Environmental Conflicts and Resolution

Ritwick Dutta
Legal Initiative for Forest and Environment
The Access Initiative (TAI) India
Environmental conflict is deep rooted in India. Concerns and protest against big dams, thermal power plants, mining and other infrastructural projects is widespread. These conflicts are not one to just protect the trees, birds and animals but one to protect livelihoods, right to life, ones culture, ‘way of life’, identity and above all the ‘Rule of Law’ and democracy itself.
• India’s Planning Commission report shows that 40% of those displaced due to Hydro electric projects are tribals who account for only 8% of India’s population. Tribal areas and rural in India still have the lowest availability of electricity. [Greenpeace Report: Still Waiting and ‘Hiding Behind the poor]

• Studies have shown that a coal fired thermal power plant emits 100 times more radiation than a nuclear power plant. But till date no studies on radiation. [Krishi Vigyan Arogya Sanasta Vs MoEF, NGT, 2011, citing Scientific American and IIT study]

• India has the largest number of people dependent on forest and each day on an average the Government of India diverts 333 acres of forest land.
Dams planned in Arunachal Pradesh: A biodiversity Hotspot
Genesis of Environmental Conflict

Poor Environmental Governance

- Project proponents statement is taken as ‘Gospel Truth’. [Samata Versus Union of India, Decision of the NGT]
- Public Hearing reduced to a mockery and its proceeding nauseating [Adivasi Kisan Ekta Sanghatan versus Ministry of Environment and Forest, NGT, 2011]
- Ex Bureaucrats as environmental experts [Kalpavriksh versus Union of India, NGT Decision]
- No detailed Appraisal and rapid appraisal and casual approach. 72 projects approved in a single day. [Samta Versus Union of Indi, NGT, 2013]
- Approach is reactive rather than proactive. It needed a disaster before cumulative impacts have been made mandatory.
Environmental Law Compliance is an ‘Empty Formality’. Viewed by both the Government, Project Proponents and Courts as directory rather than mandatory.

- Environmental law is seen as subordinate/inferior to other laws eg. Environmental Public Hearing and Environment Impact Assessment [EIA] studies take place after the lands have been acquired under the Land Acquisition Act.

- Contracts are awarded and MOU’s signed between the Government and Project proponent and the last step is environmental law compliance, which is seen as a mere procedural formality and something which is seen a matter of right so far as project proponents are concerned.

- Strategic and economic consideration always takes primacy over environmental consideration.

- Dominance of Wednesbury principle in environmental cases.
• Illegal Projects are allowed to proceed ‘at their own risk’ by orders of the court on the assurance that ‘no equity’ will be claimed later. **Yet equities are claimed and money spent has been the sole reason for regularisation.**

• Environmental laws are seen as ‘bottleneck’ and a ‘green hurdle’ and those who try to implement and enforce it are seen and branded as ‘foreign agents’, ‘anti development’ and ‘anti national’.

• Environmental defenders (both individuals and organisations) are victimised, jailed, hounded and at times killed.
Life of an environmental Activist: Ramesh Aggarwal

2011: jailed

2012: Shot
Paralysed for life...
Indian activist Ramesh Agrawal wins the 'Green Nobel'

AP | Apr 28, 2014, 05.04 PM IST

GARE VILLAGE (AP): The man walked into Ramesh Agrawal's tiny internet cafe, pulled out a pistol and hissed, "You talk too much." Then he fired two bullets into Agrawal's left leg and fled on a motorcycle.
Environmental Principles are mere words with no corresponding action and impact

- *Precautionary Principle*, the *Polluter Pay Principle* and Rule of ‘Reversal of Burden of Proof’ are today mere words in Statutes and Courts Judgments

- Case laws and administrative decisions are replete with violation of Precautionary Principle. Its ‘Pay and Pollute’, and the ‘burden is always on those who come before the Court’.

- In only one case (w.r.t to a thermal power plant) the environmental approval has been rejected by the Court for violation of these principle. Eg. *Jeet Singh Kanwar versus Union of India*, [National Green Tribunal]
Judiciary’s role in resolution of the conflict
Strengthen Environmental Courts and Tribunal so as to serve as ‘safety valve’ and therefore ensure effective access to justice. India’s National Green Tribunal is an example. While the Green Bench of the Supreme Court or High courts can only dedicate only few hours in a week or month for environmental matters, the National Green Tribunal today hears more than 150 environmental cases each day.
Strengthen Environmental Courts and Tribunal so as to serve as ‘safety valve’ and therefore ensure effective access to justice. India’s National Green Tribunal is an example. While the Green Bench of the Supreme Court or High courts can only dedicate only few hours in a week or month for environmental matters, the National Green Tribunal today hears more than 150 environmental cases each day.
• ‘Review the balancing role played by the Courts in environmental matters.

• Is the task of the Court to balance in the face of blatant environmental law violation?
Appreciate the true meaning and scope of ‘sustainable development’. Development cannot be termed as ‘sustainable’ if the same is in violation of environmental laws. The true yardstick to decide as to whether the project is sustainable or not is to see whether it is strictly in compliance with environmental laws and regulations.
Sustainable development, it has been argued by various eminent environmentalists, clearly postulates an anthropocentric bias, least concerned with the rights of other species which live on this earth.

Centre for Environmental Law Vs Union of India, Supreme Court, 2013
In M. C. Mehta v. Kamal Nath and Others (1997) 1 SCC 388, this Court enunciated the doctrine of public trust, the thrust of that theory is that certain common properties such as rivers, seashores, forests and the air are held by the Government in trusteeship for the free and unimpeded use of the general public. The resources like air, sea, waters and the forests have such a great importance to the people as a whole, that it would be totally unjustified to make them a subject of private ownership. The State, as a custodian of the natural resources, has a duty to maintain them not merely for the benefit of the public, but for the best interest of flora and fauna, wildlife and so on. The doctrine of public trust has to be addressed in that perspective.

Centre for Environmental Law Vs Union of India, Supreme Court, 2013...
Sustainable development has become the guiding theme in much environmental literature... The world has good reason to be grateful for the new prominence of this idea, yet it must be asked whether the conception of human beings implicit in it is sufficiently capacious. Certainly, people have ‘needs’, but they also have values, and, in particular, they cherish their ability to reason, appraise, act and participate. Seeing people in terms only of their needs may give us a rather meagre view of humanity....

[Why we should protect the Spotted Owlet, Amartya Sen, 2004]
Respect People’s voice and concern
Public hearing in Chattisgarh
NGT’s Response..

This is not a case where there are a few ignorable procedural lapses in conducting the public hearing. This is a case of a mockery of public hearing, which is one of the essential parts of the decision making process, in the grant of Environmental Clearance. This is a classic example of violation of the rules and the principles of natural justice to its brim. Therefore, we consider it appropriate to declare that the public hearing conducted in this case is nullity in the eye of law and therefore is invalid.

[Adivasi majdoor Kisan Ekta Sanghatan vs Union of India, NGT April, 2011 ]
As stated before, the economic interest shall be put in the backseat when it is found that degradation of the environment would be long lasting and excessive.... It is well settled that the person who wants to change the status quo has to discharge burden of proof to establish that the proposed development is of sustainable nature. We are of the opinion that the Project Proponent failed to discharge such burden of proof ...

Jeet Singh Kanwar Vs Ministry of Environment and Forest
NGT, 2013
a duty is cast upon the ..[Ministry of Environment and Forest] as the case may be to apply the cardinal and Principle of Sustainable Development and Principle of Precaution while screening, scoping and appraisal of the projects or activities. While so, it is evident in the instant case that the Expert Committee has miserably failed in the performance of its duty ....... For a huge project as the one in the instant case, a thermal power plant with an estimated cost of Rs. 11,838 crore, covering a total area of 1675 acres of land, the consideration for approval has been done in such a cursory and arbitrary manner even without taking note of the implication and importance of environmental issues ......
….It is not as if the Tribunal is not unmindful of the fact that the proposed project is a thermal power plant estimated at a cost of approximately Rs.11,830 crore and if commissioned the State would be relieved of the acute shortage of power to some extent …But, when it is noticed by the Tribunal that the EAC had not made proper exercise by applying its mind to make a proper evaluation and the same also remained unnoticed by the MoEF while granting the EC for the project in question, taking into account the larger interest of the nation from the point of view of ecology and environment, the Tribunal cannot give its nod ……for the grant of Environmental Clearance made by MoEF

Samata Versus Union of India, NGT, 2013
Does environmental Activism impact growth?

- More than 30,000 projects are granted environmental and forest Approvals each year by the Government of India and the State Governments.
- Approximately 50 Appeals are filed per year against such projects.
- In the history of environmental litigation, the Environmental Clearance (EIA) has been quashed for only 4 projects.
- More than 99% of projects goes on without legal challenge.
"When we destroy something created by man, we call it an act of vandalism. When we destroy something created by nature, we call it development"