



**Report on the International Webinar on
“Environment and Social Justice: Perspectives from India
and Australia”**

Organised by

**Centre for Environmental Law, Education, Research and
Advocacy (CEERA),**

**National Law School of India University (NLSIU),
Bengaluru**

In association with

University of South Australia (UniSA)

**DATE: AUGUST 26TH, 2021
TIME: 1 P.M. TO 3 P.M. IST**

Our Websites: nlspub.ac.in | nlsenlaw.org | nlsabs.com | unisa.edu.au

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ACKNOWLEDGEMENT

The Centre for Environmental Law, Education, Research and Advocacy (CEERA), National Law School of India University (NLSIU), Bengaluru would like to extend its sincere gratitude to the University of South Australia for providing an opportunity to engage in a thought-provoking discourse on issues relating to environment and social justice, by sharing and exchanging experiences from India and Australia. We are especially grateful to **Prof. Vicki Waye, Dean of Law, UniSA JUS**, for her guidance and unending support in organising the Webinar and to the entire UniSA team including **Prof. Eileen Webb, Prof. Jennifer Mckay** and **Dr. Sarah Moulds** for sharing rich insights on contemporary topics of legal research.

The Centre also extends its heartfelt gratitude to **Prof. M. K. Ramesh**, our mentor and guide, for his constant support to the team and to our Vice Chancellor, **Prof. Sudhir Krishnaswamy**, for his encouragement.

Finally, the Centre acknowledges the support and contributions of **Ms. Madhubanti Sadhya, Mr. Rohith Kamath, Mr. Raghav Parthasarathy, Ms. Geethanjali K. V., Mr. Vikas Gahlot** and **Ms. Lianne D'Souza** in organising this Webinar.

- **Prof. Sairam Bhat**

Coordinator and Professor of Law,
CEERA, NLSIU

ABOUT THE WEBINAR

The International Webinar on “Environment and Social Justice: Perspectives from India and Australia” was conducted in furtherance of a Memorandum of Understanding concluded between the University of South Australia and the National Law School of India University, Bengaluru. The initiative was undertaken to create a platform for discussion and deliberation on legal issues of contemporary significance, particularly those of concern to India and Australia. The aim of the webinar was to share legal discipline-based research with each other with a view to facilitating further collaborative research opportunities in the future. This would serve as a stepping stone to advance the discussion on the issues and challenges pertaining to environmental and social justice and to contribute to the legal discipline in this respect through collaborative research.



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Resource Persons

 Prof. Eileen Welsh, Professor of Law, JUS	 Prof. Jennifer McCoy, Professor of Business Law, JUS	 Dr. Sarah Maulds, Senior Lecturer, JUS			
 Prof. M. K. Ramesh, Professor of Law, NLSIU	 Prof. Sarvam Bhat, Professor of Law, NLSIU	 Prof. Vicki Weye, Dean of Law UniSA/JUS			
 Ms. Madhusmita Sastrya, Teaching Associate, CEERA, NLSIU	 Mr. Rahul Kanath, Legal Consultant, CEERA, NLSIU	 Mr. Rajgan Parthasarathy, Teaching Associate, CEERA, NLSIU	 Mr. Vikas Gehlot, Teaching Associate, CEERA, NLSIU	 Ms. Gerhanjali X.V., Legal Associate, CEERA, NLSIU	 Ms. Lianne O'Seas, Research Fellow, CEERA, NLSIU

Registration on a limited basis only
Registered Participants shall receive certificates
To register write to liam@nlsiu.ac.in

Streaming Platform: 

About the Institutions

University of South Australia (UniSA) is a premier institution built on more than 150 years of teaching, learning, and research excellence. The UniSA Justice and Society works towards change in areas of critical social need through world-class research. CEERA, NLSIU is a benefactor of the MoEF&CC and Government of Karnataka whose objectives include building environmental law database, effectively networking among all stakeholders, building up an environmental law community and policy research in the area of environment.

ABOUT THE INSTITUTIONS

University of South Australia (UniSA)



The University of South Australia is Australia's University of Enterprise on the global stage, agile and astute, known for relevance, equity and excellence. UniSA operates through a partnered, end-user informed culture of teaching and research with a commitment to outstanding service, continuous improvement and sustainability.

UniSA Justice & Society combines complementary disciplines that target areas of critical social need, including psychology, law, social work, human services, arts, and Aboriginal and Australian studies. Its multidisciplinary research explores the connections between these areas, with a focus on transformative solutions. UniSA JUS' relationships with industry and government bodies lead to improved public policy, community development, and social and economic outcomes.

National Law School of India University (NLSIU)



The National Law School of India University, the Nation's premier law university, came into existence through a Notification under the National Law School of India University Act (Karnataka Act 22 of 1986). It signified the culmination of efforts by the Judiciary, the Bar Council of India, the Karnataka Bar Council, the Bangalore University and the Government of Karnataka to reform legal education and to establish a centre of excellence for legal education and research in India. The Law School has undertaken many research projects funded by the UGC, the Government of India, the Government of Karnataka, the Department of Women and Child Development, UN agencies, the World Bank, HIVOS, Department of Justice etc.

The Projects have served to strengthen research and teaching at the Law School. The National Law School of India University since its inception has taken proactive steps in organizing conferences, seminars, workshops, refresher courses and certificate courses to update academicians, law teachers, students, industry personnel in different subject areas.

Centre for Environmental Law, Education, Research and Advocacy

(CEERA)

Centre for Environmental Law Education, Research and Advocacy (CEERA), established in 1997



is a benefactor of the Ministry of Environment, Forest and Climate Change (MoEFCC), Government of Karnataka, the Bar and the Bench in India and abroad. Building an environmental law database, effectively networking among all stakeholders, building up an environmental law community and policy research in the area of environment are CEERA's main objectives. To achieve

the aforesaid, CEERA has incessantly and successfully been able to build functional and professional linkages with government agencies and non-governmental organisations in India, the South Asian Region and at International levels. CEERA annually organises, a University Grants Commission recognized, One-week Law Teacher's Refresher Course. CEERA, has been partnering with Central Pollution Control Board in organising Training Programmes for the officers of various State Pollution Control Boards and other industry professionals for over eight years. One of the first in India, to successfully be granted a World Bank project and thereafter being a steady choice for the Ministry of Environment Forest and Climate Change, CEERA has been entrusted with research projects and workshops to impart training to Forest Officers, Revenue Officers, Officers of the Central Pollution Control Board and also of the Government of Karnataka.

CEERA has several publications in the area of environmental law, the law and public policy along with Newsletters, CEERA March of the Environmental Law, NLSIU's first e-Journal – Journal on Environmental Law, Policy and Development and manages two websites viz., www.nlsenlaw.org, wherein the law and policy on environment is regularly updated, and www.nlsabs.com, a dedicated portal wherein the law and policy on Biodiversity Access and Benefit Sharing is updated periodically.

SUMMARY OF PROCEEDINGS

INTRODUCTORY ADDRESS

The virtual webinar on *'Environment and Social Justice: Perspectives from India and Australia'*, commenced with an introductory address by Professor Vicki Waye, Dean of Law, University of South Australia. Prof. Waye commenced the session highlighting the growth of the relationship between University of South Australia (UniSA) and the National Law School of India University (NLSIU) through Centre for Environmental Law, Education, Research & Advocacy (CEERA) which had begun in 2015. Prof. Waye briefly threw light upon the progress towards an advanced research relationship that has blossomed in collaboration of the two entities. Following this, she drew attention to the on-going struggles of the pandemic in view of the concerns of climate change and measures taken to tackle the same. Research has been directed at towards enhancing economic prosperity, health and well-being of the people while ensuring fairness and justice in the due process.

Taking over, Professor Sairam Bhat pointed how rightly the Webinar has been titled as Environment and Social Justice and how apt it is to the current situation. He expressed his excitement to collaborate with UniSA and share lessons from respective environments that could be learnt through this interaction which benefits. The webinar is facilitated for an interaction between research scholars and students to inspire thoughts and ideas. Prof. Bhat expressed his gratitude to UniSA for initiating the same. He also introduced Prof. M. K. Ramesh, who is a stalwart in environmental laws, having experience of over three decades. Prof. Ramesh, taking lead, warmly welcomed the co-hosts and proceeded to fondly recollect some of his previous affiliations with the University and some of their members.

SESSION 1

Climate Action for Climate Justice: India and Australia – A Case Study – Prof. M. K. Ramesh and Ms. Lianne D'Souza

Prof. M. K. Ramesh commenced the session by briefing about India's National Action Plan for Climate Change. In the year 2003-04, Prof. Ramesh was asked to review the draft plan and this was the period when climate law and advocacy was in its nascent stage in the country. The Plan included aspects of drafting and conveying climate agreements according to the Clean Development Mechanism (CDM). It was important that climate litigation involved the integration

of environment litigation across nations. The Government of India had commissioned to prepare a brief of the same, a year before the Paris Agreement came into existence. This has inspired to look into the climate actions of other nations and learn essential commonalities that are applicable.

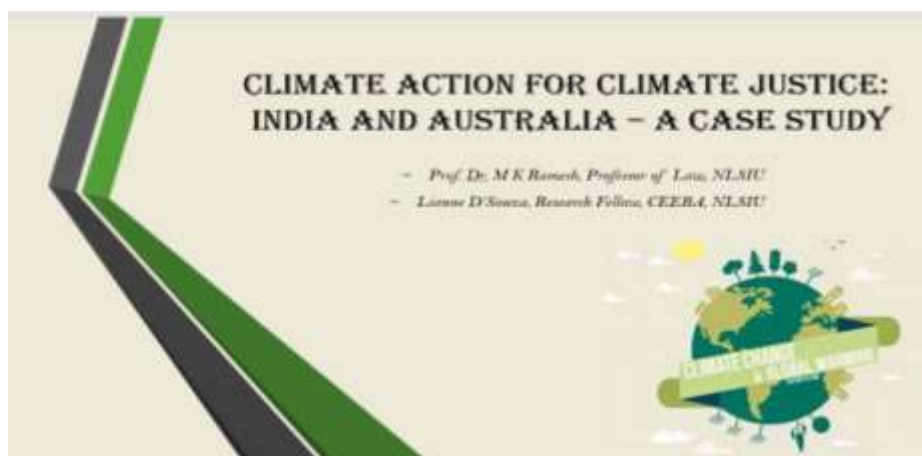


In India, the higher Judiciary has been instrumental in establishing environmental principles such as the 'precautionary principle', 'polluter pays principle' and the 'public trust doctrine'. Law Commission reports suggest the necessity to ensure justice and its access. NGTs were set up in view of the same. However, the major concern governing the NGT

and the Courts is that these bodies are not equipped with the required competence, and more so lack the ability to deal with techno-legal facets of the environmental law.

Prof. Ramesh discusses the paper that he has been co-authoring with Research Fellow, Ms. Lianne D'Souza, CEERA which pertains to 'accessing climate change'. The paper deals with certain important aspects such as means to seek climate justice, translation of climate law into implementation within the current legal regime. The developments in India are studied and analysed in light of experiences of other countries such as Australia, to show a collaborative assessment.

Taking on from there, Ms. Lianne D' Souza has highlighted certain essential components of the paper, which was relevant to the session held. The gist of what Ms. Lianne had presented is as follows:



The foundation of climate laws begins with understanding climate justice and means to access it. Climate justice should be built upon justice, equity and good conscience. This can be summed into three aspects: procedural justice - which is to understand the process; distributional justice - wherein it is integral that State and its policies reach the grassroots; just sustainability and just transition – which is adopting a climate-resilient behaviour. At the international level, it is important for nations to realise their common yet differentiated responsibilities in addressing climate change concerns and further is important to establish and understand the link between human rights and climate change. At the national level, inclusivity in terms of protecting vulnerable groups and mitigation of adverse impacts are important is studying and analysing the same. The Climate Action basically adopts principles and policies from the common law in addressing the gaps. For instance, India does not have any law in place and operates only as under action plans and executive aids. Similarly, integrating laws and precedents is essential to identify the various ways to work with the existing regime.

As a concluding remark, Ms. Lianne drew the climate actions in India which comprised of the legislations and policies such as National and State Action plans on Climate Change, Environment Protection Act of 1986, Disaster Management Act of 2005, NGT Act of 2010, etc.) and Judicial Precedents including important cases such as Wilfred J. v. Ministry of Environment and Forests (2014), Ridhima Pandey v. UoI (2017), etc. She had also highlighted the climate action in Australia which included a series of legislations and policies as well judicial precedents, which included recent developments as well.

A Qualitative Assessment of Socio-Legal Implications of Human-Animal Conflict in India – Ms. Madhubanti Sadhya



The next segment of the session was delivered by Ms. Madhubanti Sadhya, Teaching Associate, CEERA. Ms. Madhubanti, through briefing about her paper on human-animal conflicts, highlighted certain basic aspects to be understood about human-animal conflicts. The gist of her presentation is as follows:

The causes for the such conflicts to arise are loss of habitat due to increased buildings and other encounters, abundance of food that is found outside the protected areas, behaviour of species, poverty that forces dwellers to venture into protected areas, and population growth of both humans as well as animals. The effect of such conflicts is that they threaten individual species and habitats and exacerbates other threats such as increased apathy and increased threat of wildlife trade.

The interventions from the State and Judiciary have an important role to play in addressing these human-animal conflicts. Wildlife Action plans and similar executive aids such as Draft National Policy, and setting up of National Board of Wildlife has been integral in drawing plans with regards to early warning signals, repellent measures thus avoiding killing of animals is very crucial. Similarly, judicial precedents ensuring animal welfare has also helped paved way for regulating and addressing these conflicts. For instance, there has been instances where the Supreme Court has directed the Forest Department to not undertake any measures that results in reduction of animal population. The case of Hospitality Association of Mudumalai v. In Defence of Environment and Animals and Others, a 2020 ruled case had seen that the Court directed removal of facilities to protect the elephant corridor and any case of elephant death must be dealt with very strict compensation.

However, the ground reality is that there a significant number of under-reported deaths such as that caused due to snake bites. In instances where ex-gratia compensation is to be granted, the States determine the amount under the Centrally sponsored schemes. However, the problem that arises at this juncture is the determination of the sum based on the availability of funds and the disbursal of the same. For instance, Maharashtra grants the largest compensation. Further, livestock owners are unaware of the innovative tools of mitigating livestock losses. It has also been observed that the litigation as well as relief measures are not taken to the community, especially as seen in the districts of Coorg and Kodaugu.

The recommendations suggested in the paper include increased intervention of the community, training in outreach and conflict intervention, streamlining of disbursement of compensation and ensuring that benefits reach the local community. For instance, the Tiger Conservation Fund maintained in Maharashtra aims at enhancing the development of the local people. In addition to

the same, crop and livestock insurance, plantation of crops and ensuring that food is available in the protected areas itself, and exploring means to save livestock are some other recommendations in order to address human-animal conflicts.

Rights of Indigenous Communities to Environmental and Social Justice in India – Prof. Sairam Bhat and Mr. Vikas Gahlot



The session was headed by Prof. Sairam Bhat. He briefly discussed the importance of rights of indigenous communities, also recognised as forest dwellers in India. A significant population of India belongs to the forest dwellers' community. Hence, it is important to safeguard their interests, especially in light of the

liberalization, privatisation and globalisation processes which have the potential to threaten their interests. The local communities fight for forests to be untouched. It is also seen that the habit of collecting honey and medicinal plants as well as grazing cattle has been practiced by forest dwellers since time immemorial.

In light of the international commitments that India has taken upon itself, conflicts including socio-economic concerns have been well in the light. Moreover, naxalism is seen to be quite prevalent in the country. Post the inception of the Forest Rights Act, both individual rights in respect of land use rights as well as community rights have been given emphasis. As per the data collected in 2020, it is revealed that over 20 lakh dwellers have been granted land and relate rights. Given that the law is work in progress, it is important that the State expresses its interests over fighting for and protecting the same. It is important to remember that forest rights cannot be alienated under any circumstance. Monetary concerns are a significant challenge. Access and benefit sharing under the Biological Diversity Act is an attempt to provide monetary as well as non-monetary are shared even amongst the non-state actors

.Mr. Vikas Gahlot, Teaching Associate, CEERA, concludes by stating about 8.6% of the population being forest dwellers, it is integral to guard their rights, which is precisely aimed at in the paper by way of focusing on legal and policy measures.

The session concluded with a few notable remarks by Professor Waye, following which the second session commenced.



SESSION 2

Consumer Protection Law and Older Australians: An Update – Prof Eileen Webb.



In this paper presentation, Professor Eileen Webb, University of South Australia discusses in detail the abuse which the older community of the Australian continent are facing. She started off by stating a number of scams and high-profile commercial outlets tend to target the older community, exploiting their vulnerabilities and insecurities which can be viewed as a breach of the Australian

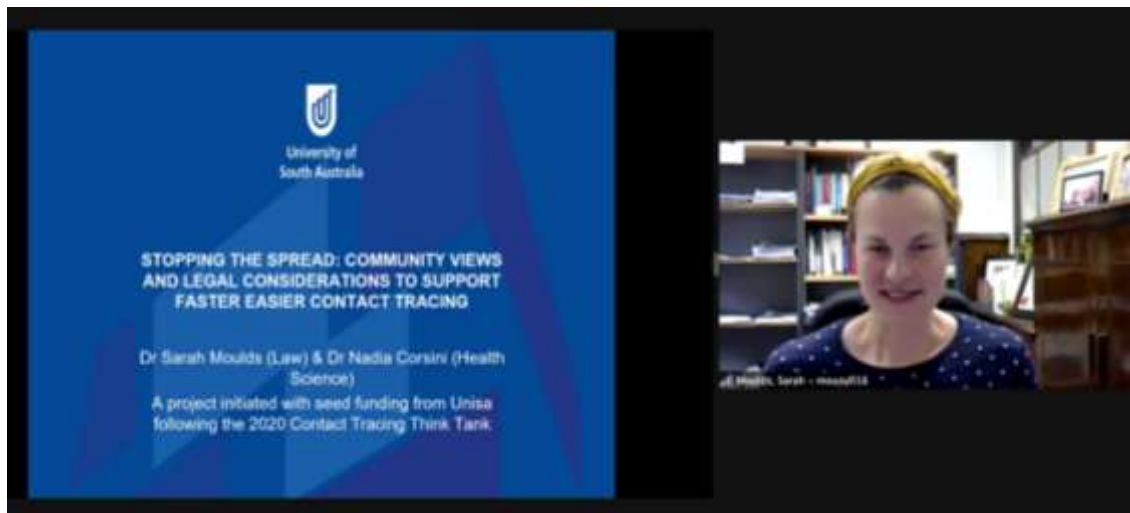
Consumer Law. Consumer law is to emphasize on the protection of trade and commercial relationship between the client and customer, but in the case of scams towards the older community, it is likely to be seen as a special case that needs particular attention.

Prof. Webb put forth a question on what the duty of law is, with regard to the old age care providers not being brought to justice for lack of services being provided. There is also a situation in the country where a huge fine had to be incurred by the largest care provider in Australia because of the lack of services and non-adherence to quality standards. Professor Webb went on to elaborate on the number of shortcomings in the consumer law with respect to protecting the older community. The standard of service to be provided is the most important aspect to protect the older community from abuse, lack of nutrition, use of restraints to not let dementia patients leave the facility and instances where the older community is forced out of the working sector, leading in the formations of insecurities and income deficiency. Unfair contractual terms in the retirement villages are also instances where the law can step in to evaluate the situation.

Misleading or deceptive conduct, unconscionable conduct and unfair contract terms are some of the ways in which the older communities are tricked into entering contracts which are really unfair and would likely hurt their financial stability. These are some of the tricks which are detected and highlighted in the Australian Consumer Law, breaching Section 61, 62 and 63 of the same for not providing standard quality services, therefore leading to abuse. The only way to handle the same issues, as stated by professor is through the consumer law itself.

In conclusion, Prof. Webb puts forth an idea of how the law has to work to include the older community to ensure there would not be any further unfair contract terms and other relating consumer disputes. After answering a question with respect to the presence of a legal duty of the children to pay maintenance to their parents, Prof. Webb states that there is a lack of certain provisions in the Australian law dealing with the financial protection of the older community.

Stopping the Spread: Community views and legal considerations to support faster, easier COVID-19 contact tracing – Dr. Sarah Moulds



Dr. Sarah Moulds, Senior Lecturer, University of South Australia starts off her presentation on COVID-19 contact tracing by bringing in certain aspects which have to be practices by the community to have a faster detection of the spread of infection. One of the main aspects which she highlighted is the necessity for collection and sharing of information with respect to the spread which also brings to light the necessity of right to privacy and the same would always be based on trust the people have in the government.

As communication is an important factor to handle and locate the spread of the infection, the willingness of the people would also have to considered on this matter. The faster information is being presented, the faster the location of the spread can also be determined. Through collected data from focus groups, there is a vast majority of people who are willing to contribute to stop the further spread of COVID-19. Dr. Moulds utilizes the data collected after discussion with the older community, Bhutanese community and lived-experience of trauma to rely on the presentation. With confidence levels varying in all three categories, there is a mix bag of range of data which is to be analyzed.

Owing to the federal nature of Australia, Dr. Moulds brought to light the necessity for state level contact tracing systems to be set up, as it would help in having a more grassroots level approach to the problem. Dr. Moulds goes on to discuss about the lack of a concrete opinion on right to privacy but the existence of various laws that talk about privacy in varying circumstances, would highlight certain difficulties that exist emerge in guaranteeing the safety of the information being revealed to the contact tracers.

In conclusion, Dr. Moulds recommended certain methods which would be beneficial in collection of data and contact tracing.

1. Collection of data prior taking the COVID-19 test.

2. Providing information to people regarding the whereabouts of their information.
 3. National guidelines would also be beneficial for developing the information transfer system.
 4. More emphasis is to be given on privacy and contact tracing.
-

Sharma by her litigation representative Sister Arthur v. Minister for the Environment (2021) FCA 560 and Intergenerational Equity – Climate Activists Win in Australia? – Prof. Jennifer McKay



In the last paper presentation of the evening, Prof. Jennifer McKay discussed about a case that brought to light environmental justice in Australia. An injunction filed to stop the extension of a coal mine in northern New South Wales, is the subject matter of this particular case. Threatening a number of species and would also increase the surface temperature by a slight margin. This petition brought in front of the Federal Court by a group of young people, representing all below the age of 18 arguing about the common law duty of care which is owed by the Minister of Environment.

Professor McKay highlighted the most interesting aspect of the case, is the decision given by the judges. Never has it even been done in any court in Australia, the judge accepted the merit review of climate science and iterated in it the concept of intergenerational equity. Another aspect that

professor praises high in this case was the injunction filed much prior to any harm caused, therefore forcing the courts to look into the expert report submitted. Professor goes on to talk about the expert report which highlighted that, there could possibly be 100 million tonnes of CO₂ expunged into the climate post the combustion of the mined coal. This act would be seen as a scope 3 level emission, making this case to potentially have an international interest associated to it.

The plaintiffs in this case brought the minister to court to tender evidence with regard to climate change that could be caused, by relying on reports of a climate expert. Bringing in a substantial manner of court proceedings, rather than a more procedural court hearing which would be the case if it were a judicial review, this case is hailed as an important decision in the Australian continent.

Prof. McKay also highlighted a question that was asked to one of the plaintiffs about the reasonableness of the minister in exercising their power to grant approval to fossil fuel projects. The answer for which was in the negative, as there is to be a reasonable duty of care which is to be exercised by the minister as the mine would cause a loss to the lives of people and to an enormous number of species living in that habitat. Prof. McKay also highlighted a quantified amount, the amount which would have to be paid extra by persons below the age of 18 would be one hundred and thirteen thousand dollars. This quantification helped better understand the urgency of the matter.

Lastly, Prof. McKay highlighted the change the case would bring with respect to participation of students and the involvement of the citizens in regards of environmental or humanitarian issues. She also goes on to highlight the need for an interpretative approach of the provisions of the statute, which would ensure for the acceptance of a broader statutory scheme which was the intent behind the same. The main intent of the case was to bring in a sense of merit to be accepted by the courts to proceed with arguments and consider expert reports as important documents. As it would help to highlight the duty of reasonableness which is to be exercised by the ministers in performance and exercise of their power.

CONCLUDING REMARKS



In conclusion, both Prof. Sairam Bhat and Prof. Vicki Waye shared few words of gratitude for the support rendered by the participating institutions and to the participants and conveyed their enthusiasm to collaborate further for more academic endeavours and development.