

BELLANDUR LAKE- LOCAL AUTHORITIES UNDER SCRUTINY

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The immense increase in population density in urban areas not only affects the spatial distribution but, as illustrated by Scholars, leads to paucity in availability of resources.¹Water resources; susceptible to human activities, became dumping yards due to eutrophication and silt deposition.²Metropolitan cities hit by acute water crisis, lose water bodies with incessant dumping of garbage and debris, tampering with inflow and outflow channels and change in land use etc.³Bellandur Lake in Bengaluru is a horrendous example of implication of urbanisation where ignorance of local authorities changed the story.

BELLANDUR LAKE: A TALE OF SEETHING CITY

Bellandur Lake is one of the largest lakes, covering across 950 acres area of the expanding Bengaluru perimeters, sharing a long history of cultivating agricultural lands around it. It was, initially a habitat for variety of birds and greenery.⁴ Till 1970, it was a source of living for 400 fishing families, supplying water to 18 villages acting as an ecological zone by storing rain water.⁵As a part of drainage system, it functioned as receptor for three other chains that joined Varthur tank and eventually merged into Pinakani River.⁶By 1980, at peak of urbanisation, breakage in chains, untreated industrial waste was released in these water bodies. The immediate effect was on the fisheries, disrupting the livelihood of fishing community.⁷ The next decade saw incoming of highway roads around the lake which

¹ Jean Dreze & Amartya Sen, "Population, Health & Environment" in India: Development & Participation (Oxford University Press, 2002) p. 197.

² M.S.Reddy & N.V.V.Char, *Management of Lakes in India*, 10 March 2004, available at: http://www.worldlakes.org/uploads/management_of_lakes_in_india_10mar04.pdf (Last accessed on April 30th, 2016).

³ Amandeep Kang, *Protection and Management of Urban Lakes in India*, CENTRE FOR SCIENCE AND ENVIRONMENT, available at: <http://www.cseindia.org/userfiles/Lake%20Protection%20and%20Management%20of%20Urban%20Lakes%20in%20India.pdf> (Last accessed on April 30th, 2016).

⁴ Madur, Bellandur Lake, Bangalore – A Lake with Lost Beauty, 21 April, 2014, KARNATAK.COM, available at: <http://www.karnataka.com/bangalore/bellandur-lake/> (Last visited on 30th August, 2016).

⁵ Akshatha M, All you need to know about Bellandur Lake and its problems, 29 Oct, 2015, CITIZEN MATTERS, available at: <http://m.bangalore.citizenmatters.in/articles/all-you-need-to-know-about-bellandur-lake-and-its-problems> (Last visited on 30th August, 2016).

⁶ Bellandur Lake, Rainwater Harvest, available at: <http://www.rainwaterharvesting.org/bellandur/bellandur.htm> (Last visited on 30th August, 2016).

⁷ *Ibid.*

increased settlers and industries in vicinity of catchment area.⁸ The clogging and immense growth of hyacinth⁹ and growing dependency on Cauvery waters left local water bodies merely as sewage pits.¹⁰ The encroachment by private builders increased as it garnered high demand for lake front property.¹¹ In recent years, despite lake side fire incidents due to froth constituting high concentration of phosphorus, government blamed small industries that released untreated wastes.¹²

THE INCESSANT LEGAL INTERVENTIONS

In environmental lawsuits, no one can be held solely responsible for the crimes they do against the ecological balance. Garrett Hardin's famous economic theory "Tragedy of Commons" implies recognition of necessity by society instead of incriminating one.¹³ Bellandur case reminds that responsibility lies on everyone but an alternative measure of higher tax for improved utilisation of resources is generally eschewed.¹⁴ An umpteen number of cases from Karnataka High Court can be cited back from 1990 to 2014. In 1996, Gram Panchayat from Bellandur filed PIL against Bangalore Water Supply and Sewerage Board (BWSSB) followed by fishing community in 1997 against the Chief Minister.¹⁵ In spite of legal directions inaction of local authorities became a nuisance.¹⁶ In 2006, RTI activist CH Ram again took the issue regarding government tardiness to Karnataka Information Commission; withal, in wane.¹⁷

⁸Harini Nagendra, *A tale of Two lakes: Collective Action in Cities*, 7 October, 2012, THE NATURE OF CITIES, available at: <http://www.thenatureofcities.com/2012/10/07/a-tale-of-two-lakes-collective-action-in-cities/> (Last visited on 30th August, 2016).

⁹*Ibid.*

¹⁰ Anjali Vaidya, *Beneath the Foam and Fire*, 23 May 2015, THE WIRE, available at: <http://thewire.in/2015/05/23/beneath-the-foam-and-fire-2342/> (Last visited on 30th August, 2016).

¹¹Ramesh.N & Krishnaiah. S, *Scenario of Water Bodies (Lakes) In Urban Areas- A case study on Bellandur Lake of Bangalore Metropolitan city*, IOSR JOURNAL OF MECHANICAL AND CIVIL ENGINEERING, Volume 7, Issue 3 (Jul. - Aug. 2013), PP 06-14, available at: <http://www.iosrjournals.org/iosr-jmce/papers/vol7-issue3/B0730614.pdf?id=2325> (Last visited on 30th August, 2016).

¹²Kushala S, *BWSSB throws up its hands, signs the death warrant for Bellandur Lake*, 13 June, 2015, BANGALORE MIRROR BUREAU, available at: <http://www.bangaloremirror.com/bangalore/civic/BWSSB-throws-up-its-hands-signs-the-death-warrant-for-Bellandur-Lake/articleshow/47648334.cms> (Last visited on 30th August, 2016).

¹³ Garrett Hardin, *The Tragedy of the Commons*, SCIENCE, NEW SERIES, Vol. 162, No. 3859 1968, pp. 1243-1248.

¹⁴Kushala, *supra* n 12.

¹⁵ Chief Minister tried to appease by making fishery department to install eggs in the lake but failed to resurrect the habitat due to already pollutants created mischief; *supra* n 6.

¹⁶ In 1997 following PIL by activist Ramamurthy, High Court direct BWSSB to survey the sewage network and block the sewage polluting the lake. The government agency when showed slackness a contempt petition was filed which then got referred to LokAdalat. Akshatha, *supra* n 5.

¹⁷*Supra* n 6.

Various Committees spoke of exigency to recuperate the faults of local authorities. N.K. Patil Committee of 2011 prepared an action plan for preservation of lakes in Bengaluru.¹⁸ Lake Development Authority (LDA) was found to be critical in report but remained a toothless enforcement agency.¹⁹ Report also focused on distribution of responsibilities by agencies and Green Cess levied on vehicle users and POL consumers, etc.²⁰ In 2015, B.S. Patil Committee Report recommended segregation of BBMP in five corporations²¹ forming a multi- municipal structure to replace a single entity.²²

Lately, National Green Tribunal in its order against the State and local government and private construction entities invoked polluter pay principle and precautionary principle to determine the liability of the above-mentioned respondents. Although the case was against illegal encroachment, it held government responsible for Bellandur adversity.²³

THE CLASH OF AUTHORITIES

The major onus lied on BWSSB for illegal release of pollutants in the lake and failing in maintaining sewage treatment plants (STPs). Other local authorities, Bangalore Development Authority (BDA), Bruhat Bengaluru Mahanagara Palike (BBMP) and LDA, equally abdicated their duties.²⁴ The major reason behind the fiasco was operations lacking integrative efforts.

BDA had the catchment and surrounding areas under their jurisdiction, where the task was to rejuvenate the lake; on contrary, 40 acre earmarked land was diverted for SEZ jeopardizing the ecological balance.²⁵ Averting on a priori ascendency the BWSSB was blamed to fail in installing STPs, meanwhile BDA remained inert.²⁶ The Karnataka State Pollution Control Board (KSPCB), like supine BDA, hold that noxious froth creating trouble for the passers-by

¹⁸ N K Patil Report, *Preservation of Lakes in the City of Bangalore*, 26/02/2011, available at: https://www.karnataka.gov.in/ldakarnataka/Documents/LakeReport_26thFeb2011.pdf (Last visited on 30th August, 2016).

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Akshatha M, With 400 wards, five parts and five mayors, committee unveils its plan for Bengaluru, 13 July, 2015, Citizen matters, available at: <http://bangalore.citizenmatters.in/articles/bbmp-restructuring-committee-final-report> (Last visited on 30th August, 2016).

²² *Ibid.*

²³ *Forward Foundation v. State of Karnataka & Ors.* ORIGINAL APPLICATION NO. 222 OF 2014.

²⁴ Akshatha, *supra* n 5.

²⁵ Kushala, *supra* n 12.

²⁶ Akshatha, *supra* n 5.

was due to no proper infrastructure by BDA.²⁷ On other side of the story, its KSPCB duty to regulate discharge of effluents by implementing standards for sewage treatment and control emission of gases, an equal obligation towards water and air bodies.²⁸The KSPCB, instead, directed BDA to take measures to curb coagulation of water with chemicals. A mandate for communities with 50 homes to have a sewage system was issued by KSPCB and assured to constitute a vigilance committee to review criminal cases against emitters, leaving implementation unchecked.²⁹ Ultimately, BDA waits for BWSSB to build sewage system and proper inlets to keep control on leaks from treatment plant to stop overflows.³⁰The High Court appointed committee, in 2015, revealed that lack of funds and non-payment of hefty charges led to impasse for BWSSB. Where, BWSSB estimates Rs. 1000 Cr. Amount for reviving Bellandur and Varthur Lakes³¹, BDA was found to sell lands reserved for sewage treatment plants.³² The present situation illustrates self-destructive system that can never be remedied unless strong opinions do not bind authorities.

Nevertheless, recent reforms like enactment of Karnataka Lake Conservation and Development Authority Bill 2014 conferring LDA with power to prosecute residents and officials for errant behaviour, assures collective responsibility of the agencies but miss to reciprocate on locus of citizens in deliberations. The Bangalore Development Authority Act 1976 allows the Authority to direct the BWSSB to provide development assistance at the cost paid by the BDA.³³ Erstwhile, there is no reference about BDA, KSPBC relatively in BWSS Act 1964.

Agenda 21 of UN Environment Programme recognises the importance of local government bodies with power distribution to improve the local choice and local voice. Being in direct

²⁷BDA must check Bellandur lake froth in 45 days, KSPCB says, 15 Oct, 2015, Deccan Herald, available at: <http://www.deccanherald.com/content/506474/bda-must-check-bellandur-lake.html>(Last visited on 30th August, 2016).

²⁸ Functions, Central Pollution Control Board, Ministry of Environment & Forest, available at: <http://cpcb.nic.in/Functions.php>(Last visited on 30th August, 2016).

²⁹Supra n 27.

³⁰Mohd. Yakoob, BDA points at BWSSB for polluting Lakes, 14 Dec 2015, available at: <http://www.newindianexpress.com/cities/bengaluru/BDA-Points-at-BWSSB-for-Polluting-Lakes/2015/12/14/article3175982.ece>(Last visited on 30th August, 2016).

³¹Express News Service, BWSSB Says it needs Rs. 1000 Cr to save two lakes, 22 May, 2015 NEW INDIAN EXPRESS, available at: <http://www.newindianexpress.com/cities/bengaluru/BWSSB-Says-it-Needs-Rs-1000-Cr-to-Save-Two-Lakes/2015/05/22/article2827126.ece> (Last visited on 30th August, 2016).

³²Court tells BBMP, BDA not to allow new construction projects near Bellandur Lake, Aug 18, 2016, TIMES OF INDIA, available at: <http://timesofindia.indiatimes.com/city/bengaluru/Court-tells-BBMP-BDA-not-to-allow-new-construction-projects-near-Bellandur-Lake/articleshow/53748239.cms> (Last visited on 30th August, 2016).

³³ S. 53, Bangalore Development Authority, 1976, Act no. 12.

contact with people, they carry out major implementation fulfilling social and economic needs relative to environment. Bellandur incident imparts the necessity of sustainable development and integrity in consultative processes.³⁴

³⁴ Local Authorities' Initiatives in Support of Agenda 21, UNEP, available at: <http://www.unep.org/documents.multilingual/default.asp?DocumentID=52&ArticleID=76&l=en> (Last visited on 30th August, 2016).

TUSSLE BETWEEN ANIMALS RIGHTS AND RELIGIOUS SANCTION IN THE 21st CENTURY

“ Any religion or philosophy which is not based on a respect for life is not a true religion or philosophy.”

- Albert Schweitzer.

INTRODUCTION

Unseen sufferings, unheard cries, lingering agony and lonely deaths. These words clearly epitomize the pain millions of animals suffer at the hands of humans every single day. Although killing or any form of torture to humans is to be considered a crime instantly but even today our legal system stands a mute witness to the uncountable incidences of animal cruelty happening all around the world. In India, 'zoolatry' has been considered as an indispensable part of our culture. Even the history reflects ethos of conservation and reverence for animals, which was long before animal activism became a global movement and animal laws were enacted in our country as in their present form. But as we move ahead in the rat-race for being a developed country, our morals and ethos are being left behind and superseded by insensitivity and egotistical attitude hidden under the garb of religion.

The ritual of animal sacrifice performed in various religions since time immemorial is not a form of worship but is in essence, it's a social evil that is based on superstition and violence against the helpless.¹ It has nothing to do with either religion or culture. Animals are also a creation of God. They also have a right to live in harmony with human beings and the nature. All Devtas and deities are kind hearted and bless the humanity to prosper and live in harmony with each other.² But unfortunately, the rules requiring kindness to animals are being neglected and forgotten. The acts of cruelty that are being perpetrated in the name of religion are absolutely misplaced and based on misconstrued interpretation of the concepts of faith and worship rooted in superstition or observance of condemned practices as a result of blind faith which is contrary to scientific temper and reason.

BACKGROUND

In contrast, the actual position on animal welfare under various religions and particularly within Islam is an excellent example of compassion and concern for those who depend on others for their care. It can be seen that cruelty is strongly condemned over and over in the Qur'an and the hadith of the Prophet. Specifically, cruelty to animals is condemned and punishments are provided for it, just as cruelty to humans is punished.³ The religion itself specifies that necessary slaughtering must be done in a way to minimize the fear and pain to the animal. Recalling that the general rule is: "The Prophet said that God required being kind in all things. So if you kill, be kind in the killing, and if you slaughter, be kind in the slaughtering."⁴

¹ Ramesh Sharma v. State of Himachal Pradesh, CWP No. 4499 of 2012

² Ibid

³ Qur'an 99:7-8

⁴ Sahih Muslim 3615; Tirmidhi 1329; Nasa'i 4329, 4335-4338; Abu Dawud 2432; Ibn Majah 3161; Musnad Ahmed 16490, 16494, 16506, 16516; Sunan al-Darimi 1888

But with changing times men no longer love or admire the gods but fear them cringingly. There has been decline of the true spirit of religious fervor along with the growth of an intricate ritual, a complex liturgy, a cold, formal and artificial organization of clerical pomp and sacrifices. It would seem that at all such periods there is a deliberate attempt on the part of an increasingly powerful clergy to emphasize the dark and fearful side of religion in order to increase its power over the superstitious minds of its followers.⁵

The act of animal sacrifice is nothing short of a heinous crime and no crime will never become less odious because sanctioned by what any particular sect may designate as religion.⁶ No matter how free the exercise of religion may be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as the subjects of punitive legislation⁷ without which constitutional guarantee of civil liberty would be a mockery.⁸

JUDICIAL DECISIONS THAT CHANGED THE STATUS OF ANIMALS

Even the Supreme Court of India that stands as a custodian of the Indian Constitution agrees that an argument, that a particular practice is dated about 300 years and is a deep rooted cultural trait does not provide any justification for its continuation because it has been declared by the Hon'ble Supreme Court that custom or usage, even if proved to have existed in pre-Constitutional era, cannot be accepted as a source of law, if such custom violates human rights, human dignity, concept of social equality and the specific mandate of the Constitution and law made by the Parliament. The vision of the founding fathers of the Constitution of liberating society from blind adherence to traditional superstitious beliefs sans reason or rational basis.⁹ Therefore, to permit commission of ritual slaughter with any rational basis contravenes the very spirit of the Constitution of India and the basic principles of a progressive and civilized society.¹⁰ Catering to the demands of a man to make professed doctrines of religious beliefs superior to the law of the land is none less than to permit every citizen to become a law unto himself which should not be permitted at any cost.¹¹

A. Animal Welfare Board of India v. A. Nagaraja and Ors.¹²

In 2014, the Hon'ble Supreme Court of India passed a landmark judgement also known popularly as the Jallikattu judgment pitching strongly on animal rights in India. It is presently considered a bible in matters of animal laws. The apex court in ¶16 extended the constitutional/fundamental right to life¹³ to animals as well.

⁵ *AMAURY DE RIENCOURT, The Soul of India (Revised ed.1986)*

⁶ *Board of Education v. Barnette*, 319 U.S. 643 (1943)

⁷ D.D. Basu, *COMMENTARY ON CONSTITUTION OF INDIA*, pg no. 3448. (22nd ed.)

⁸ *Adelaide Co of Jehovah's Witnesses Inc v. The Commonwealth*, (1943) 67 CLR 116

⁹ *N. Adithayan v. Travancore Devaswom Board and Ors.*, (2002) 8 SCC 106

¹⁰ *Ramesh Sharma v. State of Himachal Pradesh*, CWP No. 4499 of 2012

¹¹ *Reynolds v. United States*, 98 US 145, 244 (1879)

¹² (2014) 7 SCC 547

¹³ Art. 21 of The Indian Constitution

“16...Every species has a n inherent right to live and shall be protected by law, subject to the exception provided out of necessity. Their lordships have further held that so far animals are concerned, “life” means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honour and dignity. Animal has also honour and dignity which can not be arbitrarily deprived of.”

It is submitted the single worst thing one that do to an animal emotionally is to make it feel afraid.¹⁴ Both anxiety and fear play an important role in animal suffering.¹⁵ Law recognizes the same and therefore, as per law, no animal can be slaughtered in a slaughterhouse in sight of other animals.¹⁶ The slaughterhouse shall provide separate sections of adequate dimensions sufficient for slaughter of individual animals to ensure that the animal to be slaughtered is not within the sight of other animals.¹⁷ It is questioned that if the animal cannot be slaughtered in a slaughter house in sight of other animals, why animals are allowed to be slaughtered in view of other animals, causing immense fear and anxiety among the remaining animals trapped in the fishing nets.¹⁸

B. Mohd. Hanif Quareshi and Ors v. State of Bihar¹⁹

The constitutional bench came to the conclusion that it is the duty of every free Mussulman arrived at the age of maturity, to offer a sacrifice on the YD Kirban, or festival of the sacrifice, provided he be then possessed of Nisab and be not a traveller. The sacrifice established for one person is a goat and that for seven a cow or a camel. It is, therefore, optional for a Muslim to sacrifice a goat for one person or a cow or a camel for seven persons. It does not appear to be obligatory that a person must sacrifice a cow. Once the religious purpose of Muslims consists of making sacrifice of any animal, which should be a healthy animal, on Bakri Idd, then slaughtering of cow is not the only way of carrying out that sacrifice. It is, therefore, obviously not an essential religious purpose but an optional one.

For lifting the ban it should be shown that it is essential or necessary for a Muslim to sacrifice a healthy cow on Bakri Idd day and if such is the requirement of religious purpose then it may enable the State in its wisdom to lift the ban at least on Bakri Idd day. Therefore the constitutional bench in ¶9 came to the consensus that: -

“9.... Similarly it has to be held that if it is not necessary or essential to permit slaughter of a healthy cow for any religious purpose it would be equally not open to the State to invoke its exemption power under S.12 for such a religious purpose. We, therefore, entirely concur with the view of the High Court that slaughtering of healthy cows on Bakri Idd is not essential or required for religious purpose of Muslims or in other words it is not a part of religious requirement for a Muslim that a cow must be necessarily scarified for earning religious merit on Bakri Idd

¹⁴ TEMPLE GRANDIN & CATHERINE JOHNSON, *Animals in Translation*, (2006)

¹⁵ *Animal Welfare Board of India v. A. Nagaraja and Ors.*, (2014) 7 SCC 547

¹⁶ Rule 6(1), PCA (Slaughter House) Rules, 2001

¹⁷ Rule 6(3), PCA (Slaughter House) Rules, 2001

¹⁸ Rhyne, et al., *DIMENSIONS OF SUICIDE: PERCEPTIONS OF LETHALITY, TIME, AND AGONY. SUICIDE & LIFE THREATENING BEHAVIOUR*, 25(3), 373-380 ((1995))

¹⁹ AIR 1958 SC 731

C. Sardar Khan & Anr. v. State Of Bihar & Anr.²⁰

It is submitted that as per law, if a slaughter is particularly a ritual slaughter, the knocking section in slaughter house is so planned as to suit the animal and such knocking section and dry landing area associated with it is so built that escape from this section can be easily carried out by an operator without allowing the animal to pass the escape barrier.²¹ But the ritual of animal sacrifice involves an unimaginable amount of cruelty towards the sacrificial animals, which are often seen lying around in pain and suffering after receiving blows on their necks, which usually does not kill them in first go. Sometimes, the animal even tries to escape in a fatally wounded condition, which is extremely painful.

D. Ramesh Sharma v. State of Himachal Pradesh²²

The latest judgment of the Himachal Pradesh High Court which dealt with the fact that the religious slaughter should be completely banned because such a practice is based on age old traditions and mystical beliefs which are contrary to scientific temper and logic. Some important ¶ have been reproduced below: -

“75. The animals have basic rights and we have to recognize and protect them. The animals and birds breathe like us. They are also a creation of God. They have also a right to live in harmony with human beings and the nature. No deity and Devta would ever ask for the blood. All Devtas and deities are kind hearted and bless the humanity to prosper and live in harmony with each other. The practice of animal/bird sacrifice is abhorrent and dastardly.”

“76.... It is the man’s special responsibility towards the animals and birds being fellow creatures. We must respect the animals. They should be protected from the danger of unnecessary stress and strains.”

The agony of death by cutting the throat was rated by medical experts only second to that by burning.²³ PCA Act, 1960 has been enacted to prevent the infliction of unnecessary pain or suffering on animals and cruelty towards animals is punishable under § 11 of the aforesaid Act subject to exception provided in the aforesaid Act. Therefore, the aforesaid Act has been brought into existence to prevent cruelty towards animals and the actual victims of the offence of the above stated Act are animals.²⁴

It is Humbly submitted that the ritual of animal sacrifice involves an unimaginable amount of cruelty towards the sacrificial animal, which are often seen lying around in pain and suffering after receiving blows on their necks, which usually does not kill them in first go. Sometimes, the animal tries to escape in a fatally wounded condition, which is very painful.²⁵

E. Varaaki v. UOI²⁶

²⁰ Cr.Misc. No.47517 of 2013

²¹ Rule 6(5), PCA (Slaughter House) Rules, 2001

²² CWP No. 4499 of 2012

²³ Ritual Slaughter, <http://www.all-creatures.org/articles/ar-ritual.html>

²⁴ Sardar Khan & Anr. v. State Of Bihar & Anr., Cr.Misc. No.47517 of 2013

²⁵ *ibid*

²⁶ Writ Petition, (C) No. 689 of 2015

This petition dealt with the fact that over the years devotees of various religions in India are perpetrating various inhuman, cruel and blatant acts of violence and slaughter upon animals. It was stated by the Petitioner herein, at the outset, that religion does not in any way condone or prescribe cruelty to animals or other living beings and therefore, the acts of cruelty that are being perpetrated in the name of religion is absolutely misplaced and based on misconstrued interpretation of the concepts of faith and worship rooted in superstition or observance of condemned practices as a result of blind faith which is contrary to scientific temper and reason. The practice of slaughtering of animals in the name of sacrifice does not get the sanction of law neither under S. 28 of the Act nor under Articles 25 and 26 of the Constitution of India.

The Authors herein submits that that the exception provided under S. 28 of the Act does in no manner extend a protection or condonation for animal sacrifice as prescribed by any religion or community. It is submitted that the authors herein that the exception can only be extended to the protection of those methods of killing animals provided as per the religion and not for killing animals in the name of religion per se. It is submitted that the intent and scope of the aforesaid section is to merely protect a particular manner of killing of animals, if provided for by any religion. The concept of *Halaal* and *Dhabihah* as prescribed by the Quran is a method of killing of animals for consumption of meat prevalent amongst devotees of the Islam faith. It is submitted that S. 28 provides for such practices that are mentioned as a manner of killing and not as a blanket sanction for animal sacrifice.

The prominence of values enshrined in the Constitution is above any religious values or values enshrined in any personal or religious law. They have no right, whatsoever, to issue any mandate/dictate in violation of basic human rights of the human beings as well as animal rights. The animals have emotions and feelings like us. Religion cannot be allowed to become a tool for perpetuating untold miseries on animals. If any person or body tries to impose its directions on the followers in violation of the Constitution or validly enacted law, it would be an illegal act.²⁷

CONCLUSION

We need to understand that Saints and supreme religious leaders would come, change and enlighten us on duties and paths according to the necessity of the age. But we need to keep progressing. A society should look forward, of course, by following values of all religions. The essentials of any religion are eternal. The non-essential part such as ritual slaughter is relevant only for some time and cannot be treated as eternal. We have to stand up against the social evils; the society at times is beset with. Social reforms are required to build up a new social order for which we have to take a pragmatic approach.

In the present scenario, the varaaki petition before the Hon'ble Supreme Court seeking ban on slaughter of goats on Bakra Id has been dismissed by September 2015. However, the were allowed to join as a party to the appeal against the Himachal High Court judgment which banned religious slaughter on animals in temples and the matter remains pending before the court. Just as the practices like Sati, child marriage, untouchability,

²⁷ Visha Lochan Madan v. UOS and Ors., (2014) 7 SCC 707

female feticide etc. which were once deeply ingrained in our social milieu have almost been eradicated with education and reformational movements as well as judicial interventions, so is expected in th matter of ritual slaughter too.

**INTERGENERATIONAL EQUITY- THE NEED FOR DEVELOPMENT ON A
SUSTAINABLE BASIS.**

Mrs. Vinisha D’Cruz e Peres

There are two themes that have had a huge impact on the development of international law -environmental protection and sustainable development. Every country aims to achieve only one goal i.e “development” irrespective of the ways and means they might use to achieve it. We the people are paying a huge price for the development of the country. What price you may ask? Well we are paying for the development of our country by destroying the environment and by exhausting the natural resources on the earth. We talk about development, protection of environment but we fail to throw light on factors that affect the development and environment, issues like poverty and food crisis. We need to lay emphasis on areas like ways and means to reduce poverty and for promoting intensive sustainable agriculture. We need to find solutions to the prevent the problems caused by the developmental activities. How do we carry out development on a sustainable basis? This paper deals with the solutions i.e the ways, means and the need for carrying out development on a sustainable basis.

HISTORICAL BACKGROUND OF THE CONCEPT:

The term sustainable development was used at the time of the Cocoyoc declaration on environment and development in the early 1970s. Since then it has become the trademark of international organizations dedicated to achieving environmentally benign or beneficial development. ¹ The World Commission on Environment and Development Report produced after 900 days of deliberation by an international group of politicians, civil servants and experts on environment and development is the key statement of

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Michael Redclift, Sustainable development exploring the contradictions, Routledge publications 1991, page 32

sustainable development. It marked the concepts political coming of agenda established the content and structure of the present debate. The United Nations conference on environmental and development commonly known as the Rio conference on 1992 was the follow up to the Brundtland report and sought to move towards the achievement of aims laid down by the Brundtland report. The concept of sustainable development first appeared in the world conservation strategy which had argues from a dominantly conservationist environmentalist standpoint. Issues raised by sustainability had been discussed for several years, and the clash between the interests of environmental conservation and development was very clear in the Stockholm conference on the human environment in 1973. In its 1987 report, the World Commission on Environment and Development (Brundtland Commission) defined sustainable development as ‘*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*’.

Following the Brundtland report, the ideal of sustainable development quickly became politically orthodox, Institutions giving grants or loans for development projects routinely demand an investigation of the sustainability and developmental components of the project. Many writers consider that the term is so widely and loosely used that it has not been devalued. ²

There are four elements that appear to comprise the legal elements of the concept of ‘sustainable development’, as reflected in international agreements:

1. The need to preserve natural resources for the benefit of future generations (the principle of intergenerational equity);
2. The aim of exploiting natural resources in a manner which is sustainable or prudent or rational or wise or appropriate (the principle of sustainable use);

3. The 'equitable' use of natural resources, which implies that use by one state must take account of the needs of other states (the principle of equitable use, or intragenerational equity); and
4. The need to ensure that environmental considerations are integrated into economic and other development plans, programmes and projects, and that development needs are taken into account in applying environmental objectives (the principle of integration).³

The Brundtland Report offered seven major proposals for a strategy to sustainable development which are:

- Revive growth
- Change quality of growth
- Meet basic needs
- Stabilize population
- Conserve and enhance resources
- Reorient technology and manage risk
- Put environment into economics.

These proposals were elaborated further by stating that we need to:

1. To revive growth but to change the quality of that growth;
2. Meet the basic needs for employment, food, energy, water and sanitation but for a sustainable 'population base'.
3. To conserve and enhance natural resources but with an emphasis on refocusing technology to better manage risk.

4. The need to merge environment into economic decision making and at the same time realized that this was impossible without transforming attitudes and practices.⁴

INTERGENERATIONAL EQUITY

Sustainable development can be understood as the development that is carried out in such a manner that we use the natural resources in a sustainable/ controlled and wise manner so that we can leave behind some natural resources for the future generations. If we need our children to survive and to live a good life just the way we do, we need to leave some natural resources for their consumption. It is like an insurance policy which is an investment for the better life of our survivors after our death. Sustainable development is the moral conviction and ethical desirability that the current generation should pass on their inheritance of natural and cultural wealth, not unchanged, but undiminished in potential, to support future generations. Every future generation must have the option of being well off as its predecessors. For people living in poverty or in less well off circumstances as second ethical point is that there must be a redistribution of wealth so that in any generation the differences in wealth are reduced to, at least, as socially acceptable minimum standard.⁵

Inter and Intra-generational equity is an important component of sustainable development. It seeks to ensure that there is equity among generations as well as equity in the present generation itself. It seeks to ensure that future generations will have atleast the same options that are available to the present generation and that the members of the present generation have the same opportunity to access resources. It is generally argued that each generation constitutes a continuum and that all generations form a partnership and must be treated in a non discriminatory manner. *Edith Brown Weiss is considered*

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Supra 2, page 9

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Ian Moffatt, Sustainable Development: principles, analysis and policies, Chapter 3- Definitions and principles of sustainable development, Parthenon Publication, Page 32

*the architect of the intergenerational equity principle.*⁶ The theory of intergenerational equity has been advanced to explain the optimum basis for the relationship between one generation and the next. The theory requires each generation to use and develop its natural and cultural heritage in such a manner that it can be passed on to future generations in no worse condition than it was received. Central to this idea is the need to conserve options for the future use of resources, including their quality, and that of the natural environment. This is an inadequate and incomplete prescription, which begs elaboration, but it does emphasize the centrality of inter-generational equity to the concept of sustainable development. The same generational perspective underlies references in the 1972 Stockholm Declaration to man's responsibility to protect the environment and the earth's natural resources. Inter-generational equity is explicitly referred to in Principle 3 of the 1992 Rio Declaration, which provides for the right to development to be fulfilled 'so as to equitably meet developmental and environmental needs of present and future generations'. It is reiterated in the same terms in the 1993 Vienna Declaration on Human Rights, while article 3(1) of the 1992 convention on climate change calls for inter-generational equity to be taken into account in decisions of the importance now attached an international policy to the protection of the environment for the benefit of future generations. Viewing inter-generational equity as an element of sustainable development does not resolve the argument for stronger generational rights or international guardianship, nor does it determine the optimal balance between this generation and its successors. It does, however, provide an essential reference point within which future impacts and concerns must be considered and taken into account by present generations, as well as a process by which these and other concerns can be addressed.⁷

THE NEED TO ACHIEVE DEVELOPMENT- ON A SUSTAINABLE BASIS

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Sumudu Atapattu, *Emerging Principles of International Environmental Law, Sustainable Development : Emergence and application*, Transnational Publishers, 2006, page 115

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Christina Voigt, *Sustainable Development as a principle of International Law*, Chapter 1 origins and development of sustainable development, Martinus Nijhoff Publishers, 2009, Page 19

Equity relates to the distribution both within and between generations of physical and natural capital, as well as knowledge and technology. In the transition to sustainability additional obligations should be assumed by those primarily in the developed world, who have used resources in the past in a manner which limits the options of current generations, particularly in developing countries. Trade liberalizations can contribute to greater equity through the dismantling of trade barriers that harm developing countries. While domestic equity is a fundamental goal of governments, policies to achieve it are hard to implement. In seeking to promote greater equity it is possible to strive for growth to generate additional resources for distribution, or to seek better distribution of existing resources, but the two are not mutually exclusive. While there may be trade offs in the short run, success in the long run depends on pursuing both policies simultaneously.

Inequity and poverty contribute significantly to environmental degradation and political instability, particularly in developing countries. When basic needs are not met, the poor have no choice but to live off whatever environmental resources are available. At the same time, past use of natural resources already limits the choices available to present generations, particularly in developing countries. Faced with these limitations, and having limited financial, administrative and technical capacity to deal with problems of environment and development, many developing countries will require transfers of technology and financial resources. Failing such assistance, they may be unable to adequately protect their environmental resources, including many which are of global significance.

The substantial investment needed for sustainable development requires new and additional external resources in developing countries far in excess of conceivable increases in traditional foreign aid. Increased trade and investment flows, the result of more open borders in both developed and developing countries, together with appropriate domestic policies in developing countries, are the best alternative for increasing incomes in poorer countries by the magnitudes necessary to achieve sustainable development.

Protected markets in the developed world must be opened to goods and services from developing countries. Continued protection contributes to the perpetuation of poverty in developing countries, and may also result in unsustainable depletion of their natural

resources in the absence of other options for alleviating poverty. Other measures to achieve equity and poverty alleviation include strengthening developing country capacity to develop indigenous technologies and to manage environmental resources, and creating mechanisms for the accelerated transfer of existing clean technologies. Continued progress in resolving the debt crisis is also important, as is an increase in transfers of financial resources. At the same time that the additional resources are used in ways that are efficient, alleviate poverty and foster sustainable practices.

Just as past use of resources limits the choices of present generations, current patterns of use, such as significant use of nonrenewable resources, or use of renewable resources beyond their capacity to regenerate, may limit the choices of future generations, creating issues of intergenerational equity. In the interests of intergenerational equity, the combined stock of human made and natural capital should not be depleted. If future generations are to be at least as well off as are present ones, trade and development policies and programs which involve environmental change should be accompanied by a compensating development of more efficient technologies, increased knowledge, better infrastructure or improved social systems. At the same time, it must be recognized that there are limits to the extent to which increases in human made capital can compensate for losses of environmental resources. Many such resources meet needs that cannot be met by augmented stocks of human made capital, such as the life support services provided by the ozone layer, and a variety of spiritual and aesthetic needs.⁸

It has been observed that the reason for the slow development of India is due to the rise in the economic growth along with the rise in poverty. The country has failed to bring about a decrease in poverty. The main factor for the rise in poverty is due to the fact that we tend to concentrate on the industries and the trade of the country. We neglect the main occupation of the country i.e agriculture. There is need for development and the only way India can achieve it is by concentrating more on the agricultural sector. Greening agriculture in developing countries, concentrating on smallholders, can reduce poverty while investing in the natural capital on which the poor depend. There are an estimated

525 million small farms in the world, 404 million of which operate on less than two hectares of land. ⁹

SOLUTIONS TO BRING ABOUT DEVELOPMENT IN A SUSTAINABLE MANNER:

- ❖ We need to focus on land regulation and management.
- ❖ There is need to provide incentives to facilitate and encourage sustainable production activities.
- ❖ We need to provide financial and technical support to small farmers who may be effected due to lack of finances or environmental requirements.
- ❖ Educate the public on the value of agriculture.
- ❖ We need to introduce environment friendly products. To collect and disseminate information on products.

- ❖ There are various research departments in India and abroad. We should disseminate the results of our research. This will help in bringing about proper understanding of various development activities that can be carried out in a sustainable manner.

- ❖ There should be transparency in markets.

- ❖ Formation of claims portal- stating various requirements of commodity production, geographical indication, fair trade, how producers can be assisted to meet the requirements on export markets.

- ❖ Commodity related training.

- ❖ Agricultural insurance

- ❖ Strategic risk management

- ❖ There should be transparency in prices. The farmers and traders should be made aware of the market conditions and ensure that the information is clear.
- ❖ Provisions for pre-financing of seeds.
- ❖ Quantities that are produced should be sent to collateral companies. The banks should pre-finance the farmer with which they can buy fertilizers. The harvest takes place and then the bank is repaid from the export earnings. The loans between the farmers is focused on the trading company. Generally the farmer does not have access to any finance.
- ❖ Farmers should be educated about how he can generate the right prices for himself.
- ❖ They need to know the variations in prices and the effect it can have on the margin, guarantee fund and make them share the responsibility and share the funds.
- ❖ Certain amount of money should be set aside only towards agriculture. Even if India concentrates entirely on agriculture for 2-3 years the country can develop in a sustainable manner without having an impact on the environment and at the same time bringing a drastic reduction in poverty.
- ❖ Financial guarantee funds- give loan to cover the risks. Multinationals need growth and the current economic situation..high population..high growth..
- ❖ Africa has been looked over by investors. Major prospects for developing countries. \
- ❖ We need to enhance farmers access to finance.
- ❖ There is lack of organization, quality, production. We need to concentrate on these fields to bring about development in a sustainable manner.

- ❖ When the produce is sent to the traders, the farmers are not paid immediately. There is need to bring about stringent actions that can be taken for proper and fair payment of farmers in order to encourage and enhance the agricultural production.
- ❖ We need to have crop insurance, weather insurance in order to take measures and precautions for the development of the agricultural sector. We need to start programmes like “Crop insurance programme” and start organizations like farmers organization and agricultural-processing organization.
- ❖ We need to provide proper storage facilities for the farmers and traders and at the same time have banks that can finance these facilities.
- ❖ We need to inculcate in the farmers the feeling of being more business oriented.
- ❖ To focus exclusively on developing farmers and producer organization.
- ❖ Start technical education, business and financial education. Start internships to teach the farmers about finance, record keeping , accounting.
- ❖ India has a blend of various customs and traditions. Most of them have brought in women the need for purchasing gold. India is one of the countries that invests in a lot of gold. The amount of gold is fixed and when we purchase gold our investments get locked. There is no flow of investment. We need to invest in proper products that can increase the flow of money and at the same time promote a certain sector which will result in the development of the country.

CONCLUSION:

The time has come when we need to start searching for solutions. We need to start thinking of methods that can be adopted by India in order to bring about development in a sustainable manner. If we start investing in agricultural and environment friendly products it gives the sector finances to flourish at a better rate which will in return raise the level of the agricultural sector. At the same time we will solve the problem of food crisis which is a major problem in the poverty stricken areas. By increasing investment in natural assets that are used by the poor to earn their livelihoods, the shift towards a green economy enhances livelihoods in many low income areas. In

many developing countries, one of the biggest opportunities to speed up the process of a green economy is to invest in making provisions of clean water and sanitation services to the poor. A green investment in agriculture, buildings, forestry, and transport sectors would also result in an increase in job growth in the short, medium, and long terms. At the same time reducing waste and increasing efficiency in agricultural and food systems can contribute to securing global food security, reduction of poverty and increase in the economic growth of the country which will definitely result in Intergenerational equity- where we will try to fulfill the needs of the present and future generations. These methods if adopted, will only lead to one outcome- India a developed country; flourishing with a variety of flora and fauna left behind by us, for our coming generations to enjoy.

A critique of the Biological Diversity Act, 2002

¹Rima Patni

ABSTRACT

India is blessed with a variety of rich flora and fauna. In layman's term, Biodiversity refers to all the life forms within the Biosphere. Hence, from simple genetic level microbes to complex organisms, everything forms a part of Biodiversity. However, the glaring reality is that in the race of modernisation, even a country like India which has worshipped nature from time immemorial has indulged in practises which are abusing the environment and degrading its rich biodiversity. India is one of the 12 most biologically diverse countries in the world, which imposes upon India a sense of ethical responsibility to preserve and protect its biodiversity. In the wake of this, legislature came up with the Biological Diversity Act of 2002. The Act has been enacted with triple purpose of providing for conservation, sustainable utilization and equitable sharing of the benefits arising out of utilization of genetic resources. In this essay, the author throws light on the need for the Biodiversity Act. The paper discusses the provisions and objectives of the Act and tries to point out the gaps in the provisions of this existing piece of legislature due to which the desired effect of this Act could not take place. The paper ends with suggestions that are specific to India.

INTRODUCTION AND BACKGROUND

India is a land of diversity. One of the chief features of India's diverse landscape is the abundance of flora and fauna. These flora and fauna which can be called collectively as Biodiversity have been instrumental in fulfilling so many of the needs of human beings, be it food, housing or clothes. In light of the degrading environment and its consequences thereof, the urgency for the protection of biodiversity has come to be recognized by the global community in

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the past two decades. The Indian legislature has also acknowledged the immense contribution of biodiversity in sustenance of human lives and subsequently came up with the Biodiversity Act, 2002, which was in pursuance of India's obligation as a party to the Convention on biodiversity.²The UN Convention on Biological Diversity defines biodiversity as "the variability among living organisms from all sources, including, 'inter alia', terrestrial, marine, and other aquatic ecosystems, and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems".³ The first international effort towards Biodiversity preservation was in the enactment of Convention on Biological Diversity, 1993. ⁴ It was the first international agreement which aimed at the conservation and sustainable use of biological resources. The agreed text of the convention was presented at Nairobi Conference in 1992. And finally the Convention on Biodiversity was opened for signature at the Earth Summit which took place in Rio and came into force in December, 1993.⁵ CBD states its objectives as 'the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.'⁶ The convention also recognizes sovereign rights of the nations over their biological resources and directs them to use these resources in a sustainable manner. India became member to the convention by ratification in 1994. The Biodiversity Act, 2002 is an effort towards achieving the objectives of the convention to the maximum.

It took Indian legislature almost ten years from the time India signed the CBD in 1993 to come up with the Biodiversity Act. The first draft of the Biological Diversity Bill, 1997, was prepared by a committee headed by Prof. M.S.Swaminathan. The draft was primarily intended to place framework to regulate access to biological resources and traditional knowledge fundamentally

²NBA Government of India, *Defining and Explaining ABS terminology*, available at: http://nbaindia.org/uploaded/pdf/ABS_Terminology.pdf, last visited on 29th August, 2016.

³ Glossary: Biological Diversity as defined by Convention on Biological Diversity", available at: http://www.biodiv.be/glossary_keywords/B/biological_diversity, last visited on 29th October, 2013.

⁴ Convention on Biological Diversity, 1993, available at <http://www.cbd.int/doc/legal/cbd-en.pdf> last accessed 20th August 2016

⁵ ibid

⁶ ibid

accepting that these were indeed tradable commodities and prevent incidents of biopiracy.⁷ After many consultations, the Biodiversity Act was passed by the Lok Sabha on 2nd December, 2002 and by the Rajya Sabha on 11th December, 2002 and came into force on December, 2004.

SALIENT FEATURES OF THE ACT

Biodiversity act is a holistic act seeking to put in place institutional measures to frame a system of rules and regulations, obligations and duties of various stakeholders and their collective effort in the preservation of biodiversity. As the objectives of the Act states, the provision of the Act is an endeavor to achieve sustainable use of biodiversity, equitable sharing of benefits arising out of the use of resources. Hence, in pursuance of these objectives, following provisions have been included in the Biodiversity Act, 2002 which form the salient features of the Act.

Firstly, the Act authorized setting up of a National Biodiversity Authority at national level, State Biodiversity Board at state level and Biodiversity Management Committees at local village level. Some of their main functions include regulation of activities, approve and advice the Government of India on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits; grant approval under Sections 3,4 and 6 of Biodiversity Act,2002; notify areas of biodiversity importance as biodiversity heritage sites under this act and perform other functions as may be necessary to carry out the provisions of the Act and to take measures to protect biodiversity of the country as well as to oppose the grant of intellectual property rights to any country outside or any biological resources obtained from India.⁸

Secondly, the act imposes a complete prohibition on transfer of genetic material outside the country, without specific approval of the Indian government⁹ and under 6 of the Act, there is a prohibition on anyone claiming an Intellectual Property Right (IPR), such as a patent, over biodiversity or related knowledge, for any invention based on a biological resources obtained from India without permission of the Indian Government¹⁰;

⁷ Kalpvriksh and GRAIN, *Six Years of the Biological Diversity Act in India* (Delhi/ Pune 2009) 60.

⁸ The Biological Diversity Act, 2002, Chapter III

⁹ Ibid, , s 4

¹⁰ Ibid, s 6

Thirdly, the Act mandates measures for sharing of benefits from the use of biodiversity, including transfer of technology, monetary returns, joint Research & Development, joint IPR ownership, etc¹¹ and to conserve and sustainably use biological resources, including habitat and species protection, environmental impact assessments (EIAs) of projects, integration of biodiversity into the plans, programmes, and policies of various departments/sectors¹²;

Fourthly, The Act seeks to protect indigenous or traditional knowledge, through appropriate laws or other measures such as registration of such knowledge¹³;

Fifthly, Under Section 39 of the Act, the Central Government may, after consultation with the NBA, establish a Designated National Repository which will contain all the information about the specimens and any bioinformatics related to them¹⁴.

LOOPHOLES IN THE ACT

The Act took almost a decade in formulation after the ratification of the Convention on Biological Diversity by India. Aspirations were high for the success of the Act since it was a result of ample deliberations and considerations. However, the Act is not without its share of flaws. The Act has been criticized on a number of aspects over the years by conservationists.

I. CONFLICT OF LAW

First of all, the Act is in conflict with a number of other legislations and no clarifications with regards to the overriding effect of the Act have been provided to settle the confusion. There are several laws which govern the biodiversity, natural resources and forests of India, like the Indian Forests Act, 1927, Forest Conservation Act, 1981; Prevention of Cruelty to animals Act(1960) etc. The objective of all these legislation is to protect the nature as a whole. Hence some of the provisions of these acts may be overlapping in some degrees. The issue of which one of these legislations will have a prevailing effect has not been specified in the Bio-diversity Act. In case of conflict and clash between the provisions which are likely to happen considering the main essence of all these legislations, a wide ambiguity may emerge which would result in confusion

¹¹ Ibid, s 21(1)

¹² Ibid, s 36(1)

¹³ Ibid, s 36(5)

¹⁴ Ibid, s 39

and lots more of disputes. Hence the Act without the specifications on clear set overriding principle adds more to the woes rather than resolving it.

II. OVER- INSTITUTIONALIZATION OF THE ACT

The Act mandates for three level of institutional decision making process- National Biodiversity Authority, state Bio-diversity Authority and Bio-diversity Management Committee. The existence of three tier system has brought in more confusion to the Act. Instead of simplifying the provisions, the three level institutional hierarchies make the provisions of Act even more complex and complicated. Furthermore the centralized approach of the Act leaves no room for the state and the local level authority to exercise powers. The central government although is required to consult NBA and state level authorities, fact remains that the ultimate decision taking power remains with the Central government. Not only the central government is concerned with making conservationist strategies, it is also responsible for major monitoring and approval mechanism. The centralized approach of the Act is evident from provision with respect to jurisdiction of Union territories. The Act explicitly mentions in section 22(2) that no State Biodiversity Board will be formed for Union Territories which will be under direct charge of National Biodiversity Authority. Central government's decision is final and binding upon other authorities is further validated by provision of section 28 which states that 'The decision of the Central Government whether a question is one of policy or not shall be final.'¹⁵ Hence, the act empowers the central government to take final call upon major issues under the biodiversity act, thus not making it mandatory for it to take into considerations the views of other authorities. The confusion with respect to jurisdiction is inherent in the Act. The Act states that prior permission from the National Biodiversity Board must be obtained before applying for any kind of patent, especially where the invention is done using resources from India, further also giving power to impose a benefit sharing fee.¹⁶ Clearly the wide array of powers over empowers the central government whereas reduces the other authorities to a mere consultants having no autonomy with respect to decision making process.

III. TRADITIONAL KNOWLEDGE OF INDIGENOUS PEOPLE

¹⁵ The Biodiversity Act, 2002, s 28

¹⁶ Ibid, s 6(1)

Biodiversity Act defines Local or indigenous people as ‘descendants of pre-conquest, traditional people of a certain geographic area, with a common history, culture, language, and customary law.’¹⁷ These locals or indigenous people have been dependant on the bio-diverse resources since time immemorial. They are knowledge bearers to the immense value of Bio-diverse resources. This traditional knowledge has been their heritage which has been passed from their ancestors since ages. Hence, the protection of the traditional knowledge is their primary aim. However the Act has doesn’t address the issue clearly. The act doesn’t lay down any clear and coherent measures to protect the traditional knowledge of the local and indigenous people. The Act contains no provision on providing security to these traditional knowledge holders on biodiversity. Further, no mechanism has been prescribed under the Act to ensure existence of traditional knowledge before granting IPR. The Act bestows upon the central government to “endeavour, respect and protect” the traditional knowledge.¹⁸ However, nothing in the Act guarantees that the indigenous people with traditional knowledge on biodiversity get back the benefits of the results out of their knowledge. Hence the act blatantly ignores the concerns of indigenous people and effectively confers wide powers on the government to regulate these resources as per their whims and fancies. In absence of clear and definitive guidelines, the actual implementation of the protection of traditional knowledge seems to be a far cry.

IV. REDUCED ROLE OF LOCAL COMMUNITY

The rules under the Biodiversity Act confers upon the Biodiversity Management Committee the power to prepare Register which shall contain comprehensive information on availability and knowledge of local biological resources, their medicinal or other uses or any other traditional knowledge associated with them. The Rule further states that Biodiversity Management Committees may also suggest the format and the particulars of the Register in electronic form and shall receive the guidance provided by National Biodiversity Authority (NBA) and State Biodiversity Boards (SBB).¹⁹ Another rule also gives authority to Biodiversity Management Committee to validate Register and to maintain a separate register to maintain details about the

¹⁷ Paul Gepts, ‘Who Owns Biodiversity, and How Should the Owners be Compensated?’ [2004] 134(4) Plant Physiology (American Society of Plant Biologists) 1295. Also available at <http://www.jstor.org/stable/4281665> Last accessed 25 August, 2016

¹⁸ The Biodiversity Act, 2002, s 36(5)

¹⁹ The Biological Diversity Rules 2004, rr7,8,9,

access to biological resources and traditional knowledge granted.²⁰ The problem lies with the undermined role of local communities. Biodiversity Management committee works at local level and comprises of local communities. They are a significant stakeholders to these immense Bio-diverse resources. However, under the Biodiversity rules, the role of the BMC has been restricted to preparation of the People's Biodiversity Registers. Their function is just to create the registers and thereon to maintain it. Neither does the BMC have any control over it nor can BMC take any decisions with respect to it. This mechanism is essentially flawed in light of the fact that BMC works at grass-root level and their exclusion from the decision making process goes on to show the lack of conviction upon the most basic institution of the entire bio-diversity hierarchy.

SUGGESTIONS FOR IMPLEMENTATION

More than a decade has passed since the enforcement of the Act, yet no ground changes can be seen in the operation of the bio-diversity programmes. The reason is that a full proof implementation requires legislation free from glitches and ambiguities. As has been pointed out, one of the glaring defects of the Act is that it doesn't specify the overriding effect. This act is not the only legislation in operation on conservation and protection of environment. Various other legislations such as Indian Forest Act, 1927, Wildlife (Protection) Act, 1972, Forest Conservation Act, 1980 and the Protection of Plant Varieties and Farmers' Rights Act, 2001 are also operational in their own capacity. Hence it is imperative that these legislations do not come in conflict with each other. In case a situation regarding conflict of law emerges, there must be clarification in the Act with respect to the prevailing nature of the Act.

One of the main arguments of the critics of this Act has been that the Act ignores the role of local communities and traditional knowledge holders. Indeed the Act extends no security to these people with respect to the knowledge they possess as has been discussed in the defects of the Act. They are the major stakeholders of the bio reserves and know a great deal on the bio resources. Hence excluding them from their just and adequate rights with respect to monetary compensation or acknowledgment is a major loophole in the Act. The Act should not only streamline a well-defined approach to address the concerns of these indigenous local people but

²⁰ The Biological Diversity Rules 2004, rr10, 11

should also take into consideration that the vast knowledge of these people are put to the best use of humankind.

The concept of decentralization of the property has to be put in practice. The Act in its present form is way too centralized to have a coherent system of functioning. Not only the Act has conferred too much power on the central government, it has also reduced the role of local community or the Bio-resources management committee to a mere spectator. The role of BMC in the biodiversity needs to be revamped. A strong and autonomous body at the grass root level is a must for having successful implementation of the programmes.

CONCLUSION

The threat of modernization and globalization has led to severe depletion of bio-resources. The vast magnitude of developmental programmes has instigated their adverse consequences on the biodiversity resulting in destruction of ecosystem. Even though India can boast of impressive diversity of flora and fauna, the fact remains that the mounting population, expanding agriculture, rapid urbanization have posed a serious threat to the biological resources. Indeed, the purpose behind the enactment of the Biodiversity Act was laudable, the inherent defects in the provisions of the Act has rendered the purpose of the Act to a great extent fruitless. The need of the time is to bring more coherent and clearer amended provisions which can tackle the defects of the provisions efficiently. The authorities in position need to take duties in a more responsible fashion. Change doesn't come in a day only through government channels. A consolidated effort from the part of Government, NGOs, Bureaucracy and local people in collaboration is a must have for successful implementation of any ground breaking programme. Lastly, we need to understand that biological resources are not privileges to us rather they are the legacy which we have been given to transpass it to the future generations.

**AN OVERVIEW OF THE COMPENSATORY AFFORESTION
FUND BILL, 2015**

Subject: Environmental Law

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Year: III

Date of Submission: 31st August, 2016

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INTRODUCTION

Conservation of Forests, Protection of the Environment, and Respect for Mother Earth, are all phrases that seem to have lost all meaning. With every possible indicator crying out the desperate need for urgent and immediate action, society is yet somehow entangled with superficial remedies and make shift solutions, and in this engrossing process, seems to have entirely lost sight of the clichéd „bigger picture“.

Policies, laws, treaties, governments and politics: Mere words in the light of the catastrophic end we seem determined to march towards. We have all had „environmental studies“ as a subject from quite a young age, but no one can deny the callousness of the attitude of children or the mockery that has become of it. Perhaps, as children, they might be excused, but what possible explanation can our country“s „leaders“ give?

The vast and enthralling forests of our country have patiently bowed down for our „development“ and „industrialisation“ and forests are mercilessly slashed down with scant regard to any consequences. 48A of the Constitution of India requires that the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Under Article 51A, it is the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. However, more alarming than this problem itself, is the Government“s feeble and lack lustre attempts to tame the same.

The Compensatory Afforestation Fund Bill 2015¹, may just serve to be the stepping stone for a promising new chapter. The Judiciary has made a laudable effort to engrave the seriousness of the matter, and this Bill, apart from containing quite a few commendable features, more importantly, is an indicator of the Legislature“s intent of finally addressing the growing concerns.

Before the study of the Bill, there the concept of „compensatory afforestation“ needs to be understood.

¹ Compensatory Afforestation Fund Bill, 2015: Bill No. 153 of 2015, *available at:*
<<http://www.prsindia.org/uploads/media/Compensatory%20Afforestation/Compensatory%20afforestation%20ofund%20bill,%202015.pdf>>

Compensatory Afforestation is an Indian concept which has been in place since 1980. It would be naïve to expect the utilisation of forests to come to a halt. Indeed, development is also a crucial and necessary component of society. Therefore, when an agency (referred to as user agency) seeks to use forest land for non-forest purposes, adequate afforestation is required to compensate for the loss of forest cover.² This process is called „compensatory afforestation“. It is the liability of the user to provide land for afforestation purposes. Such land is to be provided to the state government and the user agency is required to pay for the plantation of trees on the land so provided.

A further concept which needs to be understood is that of Net Present Value of the forest (NPV). Since afforested land does not become a forest overnight, there is still a loss of the goods and services that the diverted forest would have provided in the interim period. These goods and services include timber, bamboo, fuelwood, carbon sequestration, soil conservation, water recharge, and seed dispersal. Afforested land is expected to take no less than 50 years to start delivering comparable goods and services. To compensate for the loss in the interim, the law requires that the Net Present Value (NPV) of the diverted forest is calculated for a period of 50 years, and recovered from the “user agency” that is “diverting” the forests.

Many countries have forest funds that collect money for conservation, forest regeneration, and related projects. The source of revenue and utilization of the money differ country by country, and some countries even have multiple forest funds.³

Brazil for instance has multiple forest funds including a reforestation fund which is funded by a reforestation tax; a 2005 national forest development fund was created to manage funds received from public forest concessions.

Indonesia collects income from tax on forest products and other materials in the reforestation fund; funds are spent for reforestation, rehabilitation of land, and plantation development in non-productive forest.

² Guidelines for diversion of forest land for non-forest purposes under the Forest (Conservation) Act, 1980, dated March 03, 2005.

³ Rosenbaum, Kenneth L & Jonathan M. Lindsay. ‘An Overview of National Forest Funds: Current Approaches and Future Opportunities.’ Food and Agriculture Organization (Italy), January 2001. See <http://www.fao.org/docrep/003/x6821e/x6821e00.htm>.

Senegal includes money from sale of forestry goods and local auctions in forestry fund; fund is used for conservation of forests and wildlife including management and surveillance of forest areas, education, and information.

United States has at least 23 trust funds and 47 special accounts at the federal level under the U.S. forest service; the Knuston-Vandenberg Fund is one of the larger funds and reserves 100% of sale of timber for reforestation or timber stand improvement; individual states also have their own forest trusts.

Uruguay collects income from government payments, fines, loans, donations, etc in the forest fund; money is kept in the Bank of the Republic; money must be used for long-term forest development.

BACKGROUND

The concept of „compensatory afforestation“ was first introduced in 1980, by the Forest (Conservation) Act. As per the Forest (Conservation) Act 1980, whenever forest land is to be diverted for non-forestry purpose usually the conditions relating to transfer, mutation and declaration as Reserve Forest/ Protected Forest the equivalent non forest land for compensatory afforestation and funds for raising compensatory afforestation etc are to be imposed.

However there was extremely poor utilization of funds deposited for such purposes and large amounts of money for compensatory afforestation was not realised by the State Government from user agencies. Here, the judiciary took up an extremely active role, and in 2002 in the case of *T.N. Godavarman Thirumalpad v. Union of India*⁴, the Supreme Court of India directed that a „Compensatory Afforestation Fund“ was to be created in which all the monies received from the user agencies towards compensatory afforestation were to be deposited along with the NPV and further proposed setting up a Compensatory Afforestation Management and Planning Authority (CAMPA) to manage the pooled funds and other compensatory affairs which was subsequently constituted in 2004 by the Ministry of Environment and Forests (MoEF) under sub-section (3) of section 3 of the Environment (Protection) Act, 1986.

⁴ *T.N. Godavarman Thirumalpad v. Union of India*, Writ Petition (C) No. 202 of 1995,

The court observed that CAMPA still had not become operational, and hence, in 2006, the apex court ordered the constitution of an Ad hoc body, wherein all monies received in the name of CAMPA and lying with the various officials of the State Government were to be transferred to the Ad hoc CAMPA.

In 2013, the Comptroller and Auditor General (CAG) in their report titled „Compensatory Afforestation in India⁵ found yet many more shortcomings some of which were⁶:

- Compensatory afforestation over non-forestland received was an abysmal 7,280.84 ha (only 7 percent of the receivable non-forestland).
- Compensatory afforestation was carried out on only 49 per cent of identified degraded forestlands.
- Seven states, i.e. Gujarat, Haryana, Kerala, Maharashtra, Meghalaya, Punjab and Rajasthan, carried out no compensatory afforestation either over non-forestland or degraded forestland.
- Out of Rs 2,925.65 crore of the compensatory afforestation funds released by Ad hoc CAMPA in 2009-12 for compensatory afforestation activities, only Rs 1,775.84 crore was utilized by states/UTs.
- The percentage of overall utilization of released funds was only 61 per cent. In 11 of the selected 30 states/UTs, use was 0-50 per cent, which indicated poor absorptive capacity of the states/UTs. Most states/UTs were unable to spend the monies released to them by the Ad hoc CAMPA.

After having once attempted to pass the Compensatory Afforestation Bill in 2008⁷, which was passed by the Lok Sabha, but lapsed with the dissolution of the same, the Ministry of Environment and Forests formulated CAF Bill 2015 as an alternate way out to institutionalise CAFs as permanent bodies.

As on May 2015, the National CAMPA had more than Rs. 37,000 crores available for utilization.⁸ Accordingly, the bill was introduced in the Lok Sabha on May 08, 2015, with the

⁵ Report of the Comptroller & Auditor General of India on Compensatory Afforestation, Report 21 of 2013

⁶ A compromised compensation: CAF Bill 2015 and PSC Report, *Centre for Science and Environment*.

⁷ Compensatory Afforestation Fund Bill, 2008: Bill No. 42 of 2008, available at: <http://www.prsindia.org/uploads/media/Compensatory%20Afforestation/1211455621_The_Compensatory_Afforestation_Fund_Bill_2008.pdf>

⁸ Department Related Parliamentary Standing Committee on Science & Technology, Environment & Forests, February 2016

objective of unlocking this massive wealth accumulated over the years in Ad hoc CAMPA funds and to ensure expeditious utilization of these funds in a transparent manner.

OBJECTIVES

India's fundamental problem, in all spheres, can perhaps be traced back to implementation. Most often, it is not the laws that are to blame, but the abysmal implementation of the same. With several laudable schemes, trusts, funds for innumerable good causes, the plight of the country remains shocking as these funds remain locked away.

The main aim of the Compensatory Afforestation Fund Bill 2015, is to unleash the extensive funds (almost 42,000 crores), accumulated by the Ad hoc committee, and to create a Compensatory Afforestation Fund Management and Planning Authority by an Act of Parliament under Entry 17A of the Concurrent List of the Seventh Schedule to the Constitution and to implement the directions of the Supreme Court to create a Fund namely, the Compensatory Afforestation Fund, to ensure the efficient utilization of the same for the purpose for which they were collected.⁹

Through this the Government intends to articulate one its objectives and undertake a massive afforestation programme called „Green India“.

The Comptroller and Auditor General in its report on Compensatory Afforestation in India (21 of 2013), had highlighted the dire need to review the existing paradigm of CAMPA and recommended that such review should be undertaken in a manner that brings CAMPA within the broader focus of both Parliament and State Legislatures and in greater public view, and had recommended the transfer of such funds into the Public Accounts.

CRITICAL ANALYSIS

Salient Features

A major change which is sought in the bill is the inclusion of the National Compensatory Afforestation Fund under the Public Account of India and the State Compensatory Afforestation Funds under the Public Account of each state. Uptill now, after the Supreme Court's order in 2006, funds have been kept outside the Consolidated Fund of India of Public

⁹ STATEMENT OF OBJECTS AND REASONS, Compensatory Afforestation Fund Bill, 2015

Account of India. It had been noted that the funds generated for protecting ecology and providing regeneration should not be treated as a fund under article 266, article 283 or article 284 of the Constitution which in turn led to such massive accumulation as to provoke a dire need for transparency, which will now be remedied.

These funds will receive payments for a) compensatory afforestation, b) net present value of forest (NPV), and c) other diversion project specific payments. Primarily, the funds received will be spent on afforestation to compensate for loss of forest cover, regeneration of forest ecosystem, wildlife protection and infrastructure development.

A further significant feature lies in the fact that presently, the centre keeps 90% of the funds collected and distributes 10% to the states. The Bill proposes a reversal by allocating 90% of the funds to the states and reserving the balance for the centre.¹⁰

Additionally, currently the NPV is computed on the basis of recommendations of the Supreme Court appointed Central Empowered Committee. However with the enactment of the bill, it will be determined by an expert committee set up by the Central Government, and will include: a) Goods and services attributable to the diverted forest, b) regulating services related to the diverted forest, and c) non-material benefits. The computation of the NPV involves classifying forests on the basis of their ecological value and quantifying a selected set of forest goods and services for these categories over a period of time.

Lastly, the Bill also seeks to establish the National Compensatory Afforestation Fund Management and Planning Authority to manage the National Fund and State Afforestation Fund Management and Planning Authorities to manage to state funds.

Drawbacks

According to the Campaign for Survival and Dignity, a federation of tribal and forest dwellers' organisations from eleven States, this Bill allows states to plant a huge number of trees (or undertake other "forest management" projects) in natural landscapes - such as grasslands, natural open forests, grazing areas, common lands or people's cultivated lands - without confirming the rights people may have over them and in the absence of any consultation with them about where they should be planted, what species should be planted, and what impact this will have on their lives.

Plantations have been one of the major sources of conflict in forest areas. Routinely used by the forest bureaucrats as a way to get more people's land under their control, the loss of access to land has led many tribal groups to starvation. Many are of the view that the Forest Rights Act is sought to be violated by side-stepping the gram sabhas, which have been assigned important roles in its implementation. Tampering with the provisions of the FRA is a grave matter as it involves land rights conferred on tribal people and other traditional forest dwellers. On May 10, Congress leader Jairam Ramesh moved an amendment in the Rajya Sabha stating that the informed consent, with a 50 per cent quorum of the gram sabhas of all villages, within whose boundaries the proposed afforestation scheme/project/activity falls, be obtained. He also demanded in the proposed amendment for such consent to include a certification that the process of implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is complete in the proposed project area.

While the principle of compensatory afforestation, and the need for payment of NPV, is fairly straightforward, the implementation is plagued with complications. The main difficulty has been the availability of non-forest land for afforestation. The law says the land selected should preferably be contiguous to the forest being diverted, so that it is easier for forest officials to manage it. But in case that is not possible, land in any other part of the state can be used for the purpose. If no suitable non-forest land is found, degraded forests can be chosen for afforestation, but in that case, twice the area of diverted forest has to be afforested. Still, there is difficulty in finding land, especially in smaller states, and in heavily forested ones like Chhattisgarh.

Yet another point of contention has been the purposes for which the money can be used. The fund was envisaged to be used only for “compensatory” afforestation, but the Bill before Parliament has expanded the list of works that this money can be utilised for, and includes the general afforestation programme run through the Green India Mission. Forest protection, forest management, forest and wildlife related infrastructure development, wildlife conservation, even facilitating the relocation of people from protected wildlife areas, are proposed to be made valid expenditure from this account. Critics say this will take the focus away from the prime objective of compensating for the forest cover lost to industrial or infrastructure development.

COMPARISON WITH 2008 BILL

The CAF Bill of 2015 is more or less a reproduction of the CAF Bill of 2008. However, there are a few differences. The 2008 Bill provided for CAF at the Central level only. However, the 2015 Bill is vastly different as not only does it provide for the establishment of such funds simultaneously at the state/UT level, but it also allocates 90 per cent of the funds for utilization by the states and only 10 per cent with the centre. This 10 per cent of flexibility is also new, as the Bill of 2008 provided that the total afforestation money collected from a state shall be used only within that state. A notable difference lies in the fact that the CAF Bill of 2008 provided for meeting afforestation targets in the time frame of one year or two growing seasons after project completion after receipt of money; however the CAF Bill 2015 remains silent in this regard.

CONCLUSION

This new Bill is indeed a breath of fresh air in the light of the abysmal history of afforestation in our country. While indeed there exists multiple lacuna in the law, the intention of this Bill is truly commendable. The Forest (Conservation) Act has provided for Compensatory Afforestation since 1980, however the implementation of the same has been abysmal. This Bill will champion this provision, and will ensure that the humungous funds that have been locked away are utilised for the purpose for which they were collected.

Another aspect to be noted, is the judiciary's active involvement in this entire process. It may be said, that perhaps if the Supreme Court had not decided to take such an active role, these events would not have been set in motion. The court's intervention, the Ad hoc committee etc all point towards a progressive and active judiciary as far as environmental law is concerned.

The Parliamentary Standing Committee has made quite a few suggestions in order to overcome the obstacles in this law for e.g. they have recommended removing the provision for the use of CAF's for the Green India Programme. They've recommended the use of native species plantations and have even recommended making approval by the National Authority of Annual Plans submitted by State Authorities time bound which is an extremely important recommendation.

The bill needs to be reconsidered and certain changes definitely need to be brought about. The Bill most definitely should not be passed in its current state, with the amount of objections and hurdles it faces. That being said, the salient features of the Bill are truly commendable and all efforts should be made in making the suitable changes and passing this Bill.

REFERENCES

„Forest Cover“, State of the Forest (2005), Forest Survey of India, Ministry of Environment and Forests. Chapter 1. See <http://www.fsi.nic.in/sfr2005/chapter1.pdf>

„Forest Cover“, State of the Forest (2005), Forest Survey of India, Ministry of Environment and Forests. Chapter 2, see <http://www.fsi.nic.in/sfr2005/chapter2.pdf>

Order dated 30.10.2002 in respect of *T.N. Godavarman Thirumalpad v. Union of India* case, Writ Petition (C) No. 202 of 1995

Handbook of Forest (Conservation) Act 1980, Rules and Guidelines

Rosenbaum, Kenneth L & Jonathon M. Lindsay. „*An Overview of National Forest Funds: Current Approaches and Future Opportunities*‘ Food and Agricultural Organisation, January 2001. See <http://www.fao.org/docrep/003/x6821e/x6821e00.htm>

Audit Report on Compensatory Afforestation, *Report No :21 of 2013*, Comptroller and Auditor General of India.

Compensatory Afforestation Fund Bill, 2008, available at: http://www.prsindia.org/uploads/media/Compensatory%20Afforestation/1211455621_The_Compensatory_Afforestation_Fund_Bill__2008.pdf

Compensatory Afforestation Fund Bill, 2015, available at: <http://www.prsindia.org/uploads/media/Compensatory%20Afforestation/Compensatory%20afforestation%20fund%20bill,%202015.pdf>

CSE Media Briefing: Forests in India, 2012, *Centre for Science and Environment, New Delhi*.

„Strengthen institutions, reform laws and streamline processes“. Agenda for improving environmental governance in India, 2014. *Centre for Science and Environment, New Delhi*.

227th Report on the Compensatory Afforestation Fund Bill, 2015, of Department- related Parliamentary Standing Committee on Science & Technology, Environment and Forests.

Guidelines for diversion of forest land for non-forest purposes under the Forest (Conservation) Act, 1980, dated March 03, 2005.

An Overview of National Forest Funds: Current Approaches and Future Opportunities”, Food and Agriculture Organization, Jan 2001

New Brazilian forest law helps fight illegal deforestation, World Wildlife Fund News Archive, July 8, 2005; PRS.