

Lex Terra

ISSN: 2445 0965

News Updates on Environmental Law

ISSUE 32

OCTOBER 2019

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ABOUT LEX TERRA

“Lex Terra is an initiative by the members of Centre for Environmental Law, Advocacy and Research (CELAR) of National Law University and Judicial Academy, Assam. Through Lex Terra, we are making an effort to put forward the various facets related to Environment from different sources which is published every fortnight among the society so that a community of environment from difference sources which is published every fortnight among the society so that a community of environmentally conscious people emerge out of the legal and non-legal fraternity. Each edition of Lex Terra highlights some noteworthy eco-news, both at global as well as national arena. This newsletter is extensively prepared by the members and researchers of CELAR, members of NLUJAA.

ABOUT CELAR

The primary mission of Centre for Environmental Law, Advocacy and Research (CELAR) of National Law University, Assam is to engage in advocacy and research on public interest environmental issues. For the purpose, it will organize workshops and seminars to educate and develop skills, convene conferences to promote exchange of ideas, conduct training programmes for capacity building in environmental law issues, undertake research on legal concerns and publish periodically, newsletters and journals. The objectives of the CELAR are as follows:

- To inspire and educate students by providing hand-on advocacy experience and direct exposure to the issues.
- Strengthen access to justice by undertaking high quality multi– disciplinary research on contemporary legal issues pertaining to environment.
- Advocate for reforms in environmental law through scientifically sound legislative proposals. • Organize training programmes for strengthening the legal capacity building on environmental laws doe civil servants, law enforcement authorities, non-governmental organizations and media personnel.
- Publish periodically journals and newsletters on environmental law.

-Prof. (Dr.) Yugal Kishore,
Centre Head, CELAR

MESSAGE FROM TEAM LEX TERRA

We the editorial team of CELAR present to the world the 31st edition of Lex terra with immense pleasure. Environmental Law has come a long way since its very inception in our country. Authorities around the world have started initiating procedures to protect the environment. While the Northeastern states of India have abundant natural resources in its pocket, there are minimal legislation that govern them. At the same time, several legislations collide with each other over jurisdiction matters thereby creating several conflicts among the population and local authorities of the region. Through Lex terra we aim to contribute to the existing literature of environmental matters in every minimal way possible. We thoroughly believe that research is the very foundation of every big movement and theoretical papers contribute to actual practical developments to greener and a cleaner environment. The current four articles of the magazine aim to cover as many subject matter as possible. We hope that you enjoy the articles!

Please keep pouring down your support and concern for mother nature.

Thank you!

Happy Reading!

THE NEXUS BETWEEN THE 2018 NATIONAL FOREST POLICY DRAFT AND THE SC/ST (PREVENTION OF ATROCITIES) ACT

Jehosh Paul¹

Introduction to The Draft National Forest Policy, 2018

The 2018 Draft National Forest Policy², released by the Ministry of Environment, Forest and Climate Change (MoEFCC), aimed for the promotion of timber-based industries and shifted the priority from *tribal* to *timber*. The significance attributed to the requirements and rights of local, forest-dependent communities, was substituted by the demand for raw material from forest-based industries. The 2018 Draft blatantly disregards the 1988 Forest Policy³, and has replaced the sections dedicated to *Rights and Concessions* and *Tribal People and Forests*, with the subject-matters of *Production Forestry, Increase (sic) the productivity of forest plantations* and *Facilitate forest industry interface*- all of which focus on increasing the timber yield. The 2018 Draft stresses that *there is a need to stimulate growth in the forest based industry sector* and encourages forest corporations and industrial units to *step up growing of industrial plantations*. The 1988 Policy, on the other hand, had specified that forest-based industries should *raise the raw material needed for meeting its own requirements* and that *no forest-based enterprise, except that at the village or cottage level, should be permitted in the future unless it has been first cleared after a careful scrutiny with regard to assured availability of raw material*. The 1988 Policy reiterated that the requirements of the local communities *should not be sacrificed for this purpose*. The shift in approach to forestry, proposed by the 2018 Draft, contrasts the guidelines specified in the 1988 Policy.⁴

Introduction to The SC/ST (Prevention of Atrocities) Act, 1989

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989⁵ is popularly known as *POA*, the *SC/ST Act*, the *Prevention of Atrocities Act*, or simply the *Atrocities Act*. The

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² Draft National Forest Policy 2018, MINISTRY OF ENVIRONMENT AND FORESTS (March 14th, 2018), <http://www.moef.nic.in/sites/default/files/Draft%20National%20Forest%20Policy%2C%202018.pdf>.

³ Draft National Forest Policy 1988, MINISTRY OF ENVIRONMENT AND FORESTS (December 7th, 1988), <http://envfor.nic.in/legis/forest/forest1.html>.

⁴ Sushant Agarwal, *National Forest Policy Draft 2018 Takes One Step Forward, Two Steps Back*, THE WIRE (April 2nd, 2018), <https://thewire.in/environment/national-forest-policy-draft-2018-takes-one-step-forward-two-steps-back>.

⁵ The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, No. 33 of 1989, Acts of Parliament 1989 (India).

Act lists twenty-two offences, relating to various patterns or behaviours which inflict criminal offences and break the self-respect and esteem of members of a scheduled caste or tribal community. This includes denial of economic, democratic and social rights, discrimination, exploitation and abuse of the legal process. The protection is provided from social disabilities, such as denial of access to certain places and the use customary passage, personal atrocities like forceful drinking or eating of inedible food, sexual exploitation, injury, etc., and atrocities affecting properties, malicious prosecution, political disabilities and economic exploitation. The prime objective of the SC/ST Act is to deliver justice to marginalised communities, through proactive efforts, by giving them a life of dignity, self-esteem and the ability to life without fear, violence or suppression from the dominant communities.⁶

Forest Rights as Envisaged Through The SC/ST (Prevention of Atrocities) Act, 1989

The SC/ST (Prevention of Atrocities) Amendment Act, 2015⁷ provides that the term *Forest rights* shall have the meaning assigned to it under sub-section (1) of section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006.⁸

Whereas, under Section 4 sub-section (i) of the Amending Act- which seeks to modify Section 3 sub-section (1) of the principle Act- it is stated at clause (g) that anyone who *wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises, or interferes with the enjoyment of his rights, including forest rights over any land or premises or water or irrigation facilities, or destroys the crops or takes away the produce* from it, shall be punished.

When one looks into the meaning of the term *Forest rights* under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, it is found that the Act endows a varied array of rights to the tribal community, which are as follows-

- a) *the right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;*

⁶ What Is SC/ST Act? All You Need To Know About This, NDTV (April 3rd, 2018), <https://www.ndtv.com/india-news/what-is-sc-st-act-all-you-need-to-know-about-this-1832430>.

⁷ The Scheduled Tribes and Castes and Tribes (Prevention of Atrocities) Amendment Act, 2015, No. 1 of 2016, Acts of Parliament, 2016 (India).

⁸ Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, MINISTRY OF TRIBAL AFFAIRS (August 7th, 2014), <http://pib.nic.in/newsite/PrintRelease.aspx?relid=108222>.

- b) *community rights such as 'nistar', by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;*
- c) *the right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;*
- d) *other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;*
- e) *rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;*
- f) *rights in or over disputed lands under any nomenclature in any State where claims are disputed;*
- g) *rights for conversion of 'Pattas' or leases or grants issued by any local authority or any State Government on forest lands to titles;*
- h) *rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;*
- i) *the right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;*
- j) *rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;*
- k) *the right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;*
- l) *any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;*
- m) *the right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005.*

However, the same section has also incorporated a few exceptions to the aforementioned rights, which are as follows–

Notwithstanding anything contained in the Forest (Conservation) Act, 1980 (69 of 1980), the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectare, namely:-

- a) schools;*
- b) dispensary or hospital;*
- c) ‘anganwadis’;*
- d) fair price shops;*
- e) electric and telecommunication lines;*
- f) tanks and other minor water bodies;*
- g) drinking water supply and water pipelines;*
- h) water or rain water harvesting structures;*
- i) minor irrigation canals;*
- j) non-conventional source of energy;*
- k) skill upgradation or vocational training centres;*
- l) roads;*
- m) community centres:*

Provided that such diversion of forest land shall be allowed only if-

- i) the forest land to be diverted for the purposes mentioned in this sub-section is less than one hectare in each case; and*
- ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.*

Establishing The Nexus Between the Draft National Forest Policy, 2018 And The SC/ST (Prevention of Atrocities) Act, 1989

Forest rights were initially provided to correct a historical injustice, by recognising the Forest rights of Scheduled Tribes and other forest dwellers. The 2006 Forest Rights Act prescribed for Forest rights to be given to individuals and communities on land (not exceeding four hectares) that they had been using for generations. The Forest rights under the SC/ST (Prevention of Atrocities)

Act finds no mention under the Draft National Forest Policy of 2018, and the livelihood of local communities finds mention in the current draft only thrice-

- 1) as passive recipients of benefits accruing from wildlife tourism;
- 2) as labour for forest-based industries and in relation to non-timber forest produce (NTFP);
and
- 3) the draft policy mentions that business plans for NTFP will be developed based on *climate-smart value chains*, but does not specify how any such initiative will be owned or what percentage of their benefits shared.

Section 3(1)(a) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, which is recognised under the SC/ST (Prevention of Atrocities) Act, provides for the right to *hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers*; this provision will be rendered meaningless if the 2018 Draft National Forest Policy comes into force. Although the Forest Rights Act of 2006 has provide 13,78,589 hectares of forest land to 9,52,369 tribal beneficiaries in the states of Andhra Pradesh, Chhattisgarh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Tripura, Uttar Pradesh and West Bengal, and additionally allotted land to 61,754 individuals and communities in the States of Assam, Himachal, Gujarat and Jharkhand⁹, it remains a bone of contention whether efficiency has been achieved in promoting sustainable livelihood for the tribal people. Several issues are still left unaddressed with regard to its effectiveness in reducing poverty. The lacunae which ought to be seen to are the weak public delivery system and asset base, cost of food and health services, inclusion of the masses in the developmental programmes and enhancement in productivity of natural resources.¹⁰

Amid all such woes and the limited success achieved in uplifting the tribal people from the shackles of poverty, the NPD 2018 exacerbates the problem by failing to address the aspects of providing the tribal people with sustainable livelihood and promote environmental conversation in such forest areas, a result of which the tribal communities have only been further alienated.

⁹ Sudha Pillai, *Protect Rights and Livelihood of Tribals*, GOVERNMENT OF INDIA PLANNING COMMISSION (Mar. 29, 2011), <http://pib.nic.in/newsite/PrintRelease.aspx?relid=71335>.

¹⁰ *Id.* Note 8.

Clause (c) of sub-section (1) of Section 3 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, provides for the *right of ownership, access to collect, use, and dispose of minor forest produce*. The provision enabled tribal people to utilise the forest resources for livelihood security. The harvesting of short rotation and annual crops such as bamboo, amla, custard apples, mahua, tendu, siali (Bauhinia Vahlia), etc., provided assured returns year after year for the tribal communities dependent on the forest land.¹¹ If the National Forest Policy Draft of 2018 is pursued, it will impede the economic benefits gained by the tribal communities and cause critical economic losses.

Similarly, clause (i) of the aforesaid Section, which provides for the *right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use*, will be violated by virtue of the 2018 Draft, since it discusses about utilising the *non-timber forest produce* (NTFP) for business plans based on climate value smart chains, but does not lay down any concrete information on how the NTFP is to be utilised. This will disturb the economic development which the tribal communities have been enjoying, by virtue of the rural job guarantee scheme (MGNREGA) for fire protection and regeneration of bamboo and broom grass. Such a bottom-up approach for the development of the livelihood of tribal people is a very unique employment model, which would be violated for the sake of commercial interests, if the proposed Policy comes into play. It should be taken into consideration that the all-India average value of *non-timber forest produce* (NTFP) stands at Rs 1,672 per hectare. This estimated the per hectare valuation in 2017 to be 2,859, by assuming a conservative inflation rate of 5 per cent per annum.¹² Thus, there is enormous potential for NTFPs to transform the economy of forest-dwelling communities, but this prospect is vitiated by to the 2018 Draft, as it only envisages the tribal communities as passive beneficiaries of the commercial use of the NTFP, and strips them of their right to conserve and protect their community forest produce.

Further, clause (l) of the same section which allows the enjoyment of *any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers*, will be defeated by the proposed Draft Policy, as the spirit of the Policy is to facilitate timber-based factories, with no due regard for the tribal communities, and it does not take into account

¹¹ *Id.* Note 8.

¹² *Id.* Note 8.

that first came the forest, followed by the people, and then the government. This chronology does not allow for the newest entrant into the system, to determine the relationship between the older two entities. In other words, the forest rights provided under the SC/ST (Prevention of Atrocities) Act is merely a recognition of the unalienable rights already vested in the communities living in and dependent on forest land.¹³

Conclusion

The Draft National Forest Policy, 2018 attempts to undo the actions taken under the SC/ST (Prevention of Atrocities) Act, to endow Forest rights, in order to ensure social and economic justice to the tribal community, who have been inadequately recognised in the consolidation of state forests during the colonial period, as well as in independent India, resulting in historical injustice to the forest-dwelling scheduled tribes and other traditional forest dwellers who are integral to the survival and sustainability of the Indian forest ecosystem.

¹³ *Id.* Note 8.

ROLE OF JUDICIARY IN ENVIRONMENTAL PROTECTION

Priyal Bohra¹

Introduction

The protection of environment was not important in post-independence era of India, because of need of industrial development and political disturbances. Post-independence, the main concern was to setup markets, industries, to make new jobs for the citizens. However, after the Bhopal Gas tragedy, Environment protection became priority. After this incident, the area of Environmental law widens in the country and judicial activity also increases.

After 1986, when first act related to the environmental protection was passed, people showed some concern about it. The main purpose of the act was to implement the decisions of the United Nations Conference on the Human Environments. The Act is like a safe guard for the nature from the newly emerged industries and the urbanization. Before this act of 1986, a major enactment was come out just after 2 years after the Stockholm Conference in 1974. The Indian Parliament makes important change in the area of environmental management to implement the decisions that were taken at the conference. It was this time when environmental protection was granted a Constitutional status and environment was included in DPSP by the 42nd Constitution Amendment. The constitution also provides an obligations under Article 48 A and Article 51 A(g) to both the State and citizen to preserve and protect the environment. These provisions have been extensively used by courts to justify and develop a legally binding fundamental right to the environment as a part of Right to life and personal liberty under Article 21. Parliament enacted nationwide comprehensive laws; like The Wildlife Protection Act, 1972 and Water (Prevention and Control of pollution) Act, 1974.

The Kerala High Court reiterated the position by holding that the Right to Sweet Water and the Right to Free Air are attributes of the Right to Life, for; these are the basic elements which sustain life itself. Following these pronouncements, the Supreme Court also recognized and asserted the Fundamental Right to Clean Environment under Art.21 of the Constitution in very categorical terms. At the same time the judiciary in India has played a significant role in interpreting the laws in such a manner which not only helped in protecting environment but also in promoting

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sustainable development². In fact, the judiciary in India has created a new “environmental jurisprudence”³

Environmental Protection

Environmental law is a new domain in jurisprudence at the global level. At the national level, even three years ahead of Stockholm summit, India made a note in the IV Five Year Plan (1969 – 74) on integrating environmental factors into the planning. The IV plan document for harmonious development “recognised the unity of nature and man. Such planning is possible only on the basis of a comprehensive appraisal of environmental issue. There are certain instances, where proper and timely advice regarding environment could have helped in designing projects and in changing adverse effect on the environment which leads to loss of resources. It is necessary, therefore to introduce the environmental aspect into the planning and development.”⁴ A national committee on Environment Planning and Co-ordination was set up as a high advisory body to the Government. This Committee looked after issues related to environment.⁵

The right to live in a clean and healthy environment is not a recent invention of the higher judiciary in India. The right has been recognized by the legal system and the judiciary in particular for over a century or so. The right to live in a clean and healthy environment becomes a fundamental right; it is the only difference in today’s industrialization era, the violation of which, the Constitution of India will not permit. It was in later part of 80s when High Court and Supreme Court of India considered this right as fundamental right. Even before 1980s, people had enjoyed this right not as a fundamental right but as a right enforced by the courts under different laws like Law of Torts, Indian Penal Code, Civil Procedure Code, Criminal Procedure Code etc. In today’s emerging Law world, environmental rights are considered as third generation rights.

Doctrine and Principles Evolved by the Courts

The doctrines evolved by courts are a significant contribution to the environmental jurisprudence in India. Article 253 of the Constitution of India indicates the procedure on how decisions made

² Paramjit S. Jaswal, Directive Principles Jurisprudence And Socio-Economic Justice in India, 543(1996). See also, Paramjit S. Jaswal and Nishtha Jaswal, Human Rights and The Law, 172-180 (1996).

³ People United for Better Living in Calcutta v. State of W.B., AIR 1993 Cal.215 at 228.

⁴ “Environmental Protection: Issues and problems”, Vol. I in Paras Divan and Peeyushi Divan (eds.) Environment Administration Law and Judicial Attitude, op. cit, p.14

⁵ Vanangamudi, P, Approach of the supreme court to industrial relations and environmental protection (2015)<<http://hdl.handle.net/10603/37611>> last access on 10/08/2018

at international conventions and conferences are incorporated into the legal system. The formulation and application of the doctrines in the judicial process for environmental protection are remarkable milestones in the path of environmental law in India.

Public Trust Doctrine

Indian legal system is essentially based on common law, and includes the public trust doctrine as part of its jurisprudence. The state is a guardian of natural resources, and natural resources are available for public for their enjoyment by nature and it cannot be changed into private property. The state is under a legal duty to protect the natural resources. In *M.C. Mehta v. Kamal Nath*⁶, the Supreme Court applied this doctrine for the first time in India to an environmental problem. According to the Supreme Court, the public trust doctrine primarily rests on the principle that certain resources like air, sea waters and forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership.

Doctrine of Sustainable Development

Environmental pollution and degradation is a serious problem nowadays. Judiciary to being a social institution has a significant role to play in the redressal of this problem. The progress of a society lies in industrialization and financial stability. But, industrialization is contrary to the concept of preservation of environment. These are two conflicting interests and their harmonization is a major challenge before the judicial system of a country. The judiciary, in different pronouncements⁷, has pointed out that there will be adverse effects on the country's economic and social condition, if industries are ordered to stop production. Unemployment and poverty may sweep the country and lead it towards degeneration and destruction. At the same time, polluting industries impend the stability of the environment. The judiciary was, therefore, of the opinion that the pollution limit should be within the sustainable capacity of the environment.

In *Vellore Citizens Welfare Forum v. Union of India*⁸, the Supreme Court opined, the traditional concept that development and ecology are opposed to each other, is no longer acceptable, sustainable development is the answer. Sustainable Development means to fulfil the need of

⁶ (1997) 1 SCC 388

⁷ Ayesh Dias, 'Judicial Activism in the Development and Enforcement of Environmental Law: Some Comparative Insights from the Indian Experience', *Journal of Environmental Law*, no 6, (1994).

⁸ AIR 1996 SC 2715

present generation without compromising the needs of future generation. Sustainable development is a balancing concept between ecology and development.

Polluter Pays Principle:

The countries moving towards the industrial development had to face the serious problems of giving adequate compensation to the victims of pollution and environmental hazards. That the polluter must pay for the damage caused by him is a salutary principle evolved very early in Europe when that continent was haunted by a new spectre, that of unprecedented pollution.

In *M.C. Mehta v. Union of India*⁹, a petition was filed under Article 32 of the Constitution of India, seeking closure of a factory engaged in manufacturing of hazardous products. While the case was pending, oleum gas leaking out from the factory injured several persons. The significance of the case lies in its formulation of the general principle of liability of industries engaged in hazardous and inherently dangerous activity.

Precautionary Principle

The precautionary principle says that if any action or project has some possible risk which can cause harm to public and environment and the person who is taking that action has knowledge about those risk, that in the absence of scientific measures that action or project is harmful, then the burden of proof lies on those persons who are taking that action that it is not harmful. The Precautionary principle says that there is a social responsibility to protect the public from any kind of harm, in case when scientific investigation point towards a risk. These protections can be relaxed in the case when person taking action can prove with sound evidence that no harm will result.

In *Vijayanagar Education Trust v. Karnataka State Pollution Control Board, Karnataka*¹⁰ the Karnataka High Court accepted that the precautionary doctrine is now part and parcel of the Constitutional mandate for the protection and improvement of the environment. The court referred to *Nayudu cases*¹¹ which laid down that the burden to prove the benign nature of the project is on the developer if it is found that there are uncertain and non-negligible risks.

⁹ 1987 SCR (1) 819

¹⁰ AIR 2002 Kant 123

¹¹ *Andhra Pradesh Pollution Control Board v. MV Nayudu*, AIR 1999 SC 812

Indian Judiciary's Role in Development of Environmental Jurisprudence

Professor Upendra Baxi, who has often supported the judicial activism in India, has also said that the "Supreme Court of India" has often become "Supreme Court for Indians". By the powers vested in the Judiciary, and through its activism, it has actively contributed in the strengthening the fundamental rights granted by the Constitution. In addition to this, the Stockholm Conference on Human Environment, 1972 has further contributed in strengthening the environmental law regime in India and also acted as the facilitating agent behind enacting the 42nd Constitutional Amendment Act, 1972. This amendment has introduced certain environmental duties both on the part of the citizens (Article 51A(g)) and on the state (Article 48A).

Under the constitutional scheme the legal status of Article 51(A)(g) and 48A is enabling in nature and not legally binding per se, however, such provisions have often been interpreted by the Indian courts as legally binding. Moreover, these provisions have been used by the courts to justify and develop a legally binding fundamental right to environment as part of right to life under Article 21. In *Asbestos Industries Case*¹² the Supreme Court extensively quoted many international laws namely ILO Asbestos Convention, 1986, Universal Declaration of Human Rights, 1948, and International Convention of Economic, Social and Cultural Rights, 1966. In this case the court dealt the issues relating to occupational health hazards of the workers working in asbestos industries. The court held that right to the health of such workers is a fundamental right under article 21 and issued detailed directions to the authorities. In *Calcutta Wetland Case*¹³ the Calcutta High Court stated that India being party to the Ramsar Convention on Wetland, 1971, is bound to promote conservation of wetlands.

Judicial remedies for Environment Pollution

Tortious liability and statutory law remedies are the two remedies which are available in India in case of environmental protection. The tortious remedies available are trespass, nuisance, strict liability and negligence. The statutory remedies incorporates: Citizen's suit, e.g.

an activity brought under Section 19 of the Environmental (Protection) Act, 1986,

¹² *Consumer Education and Research Centre & ors. v. UON & Ors.* (1995) 3 SCC 42

¹³ *People United For Better Living In Calcutta v. East Kolkata Wetlands Management Authority*, AIR 1993 Cal 215.

an activity under Section 133, Criminal Procedure Code, 1973.and

and activity brought under the Section 268 for open irritation, under Indian Penal Code, 1860

Apart from this, a writ petition can be filed under Article 32 in the Supreme Court of India or under Article 226 in the High Court

The Constitutional aspects on Environmental Law

In the Indian Constitution it was the first time when responsibility of protection of the environment imposed upon the states through Constitution (Forty Second Amendment) Act, 1976.

Article 48A states that, the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country.” The Amendment also inserted Part VI-A (Fundamental duty) in the Constitution, which reads as follows:

Article 51A(g) “It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, and wildlife and to have compassion for living creature.”

In Sachidanand Pandey v. State of West Bengal¹⁴, the Supreme Court observed “whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48A and Article 51A(g).

Conclusion

Thus, after analysing the above-mentioned cases, we find that the Supreme Court currently extends the various legal provisions relating to the protection of the environment. In this way, the justice system tries to fill in the gaps when there is a lack of legislation. These new innovations and developments in India through judicial activism open the many approaches to helping the country. In India, courts are extremely aware and cautious about the particular nature of environmental rights, as the loss of natural resources cannot be renewed. There are recommendations that need to be considered.

There is no way for a law, unless it is an effective and successful implementation, and for effective implementation, public awareness is a crucial condition. Therefore, it is essential that there is an

¹⁴ AIR 1987 SC 1109

appropriate awareness. This assertion is also upheld by the Apex Tribunal in the case of M.C. Mehta v. Union of India¹⁵. In this case the Court ordered the Union Government to issue instructions to all state and union governments to enforce the authorities as a condition of license on all cinemas, to display no less than two slides / messages on the environment in the middle of each show. In addition, the Indian Law Commission, in its 186th Report, submitted a proposal for the establishment of the Environmental Court. Hence, there is an urgent need to strengthen the hands of judiciary by making separate environmental courts, with a professional judge to manage the environment cases/criminal acts, so that the judiciary can perform its part more viably.

¹⁵ 1992 AIR 382

EMERGING NORTH EAST INDIA: RECENT SOCIO-ENVIRONMENTAL DEVELOPMENTS

- Medha Patil & Aman Bahl¹

INTRODUCTION:

In the long history of the advancement of humankind, we have achieved a phase where through quick speeding up of science and development, we have developed the capacity to change our condition in innumerable courses and on a striking scale, through several laws, legislation and forest policies. The forest policy and administration has been a subject of significant discussion and struggle ever since the British established a Forest Department and sanctioned enactments relating to forest service in the nineteenth century. The North-east, which is known for its unblemished beauty, lush green forests and rich biodiversity, is at a risk of getting depleted perpetually. The general population of the area who live in the proximity with nature is seen to get distanced from nature and natural resources essentially the land and woodland resources and experience a risk to its condition and occupation akin to nature.²

This paper examines the recent developments in the relation to forests and their use and governance in the North-Eastern parts of India. In the recent past, the State's control over the forest in this region has systematically eroded people's right over their resources, posing a threat not only to their livelihood, but also to the delicate balance which rural and forest-based communities traditionally maintained with their natural environment. For the majority of the population in the region, the forest is not only a source of food, fuel, fodder, medicine, and timber, but also the abode of their tutelary spirits and deities; sacred beings that protect them from diseases, pestilence and otherworldly afflictions. Thus the state's appropriation of their rights over forest does not simply mean the erosion of their economic base alone, but also an onslaught on their culture and tradition.³ The paper also discusses how the recent development due to the high ecological and economic value of trees left the tribes in the region with little room to exercise their traditional rights over forests have left them disturbed. Both, in the colonial and post-colonial period, the notion of rights contested issue between the local community and states exercise of the power to govern rights over

¹ B.A LL.B (Hons), Maharashtra National Law University, Nagpur.

² G. M. Day, "The Indian as an Ecological Factor in the North-eastern Forest", Vol. 34, Ecology, 1953, p. 329-346.

³S. Chatterjee, "Biodiversity Conservation Issues of Northeast India," Vol. 10 No. 2, The International Forestry Review, 2008, pp. 315-324.

the land. History, however, reveals that the bottom line of forest policies, present and, past, is revenue rather than the conservancy of trees for than the conservancy of trees.

GENERAL PROFILE OF THE REGION:

North East India constitutes an important ecological region in the country. Also known as the land of the seven sisters, a metaphor for its seven states- Arunachal Pradesh, Assam Mizoram, Nagaland and Tripura, the region houses over a hundred tribal communities characterized by diverse linguistic, political and religious backgrounds.⁴There are a number of arrangements provided in the Constitution for the administration of the region.

The system of administration in the North Eastern Region differs in important ways from that which prevails in the rest of the country. The states of Meghalaya, Mizoram of Assam are placed under the Sixth Schedule; Nagaland is governed by Article 371 A⁵. The latter provides that notwithstanding anything in this Constitution – no Act of the Parliament in respect of (i) religious or social practice of the Nagas (iii) customary law procedure, (iii) administration of justice and (iv) ownership of land and its state of Nagaland. Article 371 G⁶ provides similar safeguards to Mizoram. Interestingly, though Mizoram comes under the sixth schedule, still additional safeguards are provided in the state. This Article 371 G was incorporated in the Constitution in 1986 when Mizoram was elevated from a Union Territory into a fully fledged state.

BIOLOGICAL AND NATURAL RESOURCES:

In addition to its cultural plurality, the North East is also generously endowed with natural resources. The region is known for oil, minerals and water energy. Its biological kingdom boasts of a wide variety of floral and faunal life, many of which are enlisted among the endangered species.⁷

The vegetation differs from rich evergreen forests in the lower scopes to snow-capped and sub-alpine woodlands in the blended timberlands and meadows in the middle zones. In spite of the fact

4R. K. Kar, "Human Adaptability in Northeast India", Vol. 19 No.1, Current Anthropology, 1978, pp. 133–133.

⁵The Constitution of India, art. 371 A.

⁶The Constitution of India, art. 371 G.

⁷S. Chatterjee, "Biodiversity Conservation Issues of Northeast India", Vol. 10 No. 2, The International Forestry Review, 2008, pp. 315–324.

that the time of human settlement and moving farming has left their impact on the eco-system, the highland-mean proportion and communication has retained its natural legacy. According to Toky and Ramakrishnan, approximately 50 percent of India's forest cover is in the North East Region. However, increasing population pressure and the extractive process of development, particularly by the last two decades, has begun to exact a heavy toll on the environment.⁸

FOREST COVER:

According to an official estimate based on satellite images, the north-eastern region has 1,63,799 km² of forest, which is about 25% of the total forest cover in the country. The management of the forest has suffered in the recent past due to pressure on land, decreasing cycle of shifting cultivation, exploitation of forest for timber and lack of scientific management strategy. The age-old practice of shifting cultivation has been a single factor responsible for the forest and land degradation, thereby changing the landscape extensively. About 0.45 million families in the north-eastern region annually cultivate 10,000 km² forests whereas total area affected by '*jhumming*' is believed to be 44,000 km². Degraded secondary forests, bamboo thickets, and weeds or simply barren land dominate today's '*jhumscapes*'.

Further, the problem got worse through the indiscriminate felling of trees to satisfy the ever-growing hunger of industries surviving on forest products such as paper and pulp, plywood, matchstick, etc. There is an urgent need of policy measures to undo the massive losses to the green cover of this region. Unlike other regions of the country, administrative control regimes of forest cover in the Northeast is different. A large part of the forest in this area falls under the category of open forests with a crown density of 10-40% and only a few areas qualify as dense forests i.e. of a crown density of 40% or higher. According to 1995 estimates, these states, including Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland, and Sikkim accounted for a loss of 791 sq. km of forest area in two years viz. from 1993 to 1995. There emerges a dire need in environmental policies to incorporate strict principles to make reparations for the damages and laws for preserving these natural resources for the future.

⁸Indrani Baruah, "Borders, Ethnicity, and Traditions: A Passage to the Northeast of India", Vol. 14 No. 1, Traditional Dwellings and Settlements Review, 2002, pp. 36-37.

DEVELOPMENTS IN THE RECENT PAST:

Not long ago, Northeast part of India was a thriving economic zone in the world. Northeast India was at the forefront of industrialization in British India. With the partition of the Indian subcontinent in 1947, the Northeast became isolated, at least economically, from rest of India, and gradually surrendered to an inward-looking economic regime with broken transportation networks. The resulting aftermath of partition is well known.⁹

Forest Landscape Characterisation in Northeast India:

In a project entitled ‘Biodiversity Characterisation at Landscape Level in North-East India using Satellite Remote Sensing and Geographical Information System’ various forest vegetation types were classified and mapped with high accuracy using satellite remote sensing technology (Anon., 2002). The project is a pioneering effort to create a geospatial database on vegetation cover types, fragmentation, disturbance regimes, and biological richness. The landscape ecological principles have provided insight into the natural and human indices factors, which may bring dynamics in the forested landscape of the region. Twenty-one forest vegetation cover types and seven associated forest vegetation types were mapped.

Temporal changes in Meghalaya

The forest cover of Meghalaya has been decreased during this time period. The degradation activities viz., shifting cultivation, clear felling of forests for timber, and mining has altered the natural landscape to a great extent. This has resulted in fragmentation of the landscape and loss of many endemic species of the state. There has been a significant increase in landscape variability during 1980 – 1995. The land transformations result in the alternation of natural habitats. These changes have brought in impacts like fragmentation, loss of biodiversity and degradation of sites. Spatial presentation of landscape dynamics can be used to infer disturbance regimes horizontally. Higher land cover dynamics have been observed in Garo hills showing more alternations in the

⁹Dr Prabir De, “How government can help Northeast India re-capture its past glory”, Economic Times, 18 October 2017, available at: <https://blogs.economicstimes.indiatimes.com/et-commentary/how-government-can-help-northeast-india-recapture-its-past-glory/> (last seen on 9 Sept 2018).

landscape during the study period. For example, unique plant species such as *Cycas pectinata* and *Dipteris wallichii* were lost in Meghalaya. Also, species such as *Diospyros undulata*, *Nymphaea pygmaea* and *Sageretia hamosa* are still considered extinct and *luvunga scandens* is thought to be locally extinct.

Large scale deforestation – Sonitpur (Assam)

One of the most aggressive large-scale deforestations in the foothill region of Eastern Himalayas has been found to take place in the Sonitpur district of Assam. The spatial distribution of different forest types from 1994 to 2000 show that very valuable forest cover area is being converted to agricultural land. The reduction in total forests is more from 1999 to 2000 that was observed from 1994 to 1999. 86.75 sq km (1.70%) of the forest area has changed from 1994 to 1999 while 145.44 sq km (2.86%) has changed from 1999 to 2000. The massive change in the forest cover is due to human-induced practices and unsound forest management activities. It is the highest rate of deforestation recorded in the managed setup. Even the community participation in these regions has failed to affect the protection and conservation of the area. The changes have not only impacted the cover attributes, but also the biodiversity of the area. The expected loss in the biodiversity is quite significant.¹⁰

Impacts of Shifting Cultivation

In one of the international initiatives TREES – II, the shifting cultivation practices in northeast India have been assessed. The three test sites in Arunachal Pradesh, Nagaland, and the Barak valley were compared between 1991 and 1996. It is revealed by the study that area under permanent agriculture has almost been constant; the increase is only in semi-permanent agriculture, witnessing an increased extent of shifting cultivation in the region. In a shifting cultivation landscape, the bamboo invaders and later is replaced by the secondary forest. In the past with sufficiently long fallow periods of 20-30 years the system was sustainable, but with the reduction in the fallow period of as low as 3 years in recent times, the situation has attracted the attention of decision-makers and planners. However, due to the human pressure and ill management practices,

¹⁰J.S. Singh and S.P.S. Kushwaha, "Forest Biodiversity and Its Conservation in India", Vol. 10 No. 1, The International Forestry Review, 2008, pp. 292–304.

not only the primary forests, but also the secondary forests are being cleared. There is an extremely frequent change of mosaics in a non-forests, natural vegetation and vice-versa, showing that re-growth of forests is almost nil and since existing forests are also decreasing, the threat to which the forests are being subjected to is of immediate concern.

TOWARDS A NEW FOREST POLICY FOR THE NORTH EAST:

Now, the forest area of North East India has experienced human occupants of varied nature resulting from either the decision of taking refuge on the tradition-directed strategies for survival and development of the forest environment.¹¹ Whatever may be the driving forces, most of the forest villagers have evolved their livelihood based on principles of traditional subsistence strategies and the transformation caused by various internal as well as external processes from the very past. In conclusion, the forest area is degraded day by day with the abuse of natural resources and thus the policies of biodiversity conservation should be changed in view of long-term conservation practices.¹²

The study of forest resources, goods for the livelihood impact of indigenous society on the establishment of forest area should be evaluated and policy should be prepared in such a manner that traditionally associated forest villagers could be benefited from the conservation and management of biodiversity of forest cover. Moreover, for the cause of some of the indicators those collectively present a gloomy picture of the ecological security of the forest area. Therefore, through some conservation and sustainable management policies which can be generated to mitigate the problems at various spatial and temporal levels by an appropriate understanding of the emerging situation to evolve the right kind of action and plans for conserving the forest ecosystem and minimize current environmental problems would be possible.¹³

¹¹Sanjib Baruah, "Citizens and Denizens: Ethnicity, Homelands, and the Crisis of Displacement in Northeast India", *Journal of Refugee Studies*, [2013], Vol.16 No. 1, available at: <https://doi.org/10.1093/jrs/16.1.44> (last visited on 9 Sept 2018).

¹²Bengt G. Karlsson, "Evading the State: Ethnicity in Northeast India through the Lens of James Scott", Vol.72 No.2, *Asian Ethnology*, 2013, pp. 321–331.

¹³N.H. Ravindranath and R. Sukumar, "Impacts of Climate Change on Forest Cover in India", Vol.75 No.1, *The Commonwealth Forestry Review*, 1996, pp. 76–79.

Hence, it is needless to say that a strong regulatory framework can, undoubtedly, go a long way in effectively dealing with the environmental and policy-making problems arising in the now and in the near future and bringing about their adherence in accordance with the rest of the country.

**NARAYAN DUTT BHATT V. UNION OF INDIA AND OTHERS. WRIT PETITION
(PIL) NO. 43 OF 2014**

**UTTARAKHAND HIGH COURT’S DECISION: “ENTIRE ANIMAL KINGDOM AS
LEGAL ENTITY, WITH RIGHTS, DUTIES & LIABILITIES OF A LIVING PERSON.”**

Jayanta Boruah¹

India had a glorious tradition in the past, wherein the Hindu community even animals were treated equally along with human beings. They regarded both men and animals to be the creations of the same God (Prajapati). But, as time passed humans started committing cruelty on animals either by way of animal sacrifices or by engaging them in serious unhygienic conditions of work to satisfy the selfish needs of man.

However, the concern regarding the protection of animals from human cruelties, on the other hand, has become much important. Thereby, several nature lovers and environmental activists are sincerely devoting their efforts to safeguarding these animals. The recent activity that attracted serious attention regarding animal rights was the judgement passed by the Uttarakhand High Court on July 4, 2018, whereby the members of the animal kingdoms were assigned legal personality. The judgement was an outcome, due to a Public Interest Litigation (PIL) on the health of transport animals (including donkeys, horses and other such animals) which were used along the 14 km route from the town of Banbasa Uttarakhand, India to Mahendra Nagar, Nepal. (*Narayan Dutt Bhatt v Union of India And Others*. Writ Petition (PIL) No. 43 of 2014)

Regarding the constitutional validity of the judgement, the Court said: “ Article 21 of the Constitution, while safeguarding the rights of humans protects life and the word ‘life’ means the animal world”. This interpretation of Article 21 of the Constitution of India has extended its scope to even include animals within its ambit. Further, this interpretation may be looked upon as a revolutionary change from anthropocentrism to ecocentrism in India to some extent.

The Division Bench of Justice Rajiv Sharma and Lokpal Singh while making this judgement issued a series of directions to prevent cruelty upon animals and said: “ ...to protect and promote the

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greater welfare of animals including avian and aquatic animals are required to be conferred with the status of legal entity legal person”. The entrusting of legal rights upon animals has now made animals capable of being represented by a custodian in the Court of Law for their rights. The Court further issued several directions upon both the citizens of Uttarakhand and the state for ensuring better conditions for the animals. The PIL also prayed for, to include provisions for vaccination and health check-ups of these animals before entering India and for regulating the traffic in the Indo-Nepal border.

However, there are many opportunities for misapplication of this judgment because all the citizens of Uttarakhand has been declared *loco parentis* but, how they shall take care of the animals, or to what extent one shall be responsible, shall one be responsible as a guardian for the acts of other citizens, etc. are not been clearly provided. Moreover, as regards to rights between animals which are owned and those which are wild are not precisely demarcated, as such it is not clear as to whose rights will prevail when there will be a clash between these two groups of animals.

Such is the scenario which makes it difficult to decide when the matter comes to the implementation of such judgments. This judgment is not the single judgment on this issue, there had been several such judgments made in succession from time to time, yet the conditions remained pathetic.

In most countries like New Zealand, for instance, have several institutions for claiming rights on behalf of the ecosystem in general and also on behalf of animals in particular. But, such an institutional framework in India is yet to be acknowledged.

However, we must also not deny the importance of this judgment, since this judgment makes it clear that some sections of the humanity are still working for the ecosystem and the hope of their protection remains lighted to some extent, provided some more efforts are seriously needed in this direction.

AFTERMATH OF BHOPAL GAS TRAGEDY IN LIGHT OF RIGHT TO CLEAN ENVIRONMENT UNDER ARTICLE 21

Nancy Wadhwa¹

Bhopal Gas Tragedy, where more than 40 tons of methyl isocyanate was leaked into the atmosphere due to faulty safety systems of Union Carbide, is still pictured as the worst violation of Right to clean environment and Right to health in our country. The horror that ensued after this leakage is still a nightmare for the citizens of Bhopal. With an estimated figure of around 8.5 lakh people in Bhopal, more than 4000 people died on the spot and almost half the population suffered temporary or permanent disabilities.

Taking into consideration a large number of victims and to ensure that UCC was held adequately liable, the Bhopal Gas Tragedy Act was passed, which authorized the government to represent all the victims in any legal proceeding that took place.

The incidents that took place after this, point towards how the environment has always taken a lower hand in all of our battles.

Compensation

As per the original suit instituted in the US courts, UCC was to pay a total compensation of \$3.3 billion. This calculated amount just included the compensation to be paid to the victims of the disaster. The inadequacy of this amount is to be pinpointed at the fact that no amount of environmental damage was sought by the government. This case was shifted to the Indian courts for ease of proceedings. In another turn of events, UCC's liability was fixed through an out of court settlement between the government and UCC, wherein UCC was to pay \$470 million in full settlement of all claims. This amount did not only lack in taking into consideration the environmental damages, but also could not compensate the victims of the disaster.

Disposal of The Leftover Waste

After the horrifying incident of leakage of tank number 610 into the atmosphere, the entire focus of the citizenry and the government was directed towards reversing the effects of this tragedy on human populations in Bhopal. What remained out of the question for a very long time was that

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there existed another container of MIC still lying on the property of the UCC in Bhopal. In 2004 an activist filed a PIL in the Supreme Court regarding the tank and other toxic waste lying around in that area. The Supreme Court ordered DOW Chemicals, a subsidiary of the UCC, to clear it out. UCC, on the other hand, defended itself with the argument that the settlement discharged them of all liabilities arising out of the incident. The court then ordered the government to clean up the waste and dump it at Pithampur, MP. This was heavily protested by the citizens of that area, after which the Panchayat of that area strongly opposed it. After this opposition, it was then in talks to be shifted to Gujarat but was opposed by the Gujarat government as well. The central government upon the suggestion of an expert committee agreed to strike a deal with an incinerator firm in Germany, which due to repeated extensions of the Indian government, never took place. After this fiasco, the government has resorted to tender based cleanup of the area.

To bring it down in one line, that tank along with other toxic waste is still lying at the former plant, waiting for the Bhopal Gas Tragedy to repeat again and destroy the ecological balance of the city completely. It comes across as a very bizarre incident that for 20 years the government was just sitting on the existence of such a poisonous substance and waiting for a private multinational to clear it out. Not only is this gross negligence, but also a complete violation of the precautionary principle, for which the government has no defense. Such is the importance of the environment in our society.

Criminal Proceedings

The criminal proceedings against UCC were nothing but a mere formality, the final judgment came out in 2010 for an incident that took place in 1984. Warren Anderson, the chairman of UCC was already declared an absconder by the Indian government. The rest of the 7 accused were charged with mere punishments. An interesting aspect here is that 2010 bench couldn't even give a varied judgment as the SC had absolved UCC of any liability in regard to murder.

An important aspect to be noted here is that UCC was only held liable for offenses under Part 15 of Indian Penal Code which deals with offenses against the human body. No charge was levied under Part 16 of the IPC or the Air Act, 1981 or any other legislation pertaining to the environment which was in force at the given time. This is a clear depiction of how we treat the environment as per our convenience and how in a tragedy on such a huge level, we have completely ignored the irreparable damage caused to the environment.

Analysis

This is just one of the thousands of incidents wherein the environment takes a back seat in not just our day to day lives but major instances and disasters as well. Such tragedies and incidences bring us to question the reason as to why is Right to clean environment brought under the purview of fundamental rights when neither the judiciary nor the government is willing to work for its achievement. The meaning of the existence of law is only when it is actually implemented as per its word. It is understandable that there does exist a certain amount of discrepancy in the actual word of law and its implementation. But it is the extent of this discrepancy that is posing a problem for us. Be it be the Bhopal Gas Tragedy or case of River Yamuna being considered as the most polluted river and still being a source of drinking water for thousands settled around there, or any other environment-related cases, it proves to us again and again that this gap between the law and its implementation is continuously increasing. It is high time that we as citizens and the government of the country take cognizance if this increasing gap. By not taking adequate measures, not only are we destroying our own future, but of our upcoming generations as well.

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