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Mountains of plastic are choking the Himalayan States

Plastic is ubiquitous everywhere, from the top of the highest mountain to the deepest of trenches in the ocean. It is found even inside the human lungs and placenta. Microplastics are formed by the degradation and the fragmentation of large plastic pieces that are improperly disposed. Microplastic deposition and accumulation has been found in the Himalayan mountains, rivers, lakes and streams. These microplastics can be trapped in glaciers for a long time and released into rivers during snow melting. The Indian Himalayan Region is a critical source of water in the subcontinent, feeding a number of major rivers of India that include the Indus, Ganges and Brahmaputra river systems. Unscientific plastic disposal is causing soil and water pollution in the Indian Himalayan Region and impacting its biodiversity, which is having an adverse impact on the fresh water sources that communities downstream depend on.

Rapid and unplanned urbanisation and changing production and consumption patterns are responsible for the plastic waste crisis in the Indian Himalayan Region. A quantum jump in tourist footfalls is another reason for exacerbation of the problem. A recent report by the Social Development for Communities (SDC) Foundation Dehradun highlighting the plight of towns in Uttarakhand drowning in plastic waste is no surprise – almost all the mountain States face a similar situation. Recently, the National Green Tribunal issued notices to the Ministry of Environment, Forest and Climate Change, the Central Pollution Control Board (CPCB), the Himachal Pradesh State Pollution Control Board, the Deputy Commissioner Lahaul and Spiti and the Panchayat of Koksar in Himachal Pradesh on waste dumping in eco-sensitive areas by tourists and commercial establishments. In Assam, at the Ramsar site of Deepor Beel, Greater adjacent stacks have been floating on the plastic waste in the landfill instead of fish from the wadiar. In Manipur, growing pollution in rivers, that include the Nambul, has been widely reported. The Himalayan Clean up (2018-21) that was conducted by the Integrated Mountain Initiative with Zero Waste Himalaya and the National Productivity Council of India's waste and brand audit show increasing plastic waste, especially non-recyclables, in the Indian Himalayan Region. The Himalayan Clean up (2022) waste audit results showed that 92.7% of trash was plastic, with 72% of waste being non-recyclable plastic.

Plastic waste versus management capacities
Every year, there is a day when the amount of plastic waste surpasses the capability of waste management systems to manage it. Environment Action, a Swiss-based organisation, calls it Plastic Overshoot Day. In 2021, India reached its plastic overshoot day on January 6,



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Empowering local bodies and creating the necessary infrastructure for waste management in the Indian Himalayan Region need immediate attention

which is shocking especially as the EPR portal of CPCB claims that there is a systemic ability to deal with plastic waste. India has one of the highest mismanaged waste index (MWI), at 98.35%, in the world (after Kenya, Nigeria and Mozambique) which is the gap in waste management capacity and plastic consumption. The Government of India claims that it recycles 60% of plastic waste. In statistical analysis done by the Centre for Science and Environment (CSE) using CPCB data, India is merely recycling (through mechanical recycling) 12% of its plastic waste. Close to 20% of this waste is channelised for end-of-life solutions such as co-incineration, plastic-to-fuel and road making, which means we are burning 20% of our plastic waste and still calling it 'recycling' and when 68% of plastic waste is unaccounted for.

Legal mandate for waste management

Solid Waste Management Rules (SWM) 2016, Plastic Waste Management (PWM) Rules 2016 and Extended Producer Responsibility (EPR) 2022 constitute the regulatory framework for plastic waste management for India (at the country level). Special needs of hill areas are recognised by the SWM but are not factored in while creating a mandate for both local bodies and producers, importers and brand owners (PBOs), while PWM and EPR have not even recognised the special needs of the hills.

States across the Indian Himalayan Region have also been taking various initiatives including enacting laws to curb this menace. Himachal Pradesh and Sikkim have special State laws banning the use of plastics. Himachal Pradesh has a ban on plastic since 2019, but there is still widespread littering of plastic waste. Sikkim banned packaged mineral water use from January 2022 and has a fairly robust regulatory system, but in the absence of proper infrastructure to handle plastic waste, the State is still grappling with the issue. Mizoram has been proactive on the regulatory front – the Aizawl Municipal Corporation made by-laws under the PWM in 2019. Tripura has made policy changes, enacted municipal by-laws and has a State-level task force to eliminate Single Use Plastic though the results are not visible. The collective mandate of SWM, PWM, EPR requires waste segregation at source. Segregation of not only plastic from other waste but also different types of plastics is a prerequisite for any strategy to dispose of plastic waste in a scientific and sustainable manner. Waste segregation exists on paper, but a closer look shows landfills overflowing with mixed waste. The leachate from the mixed waste causes soil and groundwater pollution while flames from such mixed waste cause air pollution. A huge amount of plastic waste which can be recycled still remains in landfills.

Under the SWM, PWM and EPR, the task of

waste management from collection to its scientific disposal is the duty of local bodies. They can take help from PBOs for the setting up and operationalisation of the plastic waste management system, as mandated under the EPR. Though local bodies are the pivot of the waste management system in the country, a commensurate devolution of power to them is still work in progress. Very few States have enacted model by-laws and very few local bodies themselves have made by-laws to operationalise the mandate. There is no clarity regarding the mandate to ensure collaboration between local bodies and PBOs. There is a need to include traditional institutions within the definition of local bodies when it comes to the Indian Himalayan Region (prevalent in many States in the northeast). It is important to note that under Swachh Bharat Mission (SBM) and the Fifteenth Finance Commission, money was allocated to these traditional institutions.

Plugging data gaps is one step

There is a need for appropriate resource allocation and support that is considerate of and reflective of the rich biodiversity, ecological sensitivity and fragility of the Indian Himalayan Region, besides taking into account the specific geographical challenges of mountain waste management. Empowering local bodies and creating the necessary infrastructure for waste management need immediate attention. Segregation of waste and the participation of the people in this endeavour with the help of sustained public education campaigns are a sine qua non. Geographical neutrality of targets under the EPR could be countered if the higher cost of EPR operationalisation in the mountain region is given its due consideration. The value of the EPR certificate which is earned by a PBO in the Indian Himalayan Region could be higher than one earned in the rest of the country for every ton of plastic waste processed.

Data gaps in terms of the quantum and quality of waste being generated in the Indian Himalayan Region States should be plugged. Convergence in existing schemes such as SBM, the Mahatma Gandhi National Rural Employment Guarantee Act and the Finance Commission's grants could be used to create the infrastructure, maintain and run operations. The Swachh Bharat Kosh Trust set up to facilitate the channelisation of philanthropic contributions and corporate social responsibility funds towards this cause could also be used to augment resources. The Atal Mission for Rejuvenation and Urban Transformation (AMRUT) and Smart Cities Scheme under which many cities in the Indian Himalayan Region are selected, could also work in convergence on the issue of scientific waste management and making cities in the Indian Himalayan Region free of plastic.

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The long road to reforming India's political party system

With the general election 2024 inching closer, the spate of political defections across the country is no cause for surprise. In Bihar, MLAs from the Congress and the Rashtriya Janata Dal have moved to the Bharatiya Janata Party (BJP) while the elections to the Rajya Sabha that were held recently saw cross-voting in favour of the BJP in Himachal Pradesh. The MLAs concerned have now been disqualified under the anti-defection law. In the Andhra Pradesh Assembly too there have been disqualifications under this law.

However, an adjudicatory development from more than a fortnight ago makes one doubt the perceived need and utility of India's anti-defection law. On February 15, 2024, the Maharashtra Legislative Assembly Speaker delivered his verdict on the split in 2023 within the Nationalist Congress Party (NCP). No MLA from either faction of the NCP was disqualified, and the Ajit Pawar faction was recognised as being the "real" NCP. Unsurprisingly, the order appears to be similar to the Speaker's decision in the split in the Shiv Sena where neither faction was disqualified, and one of the competing factions (in that case, the Eknath Shinde faction) was recognised as the real Shiv Sena.

Transgressions that pass muster

While official copies of both these decisions are unavailable, the reasoning that went into the decision can be discerned from the livestreaming of the Assembly proceedings. Relying on the test of legislative majority, the Speaker noted that the Ajit Pawar-led faction of the NCP had the support of 41 out of 53 NCP MLAs, making it the real NCP. More intriguing was the Speaker's observations on the applicability of the anti-defection law to these proceedings.

What transpired between June 30 and July 2, 2023, when the NCP split vertically, is termed as an expression of "intra-party dissent". In uncritical terms, the Speaker has said that such intra-party dissent cannot be subject to the punitive provisions of the Tenth Schedule, and the dissenting MLAs cannot be disqualified from



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Recent political events make one doubt the perceived need and utility of India's anti-defection law

the Assembly. However, the soundness of this observation can be questioned on the ground that if any dissenting group within a political party wishes to distance itself from such a party, it must ideally merge with another party so as to be able to claim protection under the Tenth Schedule. Under the anti-defection law, a faction that splits from its original party cannot claim exemption from disqualification on its own, given that the "split" exception was deleted from the Tenth Schedule in 2003.

The only exemption available now to legislators moving in groups is that of mergers, which mandatorily require a minimum of two-third members to separate from their political party and merge with another. As is well-known, in both the Shiv Sena and NCP splits, the splitting factions (led by Eknath Shinde and Ajit Pawar, respectively), did not opt to either merge with an existing political party or establish an altogether new party. Instead, each of the two factions claimed to be the original political party themselves, and formed an alternate government with other political parties. In neither of these cases was there a merger within the strict terms of the Tenth Schedule.

It would have been interesting to see the Speaker contend with this issue in both these cases purely in terms of the language of the law. Instead, the Speaker made a rather worrying observation to the effect that it is in the very nature of politics for leaders to forge new alliances, undo old relations, and make or break into new forms, and that such political movements cannot qualify as defections under the Tenth Schedule. Why have the anti-defection law in the Constitution when even the most manifest transgressions of the law are allowed to pass muster with the adjudicating authority?

The Speaker's concern for preservation of inner-party dissent is laudable, especially when he says that the Tenth Schedule cannot be used to silence party members. The Speaker had to go by the legislative strength of each faction to determine the real NCP, because reliable information to that end could not be sourced

from the party's constitution, leadership and organisational structure.

The issue of inner-party democracy

Undeniably, this highlights the need for better thought-out reform of the political party system – one which accounts for adequate democratic structures and processes are within parties, and, second, usher in statutory regulation that compels political parties to ensure greater inner democracy. The 255th Report of the Law Commission of India proposed amendments to the Representation of the People Act, 1951 which could mandate that besides having a constitution, political parties elect an executive committee (for the party), select candidates who are to contest elections to Parliament or State Assemblies, and conduct regular elections within the party at every level. The Law Commission also proposed granting the Election Commission of India the powers to impose monetary penalties or withdraw the registration of a political party in case it failed to comply.

The Law Commission's recommendations have yet to see the light of day. Evidently, in the absence of more robust means to ensure inner-party democracy, the Tenth Schedule had to be circuitously put into disuse in the Shiv Sena and NCP verdicts – both instances where the anti-defection law could well be applied! The Maharashtra Legislative Assembly Speaker is now presiding over a committee which will review the anti-defection law. Given his recent encounters with this law in two high-profile matters, there could not be a better opportunity than now for India to get an anti-defection law best suited to its felt needs and realities.

Vidhi recently published a report titled 'Anatomy of India's Anti-Defection Law: Identifying Problems, Suggesting Solutions'

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