



# LEX TERRA

Center for Environmental Law, Advocacy and Research  
National Law University and Judicial Academy, Assam

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## IN THIS ISSUE

### **Dairy Industry: The Legal Violation of Animal Rights**

Tisha Motwani and Heena Malhotra

### **Balancing Environment and Religion: An Analysis of Judicial Approach**

Surya Prabhat Pali

### **Preventing the Next Pandemic: The Exigency for Sustainable Wildlife Management**

Sanjana Rebecca Samuel

### **Costa Rica v. Nicaragua: A Missed Opportunity by the International Court of Justice**

Dhairya Jayesh Thakkar



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# CONTENTS

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<b>About CELAR.....</b>	<b>i</b>
<b>Message from the Patron-in-Chief.....</b>	<b>ii</b>
<b>Editorial.....</b>	<b>iii</b>

## ARTICLES

### **I. Dairy Industry: The Legal Violation of Animal Rights**

Tisha Motwani and Heena Malhotra.....	1
---------------------------------------	---

### **II. Balancing Environment and Religion: An Analysis of Judicial Approach**

Surya Prabhat Pali.....	8
-------------------------	---

### **III. Preventing the Next Pandemic: The Exigency for Sustainable Wildlife Managements**

Sanjana Rebecca Samuel.....	16
-----------------------------	----

## CASE COMMENT

### **I. Costa Rica v. Nicaragua: A Missed Opportunity by the International Court of Justice**

Dhairya Jayesh Thakkar.....	23
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# LEX TERRA

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# ABOUT CELAR

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The fundamental aim of the Centre for Environmental Law, Advocacy, and Research (CELAR), National Law University and Judicial Academy, Assam, is to participate in advocacy and research on public interest environmental concerns. It endeavours to do so by holding workshops and seminars to educate and improve skills, convening conferences to encourage an exchange of ideas, conducting training programmes for capacity building in environmental law issues, undertaking legal research, and publishing newsletters and journals regularly.

The main objectives of CELAR can be elucidated as follows:

- Providing students with hands-on advocacy experience and direct exposure to the issues to inspire and educate them.
- Strengthen access to justice by conducting high-quality multi-disciplinary research on current environmental legal issues.
- Advocate for reforms in environmental law through scientifically sound legislative proposals.
- Organize training programmes for civil servants, law enforcement agencies, non-governmental organisations, and media professionals to improve their legal capacity on environmental laws and policy.
- Publish environmental law publications and bulletins on a regular basis.

Thus, to meet the last objective, *Lex Terra* is an initiative undertaken by CELAR. Through *Lex Terra*, we strive to provide a voice to various aspects of the environment, published every month, to create a community of environmentally conscious individuals from the legal and non-legal fraternity. Each issue of *Lex Terra* features important environmental news from across the world and from within the nation. This bulletin is meticulously compiled by CELAR members dedicated enviro-legal enthusiasts.

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# MESSAGE FROM THE PATRON-IN-CHIEF

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It is, unfortunately, true that inadvertently, we humans are responsible for the deterioration of this planet without recognising the negative consequences of minor things we do to contribute towards its dilapidation. Education and awareness generation can be one of the positive moves to fix the irreparable damage that we have done to our Mother Nature, and in furtherance to such moves, we as a legal institution, are continuously striving to bring environment related news and views for several environmentally sentient readers.

In this context, it delights me to note that the Centre for Environmental Law, Advocacy and Research (CELAR), National Law University and Judicial Academy Assam, is releasing a new issue of its webzine, 'Lex Terra'. Lex Terra aims to be an e-forum that involves, promotes and engages students, scholars and anyone interested in environmental law, to express and share their opinions and ideas. It is our fervent expectation that this webzine will keep providing an academic forum to bring all ecologically conscious minds together to deliberate on environment related developmental decisions.

I congratulate the entire team of CELAR for bringing out this webzine which justifies one of the significant mandates of National Law University and Judicial Academy, i.e., rendering a socially relevant legal education. I appreciate the efforts made by the student editors and peer reviewers in bringing out this webzine. I also bring on record the constant guidance being provided by CELAR teacher members to the students.

I am certain that this modest endeavour of CELAR will continue to stimulate and proliferate enviro-legal awareness.

**Prof. (Dr.) V.K. Ahuja,  
Vice-Chancellor, NLUJAA**

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# EDITORIAL

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As the new year begins, we clear our slates and attempt to start afresh. We intend to commit to all our ambitious new year commitments and mirroring that, there are quite a few commitments our leaders are going to have to persevere towards in 2022. India has pledged to achieve net-zero emissions by 2070.

The Lex Terra Editorial Board is pleased to present its 37th Issue, and the first of 2022, which spotlights articles in the same vein, all essentially echoing the various facets of the current environmental concerns. Ranging from the deleterious effects of the dairy industry on the environment to the lack of wildlife management policies, which could give rise to another pandemic, this issue covers a wide array of issues pertinent to socio-environmental concerns. This issue also includes articles mapping the evolution of enviro-legal jurisprudence in contemporaneous issues.

In the first article, Tisha Motwani and Heena Malhotra highlight that animals have a right to life under Article 21 of the Constitution of India. The authors try to bring forth a comprehensive understanding of how this right is not restricted to mere existence, but also extends to the right to live with dignity and in an environment conducive to their well-being. The outright violation of the rights of animals in the Indian dairy industry has been examined in a detailed manner. This issue is not only restricted to the brutal and cruel treatment of milch in the industry. It also includes the effects of consuming brutally obtained dairy products on public health at large, since the humans who consume their milk face harms of the same level. They conclude that the rights of milch animals co-exist with humans, rather than being seen as the milk-making machines that they are today.

This issue also features an article by Surya Prabhat Pali, that throws light on the judiciary's stand in interpreting the relationship between environment and religion. The author has put forth a comprehensive understanding of how religion as a public action has affected the interests of the larger society. He also commended the courts for having intervened from time to time to bring out justified and, sometimes, innovative solutions. To substantiate the same, the author has analyzed various landmark cases pertaining to noise pollution, idol immersion and illegal

construction, amongst others. In addition, the author has attempted to shed light on the selective assertiveness displayed by the courts. He concludes the article by both commending the judges for finding the right balance between religion and environment, whilst also providing a fair bit of caution as to how the judiciary should not sway under the populist forces.

In the third piece, Sanjana Rebecca Samuel has attempted to bring forth a connection between wildlife trafficking and the pandemic. First, she elucidates upon how the COVID-19 pandemic has exposed fundamental flaws in wildlife management. The potential perils of human-animal interaction taking the form of wet markets, exotic animal consumption, and wildlife trafficking are highlighted. Such hazards, according to the author, include the emergence of zoonoses that pose a public health risk. Furthermore, she says that, understanding the virus outbreak's roots will help us make better policy decisions and avert future pandemics. And lastly, through this paper, the author outlines India's position on wildlife trafficking legislation and compares how different countries respond to global-based norms and adapt them domestically.

A comment on the landmark case of *Costa Rica v. Nicaragua* (2018) by Dhairya Jayesh Thakkar is the last feature in this issue. This is an extremely pertinent case in the context of international enviro-legal philosophy relating to violations of Nicaraguan sovereignty and major environmental damages to its territory. The author has provided a fair analysis of the judgement in light of the relevant facts and censured the ICJ's failure to impose mandatory obligations on Costa Rica to use the compensation for restoration of the environmental damages caused. Through the course of the article, one can also find multiple other relevant international cases relied on by the author to drive home her arguments.

As can be inferred from the above discussion, this issue of *Lex Terra* has been truly insightful in every sense of the word. We hope that this publication, much like the previous issues of *Lex Terra*, can spark more conversations among the public on the raging global environmental concerns. We also hope it encourages young writers to explore the unexplored terrains of environmental law jurisprudence.

At this juncture, the members of the Editorial Board would like to extend their heartfelt gratitude to the Prof. (Dr.) V.K. Ahuja, Dr. Chiradeep Basak, and

Dr. Indranoshee Das for their constant motivation and guidance for the betterment of CELAR. The Editorial Board is also grateful to the peer reviewers who have taken out the time from their busy schedules to select the articles for this issue. Lastly, we thank the authors for their meaningful contributions to this issue of Lex Terra.

We would like to appeal to our readers to put in whatever efforts they can to save our planet because our planet's alarm is going off, and it is time to wake up and take action!

**Lex Terra Editorial Board**  
**2021 - 2022**

## DAIRY INDUSTRY: THE LEGAL VIOLATION OF ANIMAL RIGHTS

Tisha Motwani\* and Heena Malhotra\*\*

### I. Introduction

Dairy products have been an integral part of the human diet since time immemorial. Specifically in India, there seems to be an ever-growing demand for dairy since the white revolution, which has ranked the country first in the world for the most population of bovine animals.<sup>1</sup> However, a huge downside of this prowess of India's dairy industry lies in the miserable condition of the animals who are trapped in this "permitted carnage".

#### *1.1. The Status of Dairy Animals in India: A Sham*

Given the culture of the country, cattle like cows are sacred. However, it appears that people are ready to go to any extent to earn any amount of money that they may potentially receive by abusing the animals. The dairy industry is a systematic and authorized form of exploitation and murder of milch animals. These are not mere allegations, rather they are assertions based on the observations and reality of cows and other such animals in the dairy farms and shelters, which shall be discussed in greater detail further in this article. The general course taken to prevent the unethical treatment of a being is by invoking the rule of law. There is no denying that India has specific legislations dealing with animal cruelty and well-being. However, it can be adequately said that the provisions of such a law remain ineffective and unimplemented.

Furthermore, there is specific legislation passed by individual states to prevent the slaughtering of cows<sup>2</sup> yet the country records the slaughter of thousands of animals every year. Apart from looking at the lacuna in our legal system concerning the protection of dairy animals, it is pertinent that people are made aware of this process of continuous torture. The epiphany that the animals which they worship, ironically suffer every moment of their life to meet their demand, must dawn upon them. It makes us anything but humans when we exploit animals. They are not mere property, and neither can be said to be owned by anybody. They are more than just milk producers, more than the meat we eat and more than the objects we bid for sale.

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<sup>1</sup> NATIONAL DAIRY DEVELOPMENT BOARD, <https://www.nddb.coop/information/stats/pop> (last visited Nov 11, 2021).

<sup>2</sup> DEPARTMENT OF ANIMAL HUSBANDRY AND DAIRYING, <https://dahd.nic.in/hi/related-links/annex-ii-8-gist-state-legislations-cow-slaughter> (last visited Nov 11, 2021).

## II. The Sorry State of Milch Animals

Dairy is advertised to be a rich source of calcium, and almost every person begins their day by the consumption of milk. However, seldom do we realize how this by-product of cattle is reaching us and how we can consume what shall rightfully be available to the calves. There is a proposition that, previously milk was consumed only by a few selected sections of the society, and the upsurge in the dairy culture predominantly occurred due to a famine that struck the European regions. With no other source of food, milk was regarded and relied upon for the intake of nutrients and hence, widely consumed among the human race. As the demand for dairy milk increased over the years, based on the opinion that it had great health benefits, the manifestation of an industrialized dairy took place. Ironically, it is widely known that animal milk is not tolerable by the human digestive system.<sup>3</sup> More than half the Indian population is lactose intolerant,<sup>4</sup> which means that they cannot digest animal milk or related products because their body is incapable of breaking down the primary enzyme, lactase.

Like every other industrialized product, mass production of milk was normalized, and milch animals were treated as nothing more than the machine that keeps the production running. The analogy of these animals with machinery in itself shows the severity of the issue at hand. It indicates how we have conveniently disregarded or ignored the feelings of animals as sentient beings. Well, there has been sufficient and conclusive evidence gathered that strongly affirms the ill-treatment of cattle in the process of dairy farming and milking.<sup>5</sup> While a packet of milk, a slice of cheese or a cup of curd are valued with measurable quantities, the pain and suffering of these animals remain immeasurable and unexplainable. Following unethical, immoral and cruel practices are carried out blatantly in the dairy industry:

### 2.1. Artificial Insemination

It is often misunderstood that dairy animals perennially give milk due to the conditioning we are brought up with despite knowing that scientifically, mammals can't produce milk without being pregnant. Hence, to meet the demands of commercial dairy farming, a procedure called artificial insemination is performed on animals to infuse the sperm cells into the reproductive

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<sup>3</sup> 60 percent of Indians suffer from milk intolerance (and many don't even realise it), THE TIMES OF INDIA (May 18, 2020, 9:00 PM), <https://timesofindia.indiatimes.com/life-style/health-fitness/diet/60-per-cent-of-indians-suffer-from-milk-intolerance-and-many-dont-even-realise-it/photostory/75807121.cms>.

<sup>4</sup> R. K. Tandon et al., *Lactose intolerance in North and South Indians*, 34 AM J CLIN NUTR 943–946 (1981).

<sup>5</sup> Badri Chaterjee, *Two-year undercover study reveals cruel side of India's dairy industries*, HINDUSTAN TIMES (Nov. 25, 2017, 11:53 PM), <https://www.hindustantimes.com/mumbai-news/two-year-undercover-study-reveals-cruel-side-of-india-s-dairy-industries/story-7icLDyv1Rq2tVV2kbYKccN.html>.

organs of the female via instruments or without copulation. This type of reproductive method is often used in the dairy industry to ensure consistent impregnation and reproduction so that there is continuous production of milk. It not just points to involuntary impregnation but also poses certain other ethical issues which need greater consideration. In the case of *E Seshan v. The Secretary, The Department of Law Government of Tamil Nadu and others*,<sup>6</sup> the Supreme Court declared that natural reproduction is a basic need of the animals which shall not be interfered with. The process of artificial insemination deprives bulls and cows of this need and the pleasure of mating. This kind of denial of natural mating should amount to cruelty as per the Prevention of Cruelty Act, 1960. It merely reduces these animals to machines, and the Court would not permit such flagrant violations. Hence, it was “advised” by the court that the practice of artificial insemination shall not be carried out in the dairy industry.

### 2.2. Repeated Impregnation

Dairy animals are impregnated continuously from the time they become fertile. This ensures uninterrupted production of commercial milk to meet the demand in the market and extract the maximum amount of milk from each milch animal. In the case of *Bodhisattva Gautam v. Subhra Chakraborty*,<sup>7</sup> the Apex Court acknowledged its jurisdiction to enforce fundamental rights against private bodies and individuals and can award compensation for violation of the fundamental rights. The same must be done to call to attention the lack of autonomy that animals in the dairy industry are subject to.

### 2.3. Illegal practises of Phooka

“Phooka”, akin to the Hindi word Phook which roughly translates to blow, is the practice of blowing air into the vagina of the bovine animals to induce them to produce the utmost amount of milk.<sup>8</sup> This very practice of withdrawing milk is what prompted Gandhiji, a man who chose the path of morality and ethics, to give up the consumption of cow milk. While this practice is prohibited by Section 12 of the Prevention of Cruelty Act, 1960, yet it remains prevalent in most dairy farms. As per Section 12,<sup>9</sup> a person who performs or permits the performance of practices like Phooka shall be fined Rs. 1000 or be imprisoned for 2 years or both. Furthermore,

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<sup>6</sup> E. Seshan v. Secretary, 2021 SCC OnLine Mad 5031.

<sup>7</sup> Bodhisattva Gautam v. Subhra Chankraborty, AIR 1996 SC 722, (1996) 1 SCC 490.

<sup>8</sup> *An HSUS Report: The Welfare of Cows in the Dairy Industry*, THE HUMANE SOCIETY OF UNITED, <http://www.humanesociety.org/assets/pdfs/farm/hsus-the-welfare-of-cows-in-the-dairy-industry.pdf>. (last visited Nov 9, 2021).

<sup>9</sup> Prevention of Cruelty Act, 1960, § 12, No.59, Acts of Parliament, 1960 (India).

the animal shall be under the guardianship of the state. However, the ignorance of the officials and the lack of deterrence effect that this penalisation carries has not prevented this form of cruelty to the animals in any manner. The situation may have just worsened with the introduction of machines that suck out every drop of milk, and sometimes, when unregulated, the suction continues even though there is no more milk secretion.

#### *2.4. Separation of the mother from their Calves*

Like other mammals, the milk produced by a milch animal is for the nourishment of her calf. However, contrary to the natural phenomenon, the calves are deprived of their own mother's milk and are subjected to the traumatic experience of being separated from their mother even before they can stand up properly.<sup>10</sup> The male calf is usually sent to the slaughterhouse<sup>11</sup> and the female calves are expected to add to the milk produce once they become biologically prepared for the same. The calves are fed milk replacers and their share of milk is what is sold in the markets for human consumption, disregarding any emotions of the mother, even though she cries in profound pain, she is made to satiate the greed of the human race with the milk which is rightfully her calves'.

#### *2.5. Abandonment of cattle upon going dry and subsequent slaughter*

Another act that displays the utter ruthlessness of humans towards the animals which feed us is the abandonment of cattle and other dairy animals that become incapable of producing milk. In other words, once these "machines" stop running, they are not just depreciated assets but also become a liability to the industry. Hence, instead of being fed and cared for, they are conveniently left on the streets without any shelter and food to eat. Roughly 60 lakh stray cattle roamed around the streets of India in 2012, the numbers would be even higher now.<sup>12</sup>

In the state of Uttar Pradesh, which is the leading producer of milk in the country, according to the 2019 livestock census, there were about 1 million stray cattle. Having left to move aimlessly on the streets, these animals proved to be a huge menace for the farmers whose crop produce

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<sup>10</sup> Anusha Narain, *What's Behind that Glass of Milk?*, THE HINDU (2013).

<sup>11</sup> Unveiling the Truth of the Indian Dairy Industry, CATTLE-OGUE, 71 (2017), [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiJ6dYr5I\\_0AhVFDN4KHXLsAcEQFn0ECAIQAQ&url=http%3A%2F%2Fwww.fiapo.org%2Fdontgetmilked%2Fhome%2Fwp-content%2Fuploads%2F2019%2F06%2Fcattle-ogue.pdf&usg=AOvVaw3zknEIaLLYNlpwfsc71qVX](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiJ6dYr5I_0AhVFDN4KHXLsAcEQFn0ECAIQAQ&url=http%3A%2F%2Fwww.fiapo.org%2Fdontgetmilked%2Fhome%2Fwp-content%2Fuploads%2F2019%2F06%2Fcattle-ogue.pdf&usg=AOvVaw3zknEIaLLYNlpwfsc71qVX). (last visited Nov 8, 2021).

<sup>12</sup> *Id.*

was destroyed.<sup>13</sup> Even though the state has established many “Gaushalas” to protect and take care of these animals, the state of these shelters is no better than a slaughterhouse. Instances of animals being starved to death or even buried alive in the Gaushalas have surfaced.<sup>14</sup> During the period of 2016-2018, the state was also reported to be the largest exporter of buffalo meat.

Similar is the factual scenario in the states of Gujarat<sup>15</sup> and Andhra Pradesh,<sup>16</sup> both of which are the top producers of milk in the country and despite having stringent laws to prevent the slaughter of bovine animals like cows, these states experience a high rate of such crimes.

It is realised that the number of stray cattle is comparatively higher in states which are the leading producers of milk. This happens because there is excessive reproduction of dairy animals in these states due to which their population increases. Once they stop producing milk, which because of the excessive exploitation happens by the time they are 4-5 years, they are abandoned and eventually killed.

Hence, not only does the dairy industry cruelly treat milch animals to produce copious amounts of milk, but also consequentially, given the excessive breeding and lack of institutions to take care of these animals, they are ultimately murdered to further promote the meat and tanning industry. This also explains why by-products of bovine animals are the second largest category of products being exported from India.

## 2.6. Poor Living Conditions

One of the important aspects concerning the health of the animals which are “captured” in the farms and stables, is the hygiene of their surroundings. It has been observed that the animals of the dairy are subjected to living in squalor conditions, with little or no cleanliness at all.

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<sup>13</sup> *Cow slaughter is bad, but stray cattle menace bigger problem: Farmers in Western UP*, THE NEW INDIAN EXPRESS (Mar. 9, 2021, 11:48 AM), <https://www.newindianexpress.com/nation/2021/mar/09/cow-slaughter-bad-but-stray-cattle-menace-bigger-problem-farmers-in-western-up-2274247.html>.

<sup>14</sup> Haidar Naqvi, *UP: 152 cows die in 5 months at one of country's biggest and richest shelters.*, HINDUSTAN TIMES (Jan. 10, 2022), <https://www.hindustantimes.com/india-news/up-152-cows-die-in-country-s-biggest-and-richest-shelter-4-of-them-of-starvation/story-2bRfuRFo3qUyxFTTr5x3YcO.html>.

<sup>15</sup> *Gujarat: 1 lakh kg beef seized in two years, says state govt*, THE INDIAN EXPRESS (Jan. 10, 2022, 9:11 PM), <https://indianexpress.com/article/india/gujarat-1-lakh-kg-beef-seized-in-two-years-says-state-govt-6296318/>.

<sup>16</sup> A.D. Rangarajan, *Andhra Pradesh ranks high on cattle slaughter: AWBI director*, THE HINDU (Jan. 10, 2022, 10:43 PM), <https://www.thehindu.com/news/national/andhra-pradesh/andhra-pradesh-ranks-high-on-cattle-slaughter-awbi-director/article38004172.ece>.

Without any freedom to move around, they are chained to one place. Surrounded by their manure, they are expected to eat and sleep in those conditions.<sup>17</sup>

The above-mentioned practices are routine in the dairy industry despite being a clear violation of Sections 3, 11 and 12 of the Prevention of Cruelty to Animals Act, 1960 as well as Rule 14 of the Prevention of Cruelty to Animals Act (Regulation of Livestock Market) Rules, 2017. This calls for a serious perusal of the implementation of laws to stop this draconian treatment of cattle.

### III. Conclusion and Suggestions

While many legislations have been enacted to alleviate the condition of the animals in the dairy industry, their rights are flagrantly violated. More emphasis shall be laid on providing for rules and regulations in the manner in which the dairy industry operates and there shall be regular inspections for the same.

Apart from the lacuna in the legal framework and the poor implementation of the laws to protect animals from such miseries, attention must also be paid to the policies of the government concerning the dairy sector. The government has been encouraging and promoting private players and Foreign Direct Investment in our dairy sector. While it might seem to be a positive element for the economy, this move does no good for the animals in the dairy industry. With foreign bodies investing in the dairy sector, the main objective would be to increase the production of dairy products in the country, to get profits out of the same. This kind of *modus operandi* of the dairy industry would lead to the heightened exploitation of the animals. The greater focus on increasing revenue and profits would only imply having lesser or no consideration for these animals. The dairy industry is against all our principles of feminism and thrives on the concept of "speciesism" which is analogous to racism, sexism and all other discriminations historically practised among humans. It is time we applied our principles of equality on animals for our moral evolution and do away with this commercialised form of dairy and embrace the concept of veganism as propounded in spirit by Gandhiji in India and in a letter by the Vegan Society which calls for the total abolition of use and exploitation of animals for purposes of human pleasure, dairy being among them.

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<sup>17</sup> *Id.*

The antithesis to the speciesism approach that is propagated by the justifications for maintaining the status quo by infusing funds in the dairy industry is veganism. Veganism has given a surge to plant-based businesses which have community and social entrepreneurship models such as Refarm'd. Refarm'd is a newly formed organization in the UK, the goal of which is to turn all dairy farms into sanctuaries for animals. It targets specific areas and then approaches dairy farmers of certain regions where the demand is high and makes a compelling case to convert them to produce plant-based milk, meanwhile the farm animals are kept as sanctuary animals, and farmers are re-trained to facilitate them with their new plant-based initiative. This is a new plant-based milk subscription service derived from former dairy farmers. Farmers' land will be converted into an animal sanctuary for livestock that can no longer be used for animal farming. The sanctuary does not operate with donations. Instead, a portion of the profits from the price of plant-based drinks is dedicated to caring for these animals. The organization's links with farms promise that animals will be kept under legal protection and farmers' contracts. Regular inspections and veterinary inspections are done to ensure the well-being of the sanctuary animals.<sup>18</sup>

An organization with the similar objective, Jeeva Bhavana is India's Refarm'd equivalent. They facilitate the switch from animal based farming with farmers to focus on producing plant based farming and turning their farmland into an animal sanctuary. This system will enable farms to provide sustainable and locally sourced products by the production of plant-based foods on their farms. Through this system, farmers are becoming plant-based producers based on sourcing the resources they need from local producers so they can keep land for their animals. It offers a quick and easy solution that can be replaced with any farm, which does not call for drastic changes or long delays or large equipment because they provide the equipment, training and continuous support needed for a successful transition.<sup>19</sup> Though most states have laws that prevent the slaughter of cows, except for the state of Karnataka, no other state provides laws to prevent the slaughter of buffaloes, which contributes to about half of the produce in our dairy industry. Thus, the laws need to become more comprehensive to include all the species of animals that are tortured in the dairy sector.

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<sup>18</sup> *Refarm'd - Transitioning Farmers Out of Dairy: 'We Want to Give Back the Power to Farmers*, VEGECONOMIST – THE VEGAN BUSINESS MAGAZINE (August 27, 2021, 12:01 PM), <https://vegconomist.com/interviews/refarmd-transitioning-farmers-out-of-dairy-we-want-to-give-back-the-power-to-farmers/>.

<sup>19</sup> WHAT WE DO – JEEVA BHAVANA, <https://jeevabhavana.org/what-we-do/> (last visited Feb 5, 2022).

## BALANCING ENVIRONMENT AND RELIGION: AN ANALYSIS OF THE JUDICIAL APPROACH

Surya Prabhat Pali\*

### I. Introduction

When one looks into the major religions of India i.e., Buddhism, Christianity, Hinduism, Islam, Jainism, Sikhism, Zoroastrianism, they all possess a form and place of worship and certain rituals/festivals. These aspects have the ability to protect and preserve the environment. For instance, Zoroastrianism is known to be the 'world's first environmental religion' due to various rituals meant to safeguard the environment.<sup>1</sup> However, in contrast, these aspects also have the ability to damage and harm the environment. It is when this happens that the need is felt by the Judiciary of this country to intervene. As religion is a sensitive matter, especially in a country like India, it must be handled with care. Blunt restrictions cannot be imposed for the sake of environmental protection as this may kindle anger and resentment from the religious communities. Here, the Judiciary plays a very significant role.

While religion and environment are two separate concepts, it is found that they also share a relationship where one affects the other and vice versa. Amidst the interplay of the environment and religious forces, the Judiciary intervenes to harmonise and balance them so that neither one adversely affects the other. This, precisely, is the subject matter of this article.

### II. Balancing Religious Worship and Environment

Worship is an act of religious devotion usually directed towards a deity and is a general feature of almost all religions. It can be both a private action and public action. This article is concerned with the latter and shall mainly look into the forms and places of worship and their effect on the environment, along with the intervention of the courts in this regard.

#### 2.1. The Decibel Regulation of Prayers and Devotional Songs

Prayers are most certainly an important element in worshipping. Religions have their own forms of praying and the production of some sound is an integral part of it. This very importance, when amplified, can lead to issues of noise pollution. When such situations arise,

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<sup>1</sup> Richard Foltz and Manya Saadi, *Is Zoroastrianism an Ecological Religion?* 1(4) JSRNC 413, 414 (2007), [https://www.researchgate.net/publication/250015339\\_Is\\_Zoroastrianism\\_an\\_Ecological\\_Religion](https://www.researchgate.net/publication/250015339_Is_Zoroastrianism_an_Ecological_Religion).

the Judiciary gets involved in one way or another. One such example is the case of *Church of God [Full Gospel] in India v. KKR Majestic Colony Welfare Association*,<sup>2</sup> the question was that in a country having multiple religious and numerous communities or sects, whether a particular community or sector that community can claim the right to add to noise pollution on the grounds of religion?

The welfare association of a colony had filed a complaint against the Church of God (Full Gospel), as the prayers in the Church were recited by using loudspeakers, drums, and other sound-producing instruments which caused noise pollution, thereby disturbing and causing a nuisance to the normal daily life of the residents of the said colony. The Court took note of the situation and recognized its gravity. They stated that noise pollution is a threat to health and it affects communication, mental health and overall interrupts day to day life. While the Church contended that this suit was filed with the motive to curb the rights of the minority institution, the learned Judge pointed out that there was no malice or malicious wish to cause any hindrance to the free practice of religious faith of the Church, and if the noise created by the Church exceeds the permissible decibels, then it has to be abated. The Court reasoned that,

*“It cannot be said that the religious teachers or the spiritual leaders who had laid down these tenets, had in any way desired the use of microphones as a means of performance of religion. Undoubtedly, one can practice, profess and propagate religion, as guaranteed under Article 25(1) of the Constitution but that is not an absolute right. The provision of Article 25 is subject to the provisions of Article 19(1)(a) of the Constitution. On true and proper construction of the provision of Article 25(1), read with Article 19(1)(a) of the Constitution, it cannot be said that a citizen should be coerced to hear anything which he does not like or which he does not require.”*

By this, the Court meant to imply that the enjoyment of one's rights must be consistent with the enjoyment of rights by others and while this harmony may not exist in the society naturally, it is the duty of the State to ensure that such competing interests are balanced. That is precisely what the High Court has done by giving directions to the religious minority institution to bring down the noise level by keeping the speakers at a lower level so that it serves the purpose of

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<sup>2</sup> *Church of God [Full Gospel] in India v. KKR Majestic Colony Welfare Association* AIR, 2000 SC 2773.

prayer while at the same time does not cause a nuisance to others in the surrounding environment.

## 2.2. *Land and Places of Worship*

In this section, the focus shall be on the construction and expansion of places of worship such as temples, ashrams, mosques, churches, etc. which can lead to various kinds of damages to land and forests. One such instance took place in 2015 when the Akshardham temple was fined by the National Green Tribunal ('NGT') for expanding the temple premises without prior environmental clearance.<sup>3</sup> This illegal expansion was made on the floodplains of the Yamuna River. Such construction on floodplains harms the riverine ecosystem, lessens groundwater recharge capacity, and poses threats of flash floods.<sup>4</sup> The NGT's intention was to prevent such future encroachments by fining the temple.

The Madras High, however, went a step further in the case *Konambedu Gramma Pothu Nalla v. The District Collector*,<sup>5</sup> have found that a Mosque along with multiple shops have not only encroached the bed of the Konambedu lake but are also illegally extracting the groundwater in the area. This had caused a lot of hardships to people around in the form of flooding during rains, and it was public opinion that something needed to be done. After the hearings, the Court ordered the demolition of these buildings as public welfare was at stake.

Similarly, the Balayogi Shri Sadanand Maharaj Ashram, which was constructed in Tungareshwar Wildlife Sanctuary constructed was found to have violated environmental laws, particularly the provisions of the Forest Conservation Act, 1980 and the Wildlife Protection Act, 1972 for over 30 years, by continuing to illegally encroach on forest land.<sup>6</sup> Such constructions are bound to disturb the sensitive ecological systems such as wildlife sanctuaries, especially the toilet areas of these ashrams that were demolished first. The Supreme Court ordered for further demolition and ordered that the ashram be located elsewhere, as the interests of the environment in this area are of priority.

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<sup>3</sup> *NGT Imposes fine on Delhi's Akshardham Temple*, TOI, (Jul. 10, 2015, 7:30 PM), [http://timesofindia.indiatimes.com/articleshow/48021331.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/48021331.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst).

<sup>4</sup> Amita Bhaduri, *Why Floodplains Need to be Protected*, IND. WAT. POR. (Oct.12, 2018 11:56 AM) <https://www.indiawaterportal.org/articles/why-floodplains-need-be-protected>.

<sup>5</sup> *Konambedu Gramma Pothu Nalla v. The District Collector*, AIR 2018 Mad LJ 86.

<sup>6</sup> Ram Parmar and Badri Chatterjee, *At Tungareshwar Wildlife Sanctuary: Ashram Trustees Demolish Part of Structure*, H.T., (Aug 27, 2019, 04:09 AM), <https://www.hindustantimes.com/mumbai-news/at-tungareshwar-wildlife-sanctuary-ashram-trustees-demolish-part-of-structure/story-yA5L5243XmAYIkp35QCigK.html>.

### III. Balance Between Religious Practices and Their Effect on The Environment

Various rituals and festivals are associated with every religion and they are held strong by the religious communities. Some such festivals and rituals are bound to leave an environmental footprint due to their very nature, and hence it becomes important that they are not left unregulated, as they may greatly disturb public welfare. Thus, the courts in these matters play a very important role of not just a regulator but also as an innovator so as to harmonize the competing interests. Two prominent examples of such efforts are studied here.

#### 3.1. An Innovative Solution for Idol Immersion

Idol immersion is called *Visarjan* in India. The Hindus believe that after the idol of the festival is worshipped, it must be immersed in water because only Mother Earth can bear its power and energy.<sup>7</sup> Among the various *Visarjans*, *Lord Ganesha Visarjan* and *Goddess Durga Visarjan* are the most popular among the Hindus and hence, they are also a major source of water contamination.<sup>8</sup>

The idols are made with Plaster of Paris, clay, small iron rods, and decorated with different paints such as varnish, water colours, etc., all of which can lead to a significant alteration in the water quality after immersion.<sup>9</sup> This can cause a plethora of issues in humans, including heart diseases, kidney, and nervous system damage, etc. The aquatic life in the rivers and lakes is also negatively affected. In this regard, various cases have been filed in the courts with the intent to keep these immersions in check. It was in the case of *Janhit Manch v. The State of Maharashtra*<sup>10</sup> that the High Court of Bombay directed the authorities to formulate national guidelines for immersion of idols and other pooja materials in the water bodies during festivals and other occasions.

However, the most innovative solution that struck the right balance was the order by the NGT in *Manoj Mishra v. Union of India*,<sup>11</sup> where idol immersion was banned in the Yamuna River and as an alternative the Court offered the solution of immersing the idols in artificial ponds. Accordingly, the Delhi Municipal Corporation dug 116 pits that were converted to artificial

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<sup>7</sup> Avik Basu et al., *Hindu Idol Immersion: Practice & Pollution*, CENT. FOR A BETTER LIFE, (Jul. 15, 2014), <http://livebettermagazine.com/article/hindu-idol-immersion-practice-pollution-and-health/>.

<sup>8</sup> *Id.*

<sup>9</sup> Sayan Bhattacharya et al., *Effects of Idol Immersion on The Water Quality Parameters of Indian Water Bodies: Environmental Health Perspectives*, 39 ILCPA 234, 235 (2014), <https://www.scipress.com/ILCPA.39.234.pdf>.

<sup>10</sup> *Janhit Manch v. The State of Maharashtra*, 2006 (3) Bom CR 834.

<sup>11</sup> *Manoj Mishra v. Union of India*, SCC OnLine NGT 135.

ponds.<sup>12</sup> It was found that as a result of this, 24,000 idols were prevented from immersion in the Yamuna River in 2019.<sup>13</sup> This order by the NGT was applauded nationally for being a solution where religion and policy happily co-exist.

### 3.2. *The Alternative to Traditional Cremation*

The process of cremating a dead body releases millions of tonnes of Carbon Dioxide every year. Moreover, in Hindu religion, this requires the cutting down of trees for wood and also contributes to river pollution as these cremations are done near the rivers.<sup>14</sup> Such an impact came under the notice of the National Green Tribunal (NGT). In February 2016, the Tribunal questioned the centuries-old practice and said that there is a need to adopt alternative environment-friendly methods such as electric crematoriums and the use of CNG.<sup>15</sup> However, the Tribunal was wary of religious interests that may be disturbed and therefore advocated for a slow and steady approach with the government educating the public in this regard. In the words of Justice U. D. Salvi,<sup>16</sup>

*“The issue involves questions of faith and circumstances in which the people live, ... It is, therefore, the responsibility of the men who lead, particularly religious leaders, to steer the faith in a direction so as to change the mindset of people practising their faith and make them adopt practices which are environment-friendly.”*

Contrastingly, in another case, the *Panchayat of Ivor Madom* (a sacred Hindu burial site) complained that the increase in the number of cremations taking place has polluted their river, Bharathapuzha, which was the only water source for the people in the surrounding areas and along with the air pollution caused by the same, the number of skin infections and diseases increased.<sup>17</sup> However, many Hindus protested claiming that performing their religious rituals at this sacred place was their right. These clashes of interests led the Court to provide the

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<sup>12</sup> Press Trust of India, *Use of Artificial Ponds Prevented Immersion of Around 24,000 Idols in Yamuna Last Year*, H.T., (Jan. 07, 2020, 5:27 PM), <https://www.hindustantimes.com/india-news/use-of-artificial-ponds-prevented-immersion-of-around-24-000-idols-in-yamuna-last-year/story-S19zXecavGjZHtsUL1mFM.html>.

<sup>13</sup> *Id.*

<sup>14</sup> Becky Little, *The Environmental Toll of Cremating the Dead*, NAT. GEO., (Nov. 5, 2019), <https://www.nationalgeographic.com/science/2019/11/is-cremation-environmentally-friendly-heres-the-science/>.

<sup>15</sup> Ritam Halder, *NGT Targets Wood Use for Funeral Fires in Cremation Grounds*, H.T., (Feb. 3, 2016, 2:04 AM), <https://www.hindustantimes.com/delhi/ngt-targets-wood-use-for-funeral-fires-in-cremation-grounds/story-XLAHeiDZSLVGzw2m734qyN.html>.

<sup>16</sup> *Id.*

<sup>17</sup> Krishna Das. C. v. The State of Kerala, (2015) 4 KLT (SN 109) 86.

solution of using electric crematoriums at the burning ghat to keep a check on environmental pollution.<sup>18</sup> Thus, balancing the interests of both the stakeholders.

#### IV. Area of Concern

However, not all is green on this side of the field. While the Judiciary has been extensively praised for its intelligence shown in these cases, it has also been criticised for the intelligence it shows in the assertiveness of select cases. Termed as selective assertiveness, it refers to the courts indulging in the assessment of political costs before choosing whether to take strict action or not. This can be illustrated with a case relevant to this paper. In the *MC Mehta v. Union of India* case of 1987,<sup>19</sup> popularly known as the Kanpur Tanneries case, it has firstly been criticised for judicial intervention in a purely political matter.<sup>20</sup> The case was concerned with the discharge of toxic effluents into the holy Ganga River by tanneries industries. The Court justified its intervention by citing the inaction of the municipal authority. The Court then was stern in its approach and this is where the more disturbing criticism arises. It is argued that a calculation was made where the court took notice of the weak political power of the tannery workers who were majorly lower caste migrant Muslims, the strong support of a major section of the population with religious sentiments to get the river cleaned and the ability of the municipal authority to implement its order, all of which added up to the court taking strict action against the Government.<sup>21</sup>

This is a concerning criticism as it indicates that the court is not purely concerned with justice as it ideally should be, rather it is motivated by other political and popular concerns which would then give it the same weaknesses that the Executive and Legislative possess. This would have severe implications in the court's effort of balancing religion and environment, especially when there is no scope for innovation. This is because there can be cases where the political costs are too high and while this may not affect the court in the act of balancing the interests, it may make the court more lenient in the implementation of its order. On the other hand, there may be cases where the court recognizes the strong populist forces in favor of a religious activity that can greatly pollute the environment and at the same time also take recognition of

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<sup>18</sup> *Id.*

<sup>19</sup> *MC Mehta v. Union of India*, (1987) 4 SCC 463.

<sup>20</sup> Shalini Iyengar et al., *Selectively Assertive: Interventions of India's Supreme Court to Enforce Environmental Laws*, 11 SUSTAINABILITY 7234, 7236(2019), <https://doi.org/10.3390/su11247234>.

<sup>21</sup> *Id.*

the Executive's blunt unwillingness to take any action to stop the same, both of which may deviate the Court from taking the right course of action. For example, in *Dr. Avinandan Mondal v. State of West Bengal*<sup>22</sup> (which though is not specifically concerned with an environmental issue), the Court allowed for the Ganga Sagar Mela event, which is said to be the second-largest gathering in India and also a large polluter,<sup>23</sup> to take place even though it is clear that the event happening would severely increase the number of COVID cases.<sup>24</sup> The court here may have succumbed to the above two mentioned factors, as there was a large population in favor of the event and along with the West Bengal government that refused to ban the religious event.

However, much more research is to be done to prove that this is a norm,<sup>25</sup> and experience shows that this is not truly the state of affairs in the judicial process of the country. But it does show to be an area of concern. To mitigate such scenarios, the Court must tread with caution to not involve itself in matters that have strong populist forces and in cases where it has to, it must make itself aware of the socio-economic conditions of all the stakeholders involved and prevent itself from indulging in such calculations which are against the interest of justice.

## V. Conclusion

From the above discussion on the various case laws and judicial action, the positive outlook of the Judiciary reflects its ability to strike a balance with regard to environmental interests and religious interests. The Judiciary has made itself committed to provide a quality environment to the people and accordingly given paramount importance to 'health' and 'ecology' and this attitude of the Judiciary reflects the flaws and lacuna of the various legislations related with the environment.

It is essentially due to the inactivity of the Executive that has led the Judiciary to take up an active role in this crossing between religion and environment. The researcher is of the opinion that the Judiciary is more active in this field due to the fact that it is not as relatively restricted by the people's view, whereas the Executive and Legislative are popular bodies and therefore take much caution when treading towards religion. However, it has been seen that the court too

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<sup>22</sup> *Dr. Avinandan Mondal v. State of West Bengal*, 2022 SCC OnLine Cal 111.

<sup>23</sup> Ritam Sinha et al., *Pollution and its consequences at Ganga Sagar mass bathing in India*, 22 ENVIRON DEV SUSTAIN. 1413, 1413 (2020), <https://doi.org/10.1007/s10668-018-0255-3>.

<sup>24</sup> Sreyashi Dey, *Enough to Paralyse Health Infra' — Experts Raise Alarm over Ganga Sagar Mela in Bengal*, THE PRINT (Jan. 10, 2022, 12:01 PM), <https://theprint.in/india/enough-to-paralyse-health-infra-experts-raise-alarm-over-ganga-sagar-mela-in-bengal/799332/>.

<sup>25</sup> *supra* note 20, at 7252.

may at times be swayed by populist forces that make it selectively assertive. In order to destroy such tendencies, the judges must stay true to the constitutional ethos and restrain themselves from involving in matters with strong populist sentiments where it is not the Court's mandate. But this should not discount the efforts of the Judiciary where it did not just merely regulate to balance the interests of both religion and environment but went the extra mile to innovate, as we have seen in the aspects of idol immersion and cremation. The Judiciary has balanced the interests of both sides not by compromise but rather by creating a win-win situation for both religion and environment.

## PREVENTING THE NEXT PANDEMIC: THE EXIGENCY FOR SUSTAINABLE WILDLIFE MANAGEMENT

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### I. Introduction

As the world grapples with the unprecedented ramifications of the COVID-19 pandemic, scientists are tasked with the question of its origin. The exact origins of the pandemic are unknown. However, World Health Organization (WHO) in its 'WHO-China Joint Mission on Coronavirus Disease 2019' report,<sup>1</sup> has confirmed the zoonotic origin of the COVID-19 outbreak. The pandemic has magnified the risk zoonotic diseases pose to human health. Illegal wildlife trade coupled with poor wildlife management appears to be a common theme in recent zoonotic outbreaks such as the H1N1 Flu and Zika.<sup>2</sup>

It is speculated that the Covid-19 disease spread from bats through a pangolin which acted as an intermediate host that transmitted the disease to humans on consumption. Pangolins are the most trafficked mammals in the world<sup>3</sup> and are a critically endangered species on the IUCN Red List.<sup>4</sup> When found in close contact with humans, it is implied that they are either harvested from the wild or obtained by illegal encroachment of wildlife habitats. Consumption of wild animals has led to wildlife trafficking, with disastrous effects. Animals smuggled from the wild lead to loss of biodiversity and disease spill-over from animals to humans.<sup>5</sup> International conventions and domestic laws have to be strengthened to curb wildlife trafficking.

### II. Need for Sustainable Wildlife Management and Banning Illegal Wildlife Trade

Illegal wildlife trade is devastating wildlife species and biodiversity across the globe. Exotic species are kept as pets, used in traditional medicine and eaten as a delicacy.<sup>6</sup> Consumer

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<sup>1</sup> World Health Organisation, *China Joint Mission on Coronavirus Disease 2019 Report*, WHO, (Feb. 24, 2020), <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>.

<sup>2</sup> United Nations Environment Programme, *Preventing the next pandemic: Zoonotic disease and how to break the chain of transmission*, at 11, (2020), <https://www.cbd.int/doc/c/084c/e8fd/84ca7fe0e19e69967bb9fb73/unep-sa-sbstta-sbi-02-en.pdf>.

<sup>3</sup> National Geographic, <https://www.nationalgeographic.com/animals/mammals/facts/pangolins> (last visited Jun. 09, 2021).

<sup>4</sup> International Union for Conservation of Nature, <https://www.iucn.org/commissions/ssc-groups/mammals/mammals-f-z/pangolin> (last visited June 09, 2021).

<sup>5</sup> Helen Briggs, *Coronavirus: Putting the spotlight on the global wildlife trade*, BBC NEWS, (Apr. 06, 2020) <https://www.bbc.com/news/science-environment-52125309>.

<sup>6</sup> Zhong et al, *Constructing Freshness: The Vitality of Wet Markets in Urban China*, 37 AGRIC. HUMAN VALUES 175, 178 (2020).

demand for Exotic species is only increasing, thus providing an incentive for Traffickers and organized crime syndicates to continue the indiscriminate trafficking of wildlife. This in turn has disastrous consequences- due to the loss of biodiversity caused by trafficking, food supplies will be more vulnerable to pests.

Illegal wildlife trade also leads to destruction of habitats by removing necessary buffer zones between humans and wildlife. Thus, making it possible for humans to come in contact with Zoonotic pathogens. Wild animals that are traded illegally are more likely to be sold in conditions where hygiene and sanitation are poor, further exacerbating the spread of Zoonotic diseases.

### **III. Could India Be Ground Zero for The Next Pandemic?**

India could be the epicentre of the next pandemic due to unchecked deforestation and the world's second-largest population with people living and working in close quarters.

Bats, which are said to have caused the Covid pandemic with the help of an intermediate host – pangolins, carry the largest number of viruses that could infect humans. Though India is largely a vegetarian country, people may get exposed to bat-borne viruses with encroachment into forest areas. Fruits infected by bats, if eaten by humans or by livestock which in turn are eaten by humans, can transmit the infection. For example, the Nipah virus outbreak in Kerala in 2018.<sup>7</sup>

With the total ban on selling Indian species under the Wildlife Protection Act,<sup>8</sup> traffickers have shifted to the exotic animal trade and India is a potential epicenter for zoonotic diseases. Much of the population interacts closely with livestock and wild animals and lacks proper veterinary care facilities, further increasing the risk.

### **IV. Domestic Position of Law**

In India, efforts have been made by the legislature as well as the judiciary to curb wildlife trafficking. Article 48-A of the Indian Constitution,<sup>9</sup> states that "*The State shall endeavour to*

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<sup>7</sup> Centre for Disease Control and Prevention, <https://www.cdc.gov/vhf/nipah/transmission/index.html> (last visited Feb. 07, 2022).

<sup>8</sup> The Wild Life (Protection) Act, 1972, No. 53, Acts of Parliament, 1972 (India).

<sup>9</sup> INDIA CONST. art. 48-A.

*protect and improve the environment and to safeguard the forest and wildlife of the country.*<sup>10</sup> Thus, the Constitution, through its Directive Principles of State Policy has advised the state to formulate legislations to protect wildlife and curb illicit wildlife trade.

The Wildlife (Protection) Act, 1972, under Chapter VI provides for penalties for violation<sup>11</sup> of its Sections. Offences under the Act are cognizable and non-bailable in nature. The stringent penalties have ensured that illicit wildlife trade is controlled within India.

The Wildlife (Protection) Act, 1972, bans hunting of wild animals irrespective of the purpose. The major drawback of the Act is the legal loophole that does not extend protection to exotic species from outside the sub-continent and only extends protection to animals listed under its Schedule, which are indigenous.<sup>12</sup> According to IUCN Red list 2018, India hosts more than 683 wildlife species that belong to the vulnerable, endangered, and critically endangered categories,<sup>13</sup> but these are not mentioned in the Wildlife (Protection) Act and therefore, not protected by domestic law. The loopholes in the legislation created by the inconsistency between domestic and international law are being exploited by wildlife traffickers.

The term “exotic species” has not been explicitly defined under Indian law. The Prevention of Cruelty to Animals (Pet Shop) Rules, 2018 defines ‘pet animals’<sup>14</sup> to include “*dog, cat, rabbit, guinea pig, hamster, rodents of the rat or mice category and captive birds*”. Therefore, a host of exotic species such as snakes and iguanas which are frequently imported into India are left out of the act’s purview.

India is a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and has been lauded for taking efforts to curb illegal wildlife trafficking.<sup>15</sup> However, the economic hardships brought about by the COVID-19 pandemic have led to people seeking employment in alternate sources. A report by Trade Related Analysis of Fauna and Flora in Commerce (TRAFFIC), an NGO working globally to curb illegal wildlife trade,

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<sup>10</sup> The Wild Life (Protection) Act, 1972, No. 53, Acts of Parliament, 1972 (India).

<sup>11</sup> The Wild Life (Protection) Act, 1972, No. 53 Acts of Parliament, 1972 (India).

<sup>12</sup> Abhishek Chakravarty, *COVID-19: India Must Act Quickly to Open the Eyes of Its Laws to Exotic Species*, THE WIRE SCIENCE, (June 12, 2020), <https://science.thewire.in/environment/covid-19-india-exotic-animals-wildlife-trade-environment-ministry-advisory/>.

<sup>13</sup> International Union for Conservation of Nature, <https://www.iucnredlist.org/> (last visited Feb. 7, 2022).

<sup>14</sup> The Prevention of Cruelty to Animals (Pet Shop) Rules, 2018, §2 (j).

<sup>15</sup> The Hindu, <https://www.thehindu.com/sci-tech/energy-and-environment/cites-certificate-to-india-for-efforts-in-combating-illegal-wildlife-trade/article21243917.ece> (last visited Feb. 07, 2022).

has highlighted that poaching and the illegal wildlife trade have doubled in India since the beginning of the pandemic.<sup>16</sup> The strict lockdown has reduced the movement of law enforcing officers and has opened up avenues for poachers and traffickers to carry on illegal wildlife trade.

## V. International Position of Law

The trade of wildlife, livestock, and animal products through the legal route is a complicated process and is bound by the World Trade Organization's sanitary measures.<sup>17</sup> When transnational illegal trafficking of wildlife takes place, these sanitary measures are evaded, leading to the emergence of zoonotic diseases. Legal provisions that govern the movement of endangered wildlife species across international borders are in the form of Conventions, which are legally binding on countries that are signatories to it.

CITES aims at keeping the international trade of wildlife legal, traceable and sustainable. The Convention has appendices that contain names of endangered species of flora and fauna which are illegal to trade. The treaty has been successful in reducing international wildlife trafficking.<sup>18</sup> However, the Convention has its drawbacks. CITES is limited to the species it lists and focuses on international trade rather than local or domestic trade. Pandemics have shown that viral zoonoses can begin in a single location and spread across the world in a few months. CITES does not address public health concerns that arise from wildlife illegal trade and merely acts as a regulatory framework. CITES does not regulate how wildlife is harvested, handled, stored, or consumed.<sup>19</sup> CITES has failed to prevent zoonotic diseases from spreading.

The United Nations Convention against Transnational Organised Crime (UNTOC) is a multilateral treaty and the main legal instrument in the international domain to fight transboundary organized crime. The drawback of UNTOC is that it is limited to identifying and criminalizing international wildlife crimes but only where there is a link to organized

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<sup>16</sup> Saket Badola, *Indian Wildlife amidst the Covid-19 Crisis: An analysis of status of poaching and illegal wildlife in trade*, (Aug. 07, 2020), <https://www.traffic.org/site/assets/files/12885/wildlife-amidst-covid-19-india-web.pdf>.

<sup>17</sup> World Trade Organisation, [https://www.wto.org/english/tratop\\_e/sps\\_e/spsund\\_e.htm](https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm) (last Visited June 09, 2021).

<sup>18</sup> Ludwig Krämer, *The CITES a success?*, THE EUROPEAN UNION AND WILDLIFE TRAFFICKING, (Apr. 09, 2020), [https://www.era-comm.eu/Biodiversity\\_and\\_Wildlife\\_Trafficking/module\\_1/1\\_Chapter\\_13\\_success.html](https://www.era-comm.eu/Biodiversity_and_Wildlife_Trafficking/module_1/1_Chapter_13_success.html).

<sup>19</sup> Don Pinnock, *Why the wildlife trade convention failed to prevent Covid-19*, DAILY MAVERICK, (May 27, 2020), <https://www.dailymaverick.co.za/article/2020-05-27-why-the-wildlife-trade-convention-failed-to-prevent-covid-19>.

crime. Traffickers have found a way to circumnavigate authorities through illegal means and loopholes in legislations.

The Convention on Biological Diversity (CBD),<sup>20</sup> is another landmark treaty that aims at conservation of biodiversity and promotes sustainable and equitable use of resources. Article 10(c) of CBD states that “*Parties shall protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.*” It extends support to parties to formulate policies and implement integrated sustainable development programmes.

## **VI. International Response to Illegal Wildlife Trade in Light of the Pandemic**

China has issued a CITES notification<sup>21</sup> to ban the consumption of endangered and scientifically significant species of animals. While it is welcome, the scope of the ban is limited. It allows the usage of wildlife for other purposes like scientific experiments or for medicines as in the use of bear bile to treat Covid-19.<sup>22</sup> China has removed pangolins from the official list of traditional Chinese medicinal treatment.<sup>23</sup> China seems to have done this due to international pressure rather than concern for preventing the next pandemic. This is evident through reports that show that China has reopened the wet markets in Wuhan where the virus is suspected to have originated.<sup>24</sup>

On the other hand, there are countries which have responded to the wake-up call the pandemic has posed and have acted to prevent future pandemics. Malawi's Department of Parks and Wildlife has banned consumption of bushmeat as it poses significant health risks to humans.<sup>25</sup> Vietnam has issued a comprehensive ban on the import of wildlife and wildlife related products in light of the pandemic.<sup>26</sup>

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<sup>20</sup> National Geographic, <https://www.nationalgeographic.com/animals/article/how-internet-fuels-illegal-wildlife-trade> (last visited June 09, 2021).

<sup>21</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), <https://cites.org/sites/default/files/notifications/E-Notfi-2021-038.pdf> (last visited June 09, 2021).

<sup>22</sup> Environment Investigation Agency, <https://eia-international.org/news/unbelievablechinese-govt-recommends-injections-containing-bear-bile-to-treat-coronavirus/> (last visited June 09, 2021).

<sup>23</sup> The Guardian, <https://www.theguardian.com/environment/2020/jun/09/china-protect-pangolins-removing-scales-medicine-list-aoe> (last visited Feb. 7, 2022).

<sup>24</sup> Sigal Samuel, *The Coronavirus Likely Came from China's Wet Markets, they're Reopening Anyway*, VOX, (Apr. 15, 2020), <https://www.vox.com/future-perfect/2020/4/15/21219222/coronavirus-china-ban-wet-markets-reopening>.

<sup>25</sup> Charlotte Pointing, *Bushmeat is now banned in Malawi*, LIVE KINDLY, (Mar. 20, 2020), <https://www.livekindly.co/bushmeat-banned-malawi/>.

<sup>26</sup> BBC News, <https://www.bbc.com/news/world-asia-53525954> (last visited June 09, 2020).

In India, the Central government has announced a 'voluntary disclosure scheme',<sup>27</sup> which allows people to voluntarily declare possession of exotic animals to the Ministry of Environment, Forest and Climate Change. This allows the government to trace and track the movement of these species. The Delhi High Court in *Khodiyar Animal Welfare Trust v. Ministry of Environment Forest and Climate Change*,<sup>28</sup> held that once a voluntary disclosure has been made within the stipulated period of time, no action can be pursued against that person for breeding, possessing or transporting the exotic species.

## VII. Solutions and The Way Forward

Emergence of zoonotic diseases is a global problem and must be addressed collectively. Horizon scanning is a means by which countries across the world fund initiatives to monitor and screen wildlife for pathogens. This will help prevent the next pandemic. Wildlife products are indispensable for human medicinal use, a case in point would be the use of Shark liver oil in Covid-19 vaccines. Most sharks that are harvested are in the endangered category on the IUCN Red List. With global demands for vaccines increasing, sharks face the threat of extinction. A coordinated effort by the pharmaceutical industry to switch to non-animal-based products for vaccine manufacturing would meet the goal of public health and environmental sustainability.

Although pangolins have been explicitly banned by CITES, its use in medicine continued to be legal in China before the pandemic.<sup>29</sup> There exists a need for more transparency and for countries to abide by CITES and other international Conventions and adopt global best practices at the domestic level.

From a policy perspective, strengthening laws and eliminating legal loopholes is the need of the hour. Clear definitions of what exactly constitutes illegal trade as well as expanding the number of species that are protected under international and domestic law is imperative. There must also be a synergy between international and domestic law, to ensure that they are not conflicting.

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<sup>27</sup> Ishan Kukreti, *Environment ministry issues advisory to import live exotic animals*, DOWN TO EARTH (June 05, 2020), <https://www.downtoearth.org.in/news/wildlife-biodiversity/environment-ministry-issues-advisory-to-import-live-exotic-animals-71597>.

<sup>28</sup> MANU/DE/1955/2020.

<sup>29</sup> Ben Blanchard, *China defends use of wild animals in traditional medicine*, REUTERS, (July 02, 2016), <https://www.reuters.com/article/us-china-endangered-idUSKCN0ZI0GB>.

International conventions such as CITES focus on prohibiting overexploitation of animals and do not address the issue from a global health risk point of view. Reforms are necessary to enable an open and transparent international legal framework that bans high-risk wildlife trade, consumption of bushmeat, and wet markets.

With strict lockdowns being imposed worldwide, the illicit wildlife trade has gone online.<sup>30</sup> The use of artificial intelligence and other technology can prove useful in identifying and penalizing individuals who indulge in illegal activities.

### **VIII. Conclusion**

Pathogens and viruses do not respect international borders and the consequences of the threats they pose are geographically widespread. There is no doubt that the increased interaction of human beings with wild animals by encroaching their habitats and trading them to foreign lands is a primary cause of zoonotic diseases. There exists an urgent need to re-evaluate our relationship with the natural world. Zoonotic-based pandemics will continue emerging if policy measures are not put in place to stop the illegal wildlife trade.

It is imperative for governments and international bodies to recognize that the current systems for regulating wildlife trade are inadequate. They are unlikely to prevent high-risk wildlife trafficking and prevent wet markets. There is an urgent need to address this issue from a legislative standpoint and implement global best practices in prohibiting wildlife trafficking to improve our chances of preventing the next pandemic.

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<sup>30</sup> Rene Ebersole, *The black-market trade in wildlife has moved online, and the deluge is 'dizzying'*, NATIONAL GEOGRAPHIC, (Dec. 21, 2020), <https://www.nationalgeographic.com/animals/article/how-internet-fuels-illegal-wildlife-trade>.

## **COSTA RICA V. NICARAGUA: A MISSED OPPORTUNITY BY THE INTERNATIONAL COURT OF JUSTICE**

Dhairya Jayesh Thakkar\*

### **I. Facts of the Case**

The origin of this case<sup>1</sup> can be traced back to the year 1998. The series of disputes that eventually led to the present case is popularly known as the 'Nicaragua-Costa Rica San Juan River border dispute.' In the year 1998, Nicaragua blocked the path of Costa Rican policemen in the San Juan river claiming a breach of its sovereignty. It started imposing a \$25 fee on Costa Rican tourists who wished to enter the San Juan River by stating that only goods were exempted from tax under the Canas-Jerez Treaty of 1858.

This dispute eventually led Costa Rica to petition the International Court of Justice in the year 2010 claiming unlawful occupation and incursion of territory by the Republic of Nicaragua. It also claimed damage to protected rainforest and wetlands. In retaliation, Nicaragua petitioned the International Court of Justice in the year 2011 claiming violation of its sovereignty and severe environmental damage due to the construction of a road along the border area by Costa Rica. In the year 2013, the court joined both these cases and passed a provisional order preventing both the parties from carrying out any activities that would further aggravate the issue.

Not respecting the court's order, Nicaragua proceeded to dig two more channels in the disputed territory. This event led to another hearing before the International Court of justice in the same year i.e 2013 in which the Hon'ble court allowed Costa Rica to take necessary measures to prevent irreparable environmental damage but only after consultation with the Secretariat of Ramsar Convention on Wetlands of International Importance.

Finally, on 16<sup>th</sup> December 2015, the International Court of Justice held that Costa Rica had sovereignty over the disputed territory. It also held that Nicaragua was thus under an obligation to pay material damages to Costa Rica for the damage it has caused to rainforest and water

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<sup>1</sup> Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, I.C.J. Reports 2018, p. 15.

resources. The Court gave the parties 12 months to mutually agree on the quantum of compensation. In the event, the parties were not able to come to an agreement on the quantum of compensation, one of the parties could petition the same. The 2018 compensation case between the parties is the product of this.

## **II. Summary of Claim by Costa Rica**

Costa Rica, through its arguments, claimed compensation for measurable environmental harm caused by the dredging process for two channels. It made no claim in respect to the third channel. It also claimed compensation for expenses incurred to monitor and ameliorate the damage caused to the environment. Costa Rica argued that environmental defilement is indemnifiable under international law as a settled principle. It argued that other international adjudicative bodies have awarded reimbursement for environmental damages that have no monetary value. To support its argument, it pointed out that the United Nations Compensation Commission (UNCC) awarded compensation to a lot of nations for environmental damage caused by the incursion of Kuwait by Iraq in 1990.

## **III. Summary of Claim by Nicaragua**

Nicaragua argued that Costa Rica is entitled to recoupment only for damage to property or some other interests of the State and not for environmental damages. It further argued by citing the 2015 judgement of the International Court of Justice in this very case to support its argument. Nicaragua did not contest that environmental damage is compensable but argued that the UNCC approach is to give compensation for reparation costs. To support this, it put forth various claims made before this court during the first Gulf war. It argued that reparation costs include costs incurred for the construction of a dyke to remedy the impact of Nicaragua's activities.

## **IV. Summary of Judgement**

### *4.1. Introductory Observations*

The fact that there could be no agreement between the two parties viz, Costa Rica and Nicaragua and because Costa Rica made a request to the court, it was the court's responsibility to determine the compensation to be paid to Costa Rica for Nicaragua's illegal activities on its neighbour's territory causing it material harm. The dispute before the court had its roots in the territorial issue between the two parties which was resolved by the court through its earlier judgements.

Nicaragua started building channels in the San Juan River and the northern part of Isla Portillo. It also sent some military personnel to the area and started the construction of a road along the San Juan River. In the court's 2013 order, it found that the two new channels and construction of a road in Costa Rica along the San Jose River by Nicaragua were in violation of its 2011 order. Through its 16<sup>th</sup> December 2015 judgement, the court came to the conclusion that the activities of Nicaragua including the presence of military personnel in the said territory were in contravention of Costa Rica's sovereignty.

#### *4.2. Principles of Law Applicable in the Compensation Due to Costa Rica*

Before considering the issue of compensation in the present case the court had to verify whether principles in international law allow for such compensation. And for the same, the court came to the conclusion that "the breach of an engagement involves an obligation to make reparation in an adequate form."<sup>2</sup> The burden to make reparation has been held in other similar cases viz, *Republic of Guinea v. Democratic Republic of the Congo*,<sup>3</sup> *Mexico v. United States*<sup>4</sup> and *Hungary v. Slovakia*.<sup>5</sup> In the case of *Argentina v. Uruguay*,<sup>6</sup> the court held that compensation can replace reparation where reparation is impossible or too burdensome. It, however, took a stance that compensation should not have punitive or exemplary character. The issue that arises in environmental damage cases is that damage may be due to several concurrent causes and the defendant's wrongful act may alone not be responsible for it. This difficulty must be addressed when they arise before the court. The court had previously never ordered compensation for environmental damages and the consequences that may lead to the environment losing its potential to dispense goods and services. However, the court in this judgement put forth that such a principle in international law exists.

#### *4.3. Total Compensation Awarded*

Total compensation of \$378,890.59 was awarded in favour of Costa Rica. It included prejudgment interest of \$20,150.04. In case of delay, post-judgment interest would accrue from

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<sup>2</sup> *Factory at Chorzow (Germ. v. Pol.)*, 1928 P.C.I.J. (ser. A) No. 17 (Sept. 13).

<sup>3</sup> *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Preliminary Objections, Judgment, I.C.J. Reports 2007, p. 582.

<sup>4</sup> *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Mexico v. United States of America)*, Judgment, I.C.J. Reports 2009, p. 3.

<sup>5</sup> *Gabcikovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1. C. J. Reports 1997, p. 7.

<sup>6</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14.

3<sup>rd</sup> April 2018 at 6 per cent per annum. The break-up of compensation is as mentioned here: \$120,000 for loss of goods due to environmental damages. \$2708.39 as restoration costs for internationally protected wetland, \$236,032.16 as compensation for direct consequences of Nicaragua's unlawful activities and \$20,150.04 as prejudgment interest.

## V. Analysis

This is a historic case that will still be remembered and referred to even after centuries as this is the first case where the International Court of Justice recognized the concept of pure environmental damage. This judgement however has its flaws. The first is that it does not provide guidance on how environmental damages must be quantified i.e., on the basis of equity or the opinion of experts.<sup>7</sup> The court has the authority to appoint its own experts under Article 50 of the court's statute. However, the article fails to mention the weightage that can be given to such experts and the court failed to clarify this in its judgement to set a precedent.<sup>8</sup> In this case, to award compensation, the court adopted the financial assessment method and rejected Costa Rica's method of assessing environmental damages based on "ecosystem services."

This historic judgement failed to correct one very important malady viz. when the environment is damaged it affects the entire world in a way indirectly. However, the rules of the International Court of Justice require that only the state that has been affected directly can knock on the doors of the court. So, when a state decides not to proceed to the court, millions of people who have suffered would never get to see the perpetrator face the consequences. This happened in the case of *Australia v. Japan*.<sup>9</sup> In this case, which is also known as the 'Antarctica whaling case,' Australia did not claim compensation or damages since violation of the convention did not cause any material damage to it. But it did cause harm to the environment in general and thus to the world at large. However, the perpetrator faced no consequences. Thus the dream of protecting the global environment still stands on one leg and hasn't been fully realised. The court could have set a precedent in this case by mentioning in its judgement that in case of

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<sup>7</sup> Seyed Yaser Ziaee, Vahid Kosari, Mahsa Salman Nouri, *Valuation of "pure" environmental damage in Compensation Case (Costa Rica v. Nicaragua)*, ICJ, JOURNAL OF ENVIRONMENTAL SCIENCE AND TECHNOLOGY, 22 (10), pp. 65-77, (2020), doi: 10.22034/jest.2019.44174.4658.

<sup>8</sup> Anonymous, *Recognition of "Environmental Services" in the ICJ's First Award of Compensation for International Environmental Damage*, ENVIRONMENTAL POLICY AND LAW, 48 (1), (2018), doi: 10.3233/EPL-180048.

<sup>9</sup> Whaling in the Antarctic (*Australia v. Japan: New Zealand intervening*), Judgment, I.C.J. Reports 2014, p. 226.

environmental harm any state or organisation can file a claim. This would have changed the course of international environmental jurisprudence.

The Court awarded compensation for both material damages and pure environmental damages too, like restoration of wetlands. However, the court limited its job to awarding compensation and did not bind Costa Rica to use the compensation for restoration of its wetlands and other environmental damages caused as mentioned in the judgement. This makes it beneficial for victim states who could claim and win compensation but then not use it to restore the environment but for their own benefit. This error is one of the judgement's most notable flaws since something like an oil spill if not attended to could harm the entire world.

In the end, I would like to conclude that it is a significant judgement that has some major flaws which could very well have been avoided. Nonetheless, it is a one-of-a-kind judgement that will be read even centuries later.



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