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INDIAN ENVIRONMENTAL GOVERNANCE- NEED FOR CHANGE

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Abstract
As India plunges into a deeply interlinked and interconnected world focused on industry driven developmental goals, there is a pronounced need to balance the negative environmental effects which have been exacerbated by rapid growth. This paper endeavours to raise new questions about this very need and attempts to examine the challenges and fractures in the current way of life and how it is affecting an already deteriorating environment. It attempts to highlight a need for a sustainable developmental model to enable the concept of peaceful coexistence of humans with its natural life source. It briefly revisits the country's legal environmental paradigm to ensure that it is armed with proper laws and containment strategies to safeguard nature and correlates it with the international benchmark set for this era. The paper draws parallels with the recent events which have endangered our country's natural habitat and emphasizes on the need for a green-consensus among political leaders.

Keywords: *Environment, law, green-politics, deep ecology, Environment Impact Assessment (EIA), 2020*

Today India has joined the pantheon of truly advanced nations by empowering her citizens and opening her doors to liberalisation, globalisation and industrialisation for the purpose of development and modernity. With massive advances in technology and all things digital it has managed to make its mark on the world geopolitical platform albeit with a substantial cost to the environment and the nature sustaining it.

Over the years the country's policies have had little tolerance for what it calls an environmental interference with its development agenda. It has pushed for development in all [i]industries, big or small and largely dismissed the negative environmental repercussions advancement has resulted in. From the Bhopal Gas Tragedy in 1984 and the infamous Pasarlapudi blowout in 1995 to the recent Visakhapatnam Leak in 2020, almost every environmental calamity has been a result of massive human interference directed towards ambitious developmental goals which has resulted in an irreversible impact on the rich Indian biodiversity and life.

At this point, we would like to direct attention to a few recent catastrophes which were a result of human intervention to further lay emphasis on the need for an urgent action plan to save the deteriorating environment.

2020- Visakhapatnam Gas Leak and the Assam Oil Spill

While the entire country was under siege from the worst pandemic in the century owing to the corona virus, the cities of Visakhapatnam and Assam had suddenly found themselves embroiled in an environmental battle. On 7th May 2020, Vishakhapatnam saw a massive gas leak from one of its plants - LG polymers, manufacturers of chemical products polystyrene and its co-polymers which are used as raw materials for various common disposable products. The incident claimed the lives of 12 (twelve) people, left 585 (five hundred eighty-five) affected [ii] and gravely injured the green cover in the vicinity.

The leaked gas, identified as styrene, often found in vehicle exhaust and cigarette smoke

[iii] affected all plants and animals living in a 5 (five) km radius[iv] from the plant and made the soil infertile and poisonous. The toxic long-term effects are believed to cause irretrievable damage to the massive green cover near the plant and affect agriculture produce, underground animal life so much so that it will require constant artificial and synthetic human help to regain its sustainability.

Causes: To assess the extent of causes of the leak the National Green Tribunal had taken suo moto cognisance of the issue and constituted a 5 (five) judge bench to look into it. It had imposed a penalty of 50 (fifty) crores on the company when the ongoing assessment had brought about information which stated that the company had indulged in an ignorant manner of operations and possibly failed to comply with Standard Operating Procedures which led to the leak. Additionally, documents were submitted which delineated that the company had failed to comply with the environmental norms kept in place, were operating without a valid environment clearance under the provisions of Environment Impact Assessment notification 2006, (EIA), had applied for environment clearance from the Ministry of Environment Forest and Climate change (MoEFCC) under the category of projects running in violation of the said EIA notification and were allegedly vying for consideration and recognition by an expert panel of the MoEFCC. Keeping this information as a reference point the Andhra Pradesh Police registered a case against LG Polymers charging them under several sections of the Indian Penal Code for their negligence, causing hurt and endangering the life of others and for culpable homicide not amounting to murder.[v]

However, even when officials allegedly believed to have been responsible for the leak have been arrested and questioned there seems to be a conspicuous lack of attention given to the massive environmental loss and the long-term effects it may have on the biodiversity of the area.

Assam Oil Spill:

The Assam oil spill which occurred on 27th May 2020 has been a classic example of the prioritisation of human life over environmental sustainability. The spill was caused by a damaged well belonging to Oil India Ltd. which had been spewing gas for 14 days and ultimately resulted in a massive inferno. The fire broke out in close proximity to the Dibru-Saikhowa National Park, a biosphere reserve in the Dibrugarh district of Assam, housing innumerable endemic species of plants and animals. Even though it did not result in human casualties it left swathes of vegetation, flora and fauna decimated and wrecked.

It destroyed 'Maguri Beel', a significant wetland in the area and one of the 'Important bird and Diversity Areas of the world'. Located at the gateway of the biosphere reserve the wetland hosts 80 (eighty) fish species, and 300 (three hundred) bird species every year along with six vulnerable species, 2 (two) endangered and 6 (six) critically endangered animals[vi] which have all been compromised and harmed.

Additionally, the oil condensate from the spill has covered the water bodies, making it impossible for aquatic animals to survive and the area is marred by carcasses of dead animals, birds and plants. It is notable that the incident has hardly gained traction or

garnered attention in mainstream media, which has pushed this catastrophe to the side-lines. This is perhaps because the absence of this wetland would have led to a complete demolition of villages situated near the industry which allegedly justifies the ironical notion that a human life is more precious than the nature sustaining it.

Course of Action:

The action taken against the proper authorities in this case has been dismal and reckless. The National Green Tribunal had directed Oil India to deposit 25 crores and claim liability for the incident while constituting an 8 (eight) member committee to look into the possible causes of the fire, but so far could not produce substantial results.[vii] It was alleged that the public company did not have any mitigation plan for such a disaster even though the standing committee of the national board of wildlife had recommended the company to provide legal undertaking about their environmental safeguards and to specify the extent of their liability if they are faced with a situation like this. It is true, that the veracity of these claims are yet to be ascertained in a courtroom but it is unquestionable that the company indulged in malpractices and propagated a blatant disregard for its surrounding environment.

These two deadly instances have barely scratched the surface of the environmental tragedies we witness every year but it is evident upon careful study of the catastrophes that a common denominator between them is human interference and irresponsibility coupled with the immunity to flout laws and rules. This begets the need for us to have a more honest conversation about the extent to which governments should impose restrictions on industries which can potentially harm the environment and forces us to define the contours of the legal framework put in place to ensure that there is a sustainable environment for posterity.

India and International Law

Post- Independence India was heavily focused on economic development and the concept of environmental issues was only limited to health and safety laws. It was only after the UN Scientific Conference (First earth summit) that India decided to draw up the Water Prevention and Control of Pollution Act[viii] in the year 1974 which was subsequently followed by the Air (Prevention and Control of Pollution) Act[ix] in the year 1981. Since then, India has been a consistent participant in all major climate change conferences, ranging from the United Nations Conference on Environment and Development in 1992 (UNFCCC) to the Paris Accord for climate change in 2015. Up until the Paris conference, developing countries were not required to curb their green-house gas emissions however that changed during the Paris conference.

The Paris Accord & India

The Paris Conference of 2015 (COP 21) was the 21st annual session to the United Nations Framework Convention on Climate Change (UNFCCC). The conference was deemed monumental mainly because it witnessed the drafting of universal guidelines to limit global warming temperatures and was required to be ratified by UNFCCC members. There was an understanding that universal guidelines are often too vague in nature and the Paris session demanded countries who ratified the treaty to present Nationally Determined Contributions (NDC's) which would comprise plans pertaining to the specific country and their contributions to

achieving the universal goals set. The major goal was limiting the warming temperatures to 2 degree centigrade and further pursuing efforts to achieve the ideal temperature of 1.5 degree centigrade. India ratified the Paris treaty in the year 2016 and the it's NDC comprised of three main promises which focused on reducing carbon emissions intensity by 33% - 35 % and generating at least 40% of its electricity from non-fossil fuel sources. Apart from these promises, an initiative to develop a "carbon -sink"[x] by increasing forest and tree covers was also set for the year 2030. A "carbon sink" is a reservoir, that could be natural or man-made, which absorbs carbon, thereby lowering the concentration of carbon-dioxide.

A treaty when adopted is only successful if the country establishes an obligation, accountability and responsibility in the rules and acts it passes for implementation of goals. As of 2019, the government has set up a climate action tracker[xi] website which comprises of goals accompanied with timelines that the government has taken towards the reduction of carbon emissions. The main issue with this website is that it only portrays the ideas and the end desired goals but there is no information pertaining to how these goals shall be achieved. The website shows that India is on track and will achieve the goal of limiting warming temperatures to 1.5 degree centigrade. The announcements regarding the NDC's often do not specify the long-term plans and there is no follow-up process for the various committees that were created in lieu with the promises made. For instance, the National Ganga Council (NGC) chaired by Prime Minister, Narendra Modi has met just once since its creation in 2016 , with a significant number of states failing to attend.[xii]

Another one of the issues that side-tracks India from truly being responsible towards its promises made in the NDC is the exploitation of the Arctic Tamymyr Peninsula for coal. Dharmendra Pradhan, India's Minister of Petroleum and Natural Gas stated that "We are the second largest coal importer in the world, and we intend to achieve production of 3m tonnes of steel per year by 2030, so we need to increase coal supplies."[xiii] . The Arctic region is known to be extremely sensitive and the biodiversity that thrives around is in grave danger because of the constant coal-mining. Moreover, the mining raises the surface temperatures of the Arctic region which in turn contributes to global warming.

Actions like these make it hard to determine whether India's fight against climate change is legible or a mere faux. A chain of committees and talks may happen about environmental issues but there is no sign of reassurance from the government that they consider climate change and sustainable development as major issues. The policies that have been drawn encourage extreme industrialization and allow organizations to plunder, pollute and exploit resources. Policies must be inclusive of environmental concerns rather than them being in a "give and take" manner wherein industrialization harms the nature and then the government deploys more committees to remedy the damage caused as seen in the Assam and Vishakhapatnam disasters. There needs to be a transition in how we perceive sustainable development and climate change for every industry that is being set as a result of reckless policies, we move one step further away from having a future.

Internal Legal Framework

There are several legislations and provisions put in place in India which safeguard the environmental health of the country. The constitution reflects it under Part IV A (Article 51A-Fundamental Duties) and mandates that every citizen of India has a duty to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures. It also stipulates under Part IV (Article 48A-Directive Principles of State Policies) that the "State must endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country"[xiv]. However due to the non-enforceability of the Directive Principles of State Policies it becomes imperative to have certain legislations put in place to ensure that the motive to conserve nature is met and acted upon. Due to this reason, Acts like The National Green Tribunal Act, 2010, The Air (Prevention and Control of Pollution) Act, 1981, The Water (Prevention and Control of Pollution) Act, 1974, The Environment Protection Act, 1986 and The Hazardous Waste Management Regulations among others were formulated and acted upon.

Environment Protection Act, 1986

Over the years the The Environment Protection Act, 1986 ("Act") has been the foundational legislation governing major industrial policies. This is because it assigns a larger ambit to the term environment[xv]and includes it to mean water, air, land as well as the interrelationship which exists between water, air and land, and human beings, other living creatures, plants, micro-organisms and property. The Act encompasses all legislations and has underwent many amendments and changes under Section 3 (1) to accommodate the modern world. The government has so far rolled out 3 (three) notifications since the Act's inception and built the process on the precautionary principle, which advocates that when it comes to activities that may have harmful effects upon the environment, where the scientific data may be inconclusive, the benefit of the doubt should be given to the environment, and the activity avoided[xvi]

The most recent notification was the Environment Impact Assessment (EIA) Notification 2020 which amends the existing 2006 EIA notification, altering 12 out of its 14 clauses. It has received a lot of flak and criticism for its purported development-centric approach and has the following salient features-

- Under the existing 2006 law, projects are categorised into Category A and B, where all projects in Category A need to undergo the process of EIA which is a technical exercise wherein projects are supposed to submit norms of due process.[xvii] Category B projects are further classified to B1 and B2 by the regulatory authority, on the basis of their scope and potential impact, and only the projects falling under B2 category are exempted from the process to obtain an environmental clearance. Under Clause 26 of the 2020 notification, however, 40 different types of industries would be automatically exempted from the need for a Prior Environmental Clearance.
- The Notification proposes to reduce the timeframe for conducting public hearing to 20 (twenty) days, from the current 30 (thirty) days under the EIA Notification of 2006.
- The notification allows project proponents (the industrialists proposing to undertake a project) to engage private consultants for preparing the EIA reports.

- Clause 17(4) states that only restricted information may be made available to the public for consultation. For existing projects that may be merely looking to expand, the notification denies any need for a public consultation, if the modernization is less than fifty percent of the project capacity, facilitating and streamlining piecemeal expansion processes for all existing projects.
- Clause 5 (7) exempts all projects that are defined by national security or defence to require any kind of strategic planning
- Clause 22 of the notification allows the project owners to pay compensation in cases where they pollute the environment and continue their operations.
- The validity of the environmental clearance of mining projects is proposed to be extended from 30 years to 50 years and the said entire duration would be considered as a part of the "construction phase"
- The time period for conducting public hearing has been proposed to be reduced to 40 days from 45 days and general validity of the environmental permit has been proposed to be increased to 10 years.

Opposition:

Environmentalists have blamed the notification for gutting environmental laws in place and giving more importance to industrialisation and development. Some common oppositions for the notification are-

- The process of EIA stands diluted for a massive number of projects.
- The reduction of the time frame to conduct public hearing in the middle of the lockdown is bound to become unfair for local groups and communities who need to fully comprehend and respond to the EIA report.
- The engagement of private consultants to prepare an EIA report can be disastrous and lead to a situation where untrue reports can be procured or extreme technicalities can be adopted to make the process confusing and out of the public's understanding,
- The ambiguity in the language of the notification seems to intentionally favour the private parties involved in the process, which could lead to the privatization of natural resources.
- Under clauses 14(9) and (10), all responses to the EIA are to be forwarded to the project proponent. This endangers community participation since no mention is made of the community receiving any notification, which is actually conducting the hearing.
- The term 'strategic planning' has not been clearly defined which which paves way for a loose connotation. If all projects are termed under strategic projects they will not be placed in the public domain and dissuade transparency. It is implicative of the fact that all projects need not be properly planned.
- The notification equates dangerous and irretrievable environmental damage to a monetary sum since it allows illegal industries who have not obtained Environment Clearances, to pay meagre fines. It also propagates that environmental crimes can be paid off with money which currently are punishable with imprisonment. This becomes a major cause of concern since there is a noted absence of any deterrence effect.
- Industries are now allowed to only give an annual environmental compliance report rather than half yearly reports which reduces accountability, transparency and makes the environmental measures slack and ineffective.[xviii]

Deep Ecology & Green Politics- Suggestions

For as long as scientists and anthropologists can trace, man and nature have thrived together in an ecosystem. Man depended on his natural habitat to shelter, feed and nurture him and a relationship of dependency on nature emerged. However, as the world evolved and changed, a theory of shallow ecology developed wherein man adopted a political and anthropo-centric theory that "environmental preservation was only to be practiced to an extent that it met human needs."[xix]. Economic gains and development were put above the need to care for our environment and with this transition into a profit maximization set up of society, the protection of our natural habitats went for a toss. Every policy and amendment that is drawn is from a mechanistic point of view where the issue of environment is side-tracked or made secondary. The proposed Environment Impact Assessment (EIA) ,2020 by the Union government portrays how much of an upper hand industry are given to maximize their gains at the cost of nature.

The people of India have led some of the world's largest environmental protests, be it the Chipko movement or the widespread "Global Climate Strikes"[xx] that took place in 2019 or even the social media backlash that the government's EIA draft is receiving. A huge number of citizens recognize their duties as stakeholders in the fight against climate change but for a country to unanimously come together to fight for sustainability and radical change in our environmental policies, our leaders and political parties need to change their perspective with which they view environmental sustainability. There needs to be more green-parties who draft their agenda keeping environment as the central issue. There are a total of just 90 countries with green parties, of which less than 1% ever win seats in the cabinet. This is a crisis of perception and views. Humans believe that they are at the centre of the ecosystem and that natural environment is at their disposal to use and exploit. An emerging theory called deep ecology has been developed which is that "Deep ecology realizes the intrinsic values of all living things, and humans are just one strand in the web of life."[xxi] There needs to be an understanding that man does not dominate nature. Green Parties across the world believe in this idea of deep-ecology.

There is a major mis-conception that thinking green is often too idealistic and that it is extremely expensive. However, what is forgotten is the fact that forming a green-consensus and acting on the idea of "going green" and "sustainable development" is an investment for the future. Spending more and making definitive changes will cost much less than the $300 billion - $ 400 billion that will be used up when climate change reaches its most destructive and extreme state. "The cost of not doing something about climate change is much greater."[xxii] A green approach to policy making is about re-direction of existing funds into projects, generating more funds by taxing companies responsible for their industrial waste and commodification of nature. There is a wide array of solutions that dis-prove the notion that environmental governance and free market type of economy do not blend well. However, within the strata of deep ecological thinking, commodification of nature in terms increasing carbon tax for companies, enlisting system of "debt for nature swaps", which essentially involves "governments forgoing a portion of a company's debt in exchange that the company looks after the biodiversity that surrounds their area and invest in local environmental protection."

[xxiii]. Development of eco-tourism by charging a fee to enter national parks and other techniques to valuate nature.

India given its wide populace and rapid industrialization has forgone the concept of environmental governance. With the EIA draft circulating, companies can get their "safe environmental stamp" within a matter of 20 days as opposed to the original time frame of 30 days. Our leaders need to rework their perception of environmental governance because they possess the power to direct masses and to provide mechanisms and rulings that could cultivate progressive environmental change. The debate over ideologies is exhaustive and perhaps people will never come to a common consensus on how a country should be ruled, but our negligence towards our natural habitat will only prove fatal for us. Green politics is about changing the human beliefs and values when it comes to protection of nature. We need environmental movements now more than ever because they keep the momentum going. They remind masses that we are in desperate need for credible and accountable leaders, that the world as we know it is endangered.

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