THE ECOLOGICAL CONSTITUTION: REFRAMING ENVIRONMENTAL LAW (2021). By Lynda Collins, Routledge, Pp. 140. Price INR 5030/-.

Over the past few years, it has been claimed by many academicians that now humans have reached an anthropocentric era which is going to reflect the impact in many more years to come. Although, this claim is yet to receive an official nod. We are, however, witnessing the global environmental risks all around the world induced by human actions which are becoming more and more problematic and have overarching consequences on all forms of life and surrounding ecosystem. It seems clear that humanity needs to find a way to constrain its behaviour within ecological limits in order to achieve sustainability.

One of the tools to overcome this situation is through strong environmental laws which are found to have numerous flaws and are in urgent need of revisions and redrafting. The most effective way to do that is through the invocation of ecological rights and duties within the constitutions. Since the 1970s a lot has been done at a global level about the establishment of ecological constitutional provisions. Recently, the UN Special Rapporteur on Human Rights and the Environment reported that more than 80 percent of States Members of the UN (156 out of 193) manifest some form of environmental constitutionalism.[1] This has also been the centre for debate and discussion for academicians all around the world.

Against this background, Lynda Collins's book has delved into one of the facets of the ongoing debates and discussions on "environmental constitutionalism" with a new perspective. Further dignified by enlightening words in the form of Preface to the book of David R. Boyd, who himself has contributed immensely to the 'ecological constitutionalism' jurisprudence.[2] He has also advised many governments on environmental, constitutional, and human rights policies. In his words, the reason why the author had advocated for importing environmental/ecological dimension in our political and legal systems is the interrelationship between the environment

[1] United Nations Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, Right to A Healthy Environment: Good Practices, OHCHR, 43rd session, UN DOC A/HRC/43/53 (2020) at para 13.

[2] Mr. Boyd is the author of nine books and over 100 reports and articles on environmental law and policy, human rights, and constitutional law. His most recent books include The Rights of Nature (ECW Press, 2017), The Optimistic Environmentalist (ECW Press, 2015), Cleaner, Greener, Healthier: A Prescription for Stronger Canadian Environmental Laws and Policies (UBC Press, 2015) and The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment (UBC Press, 2012).

and other species found on earth including *homo sapiens*. Boyd states that no one is above and superior to the natural world.

This study maps out the relevant legal rights, duties, and principles that make up the building blocks of an ecological constitution. It also endeavours to cover how the "ecological transformation" of domestic constitutions can lead them towards the pathway of sustainability. The eight chapters of this book, therefore, elaborate on the blueprint for how to build an ecological constitution. All chapters are quite coherent and have covered relevant issues comprehensively. Therefore, every chapter is equally important and are connected, however, reviewer has restricted the discussion to some of the relevant aspects only.

The ***first chapter*** introduces the central argument and scope of the book. The book has primarily developed on the idea that domestic constitutions have the potential to infuse domestic laws with an ecological consciousness. The reason why the author has unearthed this potential is because of the inability and failure of the existing environmental law regime around the world to prevent or reverse the eco-social crises of the Anthropocene. This inefficiency has been principally caused by the anthropocentric approach and fragmented laws which are also politically weak in nature.[3] The author states that "the ecological inadequacy of environmental law is written into its DNA". The author, in the latter part, has identified the basic characteristics of any ecological legal instrument which are eco-centrism, ecological primacy, and ecological justice.[4] Therefore, the embedded ecological constitutional provisions should be enforceable and justiciable with the broadest possible jurisdiction and international cooperation.

In the ***second chapter***, the author has not only remarkably explained the importance of constitutionalizing the ecological sustainability principles rather have devised tools for the same. This can be really helpful for the nations who are yet to do the needful. The author has referred to the writings of 'Bosselmann' on the topic.[5] *Bosselmann* has suggested that for establishing 'ecological sustainability' as a fundamental legal principle, the same should be

[3] Craig Collins, *Toxic Loopholes: Failures and Future Prospects for Environmental Law* (Cambridge: Cambridge University Press, 2010).
[4] Carla Sbert, *The Lens of Ecological Law: A Look at Mining* (Cheltenham: Edward Elgar, 2020).
[5] Klaus Bosselmann, *The Principle of Sustainability: Transforming Law and Governance* (Routledge, 2nd edn., 2016); Klaus Bosselmann and Prue Taylor, *Ecological Approaches to Environmental Law* (Edward Elgar, 2017) And Klaus Bosselmann and J. Ronald Engel, *The Earth Charter: A Framework for Global Governance* (Amsterdam: KIT, 2010).

recognized by the constitution at the domestic level. He also persuasively argues that "[ecological] sustainability has the historical, conceptual and ethical quality typical for a fundamental principle of law".

In later parts, the author discusses in detail why ecological sustainability principles should be embedded within the constitutions only and should not be established as mere legal principles. To which the author has stated, referring *Bosselmann*, that constitution is the supreme law of the land which provides a continuing framework while keeping an eye on the future. And as ecological sustainability is a long-term project it makes sense to codify it in the state's most enduring legal construct. In the concluding part, the author has devised tools through which ecological provisions can be installed within the constitutional machinery of the nations. Here, the author has suggested that such an installation is possible either through an explicit amendment to the constitution or through the judicial interpretations of the existing legal machinery. For which nations like India, Pakistan, New Zealand, Canada, etc have been praised for their ground-breaking judicial interpretations to constitutionalize ecological sustainability.

Chapter three begins with the central argument that the 'right to environment is a primary human right'. Meaning thereby, all human rights are dependent on the right to the environment. The chapter, therefore, explores four distinct streams of environmental human rights that are relevant to ecological constitutionalism. The first stream, procedural environmental rights are mainly associated with environmental justice outcomes.[6] The second stream discusses how existing rights have been interpreted with ecological angle by various judicial courts.[7] The author supports the idea of adopting an ecologically literate approach to rights infringement rather than greening human rights. The third stream discusses the explicit recognition of a substantive environmental right which is considered a best practice all around the world.[8] It has also been highlighted that the countries with such substantive environmental rights are ought to perform better at environmental performance assessments and have smaller "ecological footprints".

[6] Procedural environmental rights (PERs) include access to information, the right to participate and access to justice in environmental matters.
[7] For example in *Subhash Kumar* v. *State of Bihar*, 1991 SCR (1) 5. The Supreme Court held that "the right to life includes right to environment".
[8] The domestic constitutions of at least 110 states include a substantive environmental right.

However, many times these environmental human rights are interpreted and implemented from an anthropocentric perspective which has been rightly criticized by the author. The fourth stream discusses the environmental rights of Indigenous communities and why the ecological interests of Indigenous peoples require constitutional protection. The author argues that environmental law around the world has failed to appreciate the contributions of Indigenous legal systems which hold importance in ecological matters. However, the author notes that ecological rights and human rights have a mutual relationship yet tensions can arise between the two which has been further discussed in *chapter VI*.

In ***chapter four,*** the author has discussed the principles of intergenerational equity and public trust doctrine and what role do they play in ecological constitutions. Here, the author posits that although the principles are Anthropocene in nature, which has been highlighted as one of their limitations but have helped nations to improve the sustainability of ecosystems.[9] The author has referred to the work of '*Professor Edith Brown Weiss'* on intergenerational equity wherein Weiss has identified the three core constituents of the doctrine.[10] The three kinds of ecological rights within the doctrine are the right to diversity, quality, and access.

The most important analysis of the chapter is that, although intergenerational equity establishes a collective/group right for the future generations same can be crystallized as an individual right for the present generation. The chapter has very aptly highlighted judicial activism all around the globe to constitutionalize the two principles.[11] The other important and relevant observation of author is that public trust doctrine is a domestic mechanism for instantiating doctrine of intergenerational equity in a more detailed manner. Lastly, the author put forth recommendations to remedy the weaknesses of the principles. The same can be done by – i) adding interspecies equity to inter- and intra-generational equity; ii) recognising the rights of nature.

Chapter five presents 'the legal personhood and rights of the nature', which is at the heart of the ecological constitution, as the most crucial ideas of ecological law. The author suggests

[9] Refer constitutions of Bolivia, Brazil, Hungary, Tunisia, etc.
[10] Edith B. Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Tokyo: UN University Press, 1989).
[11] *Minors Oposa* v. *Secretary of the Department of Environmental and Natural Resources*, 33 ILM 173 (1994); *Tsilhqot'in Nation* v. *British Columbia*, [2014] 2 SCR 257; *Illinois Central Railroad Company* v. *Illinois*, 146 U.S. 387 (1892); *M.C. Mehta* v. *Kamal Nath*, (1997) 1 SCC 388; *Peter K. Waweru* v. *Republic of Kenya*, Misc. Civil Application No. 118 of 2004.

that "legal recognition of the rights of nature may be one of the most powerful ways to enshrine in constitutions." This right, author argues, has the real potential to – i) fundamentally reorient human societies towards sustainability;[12] and ii) decolonise environmental law and create space for Indigenous legal orders to guide ecological decision-making.[13]

The author has referred Indigenous legal scholarship which provide foundation for ecological thoughts. Many Indigenous nations recognise nature as an integral part of human community, for instance New Zealand. In New Zealand, rights of nature are statutory and quasi-constitutional in nature and have come from efforts to redress historical and ongoing injustices towards their indigenous communities.[14] Through the statute, New Zealand has also created guardianship body to protect and promote the rights of nature.[15] Similar guardianship bodies have been created for other natural bodies as well which has resulted in better ecological democracy.[16] This has been compared to the rights of nature regime in Bolivia[17] and Ecuador[18]. In the latter part, landmark judicial decisions have been discussed through which "rights of nature" was made part of the existing legal machinery.

In Colombia the constitutional court recognised the legal rights of 'Atrato River' and 'Amazon ecosystem' along with the affected human rights. Similar examples were pulled from India and Bangladesh.[19] However, there are some limitations to this right highlighted very meticulously by the author. The author suggest that decision-makers should "consider whether needs can be satisfied without taking action that will generate violations of the rights of nature".

[12] David R. Boyd, *The Rights of Nature: A Legal Revolution that Could Save the World* (Toronto: ECW Press, 2017).
[13] David Takacs, We Are the River, 2021 (2) *U. ILL. L. REV*. 545 (2021).
[14] Refer, Te Awa Tupua (Whanganui River Claims Settlement) Act of 2017.
[15] Guardianship body known as *Te Pou Tupua* comprised of two people, one nominated by the Whanganui Maori people and one by the Crown. One member belongs to the local citizens who have historically been excluded from controlling their own essential ecological resources.
[16] National park known as *Te Urewera* and Mount *Taranaki*.
[17] In Bolivia, there are two statutes - Rights of Mother Earth Law of 2010 and the Framework Law for Mother Earth and Integral Development of 2012.
The Preamble to Bolivia's constitution provides: "We found Bolivia anew, fulfilling the mandate of our people, with the strength of our Pachamama..." and article 108 (16) imposes on Bolivians the duty "To protect and defend an environment suitable for the development of living beings" and Article 33 talks about constitutional right to a healthy environment.
[18] Refer, the rights of Pacha Mama or Mother Earth in articles 71, 72, 73, 74 of the Constitution of Ecuador.
[19] *Mohd. Salim* v. *State of Uttarakhand*, [2017] PIL No. 126 of 2014 (High Court of Uttarakhand); *Narayan Dutt Bhatt* v. *Union of India* [2018] PIL No 43 of 2014 (High Court of Uttarakhand); *Human Rights and Peace for Bangladesh* v. *Bangladesh* [2019] WP No 13989/2016 (The High Court of Bangladesh).

Chapter six begins with a small note on the shortcomings of all ecological constitutions all around the globe which is to predict the improbable trajectories of natural systems in this Anthropocene era. Therefore, the most effective way propounded by the author is 'precautionary' approach which imposes an obligation to be cautious in the face of environmental risks rather than waiting for scientific certainty. One of the strongest embodiment of which is the maxim *in dubio pro natura*, which means "when in doubt, decide in favour of nature". The author proposes that the entire legal system should be infused with 'precautionary approach' through constitutional codification which can also result in improved judicial and ecological outcomes.

The author highlights that precautionary approach complements nearly every imaginable element in an ecological constitution and must be adopted in its most robust forms. Significant number of nations have already included the principle within their constitutions or through judicial interpretations to promote ecological integrity.[20] Lastly, an alternative to the approach of precaution has been suggested by the author, *i.e.,* the principle of non-regression. The principle protects both ecological quality and regulatory environmental standards and is much easier to implement in case of scientific uncertainties, unlike the precautionary principle. It already has been implemented in a number of domestic constitutions as well as Judicial interventions. The author strongly argues for the explicit textual codification of both principles to guide decision-making at all levels.

Chapter seven introduces the concept of planetary boundaries to preserve Earth system functioning and seek to delineate a "'safe operating space' for global societal development". Planetary boundaries have been identified for nine critical threats to Earth System processes, out of which loss of biodiversity and climate change have been identified as "core" boundaries. In light of the given situation, these planetary boundaries should be translated into legal rules which is difficult to achieve at a domestic level. Therefore, the author suggests that ecological constitutions should pay, at a minimum, particular attention to crucial earth systems and this should start with 'climate change'.

[20] Refer Constitutions of Zambia, Côte d'Ivoire, France, Ecuador, etc and Judicial interventions in Brazil, Costa Rica, Indonesia, and Pakistan.

In the next segment, various climate constitutions have been referred to.[21] However, the author highlighted the gap in climate constitutionalism around the world which is the absence of substantive constitutional rights related to a safe climate. This gap could be remedied by the addition of "substantive elements" of environmental rights to the existing constitutional right to a healthy environment. Judicial courts around the globe have also performed a great part in recognizing climate guarantees within other existing rights in absence of specific constitutional or statutory provisions. There are various climate litigations going on all around the globe, for instance in Pakistan,[22] South Africa,[23] Netherlands,[24] Ireland,[25] Canada,[26] France,[27] *etc*.

It should be noted that although several constitutional climate cases have failed, however, many more are working their way through domestic courts around the world. In all these litigations interrelationship between climate change and constitutional rights have been highlighted which has been considered as a best practice by the author. One of the biggest weaknesses of climatic constitutionalism is that of equitable allocation of the benefits and burdens of GHG emissions within and among nations.

In the ***concluding chapter,*** the author has solicited the incorporation of ecological principles within the non-derogable laws of nations, *i.e.,* constitutions. The constitutions without ecological consciousness are just 'paper temples' as observed by the author. However, implementation of 'environmental rule of law' is the key along with judicial education in ecological literacy and constitutional creation of specialized environmental courts. Lastly, the author acknowledges that building an ecological constitution is an exercise in optimism which is a critical element of all environmental activism all around the world.

All things considered, it can be concluded that the book under review has brought a new dimension to the surface successfully. It is an insightful addition to the existing literature on the subject. Most importantly, it can be used as a guide for the government officials and law makers on how to infuse ecological consciousness into their constitutions. It is recommended

[21] The strongest climatic constitutional references can be found in the constitutions of Zambia, Ecuador, Venezuela, Bhutan, *etc.*
[22] *Leghari* v. *The Federation of Pakistan*, [2015] WP No 25501/2015; *Asghar Leghari* v. *Federation of Pakistan* [2018] PLD 2018 Lahore 364.
[23] *Earth Life Africa Johannesburg* v. *Minister of Environmental Affairs*, Case no. 65662/16
[24] *Urgenda Foundation* v. *State of the Netherlands* [2015] HAZA C/09/00456689.
[25] *Friends of the Irish Environment* v. *Government of Ireland* (2020).
[26] *Mathur* v. *Her Majesty the Queen in Right of Ontario*, 2020 ONSC 6918.
[27] *Association Oxfam France et. al.* v. *France* (2021).

to students of law, academicians, legal practitioners, environmental activists, and all those who have an interest in the subject.

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