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# Ecosystems Republics - Reimagining Governance for equity and sustainability

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# Structure of the Presentation

- Evidence of environmental unsustainability + disproportionate impact
- Propositions – failure of international environmental law
  - Evidence to support the propositions
    - Treaties and Case Law of ICJ and ITLOS
- Central Hypothesis
  - Enunciation of the idea of Ecosystems Republic
- Experiments
  - Forest Rights Act, 2006
  - Transboundary fisheries conflict between India and SriLanka

# Evidence

- Current practices of production and consumption are unsustainable and that economic development has come at the cost of critical degradation of these natural eco-systems (The UN Millennium Declaration'2000 and the Millennium Ecosystem Assessment'2005)
- Disproportionate impact of environmental degradation has been on vulnerable persons and living habitats

# Propositions

- International Environmental Law has failed to prevent degradation and damage of ecosystems.
- It has failed to establish a suitably robust mechanisms for ensuring liability for payment of compensation.
- It has failed in the restitution of damaged ecosystems.
- Failed to address the issue of disproportionate impact of environmental degradation on vulnerable persons and living habitats

# Propositions 2

- Sovereignty as the foremost principle of international law has impeded the realization of the objectives of international environmental law.
  - PSNR
  - Deadlock over negotiations on burden sharing between developed and developing countries
- International Environmental Litigation:
  - Well entrenched principles of no harm and also due diligence
  - However hobbled by Adversarial litigation in ICJ and ITLOS
  - Inordinate focus on *ex post facto* redress to transboundary harm rather than on *ex ante* prevention of harm in both the ICJ and the ITLOS

# Central Hypothesis

- Nation states and indeed nationalism is inimical to the idea of environmental sustainability and towards efforts for ensuring integrity of ecosystems
- And following from that I argue that there is therefore an urgent need for reimagining nation states as a series of *ecosystem republics* with the objective of ensuring the integrity (sustainability) of these eco-systems

# Ecosystems Republic

- First, the primary value is that of ensuring the integrity of ecosystems *per se* (rather than of specific species).
  - This is expressed through the idea of sustainable life systems, which I define as “securing a system of living which is in consonance with the needs of the natural eco-system and presumes that it is the latter that is of highest value and everything in it – including all living beings interests and associations need to be restructured to secure the continued sustenance of the eco-system
- Second *voices* of communities whose life systems are intimately woven with natural eco-systems are given the most value (and therefore voice) in their governance. It is a republican project allowing for greatest public participation through devolution of powers, responsibilities and rights

# Principle 1 – moral basis for equal status to all living beings

- Continuance of the ecosystem is of the highest moral value
- Organisms (for that matter living and non-living beings) have a constituent role to play in the continuance of the ecosystem and therefore all have equal moral status.
- This moral status is the basis for arguing for fairness amongst its constituents. Fairness demands that the claims of all constituents be given equal appreciation.
- Whatever may be the constituents' role (nature and scope) in the continuance of the ecosystem – every constituent plays a specific role and therefore the disappearance of any constituent will negatively affect the integrity of the ecosystem and therefore is not morally acceptable
- Drawing on the ideas of Bruno Latour (representation of interests) + Gandhi (Duty of Care to non-humans) + Amartya Sen (redressable injustices as a basis for the theory of justice)

# Principle 2 – Governance of Ecosystems

- Subsidiarity – Recognition of roles, powers and responsibilities – to the level of ecosystems
- The voice of those communities whose life systems are intimately woven with natural eco-systems are given most value in reimagining governance

# Two experiments

- Forest Rights Act
  - Recognition of intrinsic value of forests as ecosystems
  - Providing voice – representation – self governance
  - Rights with responsibilities
- Transboundary fisheries conflict between India and Sri Lanka - governance of transboundary commons – integrity of the Palk bay ecosystem – governance for whom?

# THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006

- Principles
  - An Act to recognize and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded
  - Recognised rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwellings Scheduled Tribes and other traditional forest dwellers
  - the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem;

# Species of Rights

- Recognition of both individual forest rights and community forest rights
  - right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood
  - right of ownership, access to collect, use, and dispose of minor forest produce
  - other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities
  - rights to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use
    - “sustainable use” means the use of components of biological diversity in such manner and at such rate that does not lead to the long-term decline of the biological diversity thereby maintaining its potential to meet the needs and aspirations of present and future generations; (Section 2 of the Biological Diversity Act 2002)
  - right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity
- A right conferred by sub-section (1) shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next-of-kin.

# Different imagination of rights and responsibilities that affect ecosystems

- The holders of any forest right, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to –
  - (a) protect the wild life, forest and biodiversity;
  - (b) ensure that adjoining catchments area, water sources and other ecological sensitive areas are adequately protected;
  - (c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;
  - (d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.

- Transboundary fisheries conflict between India and Sri Lanka

# Sri Lanka-India fisheries dispute

- 1974 agreement ceding Katchatheevu to Sri Lanka ("5. Subject to the foregoing Indian fishermen and pilgrims will enjoy access to visit Kachativu as hitherto, and will no be required by Sri Lanka to obtain travel documents or visas for these purposes. + 6.The vessels of India and Sri Lanka will enjoy in each other's water such rights as they have traditionally enjoyed therein.)
- 1976 letters exchanged - provide for fishing vessels of Indian Fishermen, not to engage in fishing in the historic waters, the territorial sea and the exclusive economic zone of Sri Lanka, nor shall the fishing vessels or fishermen of Sri Lanka engage in fishing in the historic waters, the territorial sea and the exclusive economic zone of India.
- India and Sri Lanka have agreed to set up a Joint Working Group on Fisheries (JWG) December 2016
- The terms of reference of the JWG includes “expediting the transition towards ending the practice of bottom trawling at the earliest”, as well as framing procedures for returning fishermen arrested by both sides, and the possibility of joint patrolling.
- Both parties have agreed on many things, particularly the Indian govt.’s consent to phaseout bottom trawling in the Palk Strait,
- Trawling by Indian fishermen causes damage to marine ecology and, specifically, fish stocks
- Sri Lanka amended the Fish and Aquatic Resources Act 1996 – July 2017 - Prohibition of fishing operations utilizing bottom trawl nets in Sri Lankan Waters

# Ecosystems Republic “approach”

- Declare the Palk Bay as a marine ecosystem – preserve the intrinsic value of the ecosystem
- Devolution of governance (Right to self determination)
  - Artisanal (Non-Mechanized) fishing communities in Sri Lanka and India cooperatively manage (principles of access based on ecological integrity (prioritize sustenance) + responsibilities) accompanied by responsibility for conservation

# Thank You

Comments are welcome

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