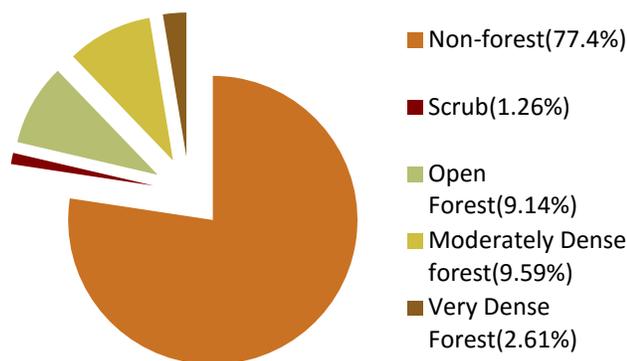


# High Level Committee Report on Review of Environmental Laws

## *A Summary and Analysis of Recommendations for Environmental Governance*

Ministry of Environment, Forest and Climate Change (MoEFCC), is the central nodal agency for planning, promotion, co-ordination and implementation of environmental and forest policies and programmes. The Constitution of India enumerates the responsibilities of the State towards environmental protection under the Directive Principles of State Policy (Article 48-A)<sup>1</sup>. The Ministry's prime responsibilities encompass conservation of India's natural resources including its lakes and rivers, its biodiversity, forests and wildlife along with prevention and diminution of pollution. About **21.34%** of the total land area of the country is under forests (or tree cover)<sup>2</sup>. **Despite significant increase in the areas with dense forest cover<sup>3</sup> (2402 sq. kms) and open forest areas<sup>4</sup> by 2402 sq kms and 4,744 sq kms respectively, there has been an alarming decrease of 3371 sq. kms in the areas with moderate dense forest cover<sup>5</sup>.**

**Forest Cover of India**



**Classification of Forest Land Cover**

Class	Area (sq kms)
Very Dense forest	85,904
Moderately dense Forest	3,15,374
Open Forest	3,00,395
<b>Total forest Cover</b>	<b>7,01,673</b>
Scrub	41,362
Non - Forest	25,44,228
<b>Total Geographical Area</b>	<b>32,87,263</b>

There is rampant destruction of the forest cover due to an increased industrial and real estate expansion coupled with weak enforcement of compensatory afforestation and increased judicial interventions in forest and environmental matters. There is need for a more robust and credible mechanism to implement environmental laws.

### Context

A committee headed by **TSR Subramaniam**, was entrusted with the task of reviewing and recommending amendments in the existing laws pertaining to environment in 2014. The committee was tasked to assess the implementation of the 6 environment acts, namely,

<sup>1</sup> The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

<sup>2</sup> India State of Forest report, 2015

<sup>3</sup> All lands with tree canopy density of 70% and above

<sup>4</sup> All lands with tree canopy density between 10%-40%

<sup>5</sup> All lands with tree canopy density between 40%-70%

1. Environment (Protection) Act, 1986
2. Forest (Conservation) Act, 1980
3. Wildlife (Protection) Act, 1972
4. The Water (Prevention and Control of Pollution) Act, 1974
5. The Air (Prevention and control of Pollution) Act, 1981
6. The Indian Forests Act, 1927(added on 18/09/2014)

The committee in its report **“interprets the existing acts and realities towards redesigning policy space for administering environment, forest and wildlife related laws.”**

Lack of performance by the state in environmental matters, delayed project proposals and failure to define any clear definition of ‘forest’ are some of the key reasons that has led to an increase in the number of judiciary interferences in environment cases. The TSR committee has recommended specific amendments for the acts to meet the overarching aim of improving environmental legislation. This was done with an intention to restore the executive bodies their authority by increasing their capacities to implement environment policies. **The recommendations envisage tools for the executive to administer environment, forest and wildlife related laws, especially focused on global warming, environmental degradation, loss of biodiversity and the contestations of natural resources that may lead to conflicts.**

## **Key Recommendations**

### **1. Creation of new umbrella legislation; ELMA, Environment Law (Management) Act.**

This is based on **“single window”** concept, which will strengthen the project clearance process, along with penalizing or prosecuting the non- performance condition of such clearances. Moreover, it will provide for an appellate mechanism against any decision taken by the ministry or bodies at the national and state level, in respect to clearances within a certain time (3 months recommended). At the later stage, the committee recommends the Air Act and the Water Act to be merged with the EP Act.

The concept of **“utmost good faith”** is induced through this new legislation such that the applicant seeking for clearance is made legally responsible for all his declarations. This concept is drawn from Marine Insurance Act 1993 wherein, the insured is required to disclose fully and accurately every material circumstance regarding the particular contract of insurance.<sup>6</sup> The committee recommended this concept for clearance and monitoring the conditions of the environmental projects. Under this good faith concept, project proponent (applicant) self declares any material, report, and details about the project while applying for environmental clearance. Any misinterpretation or suppression of vital information /details found during clearance or post sanction of clearance will subject the applicant to heavy penalties or cancelation of the clearance and even possible imprisonment.

The committee proposes to create agencies at National and State level, **National Environment Management Authority (NEMA)** and **State Environment Management Authority (SEMA)**. All projects and activities are broadly categorized in two categories based on the spatial extent of potential impacts and potential impacts on

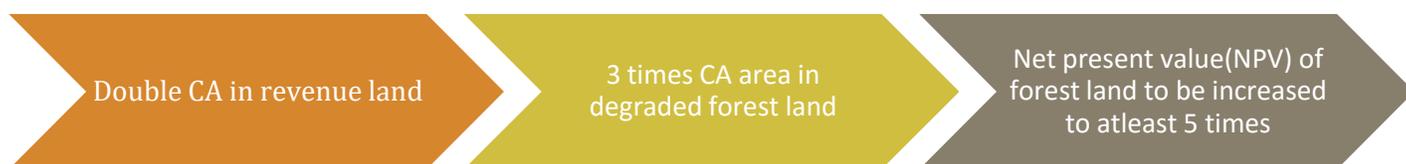
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<sup>6</sup> Marine Insurance Act 1993

human health and natural and manmade resources.<sup>7</sup> These agencies will be established to evaluate project clearances, using technology and expertise in a time bound manner, hence providing single window clearance for 'Category A' cases through NEMA and 'Category B' cases through SEMA. These agencies will also be responsible for formulating the conditions that are to be imposed on project components before giving 'consent', along with an impact assessment done of the potential environmental damage. NEMA at the Centre will be the designated body for processing approvals of all projects under the acts administered by the Ministry. Subsequently, the Central Pollution Control Board and corresponding state agencies will be subsumed. Moreover, a fast track procedure for all linear projects such as railways, roads and transmission lines along with power and mining projects are prescribed in this new mechanism.

## 2. Compensatory afforestation- 'No- Go' Areas

Compensatory afforestation involves increasing plantation in order to compensate loss of forest cover. However, this plantation does not ensure regeneration of forest ecosystem and its conservation. Afforestation is confined to meeting specific forest cover area as against the area cleared. It lacks the vision to develop environmental infrastructure that regenerates ecology that is lost during the process of deforestation. The committee in this regard, has recommended a revision in the existing Compensatory afforestation policy. They are as follows:



In addition, such revisions aim to encourage industries and other holders of private land to participate. **The Committee also recommends identification of 'no go' areas with 70% canopy cover and 'Protected Areas' that can't be disturbed without the approval of the Union Cabinet.**

**National Compensatory Afforestation Fund management and Planning Authority (CAMPA)** was established by the Supreme Court to manage the funds pooled by the user agencies. The State CAMPAs received 10% of the funds from this pool fund, for afforestation and forest conservation. The overall utilisation of the CA funds by the states was only 61%. Out of an amount of 2963.24 crores of CA funds released during the period 2009-12, only 1775.84 crores were utilised by the states<sup>8</sup>.

**Table showing funds transferred by GOI to state**

Year	Amount in Crores
2009-10	983.86
2010-11	1036.31
2011-12	943.07
2012-13	971.88

<sup>7</sup> Gazette of India, Extraordinary, Part-II, and Section 3, Sub-section (ii) MOEF, 2006

<sup>8</sup> Ministry of Environment, Forest and Climate change

<b>2013-14</b>	1049.87
<b>2014-15</b>	1054.90 <sup>9</sup>

The **Compensatory Afforestation Bill, 2015** was introduced in the Lok Sabha on May 08, 2015, which proposed establishment of National Compensatory Afforestation Fund (NCAF) under Public account of India and State Compensatory Afforestation Fund (SCAF) under the Public account of each state. It also proposed a reversal in the fund distribution between centre and the state; 90% of the funds to the states and 10% to the centre.

### 3. Rationalization of the existing acts

The approach of the committee to assess the implementation of the acts was to first analyse the various court orders and judicial pronouncements, followed by recommending amendments for the specific acts. The committee recommended revisions in the **'Wildlife Protection Act and Rules'**. Eco sensitive zones around the protected areas need to be demarcated followed by enhanced punishments for the offences under the WLP Act. The National Wildlife Action Plan emphasises in situ conservation, with people's support, for effective management of protected areas and protection of wildlife.

**'Environmental reduction cost'** is estimated for any industrial project and pre-identification of locations for industries are done through environmental management policies and programmes along with environmental mapping. A regime based on technology along with deterrent penal action is formulated for its effective monitoring.

## Challenges

One of the major critiques of this report has been the non-involvement of the experts/institutions and NGOs from the field of environment. **The Standing Committee Report of July 2015 stated that the HLC report was prepared by members not belonging to the concerned field of environment and had insufficient public hearings for public consultation.**

### 1. On Implementation

The HLC report focused majorly on the clearances and approvals rather than the nuances and complexities of environmental governance. The legal framework, ELMA as proposed by the committee, will replace the Central Pollution Control Board and State Pollution Control Board. However, there are no recommendations or guidelines defined by the committee regarding how ELMA will be harmonized with the existing Environmental Protection Act as well as the Water and Air Act. As noted by the civil society organizations before the standing committee, the recommendations of the HLC report may lead to multiplicity of institutions and authorities with very limited power and capacity, thus depriving the process of strengthening the existing bodies.

Reforming laws and streamlining of processes is feasible with adequate resources and functions. Currently the central and state pollution board lack manpower.

<sup>9</sup> Lok Sabha question number 25 (unstarred)

## 2. Compensatory Afforestation (CA)

Compensatory Afforestation is limited only to tree plantations. Experts have recommended ecological restoration as an alternative to tree plantation. Otherwise, tree lands are noted to be poor substitute for forests as they do indicate increase in forest cover quantitatively but do not ensure the qualitative aspect of environmental restoration. In addition, most states do not have enough land for CA. The total forest cover of India in 2015 was 7,01,673 sq km (21.34%) and tree cover constituted 2.82% i.e. 92572 sq km of the total geographical area<sup>10</sup>.

## 3. Clearance procedures

One of the major challenges in the recommendation is the 'good faith' concept. If not monitored efficiently, it gives leverage for industries to break/alter environmental laws by suppressing facts or important details about the project. Moreover, this may dilute public participation, as local communities will no longer participate in the process of environmental clearance.

## 4. No Go areas:

HLC recommends that only areas with 70% canopy should be declared as a 'no-go' area. However, there are areas like grasslands, wetlands, deserts, which are extremely vital eco systems, need protection and have been excluded from the 'No Go' areas.

## Conclusion

The TSR Subramaniam Committee has made recommendations to balance the complex equilibrium between environment conservation and development for sustained equity. The new guidelines recommended by the committee are to develop a more vigorous and sound mechanism of implementing environment laws. **However, one of the biggest challenges of these recommendations are that it has the possibility of diluting the existing legal and policy structure established to protect our environment.** The process of recommending guidelines for environmental governance must involve reforming current laws, strengthening the existing institutions and streamlining the clearance and evaluation process.

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<sup>10</sup> State forest report, 2015