

Climate Change and Indian Lawyers:

- A call to engage on Climate Justice

Background and context

The need for conservation and sustainable use of natural resources has been expressed in Indian scriptures, and is reflected in the constitutional, legislative and policy framework as also in the international commitments of the country. The real impetus for bringing about a well-developed framework came only after the UN Conference on the Human Environment (Stockholm, 1972). Soon after this declaration, the then National Council for Environmental Policy and Planning within the Department of Science and Technology, which later evolved into the department of Environment and Forests and rechristened again to Forest, Environment and Climate Change (MoEFCC) became the apex administrative body in the country for regulating and ensuring environmental protection. MoEFCC and the pollution control boards (CPCB i.e. Central Pollution Control Board and State Pollution Control Boards) have together formed the regulatory and administrative core of the sector.

Further, the Indian constitution laid down under Article 48-A¹ and Article 51-A² (g) made environment protection a fundamental duty of the *state* and *every citizen* respectively. We have more than 200 central and state legislations which deal with environmental issues of forest, air and water including other national policies³. Despite all these legislations, India faces formidable challenges in addressing the environment concerns. A report by Yale University in July 2016 ranked India 141st among 180 countries worldwide in Environmental Performance Index (EPI), worse than all the “competing” BRICS countries.

¹ *"The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country".*

² *"It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures."*

³ *Other Policies like Policy Statement on Environment and Development (PSED, 1992); The National Conservation Strategy (NCS, 1992); The National Policy on Pollution Abatement (NPPA, 1992)*

This highlights the gross failure of these policies in protecting our environment – air, water, forest, land, wildlife and biodiversity. Reasons for failing to uphold the constitutional mandate and the wellbeing of the people are many. Some of these relate to too many different laws and lack of coordination between the agencies involved; lack of adequate skill and infrastructure, poor understanding of the legislation, jurisdictional conflict between different agencies among others. Above all, there seems to be a lack of a comprehensive and an integrated law on environmental protection for meaningful enforcement. The other major reason for inefficiency in the enforcement apparatus relates to non-compliance of more resourceful industries who often camouflage their violations and exert undue pressure on the enforcement agencies. Pollution control boards are also not vested with power to punish the violators. Many believe that the reasons why the laws (from above) have failed is because of lack of social awareness (from below).

This is not to say that nothing has worked. There are positive examples of the Taj Mahal case, Ganges pollution case, Groundwater case and the very extraordinary Delhi CNG case, which would have been sabotaged had it not been for the very crucial role played by the Supreme Court. The recent landmark judgement in Odisha on iron ore⁴ mining scandal of enormous proportions and one involving megabucks if continued unchecked is another case example. These examples highlight the role vested with the legal community in upholding the constitutional mandate and its contribution to Climate Justice and sustainable development.

In recognition of the problems and for the purpose of efficient and effective enforcement of these laws, it was necessary to set up Environment Courts for speedy disposal of the cases. Years of deliberation has led to the creation of the National Green Tribunal (NGT) to address environmental issues in India. As is understood, a fundamental problem facing the judicial system in India is speedy disposal of cases. The problem is even more pronounced where environmental issues are concerned. A study done by the Delhi-based Centre for Science and Environment (CSE) on the status of cases filed by the state pollution control boards showed high pendency⁵ and sharp jumps in the number of cases year on year. The number of cases being instituted each year is increasing phenomenally. Between 2012 -2016, there has been

⁴ *Between 2001 and 2010 more than 2155 lakh metric tonnes of iron ore and manganese ore worth Rs 17,576 crore was illegally mined in the state of Odisha. It destroyed not just the environment and forest but also caused untold misery to tribals living in the districts of Keonjhar, Sundergarh and Mayurbhanj (Business Standard , August 2017)*

⁵ *As many as 96 per cent, 76 per cent and 55 per cent of cases filed by Chhattisgarh, Odisha and Karnataka boards respectively, were pending in the lower courts.*

a twelve fold increase in the number of cases ⁶. This has put enormous pressures on NGT. This also reflects an increasing environmental crisis in the country. .The biggest challenge that people face is the effective access to justice.

The Climate Justice Imperative

At the international level India has argued that a just response to climate change has to be rooted in Climate Justice. However, India's international stance on 'Climate Justice' needs to be translated at the national level too. The impacts of local climate variability is being felt by the local communities and these communities are also the first victims of Climate Change. With these communities facing "double exposure" of Development and now Climate Change' raises the question of climate Justice which should form the core concern in addressing environmental and climate litigations. Ironically big polluting companies are contributing the most to climate change ⁷ while also polluting land air, water, forests and increasing Green House Gas Emissions!

The CONSULTATION :

Recognizing the urgency and seriousness particularly of the climate crisis, and the unique advocacy and educational role that lawyers can play, a consultation with the lawyer community is being proposed by a concerned group of civil society. The consultation will be organised at Mayfair hotel in Bhubaneswar on the 25th November from 9:30 -1:30 pm. The consultation will be attended by eminent lawyers from the Supreme Court of India, Odisha high court , Civil society representatives, corporates from Odisha and media representatives. The civil society group envisions a proactive role that lawyers can play in advocating a clear regulatory regime to address Greenhouse gas emissions within the country and the states.

Annexure 1: List of the main environmental laws in India

Annexure 2: List of environmental cases in Odisha and their status

⁶ *The number of cases filed has increased from just 548 in 2012 to 3,116 in 2013 to 2,348 in the first three months of 2014 and 8,829 in 2016.*

⁷ *Big companies are responsible for emissions carbon levy. 90% of coal oil and gas companies account for 63 % of Carbon emissions*