

Understanding Post-Covid-19 Governance Challenges in India



School of Policy and Governance
in association with
Constitutional Conduct Group

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Azim Premji University
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About the Compendium

This compendium has eight essays on governance challenges that have emerged in India in the wake of three waves of global Covid-19 pandemic. Contributed by governance experts including those with substantial experience in higher civil service and applied academic research, the essays focus on some of the crucial areas of governance such as public health, education, social welfare, urban planning, environmental regulation and technology-enabled governance reforms. The essays survey the key issues in each of these domains, identify the emerging challenges and recommend policy measures to address the challenges.

Disclaimer: The findings, interpretations and conclusions expressed in these papers are entirely those of the authors and do not necessarily represent the views of Azim Premji University.

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Post- Covid economic challenges and environmental regulation

Kanchi Kohli and Manju Menon¹

Abstract: This paper outlines and analyses the slew of environmental regulatory changes introduced by the Indian government during the covid pandemic. The paper introduces the main environmental regulations and how their legal and policy standards have been lowered by successive governments in the name of national development and economic growth. It then outlines the regulatory changes undertaken by the government during the pandemic. The government engaged in extensive and frequent regulatory changes to accommodate the Covid protocols of social distancing. But more importantly, these changes were meant to create incentives for economic recovery at the cost of greater environmental and livelihood damage and destruction. The paper concludes by suggesting some steps based on the long-term experiences of environmental regulation for a post-Covid future.

Keywords: environmental regulation, policy standards, economic recovery

Introduction

The spread of the Covid-19 pandemic globally is an unprecedented experience in our lives. It ripped through entire populations causing large numbers of deaths and prolonged illnesses. The environmental causes and consequences of the pandemic have been a subject of discussion during this period. Research studies have found correlations between biodiversity loss and new diseases (Tollefson, 2020)². Experts have stated that we have been risking virus attacks due to human activities affecting nature at a massive scale. Agriculture, deforestation and other industrial activities have increased animal- human contact resulting in the growth of zoonoses (Jameel, 2020)³. Researchers also found that the most polluted places had the highest number and most severe cases of Covid-19 (Jefferson, 2020)⁴. These studies show that industrial scale land use change is responsible for climate change, environmental degradation and pandemics.

The state management of the pandemic impacts in India laid bare the long-term failures of governmental institutions to protect citizens and provide for their needs, especially the vulnerable sections of society that are also the largest sections of our population like rural households and informal migrant workers in cities. The lockdown as a primary means of controlling the spread of the Covid pandemic has affected the economy deeply. At the same time the lockdown

1 The authors are with the Centre for Policy Research, New Delhi.

2 Tollefson, Jeff. 2020. *Why deforestation and extinctions make pandemics more likely* accessed from <https://www.nature.com/articles/d41586-020-02341-1> on January 9, 2022

3 Jameel, Shahid, 2020. On Ecology and Environment as drivers of human disease and pandemics, ORF Issue Brief, Issue No 388. July 2020.

4 Jefferson, Brandie. 2020. Pollution and pandemics: A dangerous mix, accessed from <https://source.wustl.edu/2020/11/pollution-and-pandemics-a-dangerous-mix/> on January 9, 2022

also provided a surreal experience of pollution free environment in several parts of the world especially urban areas. The shutdown of global economic production and movement of goods and people resulted in the highest ever fall in carbon emissions.

These experiences and discussions during the first wave, provoked the question of whether a post-Covid green future was possible. As philosopher Bruno Latour notes, the pandemic showed the world that we could finally imagine something being more important than the global economy. He said that the pandemic made us question what was necessary and what was possible. According to Latour, “The pandemic has shown us the economy is a very narrow and limited way of organising life and deciding who is important and who is not important.” (Watts, 2020)⁵ These reflections were in line with the long-standing work of heterodox economists who have been working to convince governments to reorganize the economy and development sectors within the limits of environmental and planetary well-being (Wittenberg-Cox, 2020⁶; Boehnert, 2018⁷).

India’s environmental regulations are understood to be the only firewall between ecologically important land and waterscapes and aggressive policies for economic growth. The regulatory procedures that are to be followed by infrastructure and industrial projects involve scientific assessments and public participation. This paper outlines and analyses the slew of environmental regulatory changes introduced by the Indian Central government during the Covid pandemic. The first section of the paper introduces the main environmental regulations and how their legal and policy standards have been lowered by successive governments in the name of national development and economic growth. Section 2 outlines the regulatory changes undertaken by the Central government during the pandemic. The government engaged in extensive and frequent regulatory changes to accommodate the Covid protocols of social distancing. But more importantly, these changes were meant to create incentives for economic recovery at the cost of greater environmental damage and destruction. Section 3 suggests some lessons and steps based on the long-term experiences of environmental regulation for a post-Covid future.

Section 1: Environment regulation of economic development in India

Environment regulation in India is a shared responsibility of Central and State governments. This shared jurisdiction is framed and operationalized by web of laws that are enforced through expert regulatory institutions. At the national level, the ministry upholding the mandate to protect India’s environment is the Ministry of Environment, Forests and Climate Change, established in

5 Watts, Jonathan.2020. Bruno Latour: ‘This is a global catastrophe that has come from within’, accessed from <https://www.theguardian.com/world/2020/jun/06/bruno-latour-coronavirus-gaia-hypothesis-climate-crisis> on January 9, 2022

6 Wittenberg-Cox, Avivah.2020. *5 Economists Redefining... Everything. Oh Yes, And They’re Women*, accessed from <https://www.forbes.com/sites/avivahwittenbergcox/2020/05/31/5-economists-redefining-everything-oh-yes-and-theyre-women/?sh=3e5a9831714a> on January 9, 2022

7 Boehnert, Joanna. 2018. *Anthropocene Economics and Design: Heterodox Economics for Design Transitions*, She Ji: The Journal of Design, Economics, and Innovation, Volume 4, Issue 4, 2018, Pages 355-374, Accessed from <https://www.sciencedirect.com/science/article/pii/S2405872618300856> on January 9, 2022

1985. The ministry's website lays out its five-point objective as "Conservation and survey of flora, fauna, forests and wildlife; Prevention and control of pollution; Afforestation and regeneration of degraded areas; Protection of the environment and Ensuring the welfare of animals".

The legal and regulatory measures for environmental protection have evolved since the 1970s. They have been prompted by India's commitments to international treaties, the state of environmental degradation or industrial accidents. Post-1990s, legal and regulatory frameworks have been introduced to mediate environmental protection, natural resource use and neoliberal, private sector led economic development. This was justified in the light of:

- The increased demand for land and water resources for growing sectors such as power, mining, roads, industries, ports and commercial forestry that were seen to contribute to India's GDP.
- The conversion of forests, coasts, wetlands and rivers to fulfill economic demands would necessarily cause pollution, ecological degradation and social impacts such as displacement and livelihood loss.
- International commitments to include public participation and grievance redressal protocols as part of environmental regulations.

Therefore, procedures for information disclosure, impact assessments, project approval protocols, public hearings, compensatory and offset schemes were introduced to the environmental decision-making framework. These were meant to act as a firewall between the economic priorities and environmental damage. Industrial, infrastructure and extractive projects were to be approved only after their potential environmental impacts were assessed and legally mandated mitigation measures were recommended. Some laws also required taking the view of project affected people through public hearings before final decisions were taken by expert technical bodies. Over the years, the past environmental performance of a project also needed to be disclosed while seeking approval for expansion.⁸

Four legal processes form the fulcrum of the central government's decision making for the conversion of natural resources for economic development. These are popularly known as Environment Clearance, Forest Clearance, Wildlife Clearance and Pollution Consents. These processes draw their mandate from Acts and Rules and are enforced through a series of executive orders, circulars and notifications which regularly alter the scope of their influence. (See Table 1)

⁸ MoEFCC Circular No. J-11013/6/2010-1A.II (Part) regarding Environmental Clearance to the expansion projects / activities under the EIA Notification, 2006 - Certified Compliance Report regarding dated 7 September 2017

Table 1: Prior environmental approval requirements for industrial and infrastructure projects in India

| | Environment Clearance | Forest Clearance | Wildlife Clearance | Pollution Consent |
|---------------------------------------|---|--|--|---|
| Law | EIA and CRZ Notifications under Environment Protection Act (EPA), 1986 | Forest Conservation Act (FCA), 1980 | Wild Life Protection Act, 1972 | Air (Prevention and Control of Pollution) Act, 1981 Water (Prevention and Control of Pollution) Act, 1974 |
| Objective | Prior Assessment and scrutiny of environment impacts of certain industrial, infrastructure projects | Forest Conservation by regulating conversion of forests for non-forest use. | Conservation of wildlife by creation of Protected Areas (PAs); Prevention of damage to wild life and its habitat | Prevention, Restriction and Control of Pollution |
| Regulatory Institutions | Central level: MoEFCC and Expert Appraisal Committees (EACs) State level: State Environment Impact Assessment Authorities (SEIAA) and State EACs Regional Level: Regional Offices of MoEFCC | Central level: Forest Advisory Committee (FAC) Regional level: Regional Empowered Committees (REC) Regional Offices of MoEFCC | Central level: National Board for Wild Life (NBWL) and its Standing Committee, State Level: State Board for Wild Life (SBWL), Wildlife Division of State Forest Departments | Central Level: Central Pollution Control Board State level: State/UT Pollution Control Boards and their regional offices |
| Public Participation | Yes, through public hearing and written comments | Consent of Gram Sabha (Village Assembly) for forest diversion | No | No |
| Offset and Mitigation Measures | Conditions for mitigating and managing specific impacts | Compensatory afforestation against felling of trees; payment of NPV value against loss of forests; Conditions to prevent encroachment and damage | Conditions and mitigation measures to avert damage to wildlife and its habitats | Pollution Control Standards; Conditions for mitigating and managing pollution impacts |

Source: Authors

These laws are meant to govern the environmental impacts of mainstream economic sectors. This puts the environment ministry in a position to determine tradeoffs between the protection of the environment and allowing for its damage to enable economic growth. This is a major responsibility and the Ministry's role has not been without controversy. While social movements and environmental organisations have called out the economic bias of the environment ministry⁹, industry associations have sought greater leniency in regulatory procedures. Successive governments have relied on high level committee reports calling these regulatory procedures as roadblocks and causing delays in investments.¹¹ In its approach for process related reforms, the National Environment Policy, 2006 recorded that "The recommendations of the (The Govindarajan Committee) which identified delays in environment and forest clearances as the largest source of delays in in development projects, will be followed for reviewing the existing procedures for granting clearances and other approvals under various statutes and rules."¹² This issue of environmental procedures delaying economic projects re-emerged before the 2014 general elections with manifestoes of leading political parties assuring policy reforms including for "ease of doing business".

In 2014, when the new National Democratic Alliance (NDA) government led by the Bhartiya Janata Party (BJP) came to power the regulatory firewall was already considerably thin. Several exemptions from and exceptions to the approval processes were already in place¹³ and there existed a feeble monitoring protocol¹⁵ to ensure compliance with environmental safeguards. Within months, the incumbent government set in place two high level committees¹⁶ to recommend changes to all major environmental laws except the Wild Life Protection Act. These committees presented proposals and recommendations for lowering the standards for environmental scrutiny in several ways. They emphasised on the enforcement of environmental safeguards through the principle of "utmost good faith", i.e. a belief in the inherent goodness of project authorities to abide by the law and that in case of a breach, the violator could be penalised through monetary fines.

9 Kothari, Ashish. 2004. Draft National Environment Policy 2004: A Critique. *Economic and Political Weekly*, Vol. 39, No. 43 (Oct. 23-29, 2004), pp. 4723-4727

10 Menon, Manju and Kohli, Kanchi. 2009. From Impact Assessment to Clearance Manufacture, *Economic and Political Weekly*, Vol. 44, Issue No. 28, 11 Jul, 2009

11 Gol (2002): Report on Reforming Investment Approval and Implementation Procedure (Part II), Government of India, New Delhi.

12 Ministry of Environment and Forests, National Environment Policy, 2006, Government of India, New Delhi

13 Goswami, Urmi. 2014. Environment Minister Veerappa Moily to focus on forest clearance system accessed from

https://economictimes.indiatimes.com/news/economy/policy/environment-minister-veerappa-moily-to-focus-on-forest-clearance-system/articleshow/28812755.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst on August 13, 2021

14 Kohli, K. and M. Menon. 2005. Eleven Years of the Environment Impact Assessment Notification, 1994. Kalpavriksh, Just Environment Trust, Environment Justice Initiative (HRLN). pp 94

15 Menon, Manju and Kohli, Kanchi. 2019. Regulatory Reforms to Address Environmental Non-Compliance IN Policy Challenges 2019-2024: The Key Policy Questions for the New Government and Possible Pathways, Centre for Policy Research, New Delhi

16 Ministry of Environment Forests and Climate Change (2015), "Report of the Committee to Review the issues relating to the Coastal Regulation Zone, 2011

17 Ministry of Environment, Forest and Climate Change Office Memorandum (OM) No. 22-15/2014-IA.III dated 29th August, 2014

This new phase of environment regulation also focused on regularizing projects operating in violation of prior environmental approvals. In 2017, the Union Environment Ministry rolled out an amnesty scheme for all projects operating in violation of the environment and forest approvals. This resulted in a process set up to review over three thousand proposals and regularize their operations. A special expert committee was set up to review proposals, and regularize their operations through a payment of compensation and additional environment management measures. This process, which was to be a one-time measure with a six month window, became a routine affair within the ministry. It has continued to be in operation till June 2021. Even though this process was in existence for three years prior to the Covid-19, it became a flashpoint when three massive industrial accidents took place in April and May 2020, at projects operating without environment approvals (Nandi, 2020a).¹⁸ There was massive public outcry when a draft notification proposed amendments to the environment clearance process which included the regularization of violations.^{19 20}

Section 2: Changes to environmental regulation during Covid-19

The nation-wide lockdown was announced on March 23, 2020 with the justification that National Disaster Management Authority (NDMA) was “*satisfied that the country is threatened with the spread of COVID-19 epidemic.*”²¹ The lockdown meant:

- All state and regional institutions regulating environmental impacts or engaged in forest, wildlife management officially stopped operations as government offices including social justice departments were allowed to function with “bare minimum staff”²²
- All Courts, the National Green Tribunal²³, State-Level Pollution Appellate Authorities announced adjournment and postponement of hearings.
- Meetings of Expert committees looking at environmental approvals and project violations were deferred for at least ten days (Press Trust of India, 2020a)²⁴ and then set up as virtual meetings.
- Central Pollution Control Board issued various guidelines including those for “Handling, Treatment and Disposal of Waste Generated during Treatment/Diagnosis/ Quarantine of Covid-19 Patients”. These guidelines were sent to all SPCBs.

18 Nandi, Jayashree. 2020a. Vizag polymer unit didn't have environmental nod, accessed from <https://www.hindustantimes.com/india-news/vizag-polymer-unit-didn-t-have-environmental-nod/story-CSMrE8I36C3k5TTR2fVsDM.html> on January 9, 2022

19 EIA Legitimised Environmental Destruction. Now, Govt 'Renovates' it for the Worst, <https://science.thewire.in/environment/eia-2020-environmental-degradation-draft/>

20 The Draft EIA Notification, 2020: Reduced Regulations and Increased Exemptions Part I & II, Centre for Policy Research, <https://www.cprindia.org/research/reports/draft-eia-notification-2020-reduced-regulations-and-increased-exemptions-part-i-ii>

21 Ministry of Home Affairs Order No. No. 40-3/2020-DM-I(A) Government of India dated March 23, 2020

22 Addendum to Guidelines annexed to the Ministry of Home Affairs Order No. 40-3/2020-DM-I(A) dated March 24, 2020

23 NATIONAL GREEN TRIBUNAL PRINCIPAL BENCH Circular dated March 31, 2020

24 Press Trust of India. 2020a. *Coronavirus: Environment Ministry suspends meetings of its green panel till March 31*, accessed from https://www.business-standard.com/article/pti-stories/coronavirus-environment-ministry-suspends-meetings-of-its-green-panel-till-march-31-120032100155_1.html on January 9, 2022

Within four days of the first national lockdown in the first wave, offices of the forest department particularly required for wildlife patrolling, managing forest fires and plantations, were included in the essential services exemptions. However, wildlife conservation organisations reported that poaching and illegal wildlife trade doubled between March-June 2020²⁵ (Traffic, 2020).

Even as environmental institutions were non-functional and grievance redressal mechanisms were closed, “*manufacturing of drugs, pharmaceutical, medical devices, their raw material & intermediates*” and “*coal and mineral production, transportation, supply of explosives and activities incidental to mining operations*”, power plants and ports were allowed to function as “essential services” during the lockdown. Public and private sector companies were required to follow Covid-appropriate protocol (Ministry of Coal, 2020)²⁶. But the compliance with the same could not be monitored and the Covid-19 challenged district administration was stretched beyond capacity to enforce the norms. There was no regulatory oversight available to adhere to project-level environmental conditions and parameters (Kohli et al, 2020)²⁷. Reports from different parts of the country linked this lack of institutional oversight to violations of environmental safeguards and increased health risks including to the Covid-19 pandemic (Krishna Chaitanya, 2020)²⁸.

The response to this chaos caused by unregulated industrial activity differed from State to State. In the first few phases of the lockdown, State governments did not have flexibility to design Covid-19 protocols that were different from those prescribed by the Central government. So there were no directions to resume the functions of environmental institutions, especially in areas where large-scale industrial operations and mineral extraction transportation were being carried out undeterred. Some State -level politicians and the State governments took notice of news reports and directed that special care be taken to curtail violations and not increase risks (Press Trust of India, 2020b)²⁹. In effect there was a complete breakdown of the limited regulatory architecture entrusted with the responsibility of monitoring the compliance with environmental safeguards.

25 Traffic. 2020. *Indian wildlife amidst the COVID-19 crisis* accessed from <https://www.traffic.org/publications/reports/reported-wildlife-poaching-in-india-more-than-doubles-during-covid-19-lockdown/> on January 8, 2021

26 Ministry of Coal. 2020. *Ministry of Coal working to ensure maintenance of critical coal supplies during the COVID-19 lockdown period: Pralhad Joshi* accessed from <https://pib.gov.in/PressReleasePage.aspx?PRID=1608754> on July 7, 2021

27 Kohli, Kanchi, Nayak Sampada and Dora, Santosh. 2020. *Has the coronavirus lockdown increased health risks in mining areas?*, accessed from <https://en.gaonconnection.com/has-the-lockdown-increased-health-risks-in-mining-areas/> on January 9, 2022

28 Krishna Chaitanya, SV. 2020. *Tamil Nadu: Pollution puts Ennore locals at risk of COVID-19 pandemic?*, accessed from <https://www.newindianexpress.com/cities/chennai/2020/apr/12/tamil-nadu-pollution-puts-ennore-locals-at-risk-of-covid-19-pandemic-2128940.html> on January 9, 2022

29 Press Trust of India. 2020b. *12% population in polluted Korba industrial area highly vulnerable to COVID-19: Chh'garh minister*, accessed from <https://www.outlookindia.com/newscroll/12-population-in-polluted-korba-industrial-area-highly-vulnerable-to-covid19-chhgarh-minister/1797983> on January 9, 2022

Lowered legal standards for project approvals

Immediately after the announcement of the March 2020 lockdown, India's environment regulatory framework was ostensibly adapted to Covid-19 restrictions and protocols. But in effect, a number of substantive and procedural changes were made that lowered the already weak legal standards and procedures for project approvals. Some immediate changes were:

- **EXEMPTION FROM ENVIRONMENTAL APPROVALS:** On March 27, the environment ministry recategorized "Projects or activities in respect of bulk drugs and intermediates manufactured for addressing ailments such as Novel Corona Virus (COVID- 19) and those with similar symptoms". This allowed the environment ministry to grant quick approvals to these projects without environment impact assessments or public hearings.
- **VIRTUAL APPRAISALS AND APPROVALS:** Expert and Advisory committees tasked with scrutinizing environment, forests and wildlife-related approvals started meeting virtually to review projects.³⁰ Some of these meetings lasted only ten minutes and others went up to five hours.³¹ However, approvals were granted to several high profile and controversial projects including for the construction of the new Parliament building in New Delhi, new hydro power projects in North East India (Nandi, 2020b)³² and the Statue of Unity in Gujarat (Gokhale, 2020)³³. None of these activities were in the MHA's list of essential services (Nandi, 2020c)³⁴. An office memorandum was issued in November 2020, emphasized that EAC meetings should be held twice a month to avoid any delays in approvals .³⁵ In April 2020 the Standing Committee of the National Board for Wild Life (NBWL) approved infrastructure projects that could affect wildlife habitats, through its "first ever video-conferencing meet" (Koshy, 2021) ³⁶.

30 The meeting agenda and minutes recorded, "meeting of the Expert Appraisal Committee (EAC) for coal mining projects was held on 17th April, 2020 through video conferencing with support NIC team due to Covid-19 lockdown."

31 Analysis by Aditi Pinto and Van Adhikar Media Team How The Government Diluted Forest Rights Of Adivasis During Lockdown available on <https://behanbox.com/2020/07/20/how-the-government-of-india-used-the-lockdown-to-dilute-the-forest-rights-of-communities-voices-of-the-people-affected-by-coal-mining-projects/>

32 Nandi, Jayashree. 2020b. 2.7 lakh trees to be felled for hydropower project in Arunachal's Dibang Valley, accessed from <https://www.hindustantimes.com/india-news/2-7-lakh-trees-to-be-felled-for-hydropower-project-in-arunachal-s-dibang-valley/story-i0GVuHt8nHF4JbxEM4birM.html> on January 9, 2022

33 Gokhale, Nihar.2020. *Despite COVID lockdown, environment ministry's expert panels race to clear projects*, accessed from <https://india.mongabay.com/2020/05/despite-covid-lockdown-environment-ministrys-expert-panels-race-to-clear-projects/> on January 9, 2022

34 Nandi, Jayashree. 2020c. Environment ministry on project clearance spree, activists wary, accessed from <https://www.hindustantimes.com/india-news/environment-ministry-on-project-clearance-sprees-activists-wary/story-vv0oGyPPmtPL6E8mIpZMJ.html> on January 9, 2022

35 Ministry of Environment, Forests and Climate Change Office Memorandum F. No. 22-35/2020-IA.III dated November 18, 2020

36 Koshy, Jacob. 2021. Parliament proceedings | Lockdown reduced number of environment clearances, accessed from <https://www.thehindu.com/sci-tech/energy-and-environment/parliament-proceedings-lockdown-reduced-number-of-environment-clearances/article34076504.ece> on January 9, 2022

Table 2: Number of expert or advisory committee virtual meetings between November 2018 - February 2020

| Environment Clearance (EACs) | Forest Clearance (FAC) |
|------------------------------|------------------------|
| 135 | 17 |

Source: Authors

Table 3: Number of expert or advisory committee virtual meetings between March 2020 - June 2021

| Environment Clearance (EACs) | Forest Clearance (FAC) |
|------------------------------|------------------------|
| 216 | 18 |

Source: Authors

- **EXTENSION OF POLLUTION CONSENTS AND ENVIRONMENT CLEARANCES:** State Pollution Control Boards gave three-month extensions to the “Consent to Operate” to all industries, irrespective of whether they were in Ministry of Home Affairs’ list of essential services. The reasons included the need to allow for uninterrupted operations and inability to “process some applications for renewal.”³⁷ The Ministry of Environment, Forests and Climate Change (MoEFCC) also issued an Office Memorandum (OM) to extend the validity of ECs expiring between March 15 2020 and April 30 April, 2020 till June 30, 2020.³⁸ This Office Memorandum specifically cited “*the outbreak of Corona Virus (COVID-19) and subsequent lockout declared*” as its justification.
- **CANCELLATION OF PUBLIC HEARINGS AND VIRTUAL PUBLIC HEARINGS:** Several State Pollution Control Boards entrusted with the task to conduct public hearings as part of the environment clearance process, postponed or cancelled them citing Covid-19 reasons. Applications for these projects could not be scrutinized under the EIA notification, 2006 until these hearings were conducted. In response, there were demands from project proponents that these public hearings be conducted through virtual mode³⁹(Press Trust of India, 2021). Project-affected communities and environmental groups objected to this and protested

³⁷ State Pollution Control, Odisha Office Order No. 4029/IND-I-CON(M)1377 dated March 31 2020

³⁸ Ministry of Environment, Forests and Climate Change Office Memorandum F.No. 22-25/2020-IA.III dated March 25, 2020

³⁹ Press Trust of India. 2021. *Odisha Mining industries seek public hearing through online mode*, accessed from <https://www.outlookindia.com/newscroll/odisha-mining-industries-see-public-hearing-through-online-mode/2078655> on January 9, 2022

(Nandi, 2020d)⁴⁰ and initiated litigation (Plumber, 2020)⁴¹ challenging the public hearings held during the Covid-19 pandemic and the holding of virtual public hearings as they were not effective to ensure public participation.

The environment ministry issued executive orders that allowed for the virtual implementation of regulatory procedures like expert committee meetings and public hearings in a manner that did not have meaningful use. These clarifications or legal changes were issued on a monthly basis either through OMs, executive orders or through amendments of Environment Protection Rules. In all cases these amendments were given effect by exercising legal clauses that allow dispensing the requirement of public comments citing “public interest”.⁴²

During this time the environment ministry gave environment clearances to hundreds of projects, and approved forest diversion proposals of vast areas. Independent studies have pointed to the scale and impact of these approvals both on forest rights and wildlife protection (Pinjarkar, 2021)⁴³, (Sharma, 2021)⁴⁴. During the lockdown, expert committees recommended approvals to 120 projects, a quarter of which were located in Constitutionally recognized Fifth Schedule areas where Adivasi communities reside.⁴⁵ Another study shows that in 2020, the wildlife board approved the use of 1792 hectares of wildlife habitat for 48 projects, most of which were for linear projects like roads and transmission lines.⁴⁶ (Mohan, 2021).

While the Central government paid so much attention to granting project clearances through the Covid lockdown even to non essential projects and activities, three accidents within the first three months of the Covid lockdown highlighted the effects of the failures of this weakened environmental regulatory architecture.

On April 10, the dyke of a coal ash pond of the Sasan Ultra Mega Power Project in Singrauli, Madhya Pradesh, collapsed. This plant is considered to be one of the largest integrated power projects in the world. This collapse swept away six people, two of whom were reported to be

40 Nandi, Jayashree. 2020d. *Public hearings on crucial infrastructure projects compromised due to pandemic*, accessed from <https://www.hindustantimes.com/india-news/public-hearings-on-crucial-infrastructure-projects-compromised-due-to-pandemic/story-tNFn2lJU3qXk1X1B1znLL.html> on January 9, 2022

41 Plumber, Mustafa. 2020. *Law Students Move Karnataka HC Seeking To Stay Virtual EIA Public Meeting For Peripheral Ring Road Project [Read Petition]*, accessed from <https://www.livelaw.in/news-updates/law-students-move-karnataka-hc-seeking-to-stay-virtual-eia-public-meeting-for-peripheral-ring-road-project-163300> on January 9, 2022

42 These amendments cite “the Central Government, under sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986, in public interest dispenses with the requirement of notice under clause (a) of sub-rule (3) of rule 5 of the said rules” to allow for the amendments to be issued without prior notice and seeking public comments.

43 Pinjarkar, Vijay. 2021. ‘Tiger habitats overlooked in rush to grant nod for infra projects accessed from .. http://timesofindia.indiatimes.com/articleshow/84840063.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst on August 14, 2021

44 Sharma, Richa. 2021. 1,800 hectare wildlife habitat diverted for infra projects in 2020: Report, accessed from <https://www.newindianexpress.com/nation/2021/jun/05/1800-hectare-wildlife-habitat-diverted-for-infra-projects-in-2020-report-2312203.html> on August 14, 2021

45 Analysis by Aditi Pinto and Van Adhikar Media Team How The Government Diluted Forest Rights Of Adivasis During Lockdown available on <https://behanbox.com/2020/07/20/how-the-government-of-india-used-the-lockdown-to-dilute-the-forest-rights-of-communities-voices-of-the-people-affected-by-coal-mining-projects/>

46 Mohan, Vishwa. 2021. *In 2020, wildlife board cleared land diversion for 48 projects*, accessed from http://timesofindia.indiatimes.com/articleshow/84129084.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst on January 9, 2022

dead. The slurry from the ash pond contaminated nearby agricultural fields. (Menon et al, 2020)⁴⁷. Local villagers had complained that the plant was operating without adherence to pollution control and dyke maintenance procedures. The district administration had routinely issued notices against non-compliance but the project operations and pollution control consent had neither been suspended or revoked. In its letter and notice dated April 13, the Madhya Pradesh pollution control board observed that the breach had occurred due to uncontrolled discharge without adhering to the safeguard conditions listed in the pollution consent (Dutta, 2020)⁴⁸.

In the early morning hours of May 7, 2020, villagers living around the LG Polymers industrial plant in Vishakhapatnam smelt a toxic gas leak. Inhaling colourless and inflammable styrene monomer gas allegedly led to the death of 12 people and over 50 people were hospitalized. News reports indicate that “over 2000 people were evacuated between 5 a.m. and 9 a.m.”. The joint committee of the National Green Tribunal (NGT) observed that the leak could have been a result of faults caused while the plant was shut during the nationwide lockdown and a chemical reaction that would have occurred in the storage tank when the operations restarted (Bhattacharjee, 2020)⁴⁹. The investigations also brought to light that the plant had expanded its operations without seeking mandatory environment clearance. The Company had admitted to the same in its application while seeking post facto regularization of the violation. The decision on this was pending when the gas leak took place. Neither the state regulatory authority nor the MoEFCC had restrained its expanded operations, till the breach took place.

On May 27, an oil well belonging to Oil India Limited (OIL) blew out in a small village near Dibru Saikhowa National Park and the Maguri Motapung *beel* in Tinsukia, Assam. Soon after on June 9, a fire broke out at the oil well risking lives of the surrounding villages and threatening the biodiversity of the Dibru-Saikhowa National Park (Madhusudhan and Bindra, 2020)⁵⁰. This incident brought to light that in 2016, OIL had requested for an exemption from conducting a public hearing for further exploration of hydrocarbons in the National Park. The reason cited for this request was conflicts with the local population. This environment ministry’s expert committee permitted OIL this request stating that OIL had held a hearing for setting up one of its oil wells five years ago, and therefore the concerns of the local population are on record (Kalita, 2020)⁵¹. After this explosion, two erstwhile members of the standing committee of the NBWL disclosed that during their site visit to assess the OIL’s proposal for laying a crude oil pipeline

47 Menon, Manju, Gupta Debayan and Kohli, Kanchi. 2020. *The criminality of fly ash management*, accessed from <https://en.gaonconnection.com/the-criminality-of-fly-ash-management/> on January 9, 2021

48 Dutta, Arup. 2020. *Fly ash slurry in Singrauli contaminates water reservoir after taking lives and homes*, accessed from <https://india.mongabay.com/2020/04/fly-ash-slurry-in-singrauli-contaminates-water-reservoir-after-taking-lives-and-homes/> on January 9, 2022

49 Bhattacharjee, Sumit. 2020. *Visakhapatnam gas leak | How negligence and violations led to a deadly disaster*, accessed from <https://www.thehindu.com/news/cities/Visakhapatnam/visakhapatnam-gas-leak-how-negligence-and-violations-led-to-a-deadly-disaster/article31761949.ece> on January 9, 2022

50 Madhusudhan, M.D. and Bindra, Prerna Singh. 2020. *Lessons from Baghjan: India’s Environmental Regulatory Processes Are Broken*, accessed from <https://science.thewire.in/environment/baghjan-oil-well-national-board-for-wildlife-oil-india-limited/> on January 9, 2022

51 Kalita, Jayant. 2020. *Oil India Skipped Public Hearings Before Expanding Drilling in Assam’s Baghjan*, accessed from <https://thewire.in/environment/exclusive-oil-india-skipped-public-hearings-before-expanding-drilling-in-assams-baghjan> on January 9, 2022

they found that the company had “already completed most of the pipeline-laying work, leaving only a small unfinished stretch across the Dibru river and Maguri *beel*.” In their article in *The Wire* the two members stated they had reported the matter to the environment ministry and sought that this be reported to the Supreme Court. They wrote, “ the NBWL and other regulatory bodies are routinely presented with such *fait accompli*” situations Madhusudhan and Bindra, 2020)⁵². It took until November 2020 for the fire to be controlled, but the impacts were being felt by the villages well into 2021 (Mondal, 2021)⁵³. Recent reports indicate that the biodiversity loss from the blowout could take at least a decade to recover (Goswami and Ghosh, 2021)⁵⁴

Post-Covid-19 Economic Revival and Environmental Regulation

Months before the second wave hit India, India was celebrating its victory over the pandemic. The lockdown was lifted and the focus shifted to state level electoral politics and economic revival even as the vaccine production and vaccination of the population was ridden with challenges. Many countries in the world started implementing Covid-19 economic stimulus packages amidst the demands from environmental institutions to “build back better” (OECD, 2020; UN Department of Economic and Social Affairs, 2020)⁵⁵. But India remained fixated with a V-shaped recovery.

In May 2020, the Union Finance Minister, Nirmala Sitaraman delivered a five-part presentation on a plan for economic revival through the government’s Atmanirbhar (self-reliance) Package. India’s first economic recovery proposal did not involve corporate bail outs at the scale of some Western countries and it failed to put money in the hands of the poor or provide for the needs of large sections of unemployed people. But the Central government pushed for more environmentally damaging mining and infrastructure projects as these were seen as a palliative for the economy. The Covid relief package rearticulated support for the expansion of airports, ports and highways and greater privatisation of the mining sector for which legal reforms were introduced in mid-March⁵⁶.

The March 2020 Mineral Laws (Amendment) Act, 2020 & Coal Mines (Special Provisions) Act, 2020 had already set the stage for the fresh auctions for 41 new coal blocks by Prime Minister Narendra

52 Madhusudhan, M.D. and Bindra, Prerna Singh. 2020. *Lessons from Baghjan: India’s Environmental Regulatory Processes Are Broken*, accessed from <https://science.thewire.in/environment/baghjan-oil-well-national-board-for-wildlife-oil-india-limited/> on January 9, 2022

53 Mondal, Manisha. 2021. *How villagers in Assam’s Baghjan are rebuilding lives after 5-month-long oil well fire* accessed from <https://theprint.in/in-pictures/how-villagers-in-assams-baghjan-are-rebuilding-lives-after-5-month-long-oil-well-fire/619061/> on January 9, 2022

54 Goswami, Roopak and Gosh Sahana. 2021. *In Assam, biodiversity loss due to the Baghjan oil blowout could take at least a decade to recover*, accessed from <https://scroll.in/article/999437/in-assam-biodiversity-loss-due-to-the-baghjan-oil-blowout-could-take-at-least-a-decade-to-recover> on January 9, 2022

55 OECD. 2020. *Building back better: A sustainable, resilient recovery after COVID-19* accessed from <https://www.oecd.org/coronavirus/policy-responses/building-back-better-a-sustainable-resilient-recovery-after-covid-19-52b869f5/> on January 9, 2022; UN Department of Economic and Social Affairs. 2020. *Building back better after Covid-19 through risk-informed development cooperation*, accessed from <https://www.un.org/development/desa/financing/post-news/building-back-better-after-covid-19-through-risk-informed-development-cooperation> on January 9, 2022

56 On March 13, 2020, the central government introduced Mineral Laws (Amendment) Act, 2020 & Coal Mines (Special Provisions) Act, 2020 which allowed for companies with no prior experience can auction for coal/lignite mining blocks. Companies did not require to disclose any end use required for coal/lignite mining.

Modi, in June 2020 (Ministry of Coal, 2020)⁵⁷. These amendments introduced the concept of “pre-embedded clearances,”⁵⁸ allowing for automatic transfer of environment and forest clearances to new allottees of coal mines for two years. In March 2021, the government also enacted The Mines and Minerals (Development and Regulation) Amendment Act, 2021⁵⁹ to encourage commercial mining by removing restrictions on specifying the end use of mined ore (Grover, 2021)⁶⁰. It also allowed the Central government to intervene and auction mines if “state governments face challenges in conducting auction or fail to conduct it”. The Act also sought to ease transfer of mines from old owners to the new successful bidders, with an assurance to address legacy issues including that of taxation, stamp duties, etc (Mishra, 2021)⁶¹. India’s push for new coal projects through these amendments and justification for the economic recovery would result in more carbon emissions.

In August 2020, the Ministry of Road Transport and Highways issued a press release to announce that the Covid-19 outbreak had not slowed down highway expansion. In fact the National Highway Authority of India (NHAI) would exceed its target for construction of 4500 km of highways during 2020-21. The press release stated, “*Despite challenges due to the outbreak of the novel coronavirus pandemic, the National Highways Authority of India (NHAI) has awarded highest length of projects during FY 2020-21 till date as compared to the projects awarded during same period in last three years.*” 26 new projects of 744 km length were awarded with the capital cost of “over Rs 31,000 crore, which includes cost of civil construction, land acquisition, and other pre-construction activities” (Ministry of Road Transport & Highways, 2020)⁶².

These announcements established that the Central government would continue to focus on opening up new and greenfield areas for mining and related infrastructure expansion.

In 2021, the Central government’s economic revival plans involved the takeover of India’s most ecologically fragile coastal and island ecosystems, in particular the Lakshadweep and Andaman and Nicobar group of Islands. Plans for tourism and port infrastructure in the two islands had been envisioned even prior to the Covid-19 pandemic. Niti Aayog, India’s highest planning body, had released a Vision Document back in May 2019 for ‘*Transforming the Islands with Creativity and Innovation*’. The vision document build the justification for the creation of Exclusive Economic Zones, deep sea mining, trans-shipment terminals and tourism (Niti Ayog, 2019)⁶³. During the first wave of the Covid-19 pandemic the implementation of this vision was delayed.

57 Ministry of Coal . 2020. *Unleashing Coal: New Hopes for Atmanirbhar Bharat (Government of India to launch auction for commercial coal mining on 18th June 2020)*, accessed from <https://pib.gov.in/PressReleasePage.aspx?PRID=1630919> on January 9, 2022

58 Ministry of Mines Order No.16/4/2020-M.VI dated June 3, 2020

59 The Mines and Minerals (Development and Regulation) Amendment Act, 2021 accessed from <https://mines.gov.in/writereaddata/UploadFile/mmdr28032021.pdf> on January 9, 2022

60 Grover, Samarth. 2021. *Will India Be Able to Mine Its Way to a \$5 Trillion Economy?*, accessed from <https://www.thequint.com/explainers/mines-and-mineral-law-explained#read-more> on January 9, 2022

61 Mishra, Richa. 2021. *Mining sector — unburdening the legacy issues*, accessed from <https://www.thehindubusinessline.com/opinion/mining-sector-unburdening-the-legacy-issues/article33637030.ece> on January 9, 2022

62 Ministry of Road Transport & Highways. 2020. *NHAI awarded Highest Length of Projects during FY 20-21 till date as compared to last three years during the same period*, accessed from <https://pib.gov.in/PressReleasePage.aspx?PRID=1650030> on July 7, 2021

63 Niti Aayog, 2019. ‘*Transforming the Islands with Creativity and Innovation*’, Government of India, New Delhi <https://niti.gov.in/sites/default/files/2019-07/Transforming-the-Islands-through-Creativity-%26-Innovation.pdf>

The big push for these proposals came once again through the announcements in the 2021 Budget. Infrastructure projects, in particular national highways and ports, were the important focus of this budget. The budget offered to spend big on infrastructure which spans across roads, power generation, bridges, ports & so on (Kumar, 2021)⁶⁴. Several of these projects were justified for the creation of livelihoods for coastal communities (Chandrababu, 2021)⁶⁵

In the last quarter of 2020, the NITI Aayog, issued a request for proposals (RfP) to select a technical consultant to prepare a Master Plan for “holistic development of Great Nicobar Island” (Press Trust of India, 2020c)⁶⁶. In the first half of 2021 news about the “Rs 75,000 crore plan that includes an international container trans shipment terminal, a greenfield international airport, a power plant and a township complex” (Sekhsaria, 2021a)⁶⁷ emerged. Before that in early January 2021, the Standing Committee of the National Board for Wildlife (NBWL) “denotified the entire Galathea Bay Wildlife Sanctuary to allow for the port there” (Sekhsaria, 2021b)⁶⁸.

By mid 2021 the environment ministry had started receiving proposals to grant environment coastal regulation zone and wildlife related approvals for “luxury tents and resorts on some islands; two water aerodrome projects in Shaheed and Swaraj islands (formerly Neil and Havelock islands, respectively); two major township and area development projects on the Great Nicobar Island and Little Andaman, one of which is also likely to involve denotification of a tribal reserve” (Nandi, 2021a)^{69 70}

During the peak of the second wave, the Central government announced several administrative measures “for large-scale beachside tourism and infrastructure development” in the Lakshadweep Archipelago (Shaji, 2021)⁷¹. This included the controversial draft Lakshadweep Development Authority Regulation 2021 (LDAR), which gave the newly appointed administrator of the Union

64 Kumar, Ravi Prakash. 2021. *Union Budget: Here is a quick look at the highlights*, accessed from <https://www.livemint.com/budget/news/union-budget-2021-live-updates-nirmala-fm-sitharaman-budget-speech-highlights-11612144454923.html> on January 9, 2022

65 Chandrababu, Divya. 2021. *Budget 2021: Infra push, extra income for coastal communities in poll-bound TN*, accessed from <https://www.hindustantimes.com/budget/budget-2021-infra-push-extra-income-for-coastal-communities-in-poll-bound-tn-101612172848268.html> on January 9, 2022

66 Press Trust of India. 2020c. *Niti Aayog to hire consultants to prepare development plan for Great Nicobar*, accessed from https://economictimes.indiatimes.com/news/economy/policy/niti-aayog-to-hire-consultants-to-prepare-development-plan-for-great-nicobar/articleshow/78367382.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst on January 9, 2022

67 Sekhsaria. 2021a. *Mystery Deepens: NITI Aayog Says It Has No Vision Document for Great Nicobar*, accessed from <https://science.thewire.in/environment/great-nicobar-island-niti-aayog-75000-crore-plan-denial-rti/> on January 9, 2022

68 Sekhsaria. 2021b. *NITI Aayog vision for Great Nicobar ignores tribal, ecological concerns*, accessed from <https://www.thehindu.com/sci-tech/energy-and-environment/niti-aayog-vision-for-great-nicobar-ignores-tribal-ecological-concerns/article34120093.ece> on January 9, 2022

69 Nandi, Jayashree. 2021. *Experts fear biodiversity loss in Andaman, Nicobar Islands*, accessed from <https://www.hindustantimes.com/india-news/experts-fear-biodiversity-loss-in-andaman-nicobar-islands-101622415141217.html> on January 9, 2022

70 MINUTES OF 61st MEETING OF THE STANDING COMMITTEE OF NATIONAL BOARD FOR WILD LIFE HELD ON 18th FEBRUARY, 2021 http://forestsclearance.nic.in/writereaddata/Order_and_Release/3119125812141Minutes61stSCNBWL.pdf on January 9, 2022

71 Shaji, K.A. 2021. *The development plan that could end up sinking Lakshadweep islands*, accessed from <https://india.mongabay.com/2021/06/the-development-plan-that-could-end-up-sinking-lakshadweep-islands/>

Territory powers to acquire land and remove or relocate islanders from their property for town planning or development purposes. This led to local protests by the Islanders, demanding the removal of the newly appointed administrator and the withdrawal of the draft LDAR (Unnithan, 2021)⁷².

Environmental regulatory changes to approve these projects at a greater pace and scale were a necessary part of this plan. The regulatory apparatus for project approvals was set up to conduct virtual meetings and Covid-defined protocols were already in place for carrying out approval linked public hearings. At the Central level the expert committees met routinely and approved projects in every meeting (Dutta, 2021)⁷³ (Nandi, 2021b)⁷⁴.

The Central government also continued with the process of overhauling environment law reforms and introduced fresh proposals. Some of these included:

- Review of Draft Environment Impact Assessment (EIA) Notification 2020: The ministry appointed NEERI-CSIR to review the two million (Biswas, 2020)⁷⁵ comments received for the draft EIA, 2020. While the ministry held back the issuance of the final notification, office memorandums and circulars were routinely issued to introduce changes to the environment clearance regime.
- New Environment Management Law: The ministry appointed consultants to design a new environment management law merging the three central level environment laws, i.e. Air Act, 1981, Water Act, 1974 and EPA, 1986.
- Amendments to the Indian Forest Act: In April 2021, the ministry issued an Office Memorandum inviting proposals for the amendment of the Indian Forest Act, 1927 (Nandi, 2021c)⁷⁶. This law governs the reservation and protection of forest lands by forest departments and regulates the collection, use and transit of forest produce.

The effects of the breakdown of institutional response to manage environment impacts continued to show. The Covid-19 protocols designed to facilitate unhindered functioning of economic sectors without any attention to environmental monitoring and mitigation resulted in serious local conflicts.

72 Unnithan, P S Gopikrishnan. 2021. *Lakshadweep residents on hunger strike to protest against draft regulations*, accessed from <https://www.indiatoday.in/india/story/lakshadweep-residents-hunger-strike-protest-praful-khoda-patel-1811900-2021-06-07> on January 9, 2022

73 Dutta, Anisha. 2021. *PM house in new Central Vista given green clearance*, accessed from <https://www.hindustantimes.com/cities/delhi-news/central-vista-v-p-pm-residences-to-be-ready-by-2022-101620026340743.html> on January 9, 2022

74 Nandi, Jayashree. 2021b. *Centre allows expansion of Odisha's Kulda coal mine despite air pollution fears*, accessed from <https://www.hindustantimes.com/india-news/centre-allows-expansion-of-odisha-s-kulda-coal-mine-despite-air-pollution-fears-101613187028676.html> on January 9, 2022

75 Biswas, Soutik, 2020. *The environment law that mobilised two million Indians*, accessed from <https://www.bbc.com/news/world-asia-india-53879052> on January 9, 2022

76 Nandi, Jayashree. 2021c. *Centre seeks expression of interest for draft amendment to Indian Forest Act*, accessed from <https://www.hindustantimes.com/environment/centre-seeks-expression-of-interest-for-draft-amendment-to-indian-forest-act-101619761427171.html> on January 9, 2022

- In Odisha there were major street protests against unregulated transportation of minerals and inter-State movement of trucks through village roads. The inability of district authorities and pollution control boards restraint incessant dust from transportation led to violent protests (Menon, 2021)⁷⁷.
- Adivasi communities in Gujarat took to the streets to protest at a public hearing being organised as part of the environment clearance process world's biggest zinc smelter complex in Tapi, Gujarat. According to news reports the project affected people demanded that the public hearing be deferred/postponed (Times News Network, 2021)⁷⁸. Officials incharge of the public hearing told the media that they had planned to "take complaints from 200 people at a time due to Covid protocols However, those who came first and made submissions did not leave. This caused the crowds to swell " (Express News Service, 2021)⁷⁹.
- In Karnataka, hundreds of fishermen jumped into the sea demanding that the construction of a port-linked road be stopped (Express News Service, 2021)⁸⁰. The fisherfolk had written to the district administration that demolition activity not be undertaken in the light of the Covid19 pandemic and also the pendency of court proceedings related to environmental approvals.

Section 3: Recommendations for a post-Covid environmental regulation

India's economic growth policies have been based on large-scale resource grabs, lowering environmental regulatory standards for projects and condoning their environmental violations, increasing economic and social inequality and putting poor people, especially natural resource dependent people, workers and children at risk to the impacts of environmental degradation and climate change. The environmental regulatory framework has come undone through years of political posturing on environmental matters while prioritizing natural resource extraction for private capitalist growth. But the Covid pandemic has just shown us all that environmental and health protection for all is in private and public interest. Ecologists have argued that the modern world has invited this covid pandemic with its nature damaging policies and that we have not seen the last of these. They have also warned that the singular focus on vaccination to protect humanity from pandemics is like "treating the symptoms without addressing the underlying cause" (Tollefson 2020)⁸¹. We may all not agree that environmental degradation was responsible for the pandemic and therefore the need of the hour is to restore nature. But many may agree

77 Menon, Meena. 2021. A "do or die" agitation against coal pollution in Odisha, accessed from <https://india.mongabay.com/2021/05/a-do-or-die-agitation-against-coal-pollution-in-odisha/> on January 9, 2022

78 Times News Network. 2021. Gujarat: Violent protest at Vedanta's project in Tapi, accessed from http://timesofindia.indiatimes.com/articleshow/84153491.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst on January 9, 2022

79 Express News Service. 2021. Gujarat: Villagers 'resort to violence' during public hearing on zinc plant in Tapi, accessed from <https://indianexpress.com/article/cities/ahmedabad/gujarat-villagers-attack-police-vandalise-vehicles-during-public-hearing-on-zinc-plant-in-tapi-7390557/> on January 9, 2022

80 Express News Service, 2021

81 Tollefson, Jeff. 2020. Why deforestation and extinctions make pandemics more likely accessed from <https://www.nature.com/articles/d41586-020-02341-1> on January 9, 2022

with Professor Bruno Latour that this frightening form of nature is already within us and therefore we can only manage our present condition. Irrespective of what approach we take to guard ourselves and be prepared against future pandemics, a different approach to environmental regulation would be helpful towards this effort.

To make our environmental response matter to this threat of pandemics that we face as humanity, it is necessary to reorient environmental regulations to the objectives of public health and safety rather than to more economic growth. Until now, environmental laws and policies may have given some consideration to economic livelihoods that are based on natural resources⁸² but the role of environmental regulations in actively preventing death and disease and in enhancing public health and safety is largely ignored. This has resulted in huge numbers of industrial and mining accidents, man-made disasters and chronic illnesses such as cancers and respiratory diseases and deaths among certain sections of the population. These were accepted as the costs of development and economic growth. Now, having experienced the health and economic catastrophe of the pandemic at a global scale, it would be sensible to not overlook the potential of environmental regulation to protect public health and to prevent making populations already exposed to the covid pandemic more vulnerable due to air pollution and other forms of environmental degradation. If forest conservation, coastal and marine regulation, infrastructure expansions and land use changes are to be measured against these metrics, we could expect different forms of impact assessments and regulatory decisions.

Environmental regulations can play a major role in reducing and preventing more deforestation, habitat fragmentation and rapid land use change. Regulatory decisions could not only help us move away from development projects that result in these forms of environmental impacts but new regulatory procedures could also establish the significance of setting up of long-term conservation projects with environmental justice as the organizing principle.

These regulations need to be mainstreamed into economic sectors to ensure that society's needs of affordable housing, water, sanitation and food are met with by enhancing natural ecologies rather than disrupting them. India's development effects has been extremely lopsided as it has taken resources from rural, forest dependent and urban worker communities and provided them to a small section of caste and class privileged Indians. As a result we have not only lost precious natural resources but also widened the gap between the rich and poor. Social and economic inequality is a huge threat in itself to the wellbeing of our society. It is necessary now more than ever to design environmental and other sectoral policies and processes that reduce inequality in material terms.

The progressive policy principles of transparency and public participation have nearly disappeared from environmental regulations in the last two decades. This is despite a growing interest among affected communities to engage with regulatory processes to influence decisions and obtain

82 The National Environment Policy, 2006 states "*that while conservation of environmental resources is necessary to secure livelihoods and well-being of all, the most secure basis for conservation is to ensure that people dependent on particular resources obtain better livelihoods from the fact of conservation, than from degradation of the resource*".

remedies for project impacts. During the covid pandemic too, when public participation was nearly impossible, there were a number of mobilisations through social media to demand better environmental policies and resist the dilution of environmental standards to accommodate the central government’s economic plans. The mobilisation of 2 million responses to the draft EIA 2020 is symbolic of the heightened public sentiment in favour of environmental issues in the context of the covid pandemic and climate change. Environmental regulations need to provide ample opportunities for deliberative processes and public participation so that ecologists, health professionals, scientists and economists can ideally work together to confront environmental threats like pandemics.

The Covid pandemic and its impacts on human systems and institutions should be seen as a wake up call to governments, environmental institutions and civil society that we cannot unreflexively go back to old positions or demands. While there was plenty wrong with India’s environmental regulations even before covid, the new norms and procedures that we set up to respond to future threats should prioritise planetary wellbeing over economic growth (Table 4 and Table 5). This requires us to build deeper connections between environmental sustainability principles and democratic institutions of governance.

Table 4: Key changes to the Environment, Forest, Wildlife Clearance and Pollution consent procedures between March 2020-December 2020

| | Environment Clearance (EC) | Forest Clearance (FC) | Pollution Consents (CTO) | Wildlife Clearance (WC) |
|------------|--|------------------------------|--|---|
| March 2020 | <p>25.3.2020 [EC] Extension of validity of ECs expiring between 15 March-30 April extended till June 30, 2020</p> <p>28.3.2020 [EC] and 31.3.2020 [FC] Amendment to allowing for new mine owners to apply for environment clearance within two years. No time frame specified for grant of EC. This amendment was introduced to align with concept of “Pre-embedded clearances” introduced through Mineral Laws (Amendment) Act, 2020. The amendment also allows already mined out material to be evacuated and transported by previous lease owner, and will not be part of the mine capacity of new bidder.</p> | | <p>31.3.2020: Several pollution control boards including Punjab, Odisha, Karnataka ?? gave three month extension to industries to whose pollution related Consent to Operate were expiring in end March 2020</p> | <p>No specific legal changes or procedural reforms. However, several proposals for the denotification of wild life sanctuaries and national parks protected were denotified or under consideration for denotification as (ref ???) . These proposals were linked with projects in the A&N islands, etc etc.??</p> |

| | Environment Clearance (EC) | Forest Clearance (FC) | Pollution Consents (CTO) | Wildlife Clearance (WC) |
|------------|---|---|---------------------------------|--------------------------------|
| April 2020 | 29.4.2021 Office Memorandum (OM) on the reconciliation of “Pre-embedded clearances” for EC and FC with mining law amendments | | | |
| May 2020 | 14.5.2020: OM allowing for change of calendar plan for mining (coal and non-coal) activity based on previous which EC. No fresh EC required for change. | | | |
| | 21.5.2020 Amendment to the Environment Protection Rules, 1986 related to washing of coal. The MoEFCC replaced the January 2014 notification that required TPPs to use of coal that has less than 34% ash content. TPP were allowed to use low-grade Indian coal that produces more fly ash. But, TPPs will have to comply with emission norms, fly ash utilisation norms and use transportation with safeguards or means that are less polluting. | | | |
| June 2020 | 16.6.2020: Launch of Single Window clearance portal of EC, FC, CTE/CTO applications for “transparent, technology driven & non-intrusive monitoring system” | | | |
| July 2020 | | <p>27.7.2020: Exemption from compensatory afforestation for laying of underground Optical Fiber Cables (OFC), telephone lines, drinking water supply pipelines, electricity cables, CNG/PNG and Slurry pipelines within the RoW of existing roads (with conditions)</p> <p>9.8.2020 MoEFCC agrees to the request of Ministry of Mines for lump sum payment of NPV by the user agency up to March 31, 2021 or within two months from the time COVID pandemic ends, whichever is earlier.</p> | | |

| | Environment Clearance (EC) | Forest Clearance (FC) | Pollution Consents (CTO) | Wildlife Clearance (WC) |
|----------------|---|---|---------------------------------|--------------------------------|
| August 2020 | | <p>12.8.2020: Central Government power to reject FC proposal if response to additional information not received within 90 days</p> <p>18.8.2020: MoEFCC allows for dispensation of Compensatory Afforestation (CA) land on double the degraded forest land instead of equivalent non-forest land for the National Highways projects irrespective of the User Agency. This is for Central Sector Projects where the project is owned, developed and maintained by Central Government but the execution is carried out by a state agency.</p> | | |
| September 2020 | 14.9.2020: OM on public hearing protocol during Covid (more than one PH with ceiling of 100 people, use of virtual platforms) | | | |
| November 2020 | <p>11.11.2020: OM allows TPPs to change source of coal without an amendment to the EC</p> <p>12.11.2020: OM clarifies that if PH for a project is exempt as per EIA Notification, no additional Public Hearing in cases where project is in violation of EIA notification, 2006</p> | | | |

Table 5: Key changes to the Environment, Forest, Wildlife Clearance and Pollution consent procedures between January 2021-June 2021

| | Environment and CRZ/IPZ Clearance (EC) | Forest Clearance (FC) | Pollution Consents (CTO) | Wildlife Clearance (WC) |
|---------------|--|---|---------------------------------|--------------------------------|
| January 2021 | 28.1.2021: Expansion of distillery units for production of Ethanol intended for blending with petrol to be considered as B2 projects (no EIA or public hearing) provided there is a certificate from any competent authority certifying this end use. | | | |
| February 2021 | 16.2.2021: OM no additional Public Hearing for “legacy cases” mining projects where EC was granted for 5 years under EIA 1994 19.2.2021: OM laying out procedure for dealing with violations arising due to not obtaining a prior CRZ clearance for permissible activities. Application for post facto approval to be made to the MoEFCC along with a the assessment and recommendation of the State Coastal Zone Management Authority | | | |
| March 2021 | 2.3.2021: Amendment to EIA notification granting exemption from EC for a project where there is a change in change in product mix/ capacity and where the project proponent can self certify that there will be “no increase in pollution load” | 22.3.2021 State governments cannot impose additional conditions after Stage I (in principle) FC by central government | | |
| April 2021 | 1.4.2021: Amendment to Environment Protection Rules related to compliance of TPPs with emission standards. Timelines for compliance expended timeline extended till 2022 for TPPs within 10km from NCR or non-attainment cities with population of 10 lakhs+. Extension till 2023 for TPPs in “non attainment” cities and within 10 km of critically polluted areas) or December 2024 for others. 22.4.2021: Draft Flyash Utilisation Notification opened for public comments. The modifications include allowance to TPPs to dispose flyash upto 300 km. Time frame to address “Legacy” flyash concerns within 10 years. Introduction of a new system of fines to be collected by the CPCB and used for environment restoration in case of violations. | | | |

| | Environment and CRZ/IPZ Clearance (EC) | Forest Clearance (FC) | Pollution Consents (CTO) | Wildlife Clearance (WC) |
|-----------|--|--|---------------------------------|--------------------------------|
| May 2021 | | 10.5.2021: Guidelines to Regional Offices to expedite forest clearances for “critical infrastructure projects” LWE districts and those related to defence and security in border areas | | |
| June 2021 | 9.6.2021: Inclusion of a central government institution for approving the extraction of sand from ICRZB areas in Lakshwadeep and A&N Islands | | | |