

# INDIA TOWARDS ENVIRONMENTAL DEMOCRACY AND JUSTICE

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## INTRODUCTION

India has the largest democracy and owns one of the biggest emerging economies. It also has the high level concentration of individuals who belong to the category of extreme poverty. They experienced a surge of environmental justice movements because of the desire to growth make themselves part of the societies and ecosystems. India's judiciary has evolved a crucial role in environmental claims. Mainly because of legislative provisions: Article 21 of the Constitution on the Right to Life, Article 48-A (4) of the Directive Principles of State Policy and Article 51-A (g) of the Indian constitution on the fundamental duties of every citizen of India. The Supreme Court through a series of cases has tried to strike a balance between growth, equity and sustainability. Bhopal tragedy of 1984 the Supreme Court declared that "issues of environment must and shall receive the highest attention from this court." This launched in India neo-liberal reforms and its pathway to re-emergence as a global economic power, In **Subhash Kumar v State of Bihar**, the Supreme Court observed that "the right to live is a fundamental right under Article 21 of the Constitution, and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life." This landmark interpretation by the Supreme Court set the foundation for the expansion of rights-based approaches to challenging environmental impacts of growth.

## EVOLVING ENVIRONMENTAL JURISPRUDENCE

The progress of environmental jurisprudence in India was at right space and followed uniformity. First of these cases, which is still the Magna Carta of the environmental jurisprudence for recognition of public rights to decent living was treatise by Justice V.R.Krishna Iyer in Municipal Council, **Ratlam v. Vardhichand**. The recognition and growth of Public Interest Litigation (PIL) has become a catalyst for environmental justice. The Apex

Court took many unpopular decisions which have proved beneficial in the long run. Judicial directions in matters like pollution of our holy rivers, the Ganges and the Yamuna, pollution of underground water, choking of Delhi, Calcutta and other metros due to air pollution, protection of national historical monuments like the Taj Mahal, have rendered great service to humanity. Seeds have been planted, path has been shown, and direction has been given. However, our law enforcement has yet to catch up with these efforts. Law cannot reach where enforcement cannot follow. Without proper enforcement of laws our court orders will not be able to achieve desired results<sup>1</sup>.

## **ADVENT OF ENVIRONMENTAL DEMOCRACY**

Environment rights formulate norms that lead to the formation of a complete human being because of the concept of egalitarianism. This doctrine is all about the ideal individuals are equal, therefore they require equal rights and opportunities. Egalitarianism bifurcates itself into environmentalism and sustainability. The bond between environmentalism and egalitarianism is inseparable. The marginalised groups are not highlighted or recognised by mainstream environmentalism. They have been excluded from their environment which ultimately leads environmental oppression. Policy making in environmental law constantly deprives the marginalised sectors. This tarnishes the image and sanctity of the democratic state like India. This mainly happens because they are unable to partake in the policy making decision. This plays a great impact on the lives of the poor as they are denied the basic capability of participation in politics. Environmental egalitarianism which deals with a just, equal, and inclusive global community, it gives an opportunity to the interests over others, to carry out this concept it requires the assistance of environmental democracy. Environmental democracy is about government being transparent, accountable, and involving people in decisions that affect their environment therefore environmental democracy involves policy decisions that affect them (marginalised groups) and their environment<sup>2</sup>. Marginalized groups should be strength to reclaim their democratic rights. And also as equal citizens and affirmative action must be taken to prevent environmental harms upon them by the state. Only through fruitful

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<sup>1</sup> Shyam Divan , Armin Rosencranz, •Environmental law and policy in India, cases, material and statutes, (2 ed. 2002).

<sup>2</sup> k. Sivaramakrishnan, 70 •Environment, law, and democracy in India.

and effective participation in decisions concerning their communities' natural endowments can citizens' environmental rights is justly protected. However, measures are also necessary to safeguard environmental policymaking from the threats of unchecked democracy.

## **NO DEMOCRACY WITHOUT ENVIRONMENTAL EGALITARIANISM**

These reforms are an endeavour to approximate environmental democracy so as to reckon environmental egalitarianism; to that extent, as they allow full public participation, they ought to be considered genuinely democratic. What remains is that the aforesaid chance of communities subordinate environmental rights to, say, economic interests. I think that formal deliberation over multiple settings, with consultants provision scientific facts and politico-economic recommendation, ought to facilitate most voters acknowledge that environmental doctrines. It is actually instrumental to long economic security; even the voters of Diamond ultimately set to relocate though several were utilized by Shell. Still, if all else fails, we tend to should place environmental philosophical system over democratic participation, for while not the previous, and consequently a healthy and intact planet, there would be no platform for democratic rights. Environmental philosophical system should hold because the normative commonplace for policy choices as a result of substantive justice should come after the best of democratic deliberation. That's to not say, however, that environmental philosophical system ought to superordinate democracy; rather, justice could demand that undemocratic, however not anti-democratic, measures are undertaken to preserve environmental democracy.

## **INSTITUTIONAL BARRIERS AFFECTING ENVIRONMENTAL DEMOCRACY**

The three important institutional barriers to environmental democracy are as follows:

- The unavailability of information obstructs effective and meaningful democratic decision-making. The importance of free access to information is portrayed in international law: Principle 10 of the 1992 Rio Declaration, which specifically

recognizes the right to environmental information for the purpose of effective public participation.

- The lack of consultation by policymakers with the local communities has affected the environmental policies which disrupts effective public engagement. The metrics for this rating include: the presence and enforcement of laws providing opportunities for the public to participate in environmental decision-making, laws obligating the state to proactively seek public participation, and laws requiring policymakers to integrate public input into policy decisions. Even if information were freely available, democracy cannot obtain if states simply refuse to engage with their constituents<sup>3</sup>.
- The lack of avenues for redress for environmental injustice prevents citizens from defending their constitutional rights. It mainstream environmentalism neglect the rights of the poor and marginalized, even state institutions fail to adequately protect the citizenry, particularly against corporations armed with considerable litigation power. Reforms for strengthening environmental democracy are therefore necessary if we are to actualize environmental egalitarianism.

## **MECHANISM TO CURB THE INSTITUTIONAL BARRIERS THAT AFFECT ENVIRONMENTAL DEMOCRACY**

### **1. RIGHT TO UNDERSTAND**

Right to understand should be incorporated in each state and native law as a elementary opening toward securing environmental democracy. It's a movement champion's freedom data of knowledge of laws requiring that atmosphere and health-relevant information be created freely on the market to voters. With such info, voters would be able to participate a lot of effectively and with confidence in political decision-making, similarly as hold firms and states in command of infringements upon their environmental rights. It's so very important that this info be created accessible in each sense. the proper to understand should embrace basic environmental health and safety info, from air and water quality to the presence of risky substances and pollutants in merchandise and practices; it ought to additionally entail firms business enterprise their

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<sup>3</sup> ublications, Marcolab, <https://www.marcolab.net/publications.html> (last visited Sep 5, 2018).

waste and pollution discharge records as open-access documents for public scrutiny. The legal principles of answerability and transparency should be strictly upheld as an elementary gospel of democratic citizenship, provided that environmental school of thought cannot acquire while not the levelling of knowledge asymmetries between policymakers and voters.

## **2. ENVIRONMENTAL COURTS AND TRIBUNALS (ECTS)**

Finally, associate open and comprehensive system of redress for environmental injustice should be enforced to make sure that each one voter fancies the total suite of constitutional rights once they are injured. Voters ought to possess the unobstructed right to demand compensation, contest planned policies or comes, and brazenly challenge violations of their environmental rights. Significantly, environmental class-action lawsuits ought to be extremely backed given the importance of environmental rights in facultative and protective the “basic capabilities” those egalitarian justice demands. Remedies should be swift given the usually pressing nature of environmental disputes – communities like Diamond fighting to relocate from a heavily contaminated space ought to be paid inadvisably following their legal triumph. the general public ought to additionally fancy open access to past judicial and body selections, complete with full right of charm. The goal is to determine and enforce mechanisms that promote larger answerability by organizations and states to the group. Environmental courts and tribunals, just like the National inexperienced judicature (NGT) in the Asian nation, ought to, therefore, be established with full jurisdiction over all environmental disputes ECTs area unit particularly vital in locales containing poor and marginalized communities that suffer the harshest environmental harms.

## **FILLING THE GAPS AND THE LACUNAE IN ADMINISTRATION & LAW**

In certain case the courts issue directions to meet the spaces in existing law. They may also go to the extent of enquiring into the matters of the government to ensure that they constitute national and state regulatory authorities or environmental courts. In many cases, courts have issued and given directions to remind and alert the statutory authorities of their responsibility

to protect the environment. And of the same time safeguard it and protect it from pollution. Thus, directions were given to local bodies, especially municipal authorities, to remove garbage and waste and clean towns and cities. In **Vellore Citizens Welfare Forum v. Union of India**, after giving various warnings to shut down and relocation the tanneries in Tamil Nadu which was causing pollution. The Supreme Court entrusted the Madras High Court with the responsibility of introspecting matters under Art 226. The request recognised made by the Supreme Court to the Chief Justice of the Madras High Court was to create a 'green bench'- to deal with the case and other environmental matters, as is done in Calcutta, Madhya Pradesh and in some other High Courts. In **Indian Council for Environ-legal Action v. Union of India**, the Supreme Court believed that such norms in various parts of the country being better known to them, the high courts would be the most appropriate forum to be moved for more effective transactions, implementations and invigilation of the anti-pollution laws. The Supreme Court passed regulations for a more effective control and monitoring of such laws and regulations. The High Courts have greater responsibilities in curbing such issues and constraints. It concerned to the geographical areas within their respective States, where general directions are issued by this Court. It is also gives way to more effective implementation of the same. The High Courts concerned assume the responsibility of enabling the law enforcement and examining the complaints, mostly made by the local inhabitants. These are about the infringement of the laws and spreading of pollution leading to degradation of ecology and hampering the biodiversity<sup>4</sup>.

## **ENVIRONMENT JUSTICE AND THE INDIAN CONSTITUTION**

There is no specific entry on the subject of environmental protection and justice in the Indian constitution although it is a very crucial and vital to have it in the legislation.

Constructive suggestions and feedback was put forward to incorporate environment in the concurrent list which was rejected. In the 74<sup>th</sup> amendment the state legislature has passed regulation on urban forestry, promotion and protection of the environment this is with reference to the concurrent legislation. The environmental protection comes under the preview of three

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<sup>4</sup> Environment and Democracy, Political Ethnography | Department of Political Science, <https://politicalscience.ceu.edu/courses/environment-and-democracy> (last visited Sep 5, 2018).

important levels of law making authority. These vest power and privileges of the states in consensus with panchayats and municipalities.

The Indian judicial system has a bent for innovation and advancement which paves way in formulation of solution to environmental problems. These are met within ambit of public interest litigation. The constitution provisions also provide the court with adequate jurisdiction to look into matters concern with environment. According to article 142 the Supreme Court has reasonable powers to channelize the decisions in order to satisfy justice. Although the Supreme Court is the final authority as to the matters to constitutional interpretation are concerned but assumes a sort of primal position in the Indian environmental legal structure<sup>5</sup>.

In the landmark case of **Subhash Kumar v. State of Bihar** the court held that right to live of Article 21 of the Constitution of India is a fundamental right. This also includes the right of enjoyment of clean water and air. If this is infringed the right to enjoyment of environment and quality of life becomes derogation of the rights of the citizens of the state. All citizens have the right to have recourse to Article 32 of the Indian Constitution. The Supreme Court of India looked into Article 21 which has aided in the growth of an environmental jurisprudence in India. This in turn protects human right jurisprudence. There has been several landmark judgements passed that highlights that the pollution free surroundings and right to a clean environment have been inseparable from human rights and ultimately boils down to be fundamental rights of every citizen. In the case of **Kendra v. state of UP** the court put down five comprehensive interim orders which direct on the understanding of the environment rights from the view point of judiciary. All this is conferred to article 21 with simpler lines is the case of **T Damodhar Rao v. Special Officer, Municipal Hyderabad** and also in the case of **L K Koolwal v. State of Rajasthan**.

## **BHOPAL MASS DISASTER AND ENVIRONMENTAL JUSTICE**

The Bhopal gas tragedy gives insights to interpret environment justice in its entirety. Bhopal disaster carries special meaning for India. It is a turning point for India's environmental policies and laws. The Bhopal disaster was the second most important component after the Stockholm

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<sup>5</sup> Law and environmental justice, from: environment: an interdisciplinary anthology, (Erin Sheley, ed., OAD).

Conference which has greatly influenced environmental law and policy in India. In this scenario the Bhopal gas leakage was bound to happen and law and administration were not equipped to face its outcomes. The human consequences of Bhopal disaster devastated the policy makers of India. In environmental justice in Bhopal litigation the victims' main problem was to search proper judicial forum. The compensatory justice is one of the important aspects of the justice. The objective of the civil litigation is to provide compensatory justice to the victims. The search for compensatory justice compelled the Government of India to knock the doors of the U.S. Courts. The U.S. courts which refused to entertain the victims' suit this potentially to denied environmental justice to the victims of Bhopal. An adequate judicial forum is sine qua non to achieve the goal of compensatory justice. At the Supreme Court level there have been attempts to provide compensatory justice. The Supreme Court approved and justified the Bhopal settlement to secure the "immediate relief" to the victims. The problem of access to environmental justice also relates to doctrine of *parens patriae* which was used by the central government in India<sup>6</sup>. The second problem of access to environmental justice relates to infringement of natural justice. The principles of strict and absolute liability were conflicting during entire Bhopal litigation. The Bhopal settlement order has been proved as one of the most controversial and much criticized judicial exercise. The Supreme Court in its Review judgment conceded the inadequacy of the settlement exercise. Consequently it ordered for medical group insurance for the future contingencies. The Court, on humanitarian ground, asked the UCC to construct a hospital for specialized treatment of the Bhopal victims. The long history of complex Bhopal disaster litigation has exposed the 'incapacity' of national and international legal order to provide environmental justice to the victims of a man-made industrial disaster<sup>7</sup>. We may conclude this discussion by saying that the concept of environmental justice should find recognition and acceptance both at national and international levels and should be used to force the economy into ecological adjustment and social justice.

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<sup>6</sup> Raju g. C. Thomas, •India's security environment: towards the year 2000, (OAD).

<sup>7</sup> Environmental Justice - What is it, and are we aware of it?, Green Crumbs (2014), <https://greencrums.org/2012/07/environmental-justice/> (last visited Sep 5, 2018).



## STRATEGIES FOR PROMPTING ENVIRONMENTAL JUSTICE

The aim and strategy in ensuring environmental justice can be achieved through the clear understanding of where we have had some success and where we are falling. There is no gainsaying the fact that environmental justice can be prompted through a collective endeavour and at the same time peacefully securing equity and justice for all people. **In M. C. Mehta v. Union of India**, the reckless discharge of untreated sewage in the river Ganga by a riparian owner was sought to be checked with several directions issued to clean the river. This same ultimately led to the Ganga action plan. The **Vellore Citizens Welfare Forum case** recognized the concept of sustainable development as an answer to balance development with ecology. These two cases are few among many which have been able to render effective means of environmental justice.

All judges have an opportunity and scope to transact and enforce environmental law. If environmental cases don't directly reach the judges' court, his major concern regarding the environment can facilitate him to bring change and access to environmental justice. Courts which are subordinate have enough jurisdiction and power to have comprehensive knowledge for civic sense and bona fide interest of the public. The matters relating to environment seek motivation to use the jurisdiction for public welfare. A trial Judge is more apt for local environmental matters and can ascertain the environmental damage more effectively through local commissions. Witnesses can be examined and asked facts properly to determine and adjudicate at lower levels. There is no dearth of legislation and the case law, relating to environmental issues. What we require is a proper understanding of the legal system and the remedies, which leads and transacts environmental justice<sup>8</sup>. Courts have their own shortcomings and flaws. They can normally respond through cases that come before them. They cannot effect directly drastic changes in environmental conditions. Public interest litigation by public spirited persons and non-governmental organizations has assisted in protection and safeguarding of the environment. However, this effort is not sufficient to check the degradation of environmental conditions. Awakening and providing awareness to the public towards their right to live in a pollution-free environment is more vital. Public awareness alone can achieve desired results and positive results. Solutions to environmental problems lie in the hands of all. No amount of

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<sup>8</sup> irpa tenhunen, Minna säävälä, •Growth burdens the environment (pp. 171-182), from: an introduction to changing India: culture, politics and development (OAD).

effort on the part of the State or other agencies will be able to tackle the problems. Citizens have to rise to the occasion and act that suits the best interest of all.

## **ENVIRONMENTAL AWARENESS AND EDUCATION**

In the directives of the apex court of India was successful enough to spread the idea of environmental awareness and literacy in its subcontinent. It also paved way in establishing the environmental education not only at school level but also at college level. In the most renowned **MC Mehta v. Union of India** laid due importance on the need for introducing schemes such as to promote human conduct in accordance with the requirements of the law. This requires appropriate awareness about the needs and requirements of the law of the land. There should be proper steps taken in order to ensure that people are aware of the indispensable necessity of their conduct being affiliated with the requirements of law. The court also gave directions to All India Radio and Doordarshan to highlight their programmes on various aspects of environment which was immediately implemented. The Supreme Court also stated that every state government and educational board to promote and facilitate environmental education. It also stated that in the course of time these directions and various authorities function with due diligence in matters and schemes relating to environmental education.

## **CONCLUSION**

In recent times the state and its citizens are under the fundamental duty and responsibility of protecting and improving the environment. They obligated to safeguard the flora, fauna and on the same time have civic sense towards the environment. The constitutional compulsions should vitalise the rule of law into creating dynamic policies on environment. If this is not carried out the paramount laws will be stultified into mere declaration in papers. The Indian democracy depends on the welfare of its people and active participation must not lead to the submission to monocracy. This will damage the environment and create ecological imbalance. Affirmative judicial actions and legal actions despite its adversarial concerns are required to enliven environmental law. Human existence depends on the crises of dangerous degree of pollution. It is vital to reiterate the need to achieve growth in the economic and social well-

being of people throughout the world within the boundaries of a sustainable development base. Then the community sensitivity will have to be accompanied by the desire and the capacity to subject developmental projects at the government level. This impact based on principles of ecology and energy conservation. And also efficiently designed government projects blended with people's action can alone take the goal to the conservation cannot remain the responsibility solely of the Government and other authorities must work together to create greater awareness. Then environmental democracy and justice will be at par and have its effective implication in the Indian society.

