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ELR India Update™

Volume 2, Issue 1 | Environmental Law Institute with Kochhar & Co. | January-March 2011

INDIA'S ENVIRONMENT IN 2010

This past year, 2010, has been a milestone year, setting new trends in environmental concerns, policy, law, and enforcement. For perhaps the first time, environmental issues were actively recognized to be guiding many fields of India's modern economic and social fabric, such as industrial development, infrastructure projects, foreign policy, human health, and food safety considerations.

The year also witnessed significant debates on several long-standing environmental issues, including the Bhopal gas tragedy, the introduction of genetically modified food and seeds, climate change, environmental clearances, mining, the regulation of electronic waste, and forest management. Two significant laws, the Civil Liability for Nuclear Damage Act of 2010 and the National Green Tribunal Act of 2010, were enacted last year. Perhaps most notably, this past year saw the stringent enforcement of development-related environmental laws by the federal government, as in the cases of Posco, Vedanta, and Lavasa. Many large development projects were stopped or suspended for not complying with India's environmental regulations.

In this issue, we revisit the significant environment-related events of 2010, examining the questions and controversies of the year and investigating how these events are likely to impact the regulatory milieu on the Indian and global environment in the years to come.

CHALLENGES FOR DEVELOPMENT PROJECTS

From multi-billion-dollar mining projects in Orissa and a designed hill city in Maharashtra to a 600-megawatt (MW) hydroelectric project in Uttaranchal and another power project in Gujarat, many development projects came under the stringent eye of the Ministry of Environment & Forests (MoEF) in 2010 for allegedly violating environmental regulations. The MoEF had been criticized in recent years for clearing nearly all development projects, including the projects now being questioned, without regard to social and environmental considerations. In this past year, the MoEF began to question these projects and their impacts.

Whether truly beneficial or not, the actions initiated by the MoEF represent a significant change in the policy and practice of the federal government. Until now, for example, the proponents of development projects had never considered the Forest Rights Act of 2006 or the Coastal Regulation Zone Notification of 1991 as laws potentially relevant to their projects. Since these investors and project proponents were perceived as generators of development, employment, and prosperity, it had once been inconceivable that the federal government would not push aside necessary clearances and approvals.

The strict compliance now being enforced by the MoEF is in conflict with the stance being taken by other federal government ministries, such as the Ministry of Coal and Ministry of Power. The MoEF's actions also conflict with the policies and stances of some state governments, some of whom consider the actions taken by the MoEF as unwanted interference with their affairs and as hindrances to the growth and development of their state. State governments continue to try to attract investors, but associated environmental concerns are merely a secondary consideration, seen as a distraction that cannot override the need for development within the state.

Despite the fact that some state governments and other ministries are openly decrying the MoEF's new stringency, the MoEF has remained steadfast. Indeed, the sanctioning actions of the MoEF have come after millions of rupees have already been spent in the projects in question, drawing more ire from investors and other concerned parties.

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ELR India Update

ELR India Update is a quarterly newsletter analyzing the most relevant developments in Indian environmental law for international environmental lawyers, managers, policymakers, and thought leaders.

The goal of this service from the Environmental Law Institute (ELI) is to report on these developments and analyze their implications. The *Update* will also identify and analyze potential future developments for readers, so that they have advanced warning of risks and opportunities. The service will cover environmental legal and policy developments at the national and state level regarding climate and energy policy, manufacturing, importation and exportation, natural resources, product safety, worker safety, and other major environmental issues, such as water quality and supply.

We are very fortunate that *ELR India Update* is written by the attorneys at Kochhar & Co., a highly respected firm with significant environmental expertise and a thorough understanding of the ramifications of legal and policy developments. *ELR India Update* is edited by *Environmental Law Reporter (ELR)* attorneys in Washington, D.C.

ELI has a long history of working with partners in India to advance environmental law and policy. We hope this new partnership provides a service that meets your needs and expectations. We encourage any and all constructive feedback by contacting *ELR*'s Editor-in-Chief Scott Schang at schang@eli.org or 202-939-3865.

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ISSN 2153-1420 (print) ISSN 2153-1439 (online)

ELR Update India is published quarterly by the Environmental Law Institute. ELI is a nationally recognized center for research and education on environmental policy, law, and management. An independent, tax-exempt, and nonpartisan institution, ELI provides information, research, and policy analysis to a broad constituency of professionals in law, government, finance, business, advocacy organizations, and academia.

Projects and Controversies

Vedanta[1]

The MoEF had first rejected forest clearance to an ambitious bauxite-mining project of Vedanta Alumina Limited, a United Kingdom-based company, involving the diversion of 660,749 hectares of forestland for mining purposes. Thereafter, it rejected environmental clearance for the expansion of Vedanta's existing bauxite mining refinery from its installed capacity of one million tons per annum (MTPA) to six MTPA and from 75 MW to 300 MW. The refinery had been set up with the active support of the Orissa state government. It was located in proximity to the mines, which were intended to feed the refinery with raw material.

All construction activities involving the expansion of the project have been stalled, in view of the alleged violation of several environmental regulations by the project proponent.

Forest clearance was rejected because of the project's alleged violation of the Forest Conservation Act of 1980 and the Forest Rights Act, as well as the project's potential impact on wildlife, biodiversity, and most significantly, the rights of tribal groups. The MoEF had granted an in-principle (Stage I) approval for the diversion of forestland for the same mining project in 2008. Vedanta had already set up an alumina refinery in Orissa for which environmental clearance was granted in 2004. In 2007, it applied for environmental clearance for the refinery expansion. It was only when the Orissa state government applied to the MoEF for final clearance for the mining project in 2009 that the MoEF started questioning the very basis of the project. One of the factors leading to the rejection of the mining project was the failure of the state government to settle the rights of forest dwellers under the Forest Rights Act.

Environmental clearance for the refinery expansion was rejected because the company had already commenced construction activity for the expansion of its refinery without obtaining environmental clearance as required by the Environment Impact Assessment Notification of 2006. In any case, upon rejection of the mining project, the refinery expansion had lost its relevance.

POSCO[2]

In 2010, the MoEF suspended ongoing work on the proposed integrated steel plant of Pohang Steel Company (POSCO) in Orissa, having a proposed production capacity of 12 MTPA.

The government of Orissa and POSCO signed a Memorandum of Understanding on June 22, 2005, for setting up an integrated steel plant. After the signing of the Memorandum, POSCO-India commissioned rapid environment impact assessments for the steel plant (only for 4 million tons) as well as for a captive power plant and a captive minor port. The plant site is spread over an area that includes forestland as well as a coastal regulation zone (CRZ). The MoEF granted a CRZ and environmental clearance to the integrated steel plant in 2007. In 2007, in principle (Stage I) forest clearance was also given to the project for the proposed diversion of the forestland. In the meantime, the Forest Rights Act had come into force, and the states were given directions by the MoEF to settle the rights of the forest dwellers according to the terms of the Act. In December 2009, the MoEF granted final forest clearance to the project on the condition that the rights of the forest dwellers be settled before implementation of the project. The government of Orissa claimed that it had completed the settlement process and had given the MOEF a formal confirmation and assurance that the rights of forest dwellers have been settled in terms of the Forest Rights Act

After large-scale public protests by the affected local inhabitants and several petitions filed with the MoEF in this regard, a probe into the project was ordered. A four-member committee was constituted by the MoEF to conduct the probe. The committee was first requested to look into issues relating to the implementation of the Forest Rights Act and the rehabilitation and resettlement of project-affected communities. Subsequently, the committee was also directed to review the environmental, CRZ, and other clearances to the project. While the committee was undergoing the extensive consultation and review process, the MoEF decided to suspend all the work being undertaken in the project area on the basis of the initial deliberations and discussions held by the committee, which clearly evidenced that the state government had violated the Forest Rights Act in the project area. The subsequent report submitted by the committee in October 2010 indicated a bigger problem in terms of the settlement of forest rights, rehabilitation and resettlement of project-affected communities, and compliance with CRZ regulations. Today, the project stands stalled, although the final decision on the revocation of the forest and other clearances to the project is pending.

1 Vedanta refers to the bauxite mining project of Vedanta Alumina Limited, a subsidiary of Vedanta Resources, PLC, a United Kingdom-based metals and minerals company.

2 POSCO refers to the proposed integrated steel plant of the Pohang Steel Company (POSCO), a company based in the Republic of Korea. The plant was proposed to be built in Orissa with a proposed production capacity of 12 million tons per annum.

Lavasa[3]

The fate of India's first planned hill city, Lavasa, looks dismal. On November 25, 2010, the MoEF temporarily halted all construction activities in the hill city, which was being developed by the Lavasa Corporation Limited, on account of the alleged violation of environmental regulations. The MoEF contended that large-scale construction work was progressing at the project site without obtaining prior environmental clearance. Further, it was alleged that the project would have an adverse impact on the local livelihoods, biodiversity, and ecological balance. The Lavasa Corporation challenged the MoEF's decision in the Mumbai High Court, but no relief was granted. While the Court is looking into the matter, the temporary shutdown of the project activities will remain in place until the MoEF completes the analysis and passes its final order. The committee constituted by the MoEF to look into the matter was directed by the Court to submit a report to the High Court by January 14, 2010. It has been reported that the committee has found that there was no large-scale destruction to the forest cover in the project area. The Lavasa project had been widely advertised, and thousands of investors have already invested in buying property in the city.

Lessons Learned

Vedanta, POSCO, and Lavasa are merely a few examples. A number of other projects have met a similar fate. Recently, the MoEF had ordered the demolition of a group housing building in Mumbai, Adarsh Housing Society.[4] It had an occupation certificate and other clearances, but the developers overlooked the fact that the site of the building was located within the CRZ, and required a clearance for the construction from the MoEF.

The MoEF's firm and clear stance that the country's environmental needs would not be compromised for development goals is worth applauding, but these examples also point to a grim state of affairs vis-à-vis the manner in which environmental clearances are granted, industries' general disregard for environmental norms, and the role of state governments and other regulatory authorities in law enforcement.

None of these projects described above are new. In other words, these projects were not put before the MoEF for first-time approval. They are massive projects involving complex processes and had been under construction and development for years. The projects had also received substantial private investment, and, in certain cases, foreign investment.

Most projects were cleared and approved by the MoEF at the initial stages of project commencement. But if these projects could cause such irreparable damage to the environment, why were they allowed to be initiated in the first place? For example, if Lavasa or Vedanta could have had an adverse impact on the ecology and biodiversity of their respective sites, why were these aspects not looked into when the projects were first cleared by the MoEF?

Notably, in the case of POSCO, the project was suspended after it had received the final forest clearance from the MoEF itself. If the claims of the communities and environmentalists are true and there are serious violations of the Forest Rights Act at the project site, it is shocking that the MoEF cleared the project in total disregard to such critical issues. In fact, the report of the Committee constituted by the MoEF to investigate into the status of environmental compliance at the POSCO steel plant site specifically states that the final forest clearance granted by the MoEF:

> overlooked serious violations of their own directions and the procedures prescribed by law. Imposing additional conditionalities as in the clarification given by MoEF in January, 2010 while allowing the clearance to stand does not remedy the illegalities.[5]

Similarly, when Vedanta was granted the in-principle (Stage I) approval for the diversion of forestland for the mining project in 2008, the Forest Rights Act was already in place. In fact, the MoEF itself had directed the states to take steps to comply with the Forest Rights Act while diverting forestlands for development projects. Thus, was the in-principle approval to the project given by the MoEF without determining whether the state of Orissa had taken steps to settle the rights of forest communities in compliance with the Forest Rights Act? After looking into these cases, the entire exercise of granting environmental clearances by the federal government appears farcical.

Furthermore, these cases raise serious questions regarding the enforcement of laws at the state and local levels. In the case of Vedanta, the company was alleged

3 Lavasa is India's first planned hill city, being developed in the western region of India in the landscape of the Sahyadri Mountains (Western Ghats) and set among seven hills and 60 kilometers of lakefront. The proponents of Lavasa include HCC group, Avantha Group, Venkateshwara Hatcheries, and a private investor.

4 The Adarsh Housing Society is a cooperative society building a group housing society intended for war veterans and widows in Mumbai. The MoEF has recently ordered the demolition of the housing apartments within three months for violating CRZ Notification. The Adarsh Housing Society had already been in the news for various reasons, such as corruption, mismanagement, and improper allocation of the apartments.

5 Report of the Committee Constituted to Investigate into the proposal submitted by POSCO India Private Ltd. for establishment of an Integrated Steel Plant and Captive Port in Jagatsinghpur District, Orissa, to MoEF on October 18, 2010.

to be in illegal possession of forestland. In the cases of Lavasa and POSCO, the respective project operators had undertaken construction activities and had built temporary and permanent structures, allegedly without prior permission and with the state governments having full knowledge of their actions.

An important issue emerging from the Vedanta and POSCO cases is that the development projects had to suffer because of the failure on the part of the state government to fulfill its obligations under the Forest Rights Act. In both cases, the government of Orissa either did not complete the process of settlement or did a negligent job. While the projects have been stalled, what is the penalty to the state government for neglecting its statutory obligations and misguiding the federal government by presenting incorrect data and information? Most suspended or rejected projects had been under construction, and so a rejection of these projects without delineating a plan for dealing with existing structures again underscores the ad-hoc and myopic plans of the government. Perhaps it would have been better if the MoEF had applied stringent measures for fresh projects only.

Lastly, there is a lesson for industry: it cannot disregard environmental clearances and the strict procedure of law simply because the state government is incentivizing or supporting its project. Environmental due diligence must be conducted not only at the stage of conception but also through the process of establishment and operation of every project. It would not suffice now for an investor to look at other projects in the area and decide that the proposed project could be undertaken without proper environmental consideration and due diligence. For instance, there are many power projects dotting the shoreline of the state of Gujarat—but this fact itself is not sufficient to allow investment in a power plant without first considering whether the site is within the CRZ, and if it is, whether the category of CRZ and the restrictions on construction in such a zone are appropriate. It is only after determining the above that a project proponent would know the clearances necessary for such a project, the restrictions on plant capacity, and the conditions for raw material supply and disposal of waste—all of which the plant is required to follow.

In view of the ad-hoc manner in which industrial projects were being planned and implemented in India, whether on account of regulatory lapses or industries' indifference, the MoEF had to intervene sooner or later. The MoEF's stern stand on industry was indeed overdue, but the government must carefully review, consider, streamline, and institutionalize the entire process, so that investors do not fall prey to a confusing enforcement environment—and most importantly, so that the environment considerations are not bypassed. The government needs to revisit all its "permit regimes" to see how and where clearance processes fail to take into account the potential environmental repercussions of projects. Improving the day-to-day enforcement and monitoring of projects is inevitable. Lastly, it cannot be overlooked that neither the environment nor industry can be made to suffer because of lapses on the part of the federal government. The dismal picture of regulatory compliance in India, as is emerging today, would not only discourage foreign investment but would also impede domestic industry. There is a strong need to put in place a rule-driven institutional mechanism for environmental clearances, free from political influence. The power to grant environmental clearances should not be left in the hands of the MoEF, but should be transferred to an autonomous regulatory body.

Some important laws and regulations were enacted in 2010, including the National Green Tribunal Act of 2010 (also known as the NGT Act) and the Civil Liability for Nuclear Damage Act of 2010 (also known as the Nuclear Liability Act). The NGT Act has potential to revamp the face of environmental litigation in India on the civil side. The Nuclear Liability Act, which is aimed at putting in place a mechanism for compensating the victims of nuclear damage and environmental remediation, is a key law that will determine the fate of the nuclear energy sector in India. Similarly, the Wetlands (Conservation and Management) Rules of 2010 (also known as the Wetlands Rules) represent an important development that accords legal recognition and protection to wetlands. However, it fails to address wetland conservation needs in a holistic manner.

The National Green Tribunal Act of 2010

The NGT Act has finally made specialized environmental courts a reality in India. The Green Tribunal has been constituted with a total of 20 members, with former Supreme Court Justice Lokeshwar Singh Panta as the Chairperson. The Green Tribunal will have four circuit benches in India.

Now that the initial euphoria about the specialized Green Tribunal has settled and the tribunal is in place, the mammoth challenge before it cannot be ignored. Thousands of environmental matters are slated to be transferred to the Green Tribunal from the erstwhile National Environmental Appellate Authority (NEAA).[1]

The NGT Act has made it possible for people to initiate action against individuals and industries acting in disregard to the environmental norms and causing indiscriminate damage to the environment or to private property. Affected communities can now approach the Green Tribunal for compensation and damages without following the complexities of regular court proceedings. Further, matters will be decided by the Green Tribunal by applying the principles of sustainable development, the precautionary principle, and the "polluter-pays" principle. A number of environmental matters that affect the public at large, those which are generally contended before the higher courts in the form of public interest litigation, may now be put before the Green Tribunal. The tribunal has been given the power to prescribe penalties up to 100 million rupees (approximately US$2.2 million) in the case of an individual, and 250 million rupees (approximately US$5.5 million) in the case of a company. From an Indian perspective, these are significant penalties, given that other fines or penalties demand paltry amounts.

However, concerns have been raised on the independence of the Green Tribunal, since the appointment and removal of the tribunal's members have been left to the discretion of the federal government. Some worry that the Green Tribunal may meet the fate of its predecessors, the National Environmental Tribunal and the NEAA.[2] Considering the enormity of the task before the Green Tribunal, coupled with questions regarding its jurisdiction (see information box), independence, and efficiency, the Green Tribunal's true importance will be clear only once it begins adjudication.

Civil Liability for Nuclear Damage Act of 2010

The Nuclear Liability Act was the most controversial statute passed in 2010. The Act provides for the civil liability of the operators of nuclear installations in the case of nuclear disasters. The maximum liability for an operator, in the case of a nuclear disaster, has been capped at 15 billion rupees (approximately US$350 million). The Act provides for the establishment of a Nuclear Damage Claims Commission for awarding compensation to the victims of such disasters.

The Act was vehemently criticized for capping the maximum liability of the operators, protecting the interests of the suppliers of nuclear material, and for circumventing the environmental law principles laid down by the Supreme Court. International pressure, especially from the United States, was seen as the crucial reason why this controversial law was passed. Though it cannot be denied that the Nuclear Liability Act would not have seen the light of day without the India-US 123 Civil Nuclear Cooperation Agreement of 2008, undue prominence placed on this point may lead to a misunderstanding of the Nuclear Liability Act and what it seeks to achieve.

Nuclear power is the fourth-largest source of electricity in India, after thermal, hydroelectric, and renewable sources. India is contemplating rapid expansion in the nuclear energy sector. The total share of nuclear energy in the total grid is expected to increase to almost 15

1 Upon establishment of the Green Tribunal, the NEAA, established under the National Environmental Appellate Authority Act of 1997, was dissolved, and the cases pending before the NEAA were transferred to the NGT.

2 *Id.*

The Green Tribunal and Questions on Jurisdiction

In less than one year from the enactment of the NGT Act, a writ petition has already been filed in the Madras High Court alleging that the Act is unconstitutional, as it seeks to exclude from the jurisdiction of the high courts and civil courts those environmental matters falling within the ambit of the Green Tribunal.

Notably, the Green Tribunal has been empowered to address civil matters on the implementation of seven environmental statutes relating to biological diversity,[1] forest conservation,[2] environment protection, water and air pollution,[3] and public liability insurance.[4] The Green Tribunal has the jurisdiction to try civil matters involving "a substantial question relating to environment" or "enforcement of a legal right" arising out of these statutes. However, the Green Tribunal's jurisdiction does not involve trying routine noncompliance maters or other offenses under such legislation. A matter would be considered a substantial question relating to the environment only if it involves a direct violation of a specific statutory environmental obligation, whereby the community at large is being affected or there is substantial damage to the environment, property, or public health. Given the subjective nature of this definition, a number of matters will go to the Supreme Court merely to decide whether it involves a substantial question relating to the environment or not. This could lead to delays, as well as much litigation on the aspect of jurisdiction of the tribunal.

The Green Tribunal does not have criminal jurisdiction, and therefore criminal offenses under these environmental laws would continue to be dealt with by the regular criminal judicial system in the country. It is interesting to note that most acts of noncompliance under the above-mentioned statues are criminal offenses. Thus, what the NGT Act seeks to create is not a parallel judicial system, but a complementary system that strengthens the existing one. For example, if an industry is established without obtaining the requisite approval or permission under the Water (Prevention and Control of Pollution) Act of 1974, such noncompliance would continue to be tried by regular district criminal courts, which can order fines and/or imprisonment (as stipulated under said Act). In case any actual damage is caused to the environment on account of such noncompliance, the courts may also award damages, though the Act does not provide any guidance on the amount of such damages. This is perhaps the reason why numerous matters relating to pollution by an industry affecting the public at large were raised before the higher courts in the form of public-interest litigation. After the NGT Act came into force, matters relating to damage to the environment, public health, or property will now hopefully be addressed by the Green Tribunal. The Green Tribunal is not only required to provide relief and compensation to the victims of pollution, but also to award damages for the restitution of property or damaged environment. However, the appellate jurisdiction of the civil courts has been specifically excluded. Further, the appeals from the orders of the Green Tribunal would go the Supreme Court directly, and not to the high courts, thus eliminating the jurisdiction of the high courts in such matters.

1 Biological Diversity Act of 2002.
2 Forest (Conservation) Act of 1981.
3 Water (Prevention and Control of Pollution) Act of 1974 and Air (Prevention and Control of Pollution) Act of 1981.
4 Public Liability Insurance Act of 1991.

times its existing share by 2032. This ambitious plan of the federal government may not be possible under the existing regulatory framework, wherein the nuclear sector is completely controlled by the government. The government is mindful that, in the future, the nuclear energy sector may have to be opened for private investors, albeit with necessary government oversight and controls. In any case, with or without private participation, the need for creating a mechanism for ensuring civil liability in case of nuclear disasters cannot be refuted.

Wetlands (Conservation & Management) Rules of 2010

India is a signatory to the Convention on Wetlands of International Importance of 1971, also known as the Ramsar Convention, which deals not only with conservation of wetlands but also the wise use of wetlands. India presently has 25 sites designated as wetlands of international importance (as determined by the terms of the Ramsar Convention) and numerous other wetland ecosystems. Wetlands in India have been facing existential threats from human activities for years. Though there are laws that in some way provide for the protection of wetlands, India had lacked specific regulations for the protection and conservation of wetlands. These newly legislated rules are thus a step in the right direction.

Still, these rules suffer from the same flaws as other conservation-related regulations. The rules provide for a "command-and-control" or "permit" regime. The Wetlands Rules start with recognizing certain wetlands as "protected," including, inter alia, Ramsar sites, wetlands falling within UNESCO heritage sites, and those located in ecologically sensitive areas. However, the rules categorically provide that it is only the Ramsar sites that are intended to be regulated. Thus, the entire process of classifying other classes of wetlands as "protected" is completely futile, if

Revised Regulations on CRZ

The federal government recently issued the Coastal Regulation Zone Notification of 2011 in supercession of the CRZ Notification of 1991. An Island Protection Zone Notification of 2011 has also been notified, covering the Andaman and Nicobar Islands and Lakshadweep. The above two regulations were enacted with the objective of protecting the traditional livelihoods of fishermen, the preservation of coastal ecology, and the promotion of developmental activities that are required to be located in coastal areas.

In addition, the government has also prepared a draft Traditional Coastal and Marine Fisherfolk (Protection of Rights) Act of 2009, which has been issued for public comments and suggestions.

such classes are not intended to be regulated.

The Wetland Rules also suffer from shortsightedness. The rules seek to protect wetlands by prohibiting certain developmental activities[3] and permitting certain others,[4] subject to prior approval of an authority constituted specifically for granting such permits. While it is important to regulate developmental activities in wetlands, it is equally important to undertake steps to conserve and improve the existing wetlands ecosystem across the country. Under the Wetlands Rules, there is no specific obligation on the state or any regulating body to first map the existing wetlands in the country, to conserve such wetlands, to restore the polluted or damaged wetlands, or to create artificial wetlands, even though there is a need for all of these.

Pending Drafts

While the aforesaid three regulations were enacted in 2010, there were certain others that could not be taken up, including the Draft E-Waste (Management and Handling) Rules of 2010, the Seeds Bill of 2004 and Pesticides Management Bill of 2008. These draft laws have been on the anvil for a long time and are significant for their respective industries, whether electronics, IT, pesticides, or agriculture. Notably, there are existing laws on pesticides, seeds, and, to a certain extent, on e-waste as well, but the proposed statutes and regulations intend to bring the existing laws in conformity with modern times and its challenges.

Draft Legislation

Seeds Bill of 2004
The Seeds Bill seeks to regulate the production, distribution, and sale of seeds. All varieties of seeds for sale are required to be registered. The seeds are required to meet certain prescribed minimum standards. Transgenic varieties of seeds can be registered only after the applicant has obtained environmental clearance under the Environment (Protection) Act of 1986 and the rules framed thereunder.

Pesticides Management Bill of 2008
The Pesticides Management Bill was proposed as a step toward the promotion of the safe use of pesticides. This bill seeks to regulate the manufacture, inspection, testing, and distribution of pesticides. It establishes a system of licensing, as well as the setting up of a registration committee to register pesticides.

Draft E-Waste (Management and Handling) Rules of 2010
The draft rules seeks to ensure that electronic waste is managed and handled in an environmentally safe and sustainable manner. The rules are expected to introduce stringent standards of waste management for the information technology, telecommunications, and electronic industries. Under the draft rules, producers are responsible for the entire life cycle of their electronic products, from the environmentally sound manufacturing of products, to their recycling, reuse, and disposal.

3 Reclamation of wetlands, manufacture and handling of hazardous substances, solid waste dumping, and any construction of a permanent nature.
4 Aquaculture, agriculture, dredging, construction of boat jetties, and repair of existing buildings.

TWENTY-FIVE YEARS SINCE THE BHOPAL TRAGEDY

The year 2010 marked the 25th anniversary of the horrendous Bhopal gas disaster. What made this anniversary more painful was the verdict pronounced by the chief judicial magistrate of Bhopal on the criminal proceedings filed against the six former employees of Union Carbide India, Limited. The magistrate held these employees guilty of a "negligent act not amounting to culpable homicide" under Section 304-A of the Indian Penal Code of 1860. Though these former employees were given the maximum punishment and fine prescribed for the offense, two years' imprisonment, there was a general perception that the guilty should have been tried under different sections, those that provide for greater punishment. However, the magistrate could not have done much, since in 1996, the Supreme Court decided that the charges under Section 304 of the Indian Penal Code (culpable homicide not amounting to murder entailing up to 10 years of imprisonment) could not be made against the former Union Carbide employees. Thus, they were to be tried under Section 304-A.

Indian media started a crusade against the former Union Carbide chairman, Warren Anderson, in order to build pressure on the federal government to seek his extradition to India. The government has asserted that the case against him in connection with the Bhopal gas tragedy was not over and he can be extradited and tried. What further complicated the matter was the fact that at the time this verdict was announced, the government had introduced the Nuclear Liability Act, which sought to limit the liability of nuclear operators in cases of nuclear disasters. Thus, connections were drawn between the two.

In December 2010, the federal government filed a curative petition in the Supreme Court seeking an increase in the compensation to the victims to 55 billion rupees (approximately US$1.2 billion) from 7.5 billion rupees (approximately US$165 million) as stipulated in 1989. The government said that the number of victims and the degree of environmental damage was not assessed correctly in the past. The government has cited three grounds for seeking increased compensation: first, that in 1989, the death figures given were incorrect; second, that the taxpayers' money cannot be used to compensate the wrong that has been done to people by a private entity; and third, that this money needs to be utilized to clear the debris left after the Bhopal disaster. This is seen as a critical step taken by the government to undo the damage caused many years ago. However, the story does not end here. Even assuming that the court decides in favor of the government (and the victims), it will take years to recover the enhanced amount of compensation and to compensate the victims. Thus, even after the passage of 25 years since the disaster, it is doubtful whether the victims of the Bhopal tragedy will ever be adequately compensated.

INDIA'S BIGGEST OIL SPILL

This past year also bore witness to the biggest oil spill in India's history. In August 2010, two Panamanian fuel tankers collided just five miles off the coast of Mumbai. The tankers released more than 800 metric tonnes of oil, wreaking havoc on marine and coastal ecosystems. The oil spill also affected India's busiest trade route, thereby causing great revenue loss to the government, as well as to industry. The government initiated immediate action to contain the spill and its impact on the coastline, but substantial damage had already been done, and the cleanup would not only take time but also substantial resources. The government called for a detailed report on the oil spill from the Shipping Ministry, while the state government of Maharashtra, in the meantime, has been taking steps to contain the spill. Certain research organizations have been asked to conduct a detailed environmental impact assessment of the spill and bioremediation on the coastline. What is awaited is not just the reports of these studies, but also how the government would apply the principles of "polluter-pays" and "absolute liability" to affix responsibility for the disaster and environmental remediation.

India finds itself in a peculiar situation, insofar as climate change negotiations are concerned. Though India now has one of the largest economies in the world and is currently on a high-growth path, a majority of its population still lives in abject poverty, and large parts of the country have still not seen any development or growth.

Though the United Nations' climate change conference at Cancun failed to yield desired results, India emerged as a strong force and a critical player in the international deliberations on climate change. The world today recognizes that India enjoys a major share in clean development mechamism (CDM) projects in the world. As of October 2010, the registered CDM projects in India were 538, while 1,313 projects were at or after the validation stage. The total number of CDM projects approved by India might be as high as 1,581.

At Cancun, despite a controversial statement made by Jairam Ramesh of the Minister of Environment and Forests, India was able to articulate its policy on climate change. Ramesh's proposal for a framework for the "international consultation and analysis on emission reductions" was also welcomed at Cancun.

Ramesh had stated, "all countries must take binding commitments in appropriate legal form." His speech was seen as an indication that India was now ready to accept legally binding emission cuts, a move that it had vehemently resisted in the past. The statement was perceived by poorer countries as a sellout to the demands of developed countries, whereas within India, it was perceived as having been made under U.S. pressure by a minister who is far removed from the realities that millions of Indians face. The Prime Minister himself had to intervene in order to clarify that India does not intend to take on legally binding obligations, and that one should not read much into the minister's speech.

Recently, Ramesh issued a letter to all members of parliament elaborating his position at the Cancun conference. In the letter, Ramesh clarified that at Cancun, he had proposed "commitments in appropriate legal form" and not exactly "legally binding commitments." He went on to say that a legally binding agreement is not acceptable to India at this stage. He also clarified that India is not ready for binding and absolute emission cuts, and its earlier position on undertaking voluntary mitigation actions remains unchanged. He also emphasized domestic legislation stipulating performance targets for mitigation and adaptation.