

AIM OF THE JOURNAL

Conventional discourse on environmental law has presented much superficial and ‘ivory tower’ analysis, detached from the realities of environmental governance, mostly centred on judiciary’s engagement with environmental law. With dismal enforcement of environmental laws across all jurisdictions,¹ and the environment’s condition deteriorating by the day, there has emerged a need to look into the governing rule of law, which acts as a *grundnorm* for enviro-legal regulation across nations. As a concept coined by the United Nations Environment Program (“UNEP”) in 2013,² the environmental rule of law (“EROL”) offers a framework for addressing the gap between environmental laws on the books and in practice. EROL is a key to achieving the Sustainable Development Goals.

In June 2020, India ranked only 168th out of 180 countries assessed by the Environmental Performance Index.³ Despite a plethora of environmental laws and regulations in India, the situation still remains grip. Presently, India categorizes as a water stressed country in terms of the average per capita water availability and this availability is expected to reduce to such an extent by 2050 which will be close to the official water scarcity threshold.⁴ This evidently hints at the lack of grassroots enforcement⁵ of the water legislations in India. Further, despite provisions regulating chemical contamination of water exists under the Environment (Protection) Act, 1986, cancer-causing chemicals permeate our soils, entering our food-chain and eventually making their way into our bodies.⁶ Considering a micro-level example of the National Capital Region (“NCR”), the residents of the nation’s capital were discovered to have lost ten years of their expected lifespan owing to air pollution,⁷ despite the

¹ United Nations Environment Program, *GEO5: Global Environment Outlook. Nairobi, Kenya (2012)*, available at https://wedocs.unep.org/bitstream/handle/20.500.11822/8021/GEO5_report_full_en.pdf?sequence=5&isAllowed=y, last seen on 26/05/21.

² United Nations Environment Program, *Decisions adopted by the Governing Council/Global Ministerial Environment Forum at its first universal session: Decision 27/9: Advancing Justice, Governance and Law for Environmental Sustainability (2013)*, available at http://www.unep.org/delc/Portals/24151/Documents/Decisions27-9Advancing_Justice_Governance&Law.pdf, last seen on 26/05/2021.

³ *2020 EPI Results: Results Overview*, Environmental Performance Index, available at <https://epi.yale.edu/epi-results/2020/component/epi>, last seen on 26/05/21.

⁴ NITI Aayog, *Composite Water Management Index (2019)*, available at <https://www.niti.gov.in/sites/default/files/2019-08/CWMI-2.0-latest.pdf>, last seen on 24/05/2021.

⁵ Ibid.

⁶ Medhavi Arora, *Arsenic- Polluted water linked to Cancer in India*, CNN (01/05/2017), available at <https://edition.cnn.com/2017/04/28/health/arsenic-water-pollution-cancer-india/index.html>, last seen on 24/05/2021.

⁷ Michael Greenstone, *Air Quality Life Index (EPIC): India Fact Sheet (2019)*, available at https://aqli.epic.uchicago.edu/wp-content/uploads/2019/03/EPIC_IndiaFactSheet_V06-nobleeds.pdf, last seen on 24/05/2021.

existence of the Environment Pollution (Prevention & Control) Authority, a body dedicated to tackling pollution within the NCR. Thus, it becomes unequivocally clear that a contaminated environment no longer remains an *'ivory tower'* concern; its injury to human life is now as exactly discernible as a wound by gunshot.⁸

As our laws rot away to oblivion, regulatory failures are becoming increasingly more apparent.⁹ The nation, with respect to several aspects of the environment, is approaching, or has already crossed, the ecological threshold. The enforcement gap within India's environmental regulation is as startling as it is concerning. Sub-par implementation of environmental laws in India has been observed since long, and has even been specifically noted as a phenomenon in judicial record.¹⁰ Behind the robust facade of comprehensive laws, there lies a decrepit fundament- a weak EROL, which, if not remedied, will inevitably prove to be our enviro-legal framework's hamartia. In view of this, to provide a more incisive, inclusive and, most importantly, practical insight into the state of EROL in India, the Editorial Board invited articles from eminent jurists and academicians in the field to provide a rich body of research and ideas.

This Issue, on the theme titled, “**Reassessing the Environmental Rule of Law in India: Bridging Gaps for Survival**”, consists of ten articles dealing with different areas of EROL including a review of wildlife protection laws aiming at solutions to improve the existing protection arrangements, limitations of the Polluter Pays Principle and how the National Green Tribunal has been inconsistent in its application of the principle, and the rights of rivers and the ground level difficulties in enforcing such rights along with issues relating to inter-state water disputes. Further, few other areas of EROL that have been discussed in this Issue include climate inclusive agriculture, ship recycling laws, environment impact assessment notifications and their practical problems, and the powers of the National Green Tribunal and their efficacy thereto.

We thank all the contributors for their submissions to this Issue and their continued cooperation with the Editorial Board throughout the whole process. We hope that such ideas can explore the areas hitherto unexplored within India's environmental laws, with the overarching objective of rendering suggestions that can lead to a more robust EROL instead of

⁸ Kalyan Ray, *When death lurks in the air and water: Laws not enforced; Public Health in Peril*, Deccan Herald (19/01/2020), <https://www.deccanherald.com/specials/insight/when-death-lurks-in-the-air-and-water-laws-not-enforced-public-health-in-peril-796023.html>, last seen on 24/05/2021.

⁹ Srinivas G. Roopi, *Vizag Gas Leak: A clear failure of regulatory mechanism, say Expert and Environmentalists*, Economic Times (09/05/2020), <https://government.economictimes.indiatimes.com/news/technology/vizag-gas-leak-a-clear-failure-of-regulatory-mechanism-say-expert-and-environmentalists/75641310>, last seen on 24/05/2021.

¹⁰ M.C. Mehta v. Union of India, (2006) 3 SCC 399.

offering superficial corrections to an environmental-legal structure, the
fundament of which is flawed. With this aim and objective, we present to
you Issue 2 of Volume 7 of the Journal.