

CHAPTER 5

Way forward

External points - transparency, corruption, lack of access to information, gaps

What kind of reforms do we hope to see? Eg jurisdiction that we want the court to develop - environmental court)

Locus standi – external alliance

Subjective nature of EIA approval – s34A EQA, EPE2002

EIA reports must be disclosed and accessible online – procedural fairness

Procedural participation – longer period for public comments, civil participation in enforcement (go together with officers)

Higher fines for pollution and violations

Prescribed activities discretion

Clean Air Act and Clean Water Act – set air and water quality standards

Precautionary principle missing in practice?

Judicial Review weaknesses – merits not examined. Longer time for application, but development frustrated.

Environmental Court – sui generis – under CJA, same level as High Court. Specialization of judges. Should not be by JR because courts not examining the merits. File civil actions.

Litigants should have choice whether to go for JR or civil action. Low volume of cases –

justifiable? Let there be a structure first, cases will build. Appeal Board elevated to High Court, judge sits with assessors?

Evidence law, presumptions? Long term impact (e.g. carbon emission and 50 impact). Coupled with legislative reforms.

Financial exposure

Costs – should be no order.

Undertaking as to damages – should not be such requirement for environmental cases.

High Costs for gathering samples and evidence, e.g. water samples.

Frequent dialogues with judiciary (like sentencing, or annual conference), to understand them better, let them be speakers. Closed door.

Ideological battles, philosophical justifications for environmental protection balanced with development.

(Corruption, etc)

AAT?

Proposed reformed Rule 70A - codified principles

Climate Change Act per obligations under international treaties

Legal aid to do NCR cases?