**Urban Politics of Human Rights**

By: -

**ANISHKA JAIDEV GOVEKAR**

**1STYr LL.M.**

**SYMBIOSIS LAW SCHOOL, PUNE**

**Mob.: - 7744832115**

**E-mail: anishkagovenkar@gmail.com**



www.probono-india.in

**May 15, 2020**

**Statement of Problem**

The proposed research seeks to view the rising rate of politics in urban areas and understand the existent relation between Environment laws and human rights and its drawbacks.

**Research Questions**

1. Whether there is urban politics behind Environmental Pollution laws in India?

**Research Methodology**

The research proposed to be conducted demands a methodology which involves reading of case comments, reports by various international organizations, articles published in reputed journals and online databases. The researcher aims to adopt a doctrinal methodology. The rationale behind is to collate the relevant reading material and assimilate the various viewpoints on the proposed topic of research which shall prove to be most befitting.

**Scope of Research**

The study helps to understand the emerging rate of Environmental Human Rights that often leads to Urban Politics in India. International laws will be dealt with only for comparative value and the main crux of the research would concentrate on the Indian scenario.

**Limitations of Research**

The researchers being human and being subject to the limits of human performance will encounter certain limitations in the process of this study. This includes limitation of time, effort and resources. The subject for the proposed research is expansive and very relevant in society. Given its vastness, detailed critical analysis can be undertaken. A further research can be done from a historical point of view articulating the changing role of Environmental Human Rights in the society.

**Abstract**

Human rights may be viewed as a collection of ideas "containing and implementing behavioral norms, a subset differentiated by its legal nature." Yet, while its legal form distinguishes human rights, not all actors in the city always refer to human rights in their legal form. In many cases, human rights are mobilized only discursively, with no specific reference to the law but only to the larger idea. Since cities are part of the state, they have an duty on the state to uphold and enforce the international law of which the state is a party (Nijman, 2016). One might find this translated into local legislation and it would indicate that in their own actions the local government should respect human rights norms.A more recent trend is that, based on human rights principles, cities are now specifically and actively implementing policies and programs and being part of community networks.Human rights are though created at international stage it needs to be implemented by country government and implementation becomes easy when power of its implementation be given to the local and municipal level. Even environment protection is one of such example. Every person should have right to get clean and healthy environment as per international laws. And all citizens must have right to live in healthy and clean environment is a fundamental right given by constitution in India. And to protect environment and take necessary precautions, government has distributed its powers of implementation to local and municipality level like cleaning the city and maintaining natural environment etc. But sometimes government is modifying human rights as per their convenience due to various political and other reasons and due to which main principle behind the Human Rights remains un-served.

**Introduction**

In recent times, attention has grown rapidly for the emerging relationship between cities and global norms on human rights. Local governments profile themselves as important actors on the global stage when it comes to formulating and realizing human rights are part of city networks that focus on human rights and maintain direct relationships with international organizations.At the same time, in urban relations, civil rights principles are quoted, challenged and mediated on the table. Local leaders, both in the Urban North and South, focus their strategies directly or implicitly on principles of civil rights. When implementing these global norms in their communities, they have local definitions and modifications, and suggest basic urban human rights common in their localities, such as a right to public transport or a right to tranquility. Civil society organizations rely for city municipalities to utilize them as a framework for proactive public interest action where human rights principles are alleged to be breached by community legislation, use human rights for fundamental support in civic or legislative debates. As such, one might talk of a two-way interplay between urban and human rights conceptions.Human rights affect urban life, and become important, when the social patterns urbanize human rights. These efforts have tremendous potential to further realize human rights, as well as to build secure, sustainable and equitable communities in line with SDG11's ambitions. The urban level is also viewed as the optimal standard for human rights being achieved.Local officials, given that they are directly chosen, are supposed to function in very direct contact with their people. Therefore, city councils are willing to offer context-specific understandings of human rights and to better align human rights and other priorities in the public environment. Furthermore, local councils, relative to their national peers, are proactive and willing to take decisive action when appropriate. But social players will use human rights as a weapon for the healthy and the bad and politics are still concerned, which needs inspection.

**Human Rights and Environmental protection**

The relationship between human rights and environmental issues has become a matter of heated debate in recent years. The connection between the two emphasizes that a decent physical environment is a precondition for a dignified and worthy life.Quite precisely, a healthy environmental ecosystem needs to deal with, for example, noise emissions, dust contamination, surface water emissions, and hazardous material waste. Environmental pollution and human rights were first placed on the international agenda in 1972, at the UN Human Environment Meeting.Principle 1 of the 'Stockholm Declaration on the Natural Environment' lays down a framework for connecting natural rights and the conservation of the climate, noting that man has a 'fundamental right to democracy, equality and acceptable living standards, in a quality atmosphere that ensures a life of integrity and well-being, and has a sacred duty to preserve and enhance the environment. The United Nations Environment Program (UNEP) was established after the 1972 Conference.

Political rights and the climate focused on civil rights commitments on the part of States and their definition by human rights organizations.
On the basis of the study, FIDH holds the conviction that human rights and the conservation of the environment are interdependent, while a secure, clean and sustainable atmosphere is necessary for the enjoyment of human rights, the exercising of human rights, including the right to freedom of speech, education, engagement and redress, is vital to the environmental security. The FIDH has served over the last 10 years to reaffirm the importance of the Universal Declaration of Human Rights in the current discourse on climate change, hazardous waste and electricity. Environmental disruption specifically undermines the right of indigenous communities to life, safety, water, growth, accommodation, employment, culture and rights (see, for example, the role of FIDH on the COP21 negotiations.Sensitive people have the right to be shielded from harmful environmental changes, such as contaminated water, land and air, erosion and displacements arising from climate change desertification or flooding.

**Whether there is urban politics behind Environmental Pollution laws in India?**

The rise of India's growing climate problem, mass demonstrations and resistance parties, often at local level. The Chipko actions to conserve the mountain woods and the widespread protests against the Narmada Dam have received media attention globally. These are instances of the gathering support from grassroots democratic resistance. List them as the most influential indicators of environmental protection initiatives throughout India. India has a long history of disagreements about natural resource use. Disputes with a strong environmental dimension emerged at least after the 19th century, British law. Arguments regarding the freedom to use forest products or exposure to resources, though, were instead seen as being of a social rather than an economic kind. Ecological issues were interpreted as resource distribution matters not related to society as a whole long-term ability to survive.It stresses that certain environmental problems in India have a finer social dimension than in the developing countries up until now. The health and security of those poor people living at subsistence level are usually affected if land usage, access to water or public space is in dispute.Sumi Krishna (1996) points out that the focus is also likely to be on preserving their immediate wellbeing for the vulnerable people engaged in disputes perceived by academics or journalists as environmentally friendly. That includes the globally recognized movements of Chipko and Narmada.In the first case it was at risk the freedom of peasants to enter and use the wood. In the second scenario, farmers aren't going to flood their property. Ecological thinking has been a tool for these campaigns in the social battle to secure the wellbeing. This helped to build coalitions that transcended single communities.

**Environment laws in India**

The Prime Minister has created a National Environmental Policy and Co-Ordination Committee with B. P. Pal (FRS). The National Emission Control Board was formed in 1972 and the State boards followed. The Environment Department came into existence on 1 November 1980 accompanied by state agencies.Environmental laws on water (1974), air (1981), and land management (1981), as well as the Environment Protection (1986) umbrella act, were enacted. In 1992 the United Nations Conference on Climate and Development released an Environment Policy and Plan Declaration. Environment Impact Assessment for 32 sectors became compulsory by a notification passed in 1992. Environmental approval committees were created for each sectoral review, and all authority was concentrated on the Centre. In 1996, India became a nation to adopt the framework of environmental governance with a series of further notifications about coastal zone management, hill growth, Waste treatment (biomedical, chemical, hazardous); Public interest cases received redress through the lower courts and the Supreme Court.

Now, however, it all appears to shift in the opposite direction. There is no separate Union Minister for Environment, Forestry and Climate Change (MoEFCC), for the first time. The next move was a 25 per cent expenditure reduction for Ministry from the central government.India's government is shrugging its obligations of ensuring environment-conserving growth. Expectations were strong as bills were introduced on the Right to Nature, Right to Meat, Right to 100 days of work and Right to Knowledge. Yet now it's becoming clear the evolutionary cycle of "regressive metamorphosis."

The most recent one arrived in 2014 and 2016 from the initial notice to change the environmental risk statement (2006). The amendments expand the authority of state governments to issue environmental clearance for construction projects, targeting in particular the contentious mining and river valley project sectors.As per the 2016 law, district environmental approval committees are now to be established. Significant improvements can be seen as states are granted the right to clear river valley project of 5000-50,000 hectares (ha), replacing the earlier 2000-10,000 ha regulation. The problem arises as to whether the consent committee at the state level will work efficiently. Will they work individually of the regulation influence of the ruling government?

It should also be noticed that the Ministry of the Environment aims to "shift the Supreme Court toward the National Green Court to exclude the real estate industry from environmental regulations." MoEFCC 's notice on 9 December 2016 removed real estate developments from environmental impact evaluation of up to 1.50.00 square meters of built-up land. The said notice of the change is seen as a tactic to stop having environmental evaluations available. The Green Bench estimated that the construction industry produces 22 percent of India 's overall annual carbon dioxide emissions, which will affect the country 's pledge to reduce carbon dioxide emissions under the Paris Protocol.In addition, local governments and regional companies were required to set up environmental boards to regulate the environmental dimensions of building development and real estate developments[[1]](#footnote-2). The competence of such bodies to function in particular without influencing the ruling political system will obviously be highly questionable.

It all started with de-notifying forests from inside the declared protected area network and how the world is moving slowly towards a common goal — development at all costs. India shall respect 17 Sustainable Development Goals (SDGs) as a signatory to the resolution of the United Nations. how to reconcile these ambitions with real behavior seen in the region.

Environmental security and conservation and fair usage of natural resources and their need are expressed in India's constitutional structure as well as in India's foreign obligations such as its Nationally Defined Participation goals.Under Part IVA of the Constitution (Article 51A- Fundamental Duties), the Constitution gives every citizen a duty to improve and protect nature, and to have compassion for all living beings.Moreover, the Constitution provided for in Section IV (Article 48A- Guideline Concepts of State Policies) stipulates that the State shall strive to develop and conserve the atmosphere and the country's forests and wildlife.

Founded in 1985, MoEF is currently the country's top administrative agency for governing and maintaining environmental security and carries out the legislative and regulatory system for the same. A variety of environmental legislations have been in force since the 1970s.Together the MoEF and the pollution control boards "CPCB," i.e. the National Pollution Control Board and "SPCBs," i.e. State Pollution Control Boards shape the legislative and institutional heart of the industry.

Some of the important environmental protection legislation are as follows:

* The National Green Tribunal Act, 2010) has been enacted with the objectives that allow for creation of a National Green Tribunal (NGT) for the fair and expeditious disposal of cases related that environment securityand the protection of trees and other natural resources, including the compliance of every legislation pertaining to the climate and the availability of rehabilitation and reimbursement for harm to individuals and properties and similar or incidental matters.
* The Climate (Pollution Prevention and Control Act) Act, 1981 (the 'Ice Act') provides for the avoidance, regulation and elimination of climate pollution and for the setting up of Central and State Boards with a view to achieving the above purposes.
* The Water Protection and Pollution Control Act, 1974 (the "Water Act") was implemented to provide for the protection and regulation of water contamination and the conservation or regeneration of water in the country.It also calls for the creation of boards for water contamination reduction and control in order to serve the above purposes. The Water Act forbids contaminants from discharging into water sources above a defined level and imposes sanctions for non-compliance. At the Centre, the Water Act has established the CPCB which sets standards for water pollution prevention and control. SPCBs function at the state level under the direction of the CPCB and the state government.
* The Environmental Protection Act, 1986 (the "Green Act") calls for sustainable conservation and change. The Environment Protection Act lays out the structure for researching, preparing and enforcing long-term environmental health standards and developing a program of timely and effective response to environmental threatening circumstances. It is a legislative umbrella designed to provide a framework for the coordination of central and state authorities established under the 1974 Water Act and the Air Act. Under s 2(a) of the Environment Act the word "climate" is interpreted in a rather specific sense. It involves water, air and soil, and the interrelationship that occurs between water, air, and earth, and humans, other living beings, plants, micro-organisms, and objects.
* Hazardous waste is any waste that, by way of either of its solid, mechanical, reactive, radioactive, flammable, volatile or corrosive features, poses danger to health or the atmosphere, whether alone or in conjunction with other waste or substances.

Additionally, there are also other environmental rules, including-

* The Natural Life (Protection) Act of 1972 was adopted with the intention of successfully preserving this country's biodiversity and regulating the hunting, dumping and illicit trading in biodiversity and its derivatives. The Act was revised in January 2003, and the provision for crimes under the Act was made stricter.The Ministry introduced more constitutional changes by adopting more stringent legislation to improve the Act. The goal is to conserve the mentioned endangered flora and fauna and conservation areas of ecological significance.
* The Land Management Act of 1980 was introduced to help protect forests in the region. It strictly prohibits and controls the de-reservation of forests or the use of forest land for non-farm purposes without the prior Central Government permission. To this end, the Act sets out the prerequisites for the non-forestry diversion of forest land.
* The 1991 Public Liability Insurance Act defined the purpose of paying coverage to victims of an injury arising from the storage of any dangerous material. The Act applies to all proprietors involved in the production or handling of any hazardous chemicals.)
* The 2002 Biological Diversity Act was born out of India's attempt to achieve the goals set out in the 1992 UN Convention on Biological Diversity (CBD), which recognizes the sovereign right of states to use their own Biological Resources. The Act seeks to protect the biological resources and associated information and to promote safe access to them. The National Biodiversity Authority was established in Chennai for the purpose of implementing the Act's objects.
* Coastal Protection Zone Notification released by the Ministry of Environment and Forests Vide Notification, dated 06 January 2011 with the aim of safeguarding and securing coastal resources for the survival of fishing communities and other local populations residing in the coastal regionsAnd to encourage environmental growth focused on science standards, taking into consideration the risks of natural disasters in coastal regions and increasing water levels induced by global warming.

**Why would preserving the ecosystem be viewed as a human rights issue?**

There are several different responses. Most obviously, and contradictory to the majority of international environmental law, a human rights viewpoint discusses specifically the environmental effects on individual human activity, safety, private life and properties rather than on other states or the climate in general. It may serve to secure higher environmental quality standards, based on states' obligation to take action to control pollution that affects health and private life. It helps in this respect above all to promote the rule of law: Governments are primarily accountable for their inability to monitor and manage environmental pollution, including those caused by businesses, and for promoting access to justice and implementing environmental laws and court decisions. Finally, the extension of economic and social rights to include elements of public concern for the protection of the environment has brought new life to the idea that there is, or should be, in some form, a right to a decent environment.

Unlike human rights trials, the extent at which the UN human rights community takes environmental problems seriously has not been clear until now. There is no doubt that the UN institutions recognize that legal, political , economic and social rights have environmental consequences which could help to ensure some of the basic qualities of a decent community. A 2009 report for the Office of the High Commissioner for Human Rights (OHCHR) highlights the main point: 'While universal human rights treaties do not apply to a particular right to a secure and healthy environment, the human rights treaty bodies of the United Nations all acknowledge the intrinsic connection between the environment and the realization of a variety of human rights, such as the right to life.

 **A Right to a Decent Environment**

A value assessment is what makes a good setting, in which fair individuals may vary. In this context, policy choices abound: what weight natural resource exploitation should have over nature protection, industrial development over air and water quality, land-use development over forest and wetland conservation , energy consumption over climate change risks,As different governments and international organizations pursue their own priorities and make their own value judgments, moderated only to some extent by international agreements on issues such as climate change and the conservation of biological diversity, these choices can result in wide diversity of policy and interpretation.The benefit of looking at environmental conservation from the effect of adverse practices on other human rights, such as health, private life or properties, is that it directs emphasis to what applies most to individuals: to the disadvantage of significant, globally protected principles toward unregulated environmental damage. This method removes the need to describe certain terms as a reasonable or good setting. Instead, it helps the court to reconcile regard for the freedoms of treaties and economic growth. The Strasbourg Court correctly points out that 'state agencies are better positioned to take decisions on environmental problems, which also have complex social and technological implications. Therefore, 144 It is entirely plausible to conclude that the victims of trans-boundary pollution fall within the 'jurisdiction' of the State of pollution – in the most direct sense of legal jurisdiction – in order to comply with the 'controls' of the State of pollution. The power of the national courts to consider lawsuits alleging cross-border damage to extraterritorial claimants is Recognized in the form of private contractual law and corporate responsibility agreements. As we mentioned at the beginning of this portion, in these situations, the Aarhus Convention and the previous OECD procedure allow the polluting State to make allowance for non-discriminatory access to justice within its own legal framework. Aarhus refers, in general words, to the 'people' or 'groups interested,' without discriminating between those within the State and those outside its boundaries. Article 3(9) of the Non-Discrimination Article requires that ' the public shall have access to information, have the opportunity to take part in decision-making and have access to justice in environmental matters without discrimination as regards nationality or domicile and, in the case of a legal person, without discrimination as to whether he has his registered office or an effective centerof its activities.’ The principle of non-discrimination has also been adopted by the Commission on International Law.

**Urban politics**

Urban environmental policy refers to 'the struggles over the meanings and practices of nature and the city that shape identities that make certain forms of urban metabolism possible while foreclosing others.' The collection of papers on this subject explores environmental policy in a wide range of cities, from the most frequently discussed metro stations including Delhi, Bangalore and Chennai, But also the diplomacy of the Puri and Lehcenters. Using various entry points and theoretical orientations, each of these cases contributes to an interconnected set of discussions on the politization of India's urban environment. In particular, they explore how the environment is intertwined with urban citizenship issues; the role that environmental knowledge plays in urban environmental policy; and the location of urban political ecology.

Urbanization is understood to mean "a political, social and economic process that is intertwined with ecological processes and produced by various scales of power relations".Since cities are socio-environmental entities, a hybrid process fuses the environment and the urban. With this conceptualization, it is clear that the larger socio-economic and political changes described above have environmental aspects.In the one side, global prosperity and rising usage, as well as continued urbanization, have environmental consequences. As Rademacher and Siva Ramakrishnan say, "the increasing growth and resource-intensive urbanism has an impact on daily living conditions and the ecological mechanisms that underlie them.

**Whether India needs sustainable development to protect its environment?**

International leaders in the year 2000 vowed to halve severe poverty by 2015 with a regional initiative dubbed the Millennium Development Goals (MDGs). Thanks to a global effort combining millions of change makers, real progress has been made with India in achieving its Sustainable Development 2030. However, it is necessary to pursue this development agenda in a holistic, sustainable manner, in accordance with the needs of the environment in which we exist, using the resources at our disposal to achieve the world we want. Doing so will require that we all work in tandem and act on the things that matter most to people everywhere.

With the ever-increasing economies and the need for and greed for more, the Sustainable Development doctrine is becoming the most relevant principle in today's times. Sustainable Development doctrine has been most commonly defined as development that meets the needs of the present, without compromising future generations ' ability to meet their own needs. It has two main principles to it:

• The concept of needs, the basic needs of the world's poor, which should be given top priority; and

• The idea of the limitations imposed by the state of technology and social organization on the ability of the environment to meet current and future needs.This definition emanates from Our Common Future, also known as the Brundtland Report published by World Commission on Environment and Development in 1987.

The concept of "Sustainable Growth" was first addressed in the Stockholm Declaration of 1972. The World Commission on Environment and Development then submitted its report in 1987, also known as the Brunt-land Commission Report, in which efforts were made to link economic development and environmental protection. The Rio Declaration on Climate and Sustainability codified the concept of sustainable growth in 1992.

Simply stated, the theory of sustainable growth aims to create a compromise between production and the climate. It encourages intergenerational equality, i.e. greater quality of life for current and future generations.The development benefits should be matched by the environmental impact of such developments. While development is important or indeed necessary, the environmental impact should be studied before such development is undertaken.The basic concept of sustainable development aims to maintain a balance between economic advancement and environmental protection in order to meet the needs of present and future generations. The concepts of Polluter Paying and Precautionary Principle are two foundations of the philosophy of sustainable growth.

**Judicial Overview**

India's growing economy has seen rampant industrialization and development in the recent past, with adverse environmental impacts. Witnessing such degradation, India's Supreme Court has played a significant role in shaping and adopting the Sustainable Development doctrine in a bid to protect the environment. Justice Kuldip Singh, who came to be known as the 'Green Judge,' led this crusade to protect the environment.

The theory of sustainable growth has been introduced by the Supreme Court in the case of the Vellore Resident Welfare Platform vs. Union of India. The petitioners submitted a petition in the public interest pursuant to Article 32 of the Indian Constitution against pollution caused by the discharge of untreated tanneries and other industries in the Palar River in Tamil Nadu State. In the present case, the Supreme Court ruled that the precautionary clause and the polluter pays provision is part of the environmental law of India. The Court also ruled that: 'Remediation of the affected ecosystem is part of the 'Sustainable Growth' cycle and, as such, the polluter is liable to bear the costs to the actual sufferers as well as the costs of restoring the corrupted ecology.'

Subsequently, the Apex Court clarified and introduced the concept of sustainable growth in a variety of judgments.

 The Hon'ble Supreme Court of India in Narmada BachaoAndolan vs. Union of India observed that "Sustainable growth implies the form or scale of growth that can be supported by design or by ecology with or without mitigation."

In T.N. GodavaramanThirumulpad vs. Union of India, the Hon'ble Supreme Court said "as a preface issue, we should say that commitment to the concept of Sustainable Growth is now a constitutional obligation. How much harm has to be determined on the basis of each case to the ecosystem and ecology?"

The Apex Court held in the Indian Council of Enviro-Legal Action vs. Union of India: "Although economic growth should not be permitted to take place at the cost of biodiversity or by causing widespread degradation and infringement of the ecosystem; at the same time, the need to conserve nature and the ecosystem should not impede economic and other innovations." Therefore, both have been given importance to development.

The Indian Supreme Court emphasized the need to set up specialized environmental courts for the effective and expeditious disposal of cases involving environmental issues, as the right to a healthy environment has been construed as part of the right to life in accordance with Article 21.

To maintain a balance between development and environment, the Sustainable Development principle, which encompasses the 'Precautionary Principle,' must be followed whilst planning a project. By implementing and adopting mitigation steps, these will prevent any possible environmental effect a project could have. From the stage of site selection to the implementation of effective and environmentally sustainable steps at point and aspect of development to prevent or mitigate deterioration of the ecosystem, to the procurement of mitigation measures and analysis of the effect of a project on the climate / eco-system and, ultimately, restorative intervention in the event of any deterioration of today's environment is crucial

**Conclusion**

Today's developers need to be environmentally aware and follow a renewable, eco-friendly, science and energy-efficient mind-set for each project level. Such initiatives will rise the total project spending but over the longer term the gains will outweigh those costs. In implementing its INDCs and National Climate Change Action Plan, the Indian Government supports developers and facilitates the usage of renewable and energy-efficient initiatives, and developers should use these opportunities to reduce any potential carbon costs.

Sustainable Development is undeniably the need of the hour. The introduction of energy-efficient technologies makes for a harmonious union between growth and climate. It is time for each of us to adopt a 'energy-efficient and green' attitude and use the natural resources available fairly, sensibly and save them for our future generations, because the best way to predict the future is to create it.

**References**

1. Human Rights and the Environment: Where Next? Alan Boyle, *European Journal of International Law*, Volume 23, Issue 3, August 2012, Pages 613–642, https://doi.org/10.1093/ejil/chs054
2. Introduction. EnvironnementalPolitis in Urban India,Anna Zimmer and Natasha Cornea https://doi.org/10.4000/samaj.4247
3. CHAPTER FOUR Environment and Politics in India
4. India: Need For Sustainable Development12 January 2012 by Pragya Johri
1. [↑](#footnote-ref-2)