

Introduction to Special Issue on Indian Perspectives on Environmental Justice

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Abstract: India's environmental-justice discourse is shaped by two inter-related factors: grassroots community stewardship and environmental judicial activism. Based on the inter-play between law and society, these factors have played an important role in mitigating some of the challenges of development and implementing a balanced approach between development and ecology. However, the relationship between law and society has witnessed challenges, especially since the onset of neoliberalism, where the state has been going forward with its policies of development-led growth in the garb of public welfare and the common good. These challenges are extremely detrimental for the environment and also pose risks amid increasing climate and disaster vulnerabilities such as air pollution, rising heatwaves, floods, and depletion of natural resources. Law and society must work in unison within the broader principles of constitutionalism and rule of law for ensuring environmental justice.

Keywords:

1. Constitution
2. Environment
3. Judiciary
4. Justice
5. Society

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This Special Issue on *Indian Perspectives on Environmental Justice* emerged from thought-provoking and stimulating discussions at an International Workshop on Environmental Justice, organized by Academics Stand Against Poverty (ASAP), the Yale Global Justice Program, and TERI School of Advanced Studies, India. The one-day workshop started with the keynote address by Prof. Thomas Pogge, who ignited the discussion with his novel idea of an *Ecological Impact Fund*, an innovative international financing mechanism that would enable the originators of innovative green technologies to trade some of their monopoly privileges in exchange for impact rewards (Pogge, 2023). The workshop brought together scholars from India to discuss the critical and emerging environmental challenges in India, including coastal mitigation, food security, forest rights, waste management, depletion of wildlife, soil erosion, and air pollution. The stimulating discussions focused on developing actionable solutions to such challenges — solutions that reduce ecological harms while promoting social justice.

India's environmental-justice discourse is shaped by two inter-related factors: community-led grassroots movements and a proactive judiciary. The former environmental movements were deeply immersed in the Gandhian Philosophy of *ahimsa* (non-violence) and community stewardship. India's proactive judiciary has stimulated a discourse on environmental jurisprudence and established various international environmental principles, including the Public Trust Doctrine, the Polluter-Pays Principle, the Precautionary Principle, Equity, and Sustainable Development, which are international environmental law principles for protecting and conserving the environment. There have been significant milestones in the evolution of international environmental law including the United States National Environmental Policy Act (NEPA) in 1969, the establishment of the United Nations Environment Programme (UNEP) following the Stockholm Conference in 1972, and the Earth Summit in 1992. These landmark events have led to the adoption of significant international treaties for environmental governance, including the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC), and Agenda 21. They also played a major role in the adoption of environmental law principles in India's legal jurisprudence to mitigate the challenges of development and industrialization led growth.

Both community stewardship and a proactive judiciary have been essential for achieving a symbiotic relationship between law and society as well as an equitable distribution of natural resources — also aligning with the Constitutional principles of Articles 48A¹ and 51A(g)². However, this relationship has witnessed challenges in the recent past, especially since the onset of neo-liberalism, where the state has, in fact, broadened its concept of development by diverting its natural resources, giving fast track clearances for developmental projects, and averting the legal principles of Environmental Impact Assessment (EIA), thereby jeopardizing the natural resources, lives, and livelihoods of humans and nonhumans.

These challenges are not limited to the ecological pristine areas where land has been taken away for building of dams, industrial hubs, manufacturing zones, and new infrastructures. Modern cities in India like Chennai, Bangalore, Gurugram, National Capital Territory of Delhi (NCT), Mumbai, Pune, and Hyderabad are also grappling with the issues of unplanned linear expansion of cities and migration, which have made these cities vulnerable to newer challenges, such as air pollution, urban flooding, and heatwaves. Every year NCT suffers from air pollution and smog, which make the air extremely toxic, almost unbreathable, with long-term health impacts. There are measures taken, such as the National Clean Air Programme (NCAP), launched by the Ministry of Environment, Forests and Climate Change (MoEFCC) in 2019 to improve air quality in 131 cities. But these measures remain primarily ad-hoc and response-driven with no pre-emptive action being taken to mitigate the cause and effects of air pollution.

It is now important to examine the emergence of environmental-led social movements which took the country onto the path of seeing development from a humanist point of view. The decade of the 1980s heralded a new era of transition deeply rooted in the Gandhian philosophy of non-violent action and *satyagraha* which aimed to guarantee every living being a basic life of dignity. The genesis of these environmental-led movements was essentially not an anti-thesis of development-led growth but was in fact, a wake-up call for policy makers to save the pristine ecology from the dangers of disastrous destruction. These community-led environmental movements aimed to raise awareness and sensitivity against the rapid ecological destruction that was resulting in declining soil fertility and food production as well as depletion

¹ Part of the Directive Principles of State Policy (DPSP): "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country."

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

of water and land resources. Such community-stewardship-led environmental movements have been a part of India's rich cultural history and heritage, and the most prominent example of such grassroots movements can be traced back to the Khejrli Massacre of 1730 where local communities came together to protect the Khejri trees. This in fact also laid the foundation of many environmental movements, especially the Chipko Movement in the last decade of the 20th century. The environmental movements in India differed from the west as they were concerned with both environmental conservation and issues of economic equity and social justice (Karan, 1994). Grassroot environmental movements like Chipko (1973), Save the Narmada (1985), and Silent Valley Movement (1973-83) have been built on the massive destruction and exploitation caused by resource-intensive development which was undermining the needs and concerns of local communities. These movements became a countervailing power to state's authority (Swain, 1997).

The Chipko Movement can be traced back to the Forest Satyagraha of 1930-31, when local village communities came together to protest against the reservation of forests for exploitation by British commercial interests (Shiva, et. al, 1986). Similar peaceful protests were also held in Central India where the Gond tribals were gunned down for participating in the satyagraha. In fact, Chipko Movements, philosophically and organizationally can be described as an extension of Gandhian satyagraha (Shiva, et. al, 1986). Similarly, Save the Narmada holds immense cultural significance, as the river was revered as sacred by the communities and the struggle against the dams was intertwined with broader issues of human rights and environmental justice (Kala, 2001). The movement can be described both as a war of words, which included the cultural assemblage to show their struggle against the exploitation through cultural resistance that included the use of songs and poems while at the same time, also a material struggle, which involved community stewardship in protecting their natural resources from exploitation (Kala, 2001). The Silent Valley movement also raised significant environmental concerns against the hydroelectric project and its potential ecological harm to wildlife and natural resources (Subrahmanyam, 1980). A key feature of these environmental-led grassroots movements was the prominent role of women.

Another significant shift in India's environmental-justice discourse occurred through the adoption of global environmental law principles, which became a beacon of hope in the face of the dangers of industrialization and modernization. In the wake of the global deliberations on critical environmental concerns and community-led grassroots movements, the 1972 Stockholm Conference emerged as a paradigm shift in the discourse on environmental governance and laid the foundation of various laws and policies around environmental protection, wildlife, biodiversity, and protection of forests. This laid the foundations for the Wildlife (Protection) Act of 1972, the Water (Prevention and Control of Pollution) Act of 1974, the Forest (Conservation) Act of 1980 and the Environmental (Protection) Act of 1986. These laws and policies proved to be extremely critical for protecting the ecosystem and paving the way toward an equitable use of natural resources based on inter-generational and intra-generational equity and justice. This was also the era in which the judiciary emerged as a sole dispensation of securing environmental justice in India, not only protecting the sustainable utilization and consumption of our natural resources but also giving a platform to the voiceless and the marginalized. By relaxing the principle of *locus standi*, the judiciary provided a platform to environmentally sensitive citizens to raise environmental issues such as land degradation, illegal mining, chemical pollution, wildlife protection, and coastal protection. Baxi (1985) argued that the Indian model of Public Interest Litigation (PIL) was fundamentally different from the American understanding of PIL as it allowed the marginalized and the voiceless to raise their socio-economic concerns to the highest court of appeal. Baxi (1985) called this as Social Action Litigation (SAL), which changed

the discourse of securing justice in a more transparent way by allowing public spirited citizens to file petitions and also giving room for epistolary jurisdiction.

Prior to the emergence of PIL, environmental justice was provided through Criminal Law provisions as enshrined in the Indian Penal Code (IPC) and Civil Law remedies under the law of torts, while the Criminal Procedure Code (CPC) provided remedies for public nuisance cases related to air, water, and noise pollution (Sahu, 2008). The emergence of PIL fundamentally altered the shift from procedural to substantive forms of justice by expanding the horizon of accessing the court of law. This also paved the way for environmental jurisprudence in India through the application of key legal principles including the Precautionary Principle, the Polluter-Pays Principle, and Absolute Liability (Chakravarty, 2006). In *MC Mehta v. Union of India*³, famously known as the Oleum Gas Leak Case, the court rejected the doctrine of Strict Liability which came up in the *Ryland v. Fletcher* case⁴. Singh (2025) argued that absolute liability left no scope for bringing in the exception of “Act of God”, by making the industry or enterprise fully responsible for carrying out any dangerous or hazardous activity to the community.

In the *Indian Council for Enviro-Legal Action v. Union of India*⁵, the apex court invoked the Polluter-Pays Principle and ordered the closure of chemical industries for inflicting harm towards the local communities and for destroying the natural resources. The court came down heavily on the industries for deliberately causing harm by allowing the release of untreated acidic wastewater and held them absolutely liable to compensate for the environmental degradation. *Vellore Citizens Welfare Forum v. Union of India*⁶ was a landmark judgment that integrated the international Environmental Jurisprudence, Precautionary, and Polluter-Pays Principles into the Indian constitutional law. These principles are integral to sustainable development: balancing development with environment rather than viewing them as antagonistic to each other. This case also fundamentally changed the legal understanding of the Precautionary Principle, putting the onus on the developer to prove that its action is environmentally benign.

In the era of neoliberalism, there is a shift in the locus of decision making from resource-dependent communities towards capital and technology (Parikh & Sahu, 2023). Such a system of environmental governance has reduced the substantive notion of environmental justice based on equity and inclusion. Neoliberal policies and laws have to a significant extent diluted the environmental laws and institutions developed since the 1970s. The most disturbing trend that has emerged in Indian environmental jurisprudence is the manner in which environmental irregularities have been legitimized by applying the principle of *fait accompli* (Parikh & Sahu, 2023). The rule of law has been set aside by applying the principle of *fait accompli* which seriously undermines the concerns of environment, biodiversity, and ecology. But amidst these challenges, the symbiotic relationship between law and society deeply embedded in community rights was witnessed remarkably in the Niyamgiri case judgement, where the Supreme Court protected the indigenous and cultural rights of indigenous tribal communities over their natural resources. The court held that Gram Sabha has the ultimate authority to evaluate whether mining holds any public good for them and how rights of indigenous communities need to be protected. Jena (2013) argued that this judgement is significant not only for protecting religious and cultural rights but also for setting a precedent for other tribal communities and Particularly Vulnerable Tribal Groups (PVTGs) to resist displacement and assert their rights over their ancestral lands.

³ M.C. Mehta v. Union of India (1987) 1 SCC 395

⁴ Ryland v. Fletcher (1868) LR 3 HL 330

⁵ Indian Council for Enviro-Legal Action v. Union of India and Others, AIR 1996 (3) SCC 212

⁶ Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SCC 2715

Amidst environmental law governance in India, Environmental Impact Assessment (EIA) proved to be an important tool for ascertaining the likelihood of environmental damage from proposed development projects. EIA helps in making informed decisions, before a project is approved, about its potential harms and preventive measures to avoid the subsequent harms (Leelakrishnan, 1992). In 2006, EIA notification was issued by the MoEFCC under the 1986 Environment Protection Act, legally mandating that development projects undergo EIA before project approval. However, in recent years, the principle of *fait accompli* has been used in cases where a project has substantially progressed without undergoing the legally mandated EIA. This goes against the legal principles of the EPA Act of 1986, which mandates EIA. Through its recent executive orders, its 2017 Notification⁷, and its 2021 Office Memorandum (OM), the government has granted *ex post facto* environmental clearances to development projects where work has been ongoing and also in cases of completed projects. In 2025, the Supreme Court bench comprising of Justice Abhay S. Oka and Justice Ujjal Bhuyan in a landmark judgement, *Vanshakti v. Union of India*⁸, struck down the notification and OM as arbitrary and *ultra vires* of the provisions as enshrined in EPA 1986, Articles 21⁹ and 14¹⁰ of the Constitution. However, in a three-judge bench led by former Chief Justice of India, B.R. Gavai, the Supreme Court has recently (November 2025) recalled the Vanshakti judgement in a review petition.

The next big challenge India is likely to face is that of keeping intact the principles and tenets of environmental justice based on inter-generational and intra-generational equity and justice amidst the increasing over-exploitation of natural resources for development-led public purpose projects. Among development projects, the most significant in coming years will be the rapid expansion of Artificial Intelligence (AI) driven data centers, which have an unprecedented impact on the use and exploitation of natural resources. The water footprint due to global AI demand could reach 4.2-6.6 billion cubic meters of water withdrawal by 2027 (Li et.al 2023). India is a resource-constrained country with just 2.4 per cent of world's land area and 4 per cent of its fresh-water resources to sustain its (rising) 18% of world population and its demands for better infrastructural growth. India is emerging as a global hub for cloud and AI infrastructure with enormous need for more land, water, and energy for grid stability. This could have an impact on India's move towards decarbonization, climate resilience and sustainable use of natural resources. To incentivize the growth of developing these AI data centres, the Government of India has announced India AI mission and tax holiday till 2047 for eligible foreign cloud providers using India-based data centres for global operations. These AI data centres will be coming up in metropolitan hubs such as Mumbai, Bangalore, Vishakhapatnam, Greater Noida, and Chennai, which are already grappling with the issues of climate change, urbanization, disaster vulnerability, heatwaves, water scarcity, and land mis-management.

The papers published in this Special Issue on Indian Perspectives on Environmental Justice underlines that environmental justice is not merely about ecological conservation but also about achieving rights, justice, representation, and equitable utilization of natural resources. The papers examine diverse yet interconnected issues related to climate adaptation, coastal resilience, community forest rights, the role of environmental law clinics in achieving environmental justice, the role of Green Social Work (GSW) in addressing ecological and climate concerns, and the rising impact of air pollution on women's reproductive health. These papers

⁷ "To appraise and regularise the projects, already taken up or under implementation without obtaining the prior environmental clearance in terms of the provisions of the EIA Notification, 2006 and thus identified to be in violation of the same. The Notification enables consideration of such proposals at Central level by providing one-time opportunity to submit the request in this regard within 6 months"

⁸ *Vanshakti v. Union of India* 2025, SCC Online SC 1139

⁹ Right to life, "No person shall be deprived of his life or personal liberty except according to a procedure established by law."

¹⁰ Equality before law and equal protection of the laws to all persons within the territory of India.

highlight how environmental burdens are disproportionately born by vulnerable and marginalized communities. They also reveal how decision-making processes, policies, and legal frameworks often exclude the voices of the marginalized. Amidst intensifying challenges from climate change and the anthropogenic risks associated with it, it is essential that India's environmental management be compliant with the principles of Constitutionalism and Rule of Law and that any changes in law and policy be consistent with the broader principles of Articles 21, 14, 48A and 51A(g). Law and society must work in unison to foster a participatory, transparent, and accountable system of environmental governance based on community stewardship and rights. This requires richer, substantive notions of equity and justice that go well beyond the merely procedural.

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