
POLITICS, DEVELOPMENT AND ENVIRONMENTAL GOVERNANCE

Stency Mariya Mark, Assistant Professor of Law, Dayananda Sagar University, Bengaluru,
India & Research Scholar, Maharashtra National Law University, Nagpur.

ABSTRACT

India is one of the many countries that created a legal framework for environmental protection. The paper traces how corporate influence and neoliberal development imperatives have systematically intervened with the creation of legislation and also weakened environmental protections in the existing laws. There is legislation for environmental protection, but it is usually not in isolation but rather a product of discourse, politics, and ideas of development created by neoliberal corporations and the state. The article emphasizes how legislations, rules, and regulations often prioritize industrial interests over environment and even lead to dispossession of indigenous rights. This article, through a critical analysis of the various laws and policies such as the Draft National Forest Policy, 2018; the Environmental Impact Assessment Notification, 2020; etc., highlights challenges and how political will has shaped the environmental policies of India.

Keywords: Politics, Development, Environmental Governance, Corporate lobbying, Tribal Rights.

I. INTRODUCTION

The United Nations Conference on the Environment in Stockholm in June 1972 marked a significant milestone in global environmental governance, with various countries, including India, participating and leading to the development of environmental laws for the nation, such as the enactment of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. The question this article seeks to answer is not whether India has environmental law, but why that law has so consistently failed to protect the environment it was designed to govern. This article argues that the problem does not lie in legislative inadequacy but rather in the systematic submission of environmental governance to corporate and political interests that often operate and function through the dilution of legal protections. The resultant exclusion of tribal communities from forest governance along with neoliberal legislations and attempts to maneuver laws in the political and developmental interests.

II. POLITICS AND ENVIRONMENTAL LAWS

The relationship between politics, developmental narratives, and environmental governance in India is perpetually rooted in tension and friction. India and other countries were a part of the United Nations Conference on the Environment in Stockholm in June 1972.¹ It signalled a new era in worldwide environmental awareness. The delegates flew back to their countries with the goal of developing measures to conserve biodiversity and ecology in their nations.² India was one of the countries that heeded the demand for a healthier environment. India passed the Water (Prevention and Control of Pollution) Act, 1974³ after the United Nations Conference in Stockholm.⁴ Following the Water (Prevention and Control of Pollution) Act, 1974 the government enacted the Air (Prevention and Control of Pollution) Act, 1981⁵ to curb air pollution. According to the provisions of the Water and Air Environmental Acts, India attempts to have a workable regulatory framework to address pollution and environmental contamination. However, most statutes are ineffectively implemented and in sync with

¹ C.M. Abraham & Armin Rosencranz, An Evaluation of Pollution Control Legislation in India, 11 COLUM. J. ENVTL. L. 101 (1986).

² *Id.*

³ The Water (Prevention and Control of Pollution) Act, No. 6, Acts of Parliament, 1974 (India).

⁴ *Supra* note 1 at 104-105.

⁵ The Air (Prevention and Control of Pollution) Act, No. 14, Acts of Parliament, 1981 (India).

neoliberal developmental ideologies and corporate interests.⁶

In the same United Nations Conference on Human Environment in Stockholm in June 1972, Smt. Indira Gandhi said “environmental problems of developing countries are not the side effects of excessive industrialisation but reflect the inadequacy of development”.⁷ She adds “[a]re not poverty and need the greatest polluters?”⁸ This ideology wasn’t limited to India. The droughts in Africa’s Sahel region are notable for lasting decades rather than months. In the 1970s, it was commonly assumed that the drought was induced by regional farmers, who were blamed for soil degradation and desertification. It was, however, owing to over-industrialisation⁹ and a shift in the temperature of the surrounding waters.¹⁰ The same judgment was applied to India’s tribal communities, who were similarly scapegoated for deforestation and wildlife depletion while industrial expansion went largely left unbothered and unquestioned. Many times tribal communities being the marginalised communities like the poor people for years have been blamed for destroying wildlife and forests because of hunting practises and *podu* cultivation.¹¹ However, poverty and the needs of the poor cannot ever be causes of environmental deterioration to the same extent as over-industrialisation can. Many supporters of development and economic growth state that environmental protection appears to simply raise the cost of economic growth, making it unprofitable and hampering growth in underdeveloped nations.¹² But, the destruction of anything, including the environment, is always caused by human greed, not by need. Gandhi’s has failed to emphasise that environmental degradation in developing nations is a symptom of unjust development models and not of poverty. The development models adopted post-independence based on corporate lobbying, crony capitalism, economic growth and exclusive development has impacted the environment adversely.

This tension between short-term corporate gains and neoliberal agendas of the State being

⁶ *Supra* note 1 at 106-107.

⁷ Smt. Indira Gandhi, Plenary Session of United Nations Conference on Human Environment, Stockholm, June 14, 1972, at 3.

⁸ *Id.*

⁹ Karl Mathiesen, Climate Change and Poverty: Why Indira Gandhi’s Speech Matters, THE GUARDIAN, May 6, 2014, <https://www.theguardian.com/global-development-professionals-network/2014/may/06/indira-gandhi-india-climate-change>.

¹⁰ Steff Gaultier, Analysis: Understanding the Sahel Drought, ALJAZEERA, June 22, 2012, <https://www.aljazeera.com/news/2012/6/22/analysis-understanding-the-sahel-drought>.

¹¹ Ashutosh Mishra, Podu Heat on Forests, THE TELEGRAPH, Mar. 3, 2017, https://www.telegraphindia.com/odisha/podu-heat-on-forests/cid/1396855#goog_rewarded.

¹² HANS DEMBOWSKI, TAKING THE STATE TO COURT: PUBLIC INTEREST LITIGATION AND THE PUBLIC SPHERE IN METROPOLITAN INDIA 65 (Oxford University Press 2001).

routinely prioritised over long-term ecological stability finds relevance in the writings of environmentalist Anil Agrawal wherein he asserts the environment is much more than “pretty trees or tigers”. Our entire existence is reliant on the environment, and annihilating it would be a reckless act that would jeopardise our own future.¹³ He says:

Development can take place at the cost of the environment only upto a point. Beyond that point, it will be like the foolish person who was trying to cut the very branch on which he was sitting. Development without concern for the environment can only be short-term development. In the long term, it can only be anti-development and can go on only at the cost of enormous human suffering, increased poverty and oppression. India may be rapidly approaching that point.¹⁴

Industries and corporations have realised that installing anti-pollution systems exceeded the cost of bribery or nominal penalties. The compliance cost was typically greater than the cost of violation. Bribery and penalties were all less exorbitant than building “anti-pollution systems”. In fiercely competing global marketplaces, most businesses are under significant cost-cutting stress. The common consensus among violators was that “bureaucrats” could be bribed.¹⁵ This systemic corruption is not merely anecdotal or assumption but rather it has been acknowledged at the highest levels of political office. Jairam Ramesh, a Member of Parliament (MP), who served as an environment minister in 2009 admitted that before was given this position he favoured “unlimited growth”. He said:

I was an economic hawk. I knew what was happening with the environment, but before I became minister *I thought the environment could wait* [italics] and that we could solve our environmental problems when we have become as rich as the West. Then as a minister I traveled across India and I got to see the price of our growth cult: how coal mining was destroying livelihoods, how polluted rivers like the Ganges are, and how desperate tribal people are fighting for the forest they live from.¹⁶

He adds that although India has good environmental laws and regulations but their enforcement

¹³Anil Agrawal, *Beyond Pretty Trees and Tigers*, in *THE FUTURE OF THE ENVIRONMENT* 94 (David Pitt ed., Taylor & Francis 2013).

¹⁴*Id.*

¹⁵*Supra* note 12 at 68.

¹⁶ Christian Schwägerl, *Why a Leading Indian Politician Is Now an Environmental Hawk*, *YALE ENV'T* 360, Sept. 10, 2009, https://e360.yale.edu/features/why_a_leading_indian_politician_is_now_an_environmental_hawk.

is extremely weak.¹⁷ In the interview he mentioned:

[G]overnment gives *greater priority* [italics] to corporate interests. The corporate sector is extraordinarily influential. They get away with almost anything. And *corruption* [italics] is a big issue. In every state we have state pollution control boards that are supposed to implement air pollution laws, but they simply don't. Many of them have been thoroughly compromised. We pass a law, and then we bypass it.¹⁸

Politics play a direct role in environmental governance and since the BJP has held governing power since 2014 it is important to reflect upon its manifesto as offers the most direct measure of the gap between political rhetoric and actual environmental governance. Political parties have in its manifesto mentioned under the head of forest and environment that “[w]e have ensured speed and effectiveness in issuing forest and environmental clearance for eligible projects due to which we have added around 9000 square km to the forest cover of the country.”¹⁹ The manifesto then goes onto saying “[w]e are committed to maintaining this pace through adoption of cleaner practises to make our nation a greener country.”²⁰ The opening sentence of this paragraph emphasised being pro-corporate rather than pro-environment. A bigger question to ponder is how can encouraging forest forest clearances and such pace help to conservation of forests and develop a greener nation? The internal contradiction is self-evident: expediting forest clearances cannot serve the goal of forest conservation. Then there is emphasis on forest dwellers' and indigenous communities diverse interests being protected and promoted.²¹ However, the National Forest Policy of 2018 has, on the other hand, already stripped indigenous people of their basic rights and destroyed their symbiotic relationship with the forest. The instrumentalisation of the environmental discourse by political parties further complicates the governance and accountability. The Manifesto, 2014 encouraged citizen's participation, sustainability, cleaner production²² etc. but the manifesto, 2019 has no such emphasis. The manifesto of 2014 still contained a clear objective for restoring the environment, but the priority and vision are lacking in the 2019 manifesto, which only generically promises to make India greener without specifying strategies. This weakening of environmental

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ BJP Manifesto 2019, <https://www.bjp.org/manifesto2019>.

²⁰ *Id.*

²¹ *Id.*

²² BJP Manifesto 2014, http://library.bjp.org/jspui/bitstream/123456789/252/1/bjp_lection_manifesto_english_2014.pdf.

commitment in political discourse was also reflected through legislations introduced during that period such as the Draft National Forest Policy of 2018.

A. Draft of National Forest Policy, 2018: An Attempt to Privatise Forests

While the oceans are the largest carbon sinks, forests also act as carbon sinks and help to store carbon dioxide from the atmosphere.²³ The Ministry of Environment, Forest, and Climate Change (MoEFCC) announced the 2018 Draft National Forest Policy, which is intended to promote timber-based businesses and switch the focus from indigenous people to industries. The objectives of the current policy are contradictory to itself.²⁴ The preamble of the National Forest Policy, 2018 in its preamble mentions that "[f]orests are a dynamic ecosystem consisting of plants, animals & microorganisms safeguarding the ecological security of the nation. Forests provide the carbon neutral timber, non-timber products like medicines, grasses, & other ecosystem services essential for the very survival of the human beings".²⁵

i) Shifting Indigenous People to Industries: Production Forestry

The demand for timber and other forest produce is showing an increasing trend and is likely to continue as the economy grows. The policy supports the industries that help²⁶ economic value of forest²⁷ facilitate forest industry interface²⁸

The National Forest Policy (NFP), 1988 had a section dedicated towards the indigenous and tribal people titled "rights and Concessions".²⁹ This has been removed from the NFP, 2018. Secondly, the section dedicated to the indigenous and tribal people titled "Tribal People and

²³ David Whitehead, Forests as Carbon Sinks—Benefits and Consequences, 31 TREE PHYSIOLOGY 894 (2011).

²⁴ National Forest Policy, 2018, Point 2.

²⁵ National Forest Policy, 2018, Preamble.

²⁶ National Forest Policy, 2018, Point 4.2.1. The dependence on import has also been increasing drastically over the years. In order to ensure self-sufficiency in timber, the States would be encouraged to further develop their plantation programmes with scientific inputs and genetically improved planting materials.

²⁷ National Forest Policy, 2018, Point 4.2.2. Forests provide a wide range of tangible benefits like timber, fuel wood, fodder and a wide range of NTFPs and intangible benefits like ecological services, hydrological benefits, soil conservation, flood control, carbon sequestration, biodiversity conservation, amelioration of the overall environment, etc. Contribution of the forest to the national economy is estimated generally on the basis of the recorded removals of industrial wood, fuel wood and NTFPs, which is abysmally low as compared to the actuals. Scientific methods will be evolved for appropriate valuation of forests and their services through institutions of repute.

²⁸ National Forest Policy, 2018, Point 4.4. There is a need to stimulate growth in the forest based industry sector.

²⁹ National Forest Policy, 1988. Point 4.3.4.1. The rights and concessions, including grazing, should always remain related to the carrying capacity of forests.

Forests”³⁰ is again missing in the NFP, 2018. The revised NFP of 2018 is supposed to fill the gaps in the existing NFP of 1988 and not to repeal the rights of the marginalised sections of the society, i.e tribal and indigenous people.

ii) Degrading the natural ecosystem

On one hand the policy says enhance quality and productivity of natural forests³¹ On the other hand it states Increase the productivity of forest plantations³² State of Karnataka has banned eucalyptus as it is a commercial plant and uses too much water raising environmental concerns.³³ However, NFP promotes such commercial plants which destroys natural ecosystem. Decades back, the Britishers compelled the Indian farmers for years to grow indigo as it was profitable commercially in Europe. The farmers were pressurised to grow this instead of crops but the Indian farmers did not want to grow indigo as it would destroy soil quality and make it unsuitable for other crops. A similar situation is reflected here wherein profit is prioritised over sustainable environment. The NFP 2018 dictated forest use at the price of tribal people and ecological integrity, which looks unsettling yet accurate comparison to colonial profit dictating what grew on Indian soil even at expense of farmers and the soil itself.

³⁰ National Forest Policy, 1988. Point 4.6. Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest management, including the forest development corporations should be to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around the forest. While safeguarding the customary rights and interests of such people, forestry programmes should pay special attention to the following: 1. One of the major causes for degradation of forest is illegal cutting and removal by contractors and their labour. In order to put, an end to this practice, contractors should be replaced by institutions such as tribal cooperatives, labour cooperatives, government corporations, etc. as early as possible; 2. Protection, regeneration and optimum collection of minor forest produce along with institutional arrangements for the marketing of such produce; 3. Development of forest villages on par with revenue villages; 4. Family oriented schemes for improving the status of the tribal beneficiaries; and Undertaking integrated are a development programmes to meet the needs of the tribal, economy in and around the forest areas, including the provision of alternative sources of domestic energy on a subsidised basis, to reduce pressure on the existing forest areas.

³¹ National Forest Policy, 2018, Point 4.1.1 (c). Many of our forest ecosystems have been significantly altered and degraded due to land conversion, pollution, over exploitation, deforestation and degradation etc. with adverse impacts on biological diversity and livelihoods of the local population. Protection and enrichment of dense forests will be a top priority. Degraded forests will be rehabilitated by promoting natural regeneration, by taking strict protection measures and also by planting locally suitable indigenous species for assisting the existing regeneration.

³² National Forest Policy, 2018, Point 4.1.1 (d). Productivity of the forest plantations are poor in most of the States. This will be addressed by intensive scientific management of forest plantations of commercially important species like teak, sal, sisham, poplar, gmelina, eucalyptus, casuarina, bamboo etc. The lands available with the forest corporations which are degraded & underutilized will be managed to produce quality timber with scientific interventions. Public private participation models will be developed for undertaking Afforestation and reforestation activities in degraded forest areas and forest areas available with Forest Development Corporations and outside forests.

³³ Karnataka High Court stays ban on cultivation of eucalyptus, The Hindu, January 31, 2019, <https://www.thehindu.com/news/national/karnataka/karnataka-high-court-stays-ban-on-cultivation-of-eucalyptus/article26132966.ece>

iii) Collapsing the “symbiotic relationship”

If the emphasis remains on timber-based companies rather than tribal and indigenous people, they will be robbed of their rights sooner or later. According to the NFP of 1988, the tribal and forest share a “symbiotic relationship.”³⁴ A symbiotic relationship is one that is mutually beneficial³⁵ and in which both sides benefit from one another.³⁶ Forests have been safeguarded for centuries by tribal and indigenous people who function as custodians, and no one can protect the forests like them, given their expertise and passion for forests. Similarly, the forest embraces them back by providing them with a means of subsistence. Providing for their needs and maintaining life through harvesting diverse forest by-products.

The left party stated “[t]he draft [NFP] policy is, in essence, a blueprint to commercialise forests to serve the interests of industry and to bring in the private sector for the actual management of forests through the so-called public-private partnership model”.³⁷ An activist commenting on the NFP, 2018 said, “[t]he draft policy is flawed and it fails to recognise the spirit of Forest Rights Act, 2006, which sought to address historical injustice inflicted on tribals and other forest dwellers through colonisation of forests”.³⁸

B. The Forest (Conservation) Act of 1980

The Forest (Conservation) Act of 1980 was enforced in response to the revelation that state governments poorly regulated diversion of approximately 4.135 million hectares of forest land over a “25-year period” from 1951-52 to 1975-76. With the enactment of the Forest Conservation Act, 1.2 million hectares of forest land were converted for non-forest use with proper mitigation measures.³⁹ Considering that many forested regions in India are occupied or

³⁴ National Forest Policy, 1988. Point 4.6. Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest management, including the forest development corporations should be to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around the forest.

³⁵ JAMES A. REINKING, ANDREW W. HART & ROBERT VON DER OSTEN, STRATEGIES FOR SUCCESSFUL WRITING: A RHETORIC, RESEARCH GUIDE, AND READER 239 (5th ed. Prentice Hall 1999).

³⁶ SUSAN WELCH et al., UNDERSTANDING AMERICAN GOVERNMENT 128 (11th ed. Thomson/Wadsworth 2008).

³⁷ Kalyan Ray, Environmentalists See Red over Draft National Forest Policy, THE DECCAN HERALD, Apr. 2, 2018, <https://www.deccanherald.com/content/670587/environmentalists-see-red-over-draft.html>.

³⁸ Archana Phull, HP Activists Point out Flaws in Draft National Forest Policy, THE STATESMAN, Apr. 3, 2018, <https://www.thestatesman.com/cities/hp-activists-point-flaws-draft-national-forest-policy-1502623792.html>.

³⁹ Report of the National Committee on Forest Rights 103 (2010), <https://cdnbbsr.s3waas.gov.in/s3c8758b517083196f05ac29810b924aca/uploads/2019/11/2019112687-1.pdf>.

used by inhabitants, this magnitude of forest diversion might have resulted in widespread migration and eviction. As a result, around 60 million people are believed to have been physically displaced owing to development initiatives.⁴⁰ According to the figures provided by the Indian Social Institute, the 21.3 million development-induced IDPs include those displaced by dams (16.4 million), mines (2.55 million), industrial development (1.25 million) and wild life sanctuaries and national parks (0.6 million).⁴¹

C. The Forest Rights Act, 2006

The Forest Rights Act, 2006 lists the following rights as the forest rights for the forest dwellers such as the right to hold and live in the forest land, community rights, minor forest produce, right to protect community forest resource, right to in situ rehabilitation, etc.⁴² The Forest Rights Act (FRA), 2006 strives to reinstate forests to their traditional caretakers, custodians, and beneficiaries while also establishing democratic methods to administer forests. However, the revised policy enables corporate enterprises to participate in timber harvesting for economic and commercial purposes driven by capitalism and neoliberal agendas. The recent forest survey report, 2021 concluded “[t]he total forest and tree cover of the country is 80.9 million hectare which is 24.62 percent of the geographical area of the country. As compared to the assessment of 2019, there is an increase of 2,261 sq km in the total forest and tree cover of the country”. Out of the 24.62 %, 21.71 % (7,13,789 sq.km.) is the total forest cover⁴³ of the country and 2.91 % (95,748 sq.km.) is the total tree cover.⁴⁴ As against the India State of Forest Report, 2019, the total forest cover was 21.67 % (7,12,249 sq. km)⁴⁵ and the total tree cover was 2.89 % (95,027 sq.km.).⁴⁶ The forest cover have been *increased by 0.04 % only (1,540 sq.km.)* while tree cover has increased by *721 sq. km. only*. India has nine of the 10 most polluted cities in the world.⁴⁷ Thus, expanding the forest area isn't a matter of fame and glory, but rather a necessity

⁴⁰ *Id.*

⁴¹ Mahendra P. Lama, Internal Displacement in India: Causes, Protection and Dilemmas, 8 FORCED MIGRATION REV. 24, 25 (2000). National resettlement forced by development projects shows that during 1950–90 the number of people affected was 18.5 million. Mahendra P. Lama, Internal Displacement in India: Causes, Protection and Dilemmas, 8 FORCED MIGRATION REV. 24, 25 (2000).

⁴² The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, No. 2, Acts of Parliament, 2007, § 3 (India).

⁴³ India State of Forest Report 2021, at 28, <https://fsi.nic.in/isfr-2021/chapter-2.pdf>.

⁴⁴ *Id.* at 154.

⁴⁵ India State of Forest Report 2019, Vol. 1, at 21, <https://fsi.nic.in/isfr19/vol1/chapter2.pdf>.

⁴⁶ *Id.* at 107.

⁴⁷ Tanvi Deshpande, India Has 9 of 10 Most Polluted Cities, but Few Air Quality Monitors, BUSINESS STANDARD, Dec. 16, 2021, https://www.business-standard.com/article/current-affairs/9-of-world-s-10-most-polluted-cities-in-india-but-few-air-quality-monitors-121121600245_1.html. *See also*, World's Most Polluted

given the quantity of pollution generated by numerous sources. It is critical that forests continue to expand rather than being chopped down to meet consumer demand, or else India will be converted into a death chamber filled with polluted air.⁴⁸

D. Environmental Impact Assessment, 2020

Environmental Impact Assessment, 2020 notification which came out in the midst of second wave of COVID-19 to diminish the public scrutiny. This notification was meant to enable economic competitiveness, modernisation and industrialisation as well as enhance the country's economic growth. The timing of this notification illustrates the propagation of neoliberal goals and encourages capitalism.

Over the years, India has been itself a victim of various disasters every year such as Assam Gas leak,⁴⁹ Vishakhapatnam Gas leak (Vizag gas tragedy),⁵⁰ Bhopal Gas tragedy, etc. The Vishakhapatnam gas leak or Vizag gas leak (styrene gas) happened in a chemical plant which was under the management of LG Polymers Pvt. Ltd. The corporation was operating without environmental approval, putting the lives of countless individuals in jeopardy.⁵¹ What is critical to realise is that when an environmental disaster occurs, it impacts thousands of people and property in the surrounding area, not just a small number of individuals who are killed or injured. The Assam gas leak happened in a state-owned company, Oil India Limited. The NGT (National Green Tribunal) panel said that the company didn't have environmental clearance when there was a gas and oil leak.⁵² Environmental policies and organisations did not arise on

Cities Ranking, IQAIR, <https://www.iqair.com/in-en/world-most-polluted-cities?continent=&country=&state=&page=1&perPage=50&cities=>

⁴⁸ Laura Centemeri, Environmental Damage as Negative Externality: Uncertainty, Moral Complexity and the Limits of the Market, *ECON. & SOC.* (Dec. 15, 2009),

<https://journals.openedition.org/eces/266>.

⁴⁹ Tora Agarwala, Assam Gas Leak: Why It's Tough to Plug, and What Threat It Poses to the Area, *THE INDIAN EXPRESS*, June 9, 2020, <https://indianexpress.com/article/explained/assam-gas-leak-why-its-tough-to-plug-and-what-threat-it-poses-to-area-6447810/>.

⁵⁰ Sumit Bhattacharjee, Visakhapatnam Gas Leak | How Negligence and Violations Led to a Deadly Disaster, *THE HINDU*, June 7, 2020, <https://www.thehindu.com/news/cities/Visakhapatnam/visakhapatnam-gas-leak-how-negligence-and-violations-led-to-a-deadly-disaster/article31761949.ece>.

⁵¹ Jayashree Nandi, Vizag Polymer Unit Didn't Have Environmental Nod, *THE HINDUSTAN TIMES*, May 9, 2020, <https://www.hindustantimes.com/india-news/vizag-polymer-unit-didn-t-have-environmental-nod/story-CSMrE8I36C3k5TTR2fVsDM.html>. See also, Nihar Gokhale, LG Polymers Evaded Environmental Clearance for Years before Visakhapatnam Tragedy, *THE CARAVAN*, May 8, 2020, <https://caravanmagazine.in/environment/lg-polymers-evaded-environmental-clearance-for-years-before-visakhapatnam-tragedy>.

⁵² Utpal Parashar, Baghjan Blowout: Oil India Limited Operated Well without Mandatory Clearances, Says NGT Panel, *THE HINDUSTAN TIMES*, July 24, 2020, <https://www.hindustantimes.com/cities/baghjan-blowout-oil-india-limited-operated-well-without-mandatory-clearances-says-ngt/story-ajD4sTJbBCJ61AtLjcHeel.html>.

a national or worldwide level until the very life of humanity was deemed to be imperilled as a result of environmental deterioration.⁵³ The Bhopal Gas Tragedy is an example of the same. Industrialisation and determination to match with other developed countries was an ardent desire of India. This drove India to warmly welcome a slew of multinational corporations, all of which benefited significantly towards the nation's financial progress. Union Carbide of India Limited (UCIL) was one of such companies, which was a subsidiary of the American multinational Union Carbide Corporation (UCC).⁵⁴ Methyl isocyanate (MIC) escaped from UCIL plants, Bhopal resulting in one of the world's "deadliest" industrial disasters, killing over 2500 people and injuring over 200,000 others permanently. Following the Bhopal disaster, the Department of Environment was put under a lot of stress to come up with extensive laws to manage poisonous and hazardous substances, and the Environment Protection Act was adopted in 1986.⁵⁵

The most serious issue with environmental legislation is its faulty and haphazard implementation. They are not treated significantly and are regarded relatively lightly by private and public businesses, resulting in unavoidable environmental disasters and perils that destroy and damage the environment. So, if there is post-facto environmental clearance, the ecosystem will be harmed to unfathomable proportions, resulting in irreversible losses.

If the mere enactment of the laws relating to the protection of environment was to ensure a clean and pollution-free environment, then India would, perhaps, be the least polluted country in the world. But, this is not so. There are stated to be over 200 Central and State Statutes which have at least some concern with environment protection, either directly or indirectly. The plethora of such enactments has, unfortunately, not resulted in preventing environmental degradation which, on the contrary, has increased over the years.⁵⁶

The public hearing days have been reduced from thirty days to twenty days.⁵⁷ The cognizance of the violation would be done by the following:

(a) *suo moto* application of the project proponent; or

⁵³ DEMBOWSKI, *supra* note 12, at 65.

⁵⁴ C.M. Abraham & Sushila Abraham, *The Bhopal Case and the Development of Environmental Law in India*, 40 INT'L & COMP. L.Q. 334, 334 (1991).

⁵⁵ *Id* at 358.

⁵⁶ *Indian Council For Enviro-legal Action v. Union Of India And Others*, (1996) 5 SCC 281, para 25.

⁵⁷ EIA, 3

(b) reporting by any Government Authority; or

(c) found during the appraisal by Appraisal Committee; or

(d) found during the processing of application, if any, by the Regulatory Authority.⁵⁸

Many projects exempted from having “public consultation”.⁵⁹ The point 14(2)(e) mentions “all projects concerning national defence and security or involving other strategic considerations as determined by the Central Government”. However, what constitutes strategic development or consideration hasn’t been mentioned or described anywhere in the draft, which gives immense power to the central government to determine which project falls within the ambit of strategy and can be misused at times.

III. CORPORATE LOBBYING AND OLIGARCHS

Environmental governance is heavily impacted by corporate lobbying and driven by private interests. Corporate lobbying refers “to any attempt by individuals or private interest groups to influence the decisions of [the] government”.⁶⁰ The European Commission (EC) has defined lobbying as “all activities carried out with the objective of influencing the policy formulation and decision-making process”.⁶¹ Adrian Henriques defined it as “[t]he classic function of lobbying is to influence specific legislation or regulation. [...] Lobbying may continue with efforts to influence the way the judiciary will interpret legislation when (or before) it is finally in force”.⁶² While many countries, like the United States, France, Australia, Canada, etc., have considered lobbying as a legitimate activity⁶³ and are properly regulated through legislation, in India there is not any specific legislation to regulate.

Beyond legislations as traditional means of lobbying, corporations gradually seek to shape the approaches and conduct of various stakeholders. Consumers, rival businesses, press, NGOs, etc. are all influenced by corporations.⁶⁴ The top-five oil and gas companies have spent around

⁵⁸ EIA (1).

⁵⁹ EIA (1).

⁶⁰ Editors of Encyclopaedia Britannica, Lobbying, BRITANNICA, <https://www.britannica.com/topic/lobbying>.

⁶¹ JOSÉ CARLOS MARQUES & PETER UTTING, BUSINESS, POLITICS AND PUBLIC POLICY: IMPLICATIONS FOR INCLUSIVE DEVELOPMENT 161 (Palgrave Macmillan 2010).

⁶² ADRIAN HENRIQUES, CORPORATE TRUTH: THE LIMITS TO TRANSPARENCY 149 (Taylor & Francis 2013).

⁶³ Transparency and Integrity in Lobbying, OECD, <https://www.oecd.org/corruption/ethics/Lobbying-Brochure.pdf>.

⁶⁴ MARQUES & UTTING, *supra* note 61, at 162.

\$200 million a year on lobbying to postpone, hinder, or reject climate-change initiatives.⁶⁵ According to the report, the companies like Chevron, British Petroleum (BP), and ExxonMobil were the key businesses leading the field in aggressive lobbying to oppose a climate strategy to combat climate change.⁶⁶ Since 2011, Exxon, Chevron, Shell, BP, and American Petroleum Institute (API) have spent a total of \$452.6 million lobbying the federal government.⁶⁷ The lithograph, *Bosses of the Senate*, depicts a conventional view of lobbying in which the members of Congress accept their instructions directly from “affluent lobbyists” who hand out political charities and gifts in exchange for advantageous policies/legislation.⁶⁸ While incidents of abuse of power do occur, the whole lobbying process is far more complex and comprises wide spectrum of methodologies that are intended to influence governmental decisions.⁶⁹ However, in a democratic setup, many constructive types of lobbying exist, such as policy advocacy by organisations, citizens' groups, non-governmental organisations, and others, which have served an enormously constructive function in addressing average people's interests before legislators and policymakers. Lobbying is essential for democratic transparency and allowing interest groups to participate in the development of regulations and legislation. It's an important aspect of global growth, with participatory policymaking as a primary objective. Liz Dávid-Barrett said “[d]one well, lobbying ensures that groups with relevant expertise and those who will be affected by a policy can provide useful inputs. It can help ensure that public policy is made and public money spent in ways that serve the public interest. In practice, though, lobbying is often far from this ideal. Too often, it occurs in secret, misrepresents evidence or intent, serves narrow interests and is driven by private financial gain”.⁷⁰

One of the world's wealthiest individuals, Jeff Bezos, has stated that the climate problem is the “biggest threat to our planet,” and his firm, Amazon, has developed a promise for companies to

⁶⁵ Sandra Lavelle, Top Oil Firms Spending Millions Lobbying to Block Climate Change Policies, Says Report, THE GUARDIAN, Mar. 22, 2019, <https://www.theguardian.com/business/2019/mar/22/top-oil-firms-spending-millions-lobbying-to-block-climate-change-policies-says-report>.

⁶⁶ *Id.*

⁶⁷ Analysis of the Fossil Fuel Industry's Legislative Lobbying and Capital Expenditures Related to Climate Change—Staff Memo (Oct. 28, 2021), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Analysis%20of%20the%20Fossil%20Fuel%20Industrys%20Legislative%20Lobbying%20and%20Capital%20Expenditures%20Related%20to%20Climate%20Change%20-%20Staff%20Memo%20%2810.28.21%29.pdf>.

⁶⁸ Robert J. Brulle, The Climate Lobby: A Sectoral Analysis of Lobbying Spending on Climate Change in the USA, 2000 to 2016, 149 CLIMATIC CHANGE 289, 291 (2018).

⁶⁹ *Id.*

⁷⁰ Liz Dávid-Barrett, *Not another lobbying scandal: how to fix the UK's anti-corruption defences following the Greensill affair*, LSE BRITISH POLITICS AND POLICY, Date, <https://blogs.lse.ac.uk/politicsandpolicy/greensill-lobbying-reform/>.

reduce their “carbon emissions” to zero by 2040.⁷¹ Microsoft has pledged to be “carbon negative” within 10 years. However, these opulence-focused firms promote and actively lead the very lobbying groups that are seeking to bury the bill that addresses the climate issue.⁷² The conflict between declared environmental values and lobbying activities reveal tensions with respect to corporate governance on climate accountability. A report by BBC news stated “[a] leak of documents has shown how countries are trying to change a key scientific report on how to tackle climate change”.⁷³ According to the report, the records show that Japan, Saudi Arabia, and Australia, among other nations, have requested the United Nations to trivialise the necessity to transition quickly away from fossil fuels.⁷⁴ According to the leaked documents, India is among countries that have lobbied the UN against totally abandoning fossil fuels.⁷⁵ In India too, EIA 2020, dilution of emission norms, etc. are all products of lobbying.

IV. ECO-GOVERNMENTALITY

Increasing acknowledgment of environmental challenges in the present century has expanded the need for governance and regulation related to environmental behaviour and the earth. The environment and human relationships with it have emerged as key administrative and regulatory domains. Worldwide ecological challenges have given birth to a new set of “eco-knowledges”⁷⁶ in recent times, extending government authority over the entire globe.⁷⁷ As natural environment constructs became inextricably linked with the globalising expansion of capitalism relations and the frameworks of truth, knowledge, and power that build and sustain them, “the environment” emerged as a critical venue for the display of biopolitics.⁷⁸

Eco-governmentality or environmentality⁷⁹ is an integration of the environment and

⁷¹ Oliver Milman, Apple and Disney among Companies Backing Groups against US Climate Bill, THE GUARDIAN, Oct. 1, 2021, <https://www.theguardian.com/us-news/2021/oct/01/apple-amazon-microsoft-disney-lobby-groups-climate-bill-analysis>.

⁷² *Id.*

⁷³ Justin Rowlett & Tom Gerken, COP26: Document Leak Reveals Nations Lobbying to Change Key Climate Report, BBC NEWS, Oct. 21, 2021, <https://www.bbc.com/news/science-environment-58982445>.

⁷⁴ *Id.*

⁷⁵ COP26: India Says Coal Will Be Mainstay in Leaked Report, BBC NEWS, Oct. 22, 2021, <https://www.bbc.com/news/world-asia-india-58991207>.

⁷⁶ Foucault has always emphasised that knowledge and truth are always produced and created by the power structures in the society.

⁷⁷ Karin Bäckstrand, Planting Trees to Mitigate Climate Change: Contested Discourses of Ecological Modernization, Green Governmentality and Civic Environmentalism, 6 GLOBAL ENVTL. POL. 54 (2006).

⁷⁸ Catriona Sandilands, Sex at the Limits, in DISCOURSES OF THE ENVIRONMENT 84 (Eric Darier ed., Blackwell Publishers 1998).

⁷⁹ Peili Pey & Md. Saidul Islam, Eco-Governmentality: A Discursive Analysis of State-NGOs-Youth Relations in Singapore, 6 SOC. SCI. 1, 3 (2017).

Foucauldian governmentality; the term refers to a method of analysing environmental politics that takes the theoretical foundations of power/knowledge and power structures.⁸⁰ Arun Agrawal referred environmentality “to the knowledges, politics, institutions, and subjectivities that come to be linked together with the emergence of the environment as a domain that requires regulation and protection. Regulation always demands new knowledge. But the production of new knowledges is intimately connected to the shaping of practices and human subjectivities in relation to the environment”. It is an augmentation of Foucauldian principles of self-regulation and power-knowledge to the sphere of the environment.⁸¹

According to Foucault, power generates the subject and emerges via relationships between subjects, giving a distinct concept of power transcending being acted upon. Power is not held by any one entity, but is built and shared through a web of individuals based on relationships. Governmentality studies show how power is not just oppressive but also beneficial, encouraging certain forms of knowledge, regulatory tactics, and subject stances that serve the best interests.⁸² Timothy Luke said that the Worldwatch Institute was founded in 1974, in the midst of economic and political panic fueled by the 1973 oil crisis.⁸³ The Worldwatch Institute made statements on the water crisis, mineral economics, and overcrowding of the population.⁸⁴ In Worldwatch book publication, *Saving the Planet: How to shape an Environmentally Sustainable Society*, 1991, Luke examine “how the eco-knowledge generated by the Worldwatch Institute might be seen as a mediation of environmentality in a new regime of geo-power”.⁸⁵ He says such institutions provide an example of environmentality regimes used for eco-knowledge and geo-power.⁸⁶

The Worldwatch book stated “[e]ven the apparent problems—the U.S. budget deficit, Third World debt, and gyrating oil prices—are considered *minor* [italics] by most economic planners. [...] To the extent that constraints on economic expansion [...] it is in terms of inadequate

⁸⁰ ARUN AGRAWAL, ENVIRONMENTALITY: TECHNOLOGIES OF GOVERNMENT AND THE MAKING OF SUBJECTS 8 (Duke University Press Books 2005).

⁸¹ Pey & Islam, supra note 79.

⁸² Stephanie Rutherford, Environmentality and Green Governmentality, in DOUGLAS RICHARDSON ET. AL. (eds.), THE INTERNATIONAL ENCYCLOPEDIA OF GEOGRAPHY: PEOPLE, THE EARTH, ENVIRONMENT, AND TECHNOLOGY 1 (John Wiley & Sons, Ltd, 2017).

⁸³ Timothy W. Luke, On Environmentality: Geo-Power and Eco-Knowledge in the Discourses of Contemporary Environmentalism, CULTURAL CRITIQUE 57, 58 (1995).

⁸⁴ *Id* at 59.

⁸⁵ *Id*.

⁸⁶ *Id* at 71.

demand growth rather than limits imposed by the earth's resources".⁸⁷ The Worldwatch Institute has expressed its view of the geo-power/eco-knowledge as resource managerialism at global level.⁸⁸ "Resource managerialism" is an eco-knowledge of "modern governmentality".⁸⁹ As environmental development limitations are established or specified, nations are obliged to become "environmental protection agencies".⁹⁰ Governmental discourses deliberately deploy specific predictions, regulations, and processes to impose specific economic and societal conceptions. As a consequence, they produce "truths" or "knowledge" that also function as forms of power with enormous credibility and efficacy reserves.⁹¹ Such narratives can legitimise or discredit the prospects of creating certain structures, behaviours, or conceptions in society at large because they categorize, organise, and evaluate bigger conceptions of truth.⁹²

A democratic republic is a kind of government that is based on the people's will. This indicates that the citizens' support of the government's rule is strong. People were given the option to decide and choose elected members to represent them in democracy through suffrage in democratic elections. Democracy also implies that those who have been elected are held answerable to the individuals who voted for them. They must act and follow through on the commitments they made before the election to ensure that local communities are included in future agendas. All governmental agents and authorities must be accessible, translucent, and make appropriate use of what they have been assigned. The basic premise of justice is that an individual whose rights have been infringed upon receives what is right and equitable for him and makes the accused person liable for their conduct. Environmental justice is the way ahead.

Environmental justice could be achieved only if we drift away from the principle of anthropocentric to ecocentric. Many of our principles like sustainable development, polluter-pays principle, inter-generational equity have their roots in anthropocentric principles.⁹³

The Calcutta High Court in the case of *People United for Better Living in Calcutta Public v. State of West Bengal* held:

⁸⁷ LESTER R. BROWN, CHRISTOPHER FLAVIN AND SANDRA POSTEL, *SAVING THE PLANET: HOW TO SHAPE AN ENVIRONMENTALLY SUSTAINABLE SOCIETY* 22 (Orient Longman, 1991).

⁸⁸ W. Luke, *supra* note 83 at 72.

⁸⁹ *Id* at 70.

⁹⁰ *Id* at 69.

⁹¹ *Id.*

⁹² *Id.*

⁹³ T.N. Godavarman Thirumulpad vs Union Of India & Ors, (1997) 2 SCC 267.

While it is true that in a developing country there shall have to be developments, but that development shall have to be in closest possible harmony with the environment, as otherwise there would be development but no environment, which would result in total devastation, though, however, may not be felt in praesenti but at some future point of time, but then it would be too late in the day, however, to control and improve the environment. [...] The present day society has a responsibility towards the posterity for their proper growth and development so as to allow the posterity to breathe normally and live in a cleaner environment and have a consequent fuller development.⁹⁴

CONCLUSION

The environmental governance in India is captured by economic and corporate interests rendering even well-intentioned legislation hollow as it would prioritise the needs of the state while neglecting or blaming tribal communities or other marginalised people for the pollution. As the Indian legislative body continues to enact numerous laws rather than addressing the root causes of dissatisfaction and disenchantment is like pouring old wine into a new bottle. The draft of National Forest Policy of 2018 or the EIA Notification of 2020 are prominent examples of unregulated corporate and political neoliberal ideologies reflecting and shaping environmental and tribal governance while disposing them through policy instruments.

⁹⁴ People United for Better Living in Calcutta - Public & Another v. State of W.B. & Others, AIR 1993 CAL 215.