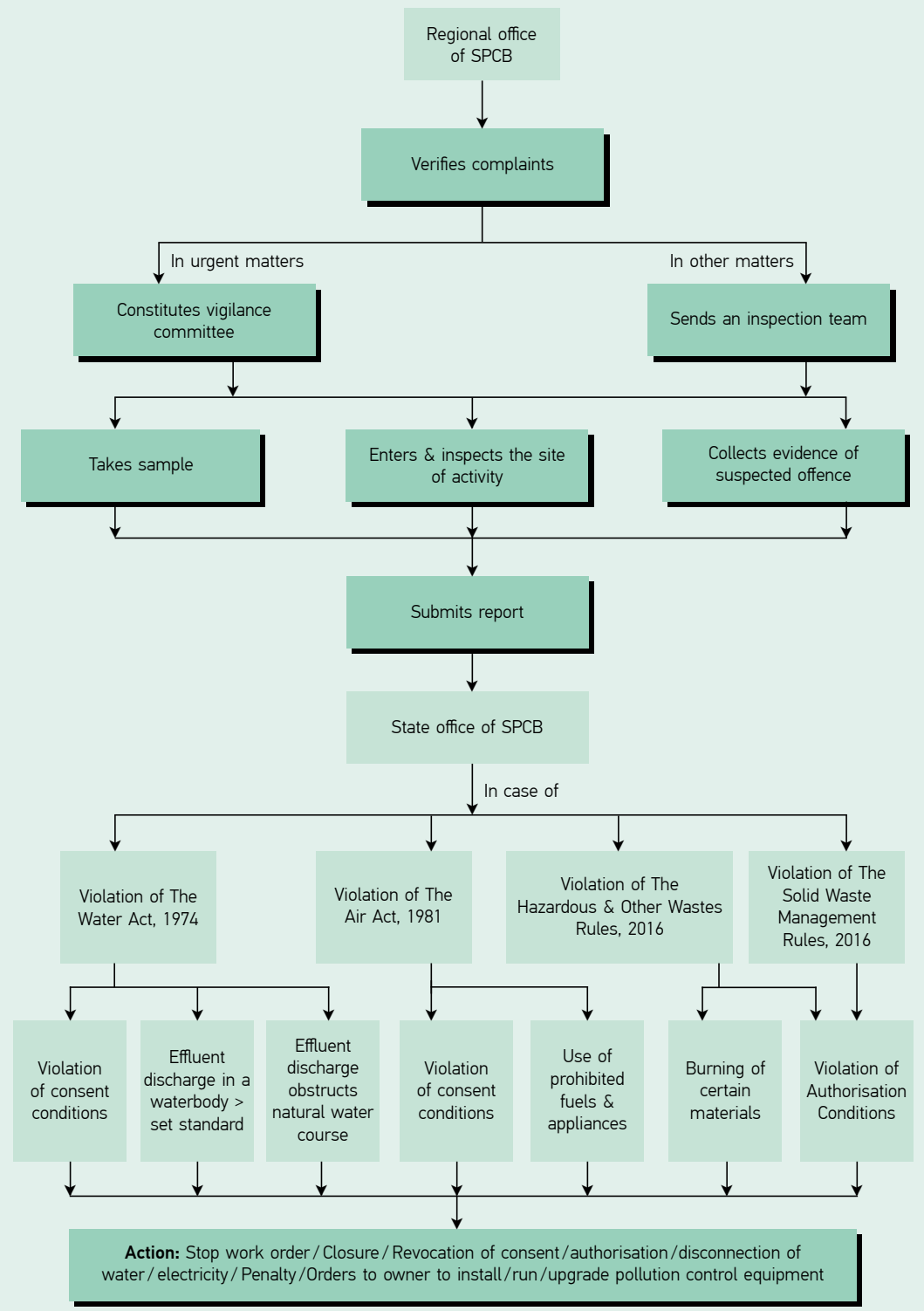


# परिशिष्ट 4

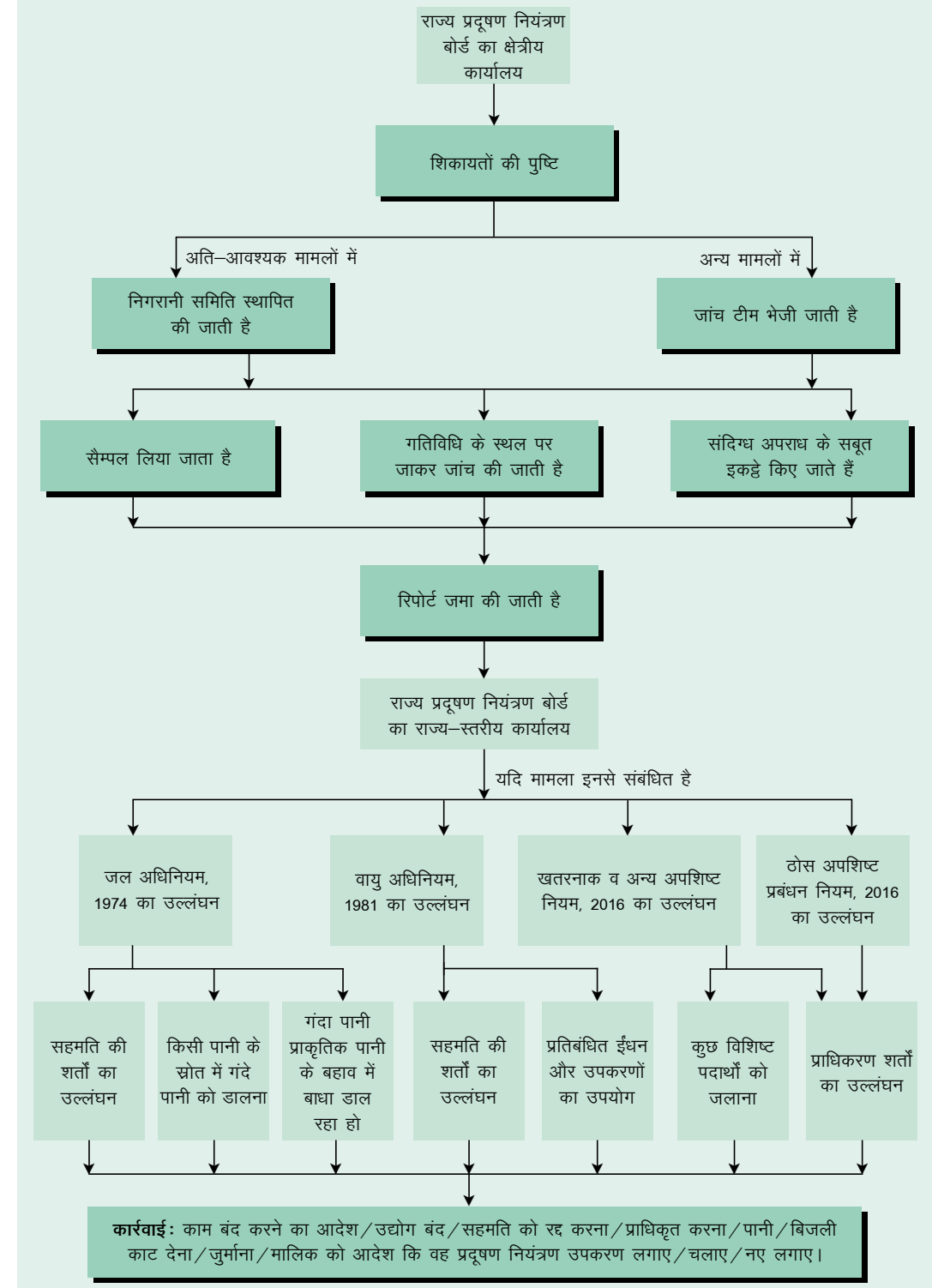
## संस्थागत मानचित्र



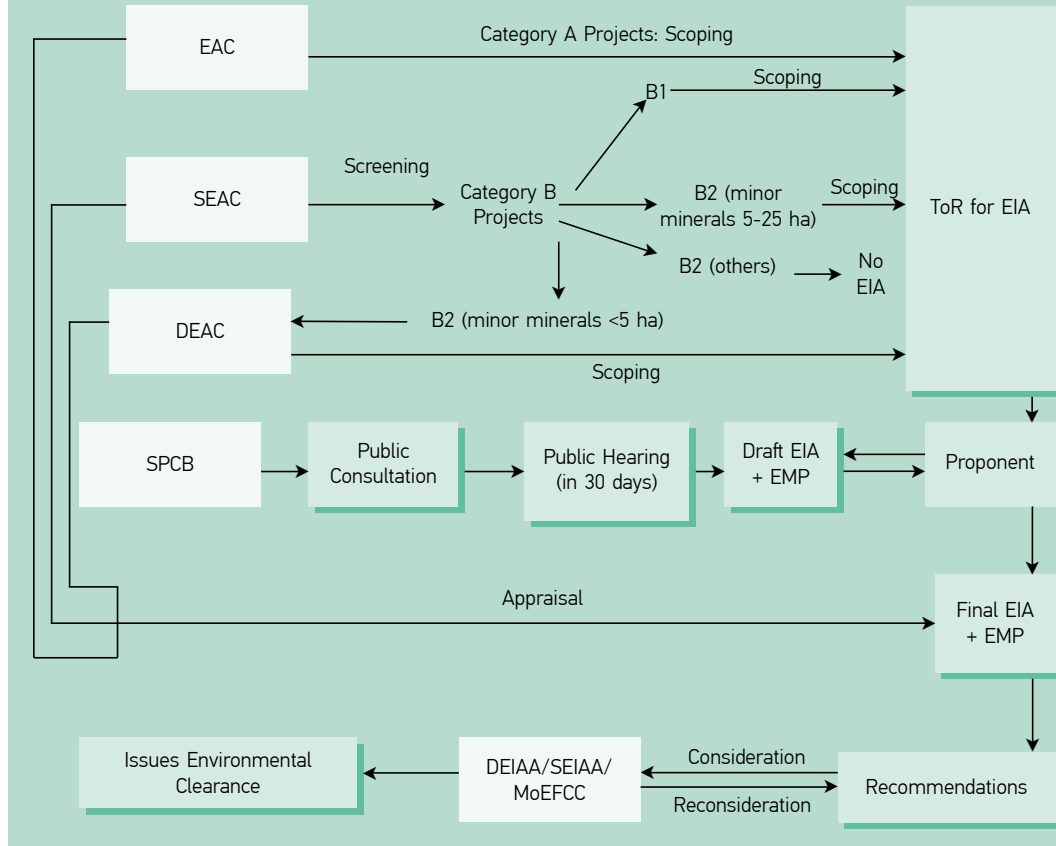
### Monitoring and enforcement under pollution laws



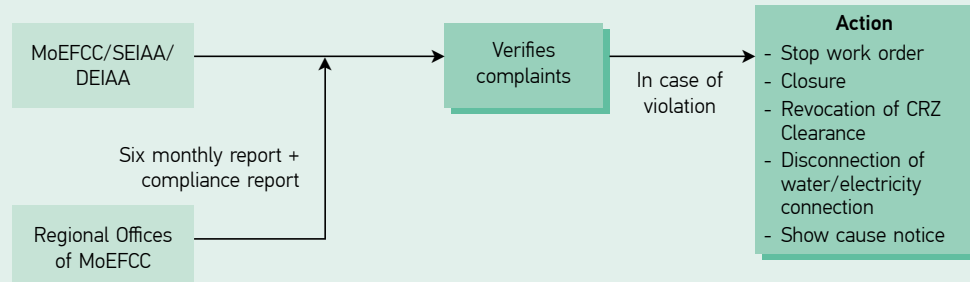
### प्रदूषण कानूनों के अंतर्गत जांच और अमल की प्रक्रियाएं



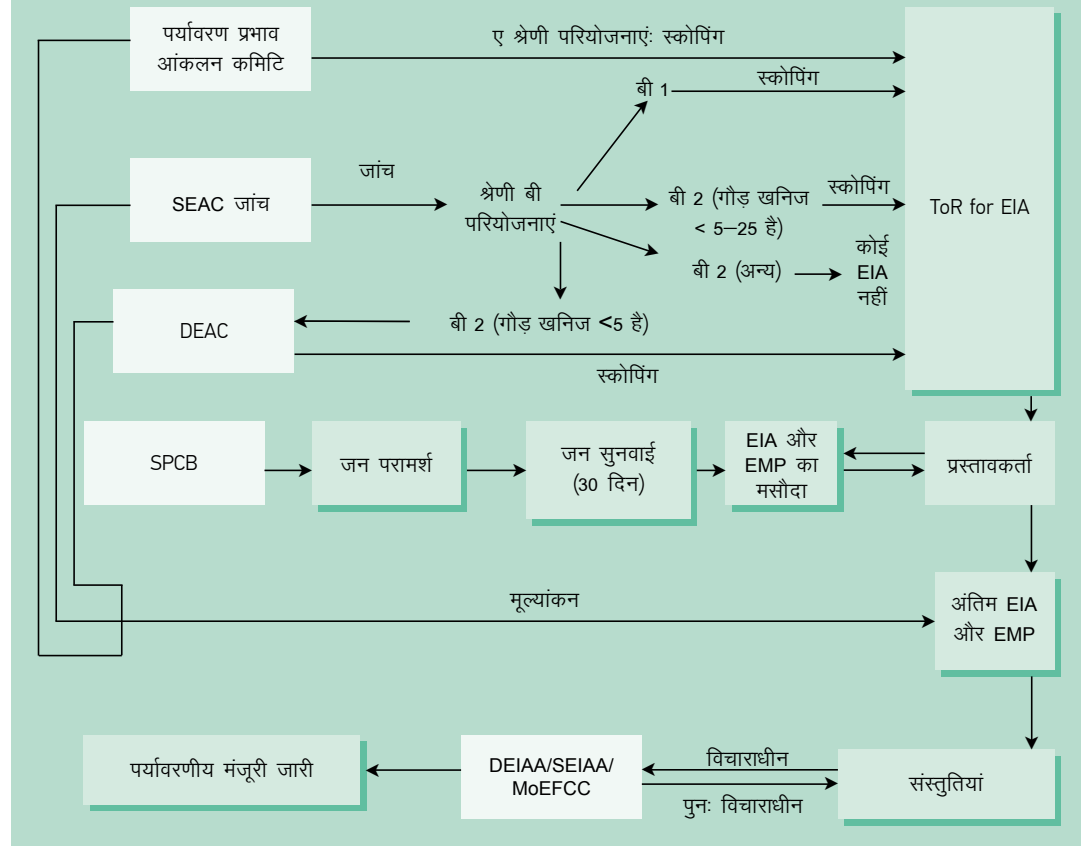
### Clearance procedure under EIA Notification, 2006



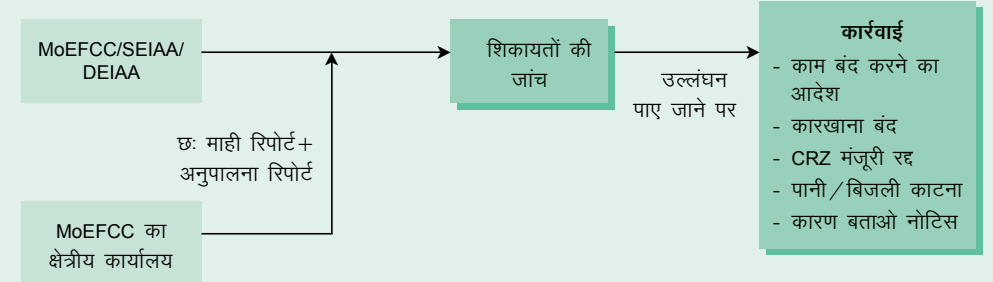
### Monitoring and enforcement under EIA Notification, 2006



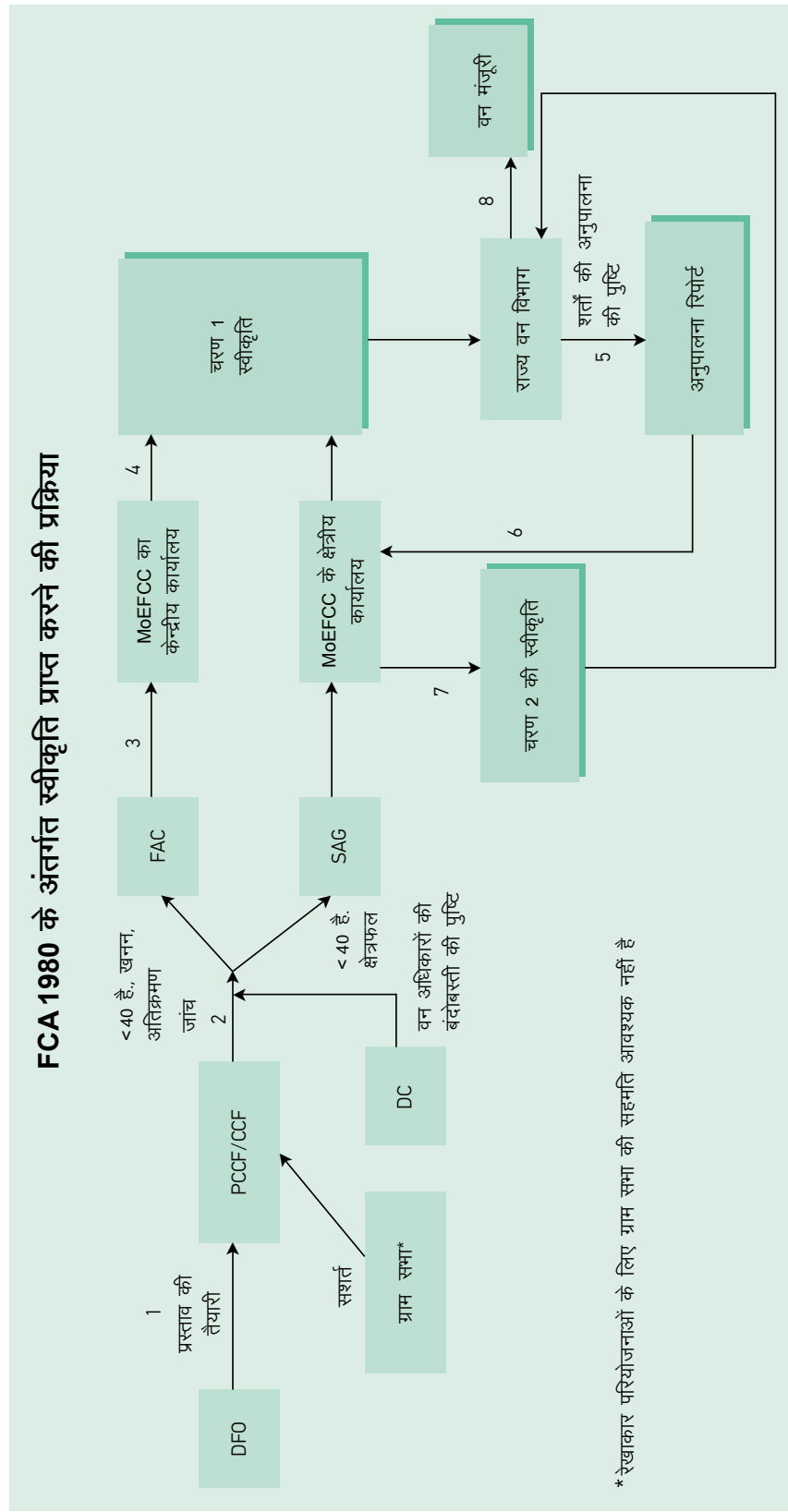
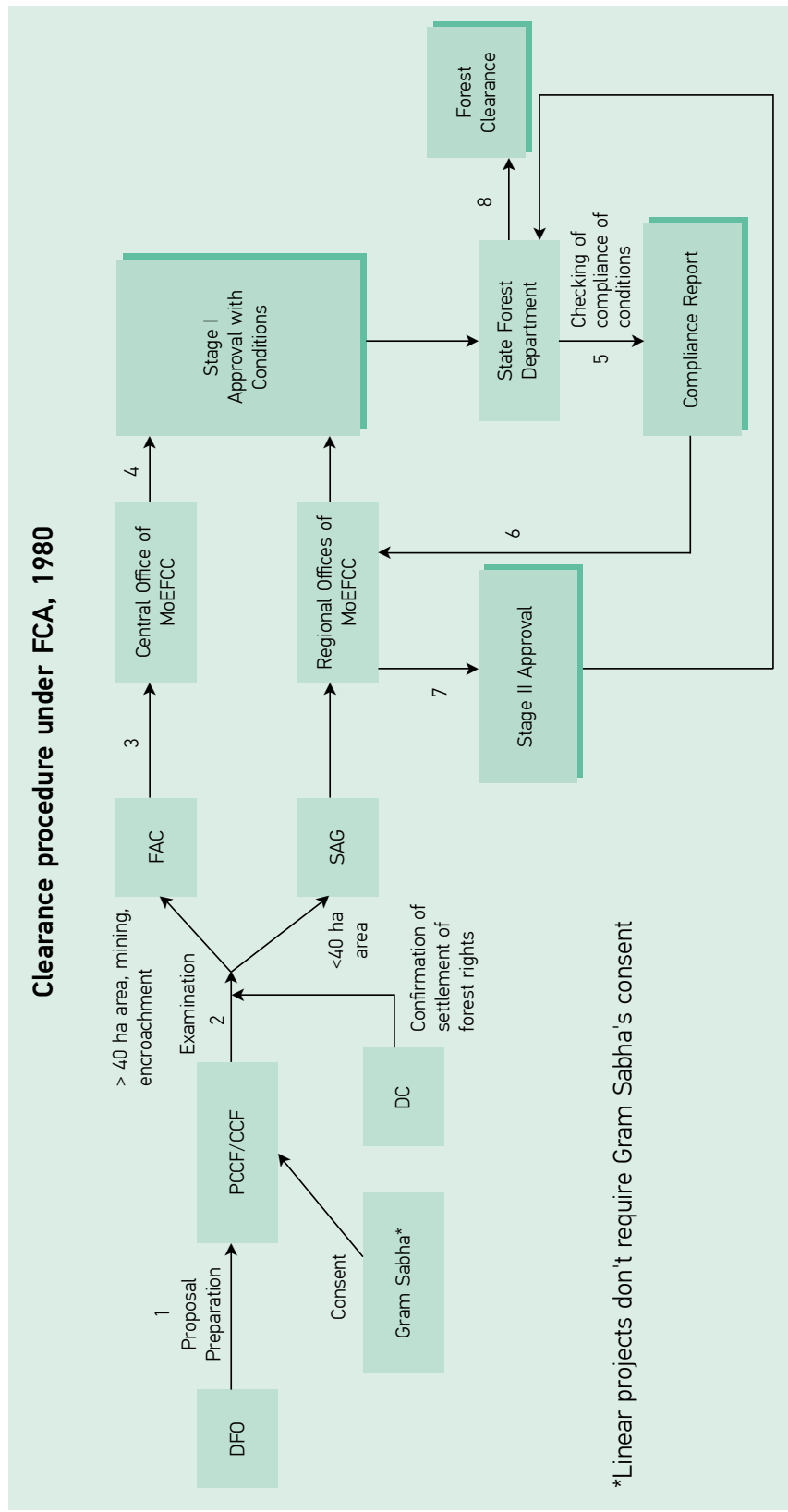
### पर्यावरण प्रभाव आंकलन अधिसूचना, 2006 के अंतर्गत स्वीकृति देने की प्रक्रिया



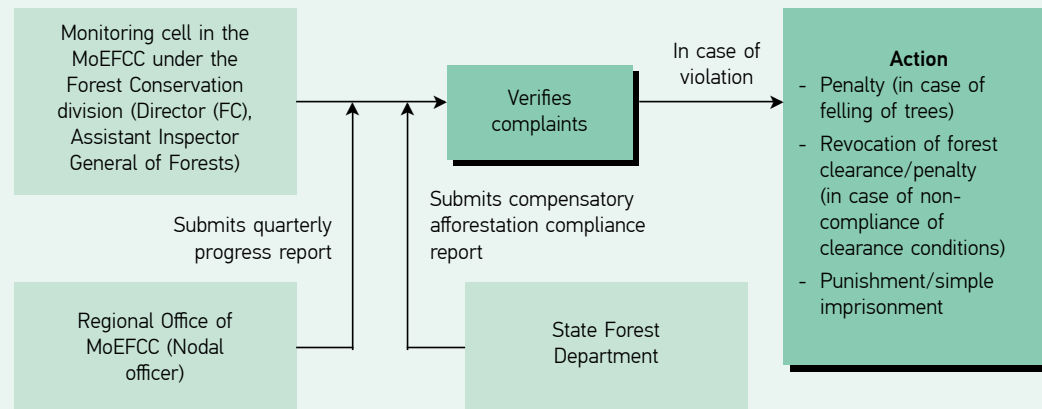
### EIA अधिसूचना, 2006 के तहत जांच और अमल की प्रक्रियाएं



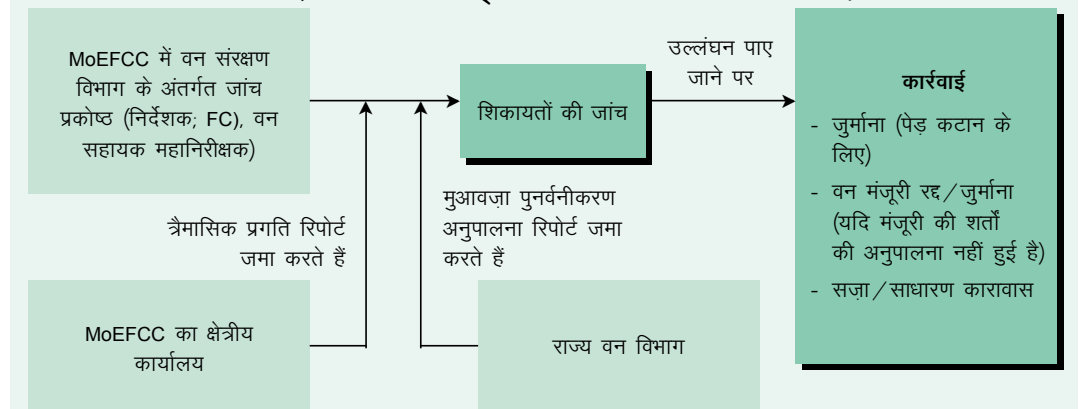




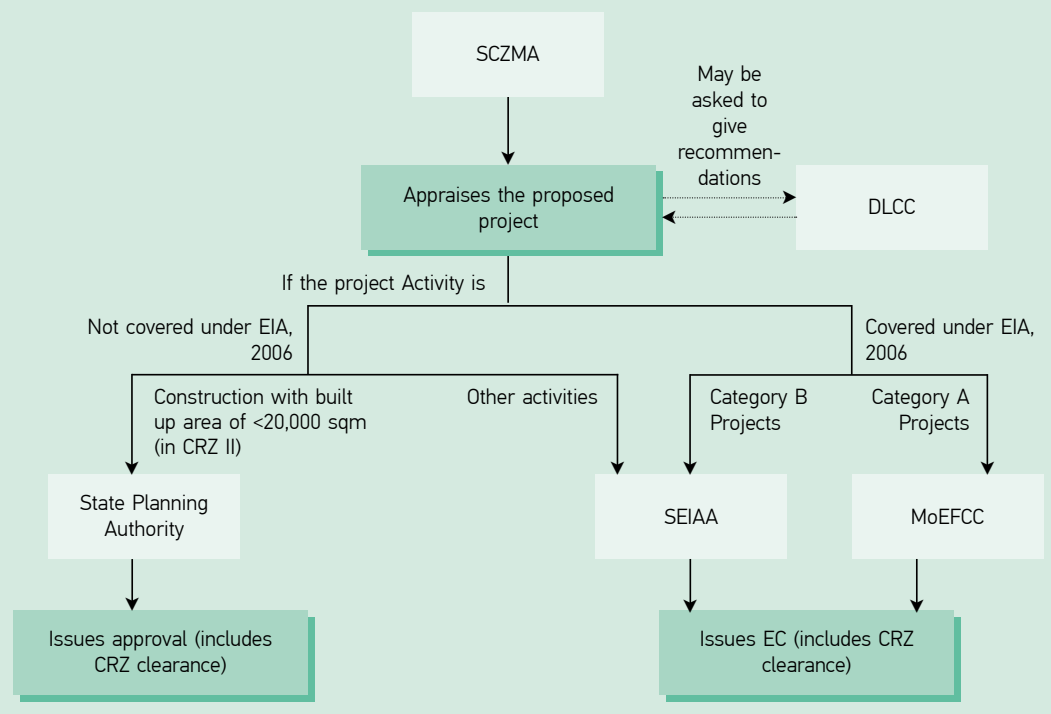
### Monitoring and enforcement under FCA, 1980



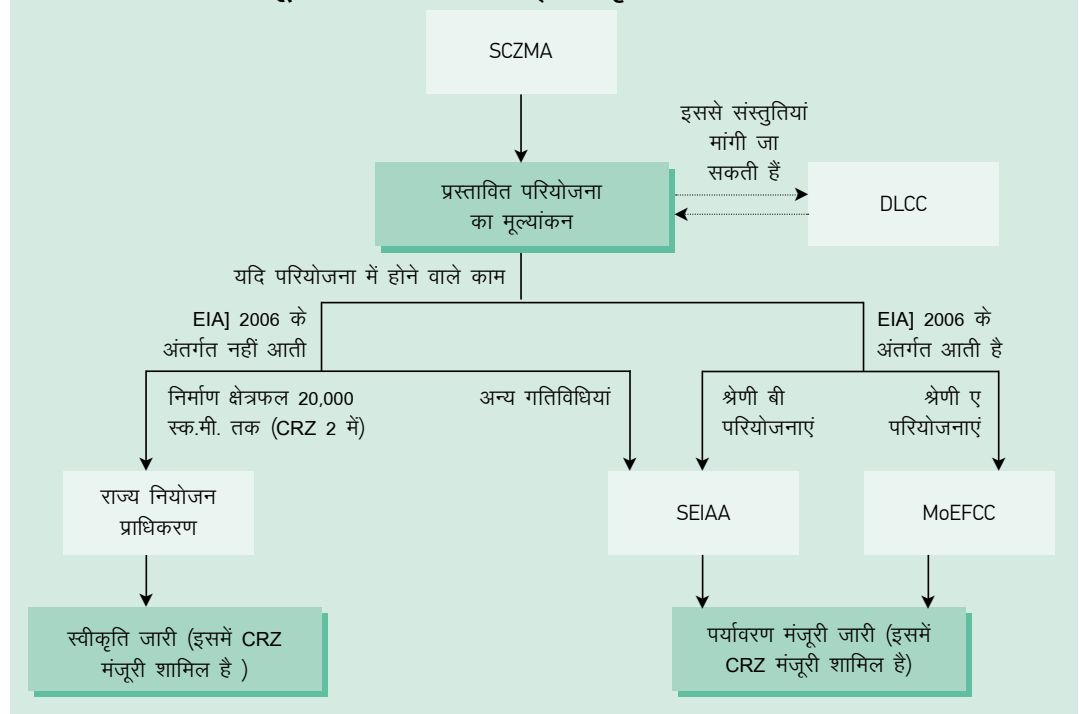
### FCA, 1980 के तहत जांच और अमल की प्रक्रियाएं



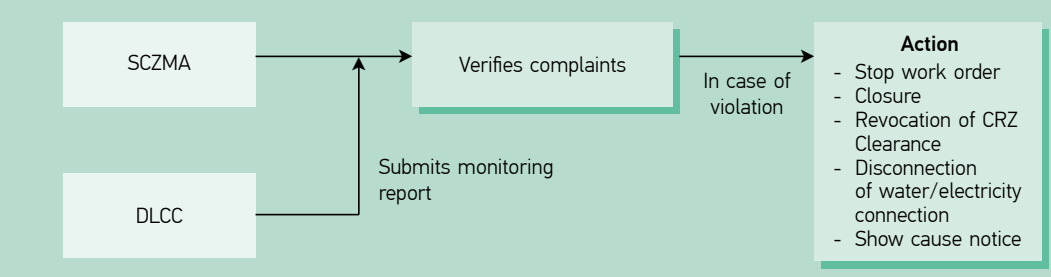
### Clearance procedure under CRZ Notification, 2011



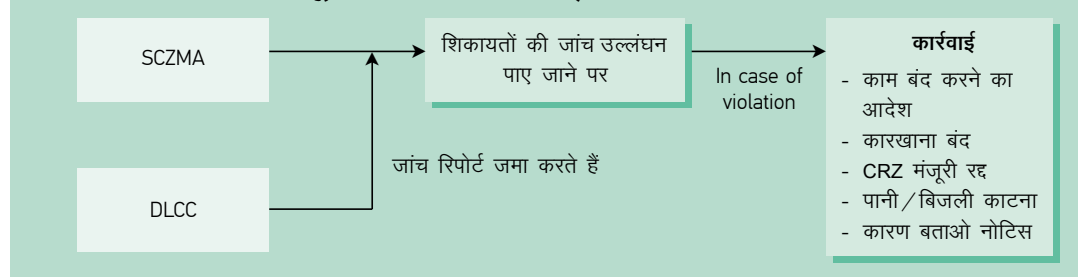
### CRZ अधिसूचना, 2011 के तहत स्वीकृति प्राप्त करने की प्रक्रिया



### Monitoring and enforcement under CRZ Notification, 2011



### CRZ अधिसूचना, 2011 के तहत जांच और अमल प्रक्रियाएं











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 हैंडबुक 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 सैंटर फॉर पॉलिसी रिसर्च-नमति पर्यावरणीय न्याय कार्यक्रम से जुड़े पर्यावरण-कानून समन्वयक समाधान निकालने के प्रयास कर रहे हैं।

