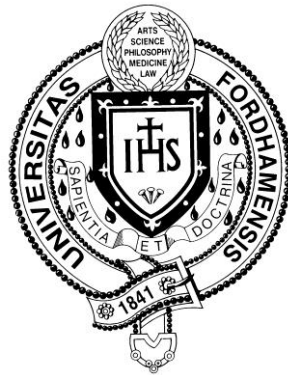


# FORDHAM ENVIRONMENTAL LAW REVIEW



REGAINING CONTROL OVER THE CLIMATE CHANGE NARRATIVE:  
HOW TO STOP RIGHT-WING POPULISM FROM ERODING RULE OF LAW  
IN THE CLIMATE STRUGGLE IN INDIA

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REGAINING CONTROL OVER THE CLIMATE CHANGE NARRATIVE:  
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LAW IN THE CLIMATE STRUGGLE IN INDIA

BINIT AGRAWAL\*

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ABSTRACT

*Over the last decade, we have witnessed a global rise in right-wing populism which has often threatened the fight against climate change. While many of these populists have claimed climate-change is fake, others have moved more discreetly to undermine the climate struggle. These leaders rely on policies which give immediate political benefits, whereas the fight against climate change requires long-term multi-dimensional policies. This has undermined the fight against climate change, as is shown through the case of India. In India, economic, religious and political agendas have prevailed over environmental security due to the contradiction between right-wing populism and climate change struggle. Hence, it is recommended that attempts must be made to decouple the two. This would require decentralisation of environmental rulemaking powers, de-bureaucratisation of the process of formulating and implementing the policies; and utilisation of market-based tools to give direct control to the people.*

INTRODUCTION

Today, it is impossible to think about economic growth without confronting its most exigent implication: Climate Change. It is common knowledge that climate change threatens our civilization and poses the biggest challenge mankind has ever known in its written history. It is imminent that we start working to save our environment. However, this revolution faces many obstacles, the rise of right-wing, climate change denying, populist politics being one of them. At this stage, I would like to introduce a word of caution for the reader. Throughout this paper, populism or populist politics would be used to refer to the right-wing populism as against the populism espoused by the left-socialists, who support actions to rein on climate change.

Donald Trump's populism has led the USA to pull back from the Paris climate treaty, dealing a big blow to the monumental treaty.<sup>1</sup> In fact, today, the USA is one of the few countries where climate change deniers politically thrive.<sup>2</sup> France saw yellow vests protest against a carbon tax on fuel, which had to be rolled back.<sup>3</sup> In Brazil, Jair Bolsonaro kept discrediting his opponents as the Amazon rainforests were engulfed in fire.<sup>4</sup> In India, we see many using religion as an argument for burning fire-crackers and causing pollution.<sup>5</sup> In the case of India, populist fanaticism has caused the environmental struggle to lose steam. This has also resulted in many institutions, tasked with protecting the environment, see their ability to respond weakened. For example, today it is very difficult for the Supreme Court of India to impose heavy penalties on fire-cracker burning due to the popular politics associated with it.<sup>6</sup> Hence, it is required that we put in place legal and policy changes necessary to weaken populism's hold on the climate change narrative.

In this paper, I suggest: *first*, to decentralise environmental rulemaking powers in India to local governments. Most of the effects of climate change are observed at the community level. Hence, local governments are more likely to come up with effective solutions, putting aside reality-twisting populist politics. *Secondly*, I propose a de-bureaucratisation of the process of formulating environmental policies, which is now dominated by politicians and bureaucrats. Bureaucracy is often the first target of populists, as it

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<sup>1</sup> *Paris climate accords: US notifies UN of intention to withdraw*, BBC (Nov. 5, 2019), <https://www.bbc.com/news/world-us-canada-50297029>.

<sup>2</sup> Ken Silverstein, *There's A Cancer On The U.S. Economy: It's Climate Change Denial*, FORBES (July 23, 2019), <https://www.forbes.com/sites/kensilverstein/2019/07/23/theres-a-cancer-on-the-u-s-economy-its-climate-change-denial/>.

<sup>3</sup> Vanessa Williamson, *What France's Yellow Vest protests reveal about the future of climate action*, BROOKINGS (Dec. 20, 2018), <https://www.brookings.edu/blog/fixgov/2018/12/20/what-frances-yellow-vest-protests-reveal-about-the-future-of-climate-action/>.

<sup>4</sup> Ishaan Tharoor, *Bolsonaro, Trump and the nationalists ignoring climate disaster*, THE WASHINGTON POST (Aug. 23, 2019), <https://www.washingtonpost.com/world/2019/08/23/bolsonaro-trump-nationalists-ignoring-climate-disaster/>.

<sup>5</sup> Ritu Prasad, *Is Delhi's Diwali firework ban an attack on Hinduism?*, BBC (Oct. 19, 2017), <https://www.bbc.com/news/blogs-trending-41670543>.

<sup>6</sup> *Supreme Court Fixes 2-hour Period for Bursting Firecrackers on Diwali, other Festivals*, ECON. TIMES (Oct. 12, 2018), <https://m.economictimes.com/news/politics-and-nation/supreme-court-refuses-blanket-ban-on-sale-and-use-of-firecrackers/articleshow/66327271.cms>.

is easy to create betrayal and corruption stories around them. This is evident from terming a large section of Indian media, economists and bureaucrats, as “Lutyens Gang”, by the populist forces.<sup>7</sup> Similarly, in the USA Mr. Trump is often marketed as the outsider, who doesn't vie for political correctness.<sup>8</sup>

*Finally*, we must put in place market-based tools to de-link climate change initiatives from popular beliefs. For example, due to politicians pandering to their constituencies, there has been no solution to the problem of air pollution in Delhi, which is caused by stubble burning in neighbouring states. Embracing a market-based tool, where rights to burn stubble can be exchanged would allow farmers to sell their right to burn stubble to city folks wanting to breathe in a clean atmosphere. This would significantly reduce the impact populism can have on the process. In the chapters that follow, I first describe how populism has undermined the climate struggle. This is followed by the sections detailing the proposed legal and policy solutions.

#### I. HOW THE ENVIRONMENT STRUGGLE WAS LOST TO RIGHT-WING POPULISM

Psychological studies have found that humans have a tendency to underplay future threats. We instead focus on taking benefit of current pleasures.<sup>9</sup> This is reflected in our daily life, in what we call procrastination. This is also reflected in some of the most pressing of our global problems, whether they be foreign policy, economy or environment. Today, humanity has to make a choice: whether to keep firing the powerhouse of unsustainable growth or slow it down for a sustained future. In the latter case, we will see the costs of living rise and a slight slowdown in our economic growth. This undoubtedly will cause inconvenience, mostly to the poorest of the lot. On the other hand, if we don't slow down our industrial rampage, we are staring at a sinking and barren planet. This again would harm the poorest the most. But since we

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<sup>7</sup> *Khan Market gang, Lutyens Delhi did not create my image', says PM Narendra Modi in fresh jibe at Rahul Gandhi*, BUS. TODAY (May. 12, 2019), <https://www.businesstoday.in/current/economy-politics/pm-narendra-modi-rahul-gandhi-khan-market-gang-lutyens-delhi/story/345826.html>.

<sup>8</sup> George Monbiot, *Donald Trump is no Outsider: He Mirrors our Political Culture*, THE GUARDIAN (Oct. 26, 2019), <https://www.theguardian.com/commentisfree/2016/oct/26/donald-trump-outsider-system-elections>.

<sup>9</sup> R. Walsh, *Toward a Psychology of Human Survival: Psychological Approaches to Contemporary Global Threats*, 43, AM. J. OF PSYCHOTHERAPY, 158, 158-60, (2018).

have a tendency to downplay future threats, we assure ourselves that it is not going to be that bleak after all.<sup>10</sup> The result of this being, creation of a political space, where some leaders can come up and discredit those who talk for the environment.<sup>11</sup> They glibly mix their agendas with anti-environment arguments on the basis of livelihood, growth, religion, and all the other things which can move the masses. One may ask, why is environmental struggle a target for populists? To answer this, we must explore two things: *how populism works* and *how environmental rulemaking works*.

### A. *Populism: Basics*

It is not uncommon today to hear, “*you don’t support PM Modi, are you an anti-national?*”<sup>12</sup> While this may seem absurd to one who has read the law, for most populists and their followers, it is a very valid question. This is because populism purports to represent the people, and in its conception “people” is a single unit, not a congregation of pluralistic identities.<sup>13</sup> Consequently, “*if the leader represents or embodies ‘the people’s’ will, and ‘the people’ are always right, then the leader is also always right*”.<sup>14</sup> The implication then is that any opposition, whether it be institutional, civil, or political, represents a difficulty for populists, as it undermines their claim to be the sole representatives of the people. This is the reason why populists spend extra resources discrediting opponents, including civil society, media, and judiciary. This is evidenced by what is happening in India. Civil society and NGOs are regularly harassed by agencies.<sup>15</sup> Greenpeace, one of the foremost environmental NGOs has almost completely shut its India

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<sup>10</sup> Glen Scherer, *Climate Science Predictions Prove too Conservative*, SCI. AM. (Dec. 6, 2012), <https://www.scientificamerican.com/article/climate-science-predictions-prove-too-conservative/>.

<sup>11</sup> Phaedra de Saint-Rome, *Why Voter Apathy and Populism Are a Climate Issue*, MCGILL J. OF SUSTAINABLE DEV. (Feb. 18, 2019), <https://www.mcgill.ca/mjsdl/article/why-voter-apaty-and-populism-are-climate-issue/>.

<sup>12</sup> Sanjay Kumar, *Modi’s New Mantra: ‘If You’re Not With Me, You’re Anti-National’*, THE DIPLOMAT (Feb. 18, 2016), <https://thediplomat.com/2016/02/modis-new-mantra-if-youre-not-with-me-youre-anti-national/>.

<sup>13</sup> JAN-WERNER MÜLLER, *WHAT IS POPULISM?* 25-40 (U. of Penn. Press ed., 2016).

<sup>14</sup> BENJAMIN MOFFITT, *THE GLOBAL RISE OF POPULISM: PERFORMANCE, POLITICAL STYLE, AND REPRESENTATION* 148 (Stanford U. Press ed. 2016).

<sup>15</sup> Sujeet Kumar, *India has been Hostile to NGOs for Decades. Modi made it Worse*, QUARTZ: INDIA (May. 3, 2019), <https://qz.com/india/1611326/india-has-been-hostile-to-ngos-for-decades-modi-made-it-worse/>.

office<sup>16</sup>, and Amnesty International has already stopped its work in India, citing government ‘witch-hunt’.<sup>17</sup> Further, most of the sane media has been categorized as “Lutyen’s Gang” or “Khan Market Gang”, and anything they say is termed as anti-national.<sup>18</sup> In fact, the Prime Minister and other ministers have avoided engaging with any critical media, creating an effective echo-chamber, wherein they speak and give interviews exclusively to the pliable media.<sup>19</sup> The last bastion of freedom, the judiciary, has also regularly been lambasted by the government in recent times, unless their judgements favour the government.<sup>20</sup> As a summary, it can be argued that populists are impatient with procedures and debate, and prefer an unmediated connection between the leader, their policies, and their people. Additionally, populists prefer solutions which yield some sort of immediate result, so as to keep their support base afloat. This is reflected in most of the decisions of the current Indian government which is a classic case of a populist government, whether it be demonetisation (wherein 86% of cash in circulation was demonetised overnight in a bid to weed out corruption), removal of Article 370 from the state of Jammu & Kashmir (the state was put under military surveillance and disconnected from the rest of the world overnight), or granting green nods to projects at a breakneck speed without giving them their due thoughts.<sup>21</sup> This is in contrast to the liberal-democratic

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<sup>16</sup> Deborah Doyane, *The Indian Government has Shut the Door on NGOs*, THE GUARDIAN (Sept. 7, 2016), <https://www.theguardian.com/global-development-professionals-network/2016/sep/07/the-indian-government-has-shut-the-door-on-ngos>.

<sup>17</sup> Hannah Ellis-Petersen and Ben Doherty, *Amnesty to Halt Work in India due to Government 'Witch-Hunt'*, THE GUARDIAN (Sept. 29, 2020), <https://www.theguardian.com/world/2020/sep/29/amnesty-to-halt-work-in-india-due-to-government-witch-hunt>.

<sup>18</sup> *Supra* note 7; see also Nikhil Inamdar, *How Narendra Modi has almost Killed the Indian Media*, QUARTZ: INDIA (Mar. 19, 2019), <https://qz.com/india/1570899/how-narendra-modi-has-almost-killed-indian-media/>.

<sup>19</sup> Tavleen Singh, *Modi's Dangerous Isolation*, INDIAN EXPRESS (DEC. 7, 2020), [HTTPS://INDIANEXPRESS.COM/ARTICLE/OPINION/COLUMNS/NARENDRA-MODI-FARMERS-PROTEST-TAVLEEN-SINGH-7093214/](https://indianexpress.com/article/opinion/columns/narendra-modi-farmers-protest-tavleen-singh-7093214/).

<sup>20</sup> Atul Dev, *In Sua Causa What the judiciary has done to itself*, THE CARAVAN, (July 1, 2019), <https://caravanmagazine.in/law/what-judiciary-done-itself>.

<sup>21</sup> Uday Mahurkar, *As Modi Government Clears Development Projects in a Flurry, India's Environmental Future is at Stake*, INDIA TODAY (Jun. 27, 2017), <https://www.indiatoday.in/magazine/special-report/story/20170703-india-environment-wildlife-endangering-nda-modi-986665-2017-06-27>; see also Neha Sinha, *Concern over Climate, Compromise on Nature*, THE HINDU (Apr. 17, 2015), <https://www.thehindu.com/opinion/op-ed/concern-over-climate-compromise-on-nature/article6824140.ece>; e.g.

style of governance, which is often slow, considered and long-term. Barack Obama, in his memoir, wrote of former Indian Prime Minister Manmohan Singh, “*He had done his part, following the playbook of liberal democracies across the post-Cold War world: upholding the constitutional order; attending to the quotidian, often technical work of boosting the GDP; and expanding the social safety net*”.<sup>22</sup> There is little element of shock, suddenness and immediacy in such style of functioning, which is what environmental rulemaking often requires.

### B. *Environmental Rulemaking: Basics*

Environmental rulemaking, especially in a developing country like India, is a necessarily pluralistic process. Many competing interests of development, sustainability, human rights, land rights, jobs and business interests have to be balanced.<sup>23</sup> Secondly, the effects of any move which can harm the environment are not immediately visible and they become apparent only after a few years.<sup>24</sup> This makes environmental rulemaking heavily dependent on institutions like scientific organisations, media, civil society, judiciary, and bureaucracy. Additionally, pro-environment decisions yield slow results, while causing immediate pain.<sup>25</sup> This is in complete contradiction to the populist impatience. Hence, they tend to compromise the processes and rules which are the basis of good environmental policymaking. Today, one can see this happening in India and I will present four examples to bolster my argument.

The first is that of Aarey Forest. A huge civil society protest erupted against cutting of trees in Aarey Forest, considered as Mumbai’s green lungs, to build a metro shed.<sup>26</sup> This was completely rejected by the government, which thrust ahead with

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Armin Rosencraz, *NGT’s Power at Risk in the Environment Law Amendment Bill*, DOWN TO EARTH (May. 3, 2016), <https://www.downtoearth.org.in/blog/forests/ngt-s-power-at-risk-in-the-environment-law-amendment-bill-53814>.

<sup>22</sup> BARACK OBAMA, *A PROMISED LAND* 601 (Crown ed., 2020).

<sup>23</sup> ELIZABETH FISHER, *ENVIRONMENTAL LAW: A VERY SHORT INTRODUCTION* 39 (Oxford U. Press ed., 2017).

<sup>24</sup> ROB NIXON, *SLOW VIOLENCE AND THE ENVIRONMENTALISM OF THE POOR*, 89 (Harv. U. Press ed., 2011).

<sup>25</sup> Elizabeth Fisher, *Unearthing the Relationship Between Environmental Law and Populism*, 31, *J. OF ENVTL. L.* 383, 383-87, (2019).

<sup>26</sup> Sripad Motiram, *Our Ecological Crisis Through an Aarey Colony Lens*, LIVE MINT (Oct. 19, 2019), <https://www.livemint.com/opinion/columns/opinion-our-ecological-crisis-through-an-aarey-colony-lens-11571332849514.html>.



tree-cutting midnight by imposing a complete curfew in the area. The second example is that of the river-interlinking project, which has been termed as a top-priority for the current government.<sup>27</sup> This is notwithstanding the fact that river inter-linking has already been discredited as a possible solution to control floods and distribute water. Thirdly, in the case of cracker bursting in the NCT of Delhi, the Supreme Court of India (“Supreme Court”) in the year 2015 first tried to impose restrictions on sale and burning of crackers, to no avail.<sup>28</sup> The government failed to implement the directives of the Supreme Court on giving publicity to the ill effects of firecrackers.<sup>29</sup> Further, the directions were openly violated by political parties, which encouraged people to burst crackers, for the sake of religious pride.<sup>30</sup> In fact, this year, a brand which came out with an advertisement encouraging people to not burst crackers came under fire from leaders of the ruling party, its social media army and its official mouthpiece “Organiser”, forcing the brand to roll back the advertisement.<sup>31</sup> As a result, the Supreme Court, in order to avoid getting entangled in a religious debate, has avoided passing any stern orders on cracker burning. Lastly, in a classic play of popular politics, three different political parties, ruling three different states, have avoided co-operating on the issue of air pollution caused due to stubble burning even after multiple requests from the courts.<sup>32</sup>

All of them pander to their own constituencies, which range from urban to rural, and try to shrug their own responsibility. The

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<sup>27</sup> Radheshyam Jadhav, *Against the Odds, Centre Forging Ahead with Ambitious River-Interlinking Project*, THE HINDU BUSINESS LINE (May 1, 2019), <https://www.thehindubusinessline.com/news/national/against-the-odds-centre-forging-ahead-with-ambitious-river-interlinking-project/article27005030.ece>.

<sup>28</sup> Polash Mukherjee, *A Noisy Diwali Ahead: Supreme Court Refuses to put Blanket Ban on Firecrackers*, DOWN TO EARTH (Oct. 28, 2015) <https://www.downtoearth.org.in/news/air/a-noisy-diwali-ahead-supreme-court-refuses-to-order-blanket-ban-on-firecrackers-51620>.

<sup>29</sup> *Id.*

<sup>30</sup> *BJP leader Tejinder Singh Bagga distributes firecrackers among ashram children*, FINANCIAL EXPRESS (Oct. 18, 2017) <https://www.financialexpress.com/india-news/bjp-leader-tejinder-singh-bagga-distributes-firecrackers-among-ashram-children/898169/>.

<sup>31</sup> *#BoycottTanishq Trends on Twitter after the Jewellery Brand Targets Hindus, advises People to Refrain from Bursting Firecrackers on Diwali*, ORGANISER (NOV. 9, 2020) <https://www.organiser.org/Encyc/2020/11/9/BoycottTanishq-trends-on-twitter-after-jewellery-brand-advises-Hindus-to-refrain-from-bursting-firecrackers-on-Diwali.html>.

<sup>32</sup> Justina Crabtree, *Smog Shrouds Delhi as India’s Capital has ‘Become a Gas Chamber’*, CNBC (Nov. 9, 2017) <https://www.cnb.com/2017/11/08/delhi-smog-india-capital-gas-chamber.html>.

result is a disastrous state of air in each of the three states, mainly in Delhi, India's capital. To curb this, the Supreme Court called for an emergency hearing on Delhi's air pollution. It summoned officials from central and state governments and passed various directives, including a complete ban on stubble burning. Implementation of the order continues to remain lax.<sup>33</sup> Such decisions and lack of decisions by populist leaders are going to put considerable strain on environmental protection.

## II. PROPOSED SOLUTIONS TO DE-LINK ENVIRONMENTAL PROTECTION FROM POPULIST POLITICS

### A. *Decentralisation of Rulemaking and Implementation Power*

Currently, in India, environmental rulemaking depends on a gamut of central legislations. These include, inter alia "*Environment (Protection) Act, 1986; the Water (Prevention and Control of Pollution) Act, 1974; the Water Cess Act, 1977; and the Air (Prevention Control of Pollution) Act, 1981; Indian Forest Act, 1927; the Forest (Conservation) Act, 1980; the Wild Life (Protection) Act, 1972 and the Bio-diversity Act, 2002*".<sup>34</sup> The implementation of these laws is done through various statutory bodies, which include, Central and State Pollution Control Boards ("CPCB" and "SPCB"), National and State Land Use and Conservation Board, Central and State Environmental Impact Assessment Authorities, State Forest Departments and Union Ministry of Environment, Forest and Climate Change.

One can see the problem here. The power to implement environmental rules is heavily concentrated in the hands of central and state government authorities. The natural consequence of this being that the implementation of these laws is slow, lax, and subject to the whims of the populist leaders and bureaucrats. Often these executives only have a superficial knowledge of what the issues on the ground are. They fail to analyse what the implications of allowing a certain project will be. They also lack the rigour and information to find solutions to issues which are causing

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<sup>33</sup> Rohan Gupta, *Supreme Court Holds Emergency Hearing on Delhi Air Pollution*, DOWN TO EARTH (Nov. 4, 2019) <https://www.downtoearth.org.in/news/air/supreme-court-holds-emergency-hearing-on-delhi-air-pollution-67588>.

<sup>34</sup> Gov. of India Planning Comm'n, Report of the Working Group on Environment and Environmental Regulatory Mechanisms in Environment & Forests for the Eleventh Five Year Plan, PCI/2007-2012 (Issued on Aug. 2007).

degradation or pollution. This is the space populist politics needs to thrive. When such a sense of vagueness persists, populists find it easy to force their own worldview and solutions. For example, nod for river inter-linking project, which will cause terrible problems for villagers and tribals who reside near those rivers, is being given at central and state levels.<sup>35</sup> This is possible because policymaking is distant from the people who are actually going to bear the burden.

However, if policymaking and implementation were to be decentralized to local levels, and people were given a voice, the role which populist leaders can play will be minimized. As per one author, resistance to populist politics must come from the ground, from the people.<sup>36</sup> This is because people, often with the help of civil society, know what the problems they are facing or are going to face. In one study from Malsad, Gujarat, it was found that entire villages had lost their livelihood because of effluent dumping in the rivers by industries. The community comprised mostly of fishermen, and the availability of fish had acutely dwindled due to the increasing toxicity of water. As per the Sarpanch, their pleas to the government and pollution control board fell in deaf ears.<sup>37</sup> In such cases, if implementation power were to be devolved to the panchayat, with only supervisory role for SPCB, it would lead to immediate resolution of the problem, regardless of the national or state level politics. In Odisha, when forest management was decentralized by giving important role to village level governments, it was found that compliance increased exponentially.<sup>38</sup> It was also found that a corporate culture of reckless development was replaced by a communitarian approach of balanced growth.<sup>39</sup> Similarly, when in 2006, district environmental impact assessment authorities took over the

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<sup>35</sup> Jadhav, *supra* note 26.

<sup>36</sup> Catarina Kinnvall, *Populism, Ontological Insecurity and Hindutva: Modi and the Masculinization of Indian Politics*, 32, CAMBRIDGE REV. OF INT'L AFF., 283, 283-89, (2018).

<sup>37</sup> Krithika A Dinesh et. al., *How Effective Are Environmental Regulations to Address Impacts of Industrial and Infrastructure Projects in India*, CTR. FOR POL'Y RES. (Nov. 16, 2016),

<https://cprindia.org/sites/default/files/policy-briefs/Are%20environmental%20regulations%20effective%20in%20addressing%20impacts%20of%20industrial%20and%20infrastructure%20projects%20in%20India.pdf>.

<sup>38</sup> *Id.* at 23.

<sup>39</sup> BISHNU P. MOHAPATRA, *DECENTRALISED FOREST GOVERNANCE, INSTITUTIONS AND LIVELIHOODS IN ODISHA: A STUDY OF EVOLUTION OF POLICY PROCESS AND POLITICS* 12 (Centre for Economic and Social Studies, 2014).

responsibility of conducting assessment from those in state and central level, there was palpable increase in compliance.<sup>40</sup>

*B. De-Bureaucratization of The Process of Formulating Environmental Policies*

This solution is closely linked to the process of decentralization. Often it happens that even in cases where power has been de-centralized to local levels, bureaucrats continue to dominate the process, diluting the decentralization of power. For example, the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, allows Gram Sabhas the right to control forests within their jurisdictions and create rules and rights relating to those forests.<sup>41</sup> However, one study reports,

Forests have been diverted for non-forest purposes without their consent, Gram Sabhas have not been informed about the rejected forest rights claims. The Gram Sabhas have also been denied their rights over minor forest products and their rights to use and manage forest resources have been opposed by the forest departments.<sup>42</sup>

This clearly shows that bureaucracy has a tendency to keep powers within itself. Thus, any decentralization of power must be backed by de-bureaucratization. The people and local level leaders must be allowed to make decisions, with a merely supervisory role for the executive. Further, environmental policies are often made by technocrats and bureaucrats. That approach too is faulty. A broad-based stakeholder consultation must be held before any new law or regulation is passed. People must be given due representation by means of surveys, field meetings, and open meetings. This is very important to contain the influence of populist politics on environmental rulemaking. Bureaucracy because of various reasons is widely disliked by the masses. Politicians use this to discredit even the good work of bureaucrats if they are not amenable to the policies of populist leaders. Hence, if people are

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<sup>40</sup> Ruth Kattumuri & Stefania Lovo, *Decentralisation of Environmental Regulations in India*, 53 *ECON. & POL. WKLY.* 32, 33, (2018), [http://eprints.lse.ac.uk/90543/1/Kattumuri\\_Decentralisation%20regulation\\_2018.pdf](http://eprints.lse.ac.uk/90543/1/Kattumuri_Decentralisation%20regulation_2018.pdf).

<sup>41</sup> Recognition of Forest Rights Act, 2006, §2(g).

<sup>42</sup> Geetanjoy Sahu, *10 Interventions Government Must Make to Protect Forest Rights*, *DOWN TO EARTH* (June 3, 2019), <https://www.downtoearth.org.in/blog/forests/10-interventions-government-must-make-to-protect-forest-rights-64863>.

given real decision-making power in the scheme of environmental regulation it will go a long way in containing the influence of politics over the process.

### *C. Putting in Place Market Based Incentives*

As discussed earlier, the biggest problem with environmental regulation is that it comes in the way of development or it is very costly. For example, we would all want stubble burning to stop, but it is very expensive to replace stubble burning with machines. Farmers lack the necessary resources to access the necessary technology and machinery. As such, no solution is found, and populist politicians take benefit at this juncture. However, if certain market-based tools were to be put in place here, this problem of cost and development will be tackled over time. In the case of Delhi, a large number of people, rich or poor, are being affected because of stubble burning. If these people were given an opportunity to buy the rights from the farmers of Punjab and Haryana to burn stubble, it is highly likely that they would do so.<sup>43</sup> This can be considered a form of insurance, wherein the cost of not burning stubble is shared amongst a large group of people, instead of farmers having to pay for it alone.

In an amicus brief submitted to the Supreme Court, it was explained that a one-time subsidy of approximately Rs. 200,000,000,00 (Rs. 20 billion) should be enough to control stubble burning in the states of Haryana and Punjab, with little maintenance cost over the years.<sup>44</sup> This translates to approximately Rs. 1,000 for every resident of Delhi, which is not a big ask for enjoying clean environment. However, until a market framework, which allows many people to cooperate is brought in place, it is not possible for Delhi residents to pay the farmers of Punjab and Haryana. Such broad-based cooperation can be made possible by the creation of an environmental exchange.

An environmental exchange can allow the two parties, farmers and city dwellers, to exchange the legal right to burn stubble for money, with the state implementing these contracts.

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<sup>43</sup> Shruti Rajagopalan, *Ronald Coase has a Solution for Delhi's Air Pollution*, LIVE MINT (Nov. 11, 2019), <https://www.livemint.com/opinion/columns/ronald-coase-has-a-solution-for-delhi-s-air-pollution-11573491626858.html>.

<sup>44</sup> *Rs 2,000-cr roadmap to end stubble burning submitted at SC*, BUSINESS STANDARD (Nov. 30, 2017), [https://www.business-standard.com/article/current-affairs/rs-2-000-cr-roadmap-to-end-stubble-burning-submitted-at-sc-117113000887\\_1.html](https://www.business-standard.com/article/current-affairs/rs-2-000-cr-roadmap-to-end-stubble-burning-submitted-at-sc-117113000887_1.html).

Corporations already have such a mechanism in place in the form of carbon emissions trading, which allows businesses to exchange their right to pollute.<sup>45</sup> Allowing people to do the same can lead to a revolutionary scheme of income redistribution and climate protection. This is in lines of what is known as Coase Theorem in Law and Economics. Coase theorem is one of the key principles of common law legal systems, which postulates that the one who is ready to pay more for something should be allowed to buy it.<sup>46</sup> Given the fact that most of the environmental damage is in the form of legally permitted negative externality, those who can buy such rights to pollute should be able to buy them through a market transaction. This will lead to overall efficiency. In our case, it also makes people the ultimate decider and keeps populism at bay.

#### CONCLUSIONS

This paper began with an attempt to present a problem which may not be very apparent in the first instance: that there is an existential threat to environmentalism from the rise of populist politics. Upon looking at how good environmental rulemaking works; it was found that none of the facets of populism apply to it. Environmental rulemaking is by nature a pluralistic and hotly debated practice and yields results over time. It doesn't provide a space for swift and impatient decision-making. As a result, it has become an antithesis to populism, and is being regularly targeted by populist governments across the world.

Populists play on our urge to postpone implementation of solutions to a future problem to further their own agendas and politics. They use arguments relating to livelihood, religion, culture, jobs, denial, etc. to tell the voters that they can enjoy their lives as they are doing now, and that there is no climate change. They are impatient with procedure, dislike debates, believe in swift decisions and like to make decisions which provide some sort of immediate results.

To deal with this, the paper provided three possible solutions to the problem. However, a caution is in order here, with populists in power, these solutions are not easy to implement. However, looking at these solutions is necessary to begin a debate

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<sup>45</sup> Kaushik R. Bandyopadhyay, *Emission Trading in India: A Study of Two Schemes*, 2016-03, AGI WORKING PAPER SERIES, 1, 1-44, (2016).

<sup>46</sup> Britannica, *The Coase Theorem*, ENCYCLOPÆDIA BRITANNICA (Aug. 25, 2014), <https://www.britannica.com/topic/environmental-economics/The-Coase-theorem>.

and look for other creative solutions. The solutions proposed here are, *first*, to decentralize environmental rulemaking powers and empowering local governments to take decisions. *Secondly*, to de-bureaucratize the process of formulating environmental policies, now in the hands of ministries and boards, by involving all the stakeholders. *Thirdly*, to put in place market-based tools to de-link climate change initiatives from popular beliefs. The end result of these solutions will be a better rules-based environmental policymaking, which takes into account the plight of the common man and doesn't dance on the whims of any one leader or group.