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Article

The Anatomy of Environmental Rule of Law Within the Indian Environmental Policies

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Abstract: The environmental rule of law (ERL) is a recent development in the international landscape. Within a very short span of time, the ERL has been considered as one of the distinctive components of environmental constitutionalism. The UNEP introduced seven core elements of the ERL in 2015 that modified canons of the rule of law putting environmental concerns at its epicentre. Like principles of rule of law, the ERL has attained the highest pedestal in the domestic legal field, and it has become eternal and less susceptible to ordinary political change. The ERL is primarily concerned with the enactment and implementation of domestic environmental laws that are substantially and procedurally just, fair, and reasonable facilitating people's right to sustainable development in a clean and healthy environment along with rights of the environment to maintain its life cycle uninterruptedly. This research paper adopts doctrinal research methodology to investigate the anatomy of ERL within the Indian environmental policies such as Constitutional Law, Wildlife Protection Act, PESA, Water Act, Air Act, EP Act and NGT Act. It has found that there is partial incorporation of ERL within the text of Indian environmental policies.

Keywords: environmental rule of law; right to environment; rights of environment; sustainable development; stakeholder's right to participate in environmental decision making; right to administrative and judicial remedies

I. Introduction

The environmental rule of law is a recent phenomenon in the realm of environmental governance across the globe. It has been propelled by the emerging dimensions of the human rights in the environmental context. To Bruch and Morley, there are two foundations of environmental rule of law: universal acceptance of rule of law and growing body of international environmental law and governance.¹ To me, environmental rule of law emerged as a result of vital contribution of traditional concept of rule of law in the environmental conservation that has facilitated to implement international environmental laws with transparently, independently, accountably and uniformly at national landscapes upholding human rights of the people to clean and healthy environment as well as human rights of environment equivalent to the rights of human beings. Human rights of the people to environment connote substantive and procedural rights of the people over the environment and human rights of environment denote self rights of environment to legally claim protection against the human actions that are hazardous to development of environment for restoration of its life cycle. These human rights are recognized and protected by law.

The seminal Stockholm Conference on Human Environment (UNCHE) has shown seeds of environmental rule of law in 1972. The UNCHE succeeded to declare universally acceptable 26

¹ Carl Bruch and Isabelle Morley, "Environmental Peacebuilding and Environmental Rule of Law: Linkages, Lessons, and Looking Forward," in *Research Handbook on International Law and Environmental Peacebuilding*, ed. Daniëlla Dam-de Jong and Britta Sjöstedt (Edward Elgar Publishing Limited, 2023), <http://dx.doi.org/10.4337/9781789906929>.

principles recognizing environmental rights and duties of man (Principles 1, 4) and setting environmental obligations on State (Principles 2, 3, 7, 11, 13, 14, 15, 16, 17, 21, 22, 26) for conservation and improvement of the human environment.² Similarly, the Rio Declaration on Environment and Development of the United Nations Conference on Environment and Development (UNCED), 1992 has reaffirmed human rights to a healthy and productive ecosystem (Principle 1) for the ability of present and future generations to exercise their developmental rights (Principle 3). It declares: common but differentiated environmental responsibility of States (Principle 7); responsibility on States to reduce and eliminate unsustainable patterns of production and consumption promoting appropriate demographic policies (Principle 8); civic participation in environmental decision making process including citizens' right to access to environmental information kept by public authorities and effective access to judiciary and administration for redressal of environmental rights (Principle 10); enactment of effective environmental legislations (Principle 11); compensation to environmental victims through development of national liability laws (Principle 13); precautionary principle (Principle 15); polluter pays principle (Principle 16); development of national environmental impact assessment instrument (Principle 17); women's participation in environmental management and development (Principle 20); youth's participation in environmental management and development (Principle 21); indigenous people's participation in environmental management and development (Principle 22).³

The UN Environmental Programme (UNEP) has developed concept of environmental rule of law forming a part of its normative agenda in 2012 in the Rio+20 Conference.⁴ The UNEP has considered and declared the rule of law central to the sustainable development. Rule of law does transparent and sustainable management of natural resources, which is engine for SD and a platform for the peace and justice.⁵

The phrase "environmental rule of law" has been first put forward by the Governing Council of the United Nations Environmental Programme,⁶ in 2013, in an internationally negotiated document titled "Advancing Justice, Governance and Law for Environmental Sustainability."⁷ The Governing Council noted that the environmental rule of law shall offer strong fulcrum for the implementation

² United Nations Conference on the Human Environment, *Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972; Official Records* (New York: United Nations, 1973). Accessed from <https://documents.un.org/doc/undoc/gen/nl7/300/05/pdf/nl730005.pdf>

³ United Nations Conference on Environment and Development, *Report of the United Nations Conference on Environment and Development: Rio de Janeiro, 3-14 June 1992; Official Records* (New York: United Nations, 1993). Accessed from <https://documents.un.org/doc/undoc/gen/n92/836/55/pdf/n9283655.pdf>

⁴ United Nations Environment Programme, *Environmental Rule of Law: Tracking Progress and Charting Future Directions* (United Nations Environment Programme, 2023), <https://doi.org/10.59117/20.500.11822/43943>; Carl Bruch, *Environmental Rule of Law: First Global Report* (Nairobi: United Nations Environment Programme, 2019).

⁵ United Nations Environment Programme, *Environmental Rule of Law: Critical to Sustainable Development (Issue Brief)*. (United Nations Environment Programme, 2015). URL: <https://wedocs.unep.org/handle/20.500.11822/10664>

⁶ Arnold Kreilhuber and Angela Kariuki, "Environmental Rule of Law in the Context of Sustainable Development," *The Georgetown Environmental Law Review* 32 (2020): 591–98.

⁷ United Nations Environmental Programme, "Advancing Justice, Governance and Law for Environmental Sustainability," (United Nations Environmental Programme Governing Council Decision 27/9. U.N. Doc. UNEP/GC.27/17. March 12, 2013). Accessed from <https://documents.un.org/doc/undoc/gen/k13/509/45/pdf/k1350945.pdf>

of environmental laws, attainment of sustainable development, decreasing environmental pressure and augmenting respect for human rights.⁸

a. Environmental Rule of Law v. Environmental Governance

Environmental rule of law is distinct from environmental governance. Later covers a broad range of principles and approaches concerned with environmental decision making and implementations; whereas, former is anxious for consistent, fair and effective implementation, compliance and enforcement of environmental laws linking it with the human rights.⁹ Environmental rule of law represents an apex environmental legal norm, not just an environmental issue, and its non-compliance renders the act null and void. For example, civic engagement and environmental impact assessment in environmental governance is an exercise to improve the quality of decision, enhance civic voice, and build public participation for compliance and enforcement of decision;¹⁰ whereas, civic engagement and environmental impact assessment are also parts of environmental rule of law and its non-compliance makes entire developmental activity futile. In *Hanuman Laxman Aroskar v. Union of India*,¹¹ the Supreme Court of India had suspended Environmental Clearance (EC) to an Airport in Goa State on the ground that the government had not appreciated environmental impact assessment in the EC that is cardinal to the environmental rule of law.

b. The Research Questions

This research paper investigates a very crucial question that whether the essential elements of environmental rule of law have been incorporated within the text of the Indian environmental policies?

c. The Research Hypothesis

This research paper has been developed considering the research hypothesis that the Indian environmental policies have partially brought essential elements of environmental rule of law within their texts.

d. The Research Methodology

This research paper has been prepared adopting doctrinal research methodology. This research paper has analyzed core elements of environmental rule of law exploring various conferences, declarations and reports of the United Nations. Further, this research paper has examined incorporation of core elements of environmental rule of law into texts of the Indian environmental policies including Indian Constitution, the Wildlife Protection Act (WPA), the Panchayat Extension in Scheduled Areas Act (PESA), the Water Act (WA), the Air Act (AA), the Environmental Protection Act (EPA), and the National Green Tribunal Act (NGTA).

II. Anatomy of Rule of Law

Relying upon Aristotelian idea that rule of law is better than the rule of man, Flores and Himma (2013) present a popular expression that no one is higher than law; the rule of law shall prevail, not

⁸ Arnold Kreilhuber and Angela Kariuki, "Environmental Rule of Law in the Context of Sustainable Development," *The Georgetown Environmental Law Review* 32 (2020): 591–98.

⁹ United Nations Environment Programme, *Environmental Rule of Law: Tracking Progress and Charting Future Directions* (United Nations Environment Programme, 2023), <https://doi.org/10.59117/20.500.11822/43943>.

¹⁰ Carl Bruch, *Environmental Rule of Law: First Global Report* (Nairobi: United Nations Environment Programme, 2019).

¹¹ (2019) 15 SCC 401

the rule of people; and the rule of law is nothing but a set of orders created by the law.¹² Lord Bingham (2007) similarly warns that greater governmental discretion poses greater scope for subjection and arbitrariness and that is antithesis to the rule of law.¹³ Fuller presents a famous list of essential elements of legality of law¹⁴ that creates the state of orders as a set of rule of law;

- a. the law should be general, publically promulgate and clear;
- b. the law should not demand something that is impossible to perform;
- c. the law should come into effect with prospectively;
- d. the law should be understandable by prudent persons;
- e. the law should be free from contradictions;
- f. the law should be relatively stable and congruent; and
- g. the law should be consistent and constantly applicable equally to all persons in all cases.

The concept of rule of law has received universal clarity and acceptance. The UN Secretary General (2004) has defined rule of law as “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”¹⁵

The rule of law is critically considered necessary for the environmental protection and sustainable development and it emerges as ‘rule of law for nature’¹⁶ or ‘environmental rule of law’ that reflects one of the paradigms of environmental constitutionalism.¹⁷

III. Anatomy of Environmental Rule of Law

The UNEP has made an appeal to the global community in March 2015 to adopt seven core elements of environmental rule law (ERL) for environmental justice (EJ) and sustainable development (SD) to all through a just, efficient and translucent institution. The UNEP (2015) identifies **seven core constituents of environmental rule of law** that includes:¹⁸

¹² Imer B. Flores and Kenneth Einar Himma, “Introduction,” in *Law, Liberty, and the Rule of Law*, ed. Imer B. Flores and Kenneth E. Himma, vol. 18, *Ius Gentium: Comparative Perspectives on Law and Justice* (Dordrecht: Springer Netherlands, 2013), 1–9, doi:[10.1007/978-94-007-4743-2_1](https://doi.org/10.1007/978-94-007-4743-2_1).

¹³ Lord Bingham, “The Rule of Law,” *The Cambridge Law Journal* 66, no. 1 (March 2007): 67–85, doi:[10.1017/S0008197307000037](https://doi.org/10.1017/S0008197307000037).

¹⁴ Lon L. Fuller, *The Morality of Law*, Rev. ed., 15. print, A Yale Paperbound 152 (New Haven: Yale Univ. Press, 1978). 33–94.

¹⁵ United Nations Secretary-General, “*The rule of law and transitional justice in conflict and post-conflict societies.*” (United Nations Secretary-General Doc. S/2004/616. 2004). Accessed from <https://digitallibrary.un.org/record/527647?ln=en&v=pdf>

¹⁶ Christina Voigt, ed., *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law*, 1st ed. (Cambridge University Press, 2013), <https://doi.org/10.1017/CBO9781107337961>.

¹⁷ Louis J. Kotzé, “Six Constitutional Elements for Implementing Environmental Constitutionalism in the Anthropocene,” in *Implementing Environmental Constitutionalism*, ed. Erin Daly and James R. May, 1st ed. (Cambridge University Press, 2018), 13–33, <https://doi.org/10.1017/9781316691588.003>.

¹⁸ United Nations Environment Programme, *Environmental Rule of Law: Tracking Progress and Charting Future Directions* (United Nations Environment Programme, 2023), p. 17. <https://doi.org/10.59117/20.500.11822/43943>; UNEP. (2015). United Nations Environment Programme,

- i. **Fair, clear and implementable environmental laws:** environmental laws should be fair and non-discriminatory in their development, application and impact, it should be unambiguously understandable and could be implemented to effectively address institutional, cultural and economic context of the nation.
- ii. **Right to information, civic involvement and right to justice:** right to information enables citizenry to identify environmental violations and determine the methodology to get engaged. Civic involvement in environmental decision-making contributes in formulation of fair and implementable laws and improves public support and compliance. Right to justice calibrates right to environmental information, per Principle 10 of the Rio Declaration, and civic participation and access of people to the adjudicating authorities for enforcement of their rights and resolving disputes.
- iii. **Accountability and integrity of institutions and decision makers:** environmental institutions must demonstrate accountability, transparency and integrity to ensure public support and compliance and to deliver effective environmental protection.
- iv. **Clear and coordinated mandates and roles, across and within institutions:** environmental governance is carried out through multiple normative agencies (statutory, customary, and religious), levels (international, national and local) and sectors (air, water, forest, agriculture, waste management etc.) resulting in institutional overlap and gaps. Clear mandates and cross-sectoral coordination are essential for effective implementation of environmental laws.
- v. **Accessible, fair, impartial, timely and responsive adjudication:** dispute resolution and enforcement mechanisms that are fair, impartial, timely and responsive increase compliance with environmental regulations and support environmental initiatives and civic trust in the judicial process.
- vi. **Recognition of the mutually reinforcing relationship with human rights:** environmental rule of law has a mutually reinforcing relationship with constitutional, human and other rights. A healthy environment is necessary for realizing rights to life, property and health as well as cultural, economic and political rights. Constitutional, human and other rights including both substantive and procedural rights provide tools for strengthening and enforcing environmental protection. And
- vii. **Specific criteria for the interpretation on environmental law:** clear and detailed guidance on environmental laws enable implanting agencies to adopt consistent regulations and enforcement practices and facilitate compliance on the part of regulated communities and the public.

Apart from the UN documents, Magraw (2014) appreciates the environmental aspects of rule of law that includes:

- a. Public promulgation of environmental laws;
- b. Enforceable capabilities in the environmental laws;
- c. Uniform applicability of the environmental laws equally on everyone including state and non-state parties; and
- d. Sufficient authority in the environmental laws for their uninterrupted observance; and
- e. The environmental law must allow full non-state stakeholder participation in the environmental matters including access to courts for redressal of rights.¹⁹

Thus, the environmental rule of law typically provides a comprehensive collection of constitutionally entrenched state of orders for care of human environment augmenting sustainable development.

Environmental Rule of Law: Critical to Sustainable Development (Issue Brief). (United Nations Environment Programme, 2015). URL: <https://wedocs.unep.org/handle/20.500.11822/10664>

¹⁹ Daniel Barstow Magraw, "Rule of Law and the Environment," *Environmental Policy and Law* 44, no. 1/2 (2014): 200, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/envpola44&div=34&id=&page=>.

IV. Anatomy of Environmental Rule of Law Within the Indian Environmental Policies

India represents best piece of environmental rule of law across the world. All Indian environmental laws are manifesting essential elements of environmental rule of law proposed by the United Nations Environmental Programme in 2015. In this research paper, I am investigating environmental rule of law in the following Indian laws.

a. The Constitution of India and Environmental Rule of Law

As long as environmental rule of law is concerned, the Indian constitution envisage the Panchayat Raj institutions through the Constitution (73rd and 74th Amendment) Acts, 1992 that establishes Panchayats (under Part IX of the Indian Constitution) and Municipalities (under Part IXA of the Indian Constitution) as local bodies of democracy. The developmental plans formulated by the Panchayats and Municipalities of a district are consolidated by the District Planning Committee to formulate a draft development plan for the district as a whole.²⁰ In the draft development plan, the District Planning Committee shall consider common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integral development of infrastructure and environmental conservation.²¹ Such draft development plans shall be forwarded to the Government of the State.²² Likewise, every Metropolitan area has a Metropolitan Planning Committee to prepare a draft development plan for the whole Metropolitan area.²³ In preparing the draft development plan, the Metropolitan Planning Committee considers the matters of common interest between the Municipalities and the Panchayats, including coordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation.²⁴ Such draft development plan is forwarded to the Government of the State.²⁵ Civic participation is essential to the formulation of development plan.

b. The Wildlife Protection Act and Environmental Rule of Law

The wildlife (Protection) Act, 1972 (WPA) is an overriding federal law²⁶ applicable to whole part of India²⁷ with an objective to provide protection to wild animals, birds and plants with a view to ensure the ecological and environmental security of India.²⁸ The WPA authorizes State Governments to create Protected Areas²⁹ comprising of Sanctuaries,³⁰ National Parks,³¹ Conservation Reserve³² and Community Reserve³³ to protect, propagate and develop wildlife and its environment. Approximately 5.28% of Indian land i.e. 1,73,629.52 square kilometer has been covered by 998 Protected Areas under the WPA which includes 567 Wildlife Sanctuaries, 106 National Parks, 105

²⁰ Article 243ZD(1) of the Constitution of India, 1950.

²¹ Article 243ZD(3)(a)(i) of the Constitution of India, 1950.

²² Article 243ZD(4) of the Constitution of India, 1950.

²³ Article 243ZE(1) of the Constitution of India, 1950.

²⁴ Article 243ZE(3) of the Constitution of India, 1950.

²⁵ Article 243ZE(4) of the Constitution of India, 1950.

²⁶ Section 66 (1) of the Wildlife (Protection) Act, 1972.

²⁷ Section 1 (2) of the Wildlife (Protection) Act, 1972.

²⁸ Long title of the Wildlife (Protection) Act, 1972.

²⁹ Chapter IV of the Wildlife (Protection) Act, 1972.

³⁰ Section 18 of the Wildlife (Protection) Act, 1972.

³¹ Section 35 of the Wildlife (Protection) Act, 1972.

³² Section 36A of the Wildlife (Protection) Act, 1972.

³³ Section 36C of the Wildlife (Protection) Act, 1972.

Conservation Reserves and 220 Community Reserves.³⁴ The WPA prohibits hunting of wild animals specified in schedules I, II, III and IV;³⁵ picking, uprooting, damaging, destroying, acquiring, collecting, possessing, selling, offering for sale, offering by gift, or transport any specified plant from any forest land;³⁶ cultivation of specified plant;³⁷ and dealing in specified plants³⁸ without permission/ license granted by the Chief Wildlife Warden.

The WPA allows forest dwellers a limited participatory right in the conservation and promotion of wildlife through their traditional scientific knowledge. By and large, a private person can bring legal action against violation of provisions of WPA only after serving a sixty days advance notice to the government or wildlife officials.³⁹ However, the Indian judiciary has entertained writ petitions filed by private individuals and directed government to develop Eco Sensitive Zones (ESZ) of minimum one kilometre width outside the demarcated boundary of every sanctuaries and national parks as buffer zone to restrict mining or other activities around it;⁴⁰ to take suitable steps to prevent cruelty against tigers and other wild animals in the zoo and protected areas such as national parks and sanctuaries;⁴¹ and the judiciary directed the State of Chhattisgarh to put into operation the Centrally Sponsored Integrated Development of Wildlife Habitat Scheme, 2009 to save the Asiatic wild buffalo from extinction.⁴² The court has also held that government licensed mining activities in the protected areas or buffer zones are unlawful and hazardous to the wildlife⁴³ and carrying business of wild birds are beyond purview of fundamental rights under article 19(1)(g) of the India Constitution.⁴⁴

c. The Panchayat Extension in Scheduled Areas and Environmental Rule of Law

The PESA prescribes wider frameworks for the State Governments to be adhered with in the making of Panchayat laws for the Scheduled and Tribal Areas referred under article 244 of the Constitution of India.⁴⁵ These frameworks are covering fourteen major aspects to be included in the State Panchayat laws. Thus, the Panchayat laws shall be in consonance with the customary laws, socio-religious practices and traditional community resource management practices of the habitants of these areas.⁴⁶ Every village falling within the limits of these areas shall have a Gram Sabha⁴⁷ competent to safeguard and preserve the traditions, customs, cultural identity and community resources⁴⁸ approving the socio-economic development plans, projects and programmes before its implementation by the Panchayat at the village level⁴⁹ and issuing the fund utilization certificate to

³⁴ Saman Narayan Upadhyay and Milendra Singh, "Community Participation in Wildlife Conservation to Promote Environmental Constitutionalism and Sustainability in India," *IJIRMF* 10, no. 1 (2024): 224–32, <https://doi.org/10.2015/IJIRMF/202401036>

³⁵ Section 9 of the Wildlife (Protection) Act, 1972.

³⁶ Section 17A of the Wildlife (Protection) Act, 1972.

³⁷ Section 17C of the Wildlife (Protection) Act, 1972.

³⁸ Section 17D of the Wildlife (Protection) Act, 1972.

³⁹ Section 55 of the Wildlife (Protection) Act, 1972.

⁴⁰ T.N. Godavarman Thirumulpad, *In re v. Union of India*, (2022) 4 SCC 289

⁴¹ Navin Raheja v. Union of India, 2000 (6) SCALE 574, (2001) 9 SCC 762

⁴² T.N. Godavarman Thirumulpad v. Union of India, decided on 13th February 2012

⁴³ Tarun Bharat Sangh, Alwar v. Union of India, 1993 Supp (3) SCC 115

⁴⁴ Chief Forest Conservator (wildlife) v. Nisar Khan, 2003 (2) SCR 196

⁴⁵ Section 4 of the Panchayat (Extension to the Scheduled Areas) Act, 1996.

⁴⁶ Section 4(a) of the Panchayat (Extension to the Scheduled Areas) Act, 1996.

⁴⁷ Section 4(c) of the Panchayat (Extension to the Scheduled Areas) Act, 1996.

⁴⁸ Section 4(d) of the Panchayat (Extension to the Scheduled Areas) Act, 1996.

⁴⁹ Section 4(e) of the Panchayat (Extension to the Scheduled Areas) Act, 1996.

the Panchayat for the executed socio-economic development plans, projects and programmes.⁵⁰ The PESA gives adequate importance to the attachment of the residents of Scheduled Area to their land mandating pre-consultation with the Gram Sabha or the Panchayat before acquiring land for development projects as well as before rehabilitating or re-settling persons affected by these development projects in the Scheduled Areas.⁵¹ The Panchayats have been entrusted with the plenary managerial powers over the minor water bodies within their jurisdiction.⁵² This Act gives ownership to the Gram Sabha and Panchayats over the minor forest produce⁵³ making pre-recommendation of these bodies mandatory before grant of license or mining lease⁵⁴ and grant of exploitation concession by auction⁵⁵ for the minor forest produce and minor minerals within the Scheduled Areas.

d. The Water Act and Environmental Rule of Law

The Water (Prevention and Control of Pollution) Act, 1974 (the Water Act) provides law necessary for promotion of enjoyment of the fundamental right to potable water putting obligations on the State and industries to keep water unpolluted. It establishes the Central Pollution Control Board⁵⁶ and State Pollution Control Boards⁵⁷ to monitor developmental activities that are hazardous to water bodies. The Water Act is prohibiting discharge of pollutants in the watercourse or spring or gutter or on land.⁵⁸ It restricts establishment of any industry, setup or handling without prior permission of State Board that has probability to pollute water.⁵⁹ As long as procedural environmental rights are concerned, the Water Act doesn't provide right to people to access to the Boards rather it allows an individual to lodge civil complaint against the Water Act violator in the Court of the Metropolitan Magistrate or Judicial Magistrate of First Class after serving sixty days advance notice to the Board.⁶⁰

e. The Air Act and Environmental Rule of Law

Like the Water Act, the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) provides law necessary for promotion of enjoyment of the fundamental right to pollution and noise free air putting obligations on the State and industries to keep air unpolluted and free from noise. The Pollution Control Boards are similar to the Water Act. The State Government declares air pollution control area⁶¹ and issue instructions to ensure standards for release of air contaminants from automobiles⁶² within its jurisdiction after consulting to the State Board. Establishment or operation of any industrial plant in an air pollution control area without preceding permission of the State Board is restricted.⁶³ The State Board defines standard for industrial pollution.⁶⁴ Like Water Act, the

⁵⁰ Section 4(f) of the Panchayat (Extension to the Scheduled Areas) Act, 1996.

⁵¹ Section 4(i) of the Panchayat (Extension to the Scheduled Areas) Act, 1996.

⁵² Section 4(j) of the Panchayat (Extension to the Scheduled Areas) Act, 1996.

⁵³ Section 4(m)(ii) of the Panchayat (Extension to the Scheduled Areas) Act, 1996.

⁵⁴ Section 4(k) of the Panchayat (Extension to the Scheduled Areas) Act, 1996.

⁵⁵ Section 4(l) of the Panchayat (Extension to the Scheduled Areas) Act, 1996.

⁵⁶ Section 3 of the Water (Prevention and Control of Pollution) Act, 1974.

⁵⁷ Section 4 of the Water (Prevention and Control of Pollution) Act, 1974.

⁵⁸ Section 24 of the Water (Prevention and Control of Pollution) Act, 1974.

⁵⁹ Section 25 of the Water (Prevention and Control of Pollution) Act, 1974.

⁶⁰ Section 49 of the Water (Prevention and Control of Pollution) Act, 1974.

⁶¹ Section 19 of the Air (Prevention and Control of Pollution) Act, 1981

⁶² Section 20 of the Air (Prevention and Control of Pollution) Act, 1981

⁶³ Section 21 (1) of the Air (Prevention and Control of Pollution) Act, 1981

⁶⁴ Section 22 of the Air (Prevention and Control of Pollution) Act, 1981

Air Act doesn't provide right to people to access to the Boards rather it allows an individual to lodge civil complaint against the Air Act violator in the Court of the Metropolitan Magistrate or Judicial Magistrate of First Class after serving sixty days advance notice to the Board.⁶⁵

f. The Environmental (Protection) Act and Environmental Rule of Law

The Environmental (Protection) Act, 1986 (the EP Act) is the second Indian federal statute that endorses necessity to put into operation the declarations of the UN Conference on the Human Environment, 1972 to take apposite steps for the tutelage and reclamation of human environment and the preclusion of hazards to human beings, other living organisms, vegetations and property.⁶⁶ The EP Act gives plenary authorities to the Union Government to undertake all measures necessary for tutelage and reclamation of the environmental quality by repressing, curbing and abating environmental contamination.⁶⁷ The Union Government is authorized to formulate rules to govern the criterion of excellence of air, water or soil for several quarters and purposes; the highest permissible caps of accumulations of several environmental contaminants (including noise) for various quarters; the modus operandi and safety measures for the management of hazardous materials; the exclusion and limitations on the management of hazardous materials in various quarters; the exclusion and limitations on the placing of industries and the running of processes and maneuver in various quarters; and the modus operandi and safety measures for the preclusion of catastrophes which may pollute environmental and for providing for curative procedures for such catastrophes.⁶⁸ The Central Government has notified the Environmental Impact Assessment Procedure in 2006 that mandates civic participation in the assessment of environmental impact of the proposed projects. However, as long as people's right to judicial access is concerned, the EP Act offers the provision similar to the Water Act and Air Act.⁶⁹

g. The NGT Act and Environmental Rule of Law

The National Green Tribunal Act, 2010 (the NGT Act) has been enacted with an objective to establish a National Green Tribunal⁷⁰ (the NGT) for the efficient and prompt disposal of cases pertaining to environmental tutelage and patronage of forests and other ecological capitals including enforcement of any lawful right concerning to environment and providing relief and recompense for harm to people and property.⁷¹ The NGT hears and settles the environmental disputes of civil nature that has been brought to it within 6 month from the day of its occurrence.⁷² The NGT may order for the relief and recompense to the sufferers of pollution as well as other environmental damages, restitution of damaged property, and reclamation of environment.⁷³ The relief and compensation and restoration of property and restitution of environment shall be in supplement to the relief rewarded or to be paid under the Public Liability Insurance Act, 1991.⁷⁴ But, the request for award of relief or compensation or settlement shall be presented inside a period of 5 years from the day on which grounds of such relief or compensation or settlement first arose.⁷⁵ A request for the grant of relief, compensation or settlement of environmental dispute can be presented to the NGT by (a) injured

⁶⁵ Section 43 of the Air (Prevention and Control of Pollution) Act, 1981

⁶⁶ Objectives of the Environment (Protection) Act, 1986.

⁶⁷ Section 3 (1) of the Environment (Protection) Act, 1986.

⁶⁸ Sections 3 (1) and (2) of the Environment (Protection) Act, 1986.

⁶⁹ Section 19 of the Environment (Protection) Act, 1986.

⁷⁰ Section 3 of the National Green Tribunal Act, 2010.

⁷¹ Objectives of the National Green Tribunal Act, 2010.

⁷² Section 14 of the National Green Tribunal Act, 2010.

⁷³ Section 15 (1) of the National Green Tribunal Act, 2010.

⁷⁴ Section 15 (2) of the National Green Tribunal Act, 2010.

⁷⁵ Section 15 (3) of the National Green Tribunal Act, 2010.

persons, (b) owners of the damaged property, (c) legal representatives of the deceased, (d) duly authorized agents, (e) aggrieved persons, and (f) government or its agencies.⁷⁶ There is complete bar on the jurisdiction of civil courts to accept any appeal concerning to any matter that is coming within the appellate jurisdiction of the NGT.⁷⁷ No courts, inferior to a Metropolitan Magistrate or a Judicial Magistrate of first class,⁷⁸ shall take cognizance of offences under the NGT Act on a complaint made by the Central Government or its officials and by any person who has served sixty days advance notice to the Central Government or its officials of his intention to file complaint.⁷⁹

Table: Incorporation of Environmental Rule of Law within the Indian laws					
Indian Laws	Components of Environmental Rule of Law				
	Right to Healthy Environment	Right to environmental information	Right to participate in decision making	Right to administrative remedy	Right to judicial remedy
Constitution of India	Yes	Yes	Yes	No	Yes
Wildlife Protection Act	No	No	No	No	Yes
PESA	No	Yes	Yes	Yes	Yes
Water Act	No	No	No	No	Yes
Air Act	No	No	No	No	Yes
Environmental Protection Act	No	No	No	No	Yes
NGT Act	No	No	No	Yes	Yes

V. Conclusion and Suggestions

The environmental rule of law has been among the international laws that have received fastest growth and global acceptance. The environmental rule of law has brought significant transformation in the worldwide recognition of the sustainable development through the means of substantive-procedural rights of people to environment as well as rights of the environment to claim its sustenance and rejuvenation. It has propelled nations across the world to give these environmental rights such a legal status that is beyond the normal political reach and change. In the course of examination of Indian environmental policies, I have found that only the Constitution of India has un-enumerately recognized the substantive right of the people to a healthy environment; peoples' right to environmental information and right to participate in the environmental decision making process have been textualized only in the Constitution of India and the PESA; right to administrative remedy has been guaranteed only in the PESA and the NGT Act; and right to judicial remedy has been guaranteed in all the seven laws explored in this research paper.

⁷⁶ Section 18 (2) of the National Green Tribunal Act, 2010.

⁷⁷ Section 29 of the National Green Tribunal Act, 2010.

⁷⁸ Section 30 (2) of the National Green Tribunal Act, 2010.

⁷⁹ Section 30 (1) of the National Green Tribunal Act, 2010.

Hence, the hypothesis H is proved since analysis of Indian laws in this research paper reveals that there is partial incorporation of environmental rule of law in the Indian laws investigated in this research paper.

Suggestions

The environmental rule of law makes domestic environmental policies unalterable and makes their observation compulsory to the public and private entities for the sustainable development. It makes sustainable development achievable through the civic engagement in environmental decision making, assessment and implementation processes. Since, there is partial incorporation of environmental rule of law within the text of Indian environmental policies, therefore following suggestions are presented to incorporate environmental rule of law in the text of Indian environmental laws:

1. The Constitution of India should be amended to declare substantive and procedural environmental rights of people as well as human rights of the environment fundamental rights;
2. The Wildlife Protection Act, 1972 should be amended to recognize rights of people to receive wildlife information kept by public authorities, right to participate in the wildlife decisions, and right to access to administrative authorities for redressal of rights of wildlife;
3. The Panchayat Extension in Scheduled Areas, 1996 should be expanded to recognize right to healthy environment of the tribals; and
4. The Water Act, Air Act, EP Act and NGT Act should be amended to recognize rights of people to receive information related to quality of water, air and environment kept by public authorities, right to participate in the water, air and environment decisions, and right to access to administrative authorities for redressal of their right to clean and healthy water, air and environment.

Future Research and Development

This paper presents a doctrinal research on the topic and raises significant research questions for the future research and development including macro-micro study on incorporation of environmental rule of law in various Indian environmental laws to serve the sustainable development.

References

Bingham, Lord. "The Rule of Law." *The Cambridge Law Journal* 66, no. 1 (March 2007): 67–85. <https://doi.org/10.1017/S0008197307000037>.

Bruch, Carl, and Isabelle Morley. "Environmental Peacebuilding and Environmental Rule of Law: Linkages, Lessons, and Looking Forward." In *Research Handbook on International Law and Environmental Peacebuilding*, edited by Daniëlla Dam-de Jong and Britta Sjöstedt. Edward Elgar Publishing Limited, 2023. <http://dx.doi.org/10.4337/9781789906929>.

Bruch, Carl. *Environmental Rule of Law: First Global Report*. Nairobi: United Nations Environment Programme, 2019.

Flores, Imer B., and Kenneth Einar Himma. "Introduction." In *Law, Liberty, and the Rule of Law*, edited by Imer B. Flores and Kenneth E. Himma, 18:1–9. Ius Gentium: Comparative Perspectives on Law and Justice. Dordrecht: Springer Netherlands, 2013. https://doi.org/10.1007/978-94-007-4743-2_1.

Fuller, Lon L., *The Morality of Law*. Rev. ed., 15. print. A Yale Paperbound 152. New Haven: Yale Univ. Press, 1978.

Knox, John H., "Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment." United Nations General Assembly Resolution A/HRC/25/53 (2013).

Kotzé, Louis J. "Six Constitutional Elements for Implementing Environmental Constitutionalism in the Anthropocene." In *Implementing Environmental Constitutionalism*, edited by Erin Daly and James R. May, 1st ed., 13–33. Cambridge University Press, 2018. <https://doi.org/10.1017/9781316691588.003>.

Kreilhuber, Arnold, and Angela Kariuki. "Environmental Rule of Law in the Context of Sustainable Development." *The Georgetown Environmental Law Review* 32 (2020): 591–98.

Magraw, Daniel Barstow. "Rule of Law and the Environment." *Environmental Policy and Law* 44, no. 1/2 (2014): 200. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/envpola44&div=34&id=&page=1>.

United Nations Conference on the Human Environment, "Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972;" *Official Records* (New York: United Nations, 1973). Accessed from <https://documents.un.org/doc/undoc/gen/nl7/300/05/pdf/nl730005.pdf>

United Nations Conference on Environment and Development, "Report of the United Nations Conference on Environment and Development: Rio de Janeiro." 3–14 June 1992; *Official Records*. New York: United Nations, 1993.

United Nations Environment Programme, "Environmental Rule of Law: Critical to Sustainable Development" (Issue Brief). (United Nations Environment Programme, 2015). URL: <https://wedocs.unep.org/handle/20.500.11822/10664>

United Nations Environmental Programme, "Advancing Justice, Governance and Law for Environmental Sustainability," (United Nations Environmental Programme Governing Council Decision 27/9. U.N. Doc. UNEP/GC.27/17. March 12, 2013). Accessed from <https://documents.un.org/doc/undoc/gen/k13/509/45/pdf/k1350945.pdf>

United Nations Environment Programme. "Environmental Rule of Law: Tracking Progress and Charting Future Directions." United Nations Environment Programme, 2023. <https://doi.org/10.59117/20.500.11822/43943>.

United Nations General Assembly, "International Covenant on Economic, Social and Cultural Rights, 1966." (United Nations General Assembly Resolution No. 2200A (XXI), 1966). Accessed from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

United Nations General Assembly, "Universal Declaration of Human Rights, 1948." (United Nations General Assembly Resolution No. 217A., 1948). Accessed from <https://documents.un.org/doc/resolution/gen/nr0/043/88/pdf/nr004388.pdf?token=l40W6ZmDWu1Q8n0ls4&fe=true>.

United Nations General Assembly, "International Covenant on Economic, Social and Cultural Rights, 1966." (United Nations General Assembly Resolution No. 2200A (XXI), 1966). Accessed from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

United Nations Secretary-General, "The rule of law and transitional justice in conflict and post-conflict societies." UN Doc. S/2004/616. (2004). Accessed from <https://digitallibrary.un.org/record/527647?ln=en&v=pdf>.

Voigt, Christina, ed. "Rule of Law for Nature: New Dimensions and Ideas in Environmental Law." 1st ed. Cambridge University Press, 2013. <https://doi.org/10.1017/CBO9781107337961>.

Upadhyay, Saman Narayan, and Milendra Singh. "Community Participation in Wildlife Conservation to Promote Environmental Constitutionalism and Sustainability in India." *IJIRMF* 10, no. 1 (2024): 224–32. <https://doi.org/10.2015/IJIRMF/202401036>.

Indian Bare Acts:

The Air (Prevention and Control of Pollution) Act, 1981

The Constitution of India, 1950.

The Environment (Protection) Act, 1986.

The National Green Tribunal Act, 2010.
The Panchayat (Extension to the Scheduled Areas) Act, 1996.
The Water (Prevention and Control of Pollution) Act, 1974.
The Wildlife (Protection) Act, 1972.

Indian Case Laws

Chief Forest Conservator (wildlife) v. Nisar Khan, 2003 (2) SCR 196
Hanuman Laxman Aroskar v. Union of India, (2019) 15 SCC 401
Navin Raheja v. Union of India, 2000 (6) SCALE 574, (2001) 9 SCC 762
T.N. Godavarman Thirumulpad, In re v. Union of India, (2022) 4 SCC 289
T.N. Godavarman Thirumulpad v. Union of India, decided on 13th February 2012
Tarun Bharat Sangh, Alwar v. Union of India, 1993 Supp (3) SCC 115

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