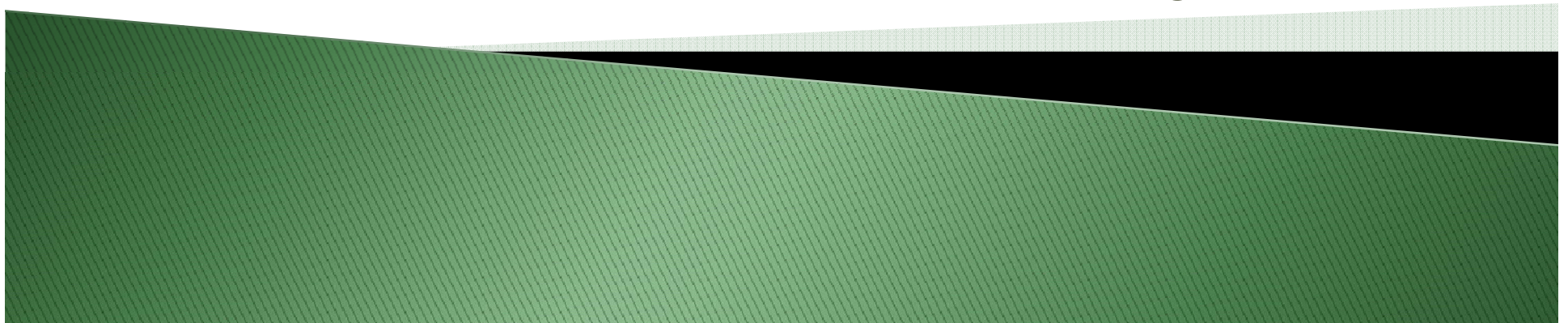


# Environmental Legislations in India– Some Concerns

Sanjay Upadhyay  
Advocate Supreme Court of India and  
Managing Partner, Enviro Legal Defence Firm  
June 2013





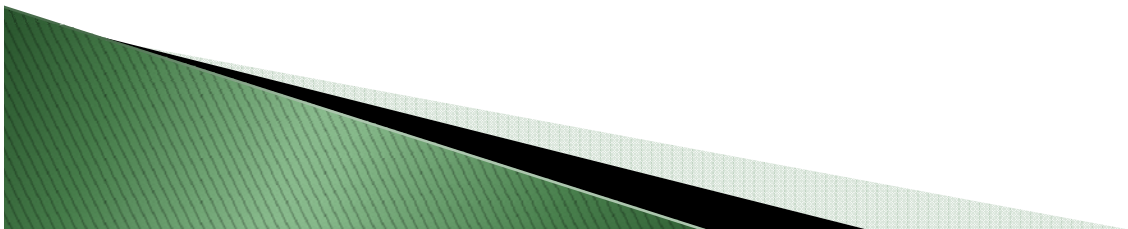
# What is?

1. wild animal,
2. minor port,
3. biodiversity heritage site,
4. the distinction between a national park and a sanctuary,
5. Coastal Regulation Zone III,
6. scheduled animal,
7. forest,
8. critical wildlife habitat,
9. ecologically sensitive area,
10. the distinction of community reserve and conservation reserve
11. Public consultation



# Some Basics

- ▶ Importance of terms and definitions,
- ▶ Hierarchy of instruments,
  - policy → strategy → action plan on one hand,
  - policy → Policy enabling Act which gives the skeleton,
  - the operational rules or enabling notifications which are statutory
  - followed by government orders, office memos, non-statutory notifications etc. that gives you the hierarchy of the instruments.
  - Court Orders!!! Court Judgments



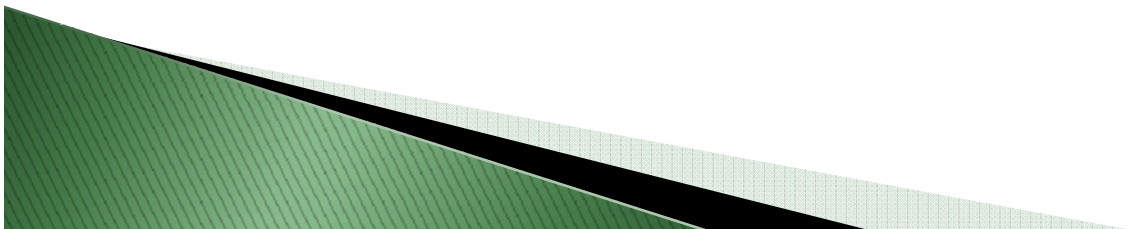
# What have we actually done? Act before the Policy?????

- ▶ Forest Act 1865, 1878, Forest Policy 1894
- ▶ Forest Act 1927; Forest Policy 1952
- ▶ Forest Policy 1988
- ▶ ??? Attempts to change forest act 1980, 1994, 2003..2012....no success
- ▶ EPA, 1986 ; National Environment Policy 2004
- ▶ Wildlife Act 1972; National Wildlife Action Plan 2002
- ▶ Biodiversity Act, 2002 ; Strategy and Action Plan 1997–1998; Policy still missing!



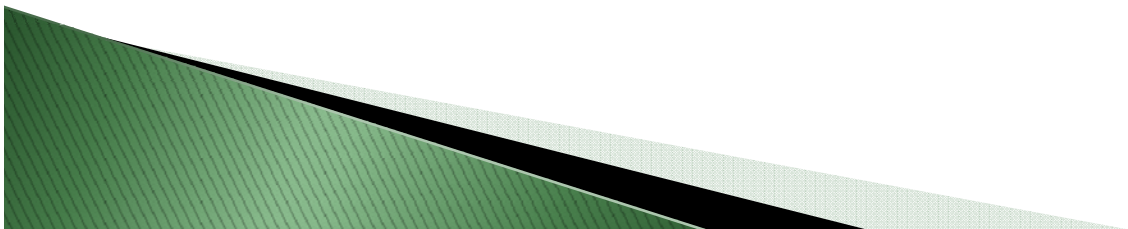
# Some Basics ( Cont'd)

- ▶ **The nature of instrument,**
  - if it is a policy, what is the consequence,
  - if it is a policy statement, what is the consequence,
  - if it is the Rule, what is the consequence,
  - if it is the regulation, what is the consequence,
  - if it is an order, what is the consequence;
  - if it is a statutory order, what is the consequence and so on.



# SOME MISUNDERSTANDINGS OF BASIC LEGAL CONCEPTS

- ❖ RIGHTS/ PRIVILEGES/CONCESSIONS /FAVOURS e.g. Rajaji National Park;
- ❖ PERCEPTIONS/RECORDS e.g. about rts and privileges, claim forms as eviction notices under settlement of rights under the WLPA
- ❖ BOUNDARIES / JURISDICTION e.g. JFMC –EDC; Revenue and Forest land – NSS West Mangrove Forest and Uninhabited island as CRZ Category; Scheduled and non scheduled areas
- ❖ KNOWLEDGE/ APPLICABILITY OF LAW– e.g. IFA in PAs; Section 50 of WLPA regarding who could arrest; Diff b/w N.P. and Sanctuary/ RF/PF/VF/FV/Closed Area

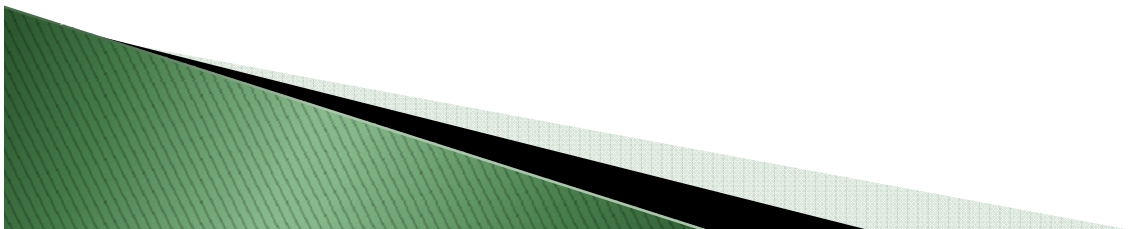




# SOME MISUNDERSTANDINGS OF BASIC LEGAL CONCEPTS



- ❖ CONFUSION OVER LEGAL CATEGORIES AND ADMINISTRATIVE (MANAGEMENT CATEGORIES) e.g. Elephant Reserve, Village forest–forest village; biosphere reserves
- ❖ JUDGMENTS/ORDERS/INTERIM ORDERS– Degree of Authority
- ❖ INTERPRETATION OF STATUTES– e.g. Shall/may; key words ..subject to ...operation of other laws not barred; prospective ; retrospective effects; Repealing Clause....
- ❖ PROCEDURAL LAW CAPACITY BUILDING e.g. Haridwar Case





# ENVIRONMENTAL LAW ?

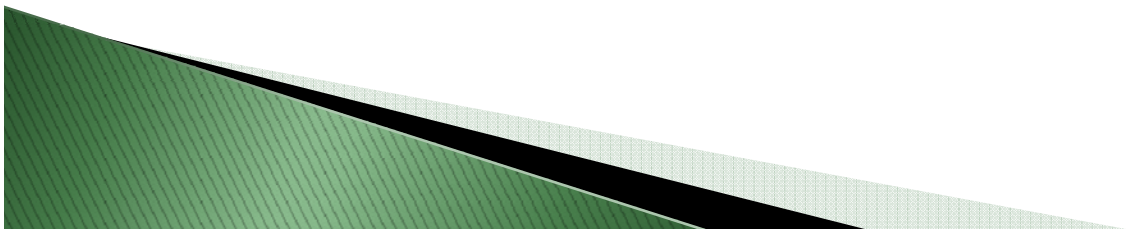
- ▶ Traditional Understanding– That Protects and Conserves
- ▶ Alternative View– That affects environment
- ▶ Laws that use natural resources –55%
- ▶ Laws used for acquiring Natural Resource– 33%
- ▶ Conservation oriented laws– 11%
- ▶ Regeneration Laws– 1%
- ▶ Inherent imbalance in those that use versus those which protects!!





# ENVIRONMENTAL LAW

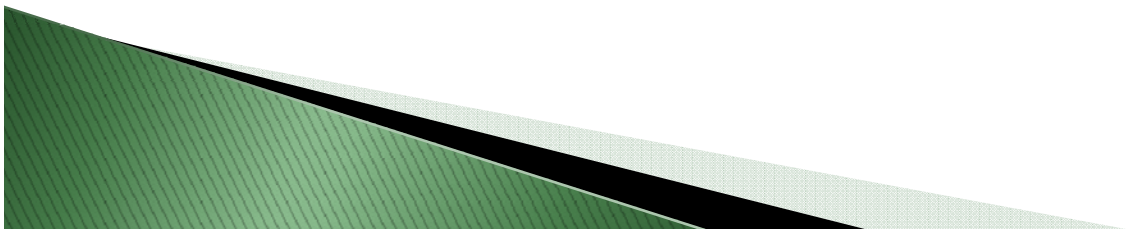
- ▶ Major Control over utilisation of natural Resource vests with State and Centre– Flows from the Constitution.– List II
- ▶ Land, Water, Minerals--- State Subjects.( Forest till '76)
- ▶ Conservation Laws– Post 80's phenomenon





# Environmental Law

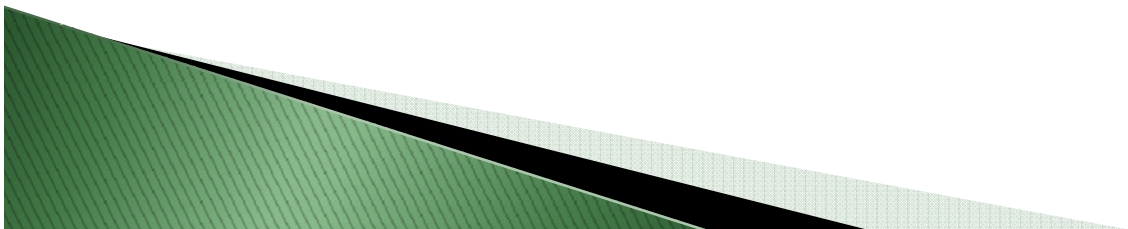
- ▶ **Based on Two Legal Principles**
  - Eminent Domain– use and acquisition laws
  - Criminal Liability/Command and Control
  - ( Conservation and Protection Laws)
- ▶ **Top Down– “Conflict Model”**
- ▶ **Need for a non adversarial “cooperative model”**
- ▶ **Judicial Activism– Article 48–A, 51–A ( g)**
- ▶ **Plethora of laws: one example in the marine sector: 28 central laws; 17 international instruments and ten nodal ministries**





# REASONS FOR INEFFECTIVE NESS

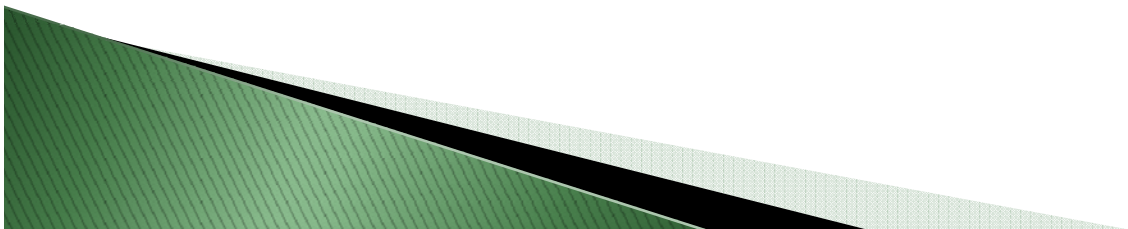
- ▶ Lack of Trained Legal Manpower
- ▶ Procedural Inadequacies
- ▶ Minimal Professional Agencies Back up
- ▶ Lack of good science
- ▶ Few special Courts/Tribunals
- ▶ Unrepresented / Minimally Represented Cases
- ▶ Least Priority
- ▶ Untrained Judges



# Environment Laws and YOU



- ▶ Wildlife Act and Citizens Suit ( Section 55 (c))
- ▶ Forest Conservation Act – Diversion/bonafide public utilities ( Section 14, 16)
- ▶ Public Consultation and Role of SDM/Member Secretary –SPCB and Role of public!



# Environmental Law and You

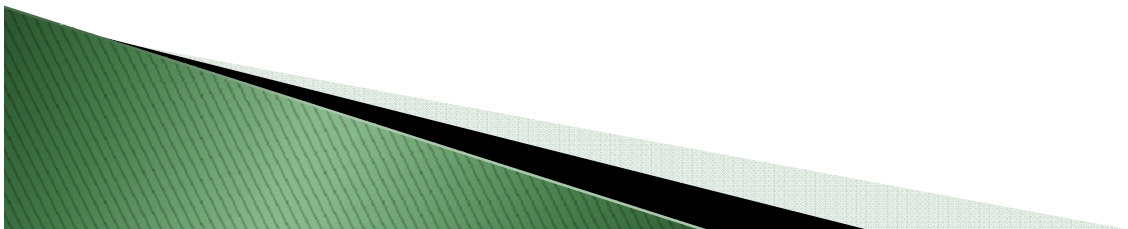


- ▶ Pollution Prevention and Role of citizens; Appellate Authorities under Air , Water Act
- ▶ EPA and Section 19 complaints!
- ▶ Nuisance versus Air Act and Water Act
- ▶ Forest Rights Act and Role of SDM/SDO/ Collector /DFO and you.
- ▶ Ensuring Consultation under PESA in Scheduled Areas

# Institutions that you should know!

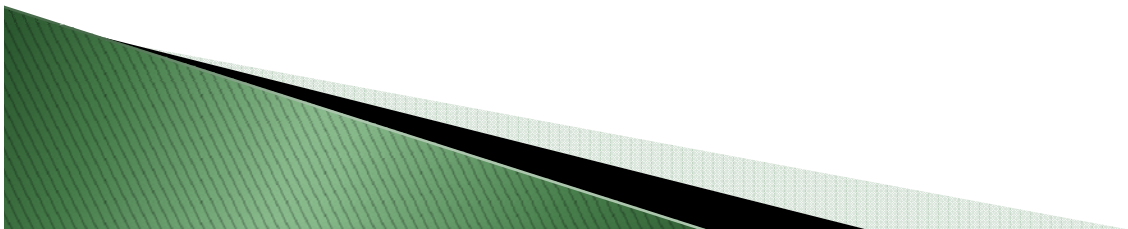


- ▶ Pollution Control Board– Water Act
- ▶ State Environment Impact Assessment Authority– EIA–EPA/State Environmental Appraisal Committee ( SEAC)
- ▶ State Land Use Boards–???
- ▶ State Coastal Management Authority– CRZ–EPA
- ▶ NTCA–WLPA
- ▶ Wildlife Crime Control Bureau–WLPA
- ▶ State Biodiversity Board–BD Act
- ▶ State Medicinal Plants Board–?
- ▶ State Board of Wildlife Board–WLPA



# How do you deal with choices?

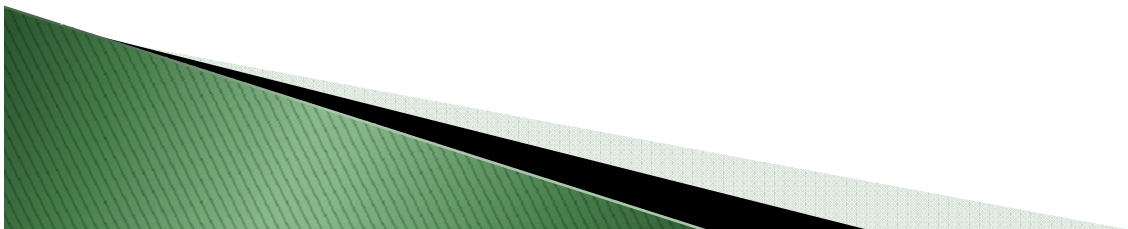
- ▶ Sustaining traditional communities or
- ▶ Sustainability of resource for human needs or
- ▶ Protecting critical habitats serving ecological needs or
- ▶ Maintaining aesthetic standards for promoting tourism or
- ▶ Safeguarding vulnerable populations such as tribals, PVTGs





# What is more important? ( Cont'd)

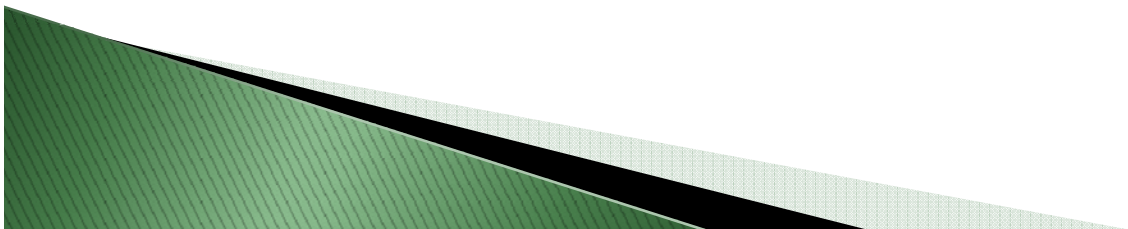
- ▶ Creating defence and strategic installations for national security or
- ▶ Facilitating trade through augmentation of ports and harbour facilities in a developing economy for the billion plus or
- ▶ Harnessing rivers/tides/waves for energy security or
- ▶ Who decides? And How?



# Infrastructure and Environmental Compliance

## – Some Examples of conflicts within

- ▶ Roads– The right of way (ROW) versus right to environment; Right to livelihood? ( Highways)
- ▶ Recent debates on linear projects and environmental clearance!
- ▶ Infrastructure Development or land grabs? SEZ
  - e.g. Mundra Port? Mangroves, Fisherfolks and Shining Gujarat?
- ▶ MUTP– External Aid and Environment Assessment Safeguards?
- ▶ Hydro power– Run of the River Projects– Is it really environment friendly? Cumulative effect? River Basin Approach?? Does individual EIAs suffice?



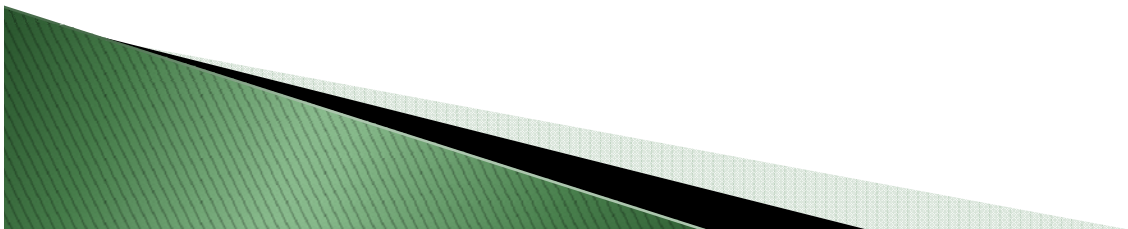
# Industry and Environment ( Forest)

- ▶ Leasing of forest lands– clearly two perspectives:
  - To lease or not to lease??
  - History suggests that many such lands were diverted, arrested in the eighties, again picking up pace due to infrastructure development processes,
- ▶ What is non negotiable?
- ▶ Leasing of wastelands?
- ▶ Numerous cases of
  - mining on forest lands,
  - scheduled areas alienation and
  - cultural appropriateness?– OMC case!
- ▶ CAMPA–NPV? Are these acceptable models?

# Social Welfare legislation and Development ?



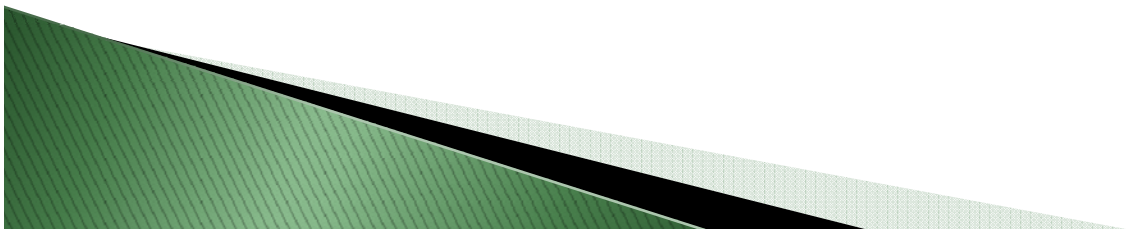
- ▶ Is it mere rhetoric? eg. PESA
  - Provisions on all development works and the acceptability of Panchayats especially Gram Sabha? What is this Gram Sabha?
- ▶ Furore on Forest Rights Act?
  - What about guidelines and Circulars issued by FD on same issue and non action thereon?
  - Rights versus responsibility ( power shift?)
- ▶ Are these instruments a panacea for tackling LWE?





# Some More Concerns

- ▶ **Decentralization :**
  - Development and management of natural resources: The debate of specialized agencies ( user agencies versus statutory institutions such as PRIs?
- ▶ **Centralization of resource and decentralization of management– A contradiction?**
- ▶ **External Aid versus Traditional Institutions**
  - Are we integrating traditional conservation ethos with the modernity or is it one size fits all model?



# Role of Courts



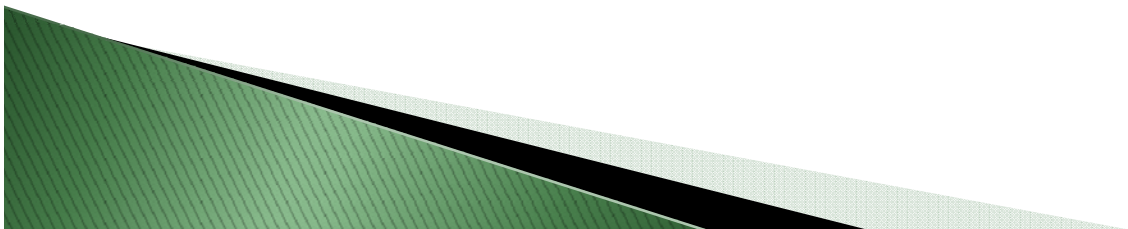
## –Development (vs) Environment

- ▶ Role of Courts– A clear trend is emerging–
- ▶ Over zealous judicial action in micro management of environment issues especially on urban environment, forest and wildlife issues– not necessarily taking into account the impact on local communities. ( Role of CEC??; cleaning the city, removal of slums, hawkers, demolitions of unauthorized colonies)
- ▶ For large infrastructure projects –A matter of Policy argument??. Again not taking into account the impact on local communities– ( Sardar Sarovar, interlinking of rivers, tehri, SEZ?)
- ▶ Futility of Follow up of court Orders?



# IMPORTANT JURAL PRINCIPLES

- ▶ Right to Healthful Environment ( Art-21)
- ▶ Right to Livelihood
- ▶ Polluter Pays Principle ( PPP)
- ▶ Precautionary Principle (PP)
- ▶ However, Above Restricted to Appellate Jurisdiction of Courts
- ▶ Real Conflicts at the Local ( Trial) Level





# Different Geographical Contexts and Environmental Law

- ▶ Mountain context
- ▶ Coastal Context
- ▶ Island Context
- ▶ Desert Context
- ▶ Rivers
- ▶ North East – its another legal maze
  - Scheduled area vs special states

# International Environmental Law : their relevance

- ▶ CITES
- ▶ CMS
- ▶ RAMSAR
- ▶ UNCLOS
- ▶ UNFCCC
- ▶ .....
- ▶ Country Systems Approach!
- ▶ Trade of Exotic Species!
- ▶ Climate Liability
- ▶ REDD+

**THANK YOU  
FOR YOUR PATIENCE!**

**[sanjay@eldfindia.com](mailto:sanjay@eldfindia.com)**

**+9810298530**

**ELD Foundation website:**

**[www.eldfindia.org](http://www.eldfindia.org)**

