

FOUR YEARS OF THE NDA GOVERNMENT

THE STATUS OF GREEN CLEARANCES



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Centre for Science and Environment (CSE) has reviewed the performance of the National Democratic Alliance (NDA) government at the end of its fourth year in office on green clearances. The review includes clearance decisions concerning environmental, forest and wildlife clearances, as administered by the Ministry of Environment, Forest and Climate Change (MoEF&CC) both at the central and the state levels, and some of the key policy measures guiding clearances.

The observations suggest that there is a preoccupation with easing and fast tracking clearances with very few projects being rejected. However, no simultaneous measures are being adopted to improve the clearance mechanisms that can help to mitigate environment problems on ground and ensure that local communities are not alienated. The slew of notifications, guidelines and other directives as issued by the Government from time to time does not reflect any intention to improve on comprehensive assessment before projects are cleared, or ensure compliance and monitoring once projects are in place.

In fact, green clearances are being treated as a formality increasingly. It has been reduced to mere paperwork with 'supposed sanctity' that environment and people are being taken care of. The reality, however, is different.

The need of the hour is thus a comprehensive reform which is well thought out. This requires a relook into regulatory provisions, processes, as well as institutions and authorities concerned with green clearances. A hurried and piecemeal approach will not work; it will only perpetuate the status quo or worsen it.

REPORT CARD





Environmental clearance

The environmental clearance process is becoming more and more a formality, with the sole obligation of doing paperwork. The quality of assessment, compliance of clearance conditions and the involvement of the local community through public hearing are being further weakened to ease the clearance process

The Environmental Impact Assessment (EIA) Notification (2006), as developed under the Environment (Protection) Act (1986), specifies the requirement for obtaining environmental clearance (EC) for various developmental projects. Depending on the spatial extent and potential impacts of proposed activities, they are broadly categorised into A and B. All category A projects are appraised by the expert appraisal committee (EAC) of the Ministry of Environment, Forest and Climate Change (MoEF&CC) at the centre and cleared by the Union environment ministry. Category B projects are cleared by state level authorities- state EAC (SEAC) and state environmental impact assessment authority (SEIAA). Besides, district-level authorities have been created through an amendment to the EIA Notification in January 2016, for dealing with ECs of small scale mining projects involving minor minerals.

Key trends

- In the past four years, the EC process has been streamlined for the convenience of the project proponents. But there has not been any improvement in the quality of assessment. The rate of rejection of projects remains very low and most projects were cleared.
- Maximum number of clearances has been given to the mining and infrastructure projects.
- Compared to the second term of the United Progressive Alliance (UPA II), the National Democratic Alliance (NDA) government in its first four years has cleared less number of projects. But this is largely because of the slowdown in the economy and excess clearances granted during UPA II in sectors like the thermal power plants.
- Policy actions with respect to ECs have been focussed on easing the clearance process, guided by the vision of “ease of doing business”. Key measures adopted include- decentralization of ECs, expediting the EIA process by developing standardized Terms of Reference (ToR), and relaxation of public hearing provisions.
- District-level clearance authorities have been created to deal with small-scale minor mineral mining projects following Court directions on observed irregularity in the sector.
- At the same time, the Government has gone ahead with regularizing EC and coastal regulation zone (CRZ) clearance violations allowing post-facto clearances; a perilous move that defy the objective of “prior” EC requirement under the EIA Notification.
- While clearance decisions have been decentralised, no measure has been taken to improve the quality of EIA or the assessment process, such as capacity building of concerned authorities or improving oversight of their decision-making.
- Also there is no improvement in post- clearance compliance and monitoring; equally poor is the availability of such reports in public domain.

A. Environmental clearance facts for major development sectors

a. Decisions at the Centre level

- Going by the available data of the MoEF&CC (as reviewed periodically), in the past four years (June 2014 until May 2018), about 578 mining and industrial projects (combining new and expansion projects) have been granted EC. This includes coal and other non-coal minerals, thermal power plant, hydropower, iron and steel, and cement (see Table 1: Environmental clearances granted to major sectors).



Table 1: Environmental clearances granted to major sector (June 2014 – May 2018)

Sectors	No. of projects	Capacity	Unit
Coal Mining	96	216.5	MTPA
Iron Ore Mining	17	44.5	MTPA
Lime Stone Mining	63	127.2	MTPA
Bauxite Mining	11	10.8	MTPA
Other Minerals*	236	285.9	MTPA
Thermal Power	35	44,727	MW
Hydro	11	4,917	MW
Iron and Steel	70	90	MTPA
Cement	39	109.2	MTPA

*Includes sand, bajri, gravel, stone etc.

- Mining sector has been a key focus of ECs. For coal mining, 96 projects with a cumulative production capacity of about 216.5 million tonnes per annum (MTPA) were cleared. For non-coal mining, a total of 327 projects of about 468.5 MTPA were cleared. A majority of these involve mining of sand/bajri/gravel/stone etc.
- Another focus has been the infrastructure sector. About 520 infrastructure projects of various categories have been cleared, such as, industrial estates, buildings, roads (also connecting roads) and highways including projects in coastal areas.
- The rejection rate of clearances remains low. For example, among all proposals received by the Centre since July 2014, only about 10 per cent has been rejected.

Has the trend shifted in the past four years?

When compared against the second term of the UPA Government, the average pace of clearance under NDA government remains comparable for most sectors, such as, mining (except for other minerals that include sand, bajri, stone, granite, etc.), hydro power, iron and steel and cement (*See table 2: Trend in granting ECs for major sectors: NDA and table 3: Trend in granting ECs for major sectors: UPA II*). However, there is significant difference in two sectors-

- For 'other minerals' ECs have increased very significantly as per available data. The average capacity granted per year has gone up by six times as compared to the UPA II.
- For thermal power the trend is the opposite. The average capacity cleared per year during the first four years of the NDA term is about one-third as compared to UPA II. It can be noted here that since June 2014, the Government has also placed more projects with state clearance authorities (depending on fuel mix).

Table 2: Trend in granting ECs for major sectors: NDA (June 2014- May 2018)

(Yearly average has been calculated taking a period of 4 years)

Sectors	Total NDA		Yearly average NDA	
	No. of Projects	Capacity	No. of Projects	Capacity
Coal Mining	96	216.5 MTPA	24	54.1 MTPA
Iron Ore Mining	17	44.5 MTPA	4	11.1 MTPA
Lime Stone Mining	63	127.2 MTPA	16	31.8 MTPA
Bauxite Mining	11	10.8 MTPA	3	2.7 MTPA
Other Minerals	236	285.9 MTPA	59	71.5 MTPA
Thermal Power	35	44,727 MW	9	11,182 MW
Hydro	11	4,917 MW	3	1,229 MW
Iron and Steel	70	90 MTPA	18	22.5 MTPA
Cement	39	109.2 MTPA	10	27.3 MTPA



Table 3: Trend in granting ECs for major sectors: UPA II (January 2009- May 2014)

(Yearly average has been calculated taking a period of 5 years and 4 months)

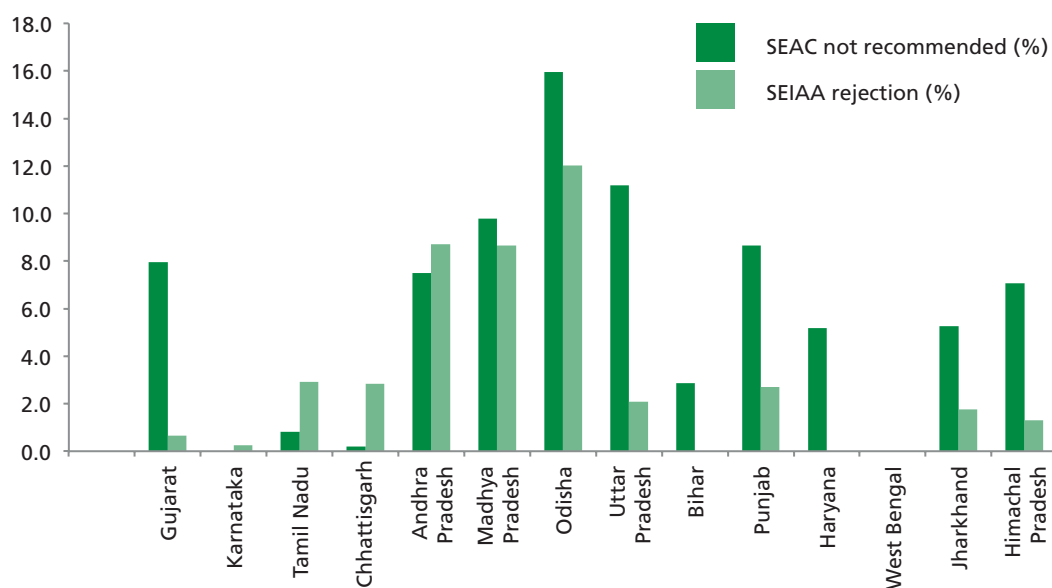
Sectors	Total UPA II		Yearly average UPA II	
	No. of projects	Capacity	No. of projects	Capacity
Coal Mining	174	387.3 MTPA	32	71.7 MTPA
Iron Ore Mining	77	141.1 MTPA	14	26.1 MTPA
Limestone Mining	78	64.3 MTPA	14	11.9 MTPA
Bauxite Mining	16	18.1 MTPA	3	3.4 MTPA
Other Minerals	120	61.6 MTPA	22	11.4 MTPA
Thermal Power	194	169,532 MW	36	31,395 MW
Hydro Power	21	8,311 MW	4	1,539 MW
Iron and Steel	195	128.1 MTPA	36	23.7 MTPA
Cement	97	192.9 MTPA	18	35.7 MTPA

b. Decisions at the state level

- Going by the available EC data in the state portal of the MoEF&CC, it can be ascertained that the overall proportion of various development projects for which EC is denied is very low (See figure 1: Proportion of rejection of clearances by SEACs and SEIAAs in various states).
- At the level of SEAC, the proportion of projects not recommended by the authority varies between zero to five per cent in most states.
- The proportion of rejection is almost negligible, at SEIAA level. A comparison of projects that are recommended by SEAC and those cleared by SEIAAs for 14 states show that the rejection rate is zero to less than one per cent in five states, and between one to three per cent in six states (See table 4: Trend in recommendation & approval of ECs by state level clearance authorities in various states).
- With respect to ECs granted for various sectors, maximum number of clearances has been granted for two sectors- mining of minor minerals (such as sand, stone, gravel etc.) and various construction projects. An in-depth review of top five states (in terms of number of proposals received and EC decisions taken) clearly shows this trend (See table 5: Sector-wise ECs in five top states). The review is based on proposals submitted after July 2015, and as per available information in public domain.

Figure 1: Proportion of rejection of clearances by SEACs and SEIAAs in various states

(for proposals submitted since July 2015)





- A key concern with SEIAAs/ SEACs is however, the quality of evaluation and their accountability. In most of the states reviewed, state-level authorities are looking at 50 to 60 project proposals in one meeting. At the same time there is no clear mechanism outlined to hold these authorities accountable for their decisions.
- On top of these, SEIAAs are also entrusted to ensure compliance with EC conditions for clearances granted at state level. Power has been delegated to the SEIAAs to issue show cause notice to project proponents in case of violations of EC conditions. But considering the lack of capacity at SEIAA, this is very difficult to implement.

Table 4: Trend in recommendation & approval of ECs by state-level clearance authorities in various states (for proposals submitted since July 2015)

State	Proposals submitted	Accepted by SEAC*	Recommended by SEAC	Decisions by SEIAA			
				EC granted	Pen-ding	Reje-cted	Deli-sted**
Gujarat	6,434	2,754	1,354	1,132	147	9	66
Karnataka	1,907	1,542	1,518	1,446	62	4	6
Tamil Nadu	1,773	1,572	1,403	1,202	160	41	0
Chhattisgarh	686	483	459	412	34	13	0
Andhra Pradesh	972	760	655	599	9	57	0
Madhya Pradesh	2,470	266	231	156	35	20	20
Odisha	631	232	183	130	31	22	0
Uttar Pradesh	432	304	193	146	43	4	0
Bihar	395	245	146	90	56	0	0
Punjab	336	127	111	101	7	3	0
Haryana	259	193	119	77	42	0	0
West Bengal	197	151	101	39	62	0	0
Jharkhand	156	76	57	7	49	1	0
Himachal Pradesh	114	99	77	46	30	1	0

*The difference that exists between proposals initially submitted by project proponents and those taken up for review by SEACs, are the ones that have been sent back to the project proponents for reasons of incomplete information or are under review.

**As per the EC manual of the MoEF&CC (2015), any project proponent may withdraw a proposal at any stage of the EC process before the TOR/EC letter is issued. For that, a request has to be made to the concerned authorities and after accepting the request, the proposal will be treated as withdrawn and noted to be delisted.

Table 5: Sector-wise ECs in five top states (January 2015- April 2018)

Sectors	State name				
	Gujarat	Karnataka	Tamil Nadu	Andhra Pradesh	Chhattisgarh
Coal mining	-	-	1	-	4
Limestone mining	4	7	5	5	43
Bauxite mining	3	-	-	-	-
Iron ore mining	-	-	-	-	2
Other mining	613	968	1,079	469	315
Iron and steel	-	-	2	-	9
Cement	2	11	1	7	-
Thermal power	2	2	-	-	-
Hydropower	-	13	-	-	-
Other industrial	137	33	8	16	26
Construction and miscellaneous infrastructure projects including in CRZ areas	383	422	110	98	18



B. Policy measures adopted to expedite and ease EC

The MoEF&CC has proposed certain regulatory and policy changes with respect to EC to expedite the clearance process. This has been done primarily through the following three measures-

- Decentralization of ECs
- Expediting the EIA process by proposing standardized Terms of Reference (ToR)
- Easing public hearing requirements

a. Decentralization of ECs

The decentralization process has been particularly observed in two respects-

- More projects placed under ambit of state-level authorities
- District level authorities created to deal with small-scale mining ECs

Over the years more development projects have been placed under the ambit of state authorities- SEACs and SEIAAs. This has been done by amending the EIA Notification from time to time and placing more projects under category B (See table 6: Projects given to state-level authorities for EC since June 2014).

Simultaneously, district level authorities- District Environment Impact Assessment Authority (DEIAA) and District Expert Appraisal Committee (DEAC) - have been created to deal with ECs pertaining to small-scale mine leases. The EIA Notification amendment of January 15, 2016, made EC compulsory for mining of minor minerals in areas less than or equal to five hectares, which these authorities will clear. They have also been charged with ECs for clusters of small leases, where the cluster size is greater than five ha but less than 25 hectares, with no individual lease being more than five hectares.

But such decentralisation has not being accompanied by capacity enhancement of these state and district level agencies. The result is that the assessment process has remained weak.

Table 6: Projects given to state-level authorities for EC since June 2014

Date	Sector	Project type
June 25, 2014	Thermal power	Projects greater than or equal to 50 MW but less than 500 MW capacity using coal, lignite, naphtha and gas based fuel.
		Projects greater than or equal to 5 MW, but less than 50 MW capacity, using all other fuels except biomass and municipal solid non-hazardous waste.
		Projects between 15-20 MW capacity using municipal solid non-hazardous waste as fuel
		Projects equal to or more than 15 MW capacity using biomass fuel.
	Irrigation/ river valley projects	Those with command area between 2,000 to 10,000 ha
January 15, 2016	Minor minerals	Greater than 5 ha and less than 25 ha; also cluster of mine leases covering an area 25 ha or more with individual lease size less than 50ha
Dec 9, 2016	Building and construction	Township and areas development projects with built up areas between 1,50,000 to 3,00,000 sq.m. *
December 18, 2017**	Non-coal mining	Only projects with 100 ha or more of lease area will be cleared by the Centre
	Irrigation/river valley projects	Those with CCA between 5,000 to 50,000 ha

* For projects between 2, 000 to 1,50,000 sq.m., ECs to be given in integrated manner with building permits.

** Draft amendment to EIA Notification

b. Expediting the EIA process by proposing standardized Terms of Reference (ToR)

- In April 2015, the MoEF&CC proposed standard ToRs for preparation of EIA reports or Environmental Management Plans (EMP) for projects that require EC.
- Standardized ToRs have been proposed for all the 39 sectors/activities listed in the Schedule to the EIA Notification, 2006. A prime reason for standardization remained “expediting the process of EC”. Also this would help in “rationalizing the process of EC, remove arbitrariness and make the system transparent”.
- The standard ToR guideline notes that the proponent can commence the EIA study after online registration based on such ToR. However, the EAC/ SEAC will have the right to stipulate additional project specific conditions within 30 days of the online registration ‘considering’ project’s features.

While proposing sector-specific standard ToRs for preparation of EIA reports/ EMPs is a good move as this can reduce time, put fewer burdens on EAC/SEAC members and potentially minimize arbitrariness in the process, it falls short on certain accounts. A key factor is site visit by EAC/SEAC members. The standard ToRs do not require a site visit by the members to give specific recommendations before EIA can commence. This essentially means that the developer will choose the site, apply online and start the EIA. However, poor site selection has made projects extremely contentious in several cases after ECs were granted. This is because of pollution concerns as well as issues of livelihood loss. Examples include the Nagarjuna thermal power project in Sompeta district of Andhra Pradesh, the Nirma cement plant in Bhavnagar district of Gujarat, the Gare IV/6 coal mining project of Jindal group in Raigarh district of Chhattisgarh, the Lanjigarh bauxite mining of Vedanta in Kalahandi district of Odisha.

c. Dilution of public hearing requirement for coal mining to meet proposed increase in coal production

The process of public consultation has been diluted in recent years particularly for coal mining projects through a series of ‘notifications’. The process in fact started during UPA II, and was followed through in quick successions during NDA.

- Between 2012 and 2014, total five notifications were issued by Union environment ministry to do away with public hearing requirements for coal mine expansions of bigger and bigger capacities (*see Table 7: Public hearing exemptions for coal mining*).
- The impact of such easing is also reflected in the significantly higher proportion of ECs for expansion projects. A review of ECs for coal mining projects granted between 2015 and 2017 show that the number of expansion projects granted ECs are nearly four times that of green field projects.
- Besides these notifications, specific decisions have also been taken by the EAC to exempt public hearing. The reference is particularly the meeting held on July 25, 2017, when the EAC approved a proposal made by Coal India Limited (CIL) seeking exemption from public hearing for coal projects with a capacity expansion of 50 per cent. The EAC after deliberations exempted companies from doing so for capacity expansion up to 40 per cent. The exemption comes with conditions that this would be allowed in two to three phases.

However, as per the Government’s own records, this has been a controversial proposal since the proposal first came in July 2015, and was discussed in a meeting held between the then Minister of environment and the Ministry of Coal. At that time CIL requested the Government to allow them to increase the production capacity by 50 per cent without doing public hearing to meet the government’s coal production commitment of 908 million tonnes by 2019-2020. However, the EAC ‘disapproved’ such blanket permission when they considered the proposal on July 15, 2015, particularly over concerns of pollution and impact on livelihood of local communities. In February 2017, the Union coal ministry and environment ministry had a discussion once again and requested the EAC to re-consider the exemption. This time the EAC said that an exemption can be granted if certain conditions are met such as, air quality is within prescribed limits, mine-lease area does not expand, compliance of EC conditions is found to be satisfactory and other pollution abatement measures are followed. Finally, the EAC agreed to it in July, stipulating these conditions.



Table 7: Public hearing exemptions for coal mining

UPA II	
Date	Public hearing exempted for
December 19, 2012	Mines seeking one time capacity expansion of up to 25 per cent, with a ceiling of 2 MTPA additional production
January 7, 2014	Mines with up to 8 MTPA production capacity, seeking one time capacity expansion up to 50 per cent (or incremental production of 1 MTPA, whichever is more)
NDA	
May 30, 2014	Mines with production capacity over 8 MTPA and up to 16 MTPA, seeking one time capacity expansion with production enhancement up to 4 MTPA
July 28, 2014	Mines with production capacity more than 16 MTPA, seeking one time capacity expansion with production enhancement up to 5 MTPA
September 2, 2014	Mines with production capacity more than 20 MTPA, seeking one time capacity expansion with production enhancement up to 6 MTPA
July 25, 2017	The EAC in a meeting exempted companies from having to go through public hearing for capacity expansion up to 40 per cent following a long-standing proposal of CIL

C. Allowing post facto clearances

One of the most damaging moves with respect to the integrity of the EC mechanism has been allowing post facto clearances to regularize clearance violations. Starting with ECs in March 2017, this has been extended to coastal regulation zone (CRZ) clearances as well.

a. Regularizing EC violation cases

- On March 14, 2017, MoEF&CC issued a notification, giving a six-month window to project proponents, who have been operating without obtaining a prior EC, to apply for the same. It was specified that all applications of EC (for the violation cases), irrespective of their size and capacity, will only be appraised at the central level by the respective sector-specific EAC and cleared at the Centre.
- This was allowed under the pretext of improving ‘compliance’. The Union ministry at that time of issuing the notification said that it is “*necessary to bring such projects and activities in compliance with the environmental laws at the earliest point of time, rather than leaving them unregulated and unchecked, which will be more damaging to the environment*”. Thus, it is “*essential*” to grant EC to these projects with adequate safeguards to make them compliant.
- Within a year, the MoEF&CC issued another notification on March 8, 2018, (amending the notification of March 14, 2017), to allow EC violation cases to be re-assessed and cleared at the state level too alongside the Centre, indicating the urgency of regularizing. This is also done at a time, when there is a clear concern of capacity of state-level authorities to appraise properly even the regular proposals coming to them.

b. Regularizing CRZ clearance violation cases

- On March 6, 2018, MoEF&CC issued a notification to regularize CRZ clearance violations as well. The notification says that, “*all activities, which are otherwise permissible under the provisions of this notification, but have commenced construction without prior clearance, would be considered for regularization*”.
- These projects will only be considered by the MoEF&CC for regularization if applications are made within a specific time period (specified as June 30, 2018). The concerned Coastal Zone Management Authority will give specific recommendations regarding regularization of such proposals.



D. Poor compliance monitoring

With no significant change in status quo on proportion of projects being cleared, along with regularization of EC violations, a prime concern is about post clearance compliance and monitoring. However, this is one of the weakest aspects.

The EC letters contain a lengthy set of conditions- general and specific- that are to be met once projects are cleared. The 10 regional offices of MoEF&CC are supposed to monitor thousands of such projects periodically to check compliance. However, the information on monitoring as available in public domain, suggests the following-

- A review of monitoring reports, as made available by the regional offices through the central portal of MoEF&CC shows that for projects granted EC since 2014 in major development sectors, there are barely any reports available (See table 8: Sector-wise trend in uploading of monitoring reports by the regional offices of the MoEF&CC).
- The situation is equally bad across all regional offices of the MoEF&CC.

In the absence of proper monitoring, the entire compliance system becomes reliant on periodic submission (required to be submitted every six months) of EC compliance reports by the project proponents. However, as per information available through central portal of MoEF&CC, the availability of such compliance reports is also grossly unsatisfactory (See table 9: Sector-wise trend in uploading of compliance reports by the regional offices of the MoEF&CC).

For example, a review of reports for projects granted EC since June 2014 (cases taken into account include where at least one compliance report was submitted against a particular project), shows that-

- For many sectors, a large number of compliance reports are not available. For instance, for coal mining projects, while 96 projects have been cleared since June 2014, compliance reports are available only for about 50 per cent of projects. Similar is the case for all other sectors.
- What makes it worse is the poor capacity of regional offices of MoEF&CC to even check these compliance reports. On an average, there are six to seven officers to handle the various responsibilities of the regional offices. The compliance reports often go unverified and offenders never penalized.

Table 8: Sector-wise trend in uploading of monitoring reports by the regional offices of the MoEF&CC (for ECs granted since June, 2014)

Regional offices	Number of reports as available for various sectors								
	Coal mining	Lime-stone mining	Bauxite mining	Iron ore mining	Other mining	Thermal power	Cement	Iron and steel	Hydro
Bangalore	-	-	-	-	-	1	-	1	-
Bhopal	-	-	-	-	-	-	1	-	-
Bhubaneshwer	2	-	-	-	-	-	-	-	-
Chandigarh	-	-	-	-	-	-	-	-	-
Chennai	-	-	-	-	3	-	-	1	-
Dehradun	-	-	-	-	5	-	2	1	-
Lucknow	1	-	-	-	-	-	1	-	-
Nagpur	3	-	1	-	-	-	-	-	-
Shillong	-	1	-	-	1	-	-	-	-
Ranchi	2	-	-	-	-	-	-	1	-
Total	8	1	1	0	9	1	4	4	0



Table 9: Sector-wise trend in uploading of compliance reports by the regional offices of the MoEF&CC (for ECs granted since June, 2014)

Regional offices	Number of projects against which compliance reports are available for various sectors								
	Coal mining	Lime-stone mining	Bauxite mining	Iron ore mining	Other mining	Thermal power	Cement	Iron and steel	Hydro
Bangalore	-	1	-	-	-	3	6	4	1
Bhopal	2	12	2	-	4	4	-	3	-
Bhubaneshwer	18	1	2	1	11	8	-	16	-
Chandigarh	-	-	-	-	2	-	-	-	2
Chennai	7	13	-	-	5	9	12	3	-
Dehradun	-	1	-	-	31	-	-	1	2
Lucknow	5	9	-	-	25	6	8	-	-
Nagpur	6	5	4	4	-	3	2	3	-
Shillong	1	4	-	-	3	-	1	-	9
Ranchi	7	-	2	1	8	1	5	4	-
Total	46	46	10	6	89	34	34	34	14

Forest clearance

Forest clearances are being fast tracked with no simultaneous effort to improve the assessment process, ensure compliance of clearance conditions and forest rights, and build capacity and accountability of authorities for monitoring and enforcement

The Forest (Conservation) Act, 1980, restricts and regulates the diversion and use of forestland for non-forest purposes. It specifies the requirement of a forest clearance (FC), a two stage process, before such diversion can happen. In the first stage, a proposal is granted an “in principle” clearance, which comes with a set of compliance conditions. Among these, the most important ones are related to compensatory afforestation, payment of net present value (NPV) and settlement of forest rights. Based on the compliance of these conditions, as captured in a compliance report from the State government, the second stage clearance is granted.

Both the Central and regional offices of the MoEF&CC grant FCs depending on the nature of project and area of forestland diversion. Development projects requiring more than 40 ha forestland diversion, and all mining, hydropower and encroachment cases are cleared at the central level after being reviewed by the Forest Advisory Committee (FAC). Proposals involving less than 40 ha of forestland and all “linear” projects such as transmission lines, roads, railways, canals etc., are cleared at the regional level. The 10 regional offices of the MoEF&CC have Regional Empowered Committees (REC) to review these projects.

Key Trends

- Similar to the EC process, the FC process has also been streamlined for the convenience of the project proponent and to fast track clearances. But no measures have been taken to improve the assessment of proposals or monitoring of compliance conditions. The rate of rejection of projects also remains very low.
- There is no significant difference in the extent of forestland diverted between UPA II and the first four years of the NDA. However, there has been a deliberate push to ease clearances for certain sectors such as roads, railways and transmission lines, which are considered as linear projects. This has been done through ‘decentralization’, allowing all such projects to be cleared by the regional offices of MoEF&CC.
- In the last four years, the largest extent of forestland has been diverted for such linear projects and mining.
- Policy actions with respect to FCs have been primarily guided by the need to ‘fast track’ the process. This has been done by adopting measures such as decentralization of FCs, diluting project assessment such as by delinking FCs from wild life clearance, providing flexibility in compliance, and easing the requirements for compensatory afforestation.
- There has been no comprehensive approach to improve the FC process which is the need of the hour. The Government’s approach to deal with FC matters is completely ‘piecemeal’ which is evident from the large number of guidelines, clarifications, notifications (at least 100), issued during the last four years. These in fact create more confusion than bringing in clarity in governance mechanisms.
- There has been no improvement in monitoring of post-clearance compliance conditions; no monitoring report is available in public domain.

A. Forest clearance facts for major development sectors

As per information available in public domain, in the past four years (June 2014 until May 2018), the MoEF&CC has allowed about 124,788 hectares (ha) of forestland diversion including in-principle (Stage I) and final (Stage II) clearances. This involves 6,060 projects of various development sectors (*See table 10: Forest clearances granted to major sectors*).



Table 10: Forest clearances granted to major sectors (June 2014 till May 2018)

Sectors	No. of clearances - Stage II	Land diverted (ha)	No. of clearances - Stage I	Land diverted (ha)	Total no. of clearances (Stage I + Stage II)	Total Land diverted (ha)
Mining	110	17,034.64	86	12,356.2	196	29,390.89
Irrigation	90	12,023	126	15,197.96	216	27,220.77
Road	684	6,166.80	1,329	11,264.31	2,013	17,431.1
Transmission line	255	4,109.08	289	5,056.70	544	9,165.78
Railway	52	1,847.8	54	2,335.2	106	4,183.0
Defense	8	4,078.03	13	4,116.89	21	8,194.93
Hydropower	20	531.86	34	5,830.17	54	6,362.02
Thermal power	8	4,857.47	5	183.81	13	5,041.3
Forest Village Conversion	12	1,775.24	4	405.70	16	2,180.9
Industry	62	102.04	23	1,748.37	85	1,850.41
Borehole prospecting	4	197.26	23	1,591.54	27	1,788.80
Wind power	9	334.58	16	859.10	25	1,194
Drinking water	34	117.83	178	564.88	212	682.71
Rehabilitation	3	542.6	4	30.32	7	572.91
School	21	15.11	21	59.08	42	74.20
Quarrying	7	22.56	10	33.64	17	56.20
Village electricity	5	0.39	43	50.51	48	50.89
Dispensary/hospital	8	42.24	3	2.01	11	44.24
Approach access	15	0.55	10	0.95	25	1.50
Others	1,068	4,392.8	1,314	4,908.68	2,382	9,301.51
TOTAL	2,475	58,192	3,585	66,596	6,060	124,788

- Mining and linear projects (road, transmission line and railways) account for the highest share of forestland diversion, about 25 per cent each. This is followed by irrigation projects accounting for about 22 per cent (*See figure 2: Sector-wise forest land diversion since June 2014*).
- Most of the forestland diversion has happened in the state of Madhya Pradesh accounting for nearly 21.8 per cent of the total land diverted. This is followed by Odisha (11.9 per cent), Telangana (11.6 per cent) and Chhattisgarh (6.7 per cent), all of which also have mines in forested areas (*See figure 3: State-wise forest land diversion since June 2014*).
- While, not significant in terms of area diverted, small roads projects and mining and quarrying projects in small lease areas account for a very significant number of FCs. For example, in just two states Haryana and Punjab, more than 2,340 projects have been given a FC for such activities. These typically involve small patches of forestland, even less than one hectare. These in fact account for more than 38 per cent of the total projects cleared.

Figure 2: Sector-wise forest land diversion since June 2014

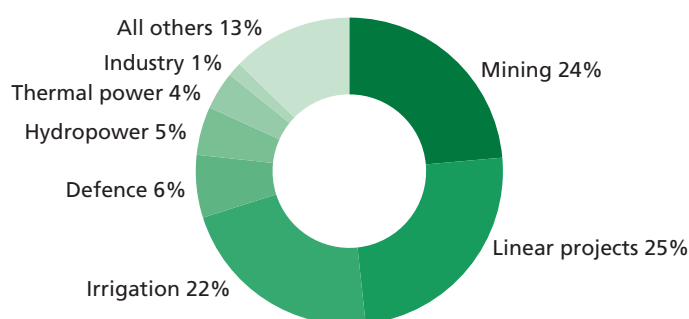
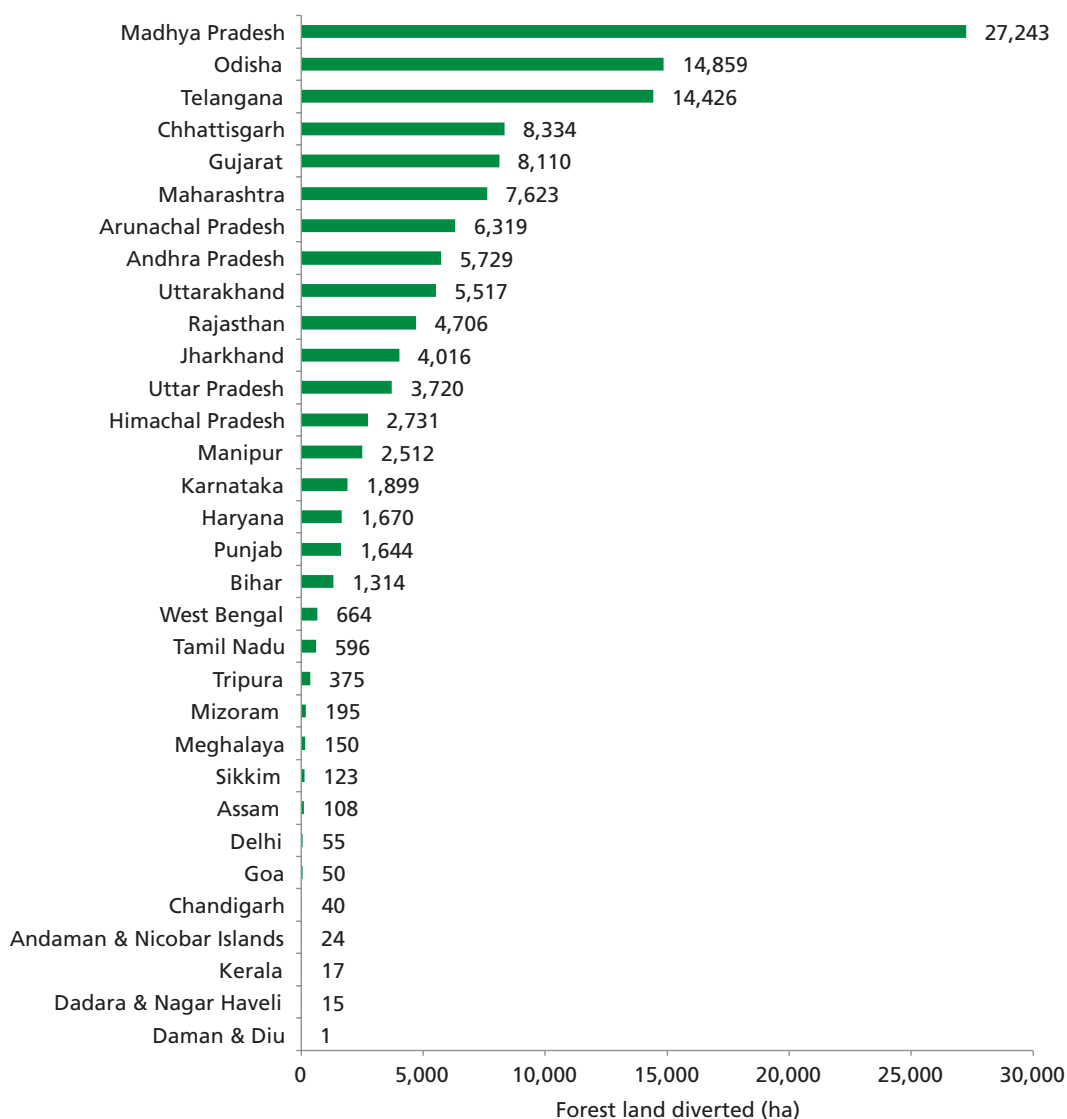




Figure 3: State-wise forest land diversion since June 2014



Has the trend shifted in the past four years?

In terms of forest land diversion, the current government has not shown any significant departure from its predecessor. This is evident from the comparison of FCs considering the second term of the UPA government and the past four years of NDA.

- If the yearly average of forest land diversion is considered, under UPA II, on an average 41,248 ha of forestland has been diverted per year (considering an assessment period over five year). For NDA, the average rate of diversion per year (over the last four years) is 31,197 ha (see Figure 4: Forestland diversion: UPA II vs. NDA).
- However, it is to be noted, that the 10,000 ha difference in yearly average is largely influenced by the 2009 figures under UPA. While 94,728 ha of forestland was diverted that year, nearly 70 per cent of this is for delisting of cultivated land from forest reserves in Punjab. In fact, if we remove this one factor from the 2009 figures, the forestland diversion under the two governments has been more or less the same.
- The sector-wise comparison of FCs as granted under UPA II and NDA in fact brings out that except for mining sector, in all other cases either the pace of clearances has increased or remained comparable (See table 11: Sector-wise comparison of FCs between NDA and UPA II).



- However, the comparatively low figures of the mining sector under the NDA government as compared to UPA II are not because of Government's intention to limit mining. In fact, the Government's target is to boost mining which is evident from the huge number of projects that are in pipeline for auction. The low numbers can be attributed to court decisions, particularly of the Supreme Court on coal mining (when coal blocks were cancelled in 2014 observing irregularities in allocation), restrictions imposed on iron ore mining (such as capping production by SC, directing payment of fines for illegal activities etc.) .

Figure 4: Forestland diversion: UPA II vs. NDA

(Yearly average for UPA II: period 2009 - May 2014; and NDA: June 2014- May 2018)



Table 11: Sector-wise comparison of FCs between NDA and UPA II

Sectors	NDA		UPA II	
	Average no. of clearances per year	Average Land diverted per year (ha)	Average no. of clearances per year	Average Land diverted per year (ha)
Mining	49	7,348	50	10,003
Irrigation	54	6,805	28	2,584
Road	503	4,358	210	3,377
Others	596	2,325	391	14,932
Transmission Line	136	2,291	107	2,027
Defense	5	2,049	18	5,186
Hydro-power	14	1,591	13	1,374
Thermal	3	1,260	4	341
Railway	27	1,046	10	351
Forest Village Conversion	4	545	0	0
Industry	21	463	2	9
Borehole Prospecting	7	447	0	1
Wind Power	6	299	6	420
Drinking Water	53	171	12	248
Rehabilitation	2	143	2	283
School	11	19	2	6
Quarrying	4	14	0	0
Village Electricity	12	13	2	3
Dispensary/hospital	3	11	1	2
Approach Access	6	0	0	0
Encroachments	0	0	0	101



B. Policy measures adopted to expedite and ease FCs

The MoEF&CC has proposed certain regulatory changes and policy actions with respect to FC to expedite and ease the clearance process. This has been done primarily through four measures-

- a. Decentralization of FCs for linear projects
- b. Dilution of assessment process, clearance requirement and compliance
- c. Creating “opportunities” for project proponents while sidelining communities
- d. Easing requirements for compensatory afforestation

a. Decentralization of FCs for linear projects

In October 2014, the Government amended the Forest (Conservation) Rules (2003) to decentralize the FC process. The Regional Empowered Committees (REC) constituted at each Regional Office of the MoEF&CC were empowered to grant clearances to all linear projects such as road, canal, transmission lines, pipelines etc., irrespective of the forestland involved.

However, no simultaneous measure was taken to build capacity of these authorities which has remained a long-standing concern.

The move to fast track such linear projects is also reflected in the high number of clearances for these in the last four years. Nearly 2,663 projects have been cleared combining roads, transmission lines and railways, accounting for 25 per cent of the total 1.2 lakh ha forestland diversion.

b. Dilution of assessment process, clearance requirement and compliance

MoEF&CC over the past years has issued a slew of guidelines, directives and clarifications to revise FC requirements. Just between July 2014 and May 2018, at least 100 such documents have been given out. However, most of these do little to improve the FC process. Instead of insisting on comprehensive assessment and enforcing implementation of the FC Act (1980) in its true spirit, these are largely geared towards simplifying the FC process in favor of project proponent and fast track clearances. Also many of them are just building on clarifications of previously issued documents, which also shows the ‘piecemeal approach’ of the Government, when it comes to dealing with important issues such as forestland diversion and conservation.

The weakening of the FC process has primarily been brought about by two ways-

- i. Relaxing requirements for clearances/permits
- ii. Diluting the assessment process

i. Relaxing requirements for clearances/permits

This has been primarily done for linear projects and certain activities related to the mining sector. Some of the key measures are as follows-

For linear projects-

- On August 8, 2014, the MoEF&CC issued guidelines stating that for cutting tress and commencement of work involving linear projects (such as roads, railways, transmission lines), the in- principle approval can be “deemed” as the “working” permission, as long as all compensatory levies have been realized from the project proponents. Forest official not below the DFO level will issue such permission.

The Government later (on August 28, 2015) clarified that the validity of such deemed permission is for one year, and it can be extended subject to submission of “reasonable” progress with compliance conditions by the project proponent.



While a “deemed” working permission is problematic in itself, as it can give rise to a ‘fait accompli’ situation, adding to it vague provisions such as ‘reasonable’ progress makes compliance also extremely weak.

In fact, the relaxation in compliance has not just been limited to linear projects. On October 7, 2014, the Centre had recommended that state governments will not recommend compliance conditions which are “beyond the control” of the user agency, almost leaving compliance at the ‘will’ of the developers.

For mining sector-

- On November 10, 2015, guidelines were issued saying that if a mining lease involves forest and non-forest land, work can start on the non-forest land once Stage 1 approval has been obtained for the forestland in the mining lease. This was particularly targeted towards coalblocks having both forest and non-forestland.

Earlier project involved both forest and non-forestland, no work could start even on non-forestland until all clearances were obtained.

- There has also been sustained pressure on the MoEF&CC to exempt FC requirement for stages of prospecting of mineral ores in forestlands. While complete exemption has not been provided, the Union ministry has been steadily relaxing the clearance requirements for such activity (See table 12: Relaxation of FC requirement for mineral prospecting).

Others-

- On October 7, 2014, development projects such as transmission lines, hydroelectric projects, seismic surveys, exploration for oil drilling, mining etc. were exempted from obtaining an FC to do “survey and investigation” inside Protected Areas (PA).

Table 12: Relaxation of FC requirement for mineral prospecting

Date	Relaxation provided
4 July 2014	The following changes were made to the existing FC process for prospecting minerals: i. Complete exemption from compliance under the Forest Rights Act 2006 ii. Site inspection not required if proposed area for drilling holes is less than 100 ha iii. For temporary change in land use from the activity, NPV payments not required
9 May 2018	Prior permission of Central government will not be required in the following cases of prospecting minerals: i) If crown density of forest (excluding PA) is less than 40 per cent; ii) For drilling up to 20 boreholes of maximum 8” diameter per sq.km in case of minerals such as coal, lignite; iii) For drilling up to 16 boreholes of maximum 6.6” diameter per sq.km for non-metallic ores.

ii. Diluting the assessment process

Dilution of assessment has been primarily done for clearances in wildlife habitats. On August 20, 2014, guidelines were issued delinking the FC and wildlife clearance (WLC) for projects within eco sensitive zone (ESZ) boundaries. Earlier the FC was contingent upon obtaining the WLC, as in such areas protection of wildlife habitats is of prime importance.

c. Creating “opportunities” for project proponents while sidelining communities

On October 7, 2014 guidelines were issued saying that the project proponent will be provided the “opportunity” to place their case before the FAC and the REC while their proposal is under review.

The move is certainly “favouritism”, because while the Government considers project proponents should be given an “opportunity” to be heard, the same consideration is not shown for local communities. This



is evident in the categorical dilution and poor implementation of the Forest Rights Act (2006), even after 12 years of its commencement. Problems exist with the convening of Gram Sabha without proper representation, harassment of forest dwellers, generation of manufactured and forged consents, and even cancellation of recognized forest rights, all of which have been matter of controversy.

The fact is also well recognized by the Government, though little action has happened. In a meeting between the Ministry of Tribal Affairs (MoTA) and MoEF&CC in January 2018, MoTA had insisted that FRA compliance should be ensured before stage 1 approval is given, to avoid any controversy and a fait accompli situation. While MoEF&CC agreed, it has not issued guidelines to the effect till date.

d. Relaxing compensatory afforestation requirements

The guidelines for compensatory afforestation (CA) as issued under the FC Act (1980), require projects to identify an equivalent amount of non-forest land for compensatory afforestation in lieu of forest diverted. For certain projects and only in cases of non availability of non forest land, degraded forests twice the extent of forest diverted can be identified.

However, land scarcity for CA has been problematic. Due to the non-availability of non forest land, state governments have been lobbying with the MoEF&CC to relax the non-forest land criteria and permit use of degraded forests for CA.

Responding to these, the MoEF&CC has issued a number of guidelines to relax the CA requirements. This has also come by way of creating land banks by the Government even taking up land important for subsistence of communities (*See table 13: Relaxation of compensatory afforestation requirements*).

Table 13: Relaxation of compensatory afforestation requirements

Date	Relaxation provided
July 11, 2014	All transmission line projects can carry out compensatory afforestation on degraded forests instead of non forest land. Earlier, the exemption was only for projects up to 220 KV.
August 8, 2014	Creating land bank for CA taking up revenue lands, <i>zudpi jungle, chhote/bade jhar ka jungle, jungle jhari</i> land, <i>civil-soyam</i> lands, while most of these land are important to communities for their subsistence.
August 25, 2014	States with more than 33 per cent of geographical area under forest cover can submit certificate of non availability of non-forest land for compensatory afforestation. Earlier, only states with more than 50 per cent forest cover were allowed to do so.
November 7, 2014	The Chief Secretary of a state can take a univocal decision on whether there is no non-forestland available for CA. She/he does not require any "certificate" on this from the district collector and the divisional forest officer. Earlier, Chief Secretaries were required to source such a joint certificate from every district before the state could get the certificate for non-availability of forest land from the Centre.
June 22, 2015	If non-forestland for compensatory afforestation is not available in the same district, it can be identified anywhere else in the state nearest to the site of diversion.
November 8, 2017	Degraded forests with crown density less than 40 per cent, areas falling in wildlife corridors and in catchment areas of important rivers, water supply schemes, etc can be included in the land bank for compensatory afforestation. Further, a minimum of 1000 plants per ha should be planted in non-forest land, and if not possible this can be planted on degraded forests.
January 17, 2018	Small hydroelectric projects (less than 25 MW and not exceeding 5 ha) added to the list of sectors allowed to carry out compensatory afforestation on degraded forests.



Wildlife clearance

With negligible rates of rejection, wildlife clearances are being allowed even in the most sensitive wildlife habitats, such as protected areas

The process of granting wildlife clearance (WLC) involves authorities both at Centre and state levels. The Standing Committee (SC) of the National Board of Wildlife (NBWL), which is the central authority with respect to WLC, approves the proposals after they have been reviewed by the State Board of Wildlife and the state government.

The SC of NBWL was constituted by the MoEF&CC (at that time MoEF) through a notification in November 2003. The committee is chaired by the Minister of Environment, Forest and Climate Change, along with other official and non-official members including experts. The SC is supposed to meet once in three months.

Key trends

- The rate of rejection of proposals seeking WLC has been negligible. With merely about 1 per cent rejection over the past four years, it can be said that practically no proposals have been denied clearance.
- There has been an increase in the number of projects considered and recommended by the SC of NBWL in the last four years.
- Projects have been cleared by the committee despite giving arguments against it; this shows a clear contradiction between observations and decisions.
- Projects are also being cleared in Protected Areas (PA), as important as tiger reserves. The Government, in fact, has introduced the provision of “most exceptional circumstances” to allow use/ diversion of forests within PAs under the pretext of ‘balancing’ conservation with development. However, there is no clarity on what constitutes such “cases” and seems to be completely subjective.

A. Wildlife clearance facts for major development sectors

- In the last four years (between June 2014 to May 2018), as per meeting minutes of the SC of NBWL, 519 projects have been given a nod for WLC. This has impacted at least 24,329 ha of wildlife area, both inside and outside PAs.
- The actual area impacted however would be much larger, as the minutes of meetings do not provide the area of each project under consideration.
- Madhya Pradesh has been the most affected state in terms of WLCs, where 85 project proposals have been recommended involving a minimum area of impact of 14,328 ha. (See table 14: State-wise wildlife clearances granted under NDA regime).
- Considering sectors, maximum approval (152 projects) has been given for road and highway projects, which also leads to fragmentation of wildlife corridors. Another key sector is mining, for which 74 projects impacting nearly 4,200 ha of wild life areas have been approved. However, the maximum impacted area is for irrigation project which is about 13,377 ha (See table 15: Sector-wise wildlife clearances granted under NDA regime).
- A major concern is also about the quality of evaluation. A review of the meeting minutes of the SC of NBWL suggest such as that on an average, the standing committee has been taking up more than 40 proposals per sitting. At the same time, the average number of projects cleared per meeting is 28.
- In the years 2015 and 2017, NBWL has in fact cleared as many as 135 and 148 projects respectively (See table 16: Wildlife clearances granted by the Standing Committee of NBWL)
- The Government has also, in some instances, ignored the observations of the expert members appointed by the NBWL before granting WLC. For instance, in the case of Ken-Betwa river interlinking project, WLC was granted even before the expert committee constituted by the NBWL had conducted site inspection of the project area.



**Table 14: State-wise wildlife clearances granted under NDA regime
 (June 2014 – May 2018)**

State	No. of proposals recommended	Minimum area of impact (ha)
Madhya Pradesh	85	14,328
Gujarat	60	1,069
Uttarakhand	48	805
Maharashtra	39	1,114
Rajasthan	37	1,435
Telangana	34	1,865
Uttar Pradesh	26	78
Chhattisgarh	22	168
Haryana	18	182
Assam	13	336
Andhra Pradesh	12	168
Himachal Pradesh	12	55
Karnataka	12	224
Sikkim	11	17
Arunachal Pradesh	10	103
Jammu & Kashmir	8	102
Bihar	9	137
Odisha	9	716
Jharkhand	8	1,098
Kerala	8	1
Tamil Nadu	8	13
Andaman & Nicobar Islands	6	100
Punjab	6	NA
Tripura	5	27
Manipur	4	102
West Bengal	3	87
Delhi	2	NA
Goa	2	0
Dadar and Nagar Haveli	1	NA
Mizoram	1	NA
TOTAL	519	24,329

B. Policy loophole

There exists a major policy loophole in WLC, which comes through the provision of “most exceptional circumstances”. On April 10, 2015 the Government issued guidelines saying that “...*Keeping in view the fact that a balance has to be struck between development and conservation, any activity involving use or diversion of any part of a notified protected area may be considered only under most exceptional circumstances, taking mainly into account inevitability, its impending impact on the management of the Protected Area, and feasibility of mitigation ...*”.

However, no elaboration had been provided on what constitutes “most exceptional cases”. In fact, for the majority of projects granted WLC inside PAs, the meeting minutes of SC of NBWL make no mention of the “exceptionality” of such projects.



Table 15: Sector-wise wildlife clearances granted under NDA (2014 – 2018)

Sector	No. of proposals recommended	Minimum area of impact (ha)
Roads and Highways	152	908
Mining and Quarrying	74	4,195
Others	61	2,687
Hydro-electric power	10	1,007
Irrigation	27	13,377
Railways	15	535
Transmission line	25	376
Boundary Alteration	6	315
Oil and Gas	1	304
Defense	20	279
Cables and pipelines	70	197
Commercial and Residential buildings	18	94
Industry	10	22
Social Amenities	11	21
Oil Exploration	4	8
Survey & Investigation	8	1
Thermal power	7	NA
TOTAL	519	24,329

C. Approval rate has gone up significantly over the past four years

- The pace of WLCs granted over the past four years when compared against UPA II, shows that clearances have gone up significantly (See table 16: Wildlife clearances granted by the Standing Committee of NBWL).
- From 2014 through 2018, the overall rate of rejection was a mere 1.1 per cent. Under UPA-II, the rejection rate was 11.9 per cent.

Table 16: Wildlife clearances granted by the Standing Committee of NBWL (June 2009 to May 2018)

Govt. in Power	Year	Number of Meetings	No. of Proposals Discussed	No. of Proposals Recommended	No. of Proposals Rejected	No. of Proposals Deferred	No. of proposals delisted/pending	Per cent Recommended (%)	Per cent Rejected
NDA	2018	2	60	40	4	9	7	66.7	6.7
	2017	7	232	148	2	82	0	63.8	0.9
	2016	3	111	63	1	46	1	56.8	0.9
	2015	5	219	135	1	79	4	61.6	0.5
	2014	1	172	133	1	33	5	77.3	0.6
TOTAL		18	794	519	9	249	17	65.4%	1.1%
UPA II	2013	3	148	56	21	71	0	37.8	14.2
	2012	3	106	42	6	58	0	39.6	5.7
	2011	4	127	88	6	33	0	69.3	4.7
	2010	3	98	30	24	44	0	30.6	24.5
	2009	4	92	44	11	37	0	47.8%	12.0%
TOTAL		17	571	260	68	243	0	45.5	11.9