

ENVIRONMENTAL LAW – I ASSOCIATED LAWS TO ANIMAL PROTECTION

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Environmental Law Overview

- The Indian Forest Act, 1927
- The Wildlife (Protection) Act, 1972
- Water (Prevention and Control of Pollution) Act, 1974
- Forest (Conservation) Act, 1980
- Air (Prevention and Control of Pollution) Act, 1981
- Environment (Protection) Act, 1986
- The Biological Diversity Act 2002
- Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006

Environment (Protection) Act, 1986

- Backbone of India's environmental laws: “an Act to provide for the protection and improvement of environment and for matters connected there with”
- The Environment Impact Assessment Notification, 2006
 - *imposes restrictions and prohibitions on new projects or activities,*
 - *or on the expansion or modernization of existing projects or activities*
 - *based on their potential environmental impacts as indicated*

21.

Whether the proposal involves approval/
clearance under: If yes, details of the same and
their status to be given.

(a) The Forest (Conservation) Act, 1980 ?

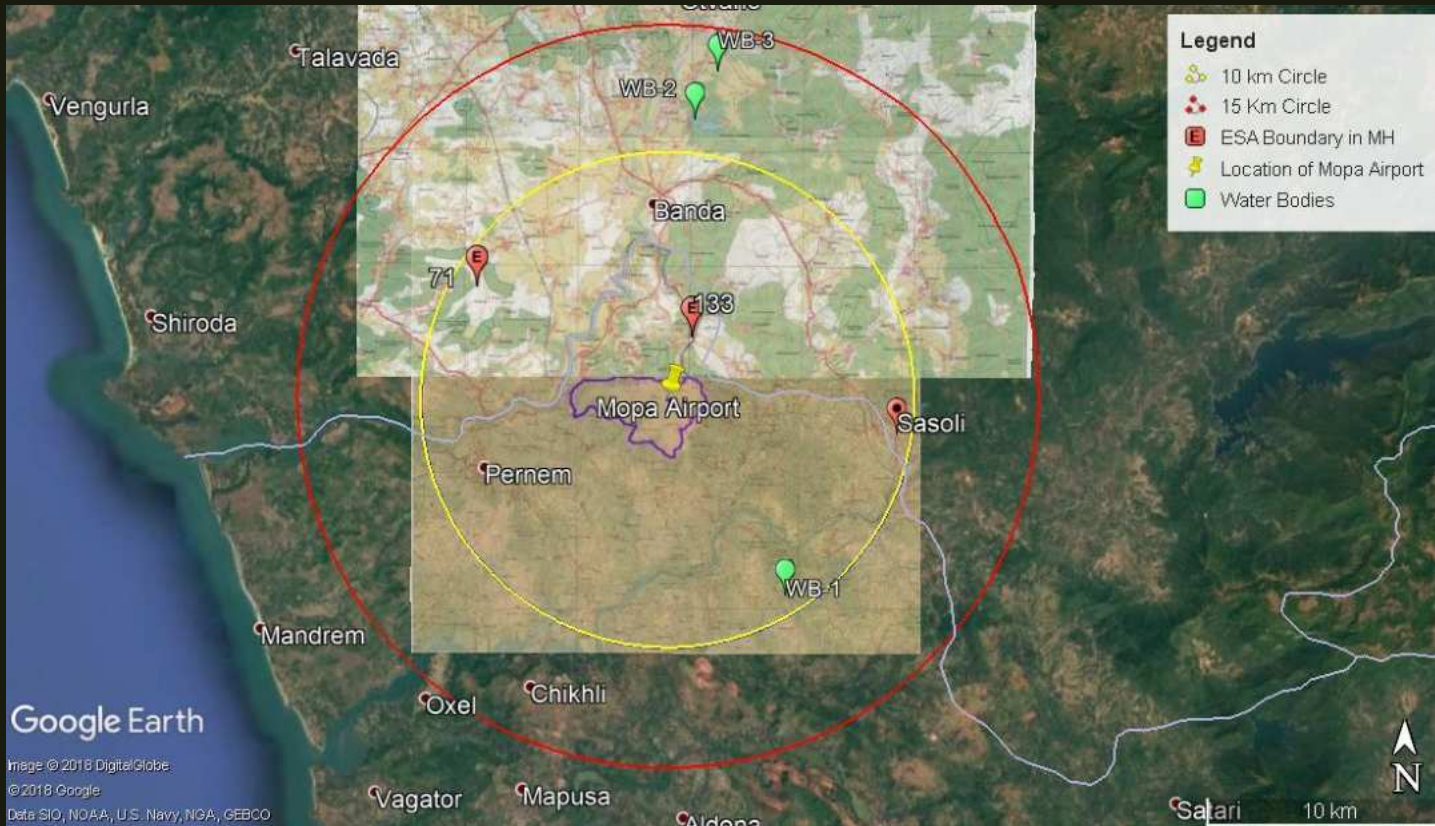
(b) The Wildlife (Protection) Act, 1972 ?

(c) The C.R.Z. Notification, 1991 ?

(III) Environmental Sensitivity

S.No.	Areas	Name/ Identity	Aerial distance (within 15 km.) Proposed project location boundary
1	Areas protected under international conventions, national or local legislation for their ecological, landscape, cultural or other related value		
2	Areas which are important or sensitive for ecological reasons - Wetlands, watercourses or other water bodies, coastal zone, biospheres, mountains, forests		
3	Areas used by protected, important or sensitive species of flora or fauna for breeding, esting, foraging, resting, over wintering, migration		
4	Inland, coastal, marine or underground waters		
5	State, National boundaries		

- Project proponents must speak to all ecologically sensitive areas, and consider the impacts on fauna
- Depending on *where* the project is, animals impacted the project could be different
- An environment clearance granted under the EIA Notification, 2006 can be challenged on *process and substance* before the National Green Tribunal
- So how does this play out?



Hanuman Laxman Aroskar v. UOI (SC)

- Airport in an ecologically sensitive area
- Environmental clearance granted under the EIA Notification, 2006 was challenged
- Rejected by the NGT
- Appealed to the Supreme Court

There are no major wild animals in the study area of 10 km radius and 11 mammals were recorded in study area (Table 4.23). There is no visual sighting of any threatened species as mentioned in the Indian Wildlife Protection Act, 1972.

Table 4.23: Mammals recorded in the study area

SI No	Common Name	Scientific Name	Family	IUCN Category
1	Bengal Fox	<i>Vulpes bengalensis</i>	Canidae	LC
2	Black-napped Hare	<i>Lepus nigricollis</i>	Leporidae	LC
3	Common House Mouse	<i>Mus musculus</i>	Muridae	LC
4	Common House Rat	<i>Rattus rattus</i>	Muridae	LC
5	Common Mongoose	<i>Herpestes edwardsi</i>	Herpestidae	DD
6	Domestic Cat	<i>Felis catus</i>	Felidae	LC
7	Domestic Cattle	<i>Bos taurus</i>	Bovidae	LC
8	Domestic Dog	<i>Canis familiaris</i>	Canidae	LC
9	Jackal	<i>Canis aureus</i>	Canidae	LC
10	Three-striped Palm squirrel	<i>Funambulus palmarum</i>	Sciuridae	LC

Table – 2.1 Environmentally sensitive areas

Environmental sensitive area	Goa	Maharashtra
Archaeologically important places / Monuments	Fort of Alorna - Alorna village, Statue of Buddha/Fortress of Colvale	None
National Park / Wildlife Sanctuary	None	None
Reserved Forests	Present	None
Protected Forests	None	None
Defense Installations	None	None
Critically polluted areas as identified by the CPCB	None	None
Areas occupied by sensitive man-made land uses (hospitals, schools etc)	None near project location	None
Wet lands	Present (Two)	None
Water bodies	Chapora river, Kalna river, Tiracol rivel, Moide river	None
State / national boundaries	State boundary for Maharashtra	None
Tourist Places	None	None
Industrial estate	Four	None
Major industries	Two	None

Judgement- Observations (2019)

ecologically should be discounted.

72. We cannot gloss over the patent and abject failure of the State of Goa as the project proponent in failing to disclose wetlands, water sources, water bodies, biospheres, mountains and forests within an aerial distance of 15 km as required by Form 1. The

101. We find that the collection of both primary and secondary data of fauna in the EIA report was perfunctory. The primary study is not based on data collected from acknowledged sources such as the Zoological Survey of India, Wildlife Institute of India and Ministry of Earth Sciences as required under the Guidance Manual. Similarly, as regards avi-faunal studies, the EIA report lists 385 plant species in Table 4.15 of Chapter IV, titled

“Description on Environment”. It also states that 86 species of birds were observed during the survey in the 10 km study area from the proposed site. Column 9(III) of Form 1 refers to “areas” in the following terms:

“areas which are used by protected, important or sensitive species of flora or fauna for breeding, foraging, nesting, resting, over wintering or migration”.

The above column was left blank by the project proponent in Form 1. According to the Guidance Manual, secondary data has to be collected within an aerial distance of 15 km for the parameters specifically specified in Column 9(III) of Form 1 of the 2006 Notification. This was evidently not done. A careful avi-faunal study was necessary, having due regard to the fact that the proposed project is an airport site. Bearing in mind the profile of airport

- Court concluded: failure to disclose forests, flora, fauna, and number of trees to be cut (over 20,000)
- Environmental Clearance ('EC') was suspended and
- Sent to the Government to decide
- Came back after 6 months with EC again with a few more mitigation measures- MoEFCC disproved evidence produced from ZSI re: animal sightings (leopards etc.)
- Said DGC will follow air strike manual
- Allowed



Save Mon Federation v. Union of India (NGT)

- The Save Mon Region Federation, on behalf of the Monpa indigenous community, challenged the environmental clearance granted for the construction of a hydroelectric dam on the Naymjang Chhu River in Sikkim
- EIA Report did not consider that the dam would destroy one of two wintering sites of the black necked crane revered by the Monpa indigenous community

22. It is true that hydel power project provides eco friendly renewable source of energy and its development is necessary, however, we are of the considered view that such development should be 'sustainable development' without there being any irretrievable loss to environment. We are also of the view that studies done should be open for public consultation in order to offer an opportunity to affected persons having plausible stake in environment to express their concerns following such studies. This would facilitate objective decision by the EAC on all environmental issues and open a way for sustainable development of the region.

ii) The MoEF&CC shall cause to be made a separate study of E-flow requirement for protection of habitat of the Black necked Crane and for conservation of the Black necked Crane through the Wildlife Institute of India, Dehradun, as expeditiously as possible and make such study report along with Tawang River Basin study available for 'public consultation' and shall hold 'public consultation' in compliance of the aforesaid direction in accordance with law.

Forest (Conservation) Act, 1980

Initial Information

- Preparation of proposal by the user agency (the user agency in question can be both a private party or a public agency)

Consideration by forest service

- Nodal officer under the Act sends it to the District Forest Officer (DFO) for inspection
- DFO prepares a report after a field visit
- Nodal Officer reviews findings and confirms
- Head of the forest service confirms

Review by the State Government

- State Government reviews the report prepared by the Forest Service and confirms with an official recommendation of diversion of forest land or a rejection [Stage I forest clearance]

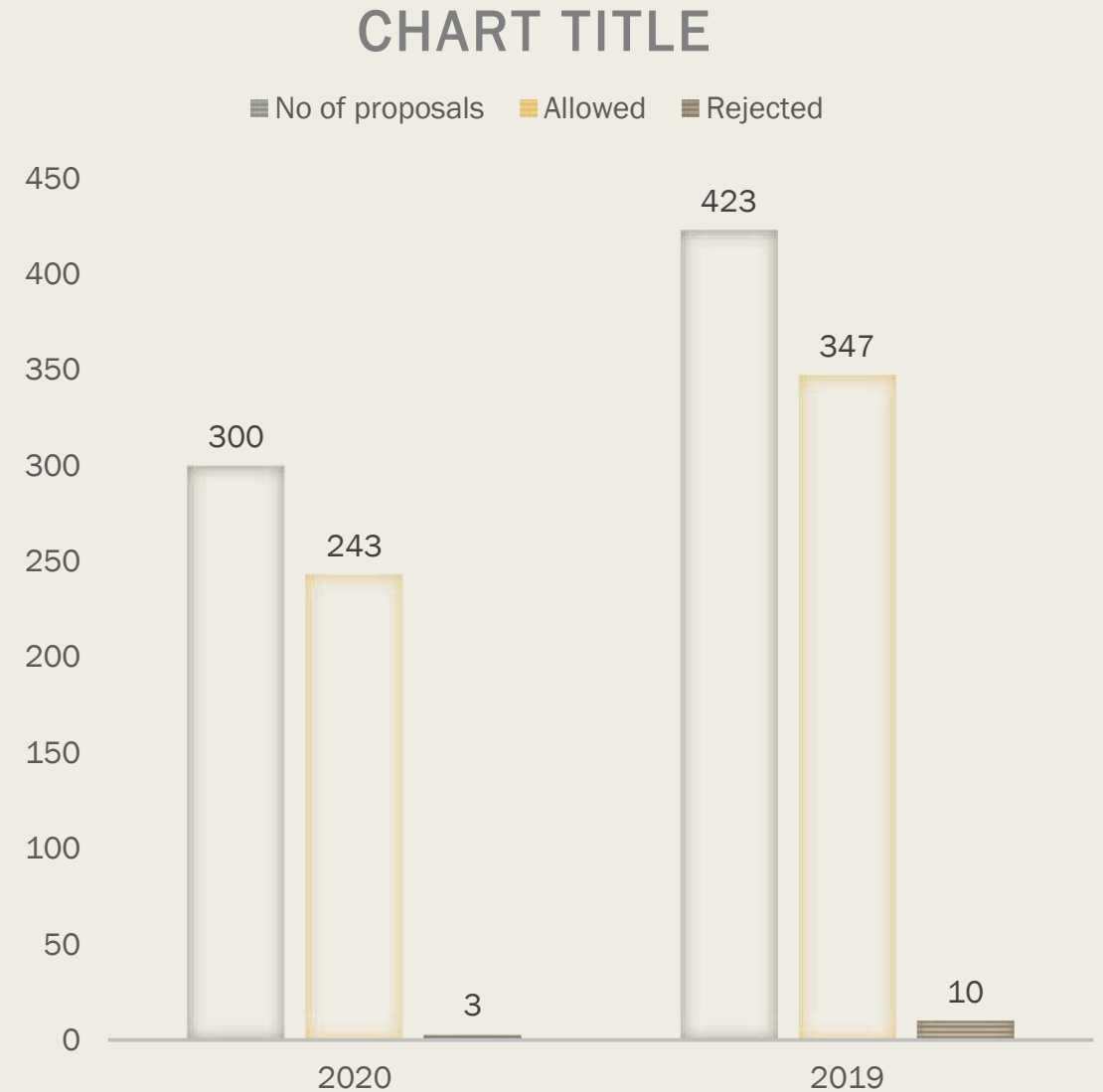
Executive Decision Making

- Forest Advisory Committee/ Regional Empowered Committee (experts) recommends diversion

Final Decision by the Central Government

- Decision by the expert committee is confirmed by the Ministry of Environment, Forests and Climate Change [Stage II forest clearance]

- Between 2017-2020: 72,673.03 ha forest land diverted (726 square kilometers)
- Rejection rates are very low
- Directly impact animals
- Forest Clearance granted can be challenged before the National Green Tribunal in both *process and merit*
- India has 8% of the recorded species of the world and representing 4 of the 34 globally identified biodiversity hotspots



Nodal Officer: Deputy Conservator of Forests

21. Significance of the forest land proposed to be utilised for prospecting from wildlife point of view:
- i) Details of wildlife present in and around the forest land proposed to be utilised for prospecting;
 - ii) Whether forms part of national park, wildlife sanctuary, biosphere reserve, tiger reserve, elephant corridor, wildlife migration corridor etc., (If so, the details of the area and comments of the Chief Wildlife Warden to be annexed);
 - iii) Whether any national park, wildlife sanctuary, biosphere reserve, tiger reserve, elephant corridor, wildlife migration corridor etc., is located within ten kilometers from boundary of the forest land proposed to be utilised for prospecting (If so, the details of the area and comments of the Chief Wildlife Warden to be annexed);
 - iv) Whether any national park, wildlife sanctuary, biosphere reserve, tiger reserve, elephant corridor, wildlife migration corridor etc., is located within one kilometer from boundary of the forest land proposed to be utilised for prospecting (If so, the details of the area and comments of the Chief Wildlife Warden to be annexed);
 - v) Whether any rare or endangered or unique species of flora and fauna found in the area - if so, details thereof.

Forest Advisory Committee

- (i) whether the forests land proposed to be used for non-forest purpose forms part of a nature reserve, national park, wildlife sanctuary, biosphere reserve or forms part of the habitat of any endangered or threatened species of flora and fauna or of an area lying in severely eroded catchment;

State Government and Central Government

- (C) the State Government or the Union territory Administration, as the case may be, before making his recommendation, has considered all issues having direct and indirect impacts on the diversion of forest land on the forest, wildlife and the environment;

Lt. Col. (Retd.) Sarvadaman Singh Oberoi versus State of Haryana & Ors. (NGT)

Photograph dated 18.06.2017 of site
before felling/ clearing forest land.



Photograph dated 27.06.2017 of
site after felling/ clearing forest
land.





Sudiep Srivastava v. State of Chhatisgarh and Ors.

- Hasdeo Arand Coal fields of Chhatisgarh
- Forest Clearance granted for three coal blocks
- FAC rejected, overruled by the State Minister and eventually accepted by MoEF
- Set aside by the NGT
- But FAC also did not consider the existence of the elephant habitat

44. Instances of human wildlife conflict just cannot be ignored as those spring not from the encroachment of human territories by animals but vice versa and, therefore, have to be regarded as alarm bells in respect of the encroachments human invasion on the environment. Human wildlife conflict is critical threat to the survival of endangered species like elephants, tiger, wild buffalos, lion etc. They not only affect its pollution but have environmental impacts on eco-system equilibrium and bio-diversity. Conservation of bio-diversity is directly linked with conservation of eco-system and thus with water and food security in as much as natural process, forest and wild habitats recharge aquifers, maintain water regimes and moderates the impact of floods, droughts and cyclones to ensure regulation of climate and the consequent food security. National planning and development has not taken into account the adverse ecological consequences of shrinkage and degradation of wilderness from the pressures of population, industrialisation mining and commercialisation. Increased man animal conflict is the outcome of shrinkage, fragmentation and deterioration of habitat. In fact wildlife management is a crucial management issue which needs to be addressed through innovative approaches. Wildlife conservation cannot be restricted to natural parks and sanctuaries as areas outside the protected area network including fringe areas are vital in its role to provide sufficient habitat for spatial movement of the species outside protected areas and provide biological resources needed by the local communities to prevent their dependency on protected areas. Such areas are also critical to the linking of protected areas with effective wildlife corridors for providing genetic community and prevent insular wild animal's populations.

45. Keeping this in view Rule 7 sub-clause 2 of the FC rules required the FAC to have due regards to the matters namely area in question forming part of a natural reserve, national park, wildlife sanctuary, biosphere reserve or habitat of any endangered or threatened species of flora and fauna, its use for agricultural purposes or for rehabilitation of persons, compensatory afforestation while tendering its advice on the proposals for forest clearance referred to sub-rule 1 of the said rule. Reading of sub-clause 3 of rule 7 also reveals the role of FAC in suggesting conditions or regulations on the use of any forest land which would minimise adverse environmental impact thus the role of the FAC is both diagnostic and curative in the matter of tendering its advice on the proposal for forest clearance.



ECO-FRIENDLY
MEASURES TO MITIGATE IMPACTS OF
LINEAR INFRASTRUCTURE ON
wildlife

The Biodiversity Management Act, 2002

- "An Act to provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith or incidental thereto."
- Biodiversity Impact Assessment

(4) The Central Government shall undertake measures,—

(i) wherever necessary, for assessment of environmental impact of that project which is likely to have adverse effect on biological diversity, with a view to avoid or minimise such effects and where appropriate provide for public participation in such assessment;

(ii) to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology likely to have adverse impact on the conservation and sustainable use of biological diversity and human health.

i) OIL will carry out Bio-diversity Impact Assessment study through Assam State Biodiversity Board, for which budgetary offer have already been obtained on 12th May, 2017.

Days before Assam fire, OIL cleared curbs to get nod for project inside national park

On May 11, OIL obtained environment clearance from the Centre for drilling seven wells inside Dibru Saikhowa using the sub-surface Extended Reach Drilling (ERD) technology from three existing wells (Baghjan 3, 5 and 11) adjacent to the park.

