Mining

Laws like the Forest (Conservation) Act 1980, the Wildlife (Protection) Act, 1972 or the Environment (Protection) Act, 1986 create the legal (environment-related) frameworks within which operations like mining etc can take place. These laws can also be used to set in place further restrictions or check violations. The judiciary can decide if violations or executive processes (MoEF or State Governments) like granting of environmental clearances are within the ambit or are violative of these established laws. These laws also outline the legal status of various land regimes (statutory protective status can be imparted to certain kinds of land like National Parks or Wildlife Sanctuaries, Reserved or Protected forests) and violations of these regimes can be seen in contravention to these established laws. Any violation of the law, dealing with the environment, can be brought to the notice of the courts (High or Supreme Court) or other tribunals like the National Environment Appellate Authority or the CEC. The judgement largely depends on the **interpretation of the law by the concerned court/tribunal.** It is largely dependent on the sensibility and interpretation of the law by individual judges.

Even though laws/policies over the years seems to have put in place a “just” framework vis-à-vis environmental protection, other laws and procedures, for e.g. Mining laws which facilitate the easier establishment of mining operations and environmental clearance procedures for these same processes which are poorly implemented, weaken the original scope of the “environmental” laws. On the part of the MoEF, the **dilution/weak implementation/lack of verification and monitoring of compliance of environmental clearance procedures** (evident in the repeated amendments to the EIA notification, 1994) for the smoother facilitation of industrial processes has weakened the very basis of the Acts which are supposed to guide its functioning. As laws and policy statements, several of these laws are pretty progressive with respect to their perception of forestland and biodiversity, the problem seems to be with implementation and monitoring and skewing other development policies in favour of industrial interests which come in contravention of most of these laws.

Policies/laws over the years that have dealt with the protection of forestland/influence mining sector

<u>Forest (Conservation) Act, 1980</u>

> Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing -

1. that any reserved forest shall cease to be reserved;
2. that any forest land may be used for any non-forest purpose;

3. that any forest land may be assigned by way of lease or otherwise to any private person or to any authority ,corporation, agency or any other organization not owned ,managed or controlled by Government;
4. that any forest land may be cleared of trees which have grown naturally in that land or portion ,for the purpose of using it for reafforestation.

National Forest Policy, 1988

Several clauses which impose restrictions on ecologically harmful activities (including mining) and subordinates any activity which “derives direct economic benefit” in contravention to the principal aim of “protecting ecology”

That diversion of any forest land for non-forestry purposes must be carefully scrutinised from the point of “social and environmental costs and benefits” / construction of dams, mining, industrial development should be consistent with conservation

Emphasizes restoration of mining areas and no new granting of mining leases without proper management plans and proper enforcement

National Wildlife Action Plan (NWAP), 2002

- Protection of forests and ecological security cannot be made subservient to short-term economic gains
- Conservation should be made a high-priority area with State Governments and the Central Government and must be integrated in all development programmes
- Identified the requirement of a National Land Use Policy wherein “conservation” would not simply be restricted to Wildlife Sanctuaries and National Parks

Provisions relevant to mining

With regard to the conservation of wild and endangered species and habitats, areas under Protected Areas and animal corridors to be identified and declared as eco-fragile areas under the Environment Protection Act, 1986

Directives were given to States and Union Territories with regard to the restoration of degraded habitats outside Protected Areas, wherein such habitats would need to be identified and prioritized for regeneration. In addition, linkages between habitats and animal corridors would need to be identified and restored

Integration of NWAP with other sectoral programmes

- biodiversity protection to be made significant within national planning

- national decision-making bodies would need to be engaged with directly
- recommendations issued to other Ministries…..with regard to mining, the NWAP recommends –

"…to exclude wildlife protected areas/corridors from mining plans. Proper rehabilitation of degraded and abandoned mining areas should be done. A programme to phase out all existing operations in wildlife areas should be prepared"

Adoption of Wildlife Conservation Strategy, 2002

- No diversion of forest land for non-forest purposes from critical and ecologically fragile wildlife habitat shall be allowed.
- Lands falling within 10 km of the boundaries of National Parks and Sanctuaries should be notified as eco-fragile zones under Environment (Protection) Act and Environment (Protection) Rules.

National Biodiversity Strategy and Action Plan

Fundamental stress is on the fact that planning and decision-making should focus on ecological and livelihood security

Recommends strategies and actions –

- National land and water use plan (mapping of areas of ecological & livelihood significance and excluding these areas from commercial development processes)
- Decentralized institutions of governance
- Development-related policies, laws and schemes reoriented to ensure ecological and livelihood security
- Eco-regional planning
- Inter-sectoral and inter-departmental coordination to integrate biodiversity concerns
- Expansion and strengthening of conservation sites (PAs, CCAs, ESAs, Biosphere Reserves…)
- Strengthening of Environmental Impact Assessment procedure
- Reorientation of State and National budgets to integrate biodiversity concerns and environmental services and redirect funding for rural and urban development into conservation and sustainable use.

Water(Prevention and Control of Pollution) Act,1974

– regulatory bodies Central & State Pollution Control Boards

- consent required if mining process involves discharge of sewage or effluents into stream, well, sewer, land

Air(Prevention and Control of Pollution) Act,1981

Environmental (Protection) Act, 1986

- Central Government empowered to take measures "necessary and expedient for the purpose of protecting and improving the quality of the environment, and preventing, controlling and abating environmental pollution"
- Government can restrict areas in which industries, operations and processes may not be carried out or may be carried out subject to certain safeguards

Under Environmental (Protection) Rules, 1986 under EPA, factors which make restriction necessary include topography & climate of area, biological diversity if deemed necessary to be preserved, environmentally compatible land use, proximity to PAs

Environment Impact Assessment Notification, 1994

First comprehensive legislation for EIA and environmental clearance for a listed category of projects, under Schedule I of the notification 30 projects require environmental clearance

Specifically mining-related, as per EIA notification 1994, no environmental clearance required for –

i. mining projects for major minerals below 5 ha
ii. all mining leases for minor minerals
iii. prospecting, exploration of any minerals

Dilution of EIA notification through amendments

Amendment 4 May 1994

- site clearance for prospecting and exploration of major minerals in areas above 500 ha restricted only to major minerals and not all minerals as required in original notification
- not mandatory for Impact Assessment Agency (MOEF) to consult experts in decision-making on environmental clearances
- not mandatory for IAA to visit sites and interact with affected population and environmental groups
- availability of compliance reports, half-yearly reports of IAA "subject to public interest only"

- mining projects with lease above 5 ha for which EIA was applicable was restricted only to major minerals and not minor minerals

Amendment 10 April 1997

- introduction of Public hearings to EIA notification : details of public hearings would also inform recommendations of IAA
- "all projects proposed to be located within the radius of 25 km boundary of RFs, ESAs (NPs, WSs, Biosphere Reserves, critically polluted areas) and within 50 km of an inter-state boundary would require to be cleared by the Central Govt"

Amendment 27 January 2000

- "expansion or modernization of any activity (if pollution load is to exceed the existing one), or new project listed in Schedule I to this notification, shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Govt "
- this amendment specified that public hearing was not required, among other things, for mining projects (major minerals) with lease area up to 25 hectares

Amendment 21November 2001

- "Time period for completing public hearings: The public hearing shall be completed within a period of 60 days from the date of receipt of complete documents…"

Amendment 21November 2001

- mandatory for the EIA report to be available at a designated place 30 days prior to a public hearing (as soon as the notice for public hearing was issued (prior to this only an executive summary of the EIA report was required)

Under EIA notification, for site-specific activities like mining among others, "the project authorities will intimate the location of the project site to the Central Government in the Ministry of Environment & Forests while initiating any investigations and surveys. The C.G in the MOEF will convey a decision regarding suitability or otherwise….within a period of sixty days. The said site clearance shall be granted for a sanctioned capacity and shall be valid for a period of five years for commencing the…mining."

In brief,

(a) under EIA notification,

- site clearance for prospecting and exploration of major minerals in areas above 500 ha
- site clearance and environmental clearance for mining projects of major minerals with lease areas above 5 ha
- with August 2001 amendment to EIA notification, public hearings required only for mining leases of major minerals above 25 ha (prior to this amendment, public hearing was required for lease areas above 5 ha)

(b) Consent under Water(Prevention and Control of Pollution) Act,1974 and Air(Prevention and Control of Pollution) Act,1981

(c) Environmental clearance and public hearings not required for major minerals with lease areas below 5 ha and all minor minerals

(d) If diversion of Forest land is involved, forest clearance under Forest (Conservation) Act, 1980 is also required

Order of the Supreme Court dated 16-12-2002 (IAs 828, 833, 834-835, 837-838, 839,840,846 & 847)

"On consideration of the report of Central Empowered Committee dated December 14, 2002, we issue the following further directions:

(1) Mining may be permitted in Forest areas where specific prior approval under Section 2 of the FC Act has been accorded by the Ministry of Environment and Forest. However, in view of this Court's order dated 14.2.2000 passed in I.A.No. 5484 no Mining activity is permitted within areas which are notified as Sanctuary, National Park under Sections 18, 35 of the Wild Life (Protection) Act, 1972 or any Sanctuary, National Part or Game Reserve declared under any other Act or Rules made thereunder even if prior approval have been obtained from the MoEF under the FC Act in such an area.

(2) No Mining activity would be permitted in respect of areas where there is a dispute of applicability of FC Act, till such time the dispute is resolved or approval under the FC Act is accorded, in addition to order already passed in Writ Petition No.4677/1985"

Hearing in Godavarman case by CEC in August 2004

Two primary points were raised in this hearing -

The first concerned the need to develop an effective polluter pay principle wherein in a situation where an illegal activity is taking place e.g. Mining in a Sanctuary or National Park, the erring company/unit should be directed to pay for the costs for the restoration of the ecology or the profits of the company, which ever is higher.

The second concerns the need to create buffer areas around National Parks and Sanctuaries in order to effectively protect wildlife habitat from Mining activities. The CEC suggested that a 100 metres buffer be designated around each Protected Area. This was not agreed to by the Amicus Curie who suggested to the Court that a minimum of 500 metres of buffer be established.

The Amicus also brought to the notice of the court of the Court of the recommendation of the Indian Board for Wildlife to designate 10 Km around National Parks as eco sensitive zones. The Court adjourned the matter and directed the Ministry of Environment and forests to further examine the issue and place its views.

Mining-related laws/policies/recommendations which impinge upon environment-related laws

Several laws related to mining have sufficient clauses dealing with the protection/regeneration of the environment, even laying down clauses which state that mining shall not be undertaken in ecologically sensitive and biodiversity-significant areas. The environmental provisions within mining laws are primarily related to environmental management and mitigation.

For example, the National Mineral Policy 1993 in its section on Mineral development and protection of environment states – “Extraction and development of minerals are closely interlinked with other natural resources like land, water, air and forest. The areas in which minerals occur often have other resources presenting a choice of utilization of the resources. Some such areas are ecologically fragile and biologically rich. It is necessary to take a comprehensive view to facilitate the choice or order of land use keeping in view the needs of development as well as needs of protecting the forests, environment and ecology. Both aspects have to be properly coordinated to facilitate and ensure a sustainable development of mineral resources in harmony with the environment.”

But the ecological services which these areas provide as well as their economic significance in the lives of people who inhabit these areas are not adequately represented in the cost-benefits analysis of most mining projects. Further, the National Mineral Policy 1993 (concurrent with the liberalization of the mining sector) inverted the earlier hierarchy of “regulation” before “development” as enshrined in the MM (Regulation and Development) Act. The Act soon became the MM (Development and Regulation) Act.

In the National Mineral Policy section on ‘small (mineral) deposits’, “efforts will be made to promote small-scale mining of small deposits in a scientific and efficient manner while safeguarding vital and environmental interests. In grant of mineral concessions for small deposits in scheduled areas, preference shall be given to the scheduled tribes.” - This section becomes significant and subject to critique if seen in the light of the August 2001 amendment to the EIA notification which increased the minimal lease area for which public hearings would be necessary from 5 ha to 25 ha. Also “small deposits in scheduled areas, preference …scheduled tribes” if considered in the light of the pressure of the mining lobby to amend the Vth Schedule of the Constitution to allow for the transfer of land from tribals to non-tribals (as a consequence of the Samatha judgement), to allow the entry of mining interests into Scheduled areas, which hold some of the richest deposits of minerals in the country.

“While both environmental laws and environmental provisions within mining laws for in-operation mines are there, enforcement remains a critical issue…MoEF…”environmental provisions within mining laws” are not the ones which will be the main cause for conflict in the future. Partly because we have a full-fledged ministry (MoEF) to look at environmental aspects and a set of environmental laws which could more than fill in the gaps which are there in the mining legislation on environmental aspects. <u>The real conflict will be over access to land for mining</u>. It will be necessary to gauge in a just and fair manner <u>whether mining is an appropriate land use in a particular area or not</u>.” *(Undermining India – Neeraj Vagholikar & Kaustubh Moghe)*.

The pressure to divert forest land (mostly Reserved and Protected forests) for mining and other non-forestry purposes is immense, especially in mineral rich areas like Madhya Pradesh, Chhatisgarh, Orissa and Jharkhand. The Forest Advisory Committee is a committee set up by the MoEF which looks into critical issues like the setting up of industries and other non-forest activities in forest areas. The agenda of the last meeting held on 27.03.2006 included a discussion of a cumulative total of 4650 hectares of forest land to be diverted for the mining of iron-ore and coal in Orissa, Chattisgarh and Jharkhand. Another 901 hectares were to be discussed with relation to granting permission for prospecting. Between 1980 since the enactment of the Forest (Conservation) Act and 2002, the diversion of 5.76 lakh hectares of forestland for non-forestry purpose has been approved by the Ministry of Environment and Forests. Madhya Pradesh has legally diverted 2264 sq km of forest area between 1982 and 1997. Out of this, 1589 sq km (70%) has been diverted since 1990 (coinciding with the liberalization of the economy and the entry of private players and outside capital into what were earlier public sectors). The Forest Survey of India has assessed the actual loss of dense forest cover between 1993 and 1997 in Madhya Pradesh as being about 12,408 sq.km. In Orissa, 29,780 hectares of forest land has been diverted since the inception of the Act and 2005. With regard to mining in Orissa, mining leases have been granted for an estimated 79,339 hectares of land, out of

which 43,975 ha fall in forest areas. Till December 2005, this has involved the diversion of 10,400 ha of forest land.

"With the country's liberalised mining policy, 73 proposals of Foreign Direct Investment (FDI) have been approved by the Foreign Investment Promotion Board (FIPB) with an expected inflow of over Rs. 4,044 crore in the field of mineral prospection, exploration, processing and mining… the total value of the country's mineral production during 2004-05 was more than Rs 75,000 crore or $ 17,200 million which accounted for 2.6 per cent of GDP" (-statement of Joint secretary of the Union Mines Ministry, Ajita Bajpai Pande addressing an investors meet and conference on 'Harnessing mineral potential for industrial development in the north-eastern region' at Shillong on 18th November 2005). Even though the ecological significance of several forest tracts and biodiversity rich areas may be recognized by several laws, the significance of these areas as rich mineral deposits makes it alluring for any govt to encourage investment in these areas. This is especially visible in Orissa. Orissa's iron ore reserves are estimated at 5,428 million tonnes. Of this, 3,133 million tonnes is in mines leased out to private companies and 766 million tonnes has been given to government-run agencies. That leaves the State government with reserves of 1,529 million tonnes. Investors in this sector range from global giants such as South Korea's Pohang Steel Company (POSCO) to obscure ones such as Bhushan Steel. Besides iron ore (32.9 per cent of the country's reserves), Orissa has bauxite (59.95 per cent), chromite (98.4 per cent), coal (24.8 per cent) and manganese (67.6 per cent). At present, the only steel plant in the State is at Rourkela in Sundargarh district. Run by Steel Authority of India Limited (SAIL), it produces 1.6 million tonnes of steel per annum. Between 2003-05, the State government has signed 43 MoUs with private companies for the setting up of as many greenfield steel plants. These projects, when fully commissioned, will produce 58.4 million tonnes of steel per annum. The State Government's Steel and Mines Department estimates the investment in these steel plants to the tune of Rs.1,37,157.85 crores. The Union Cabinet in 2005 unveiled a new steel policy that seeks to increase the per annum steel production from 30 million tonnes to 100 million tonnes by 2020. An estimated Rs. 150,000 crores has been proposed as investment in mining related projects in Orissa in the next decade or so. Most of the areas where mining is proposed not only have some of the finest forests in the country, they are also the traditional homelands of hundreds of tribal communities besides supporting large numbers of endangered fauna like the tiger and the elephant. Shrinking habitats due to large scale mining have already denied elephant populations their traditional migratory corridors, as is evident in the Talcher belt, an area which has been severely mined for coal over the last few decades. This has heightened conflicts between animals and surrounding populations, impacting the interests of both.

Considering that most of these are forest areas, the issue of environmental and forest clearances for these mining interests become legally mandatory. If one takes the case of Orissa, the promise of such huge investments directly or

indirectly contradicts several laws and policies dealing with the interests of environment and forest protection. It is important to view repeated amendments to the EIA notification in this light, as well as pressures by the mining sector to simplify environmental clearance procedures to facilitate ease of granting land for mining purposes. In April 1998, the Ministry of Mines set up a National Committee which was to be "…the Apex Advisory Committee for monitoring and reviewing environmental aspects of mining activities". The first meeting of the Committee recommended that no environmental clearances should be required for major mineral mining leases up to 50 ha and that public hearings should be made compulsory only for mining leases above 500 ha. A workshop on "Environment and Forestry in mining areas" was organized jointly by the MoEF and the Federation of Indian Mineral Industries (FIMI) in August 1998 where it was recommended to the MoEF that the project threshold limit for obtaining environmental clearance should be raised to 50 ha and public hearings should not be made necessary for leases up to 50 ha. In September 2002, at the Mineral Advisory Council meeting, the Fed. Of Mineral Associations of Rajasthan suggested that leases up to 50 ha be exempted from environmental clearance. FIMI recommended that public hearings be made mandatory only for lease areas above 100 ha. Several amendments have been made to the EIA notification. (As have been outlined above in the section on EIA notifications and its amendments). Efforts of mining companies to circumvent established laws and regulations are commonplace – faulty EIA reports, lack of compliance, political pressure to grant clearances, biased public hearings. The responsibility for this lacunae lies equally with the MoEF and State Governments, measures with regard to implementation of procedures and regulations are extremely weak and susceptible to other kinds of pressures. The initial mining plans by Vedanta in the Niyamgiri hills of Orissa were deemed "illegal" by the Central Empowered Committee of the Supreme Court. (am going to look at how this was so and what the Court had to say with respect to this), after the MoEF had granted it clearance.

The pressure on mineral reserves within Protected Areas is also bound to increase. This is again evident in Orissa. In November 2005, BHP-Billiton, the world's largest mining conglomerate, applied to obtain a mining lease close to the Karlapat Wildlife Sanctuary in Kalahandi, Orissa. The Karlapat Sanctuary with an area of 175 sq km was notified in 1992 and at present is the only wildlife sanctuary in Kalahandi. It is a water rich area and is home to several species including leopards, tigers, elephants, black panthers, deer, sambhar and several varieties of birds. It is also rich in floral wealth and is a habitat for more than 25 types of orchids. The watershed of Khandualmali hills drains towards the Karlapat Wildlife Sanctuary and more than 35 streams originate from the hilltop. The Central Empowered Committee of the Supreme Court has held that the Karlapat mines are too close to the sanctuary and are part of the proposed South Orissa elephant reserve. The State Government had stated in 2004 that no mining activities would be allowed in this region of Khandualmalli hill. The company in its application asked for the allotment of a mining lease area in the

Khandualmali hill to extract rich bauxite deposits of the region. These deposits fall within a distance of three km from the Sanctuary boundaries and are hence classified as ecologically sensitive and protected under various legal provisions The Orissa Government has been under pressure from BHP-Billiton to denotify a portion of the Karlapat Wildlife Sanctuary and redraw its boundaries keeping in mind the rich bauxite deposits of the adjacent Khandualmalli hill and to enable it to get environmental clearance.

Changing land use – Panna Tiger Reserve, Madhya Pradesh

According to government records, Madhya Pradesh has "legally" diverted 2264sq km of forest area between 1982 and September 1997 with 70% of the loss having occurred since 1990. The Forest Survey of India's latest research reveals that between 1993 and 1995 the actual loss of dense forest cover in Madhya Pradesh was a massive 12,408 sq. km. Guidelines from the Central Ministry of Environment and Forests insist that industrial sites maintain a distance of at least 25 km from ecologically and/or otherwise sensitive areas, including National Parks and Sanctuaries.

The government owned National Mineral Development Corporation (NMDC) diamond mine is situated just outside the boundary of Panna Tiger Reserve and encroaches on Gangau Wildlife Sanctuary. It not only contravenes the Ministry's guidelines, but also violates Section 2 of the Forest (Conservation) Act, 1980 (FCA), Section 35 (6) and Section 25 of the Wildlife (Protection) Act, 1972 (WPA) and the Environmental (Protection) Act, 1986 (EPA).

NMDC's lease ran out in 1999 and their application for renewal has consistently been rejected. Mountains of solid waste material from the open-cast mine, pre- and post-treatment are dumped on surrounding forest land, encroaching on Panna Tiger Reserve and neighbouring Gangau Wildlife Sanctuary. According to the Jabalpur Nature Conservation Society, which has taken NMDC to court, 1400 cubic metres of waste are dumped every 24 hours in this precious forest area. Slurry from the mine also feeds into the Kaimasan nallah (stream) carrying the sludge to the Tiger Reserve so that "whatever water is flowing is highly polluted". NMDC have constructed permanent buildings on forest land that they do not even hold a lease for, across the road from Panna Tiger Reserve. According to senior Park officials, the mine has increased output by 30% and intends to expand. There are already five cases of sandstone mining in violation of the FCA in Gangau Wildlife Sanctuary which was notified in 1976 but neglected by the State government.