ELR® अपडेट

ELR India Update™

Volume 2, Issue 2 | Environmental Law Institute with Kochhar & Co. | April-June 2011

Forestland Rights for Traditional Forest Dwellers: Boon or Bane to Industry?

When the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006 (Forest Rights Act) was notified in January 2007—a little over a year after it was passed—it was largely regarded as a politically motivated act aimed at appeasing the tribal population in the country. The main opponents of the Act were the nature and wildlife conservationists who believed that granting tribal communities access to the forestlands would render it extremely difficult to protect and preserve the few remaining forests and wildlife habitats. Many conservationists worried that India's large tribal population, including those who still live close to or depend on the forests, are not wholly insulated from the materialistic trappings of a modern, urban lifestyle and so cannot be expected to refrain from exploiting the forests and wildlife for monetary gains. However, few observers expected that the Forest Rights Act would also impact large industries and development projects. Many projects, including the ambitious mining projects of POSCO and Vedanta in Orissa, and the Polavaram dam project in Andhra Pradesh, were stalled for possible violations of the Forest Rights Act.

The Act, which seeks to recognize and vest rights in forest-dwelling communities, including the right to occupy forests, is unique. The Forest Rights Act neither seeks to create new rights in favor of tribal communities nor is it aimed at restricting the commercial use of forests. The Act is based on the premise that traditional forest dwellers are integral to the survival and sustainability of the forest ecosystem. Thus, it aims to address the long-standing insecurity of tenurial and access rights of forest-dwelling communities that were forced to relocate outside the forests due to state interventions.

Historically, forest-dependent communities used to control and manage forests in various parts of the country, especially in tribal areas. Forests were worshiped, and a few remaining sacred groves (protected patches of forests or natural vegetation dedicated to local folk deities or tree spirits) in several states provide testimony to their revered history. For centuries, communities, forests, and wildlife coexisted, sharing a relatively stable, symbiotic relationship with each other.

However, during the British Raj, erstwhile rulers asserted state monopolies over forests, mainly to exploit India's abundant forest resources. After independence, successive governments carried forward this British legacy of maintaining sovereign rights over forest resources, thereby regulating and, when deemed necessary, restricting people's access to India's forests. Some also believed that forests should be managed scientifically—and impoverished, illiterate communities were supposedly incapable of doing so.

While forest-dependent communities were consistently expelled from the forests, the forests were slowly becoming victims of unbridled commercial activities and unscientific felling. It was only through the Forest Rights Act that the rights of tribal communities and forest dwellers were accorded a definite shape and scope, in order to undo what was deemed "historical injustice" to these peoples.

Still, the Forest Rights Act was not welcomed by all. Conservationists feared that the Act would legalize otherwise illegal encroachments over forestland and would lead to massive ecological imbalances and the destruction of forest resources. Many also feared the possibility of fraudulent forest encroachment by people without any traditional association with India's forests. The notification of the Act was succeeded by at least six petitions, filed with the Supreme Court and state high courts, seeking the annulment of the Forest Rights Act.

History of Legislation and Traditional Rights

The existing laws on forests in India, whether the Indian Forest Act of 1927 (IFA) or its state adaptations[1] contain

1 In India, both the federal government and state governments are empowered to enact legislation on forests and wildlife. While the IFA is the main, federal legislation, states are free to modify it in their own legislation. Some states, such as Madhya Pradesh, West Bengal, and Uttar Pradesh have adopted the IFA. Other

Continued on page 3

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.

Kochhar & Co.

Kochhar & Co. is one of the leading and largest law firms in India, with full-service offices in six prominent Indian cities—Bangalore, Chennai, Gurgaon, Hyderabad, Mumbai, and New Delhi—and a presence in Atlanta, Georgia, and in Singapore.

Kochhar & Co. is one of the very few firms in India with a specialized environmental law practice. The firm's experience ranges from active litigation, legal research and consultancy, to opinion work. Kochhar & Co. provides regulatory compliance advice and assistance to its clients on a wide gamut of environmental issues, including environmental impact assessment, management of hazardous waste, chemicals, and hazardous micro-organisms, solid waste management, forests, biodiversity, and clean development mechanism. The firm is also active in environmental litigation and in conducting due diligence on industries, processes, and operations from an environmental law perspective. For further information, please contact:

Mr. K.V. Singh, Partner
Kochhar & Co., Advocates & Legal Consultants
kv.singh@kochhar.com
Mobile: +91-9811334420

Ms. Shephali Mehra Birdi, Senior Associate
Kochhar & Co., Advocates & Legal Consultants
shephali.mehra@kochhar.com
Mobile: +91-9958891038

ENVIRONMENTAL LAW • INSTITUTE®
www.eli.org

ELR Staff
Leslie Carothers, *Publisher*
Scott Schang, *Editor-in-Chief*
Rachel Jean-Baptiste, *Managing Editor*
Erin Webreck, *Associate Editor*
William J. Straub, *Desktop Publisher*
Sandeep Prasanna, *Editorial Associate*

Subscription: $200 annually.
Contact orders@eli.org or 1-800-433-5120.
2000 L Street NW, Suite 620, Washington, DC 20036
202.939.3800, law@eli.org, www.eli.org

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.

artifacts of India's colonial past, a time when forests were seen as a source of revenue. The enactment of the IFA addressed neither the need for conservation nor the recognition of conservation practices and traditional knowledge of forest-dwelling communities. Rather, it created a state monopoly of the trade and transit of forest produce and timber and was enacted in order to "consolidate the law relating to forests, transit of forest produce and the duty leviable on timber and other forest produce."

The IFA introduced a scheme whereby the state could control human access to forests and activities within them by declaring them either "reserved" or "protected." However, the IFA fails to lay down any scientific basis for the classification of forests as reserved or protected. It did not envisage any logical connection between ecological and conservation considerations and its declaration as reserved or protected. The process of declaring a land as a forest also involves what is known as a "settlement process," wherein a Forest Settlement Officer inquires into, settles, and records the rights of a people over local forests. These rights generally include, among others, rights of passage or grazing and the right to collect minor forest produce. But in a reserved forest, the rights of local communities are extinguished after settlement, while in a protected forest, certain usufructory rights are allowed and are duly recorded.

Although theoretically, the law did provide for the settlement of community rights, the rights were more in the form of usufructs, based on the premise that the forest belongs to the state and the people are to be given restrictive rights of usage. Further, it was difficult for impoverished, illiterate tribal peoples to establish their rights and to participate in the settlement process. Moreover, most state governments have not yet been able to complete the settlement process in forests under their jurisdiction. Thus, traditionally forest-dwelling communities became "encroachers" and their traditional rights to forests were rendered illegal.

The report of an Expert Group of the Planning Commission on "Development Issues to Deal With the Causes of Discontent, Unrest and Extremism" pointed out that "large areas that were traditionally the habitat of forest-dwelling communities, which means principally *adivasis*,[2] were declared reserve forests without any recognition, let alone accommodation, of the rights of those communities."[3] The preamble to the more recent Forest Rights Act also affirms that the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of state forests during the colonial period as well as in independent India.

The enactment of the Forest Conservation Act of 1980 (FCA) further aggravated the problem and lead to wide unrest amongst tribal peoples and forest-dwelling communities. The aforementioned Expert Group observed that

> the FCA made this position irreversible by declaring that no forest land shall be diverted to non-forest use without the permission of the Union government. The punitive provisions of the Act meant that eviction of adivasi occupants of forest land took place on a regular basis, resulting in considerable deprivation and suffering.

Thus, it was felt that some kind of legal recognition of the rights of the communities was warranted, as well as a change in the government's approach toward forest management. However, the question remains whether the granting of forest rights in its present form is the only way such historical injustice can be undone, especially considering the modern economy and a changed socio-cultural environment.

Beneficiaries of the Forest Rights Act

The beneficiaries of the Forest Rights Act of 2006 include forest-dwelling scheduled tribes[4] and traditional forest dwellers. Although scheduled tribes have a specific legal connotation in India, it is wrong to assume that every scheduled tribe is a beneficiary under this Act. The Forest Rights Act vests forest rights into only the scheduled tribes who primarily reside in and depend on forest lands for bona fide livelihood needs. However, defining "traditional forest dwellers" was challenging, as the title was prone to misuse and erroneous claims. The federal government decided that to qualify as a traditional forest-dweller, a person must have resided in the forests for at least three generations prior to December 13, 2005, and be dependent upon forests for bona fide livelihood purposes. Even the members of scheduled tribes must meet this requirement under the Forest Rights Act. In

states, such as Assam, Karnataka, and Tamil Nadu, have their own forest statutes based on the IFA.

2 *Adivasi* is the term used for tribal peoples and forest-dwelling communities in India.

3 Development Challenges in Extremist Affected Areas, Report of an Expert Group to Planning Commission, April 2008.

4 The Constitution of India, Article 366 (25) defines Scheduled Tribes as "such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution." The term generally refers to Indian population groupings that are explicitly recognized by the Constitution of India, and were previously called the "depressed classes" by the British.

Forest Rights

(a) right to hold and live in the forestland under the individual or common occupation for habitation or for self-cultivation for livelihood;
(b) community rights such as *nistar* (subsistence) rights;
(c) right of ownership, access to collect, use, and dispose of minor forest produce that has been traditionally collected within or outside village boundaries;
(d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant), and traditional seasonal resource access of nomadic or pastoralist communities;
(e) rights, including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;
(f) rights in or over disputed lands where claims are disputed;
(g) rights for conversion of patta[6] leases and grants issued by any local authority or any state government on forest lands to titles;
(h) rights of settlement and conversion of all forest villages, old habitation unsurveyed villages and other villages in forest into revenue villages;
(i) right to protect, regenerate, conserve, and manage any community forest resource, which they have been traditionally protecting and conserving for sustainable use;
(j) rights that are recognized under any state law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of concerned tribes of a state;
(k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;
(l) right to in situ rehabilitation including alternative land in cases where the scheduled tribes and other traditional forest-dwellers have been illegally evicted or displaced from forest land without receiving their legal entitlement or rehabilitation prior to December 13, 2005.

Source: Section 3, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

other words, it was necessary that the scheduled tribes were in occupation of forestland prior to December 13, 2005, to be eligible for forest rights. Some strongly advocated that the date of coming into force of the earlier Forest Conservation Act (October 1980) should have been the cutoff date for the determination of a person's qualification as a traditional forest-dweller, as large parts of the forests have been encroached over recent years. However, the federal government decided to adopt December 13, 2005, as the cutoff date.

The Forest Rights

Residence in and dependence on forests are two very critical factors that determine a person's entitlement to forest rights under the Forests Rights Act, and determining what is a "bona fide livelihood purpose" can be problematic.[5] This is critical in light of the broad ambit of the rights assigned to tribal peoples and forest dwellers under the Act, including the right to convert patta[6] leases into titles, the right of occupation and self-cultivation, and others.

The rights that are bestowed upon tribal peoples and forest dwellers include both individual tenurial and access rights as well as community rights over forest resources. The rights can also be generally categorized as land rights, access rights, usage rights, ownership rights, and management and control rights.

The Forest Rights Act is based on the presumption that these rights and practices have existed for ages and only seeks to recognize them as such. Thus, the Act entails a process for the presentation and settlement of claims by tribal peoples and forest dwellers. The Act also lists certain records and documents, such as gazetteers, censuses, surveys, settlement reports, research studies having force of customary law, and transcribed statements of elders, all of which are taken as evidence for these individual and community rights. The rights under the Forest Rights Act are heritable but not alienable or transferable.

Though the federal government is well-intentioned in defining forest rights broadly, certain terms may need clarity to ensure that they are not misused and that they do not deprive tribal peoples and forest dwellers of their entitlements. For example, rights over disputed lands are of no significance unless the term "disputed lands" is assigned a specific meaning.

Further, there are possible overlaps between the Forest Rights Act and certain other legislation that requires further analysis. The Forest Rights Act vests the ownership and management of minor forest produce with tribal peoples and forest dwellers in accordance with traditional practice. The Panchayat Extension to the

5 Bona fide livelihood does not necessarily mean sustainable in terms of forest conservation.

6 A patta is a document that recognizes ownership and occupation over land but not necessarily title to that land.

Challenges for Developers

Until the enactment of the Forest Rights Act, forest clearance under the FCA—obtaining permission to carry out non-forestry projects and activities on forest land, including the clearing of forests for preparation of land—was required for the diversion of forestland for non-forestry purposes or for the de-reservation of forests. Though the forest clearance process is comprehensive, it does not envision the settlement of any individual or community rights over forestland. The Forests Rights Act has added a new dimension to this process. Section 5 of the Forest Rights Act provides that if there are holders of forest rights in an area, the gram sabha is empowered to determine the use of that land and protect that land, including taking steps to ensure that the habitat of the forest dwellers is protected from any destructive practices that may affect their cultural and natural heritage. Rights such as the right to inhabitat and the right to conserve, protect, and manage community forest resources automatically imply that the consent of the community is required prior to the authorization of any damage to or destruction of their habitat or community forest resources.[1] According to §4(5) of the Forest Rights Act, there can be no removal or eviction from forestland unless the tribal rights have been recognized and the verification procedure is complete. It is here where the Forest Rights Act pinches industry or even the development ministries and bodies, such as the Ministry of Coal, mining departments, and the Ministry of Petroleum.

The Ministry of Environment and Forests, recognizing the role of gram sabhas in the implementation of the Forest Rights Act as well as in the diversion of forest land for non-forestry purposes, made it clear in a circular dated August 3, 2009, that a letter from each of the concerned gram sabhas indicating the completion of the process of the Forest Rights Act and of prior informed consent for any diversion of forestland is a precondition that must be satisfied before final forest clearance is granted.

Developers are practically handicapped until individual states complete the settlement of rights process under the Forest Rights Act, even after procuring all other clearances and approvals. There is nothing developers can do to avoid this hurdle. It is for state governments to ensure that the rights over the forestlands in question have been settled in terms of the Forest Rights Act, and that gram sabhas have issued the relevant certificate approving the diversion of land for the proposed project in question.

Project proponents now have no option but to conduct a detailed analysis of the status of the implementation of the Forest Rights Act over the area proposed to be diverted by them for their development project.

1 Report of the Four Member Committee for the Investigation into the Proposal submitted by the Orissa Mining Company for Bauxite Mining in Niyamgiri, dated August 16, 2010.

Scheduled Areas Act of 1996 envisaged the ownership of minor forest produce with the gram sabha[7] in tribal areas of Schedule V states.[8] This could lead to a situation wherein the individual rights of tribal peoples and forest dwellers are pitted against those of the larger gram sabha. Thus, the extent to which the gram sabha records such individual or community rights is something that only those who are powerful and influential in the gram sabha may end up deciding.

The Forest Rights Act also runs in conflict with protected areas of national parks and wildlife sanctuaries. Despite various efforts in the last 30 years to restrict the denudation of wildlife habitats, and despite the Wildlife Protection Act (WLPA) of 1972, the government has largely been unable to relocate many villages from within critical wildlife sanctuaries and national parks, which are under constant pressure from human encroachment, exploitation, and poaching. The forests in India have been decreasing at an alarming pace.

There is no restriction per se on forest rights over such areas, except in the case of inviolate areas, which are termed "critical wildlife habitat" under the Forest Rights Act. The Act obligates the Ministry of Environment and Forests to determine and notify such inviolate areas after an open process of consultation by an expert committee that includes a representative of the Ministry of Tribal Affairs. The Act, however, restricts the notification of such areas unless certain conditions, including informed consent of gram sabha and provision of resettlement package, are satisfied. It was vehemently argued by the conservationists that this provision would restrict the ability of local forest and wildlife departments to act independently in the interests of wildlife conservation. Since the Forest Rights Act provides that the forest rights recognized under the Act cannot be modified or resettled without the free, informed consent of the gram sabhas in the areas concerned, it will be difficult for the government to protect the remaining forest cover in areas declared national parks and sanctuaries.

Conclusion

The Forest Rights Act is unique due to the extensive and far-reaching rights it seeks to vest with tribal communities and forest dwellers. However, it is similar to the IFA and the WLPA in that its success or failure is in the hands of those responsible for the settlement of rights. Forests

7 Village assembly, comprising the entire adult population of a revenue village registered on the electoral rolls.

8 Schedule V to the Constitution of India covers tribal areas in nine states of India: Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Chhattisgarh, Orissa, and Rajasthan. It provides for special administration of such areas.

rights have no meaning if the respective gram sabhas or state governments fail to initiate the settlement process. The IFA and the WLPA are examples of how, despite the lapse of over 30 years, the settlement process has remained incomplete in various parts of the country.

The Act places the gram sabha in the center of the whole process and makes it the nodal agency for the process of the settlement of rights. While this complies with the principles of decentralized governance as enshrined in the Constitution of India and the Panchayat Extension to Scheduled Areas Act of 1996, it is difficult to say whether gram sabhas are ready to effectively shoulder this responsibility. The question is not whether gram sabhas are capable of taking the right decision; rather, the question is whether gram sabhas are capable of taking a decision in a participatory manner. At the grass-roots level, a gram sabha comprises thousands and thousands of people, and thus one cannot predict whether such a large group can come to a unanimous decision. Also, there are certain states, such as Rajasthan, that have huge revenue villages. In these cases, it may be that only a handful of influential people are deciding matters without the participation of the others.

From a conservation perspective, it is inconceivable how a forest would look after the settlement process is complete and the forest dwellers are again residing within forests. Whether such rights should be restricted over a concentrated area or whether they should be allowed to spread over entire forestlands needs to be explored. Further, the federal government has not decided how much forestland can be allowed to get diverted to fulfill the claims under the Forest Rights Act. In other words, there is practically no limit to the claims. While it is important to undo historical injustices, it is equally important to ensure that there are enough forest resources left for future generations. In particular, rights such as the right to convert pattas into titles and the right to use forestland for self-cultivation could mean the end of the remaining forests and wildlife sanctuaries in India.

While the intention to undo historical wrongs and to provide forest dwellers a voice in developmental projects in their areas is laudable, wisdom demands that such efforts should have been undertaken without risking the denudation of forests and endangerment of wildlife.

Wildlife Protection Corridors Impact on Development

Wildlife corridors and buffer areas are vital for biodiversity preservation and species conservation. They help maintain biodiversity, allow populations from one protected area (PA)[1] to migrate to the other and interbreed, and reduce instances of man-animal conflict. Corridors are equally important for the local community because they prevent the invasion of predators and herbivores into agricultural lands and human settlements. Corridor management thus forms an essential component of PA management.

India is home to some of the finest natural corridors for wildlife, such as the Kaziranga-Karbi Anglong elephant corridor at Panbari in Assam, which connects the elephant populations of Kaziranga National Park and South Karbi Anglong Wildlife Sanctuary, comprising nearly 2,000 wild elephants. A number of corridors also exist between the PAs of the Western Ghats and the adjacent coastal belts. Nevertheless, the existing corridors are not enough, and the ideal situation would provide wildlife the means to migrate between several PAs. The fact that so few natural corridors remain makes it all the more important that they be preserved.

Lately, wildlife corridors in India, whether natural or man-made, have been facing existential threats from increasing commercial and human activities around such areas. The recently released Tiger Estimation of 2010 shows some improvement in the number of tigers in the wild since the last tiger census in 2006. However, the findings also point to the alarming depletion of corridors and buffer areas outside the PAs. The report states that the area occupied by tigers outside PAs has decreased considerably. Over the years, infrastructure projects, highways, mining activities, and human habitations have been slowly but persistently spreading inside the forests, coastal regions, and other ecologically significant areas, thereby reducing the gap between human habitations and PAs. This may, in the long run, result in serious man-animal conflicts and the impeding of conservation efforts. In the recent past, several cases of man-animal conflict (especially fatal interactions) have been reported from different PAs in India. This situation warrants comprehensive planning and implementation, both at the federal and the state

1 The term Protected Areas comprises national parks, sanctuaries, and community and conservation reserves as notified under the Wildlife Protection Act of 1972.

level, for ensuring adequate protection to the areas around PAs, including corridors.

The government must accord legal protection to these sensitive areas to prevent the further depletion of corridors and buffer areas around PAs. The existing laws contain various provisions that may be used either independently or in combination with each other to address specific threats faced by each corridor and to fulfill its conservation needs.

For instance, some of the intervening areas or corridors fall within the ambit of notified "forests," and, thus, commercial and human activities can be regulated in such areas under applicable state forest laws. However, the declaration of corridors as "forests" may not be appropriate in the case of coastal belts, plateau tops, rocky escarpments, or waterfalls. Further, the process of identification, declaration, and demarcation of forests and the settlement of rights over the area under the applicable state forest laws is a cumbersome and time-consuming process.

Alternatively, or in addition to the above, the relevant provisions of the Wildlife Protection Act (WLPA) of 1972—the primary legislation governing the establishment and management of PAs across the country—can also be applied for corridor protection and management. The WLPA empowers state governments to declare any area owned by the state, particularly the areas adjacent to national parks and sanctuaries and those areas that link one PA with another, as "conservation reserves" in order to protect landscapes, seascapes, and various wildlife habitats. The management of a conservation reserve, so declared, is to be undertaken by a conservation reserve management committee, which comprises representatives from forest and wildlife departments, the department of agriculture and animal husbandry, village panchayats,[2] and nongovernmental organizations. Today, India has more than 40 conservation reserves. A number of these reserves include elephant corridors in various parts of the country. In a conservation reserve, the chief wildlife warden has ample powers to take steps as he or she may deem necessary for habitat improvement. Thus, although a number of commercial activities that threaten the wildlife and biodiversity in a corridor may be regulated inside a conservation reserve, such regulation essentially depends on the will and wisdom of the wildlife warden.

The corridors may also be protected by declaring them "ecologically sensitive areas" (ESA) under the Environment Protection Act (EPA) of 1986. Under the EPA, the Ministry of Environment and Forests (MoEF) is empowered to restrict or prohibit certain industries or operations in an area on the basis of considerations, like biological diversity, environmentally compatible land use, or proximity to PAs. The ESA model offers a centralized and consistent approach that may be used to accord protection to vital biodiversity hotspots and intervening areas across the country. It also contains an element of flexibility, as each ESA may be managed as per its unique conservation needs. The Wildlife Conservation Strategy of 2002 stipulated that land falling within 10 kilometers of the boundaries of national parks and sanctuaries should be notified as eco-fragile zones. The National Wildlife Action Plan of 2002-2016 also proposed that all identified areas around PAs and wildlife corridors be declared as ESAs.

In its order dated December 4, 2006,[3] the Supreme Court suggested that the states and union territories forward proposals for the declaration of eco-sensitive zones around its PAs to the MoEF. However, very few states, among them Haryana, Gujarat, Assam, and Mizoram, have done so. Recently, in December 2010, the MoEF issued Guidelines for Declaration of Eco-Sensitive Zones around National Parks and Wildlife Sanctuaries (Guidelines) in order to provide guidance to state governments to develop their own state-specific regulations in this regard.

The Guidelines emphasize that the purpose of creating ESAs around national parks and sanctuaries is to create some "shock absorbers" or transition zones. Therefore, the commonly used parameters for defining ESAs, such as the richness of flora and fauna, slope, rarity of species, and others, cannot be applied in the case of ESAs around PAs. The Guidelines stress the importance of extensive studies on the land use pattern, the presence of different activities, industries around the PA, and so on, prior to deciding whether the area should be covered under the proposed ESA. The activities conducted in the proposed area may be categorized as "prohibited," "restricted with safeguards," and "permissible." The Guidelines classify activities such as commercial mining, the setting of saw mills, the commercial use of firewood, and the establishment of hydroelectric projects as prohibited activities. The felling of trees, erection of electrical cables, and the widening of roads may be permitted subject to certain conditions. The Guidelines also propose that organic farming, rainwater harvesting, and the use of renewable energy sources should be actively promoted in ESAs. So far as the extent of ESAs is concerned, the Guidelines stipulate that they should be flexible and PA-specific; however, as a general principle, an ESA could be up to 10 kilometers wide. As

2 Panchayat is a vernacular word that refers to local bodies of decentralized self-governance. The term "village panchayat" refers to elected members of the village assembly.

3 Goa Foundation v. Union, Writ Petition (Civil) No. 460, 2004.

per the Guidelines, state governments are required to send proposals identifying the areas around PAs to be declared as ESAs to the MoEF for further processing and notification.

Though the Guidelines recommend that the corridors should be declared ESAs, it is primarily up to the states to ascertain in each case whether ESAs or conservation reserves would provide better protection. Further, states are free to use a combination of different models to address the challenges faced by a different corridor. Effective corridor management also necessitates effective coordination between different state governments, as there are a number of PAs and corridors that straddle the boundaries of different states.

The corridors are also regulated as biosphere reserves or buffer zones, but there are no substantive guidelines for the management of buffer zones or biosphere reserves in India.[4]

There are other environmental regulations in India that accord special protection to the areas around PAs. In various laws and rules regulating commercial activities from an environmental protection perspective, such as the Environment Impact Assessment Notification, 2006 and the Coastal Regulation Zone, 2011 Notification, proximity to PAs is an essential factor to be considered in permitting any commercial activity.

In view of the recent revelations regarding the fast depletion of corridors and buffer areas, it is hoped that state governments would take appropriate steps to protect, preserve, and improve the corridor network in India by applying the Guidelines formulated by the MoEF.

4 Buffer zones and biosphere reserves are administrative categories and are not created under any statute.

Urban Plantations: Are They Forests?

Over the years, there has been an upsurge in afforestation and plantation projects in India. However, whether the afforested areas and plantations could be treated on par with "forests" or "forestland," which enjoy the restrictive provisions of the Forest Conservation Act (FCA) of 1980 was, until now, a moot question. In a recent order, the Supreme Court distinguished urban parks and plantations from forests and held that there is no universal rule that every urban plantation would have to be treated as forest or forestland.

In *Construction of Park at Noida Near Okhla Bird Sanctuary v. Union of India*,[1] the Court was faced with the question of whether plantations grown for the purpose of creating urban forests would fall under the definition of "forests" and whether the land beneath it would be considered as forestland. Also at issue was whether the felling of trees from such forestland would require prior clearance under the FCA.

The Supreme Court observed that it is inconceivable that trees planted with the intent to set up an urban park would turn into a forest and that land that had been agricultural would be converted into forestland within a span of 10 to 12 years. Though the Court had earlier given broad interpretation to the terms "forest" and "forestland" as used in the FCA, in the present case it held that however broad the definition of forest, it must relate to the context. It is pertinent to note that the Supreme Court, in a December 12, 1996, order in *T.N. Godavarman v. Union*, held that the word "forest" must be understood according to its dictionary meaning, without regard to whether they are statutorily recognized forests or not. The term "forestland" as occurring in Section 2 of the Forest Conservation Act of 1980 was defined to include not only the "forest" as understood in the dictionary sense, but also any area recorded as forest in the government record, irrespective of the ownership. Though several definitions exist for the term "forest," it is generally understood as an ecosystem comprising trees, shrubs, vines, grasses, other herbaceous (non-woody) plants, mosses, algae, fungi, insects, mammals, birds, reptiles, amphibians, and microorganisms living on the plants and animals and in the soil.

In the *Bird Sanctuary* case, the Court noted that a man-made forest may be a forest just like a naturally grown one, and that non-forestland may also change its character and become forestland. But it stressed that this cannot be a rule of universal application and must instead be examined in the specific facts of each case. Thus, whether a man-made forest or an urban forest falls within the definition of "forest" has to be ascertained on a case-by-case basis.

This order of the Court has been gladly accepted by industry leaders, since developers and project proponents can consider locating projects in an urban plantation area without going through the elaborate processes of forest clearance.

1 (2011) 1 Supreme Court Cases 744.

Plastic Waste (Management & Handling) Rules of 2011
The Ministry of Environment and Forests (MoEF) notified the Plastic Waste (Management and Handling) Rules of 2011 (Plastic Wastes Rules) on February 4, 2011, in supersession of the Recycled Plastics Manufacture and Usage Rules of 1999.

The Plastic Wastes Rules provide for the compulsory registration by manufacturers of plastic carry bags and multilayered plastics and the recyclers of the said products. The term "manufacturer" includes not only the persons engaged in the manufacture of plastic carry bags and multilayered packaging, pouches, etc., but also those who use such materials in the packaging of a product.

The Plastics Wastes Rules prohibit the use of plastic sachets for storing, packing, or selling gutkha, tobacco, and paan masala. The Rules also prohibit the use of carry bags made out of recycled or compostable plastics for storing or packaging foodstuffs. Detailed guidelines have also been stipulated for plastic waste management.

National Ambient Noise Monitoring Network Launched
On March 23, 2011, the Central Pollution Control Board (CPCB) established the National Ambient Noise Monitoring Network (NANMN) covering 35 locations in seven metro cities of India, including Delhi, Lucknow (Uttar Pradesh), Hyderabad (Andhra Pradesh), Mumbai (Maharashtra), Chennai (Tamil Nadu), and Bangalore (Karnataka). The NANMN aims to monitor noise for compliance with the prescribed norms and to assess the adverse impact of noise on human health and environment.

Indian Council of Forestry Research and Education Recognized as India's First Certification Entity for Clean Development Mechanism

The Indian Council of Forestry Research and Education (ICFRE) has become the first Designated Operational Entity (DOE) in India to be accredited by the Executive Board of the Clean Development Mechanism (CDMEB) to validate, verify, and certify Clean Development Mechanism (CDM) projects pertaining to afforestation and reforestation across the country. The accreditation to the ICFRE is valid for a period of three years from the date of issuance. Globally, the CDMEB has accredited 17 DOEs for CDM afforestation and reforestation projects, including the ICFRE. Out of these 17 DOEs, very few are from developing countries (India and Colombia). The accreditation of the ICFRE is certain to provide a stimulus to CDM forestry projects in the country.

Mapping of the Coastal Hazard Line in India to Enhance Preparedness for Sea-Based Disasters
Under the World Bank-assisted Integrated Coastal Zone Management Project, the MoEF has signed an agreement with the Survey of India (Department of Science and Technology) to map, delineate, and demarcate the hazard line along India's seven-kilometer-wide coastal belt. The hazard line is a composite line of the shoreline changes (including sea-level rise) due to climate change, tides, and waves.

This initiative of the MoEF forms a critical part of its responsibilities toward the planned management of the country's coastal zone. Under this World Bank-assisted project, the hazard line for the mainland coast of India will be mapped, delineated, and demarcated on the ground over a period of five years. This will include the collection and presentation of data, identifying flood lines over the last 40 years (which includes sea-level rise impacts), and a prediction of erosion to take place over the next 100 years.

India Tiger Estimation 2010 Released
The Government of India has released the results of the National Tiger Assessment of 2010. According to the assessment, the tiger population in the wild in India is between 1,571 and 1,875 (older than 1.5 years). In comparison with the Assessment of 2006, the current population estimate shows a 12% increase. However, there is an alarming decline in the tiger habitat from 93,600 km^2 to 72,800 km^2 (see story on page 6).

A comprehensive monitoring exercise was carried out by the federal government in partnership with various nonprofit organizations and local communities between December 2009 and December 2010, spread over three phases, including the collection of field data by forest staff, the analysis of habitat status of tiger forests using satellite data, and camera trapping. Under this monitoring exercise, certain new areas were assessed, including the Sundarbans (West Bengal) and parts of Maharashtra, Uttaranchal, and Assam.