Beyond the Tsunami

Environmental Law Guide
An Analytical Guide for Deciphering Legal Content

2008

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Back cover photo: Sand dunes along the east coast, India (Photo credit: A. Sridhar, 2008.)
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Environmental Law Guide - An Analytical Guide for Deciphering Content of Laws in India

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Table of Contents

Executive Summary

The knowledge of environmental laws in the country is integral to making conservation and protection efforts effective. While such knowledge helps citizens find a legal framework within which to locate their efforts, the engagement of concerned individuals, NGO's, government officials and others in such processes is an important contribution to decision making processes as environmental considerations and priorities for development are only validated with the participation of all stakeholders who are affected by such decisions. The awareness of the intricacies of these laws also helps in understanding the deficits or limitations of these laws such as the lack of appropriate expertise in decision making or grievance redressal or even conflicting clauses between or within laws. In the post-tsunami context, an analysis of the laws pertaining to activities along the coast has exposed fundamental weaknesses and has revealed potential strengths in legislation not only in how the operation of these laws affects responses to such disasters, but also in how they affect conservation and development priorities in general, and the protection they offer to resources and dependent communities from natural and human influences.

Availability and efficient use of information is critical for the fruitful participation of individuals, groups and communities. The unavailability of laws and orders is a major deterrent to active participation, in addition to such information only being available in forms that are not easily comprehended by users without the knowledge of legal technicalities.

The Environmental Law Guide CD that has been produced therefore is aimed primarily at these target groups and is also a useful reference tool for those interested in conservation issues and environmental law.

A set of 7 laws that pertain to activities on the coasts were selected. Although there are other laws that deal pertain to coastal and marine areas and related activities, the exercise was restricted to these seven in particular to experiment with the utility of the format and design of the current exercise. A successful deconstruction of the laws selected will provide for a similar exercise to be carried out for other laws, pertaining to other areas as well, in the future. We seek to test this Guide to Environmental Law by distributing the same to various target groups, and seek their feedback so that the same formats and designs maybe applied to other environment and development related laws.

The following laws have been represented in the Guide:

- The Wild Life Protection Act, 1972
- The Water (Prevention and Control of Pollution) Act, 1974
- The Forest (Conservation) Act, 1980
- The Environment (Protection) Act, 1986
- The Environment Impact Assessment Notification, 2006
- The Coastal Regulation Zone Notification, 1991
- The Coastal Aquaculture Authority, 2005

For each of the laws (listed above), the Guide provides an illustrative break-up of the various sections into which the provisions of the law may be logically categorized. This is represented as what is referred to in the Guide as a 'Structure flowchart'. Each section is identified with a particular colour, and specific provisions (often represented as boxes/links of the same colour) are arranged in a manner that is easy for the reader to be able to navigate to a specific part of the law in a relatively simple and logical manner. The linkages among different parts of the same section, and those across section are also represented in these structure flowcharts. The use of the colour code provides a superficial illustration of how different parts of the law are linked to each other and a thorough navigation (following such linkages) within the guide demonstrates how the provisions pertaining to a particular section may be applicable in another. Therefore, while navigating through the guide, the reader not only has access to information that is categorically organized, but is also able to explore how one section of the law is connected to another. This in itself provides the framework for a preliminary analysis of the law.

For example, a section on 'Authorities' under a given law lists out the authorities, officers, etc. who may be appointed under that Act or under any other Act but having specific roles within the purview of the present Act. The section also provides a list of the functions assigned and the powers delegated to such authorities. This information is gathered from various relevant parts of the law, which is more often than not non-linearly organized in the main text of the Bare Act of the law.

As the Guide attempts to reach out interested citizens, government officials, students and conservation groups, the language used in the guide has been simplified and altered suitably from that of the text of the law, while ensuring that the meaning implied remains the same. However, the Guide does provide quick access to Bare Acts, amendments and notifications from which the information has been obtained. This has been provided in order not to undermine the utility of legal technicality and jargon and encourages the reader to consult the law from the Bare Act in order to recognize how the text translates from the Bare Act to the information provided in the Guide.

Each law, as organised in the Guide contains a 'Downloads section' which includes the Bare Act, rules, orders and notifications made under the Act, and amendments to the Act. Where relevant, guidelines issued by the Ministry of Environment and Forests in relation to a particular law have also been included. This information has been collected over the duration of the project through Right to Information applications (under the Right to Information Act of 2005), requests for gazetted documents from various government departments and various online legal resources.

The document accompanying the Guide contains a description of each of the laws as it appears in the Guide has been provided below. In addition, it also contains brief analyses of each of the laws.

The Wild Life Protection Act, 1972

The Wild Life (Protection) Act was enacted by the Government of India in 1972. It is a comprehensive national law that addresses protection and conservation of wildlife. It provides for the protection of plant and animal species and aims to ensure ecological and environmental sustainability.

In the Guide, the Act has been divided into four major sections: Authorities, Activities, Protected Areas and Zoos.

The Water (Prevention and Control of Pollution) Act, 1974

The Water Act was brought into force in 1974 and sought to provide for the establishment of agencies at the Central and State levels to provide for the prevention, abatement and control of pollution of rivers and streams, for maintaining and restoring the wholesomeness of such water and for controlling existing and new discharges of domestic and industrial wastes.

In the Guide, the Water Act has been divided into four major sections: Authorities, Procedures, Regulation and Prohibitions and Offences and Penalties.

The Forest (Conservation) Act, 1980

The Forest (Conservation) Act, that came into force in 1980 sought to check deforestation in the country by making the prior approval of the central government necessary for the de-reservation of reserved forests and for the diversion of forest land for non-forest purposes by state governments (or other authorities).

In the Guide, the Forest (Conservation) Act has been divided into four major sections: Authorities, Activities (requiring clearance under the Act), Submission and processing of proposals (for forest clearance) and Offences and Penalties.

The Environment (Protection) Act, 1986

This Act is considered the central legislation on all environmental matters. It was implemented as an umbrella legislation as it specifically addresses issues related to the environment and vests with the Central Government a powers to take actions for environment protection.

The Environment (Protection) Act in the Guide has been divided into four major sections: Authorities, Procedures, Regulations on Citizen Activities and Offences and Penalties.

The Coastal Regulation Zone Notification, 1991

The CRZ Notification was issued in the year 1991 using the provisions of the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986. The EP Act empowers the Central Government to delineate areas where anthropogenic activities can be regulated and restricted.

In the Guide, the CRZ Notification has been divided into five major sections: Authorities, Environmental Clearance Procedures, Projects requiring Environmental Clearance under the CRZ, Regulation of Activities and Offences and Penalties.

The Coastal Aquaculture Authority, 2005

The Coastal Aquaculture Authority Act, 2005 provides for the establishment of the Coastal Aquaculture Authority for regulating the activities connected with coastal aquaculture.

In the Guide the Coastal Aquaculture Authority Act has been divided into five major sections: Authorities, Regulations, Finances, Offences and Penalties and Guidelines (issued by the Central Government).

The Environment Impact Assessment Notification, 2006

The Environment Impact Assessment Notification which was notified on 14th September, 2006 supersedes the 1994 EIA Notification. The purpose of the notification is to impose certain restrictions and prohibitions on new projects and activities, or on the expansion or modernization of existing projects and activities based on their potential environmental impacts.

In the Guide, the EIA Notification has been divided into four major sections: Authorities, Environment Clearance Procedure, Categorization of Projects Requiring Environmental Clearance and Revocation and Rejection of Applications.

1. Introduction to the Environmental Law Guide

The Guide to Environmental Laws was produced by the members of the Coastal and Marine Programme at ATREE and the technical team with funding support from the United Nations Development Programme as part of the project titled *Post-Tsunami Environment Initiative.*

This document outlines the process of the preparation of the CD-ROM that contains the Guide to Environmental Laws in India. The document provides additional information containing an analysis of each of the laws that we have deconstructed here. We also provide a useful bibliography of select literature on each of the laws.

The Guide at present contains information on 7 select laws. These are the Wild Life Protection Act, 1972, the Water (Prevention and Control of Pollution) Act, 1974, the Forest (Conservation) Act, 1980, the Environment (Protection) Act, 1986, the Environment Impact Assessment, 2006, the Coastal Regulation Zone Notification, 1991 and the Coastal Aquaculture Authority, 2005

The authors of the Guide to Environmental Laws and the networks that they work with have several valuable but scattered information on several other environmental laws. We seek to test this Guide to Environmental Law by distributing the same to various target groups, and seek their feedback so that the same formats and designs maybe applied to other environment and development related laws. We seek the support of readers and various networks and interested persons in this. The Guide was produced in 2008 and we hope that our efforts extend beyond to make this a timeless tool.


The knowledge of environmental laws is integral to making conservation and protection efforts effective. Conservation efforts in India have met with success through the active involvement of local communities, tribal groups, forest-dwelling communities, fisherfolk unions, NGOs and citizen groups. Many motivated officials at various levels of government, have also contributed towards conservation beyond their call of duty.
However, legal text in the form of government orders and gazettes is largely unavailable to the public and is often unorganised. The meaning of legal terms and text can also be a challenge to navigate through. This impacts implementation and is responsible for the frequent skewed interpretations of laws. This CD hammers out the structure and meaning from a selection of laws, which make their nature, structure and power clear to the viewer.
This CD contains a wealth of information laws! You will find here carefully compiled documents on the main environmental laws in the country.
This CD was produced as part of the UNDP- assisted Post-Tsunami Environment Initiative by the Coastal and Marine Programme, ATREE.
environmental law
guide
Coastal Aquaculture Authority Act, 2005
Coastal Regulation Zone Notification, 1991
Environment (Protection) Act, 1986
Environment Impact Assessment Notification, 2006
Forest (Conservation) Act, 1980
Water (Prevention and Control of Pollution) Act, 1974
Wild Life (Protection) Act, 1972
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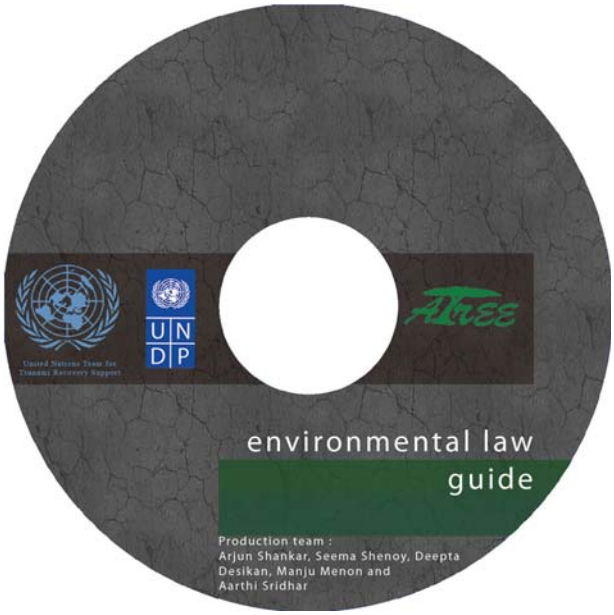
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2. The CD on Environmental Laws

Over the years, Nature, through its beauty and bounty, has drawn individuals and communities towards its protection and conservation in different ways. Planting, cutting, creation of gene repositories, reverence or worship of animals and plants, revival of wild or lost varieties of plants through the collection and exchange of seeds, creation of enclosures, ban on activities such as hunting/fishing or land use alterations, research and nature education, in rural or urban landscapes and seas are examples of sustainable use of natural resources. However, many of these activities are selectively facilitated, prohibited, managed or influenced by a regulatory regime that comprises of laws. By this we mean, legislations of the Centre or states, their rules, circulars, notification, administrative orders as well as orders of High Courts and the Supreme Court emerging from judicial pronouncements in various cases. The battery of laws and policies has also undergone change over time, through amendments by parliamentary procedures and departmental orders.

The knowledge of such laws is integral to making conservation and protection efforts effective. Not only is such knowledge imperative in drawing support for conservation efforts, it is also important in understanding the ways by which laws might impede genuine conservation efforts. So on the one hand, the knowledge of environmental laws helps citizens find a legal framework within which to locate their efforts, such as in the protection of trees or private lands with wildlife or protecting a landscape from destructive land use change. The awareness of the intricacies of these laws also helps in understanding the deficits or limitations of these laws such as the lack of appropriate expertise in decision making or grievance redressal or even conflicting clauses between or within laws.

Today the conservation efforts in India have the active involvement of local communities, fisherfolk unions, NGOs and students. These groups and individuals undertake conservation work with or without the support of government departments. There are also many examples of motivated government officials who have taken up conservation efforts well beyond what those expected of their official positions. This is especially true of officers posted in remote areas rich in biodiversity but lacking in basic supportive infrastructure such as transport and communication facilities.

Our experience over the past decade has been that information is critical to the kinds of interventions that are made. The unavailability of laws and orders is probably the most important feature of Indian law. Its exclusivity even in terms of being out of reach of persons interested in environmental issues can be most frustrating, if not discouraging. It prevents the planning of appropriate conservation initiatives, the restriction of illegal practices by private parties and government departments to change land use, to curb activities prohibited by law and to demand rightfully for privileges and permissions to use land and resources for livelihoods and survival.

The exclusive availability of laws, orders and notifications to only some sections of society that are well- networked with sources in the government or law makers has also resulted in the implementation of certain clauses while there is little or no attention paid to others that may be of direct benefit to marginalised groups of people. This exclusivity has been responsible for immense frustration and discouragement to nature lovers, be they citizens of government officials in charge of implementation at local sites, and has also been responsible for a skewed interpretation or implementation of some laws/clauses.

Our effort to put together a CD on environmental laws is guided by the obstacles faced by above target groups. We hope that the information regarding the process and content of

conservation laws presented in this CD helps their efforts in the implementation of progressive rules and clauses and developing a critique of those that hamper ecologically and socially just conservation based on their experiences in conserving Nature.

We aim to distribute this CD and report to groups and individuals and thereby expand the circle of discussants on environment policy and law. We have therefore made a CD showing the various laws in the form of flowcharts and from a deconstruction of their content to show how they function.

3. Who the Guide targets

The CD-ROM with the Environmental Law Guide is targeted at those who primarily have an interest in law and more so an interest in environmental law. This includes local and national conservation NGOs, lawyers groups, environmental activists, community groups, students, environmental law educators and government officials. We have not covered in this law all sets of laws pertaining to the environment. We only cover here, a set of 6 laws that pertain to activities on the coasts. There are of course many other laws that deal only with coastal and marine resources such as the Marine Fisheries Laws, the Merchant Shipping Act, the Ports Acts and so on. We have only selected a few to experiment with the utility of the format and design that we employed.

We have compiled in this CD-ROM a set of 7 laws. These are listed in the order of the year that they were introduced to assist the reader to view the changes over time.

- *The Wild Life Protection Act, 1972*
- *The Water (Prevention and Control of Pollution) Act, 1974*
- *The Forest (Conservation) Act, 1980*
- *The Environment (Protection) Act, 1986*
- *The Environment Impact Assessment Notification, 2006*
- *The Coastal Regulation Zone Notification, 1991*
- *The Coastal Aquaculture Authority Act, 2005*

The CD-ROM is obviously meant for those with access to a computer but perhaps not a reliable internet connection. Running this CD-ROM requires a basic set of instructions. Our apologise at the outset, to those nature enthusiasts and conservationists, who do not possess computers or the skills to navigate through this CD-ROM. It is our endeavour to reach out to networks of groups and individuals and propagate the use of the CD-ROM and the information contained therein. We respect the spirit and interest of several persons involved in conservation, but who lack access to these resources at present. We are committed to help such persons utilise this resource and also endeavour to make this more widely accessible to other persons who do have access to the internet, by uploading the same on a website.

4. Methodology

These flowcharts and the content of each of its sections have been created through extensive readings of the Bare Acts and rules along with notification and circulars. All of these have been procured from different sources in different ways. Some were available on the websites of the Ministry of Environment and Forests and conservation groups and NGOs. However, many supporting documents especially delegated legislations and recent new or updated circulars had to be obtained from the concerned departments and Ministries. These were sought through applications under the Right to Information, Act. Responses to our applications in some cases were names of book shops and publishers in faraway cities and towns that stocked these documents as per government records. Instances such as these are themselves proof of the need for an easy- to-keep, easy- to-use space that hosts a comprehensive collection of information that is directly relevant to conservation. The flowcharts depict the layout and functioning of the primary laws that govern conservation.

Although a lot of information, particularly the notifications and orders, was collected through Right to Information applications filed with the various Ministries, from various websites, and a large portion was collected from the personal libraries of various activists working on environmental issues, including those available in the authors' personal collections.

Disclaimer

The Environmental Law Guide is to be used as an additional aid to understanding the law. Some of the text in the Guide has been re-written in various places throughout the CD-ROM and has not been reproduced the exact text from the bare acts. While all efforts have been made to maintain the accuracy of this information, relevant official gazettes should still be consulted for authenticity. The authors of this resource, neither their donors, including the UNDP, will not be responsible for any loss due to the information provided in this Guide.

5. Special features

The Environmental Law Guide CD-ROM serves as a reference tool and additional aid to understanding environmental laws in India. Throughout the Guide, the text that has been used is taken from the Bare Act. In some cases, we have included even the information contained in the Rules (such as for the Environment (Protection) Act, 1986. For other Acts other rules made under it, or notifications / orders passed are not included in the text itself. Separate links are provided to all the rules, orders and notifications that we have been able to compile. The language used in the guide has been simplified and altered suitably from that of the text of the law, while ensuring that the meaning implied remains the same. The viewer can navigate through the law by using a conventional menu to the right hand side of the page view or through a flowchart which will appear when you move your mouse to the left hand side of the page. The flowchart is present on every page.

Here are a list of symbols and special features used in this site:

Expand 

If you click this symbol, the area below expands with more information.

Expand /Contract All: This is a feature that will help you either see all the text or contract it all.

***Section References*:** This will also be a hyperlink. Clicking this link will tell you which part of the law the accompanying text has been obtained from. The reference will be displayed below the text. For example, when the reference is shown as 'Section 18.2.a', it is read as 'clause (a) of sub-section 2 of section 18'

Linkages: Many words and sentences are hyperlinked in the text. This is done to provide an easy link to the specific section in the case the reader wants to know more.

Definitions: They will appear as a pink box over hyperlinked words. Clicking the word will tell you how the particular word/phrase has been used within the law. The definitions will appear below the text in which the particular word/phrase appears. The complete list of definitions is also available through the menu above or the flowchart.

The Bare Act: A link to the Bare Act is provided (see 'downloads' in the main menu). We suggest that you refer to the Bare Act for any clarifications you might need.

Download the whole law section: You can download the entire laws section (see 'Download this site' under Downloads in the main menu).

6. The Wild Life (Protection) Act, 1972

The Wild Life (Protection) Act was enacted by the Government of India in 1972. It is a comprehensive national law that addresses protection and conservation of wildlife. It provides for the protection of plant and animal species and aims to ensure ecological and environmental sustainability.

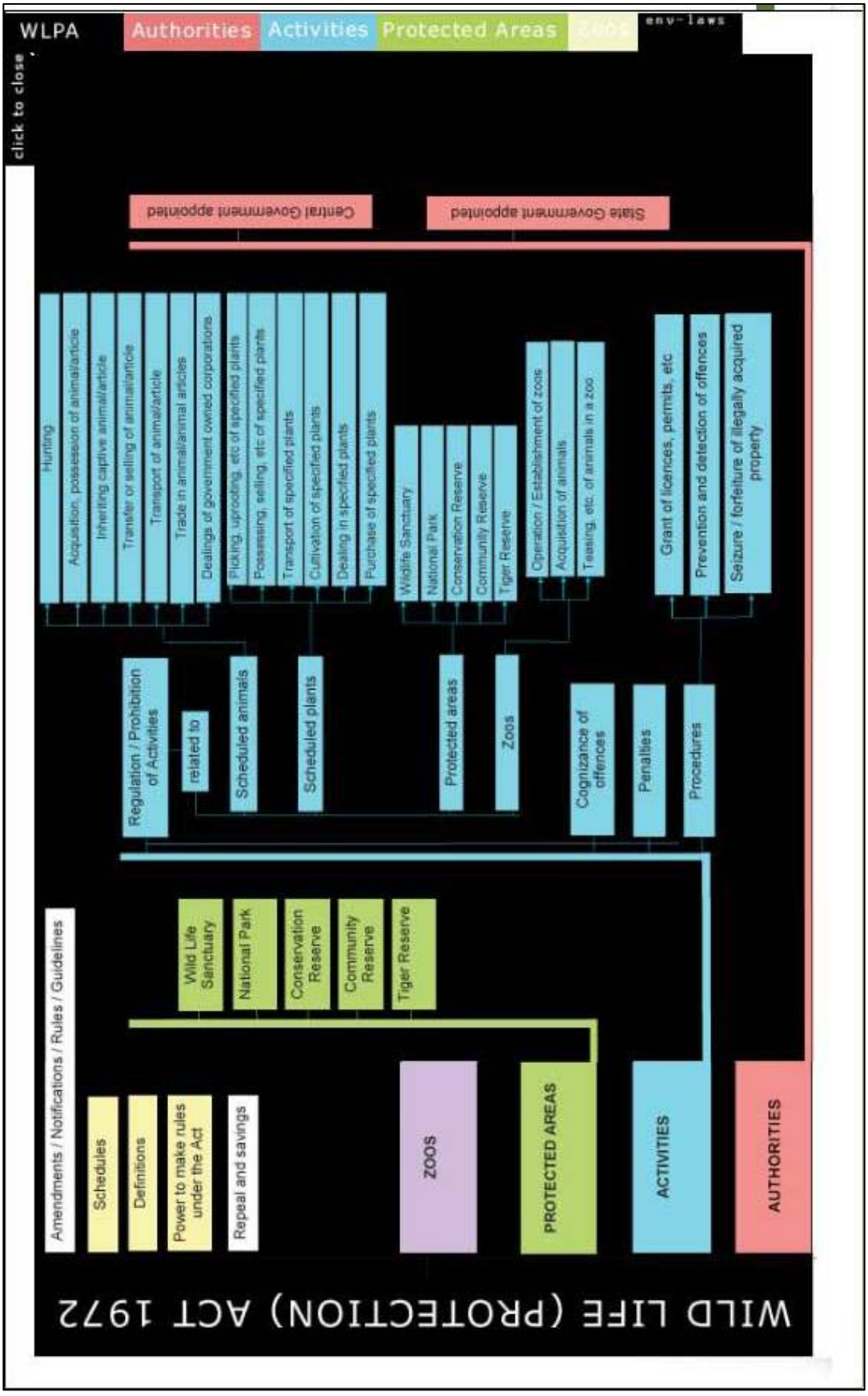
It extends to the whole of India, except for the state of Jammu and Kashmir. Until 1976, the subject of wildlife (*protection of wild animals and birds*) belonged on the State list. The Parliament therefore had no power to make a law applicable to the State unless the Legislatures of two or more States pass a resolution in pursuance of Article 252 of the Constitution empowering the Parliament to pass the necessary legislation. The Legislatures of eleven Indian States passed such a resolution and the Wild Life (Protection) Act of 1972 was passed. However, in 1976, the Forty-Second Constitutional Amendment moved the subject of wildlife from the State List to the Concurrent List and subsequently, the Act was extended to all other states except the State of Jammu and Kashmir.

It establishes (six) *schedules* of protected plants and animals, and degrees of protection vary across the schedules with species under Schedule I being offered highest protection.

The law has provisions for protection being offered to scheduled species, and also provides the legal framework for the management of habitats (by laying down procedures for declaring areas as sanctuaries, national parks, etc), thereby offering protection to *all* wildlife within these designated areas. The Act also regulates trade in wild animals, animal articles, trophies, etc and in plants specified in the schedules. The law accordingly awards penalties (which may include imprisonment and/or fines) for violations of the provisions of the Act.

The Wild Life (Protection) Act provides for the establishment of advisory bodies such as the National Board of Wild Life and State Wild Life Boards and the appointment of wildlife wardens (and other officers) to implement the Act.

THE MAIN STRUCTURE PAGE OF THE WILD LIFE (PROTECTION) ACT, 1972



6.1 The Wild Life (Protection) Act in this Guide

6.1.1 Main structure of the Act

The adjacent image shows the Structural Flowchart of the WLPA.

In the Guide, we have arranged the text into four sections:

1) ***Authorities*** – this section lists out authorities appointed under the Act by the Central Government and the State Governments for implementation of the Act. It includes Boards, Committees and individual officers and lists their functions and powers.

2) ***Activities*** – this section includes activities that are prohibited or may be regulated under the Act related to 'Scheduled animals', 'Scheduled plants', 'Protected Areas' and 'Zoos'. Carrying out a prohibited activity or contravening provisions laid down for a regulated activity amount to an offence. Cognizance of offences and penalties are also discussed in this section.

   Also discussed in this section are activities carried out by implementing agencies such as the grant of permits, licences, etc, prevention and detection of offences and seizure of illegally acquired property as defined under the Act.

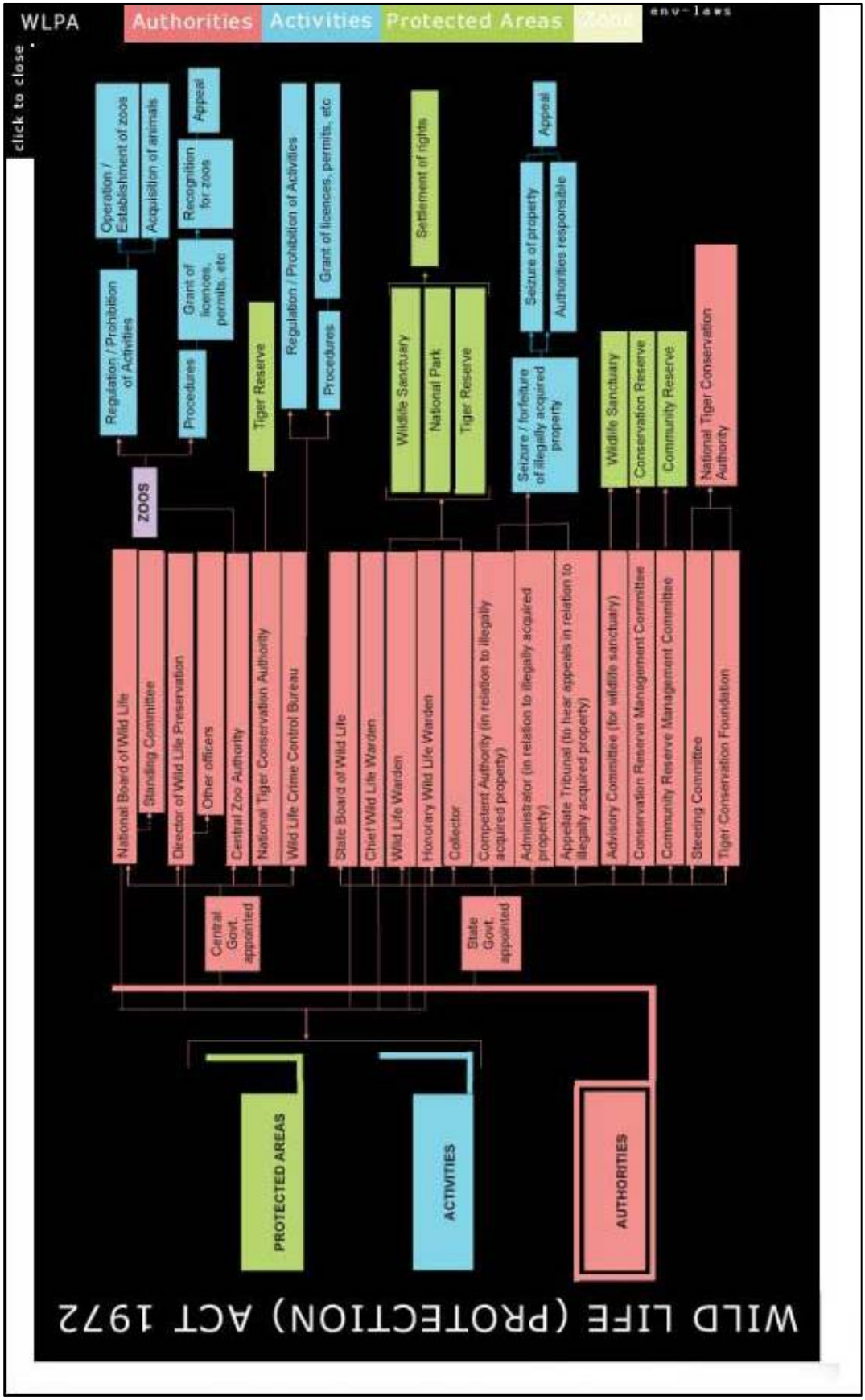
3) ***Protected Areas*** – The Act lays down provisions for the declaration and management of protected areas. The different kinds of protected areas notified under the Act enjoy varying degrees of protection. Various authorities have specified functions regarding the management of such areas, in consultation with advisory boards constituted for this purpose.

4) ***Zoos*** – The Amendment Act 44 of 1991 included provisions for the setting up of a Central Zoo Authority responsible for overseeing the functioning and development of zoos in the country. This section discusses the role of this Authority, the procedure for the establishment and management of a zoo.

Apart from these sections, the following from the Bare Act have been provided: The Schedules, Definitions, Power of the Central and State Government to make rules and Repeal and Saving.

Amendments, Notifications, Rules and Guidelines are also provided in downloadable pdf formats.

THE 'AUTHORITIES' STRUCTURE PAGE OF THE WILD LIFE (PROTECTION) ACT, 1972



6.1.2. Authorities under the Act

This section covers the Authorities appointed under the Act to carry out the functions and powers assigned to them, and also includes Committees, Boards and other agencies that are responsible for implementing the provisions of the Act. The authorities/boards/committees are constituted at the central as well as state levels.

At the Central level:

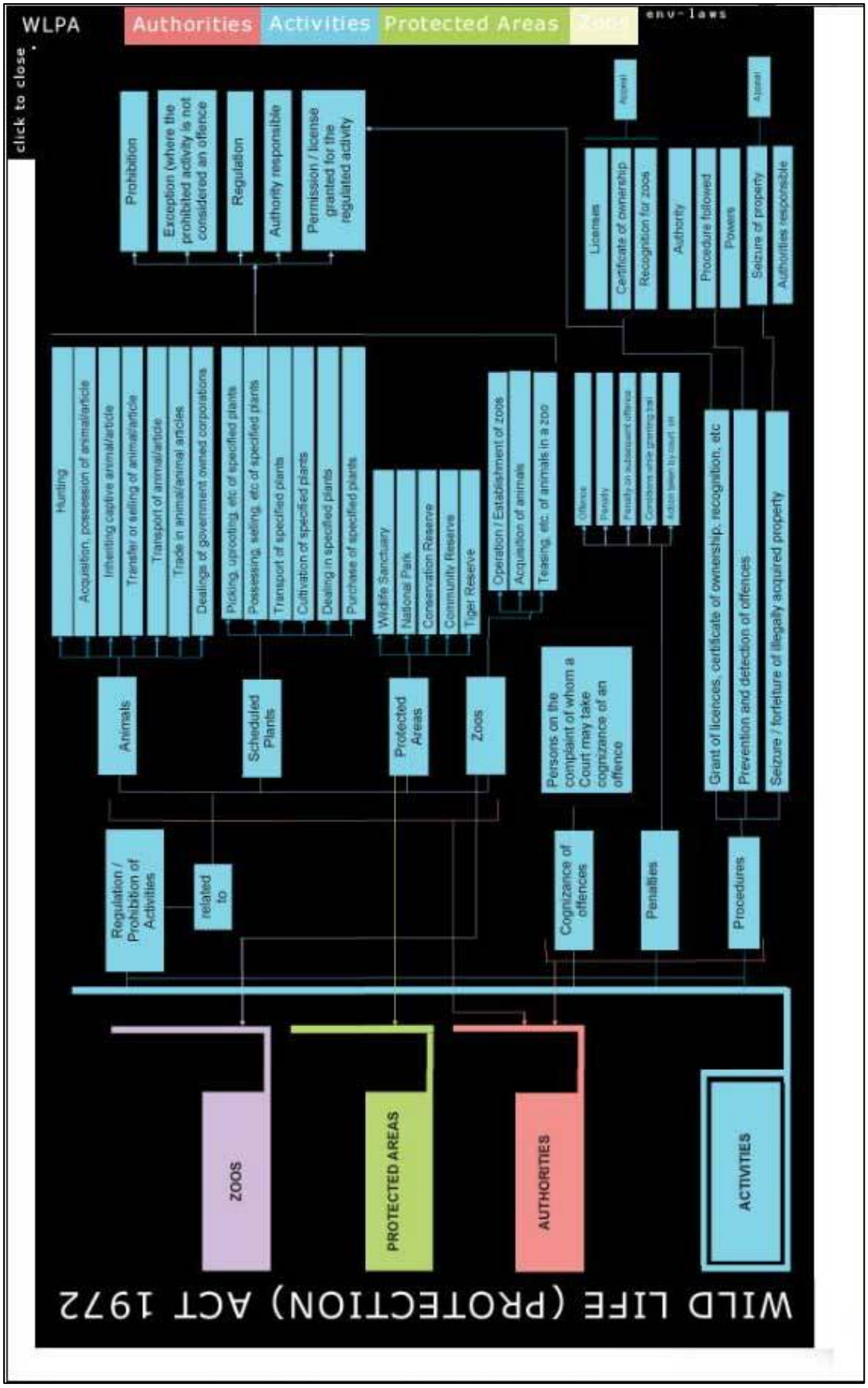
- National Board of Wild Life

  - Standing Committee of the National Board of Wild Life
- Director of Wild Life Preservation – and other officers
- Central Zoo Authority
- National Tiger Conservation Authority
- Wild Life Crime Control Bureau

At the State level:

- State Board for Wild Life
- Chief Wild Life Warden
- Wild Life Warden
- Honorary Wild Life Warden
- Collector
- Competent Authority, Administrator and Appellate Tribunal (in relation to illegally acquired property)
- Advisory Committee (for wildlife sanctuary)
- Conservation Reserve Management Committee
- Community Reserve Management Committee
- Steering Committee (whose activities are coordinated with the National Tiger Conservation Authority)
- Tiger Conservation Foundation (for tiger reserve States)

THE 'ACTIVITIES' STRUCTURE PAGE OF THE WILD LIFE (PROTECTION) ACT, 1972



6.1.3. Activities under the Act

This section is divided into four major sub-sections

- ***Regulation and Prohibition of Activities***

  (in relation to Scheduled Animals, Scheduled Plants, Protected Areas and Zoos)

  This sub-section lists out the prohibited activities and regulation of certain activities as they are listed out in the Act. Carrying out a prohibited activity or a regulated activity in contravention of the provisions of the Act amounts to an offence. A Court may take cognizance of an offence on the complaint of certain authorities / officers / persons. This leads to the next sub-section:

- ***Cognizance of offences***

  This sub-section lists out the persons on the complaint of whom a Court may take cognizance of an offence under the Act

- ***Penalties***

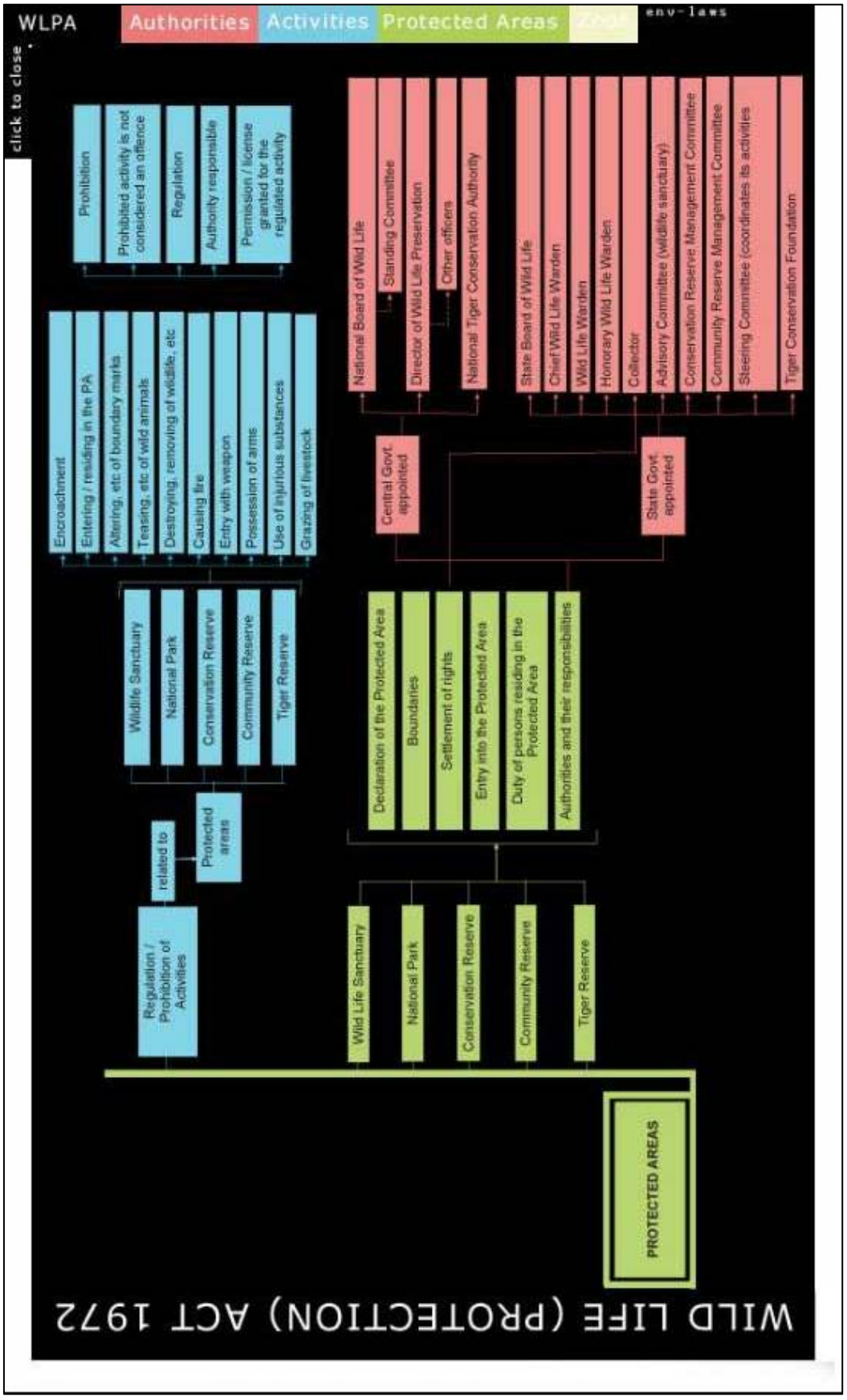
  Once convicted of an offence, according to the nature of the offence, a penalty (fine and/or imprisonment) is awarded under the Act. This sub-section lists the penalties for various offences and also provides information on penalties for subsequent offences of a similar nature and the subsequent action taken by the Court upon conviction; cancellation of licenses and permits, acquisition of animals, articles, etc in respect of which the offence has been committed, etc.

- ***Procedures***

  This subsection provides information on the procedures followed and the powers exercised by the authorities appointed under the Act in relation to:

  - The grant of licenses, permits, certificates of ownership, etc for regulated activities under the Act
  - The prevention and detection of offences
  - The seizure and forfeiture of illegally acquired property, i.e. property acquired in contravention of the provisions of the Act.

THE 'PROTECTED AREAS' STRUCTURE PAGE OF THE WILD LIFE (PROTECTION) ACT, 1972



6.1.4. Protected Areas under the Act

Under the Act, species specified in the Schedules to the Act are protected regardless of location. However, the provision to declare certain areas as 'protected areas' allows for the protection of all wildlife within such areas.

This section provides details on the five types of protected areas that may be declared under the provisions of the Act:

- Wildlife Sanctuary
- National Park
- Conservation Reserve
- Community Reserve
- Tiger Reserve

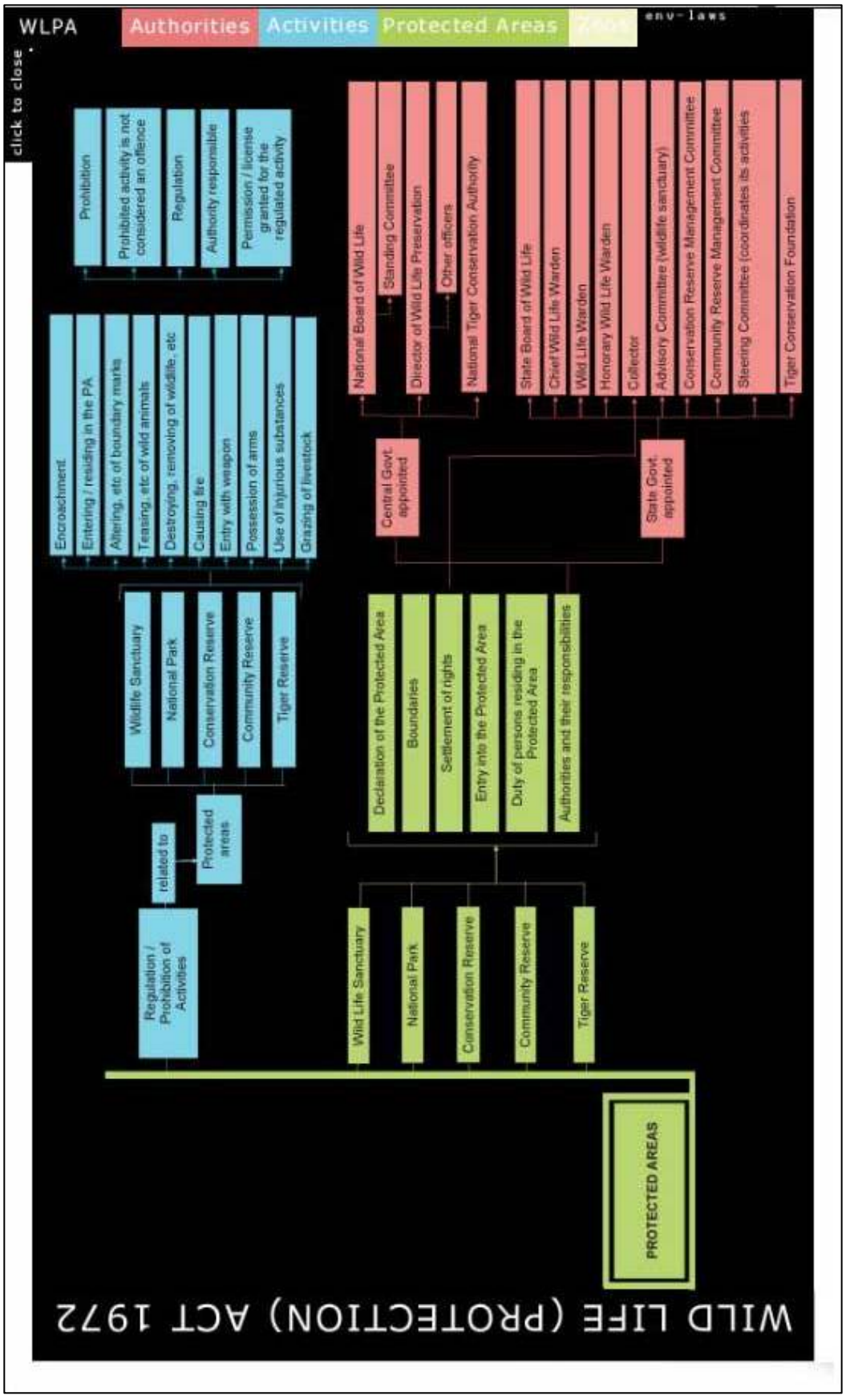
The information provided for each of the above protected areas contains details of the following:

- Declaration of the Protected Area
- Boundaries of the Protected Area
- Settlement of rights within the Protected Area
- Duties of persons residing within the Protected Area
- Authorities and their responsibilities in relation to a Protected Area

The information related to activities that are regulated or prohibited within (or in relation to) a protected area are covered in the section on 'Regulation and Prohibition of Activities'.

Some of the provisions related to the sub-sections above may be common across two or more protected areas. The categorization of the five types of protected areas in this guide helps identify provisions that are common and those that are exclusive among them.

THE 'ZOOS' STRUCTURE PAGE OF THE WILD LIFE (PROTECTION) ACT, 1972



6.1.5. Zoos under the Act

The section on zoos has been described separately as the Amendment Act of 1991 provided for the establishment of a Central Zoo Authority. It has the responsibility of granting recognition to zoos and ensuring that norms and standards prescribed by the Central Government in this regard are adhered to. Provisions applicable to zoos are found in other sections of the law as well, and within the guide, linkages to these sections have been elucidated.

The section on zoos links to the following sections:

- ***Authorities*** – through the Central Zoo Authority
- ***Activities:***
  - Regulation and Prohibition of Activities – this section lists out the activities within (or in relation to) a zoo that are considered offences.
  - Procedures - the procedure by which zoos are granted recognition by the Central Zoo Authority
  - Cognizance of offences
  - Penalties – for offences in relation to zoos

6.2. Commentary on the Wild Life (Protection) Act, 1972

This law was a outcome of an expert committee constituted under the Indian Board for Wildlife (IBWL), now the National Board for Wildlife, (NBWL) that was set up to recommend a way out of the crisis of wildlife decimation. The danger faced by wildlife in India, especially the plight of the tiger, gharial and wild buffalo came to public attention in the late 1960's. It was this committee that defined 'wildlife' for the first time and its work became the basis for a new legislation for its preservation. Prior to this, there were only game rules and state legislations for different areas. This committee also reviewed these existing laws for the preservation of different species. The report of the expert committee was submitted in 1970 and the new wildlife legislation was drafted and promulgated in 1972.

During the late 60s and early 70s, wildlife and conservation advocacy of the kind that exists today was absent. Those who had access to the Prime Minister convinced her of the need for wildlife conservation. The Indian Congress Party, headed by Mrs. Indira Gandhi, then the single most powerful political party held a strong influence over smaller and regional parties, who in turn lent their full support. Convinced of the need for a law for wildlife conservation, they faced no real opposition to the idea of the legislation proposed by the Centre. Under the Prime Minister's rule, upto 1977, the conservation imperative strengthened. Marine scapes and water bodies were important in the conservation agenda in the 70's mainly due to the well-known work of people such as Lavkumar Kacchar and Rom Whitaker.

Protection mechanisms

Today, the 'Protected Area' network set in place by the WLPA includes national parks, sanctuaries, conservation reserves, community reserves and tiger reserves. The last three categories were added in the 2002 and 2006 amendments to the Act. The network of PAs currently covers an area of 1,56,728.52 sq km, encompassing about 14 percent of the country's forest area and 4.77 percent of its land mass. From 6 national parks and 59 wildlife sanctuaries in 1970, the numbers increased to 96 and 510 respectively and 3 Conservation Reserves and 2 Community Reserves, bringing the total to 611 PAs.

Marine Protected Areas or MPAs are not really defined as such in the WLPA. However coastal and marine areas can be declared as PAs under any of the five categories of mentioned in the WLPA, with existing MPAs mainly declared as either sanctuaries or national parks. In the case of the Sundarbans National Park, a small area has been designated as a tiger reserve. The first MPA in India was designated either in 1967 or 1970 for the protection of wetlands, even before a specific legal framework for protected areas (PAs) was put in place. Currently, there are 31 MPAs along India's coastline (including the Andaman& Nicobar and Lakshadweep islands) that have been officially declared for conserving and protecting coastal and marine biodiversity. There are another 100 PAs that have terrestrial or freshwater components, which partly contain marine environments. Most of the MPAs were designated during the 1980s and early 1990s as either national parks or wildlife sanctuaries. In these categories, extraction of resources is altogether prohibited or can be undertaken only with permissions from one and in some cases all of the following agencies: the state Forest Department, the Ministry of Environment and Forests and the National Board for Wildlife.

The Act also provides for the protection of species irrespective of their locations. Endangered species listed in Schedules I, II, III and IV are protected (especially against hunting), regardless of their location in or outside PAs. The species listed in Schedule I, including marine

species such as all five species of turtle found in Indian waters, ten species of shark and ray, all species of seahorse, giant grouper, reef-building corals, black coral, organ pipe coral, fire coral, sea fan, and nine species of molluscs and sea cucumber. Hunting and harvesting of all these is prohibited. All sponges are listed in Schedule III, and 15 species of molluscs are listed in Schedule IV, which are also prohibited from being hunted or captured.

Rationale for the management approach of PAs

The relocation of people from PAs in 1969 was 0.5% and it increased ten fold by the year 2000. Most relocations took place between 75-77 the period of the Emergency. The relocation of people also rose substantially in the period between 1980 and 1989 as this was the time when many parks were created. The first signs of conflict over use of usufruct rights in PAs emerged early on in the implementation phase of the WLPA with the clash in Keibul Lamjao National Park in Manipur in 1979 and Bharatpur in Rajasthan in 1982.

The basic approach to management of PAs has been exclusivist, based on the assumption that all wildlife can be protected only within enclosed spaces, devoid of human presence. Therefore the strategies and methods to implement protection measures logically included strict enforcement of legislation, patrols to prevent illegal activities and infrastructure maintenance. Attempts to protect PAs from human intervention by coercion have often led to hostile attitudes of local people towards wildlife management and forest department staff and to open conflict.

The continued presence of large or viable populations of jackals, floricans, bustards and other species outside these enclosed spaces have been reported but these studies have taken time to influence the dominant legal paradigm of management of PAs. With MPAs too, the Act has been used as a tool to prohibit or control human activity for livelihoods through legal clauses and rulings of courts. While studies have examined the ecological and biological impacts of MPAs, few have focused on their social implications for communities and other stakeholders in the area who depend on fisheries resources for a livelihood. If studied, it may appear that MPAs are devoid of community management and conflict resolution mechanisms.

Our understanding of these communities through sociological research is, however, comparatively limited. There are several differences between terrestrial and marine socio-ecological systems. Also, various fishery practices have evolved from assiduously studying and understanding the sea, its creatures, their behaviour and the power equation between man and sea. Fishermen face definite and distinct challenges that limit their control over the sea and its bounty. These natural challenges posed by the sea are completely different from those of terrestrial areas. Significantly, in India, MPAs are designated for conservation and preservation of the marine ecosystem or species, and not for fisheries management.

Another central difference is that there are no watertight boundaries that can be drawn within the marine space. Although ecosystems like coral reefs that surround small islands do have a discernable physical boundary in the form of lagoons, this does not impede the dynamic exchange of water, nutrients, pollutants and marine species within these areas.

Eco-development

Since 1991, the Government of India committed funds, particularly in the field of PA management, for eco-development (also called integrated conservation and development).The government has

launched eco-development projects in 80 PAs through a centrally sponsored scheme and in seven PAs with World Bank assistance. Eco-development sought to integrate environmental and forestry activities with those of other development agencies. Social welfare activities include the provision of drinking-water and irrigation facilities, soil and water conservation, fencing, village road-work, health care camps and employment generation for local communities in the vicinity of PAs. Eco-development was an attempt to reduce forest dependence and to compensate local communities (in cash and kind as well as through alternative off-farm income-generating opportunities) for the lost access to resources in PAs. The approach acknowledges that people living near PAs may have to bear enormous opportunity costs while deriving few tangible benefits from conservation. All the eco-development activities are administered by village eco-development committees or forest protection committees.

However, this initiative has come under criticism from both conservationists and social groups. Conservationists have maintained that this has 'taken the edge off' scientific wildlife conservation and has diverted the limited forest and wildlife staff and resources meant for wildlife towards community development activities which should have been undertaken by other government departments. They also maintain that activities for improving the local and national economy, say, through tourism, are not always beneficial for wildlife spaces and wildlife even though they may earn the much needed revenue for wildlife conservation and local people.

Social groups have criticised this on the grounds that it has fractured communities in the name of conservation and even led to the punishment and ostracism of those families dependent on wildlife spaces at the hands of their own community. It has led to these local newly formed institutions, with access to financial resources, to gain power over the formal political institutions and create a parallel system of governance often conflicting with the formal system. There is evidence of these newly formed institutions operating as extensions of the forest and wildlife bureaucracy.

Implementation of the WLPA

It is useful to pay attention to what the Statement of Objects and Reasons to the 1991 amendment to the Act stated. *'… 6. While making the provisions of the Act more effective and stringent due regard has also been given to the rights of the local people, particularly the tribals. It is being provided that except for the areas under reserve forests, (where the rights of the people have already been settled) and the territorial waters, no area can be declared as sanctuary unless the rights of the people have been settled. State Wild Life Advisory Boards are also being made responsible for suggesting ways and means to harmonise the needs of tribals and the protection of wildlife.'*

The section on the Settlement of Rights is an area that begs attention. Statistics yet to be confirmed indicate that the settlement process is yet to be completed in 62% of the PAs. In many of these areas where it is yet to take place, communities have lived in constant fear of the threat of eviction and numerous restrictions of movement within PAs and access to resources. Rightly so, these have only caused ill-feelings among these communities towards the cause of wildlife conservation.

Section 29 of the Act says that no activities which are harmful to wildlife can be carried out without the Chief Wildlife Warden's permission. And the CWW is to ascertain if the activity to be undertaken will benefit wildlife before he grants clearance to the activity. Despite this clause, oil pipelines in Gujarat have been permitted through the Marine National Park, bamboo extraction by

industries has been allowed from Shoolpaneshwar Sanctuary. The list of clearances that have been given to destructive projects using this clause is long.

However, in recent years, the misuse of this clause has been restricted to some extent as scrutiny from the members of the NBWL has increased. There have also been Supreme Court orders on what activities can be undertaken inside a PA, with permission. In fact, now certain non-forestry activities are not allowed in the PAs unless it is in the working plan which is approved, for which Supreme Court clearances are needed. But these mechanisms are unable to defend wildlife spaces from the threat of infrastructure development and extractive industries. At the time of writing, the Supreme Court permitted diamond mining within the forests of Panna National Park. Until this, mining was taking place just outside the Park. Legislations alone could do nothing to halt the mining outside all these years. Marine Protected Areas (MPAs) too, as envisaged and operated through the WLPA, fail on an important count. Since the focus remains on protecting the habitats within boundaries, the law is simply unresponsive to threats outside MPAs. All the MPAs of the country have some experience of this.

The process by which the inclusion of several marine species was made to Schedule I in 2001 is a mystery. There is no information regarding how these species were considered endangered. There was no consultation with fishermen's organisations and NGOs working in the sector. It is believed that even the fisheries departments of the State governments were not consulted. News reports indicated that the central scientific institutions in fisheries may have also not been consulted and that they did not recommend certain bans such as that on shark fishing. At the time of the ban, it was estimated that approximately 15,000 to 20,000 fishermen who depend almost entirely on shark fishing would lose their source of livelihood. This was estimated to affect, their families and dependents. The total population affected was estimated between 150,000 and 200,000. Around 100,000 fishermen would see a reduction in their seasonal and occasional income from shark and elasmobranchii that were on the prohibited list. This would obviously affect their families and dependents, numbering anywhere between 500,000 and 1,000,000. Thousands involved in drying and processing shark and in the domestic and international trade would be affected.

Implications for marine wildlife

The WLPA is itself drafted on the singular idea that physically separating humans from wildlife is the appropriate approach to all conservation challenges. It, therefore, does not provide much of a conservation plan beyond penalties and punishments for human intrusion into PAs and human use of protected species. Human-wildlife interactions, socio-ecological institutions, organisations and phenomena and even simple dependence regimes are given short shrift in this law. Although the academic approach to understanding biodiversity conservation has evolved considerably, with concepts like socio-ecological resilience and community-based approaches gaining popularity, the overall conservation effort in the country is still one that separates humans from wildlife habitats. If only government reports and presentations on India's PAs were accompanied by descriptions of the nature and extent of conflict in these areas, the 'success' of this 'one size fits all' model would be evident.

Marine ecosystems require management measures that are distinct from those currently practiced in terrestrial areas. In practice, however, the terrestrial approach is being increasingly applied to marine wildlife protection, as more conservationists look towards the WLPA and its design to provide solutions to marine challenges. This trend needs to be examined and revised as reports of conflict over these styles of marine conservation pour in. There are important lessons for

the conservation of terrestrial areas from existing marine management strategies. Likewise, the conflicts over terrestrial conservation and environment protection laws provide several insights for designing coastal and marine conservation measures.

The rigidity of this exclusionist approach in terrestrial area management, specifically through the narrow options offered by the WLPA, is in stark contrast to the flexible, socially appropriate and case-specific methods applied for the management of fishery resources by fisher communities. It bears repetition that even the formal marine fisheries regulation laws of the state governments are not based on the physical exclusion of people. These laws are not designed to exclude people from their marine environments. The fisheries departments and government institutes, such as the Central Marine Fisheries Research Institute, have systems in place for monitoring stocks of marine species (even if only partially reliable). It appears that these conservation measures also recognise that humans have historically 'used' or consumed marine species, including those now classified as 'endangered'. Thus, fisheries management, while prescribing conservation options that allow for the presence of humans and human activity, also call for modifications in the range, intensity and nature of fishing activity. For example, in Gujarat, the fisheries regulations prescribe prohibitions on the catch of gravid lobsters. The Tamil Nadu fisheries laws prescribe rules on species of shanks that can be harvested and their size. Although fishery laws approach conservation from a resource use and management standpoint, thereby possessing the potential to integrate both conservation and development, a continued reliance on the WLPA for marine management cannot but result in a state of heightened mayhem.

Fishworkers have objected to the complete ban on human presence in these formerly open access areas. The example of Orissa is apt here. For the last few years, conservationists have been trying in vain to prevent olive ridley turtles from being trapped in trawl fishing nets. National and international efforts to introduce turtle excluder devices and keep trawlers out of the Gahirmatha Marine Sanctuary have failed, in part due to the strong resistance from the trawling community. The 1997 declaration of the Gahirmatha Marine Sanctuary generated considerable discontent among various fishing communities, as it denied them all fishing rights within a delineated core zone. Conservationists now recognise that it would be more effective to focus efforts on the protection of mobile offshore turtle congregation 'reproductive patches' containing mating turtle pairs. They also recognise that within these congregation areas, certain forms of fishing might be benign.

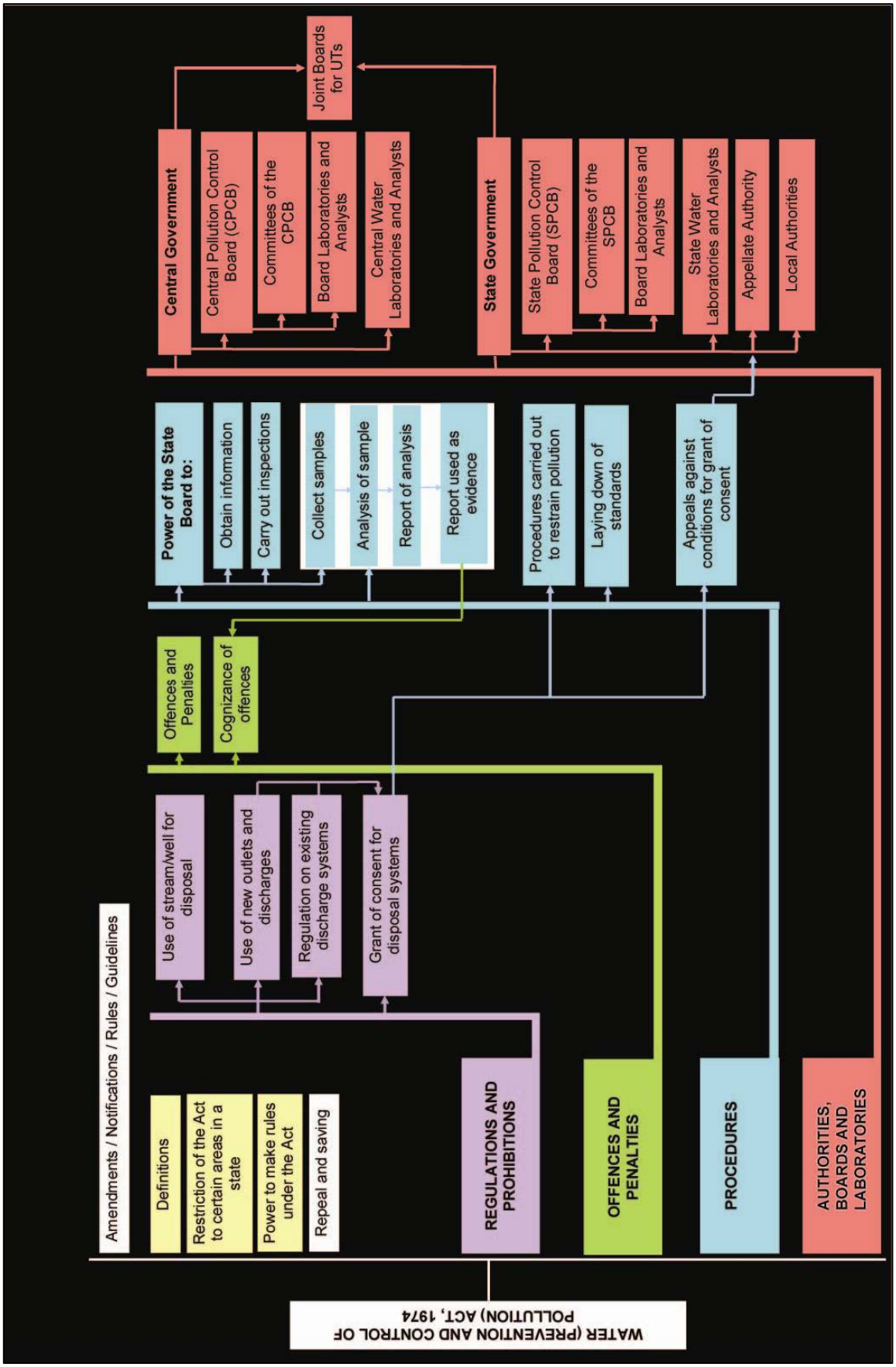
7. The Water (Prevention and Control of Pollution) Act, 1974

The Water (Prevention and Control of Pollution) Act of 1974 was the first important environmental legislation in India. Before the enactment of the Act, there were few initiatives to legislate pollution control at the national level. A Committee that reviewed existing laws found that a comprehensive legislation to address the issue of water pollution in the country was inadequate. On the prompting of various states, a bill was introduced in the Rajya Sabha in 1962 and was examined by the Select and Joint Committees of Parliament. The bill sought to provide for the establishment of agencies at the Central and State levels to provide for the prevention, abatement and control of pollution of rivers and streams, for maintaining and restoring the wholesomeness of such water and for controlling existing and new discharges of domestic and industrial wastes.

Water is a subject in the State List of the Constitution. The Act was enacted as a central law in pursuance of Article 252(1) of the Constitution which empowers the Union Government to legislate in a field reserved for the states, where two or more State Legislatures pass a resolution consenting to a central law. All States have adopted the implementation of the Act as enacted in 1974.

The Act provided for the establishment of administrative boards under the executive branch of the Central and State governments. The powers and functions assigned to the boards broadly include the setting of standards (for effluent and sewage disposal) and advising the government on measures to combat pollution. The State Boards have the authority to grant consent to the use of new or existing disposal systems, and may impose certain conditions on the grant of such consent. The law provides for penalties for the contravention of the provisions of the Act, which includes the failure to comply with the directives of the State Board. It also provides for the establishment of Central and State water testing laboratories whose primary functions are to aid in the setting of standards, and for testing of water samples collected and analyzed under the provisions of the Act, to ensure compliance with the standards enforced or to establish contravention of the same.

THE MAIN STRUCTURE PAGE OF THE WATER ACT, 1974



7.1. The Water Act in this Guide

7.1.1. Main structure of the Act

The adjacent image shows the Structural Flowchart of the Water Act, 1974. The Water Act as it appears in the Environmental Law Guide has been divided into four sections:

1. ***Authorities/Boards and Laboratories***

   This section lists out authorities appointed under the Act by the Central Government and the State Governments for implementation of the Act.

2. ***Procedures***

   This section lists out certain procedures carried out by various authorities for achieving the objectives of the Act; the control and abatement of water pollution such as: *Collection and analysis of samples, Laying down Standards, Procedures for State Board to carry out procedures, Appeal*

3. ***Regulations and Prohibitions***

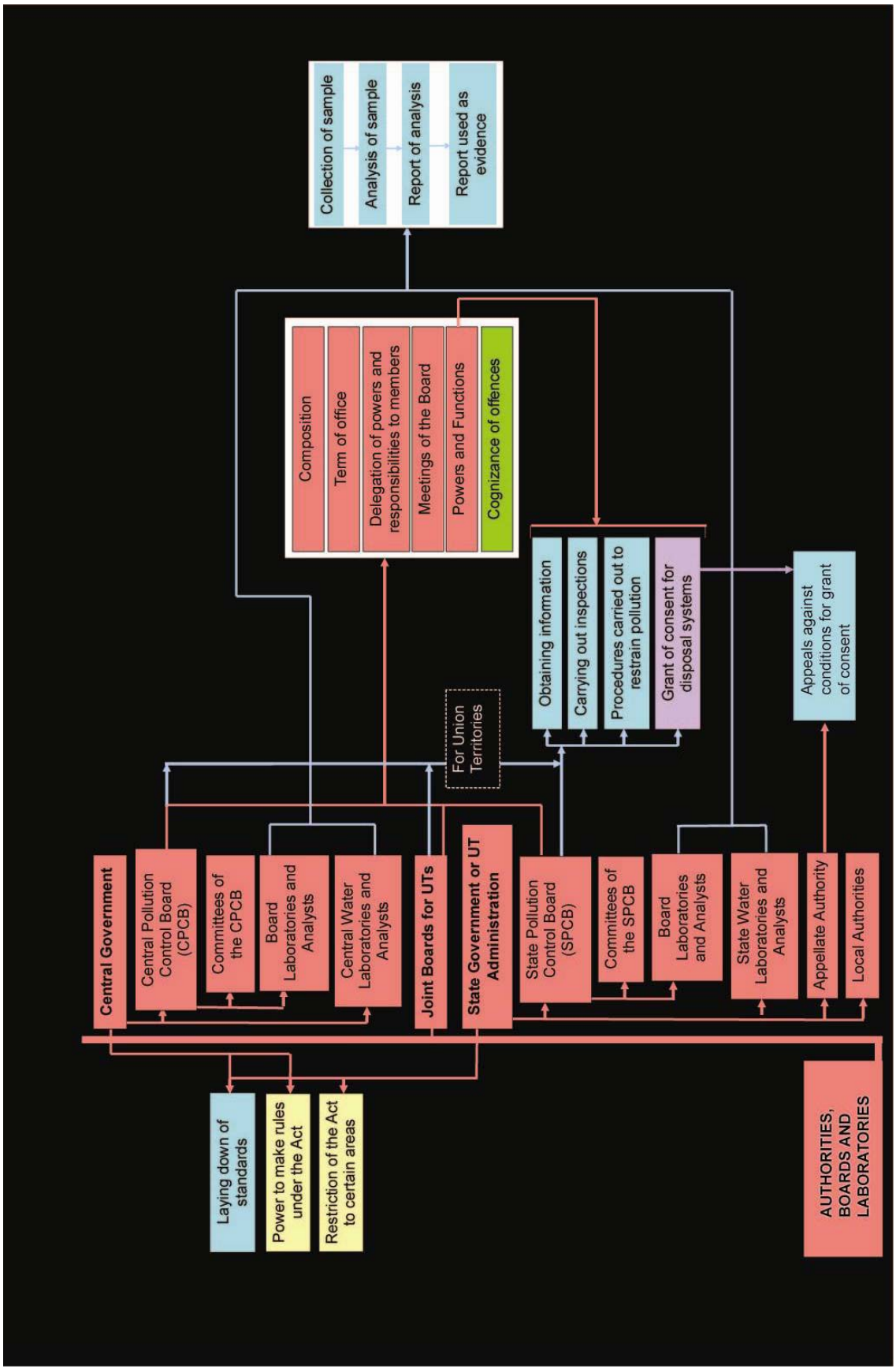
   This section includes activities that are prohibited or may be regulated under the Act. Section 21 of the Act. The use of new or existing disposal systems (i.e. in existence prior to the commencement of the Act) requires the consent of the State Board which must ensure that the standards laid down for effluent discharge are complied with, and to do so, the Board may impose conditions along with the grant of such consent.

4. ***Offences and Penalties***

   The Amendment Act 1988 strengthened the penalties provided in the original Act of 1974. Failure to comply with orders or directions of the State Board, knowingly exceeding prescribed standards of effluents in discharge, carrying on activities without the consent of the State Board where such consent is mandatory, amount to offences under the Act and penalties (including penalties for subsequent offences of similar nature) have been specified in the Act.

Apart from these sections, the Environmental Law Guide contains the following which are taken from the Bare Act: Definitions, Power of the Central and State Government to make rules and Repeal and Saving. Amendments, Notifications, Rules and Guidelines are also provided in downloadable pdf formats in the Downloads Section of the law, in the CD-ROM.

THE 'AUTHORITIES' STRUCTURE PAGE OF THE WATER ACT, 1974



7.1.2. Authorities under the Act

The implementation of the Act is carried out at the central and state levels by authorities appointed under the Act for the purpose. They are aided by other agencies, such as Committees, Laboratories and associated Analysts appointed for specific functions under the Act.

The central and state Boards at the center also carry out functions under the provisions of the Environment (Protection) Act of 1986 and the Air (Prevention and Control of Pollution) Act of 1971. In the guide to this law however, the functions and powers of the Boards as specified in this Act alone have been listed out. Functions and powers of Committees, Laboratories and associated Analysts appointed by the Act have also been discussed in this section.

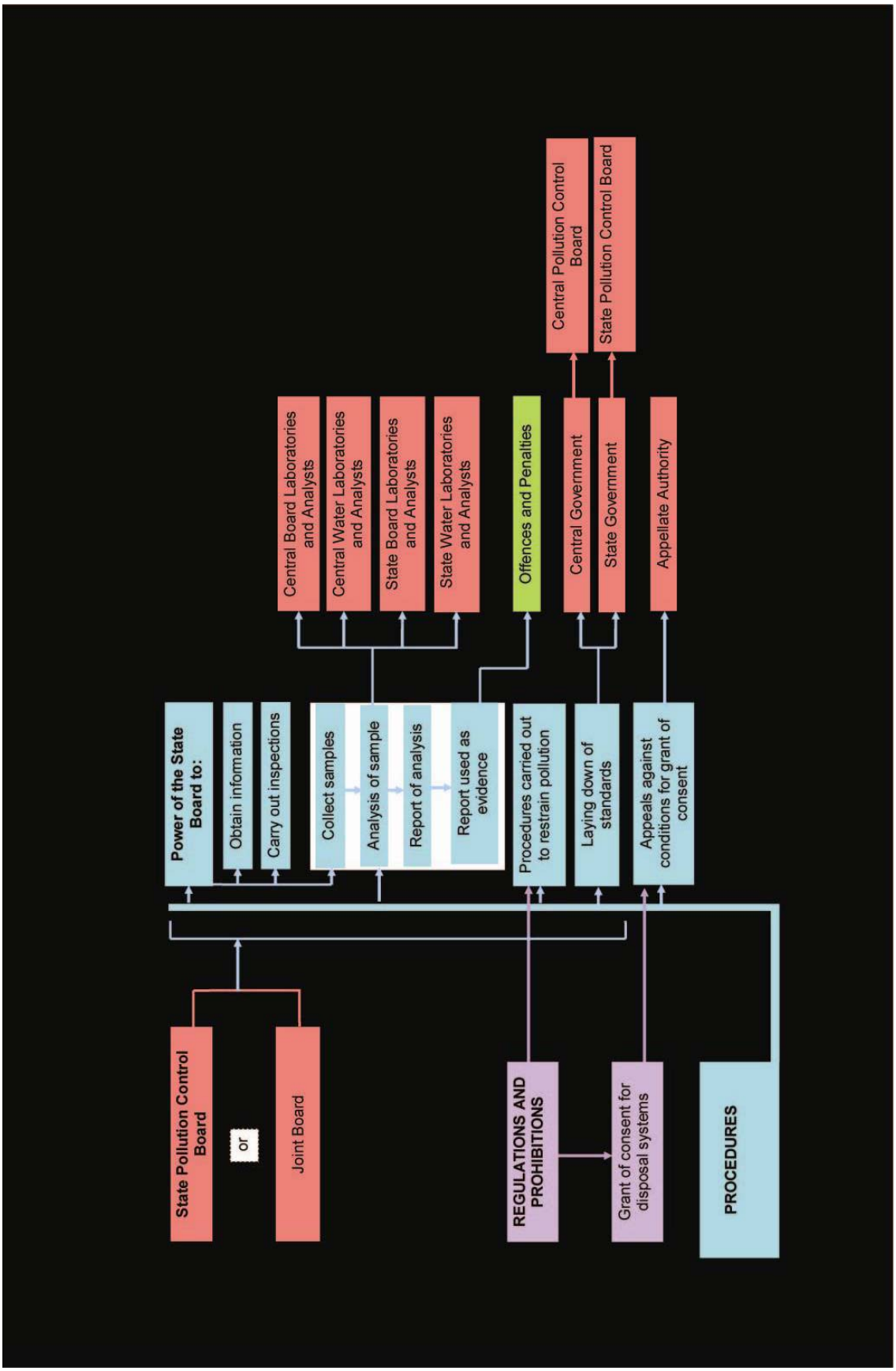
At the Central Level:

- The Central Government
- The Central Pollution Control Board
    - Committees of the Central Pollution Control Board
    - Central Board recognized or established Laboratories
    - Central Board appointed Board Analysts
- Central Water Laboratories recognized or established by the Central Government
- Government Analysts appointed by the Central Government

At the State Level:

- The State Government
- The State Pollution Control Board
    - Committees of the State Pollution Control Board
    - State Board recognized or established Laboratories
    - State Board appointed Board Analysts
- State Water Laboratories recognized or established by the State Government
- Government Analysts appointed by the State Government
- Appellate Authority constituted by the State Government
- Local authorities – to assist in the implementation of the Act

THE 'PROCEDURES' STRUCTURE PAGE OF THE WATER ACT, 1974



7.1.3. Procedures under the Act

The procedures carried out by boards/authorities with regard to measures for the prevention and control of water pollution specified in the provisions of the Act have been described in this section.

This section is divided according to:

- The powers of the state board:

i) Obtaining information

ii) Carrying out inspections

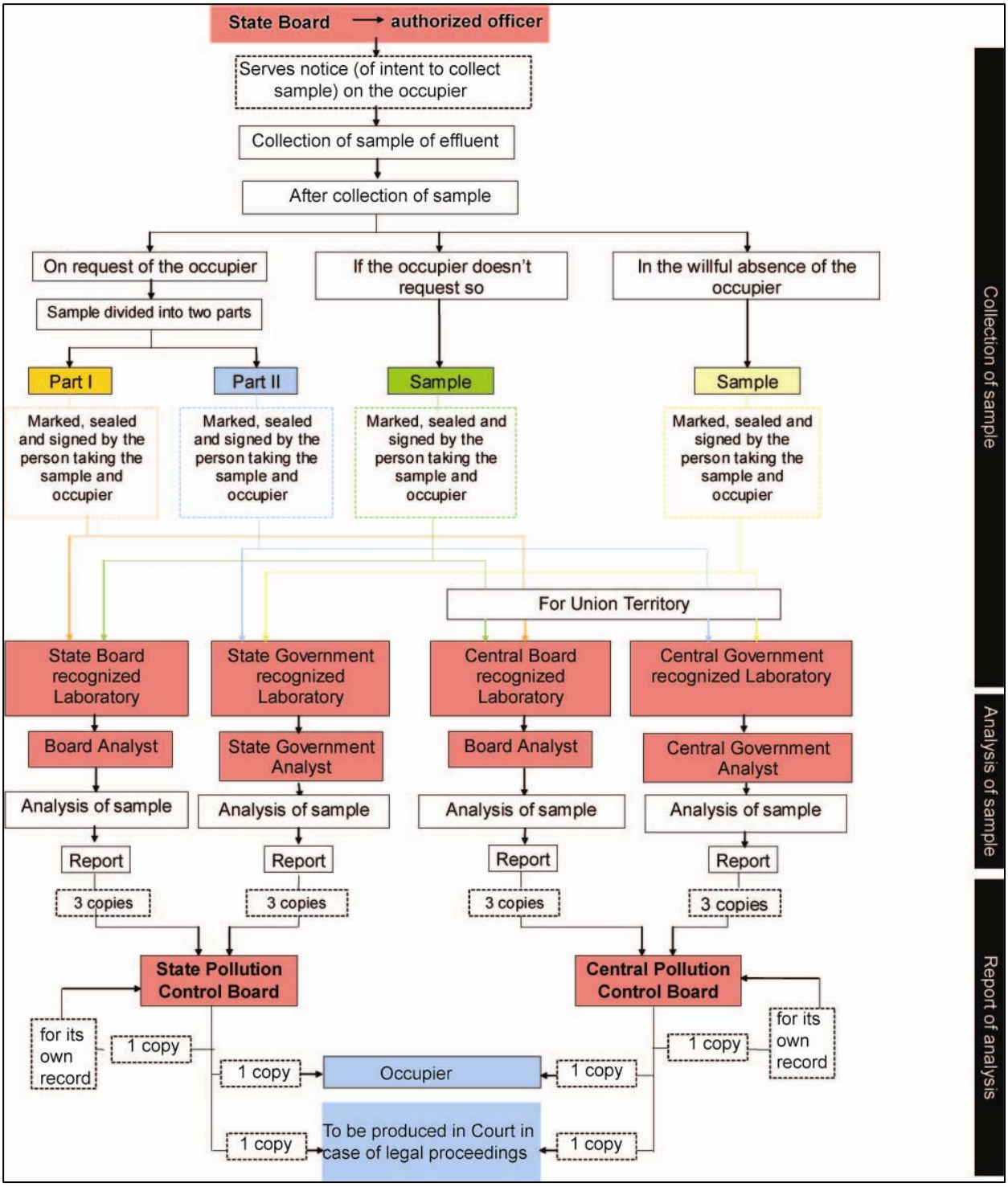
iii) Collection of samples

- Analysis of samples and Report of analysis
- Procedures carried out by the State Board to restrain pollution

  This sub-section includes the procedures carried out by the Board to restrain apprehended or accidental pollution and also includes the measures carried out by the Board when on the grant of consent to a person, certain conditions have been imposed, but the works to be carried out as prescribed by the conditions have not been carried out by the person to whom the consent has been granted.

- Laying down of standards
- Appeals - against conditions imposed on grant of consent

THE 'COLLECTION OF SAMPLES PROCEDURE' STRUCTURE PAGE OF THE WATER ACT, 1974

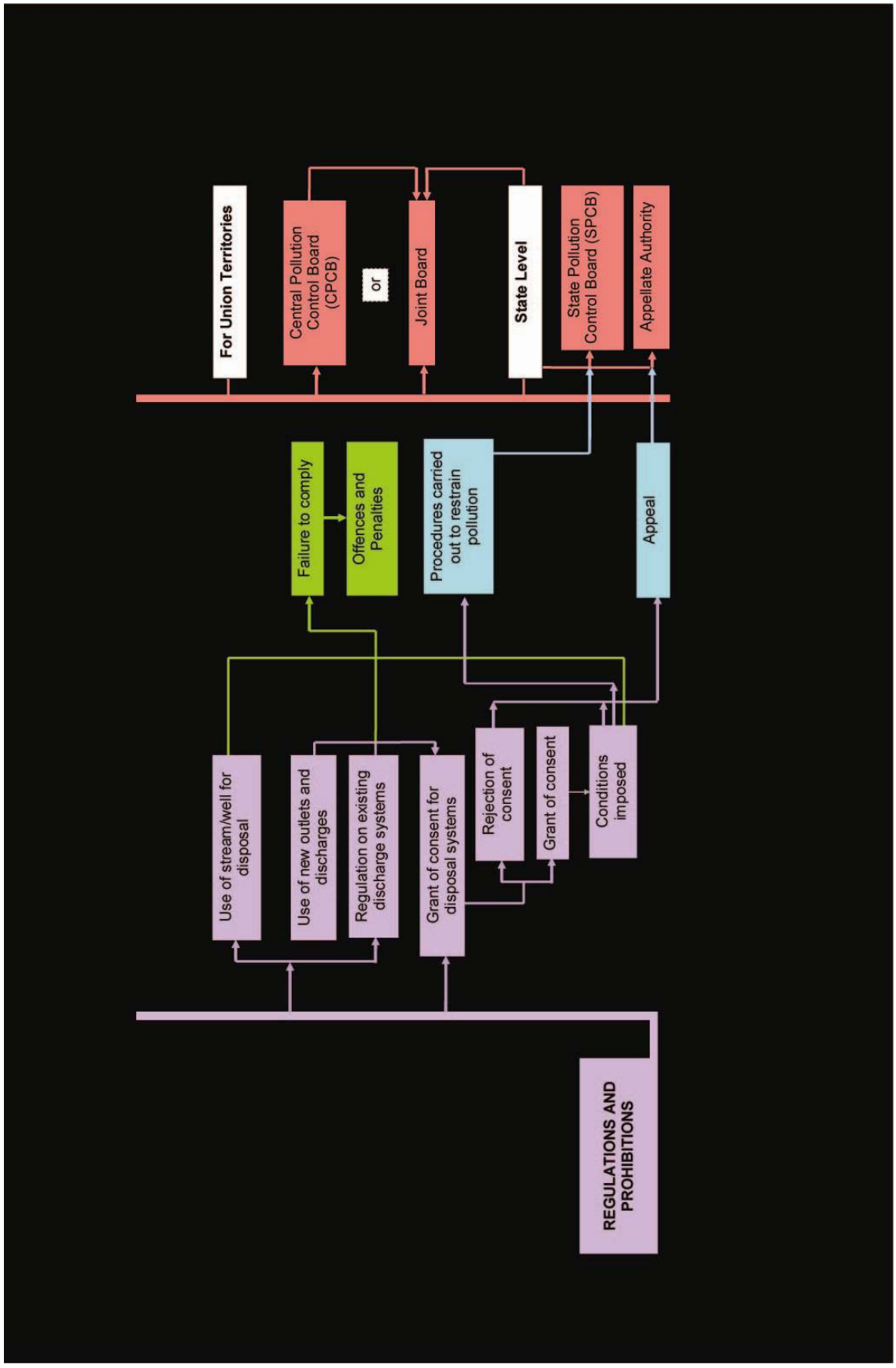


Procedure for 'Collection of samples → Analysis of samples → Report of analysis' under the Water (Prevention and Control of Pollution) Act

A State Board or any officer empowered by it has the power to take samples of water from a stream or well or samples of sewage or trade effluent for the purpose of analysis. The samples collected are sent to the recognized/established laboratories where they are analyzed to determine whether or not the standards established by the Board have been adhered to. The report of analysis may be used as evidence in a court of law provided the due procedure prescribed in the Act has been followed in the collection and analysis of samples.

This section in the guide provides the detailed procedure by which samples are collected by an authorized person, the respective laboratory it is sent to, the analysis that is carried out by the appointed board, and the report produced by the laboratory analyst.

THE 'REGULATIONS AND PROHIBITIONS' STRUCTURE PAGE OF THE WATER ACT, 1974



7.1.4. Regulations and Prohibitions under the Act

The Act prohibits the use of a stream or well for the disposal of sewage/trade effluent or other polluting matter. With respect to the use of disposal systems for sewage or trade effluents, under the Act, a person may bring into use a new or altered disposal system or continue to use an existing system only with prior consent sought from the state board.

Details about individual activities are provided in this section under the following:

Prohibition on the use of stream or well for disposal of polluting matter

Restriction on new outlets and discharges

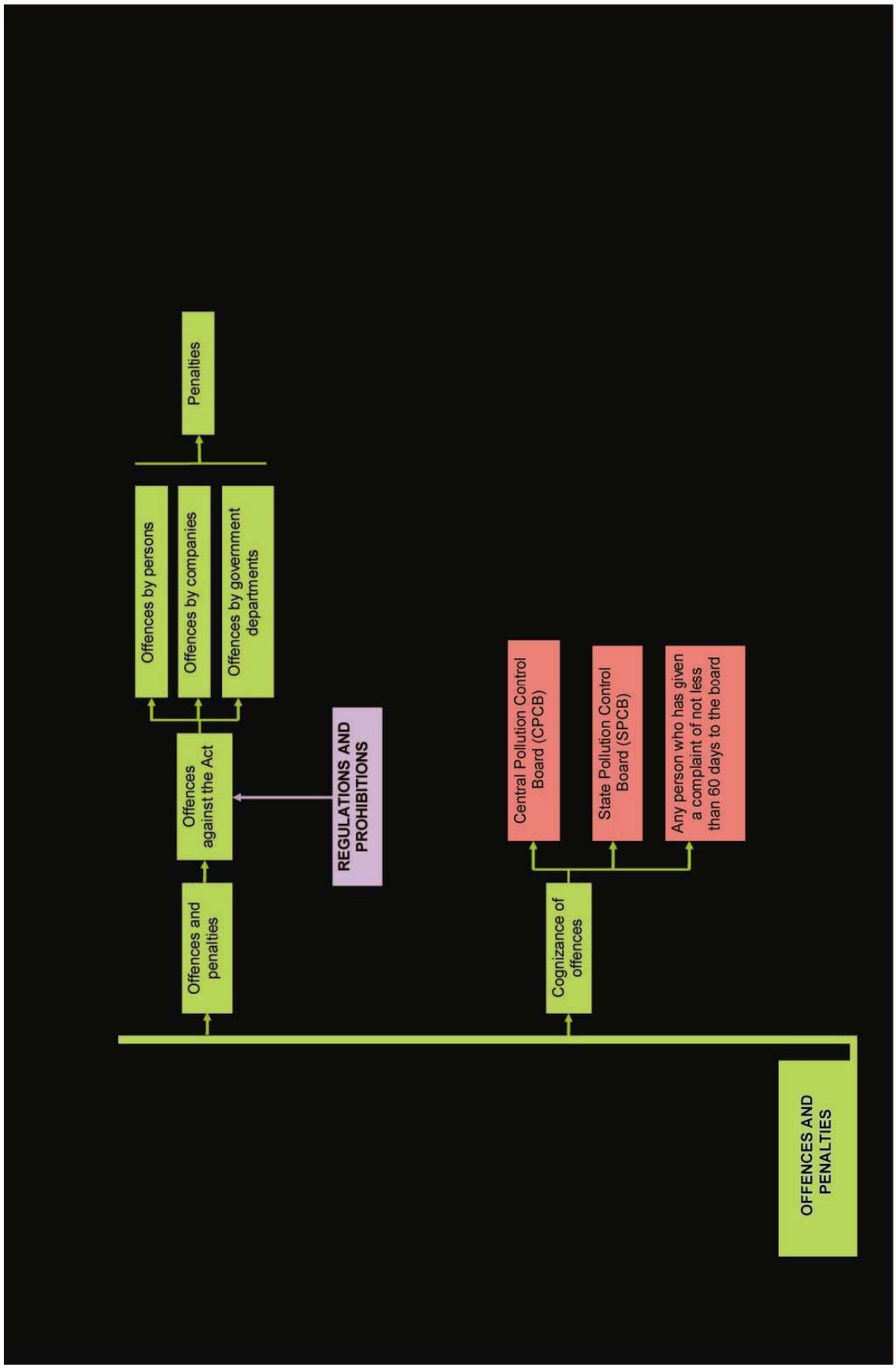
Regulation on existing discharge systems

Grant of consent for disposal systems

For the use of new or altered outlets, and for the continued use of existing discharge systems, details of the procedure for the grant of consent by the state board are provided here.

Carrying out a prohibited activity or a regulated activity in contravention of the provisions of the act amounts to an offence under the Act. This section therefore links to the 'Offences and Penalties' section, described below.

THE 'OFFENCES AND PENALTIES' STRUCTURE PAGE OF THE WATER ACT, 1974



7.1.5. Offences and Penalties under the Act

Sections 41 – 48 of the Act define activities that are considered offences under the Act and provides details of penalties to be awarded to a person committing such offences.

Provided in the guide is a table listing out such activities, the penalty upon conviction, and penalty for a subsequent offence of a similar nature.

The main sub-sections include:

Offences by a person

Offences by companies

Offences by government departments

The penalties for an offence remains the same irrespective of the offender (as categorized above). Penalties under this section have been provided in the table according to the offences committed, which have been categorized into the following:

Failure to comply with directions or orders of a court or Board.

Other activities that are considered to be offences under the Act.

This section also provides details of the procedure for:

Cognizance of offense (by Courts on the filing of a complaint against a violator)

7.2. Commentary on the Water Act, 1974

The Water (Prevention and Control of Pollution) Act of 1974 was the first comprehensive environmental legislation in India; comprehensive in that it addressed the issue of water pollution at the national level and sought to implement its objectives through agencies at the Central level and state levels. The bill that preceded the Act incorporated some of the provisions of State level legislations, the Orissa River Pollution Act of 1954 and the Maharashtra Prevention of Water Pollution Act of 1969 being two of the earliest legislations in the field.

The law defines pollution as "such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly), as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms" The application of the Act covers streams, inland waters, subterranean waters, and sea or tidal waters.

The Act provided for the establishment of regulatory agencies at the central and state levels in the Boards that are constituted by the Central Government and the State Governments respectively.

The activities of the state agency (the State Pollution Control Board) are coordinated by the Central Board. Laboratories and Analysts assigned at these levels are meant to complement the functioning of these Boards with respect to analysis of samples to ensure adherence to standards laid down (in the rules made under this Act) and to aid in the establishment of these standards for effluent discharge. The centrally established standards serve as minimal standards for compliance, and any standards enforced at the State Level must be more stringent than central standards.

While the network of agencies and their corresponding functions at the central and state level may seem to incorporate more region specific interventions in the control and abatement of water pollution, implementation of provisions and enforcement of conditions to meet the standards laid down continue to be poor.

Barring inadequacies in the provisions within the Act itself, institutional, political and technical constraints have been identified as key factors that undermine the effectiveness of the Act. These factors are typically overbearing at the level of individual States and at the 'third tier' of government, i.e. the local government in urban and rural areas. At the district level, an Environmental Officer so appointed functions under the directives of the State Board on matters related to water pollution.

Most State Boards lack the capability and resources to perform the functions assigned to them under the Act. Poor enforcement of ensuring compliance to standards and prescribed measures in the rules laid down under this Act may typically occur due to (a) inadequate financial resources to carry out these functions on a regular basis, (b) inadequate technical facilities and trained personnel for monitoring polluting units and (c) lack of political will of the State Government to support interventions prescribed by the State Board under the Act.

State Boards are autonomous bodies. However, the members of the Board are nominated by the State Government and the funding for its activities is also provided through contributions of the State Government. The State Governments therefore, may potentially influence decisions made by the State Boards.

The rules made under the Water Act have laid down standards for discharge of effluents exceeding which is punishable under the law. The Central Board prescribes minimum standards for this purpose which is applicable throughout the country. State Boards may establish their own standards only when they are more stringent than the ones established by the Central Board.

Although legal and administrative interventions, through the setting of standards, have been attempted, ambient standards of water pollution continue to be exceeded in many parts of the country. Enforcement in this regard relates primarily to source emissions, the standards of which are laid down for individual polluters.

The methods by which such standards are developed have often been criticized. While in some cases, such standards are determined for specific areas and then extrapolated to include a larger region, in other cases they are replicated from other countries without determining whether or not such standards are suitable to the Indian situation. The setting of national minimum standards also calls into question the 'one-size-fits-all' decision making strategy that is an outcome of central dominance in policy making. However, the assignment of such roles to the Governments of States exclusively calls for some deliberation as priority for attracting industrial investment could override environmental concerns, thus result in the setting of standards lower than those that would be necessary for controlling pollution.

Under Sections 25. 26 and 27 of the Water Act, the State Board regulates the use of a new or altered drain outlet or for new discharge of sewer effluents into a stream through a grant of consent procedure. When such grant is given, the State Board may impose certain conditions that must be adhered to in operating these processes. The Board is authorized to vary or modify these conditions at any time, and also has the power to revoke consent previously given. But analyses of the implementation of the Act have shown that these powers have not been used on a regular basis and bear little relation to the actual functioning of the Board. The Board's recourse, in cases of discharge exceeding minimum standards by a polluting unit, is to institute a prosecution, which has its own hurdles of being an ineffective and often time-consuming process.

Even with regard to punitive action, it has been shown that more often than not, State Boards prefer to be persuasive. The amending Act of 1988 however, strengthened the powers that could be exercised by the Board by enabling it to issue directions for the closure of any industry or process, or for the stoppage of electricity and other services to such unit.

The provisions of the Act were also strengthened considerably with the passage of the Water Cess Act, under which industries and local bodies are required to pay a nominal cess on water consumption. This cess was made refundable up to a certain percentage if the discharge of water did not exceed the permissible limits.

The amendments in the Water Act in 1998 brought some of its provisions in line with the Environment (Protection) Act of 1986 (EPA). The EPA was designed as an umbrella legislation to provide a framework for the coordination of activities of various Central and State authorities created under the Water Act and the Air Act (which was passed in 1971). Under the original Act of 1974, the cost of defiance for polluting industries was often lower than the cost of compliance to norms established by the Boards. Therefore industries found it more cost effective to pay fines than to adhere to pollution control guidelines.

The penalties for offences under the Water Act were made stronger in the amending Act, and while before the amendment the power to prosecute had remained exclusive to the government agency, citizens were given the legitimacy of filing complaints against offenders under the Act.

Under the provisions of the original Act, the public was not given the right to seek court enforcement of the legislative provisions.

While this provision increased the participation of citizens in encouraging penal action to be taken against offenders, the other provisions of the Act have been accused of excluding public participation. Since public interest is significantly affected by pollution of water (and air), participation should encourage the public to be heard at all stages of pollution control decisions. The standards established at the Central and State levels are done so largely exclusive of public participation. Further, the provision for appeal against conditions imposed by the State Board on its grant of consent is only available to the person aggrieved by such order, i.e. the person in charge of the unit for which the consent is sought, although the activities of such unit may affect, more significantly, sections of the public with access to the same source of water.

Article 21 of the constitution recognizes the right of every citizen to pollution free air and water. Affected parties (of pollution), NGO's and the general public take recourse to legal action mainly through Public Interest Litigations (PILs). Interpreting access to clean air and water as a fundamental rights, courts have pronounced several judgements on the implementation of environmental regulations, including the regulations under the Water Act, thereby often taking over the role of the executive.

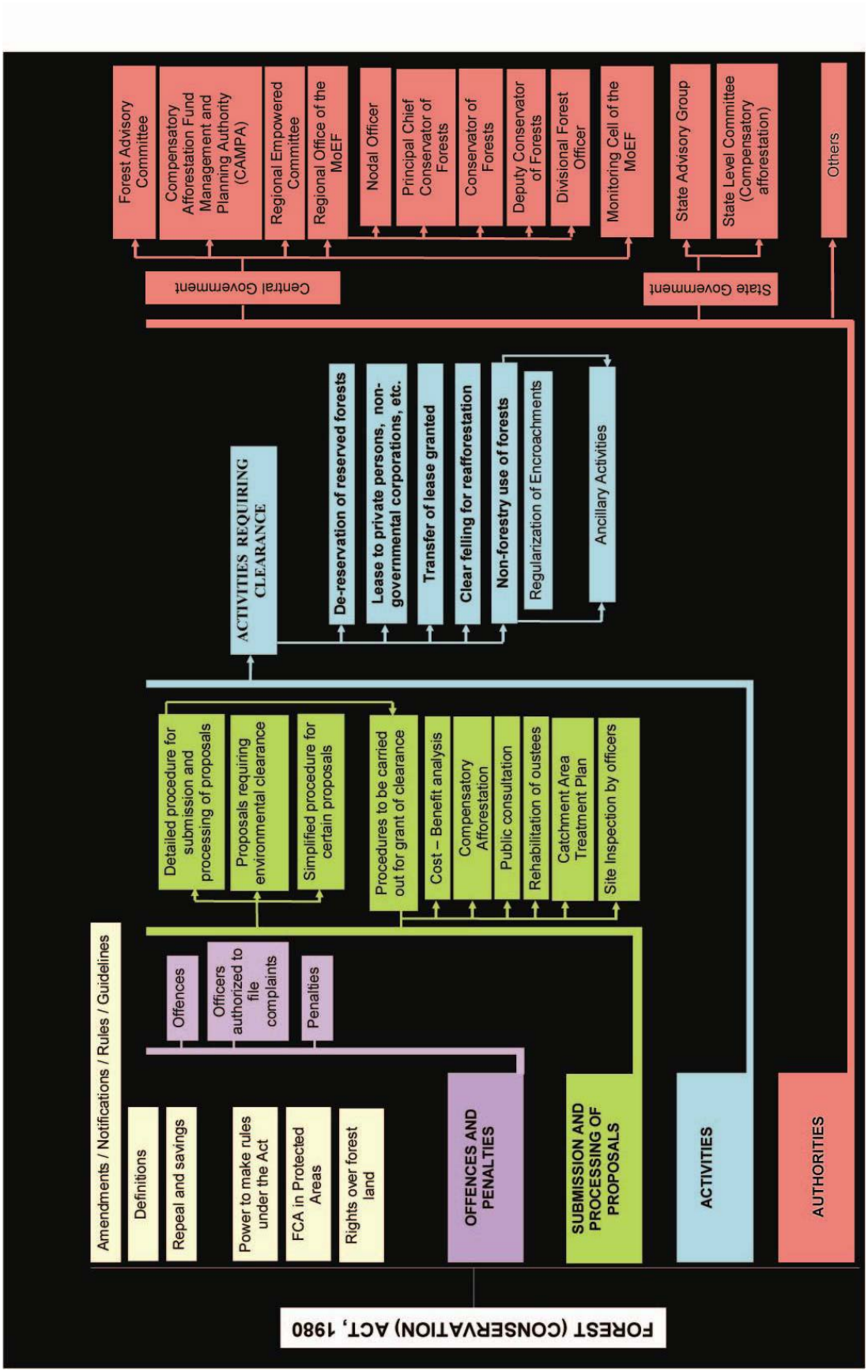
8. The Forest (Conservation) Act, 1980

On 25th October 1980, the President of India promulgated a Forest (Conservation) Ordinance which aimed to provide for the conservation of forests in the country. The Forest (Conservation) Act, that consequently replaced the Ordinance, made the prior approval of the central government necessary for the de-reservation of reserved forests and for the diversion of forest land for non-forest purposes by state governments (or other authorities). Until 1976, the subject of forests belonged in the State List of the Constitution and state governments regulated forests in accordance with the Indian Forest Act of 1927. The Forty-Second Amendment Act of 1976 transferred forests to the Concurrent List, thereby empowering the central government to play a more direct role in the management of forests and the regulation of activities in forest lands. The Forest (Conservation) Act of 1980 extends to the whole of India, except for the state of Jammu and Kashmir.

The need to institute such a law was based on the Government's acknowledgment of the high rate of deforestation and diversion of forest land for industrial and agricultural activities that was taking place throughout the country. In 1986, the Act was amended to include provisions for the law to operate in plantations (by non-governmental organizations) and in forest land where trees were felled.

The Forest (Conservation) Rules of 2003 provide the procedure by which proposals for diversion of forest land must be made and the procedure by which these proposals are processed at the level of the state government, regional offices of the Ministry of Environment and Forests and the central government.

THE MAIN STRUCTURE PAGE OF THE FOREST (CONSERVATION) ACT, 1980



8.1. The Forest (Conservation) Act in this Guide

8.1.1. Main structure of the Act

The adjacent image shows the Structural Flowchart of the Forest (Conservation) Act, 1980. The rules and guidelines issued under the Act are also included in the text for this particular law as many of the provisions have been elaborated upon within these guidelines. The Forest (Conservation) Act as it appears in the Environmental Law Guide has been divided into four sections:

Authorities: This section lists out authorities, committees and boards appointed under the Act by the Central and the State Governments for implementation of the Act. It also includes authorities appointed under other Acts who have specified roles in the implementation of this Act.

Activities: This section provides details of the activities that require clearance under the Act (for diversion of forest land). Depending on the type of activities and the size of forest land in question, the authorities responsible and the specific guidelines applicable vary across activities.

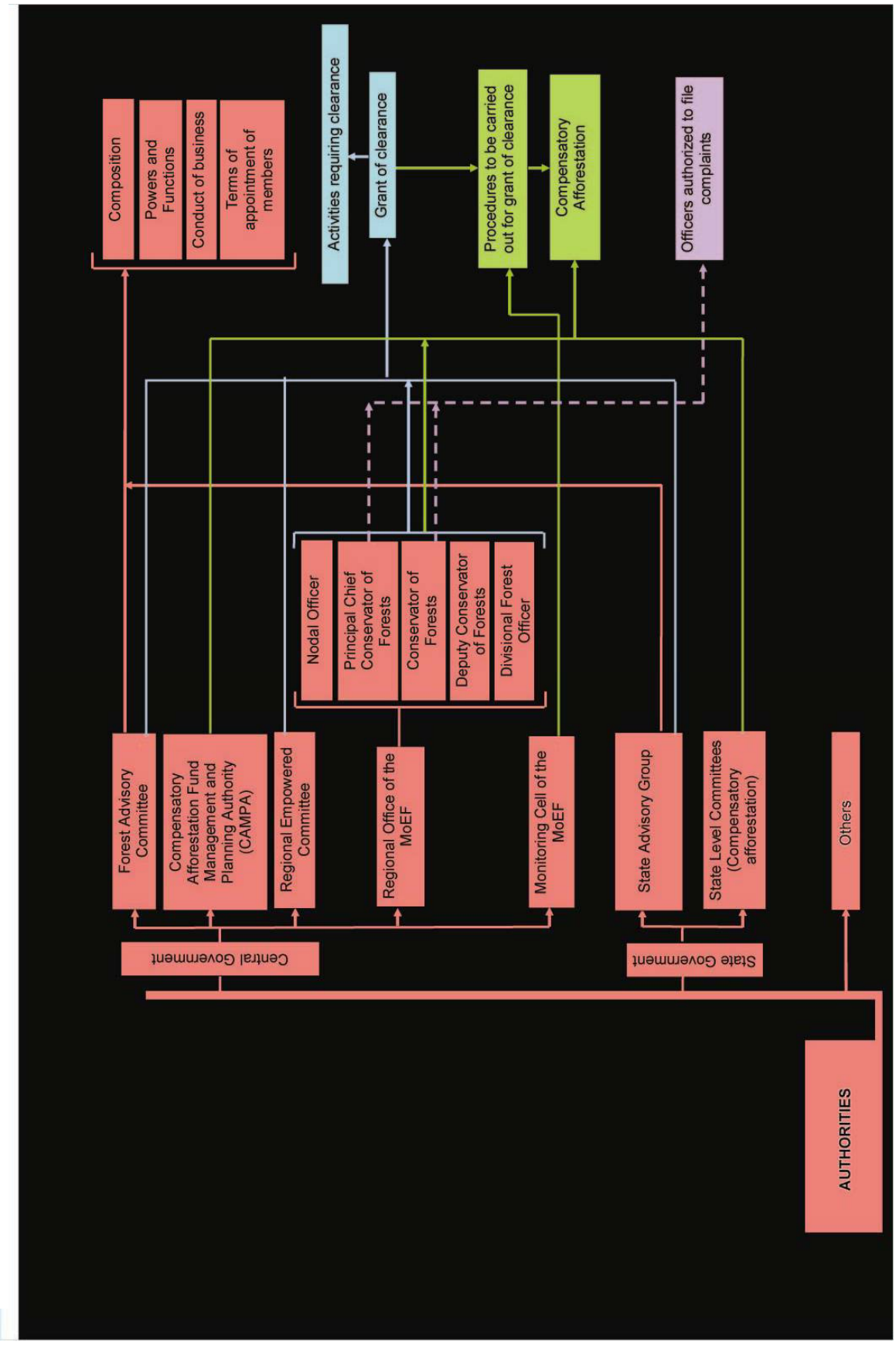
Submission and processing of proposals: For diversion of forest land, the procedure by which proposals are submitted and processed have been elucidated in this section. The roles and responsibilities of the authorities are illustrated in the flowchart (and accompanying text in the Guide) specific to the submission and processing of proposals for different activities.

Regulations and Prohibitions: This section includes activities that are prohibited or may be regulated under the Act. Section 21 of the Act. The use of new or existing disposal systems (i.e. in existence prior to the commencement of the Act) requires the consent of the State Board which must ensure that the standards laid down for effluent discharge are complied with, and to do so, the Board may impose conditions along with the grant of such consent.

Offences and Penalties: This section in the Guide provides details of penalties for specific activities that are considered offences.

Apart from these sections, the Environmental Law Guide contains the following which are taken from the Bare Act, rules and the guidelines: Definitions, Power of the Central and State Government to make rules, effect of the law in Protected Areas, how the law affects rights over forest land and Repeal and Saving. Amendments, Notifications, Rules and Guidelines are also provided in downloadable pdf formats in the Downloads Section of the law, in the CD-ROM.

THE 'AUTHORITIES' STRUCTURE PAGE OF THE FOREST (CONSERVATION) ACT, 1980



8.1.2. Authorities under the Act

Authorities appointed at the central level, the regional offices of the Ministry of Environment and Forests and the state level have functions and may exercise delegated powers under the Act. The Authorities whose roles in the implementation of the Act have been described include:

At the Central level:

- Forest Advisory Committee
- Compensatory Afforestation Fund Management and Planning Authority

At the Regional level (i.e. the regional office of the Ministry of Environment and Forests):

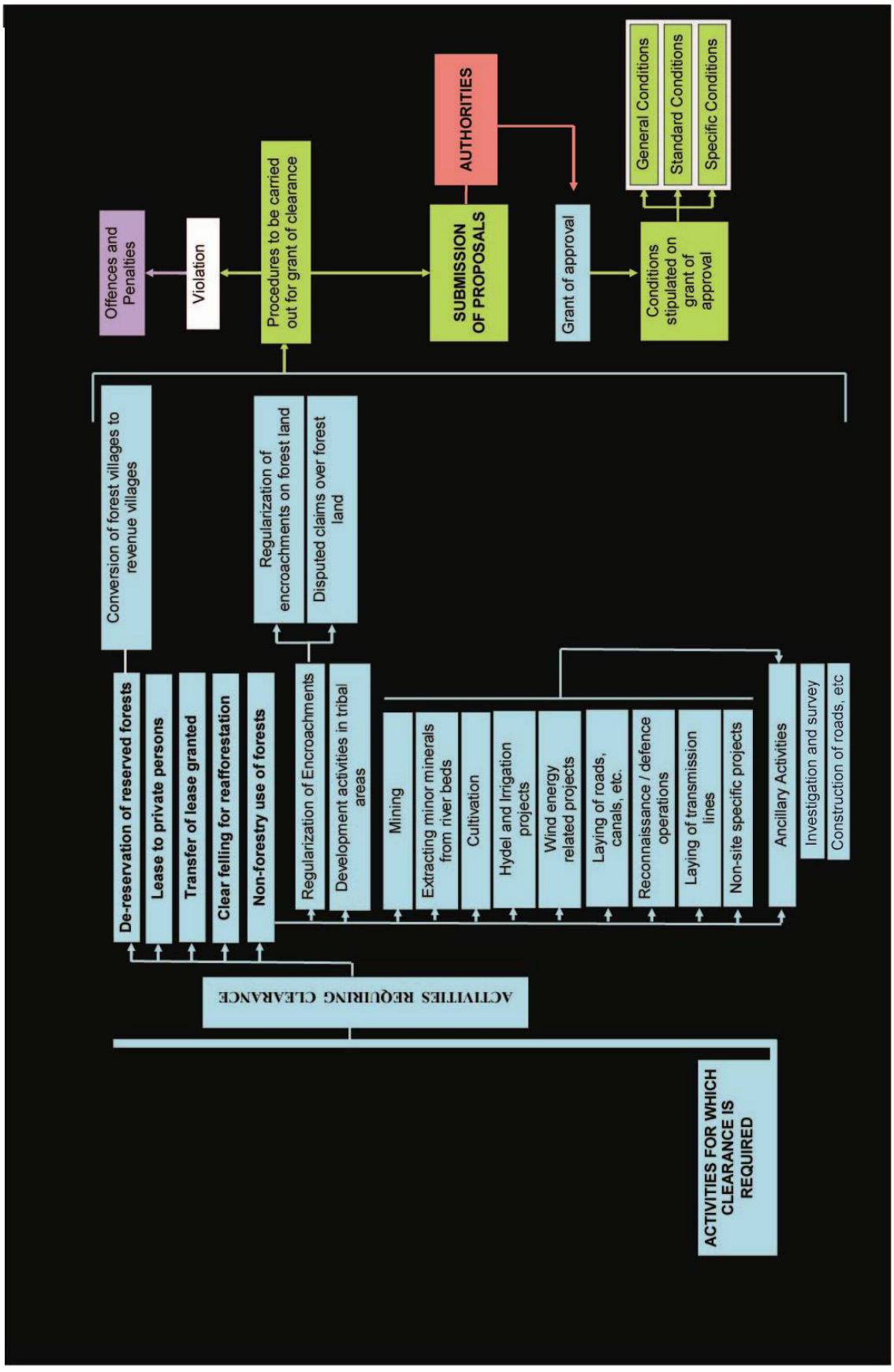
- Regional Empowered Committee
- Nodal Officer
- Principal Chief Conservator of Forests
- Chief Conservator of Forests, Conservator of Forests and Deputy Conservator of Forests
- Divisional Forest Officer

At the State level:

- State Advisory Group
- State Level Committee (in relation to Compensatory Afforestation)

Other officers, who have minor, yet significant roles in the implementation of the Act include the District Mining Officer (for activities involving mining in forest land), the National Board of Wild Life and Chief Wild Life Warden (for activities in protected areas) and other officers of the State Forest Department.

THE 'ACTIVITIES' STRUCTURE PAGE OF THE FOREST (CONSERVATION) ACT, 1980



8.1.3. Activities under the Act

The Forest (Conservation) Act of 1980 restricts the de-reservation of forests and the use of forest land for non-forestry purposes. Any activity that requires the de-reservation of forests or the diversion of forest land for non-forest purposes must acquire prior approval from the central government.

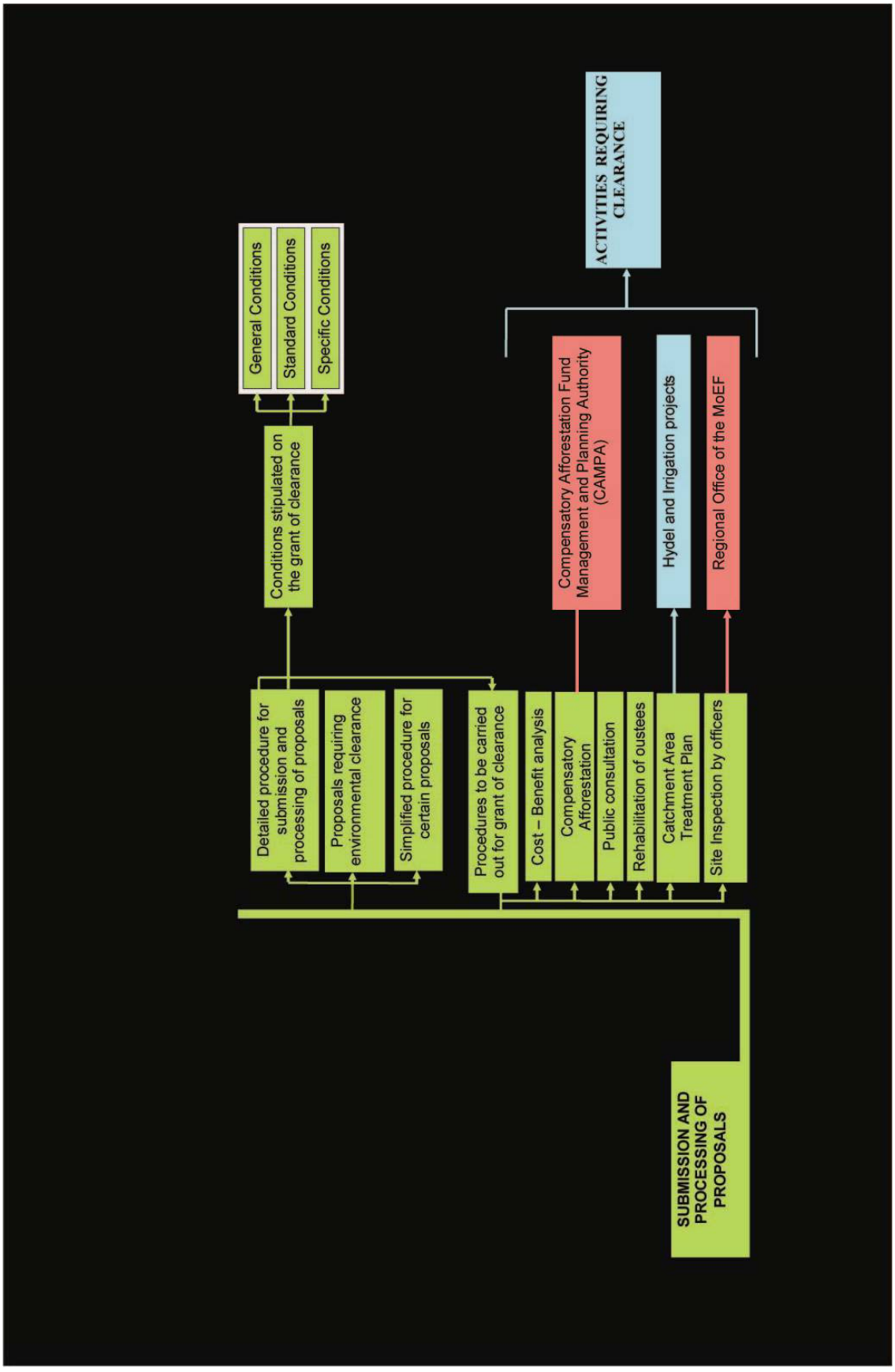
The Act requires that prior permission be obtained for the following activities:

- De-reservation of forest land
- Lease of forest land to private persons, non-governmental corporations, etc. and transfer of lease granted for use of forest land
- Clear felling of forest land for the purpose of afforestation
- Non-forestry use of forest land

From the definition of 'non-forestry use' under the Act, this Guide has identified the following activities and lists out the guidelines specific to such activities as they are covered under the provisions of the Act:

- Regularization of encroachments
- Mining
- Extracting minor minerals from river beds
- Cultivation
- Hydel and Irrigation projects
- Wind energy related projects
- Laying of roads, canals, etc.
- Defence operations
- Laying of transmission lines
- Non-site specific projects
- Ancillary activities (i.e. activities carried out accompanying the major activities as listed above)
-

THE 'SUBMISSION AND PROCESSING' STRUCTURE PAGE OF THE FOREST (CONSERVATION) ACT,



8.1.4. Submission and processing of proposals under the Act

Under the Act, activities requiring the use of forest land for non-forest activities may be carried out only with prior approval of the Central Government (and in certain cases the Regional Office of the Central Government in the Ministry of Environment and Forests).

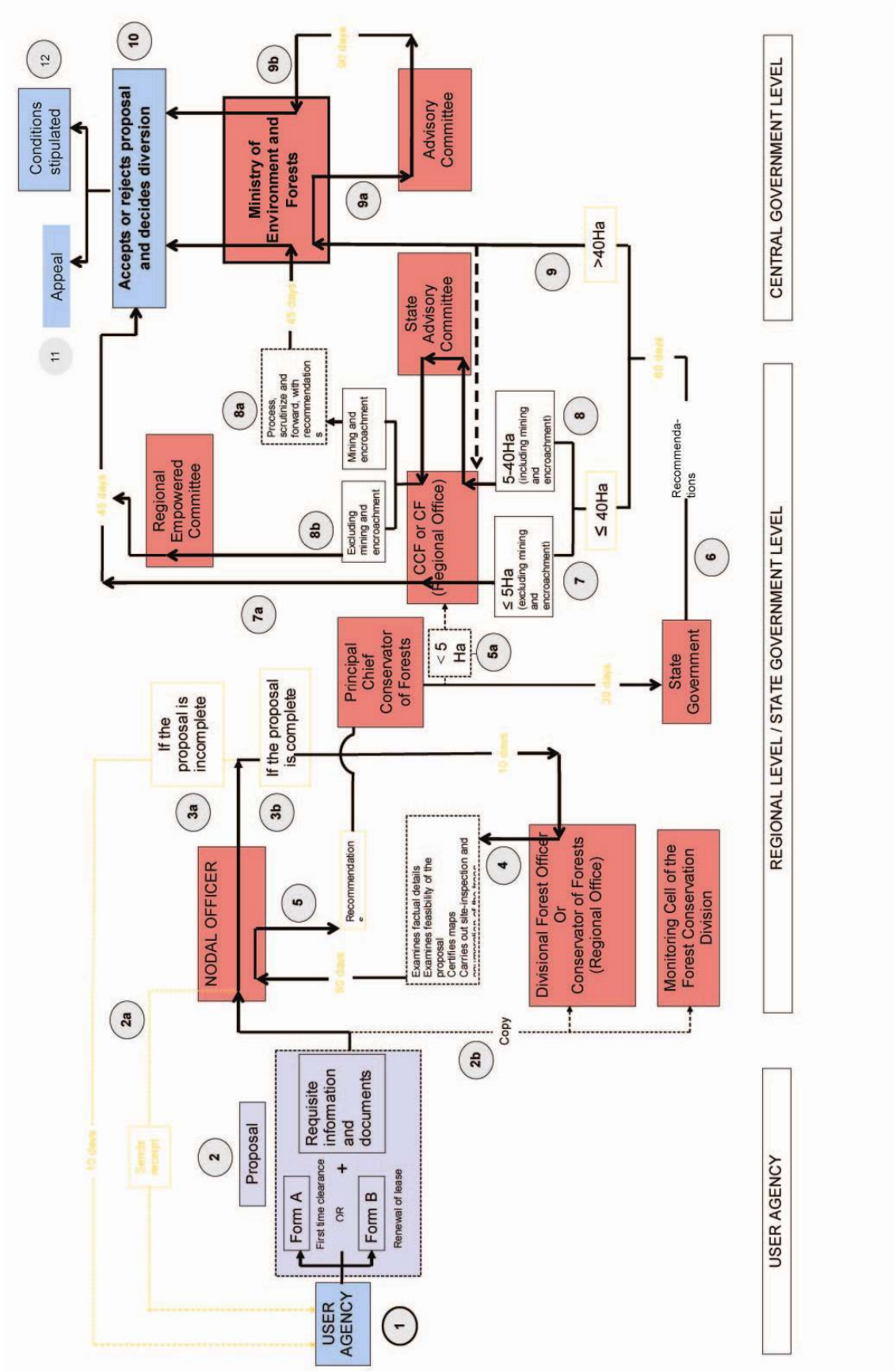
This section in the guide provides details in this regard under the following sub-sections:

- Detailed procedure for submission and processing of proposals
- Procedure for proposals also requiring environmental clearance
- Simplified procedure for certain proposals (depending on the type of activity and area of forest land)

While applying for a 'forest clearance' the user agency must carry out certain activities that are mandatory, the specificities of which depend on the type of project and area of forest land. Authorities processing the application for such clearance are also required to carry out certain duties while ensuring that provisions to carry out these mandatory activities have been met by the user agency. These details have been provided under the following activities:

- Cost-Benefit Analysis
- Compensatory Afforestation
- Public Consultation
- Rehabilitation of Oustees
- Catchment Area Treatment Plan
- Site Inspection by officers

THE 'SUBMISSION AND PROCESSING' STRUCTURE PAGE OF THE FOREST (CONSERVATION) ACT,



Procedure for submission and processing of proposals under the Act

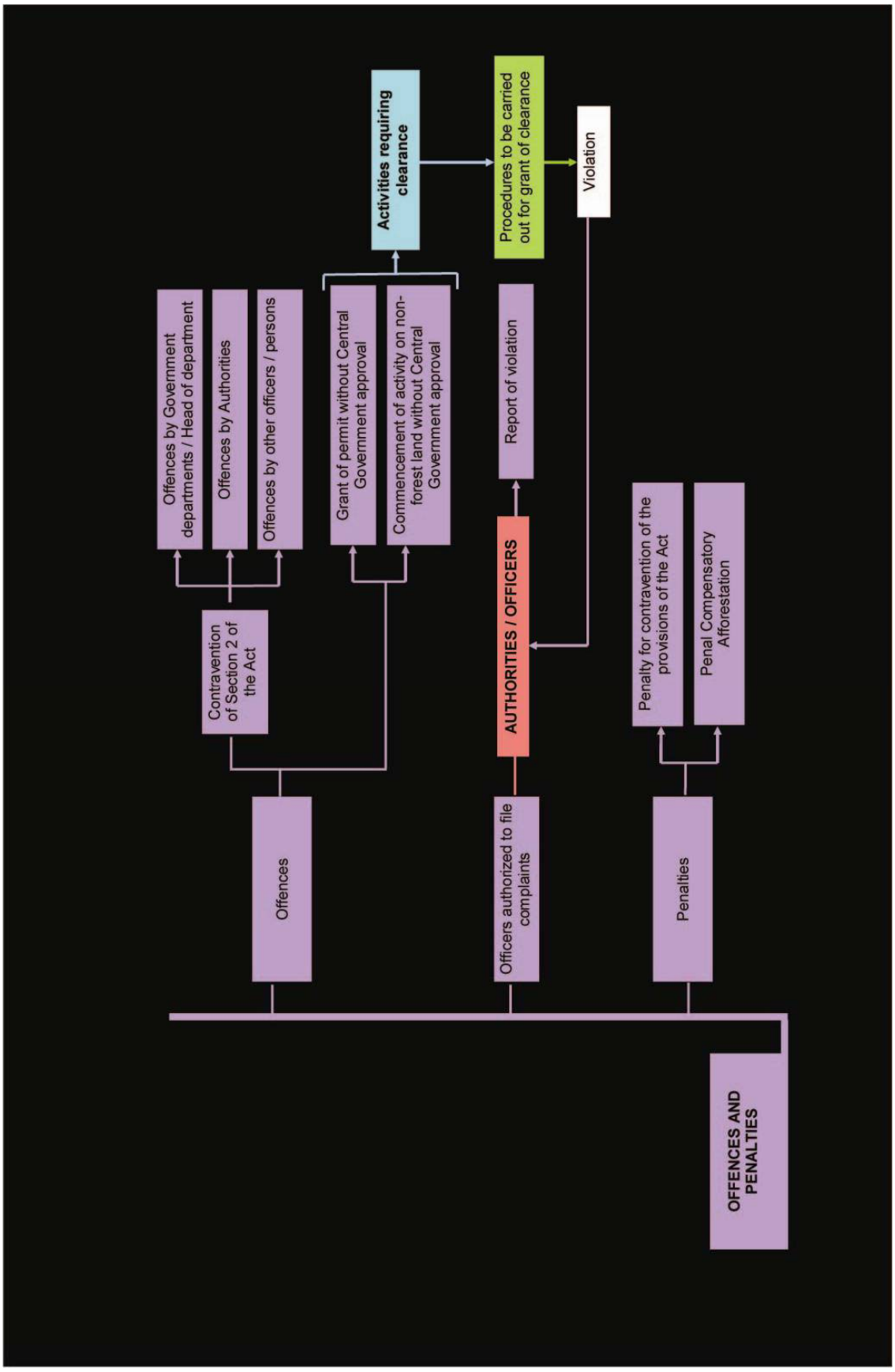
The adjacent flowchart illustrates the process by which a proposal submitted by a user agency is evaluated by different levels of the state and central government in seeking approval for the proposed activity.

Depending on the type of activity and the size of forest land in question, the roles and responsibilities of different authorities vary, the main details of which have been shown in this flowchart, and the finer details of which are provided in the accompanying text in the Guide.

The general steps identified in the procedure include the following:

- Submission of the proposal by the user agency in the appropriate form to the nodal officer
- Examination of details in proposal by officers at the Regional Office of the Ministry of Environment and Forests
- Forwarding of the proposal by the nodal officer, through the Principal Chief Conservator of Forest to the State Government
- Depending on the size of forest land in question, forwarding the proposal to either the Regional Office of the Ministry of Environment and Forests or the Central Government in the Ministry of Environment and Forests
- Recommendations made by the State Advisory Group or the Forest Advisory Committee
- Rejection or acceptance of the proposal by the concerned authority
- Conditions imposed on the grant of approval
- Appeal preferred if aggrieved by the conditions on the grant of approval or the rejection of an application

THE 'OFFENCES AND PENALTIES' STRUCTURE PAGE OF THE FOREST (CONSERVATION) ACT, 1980



8.1.5. Offences and Penalties under the Act

The Act defines activities that are considered offences and provides details of penalties to be awarded to persons committing such offences.

Provided in the guide is a table listing out such activities, the penalty upon conviction, and penalty for a subsequent offence of a similar nature.

The main sub-sections include:

- Offences by a government departments/Heads of departments
- Offences by authorities
- Offences by other officers/persons

The penalties for an offence remains the same irrespective of the offender (as categorized above). Penalties under this section have been provided in the table according to the offences committed, which have been categorized into the following:

- Contravention of Section 2 of the Act (which makes prior clearance for an activity mandatory under the Act)
- Grant of permit without Central Government approval
- Commencement of activity on forest land prior to obtaining approval

This section also provides details of the procedure for:

- Cognizance of offence by a Court on the complaint made by an authority/authorized officer
- Report of violations for the filing of a complaint

8.2. Commentary on the Forest (Conservation) Act, 1980

The legislation promulgated by Mrs. Indira Gandhi government, in its opening lines states its mandate to be that of conservation of forests. This Act provides for the constitution of an advisory committee to advise the Central government with regard to grant of approval for clearing forests. Like the Ordinance that preceded it, it made *'the prior approval of the Central Government necessary for de-reservation of reserved forests and for use of forest land for non-forest purposes.'* It mandated that all user agencies (public and private) would need to seek a mandatory clearance from the central government i.e. Ministry of Environment and Forests (MoEF) before they could use any forest land for industrial, plantation or any other purpose that is understood by the legislation as a non-forest activity. However, the user agency does not seek clearance directly as in the case of environmental clearance under the EIA notification of the EPA 1986 but through the relevant state government, in whose name the forest clearance would be granted.

Till 1996, the legislation was applicable only to government forest lands. The definition of forest as understood by FCA was of a forest as defined in the Indian Forest Act 1927. An order passed that year in the T.N.Godavarman Thirumlkpad v/s Union of India; the Supreme Court reinterpreted the FCA's jurisdiction. This was following the filing of a Public Interest Litigation in 1995 by Shri T.N Godavarman regarding the depletion of forest areas in Tamil Nadu. The subsequent Interlocutory Applications tagged onto this case and orders resulted in the making this law applicable to all areas that can be considered forests as per the dictionary meaning of the term, irrespective of the nature of ownership and classification of land. This was a critical move that expanded the scope of the FCA manifold, and continues to operate till date. Through an order in this case, the Supreme Court set up the Central Empowered Committee (CEC) to look into each case of conversion of forest land for non-forest use and report to the court. Many activists and government officials who believe that natural resources need to be managed in a democratic manner see this as the intrusion of the judiciary in the day to day management of forests.

Purpose of the law

The parliamentary debates that preceded the issuance of the FCA indicate that the need for the law was to arrest the loss of 1.5 lakh hectares of forest land per annum between 1950 and 1980. State governments were also held responsible for this loss and hence the need for a central legislation for forest clearance. Prior to this, in 1976, the Constitution of India was amended and forests were brought under the concurrent list to enable the Parliament to enact the FCA.

If the legislation had managed to achieve what it set out to do, there would have been at least a reduction if not a complete stop on the loss of forests. Between 1950 and 1980 forest land was diverted at the rate of 1.5 lakh ha per annum by states/UT. Their diversion came down to 0.38 lakh ha per annum after 1980. If regularization of pre 1980 eligible encroachments - over 3.66 lakh ha of forest land - is excluded, the net rate of annual diversion comes to 0.23 lakh ha only. Since 1980 about 9.21 lakh ha for forest land have been diverted till 2004.

Quite interestingly, upto 2006 the MoEF granted permission for the diversion of 11, 40,176 hectares of forest land for non-forest use. At the present rates of loss, we are close to the deforestation rates before the enactment of the FCA, and statistics don't reveal a significant step ahead in checking the same. It may be borne in mind that these figures highlight only those

development and industrial processes wherein permission under the FCA has been sought. It does not indicate the extent of projects in violation of the FCA and which may have caused forest loss.

A lot of the above forest land has been diverted along the coastal stretches. One of the most recent examples of a forest clearance relates to India's highest Foreign Direct Investment project by the South Korean multinational POSCO. The proponents have proposed a 12 million tonne steel plant and a captive port less then 12 km from the Paradeep port in Jagatsinghpur district in Orissa. The setting up of these two operations will entail cutting diversion of 1253.255 hectares of forest land and cutting of 2.8 lakh trees. Other than this, what will be lost are extremely fertile and fragile sand dunes, coastal agricultural economy and fisheries near the area.

Yet another instance of a mega project along the coast which seeks to use mangroves and other forest land is the Mundra Port and SEZ of the Adani Group in Gujarat. In a letter by civil society groups to the Forest Advisory Committee (FAC) dated 8.9.2008, it is stated that the destruction of the mangroves had started way back in 1998 and as per news reports mangrove trees spread over more than 2000 hectares have been cleared. A forest clearance of 1576 hectares of forest land is pending clearance under the FCA.

It is not that projects have never been rejected clearance or returned for reconsideration. The construction of the Hubli-Ankola railway line in Karnataka was stayed by the Central Empowered Committee (CEC) of the Supreme Court in 2007 as construction was taking place without the mandatory approval under the FCA. This railway line is an important trade link to join the mining and industrial belt in Karnataka to the coast in Uttara Kannada district.

Implementation of the law

At the central level, it is the Forest Advisory Committee (FAC) that is to look at a proposal carefully and consider it according to parameters laid down under the FC Rules, 2003. This is one of the most critical issues with the FCA that clearance is highly centralized and the clearance procedures have no scope for public participation. Subjective representation of facts and its interpretation is at the core of this process, with little scope of public scrutiny. Individual members of the committee may sometimes provide some transparency, but the process is not institutionalized in law.

In the process of assessment of applications for forest clearance, the final responsibility lies with the nodal officer in each state, because he is in charge of all the applications under the Act. It is not clear as to who in the assessment process ensures that all alternatives are considered; the DFO who fills in the application or the senior officials in the process or then the Conservator of Forests gives his comment, either in support or against what the DFO said, .or then the nodal officer.

There is a circular saying that the consent/resolution of local communities should be taken before grant of clearance to projects, but later a clarification was made that for projects that require environmental public hearings, this consent is not needed. In actuality these are two different processes. Environmental public hearing is not a process of consent; it is only a process of hearing people's comments and forwarding them to the clearance granting agency. The annexure of the FCA said '*get a resolution from the Aam Sabha regarding whether it considered the project as beneficial or not'*. The annexure if implemented in all cases gives powers to the *Aam sabha* to become a decision maker in the process of the grant of clearance.

Explaining the reasons for forest loss as being inherent in the law itself, Regional Chief Conservator of Forests (RCCF), Northeast region, Shri Promode Kant said in 2003, that clearances that involved diversion of forest land up to 5 ha is to be decided by the RCCF. This amounts to almost 60% of the total cases for forest clearance. Projects requiring 5 to 20 ha used to be cleared by the State Advisory Board. This comprised only bureaucrats and no NGOs or civil society members. Their recommendations are almost final and the clearance is granted by the MoEF. Only projects requiring forest area beyond 20 ha to be diverted go to the MoEF for clearance. The RCCF is expected to conduct site inspection only when the area of land involved in diversion is above 100 ha.

These rules underwent a change in 2004. Now, if the area to be diverted is less than 40 Ha, it gets cleared by the regional office of the MoEF and does not have to be placed before the FAC. All areas above 40 ha have to be put to the FAC and then the CEC. In order to bypass this long process, many projects especially mining projects show the initial land requirement as less than 40 ha and then keep adding small amounts to this subsequently so that the clearances may be obtained at the level of the regional office.

Conservationists who have followed the implementation of the Act say that this Act must have a system of checks and balances, instead of overly relying on the state, centre or communities to achieve the objective of forest conservation. Through a centralised legislation such as this one, the Central Government can put a check on State Governments diverting forest land because the States are competing for investments, whether it is for mines, or other infrastructure projects. Nobody should be allowed to undertake self-regulation.

Another criticism has been that wildlife values are not reflected enough in the forest diversion proposal. Any forest area that needs to be diverted even if it is just outside a protected area (PA) has no special protection other than for the FCA. Only the subjective opinion of the Chief Wildlife Warden is needed to grant clearance as against the NBWL and other committees that come into play in the case of diversion of a PA.

There are several cases of contravention of Section 2 where state governments have issued clearances without the permission of the MoEF. These have taken place either in the use of the forest land itself or in cases where there has been an under-reporting in actual use of the land. There was a recent case in Bihar where a part of the sanctuary was to be submerged by a dam project. However, there is now a lot of restraint by state governments due to the intervention of the Supreme Court. A year ago, there was a case in Maharashtra where a Minister and senior bureaucrats were sent to jail for violating norms, giving licences to saw mills within ten kilometers of the Phansad sanctuary, as they has manipulated the information for the forest clearance. In the Bihar case, the State Government itself prosecuted its officers including the irrigation secretary, the power secretary and some others as they thought that the Supreme Court will take action against the State Government. So, there might be an increasing fear of allowing diversion of forest land for non-forestry purposes without a clearance from the Central Government, particularly when large areas of land is involved.

Monetizing forests and forest loss

As development projects gain precedence over forest conservation, there is sometimes a reluctance to operationalise the penal clauses. If a private developer illegally occupies more land than he is supposed to, the FD will raise the issue that they have occupied land for non-forestry purposes

illegally. Very often, in these cases the solution is penal compensatory afforestation. For eg; in the case of the Teesta - V Hydel Project in Sikkim, there was severe violation of the FCA and dumping of construction muck and debris into the river by the project proponent, a Public sector company. So the Sikkim Forest Department filed a case asking for a 14 crore compensation. In such cases, the violation of the Act and destruction of forest areas gets reduced to being compensated by monetary penalties.

In such cases of violation, the judiciary tends to penalise the government, but not the project authorities. If a project authority has violated the FCA, very often the focus of even the judicial intervention becomes essentially a question of how it can be resolved. The judiciary itself is reluctant to take any decisions which it considers 'anti-development'. In Meghalaya, Lafarge, the cement giant, was operating a mine without FCA clearance. The MoEF withdrew their environmental clearance under immense pressure from the Khasi Students Union and other local groups. Lafarge went to the Supreme Court and the Court asked the company to seek clearances and pay the required compensation.

In cases where destruction of forest land has taken place due to the violation, the focus of judicial intervention seems to be of a 'clean-up' of that land. There needs to be some mechanism by which perpetual violators are identified and this is factored into future decision making on their projects. Ideally, the decision making body like the Forest Advisory Committee should be examining the past record of the company seeking a clearance with respect to previous violations.

Now, the projects that require forest land have to pay a Net Present Value (NPV) for the land based on the quality of forests that is to be diverted. So it becomes the interest of the project authorities to show that they are using less forest land. But state governments may also be keen to show as much area for diversion as that means greater money coming into their hands as NPV. These are supposedly to be utilised for catchment- area treatment, compensatory afforestation, and other forestry activities. This has also been the greatest suspicion of project authorities as to whether the money handed over by them to the state Forest department has been utilized for the purposes it is meant for. Irrespective of whether forest land required for diversion is shown to be less to save on NPV or if the paid up NPV is used up for purposes other than forest conservation, the cause of forest conservation suffers.

However, a regulatory regime like the FCA needs to be viewed within the context in which it operates today. The Indian government has been keen on inviting large scale foreign investment in the country in order to achieve a double figure growth rate. All this requires converting the country's natural and ecological spaces and related livelihoods into commodities to be dispensed away for the "development" process. Therefore a law that does not prohibit use of forest land or changes to land use, but only lays down a regulatory procedure is likely to be used to meet the demand for land rather than for the forests that stand on it. The statistics on the diversion of forest land from 1980-2006 reveal this clearly and also that fact that there has been an impetus towards granting clearances in the last three years.

The FCA was stated to be conservation legislation, but other than its title it provides little for the proactive conservation of forests. Even in its attempt at regulating forest loss by developmental threats, much is wanting.

There needs to be greater access to information to the public, in the filling of the application by the forest department and at that stage the Aam Sabha is consulted. A cost-benefit analysis is to be carried out, and this process of determining costs and benefits could benefit greatly from detailed

consultations and consent of the local communities. A greater participation of non-forest department members in filling the applications could reflect the ground situation more accurately.

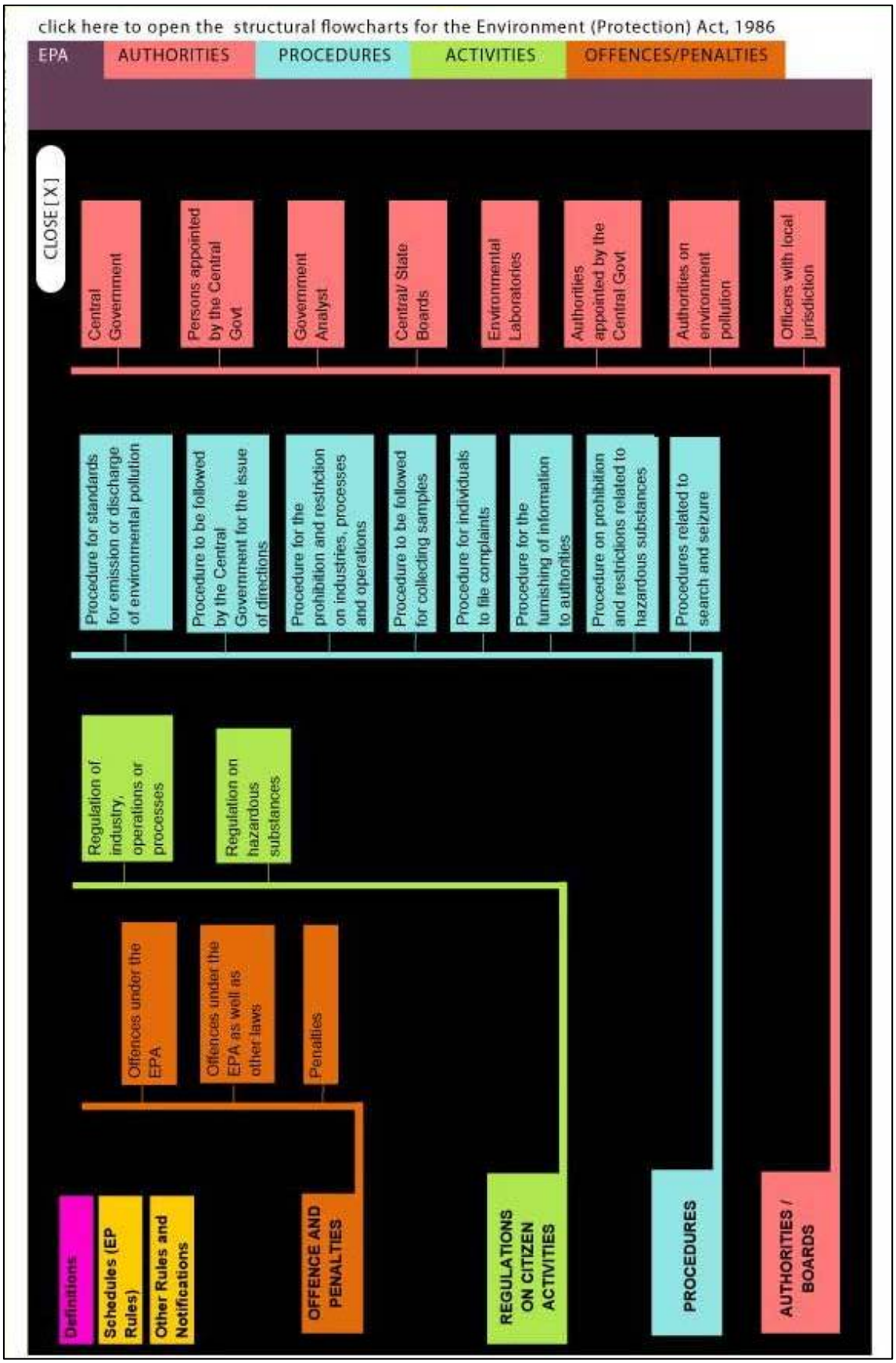
Under the FCA guidelines, the Ministry has the right to recommend a project which has come for forest clearance to also be examined from the environment angle, i.e. to look into the EIA reports of the project or to commission studies for assessing environmental impacts. But this is almost never or very rarely exercised. If greater scrutiny can be achieved both by publicizing of applications and inviting public comments at all levels of the decision making process, and the inclusion of the environmental clearance process, improvements can be made to the forest clearance process also.

9. The Environment (Protection) Act, 1986

There are several pieces of legislation or rules that are related to the environment. Some of were even pre-independence and still others are not central but local or state level rules. The Environment Protection Act, 1986 took proper shape after the United Nations Conference on the Human Environment held in Stockholm in June 1972. After the conference, it was found necessary to enact a comprehensive law on the subject to implement the decisions of the Conference. The EP Act was then introduced in the Parliament. This law came much after the Wild Life Protection Act, 1972 but is considered **the** central legislation on all environmental matters. This is because it specifically addresses issues related to the environment and vests with the Central Government a great deal of powers to take actions for environment protection.

This is a very broad legislation and just by itself only provides the very outline of the structure and implementation machinery envisaged for environment protection. It only becomes properly operations through Rules or Notifications (also called subordinate legislation) – which are more detailed and subject specific. Examples of Rules are The Environment (Protection) Rules, 1986 or the Rules for the Manufacture, Use, Import, Export and Storage of Hazardous micro-organisms Genetically Engineered Organisms or Cells. Some examples of notifications are the CRZ Notification, 1991 or the Environment Impact Assessment Notification, 2006.

THE MAIN STRUCTURE PAGE OF THE ENVIRONMNET (PROTECTION) ACT, 1986



9.1. The Environment (Protection) Act in this Guide

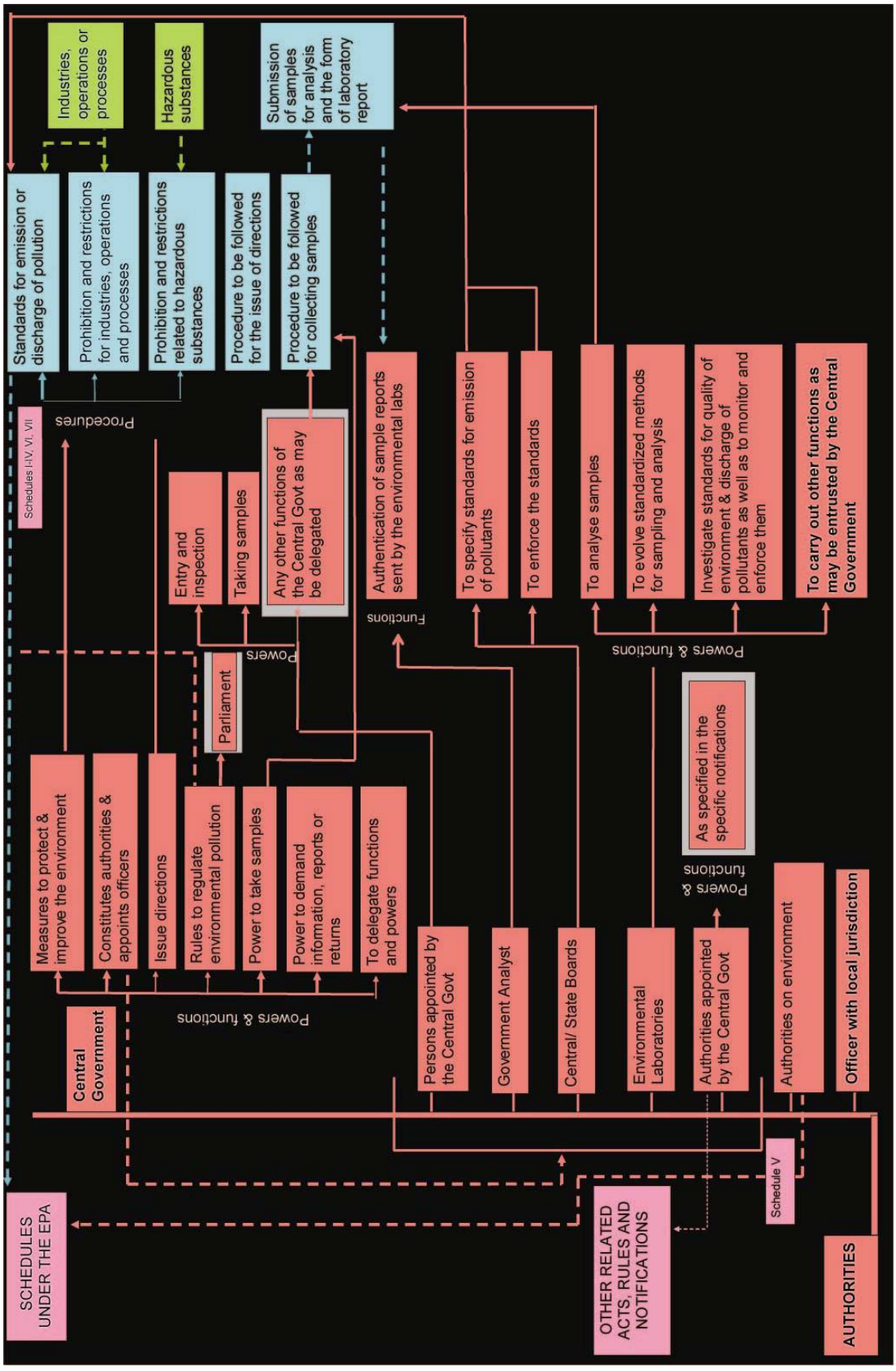
The adjacent image shows the Structural Flowchart of the Environment Protection Act, 1986. The Environment Protection Act in the Environmental Law Guide has been divided into five sections:

9.1.1. Main structure of the Act

The Environment (Protection) Act as it appears in this guide has been divided into four sections:

1. ***Authorities:*** This section lists out authorities appointed under the Act for implementation of the Act. It includes Boards, Authorities, Officers, Government Analysts, Environmental Laboratories, or persons with local jurisdiction and lists their functions and powers.
2. ***Procedures:*** A large portion of the EP Act is concerned with laying out a set of procedures related to the performance of the functions and duties of the above mentioned authorities. These procedures comprise of the collection of samples, entry and inspection, furnishing information on discharge of pollutants, making individual complaints, issuing directions, the location of industry, restrictions on hazardous industries, search and seizure, standards for emissions and submission of samples for analyses.
3. ***Regulations on Activities:*** This section includes the responsibilities of citizens and also the activities that are prohibited or regulated under the Act. This pertains to Industry, operations & processes, Handling of hazardous substance, Submission of Environmental Statement and Furnishing reports.
4. ***Offences and Penalties:*** Carrying out a prohibited activity or contravening provisions laid down for a regulated activity amount to an offence. Cognizance of offences and penalties are discussed in this section.
5. ***Downloads:*** Apart from the above mentioned sections, in the Downloads section, we provide a compilation of notifications, rules, orders etc. These are either scans of original gazette copies or they have been downloaded from different sources including from the Ministry of Environment and Forest website. These include the Bare Act, Rules, Notifications, Schedules, Amendments and Guidelines, all in downloadable pdf formats.
6.

THE 'AUTHORITIES STRUCTURE' PAGE OF THE ENVIRONMNET (PROTECTION) ACT, 1986



9.1.2. Authorities under the Act

The Environment (Protection) Act provides a structure for the implementation of its objectives and for the performance of its functions. The structure for implementation includes a large set of authorities and persons. From the Act, we have synthesised the roles and responsibilities of the various persons, Boards, Committees, authorities or entities that are mentioned in it.

The Central Government

Authorities appointed by the Central Government

Authorities that deal with environmental pollution issues

Boards (comprising of the Central and State Pollution Control Boards)

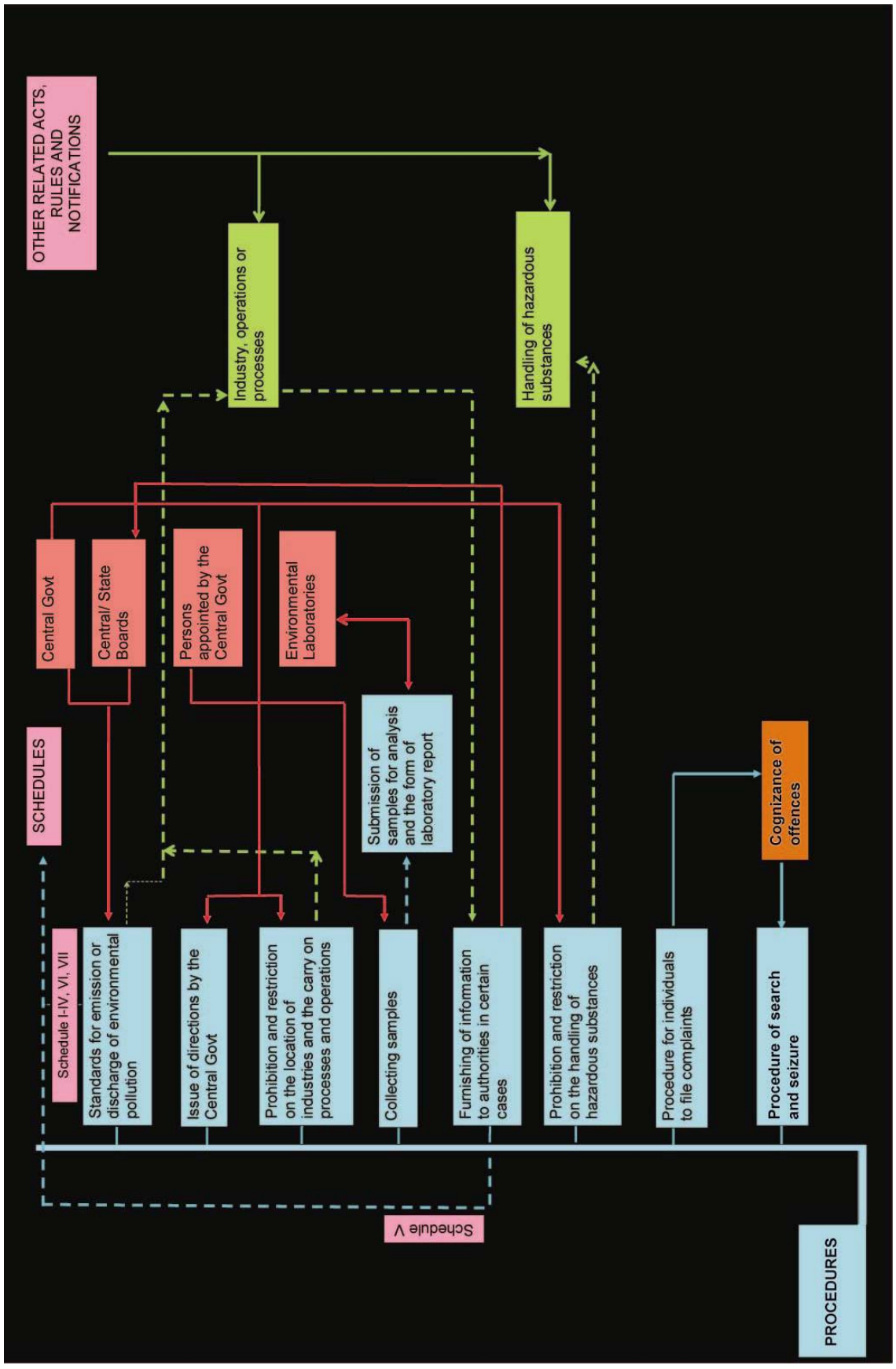
Environmental Laboratories

Government Analysts

Officers having local jurisdiction (on pollution matters)

Persons specially appointed by the Central Government

THE 'PROCEDURES' STRUCTURE PAGE OF THE ENVIRONMNET (PROTECTION) ACT, 1986



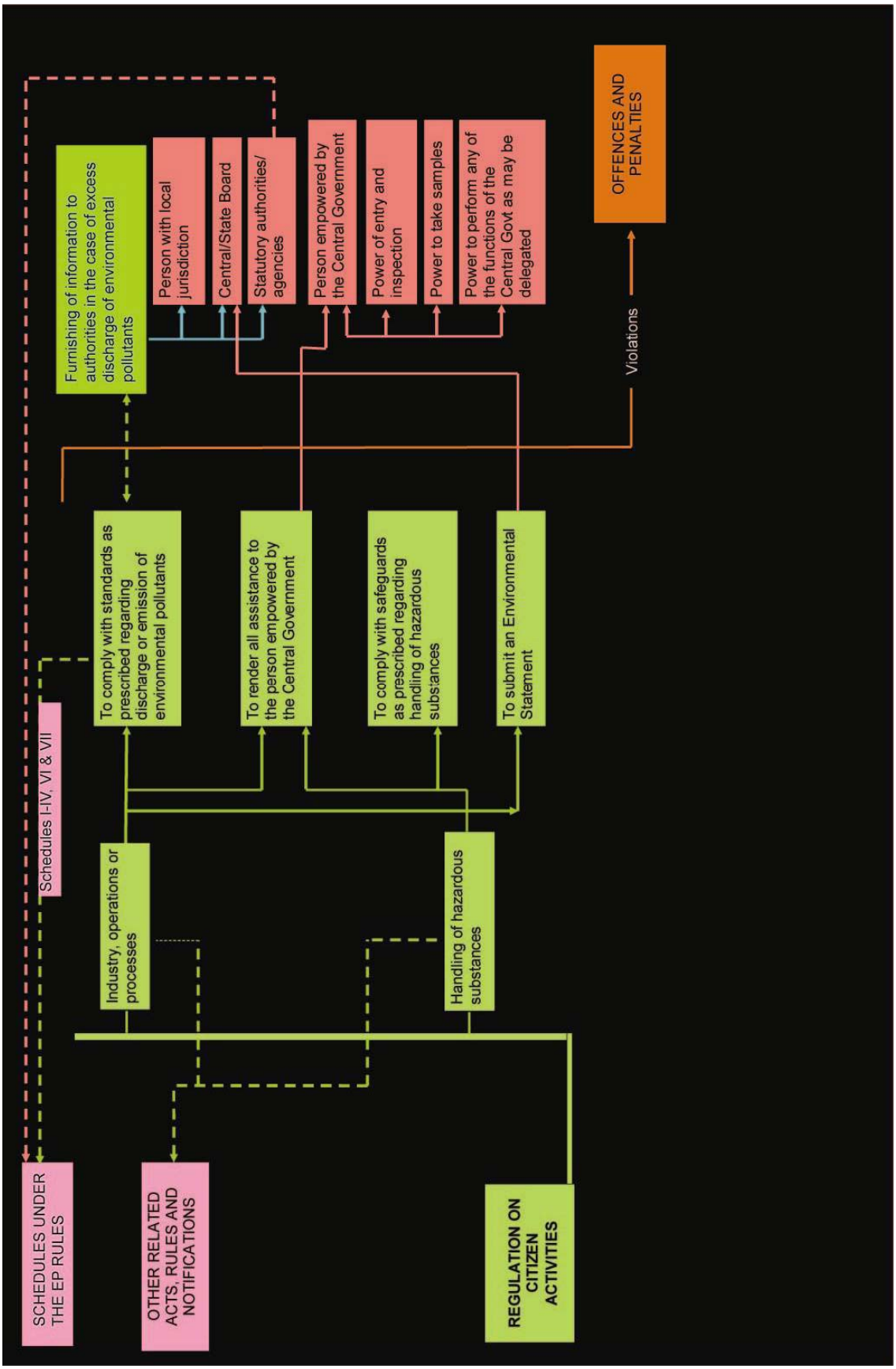
9.1.3. Procedures under the Act

The Environment (Protection) Act, 1986, outlines a series of procedures related to its purpose and functions. These procedures related to the manned in which various authorities need to function. They also include the manner in which different functions need to be carried out by them. Some of the procedures are also related to how citizens should act in order to carry out their responsibilities. Click here to see Regulations of Citizens' Activities.

The bulk of the text contained in the EP Act and EP Rules, 1986 is all about the following procedures:

- Prohibition and restriction on the location of industries and the carrying on processes and operations in different areas
- Prohibition and restriction on the handling of hazardous substances
- Standards for emissions or discharge of environmental pollutants
- Furnishing of information to authorities and agencies regarding discharge of excess pollutants
- Procedure for individuals to file complaints/give notice for the purpose of cognizance of offence
- Procedure for entry and inspection
- Procedure for collecting samples
- Procedure for search and seizure
- Procedure for issue of directions
- Procedure for submission of samples for analysis

THE 'REGULATION OF CITIZEN ACTIVITIES' STRUCTURE PAGE OF THE EP ACT, 1986



9.1.4. Regulation of citizen activities under the Act

The Environment (Protection) Act requires that all citizens follow certain responsibilities.

These are mentioned below.

Industry, operations & processes

There are certain responsibilities and requirements of industries, operations and processes that are specified by the Environment (Protection) Act, 1986. These would apply to persons carrying on industry operation or processes.

Handling of hazardous substance

The handling of hazardous substances can also be considered an industry, activity or process but certain specific regulations are made for hazardous substances.

Submission of Environmental Statement

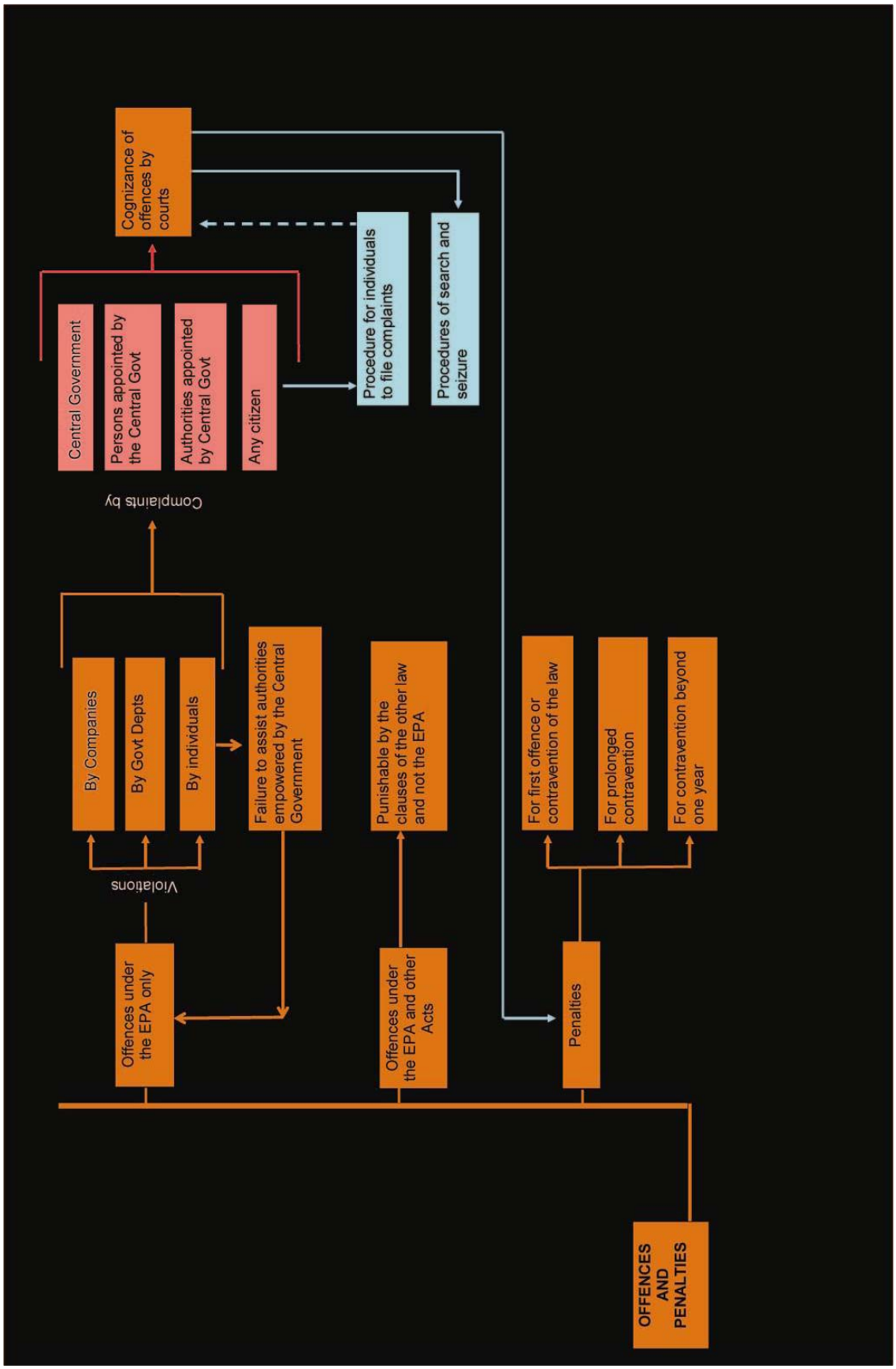
Every person carrying on an industry, operation or process requiring consent under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 or under section 21 of the Air (Prevention and Control of Pollution) Act, 1981 or both, or authorization under the Hazardous Wastes (Management and Handling) Rules, 1989 shall submit an environmental statement for the financial year ending the 31st March in Form V to the concerned State Pollution Control Board on or before the thirtieth day of September every year, beginning 1993.

Furnish reports

The Central Government may require any person to furnish to it or any prescribed authority or officer any reports, returns, statistics, accounts and other information and such person, officer, State Government or other authority shall be bound to do so.

If these responsibilities are not complied with, then that is considered an offence of the Environment Protection Act.

THE 'OFFENCES AND PENALTIES' STRUCTURE PAGE OF THE ENVIRONMNET (PROTECTION) ACT,



9.1.5. Offences and Penalties under the EP Act

Offences

The following are the Offences under the Environment Protection Act:

- *Offences by individuals*
- *Offences by companies*
- *Offences by Government Departments*
- *Offences of Omission*

Cognizance of offences

There is only a certain procedure whereby courts can take cognizance of an offence. This is explained here.

Penalties

The liability of offenders and the consequent penalties and punishments are different for offences which are committed under the EP Act and for those which might be offences under the EP Act but which are also offences under other acts. These are shown below:

Penalties for Offences under the Environment (Protection) Act, 1986

If someone fails to comply with or contravenes any of the provisions of the Environment (Protection) Act, 1986, or its Rules or Orders or Directions, he or she shall be punished for each such contravention. The flouting or infringement of any of the provisions of the EP Act is considered a punishable offence.

Penalties for Offences under the Environment (Protection) Act, 1986 and Other Acts

Where any act or omission constitutes an offence punishable under the EP Act and also under any other Act, then the offender (who is found guilty) shall be liable to be punished under the other Act and not under the EP Act.

9.2. Commentary on the Environment (Protection) Act, 1986

The Environment Protection Act (EP Act) has been extensively and creatively used since its introduction in 1986. The Act can be cursorily described as a central legislation that makes the Central Government a 'pro-active watchdog' of the environment. It strives to improve environmental quality and it also reigns in development processes where they threaten environmental resources. Despite the fact that there are very serious questions regarding aspects of planning, execution / poor implementation, inaction etc directed at the Centre, the Act per se still holds much promise as a tool for environmental security.

The Environment (Protection) Rules, which followed the Act, have been used in conjunction with the Act for carrying out its objectives. Some of the clauses and provisions of the EP Act and Rules have been used extensively such as the clauses for the declaration of Ecologically Sensitive Areas. The crux of the Act and its Rules is that it empowers the Centre [which translates as the Ministry of Environment and Forests (MoEF)] with tremendous power to take actions 'for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution'. In practice this has included an interesting assortment of things. Some of the actions taken by the MoEF through the EP Act include the formulation of standards, guidelines, Rules, creation of Boards, Authorities, appointment of officers, taking punitive action against offenders of the Act, establishment of institutions, labs, dissemination of information to name a few.

Since its promulgation, as and when it was brought to the notice of the Central Government, that certain actions needed to be taken in respect of environment protection, the MoEF introduced notifications and orders to address these. And to do this it used the provisions of the EP Act. It has given birth to several rules such as Hazardous Wastes (Management and Handling) Rules, 1989, The Manufacture, Storage and import of Hazardous Chemical Rules, 1989, the Rules for the Manufacture, Use, Import, Export and Storage of Hazardous micro-organisms Genetically engineered organisms or cells, Bio-Medical Waste (Management and Handling) Rules, 1998, Recycled Plastics Manufacture and Usage Rules 1999 , the Noise Pollution (Regulation and Control) Rules 2000 , the Ozone Depleting Substances (Regulation and Control) Rules, 2000, the Municipal Solid Wastes (Management and Handling) Rules, 2000 and the Batteries (Management & Handling) Rules, 2001 are all important Rules that have emerged from the EP Act. Some of these rules have also been amended from time to time. All the Rules emanate from the same sections more or less but they vary greatly in their plans, mechanisms, structure and procedures. It is seen from the above Rules that they deal with particular substances or seek to regulate specific sources of pollution. These apply to the entire country.

The Act has also led to a range of subordinate legislations or notifications issued under various clauses. Some of the better known notifications are the Environment Impact Assessment Notification, 1994, the Coastal Regulation Zone Notification, 1991 and the more recent Environment Impact Assessment Notification, 2006. There are also several notifications issued to restrict development in certain areas.

Ecologically Sensitive Areas

One of the most powered aspects of the EP Act has been the power of vested with the MoEF to restrict development processes in particular sensitive areas. Some of these regions have been accorded special statuses, which have been spelt out in their individual notifications. The terms used to describe such areas in the notifications are: Ecologically Sensitive Areas (ESA) or Ecologically Fragile Areas (EFA) or No Development Zones (NDZ or, Ecologically Sensitive Zones (ESZ).

Some of these areas are:

- *Murud- Janjira 6th January 1989 [Section 3(2)(v)]*
- *Doon Valley 1st February 1989 [Section 3(2)(v)]*
- *Antop Hill, 9th February 1990 [Section 3(2)(v) EP Act & 5(3)(a) EP Rules]*
- *Dahanu Taluka, June 20th 1991 [Section 3(2)(v) of the EP Act]*
- *Aravalli Notification 7th May 1992 [Section 3(2)(v), 3(1) of the EP Act and Rule 5 of the EP Rules]*
- *Numaligarh 5th July 1996 [Section 3(2)(v) EP Act, Rule 5(3)(a), Rule 5(4) of EP Rules]*
- *Pachmarhi 17th September 1998 [Section 3(2)(v) EP Act]*
- *Mahabaleshwar-Panchgani Region 17th January 2001 [Sections 3(2)(v), 3(1) of EP Act]*
- *Matheran 4th February 2003 [Section 3(2)(v), 5(3)(d) of the EPAct]*
- *The Himalayas (with a list of states) 6th October 2000 [Sections 3(1), 3(2)(v) of EP Act] (Draft)*
- *The Himalayas (Assam & Himachal Pradesh) 28th Nov 2000 [Sections 3(1), 3(2)(v) of EP Act] (Draft)*

In many of the ESA sites, there are supposed to be monitoring committees set up to oversee the functioning of the rules for these places. The tenure of many committees have expired and in some places they have not yet been constituted. Many of the ESA sites are also facing immense pressure from different lobbies, particularly the industrial lobbies to rescind these notifications. In regions where there is no involvement of active conservation groups, there is negligible implementation of these laws. Environmentalists who have lobbied with the MoEF towards introducing such notifications, sense a reluctance on the part of the MoEF to declare more such areas as Ecologically Sensitive, using these clauses.

Other measures for protection

The Ministry has taken several steps using the EP Act – it has constituted several empowered expert and / monitoring committees, nominated officers to inspect premises, take samples, take action against the violation of the Act etc. It has recognized and nominated several laboratories in the country as well as appointed Government analysts. State Governments have also been delegated several of its powers in environment protection and implementation of its earlier orders. All these steps are notified and legally binding.

Issues in implementation

The biggest problem faced for the implementation of any environmental law, the EPA being no exception, is that development concerns override environmental ones. With capitalist driven modes of production and an industrialised economy, there is lesser attention paid to the implementation of

environmental concerns. Officials at the Ministry of Environment and Forests claim that they are under constant pressure from the other ministries to remove restrictions on development. The personal opinions of decision makers also influences their interpretation on the need for stringent protection or industrial activity and what is acceptable pollution limits or when action needs to be taken on offenders. Recently environmental activists displayed their opposition and displeasure to the recent moves by the MoEF to amend certain laws and introduce the controversial National Environment Policy, which lacks even the protection spirit evident in the EPA.

The opinion of activists on the usefulness of laws and courts in deciding on environmental matters is also divided. Those who are in favour of judicial activism state that they have had significant assistance from courts of law *and state that the bureaucracy has failed miserably in its task of protecting the environment. They call it a 'a clearance granting body only'. At interviews with activists, it was stated that the Ministry of Environment and Forests 'should be shut down as it is only justifying destruction.' Other statements included 'the MoEF has done preposterous things like 80 public hearings held in one day (in AP).'*

There is little to critique by means of the text of the EPA itself, since it contains only a very broad set of powers and regulations. It is in the rules and the text of the notifications where the details should have been fleshed out. However, even several notifications and rules are not very clear in terms of how they define certain words and contain a certain level of ambiguity. There is the problem that the EP Act does make the use of words such as 'persons' and 'officers' or agencies or authorities from time to time. It is not clear from this whether each of these persons often has the same set of responsibilities or whether they need to follow only those responsibilities set out in the notifications that constitute them.

There is the additional problem with the EPA and its notifications that the law is not accompanied by a clear allocation of resources for its implementation. Therefore several of the standards mentioned in the schedules of the EPA are likely to remain in these schedules and never see implementation. There has till date not been a good assessment of the implementation issues in the EP Act, with a view to strengthening it. Only certain notifications have been studied by certain committees and they have more often ended up amending these notifications where they have conflicted with industrial development and thereby weakened the regulatory framework. The critiques of some of the notifications such as the Environment Impact Assessment Notification, 2006 and the Coastal Regulation Zone Notification is given below.

Standards for water and air pollution are outlined in the EPA. Some environmentalists state that these are superior to the ones given in the Pollution Control Board's norms. Implementation issues persist in both these. There is no information available as to whether these standards are revised using scientific information or even what the process is.

Many environmental lawyers have opined that the EPA is actually not an effective deterrent to a polluter or offender. Section 24 of the EP Act states, if any act or omission constitutes an offence punishable under the EP Act and also under any other Act, then the offender shall be liable to be punished under the other Act and not under the EP Act. This provision has made it difficult for prosecutions to take place under the EP Act since an offence under the EPA also constitutes an offence under some other law, where the penalties are not normally as severe. Therefore prosecution under the EPA does not take place in many instances.

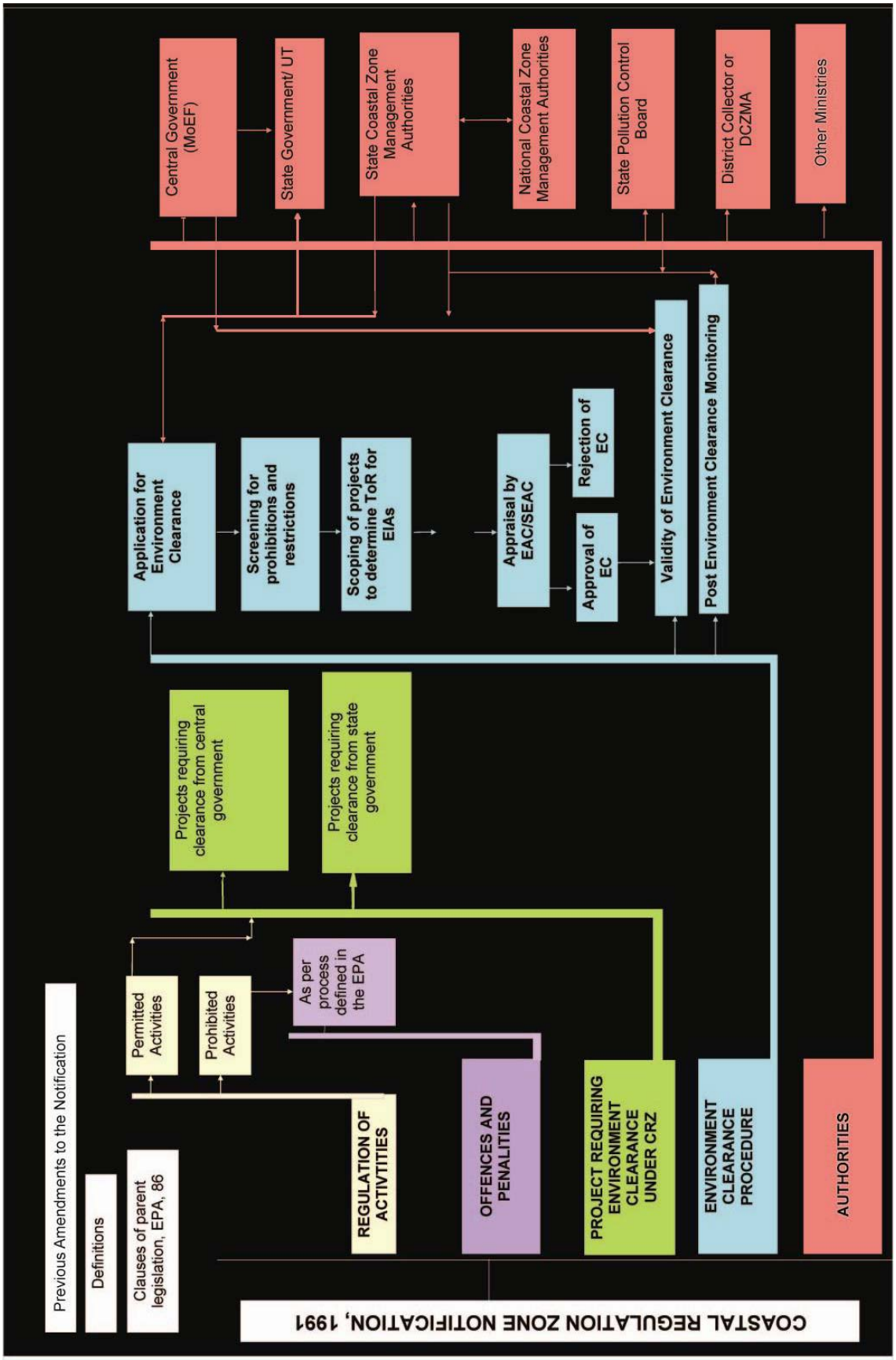
10. The Coastal Regulation Zone Notification, 1991

The CRZ Notification was issued in the year 1991 using the provisions of the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986. The EP Act empowers the Central Government to delineate areas where anthropogenic activities can be regulated and restricted. The CRZ Notification is therefore a specialised legislation, which was introduced with the intention of protecting the coastal environment of India at the behest of Mrs Indira Gandhi who expressed concern over the degradation of beaches and coastal areas.

The coastal stretches of India's mainland and her numerous islands including the Andaman & Nicobar Islands and Lakshadweep, are governed by the Coastal Regulation Zone Notification, 1991. However, the CRZ Notification does not apply to an unspecified area, merely meeting the description of a 'coast'. For the purpose of effectively legislating on coastal protection, the law sets limits to the area under its purview. The Coastal Regulation Zone or the zone under the purview of the CRZ Notification was declared comprising the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) up to 500 metres from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL. The 500-metre CRZ boundary is drawn at a radial distance (as the crow flies) uniformly from the HTL, and runs parallel to the coast. The measurement of the 500-metre boundary of the CRZ does not take into account the height of elevations of land on the coast, such as the height of hillocks, promontories or cliffs. The MoEF has recognised this while conditionally approving the Coastal Zone Management Plans (CZMPs) prepared by the coastal states, wherein high cliffs and hillocks are included in the CRZ and the CRZ continues several metres beyond these structures (which measure more than 500 metres in height).

In the case of rivers, creeks and backwaters, the notification states that the CRZ would apply to both banks of the water body, but the distance of the CRZ from the HTL may be reduced from 500 metres on a case-by-case basis, with the reasons for the reduction to be recorded in the CZMP of that State. However, this distance was not to be less than 100 metres or the width of the river, whichever was less . Therefore, lands in these areas are also subject to the regulations of the notification.

THE MAIN STRUCTURE PAGE OF THE CRZ NOTIFICATION, 1991



10.1. The Coastal Regulation Zone Notification in this Guide

The CRZ Notification contains various paragraphs and sections which are explained in the Guide in detail and are mentioned here briefly:

10.1.1. Main structure of the Notification

1. Authorities

The powers and responsibilities of the various authorise mentioned in the notification are contained in this section. These include the Central Government, State Governments, National, State and District Coastal Zone Management Authorities, the various Ministries and specialised committees and authorities.

2. Environmental Clearance Procedures

This is an unusually complicated part of the CRZ Notification. This has been simplified to the extent possible. In large parts, the notification itself is silent about a number of procedures and processes for clearance.

3. Projects requiring Environmental Clearance under the CRZ

There are certain prohibited and permitted activities as per the law. However, even the prohibited activities contain some exceptions. This has been extracted and shown as a table in the CD-ROM

4. Regulation of Activities

All activities that might take place in the coastal zone are divided into a set of prohibited and permitted activities. This is further divided into a set of zones - CRZ –I, CRZ-II, CRZ-III and CRZ-IV. These are all contained in this section and explained here.

5. Penalties and Offences

The notification by itself does not provide any penalties or offences. It only contains a section of procedures which outlines who can take cognizance of an offence. Beyond this, the procedure laid out in the Environment (Protection) Act, 1986, which is the parent legislation, comes into play.

6. Downloads

There are additional resources available here such as downloadable PDFs of the various amendments of the CRZ Notification, 1991 up till 2003. There is also a copy of the complete CRZ Notification with all amendments incorporated till date. A copy of the proposed CMZ Notification is also made available in this section.

Additional features include definitions under the CRZ Notification.

10.2. Commentary on the Coastal Regulation Zone Notification, 1991

The CRZ Notification was introduced with three main principles:

- It is necessary to arrive at a balance between development needs and protection of natural resources.
- Certain activities are harmful for both coastal communities and their environment, and these should be prohibited or regulated.
- If coastal ecosystems are sustainably managed, then the livelihoods of millions will be protected and their survival guaranteed.

The implementation of this central notification was by and large ignored by many state governments. Vested interests from various lobbies such as the tourism and industry have constantly sought to get rid of this notification. The CRZ Notification has been amended at least 19 times, and each dilution rendered the law more impotent. The 26 December 2004 Indian Ocean tsunami starkly demonstrated the impact of this gross neglect.

While the CRZ Notification is one of the earliest specialized environmental legislations, nearly 19 years since its introduction several anomalies have crept in, resulting in serious problems for implementation. Since 1991, there have been 19 amendments and around 3 corrigenda (up to 24th July 2003) to the provisions of the notification. Each of these amendments have sought to dilute the protective measures of the notification and in the process have introduced newer clauses further complicating and rendering meaningless several of the protective clauses of the original notification.

Despite the numerous amendments, the MoEF has not yet issued a consolidated notification in the official gazette, incorporating all the changes to the original notification. This makes the interpretation of the various clauses of the notification a real challenge. The MoEF's official website presently has only a few select amendments. All amendments and a consolidated notification need to be made publicly available. The series of amendments to the notification have made way for several industrial and large-scale commercial activities. However, none of the amendments have sought to clarify some of the other ambiguities and uncertainties such as the definition of key terms such as 'local inhabitants' , 'traditional rights and customary uses'

Although the states were supposed to prepare their CZMPs before February 1992 , they only submitted the CZMPs after being directed to do so by the Supreme Court in 1996. The MoEF has only conditionally approved these State Coastal Zone Management Plans . However, none of the States have incorporated the conditions laid out by the MoEF and are yet to prepare a revised CZMP that has been fully approved by the MoEF incorporating all its conditions. In the case of Tamil Nadu, the Coastal Zone Management Plan is not fully approved and the MoEF has approved only 10 out of the 31 maps developed for the Tamil Nadu coast. For other areas, one would have to rely on the geomorphologic and other characteristics of the region to determine its classification and get an approval from the Department of Environment of the Government of Tamil Nadu. It has to be clarified by the MoEF if this approach will suffice under the present conditions and for this special context of rehabilitation.

The High Tide Line and the Low Tide Line are to be demarcated only by certain authorities that have been designated by the Central Government for this purpose. However, the Government of India is still in the process of arriving at a common methodology for HTL/LTL demarcation and is still evolving guidelines. In none of the states has the High Tide Line demarcation exercise been done at the ground level, for identification of zones and field implementation of the notification.

The MoEF directed the Tamil Nadu Government in its letter dated September, 27, 1996, under Condition A (viii), 'The Government of Tamil Nadu shall delineate LTL, HTL, 200 metres, 500 metres lines and other relevant lines in respect of creeks, backwaters and rivers affected by tidal action so that distances can be measured, whenever required.'

Even prior to the tsunami, a process had been undertaken by the Ministry of Environment and Forests to reform environmental regulations. These included the promulgation of a National Environment Policy, the reengineering of the environment clearance process and the establishment of the M.S Swaminathan Committee to review the CRZ Notification and suggest changes for a new legislation. The Swaminathan Committee, headed by Prof. M.S. Swaminathan was constituted in July 2004 with the mandate to suggest an appropriate framework of coastal management. The report of the committee was submitted to the MoEF in February 2005.

The minutes of the meetings of the Swaminathan Committee makes reference to several activities that have been responsible for destroying coastal areas and also affecting the livelihoods of fisher communities, such as sand mining and sea walls. On comparing the minutes of the meetings to the suggestions in the final Swaminathan Report, one sees that several suggestions made in the committee meetings don't match with the final recommendations of the final chapter of the Swaminathan Report.

The entire process of review of the CRZ Notification by the Swaminathan Committee was criticised because it was devoid of the participation of public interest groups or coastal communities. The meeting minutes and reports of the committee remained out of public access until an application under the Right to Information Act was filed seeking this information.

The MoEF plans to introduce a new notification replacing the CRZ Notification. The proposed Coastal Zone Management (CZM) Notification is presumably based on the recommendations of the Swaminathan Committee which the MoEF set up in 2004 to review the CRZ Notification. Although the Swaminathan Committee was purportedly set up to infuse better science into the law and devise regulations for coastal conservation and livelihood needs, it fell short on many counts. The most strident criticism of this committee has been that the regressive regulatory framework suggested in the final chapter and annexes of its report is completely antithetical to the initial chapters that outlined principles of integrated coastal zone management.

Recommendations

- It is of tremendous value to involve a representative cross-section of the public at the planning stage before actual changes to legislation. There should be major public consultations/workshops inviting various NGOs and resource persons to present the findings of the Swaminathan Committee report and to build on it. The Swaminathan Committee's findings need to be discussed widely with several sections of people especially fishworker communities, fisher trade unions, local governments, traditional governance institutions in coastal areas. These groups have either been involved with the implementation of the CRZ Notification or have faced the impacts of its faulty implementation. Their inputs will be critical to determine a sound regulatory process for coastal conservation and to facilitate their involvement in the implementation of the law.
- The Swaminathan Committee report should be discussed with regulatory agencies that have been involved with the implementation of the notification at the state and central levels. The Swaminathan Committee failed to consult SCZMAs and district committees that performed the

task of implementation of CRZ at the state level on a day-to-day basis. A sound regulatory framework cannot be developed unless the problems faced by these agencies are fully understood. Their problems are of a varied nature and range from the logistical to the political. If these are not addressed, any new legislation brought in place of the CRZ Notification may run into the same problems.

- A participatory process for developing changes to legislation can be established by holding consultative group meetings, establishing task forces and thematic groups and conducting trainings and workshops for stakeholders
- Independent reviews of the Swaminathan Committee Report criticised the recommendations of the Swaminathan Committee as having fallen short on scientific grounds. One such review has recommended that "it is however possible to overcome this inconsistency and other discrepancies outlined in this review, by launching a complementary set of studies, and planning exercises, which are truly national in scope and participatory in approach"
- *Sridhar et al* specifically recommended research and documentation of primary and secondary biological, legal and sociological information relevant to coastal conservation, which is required to guide policy changes. A detailed collation of all the un-addressed deficiencies with the CRZ notification should be undertaken. There are several studies and reports done by institutions and NGOs that can be referred to as well as various letters, memoranda and petitions highlighting these deficiencies.
- It is also essential to commission a study to understand the coastal management policies and tools followed by other countries and identify suitable best practices. This would also include their policy/ legislative responses to coastal hazards and development challenges.
- A mechanism to grant usufruct rights to fishers over coastal areas with appropriate conservation conditions must be devised. These must be formally incorporated into the coastal management framework. The framework for coastal management must be firmly based on the priority given to fishworker communities as having the first right to coastal areas.

Some aspects listed below need to be incorporated in any new legislation proposed for coastal conservation and management.

- Incorporation of hazard and risk management and flood plain management and wetland drainage design in the overall coastal management mechanism and in the designing of the vulnerability line.
- Flexibility in the concept of the vulnerability line with proper guidelines and procedures for changes. The provisions for change of the vulnerability line should not be misused for dilution to pave for development activities in this sensitive area.
- A detailed set of guidelines for the identification of the Ecologically Sensitive Areas and the degree of protection they require.
- A review of the utility and effectiveness of bio-shields must precede plantation work on the coast. These reviews should be supplemented with complete impact assessment studies, identification of alternatives and assessments of particular species as actual bio-shields.
- The legislation should contain a specific list of projects for each zone on the coast for which Environment Impact Assessment procedures are mandatory (notwithstanding any list prepared

under other legislations). These must employ rigorous BACI (Before-After-Control-Impact) designed studies that are ongoing processes, lasting as long as the development activity is being conducted.

The MoEF proposes to replace the present CRZ Notification with a 'Coastal Zone Management' Notification, 2008. The draft is an outcome of the Swaminathan Committee report but has unfortunately passed by all the positive aspects of the report. There are no procedures outlined for enforcement and monitoring in this law. Several groups are in complete opposition to this notification. Several other issues are still pending with the implementation of the CRZ Notification:

- The multiple interpretations of CRZ clauses by various MoEF orders and legal judgements.
- The lack of definitions of terminology used in the CRZ notification
- Specific mention of the agencies responsible and elaboration of the process for the grant of clearance for various activities listed in the notification
- Guidelines for development / rehabilitation activities in the tsunami affected states in the context of the provisions of coastal laws.
- Preparation and making publicly available, detailed geo-referenced maps for the entire coast to facilitate a GIS-based approach to coastal zone management.
- Specific mention of the punitive measures and guidelines for taking action against violators of the CRZ notification in the text of the notification
- Introducing into the notification appropriate clauses of transparency and public access to all documents, minutes and decisions of all the regulatory agencies and authorities involved in the implementation of the CRZ notification.

It is essential for the MoEF and other implementing bodies to accept that violations of the present notification cannot be overlooked. If this is not done, the message to violators will be that the present and future violations will be regularised in time. This is bound to set a very poor precedent and will make future implementation of any coastal conservation law impossible.

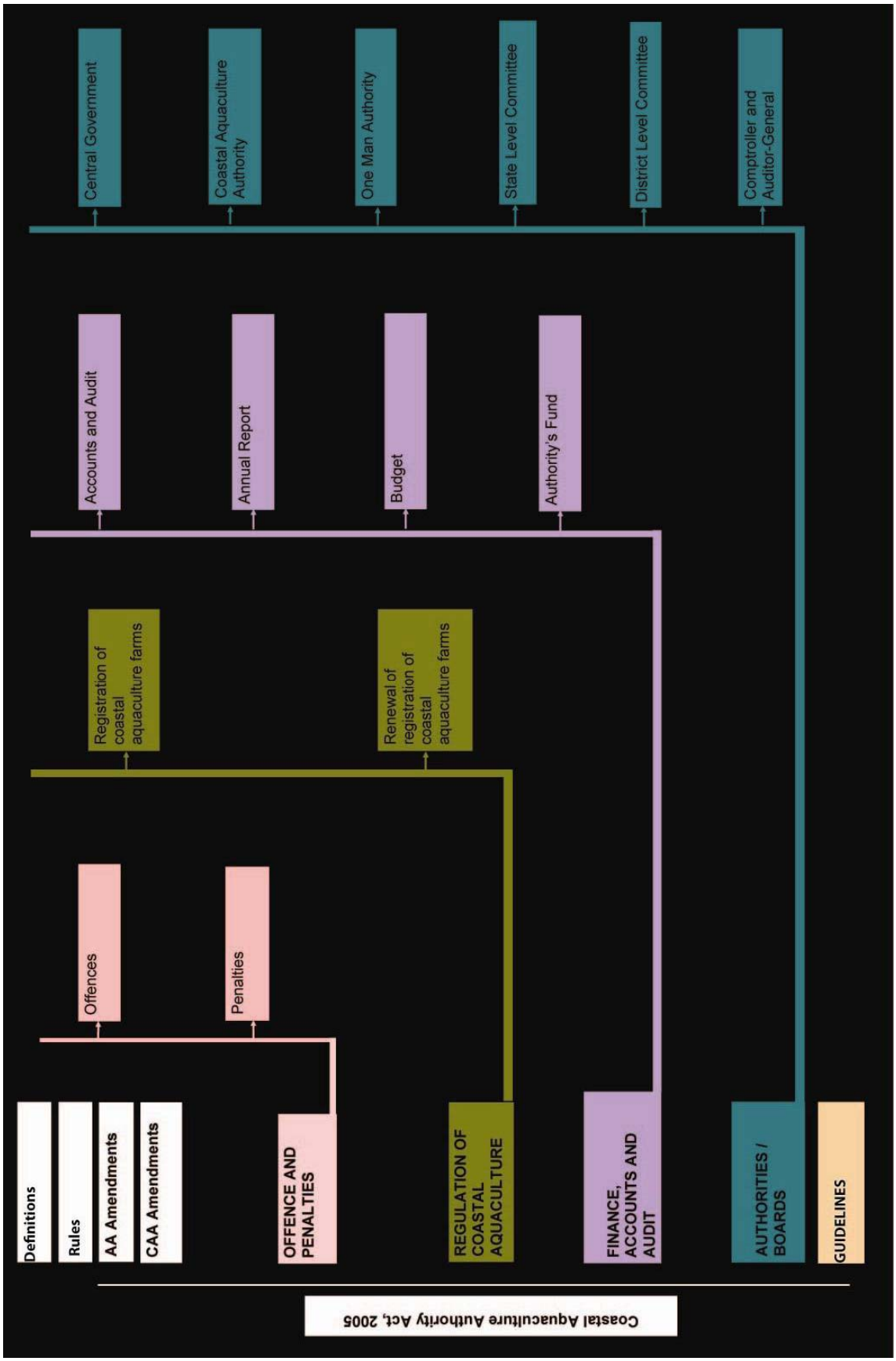
11. The Coastal Aquaculture Authority Act, 2005

The Coastal Aquaculture Authority Act, 2005 (24 of 2005) enacted by the Central Government on 23 June 2005 provides for the establishment of the Coastal Aquaculture Authority for regulating the activities connected with coastal aquaculture in coastal areas and matters connected therewith or incidental thereto. The Act mandates the Central Government to take all such measures as it deems necessary or expedient for regulation of coastal aquaculture by prescribing guidelines, to ensure that coastal aquaculture does not cause any detriment to the coastal environment and the concept of responsible coastal aquaculture contained in the guidelines shall be followed in regulating coastal aquaculture activities to protect the livelihood of various sections of people living in the coastal areas.

The Aquaculture Authority was set up under Section 3 (3) of the Environment (Protection) Act, 1986 in pursuance of the Supreme Court Judgement on 11 December 1996 in the case Jagannath v. Union of India, AIR 1997 SC 811. The judgement was given primarily to protect the coastal environment and the livelihoods of the coastal communities through the regulation of aquaculture in the coastal states and union territories of India, and to ensure the closure of aquaculture farms operating in the coastal zones categorized as CRZ areas.

An Aquaculture Authority was first created under the Environment Protection Act, but in 2005, the Aquaculture Authority was subsumed in the new Coastal Aquaculture Authority set up as under the Coastal Aquaculture Authority Act, 2005 which focuses on promoting sustainable aquaculture practices. More details are available on the commentary on the Act.

THE MAIN STRUCTURE PAGE OF THE CAA, 2005



11.1. The Coastal Aquaculture Authority Act this Guide

11.1.1. Main structure of the Act

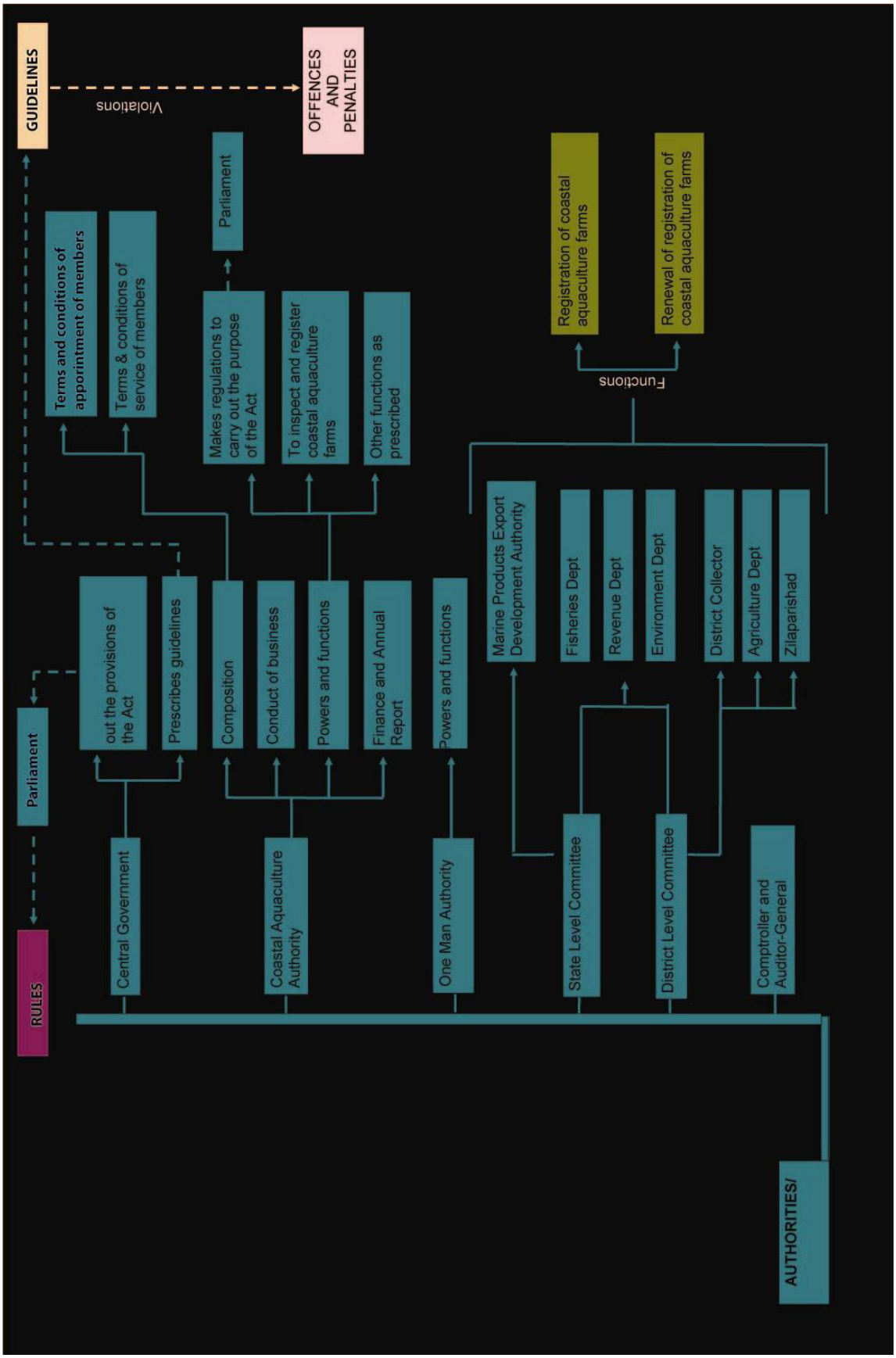
As seen in the adjoining flowchart, the Environmental Law Guide outlines the following main sections of the Coastal Aquaculture Authority Act, 2005.

These are divided into the following sections:

1. Authorities
2. Regulations
3. Finances
4. Offences and Penalties
5. Guidelines
6. There are additional features such as
    - Definitions in the CAA Act
    - Annexes and Forms mentioned in the Act

We also have a 'downloads' section that contains a number of notifications, the Bare Act, and other downloadable documents.

THE 'AUTHORITIES' STRUCTURE PAGE OF THE CAA, 2005



11.1.2. Authorities under the Act

The following authorities related to the implementation of the CAA Act are discussed in the CD-ROM

Central Government

- Powers and Functions of the Central Government

Coastal Aquaculture Authority (CAA)

The following details are outlined in the flowchart about the CAA

- Composition of the Authority:
- Terms and conditions of appointment of members of the Authority
- Terms and conditions of service of members of the Authority
- Conduct of Business
- Powers and Functions of the Authority

Comptroller and Auditor-General

The Comptroller and Auditor-General of India acts as a consultant and auditor for the Authority with regard to its accounts and statements.

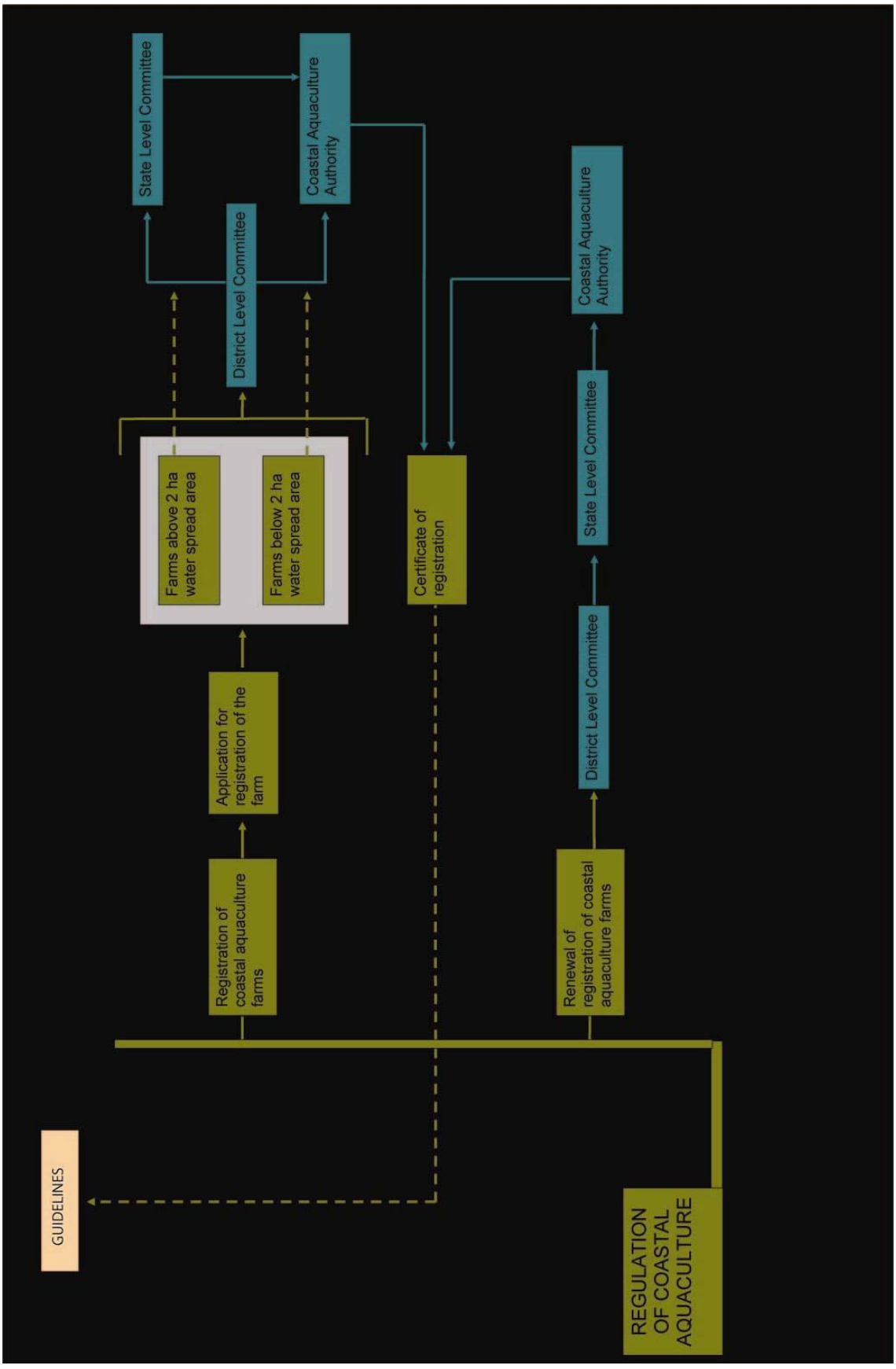
One-Man Authority

The one man-authority is any person that is generally or specially appointed and authorised by the Authority in its behalf to carry out certain functions as the case may be.

State & District Level Committee

The Coastal Aquaculture Authority is required to set up two committees – at the district level and the state level respectively in all the coastal areas, to assist it in the regulation and registration of coastal aquaculture farms.

THE 'REGULATIONS' STRUCTURE PAGE OF THE CAA, 2005



11.1.3. Regulations under the Act

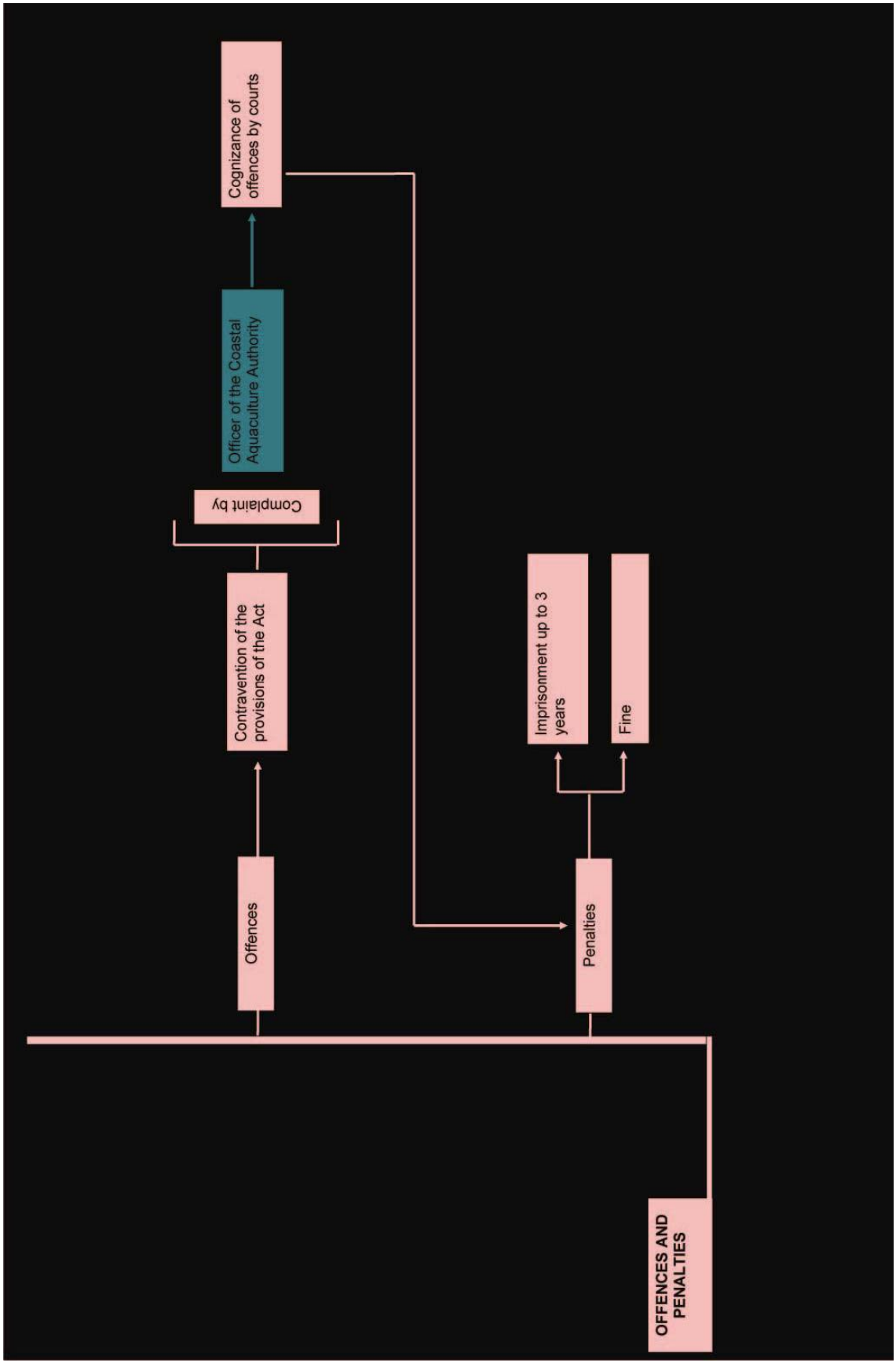
Registration of Coastal Aquaculture farms

According to the Act, there are specific conditions as specified by the rules, regulations and guidelines, under which coastal aquaculture farms are allowed to function, provided that they apply for registration. Based upon the farm's compliance with these factors, the Authority may provide a license, and register the farm.

Renewal of registration of Coastal Aquaculture farms

This section provides information on the procedure to be undertaken by coastal aquaculture farms that have already been registered by the Coastal Aquaculture Authority, and who intend to renew their registration on expiry, to continue their activities.

THE 'OFFENCES AND PENALTIES' STRUCTURE PAGE OF THE CAA, 2005



11.1.4. Offences and Penalties under the Act

Offences

Violations of provisions of the Act concerning location and registration of coastal aquaculture farms may be considered an offence.

Cognizance of offence

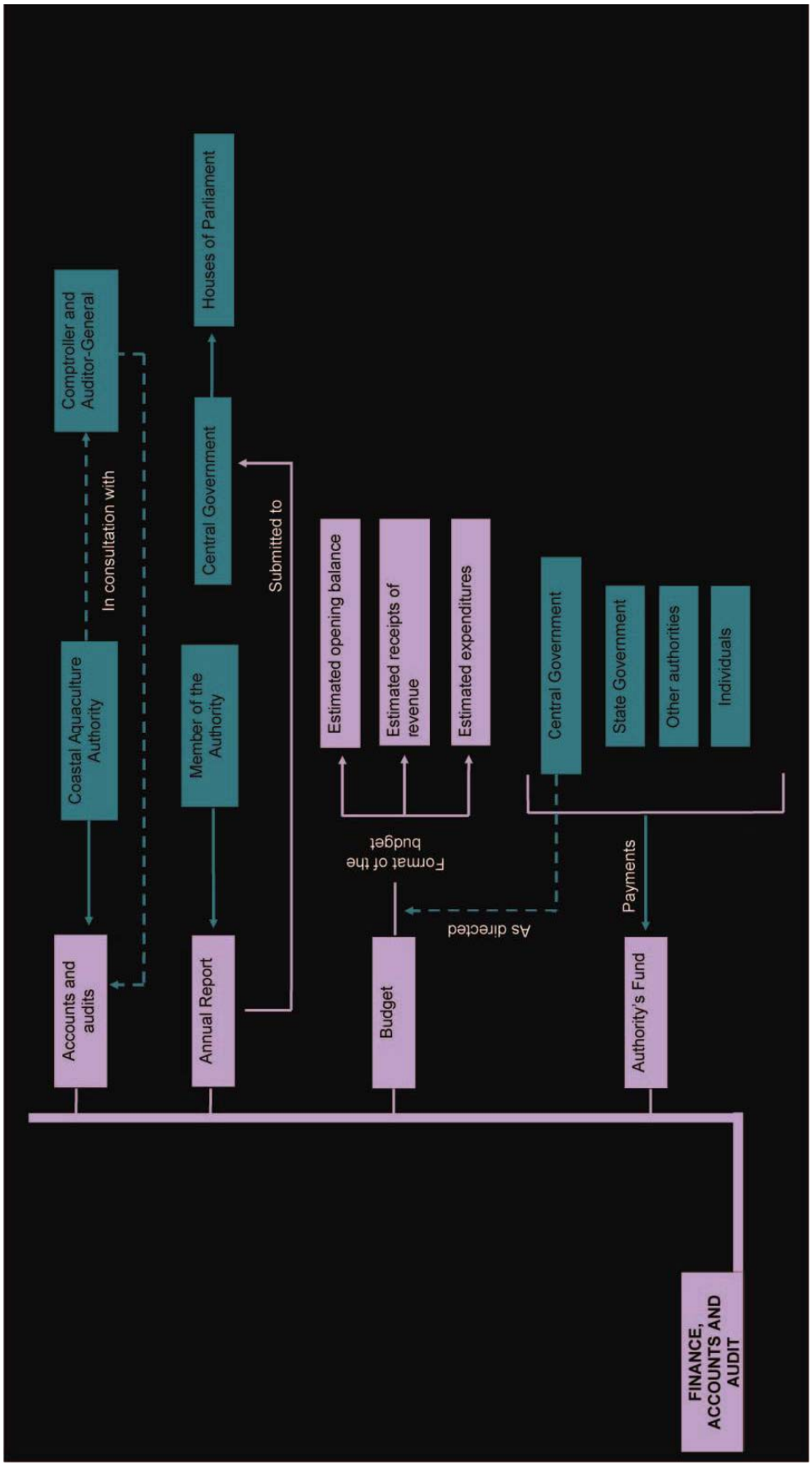
No court is allowed to take cognizance of an offence under section 14, without a written complaint filed by an officer of the Authority authorized for this purpose.

Penalty

If any person carries on coastal aquaculture or traditional coastal aquaculture or causes coastal aquaculture or traditional coastal aquaculture to be carried on in contravention of sub-section (1) of section 13, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to one lakh rupees, or with both.

Details are provided in the CD-ROM including the connection with relevant authorities and procedures

THE 'FINANCES' STRUCTURE PAGE OF THE CAA, 2005



11.1.5. Finances under the Act

Finance, accounts and audit

The Act provides outlines for the Authority with regard to its finances, annual reports, budget and accounts and audits, all of which are subject to the Central Government's directives.

In the guide, the following are discussed in greater detail:

Authority's fund

The Central Government as per provided by the law, is required to pay the Authority a certain sum for each financial year as may be considered necessary for the performance of its functions during that year.

Budget

The Authority is required to prepare a budget for the coming financial year in a particular format and such time as may be prescribed, showing estimates of receipts and expenditures.

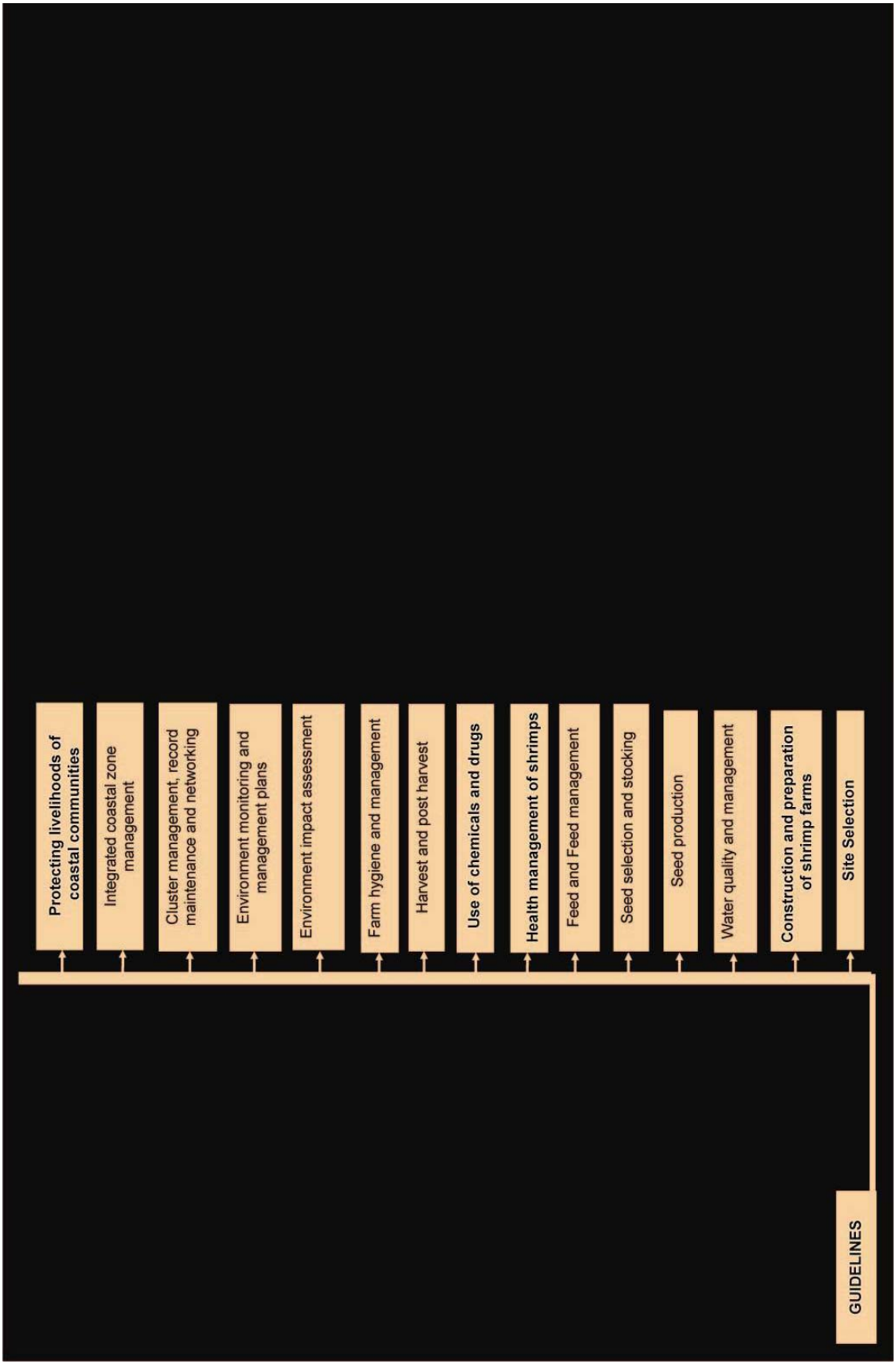
Annual report

The Chairperson or any authorized employee of the Authority in this behalf has to prepare an annual report at the earliest following the commencement of each financial year. The report is to contain an accurate and full account of the Authority's activities during the previous year.

Accounts and audit

The Authority is required to maintain accounts of all its receipts and expenditures relating to every financial year, and a separate bank account has to be maintained for the registration fees.

THE 'GUIDELINES' STRUCTURE PAGE OF THE CAA, 2005



11.1.6. Guidelines under the Act

Coastal aquaculture entails managed farming or culture of organisms in saline or brackish water areas for the purpose of enhancing production, both for domestic and export markets. Coastal aquaculture in the broader sense includes culturing of crustaceans like shrimp, prawn, lobsters, crabs and fin fishes like groupers, sea bream, mullets and molluscs like clams, mussels and oysters.

These guidelines are to ensure orderly and sustainable development of shrimp aquaculture in the country. The guidelines are intended to lead to environmentally responsible and socially acceptable coastal aquaculture and also enhance the positive contributions that shrimp farming and other forms of aquaculture can make to socio-economic benefits, livelihood security and poverty alleviation in the coastal areas.

The present guidelines are to cover the entire gamut of shrimp farm management and measures to reduce the environmental impact of the wastewater discharged from shrimp farms, treatment of such wastes and mitigation of the adverse impact of such wastes on the environment as well as resolution of social conflicts, which could lead to sustainable development of shrimp aquaculture. The guidelines are intended to assist the farmers in adopting good management practices (GMP).

These guidelines are for the use of all stakeholders involved, including shrimp farmers, the coastal community, State Fisheries Departments, Pollution Control Boards and the Ministries and Departments of the Governments of India and the States.

11.2. Commentary on the Coastal Aquaculture Authority Act, 2005

Shrimp aquaculture is recognised as a problematic industry by the members of the Aquaculture Authority and as mentioned in their preface of the official publication of the law establishing the Authority and its related notifications. One of the most important opponents of the shrimp industries has been the Campaign Against Shrimp Industries (CASI). CASI has opposed shrimp industries on the grounds that

- It has radically altered traditional ecology and livelihood systems that are mutually sustainable.
- Thousands of acres of rich agricultural lands were converted and are still being converted into shrimp industries or kept for conversion into shrimp industries.
- Aquaculture shrimp industries provide employment only to a few. The loss of employment due to agricultural lands being taken ovr for these is much greater than the employed generated by the Shrimp industry..
- Fertilizers and chemicals used for growth of shrimp are pumped out as toxic effluents into the estuaries, creeks, backwaters and into the sea adversely affecting the breeding of wild shrimp and fish thereby creating a drastic depletion in the income for the fishing community, agricultural labour and small farmers.
- The salinisation of ground water in the vicinity of shrimp industries along the coastal areas has destroyed the main source of water for the coastal communities and thus deprives them their right to water. Ground water resources once contaminated may prove impossible to be revived.
- Large tracts of coastal lands and stretches of open sea which were under the dejure control of the State and /or areas where local communities have some customary historical rights of access are being handed over to industrial interests thus making the traditional communities 'internal refugees'
- They pose a threat to existing pattern of food production which may lead to a national and local food security.

Shrimp farms are one of the most common CRZ violations in the rural stretches of the Coramandel coast. A study by FERAL reveals the lack of procedures for selection of sites with a high number of conversions of agricultural land and possible impacts on agricultural areas. It also maps the extent of aquaculture and reveals a huge expanse of this industry along the Coramandel coast. Shrimp aquaculture created many social and environmental problems. Some of them include- water pollution, salinisation of ground water & paddy fields, destruction of wild fish & crustacean species and social conflicts related to land conversion. Another major impact of this sector has been has been the conversion of mangroves to shrimp farms (Hein, 2000).

Supreme Court Intervention

The conflicts generated by these problems resulted in public interest litigation in the Supreme Court (Jagannath v. Union of India, AIR 1997 SC 811). As a consequence, non-traditional shrimp aquaculture was banned in India's Coastal Regulation Zone in 1996. In this case, the judiciary assumed the pro-active role of a policy-maker. It also used the precautionary approach to curtail commercial shrimp farming in the CRZ. The Aquaculture Authority was established in order to form a regulatory and institutional framework for the shrimp aquaculture as directed by the Supreme

Court. It was established by the introduction of the 1997 Aquaculture Bill to protect the ecologically fragile coastal areas, sea shore, water front and other coastal areas and to specifically deal with the situation created by shrimp culture industry in the coastal states and union territories.

As per the judgement the shrimp culture industries/shrimp ponds are covered by the prohibition contained in Para 2(1) of the CRZ Notification. No shrimp culture pond can be constructed or set up within the Coastal Regulation Zone as stated in the CRZ Notification. This shall be applicable to all seas, bays, estuaries, creeks, rivers and backwaters. All aqua culture industries/shrimp culture industries/shrimp culture ponds operating/ set up in the Coastal Regulation Zone as defined under the CRZ notification were to be demolished and removed from the concerned areas before March 31st 1997. This new law undoes this aspect of the Supreme Court's judgement and also carries out an indirect amendment of the CRZ Notification. Through the amendment, it nullifies the effect of the CRZ on aquaculture.

CRZ Review Committee recommendation on aquaculture

The Swaminathan Committee was set up by the MoEF to review the CRZ Notification and presumably strengthen it. This committee's controversial report appears to have side-stepped the concern about aquaculture in its report, has in fact made recommendations that are detrimental to coastal ecosystems. Although seeking immediate action against those who have destroyed mangroves, the Committee sought enhanced aquaculture activities within the CRZ area. The Committee should have quite clearly stressed that the Supreme Court order only permits traditional aquaculture to continue within the CRZ and ought to have emphasised the implementation of the other aspects of the Supreme Court's order. There is currently very poor enforcement of the above order. In most cases, these farms do not have effluent treatment facilities or settling ponds. Unproductive agricultural land is also not to be allowed for conversion to aquaculture use as stated in the Swaminathan Report. There is no mention /discussion of traditional aquaculture at all. While mariculture, which is advocated in the Swaminathan Report, could provide livelihood opportunities to fishing communities, it cannot be allowed with out proper guidelines and actual enforcement.

The statement in the Swaminathan Report that the conversion of mangroves into aquaculture ponds reduced after the Supreme Court's orders is not true. On the contrary it has been reported that local communities and panchayats had to fight against aquaculture agencies in places like Muthupet in Tamil Nadu and found little support from the State authorities, MoEF and Aquaculture Authority (Pers. Comm. T.Mohan, Advocate, Chennai High Court).

Present implementation

The Supreme Court ruling and the operation of the Aquaculture Authority (set up earlier by the Environment Protection Act, and now the Coastal Aquaculture Authority Act, 2005) has had till date very little effect on the sector and violations continue to exist. The implementation of the current regulatory system is still defective, and in the absence of proper planning and regulation, further expansion of shrimp farms could result in significant additional environmental and social impacts. The verdict has not been implemented due to the government safe-guarding the interest of the industry as well as the lack of willingness by the administration towards this. The CAA has deviated from the Supreme Court decision and allowed existing shrimp farms in the CRZ to continue operations under certain conditions. There have been very few closures of unlicensed

shrimp farms, and hence shrimp farms have very little motivation to apply for a licence resulting in most of them not acquiring a licence at all.

The mandate of the Aquaculture Authority provided a number of directives as per the court order for shrimp aquaculture in the coastal zone. Some of them included that aquaculture farms were to obtain a licence within six months of the notification of the bill, and no licence was to be granted for aquaculture farming proposed within 200 m from the high tide line or within the CRZ in relation to creeks, rivers and backwaters. However, the restriction on locations did not apply to farms in existence on the day of establishment of the Aquaculture Authority. This provision was a deviation from the initial Supreme Court judgement.

Jesu Rethinam of the Coastal Action Network, an NGO which has compiled data on shrimp farms in the CRZ of Tamil Nadu, points out that that successive governments and administrations have not taken any action against the shrimp farms. Just before the tsunami struck, the administration assured various NGOs, that a total of 293 prawn farms in the CRZ would be removed and yet they remained untouched with no action.

Opposition to the CAA, 2005

Several fisherfolk organisations and NGOs working on coastal issues had strongly protested the introduction of the Coastal Aquaculture Act, 2005. They stated that the introduction of the Act by of the parliament and union cabinet circumvents and subverts the historical Supreme Court Judgement by Justice Kuldip Singh and Justice Saghir Ahmad in December 96.

Those opposing this law also stated that this was an action that is biased based on the needs and demands of the Aqua farm owners, Union Government and the Coastal State Governments. They stated that scientists, academics, social activists, political parties, farmers and fishing community who opposed aquaculture of a certain kind for the last 11 years were not consulted before the drafting of this Bill.

In Tamil Nadu there are 2086 shrimp farms functioning in all the 12 coastal districts (except Chennai), out of which, only 852 shrimp farms have got approval from the State Aquaculture Authority (Fisheries Dept., 2005). The policy note of the fisheries dept. states "steps are being taken to regulate all shrimp farms functioning without the approval of Aquaculture Authority". It is quite evident from the above that, as of date, there are many farms that are in violation of the CRZ and the Supreme Court directives. The Green Coast study also indicates this, but the exact details/ quantum of these illegal shrimp farms are not known.

Another issue highlighted, specifically in Tamil Nadu was the sector's reliance on mostly tiger prawn indicating a monoculture which has implications in spread of diseases.

The Aquaculture Authority also did not issue any guidelines, order or directives specific to the post-tsunami rehabilitation. The Authority has no powers to grant solatium to shrimp farmers hit by the tsunami and could only make recommendations to the Centre that could form the basis for providing relief to the affected farmers. It was also publicly admitted by the Member-Secretary, Aquaculture Authority that all their "recommendations can cover only licensed farms," and their main concern was "about small farmers, who own land over an extent of one-fourth of a hectare or half-a-hectare". In fact most of the violations of the CRZ and Supreme Court guidelines are less than half-a-hectare.

The tsunami provided an opportunity to take stock of this sector and put systems in place for better planning, regulation and management in the sector. This unfortunately did not happen. Coastal aquaculture has been a controversial issue in the pre-tsunami phase and given the adverse social, ecological and economic impacts which this industry has had on other coastal communities in the past, it has been suggested that measures for its rehabilitation away from the coastal belt should be given serious thought along with provisions for adequate compensation & alternate rehabilitation options. Some advocated that the Government use the tsunami as an opportunity to phase out the presence of aquaculture farms.

Interviews conducted with various officials in charge of aquaculture – such as the District Level Committees and the State Level Committees only revealed that the Coastal Aquaculture Authority act, 2005 was going the way of a series of new legislations. They are all turning into access legislations. The entire effort of the machinery for implementation appears to be geared to legalising the aquaculture farms all along the coast. In many areas, members of the DLCs were not aware of their own role in implementation of the law.

As usual the allocation of funds for the implementation of this law is very poor and in many cases the local district level functionaries operate using the funds from other departmental allocations. Again all the funds are spent on popularising the idea of getting people to register their farms. This is a huge step and the deadline for regularising all legal farms is long over, and the process is still underway, at least in the states of Tamil Nadu and Kerala.

The Coastal Aquaculture Act, 2005 however, is an ambitious legislation, containing a very detailed set of guidelines on various subjects. None of the officials seem to be actually involved in monitoring these guidelines and there is absolutely no machinery to actually facilitate this. The CAA is plagued by the same concerns of implementation that other environmental legislations face – the most serious of which is the inability to balance the priorities of development and environment protection.

12. The Environment Impact Assessment Notification, 2006

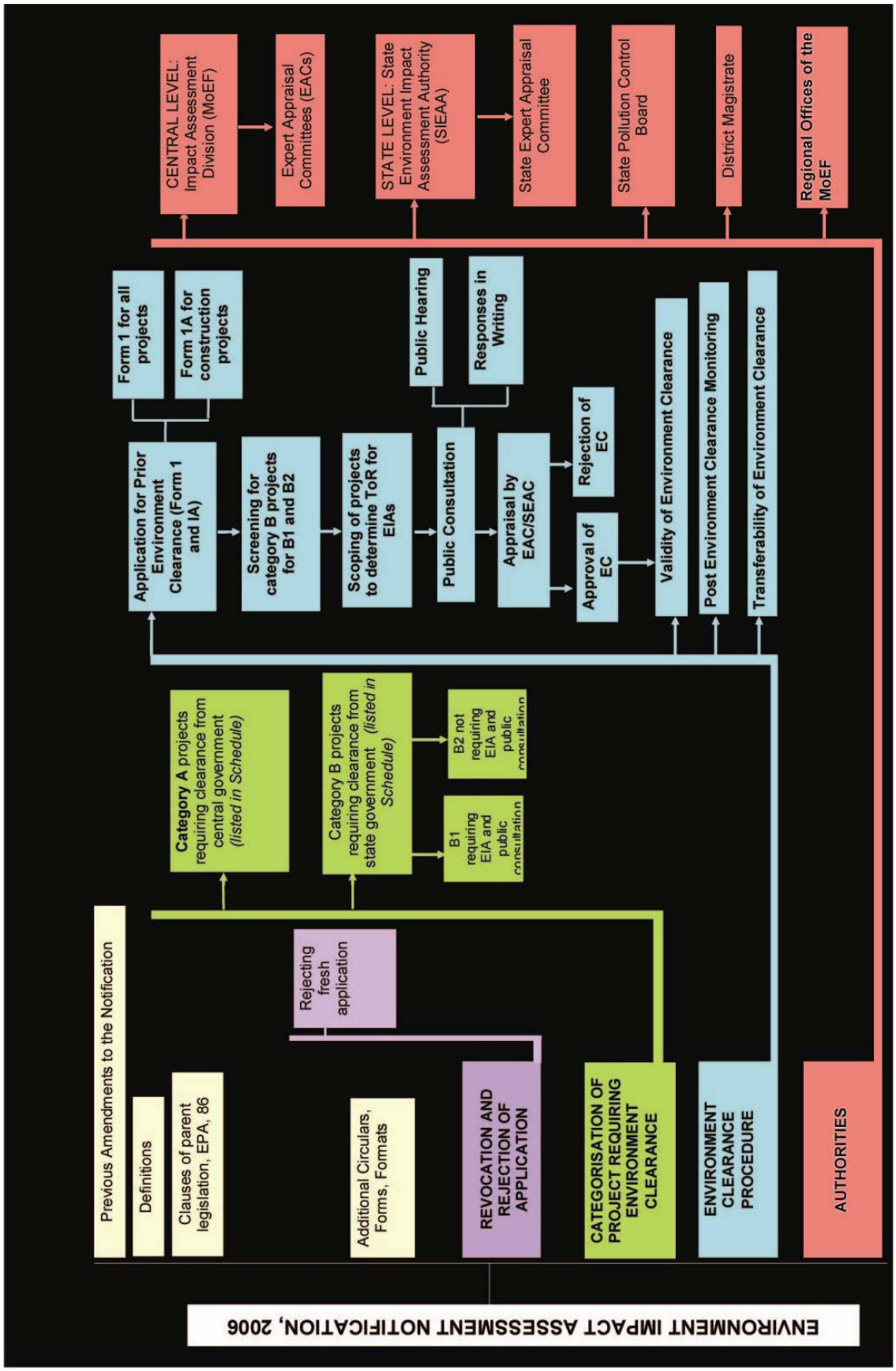
The Environment Impact Assessment Notification which was notified on 14th September, 2006 supersedes the 1994 EIA Notification. This notification is issued under Section 3.2.1.v of the Environment Protection Act, 1986, read with 5.3.d of the Environment Protection Rules, 1986

The purpose of the notification is to impose certain restrictions and prohibitions on new projects and activities, or on the expansion or modernization of existing projects and activities based on their potential environmental impacts. A prior environmental clearance must be obtained either from the Central Government or the State (or Union Territory) Level Environment Impact Assessment Authority, constituted by the Central Government under the Environment Protection Act, 1986.

All projects being covered under this notification have been divided into Category A and B based on their potential environmental impacts. Category A projects are to develop an EIA based on a Terms of Reference and presented to the MoEF. Category B projects are to be screened and further subdivided into B1 and B2, and the requirement of an EIA and public consultation have been dispensed with for B2 projects.

The notification contains schedules which list activities and projects that come under Category A and B. It also contains application forms 1 and 1A, a generic structure for an EIA document, framework for contents for a summary of the EIA report, the procedures for the public hearing and appraisal process. The notification also delineates who is an 'expert' eligible for positions, the composition and term of office of the EAC and SEAC.

THE MAIN STRUCTURE PAGE OF THE EIA NOTIFICATION, 2006



12.1. The Environment Impact Assessment Notification in this Guide

The EIA notification as it appears in the guide has been divided into four sections:

12.1.1. Main structure of the Notification

1) Authorities

This section lists out authorities appointed under the Act by the Central Government and the State Governments for implementation of the Act. It includes Boards, Committees and individual offices and lists their functions and powers granted under this notification.

2) Environment Clearance process

This section lays out the step wise process of grant of environment clearance for Category A and B projects. While the process is almost similar, there are exceptions granted to certain kinds of projects from some or most steps of the clearance process.

3) Categorisation of projects

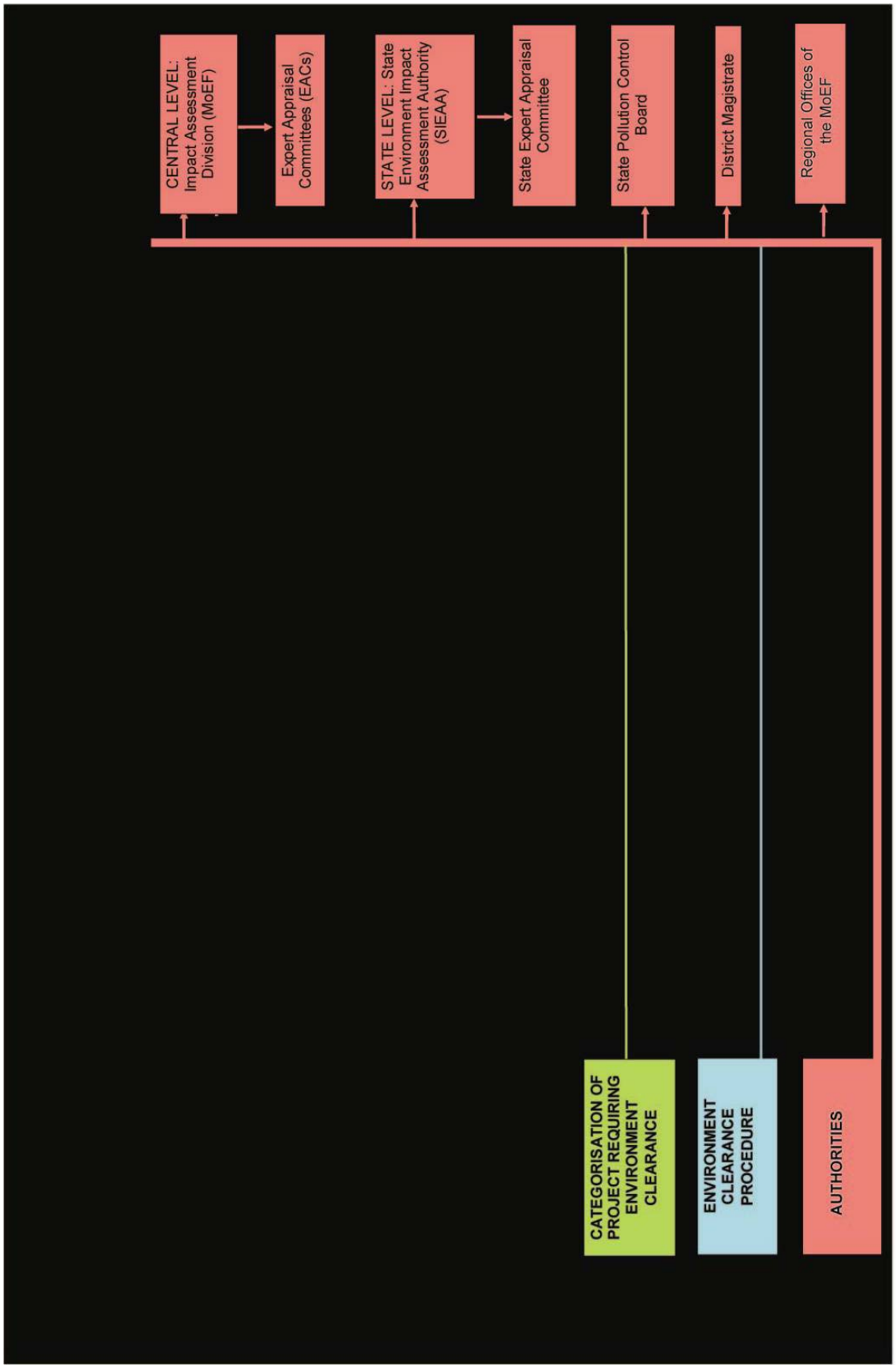
This section contains the schedule of activities categorised as A and B by the MOEF. The projects in Category B are to be further divided as B1 and B2, however the guidelines that are necessary to make this distinction have not been worked out by the MoEF.

4) Revocation and rejection of clearance

This section identifies the various clauses in the notification under which application forms and environment clearance may be rejected or then clearances granted to projects may be revoked.

Apart from these sections, the following have been provided: Definitions from the Environment Act, Powers of the Central and State Government to make rules. The predecessor EIA Notification 1994 with all amendments consolidated until 2006, circulars and supplementary government orders are presented in downloadable pdf formats.

THE 'AUTHORITIES' STRUCTURE PAGE OF THE EIA NOTIFICATION, 2006



12.1.2. Authorities under the Notification

The EIA notification is implemented by the Central government. Authorities are set up at the State/ UT level. Their functioning is supported by Expert Committees which are technical bodies that recommend grant of clearance. The state level Pollution Control Boards and District Magistrate's office play a crucial role in the public consultation process.

The following authorities are discussed and their powers and functions outlined in the CD.

1. MoEF Impact Assessment Division

2. MOEF Regional Offices

The six regional offices of the MOEF have an important role in post- clearance monitoring.

3. Expert Appraisal Committee (EAC) at the Central level

The Expert Appraisal Committee (EAC) is constituted by the Central Government for the purposes of this notification. The Ministry of Environment and Forests grants prior environmental clearances to projects or activities under Category 'A' on recommendations of the EAC. The EAC shall scope and appraise projects or activities categorized under Category 'A'.

4. District Magistrate

The District Magistrate or his or her representative not below the rank of an Additional District Magistrate assisted by a representative of SPCB or UTPCC, is given the task of supervising and presiding over the entire public hearing process.

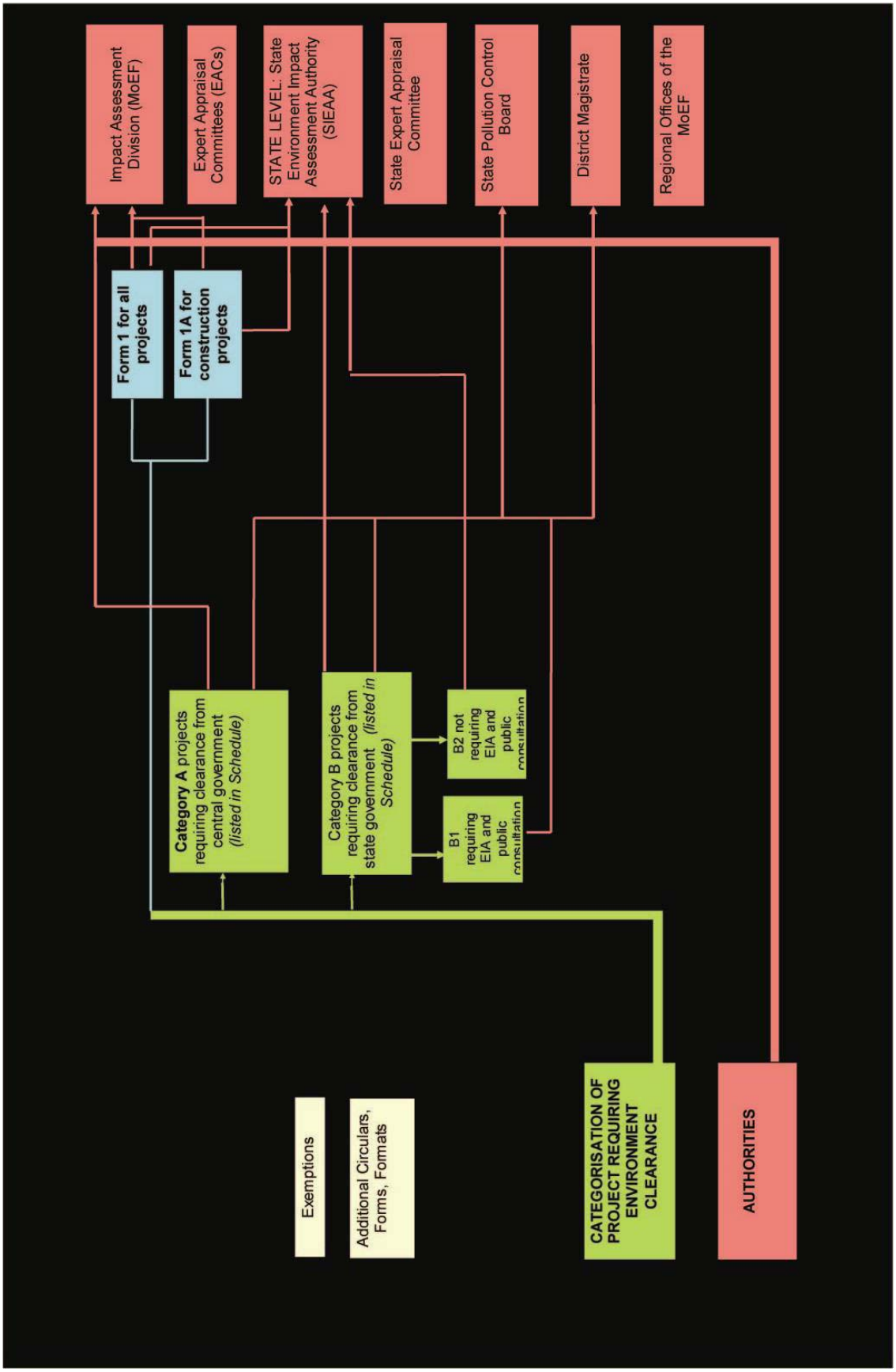
5. State (Union Territory) Level Expert Appraisal Committee (SEAC)

6. State/Union Territory Level Impact Assessment Authority

7. State Pollution Control Board

The SPCB's role is in the public consultation stage of the Environment Clearance process.

THE 'CATEGORISATION OF PROJECTS' STRUCTURE PAGE OF THE EIA NOTIFICATION, 2006



12.1.3. Categorisation of projects under the Notification

All projects and activities are broadly categorized into two: Category 'A' and Category 'B'; based on the spatial extent of potential impacts and potential impacts on human health and natural and man made resources.

Category 'A'

All projects or activities included as Category 'A' in the Schedule, including the expansion and modernization of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government

Category 'B'

All projects or activities included in as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities, or change in product mix (but those which fulfill the General Conditions stipulated) as specified in the Schedule, will require prior environmental clearance from the State/Union Territory Environment Impact Assessment Authority (SEIAA) and other authorities specified in the notification.

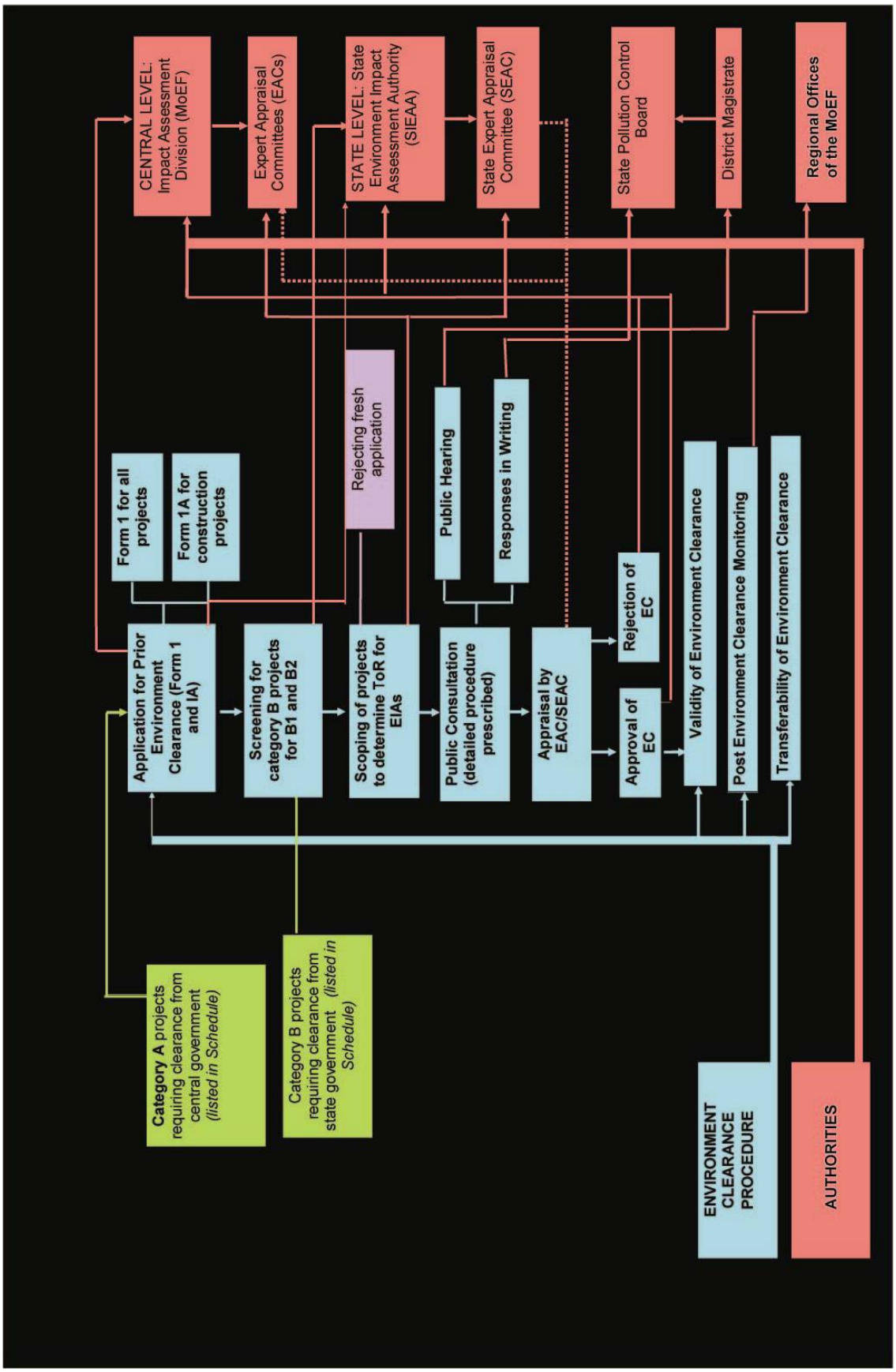
Category 'B1'

The screening process of all Category 'B' projects or activities will entail the scrutiny of their application seeking prior environmental clearance by the concerned State level Expert Appraisal Committee (SEAC).

Category 'B2'

The screening process of all Category 'B' projects or activities will entail the scrutiny of their application seeking prior environmental clearance by the concerned State level Expert Appraisal Committee (SEAC) and other concerned authorities mentioned in the notification.

THE 'ENVIRONMENTAL CLEARANCE PROCEDURE' STRUCTURE PAGE OF THE EIA NOTIFICATION. 2006



12.1.4. Environmental clearance procedures under the Notification

The environmental clearance process for new projects will comprise of a maximum of four stages, all of which may not apply to particular cases . These four stages in sequential order are:-

Stage (1) Screening (Only for Category 'B' projects and activities)

In case of Category 'B' projects or activities this stage will entail the scrutiny of an application seeking prior environmental clearance by the concerned SEAC.

Stage (2) Scoping

"Scoping": refers to the process by which the Expert Appraisal Committee in the case of Category 'A' projects or activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities determine detailed and comprehensive Terms Of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought.

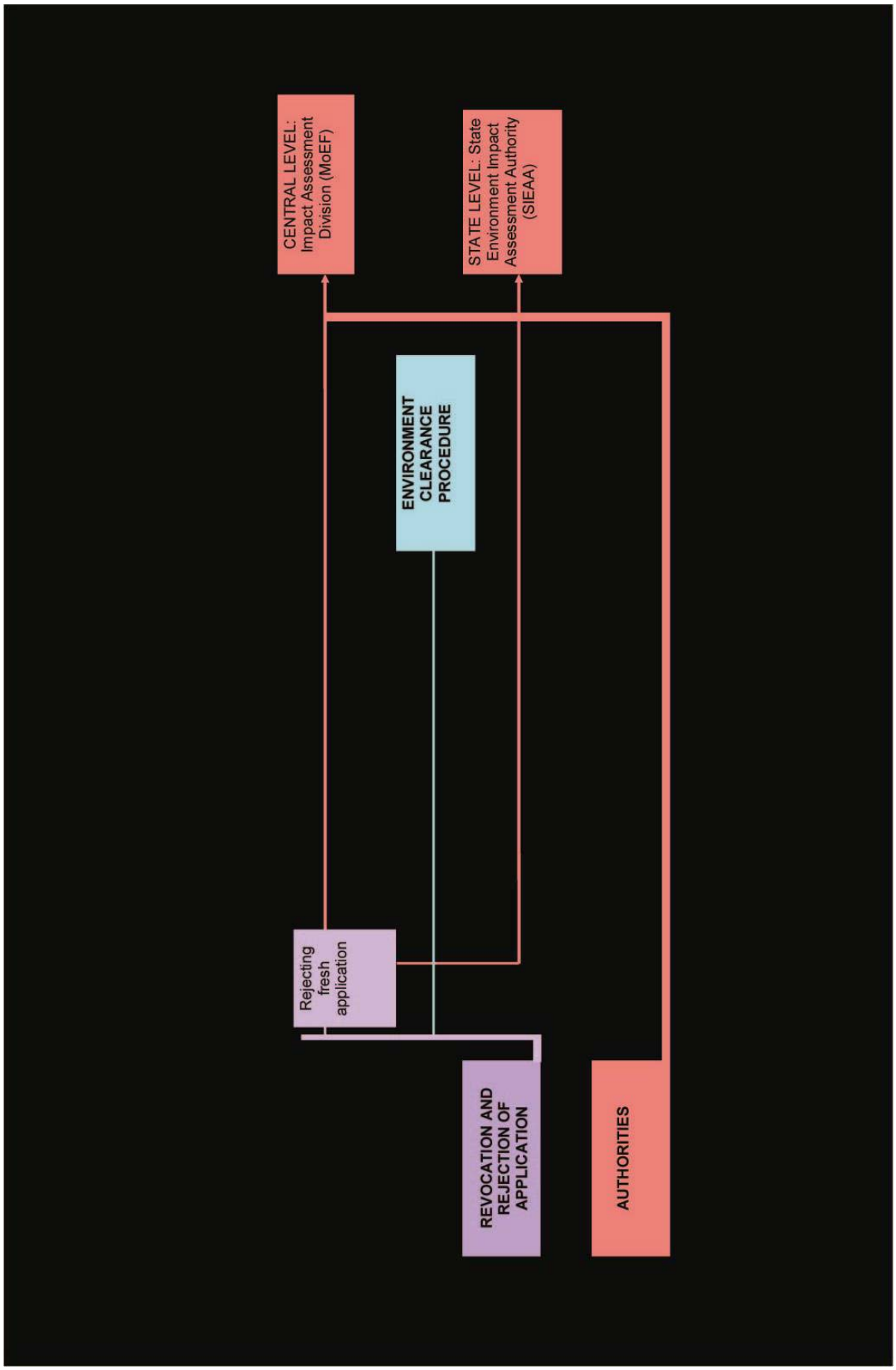
Stage (3) Public Consultation

"Public Consultation" refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained to take into account all the material concerns in the project or activity design as appropriate.

Stage (4) Appraisal

Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance.

THE 'REVOCATION AND REJECTION OF APPLICATIONS' STRUCTURE PAGE OF THE EIA NOTIFICATION. 2006



12.1.5. Revocation and rejection of clearances under the Notification

Rejecting fresh applications

Applications for prior environmental clearance may be rejected by the regulatory authority concerned on the recommendation of the EAC or SEAC concerned at this stage itself. In case of such rejection, the decision together with reasons for the same shall be communicated to the applicant in writing within sixty days of the receipt of the application.

The authorities at the Central and State level are listed in the adjacent flowchart

12.2. Commentary on the EIA Notification, 2006

The need to consider environmental aspects prior to the construction of projects was first officially recognized in India with the 1975 guidelines of the Central Water Commission (CWC), Government of India. These guidelines for conducting investigations regarding major irrigation and hydro-electric projects, had a chapter on environment which stated, *"The planning, construction and operation of irrigation/ hydroelectric/ multipurpose projects have considerable impacts on navigation, fish culture, wild life, recreational aspects and overall ecology of the affected regions. Some of these aspects on the ecology of the region as well as the overall environment are irreversible in nature. It is, therefore, necessary that a careful evaluation is made of these impacts, whether good or bad…."*

The CWC guidelines then delineated several aspects that warrant detailed studies for appropriate decision making. Though these directions existed, they were not backed by any clear set of laws. Environmental assessments of dams therefore remained haphazard and vague, and were purely incidental components of the planning process. In 1980, clearance of large projects from the environmental angle became an administrative requirement, to the extent that the Planning Commission and the Central Investment Board sought proof of such clearance before according financial sanction. Five years later, the Department of Environment and Forests, Government of India, issued Guidelines for Environmental Assessment of River Valley Projects. These guidelines specified the various studies which are necessary as part of an EIA, including impacts on forests and various studies which are necessary as part of EIA, including impacts on forests and wildlife in the submergence zone, water-logging potential, upstream and downstream aquatic ecosystem and fisheries, water-related diseases, climatological changes, and seismicity.

The Environment Impact Assessment Notification (today "re-engineered" as the EIA Notification 2006), promulgated under the Environment (Protection) Act, 1986 took another 14 years to be legislated. This law created the scope to consider impacts of development projects in a much wider and deeper manner than what existed in the past. The EIA notification 1994 was fully amended and the present clearance process is under the EIA notification 2006. From then to now, the story of the environment clearance process is a story of systematic deregulation of development projects.

Purpose of the law

The new EIA Notification, 2006 divides industries, projects and activities into Category A and Category B where projects under Category A have to be cleared by the Central Government (Ministry of Environment and Forests), and Projects under Category B are to be cleared by the State Government (new institutions to be set up for this). Category B will be further categorised into B1 and B2 on the basis of guidelines, yet to be issued by the MoEF. Industries falling within Category B1 will require an EIA Report to be submitted, and a public consultation to be held. Industries falling in Category B2 will not require either an EIA or Public Consultation., thereby making the notification almost redundant for them.

The whole purpose of this law therefore is only to maintain a procedure by which projects can be granted clearance in an efficient and time bound manner. It does little by way of planning and regulating over- industrialization, managing or reducing congestion and pollution in already industrialized areas and offering suggestions or directions for more environment-friendly development. Some may argue that these aspects are covered under other legislations. If that were to be granted, then the problem remains that the EIA notification and the clearance procedures are in

no way connected or related to these other legislations and therefore, planning and management components of the other laws are lost out on this clearance process. Infact, even the rudimentary connection that the EIA process of 1994 had with the process of grant of No Objection Certificated by the Pollution Control Boards, has been lost in the 2006 version. The EIA notification process also has no relation to the Forest Clearance procedures under the Forest Act or the process of utilization of Protected Areas by projects that is governed by the National Board for Wildlife.

Deregulation of sectors

The system of deregulation is best understood through the example of procedures for SEZs. Immediately after the SEZ policy was formalized in 2000, an amendment to the EIA notification, 1994 in 2001 stated that the public hearing process mandated in Schedule IV of the notification was not required for units located in Export Processing zones and Special Economic Zones [Para 2(1)(a)(iv)]. This was a dilution of the provisions of the law whereby public opposition to units to be located within SEZs could be suppressed. It is to be recognised that under the 1994 notification, investors approached the Ministry of Environment and Forests for environmental clearances merely for individual units located within SEZs and not for the entire SEZ. Despite SEZs being a high intensity development area, their growth potential and their consequent impact on the environment were not being screened or even assessed.

The 2006 notification now mandates that "industrial estates/parks/complexes/areas, export processing zones (EPZs), Special Economic Zones (SEZs), Biotech Parks, Leather Complexes" are to seek environment clearance [Item 7(c), Schedule 1].

If one reads this schedule with the specific conditions and other exclusions laid out with the EIA notification, the following scenario emerges:

" if at least one industry in the proposed industrial estate falls under Category A, entire industrial area shall be treated as Category A irrespective of area", and "industrial estates with area greater than 500 ha. and housing at least one Category B industry" it will be considered Category A and will require Central clearance.

If "industrial estates housing at least one Category B industry and area < 500 ha" ; or "industrial estates of area > 500 ha and not housing any industry belonging to Category A or B", then they will require to apply for clearance at the State Level.

- An industrial estate that is less than 500 ha and does not house an industry of either Category A or B is exempt from Environmental Clearance.
- SEZs will require to prepare an EIA and go through the public consultation process unless the Category B projects are further reclassified as B2.

The GC of the new notification also states that if any project in Category B is to be located within 10 km from the boundary of a PA, critically polluted area, notified ESAs or inter state/internations boundary, then it will be moved to Category A for which the clearance granting agency is the MoEF.

The Special Condition (SC) under Schedule 1 lays down the procedure for grant of clearance to units to be located within SEZs. It states: *" If any Industrial Estate/Complex / Export processing Zones /Special Economic Zones/Biotech Parks / Leather Complex with homogeneous type of industries such as Items 4(d),*

4(f), 5(e), 5(f),[1] or those Industrial estates with pre –defined set of activities (not necessarily homogeneous, obtains prior environmental clearance, individual industries including proposed industrial housing within such estates /complexes will not be required to take prior environmental clearance, so long as the Terms and Conditions for the industrial estate/complex are complied with (Such estates/complexes must have a clearly identified management with the legal responsibility of ensuring adherence to the Terms and Conditions of prior environmental clearance, who may be held responsible for violation of the same throughout the life of the complex/estate)."

It can be interpreted here that if individual units coming up within an SEZ are homogenous and belong to one of the abovementioned categories or not homogenous but their presence has been pre-defined at the time of the grant of clearance to the SEZ, then these individual units will not be required to go through the clearance process.

The trend of deregulation has stayed throughout the implementation period of the EIA notification. Almost all of the amendments to the 1994 notification had exclusions of projects from part of whole of the clearance process. These were small scale industries (SSIs) in industrial areas/estates, widening and strengthening of highways, offshore exploration activities beyond 10 kms from the nearest habitat, mining projects of major minerals with lease above 20 ha, modernisation of existing irrigation projects and units to be located in Export Processing Zone (EPZ) and Special Economic Zone (SEZ). In its first avatar, projects with investments below 50 crores did not need to get an environmental clearance from the MoEF. The logic of investment limits rather than the proposed location of projects being used to decide whether it requires a clearance was fundamentally absurd. And much damage was caused by large projects that got clearances as sub-projects of less than 50 crores.

Privileges to investors

On November 29, 2004, at a meeting with NGOs, the Ministry of Environment and Forests (MoEF) distributed a draft format for a new environmental clearance (EC) process. This note titled 'Reforms in grant of Environmental Clearances' clearly established the link between the EMCB project and the EIA review. It also gave reference to the Govindarajan committee report on investment reforms. The meeting was with a very limited number of civil society organizations. Attempts were made by representatives of peoples' movements to attend the meeting, but they were expelled from the Ministry premises. On the contrary several consultations were held with industry associations where this note and subsequent drafts of the notification were discussed. As per the Ministry's own submission (to applications under the Right to Information Act filed in 2005-2006, consultations on the draft notification were held only with representatives of industry and central government agencies. A revised version of the draft notification was also shared with industry associations in mid 2006 before the final version was issued in September 2006. According to documents received through Right to Information, it was revealed that specific instructions for this were given from the Prime Minister's Office (Note dated 28.4.2006. PMO I.D. No. .250/31/C/4/05- ES-II to Secretary, MoEF). Despite protests from political party representatives of the Communist Party of India (M), Samajwadi Party, All India Forward Bloc, AIADMK and the Pattali Makkal Katchi (PMK), the MoEF went ahead to issue a re-engineered EIA notification, 2006 on 14th September.

[1] *Where items 4(d), 4(f), 5(e), 5(f) are chlor-alkali industry, soda ash industry, petro-chemical based processing (processes other than cracking and reformation and not covered under the complexes) and synthetic organic chemicals industry (dyes and dye intermediates; bulk drugs and intermediates excluding drug formulations; synthetic rubbers; basic organic chemicals, other synthetic organic chemicals and chemical intermediates).*

Earlier, in May 2004, the MoEF announced a set of 'Good Practices in Environmental Regulation'. But these were in reality only meant to address the concern of 'delays' in the process of grant of clearance to projects (such as the repeated requirement for additional information sought by the Ministry from the developers and delays in expert appraisal committee meetings*)*. Another good practice to be adopted was that 'no application will be rejected on procedural grounds alone, unless the application has deliberately not followed the prescribed procedure in order to realize some unwarranted benefit.' There are umpteen examples of fradulent Environmental Impact Assessment reports submitted by consultants and project proponents, the fudged report by Ernst and Young for Dandeli Mini hydel project in Karnataka being the most infamous. Some of these practices that were identified as 'good' and the process by which the new notification was brought in clearly demonstrate the government's willingness to stretch themselves to give a project proponent or investor maximum opportunity to get clearance for his/her project.

However in states where environmental and livelihood struggles are able to influence the citizenry, clearances and challenged and revoked. According to Claude Alvares, the gram panchayats in Goa are increasingly keen on taking decisions that are pro environment. They do not grant permissions for the setting up of projects like the MoEF. There have been several instances where they have rejected permissions to projects that have been cleared by the Ministry. Centre-State issues and politics also play with a centralized clearance process of this kind. The state of Himachal Pradesh urged the MoEF not to grant environmental clearances to hydel projects in the state as the state government was being unable to ensure compliance by the project developers.

Quality of Information in the assessment process

The MoEF and industry associations have initiated a new exercise for the accreditation of EIA consultants. As a visitor to the MoEF website, one can hit upon a document titled 'NRBPT Criteria for Registration of EIA Consultant Organisations'. It is a voluntary scheme to register agencies that prepare Environmental Impact Assessment Reports for development projects under the National Registration Board for Personnel and Training (NRBPT), a constituent of the Quality Council of India (QCI).

QCI is an autonomous body with the Ministry of Commerce and Industry as its nodal ministry. The industry representatives on this are ASSOCHAM, CII, and FICCI. Interestingly these were the same three industry associations the MoEF had shared the revised version of the re-engineered EIA notification through special meetings. They therefore had an important role to play in the highly diluted version of the law which is under implementation today.

Civil society organizations engaging with the EIA process for the last 13 years have been consistently pointing out to the MoEF that some EIA consultants have been repeatedly producing shoddy reports and therefore there is a need to "black" list them. They have also been stating that only consultants who have demonstrated professional integrity should be allowed to do EIAs. But the new initiative does not focus on either of these concerns and instead adopts a system of voluntary registration. Will the registered consultants get any special privileges or incentives for good work or is the registration incidental to the question of who can conduct EIAs, remain unanswered.

The MoEF's role in this initiative is "unstated", to say the least, as informal inquiries let to no clarity on the matter. Only the response to a Right to Information application filed by Kalpavriksh with the MoEF regarding the accreditation scheme for EIA Consultants resulted in the Ministry admitting in writing, that two meetings were held in Paryavaran Bhavan and chaired by the

Secretary, MoEF. The draft scheme prepared by the QCI was discussed and finalized based on these meetings in 2005 and 2006. Presentations were also made to the MoEF's Expert Appraisal Committee on Mining. What the MoEF's role in this will be, as the regulatory body granting clearances, is yet to be known.

This question is critical as even today, as always, the EIA consultants are hired by the project proponent with clear Terms of Reference, which often include assisting in or procuring the environment clearance for the project. Since the consultants are paid by the proponents there is no autonomy in carrying out impact assessments.

The abysmal quality of EIA reports is something that has been acknowledged even in the NRBPT document. But this has not been considered reason enough to reject clearance to any project. During 2003-2006, the MoEF has cleared approximately 2056 projects in different sectors. The EIAs of many of these projects were studied by civil society groups and communities and well researched critiques were presented to the decision making authorities at the time of public hearings. Unfortunately, it made no difference to the decision making process whatsoever due to the Ministry's functioning as a 'clearing house'.

Hearing the public

Public Hearings, the only window for the public into the environmental decision making process, is marred by intimidation or violence all across the country. The first set of public hearings conducted in 2005 in the tsunami affected areas for the Sethusamudram project, when local people were still in relief camps, is telling on the nature of the state. In the case of the Indira Sagar Major Irrigation (Polavaram) project in Andhra Pradesh, the project proponent conducted only one public hearing (mandatory under the Notification) in Andhra Pradesh even though tribal communities of Chhattisgarh and Orissa will also be affected by the project. In their arguments before the National Environment Appellate Authority, where the environmental clearance of this project has been challenged, the project proponents claimed that they did not think it necessary to conduct public hearings in the other States.

One of the most problematic areas in this Notification is the Public Consultation process, where only a draft EIA report will be available to the affected persons at the time of the hearing. Now, communities that are likely to be affected will not get to see the final document, on the basis of which the decision on the project will be made. The public hearing can also be cancelled if the local conditions are not conducive to it. It is not mandatory then for the authorities to conduct a fresh hearing. There is no doubt that this clause is subject to misuse by the project proponents and the regulatory authorities. This is not a presumption but facts on the ground all point to this. The next time a tribal community attempts to enter a public hearing being conducted, as they did in 2005 in the Tata Steel plant in Noamundi, Jharkhand, the authorities could simply cancel the event on the pretext of law and order problems and make recommendations without hearing people out. Most regions where large projects are proposed today are rife with peoples' struggles to reaffirm their rights over land and their livelihoods. It is hard to imagine or expect a peaceful public hearing anymore. In these places, where marginalized people struggle, the cancellation of the public hearing process, will be an injustice perpetuated twice over.

Redressal of grievances against the assessment process and decisions

In 2007, Coastal Action Network, raised the issue of survival of almost a lakh fisherfolk threatened by the Sethusamudram Project in the High Court of Madras. They challenged the environment clearance granted to the project by the MOEF. The court however disposed it on the grounds that there was an adequate alternative body to redress grievances in National Environmental Appellate Authority, set up through a Parliamentary Statute in 1997.

In response to this, the petitioners brought out the stark and rather unfortunate truth that the appellate, the highest body in the country for redressal of environment related cases was technically unqualified to take a decision on this issue. There was no one with a background in any environment related subject and most cases had been dismissed by the Appellate on procedural grounds without looking into substantive issues of merit. Heeding the plea of the petitioners in the Sethu case, the High Court ordered that the Central Government should appoint a Chairperson for the NEAA within 30 days and that the Sethusamudram case ought to be heard by the NEAA following this appointment.

The 30 day period end in July, so also did the term of the present Vice-Chairperson, Vishvanath Anand. Following this, for the interim, the MoEF appointed a bureaucrat of the rank of Joint Secretary to fill this gap. It was absurd that a clearance letter signed by an officer of the MoEF, when challenged, was to be brought to the Joint Secretary of the same Ministry. This indicated both the refusal of the centre to grant true independent status to such a critical body as well as MoEF's efforts to make redundant, any process that challenges its decisions.

Even today the NEAA is yet to be fully constituted. It does not have a Chairman since Justice N. Venkatachala retired in 2000 and has had no Vice-Chairman since the last three years. At present, the 'technical experts' panel comprises retired Indian Forest Service (IFS) and IAS officers. Thus the functioning of this specialized grievance redressal body has been severely handicapped because there are no judicial members and technical experts in it to deliberate and pass judgements on the subject of environmental destruction by projects and impacts on people. High Courts will not hear these matters as it is not within their jurisdiction anymore to do so. Thus the dispensing of justice is unfulfilled.

Despite detailed critiques presented against the viability of projects, through thorough research, expert committees and the Ministry of Environment and Forests grant clearances to them in the name of 'development'. While we are told that policies and processes are being made more scientific, a staggering number of projects which cause irreversible impacts on a large number of forests, wetlands and coastal areas are being permitted. Environmental regulations have been turned into 'access legislations' with no regard for democratic decision making processes.

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14. List of interviewees for the project

- Claude Alvares, Goa Foundation, Goa
- Kanchi Kohli, Kalpavriksh, Delhi
- Neeraj Vagholikar, Kalpavriksh, Pune
- Prof. Mahesh Rangarajan, Department of History, University of Delhi
- Ranjit Singh, New Delhi
- Ritwick Dutta, Environmental Lawyer, LIFE, New Delhi
- Samir Mehta, Bombay Environment Action Group, Mumbai
- Shyam Divan, Environmental Lawyer, New Delhi,

Nagapattinam, Tamil Nadu

- Members of the District Level Committee (Aquaculture)
- Mr. Shankar Pillar, Vanagiri
- RFO, Point Calimere Wildlife Sanctuary
- T S Jawahar IAS, District Collector

Chennai, Tamil Nadu

- Dr. K. Paul Raj, Member Secretary Coastal Aquaculture Authority
- Mr. Ravichandran; Member Secretary of the CAA
- Mr. Shambhu Kalolikar, Commissioner of Fisheries

Allepey, Kerala

- Dr.KG Padmakumar, Regional Agriculture Research Station (RARS), Kumarakom, Kerala Agriculture University
- Environment Engineer, Kerala State Pollution Control Board
- M.S. Jayaraman, Asst. Conservator of Forests, Social Forestry Division, Alappuzha
- Mr. K.M.Namboodiri, AREED
- Raja Swamy, Research Scholar.
- Rajan, SEUF
- Sumesh Mangalassery, and Kabini
- V.K. Balakrishnan, District Collector, Allepey

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16. Production and Editorial Team

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Manju Menon is a member of Kalpavriksh Environmental Action Group. Her work involves investigations on environmental and social impacts of large development projects. As part of a research and campaign team, she studies the implementation of and changes in environment laws and policies and supports local groups to understand and respond to the environment clearance (EC) procedures and amendments to clearance legislations. Apart from the national level work, her specific regional focus has been in North East India. Over the past six years she has closely followed environmental and social issues with respect to the large dams proposed in Northeast India.

Seema Shenoy

She has been working on the social and policy aspects of conservation with the Coastal Programme at the interface of ecology, the social sciences and policy analysis. She is a part of the CD-ROM and Environmental Law Guide production team. She works on environmental policy issues as part of the UNDP Post Tsunami Environment Initiative Project. She has been involved with analysing the effectiveness of various conservation policies along coastal areas in terms of implementation efficiency, with special regard to tsunami-affected regions in Tamil Nadu, Andhra Pradesh and Kerala. She has a Master's degree in Environmental Sciences from the University of Pune.

Deepta Desikan

She is a part of the Coastal and Marine Programme at ATREE and has worked on the socio-ecological and policy components. Her role in the Post-Tsunami Environment Initiative project has been to assist in the development and functioning of the framework for the sociological component and in the policy analysis and the production of the CD-ROM and Environmental Law Guide.

Arjun Shankar

Arjun Shankar is a graphic designer and was responsible for creating the design, and construction of the CD-ROM. He heads the technical production of the Environmental Law Guide Team and handles all technical aspects of the CD-ROM and is working on a web-based version of the same. He straddles a wide range of interests that include art, photography, theatre, music and writing and is a Trustee of Toto Funds the Arts.

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She has been with the Coastal and Marine Programme since August 2004 and her interests in conservation and development are on socio-legal situations arising from the application of laws. She was responsible for coordinating the production of the Environmental Law Guide and CD-ROM. She is also the Regional Coordinator, Indian Ocean Region, and the World Commission on Protected Areas (Marine). Her interests in collaborative approaches to environmentalism and conservation drives her involvement in various initiatives such as the Orissa Marine Resources Conservation Consortium (www.omrcc.org) and the Dakshin Foundation, of which she is a founder member (www.dakshin.org).

Our Post-Tsunami Environment Initiative publications:

- Beyond the Tsunami: Social, Ecological and Policy Analyses of Coastal and Marine Systems on the Mainland Coast of India
- Trends and Patterns in Hydrology and Water Quality in Coastal Ecosystems and Upstream Catchments in Tamil Nadu, India
- Macro and Mega Faunal Communities of Intertidal Ecosystems on the Tamil Nadu Coast, India
- Status of Fisheries in Tamil Nadu, India: A Snapshot of Present and Long-term Trends
- Environmental Law Guide - An Analytical Guide for Deciphering Content of Laws in India
- Community Perceptions of Resources, Policy and Development, Post-Tsunami Interventions and Community Institutions in Tamil Nadu, India
- Current Status of Mangroves in Kerala and Tamil Nadu, India, with regard to Vegetation, Community Perceptions and Policy
- Coastal Sand Dunes of Tamil Nadu, India - An Overview
- A Protocol for Ecological Monitoring of Sandy Beaches and Intertidal Fauna on the Indian Coast
- Sand in my Hands! An Activity Book on Sandy Beaches and Sand Dunes for Children
- Policy Brief: Bioshields
- Policy Brief: Sand Dunes
- Policy Brief: Sea Walls

United Nations Team for Tsunami Recovery Support

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The Coastal and Marine Programme at ATREE is interdisciplinary in its approach and applies skills in the natural and social sciences to its research and conservation interventions.