Key Environmental Issues and Challenges in South Asia—Legal Perspective

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Constitutional Position on Environment

- **Bangladesh** – Amendment through Art 18 –A– Obligation of State to protect environment
  – Earlier – Linked to ‘right to life’ – Article 31, 32
- **Nepal** – Fundamental Right to environment and health guaranteed in the Interim constitution (Art 16)
- **Pakistan** – Environment now delegated as a Provincial subject from concurrent (18th Constitutional Amendment)
- **India** – Constitutional mandate (48-A; 51-A(g)) and environment more as a Central or Federal subject; forest and wildlife being concurrent subject; Article 21 and its interpretation of fundamental right to healthful environment
Constitutional Position on Environment

- **Afghanistan** – Preamble declares that attainment of a prosperous life and sound living environment for all inhabitants.
- **Srilanka** – Article 27(14) declares that ‘the state shall protect, preserve and improve the environment for the benefit of the community.’
- **Bhutan** – Article 5 – regarding the protection and conservation of the environment; Trustee; 66% forest cover to be maintained.
- **Maldives** – Article 22; 23; 67; 232 – Detailed provisions regarding protection of environment as well as for future generations; including state duties; citizens responsibilities and decentralized NR governance.
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- Regulatory mechanisms on environmental law compliance
  - *Environment Impact Assessment*: Is it proving to be a good tool for regulation? Or merely a box ticking formality? – Most SA countries
  - *Cumulative impact assessment*: Should it now be a mandatory in the region?
  - *Strategic environmental assessment*– Pakistan
  - *Public hearing and monitoring of environmental clearance conditions*
  - *Process of forest clearance and its monitoring*
  - *Unregulated growth in urban centers*– The link between Town Planning laws and environment
  - *Regulating flood plains*– The need for river regulation zone
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- **Institutional Perspective**
  - A very active Supreme Court of India and its continual interventions on environmental obligations– The Monday–Friday Environment Bench
    - The National Green Tribunal in India and its working– Miles to go
    - Pakistan– Very Active Supreme Court; Green Bench of the Lahore High Court
    - Environmental protection tribunals of Pakistan
    - Executive bodies: Environmental decision–making is marred by political considerations and bias is toward economic growth
    - EAC; FAC; SEIAA; SEAC etc
    - Pakistan Environmental Protection Council
    - The case of weak appellate authorities in India that are statutory in nature
    - Concept of Independent Regulator– a contested domain!!!
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- Capacity-building on both substantive and procedural environmental laws:
  - Within the executive, judiciary and legal profession
  - Curriculum of environmental teachers
  - Capacity-building of institutions to train environmental lawyers
  - Capacity-building of administrative and regulatory institutions – PCBs; CZMAs, EACs,
Role of environmental law in corporate governance:
- Corporate social responsibility to corporate environmental responsibility
- India—Its more as one of the Terms of Reference for prior EC
- How can we get the concerns of the environment in the board rooms?
- Environmental decisions need to make good business sense.
Significant environmental concerns that may or may not have parallels in all South Asian Countries

- **Saving critical habitats** such as critical wildlife habitats and critical tiger habitats in India: Creating Inviolate Zones
- **Transboundary wetlands**: An opportunity for co-management—
  - Sunderbans; Bangladesh–India
  - Ground water aquifers– India–Pakistan
  - Kosi River– Nepal–India
- **Ecologically Sensitive Areas** Debate–India
- **Tenure security and eliciting local communities’ participation** for conservation–Nepal, India
- **Scheduled areas** or autonomous areas and NRM
VIEWS FROM SANEL MEMBERS
On three/Four Big challenges on environment!
Pakistan–

Justice Mansoor Ali Shah and Saima Khawaja, Advocate

1. Water (both scarcity and pollution)
2. Air pollution
3. solid waste issues
4. deforestation
Shift in environmental governance from carrot and stick to that of partnership between the regulators and regulattees.

Cumulative effects of projects and thus the need for strategic environmental assessment to understand better the carrying capacity.

Social corporate responsibility.

Hydropower – what it means for a young fragile eco–systems.
Climate Change;
Habitat destruction; and
Unplanned rapid urbanization.
Afghanistan
Mohammad Khalid Bahrami – Judge*

- Sanitation
- Lack of Urban Planning
- Existence of bricks stoves

* Not a SANEL member yet
Conservation of biodiversity and ecosystems,
Recognition that laws must contribute to poverty reduction and equity, promote intra and inter-generational equity, and respect for generations of life,
Integration of conservation and sustainable use of biodiversity into national and sectoral decision making as well as sectoral policies and legislation,
Mainstreaming precautionary approach to ecosystems, species, and human health into policies, legislation and institutions
Establishment of appropriate institution(s) to ensure prompt, fair and transparent implementation of different pieces of legislation including environmental laws.
There should be an efficient mechanism for disseminating information (specially judgments, literature) among members of the judiciary in SARRC countries. This is important as the environmental issues in the region are quite similar.

Judges should be aware not only about the law, but about the gravity of current environmental threats and the state of the degradation. Such awareness will pave the way for effective judicial remedies.
Climate change (adaptation and resilience would be especially important in South Asia)

Ecosystem/biodiversity destruction (especially deforestation)

Pollution (air, water – both marine and freshwater)
Lack of coordinated framework with various Ministries impacting environment—Mines, coal, forest, tribal, power, petroleum....

Weak Monitoring Framework for Cleared Projects

Solid and Hazardous waste disposal especially in non planned rural areas or peri urban areas

Illicit and organised Wildlife Trade
Some Suggestions

- Strengthening networks with environmental lawyers (E.g. SANEL)
- More specific and thematic orientation and interactions with judges and environmental lawyers
- Working on shared concerns
- Dissemination and sharing of key environmental law developments
- Share both successes and failures
- Sharing strategies, cross learning
- Focusing Judicial Academies– Specialist
- Improving and enhancing lower judiciary on environment issues including, wildlife prosecution, pollution issues, complaint cases etc.
- Role of SACEP
THANK YOU

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