**The *Void* in Environment Laws of India**

**Abstract**:

The 2021 COP26 Summit witnessed PM Modi pledging net zero carbon emissions by 2070. While these ambitions and pledge are highly appreciated, there is more to environment than just carbon emissions. Unlike the usual political motives that affect a few, changes in environment effect all. But the government, and the opposition, fail to raise concerns of the same magnitude around and about it. From easing of environmental clearances, to reducing the number of independent members in National Board for Wildlife and to Central Pollution Control Board allowing thermal power plants to release pollutants in violation of the 2015 limits (set by the government), the issue at hand is very serious. It comes as no surprise that 22 of world's out 30 most polluted cities are in India. The National Green Tribunal too finds a loss of strength since in the past few years, the appointment of both judicial and expert members to the green body is pending. This research aims to put furth how, and where, our comprehensive, yet insufficient environmental legislations limit, and what is its impact on the lives of people.

**Introduction:**

While the past few decades have seen an unprecedented rate of development for India, much in the name of urban modernisation & infrastructure growth, there also has been an under-reported exponential harm to nature. The motivation of shaping interaction with surroundings and the lifestyle comes at the cost of environmental issues that jeopardize not just the country’s development but also its future perspective (Saheb et. al, 2012). This infrastructural growth often renders a blow, *overshadowed* by *development*,to the wildlife and communities *over* which it is built. The *success* stories of fancy complexes, dams, highways, and more sophisticated forms of *concrete* are also accompanied by the *murderous* stories of wildlife, communities, culture and other forms of *life*. Yet the media, politics, *and our eyes*, are usually more happy than sad.

Unlike the *usual political motives* that affect a few, changes in the environment affect all. But the government, and the opposition, often fail to raise concerns of the same magnitude around and about it. From easing of environmental clearances, to reducing the number of independent members in National Board for Wildlife and to Central Pollution Control Board allowing thermal power plants to release pollutants in violation of the 2015 limits (set by the government), the issue at hand is very serious. It comes as no surprise that 22 of the world's 30 most polluted cities are in India (The Print, 2021). Through my research, I intend to present my findings on identification of the *void* in the environmental laws in India and would also highlight what is being filled in the place of this *void*.

**Background:**

The basis of environmental laws and policy are laid within the constitution itself, from the Directive Principles of State Policy (DPSP)[[1]](#footnote-1) to Fundamental Duties[[2]](#footnote-2) and to Fundamental Rights[[3]](#footnote-3) ensured to every Indian citizen. Further, the environmental legislation, like the National Green Tribunal (NGT) Act, 2010, clearly places the principle of sustainable development, the concept of ‘*polluter pays*’ and the precautionary principle (Sidhu & Rathi, 2021). Furthermore, the Ministry of Environment, Forest & Climate Change (MoEFCC) together with the Central Pollution Control Board as well as the State Pollution Control Boards of all the states and Union Territories control and implement the laws and regulations pertaining to the environment. Despite these, and many other, comprehensive and elaborate provisions, legal and otherwise, the existing environmental laws and policies in the country are often unable to produce the *intended* results.

The issues of environmental negligence are profound across the Indian subcontinent. From the cities shrouded in thick toxic smog to the rural areas losing, or drowning, in their waters, the impact of this *void* in the environmental laws and policies is affecting the Indian population, and wildlife, at an alarming rate.

**The Issue:**

India is witnessing an expeditious rate of growth, economic and industrial, since the past few decades, and, simultaneously, a poorer quality of its air and water. While a polluted environment affects everyone who lives in it, it has a profound effect on the rates of life expectancy and infant mortality (Striessing, Schbpp, & Amann, 2013). Although the country has made many efforts to improve its air and water quality, the results have not been very positive. The inefficiency of the setup is a result of the substandard institutional settings and insufficiency of implementation of the regulations (Chandra, 2015).

Though the issue of environment, at large, is global, every nation has control over its environment via its territorial jurisdiction. The role of every nation, as an individual entity responsible for regulating its environment, makes implementing global statutes arduous. It has been seen that international organisations and Non-Governmental Organisations (NGOs) working towards the environmental issues, especially pertaining to human rights standards, find it difficult in having overlapping interests (Randeria, 2003).

The new notification on Environment Impact Assessment (EIA), 2020[[4]](#footnote-4) does not reinforce the governing processes and institutional machinery. The national level Expert Appraisal Committee (EAC)[[5]](#footnote-5), and those at the state level, function in an ad-hoc manner, without much bureaucratic extent and have often found questions on their competence (Prasad & Menon, 2020). The legal environmental framework of the country still misses an independent regulator for environmental matters[[6]](#footnote-6). Though the new EIA regulations put a mandate for the big industrial and/or infrastructural projects to scrutinize their environmental impact before applying for a clearance approval from the MoEFCC, it also raises controversies by allowing the entities running the project to choose their EIA consultant. The new EIA proposal fails to sufficiently address the issues of climate crisis and over utilisation of resources (Naik & Joisa, 2020).

Despite the many provisions aiming to strengthen the environmental laws and policies in India, they also fail because of their non-compliance by the population at large and the implementation crisis. Since there is no independent regulatory body to govern environmental issues, MoEFCC looks after the area. The ministry, being a part of the governmental and dynamic political structure, falls prey to an uncontrolled political intervention, leading to *sabotaging* of the environmental laws (Dahiya, 2018).

The lack of political will further renders the many laws and committees on the environmental sphere ineffective. The central government’s new ordinance to tackle the pollution in the National Capital Region (NCR), along with the neighbouring areas, provides for setting up of a Commission for Air Quality Management[[7]](#footnote-7). The composition of the commission is majorly that of the government officials and raises concerns on it falling prey to a *dead* political motivation. Experts believe that the fight against the issue of pollution in the NCR is not a result of lacking laws or authoritative bodies, but due to a lacking political motivation (Roy, 2020).

Despite the dynamic and evolving environmental legislative capacity of the country, the ongoing environmental crisis finds no end. The increasing particulate pollution, unhygienic discarding of solid waste, mixing of untreated sewage and hazardous chemicals into the river streams, the increasing dependence and usage of chemical fertilisers and pesticides along with the *modern* menace of plastic and electronic wastes are simply degrading the environment (Sawhney, 2018). The state of the environment is harming not just humans, but all forms of life. The gloomiest, and perhaps the most questionable, matter of concern here is that for every environmental issue discussed, there are multiple legislations/policies in place governed by multiple institutions and bodies. Yet the *smog curtains* only vividly show the realities of a lethal, unhealthy, toxic environment *gasping for breath*.

**The Impact:**

A lacking national level legislation and reduced budget highlight the lessened weight of the issue for the government (Guttikunda, 2021). As per the 2021 Lancet report, 1.67 million deaths in India, for the year 2019, could be attributed to air pollution alone. As per the Council on Energy, Environment and Water, despite launching the National Clean Air Programme[[8]](#footnote-8) (NCAP), the plans, created and aimed at city levels, lack specific objectives and priorities. The NCAP further misses on having a legal directive and any mandate for execution based on timeline. The lacking political will to strengthen the already existing many laws and policies is costing citizens their health, and life. If the country could attain and reduce the pollution levels by just one-fourth, it would add 1.6 years to the national life expectancy (Tripathi, 2020).

The rapid growth of the urban centers has not just deteriorated the air but the waters too. It is estimated that 70% of the surface water resources are contaminated in the country (Hirani & Dimble, 2019). The cost of degrading the environment is economic as well. A degraded environment costs the Indian economy $80 billion annually. The country’s inability to utilise the environmental laws and policies to provide clean water, a basic human necessity, costs it 400,000 lives every year. A report by Global Alliance on Health and Pollution finds that India ranks first in pollution related deaths[[9]](#footnote-9). For the period of 2008-15, the number of polluted rivers has grown by more than twice from an uncontrolled discharge of sewage and industrial effluents.

The dawn of the Indian environment laws emerged in response to one of the worst fatal industrial disasters, the Bhopal gas tragedy. However, the impetus to actually execute and follow the constitutional remedies is lost in the slacked off attitude of the authorities, and citizens. Through a reduced public participation in the environmental approvals, the environmental clearances are only viewed as procedural impediments (Chakraborty, 2020).

The unsustainable exhaustion of resources is choking our environment by making our air polluted, clean water scarce and waste augmented. With every passing day, human and environmental health are succumbing to manmade hazards. The vehicular emissions and industrial pollution are paving the way for increasing breathing and lung diseases. In 2019, more than 50% of the patients in Delhi suffering from lung cancer had no history of smoking. Another Indian metropolitan city, Mumbai, witnesses an increase in the vector borne and water borne diseases in every monsoon flood (Asia Society, 2021).

In the 2020 Environmental Performance Index[[10]](#footnote-10) (EPI), India ranked 168 out of 180 assessed countries. Most of the experts believe that India is faring well on the policy department. What is creating this *void* is the inability to execute them. The system of accountability is enfeebled by a lack of monitoring and *disabled* institutions in power (Pandey, 2019).

While environmental pollution is a menace for all, the burden of it falls more on the economically disadvantaged households. The low-income groups contribute less to air pollution, yet face an inordinate impact from the other pollution sources (Rao et al, 2021). Diluting the existing legal frameworks, like the 2020 EIA notification, only amplifies the socio-economic burden on the marginalised. The projects approved by the EIA, like dams and mines, separate the forest communities, like the adivasis and marginalised castes groups, from their homeland. The infrastructural projects of *development* redistribute resources from the marginalised and *weaker* communities to the powerful political and industrial groups (Menon & Kohli, 2020). Such dilutions fail to give precedence to socially useful plans and prioritise projects supported by government and investors generating private profits.

The narrative of development and its harms to the environment pushing the marginalised communities at a lower economic stratum can be understood by its impact on the fishing community of Mumbai. The region’s *development* has caused changes in the natural environment, receding the fishing backwaters and creek of the community and making them polluted with the industrial effluents. This has not only made the fishermen of the region lose their only source of livelihood but has also changed their eating habits (Gambhir & Kumar, 2013).

The irrelevant bureaucratic and diluted clauses weaken the country’s fight for a healthy environment. The already slacked off attitude of corporations, combined with bureaucratic inefficiencies and attenuated legislative provisions, renders the corporations a lethal confidence of damaging the environment. The rate at which the environment is being harmed, making us lose our *healthy* years, is much higher than the pace at which it is being repaired. The tag of development has ironically steadily deteriorated our environment, health and biodiversity.

**Conclusion:**

The Indian environmental laws and policies have comprehensively evolved over time. However, despite the legislative developments, the abysmal state of the environment has not seen any significant changes. The deteriorating environment is not a result of lack of regulations and norms, but a result of an unready, underprepared and overwhelmed system. These policies and laws will keep evolving over time. But the bigger question to answer is if the robust evolution of the environment laws and policies also ensures their compliance?

The issues of pollution of our natural resources, greenhouse gases, global warming, soil erosion have not just jeopardized the environment but also the health, and lives, of everyone who lives in it. Although the environmental laws and policies have evolved over the years in an attempt to repair/undo the damage inflicted on the environment, without a will, stacking laws and institutions are nothing more than a band-aid to a much larger injury.

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1. Article 48A of the Indian Constitution states that “the state shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country”. [↑](#footnote-ref-1)
2. Article 51A (g) of the Indian Constitution states that “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”. [↑](#footnote-ref-2)
3. The judicial interpretation of Article 21 (Right to Life) of the Indian Constitution also includes the right to a clean and healthy environment free of pollution. [↑](#footnote-ref-3)
4. The new Environment Impact Assessment (EIA) notification was released by the Ministry of Environment, Forest and Climate Change in March 2020. It was introduced to replace the older EIA notification of 2006. [↑](#footnote-ref-4)
5. The Expert Appraisal Committee (EAC), both at the national and state levels, advises the government on the potential impacts on the environmental clearance of development projects. [↑](#footnote-ref-5)
6. In 2011 the Supreme Court of India had asked the central government to form an independent environment regulator that would aid in the clearance process which still has not been created. [↑](#footnote-ref-6)
7. The Commission replaces the former Environment Pollution (Prevention and Control) Authority for the National Capital Region of Delhi. [↑](#footnote-ref-7)
8. The National Clean Air Programme (NCAP) was launched in January 2019 by the Ministry of Environment, Forest and Climate Change (MoEFCC) to make clean air action plans with an aim to reduce PM2.5 pollution by 20-30% by the year 2024 (as compared to 2017) in the selected 122 cities. [↑](#footnote-ref-8)
9. As per the Global Alliance on Health and Pollution report, 2.3 million people died from pollution in India in the year 2017 alone. [↑](#footnote-ref-9)
10. The method of Environmental Performance Index (EPI) is used to quantify and numerically assess the environmental performance of a country’s policies. [↑](#footnote-ref-10)