

# A CRITICAL EXAMINATION OF THE STATE OF ENVIRONMENTAL GOVERNANCE UNDER PRIME MINISTER - NARENDRA MODI

Leo F. Saldanha<sup>\*</sup>

## ABSTRACT

*India has developed its own unique jurisprudence on Environmental issues over time, largely framed by policy that has been adopted by the government and also the outcome of judicial interventions, international agreements and public pressure. Where such policy must be guided by science and rational thought, it has come to be grounded in ideology and short-sightedness. This turn of events has been near rampant in the Modi-led NDA government presently at the helm of affairs. Among other things, what has become particularly worrying, based on the Prime Minister's own rhetoric, is the focus on development, often at the cost of the environment and human rights. This essay seeks to undertake a critical evaluation of the present government's approach to environmental policy and concomitant environmental issues that the government is charged with addressing. It begins by discussing the ideal approach to environmental policy and observes how policy decisions are increasingly predicated upon the 'obfuscation of logic.' It then compares the policy ideals previously espoused by the Indian Republic with the new approach that has emerged guided largely by the nature of politics favoured by the Bharatiya Janata Party. In*

---

<sup>\*</sup> The author is Coordinator of Environment Support Group, a voluntary organization responding to environmental and social challenges across India. More details of ESG may be accessed at: [www.esgindia.org](http://www.esgindia.org) Comments and criticisms on this essay may be directed to the author via email: [leosaldanha@esgindia.org](mailto:leosaldanha@esgindia.org).

*sum, the paper concludes that implementing ideological beliefs under the garb of environmental policy, while eschewing scientific thinking, bode ill for the future of environmental policy and ecological security of India.*

## 1. INTRODUCTION

A democratic polity is characterized by how public policy is evolved. The Supreme Court of India has highlighted the foundational prerequisites of evolving public policy in *Delhi Transport Corporation v D.T.C. Mazdoor Congress* in the following manner:

*“The absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law.”<sup>1</sup>*

This ruling strongly suggests that public policy needs to be the outcome of deeply democratic reasoning, while accommodating dissent, and ensuring that decision making is a rational exercise of executive power.

---

<sup>1</sup> Delhi Transport Corporation v. D.T.C. Mazdoor Congress, 1990 SCR Supl. (1) 142.

If we were to examine how public policy is being shaped in India today, we find that individual opinions, investor induced pressure, even myths, are becoming the basis for influencing and determining the nature and direction of public policy. This is not to suggest that such factors did not play a role in shaping public policy in the past. Most certainly they did. But what is distinctively different about how policies are being shaped by the Bharatiya Janata Party government at the Centre, is that they are being re-imagined and re-structured to serve the political philosophy and ideological moorings of the party. Can subjective, motivated and ideologically rooted opinions be allowed to shape public policy of India? Can ostentatious claims influence and shape public policy? This essay examines what impact policies woven out of such methods will have on the State of India's environment and in advancing ecological security of present and future generations.

### 1.1. Obfuscation as 'science':

Dr. Harsh Vardhan, currently Minister in charge of India's Ministry for Environment, Forests and Climate Change, and also Science and Technology Minister of India, infamously claimed in the 105<sup>th</sup> Indian Science Congress (March 2018 at Imphal, Manipur) that the renowned scientist Stephen Hawking had said Vedas are superior to Einstein's  $E=mc^2$ .<sup>2</sup> Hawking never said anything like that. But truth and science seems irrelevant to the Modi administration. As was

---

<sup>2</sup> See, *Stephen Hawking said theory in Vedas superior to Einstein's  $E=mc^2$ : Science minister*, THE TIMES OF INDIA, (Mar 19, 2018), <https://timesofindia.indiatimes.com/india/stephen-hawking-said-theory-in-vedas-superior-to-einsteins-emc2-science-minister/articleshow/63335106.cms>, (last accessed Feb. 5, 2018).

revealed in a compilation by Altnews,<sup>3</sup> Dr. Vardhan's claim is only the most recent of a series of dubious claims of the Vedic age being the pinnacle of scientific advancement in all of humanity's civilisation process. Prime Minister Narendra Modi has himself led such obfuscation of science, and history, by claiming in a conference of medical practitioners that plastic surgery was advanced in the Vedic period as is evident from the mythical elephant headed Lord Ganesha. He also claimed that Karna, a key character in the epic Mahabharatha, was a product of genetic engineering. Human Resources Development Minister Satyapal Singh has claimed that Darwin's theory of evolution is scientifically wrong, as none have seen an ape turn into man. The same Minister has also claimed that an Indian invented the aeroplane before the Wright Brothers. The Minister for AYUSH has claimed Yoga cures cancer and Rajasthan's Education Minister and Panchayat Raj Minister Vasudev Devnani has claimed that the cow is the only animal that inhales and exhales oxygen. Devnani also has claimed that 1000 years before Newton, a certain Brahmagupta II explained the Theory of Gravity.

Such ludicrous claims have been systemically disseminated by Rashtriya Swayamsevak Sangh (RSS), the parent organisation of BJP, as part of its socio-political project for making India a Hindu Rashtra (Hindu theocratic state) by uniting all Hindus, who constitute a majority of India's population, as one community. To achieve this,

---

<sup>3</sup> Arjun Sidharth, *BJP and Science: From Ganesha's Plastic Surgery to 'Yoga can cure cancer'*, ALTNEWS, (Feb .9, 2018), accessible at: <https://www.altnews.in/bjp-science-ganeshas-plastic-surgery-yoga-can-cure-cancer/> , (last accessed Feb. 9, 2018).



RSS propagates the Hindutva ideology,<sup>4</sup> which claims all those who are born in India, irrespective of their religion, are Hindus. And that everyone must participate in rebuilding India to reclaim the greatness of the Vedic period. RSS' key ideologue M S Golwalkar has said this involves "organis(ing) the entire Hindu society, and not just to have a Hindu organization within the ambit of this society" and that this has been the idea "(r)ight from its inception" (of RSS) which has "clearly marked out as its goal the moulding of the whole of society, and not merely any one part of it, into an organized entity."<sup>5</sup>

The Vedic period indeed was marked by various contributions to the advancement of science and mathematics, as was the case in other periods of India's history. But in the Vedic period was also born the Varna system, the basis of the highly divisive caste system, which in subsequent centuries has been made by praxis and enforcement systemic to social life in India. The Vedic Age is therefore a period of various social achievements as also social regression. There is, however, no evidence to suggest that during the Vedic period a scientific theory as robust as Einstein's Theory of Relativity was ever developed.

## **1.2. Obfuscation as 'logic':**

Prime Minister Narendra Modi has employed his oratory skills to great effect. This has helped the electoral prospects of BJP

---

<sup>4</sup> Hindutva (Hinduness) was popularized by V D Savarkar of the Hindu Mahasabha, a terminology that explicitly advocated the creation of India as a Hindu nation. Savarkar, interestingly, was an atheist.

<sup>5</sup> SHANKAR GOPALAKRISHNA, UNDERSTANDING THE RSS AND THE SANGH PARIVAR, 22 (2018).

to not only capture power at the Centre, but also in most States of India. However, the same oratory skills have also been employed to make statements that have had a rather debilitating impact on how India responds to contemporary environmental challenges.

This is particularly evident in how Mr. Modi addressed climate change and its consequences. When addressing young and impressionable students from across India in September 2014, an event that was televised on all channels and also broadcast via national radio, thus commanding a massive audience, a rather worried student asked Mr. Modi how India was preparing to tackle climate change. The question, in effect, laid out a platform for Mr. Modi to explain how he would lead the country into a secure future. Mr. Modi responded: “*Climate has not changed. We have changed.*” If one were to be under the impression that a philosophical point was being made here, or if it actually was a *gaffe*, Modi then went on to say: “*Climate change? Is this terminology correct? The reality is that in our family, some people are old ... They say this time the weather is colder. And, people’s ability to bear cold becomes less.*” What Modi ended up doing here was to employ obfuscation as logic. In the process, not only did Modi forfeit a tremendous opportunity to assure a young person that his administration was serious about responding clearly and firmly in addressing climate change impacts, but he also lost the opportunity to awaken India's massive population, especially the youth, to the serious threats the country faces from climate change and of the need for major course corrections. Such comments confused a nation and had international repercussions as well. Coming as it did at the

very beginning of Mr. Modi's term as Prime Minister, many wondered if he is a climate sceptic, perhaps even a denier.<sup>6</sup> As the leader of the world's second most populous country, a major emitter of greenhouse gases, such articulation by Modi was perceived as indicative of how his administration would work to tackle climate change. As it turned out, it was more than indicative of Mr. Modi's approach to environmental governance.

For leading environmental correspondent Nitin Sethi, *“environmental decisions are not about protecting some anodyne and aesthetical idea of ‘environment and forests’. These are decisions that apportion natural resources in an economy – either for a few or for many. They hold the potential of shaping the economy and the nature of economic and social justice in a society”*. He argues that *“...policy decisions on environmental issues are a toughie. Even when such decisions are taken with the most honest intentions they require locating a fine balance between the contesting demands over lucrative resources on some occasions and between profit-making and public health and safety at other times. They involve and impact large business interests at all times.”*

### 1.3. Can Obfuscation become Policy?

Environmental governance in India is essentially about delivering to a crucial assurance made in the Constitution of India. This is articulated in Article 39 which requires the State to “...direct

---

<sup>6</sup> Malini Mehra, *The miseducation of Narendra Modi on climate change*, CLIMATE HOME NEWS, (Sep. 8, 2014), <http://www.climatechangenews.com/2014/09/08/the-miseducation-of-narendra-modi-on-climate-change/>, (last accessed Feb. 9, 2018). See also Suzanne Goldenberg, *Is Narendra Modi a climate sceptic?*, THE GUARDIAN, (Sep. 9, 2014), <https://www.theguardian.com/environment/2014/sep/09/narendra-modi-india-prime-minister-climate-change-sceptic>, (last accessed Feb. 9, 2018).

*its policy towards securing (a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (b) that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.”*

This Article requires decisions that involve use of natural resources, impact lives and livelihoods of millions, and determine the economic and socio-ecological security of present and future generations, need to be outcomes of carefully constructed arguments which are tested by democratic reasoning. Being in Part IV of the Constitution containing the Directive Principles for State Policy, Article 39 is not judicially enforceable. However, as Article 37 demands, the principles laid down in Part IV “...are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.”

Evolving policies and public schemes are like weaving a fabric - the fabric is as strong as the tensile strength of the threads that hold it together. The threads that construct strong and progressive policies are based on a very careful understanding of the historical context of the issue being addressed, a thorough analysis of its socio-economic and political context, and a fairly clear assessment of how the policy would impact short and long term goals. The resilience of a democratic process is tested by how it manages to weave progressive and inclusive policies into praxis. When evolving laws and policies, or in amending or reformulating them to adapt to the dynamic demands of the nation, principles set out in Article 39

should serve as a ready reckoner. Obfuscation clearly has no role in such a schema.

This is particularly important in India because our environmental jurisprudence is constructed from multiple learnings from a very complex set of factors, and that over decades. This includes horrific accidents such as the leakage of toxic gases from the Union Carbide/Dow Chemicals factory in Bhopal in 1984 killing and maiming thousands. The Environment Protection Act, 1986, is in some ways a response to prevent such events, and is also an effort to ensure rule of law works to prevent such incidents from taking place. For a similar reason, pollution control laws have been strengthened, and when necessary new ones initiated, such as those to tackle hazardous waste, e-waste, plastic, etc.

Thousands of struggles and public actions have informed and caused reform in laws governing forests, wetlands, biodiversity, coastal areas and in securing the traditional rights of Adivasis over forests. Some of these are the Biological Diversity Act, 2002 and the historic Forest Rights Act, 2006. Multiple public interest litigations have been advanced to tackle the loot of natural resources, contain damage to the environment and protect human rights. As a consequence, various path-breaking judgments have been delivered, particularly by the Supreme Court of India which invoked and integrated progressive environmental and human rights principles into our environmental jurisprudence. Alongside, India has also demonstrated great willingness to work with the community of nations to respond to global and regional environmental challenges

and initiatives. In the process, various international environmental and human rights treaties have been ratified. All this set the stage for building a strong network of environmental administration and regulatory institutions, so that the important task of securing India's ecological and social security was not left to chance.

In this context, if we review the statements made by the Prime Minister Modi and the Environment Minister, and also those of other senior functionaries of the government, they come across as reckless and dismissive of such serious matters of public concern. This does not bode well for governance at all. When deliberate obfuscation is being passed off as statements of the government's understanding of an issue, or for advancing narrow political agendas, the consequences can be quite unpredictable, dangerous and irreversible.

## **2. SECURING ENVIRONMENTAL GOVERNANCE IN AN AGE OF GLOBALISATION**

There is little dispute that the state of the environment of India is far from healthy. This can be perceived in various ways. Despite the enactment of a variety of progressive environmental legislations, regulations and norms, their implementation has been weak. Institutions set up to assist in the implementation of these laws and norms, and also regulate against pollution, have weak funding from State and Central budgets and thus have very thin administrative base, even as they are required to periodically monitor and regulate a vast variety and network of industries and urban and industrial areas across India. This is clearly evident in the woeful state

of the massive Ganges River which is highly polluted throughout its flow through the plains of north India. This is also true of most rivers across India. The largely unplanned industrialisation and urbanisation in India has compounded the problem and caused a range of complex environmental, social and health problems. Responses to address them have been symptomatic at best. It should come as no surprise then that recent analysis of the state of pollution worldwide by the World Health Organisation reveals nine of ten most polluted cities in the world are in India.<sup>7</sup>

When it comes to usage of water, much of India's ground water resources have been overdrawn. This is posing a variety of problems in sustaining agricultural productivity and to public health.<sup>8</sup> The state of India's forests is not healthy<sup>9</sup> despite claims to the contrary made by the Forest Departments and Ministry of Environment. The Alliance of Leading Environmental Researchers and Thinkers says this is the outcome of "*excessive optimism*."<sup>10</sup> In coastal areas fisher people report fish drought and sharp decrease in fish diversity due to contamination of coastal waters, and

---

<sup>7</sup> Shafi Musaddique, *Here are the world's 10 most polluted cities – 9 are in India*, CNBC, (May. 3, 2018), <https://www.cnbc.com/2018/05/03/here-are-the-worlds-10-most-polluted-cities--9-are-in-india.html>, (last accessed Feb. 9, 2018).

<sup>8</sup> Prabhat Singh, *India's Groundwater Crisis: Depleting groundwater levels the biggest threat to rural livelihoods and food security*, LIVE MINT (May. 1, 2015), <https://www.livemint.com/Opinion/v4nXpXNxsJtxQNIEbvtJFL/Indias-groundwater-crisis.html>, (last accessed Feb. 9, 2018).

<sup>9</sup> A.K. Ghosh, *Real state of India's forests*, DOWN TO EARTH, (July 15, 2016), <http://www.downtoearth.org.in/blog/real-state-of-india-s-forests-54908>, (last accessed Feb. 9, 2018).

<sup>10</sup> Priya Davidar, *Debate Erupts over Status of Wildlife in India*, ALERT, (Jun. 14, 2016), <http://alert-conservation.org/issues-research-highlights/2016/6/13/1qjx5muigu4ne5891sfyq6fnunw7yw> (last accessed Feb. 9, 2018).

overexploitation by industrial fishing.<sup>11</sup> There is also the disturbing fact that about half of India's coastline is prone to erosion.<sup>12</sup>

Pastoralists are engaging in distress sale of livestock as they are losing access to grazing pastures, and are not able to find fodder. In fact, India, overall, has 63% less fodder than is needed to provide for the approximately 500 million livestock. Of late the fear of right wing lynch mobs attacking cattle traders has also affected pastoralists and farmers from gaining economically with beef production.<sup>13</sup> A decade after the Forest Rights Act was enacted, less than half of the 45 lakhs claims to forest rights have been settled.<sup>14</sup> In the farming sector rising input costs and dwindling gains has made the life of a farmer miserable. As a result, over 3 lakh farmers have committed suicides since 1995, unable to pay off their mounting debts and face humiliation.<sup>15</sup>

It is clearly evident that natural resource dependent communities, who form a major proportion of India's population,

---

<sup>11</sup> Neha Jain, *India's seas are gasping for oxygen and this can affect fish catch*, MONGABAY, (Mar. 13, 2018), <https://india.mongabay.com/2018/03/13/indias-seas-are-gasping-for-oxygen-and-this-can-affect-fish-catch/>, (last accessed Feb. 10, 2018).

<sup>12</sup> Manupriya, *45% Of India's Coastline Facing Erosion*, INDIA SPEND, (Aug. 11, 2015), <http://www.indiaspend.com/cover-story/45-of-indias-coastline-facing-erosion-34881> (last accessed Feb. 10, 2018).

<sup>13</sup> Jitendra, *How is fodder crisis rendering livestock vulnerable?*, DOWN TO EARTH, (Mar 23, 2017), <http://www.downtoearth.org.in/coverage/drought-of-fodder-52671>, (last accessed Feb. 10, 2018).

<sup>14</sup> Dommen C. Kurian, 2005, *Implementing the Forest Rights Act: Lack of Political Will?*, Oxfam India Policy Brief, Oxford UK, <https://www.oxfamindia.org/sites/default/files/PB-implementing-forest-rights-act-lack-of-political-will-261115-en.pdf>, (last accessed Feb. 10, 2018).

<sup>15</sup> Chaitanya Mallapur, *Agricultural output rose five fold in 60 years but farming sector is in distress*, HINDUSTAN TIMES, (Aug 1, 2017) <https://www.hindustantimes.com/india-news/agricultural-output-rose-five-fold-in-60-years-but-farming-sector-is-in-distress/story-cu3zGEBAb5yB9l2LoJAvN.html>, (last accessed Feb 10, 2018).



are not gaining from the ‘good life’<sup>16</sup> that was promised when India’s economy was liberalised and globalised. Instead, they are struggling to survive and their distressing state is indicated by the historically unprecedented farmer suicides.

President K. R. Narayanan presciently warned of the implications of the paradigm of development globalisation advocates in his Republic Day address in 2000. He lamented that globalisation was producing “*(t)he unabashed, vulgar indulgence in conspicuous consumption by the nouveau-riche (which) has left the underclass seething in frustration.*” And painfully commented that “*(o)ne half of our society guzzles aerated beverages while the other has to make do with palmfuls of muddied water. Our three-way fast lane of liberalisation, privatisation and globalisation must provide safe pedestrian crossings for the un-empowered India also, so that it too can move towards ‘equality of status and opportunity.’*”<sup>17</sup> President Narayanan was alerting the nation to growing discontents that were spreading across India, and was worried that it would intensify and spread if due care was not taken to ensure development and governance was made inclusive, and with due dispatch.

Some years later, in 2006, Home Minister Shivraj Patil tabled

---

<sup>16</sup> In his address to the National Development Council in 2001, Shri. A. K. Antony, then serving as Chief Minister of Kerala, had lamented that the much promised ‘good life’ had not reached at least a third of India’s population, and they continued to suffer like before. The speech delivered on 1<sup>st</sup> September 2001 at the 49<sup>th</sup> meeting of the Council can be accessed at: <http://planningcommission.nic.in/plans/planrel/pl49ndc/index.php?state=kerala.htm>.

<sup>17</sup> See, *The President Speaks* a speech by K.R. Narayanan in LOOKING EAST A SYMPOSIUM ON THE NEED TO REFOCUS OUR FOREIGN POLICY, Seminar, No. 487 (2000), <http://www.india-seminar.com/2000/487/487%20narayanan.htm>, (last accessed Feb. 12, 2018).

a report in Parliament, entitled *Status Paper on the Naxal problem*.<sup>18</sup> This report indicated the extent of discontent then prevailing in India. The report reveals that 220 districts in India, roughly equivalent to 40% of India's landmass, were not governed effectively by the State due to Naxal led insurgency. Interestingly, almost all of these affected districts are forested and tribal dominated. The discontents and ensuing conflict should come as no surprise given that these are areas where mineral extraction, deforestation and exploitation of labour and of farming communities is massive. Political representation is weak, and the capacity of communities to find agency to articulate their world views is almost wholly absent here through formal systems of governance. Unless communities here organise themselves into mass movements, there is rarely any acknowledgement of their concerns and distress, and thereby no effective redressal of their demands for just and secure life.

### **The dubious role of GDP as an indicator of economic success:**

Yet, such realities appear to have very little impact in the shaping of national economic policies. Predominantly, the success of a government is determined by how it has sustained a healthy rate of economic growth measured as it is in terms of Gross Development Product (GDP) terms. International financial institutions like the World Bank, International Monetary Fund, Asian Development Bank, political formations like the G8, Davos summit, etc., and also large financial banks, have primed GDP as an indicator of success or

---

<sup>18</sup> Union Home Minister Mr. Shivraj Patil, Government of India, *Status Paper on the Naxal Problem*, [http://www.satp.org/satporgtp/countries/india/document/papers/06Mar13\\_Naxal%20Problem%20.htm](http://www.satp.org/satporgtp/countries/india/document/papers/06Mar13_Naxal%20Problem%20.htm), (last accessed Mar. 6, 2018).

failure of economic policies. As national leaders respond to such pressures, government's focus on delivering to such perceptions, respond with deals that sweeten the investors' taste, and in the process the real needs of the citizenry is ignored. Investor induced pressures also work to sustain this approach to governance and play on the need to be competitive in a globalized world to promote schemes and policies that return healthy returns to investors, unmindful of what this does to the socio-economic status of the citizenry. Commenting on GDP forming the unitary indicator for evaluating governance and economic policies, *The Economist* observes that it is “a measure created when survival was at stake, took little notice of things such as depreciation of assets, or pollution of the environment, let alone finer human accomplishments” and “treats the plunder of the planet as something that adds to income, rather than as a cost.”<sup>19</sup>

Of such “widespread plunder” President Narayanan had warned about two decades ago. Over the past couple of years, Oxfam has produced reports that reveal the beneficiaries of such a model of development: 8 men own half the world's wealth, and 42 people have wealth equal to the 3.7 billion poor people of the world.<sup>20</sup> And the gap is widening, not closing: 82% of the wealth generated globally in 2017, ended up with the top 1%.<sup>21</sup> What we are witnessing is a

---

<sup>19</sup> *The Trouble with GDP: Measuring Economies*, THE ECONOMIST, (Apr. 30, 2016), <https://www.economist.com/news/briefing/21697845-gross-domestic-product-gdp-increasingly-poor-measure-prosperity-it-not-even>, (last accessed Feb. 15, 2018).

<sup>20</sup> Larry Elliot, *Inequality gap widens as 42 people hold same wealth as 3.7bn poorest*, THE GUARDIAN, (Jan. 22, 2018), <https://www.theguardian.com/inequality/2018/jan/22/inequality-gap-widens-as-42-people-hold-same-wealth-as-37bn-poorest>, (last accessed Feb 28, 2018).

<sup>21</sup> See, *Richest 1 percent bagged 82 percent of wealth created last year - poorest half of humanity got nothing*, OXFAM, (Jan 22, 2018), <https://www.oxfam.org/en/pressroom/pressreleases/>

struggle between economic policies driven by, and servicing the interests of, powerful global financial powers and the super-rich, who are also increasingly capturing or manipulating political power to serve their goals. Efforts invested over decades through various legislative and policy initiatives, and programmatic actions, to build equity as the basis for governance, is being comprehensively sidestepped. As the Oxfam study reveals, the top 1% is clearly winning. And in India, such disparity has reached frightening proportions, as reports reveal that the top 1% had 58% of India's wealth in 2014, and this has increased to 73% in 2017 and 35% in 2000.<sup>22</sup> As Oxfam reports, "*India's top 10% already held over half the country's wealth (52%) in 1991, but the situation worsened further by 2012 with their share in total wealth rising to 63%.... In the same period, the share of wealth held by the bottom 50%, which was already low at 9% in 1991, fell to 5.3%.*"<sup>23</sup> Overall, it is clear that prevailing economic policies are designed to accentuate such disparities.

This raises serious questions about the role of public policy as an instrument of governance and its responsibility in delivering to a key promise of democracy: development with equity. As Arjun Appadurai explains, "*(d)emocracy rests on a vision. And all visions require*

---

2018-01-22/richest-1-percent-bagged-82-percent-wealth-created-last-year, (last accessed Feb. 28, 2018).

<sup>22</sup> See, *India's richest 1% corner 73% of wealth generation: Survey*, TIMES OF INDIA, (Jan. 22, 2018), <https://timesofindia.indiatimes.com/business/india-business/indias-richest-1-corner-73-of-wealth-generation-survey/articleshow/62598222.cms>, (last accessed Feb. 28, 2018). See also, Rukmini S. *India's staggering wealth gap in five charts*, THE HINDU, (Dec. 8, 2014), <http://www.thehindu.com/data/indias-staggering-wealth-gap-in-five-charts/article10935670.ece>, (last accessed Feb. 28, 2018).

<sup>23</sup> Ajai Sreevatsan, *India's top 10% own 63% of country's wealth, bottom 50% own 5.3%: Oxfam report*, LIVE MINT, (Feb. 23, 2018), <https://www.livemint.com/Politics/9stBSHEcP13HsQ4oG5RCcJ/Indias-top-10-own-63-of-countrys-wealth-bottom-50-own.html>, (last accessed Feb. 28, 2018).

*hope. But it is not clear whether there is any deep or inherent affinity between the politics of democracy and the politics of hope.*”<sup>24</sup> That surely seems to be the case in the indecent accumulation of global wealth in the hands of a tiny number, almost all of who are citizens of democratic countries. What then is the future of democracy, if it cannot guarantee equity for all? This when, as the World Bank reports “*Human capital - the skills, experience and effort of a population, is the world’s greatest asset. It accounts for about 65% of global wealth.*”<sup>25</sup> In India this would mean that natural resource dependent communities produce much of the wealth but gain nothing at all from it despite their hard work.

### 3. POWER TO THE PEOPLE

As we focus on the fault-lines of globalisation, and worry about its implications, it is worth taking note of several path-breaking legislations India has passed to ensure development with equity, as promised in Article 39, becomes a reality. These include the Constitutional 73<sup>rd</sup> Amendment (Panchayat Raj) Act, 1992, Constitutional 74<sup>th</sup> Amendment (Nagarpalika) Act, 1992, Panchayat Raj (Extension to Scheduled Areas) Act, 1996, Biological Diversity Act, 2002, and Scheduled Castes and Scheduled Tribes and Other Traditional Forest Dwelling Communities Act, 2006 (popularly known as Forest Rights Act). The basic premise in passing these laws is that with devolution of power to Local Governments and with

---

<sup>24</sup> Arjun Appadurai, *Hope and Democracy*, 19 PUBLIC CULTURE 29, 29 (2007), accessible at: [http://www.arjunappadurai.org/articles/Appadurai\\_Hope\\_and\\_Democracy.pdf](http://www.arjunappadurai.org/articles/Appadurai_Hope_and_Democracy.pdf), last accessed (Mar. 18, 2018).

<sup>25</sup> *Year in Review: 2017 in 12 Charts*, WORLD BANK, (Dec. 18, 2017), <http://www.worldbank.org/en/news/feature/2017/12/15/year-in-review-2017-in-12-charts>, (last accessed Feb. 28, 2018).

decentralisation of administration, governance institutions become accessible to people at a level closest to them. In addition, greater transparency and accountability would result. All this would aid in building a form of governance that would, in time, ensure prudent use of the “*material wealth*” for “*common good*”, and ensure “*operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.*”

Laws are part of an ongoing effort to respond to a Constitutional schema that promises development that advances social and ecological security. Key mechanisms to make this a reality involve and include advancing governance through empowered Local Governments and their instrumentalities, such as Panchayats (in rural areas and Councils and Ward Committees (in urban areas), and the developmental efforts of both urban and rural areas would be coordinated by District/Metropolitan Planning Committees. Forest Right Committees would play a substantive role in in forested areas and Biodiversity Management Committees in biodiversity rich areas, and also where there is traditional knowledge associated with local bioresources. Together, these constitutionally mandated bodies would govern administration and development from the ground up, as is envisaged in the 11<sup>th</sup> and 12<sup>th</sup> Schedules of the Constitution, which are associated with the Panchayat Raj and Nagarpalika Acts respectively. Environmental governance is an integral part of the functioning of Local Governments, as is envisaged through these laws, in particular Article 243ZD and ZE.

Notwithstanding all these promises, the decentralisation of

administration and devolution of power in India's governance systems has not taken place despite the passage of 25 years of the enactment of the Panchayat Raj and Nagarpalika Acts. The continuance of centralised economic planning by State and Central Governments has been a key reason for this situation. Moreover, neo-liberal economic policies have dominated the governance landscapes during this period and ensured that decision making relating to mega projects, particularly those that involve massive allocation of natural resources or involve major financial investments, are within the domain of State and Central administrations and their decisions are opaque to public oversight. Globalisation has played a significant role in this process for it demands a decision-making framework that is supportive of the competitive nature of investors, especially foreign corporations, and promotes prime attention of key governance bodies on quick turnaround in decisions to investor induced demands. This is an investment of faith in the Mayo doctrine which promotes decision making by a few over the democratic choices of many. However, the laws listed above are all reflective of the Ripon Doctrine which advocates representative decision making as a key method of governance, and as a necessary prerequisite for ensuring developmental decisions are an outcome of carefully and democratically debated choices of resource use, of investment of labour, of production of wealth and also about how revenue streams generated are guided by principles of equity.<sup>26</sup>

---

<sup>26</sup> For a discussion on approaches to governance advocated by Lord Mayo in 1870 and then by Lord Ripon a decade later, both Viceroys of the British Empire to India, see, W.S. Seton-Karr, *Lord Ripon's New India Policy*, 1 THE NATIONAL REVIEW, 208-223 (1883); see also Benjamin Weinstein, *Liberalism, Local Government Reform, And Political Education In*

#### 4. SITUATING MODI ADMINISTRATION'S APPROACH TO ENVIRONMENTAL GOVERNANCE

Prime Minister Narendra Modi's administration is pushing environmental governance in a direction opposed to the very nature of environmental jurisprudence that India has built over decades. In that sense, it is steeped in following the Mayo Doctrine. Soon after assuming power, amongst the first major decisions Mr. Modi took is to set up a High-Powered Committee to review India's environmental and forest protection laws<sup>27</sup> and with a mandate to "review these Acts and *suggest appropriate amendments to bring them in line with their objectives*" (emphasis supplied). Merely two months was allotted to deliver a report on reshaping and realigning six very complex environmental laws of India. It was also admitted that "*two months given to the Committee are not adequate for a thorough examination, revamping and redesigning of the various Acts and rules*", and yet the Committee submitted its report in November 2014, within four months of being given the task,<sup>28</sup> under the chairmanship of former Cabinet Secretary Mr. T S R Subramanian.<sup>29</sup>

---

*Great Britain And British India, 1880–1886*, 61 THE HISTORICAL JOURNAL, 181-203 (2018), <https://www.cambridge.org/core/journals/historical-journal/article/liberalism-local-government-reform-and-political-education-in-great-britain-and-british-india-18801886/641525816F5D286E5A95D615209EA480>, (last accessed Mar. 18, 2018).

<sup>27</sup> Megha Barhee, *Indian Govt Sets up Committee to Review Environmental Laws; Not Everyone Is Happy With It*, FORBES, (Oct. 16, 2014) <https://www.forbes.com/sites/meghabahree/2014/10/16/indian-govt-sets-up-committee-to-review-environmental-laws-not-everyone-is-happy-with-it/#345853534deb>, (last accessed Feb. 28, 2018).

<sup>28</sup> Ministry of Environment, Forest & Climate Change, Government of India, *The Report of High Level Committee to review various Acts*, [http://envfor.nic.in/sites/default/files/press-releases/Final\\_Report\\_of\\_HLC.pdf](http://envfor.nic.in/sites/default/files/press-releases/Final_Report_of_HLC.pdf), (last accessed Mar. 6 2018). (*hereinafter* Subramanian Report).

<sup>29</sup> Mr. T S R Subramanian was Cabinet Secretary from 1<sup>st</sup> August 1996 to 31 March 1998. Following the submission of this report, Mr. Subramanian chaired another committee to



Given the speed with which the Committee prepared its report, the 'consultation' processes that it engaged in was found wanting in many respects and was widely criticised as an exercise steeped in dismissing the critical importance of democratic debate and dissent in such a fundamental review of environmental and forest protection laws. In a critique of the Committee's report offered by Environment Support Group, co-authored by this author, we held that:

*“(w)hen phrases such as proposing 'specific amendments' to existing environmental laws '...to bring them in line with current requirements to meet objectives' are employed, it could be interpreted in any manner possible. Such a phrase does not mean anything specifically, yet could be interpreted in any manner possible. This gives rise to all sorts of suspicions and worries especially because environmental and forest protection laws of India have a direct bearing on securing the ecological and economic security of not just present generations, but generations to come.”<sup>30</sup>*

The Committees' approach can be summarized as promoting reform of India's environment and forest protection laws by investing 'utmost good faith' in investors and developers to self-regulate, thus 'making doing business easier in the country'.<sup>31</sup> In effect, this proposal inverted dismissed the very praxis foundational

---

evolve a new education policy. He passed away on 26<sup>th</sup> February 2018 at the age of 79 years.

<sup>30</sup> Leo F. Saldanha & Bhargavi S. Rao, *A Non-trivial Threat to India's Ecological and Economic Security: A Critique*, ENVIRONMENT SUPPORT GROUP, 2 (2014), <http://esgindia.org/sites/default/files/campaigns/press/esg-critique-tsr-subramanian-report-dec-.pdf>. (*hereinafter* ESG Critique), (last accessed Mar. 28, 2018).

<sup>31</sup> Subramanian Report *supra* note 27 at 57.

to environmental governance in India: democratic decision making with oversight from autonomous regulatory agencies review. There is little doubt that environmental decision making in India has been largely ritual and rarely democratic. It has also been extremely ineffective in addressing key concerns of impacted communities and final decisions are almost entirely based on information supplied by investors in securing environmental and forest clearances. Mr. Jairam Ramesh, former Union Minister of State for Environment and Forests, had said that the rate of according environmental clearances to projects was 'unnaturally' and 'unhealthily' high' and that "one analysis indeed indicated that the percentage of approved projects works out to 99.1%."<sup>32</sup> And as *Green Tapism: A Review of the Environmental Impact Assessment Notification – 2006*, co-authored by this author documents, it has resulted in promoting investments 'even when they encroach upon and fundamentally violate key precepts of Indian environmental and forest protection legislations.'<sup>33</sup>

Jairam Ramesh was making the case that for effective implementation of India's environmental and forest protection laws, the competence and capacities of environmental decision-making bodies needed to be enhanced and democratised with due dispatch. The Subramanian Committee, in contrast, was arguing that

---

<sup>32</sup> Nitin Sethi, *Only 19 projects were denied green clearance from 2008 to Aug 2011*, THE TIMES OF INDIA, (Aug. 16, 2011), <http://timesofindia.indiatimes.com/home/environment/Only-19-projects-were-denied-green-clearance-from-2008-to-Aug-2011/articleshow/9617490.cms>, (last accessed Mar. 28, 2018).

<sup>33</sup> Leo F. Saldanha, Abhayraj Naik, Arpita Joshi & Subramanya Sastry, *Green Tapism: A Review of the Environmental Impact Assessment Notification – 2006*, ENVIRONMENT SUPPORT GROUP, 7 (2007), [https://www.academia.edu/1155083/Green\\_Tapism\\_A\\_Review\\_of\\_the\\_Environmental\\_Impact\\_Assessment\\_Notification\\_2006](https://www.academia.edu/1155083/Green_Tapism_A_Review_of_the_Environmental_Impact_Assessment_Notification_2006), (last accessed Mar. 28, 2018).

environmental regulation, despite its admitted weaknesses, must not come in the way of business. This even when the Committee admitted that “*our businessmen and entrepreneurs are not all imbued in the principles of rectitude – most are not reluctant, indeed actively seek short-cuts, and are happy to collaboratively pay a ‘price’ to get their projects going; in many instances, arbitrariness means that those who don’t fall in line have to stay out*”.<sup>34</sup>

The Committee went even further. In what can be considered subordination of environmental governance to executive decision-making powers of the Environment Ministry, admittedly arbitrary, the Committee recommended that even if “*...the Ministry may not be in a position to give detailed reasons for its decisions, which may be couched in generic terms*”, it could take decisions in certain matters *suo moto*.<sup>35</sup> This was deeply problematic in multiple ways, particularly in highly contentious cases. Besides, such a proposal is in clear violation of the Constitutional 73<sup>rd</sup> Amendment (Panchayat Raj) Act, 1992, Constitutional 74<sup>th</sup> Amendment (Nagarpalika) Act, 1992, and the Scheduled Castes and Scheduled Tribes and Other Traditional Forest Dwelling Communities Act, 2006, amongst others, which require environmental decision-making is to be an outcome of discussion and debate in constitutionally appointed and elected Local Governments. For instance, Article 243 ZD and ZE of the Constitution requires District Draft Development Plans are developed democratically taking into account the use of water, natural resources and environmental concerns. It is also in gross variance to Principles 10 and 11 of the Rio Declaration on

---

<sup>34</sup> Subramanian Report *supra* note 27 at 8.

<sup>35</sup> ESG Critique *supra* note 29 at 31.

Environment and Development (1992) which argue for environmental decision making to be democratic as “*Environmental issues are best handled with the participation of all concerned citizens, at the relevant level*” (Principle 10), and “*States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply*” (Principle 11).<sup>36</sup>

It is common knowledge that such constitutional requirements and international commitments have been rarely complied with in India’s environmental regulation and governance systems. An apt example would be the manner in which India pushed through the massive iron ore mining and steel plant by South Korean giant POSCO, and this was blocked largely due to the successful resistance by local communities in Jagatsingpur district of Odisha.<sup>37</sup> In that sense, the Subramanian Committee was an opportunity to fundamentally reform environmental governance by promoting meaningful and sincere implementation of environmental and forest protection laws and to deepen democratic decision making. This was forfeited, however, as the Committee responded to the key directive of the Government, which was to “*review these (environmental) Acts and (to) suggest appropriate amendments to bring them in line with their objectives.*”

---

<sup>36</sup> The Rio Declaration On Environment And Development (1992), [http://www.unesco.org/education/pdf/RIO\\_E.PDF](http://www.unesco.org/education/pdf/RIO_E.PDF), (Last accessed: Jun 20, 2018)

<sup>37</sup> For a detailed critique of the environmental and social impacts of the POSCO project, and also how applicable laws and policies were sidestepped in advancing the project on the claim that it serve the “strategic interest” of the country, see, Leo F. Saldanha and Bhargavi S. Rao, *Tearing through the Water Landscape: Evaluating the environmental and social consequences of the POSCO project in Odisha, India*, ENVIRONMENT SUPPORT GROUP (2011), <http://www.indiaenvironmentportal.org.in/files/water-landscape-esg-posco-final-27may201.pdf>, (last accessed Mar. 28, 2018).

The ESG Critique discussed the major lacunae in the Subramanian Report as follows:

*“The task of identifying gaps and proposing reforms expectedly would involve deliberate, careful and sensitive analysis of various factors, and would demand deeply democratic consultations with a range of constituencies across the length and breadth of this vast country, filled as it is with multiplicity of languages, geographies, ecologies and aspirations. Adequate time is of essence to interrogate such complex terrains, as is also the quality of the dialectic employed.*

*The High- Powered Committee admittedly has not had the necessary time, which it was aware of right at the inception of its appointment. It would have been expected from men who have held high positions of power to negotiate with the Government a reasonable duration to address all the complexities involved, lay down the framework of engagements in a transparent manner, and then go about its task. The Committee has been content in rushing through this terrain and produced a report that does have some ideas worth considering. But in the end, the recommendations of the Committee appear to be nothing more than a cacophony of different voices, in which the one who shouted loudest was heard, and millions who could not, or were not allowed to, were never heard. As a result, this is a Report that does not represent India's challenges in environmental governance.”*

The failure of the Subramanian report in addressing the real challenges of environmental governance in India may also be

perceived in comparison with the 1980 “*Report of the Committee for Recommending Legislative Measures and Administrative Machinery for Ensuring Environmental Protection*”<sup>38</sup> constituted by the Government of India. This report was written with great far-sightedness as is evident from this excerpt:

*“The Committee would like to emphasise that at present the greed of commercial interest and their lack of concern for the future, as well as the genuine needs of the poor for essential articles of daily need such as fuel and fodder, contribute to the denudation of forests and vegetation and thereby to the degradation of the environment. Legislative measures should be devised to curb the degradation caused by profit motive through several punishment, while appropriate steps should be taken to meet the needs of those below the poverty line...”*

Following the submission of the Subramanian Report, there has been widespread criticism that it clearly was an exercise responding to the dominant economic agenda of BJP, placing business interests over ecological security of India. Unmindful, even bristling at such criticisms, Mr. Modi remains committed to this approach. Several of his key economic reforms, particularly demonetization and the introduction of Goods and Services Tax regime, have failed to deliver, and have also been termed a colossal

---

<sup>38</sup> Department of Science and Technology, Government of India, *Report of the Committee for Recommending Legislative Measures and Administrative Machinery for Ensuring Environmental Protection*, (Sept. 15, 1980).

failure by Subramanian Swamy, a key economist of BJP.<sup>39</sup> And it has been argued that “(t)hree years into its five-year term ..the Modi government’s approach to social policy remains unclear”<sup>40</sup>, engaged in “grandstanding”, and which “stems in large part from his preoccupation with presentation over substance.”<sup>41</sup>

In a country where most are worried endlessly about their day to day existence, given the highly stressful state of their personal economies, the role of a leader is crucial in directing policy and guiding governance to serve the interests of most peoples, if not all. Yet, the Modi administration has quietly proceeded to implement various aspects of the Subramanian Report, and even proceeded to take steps to make the National Green Tribunal dysfunctional. Jairam Ramesh has challenged such efforts in the Supreme Court arguing that ““(d) ilution of the independence of the NGT is a direct dilution of the fundamental right to a clean environment and a balanced ecosystem.”<sup>42</sup>

---

<sup>39</sup> Press Trust of India, *Demonetisation a ‘failure’, GST ‘nightmare’ at present but BJP will win 2019 elections: Subramanian Swamy*, FINANCIAL EXPRESS, (April 9, 2018), <https://www.financialexpress.com/india-news/demonetisation-a-failure-gst-nightmare-at-present-but-bjp-will-win-2019-elections-subramanian-swamy/1126738/>, (last accessed Mar. 28, 2018).

<sup>40</sup> Yamini Aiyar, *Three Years On, the Modi Government Still Has Gaping Holes in its Social Policy*, THE WIRE, (Feb. 1, 2017), <https://thewire.in/economy/social-policy-three-years-modi-government>, (last accessed Mar. 28, 2018).

<sup>41</sup> *Modi blues: India’s prime minister focuses too much on appearances*, THE ECONOMIST, (Nov. 2, 2017), <https://www.economist.com/news/leaders/21730880-consequences-are-beginning-catch-up-him-indias-prime-minister-focuses-too-much>, (last accessed Mar. 28, 2018).

<sup>42</sup> IANS, *BJP Government may disband National Green Tribunal: Jairam Ramesh*, (Aug. 30, 2017), THE NEWS MINUTE, accessible at: <https://www.thenewsminute.com/article/bjp-government-may-disband-national-green-tribunal-jairam-ramesh-67624>, (last accessed Mar. 28, 2018).

#### **4.1. Serving the Hindutva agenda by the problematic misuse of environmental laws:**

One deeply disturbing aspect of the Modi administration's approach to environmental governance is that it has attempted to employ environmental laws to serve the Hindutva agenda of his political party and of the Sangh Parivar in the end. While claiming Vedas to be superior to the Theory of Relativity positions faith over science, arguments contesting and trivialising well founded and harshly experienced climate change realities dismisses the very need for factoring a range of complexities in today's decision making. Such articulations aren't random or co-incidental, but are part of a well-orchestrated effort to subordinate reason and rationale to faith and ideology, perhaps even lumpenised decision-making. This comprehensively displaces and dismisses the role of rationale and scientific temperament in public decision making.

This is the very outcome of the controversial 23 May 2017 Notification which the Indian Environment Ministry introduced under the Prevention of Cruelty to Animals (Regulation of Livestock Markets) Rules, 2017.<sup>43</sup> This Notification was widely perceived as an effort to divide society on what people eat. The amendments actively restricted trade and slaughter of cattle, expanded the meaning of cattle to also include camels, and introduced restrictions and monitoring mechanisms that would render impossible cattle trade,

---

<sup>43</sup> For access to the Rules and accompanying Notification *see*, Vidhya Kumaraswamy, *Prevention of Cruelty to Animals (Regulation of Livestock Market) Rules, 2017*, LAWLEX.ORG (May 29, 2017), accessed at: <https://lawlex.org/lex-pedia/prevention-cruelty-animals-regulation-livestock-market-rules-2017/13779>, (last accessed Mar. 28, 2018).



slaughtering of cattle for food and particularly the consumption of beef. This was effectively an attack on personal choice, and on the Right to Livelihood of millions who are associated with rearing livestock and trading cattle for slaughter. And this was done through a Notification which does not require Parliament scrutiny. This at a time when lumpen lynch mobs allied with the Sangh Parivar were actively attacking and killing Muslim cattle traders, Dalits and also those who were suspected of consuming beef. In the back drop of nation-wide protests, a Public Interest Litigation was filed seeking a stay and quashing of the Notification by the Madras High Court. The Court stayed the Notification, a decision subsequently confirmed by the Supreme Court. A miffed Ministry finally withdrew the Notification in November 2017. It is evident from this that BJP is restless in utilising environmental laws to serve its political agenda, and the need for rationality and democratic debate in such matters is of little concern to its Hindutva project and constitutional norms are often comprehensively side-stepped.

Formulating law and policy in such a prejudicial climate responds to and encourages the lumpenisation of political discourse. It also brings to fore the role of science and scientific reasoning in guiding public decision making. It is imperative to be reminded here of a debate that prevailed in Constituent Assembly while drafting the Constitution over the cow slaughter issue. While there was a widespread view to not get into the question of what people eat, the demand for regulating peoples' consumption practices, in particular the protection of cows from slaughter, was brought up by Thakurdas

Bhargava who claimed “(t)he Hindu sentiment in favour of cow protection is old, widespread and deep-seated and it has taken no time to rouse at this moment to a pitch when it is difficult, if not impossible, to ignore it. I think that the matter does require consideration and we must take a decision whatever it is after due consideration. The Hindu feeling on account of recent happenings is very much agitated and this movement, like the movement in favour of Hindi, is bound to gain strength more rapidly than we can imagine”<sup>44</sup> About such an argument, legal commentator A. G. Noorani records that it “.... began by paying obeisance to science and modernity and ended up with the religious plea”<sup>45</sup>.

## 5. CONCLUSION

India has largely evolved its environmental jurisprudence on the basis of rationale and democratic reasoning. This is evident in how the N. D. Tiwari Committee approached the need to consider environmental impacts of development and to ensure that development with equity is not lost sight of. More recently, Jairam Ramesh as Environment Minister has demonstrated how law, science and public opinion can be integrated in formulating a policy on highly controversial issues, such as the re-examination of the controversial approval accorded by the Genetic Engineering Approval Committee (later approval was rephrased as Appraisal) for B.t. Brinjal, India's first genetically modified food, without any public

---

<sup>44</sup> VALMIKI CHOUDHARY, DR RAJENDRA PRASAD: CORRESPONDENCE AND SELECT DOCUMENTS, 91-92 (1947), as quoted by A. G. Noorani, *The Ban on Cow Slaughter*, FRONTLINE (Jun. 24, 2016), <http://www.frontline.in/social-issues/the-ban-on-cow-slaughter/article8700526.ece>, (last accessed Mar. 28, 2018).

<sup>45</sup> A.G. Noorani, *The ban on cow slaughter*, FRONTLINE, (Jun. 24, 2016), <http://www.frontline.in/social-issues/the-ban-on-cow-slaughter/article8700526.ece>, (last accessed Mar. 28, 2018).

consultation. In evolving this policy, Ramesh personally conducted Public Consultations<sup>46</sup> which witnessed the participation of thousands, in seven locations nation-wide, and finally came up with a reasoned decision to issue a moratorium on the release of the GMO product which he based on a range of scientific evidence, widely prevailing public doubt and guided by the Precautionary Principle<sup>47</sup>. Ramesh repeated a similar exercise of public consultations on two other contentious issues, the 'reform' of the Coastal Regulation Zone Notification and the National Green Mission. These consultations set a rather high standard for the methodology that could be employed to democratise environmental governance, which was seen until then as largely a preserve of the technically skilled and of the scientific community. Here were efforts to humanise environmental governance and to bring it within access of ordinary folks nation-wide. However, such popular approaches did not result in systemic reforms required to address the critical gaps in India's environmental governance.

Jairam Ramesh eventually capitulated to the realpolitik of decision making when under pressure from the Prime Minister Dr. Manmohan Singh's office, he approved a controversial clearance to the massive steel project promoted by South Korean POSCO in Orissa, overlooking reports of two Expert Committees, which he had

---

<sup>46</sup> Centre for Environment Education, Ministry of Environment and Forests, Government of India, *National Consultations on Bt Brinjal*, available at: [http://www.moef.nic.in/downloads/public-information/Annex\\_BT.pdf](http://www.moef.nic.in/downloads/public-information/Annex_BT.pdf), (last accessed Feb. 28, 2018)

<sup>47</sup> Ministry of Environment and Forests, Government of India, *Decision on Commercialisation of B.t. Brinjal*, [http://www.moef.nic.in/downloads/public-information/minister\\_REPORT.pdf](http://www.moef.nic.in/downloads/public-information/minister_REPORT.pdf), (last accessed Feb. 18, 2018).

appointed, and when both committees had recommended a comprehensive rethink of the environmental clearances accorded to the project. Ramesh justified this decision as required to protect the “strategic interests” of India.<sup>48</sup> The project, however, was eventually abandoned due to strong resistance from local communities led by the POSCO Pratirodh Sangram Samithi.

For environmental justice to gain more than a foothold in economic decision making, it has to be an outcome of a complex set of actions, intricately linked to local, regional, national and global law and policy actions, path-breaking judicial decisions, and various progressive programmes and schemes. Ensuring such efforts result in action is crucial as India witnesses unprecedented expansion of industrial, commercial, urban and infrastructure sectors, and also consumerism, which has been building up since the 1990s. While there has been a massive surge in economic productivity, it has resulted in grossly unequal accumulation of wealth and also served a debilitating impact on the country’s environment and public health.

The populism with which Mr. Modi’s Government has promoted development as a major plank for demonstrating his political achievements has been premised on ease of doing business as a prime goal. This has meant social and environmental concerns are subordinated to “*utmost good faith*” in investors to adhere to environmental regulatory norms. This has fundamentally altered the

---

<sup>48</sup> Abhay Sahoo & Prashant Paikay, *Scandalous Decision of Jairam Ramesh to Clear the POSCO Project: Environment Minister Disregards Findings of His Own Review and Statutory Clearances Committees*, MAINSTREAM (Feb 12, 2011), <https://www.mainstreamweekly.net/article2590.html>, last accessed (last accessed Mar. 28, 2018).

nature of environmental jurisprudence which India has evolved over decades. The emasculation of the National Green Tribunal, and that also through a Finance Bill, is clearly indicative of the intent to block peoples' easy access to justiciable forums and their right to quick relief. The beneficiaries, clearly, would be polluting industries and such other environmental violators. Further, the manner in which environmental laws are employed to promote divisive political agendas of the Sangh Parivar, presents a highly disturbing scenario of the situation that is developing in the country. Meanwhile, there are efforts underway to amend the existing Coastal Zone Regulation Notification and replace them with a new version which promotes widespread development of ports and such as other infrastructure which has a substantial impact on coastal ecosystems and livelihoods of fisher peoples. The proposal is to allow major infrastructure even in highly ecologically sensitive CRZ I areas. This is notwithstanding the growing threats to India's coastline due to sea level rise and other extreme weather events caused by global warming.

In much the same way, the Modi administration is dealing with forests. The Draft National Forest Policy 2018 pitches a strong role for private sector entry into forestry operations, and this includes privatization of vast stretches of India's so-called 'degraded' forests. As a widely subscribed statement has argued, this policy "... *has been developed by an undemocratic process, is fraught with procedural and statutory violations, promotes schemes, programmes and interventions that are opposed to public policy and the Constitution of India*". The statement supported by a range of people's movements, forest workers union, academicians,

researchers, etc. demands that such policies be withdrawn, which is indicative of deep mistrust in the Modi administration's environmental governance agendas. This is evident in the force of the language employed:

*“Our forests are ours to keep and conserve. Forests are the sovereign property of the peoples of this country and we will not allow our forests to be forfeited. We will never allow them to be privatized. We will not allow ill-thought policies like this draft forest policy, motivated to exploit nature for private profit, to take root in this biologically diverse country. We will not allow the displacement of millions that will follow due to such myopic and ill-informed thinking by a few based in the nation's capital. We are deeply concerned that the draft policy promotes interventions which might exacerbate prevailing socio-economic distress, spread discontents and result in unprecedented destruction of our biodiversity. We will not allow this to happen.”*<sup>49</sup>

There is also increasing concern over the Modi led Government's proposal to restrict access to information by placing various obstacles in exercising the Right to Information. This is being achieved by proposing multiple amendments to the operative parts of the law, often through clarificatory notes that are executive decisions. This is grossly and adversely affecting the right of impacted communities to access environmental information which is be critical

---

<sup>49</sup> See, Peoples Movements, Networks, Academicians, Researchers and Civil Society Organisations reject the Draft National Forest Policy 2018: Demand a fresh policy is evolved through a deeply democratic consultation mechanism and scientific process (Apr. 14, 2018), <http://esgindia.org/campaigns/press/peoples-movements-networks-academicians-.html>, (last accessed Mar. 28, 2018).

to safeguard environment, public health, and to tackle pollution.<sup>50</sup>

All these instances suggest that promoting a deeply democratic, scientifically imbued and rational environmental decision-making framework is essentially not a focus of the Modi administration. This is not to suggest that previous administrations have been environmentally benign – that is certainly not true. What is true though is when previous administrations have most certainly advanced their share of environmentally disastrous decisions, the overall approach was one of promoting public policies whose explicit intention was safeguarding environment and human rights, and for the promotion of a welfare state, even if rhetorically and ritually.

In stark contrast, however, Prime Minister Narendra Modi's administration is actively working to dismantle decades of efforts invested in building a robust environmental jurisprudence. That this is the outcome of multiple peoples struggles, progressive judgments and the embracement of progressive international environmental agreements and treaties, appears to be hardly of any concern to the administration. The business first approach that is being aggressively promoted in fact perceives democratic environmental and social impact appraisals and clearance mechanisms as bottlenecks to economic growth. Critics of such weakening of environmental jurisprudence are harried with very strong reactions from the government, often by employing obfuscation of relevant facts to deflect substantive criticisms. Quite often this reaction also

---

<sup>50</sup> Poonam Agarwal, In The Name of Transparency, Govt Dilutes RTI Rules, *THE QUINT*, (May 6, 2018), <https://www.thequint.com/news/india/exclusive-rti-rules-2017-diluted-in-name-of-transparency-by-government>, (last accessed May 10, 2018).

constitutes attacking the fundamental freedoms of individuals and organisations to express their dissenting views.<sup>51</sup> In effect, a climate of fear is being spread, thus causing many who would be critical to prefer silence to being punished for speaking out. This does not bode well at all for the state of India's environment, for human rights and for the critical necessity to safeguard the socio-economic and ecological security of present and future generations of this large, densely populated and diverse country.

---

<sup>51</sup> Thatagata Bhattacharya, *Environment Ministry enabling corporate takeover of India*, NATIONAL HERALD, (Jun. 9, 2018), <https://www.nationalheraldindia.com/opinion/environment-ministry-enabling-corporate-takeover-of-india>, (last accessed Mar. 28, 2018).