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From the Vice-Chancellor's Desk
Prof. [Dr.] R. Venkata Rao
Vice Chancellor, NLSIU

Only when the last tree is cut, only when the last fish is caught and only when the last river becomes dry, then we will realize that money cannot buy everything. National Law School of India University, Bengaluru, the preferred destination of legal education and the premier center for quality legal education and research, as a part of fulfilling its mandate of providing socially relevant Legal Education, has taken upon itself the onerous responsibility of disseminating Environmental awareness. March of the Environmental Law is another illustrative exercise of its bounden duty. I am sure the latest edition of "March of the Environmental Law" once again proves that its March Continues to be incessant in the pursuit of making our surroundings environment friendly. I congratulate the efforts of CEERA.

Between Us
Prof. (Dr.) M. K. Ramesh,
Professor of Law, NLSIU

The "March of the Environmental Law", to say the least, has been FABULOUS. At a time, when tracking the trajectories of the developments concerning Environmental Law and Governance, has become difficult and at times confusing and misleading, the March of the Environmental Law has, indeed, turned out to be a beacon light, giving a realistic picture of the developments in this exciting discipline of law. It is remarkable that within a short span of is launch, March of the Environmental Law has been able to demonstrate its value and immense worth to a researcher in this rarefied field of law. As a Fellow Traveller, I look for this "Shaft of Lighting", to illuminate my understanding, issue after issue. Dr. Sairam Bhat, Mr. Manjeri Subin Sunder Raj and the whole team, here are my best wishes for you to keep going – Sky is the limit for you!.

From the Co-ordinator, CEERA
Prof. (Dr.) Sairam Bhat
Associate Professor of Law, NLSIU

Being consistent in research and training, thereby achieving excellence in teaching and establishing premiership in the field of environmental law is one of the main motto of CEERA. Amongst the various activities at CEERA, in February 2015, we organised a three day training programme for Officers of CPCB and propose to organise a Certificate course on Environment, Health and Safety from 12-14th June 2015. We are delighted to bring in the March of Environmental Law- 2015, that is a collection of significant contributions from the Faculty, Research scholars, students and interns who are associated with the environmental law mission at NLSIU. With regard to the next issue, we intend to invite contributions from all stakeholders in the field of environmental law, so that the reach of this publication would be useful to a wider community of law teachers, practitioners and researchers. I extend my gratitude to our Patrons, the Vice-Chancellor, Prof. R Venkata Rao and Prof. M K Ramesh, both, for their enduring support and motivation. Lastly, I would thank the research team at CEERA, ably led by Mr. Manjeri Subin Sunder Raj in coordinating all aspects of this edition.

Inside This Issue

Development v/s Environment:
"Development is what we do. Environment is where we live. How can we allow where we live to be destroyed by what we do?" Prof. R Venkata Rao's message to CPCB Officers, 11th February, 2015

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GREEN ARTICLES
ALLOCATION OF NATURAL RESOURCES AND THE PUBLIC TRUST DOCTRINE IN INDIA

Over the past few decades, India has seen an ongoing debate contemplating the most efficient or optimal mode of allocation of scarce resources. Developing countries have a more serious stake in optimizing the use of their natural resources than the economically progressed countries. The incidence of large natural resource reserves in developing countries is sometimes a curse rather than a blessing, if not adjoined with efficient institutional set up; they may well end up being breeding grounds of social divisions, weakened institutional capacity, poverty, inequality, corruption, rent seeking etc. The existence of unreliable or efficient institutions coupled with an opportunity for rent seeking behavior leads to inefficient utilization of natural resources which will further spark a controversial environmental debate on preservation as against extraction. This is the paradox of plenty[1] which operates on natural resource management in developing countries. A sound institutional structure and public policy is the only panacea.

It is necessary to understand that there are different types of policies in allocation of different types of natural resources. Policy making for the allocation of natural resources is not merely a technical aspect but one that is distraught with political controversies and social conflicts. It is pertinent that these policies are beneficial to both stake holders and shareholders as well, to ensure environmental sustainability by complying with the environmental standards of the country. There are other objectives apart from revenue maximization in alienation of natural resources; expanding the base of use of the natural resource in question, enhancing competition while protecting business viability and optimizing consumer welfare will, in the long run, maximize revenue for the government etc.

When the government gives away public assets, i.e. natural resources for private or commercial use, it must make sure that the process must adhere to three main principles;

1. Transparency
2. Equal opportunity
3. Protection of public interest and public assets, especially natural resources

When the State makes policies with welfare or social objectives in mind, the courts have made it clear through several judgments that these policies must not violate Article 14[3] and Article 39(b)[4]. The Supreme Court of India in the 2G case[5] said 'natural resources' "are vested with the government as a matter of trust[6] in the name of the people of India, and it is the solemn duty of the state to protect the national interest, and natural resources must always be used in the interests of the country and not private interests".

The doctrine of public trust has evolved over the years to emerge as one of the core principles for

* I would like to acknowledge the research assistance of Ms. Pavithra Nancy & Ms. Tejaswini. U, interns at CEERA, in writing this article.

1 Joseph E. Stiglitz, Making Natural Resources into a Blessing rather than a Curse, *available at,* https://www0.gsb.columbia.edu/faculty/jstiglitz/download/papers/2005_Covering_Oil.pdf.

2 This is also essential keeping the inter-generation equity is policy perspective where, resources are not exploited so as to infringe the rights of the next generation.

3 See *Inderpreet Singh Kahlon* v. *State of Punjab*, AIR 2006 SC 2571.

4 See generally *Srinivasa* v. *State of Karnataka*, AIR 1987 SC 1518, *State of Tamil Nadu* v. *Abu* , AIR 1984 SC 326.

5 Writ Petition(Civil) No. 423 of 2010.

6 Who owns the Earth and its resources? In the context of 'Public trust', the legal title is vested in the State but the equitable title is vested with the citizens. Thus the State is responsible as a trustee to manage the property in the interest of the public. The origins of the doctrine can be traced back to Roman times. According to *The Institutes of Justinian*, 'by the law of nature, these things are common to mankind - the air, running water, the sea, and consequently the shores of the sea. The Public Trust Doctrine perseveres as a value system and an ethic as its expression in law mutates and evolves. Generally see Sanders, T.C. (ed.). The Institutes of Justinian. Book II, Tit. I(1), 8th Ed. London: Longmans, Green & Co., 1888, at 90; see Richard J. Lazarus, op. cit., footnote 4, p. 634; Scott, Geoffrey R. The Expanding Public Trust Doctrine: A Warning to Environmentalists and Policy Makers. [1998] 10 *Fordham Envtl. L.J.* 1, pp. 25-26.

the judiciary to substantiate the legitimacy of governmental action that interferes with the use by the general public of natural resources. The incorporation of this doctrine into our legal system has resulted in the imposition of a much required check upon governmental authorities who seek to divest state control over such natural resources in favour of private parties[7].

While deciding the case of *Centre for Public Interest Litigation* v. *Union of India*[8], the Apex Court observed that natural resources are of intrinsic utility to mankind. Its value is determined by its availability and demand; albeit it belongs to the people, the state legally owns them. While distributing natural resources, the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest. Article 39(b) directs the state to appropriate resources so as to sub serve the common good. The court cited the relevance of international environmental laws to determine the ownership regime of property rights of scarce natural resources. Likewise, the state is expected to act as the guardian and trustee of these resources. The Court opined that*, a duly publicised auction conducted fairly and impartially is perhaps the best method*.

The Court in the 2G case opined that the principles of equality, public trust, and public interest, as obligations that govern the State's conduct. The two core challenges before the Court in the 2G case were: first, did the Department of Telecommunication follow applicable law and policy and second, is the DOT's policy on spectrum allocation constitutionally valid? The first challenge is about administrative process and the second is about administrative policy.

However, in the second spectrum case, that is Natural Resources Allocation, In re, Special Reference[9], the contention whether the only permissible method for disposal of all natural resources across all sectors and in all circumstances is by the conduct of auctions, was clarified by the court. It was held that, the general application of auction was not meant to mandate it as the only method of alienation of natural resources but was specific to the first spectrum case because such a mandate would call into question the constitutional legitimacy of many laws enacted, which cannot all be deemed ultra vires before discussing their individual merits.

Also in the Coal block allocation case[10]*,* R.M. Lodha, CJI, reviewed the allocation of coal blocks for the period 1993 to 2010 and among the various issues highlighted in the judgment, brought about violation of the principle of Trusteeship of natural resources by gifting away precious resources as largesse. The issues in the Coal block case were arbitrariness, lack of transparency, lack of objectivity and non-application of mind; and allotment tainted with mala fides and corruption and made in favour of ineligible companies. The Court held that allocations made, both under the Screening Committee route and the Government dispensation route, are arbitrary and illegal. The approach had been ad-hoc and casual. There was no fair and transparent procedure, all resulting in unfair distribution of national wealth. The Screening Committee has never been consistent, it has not been transparent, there is no proper application of mind, it has acted on no material in many cases, relevant factors have seldom been its guiding factors, there was no transparency and guidelines have seldom guided it. On many occasions, guidelines have been honoured more in their breach. There was no objective criteria, no criteria for evaluation of comparative merits. The Court observed in its judgement that the Committee is apparently subjective as the minutes of the Screening Committee meetings do not show that selection was made after proper assessment. The project preparedness, track record etc., of the applicant company was not objectively kept in view. The consideration had been ad-hoc in so

7 See cases like the *M.I. Builders* v. *Radhey Shyam Sahu* AIR 1999 SC 2468 & *M.C Mehta* v. *Kamal Nath* (1997) 1 SCC 388, *Fomento Resorts and hotels Ltd.* V. *Minguel Martins* (2009) 3 SCC 571 for more on the public trust doctrine.

8 *Centre for Public Interest Litigation* v. *Union of India*, (2012) 3 SCC 1.

9 *Natural Resources Allocation, In re, Special Reference* No.1 of 2012; (2012) 10 SCC 1.

10 *M.L. Sharma* v. *Principal Secretary Writ Petition (CRL.) NO. 120 OF 2012.*

much so that in every meeting, the guidelines were altered. Competitive bidding has the effect of improving mine efficiency and thus ensuring a better value for scarce resources. The bidder investing large amounts upfront has the incentive to extract the optimal quantity deploying modern technology, as against those who have the comfort of paying when the production begins.

In the tariff-based competitive bidding regime for bulk power supply, the bidders are expected to bid for coal blocks with their sight on the final output price. In the power generation sector, the prime determinant of the quote for coal block will be the levelised variable tariffs for power produced. The competitive bidding for coal blocks may thus reduce the arbitrage in coal production and power generation, where the power supplies are also made through competitive bidding. The prime motivation for coal mining may then shift from margins to fuel supply security.

The court suggested that allocation through auction maybe the best mode only when the aim of an allocation is to maximise revenue; under Article 14, it is the only method that bears a rational nexus with an objective of revenue maximisation. However, the executive may employ any other alternative method as long as it is consistent with Article 14 and Article 39(b).

Further the recommendations forwarded by FICCI to the Ashok Chawla Committee, particularly with regard to mining, were that keeping in mind the under explored resources of India, it is important to incentivize investors. FICCI said that a transparent, auction-based system similar to NELP (National Exploration Licensing Policy) can be adopted while granting license for fully explored blocks of minerals, other areas should be granted on First-Come-First-Served basis subject to competitive criteria of technical expertise, financial resources and investment proposed[11]. In *Reliance Natural Resources Ltd.* v. *Reliance Industries Ltd.,*[12] which involved an extremely complex dispute over the fixing of gas prices, the Court invoked the international law principle that a nations' people have ultimate sovereignty over natural resources as well as the public trust doctrine, along with Articles 39(b) and (c) of the Constitution. Historically, the allocation of resources like spectrum, mines and minerals and land were allocated through the Soviet model of Command and Control-where the Government would grant lease for the exploitation of the resources and claim royalty from the lessee. Over the last few decades economic instruments and market oriented governance has come to substitute this method.

Governments across the world have largely relied upon four methods to allocate rights to private parties- Auctions, FCFS, Competitive bidding and administrative process[13]. In the system of administrative process the problem of probabilities of users are to an extent satisfied. This method is slow and cumbersome and often the resources are undervalued. The executive settles on prior determined criteria for allocation by constituting meetings or ad hoc processes. This offers flexibility but also incentivizes the politicians to show an opaque version of the agreed dimension for selection, it increases lobbying and rent seeking behavior and altogether fails in transparency. Lotteries and administrative processes may encourage frivolous applicants and speculators in the former case. They do not guarantee technical or technological competence.

The FCFS system has the advantage of working quickly and cheaply same as lottery. It is more or less fair since applicants who are willing to sacrifice their opportunity cost (albeit low) in appropriating this resource queue up first. (For eg. The Oklahoma land rush in 1989). Resource users who are first to the scene are not alone deserving of the resource. There is no way to estimate technological capacity. Also, first users may hoard the resource which is detrimental to the later generations. The issue of transparency is another major road block in the FCFS system. As evident in

11 Business Standard, FICCI for auction system for allocating natural resources, May 1, 2011, *available at,* http://www.business-standard.com/article/economy-policy/ficci-for-auction-system-for-allocating-natural-resources-111050100057_1.html

12 [2010] 156 Comp Cases 455 (SC).

13 Valeen Afualo and John McMillan, Auctions of rights to public property, Nov 1996.

the coal block allocation, the resources were given away for free and in violation of the established legislative procedures. Giving away resources at less than market price is subsidizing private corporations with the tax payers' money. The Court in the 2G case held that there was a fundamental flaw in the first-come, first-served principle, inasmuch as it "involves an element of pure chance or accident." It said: "In matters involving award of contracts or grant of licence or permission to use public property, the invocation of the first-come, first-served principle has inherently dangerous implications."

On the other hand, auctioning enables the revelation of the actual market price, and costs. Since entry into industries where resources are being auctioned is easier rather than in the administrative process, it is an anti-monopoly technique. Further auction rules can be designed to favour the public policy. Auctioning will increase the revenue for the government, but might lead to higher prices or tariffs as companies might speculate to acquire the limited resource.

Auction, despite being a more preferable method of alienation/allotment, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources. There have also been cases involving use of Swiss Method of Bidding by the administration. In this method, which is slightly different from the competitive bidding, the private contractor gives his idea of developing the land to the government[14]. The government on receiving and subsequently analysing the idea requests for tenders from the public. On receiving all the bids, the private contractor is given the opportunity to match the offer of highest bidder or has the right to refuse the offer. However, if the originator matches the offer of the highest bidder, he is entitled to the tender[15]. The critique to this system is that there is absence of clarity at the same time there is deficiency of equal and fair conduct to the prospective bidders as there is material irregularity and bidding asymmetry amongst original promoter and his tender competitors[16]. The use of this technique for public procurement was challenged in case of *Ravi Development* v. *Shree Krishna Prathisthan*[17]. In this case, court was of the view that such technique was not in any way violating the Article 14 of the Constitution which ensures right to equality. The lack of public auction or proposal was not considered to be the adequate object to claim inappropriate use of power[18]. Therefore, it was established that the choice to choose the process of bidding would fall under acumen of discretion of the executive and hence the courts are not empowered to impede with the same.

Critical Analysis of auction process of resource allocation:

Among the other methods of allocation, auction has been considered as one of the best way to allocate resources. This is mainly because it is believed to be a transparent process when compared to the administrative process. Auctions urge the government to reveal determinant criteria prior to the bidding, auction rules and dates for the process are advertised well in advance which was not done in the 2G spectrum allocation[19]. The openness of auction prevents the suspicion of undue influence, impropriety or even corruption that can rise if the decisions are made behind closed doors.

However, on further contemplation the social costs and other defects of auctions come to the forefront. Do auctions cure the paradox of plenty? Will they cure the disease i.e.,- of resource rich countries with poor people? Do they increase social welfare in compliance with Art 39(b)? What will be its long term effect on the natural resource market?

14 *Shree Ostwal Builders Ltd* v. *State of Maharashtra* 2008 (3) Bom CR 36, 2008 (110) Bom L R 1209.

15 *Id.*

16 *Supra n*. 1.

17 *Ravi Development* v. *Shree Krishna Prathisthan* AIR 2009 SC 2519.

18 *M & T Consultants, Secunderabad* v. *S.Y. Nawab (*2003) 8 SCC 100.

19 National Telecom Policy 1999: 'Access to telecommunications is of utmost importance for achievement of the country's social and economic goals. Availability of affordable and effective communications for the citizens is at the core of the vision and goal of the telecom policy.'

1. The first and major defect of the auction method is that it increases the costs of production for the manufacturers and the burden is ultimately transferred to the consumers thus defeating Art 39(b) per se. If deposits like iron ore and bauxite are auctioned, commodities like steel, aluminium and cement will become costlier. This is not an efficient solution from both legal and economic perspective.

   Economic logic establishes that alienation/ allocation of natural resources to the highest bidder may not necessarily be the only way to sub-serve the common good, and at times, may run counter to public good. In the real world, consumers are made to pay the maximum price that they are willing to pay in order for the producers to gain more producer's surplus and deprive the consumer of their surplus. Though this may not be accepted from a welfare point of view, from economic perspective the surplus, whether enjoyed by consumers or producers both ensure allocative efficiency. However, the competitive auction method demands from the producer the maximum price that they could possibly afford to obtain the license and as a result they end up charging high prices to consumers. Hence, this result in economic inefficiency as the surplus is neither enjoyed by the producers nor the consumers.

   This can be directly related to the legal perspective of the issue. According to Art 39(b) of the Constitution which demands that the ownership and control of the material resources of the community should be distributed as best to sub-serve the common good is also violated here. If neither part of the community gains (neither producers nor consumer) through this method then such a method cannot be considered as one that best sub-serves the community good. Thus it can be termed as unconstitutional.

2. The danger of auctions is that of over valuation of the resource in question, this is the phenomenon of the winner's curse. The sole criterion of maximizing revenue to cover opportunity costs ignores retarded consumer demand which will result in fixing exorbitant commodity prices (and tariffs).

3. Another problem with auction is that, it invites speculative bidders who are not serious and this cannot be good for the market. One can never be certain if the highest bidder has the best potential to execute the project. Auctions and competitive bidding may also encourage bid rigging, collusion and formation of cartels. Hence, certain qualifications have to be laid down for participating in the auction.

4. The auction method also potentially leads to artificial scarcity and the *hold-up* problem. Since natural resources are scarce goods, there is a perverse incentive to not use it at all. Participants and existing owners in the market can pre-emptively buy the goods and then warehouse it to prevent existing or newcomer competitors from utilizing it. The existing owner's official plans for these warehoused goods would be to save it for an unknown future use, and therefore not utilize it at all for the foreseeable future.

5. Auctions appropriate resources to the highest bidders which further widens the chasm of disparity between the rich and the poor. A sole primitive design of auction cannot be expected to bring gains in the allocation of all resources.

Alternative solution:

In the light of the above summarized defects the court in the second spectrum case, held that the auction process for resource allocation is not a constitutional mandate; and that revenue maximization alone cannot be the sole criterion for deciding an allocation process. It is pertinent to observe other alternative methods which are capable of setting off the defects of auction process;

1. The first come- first serve basis and the auction method are two extreme cases and there has to be an intermediary between them.

   Hence, there should be a combination of methods. First the prospective companies have to be short-listed based on few important parameters and criteria and then auction should be conducted among them. This can eliminate the problem of inefficient prospects. For industries such as mining, the method cannot be completely aimed at enhancing transparency

but value-addition should also be taken into consideration.

Hence, a combination of methods will lead to efficiency, transparency and maximizing revenue.

2. Another possible solution to resolve the battle between auction and other methods could be for the government to allow the recipients to resell in secondary market. In this way, the government's method of allocation matters less if it permits resale than if it doesn't. Hence, it can avoid corruption and lobbying by bureaucrats and industrialists. Additionally with respect to spectrum allocation - spectrum pooling[20] can be used as an alternative solution to combat the issue of inefficiency in the auction system. Spectrum pooling is a spectrum management strategy in which multiple radio spectrum users can coexist within a single allocation of radio spectrum space. One use of this technique is for primary users of a spectrum allocation to be able to rent out use of unused parts of their allocation to secondary users. This method provides an incentive to the primary license holders to rent out the unused space and not retain it idly.

Hence, with an open secondary market, regardless of the initial mode of allocation, the resources would eventually find its own way to reach that user who makes the best use of it, thus ensuring efficient resource utilization.

Conclusion:

In the context of resource allocation, equity is a state in which each user's welfare is increased to the extent possible, given the limited resources, after taking proper account of disparate claims and individual circumstances[21]. There is a responsibility on the State to provide public goods, to sub serve the common order. This is not to be taken lightly. The government must make scarce resources available to potential users in some manner. A method adopted by the government must make accessible to the general population the products of the natural resources (power, water, fisheries, and telecom services). Resources can be allocated on the potential of prospective users' capacity to benefit public interest (depending upon the innovation, personal abilities, etc.)

Recent decades have seen over exploitation of non-renewable natural resources and even renewable resources like fisheries, etc. causing extinction of certain species, destruction of fertile land, erosion, silting and contamination of soil due to mining; loss of bio diversity; water shortages and pollution (radio frequency pollution).

No fool proof method can ever be constructed for such allocation of natural resources. Every system will always have defects. But the role of the government lies in choosing the one system that has the least defects. The need of the hour is accountability and transparency and better auction design schemes and a strict policy system that is efficiently regulated that curtails discretion of officials and which completely makes nil any scope for bribes and cronyism must be legally enshrined.

Natural resources are not homogeneous in nature and require different treatment in alienation. There is no uniform policy for the allocation of scarce natural resources, any attempt at generalizing the system of auction or the FCFS system will only be short sighted.

Hence, government should develop a combination of strategies for resource allocation which is quite flexible so as to fit in various circumstances and situations. As is rightly said that "One size cannot fit all" - one method cannot be used for all conditions and circumstances.

"To waste, to destroy our natural resources, to skin and exhaust the land instead of using it so as to increase its usefulness, will result in undermining in the days of our children the very prosperity which we ought by right to hand down to them amplified and developed."

— Theodore Roosevelt

20 Friedrich K Jondral, Cognitive radio – A necessity for Spectrum Pooling, Feb 6, 2006, Universität Karlsruhe (TH), Institut für Nachrichtentechnik, D-76128 Karlsruhe, Germany.

21 Defining, Measuring, and Implementing Equity Metron Aviation Principal Investigator: Robert L. Hoffman, Ph.D. Senior Analyst: Goli Davidson Research Conducted under Contract to the FAA Free Flight Program Office (FFPO) Program Manager: Kelvin Streety.

THRISSUR POORAM: A PACHYDERM PROBLEM

Manjeri Subin Sunder Raj
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Though the hue and cry over the recently concluded Gadhimai Festival in Nepal[1] has put into action a number of people who have taken a solemn oath to protect animal rights[2], the way forward for each one of them is not so easy as is made quite evident by the innumerable examples of religion being used as a tool to facilitate such atrocities. Examining as to whether animals too, akin to humans, have a right to live and a right to be treated in a humane manner, a connection between religion, morality and animal rights is sought to be looked into in light of the recent hullaballoo over the use of elephants in the Thrissur Pooram held every year in Kerala.

The Father of our Nation, Gandhiji had rightly observed that *"The moral progress and strength of a nation can be judged by the care and compassion it shows towards its animals".* Recent judgments of courts in India have picked up this exhortation and come up with admirable steps and decisions which foster better protection for animals. One such example is the decision of the Himachal Pradesh High Court in *Ramesh Sharma* v. *State of Himachal Pradesh*[3], wherein religious sacrifice of animals has been banned. The court also came up with a bold observation, *'We must permit gradual reasoning into religion*[4]*'.* Another landmark decision was the one given by the Supreme Court of India in *Animal Welfare Board of India* v. *A. Nagaraja and others*[5]. This case while holding Jallikattu as unconstitutional restated that animal welfare laws have to be understood by observing animals' welfare and best interest subject to just exception out of human necessity[6]. It also opined that rights and freedoms guaranteed to the animals under Sections 3 and 11 of the Prevention of Cruelty to Animals Act have to be read along with Article 51A(g) and(h) of the Constitution, which is the Magna Carta of animal rights[7].

Falling squarely within the ambit of reading more reason into religion, the Thrissur Pooram, held in Kerala every year, has become the cynosure of all eyes and ears[8]. A Public Interest Litigation was filed by the People for the Ethical Treatment of Animals, New Delhi, before the division bench of the Kerala High Court. The Bench comprising of Justices AM Shaffique and PV Asha, declined to interfere in the PIL and posted the case after May 20, when the High Court reopens after vacation.

Another Public Interest Litigation has been filed in the Supreme Court of India by a Bangalore-based organization, the Wildlife Rescue and Rehabilitation Centre seeking a complete ban on parading elephants in religious and tourist events citing abuse meted out to pachyderms during such events, especially in Kerala, Tamil Nadu, Andhra Pradesh and Karnataka[9].

The Supreme Court Bench comprising of Justice Dipak Misra and Justice Prafulla C. Pant heard the Public Interest Litigation which was filed late last year. The Court after hearing the preliminary arguments have held that in the interim that if any elephant is treated cruelly by festival

1 It was only in the recent past that the world came to know about the Gadhimai festival that is held in Gadhimai Temple, Bariyapur, Nepal, every five years. Though said to be based on a legend, which took place more than two and a half centuries ago, wherein an imprisoned feudal landlord, Bhagwan Chaudhary, had a dream that if he offered a blood sacrifice to Goddess Gadhimai, all his misery and travails would end, modern day reference can only be attached to a similar sacrifice ritual that occurred, amidst widespread protests from animal rights activists, in 2009, wherein an estimated 350,000 animals were killed. The most recent one was held in 2014 amid wide spread protests from citizens and animal rights activists alike. For more see, http://www.businessinsider.com/ stunning-photos-of-the-worlds-largest-animal-sacrifice-2014-12#ixzz3L1fR 55US, last accessed on 10/05/2015.

2 Ms.Gauri Maulekhi, noted animal rights activist and environmentalist, filed Writ Petition (Civil) No. 881/2014 before the Supreme Court of India to look into the illegal transport of animals from India to Nepal for slaughter.

3 *Ramesh Sharma* v. *State of Himachal Pradesh,* MANU/HP/0934/2014.

4 *Ibid* at para 78.

5 (2014) 7 SCC 547.

6 *Ibid,* para 12.

7 *Ibid,* para 56.

8 http://www.deccanchronicle.com/150421/nation-current-affairs/article/relief-jumbos-thrissur-pooram, last accessed on 10/05/2015.

9 http://www.thenewsminute.com/article/will-keralas-iconic-thrissur-pooram-have-do-away-elephants-year, last accessed on 10/05/2015.

organizers or in connection to festivities, then the same would be viewed seriously and would constitute contempt of the Court. The matter has now been listed and would be taken up on 14/07/2015.

Meanwhile, the Animal Welfare Board of India submitted a report in the Supreme Court of India which gave a detailed description of the physical as well as mental torture to which the elephants were subjected. The report, which was prepared after physical examination of the elephants by Ashish Sutar of AWBI, Rakesh Chittora, veterinary trainer with Animal Rahat, and Sunil Hawaldar, Honorary Animal Welfare Officer with the AWBI, threw light on the pitiable conditions of the elephants[10].

The AWBI also placed reliance on the Performing Animals (Registration) Rules of 2001, wherein it is said that the animals used in parades should be registered with the Animal Welfare Board of India, Chennai[11]. It was alleged that there was a blatant violation of the said Rules. The counter argument was that the Pooram was being conducted since 1798 and that all necessary arrangements were being made to ensure the safety and wellness of the animals.

An international flavour was also present as Hollywood actress and noted PETA activist Pamela Anderson wrote to Mr. Oommen Chandy, the Chief Minister of Kerala, asking him not to use elephants for the festival. She also offered to contribute the cost of providing 30 life-sized, realistic and portable elephants made of bamboo and papier-mache to replace live elephants[12]. However the same did not happen!

Though the supporters and organisers of the event reiterated that the elephants were being taken care of and ample protection and safeguards were being carried out, the fact still remains that much has to be done to ensure proper and ample safeguards. The Chief Minister of Kerala, Mr. Oommen Chandy, had in the light of these recent developments announced that he will release a new set of guidelines which deal with parading elephants and which will be in line with what the Hon'ble Supreme Court had directed.

While this year the festival was conducted, the courts are now cast upon with a duty to ensure that the animals are being treated with utmost care and don't suffer from the myriad practices to which they are subjected to, courtesy humans!

It is high time that we humans come to understand and realise that such activities that tend to take away the rights of animals need be done away with. Unless the people themselves come forward and initiate steps so as to get rid of such practises, the same would continue and flourish. Educating people and imbibing in them the true spirit of religion and inspiring them to be a part of the revolutionary change that one needs to have in the field of religion, by far, is felt to be the best solution to the whole scenario.

Though we may have our own doubts, which by far are reasonably grounded as well, a definitive change from anthropocentrism to eco-centrism is necessitated not *only* due to the fact that man cared for other beings as well, but also due to the fact that man cared for himself *more.* Dismissing such doubts, though courts have time and again come up with progressive judgments, it is high time that each one of us play a particular role, however small in furthering such a cause.

Keeping in mind such progressive steps which need be taken and which by far are the need of the hour, animals, in whatever way they are put to 'use' in religious traditions and customs, should be protected and taken care of, lest the problem snowballs to 'pachydermic' proportions!

> Try to leave the Earth a better place than when you arrived.
>
> —*Sidney Sheldon*

10 http://www.thehindu.com/todays-paper/tp-national/tp-andhrapradesh/abuse-of-elephants-at-pooram-sc-seeks-report/article 7174957.ece, last accessed on 10/05/2015.

11 Section 3- Application of Registration :

(1) Any person desirous of training or exhibiting a performing animal shall, within thirty days from the commencement of these rules, apply for registration to the prescribed authority and shall not exhibit or train any animal as a performing animal without being registered under these rules.

(2) Any person desirous of exhibiting or training any performing animal shall apply for registration in the form of application set out in the First Schedule.

(3) Every such application shall be made to the prescribed authority.

12 http://www.ndtv.com/kerala-news/actor-pamela-anderson-asks-kerala-chief-minister not-to-use-elephants-for- kerala-festival-758460, last accessed on 10/05/2015.

T.S.R. SUBRAMANIAN COMMITTEE REPORT: A DESCRIPTIVE ANALYSIS

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The inexorable conflict between environment and industry is nowhere more apparent than in developing economies like India. Over the past few years, post the liberalization period, as the Indian Economy has continued its march towards 'development', the environment and many stakeholders therein have been left in its wake. At the same time, it is widely alleged by those in industry (and often the government) that environmental considerations often act as roadblocks in the developmental process. As this debate rages on in public fora, it has become apparent that India's environmental laws are in urgent need of review. It is in this context that a high level committee was constituted by the Union Ministry of Environment, Forests and Climate Change to review the environment laws in the country. The committee, headed by the former cabinet secretary T S R Subramanian, was constituted on August 29, 2014 to review key environment laws, namely,- Environment Protection Act (EPA) of 1986, Forest Conservation Act (FCA) of 1980, Wildlife Protection Act (WPA) of 1972, the Indian Forest Act (IFA) of 1927, the Water (Prevention and Control of Pollution) Act of 1974 and the Air (Prevention and Control of Pollution) Act of 1981, in order to "bring them in line with current requirements and objectives".[1] The Committee comprised of former Secretary to Government of India VishwanathAnand, former Judge of the High Court Justice (retd) A.K Srivastava and former Additional Solicitor General of India K.N. Bhat as members with Mr Subramanian acting as Chairperson. Initially given 2 months to publish its report (this was later extended by a month), the Committee reviewed existed literature on the matter, invited public comments on the issues before it and conducted public consultation meetings in order to analysis and recommend changes to the legislations within their purview. The Committee submitted its report to the government on November 18, 2014, ten days ahead of its deadline.[2] This report, touted as the seminal contribution to environmental protection laws in India, has garnered much public scrutiny and debate since its publication. Currently before the Department Related Parliamentary Standing Committee on Science, Technology, Environment and Forest headed by Congress Member of Parliament Dr Ashwani Kumar, the Report promises to bring about a sea of change in the administration of the environmental protection regime, if accepted.[3] In the following sections, the recommendations made by the Committee will be discussed.

Forests: The Committee, in the interests of protecting biodiversity in areas rich in them, recommends that 'no-go' areas be designated and notified to the public, in which no activity or even expressions of interest in activities threatening the environment will be permitted.[4] The Committee also makes observations to aid the Ministry of Environment, Forests and Climate Change in formulating a definition for the term 'forest'[5]. One concern it expresses in this regard has to do with incentivizing community participation in tree plantations, without the inhibition that their area may be designated a 'forest'. A second issue it discusses is the need to permit the plantation of species that are consistent with local ecology, to have a beneficial impact on the environment. Addressing both the above concerns, it suggests a

1 Report of the High Level Committee on Forest and Environment Related Laws, Union Ministry of Environment, Forests and Climate Change, (November 2014).

2 K. Sambhav, *T S R Subramanian panel proposes new law, institutions to fast track green clearances,* Down To Earth (20 November, 2014). (*Available at* http:// www.downtoearth.org.in /content/t-s-r-subramanian-panel-proposes-new-law-institutions-fast-track-green-clearances)

3 Press Information Bureau, Government of India, *TSR Subramanian Committee Submits Report to ShriPrakashJavadekar,* (18 November, 2014). (*Available at:* http://pib.nic.in/newsite/PrintRelease.aspx?relid=111520).

4 Mainly comprising PAs and forest cover over 70% canopy cover. § 5, Report of the High Level Committee on Forest and Environment Related Laws, Union Ministry of Environment, Forests and Climate Change, (November 2014).

5 §5, Report of the High Level Committee on Forest and Environment Related Laws, Union Ministry of Environment, Forests and Climate Change, (November 2014).

new term of classification called 'tree lands' to allow for private trading activity in them[6].

While the Committee recommends that the procedure for obtaining forestry clearance be greatly simplified, it also puts forth that in tandem with projects swiftly being given approval, private parties' requirements to perform compensatory afforestation must be increased to the ratio of 2:1, and the quantum of compensation be enlarged[7].

Wildlife: Apart from proposing that Schedule I of the Wildlife Protection Act be amended to include more species threatened by trade, that State Governments be empowered to alter the boundaries of their designated Protected Areas, and that leg and mouth traps be completely prohibited, the Committee's recommendations relating to wildlife protection also emphasize the timely completion of rights settlement proceedings and the prosecution of wildlife crimes.[8] The Committee recommends demarcating eco-sensitive zones around protected are as to minimize human-wildlife conflicts, and delegating permissions for research to Park Directors and naming the Wildlife Institute of India 'experts' under §293 of the Criminal Procedure Code, both in the interests of saving administrative time.[9]

Environmental Management: The Committee's Report reinforces its previous recommendations to expedite project clearance processes in a comprehensive chapter on Environmental Management.[10] It proposes the creation of a nodal agency, the National Environmental Management Authority (NEMA) and the State Environmental Management Authority (SEMA), at national and state levels respectively that are technologically equipped to process and assess all environmental clearing applications, and also proposes their composition and functions.[11]

New legal framework – Taking note of the lacunae in the current laws relating to environmental management, the Committee proposes the enactment of an umbrella legislation, namely the Environment Laws (Management) Act (ELMA). It is proposed that the concept of '*utmost goodfaith*' be enshrined in the new law.[12] The Committee Report further recommends that the new law provide for the establishment of special courts as well as an appellate tribunal which deals with appeals against the decisions of NEMA or SEMA.[13] Another notable suggestion by the Committee is the addition of a provision relating to noise pollution under the Environmental Protection Act.[14]

In order to provide technical assistance to the proposed NEMA and SEMA, the Committee emphasizes the importance of identifying universities and technical institutions within the country to fulfil this role.[15] With respect to the field of environmental sciences, it is proposed that Parliament establish a national research institution to act as the research centre in the said field. The Committee has also recommended the creation of an Indian Environment Service based on qualifications prescribed by the Ministry of Environment and Forests[16].

Environmental Reconstruction Fund – The Committee Report proposes the creation of an Environment Reconstruction Fund (ERF) as a public fund to be managed by the Ministry or

6 §5, Report of the High Level Committee on Forest and Environment Related Laws,Union Ministry of Environment, Forests and Climate Change, (November 2014).

7 §5, Report of the High Level Committee on Forest and Environment Related Laws, Union Ministry of Environment, Forests and Climate Change, (November 2014).

8 §5, Report of the High Level Committee on Forest and Environment Related Laws, Union Ministry of Environment, Forests and Climate Change, (November 2014).

9 § 6, Report of the High Level Committee on Forest and Environment Related Laws, Union Ministry of Environment, Forests and Climate Change, (November 2014).

10 § 7, Report of the High Level Committee on Forest and Environment Related Laws, Union Ministry of Environment, Forests and Climate Change, (November 2014).

11 §7, Report of the High Level Committee on Forest and Environment Related Laws, Union Ministry of Environment, Forests and Climate Change, (November 2014).

12 § 8, Report of the High Level Committee on Forest and Environment Related Laws, Union Ministry of Environment, Forests and Climate Change, (November 2014).

13 §8, Report of the High Level Committee on Forest and Environment Related Laws, Union Ministry of Environment, Forests and Climate Change, (November 2014).

14 § 8, Report of the High Level Committee on Forest and Environment Related Laws, Union Ministry of Environment, Forests and Climate Change, (November 2014).

15 § 8, Report of the High Level Committee on Forest and Environment Related Laws, Union Ministry of Environment, Forests and Climate Change, (November 2014).

16 § 9, Report of the High Level Committee on Forest and Environment Related Laws, Union Ministry of Environment, Forests and Climate Change, (November 2014).

NEMA. It is envisaged that the fund will be primarily utilized for environment management activities viz. research towards setting of standards, sponsoring research projects involving the participation of national institutions and laboratories, creation of databases and raising public awareness on environmental related matters.[17]

Relationship between the Central and State Governments – In the matter of environmental management, the Committee has observed that the existing arrangement is skewed towards federal governance. Accordingly, the Report recommends that the Central Government retain the responsibility of environmental legislation, policy formulation, administration of the ERF, administration of environmental management laws relating to standards setting for pollution levels. It is proposed that the role of the State Governments be restricted to the functioning of SEMA. Further, it is emphasized the State Governments exercise control over pollution control and garbage collection in urban and semi-urban areas.[18]

Air: As mentioned above, the Air (Prevention and Control of Pollution) Act, 1981 was one of the six legislations that the Committee was mandated to review. However, the committee has focused only on the issue of air pollution in urban areas and since motor vehicles are a prominent cause for increasing levels of air pollution, it has recommended that different ministries make concerted attempts to resolve this issue such as encouraging public transportation, revising the current system of taxation to limit the increase of motor vehicle population and effective policies for proper monitoring and reduction of vehicular pollution.[19]

Mining: As the issue of mining is closely tied to the welfare of forests, the committee recommends that an effective long-term policy regarding mining projects be adopted which focuses not only on giving fast-track clearances to mining projects but also proper afforestation and re-forestation programs and to this end recommends that a special cell be constituted under NEMA which would facilitate the same.[20]

Waste Management: One of the most important areas that has been identified by the committee is Municipal Solid Waste management. Given that solid waste management is an oft-ignored area and because this is an on-going and burgeoning problem, the committee recommends that the main stakeholders involved in the generation and recycling of solid waste viz., general public, urban local bodies, hospitals and rag-pickers need to be made accountable and municipal laws need to be amended so that solid waste can be efficaciously managed.[21]

Science and Technology: The Committee in its recommendations encourages the use of science and technology in various areas such as managing protected areas for wildlife, monitoring emission/pollution levels from industrial units, usage of GIS maps instead of the out-dated cadastral maps etc. The committee, however, notes that science and technology should be used in an appropriate manner and with utmost caution particularly in the area of Genetically Modified (GM) crops.[22]

> "Shouldn't we also ask ourselves what the consequences are of scrambling to provide the "most" of everything to our children in a world of fast dwindling resources?"
>
> *— John Taylor Gatto*

17 § 9, Report of the High Level Committee on Forest and Environment Related Laws, Union Ministry of Environment, Forests and Climate Change, (November 2014).

18 § 9, Report of the High Level Committee on Forest and Environment Related Laws, Union Ministry of Environment, Forests and Climate Change, (November 2014).

19 § 9, Report of the High Level Committee on Forest and Environment Related Laws, Union Ministry of Environment, Forests and Climate Change, (November 2014).

20 § 9, Report of the High Level Committee on Forest and Environment Related Laws, Union Ministry of Environment, Forests and Climate Change, (November 2014).

21 § 9, Report of the High Level Committee on Forest and Environment Related Laws, Union Ministry of Environment, Forests and Climate Change, (November 2014).

22 §9, Report of the High Level Committee on Forest and Environment Related Laws,Union Ministry of Environment, Forests and Climate Change, (November 2014).

TSR SUBRAMANIAN COMMITTEE REPORT: A CRITIQUE

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Law and policy formulation with respect to the environment in India have always struggled to keep pace with current developments and there are also the twin contentions that environmental policies have always been reactive and come in the way of development. Amidst increasing calls for proper enforcement of the laws that are in place and amending certain legislations so that the development process would not be hindered, a committee headed by Shri. TSR Subramanian was formed to review important environmental legislations[1] administered by the Ministry of Environment, Forest and Climate Change. Reviewing these important legislations are by no means an easy task and the committee had to work under significant time constraints in order to come out with a report within three months. While the committee has successfully managed to submit the report, the report has come under severe scrutiny and has generated a lot of debate regarding the current government's stance towards environmental governance in India.

The committee has correctly identified the several shortcomings of environmental governance in India and the Executive in particular has faced flak for being ineffective in enforcing the multifarious laws, rules, guidelines et al thereby handing over the reins to the Judiciary whose pronouncements have *"supplanted legislative powers and are occupying the main executive space"*.[2] The Committee has made important recommendations pertaining to forests and has recommended, *inter alia* that forests having a canopy cover of over 70% should be demarcated as 'no-go areas', hastening the process by for giving clearance to 'linear projects', power/mining projects which is based on a single window concept and increasing the amount payable for compensatory afforestation. While the intentions of the committee to overhaul the system is clear, the single-window clearance mechanism is seen as furthering the development agenda especially at the cost of the environment and the inhabitants of the aforesaid areas. With regard to increasing the efficacy of laws pertaining to wildlife in order to improve wildlife protection, some of the important recommendations include creating a buffer zone between protected areas and areas of human settlement, banning polythene bags and plastic bottles as well as banning the manufacture and possession of mouth and leg hold traps found outside protected areas. Most importantly, the committee has recommended that the wildlife management plan be made mandatory by way of enacting a provision in the Wildlife Protection Act.

As mentioned earlier, one of the main recommendations of the committee was to streamline the environmental clearance process and to this end the committee has recommended the setting up of two new institutions, the National Environment Management Authority (NEMA) at the center and the State Environment Management Authority (SEMA) at the state level. The pollution control boards existing at the center and state levels are to be replaced by these institutions. In order to set up these institutions, a new law called the Environmental Laws (Management) Act has been proposed.In order to reduce the various inspections that are undertaken before a project can get clearance, the committee has also proposed the concept of 'utmost good faith' whereby the project proponents are to disclose all information pertaining to the projects and if it is subsequently found that the project proponents had withheld certain information or given wrong information, then severe consequences may follow including imprisonment. ELMA also contains a provision for setting up of special environmental courts in each district and these courts are set up to entertain complaints and to expeditiously dispose of cases. This initiative to set up a special environmental courts in each district is laudable, however, it is

1 Viz. (i) The Environment (Protection) Act, 1986 (ii)Forest (Conservation) Act, 1980 (iii)Wildlife (Protection) Act, 1972 (iv) The Water (Prevention and Control of Pollution) Act, 1974 (v) The Air (Prevention and Control of Pollution) Act, 1981 and (vi) The Indian Forests Act, 1927.

2 Cl. 1.5, Report of the High Level Committee on Forest and Environment Related Laws (November 2014).

impractical given the extra cost and effort it takes to set up these courts. A more viable solution would be to set up more benches of the National Green Tribunal (NGT). The Act has also proposed to set up an appellate board to which the aggrieved party can approach. This creation of an additional forum only complicates matters given that the NGT already exists. This move to create a new forum for appeal has been criticized as this seemingly dilutes the powers of the NGT which has, ever since its inception given decisions that do not espouse the development agenda. Hence, it becomes apparent that many recommendations given by the committee seek purely to promote the cause of 'development'.

While this committee was set-up to review 6 major legislations, it has failed to come up with any meaningful recommendations pertaining to two important legislations viz., The Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. Additionally, while the committee has correctly identified the lacuna in the existing system of environmental governance, the recommendations given by the committee in order to overhaul the current system such as the setting up of new institutions and enactment of new laws only exacerbates the problem as this adds more layers to the existing system thereby making it even more inefficient. It would not be in the best interests of either the environment or the stakeholders involved if the committee's recommendations are accepted by the Government. That being said, many of the pertinent observations made in the report pertaining to problems in the current regulations needs to be taken note of and it is imperative that the government focus its efforts to come up with an effective model of environmental governance without further delay.

Keep close to Nature's heart... and break clear away, once in awhile, and climb a mountain or spend a week in the woods. Wash your spirit clean.

— *John Muir*

THE SUPREME COURT'S RESPONSE TO THE MOEF'S ATTEMPTS AT INSTITUTIONAL RESTRUCTURING

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During the last few decades, it has become evident that we can no longer think of socio-economic development in isolation from the environment. The nature of issues confronting us along with an increasing interdependence among nations necessitates that countries come together to chart a sustainable course of development. This note studies two of the most important developments that have recently emerged in the field of Indian environmental jurisprudence: *Lafarge Umiam Mining Private Limited* and *T.N. Godavarman* against this backdrop. It provides an analysis of the judgments in these cases and reviews their impact on the future of environmental law in India.

Lafarge Umiam Private Limited v. *Union of India*[1]:

In this case, Lafarge Suma Cement, the company in question, was a mining company incorporated in Bangladesh. The limestone required for the manufacture of cement was to be sourced entirely by its subsidiary Lafarge Umiam Private Limited, which was to be delivered across the India-Bangladesh border by means of a conveyor belt. In order to obtain the necessary environmental approvals for the limestone mines, Lafarge submitted that the mining site for the limestone reserves did not involve the diversion of forest land. On this basis, the Ministry of Environment and Forests allowed Lafarge to commence its operations by granting an environmental clearance in 2001. The matter raised before the court in this case was whether Lafarge had obtained environmental clearances for the mining siteby misrepresenting the nature of the land.

It was argued by Lafarge that since the relevant government authorities had no objections to its characterization of the mining site, there was

1 Lafarge Umaiam Mining Private Limited v. Union of India 2011 7 SCC 338 [Supreme Court of India].

no need to question their decision. The Supreme Court refused to apply such a principle across the board and held that the decision of the authorities must be reviewed on the basis of the "margin of appreciation" doctrine in order to ensure the protection of the environment.

The Supreme Court also directed the Central Government to establish an environmental regulator at the level of the State and the Centre for the regulation of processes under the Environmental Impact Assessment Notification 2006 ["EIA"] including: developmental project proposals, enforcements of conditions contained in environmental clearance and for the imposition of penalties on polluters.[2] This was meant to make the decision making process more fair and efficient. Interpreting the scope of Section 3 of the Environment Protection Act, 1986 ["EPA, 1986"], the apex court stated that it "*is incumbent on the central government ... to appoint an appropriate authority, preferably, in the form of regulator, at the state and at the central level for ensuring implementation of the National Forest Policy, 1988.*"[3] The government responded to this direction by stating that there was no need for such a regulator since an appropriate mechanism was in place.[4] This is where the decision of the Supreme Court in *T.N. Godavarman* comes into play.

T.N. Godavarman Thirumulpad v. *Union of India*[5]

In January 2014, an interim application was filed before the Supreme Court for the purposes of clarifying some of its key conclusions in *Lafarge Umiam Mining Pvt. Ltd.* v. *Union of India.*

Two main issues were raised in this case: *First,* whether the directions for appointing an environmental regulator under Section 3 of the EPA, 1986 are mandatory in nature and *second,* whether Section 3 of the EPA, 1986 should be read with Section 2 of the Forest (Conservation)Act, 1980 ["FCA, 1980"]. While deliberating on the first issue, the court agreed with the decision in *Lafarge* and found that the current environmental clearance process was "deficient in many respects" and once again, mandated the appointment of a regulator for the purposes of the EIA and the National Forest Policy as per the mandatory directions under Section 3of the EPA, 1986. The immediacy of the requirement for a regulator was apparent with the stipulation of a time frame for its appointment. The second issue was concerned with the scope of the regulator's powers and whether it would be empowered to discharge the central government's duty of giving prior approval for the conversion of forest land under Section 2of the FCA, 1980. Interpreting both provisions, the court distinguished the role of the central government under Section 3 of the EPA, 1986 as that of an overseer from the direct duty conferred under Section 2 of the FCA, 1980. Thus, it was held that the role of the regulator appointed under Section 3(3) of the EPA, 1986 is restricted to the duties specified under Section 3(2) of the EPA, 1986 and does not extend to the duties of the Central Government under the FCA, 1980. The decision made a significant[6] impact, with the government finally taking steps to set up an inter-ministerial panel in September 2014 to consider the feasibility of setting up such a regulator. It is submitted that a regulator of the nature envisaged by the Supreme Court, if properly designed and adequately resourced, would be a valuable addition to the institutional mechanisms in place for the regulation of environmental laws in India. One of the most important benefits a new regulator could offer is ensuring independence in environmental decision-making by protecting regulatory processes from interference or lobbying from political or corporate forces.

"Man is a complex being: he makes deserts bloom - and lakes die."

— Gil Scott-Heron

2 S. Ghosh, *Is There a case for an Environmental Regulator* ECONOMIC AND POLITICAL WEEKLY Vol. XLIX 26 (2014).

3 Lafarge Umaiam Mining Private Limited v. Union of India 2011 7 SCC 338 [Supreme Court of India].

4 Lafarge Umaiam Mining Private Limited v. Union of India 2011 7 SCC 338 [Supreme Court of India].

5 T N Godavarman v. Union of India. I.A. Nos. 1868, 2091, 2225-2227, 2380, 2568 and 2937 in Writ Petition (Civil) No. 202 of 1995 [Supreme Court of India].

6 T N Godavarman v. Union of India. I.A. Nos. 1868, 2091, 2225-2227, 2380, 2568 and 2937 in Writ Petition (Civil) No. 202 of 1995 [Supreme Court of India].

CASE COMMENT
MANOHAR LAL SHARMA v. *THE PRINCIPAL SECRETARY*[1]
(2014) 9 SCC 516

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The issue of coal block allocations exploded into importance in 2012 when the Comptroller and Auditor General of India (CAG) in a performance audit questioned the transparency and efficiency of allocation procedure followed by the Central Government during the 11th fifth year plan.[2] This set off a chain of events, leading to the political scandal popularly referred to as 'Coalgate'.

In 2014, some of the core issues arising out of the scandal were considered by the Supreme Court of India in *Manohar Lal Sharma* v. *The Principal Secretary.*[3] This case arose out of a PIL filed by Manohar Lal Sharma and Common Cause challenging the validity of 216 licenses that the Government of India had issued between 1993 and 2010. The fundamental questions before the court were those relating to the powers of the Central and State Government under the Mines and Minerals (Development and Regulation) Act, 1957 ["MMDR Act"] and the Coal Mines (Nationalization) Act, 1973 ["CMN Act"]. Coal being a natural resource, the claim of the Petitioners was that the act of licensing by the Central Government amounted to breach of trusteeship. Additional issues of unconstitutionality, arbitrariness, corruption and *mala fide* conduct were raised; however, these were answered within the exclusive framework of Constitutional law itself.

Under the Seventh Schedule to the Constitution, Entry 54 of List I vests power to legislate in respect of mines and minerals in the Central Government. Entry 23 vests similar powers in the States. The consequence, by virtue of Constitutional interpretation, is that in so far as the Central Government legislates on mines and minerals, that portion of the field is deemed to be covered; states can no longer legislate on those matters.

On the basis of Entry 54 of List I, the Central Government passed the MMDR Act in 1957, and under it, framed the Mineral Concession Rules in 1960. Prospecting and mining operations in mines and minerals in India were restricted under this scheme to only license holders recognized by the Central Government. To deal specifically with the case of coal, in 1973, the CMN Act was passed. Under S. 5 of that act, the rights over mining in any coal mine in India were vested in the Central Government. Section 1A, inserted through a subsequent amendment, restricted the kinds of persons who could undertake coal mining operations to the Central Government, a Government Company, Corporations controlled, owned, or managed by the Government, or sub-lessees of these above-mentioned persons. It also allowed coal mining by persons engaged in iron and steel production.

Crucially in 1991, S. 3(3) of the CMN Act was amended to allow the entry of private companies into the coal mining sector, purely for captive consumption. This was primarily motivated by the electricity shortage in the country. Based on this amendment, the Central Government allocated coal blocks to various private players, selected via a Screening Committee. Some coal blocks had also been allocated through a Government Dispensation process to State Government Undertakings and PSUS.This procedure of allocation followed was challenged on the basis:

a. that it violated the provisions of the MMDR Act,

b. that the companies selected were ineligible under the amended S. 3(3) of the CMN, and

1 Manohar Lal Sharma v. The Principal Secretary, (2014) 9 SCC 516.

2 *Performance Audit of Allocation of Coal Blocks and Augmentation of Coal Production (Ministry of Coal*, Report No. 7 of 2011-12, COMPTROLLER AND AUDITOR GENERAL OF INDIA, *available at* http://www.saiindia.gov.in/english/home/Our_Producs/Audit_Report/Government_Wise/union_audit/recent_reports/union_performance/2012_2013/Commercial/Report_No_7/Report_No_7.html.

3 Manohar Lal Sharma v. The Principal Secretary, (2014) 9 SCC 516.

c. that the Screening Committee had employed arbitrary and illegal procedures.

The Supreme Court in its 25th August, 2014 decision held in favour of the petitioners on these three issues. On the first issue, it had been the submission of the Central Government that the procedure for allocation of a coal block is not dealt with by the MMDR Act, and that all matters relating to coal fell solely under the domain of the CMN Act. This was rejected by the SC. It held that the MMDR Act continues to cover the field, and the Central Government is required to not derogate from any of the mandated procedural requirements when allocating coal. This includes provisions on reconnaissance, prospecting, licensing etc. It noted that the CMN Act did not prescribe any procedure for allocating coal blocks; in the absence of any rules or notifications under the CMN allowing allocation, the Central Government could not have allocated the blocks. Therefore, the Central Government was held to have been required to follow the detailed procedure laid out in the MMDR Act.

The SC then examined the procedure for allocation. The first question was whether an auction should have been the proper method of allocation. Referring to the 2G case and the Natural Resources Allocation Case, the SC noted that in allocating natural resources, the Government is not mandated to carry out auctions. They reiterated that these are administrative decisions based on executive policy, and consequently outside the domain of judicial enquiry. They noted that they could however examine the procedure followed on the touchstone of Article 14 – if the procedure was arbitrary, unfair, or discriminatory, it could be the subject of a judicial enquiry.

The SC then proceeds on a lengthy examination of the minutes of the Screening Committee's meetings from 1993 onwards as well as allocation through the Government Dispensation route. After said examination, the court held with respect to the procedure of the Screening Committee, that it has:[4]

> "…never been consistent; it has not been transparent; there is no proper application of mind; it has acted on no material in many cases; relevant factors have seldom been its guiding factors; there was no transparency and guidelines have seldom guided it. On many occasions, guidelines have been honoured more in their breach. There was no objective criteria, nay, no criteria for evaluation of comparative merits. The approach had been ad hoc and casual. There was no fair and transparent procedure, all resulting in unfair distribution of the national wealth. Common good and public interest have, thus, suffered heavily.

The Screening Committee had also employed a dubious consortium of companies approach to the allocation, which was outside what was contemplated under S. 3. Joint ventures were held to be ineligible under S. 3. Further, the procedure followed for the Government Dispensation was also held to be patently in violation of Section 3, CMN Act as it did not allow for any grant of license to PSUs or State Government undertakings. Consequently, all the three above mentioned issues were held in favour of the petitioners; all coal block allocations since 1993 were held to be illegal.

In a follow up order dated 24th September, 2014,[5] the SC considered the consequence of its decision holding all coal block allocations as illegal. In these "consequence proceedings", the SC held that natural resources had been treated by the Union of India as if they belonged to a few individuals; on the contrary, they belong to the country as a whole. To compensate for the loss to the exchequer by the actions of the Central Government, the SC ordered every allottee of coal blocks to pay Rs. 295 per ton of coal mined since 1993 to the government.

The fall out of this judgment had immediate and explosive political consequences. However, some legal issues also present themselves. For instance, the levy of the Rs. 295 per tonne penalty by the SC has been poorly received by both the

4 Manohar Lal Sharma v. The Principal Secretary, (2014) 9 SCC 516.

5 Manohar Lal Sharma v.The Principal Secretary, (2014) 9 SCC 614.

industry as well as by the legal community. It squarely placed upon innocent private individuals the responsibility to ensure that their contracts with the government are procedurally correct. While it may be true that loss accrued to the exchequer due to the improper allocation of coal blocks, it was the fault of the Central government; therefore, the decision to penalize the allottees for the same, without recording any finding of wrong doing on their part, is patently unfair.

In terms of jurisprudence, the SC did not take the opportunity to address questions on on natural resource law; the focus was primarily on to administrative and constitutional questions. However, undoubtedly the decision will have extremely significant impacts on how mines and minerals will be treated by the executive as well as the industry in the coming years, at the very least on importance of procedural due process.

FISCAL POLICY FOR SUSTAINABLE DEVELOPMENT: ANALYSING THE UNION BUDGET 2015-16

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There are different approaches, visions, models and tools available to each country, in accordance with its national circumstances and priorities, to achieve sustainable development. While legislation-based policy interventions are the most visible and often take priority, governments have also experimented with other instruments for environmental protection and sustainable natural resource management. In this regard, fiscal policy, in its capacity to prioritize and channelize government spending through allocation of financial resources, has received considerable attention. Increasingly, fiscal policy measures are being seen as effective tools in the drive towards sustainable development. This increased interest is particularly driven by the variety of fiscal instruments at the governments' disposal, including taxation, subsidization and growth incentives, depending on the peculiar needs of each country. India is no different.

In India, the annual Union Budget presents an accurate picture of the government's fiscal policy. As is expected, the proposals stated therein significantly affect the country's environmental policy over the next year. The 2015-16 Budget was presented by the Finance Minister on February 28, 2015. In the following sections, the authors shall examine the relevant proposals laid down in this year's Union Budget to assess whether or not it is enough to counter the environmental challenges our country faces today.

ENVIRONMENTAL AND NATURAL RESOURCES TAXATION

Green taxes and similar charges are an essential element of policy frameworks to discourage reliance on environmentally harmful modes of production. By increasing the relative cost of polluting goods and services, environmental taxes are a powerful policy tool for encouraging more sustainable economic behaviour. Recognizing the importance of such taxation measures, the Union Budget increases the clean energy cess from Rs. 100 to Rs. 200 per metric tonne of coal. Further, the excise duty on sacks and bags of polymers of ethylene other than for industrial use has also been increased from 12 percent to 15 percent.

In addition, there has also been a reshuffle in the excise duty imposed on petrol and diesel. However, the new policy is largely inadequate. Not only must the government tax these polluting fuels, it ought to also use the tax funds and much more to provide infrastructure to wean us away from cars or using roads to transport goods. However, such measures are conspicuous by their absence in the Budget. Instead, Rs 4 per litre of the excise duty on petrol and diesel has been set asidefor a dedicated road cess. While the construction of roads is undoubtedly essential to the country's economic growth, a certain portion of the funds could have been set aside to bolster public transport systems which would reduce the number of private vehicles on the roads which are a major pollutant. A certain portion of these funds could also have been utilized to effectively implement Euro IV norms with

respect to diesel vehicles, thereby controlling air pollution. However, no such measures have been taken by the government.

Henceforth, a new cess named as the *Swachh Bharat* (SB cess) will be imposed on the value of the taxable services on all or any of the taxable services – subject to notification by the government. We have to see whether this cess is a blanket cess which will be applicable on all services or only to select services. If most of the services or all services suffer this cess then the overall ST rate inclusive this cess will be 16%. Regardless, resources generated from this cess will be utilised for financing and promoting initiatives towards the *Swachh Bharat* campaign. Additional funds have also been set aside for the campaign. However, they shall be up for discussion at a later stage.

As far as exemptions are concerned, the government has proposed 100 percent tax exemption under Section 80G of the Income Tax Act for all donations to *Swachch Bharat Kosh* and the Clean Ganga Fund. Contributions u/s 135 of the Companies Act, 2013 are not included within this exemption. Also, service provided by a Common Effluent Treatment Plant (CETP) operator for treatment of effluent has also being exempted from service tax.

Although the SB Cess could provisionally bring in additional funds to the campaign, it can be argued that the increase in the Clean Energy cess is the singularly most important measure implemented by the government. The CE cess goes to the National Clean Energy Fund (NCEF), which has been created for funding research and innovative projects in clean energy technologies. With mining activity expected to pick up in the country after the coalfield auctions, the annual collection is expected to substantially increase to around at least Rs.36,000 crore a year over the next three to four years. The important issue, however, is the manner in which this money is put to use. By September 2014, 46 clean energy projects worth Rs.16,511.43 crore were recommended for funding out of the NCEF.[1] Unfortunately, disbursement has been inefficient, with allegations that the proceeds parked in the fund were being used to bridge the government's fiscal deficit.[2] Furthermore, it is hoped that the increase in this cess would also reduce carbon emissions substantially. It can also be seen as a part of a larger scheme to gradual increase the cess to Rs 500 per metric tonne, a measure which could potentially bring down India's carbon emissions by 214 million tonnes (11 % of annual emissions), while still keeping most coal power plants profitable.[3] The coal cess therefore has a two pronged objective – to reduce carbon emissions due to increased costs while also bringing in additional funds to be utilized towards clean energy initiatives.

CLEAN ENERGY INITIATIVES

Renewable Energy

India's current renewable energy capacity is 33,000 MW.[4] Taking cognizance of the importance of renewable energy in environmental protection and sustainable development, the Ministry of New Renewable Energy has revised its target of renewable energy capacity to 1,75,000 MW till 2022, comprising 100,000 MW Solar, 60,000 MW Wind, 10,000 MW Biomass and 5000 MW Small Hydro-electricity. These targets are significantly higher than previous ones – indicating a major policy shift on part of the government. If these steps are to be prevented from being mere paper tigers, substantial investments in generation, transmission and related infrastructural development is required. However, in what is being seen as a regressive step, the allocation to the Ministry of New and Renewable Energy has been reduced from Rs 3,941 crore last year to Rs 3,660 crore—a reduction of 7 per cent. Additionally, there is no revision in outlays for the central transmission utility (PGCIL) or for government schemes such as Green Energy Corridors, which have remained unchanged from the previous year's budget. There is, therefore, a distinct lack of consistency in the government's approach to renewable energy. If the government

1 http://www.finmin.nic.in/the_ministry/dept_expenditure/plan_finance2/ProjStatement_IMG_underNCEF25092014.pdf

2 http://www.livemint.com/Politics/7008Rw5aY79CmN9MEzqpcO/ Govt-uses-green-energy-fund-for-fiscal-balancing.html

3 Indian Economic Survey (Volume I), p. 128, available at http://indiabudget.nic.in/es2014-15/echapter-vol1.pdf

4 Indian Economic Survey (Volume II), p. 124, available at http://indiabudget.nic.in/es2014-15/echapter-vol2.pdf

intends to meet its stated target, it must facilitate flow of low-cost funds to the renewable energy sector, with a focus on infrastructure as well as research and development. Proponents of renewable energy in India can however take solace in the fact that more funds shall be available to the sector due to increased inflow to the NCEF – owing to the increasing in the coal cess. However, as discussed earlier, disbursement has been problematic at best.

Electric Vehicles

Owing to the limited domestic reserves of the conventional fuels and their high carbon footprint, it has become essential to identify alternate sources of energy for transport which are eco-friendly yet cost-effective. Recognising this need, the government launched the Scheme for Faster Adoption and Manufacturing of Electric Vehicles (FAME), with a proposed outlay of Rs 795 crore over a two year period from 2015-17. While the initial corpus for the scheme has been set at Rs 75 crore, it is expected that further funds shall be released based on the successful implementation of the scheme and utilization of funds so far ear-marked. FAME is a part of the National Electric Mobility Mission Plan, which aims to attain national fuel security by promoting hybrid and electrical vehicles within the country.

As part of the FAME scheme, the government plans to incentivize buyers while purchasing these hybrid and electric vehicles by providing monetary support. Starting 1 April, buyers of electric and hybrid vehicles, depending on the speed and efficiency of the vehicle, will get an upfront discount of one-third of the difference between the price of that particular vehicle and a comparable petrol model. The manufacturer will be reimbursed by the government for this discount in 60-90 days.

It must be noted that the FAME scheme is but a part of a larger plan aimed at securing reasonable degree of fuel security in the country. Naturally, results may not be visible immediately. It is unlikely that electric unit sales will go up drastically, more so with oil prices at the current low levels. However, this is by no means an insignificant exercise and could go a long way in reducing India's vehicular emissions over the coming decade.

ALLOCATION OF RESOURCES

It cannot be denied that the Central Government has taken certain steps towards a healthier environment in the Budget, such as doubling the carbon tax on coal and tax benefits for contribution to the Clean Ganga Fund. However, certain key focus areas appear to be missing from the government's agenda. Either they have been completely ignored, or short-changed significantly. For instance, the allocation to the Ministry of Environment, Forests and Climate Change has shrunk by a fourth. A number of crucial projects — including Project Tiger, National Afforestation Programme and Biodiversity Conservation — have fallen victim to the cuts, with allocation plunging to□1,681.6 crore for 2015-16 against □ 2,256 crore last year.

The allocation for Union Ministry of Water Resources, River Development and Ganga Rejuvenation is down to Rs 4232 crores, from Rs 13637 crore allotted to the Ministry in 2014-15. Although the severe cut can be partially attributed to the proposed greater devolution to states as per the 14th Finance Commission's recommendations, the government has not clarified how this reduction would affect centrally sponsored schemes like the Accelerated Irrigation Benefits Programme or the National Projects Scheme which extended funds to specific projects. Around 2100 crores of the funds allotted to the Ministry of Water Resources have been earmarked for the Clean Ganga mission. The money for the same is being sourced from the National Clean Energy Fund. Donations received towards the Clean Ganga fund shall also be diverted towards this scheme. With such large sums at stake, it is essential that the project be implemented in an organized and timely manner. Whether the same would be possible is still to be seen.

CONCLUDING REMARKS

If one were to focus on specific initiatives and fiscal measures, the Union budget does have certain positive signs for India's environmental policy. However, it still has not done enough to effectively tackle the environmental crisis our

country faces at present. In what is a concerning development, the funds allocated towards environment protection, water resources and renewable energy have all been reduced from the previous financial year. Certain critical issues like air and water pollution have been left unaddressed by the government. Measures, if any, have been merely token in nature – like the service tax exemption for CETP services. It must also be noted that mere allocation of resources towards the government's flagship schemes will not be enough to bring about environmental protection in the country. The need of the hour is to ensure that these proposals are implemented effectively, with expert guidance, supervision and accountability.

Doctrine of Public Trust

"The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole, and that it would be wholly unjustly to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes." [Supreme Court in M.C. Mehta vs Kamal Nath & Ors on 13 December, 1996]

The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". It was founded on the ideas that certain common properties such as rivers, sea-shore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Under the Roman Law these resources were either owned by no one (Res Nullious) or by every one in common (Res Communious). Supreme Court of California said in the Mono Lake case, "….the public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the state to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust...."

LEGISLATIVE UPDATES

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NATIONAL FRAMEWORK:

1. Mines and Minerals Amendment Bill, 2015
2. Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulation, 2014.
3. Proposal for Environment Loss Management Act by Subramanian Committee
4. National Air Quality Index
5. India's Climate Change Strategy

INTERNATIONAL FRAMEWORK:

1. Comments on Lima Conference (December, 2014) COP-20
2. China passes First Amendment to its Environmental Law

NATIONAL FRAMEWORK

1. Mines and Minerals Amendment Bill, 2015

The Mines and Minerals (Development & Regulation) (Amendment) Bill (MMDR), 2015 was passed by RajyaSabha, which is considered to be anti-people and pro-miners. The Bill is criticised on many grounds. The major drawback of the Bill lies in giving overarching power to Centre over states leaving them to undertake clerical work. The fund disbursement mechanism of District Mineral Foundation (DMF), the trust developed by state governments facilitating the sharing of benefits of mining with affected communities, was also matter of concern. The amended provision states that the objective and functioning of the DMF should be guided by Constitutional provisions as it relates to Fifth and Sixth Schedules for governing tribal areas.

The short time given to the Select committee to review the bill proved highly contentious as matters such as wider stakeholder consultations were not carried out. The Bill puts highest limit on the sum to be paid by the mine lease holder but fails to put lower limit which is digression from the previous bill. It hardly steers the mining sector towards environment-friendly practices and curbs long term growth prospects also by limiting scientific exploration of minerals. The opportunity of enacting good mining law to strengthen mining

governance and combining economic growth with environmental safety and social justice, is lost.

2. Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulation, 2014.

The guidelines have been issued by Ministry of Environment in pursuance of Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization. The guidelines provide approach to determine the financial obligations of the users of genetic resources for identified activity including commercial utilization, bio-utilization, research, IPRs. It empowers State to determine the amount of benefit sharing to be given by AYUSH manufacturers (using biological resources and traditional knowledge) to the state exchequer.

It states that, when biological resources are used for commercial utilisation, the applicant shall have the option to pay the benefit sharing ranging from 1 to 5 % at the mentioned graded percentages of the annual gross ex-factory sale of the product, which shall be worked out based on the annual gross ex-factory sale minus government taxes.As per the guidelines, monetary and/ or non-monetary modes could be agreed upon for the benefit sharing, as agreed by the applicant and the concerned NBA/ SBB in consultation with Benefit claimer/ BMC. The determination of benefit sharing is based on various considerations. It also lists certain activities or persons exempted from the approval of NBA or SBB, such as collaborative research projects approved by the concerned Ministry; local people and communities of the area etc.

3. Proposal for Environment Loss Management Act by Subramanian Committee

A high level committee formed by government and headed by former cabinet secretary T.S.R Subramanian proposed a new Environment Loss Management Act under which full time expert bodies at state and central levels will be set up for evaluating and clearing projects. The executive report recommends a "fast track" procedure for "linear projects" which provides benefit to community at large, as well as power/mining projects of national importance.

4. National Air Quality Index

The Ministry of Environment and Forests has finally announced the new National Air Quality Index that classifies air quality into good, satisfactory, moderately polluted, poor, very poor and severe to inform people on a daily basis about the severity of pollution and the likely health impacts. This will build public awareness as well as public support for hard decisions needed to get cleaner air. The new AQI has been hosted on the website of the Central Pollution Control Board. With this step forward, India has joined the global league of countries like the US, China, Mexico, France and Hong Kong that have implemented smog alert systems. These countries not only issue smog alerts, but also implement pollution emergency measures to bring down the peak pollution levels. Indian cities need the similar roadmap.

5. India's Climate Change Strategy

Conference of Parties (COP-20) at Lima, Peru brought various diplomats together from across the globe to prepare blueprint for future emission reductions. India opposed ex-ante review of mitigation commitments, so did China. In the Lima Call for Action, there was no provision for ex-ante review. Now countries will provide information about how their INDCs will be fair and ambitious, but in light of national circumstances. We have no mechanism to ensure that the commitments by the rich countries are equitable and not crippled by what countries can do. In the final communiqué in Lima, even the basic principle of equity - common but differentiated responsibility and respective capabilities (CBDR) - has been fatally twisted. Now it says CBDR will be "in light of different national circumstances". Effectively, this means the US can say it cannot do more because it's Congress will not pass legislation. It has legalised lack of ambition or inequity of action.

India did not commit to any internationally binding emission targets. While such stance of India, putting economic development as the supreme might be disturbing but at the same it is imperative to acknowledge the government's efforts to combat domestic climate change. India could have proposed at Lima to hold the rich accountable for their commitments through the ex-ante review. In this way, each country's domestic contribution would include an equity metrics of its per capita emissions and the carbon space it will occupy. This contribution and subsequent action would be reviewed before the post-2020 climate change agreement is signed so that targets can be revised to take into account ambition and fairness.

The briefing paper on *"India's Progress in Combating Climate Change"*by Ministry in context of Lima Conference outlines the

engagement of the Government of India to step up cooperation on climate change related programs by collaborating with various state and non-state actors. The paper also describes the huge challenges of financial requirements for developing climate resilient infrastructure, clean technologies and capacity building in India. In 2008, India launched its National Action Plan on Climate Change (NAPCC) to support mitigation and adaptation policies and programs across the country. In addition, the state governments are developing their own State Action Plans on Climate Change (SAPCC) to promote state-specific climate initiatives. The purported aim to balance the urgent need to reduce emissions across the board whilst simultaneously avoiding harmful impacts on the development prospects,is displayed by India's garnering pledge for solar energy development by having built the world's largest solar plant in India.

While these Missions hold great promise, they would be just another set of documents lining bureaucratic shelves without adequate financial backing. In 2010, the Government created a National Clean Energy Fund (NCEF) to finance and facilitate the adoption of clean energy technologies in the country. In an attempt to discourage coal use, a Clean Energy Cess of INR 100 was levied on every ton of coal produced domestically or imported. The money collected from this coal tax goes directly into the NCEF. The government also introduced a market-based climate program called the Perform, Achieve and Trade (PAT) scheme, which sets mandatory energy efficiency targets on energy-intensive industries. The second trading system, India's Renewable Energy Credit (REC) system, was launched to promote renewable energy use by mandating power companies to purchase a certain amount of their energy from renewable sources.

Implementing climate-friendly policies and promoting clean energy use and energy efficiency in our country, with crippling lack of technical and institutional capacity doesn't help the cause. Furthermore, the downscaled, regional data derived from climate models (which forms the basis for state and national-level climate interventions) is unreliable and inaccessible. All this, coupled with the political reluctance to commit to absolute emission reduction targets, has made India and its billion people highly vulnerable to effects of climate change.

INTERNATIONAL FRAMEWORK

1. COMMENTS ON LIMA CONFERENCE (DECEMBER, 2014) COP-20

The Lima conference on climate change was intended to provide clarity on what the INDCs (Intended Nationally Determined Contributions) need to contain from all countries, including developing nations. Delegates were expected to bring a draft of the agreement to the table, to outline what they would do to achieve their goals and to provide clarity on the handling of finance, technology and capacity-building measures to fulfill a long-term vision of achieving climate neutrality in the pursuit of development that is sustainable for all. The overarching goal of the conference was to reduce greenhouse gas emissions (GHGs) to limit the global temperature increase to 2 degrees Celsius above current levels.

The Lima Conference saw mixture of expectation from parties, on one hand those parties having lot of expectations looking at it as platform of starting point for Paris agreement in 2015. While on other hand some parties had limited expectation looking it as forum for informational package about contributions before 2015 agreement in Paris. Lima reflected on allegations by developing countries on issues such as mismatch of expectations, poor management, non-inclusive and non-transparency of the process involved. However, on substantive issues Lima Conference might have important implications on Paris agreement and beyond Paris agreement.

Redefining CBDR (Common But Differentiated Responsibilities):The text states that parties' contribution or ambition shall be determined according to “national circumstances” in addition to capabilities and responsibilities of parties. This inclusion of new term can be highly problematic for developing countries. The reason being, it potentially seeks to remove the differentiation between developed and developing countries' contribution towards mitigation and adaptation measures. The national circumstances that count for developing countries included mainly poverty, development deficit, need for growth etc.). But, now after Lima, even developed nations can shook away their responsibilities by taking shed under national circumstances, such as Europe (recession), United states (the inability of its political system to achieve an ambitious climate change legislation domestically).

INDCs (Intended Nationally Determined Contributions) could have linked to equity and

CBDR but was not linked at Lima:The developing countries had the hook of equity and CBDR to seek review of INDCs by developed countries but developing countries specially the Like Minded Developing Countries (LMDCs) failed to garner this opportunity of questioning the developed countries on their low ambition to reduce the emissions, finance and tech-transfer. They failed to talk of appropriation of carbon space by developed countries, as for instance, US – China Climate agreement which was entered just before the Lima (non-ambitious agreement under which US does not agree to reduce its emissions much and China only to peak post 2030 which states that till 2050, China, US and Europe will appropriate for more than 50% of carbon space). India was very aggressive on ex-ante review of INDCs, which was necessary and relevant but failed to question the developed countries on their low ambition over reduction targets, finance and technology transfer.

Developed countries did not pledge to reduce their emissions from now till 2020. They also gave no concrete assurance to provide finance and technology to developing countries.Transparency over INDCs is one of the major issues to be addressed in Paris and road towards Paris will not be easy and without conflicts. The Lima reflected low ambition of parties over commitments and it also makes things for developing countries hard.

Some other notable points:

- it doesn't give an ambitious roadmap for climate finance, it addresses the concerns of developing countries by keeping 'adaptation' clause intact.
- intended nationally-determined contributions (INDCs) will form the foundation for climate action post 2020 when the new agreement is set to come into effect.
- Lima has given new urgency towards fast-tracking adaptation and building resilience across the developing world but need of strengthening the link to finance and development of national adaptation plans no financial road map to scale up commitments.
- Lima climate conference achieved a range of other important outcomes, decisions and "firsts" in the history of international climate process. Pledges were made by both developed and developing countries prior to and during the COP that took the capitalization of the new Green Climate Fund (GCF) past an initial $10 billion target.
- levels of transparency and confidence-building reached new heights as several industrialized countries submitted themselves to questioning about their emission targets under a new process called a "multilateral assessment".
- the countries finally agreed to ground rules on their national contributions by March 2015 if they are ready or by October 2015, and also a framework for the new treaty in Paris. These Intended Nationally Determined Contributions (INDCs) will form the foundation for climate action post 2020 when the new agreement is set to come into effect, the UNFCCC said.

2. CHINA PASSES FIRST AMENDMENT TO ITS ENVIRONMENTAL LAW

Chinese legislators have passed the first amendments to the country's environmental protection law in 25 years, promising greater powers for environmental authorities and harsher punishments for polluters. It will allow authorities to detain company executives for 15 days if they do not complete environmental impact assessments or ignore warnings to stop polluting. Since China's environmental protection law was passed in 1989, the country has become the world's second-largest economy and its biggest carbon emitter. The new law "sets environmental protection as the country's basic policy". The amended law will remove limits on fines for polluting factories, which are currently so low that many enterprises prefer to pay them than take long-term anti-pollution measures and will impose criminal liability on the offenders.

GREEN DECISIONS

Karuna Society for Animals & Nature* v. *Union of India and Ors.

(2015) 2 SCC 355

Environment (Protection) Act, 1986 - Section 5; Plastic Wastes (Management and Handling) Rules, 2011; Constitution of India- Article 32

The petitioners, an NGO approached the Supreme Court of India under Art 32 and sought the following directions to the respondent(s):

(I) issue appropriate directions under Section 5 of the Environment (Protection) Act, 1986 prohibiting the use, sale and disposal of

plastic bags in all municipalities and municipal corporations;

(ii) issue appropriate directions to all State Governments and municipalities/municipal corporations to forthwith prohibit and/or to phase out in a time bound manner the "open garbage disposal system" and to remove open garbage receptacles;

(iii) issue appropriate directions to State Governments, municipal corporations and municipalities requiring them to implement door to door garbage collection and to ensure that waste storage facilities are built and managed such that animals are not allowed to move around in the vicinity of such facilities;

(iv) issue appropriate directions to State Government/Municipal Corporation and municipalities to require segregation of all plastic waste across the municipal solid waste collection and disposal chain/systems; and

(v) issue appropriate directions prohibiting the use, sale and disposal of plastic bags in all municipalities and municipal corporations within their territory.

(vi) to provide animal shelters, rescue homes and veterinary services for stray cattle to provide amelioration for suffering animals.

Based on the arguments raised, the Court formed a Committee of three lawyers to look into the scenarios as it prevails. The Court highlighting the need for proper implementation of the law and rules that were present, directed the respondents to file their responses failing which appropriate orders would be passed.

Vikrant Kumar Tongad* v. *Delhi Tourism and Transportation Corporation

2015 SCC Online NGT 3

Constitution of India-Entry 8 (a) and Entry 8 (b) of the Schedule to the Environment Clearance Regulations, 2006.

The case was filed by a public spirited person who questioned the construction of a 'Signature Bridge' across the Yamuna. It was alleged that the project had not got the required clearance and the construction in all likelihood would impact the river and river hydrology adversely. The NGT was to address the issue as to whether constructing a bridge across Yamuna would fall under a 'project' or an 'activity' which requires prior environmental clearance from the Regulatory Authority. The Delhi Tourism and Transportation Corporation submitted that an application was made to the MoEF for environmental clearance but since the MoEF conveyed that 'Bridges' were not covered under the 2006 regulations and that Environmental Clearance is not required, they did not pursue the matter.

The Tribunal going into the definition of 'bridges', looked into the rationale behind the Entries in the 2006 Regulations. Following the decisions of the Supreme Court in *The Authorised Officer, Thanjavur* v. *S Naganatha Ayyar(1985) 4 SCC 71* and *SEBI* v. *Ajay Aggarwal* (2010) 3 SCC 765, the Bench held that provisions of social welfare legislations should be interpreted in a liberal way, by courts, so as to foster better welfare for the people. Specifying that the 2006 Regulations were framed under the powers given to the Central Government by the Environment (Protection) Act, 1986, the court opined that they have been promulgated with the aim and object of assessing the impact of various developmental activities on the environment.

Applying the Principle of Liberal Construction to such socio-welfare legislations and relying on the Supreme Court of India's decision in *In Re. Construction of a park at NOIDA Near Okhla Bird Sanctuary* v. *UOI* (2011) 1 SCC 744, wherein it was opined that mere absence of a law cannot be a ground for degrading the environment, it was held by the NGT that construction of a 'bridge' would come under would come under the ambit of Entry 8 (b) of the 2006 Regulations. It directed the DTTC to get an environmental clearance. It was also noted that since 80% of the work was already over, demolition of the same is not a way out. However the State Level Environment Impact Assessment Authority was asked to monitor the construction and also put terms and conditions to ensure that no environmental damage is caused as a result of the bridge.

Bhartiya Gauvansh Rakshan Sanvardhan Parishad* v. *State of Maharashtra

2015 SCC Online Bombay 484

Constitution of India- Section 5D, Maharashtra Animal Preservation (Amendment) Act 2015 - Section5(1)(ii)Maharashtra General Clauses Act, 1904

The Division Bench of the Bombay High Court had passed an order directing police and civic body officials to implement Section 5D of the amended Maharashtra Animal Preservation (Amendment) Act that banned slaughtering bulls and bullocks and possessing their flesh and beef. Based on this order the authorities were to ensure

that bulls and bullocks were not slaughtered in abattoirs. Beef traders in the state had approached the High Court praying a stay on this order. Granting an interim relief to the beef traders association the Division Bench in this case, consisting of Justice VM Kanade and Justice AR Joshi stayed the previous order. It was held that the previous order would come into force only when the necessary consent is given by the Governor/President and published in the Official Gazette.

Suo Motu* v. *State of Rajasthan

2015 SCC Online Raj 352

Art. 21 Constitution of India

Based on a report published in the Times of India the High Court took Suo Motu cognizance of the pitiable situation that the lakes of the city of Jaipur found themselves in and directed the Deputy Registrar to register a writ petitionagainst the competent authorities as to why necessary directions should not be given to prohibit immersion of idols, garlands, clothes, glitters, coconut shells etc. in the lakes.

The state authorities filed a status update on the actions taken by them to protect the lakes. However the Court rejected the contentions put forth based on its finding that no effective steps were being taken to protect the lakes from pollution even after an earlier order to the same effect had been passed.

The Court gave more time to the District Administration, Udaipur to implement its projects to clean the lakes effectively. However in the interim it passed orders

- Imposing a ban on all the activities which may pollute water of the lakes situated in the city of Udaipur e.g. immersion of idols as well as bathing by using soap and washing clothes at the lakes, calling it "public nuisance" under Section 268 IPC and also "fouling water of public reservoir" under Section 277 IPC.
- directing the Collector of Udaipur to avail an undertaking from the management of each and every Hotel, Guest House including Paying Guest House and the Restaurants situated at the banks of the lakes and within the periphery of 250 meters from the bank of lakes to the effect that they will not throw any kind of waste material (organic or inorganic) or even open flowing outlets in the lakes. It was laid down that failure of the same would render them liable and would lead to cancellation of their licence.
- imposing restrictions on religious celebrations which may be organised at the banks of the lakes while observing that such celebrations may not cause pollution to the lakes.
- Laying down that immersion of idols be made symbolically
- directing the Municipal Corporation to clean the entire area after religious celebrations within a period of 12 hours.
- Directing that for organising any private or social function at the banks of the lakes, the private person or body will have to seek prior approval from the Collector, Udaipur, along with a cash security deposit of atleast Rs 10000/- to ensure cleaning of the area.
- Imposing a complete ban on parking and washing of the vehicles on public Ghats situated at the banks of lakes.
- directing the District Administration to restrict movement of stray cattle on public Ghats situated at the banks of lakes.

People for Animals* v. *Mohammed Mohazzim and Anr

2015 SCC Online Del 9508

Prevention of Cruelty (Capture of Animals) Rules, 1979

Based on an intimation given by People for Animals, the police seized caged birds and animals from the respondent. However the birds/animals were released on *superdari* on application of the respondent. Before the Delhi High Court, the NGO produced photographs of birds kept in small cages. The Court was also informed of the cruel acts meted out. The Court, following the principles laid down in *A Nagaraja* v. *AWBI,* reiterated the dictum of the Supreme Court of India that animals too have the right to live with dignity.

Based on the arguments that were raised by both parties, the Court held that running the trade of birds is in violation of the rights of the birds. It went on to hold that birds have a fundamental right to fly and not to be caged. Humans, it was held, had no right whatsoever to cage the birds for business purposes or otherwise.

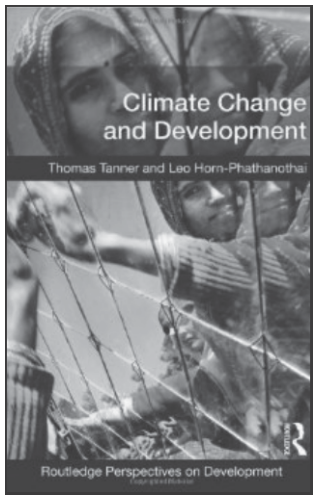
Manjeri Subin Sunder Raj

BOOK REVIEWS

Climate Change and Development

Thomas Tanner and Leo-Horn Phathanothai,

Routledge Publishers, 2014



To address two of the greatest challenges that present day society faces, climate change and poverty, being a herculean challenge itself, the authors of the book have come up with a section wise approach. Bringing about a nexus between catastrophic climate change and poverty, the authors have flushed ideas to avert both. To foster better understanding, the book has been divided into three clear sections which form the very basis. Having taken this approach has helped readers to get a hold of a complex subject, which if not tackled properly would not have been able to convey ideas lucidly and succinctly.

While in the first section, the authors have tried to bring about the relation between climate change and development, the next section concentrates on ways to respond to climate change which by itself poses a challenge for development. Dealing with the international situation this section has been able to highlight the causes and concerns of developing nations. To bring about some sort of a balance between their developmental aspirations and at the same time not to hamper climatic conditions is a tight walk rope. Delving deep into climate change mitigation and adaptation responses and also by concentrating on climate finance, this section is more than capable of providing a better understanding of the whole scenario from the perspective of third world countries. The last section concentrates more on the way forward and throws light on why development should be reframed so that it would be able to deliver outcome which are far more equitable and sustainable. The last part of this section, which is the concluding chapter, harnesses the ideas that have been vividly conveyed in the preceding sections and details the present situation of science as well as steps that have been taken, till date, to tackle the issues mentioned. The highlight of this part is that it mentions five critical challenges that the world would face, which would charter the course of actions that would be taken in the next decade. This serves as the cherry on top of the icing and succinctly puts across to the reader the whole idea behind this work.

Apart from the content that the book contains, the methods and ways that have used to put across ideas plus the structuring of the sections and chapters within it play a great role in evincing interest in the reader. With use of apt caricatures at the start of each chapter and bullets of the sub-headings apart from tables, figures, graphs and boxes that highlight important themes and gives a better as well as a clearer picture of the ideas sought to be conveyed, the authors have been immaculate also for the fact that each part ends with a summary of the discussion and lays down questions that need be discussed to further more ideas. Providing references which include further readings and websites as well augurs and caters to the need of the reader who would definitely be yearning for more. The Glossary at the end gives a short but succinct description of various terms that have been covered in the book. The concerned reader would surely have his plate and mind full once he finishes devouring this well written, well articulated and well structured work.

Manjeri Subin Sunder Raj

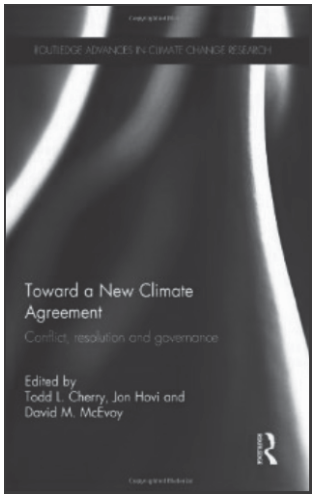
Asst. Professor of Law

Towards a New Climate Change Agreement: Conflict, Resolution and Governance

Edited by Todd L. Cherry, Jon Hovi and

David M McEvoy

Routledge Publishers, 2014



Climate Change has been one of the most hotly debated topics in the present world owing much to the problems it has caused around the globe. How exactly to tackle this wherein states given their sovereign powers need heed to the rest of the global community has stirred the hornet's nest. Though steps have been taken by the

international community, how to come up with a meaningful international climate change agreement that is acceptable to all is a question that lacks a definite answer.

Providing a platform for a long line of experts on the topic, this book, brilliantly edited, divides the whole subject into three parts- Conflict, Resolution and Governance. Comprising of eighteen articles, six under each part, the editors have been able to collate and demarcate the book in an organised fashion which throws ample light on the reader to understand the nuances and intricacies of coming up with an international climate change agreement.

While the first part tries to look more into the issues that would arise and act as a barrier in achieving the goal of an internationally acceptable agreement, the second part aims to look into approaches that are capable of providing a better prospect to come up with an effective and acceptable agreement. The last part looks into acts of governance, the very basis which enhance the effectiveness of such a mutually acceptable agreement.

While it is crystal clear that the ideas posed can in no way be compartmentalised within a particular part, the selection of articles under each theme has done enough justice to the reader and enables him to get a clear picture of the problem that the world faces at this very moment. By trying to give an ample recognition as well as adequate representation of ideas from various sides, the editors have come up with a commendable collection of articles that try to tackle the problem and provide for a solution which would have far reaching consequences.

Manjeri Subin Sunder Raj
Asst. Professor of Law

> The only way forward, if we are going to improve the quality of the environment, is to get everybody involved.
>
> —*Richard Rogers*

PROGRAMMES / ACTIVITIES OF ENVIRONMENTAL LAW RESEARCH CENTRES, NLSIU

1. 20th NOVEMBER, 2014 : BRAINSTORMING SESSION ON CLIMATE CHANGE RESEARCH

Commons Cell, National Law School of India University, Bangalore under the guidance of Prof M K Ramesh, are engaged in a significant research work on Climate Change under the auspices of MoEF&CC. The objective of this research work is to draft three alternatives for Climate Change Negotiations under the frame of UNFCCC: An Agreement, A Protocol and a third Outcome with legal force. As regards the same, the Cell organized a Brainstorming Session to have the insights in refining these drafts. The experts in the Brainstorming Session were Dr. Yellappa Reddy, Prof. Ravindranath, Prof. Gururaja and Dr. Srinivas Ravindra. The programme was attended by Mr. Chiradeep Basak and Mr. Manjeri Subin Sunder Raj, Assistant Professors of Law, NLSIU and the students (Research Fellows) of the Cell. Few participants wanted more coverage for wind and biomass sectors as well, as they found the emphasis was on Solar Energy. They were provided case studies based on decided cases and were asked to identify the issue involved, laws applicable, and authorities to be approached in case such problems arise. The participants had to make a small presentation on the same.

2. 11th to 13th February, 2015 - THREE DAY CAPACITY BUILDING WORKSHOP ON ENVIRONMENTAL LEGISLATIONS: INTERPRETATION AND ENFORCEMENT FOR POLLUTION CONTROL BOARD OFFICERS

Three day Capacity Building Workshop on "Environmental Legislations: Interpretation and Enforcement" Programme was held at NLSIU in association with Central Pollution Control Board (CPCB) for the Pollution Control Board Officers. Prof. (Dr.) O V Nandimath, Registrar, NLSIU inaugurated the workshop and addressed the gathering on 11th February, 2015. He also held a session on the same day in the afternoon. Prof. R Venkata Rao, Vice Chancellor, NLSIU addressed the gathering on 12th February, 2015. There were 20 participants. 13 resource persons dealt with various topics right from Overview of Environmental Law in India, including TRS Subramanian Committee Report, EIA and Public Hearing, Interpretation of Pollution Control Laws, Waste Management Laws, Environmental Law Compliances, Environmental Law Liability Regime in India, to Environment Justice Delivery: NGT and Cleaner Technology with Interpretation of Environmental Legislations. Prof. (Dr.) M K Ramesh, Professor of Law, NLSIU and Dr. Reetu Kakkar, IFS, Director General, EMPRI were the Chief Guests of the Valedictory Function on 13th February, 2015. She spoke to the gathering and also distributed the Certificates to the participants. Mr. Sethuramalingam, Administrative Officer, CPCB, expressed his appreciation over the conduct of the programme by NLSIU. The programme was appreciated by one and all the participants and they were of the opinion that such training programme should be held more often. The Programme was coordinated by Dr. Sairam Bhat, Coordinator, CEERA, NLSIU assisted by Mr. Manjeri Subin Sunder Raj and Mr. Chiradeep Basak, Assistant Professors of Law.

3. 19th and 20th February, 2015 : TWO DAY PROGRAMME ON RENEWABLE ENERGY LAW AND MANAGEMENT

Centre for Sustainable Development (CSD) recently organized a unique two-day program on "Renewable Energy Law and Management" in association with National Law School of India University, Bangalore; supported by the Ministry of New and Renewable Energy, Government of India (MNRE). The program was held at KAS Officers Association Hall, Infantry Road, Bangalore on 19th and 20th of February and was attended by about 40 participants from government, industry and academia. CSD's primary vision for this one-of-a-kind training program was to educate and equip target groups mainly consisting of personnel who are involved in the energy sector of government, energy regulators, industrialists who invest and bring about development in this sector and practitioners of law. The program was chaired by Shri Upendra Tripathy, Secretary, MNRE; Dr. A Ravindra, Chairman of CSD and former Chief Secretary to the Government of Karnataka and Dr. M K Ramesh, distinguished Professor of Law at NLSIU. The inaugural address was given by Sri Tripathy. He elucidated on MNRE initiatives on Solar to meet the targeted installed capacity for Solar Energy of the country. He emphasized the need for service technicians to provide timely services for maintenance of renewable energy installations. He said that Renewable Energy Policy would soon be brought out by MNRE where he suggested both CSD & NLSIU can organize workshops to discuss RE Policy.

The training started with an introductory session on the critical interface between Law and

Policy making in the Renewable Energy sector by Dr. Ramesh, followed by a session on Climate change and Renewable Energy by Mr Chiradeep Basak. The first day's sessions was concluded by a thought provoking lecture by Dr. R Srinivas, Executive Director, CSD on the Development and Transfer of RE Technology and its Role in Meeting Climate Change Regime. The second day was based on sessions on Policy and Legal dimensions of Energy Security and the Role of Regulatory Mechanisms governing RE sector dealt by Dr. Sairam Bhat and Mr. Manjeri Subin Sunder Raj. Interactive sessions and group discussions were taken up by faculties from Karnataka Renewable Energy Development Limited (KREDL) and Karnataka Electricity Regulatory Commission (KERC), who spoke on Fiscal Incentives, Taxation and Consumer Policies in the Renewable Energy Sector.

The programme was well received by the participants, who mentioned that it imbibed not only the theoretical parts of Law in the Renewable energy sector; but also helped in conceptualization, visualization, planning and application of Policy and Law in the Renewable Energy Sector. Few participants wanted more coverage for wind and biomass sectors as well, as they found the emphasis was on Solar Energy

4. 20th February, 2015: ONE DAY PARTICIPATIVE WORKSHOP ON 'PROTECTING THE ENVIRONMENT: THE LEGAL WAY'

The Environmental Law Clinic of National Law School of India University conducted a One Day Participative Workshop on 'Protecting the Environment: The Legal Way' on 20th February 2015 at Acharya Institute of Technology, Soldevanahali, Bengaluru along with Nature Watch, the Environmental Club at AIT. Over 60 participants attended the workshop. Both chief guests Dr. H D Maheshappa, Principal, AIT and Dr. M K Ramesh, Professor of Law, NLSIU and Patron, ELC, spoke about the importance of protecting and conserving the environment as well as stressed on the importance of law to achieve the same. An introduction to Environmental Law, detailing the constitutional provisions and legislations concerning different facets was discussed by Dr. Sairam Bhat, Mr. Manjeri Subin Sunder Raj and Mr. Rohith Kamath. The objective and the method of the participatory exercise were put across by Ms. Srividya R Sastry and Ms. Shibu Sweta, Research Officers, ELC. The participants were divided into groups comprising of 8-10 and each group was monitored by an ELC team member.

5. 25th to 27th May, 2015: THREE DAY TRAINING PROGRAMME FOR INDIAN ADMINISTRATIVE SERVICE OFFICERS (PROBATIONERS OF 2013 BATCH)

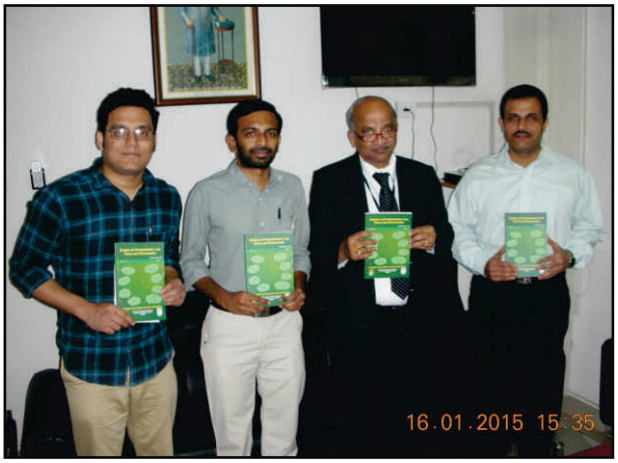
Three day training programme was held for IAS Officers at the Training Centre, NLSIU in association with Government of Karnataka. 8 officers participated in the programme. There were both external and internal Resource Persons. Hon'ble Mr. Justice Santosh Hegde, Former Judge, SCI took a session on "Role of Lokayukta in Karnataka. Other external resource persons were Dr. Aditya Sondhi, Mr. Nandakumar, Mr. Promod Nair, Mr. Ravishankar, Dr. C S Patil, Mr. Suresh Babu, Retd. Addl. DGP., Mr. Ravishankar. Internal Resource persons were Prof. M K Ramesh, Prof, Sairam Bhat, Prof. V Vijayakumar, Prof. Subba Rao, Prof. V S Mallar, Prof. V Nagaraj, Prof. O V Nandimath, Prof. V S Elizabeth, Prof. Babu Mathew, Prof. S B N Prakash.

PUBLICATIONS AND ONLINE RESOURCES

1. MARCH OF THE ENVIRONMENTAL LAW

Centre for Environmental Law Education, Research and Advocacy (CEERA) came out with the Re-launch issue of its March of the Environmental Law – RE-LAUNCH ISSUE, DECEMBER, 2013,by the team led by Prof. M K Ramesh and Dr. Sairam Bhat. This can be viewed on www.nlsenlaw.org. **Vol. VI Issue 1 was released in September, 2014.**

2. JOURNAL ON ENVIRONMENTAL LAW POLICY AND DEVELOPMENT



Centre for Environmental Law Education, Research and Advocacy (CEERA), NLSIU came up with Issue 1 of eJournal on Environmental Law Policy and Development during April, 2014. This can be viewed on www.nlsenlaw.org. Prof. (Dr.) R Venkata Rao, Vice Chancellor released **Issue 2 of the Journal on 16th January, 2015.**

3. ENVIRONMENTAL LAW WEBSITE:

Centre for Environmental Law Education, Research and Advocacy (CEERA), NLSIU regularly updates its online portal www.nlsenlaw.org. The website was inaugurated by the Council Members of NLSIU in 2013.

Environmental Education

According to UNESCO, "Environmental education is a way of implementing the goals of environmental protection. It is not a separate branch of science but lifelong interdisciplinary field of study." It means education towards protection and enhancement of the environment and education as an instrument of development for improving the quality of life of human communities.

Supreme Court order dated 22 Nov 1991, in a case filed by M C Mehta, directed cinema halls that they show slides with information on the environment; directed for the spread of information relating to the environment on All India Radio; and directed that the study of the environment becomes a compulsory subject in schools and colleges.

On '18th December 2003, the Honble Supreme Court further ordered, "We also direct the NCERT….to prepare a module (model) syllabus", and directed that

"We accept on principle that through the medium of education awareness of the environment and its problems related to pollution should be taught as a compulsory subject. The University Grants Commission will take appropriate steps immediately to give effect to what we have said, i.e. requiring the Universities to prescribe a course on environment. So far as education upto the college level is concerned, we would require every State Government and every Education Board connected with education upto the matriculation stage or even intermediate college to immediately take steps to enforce compulsory education on environment in a graded way."

NLSIU e-Journal on Environmental Law Policy and Development [JELPD]

Vol. 3 2016 ISSN (O) 2348-7046

CALL FOR PAPERS Vol. 3 2016

JELPD is a peer-reviewed, interdisciplinary journal, jointly published by the Commons Cell and the Centre for Environmental Law Education, Research and Advocacy (CEERA), a research wing on Human Rights and Environment, at the National Law School of India University, Bangalore, on its website www.nlsenlaw.org.

JELPD aims to be a forum that involves, promotes and engages students, scholars and anyone interested in environmental law, to express and share their ideas and opinions. The Journal also plans to feature guest articles by eminent scholars as well as articles by students, thereby providing an interface for the two communities to interact.

Submissions, under the following categories, are welcome.

1. Articles (Long Articles- between 8000-10,000 words including footnotes and Short Articles- between 5000-6000 words including footnotes)
2. Book Reviews (1000-2000 words including footnotes)
3. Case Commentaries (1000-3000 words including footnotes)
4. Comments/Articles on Policies / Documents / Draft Bills / Law Commission Reports / Committee Reports (3000 to 5000 words including footnotes)

SUBMISSION GUIDELINES:

1. Submissions are to be made only in electronic form. They are to be sent to **ceera@nls.ac.in**
2. Details about the author, including qualifications and institutional affiliations, if any, are to be detailed in the covering letter.
3. Only original work need be sent. It is presumed that, once the work has been sent, that it is the original work of the author so named and that it has not been published anywhere else.
4. All work need be sent in MS Word format- (.doc or .docx)
5. The author should maintain a uniform mode of citation throughout the whole work.

Scope and relevance: The work must be on contemporary legal issues on environment. The language used must be formal and clear, adhering to the submissions guidelines of the journal.

REVIEW PROCESS

The submissions received would be reviewed and the Editor(s) would determine whether the subject matter fits within the scope of the Journal and also would assess the quality of the manuscript. The decision on publication will be solely the discretion of the Chief Editor and it takes a minimum of 1–2 weeks after the deadline.

JELPD

Last date for Submission :November 15, 2015

For details about the Environmental Law Portal, kindly visit:www.nlsenlaw.org