

RGNUL STUDENT RESEARCH REVIEW

(RSRR)



ANNOUNCES

CALL FOR PAPERS

on

**“REASSESSING THE ENVIRONMENTAL RULE OF LAW IN INDIA:
BRIDGING GAPS FOR SURVIVAL”**

for

VOLUME 7, ISSUE 2 OF THE JOURNAL

CALL FOR PAPERS

In January 2018, India was ranked 177th out of 180 countries assessed by the Environmental Performance Index.¹ A few months later, NITI Aayog predicted the exhaustion of groundwater supply in 21 Indian cities by 2020, despite the existence of relevant laws and model bills.² Soon after, residents of the nation's capital were discovered to have lost ten years of their expected lifespan owing to air pollution,³ despite the existence of Environment Pollution (Prevention & Control) Authority, a body dedicated to tackling pollution within National Capital Region ["NCR"]. Cancer-causing chemicals permeate our soils, entering our food-chain, eventually making their way into our bodies,⁴ despite provisions aplenty in the Environment (Protection) Act, 1986, which supposedly regulate such contamination. Killings over access to water are no longer dystopian fiction.⁵ India's environmental activists face persecution, at the hands of criminals,⁶ and the government alike.⁷ A contaminated environment is no longer an *'ivory tower'* concern; its injury to human life is now as exactly discernible as a wound by gunshot.⁸

Endless reams of paper are wasted away printing out compendious environmental legislations in India, and yet, we are no closer to averting the greatest crisis that the Indian democracy has ever faced. Despite the indubitable gravity of the situation, India's priorities, quite counterproductively,

¹ PTI, *India Ranks 177 out of 180 in Environmental Performance Index*, THE HINDU (Jan. 24, 2018), <https://www.thehindu.com/sci-tech/energy-and-environment/india-ranks-177-out-of-180-in-environmental-performance-index/article22513016.ece>.

² NITI Aayog, *Composite Water Management Index (2018)*, https://niti.gov.in/writereaddata/files/document_publication/2018-05-18-Water-Index-Report_vS8-compressed.pdf.

³ Michael Greenstone, *Air Quality Life Index (EPIC): India Fact Sheet* (2019), https://aqli.epic.uchicago.edu/wp-content/uploads/2019/03/EPIC_IndiaFactSheet_V06-nobleeds.pdf.

⁴ Medhavi Arora, *Arsenic- Polluted water linked to Cancer in India*, CNN (May 1, 2017), <https://edition.cnn.com/2017/04/28/health/arsenic-water-pollution-cancer-india/index.html>.

⁵ Annie Banerji, *India's 'worst water crisis in history' leaves millions thirsty*, REUTERS (Jul. 15, 2018), <https://www.reuters.com/article/us-india-water-crisis-idUSKBN1JV01G>

⁶ United Nations Environment Programme, *Environmental Rule of Law: First Global Report* (2019), https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowed=y

⁷ Mari Marcel Thekaekara, *India's arrest of an 83-year-old priest on terrorism charges is an insult to justice*, THE GUARDIAN (Oct. 18, 2020), <https://www.theguardian.com/world/commentisfree/2020/oct/18/india-arrest-83-year-old-priest-terrorism-charges-stan-swamy-indigenous>.

⁸ Kalyan Ray, *When death lurks in the air and water: Laws not enforced; Public Health in Peril*, DECCAN HERALD (Jan. 19, 2020), <https://www.deccanherald.com/specials/insight/when-death-lurks-in-the-air-and-water-laws-not-enforced-public-health-in-peril-796023.html>.

lean towards ensuring ‘*ease of doing business*’,⁹ the cost of which is borne by the environment. As our laws rot away to oblivion, regulatory failures are becoming increasingly more apparent.¹⁰ 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.¹¹ Behind the robust facade of comprehensive laws, there lies a decrepit fundament - a weak ‘environmental rule of law’, which, if not remedied, will inevitably prove to be our enviro-legal framework’s hamartia.

With dismal enforcement of environmental laws across all jurisdictions,¹² 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 2013,¹³ 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.

Conventional environmental law discourses are often unable to capture the practicalities of environmental governance. With many of India’s ecological systems reaching the margins of sustainability, the timing is apt for taking a practical dive into the realities which theoretically comprehensive legal frameworks in India have been unable to adequately govern.

It is in such context that the **RSRR JOURNAL** invites papers for **VOLUME 7, ISSUE 2**, from academicians, practitioners and legal luminaries with practical experience in environmental laws,

⁹ Digvijay Singh Bisht, *How the Centre is diluting Green Clearance norms*, DOWN TO EARTH (Jan. 15, 2019), <https://www.downtoearth.org.in/blog/urbanisation/how-the-centre-is-diluting-green-clearance-norms-62828>.

¹⁰ Srinivas G. Roopi, *Vizag Gas Leak: A clear failure of regulatory mechanism, say Expert and Environmentalists*, ECONOMIC TIMES (May 9, 2020), <https://government.economicstimes.indiatimes.com/news/technology/vizag-gas-leak-a-clear-failure-of-regulatory-mechanism-say-expert-and-environmentalists/75641310>.

¹¹ M.C. Mehta v. Union of India, (2006) 3 SCC 399.

¹² United Nations Environment Program, *GEO5: Global Environment Outlook. Nairobi, Kenya (2012)*, https://wedocs.unep.org/bitstream/handle/20.500.11822/8021/GEO5_report_full_en.pdf?sequence=5&isAllowed=y.

¹³ United Nations Environment Program, *Decision 27/9: Advancing Justice, Governance and Law for Environmental Sustainability* (2013), <https://wedocs.unep.org/bitstream/handle/20.500.11822/12221/Governing%20Council%20Decision%2027-2.pdf?sequence=1&isAllowed=y>.

on the theme titled, “**REASSESSING THE ENVIRONMENTAL RULE OF LAW IN INDIA: BRIDGING GAPS FOR SURVIVAL**”.

UNEP’s ‘First Global Report on the Environmental Rule of Law’,¹⁴ identifies seven core elements of the concept of EROL –

- ❖ fair, clear, and implementable environmental laws;
- ❖ access to information, public participation, and access to justice;
- ❖ accountability and integrity of institutions and decision makers;
- ❖ clear and coordinated mandates and roles, across and within institutions;
- ❖ accessible, fair, impartial, timely, and responsive dispute resolution mechanisms;
- ❖ recognition of the mutually reinforcing relationship between rights and the environmental rule of law;
- ❖ specific criteria for the interpretation of environmental law.

While drawing from broader rule of law principles, EROL is unique in its context, principally because it governs the vital link between humans and the environment that supports human life and society, as well as life on the planet. Two concepts have been incorporated as inherent components of the understanding of the EROL. *First*, voluntary measures alone are not enough to ensure sustainable management of the environment upon which people and the planet depend. Binding systems of laws — with standards, procedures, rights, and obligations — are necessary to avoid the tragedy of the commons. *Second*, as with any other area of law, legal objectives can only be fulfilled when there is rule of law. It also emerges from the circumstantial reality of the gaps in environmental rule of law that stand as a major impediment to achieving environmental and sustainable development ambitions.¹⁵

India’s legal history is replete with instances where citizens’ environmental rights, neglected by the Legislature and violated by the Executive, have been salvaged by the Judiciary, often in disregard of fundamental legal principles.¹⁶ This disregard, though justified by many as a

¹⁴ UNEP, *supra* note 6.

¹⁵ UNEP, *supra* note 6 at 10.

¹⁶ M.C.Mehta v. Kamal Nath, (1997) 1 SCC 388.

‘desperate measure’ to tackle desperate circumstances, has weakened the overall state of the rule of law. A seminal work on the EROL in India,¹⁷ critiques the aforementioned developments through the lens of principles such as the separation of powers, the law’s capacity to guide behavior, and the coherence, clarity and stability of the overall framework of environmental regulation in India.

The analysis most required in present times must dig deeper than the text of laws, and make practical proposals to convert the obfuscated cobweb of fragmented laws and regulations into a practically enforceable regulatory framework. In order to achieve this, any regulatory efforts must be in consonance with basic legal principles which have evolved out of sound logic - separation of powers, conflict of interest and certainty of legal sanctions on violation - all of which constitute the essence of the rule of law.

Apart from the doctrinal aspect of the EROL, highlighted in the preceding paragraph, the focus of the concept also lies on ground-level implementation. ‘Groundtruthing’ exercises conducted by various think tanks¹⁸ are an initial step towards assessing exactly the gap between laws on paper and in practice. The focus, therefore, is gradually shifting from theoretical to practical assessment of environmental regulation.

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. The upcoming issue of the Journal seeks to provide more incisive, inclusive and, most importantly, practical insights into the state of EROL in India. The aim is to create an immediately relevant body of research and ideas, that 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 offering superficial corrections to an environmental-legal structure, the fundament of which is flawed.

¹⁷ Dhvani Mehta, *Environmental Rule of Law in India*, UNIVERSITY OF OXFORD (2017), <https://ora.ox.ac.uk/objects/uuid:730202ce-f2c4-4d2f-9575-938a728fe82a>.

¹⁸ Centre for Policy Research and Namati Environmental Justice Programme, *Groundtruthing: A note on methodology* (Mar. 7, 2018), <https://www.cprindia.org/research/reports/groundtruthing-note-methodology>; Vivek Trivedi, *Groundtruthing: A Journey from Law to Environmental Justice*, NAMATI (May 20, 2016), <https://namati.org/news-stories/groundtruthing-webinar-recap/>.

Some of the **possible sub-themes** which can be explored by the authors have been briefly discussed below. These sub themes are **not an exhaustive enumeration**, but rather a guide to give prospective authors suggestions and convey an idea of the overall direction of the upcoming issue. These sub-themes are merely an **extension of the forgoing concept note**, and are only for the convenience of the author. A detailed version of each sub-theme can be found in the following section.

The sub-themes explored in this section are:

- *Assessing Regulatory Authorities;*
- *Access to Environmental Justice;*
- *Exploring laws and policies for Sustainable Agriculture;*
- *Grey Areas within General Principles of India's Environmental Law;*
- *Inclusive Participation in Environmental Decision-Making;*
- *Reassessing India's Environmental Policies;*
- *International Commitments, Climate Change and Carbon Laws - Reaching the grassroots.*

❖ **SUB-THEMES**

1. ASSESSING REGULATORY AUTHORITIES

Literature within environmental law has mostly focused on analysis of the judiciary as the pivotal authority around which environmental law has evolved. However, the role of other regulatory authorities in the development of our environmental-legal framework has been equally, if not more, important. Little research has been done around the functioning of bodies such as Pollution Control Boards, Expert Appraisal Committees, Environment Pollution (Prevention & Control) Authority, the Ministry of Environment, Forests & Climate Change ["MoEFCC"]. These bodies are at the forefront of ground-level implementation of environmental laws, with relatively little transparency about their operations.

2. ACCESS TO ENVIRONMENTAL JUSTICE

Reduced access to justice strikes at the root of the rule of law. With the regional benches of the National Green Tribunal [“NGT”] shutting down over the past year, marginalized communities have borne the brunt of an impeded access to judicial forums.¹⁹ There is a need for an overhaul of the existing framework respecting access to justice. With the organisational endowments of the NGT being subject to the whims and fancies of the MoEFCC, there exist few safeguards against the contraction of environmental-legal remedies and forums by the government, as has happened over the past few years.

How has the reduced access affected ground realities? Do we need a more transparent and executive-free organisational framework for our redressal forums? Could such an overhaul translate into tangible gains in terms of increased environmental rights’ assertions?

3. EXPLORING LAWS & POLICIES FOR SUSTAINABLE AGRICULTURE

The recent Farm Bills, which do much to forward the Corporatization Agenda but do nothing for the Environment Agenda, stand as a testament to the continued apathy of the government towards environmental considerations within agriculture. Despite the significant position of agriculture within India’s economy and environment, there exist few policies or laws to orient agriculture along environmentally sound lines. Problems such as crop residue burning, groundwater contamination and exhaustion, etc., are offshoots of the unsound agricultural practices, which have come to form through years of policies that do not factor in environmental considerations. Novel regulatory approaches, drawing from the experiences of agro-environmental regulation in other jurisdictions, are required to deal with this constitutionally-sensitive subject.

4. GREY AREAS WITHIN GENERAL PRINCIPLES OF INDIA’S ENVIRONMENTAL LAW

¹⁹Aruna Chandrasekhar, *Scorched Earth: The suffocation of National Green Tribunal*, THE CARAVAN (Aug.1, 2019), <https://caravanmagazine.in/law/suffocation-national-green-tribunal>.

In no other field of India's laws has judicial law-making been as prominent as in environmental law. Internationally accepted principles such as Polluter Pays Principle, Precautionary Principle, Sustainable Development, etc. have been incorporated into our law by the Courts, starting from landmark cases such as RLEK,²⁰ and Vellore.²¹ However, decades after their incorporation, there exists little coherence and clarity with respect to their nuances, interpretation and practical impact. Sustainable Development (the Principle of Balancing), for example, has recently been distorted to approve projects undertaken in blithe disregard of legal procedures. Similarly, very little is known about how regulatory authorities apply the Precautionary Principle,²² and what is the level of scientific certainty (or uncertainty) required to invoke the Principle and take prohibitive action. Analogous research for other jurisdictions is available, and has contributed much to clarifying the substance of this principle.

This lack of consistency and clarity about the law also takes away from the overall strength of rule of law. Moreover, there is little guidance on how these principles are invoked by non-judicial environmental regulators. **Comparative analysis**, with respect to the interpretation and development of these principles in foreign jurisdictions and at the international level, can therefore be used to bring clarity in the Indian context.

5. INCLUSIVE PARTICIPATION IN ENVIRONMENTAL DECISION-MAKING

The Draft EIA Notification 2020 received flak for adopting a regressive approach towards public participation in environmental decision-making, much below par when compared to international developments such as the Aarhus Convention etc. However, the experiences narrated by veteran environmental activists²³ reveal that the EIA & Public Hearing regime has always been a sham exercise, perfunctorily executed by dismissive authorities. Much literature has been produced about the theoretical flaws of the draft notification, without

²⁰ Rural Litigation and Entitlement Kendra v. State of U.P., (1985) SCR (3) 169.

²¹ Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCC 647.

²² Gitanjali Nain Gill, *Precautionary Principle, its interpretation and application by the Indian Judiciary: 'When I use a word it means just what I choose it to mean- neither more nor less' Humpty Dumpty*, 22 ENV. L. REV. 2019, <https://journals.sagepub.com/doi/full/10.1177/1461452919890283#:~:text=The%20precautionary%20principle%20is%20accepted,core%20of%20the%20precautionary%20principle.>

²³ Anil Agarwal, Vimal Bhai Matu Jan Sangathan, YOUTUBE (Feb. 24, 2012), <https://www.youtube.com/watch?v=ZEeOvvF5Qyk>.

however addressing the fundamental and practical problems that have always ailed India's environmental decision-making structures. A more grassroots-oriented approach is, therefore, required to remedy the system. The current EIA regime raises conflicts of interest aplenty, at various stages of the process, and is, in general, a heavily flawed system in practical terms.

Should the Executive even be trusted with framing a structure as important as the EIA regime? Should we look to the Legislature for a model EIA Bill, produced after legislative and stakeholder deliberation? Should we even rely on the outdated EIA system for ensuring public participation, when experts suggest adopting newer systems? Can we look to foreign jurisdictions for the answers to our questions?

6. REASSESSING INDIA'S ENVIRONMENTAL POLICIES

Policies determine the overall direction into which specific laws then push various institutions of the state. To expect laws guided by flawed policy choices to achieve perfect results is therefore, illogical. India's National Action Plan for Climate Change and the eight sub-missions under it add much to the literature on environment, but do little in terms of on-ground environmental improvement.

Do we need to reframe our policy choices? Are there policy choices available which can help us overcome the restraints imposed by our country's populist politics, and take decisive action on the environment? Can innovative policies help us create win-win situations within environmental preservation, or will the development-environment trade-off prevail?

7. INTERNATIONAL COMMITMENTS, CLIMATE CHANGE AND CARBON LAWS - REACHING THE GRASSROOTS

Despite a plethora of international commitments on the subject of climate change, India's action against the crisis has consisted of fragmented, piecemeal and half-heartedly executed action plans. India's Intended Nationally Determined Contributions ["INDCs"] under the Paris Agreement are ambitious, and given the general opacity perpetuated by the current government around environmental decisions and progress, one hesitates to rely on

the ‘all is good’ image painted by India’s official reports.²⁴ Given the multidisciplinary nature of climate change action, any law or policy has to draw from various fields of knowledge in order to be effective.

Do we need a more coherent and consolidated policy towards carbon emissions across sectors? Could India benefit from a more uniform and comprehensive carbon law? In the ever more dynamic field of climate change action, is India up to date with global developments? What can be done to translate India’s INDCs into practically implementable laws and regulations? Is there a way to take the climate action agenda closer to the grassroots? Can we draw from climate change regulation in other legal systems to achieve this objective?

Note: The above-mentioned sub-themes are only illustrative and not exhaustive, and the authors are free to write upon any other sub-theme, provided they fall within the broad ambit of this journal’s theme.

Given that the Journal seeks to explore areas uncharted by conventional environmental-legal discourses, we request the authors to kindly choose topics keeping in mind this specific direction of the issue.

²⁴ MoEFCC, *India: Second Biennial Update Report to the United Nations Framework Convention on Climate Change*, MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE, GOVERNMENT OF INDIA (2018), <https://unfccc.int/sites/default/files/resource/INDIA%20SECOND%20BUR%20High%20Res.pdf>

SUBMISSION GUIDELINES

❖ SUBMISSION CATEGORIES

The RSRR invites papers under the following categories:

- **Articles** (5,000 to 10,000 words)
- **Short Notes** (3,500 to 5,000 words)
- **Case Comments** (2,500 to 4,500 words)
- **Normative Law Articles** (3,000 to 5,000 words)

Articles: A comprehensive and thorough analysis of issues related to the theme of the Journal.

Short Notes: These should contain brief, terse and pointed arguments revolving around a specific, current issue or an issue of importance which may have not received due research.

Case Comments: An academic writing that analyses or is a critique of a recent case.

Normative Law Articles: These will explore the opinion of students relating to the specific legislations involved in the theme of the Journal. It seeks to bring out a student's view on how a particular legislation or legislative provision should have been drafted to bring out clarity into the law. The authors are welcome to draft amendments (or even a law in entirety) to the existing laws should they believe that the particular legislation requires some amendments. Arguments must be logical and can take into account aspects such as sociological, political, and economic implications of the law.

❖ INSTRUCTIONS FOR AUTHORS:

1. All submissions must be in Garamond, font size 12, spacing 1.5.
2. All footnotes shall be in Garamond 10, single-spaced and should conform to the **Standard Indian Legal Citation (SILC)**.
3. Margins: Left 1 Inch and Right 1 Inch, Top 1 Inch and Bottom 1 Inch (A4).
4. The word limit is exclusive of all the footnotes.

5. Co-authorship is allowed up to 2 authors, unless otherwise is approved by the Editorial Board.
6. All submissions must be accompanied with an abstract of subject to a maximum of 250 words. Abstract shall also be accompanied by at least 3 keywords in the paper, up to a maximum of 7 keywords.
7. All entries should be submitted in **.doc/ .docx** format **only**.
8. The author(s) bear sole responsibility for the accuracy of facts, opinions or views stated in the submitted paper. In case of any plagiarism found in the contents of submitted paper, the Manuscript shall be subject to rejection.

❖ **SUBMISSION DEADLINE:**

Deadline for final paper submission, inclusive of the abstract, is **25th January, 2021 by 11:59 P.M. (Indian Standard Time)**.

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The RGNUL Student Research Review (RSRR) Journal is a bi-annual, student run, blind peer reviewed, flagship journal based at Rajiv Gandhi National University of Law, Punjab. It has been founded with the objective of facilitating arguments in black and white. Legal Research skills form the core of the learning process in any dimension of law.

The RSRR Journal aims to publish comprehensive treatments of subjects (“articles”), written by law students as well as shorter pieces, commonly called “notes” and “comments”.

Normative law articles form a major component of the RSRR Journal. Legislative Bill Drafting is one of the novel and the primary areas which it aims to cover. Ambiguous provisions in the law are a cause of concern amongst the legal community. The RSRR Journal aims to seek the opinion of student researchers and provides the option to draft and/or amend the existing law. RSRR is proud to share that its Journal has been continuously supported and published by Eastern Book Company (EBC) in the past. The Journal has already applied for the RNI number and upon its approval; EBC will again be a part of the journal’s forthcoming publications. EBC’s online legal-research tool SCC also features the previously published volumes of the RSRR Journal.

RSRR also runs its Blog Series with an aim to provide a platform for academicians to critically analyze contemporary and unexplored legal issues. The RSRR Blog Series has been named one of the top 35 Constitutional Law Blogs by [Feedspot](#).

❖ NOTABLE COLLABORATIONS OF RSRR

RSRR has previously collaborated with firms and organisations for various blog series as well as past editions of the journal.

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Volume 6, Issue 1	Arogya Legal - A healthcare specialist law firm Medical Students Association of India - A pan India nongovernmental organization
Blog Series on Artificial	Mishi Choudhary & Associates - A technology driven law

Intelligence	firm, founded by the founder of Software Freedom Law Centre, Mishi Choudhary. We, in collaboration, also conducted a webinar series on AI.
Blog Series on Healthcare Laws in India	Nishith Desai Associates - A research and strategy driven international law firm
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