

Lex Terra

News Updates on Environmental Law

ISSUE 6

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“What's the use of a fine house if you haven't got a tolerable planet to put it on?”

— Henry David Thoreau

The rate at which we are exploiting the Earth at present is at its highest. A bit of awareness can help change this. *Lex Terra* is a mode of creating awareness. An effort made by the Seventh Semester Environmental Law Specialisation Students of B.A.,LL.B, it is an extension of a classroom exercise which the students under Asstt. Prof. Chiradeep Basak intend to put forward to the entire family of NLU-A. A bit of contribution here and a bit of contribution there from each one of us is what the Earth desperately needs at this point of time. Through *Lex Terra*, the students intend to highlight important happenings in the field of Environment which we all must be aware of.

Every issue of *Lex Terra* would be a collection of various Environment specific news items which will be touching various facets of environmental law as well. Law is the best instrument to usher in any kind of change and change in our approach towards our interaction with the environment is a necessity right now.

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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.

- Organise 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.

— **Professor (Dr.) Yugal Kishore,**
Centre Head, CELAR

Message from Team *Lex Terra*

Dear Readers,

Lex Terra proudly presents it's sixth issue for all the would be legal eagles and scholars of NLU, Assam. With your continuous support, she will maintain her tempo and share all relevant news vis-a-vis environment, through this virtual interface.

We congratulate the *Lex Terra* team for its praiseworthy collective efforts.

The team of *Lex Terra* wishes to thank all of those who supported this initiative. We would like to express out gratitude to our respected Vice-Chancellor, Prof. (Dr.) Vijender Kumar for his continuous support and timely inputs. We would like to thank Prof. (Dr.) Yugal Kishore, the Centre Head of CELAR for his help and encouragement. Lastly, we would like to thank Mr. Chiradeep Basak, Centre Co-ordinator of CELAR, who has been a source of inspiration from the outset, along-side his unrelenting contribution to all phases of the

job, from planning, to setting clear goals and appraising the outcome.

It gives us immense delight to inform our readers that we are going to have separate segment from 6th issue on short articles, case studies/legislative/case commentaries on environmental law from NLU students, every fortnight.

Our issues goes online every 1st and 16th of each month. So from 6th issue onwards, you are invited to submit your original write ups (maximum 500-1000 words) by 22nd and 8th of every month.

The same will be reviewed and then published online. Maximum of 10 write ups will be part of this segment.

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

Thank you

Happy Reading!



Courtesy- Google

SHADES OF CLIMATE DIPLOMACY AND INDIA'S PROMISE

Chiradeep Basak,
Assistant Professor of Law, NLU-A

“Environment is where we live, Development is what we do. How can any sane person allow degeneration of where we live in the name of what we do. It is sad but true that unwittingly all of us contribute to the liquidation of the earth without realizing the consequences of small things we do.”

-Prof. R Venkata Rao

Vice Chancellor, National Law School of India University, Bangalore

On the eve of International Non Violence Day, India, i.e. Bharat submitted her 38-page Intended Nationally Determined Contributions (INDCs) to UNFCCC. INDCs, in a way will be the skeleton for Paris Negotiation (Conference of Parties (COP) 21 meet). It will bring an accountability element for all participating countries. The world is eagerly waiting for this event, scheduled to begin from November 30th, 2015.

Since 1972, Climate Diplomacy has played a crucial role in deciding the providence of policy scaffold of more than 150 countries across the globe. The demarcation of world community on the basis of its socio-economic status didn't help a lot in combating climate change. Some of the initiatives were not only novel but also devious. Placing the cards of 'market based mechanisms' and 'climate justice' changed the shape and structure of climate law discourse in this timeline. However, we failed to draw a consensus due to our anecdotal domestic self interest.

Mark Twain once said, The Principle of give and take is the principle of Diplomacy- give one and take ten. Whether this principle play well with the concept of historical responsibility is a fiddly point of climate debate because figures of GCF (Green Climate Fund) speaks otherwise.

The major challenge is climate funding, for an economy which carries with itself the burden of highest number of poor in the globe. India promised:

To reduce emissions intensity of its Gross Domestic Product (GDP) by 33-35% by 2030 from 2005 level;

To create an additional carbon sink of 2.5-3 billion tones of CO₂ equivalent through additional forest cover by 2030;

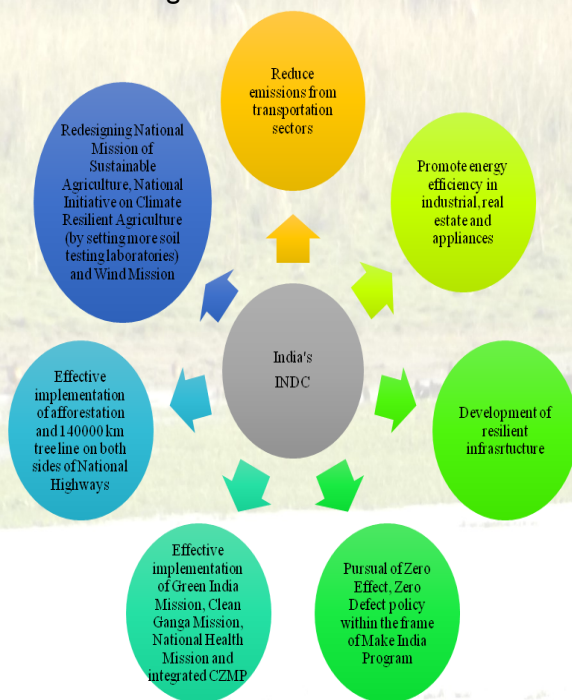
To achieve about 40% of electricity from non

fossil fuel resources by 2030 with the impetus of international climate finance and technology transfer from the developed countries.

In order to achieve these targets, several measures have been targeted under the head of *Electricity for all*, which includes:

Sector	Target
Wind Energy	currently, India is 5 th largest wind producer in the world and aim to attain a target of 60GW of wind power installed capacity by 2022
Solar Energy	Implementation of several ambitious programs with a target to enhance the capacity to 100GW by 2022. In order to attain the same, 25 Ultra Mega Solar Power Projects, Solar Parks, Canal Top Solar Projects and installation of solar pumps for farmers have been targeted
Biomass Energy	Enhance the capacity to 10GW by 2022 from the present capacity of 4.4GW
Hydro-power Energy	New and specialized programs with an objective to promote mini as well as small hydel projects, especially for electrification of remote rural areas
Nuclear Energy	One of the environmentally and economically sound technology is also under the radar of India's INDC with a target to achieve 63GW capacity by 2032
Clean Coal Energy	144 existing thermal power stations have been given compulsory targets for refining energy efficiency in addition with stringent emission standards for thermal power plants
National Smart Grid Mission	Launched to enhance efficiency in power generation and supply. About USD 6Bn worth projects under GREEN ENERGY CORRIDOR have been rolled out

(... Contd.)In addition, there are certain ladders that have been fashioned to implement the aforementioned goals-



Challenges and Way Forward:

They say, money matters and as George Bernard Shaw once said, “Capitalism justified itself and was adopted as an economic principle on the express ground that it provides selfish motives for doing good, and that human beings will do nothing except for selfish motives”. So in this conflict between climate and capitalist consumption, one question remains, what will be the financial backbone for all these goals? In order to achieve these aforementioned goals, at least USD 2.3 trillion will be necessary between 2015-2030. We we fail, a catastrophic escalation of environmental disasters is

inevitable. From economic point, several initiatives have been taken to generate funds. For example, about INR 170 billion has been collected though coal cess. An initial impetus of INR 3500 million has been created under National Adaptation Fund. Several tax free infrastructure bonds of about INR 50 billion has been introduced for funding several energy generation projects but these amounts are not sufficient enough to attain the goals.

India will face a major challenge in projecting the principle of Common but Differentiated Responsibilities as its strong suit because. We don't have strong lobby (Small Island, Latin American and even African countries) to table this contention. China's bilateral chord with United States is another blow. We have to see, how LMDCs (all like minded developing countries) are going to negotiate for climate finance. The tragic paradox is that all major emitters will be on one side with their respective self mandated emission cuts while on the other hand a weak contention for climate justice will struggle to triumph. Only on 11th December, 2015 we will come to know, who wins over whom. However, we expect that the upcoming agreement will have a cascade effect in both International as well as National Environmental Legislations.

On climate change, we often don't fully appreciate that it is a problem. We think it is a problem waiting to happen.

- Kofi Annan

Ourfannasieb

THE SELFISHNESS IN THE SUSTAINABILITY OF SUSTAINABLE DEVELOPMENT

-Rashmi Patowary

Since, the birth of the concept of “Sustainable Development”, it has become a global mascot, carrying the burden of harmonizing an apparent conflict that has been disturbing the thought process of human race – the conflict between environment protection and development. The concept of Sustainable Development has been making an effort to find a middle path wherein conservation and preservation of environment would compliment development and vice-versa. Why is it that even after almost 45 years, numerous negotiations, treaties, conventions, discussions drawing the spirit of sustainable development fail to manifest solid results?

The Brundtland Report that popularized “Sustainable Development” defined the concept as follows:

Sustainable development is development that meets the needs of the present without compromising the needs of the ability of the future generations to meet their own needs.

The aforesaid definition has the essence of compromise. A compromise that, creates an illusion; wherein like the horizon, development seems to merge with environment protection. The problem lies in the construct of the words. “Sustainable Development is development”, reflects that it is a kind of development bearing certain features. The features are drawing a

balance in the needs of different generations. Why can the term “development” in itself contain the essence of sustainability? The usage of prefixes such as “economic development”, “sustainable development” is misleading. It breeds narrow outlook. The idea of development cannot shine bright if; one begins to prioritize its various facets. Development in itself is incomplete if one has to lose in order to gain something!

The other question that now arises is “whose generation?” Is it the generation of human race alone or every being that lives on this planet? If it is human race alone; the definition is without any doubt, the product of an anthropocentric outlook. Man so far can be blamed of viewing earth as a commodity to satisfy their need alone; which will well explain all the failures. On the other hand, if generations include everyone i.e., all beings, the problem is who are we (humans) to decide for the other beings? Our incapacity to understand the tongue and behavior of other beings do not make us more rational and intelligent. It does not mean that we have a language and they do not. There are numerous natural phenomena, which even to this day lack strong scientific understanding and are built on assumptions. To say that humans are the most intelligent species on earth would be a fool’s statement. Cockroaches, elephants

and numerous migratory species roam the planet to challenge our understanding and footing on this planet.

The concept of sustainable development is like an invisibility cloak that we have knitted to hide and justify our selfish attitude. We mould and shape it to give strength to our actions; actions that we are well aware have sprouted from the short-term happiness that we desperately seek to achieve.

*Humankind has not woven
the web of life.*

*We are but one thread within
it.*

*Whatever we do to the web,
we do to ourselves.*

*All things are bound
together.*

All things connect.

— Chief Seattle, 1854

A POLICY FOR SOLID WASTE MANAGEMENT IS NEEDED IN ASSAM

- Nishigandha Paniphukan

In India, a policy on Solid Waste Management was framed in September, 2000 based on a Report of the Committee for Solid Waste Management in Class I Cities of India, which was submitted to the Supreme Court. The Supreme Court urged statutory bodies to comply with the Report's suggestions and recommendations. However, Assam failed to implement or frame any such laws for the management of solid waste.

Solid waste is a major concern in towns and cities of Assam. Guwahati, with a population of more than a million people produces a huge amount of solid waste each day but there is no proper and specific method of disposal of these wastes. The lack of a particular policy or a proper concrete framework is the reason behind it. According to most major Solid Waste Management policies, the solid wastes from the homes are to be divided into categories of dry waste and wet waste and also into bio-degradable and non-biodegradable which are to be disposed off in a separate manner. This process of separation helps in using the wet food waste for the purpose of composting, which is a cost-effective process practiced since old times, and also India's soils need organic manures to prevent loss of fertility through unbalanced use of chemical

fertilizers.

In other towns of Assam like Dibrugarh, there is almost a complete absence of proper solid waste management system which poses a severe threat to the environment in the area. Dibrugarh town is considered to be one of the fastest growing industrial towns of Assam, and absence of solid waste management system remains a worrying issue.

In Dibrugarh town, there is no formal door to door garbage collection system or separation of wastes. Waste disposed off by people in roadside bins or enclosures are collected in trailers by a few tractors and dumped in the open on the bank of River Brahmaputra. The garbage is neither treated nor processed. Likewise with bio-medical, industrial and hazardous wastes that go into the dump. Toxic substances generated from the

disposal site flows into the river and percolates into ground water, causing water pollution, which has become a very serious concern.

Similarly, in Guwahati also a similar problem is seen where the wastes are disposed at a place near Deepor Beel Bird Sanctuary, which is a Ramsar site. Therefore, many organizations and NGOs have urged the State Government to frame a proper framework for the disposal of solid wastes in Assam. A policy based on the lines of the recommendations of the report of the Committee for Solid Waste Management would be very much appreciable in Assam and would not only help in reduction of pollution but also lead to increase in organic manure production in the state thus helping the urban people as well as the farmers.



Photograph by— Abhishek Chakravarty

BAN ON RAT HOLE MINING: NGT TO HEAR CASE

- Anurupa Chetia

The National Green Tribunal (NGT) will hold the hearing on Monday on rat hole mining in New Delhi as reported in the Shillong Times. Supreme Court Lawyer and Counsel for the Meghalaya government, Ranjan Mukherjee, said over phone from Delhi on Sunday that as per the mining plan and guidelines, there was no mention on complete ban on rat hole mining since the State government has pushed for the same system to continue with sufficient safeguards.

According to Counsel of the Government side, since coal seam is narrow in the State, open cast mining is not possible. The Counsel stated that, in the last hearing they have submitted the mining plan to adding that some response from the coal ministry can come during Monday's hearing. While the transportation of extracted coal will continue till November 30, the last date for submission of challans was on October 31. The counsel of the government will submit the

cases of violations in the transportation of coal from all the districts especially from East Jaintia Hills to the NGT on Monday. Also, added that the Chief Secretary Barkos Warjri had expressed doubt over the implementation of mining plan in Meghalaya when asked about the different layers of licenses to be procured by the mine owners as per the mining plan. "We have small and thin deposits of coal and we have suggested a plan for small holdings. A few mine owners can get together and make a plan with necessary safeguards before carrying out mining." The State government has received Rs.258 crore in terms of royalty collected for transportation of already extracted coal since November 2014, while the money collected under the environment restoration fund is Rs.130 crore.

This type of incidents depicts about the conflict between Government and the local communities interest. How to manage or settle between the interests of the local communities for their livelihood and

interests of the Government for development purpose? But a big question comes to my mind whether the Government are really protecting the State's natural resources for developmental purpose or are they having some hidden interests in it. Are local communities or people engaged in rat hole mining seriously causing damage or loss to State resources or are they protecting these resources. These questions might be answered after a great debate from both the sides but being an environmentalist it's very difficult to judge who is right or wrong because resources need to be properly used for developmental purpose and there must be sustainable development but if these resources are not amicably utilised and extracted in a very mismanaged and unusual manner then definitely it is not going to serve the purpose of sustainable development.

When one tugs at a single thing in nature, he finds it attached to the rest of the world.

— *John Muir*

DIWALI: A DREADFUL DAY FOR INDIAN OWLS

- Raman Virk

The significance of the festival of Deepawali lies in the victory of good over evil. The lighting of lamps is a way of paying obeisance to God for attainment of health, wealth, knowledge, peace, valor and fame. The belief is that from darkness unto light — the light that empowers us to commit ourselves to good deeds, that which brings us closer to divinity. But, for the Owls in India, this festival of lights in India turns out to be a day of darkness since superstition leads to their illicit trafficking and ultimately they are sacrificed for the purposes of black magic.

Recently, a Hindustan Times team on 7th November 2015 landed up at the Kabootar Bazaar in Old Delhi to test the trend and concerns of the animal rights activities. The team was guided to a shop in the corner of the market where after hard negotiation; the owner of the shop brought the offer down to Rs. 5000 for the small bird and Rs. 14,000 for the large one. He also offered to sacrifice the owl on our behalf on Diwali night if, the team paid an additional Rs. 10,000. Thus, we see that despite a complete ban on this business by the government how illegal trading of owls is still rampant. The simple law of economics is if there is a demand, there would be the supply of the product in the market. The major reason behind the demand of owls especially on the festival of Deepawali is that a white owl is considered as a

companion and *vahana* (vehicle) of Goddess Lakshmi – the goddess of wealth – and therefore a harbinger of prosperity. Hence, sellers successfully convince the gullible that owls are lucky and by worshipping them they will get wealthy.

In its report entitled “Imperilled Custodians of the Night” published in 2010, TRAFFIC India stated that the use of owls in black magic and sorcery driven by superstition, totems and taboos is one of the prime drivers of the covert owl trade. Hunting of and trade in all Indian owl species is banned under the Wildlife (Protection) Act 1972 of India. But, the black magic practitioners frequently referred to as tantriks in India, prescribe the use of owls and their body parts such as skull, feathers, ear tufts, claws, heart, liver, kidney, blood, eyes, fat, beak, tears, eggshells, meat and bones for ceremonial pujas and rituals. Owls are normally sold for Rs 20,000 but cost up to Rs 2 lakhs for sacrifice on the amavasya of Diwali. Tantriks earn between Rs 50,000 to Rs 2 lakhs because they claim to have the power to capture and transfer the soul of the owl they kill, into a taviz/talisman. Thus, the most important festival of Diwali marks a supposedly auspicious time for the sacrifices of threatened and even critically endangered owls—a rite that some believe can win favor from the goddess of wealth, Lakshmi.

Renowned ornithologist and an expert in owls, Abrar Ahmed on

this issue told that nothing is going to change unless the government decides to save these species from the grass root level. If a check is kept on the trapping than half the problem can be tackled because once these birds reach the market there is nothing much you can do to save them. My personal view is that, firstly there is a need to bring about a change in the mindset of the society itself. Unless people stop believing in the superstitions, the innocent birds and the endangered species would continue becoming the target of sacrifice and a means of earning money by the so called black magic practitioners or the tantriks.

Courtesy:

- Imperilled Custodians of the Night, TRAFFIC INDIA, http://www.traffic.org/species-reports/traffic_species_birds12.pdf.
- UP hub of illegal owl trading during Diwali, reveals report, Times of India, Nov 14, 2012.
- Caught on camera: Illegal sale of owls before Diwali in Old Delhi, Hindustan Times, Nov 7, 2015.

SOLVING THE MAN-ANIMAL CONFLICT – ONE ELEPHANT AT A TIME!

- Shweta Sachdeva

Human-animal conflict has been rising across wildlife areas including tiger and elephant habitats in the country as rapid development in the last two decades have cut off green corridors linking one habitat with another. These corridors help in free movement of animals from one habitat to another when their population density increased.

With the Environment Ministry ready to brand certain animals as 'vermin' under the Wildlife Protection Act, 1972 for their easier hunting – there is one man who has reconciled this problem in an efficient and modern way. Dr. Ananda Kumar, a wildlife conservationist, has been awarded the 'Green Oscar' (Whitley Award 2015) for his innovation that is saving the lives of elephants and people – one click at a time, literally. By means of his innovation alerts *via* mobile phones are sent out to persons within range of elephants in the Valparai plateau of Tamil Nadu, thus avoiding mishaps; the number of such conflicts has indeed seen a decline since the advent of his noble intervention. He has conspicuously handled the problem of human-animal

conflict that is affecting the region which arose by the massive clearing of forest lands by coffee and tea companies and is working on another project to aid farmers whose crops are damaged by elephants.

The Ministry of Environment, Forests and Climate Change (MoEFCC) on the other hand, has taken an adverse step to address the problem and it seems, has not put much effort in taking stock of the situation. With more and more forest cover being taken over either by the State or private agencies in the name of expansion of cities, townships – animals are being left homeless and more vulnerable. Rather than looking out for their rehabilitation and relocation to proper habitats, the decision of the Ministry seems rather abrupt and fastidious in nature. In fact, as per the Prevention of Cruelty to Animals Act, 1960, such killing of healthy animals is an offence. The Ministry with such an announcement has brought forward glaring contradictions between the Wildlife Act and the Prevention of Cruelty Act (PCA). The PC Act within its objective and essence embodies that minimal pain and unnecessary suffering to animals be prevented and circumvented, but such a measure by the Ministry is clearly an oversight with regard to

the PCA legislation.

In fact, such an extreme step consequently authorizes hunting and random killings of animals in these regions (Uttarakhand, Maharashtra, West Bengal and Madhya Pradesh) by any persons. If inculcated within law, it would amount to free slaughter of such animals without proper reasons and would easily be excused under the pretext of 'protecting crops and people'. The tracking of animals, as done by Ananda Kumar and his team as stated above, can be done by the State Forest Departments; similar procedures can be adapted to alert and notify persons in case they are in the vicinity of such animals. This avoids the situation of the animals being killed and saves others from harm. As far as damage to crops is concerned, farmers should only be allowed to crop till a safe limit – one which would be inaccessible or least likely to be accessed by animals. If crops and plantations are made within the heart of forests and wilderness, it automatically attracts animals as it is their humble adobe and branding them as 'trespassers' is then simply inaccurate.

NGT IS YET TO GIVE ENVIRONMENTAL CLEARANCE ORDERS TO ANDHRA PRADESH'S CAPITAL CITY PROJECT

-Geetashree S. Kurup

Former Union finance secretary EAS Sarma has alleged that Andhra Pradesh's Capital City Project is yet to be subjected to a statutory environment impact appraisal. In pursuance of Section 6 of the AP Reorganisation Act, 2014, the Union Home Ministry had constituted a committee under Sivaramakrishnan to study the alternatives for locating the AP capital city, Sarma noted in his letter to Nripendra Misra, Principal Secretary to PM. The Ministry specifically asked the Committee to keep in view the need to cause "the least possible dislocation to existing agriculture systems as well as ensure minimum resettlement of people and their habitations", to ensure "preservation of local ecology and natural features including water bodies", make a "vulnerability assessment for natural disasters like floods, cyclones and earthquakes" and "assess the scope for minimising the cost of construction and acquisition of land".

"The Sivaramakrishnan Committee had submitted a comprehensive report accordingly but the State government ignored that report in defiance of the Act and unilaterally decided on locating the capital in Vijayawada-Guntur region, without any consultation with the people," Sarma, who also served as Union power secretary and principal adviser, Planning Commission, said.

The retired bureaucrat alleged that the capital city project, as being thought of by the Chief Minister N Chandrababu Naidu, would disrupt agriculture over large stretches of fertile land, adversely affect the lives of lakhs of farmers, agricultural workers, artisans and agribased economy, like never before. The project is yet to be subjected to a statutory environment impact appraisal, he added.

According to him, the National Green Tribunal (NGT), in an interim order dated October 10, appears to have expressed concern at the fact that the State authorities are yet to survey the area and assess its agricultural resources and directed them not to proceed with any activity that is likely to disturb agriculture and the local environment.

Mr Sarma also claimed that, there is a simmering discontent among the people of north Andhra Pradesh and Rayalaseema at the "huge, extravagant" public expenditure being incurred by the State on its "grandiose" capital city project. Large stretches of land in that area, subject to inundation, may have to be raised in level and a new barrage may have to be constructed across River Krishna to provide water for the capital, involving a huge expense that will syphon off scarce budgetary resources from north AP and Rayalaseema districts to benefit the region of the capital city.

"Such a large expenditure on a single project to benefit a single region would

also starve important development sectors in the State such as public health, education, social welfare and so on. Should the PM endorse this?" Mr Sarma said. The State is already groaning under a huge overdraft and is finding it difficult to pay the salaries of its employees and meet the development commitments. The mind-boggling financial commitments being made on the capital city will not only affect the present government but also the future governments to come, he alleged.

Stating that he was associated at the Centre with the formation of Chhattisgarh, Jharkhand and Uttaranchal States and the commitments made for their new capital cities, he said in these days of advanced digital and satellite communication systems, to concentrate construction activity for a large capital city in one place is uneconomical and the only beneficiaries of the project would be the real estate developers.

OIL COMPANIES VERSUS CONSERVATION FORESTS: A CENTURY OLD CONFLICT IN ASSAM

- *Abhishek Chakravarty*

Since, the discovery of oil in the rainforests of Upper Assam in 1890s and the setting up of the Digboi refinery in 1901, there has been a constant fight between the conservation of forests on one hand and extraction of crude oil on the other. In Assam, oil is mostly extracted from fields located on the foothill areas of the Patkai ranges, which separates India from Myanmar. This region is very rich in flora and fauna. With more than 4,000 mm of rainfall each year, the region boasts some of the last remaining pure stands of lowland rainforests in India. The need for crude oil has however posed a serious threat to the region.

Recently in news it was seen that a golf course is being built by Numaligarh Refinery Ltd. in Upper As-

sam's oil town of Numaligarh. The golf course is situated on the northern side of the old township and sprawls across about five hectare which originally comprised hillocks, streams, wetlands, and trees, and served as a foraging site for elephants and other herbivores like deer. Further a 1.5 km wall is also being built in the area, which has obstructed an important elephant corridor.

Assam produces about 15 percent of India's onshore crude, with state-owned exploration companies, Oil India Limited and Oil and Natural Gas Corporation Limited supplying crude oil to state-run Indian Oil Corporation's refineries. But with the growing Indian economy, the demand for crude oil is also increasing day by day and this has led many new explorations by the companies and in return trees are being felled to construct roads and access

drilling sites. The forest canopy is rapidly being destroyed, adversely affecting birds like the Great Pied Hornbill and rare primates like the Hoolock Gibbons. The drilling and spillages from it also adversely affects the vegetation in the region. In several localities of Upper Assam like Lakowa, Geleky, Naharkatia etc. the spillages from oil wells locally known as 'gaspani' has rendered several hundred acres of vegetation unsuitable for re-growth.

This ongoing conflict has to be addressed not only to protect the environment but also to ensure that the oil production is not hampered. Therefore, both the parties should come to a common decision of taking all necessary measures before drilling into the oil fields located deep inside tropical rainforests of Upper Assam. The concept of 'Sustainable Development' should be adopted and implemented in the oil fields of Assam to ensure the protection of the environment from the hazardous activities of the oil companies. The rich biodiversity of these forests are at stake and



CASE ANALYSIS

SUPREME COURT GUIDELINES ON NOISE POLLUTION IN **NOISE POLLUTION (V), IN RE With FORUM, PREVENTION OF ENVIRONMENTAL & SOUND POLLUTION**

Versus.

**UNION OF INDIA AND ANOTHER
 (AIR 2005 SC 3136)**

- *Irfan Hasieb*

In India the manufacture, possession, use, sale, and transactions in firecrackers is regulated by The Explosives Act, 1884. The noise, that is produced by these fireworks is regulated by the Environmental Protection Act, 1986 and the Noise Pollution (Regulation and Control) Rules, 2000. In terms of the systems available for evaluation of firecrackers, the Honourable Supreme Court Bench of Honourable Chief Justice R.C. Lahoti and Honourable Justice Ashok Bhan, it was held that the evaluation of firecrackers in terms of their chemical composition is more practicable and workable in Indian circumstances than evaluating firecrackers in terms of the noise levels. The Department of Explosives (DoE) shall undertake necessary research activity and come out with the chemical formulae for each type of firecrackers. They shall also specify the composition as well as the permissible weight of every chemical used in the manufacturing of firecrackers. The Department of Explosives may divide the firecrackers into two categories— (i) Sound emitting firecrackers, and (ii) Colour/light emitting firecrackers. The Court further held that, by restricting the time of bursting the

firecrackers, it has not in any way violated the religious rights of any person as enshrined under Article 25 of the Constitution. The festival of Diwali is mainly associated with *pooja* performed on the auspicious day and not with firecrackers. In no religious text book, it is written that Diwali has to be celebrated by bursting crackers. Diwali is considered as a festival of lights and not of noises. Shelter in the name of religion cannot be sought for, for bursting firecrackers and that too at odd hours. Thus, bursting of sound emitting firecrackers is completely banned between 10 pm and 6 am. However, such restrictions do not apply to light emitting firecrackers.

Every manufacturer of firecracker shall mention details of its chemical contents and that it satisfies the requirement as laid down by DoE on the box of the firecrackers. In case of a failure on the part of the manufacturer to mention the details or in cases where the contents of the box do not match the chemical formulae as stated on the box, the manufacturer may be held liable. It was further opined by the Honourable Court that firecrackers noise is an impulsive noise and is hazardous. Bursting of a firecracker near the ear can lead sometimes to non-recoverable hearing loss.

Diwali is one of the most important

festivals of India. The bursting of firecrackers during this period is a wide spread practice. The unpredictable, intermittent and impulsive noise produced by bursting of crackers all around, turns the festival of lights into cacophony of noise. People are unable to even sleep due to this excessive noise pollution. Several people are injured due to the noise produced by firecrackers every year. Firecrackers not only increase the ambient noise level but also contribute significantly in increasing the air pollution by means of toxic gases and particles due to their blast wave resulting from a rapid release of energy.

Further, the Court held that firecrackers shall not be used at any time in silence zones as defined in S.O. 1046(E) issued on 22.11.2000 by the Ministry of Environment and Forests. In the said Notification, Silence Zone has been defined as: "Silence Zone is an area comprising not less than 100 meters around hospitals, educational institutions, courts, religious places or any other area which is declared as such by the competent authority."

RAVINDRA BHUSARI v. MINISTRY OF ENVIRONMENT & FOREST AND ORS:

POLLUTER PAYS PRINCIPLE REVISITED

- Neil Dutta

In a recent judgment, the Western Bench of the National Green Tribunal (NGT) took a noteworthy approach towards ensuring a clean Diwali. The approach, which is indeed laudable, has put the general citizens of this festival-loving nation in a serious dilemma. The issue of banning high decibel crackers in India has been the most prime discussion since the age of environment law. However, till now very few initiatives have been taken to curb this rising menace. The petitioner through this petition sought to rectify this situation in Maharashtra.

Through previous orders in regard to this case, the NGT attempted to control the using of high decibel crackers, which significantly contribute to the noise and air pollution at the time of 'Festive of Lights'. The NGT directed the Authorities to pay random visits to trading/units of firecrackers, in order to verify whether imported China made firecrackers are stocked for sale and if they are so stocked, then they may be sealed and seized, if they are illegally imported without license. It also directed the authorities to seize the entire stock of crackers if such firecrackers are found to be of standard above permissible decibels at the source.

The NGT pointed out that among several excuses of the authorities in non-implementation of these directions, one such excuse is shortage of manpower. Replying to such submission of the respondents, the NGT said,

"The authorities responsible for environmental regulation enforcement have special responsibility as such non-compliance are likely to cause serious threat to human health and environment."

After heavily relying on three major judgments of the Hon'ble Supreme Court of India including the recent case **Arjun Gopal & Ors v. Union of India** (Writ Petition (Civil) No.728 of 2015), the NGT came to the conclusion that, the existing legal mechanism to tackle the noise and air pollution due to bursting of crackers having standards beyond permissible limit, would be more effective if the agencies enshrined with the implementation of such laws, act in a more committed manner. The NGT strongly took note of the solid waste generated after bursting of the firecrackers, which has considerable contents of toxic materials like Zinc, Nickel and Chromium. Upon examining the existing picture of the situation and evaluating the necessary consideration to the problem of loud and dirty firecrackers, the NGT passed on the following directions:

The Government authorities shall advertise heavily on the ill-effects of the fire crackers both in print and electronic media as per the directions given in the recent judgment of the Hon'ble Apex Court;

The respondents with help of the police force shall conduct noise and air monitoring during "Diwali" period, in order to assess adverse noise impacts of the firecrackers;

The Respondents shall conduct random tests of different brands and type of fire crackers in order to verify their compliances of stipulated standards;

Publication of the name and brands of firecrackers by the respondent in their website if any of them found to be non-complying with the existing norms;

Sampling and Analysis of solid waste generated from bursting of fire crackers; and

Based on the *Polluter Pays* Principle, all the establishments in distributing and selling of firecrackers shall pay Rs. 3000/- to the Mu-

nicipal Authority as Environment Cleanliness Charges, which is to be primarily used for cleaning of solid waste generated from bursting of fire crackers and remainder if any, shall be used for environment activities like construction of toilets, plantation, etc. In case of default in payment of such charges, the Municipal Authority shall blacklist such agencies/shops, which shall include non-renewal of their licenses in future.

The last direction given by NGT need some serious appreciation, because of which NGT would be considered as the forerunner for implementation of *Polluter Pays* Principle in regard to Diwali celebrations. This dramatic approach taken by the Tribunal points towards the necessity of celebrating festivals only with such grandeur, which does not infringe the rights of other living beings on this planet, more importantly it should not affect the environment severally. The notion of *polluter pays* thus seeks to rectify such alarming situations with compensatory mechanisms. Therefore, NGT's approach in incorporating *polluter pays* principle in curbing noise and air pollution during "Dipawali" period is a positive attitude, which seeks to puzzle Indian citizens and their outlook towards celebration of festival of lights.

BIOLOGICAL WEAPONS CONVENTION

- Sangha Shree Nath

As of march 2015 how many states are party to the Biological weapons convention?

173

How many reviews have taken place till date?

Seven

What was the main issue of disagreement during the fifth review conference?

Ad hoc group

When was the biological weapons convention signed?

10 April 1972

How many states have ratified the convention?

22

What is the number of signatories of the convention?

109

What is the scope of the BWC's?

This includes all microbial and other biological agents or toxins and their means of delivery (with exceptions for medical and defensive purposes in small quantities)

Where did the seventh review convention take place?

Geneva

What does the 1925 Geneva protocol prohibits?

The Geneva Protocol prohibits use but not possession or development of chemical and biological weapons

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 (EPBC ACT).

-Sanjukta Gogoi

Which country's Parliament passed this Act and when was it enacted??

Ans. This Act was passed by the Parliament of Australia

Ans. It was enacted on 17th July 2000.

Name three treaties on which the key provisions of the EPBC Act are based.

Ans. A) World Heritage Convention – The Convention for the Protection of the World Cultural and Natural Heritage 1975.

B) Ramsar Convention – The Convention on Wetlands of International Importance especially as Waterfowl Habitat 1975.

C) Convention on Biological Diversity 1992.

What are the seven matters of National significance as mentioned by the Act?

Ans. World Heritage properties, National heritage places including overseas places of historic significance, Wetlands of international importance (Ramsar wetlands), Threatened species and ecological communities, Migratory species Commonwealth marine areas, Nuclear actions (including uranium mining & building of nuclear waste repositories)

Which agency commissioned an independent review of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) ?

Ans. Minister for the Environment, Heritage and the Arts.

What are the penalties faced when there is a failure to comply with the Act?

Ans. Failure to comply with the Act can result in penalties including remediation of damage, court injunctions, and criminal and civil penalties.

CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE, ESPECIALLY AS WATERFOWL HABITAT OR THE RAMSAR CONVENTION

- Anubhab Aterya

What is the the purpose of the Ramsar Convention?

Ans: It is an international treaty with the basic purpose of conservation and sustainable utilization of wetlands keeping in mind the fundamental ecological functions of the wetlands and their economic, cultural, scientific and recreational value.

When was the Ramsar Convention signed ?

Ans: The Convention was adopted and signed by the parties at a meeting in Ramsar in Iran on February 2, 1971 and it came into force on December 21, 1975.

What are the International Organization Partners of the Ramsar Convention?

Ans: Birdlife International, the International Union for Conservation of Nature (IUCN), the International Water Management Institute (IWMI), Wetlands International and WWF International are the five International Organization Partners (IOPs) of the Ramsar Convention.

How many sites are accorded the status of Ramsar Cites?

Ans: The Ramsar List of Wetlands of International Importance now includes 2208 sites covering an area of 520,735,720.3 acres as of 2015.

What is the number of signatories to the Ramsar Convention?

Ans: At present, there are 169 contracting parties to the Convention which has increased from the 21 initial signatory nations in 1971.

What is the definition of Wetlands according to the Convention?

Ans: The Ramsar definition of wetlands stipulates a wide area, including "areas of marine water the depth of which at low tide does not exceed six meters" as well as fish ponds, rice paddies and salt pans.

What and when are were the amendments to the original convention carried out?

Ans: The amendments to the original convention were first carried out in Paris (1982) and Regina (1987).

What is the mandate of the Ramsar Wetland Conservation Award?

Ans: It honours the work of governments, organisations and individuals in promoting the wide use and conservation of wetlands.

When was the Ramsar Wetland Conservation Award instituted?

Ans: It was established in 1996 at the 6th Meeting of the Contracting Parties to the Ramsar Convention.

Is Ramsar Part of the UN Environmental Conventions?

Ans: United Nations Educational, Scientific and Cultural Organization (UNESCO) serves as Depository for the Convention is not part of the United Nations and UNESCO system of environmental conventions and agreements.

Cirfanhasieb

UNITED NATIONS CONVENTION TO COMBAT DESERTIFICATION (UNCCD)

- Adrita Bhuyan

Which are the countries contributing to UNCCD?

Ans. The United Nations Convention to Combat Desertification in those Countries experiencing serious drought and/or desertification, particularly in Africa (UNCCD). The Convention addresses specifically the arid, semi-arid and dry sub-humid areas, known as the dry lands, where some of the most vulnerable ecosystems and peoples can be found.

What is the main area of study of UNCCD?

Ans. It is a Convention to combat desertification and mitigate the effects of drought through national action programs that incorporate long-term strategies supported by international cooperation and partnership arrangements.

What is special about the UNCCD?

Ans. The UNCCD is the only Convention stemming from a direct recommendation of the Rio Conference's Agenda 21.

Is there any other international legally binding framework on desertification?

Ans. It is the first and only internationally legally binding framework set up to address the problem of desertification.

On what principles is the UNCCD based?

Ans. The Convention is based on the principles of participation, partnership and decentralization—the backbone of Good Governance and Sustainable Development.

How does UNCCD achieve a global reach?

Ans. It has 195 parties, making it truly global in reach. In 27 March 2013, Canada became the first country to announce its intention to withdraw from the convention. The Convention's 195 parties work together to improve the living conditions for people in dry lands, to maintain and restore land and soil productivity, and to mitigate the effects of drought.

Does UNCCD collaborate with other conventions?

Ans. As the dynamics of land, climate and biodiversity are intimately connected, the UNCCD collaborates closely with the other two Rio Conventions; the Convention on Biological Diversity (CBD) and the United Nations Framework Convention on Climate Change (UNFCCC), to meet these complex challenges with an integrated approach and the best possible use of natural resources

How are National action Programmes beneficial for the working of UNCCD?

Ans. National action programmes (NAPs) are the key instruments to implement the Convention. They are often supported by action programmes at sub-regional (SRAP) and regional (RAP) levels.

Who constitute the core members in the UNCCD?

Ans. The UNCCD has been ratified by 195 states plus the European Union. All member states of the UN are parties to convention. The convention does not apply to Aruba, Caribbean Netherlands, Curaçao and Sint Maarten (Kingdom of the Netherlands), or to Gibraltar, the Isle of Man, Guernsey, or Jersey (United Kingdom).

One ratifying state—Canada—has announced its denunciation the Convention. The non-UN member states that have ratified the Convention are the Cook Islands and Niue. The Holy See and the states with limited recognition are non-parties.

CALL FOR PAPERS**JOURNAL OF ENVIRO-LEGAL RESEARCH AND ADVOCACY****NATIONAL LAW UNIVERSITY, ASSAM****CENTRE FOR ENVIRONMENTAL LAW, ADVOCACY AND RESEARCH**

National Law University, Assam's **Centre for Environmental Law, Advocacy & Research (CELAR)** is delighted to announce the launch of the first issue (**December, 2015**) of JOURNAL OF ENVIRO-LEGAL RESEARCH AND ADVOCACY (**JoE.LRA.**)

JOURNAL OF ENVIRO-LEGAL RESEARCH AND ADVOCACY is an online journal of environmental law dedicated to delve into the critical environmental law and policy aspects of India. It is an open access, annual, peer reviewed digital publication from NLU, Assam's CELAR.

We would like to invite you to contribute a Research Paper/ Research Article/ Case Study/ Case Comments/ Legislative Analysis/Book Review for publication in **JoE.LRA.**

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The Sub themes are as follows:

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3. Armed conflict in North-East India and its impact on environment;
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6. Wildlife related Laws and North-East India;
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All submissions along with cover letter (about the author, acknowledgement of originality) must be submitted in .doc or .docx file format and should be emailed to: **celar@nluassam.ac.in**

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