



# Lex Terra

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Centre for Environmental Law, Advocacy and Research (CELAR)  
National Law University and Judicial Academy, Assam

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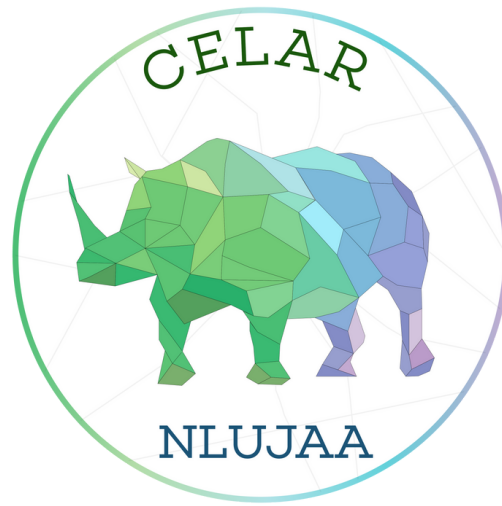
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# ABOUT CELAR

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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 quarterly, 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 and is dedicated to enviro-legal enthusiasts around the country.

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# MESSAGE FROM THE CHIEF MENTOR

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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 NOTE

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*World Environment Day*, observed annually on June 5th, is a significant global event that raises awareness and encourages action for environmental protection. Each year, this day focuses on a specific theme to address pressing environmental challenges. In 2023, the theme for World Environment Day is “Solutions to Plastic Pollution”, shining a spotlight on the urgent need to tackle the growing crisis of plastic waste. The theme of “Solutions to Plastic Pollution” underscores the importance of finding effective strategies to mitigate and ultimately eliminate plastic waste. It calls for collaborative efforts from governments, businesses, communities, and individuals to address this global problem. It emphasizes the urgent need for innovation, policy changes, and behavioral shifts to reduce plastic consumption, promote recycling and circular economy models, and develop sustainable alternatives to single-use plastics. By recognizing the gravity of plastic pollution and actively seeking solutions, we can collectively make a significant difference. Let us use this day as an opportunity to reflect on our choices, support initiatives that combat plastic pollution, and strive for a cleaner, healthier environment for ourselves and future generations. Therefore, on that very note the Centre for Environmental Law, Advocacy and Research (CELAR), National Law University and Judicial Academy Assam, is pleased to release the 41st edition of ‘Lex Terra’ which highlights many such pressing issues plaguing our environment and the evolutionary changes we as a community need to adopt for the sustainable growth of our planet.

In the first article, author Rishabh Dwivedi delves into India’s climate action plans and examines them from a “green federalism” standpoint, while criticising India’s lack of specific climate legislation, instead relying on scattered environmental laws and international commitments. The article also highlights the National Action Plan on Climate Change (NAPCC) and its goal of balancing economic development with carbon emission reductions through eight national missions. Furthermore, the article discusses the challenges associated with



executing State Action Plans on Climate Change (SAPCCs), such as funding, stakeholder involvement, and coordination concerns. Overall, the study proposes “green federalism” as a solution, urging decentralisation and involving state governments, municipalities, and local councils.

The article by Royan Bage gives us a critical viewpoint into the case of Janardhan Bezbarua v. Oil India Ltd. where the defendant proposes to conduct a seismic survey across the river Brahmaputra of Assam for exploration of HydroCarbon Reserves. The author tries to prove the impracticality of the Environmental Impact Assessment (EIA) study conducted by Gauhati University which supports the seismic survey, claiming short-term effects on marine animals. The EIA study presented by the defendant attempts to assure the court of the minimal probability of adversity resulting from seismic surveys in the Brahmaputra River. However, the study fails to consider the mitigating measures proposed in the same report. The defendant’s reliance on the EIA study to support the benefits and negligible adversity of seismic surveys appears to be a ploy to proceed with the surveys and evade future liability in case of pollution. Considering the incapability of the state government in regulating activities like seismic surveys, the author suggests intervention of the central government as it is crucial to prevent river pollution. The author highlights the importance of prioritizing the preservation of the Brahmaputra River through strict regulations and enforcement, ensuring punishment for non-compliance. This article tries to explore the need to safeguard the river and its inhabitants. The author believes it to be vitally important for the case to be appealed, considering a more comprehensive assessment of the situation and the implementation of effective measures to prevent further pollution and preserve the integrity of the Brahmaputra River.

In the third article, authors Sajidur Rahman and Dr. Mridula Sarmah advocate the urgent need to handle e-waste which poses severe environmental and health risks. The authors address the emerging catastrophe and the comprehensive

measures that need to be taken which includes establishing e-waste recycling facilities equipped with advanced technologies to safely handle and dispose of electronic waste. Furthermore, the article emphasizes the government regulations and policies that should be put in place to enforce proper e-waste management practices. The authors shed light on the Gateway of North-East, a region known for its natural beauty and rich biodiversity, which is facing the deterioration of adequate infrastructure and mechanisms to handle this mounting waste stream. Lastly, the authors highlight the increasing generation of e-waste as a significant environmental and health threat to the Gateway of North-East and that urgent action is required to develop a robust e-waste management system, involving collaboration between the government, industry, and the public.

Anik Majumder, in his article, discusses the need for humanity to reconcile with nature and mend its ties with the environment in order to progress as a civilization. It highlights the concept of human-wildlife conflict as a consequence of environmental changes and increasing global population. The conflict between humans and animals in India is specifically mentioned, with examples of the deaths of tigers, leopards, and people due to these conflicts. The article emphasizes the importance of stronger laws to protect wildlife and calls for a more comprehensive approach to human-wildlife coexistence. It suggests measures such as creating corridors for wildlife, protecting habitats, and implementing community-based management of natural resources. The article concludes by stating that cooperation and coexistence between humans and animals are crucial for our continued survival.

The article by Arafat Ibnul Bashar tries to put light on the growing global recognition of the urgent need to protect our environment and address the escalating threats posed by human activities. He adds that as the devastating consequences of climate change, deforestation, pollution, and species extinction become increasingly apparent, the concept of 'ecocide' has emerged as a

potential solution to hold individuals and corporations accountable for environmental destruction. While it is not yet an internationally recognized crime, the idea of ecocide as a legal concept is gaining traction and sparking crucial conversations on the protection of our planet. The author substantiates his point by stating that numerous organizations, activists, and legal experts around the world have rallied behind this cause, advocating for its inclusion in international law and that the growing awareness of ecocide's potential impacts has led to promising developments, such as discussions within the International Criminal Court (ICC) and the increased attention of policymakers and governments. The author presents a comprehensive picture of the topic when he highlights that defining and proving ecocide in a legal context could be complex and contentious and there are concerns that the vague or overly broad definitions of ecocide could lead to unintended consequences, stifling innovation and hindering economic development. Yet, he emphasizes that the need to address ecocide and its detrimental effects on our planet cannot be overstated. Conclusively, the author implies that the urgency of the situation demands bold action and innovative solutions. Recognizing ecocide as an international crime could send a strong signal to industries and governments that environmental destruction will no longer be tolerated.

Bilal A Nazeer, in his article, explores the intricate relationship between patent law and environmental protection. The author highlights how patents can incentivize innovation in sustainable technologies, while also addressing the challenges they pose. The author discusses the role of patents in promoting research and development in areas like renewable energy and waste management. However, he also acknowledges the need to balance intellectual property rights with the urgent need for green technology adoption. The author emphasizes the impact of patent barriers on technology transfer, particularly for developing nations. Nazeer's article sparks a crucial conversation on finding the right balance between patent protection and environmental preservation, urging policymakers and experts to consider new solutions for a sustainable future.

The article by Sai Datta Majji and Vaishnavi Yadav deals with the dichotomy of promoting the North East region of India by the central government and the problems it faces. It questions the budgetary allocations to the region which this article claims has caused harm to the biodiversity conservation efforts of the local governments. The article also highlights the precarious position of the chicken neck corridor vis-a-vis transport to the east. The article also adequately answers India's commitment to international treaties as well as the dangers of natural catastrophes. The article has touched upon almost all real issues affecting the region.

The article authored by Trisha Shivkumar and Agrim Sinha addresses the issue of rat-hole mining in Meghalaya, India, highlighting its hazardous and unscientific nature, as well as its detrimental environmental and labour consequences. The ban imposed by the National Green Tribunal (NGT) in 2014 has faced resistance, with arguments favouring the legalization of rat-hole mining based on constitutional and economic grounds. Proponents emphasize the violation of tribal autonomy and the economic benefits derived from coal mining, while opponents stress the environmental damage and labour hazards associated with this mining method. This article explores the need for environmental restoration and proposes alternative revenue and employment sources for Meghalaya. It suggests the development of the tourism industry, improvement of infrastructure, and the promotion of Micro, Small, and Medium Enterprises (MSMEs) as means to achieve sustainable growth, while balancing economic development with environmental protection. The article aims to provide insights into the complexities of the rat-hole mining issue and offers potential solutions for a sustainable future in Meghalaya.

The author of the final article, Prof (Dr.) Rajiv Khare discusses the concept of sustainable development and its importance in the context of India and the global community. The author highlights the current state of environmental degradation, depletion of natural resources and the alarming frequency of

extreme weather events worldwide. This article aims to address several questions, including the origin, meaning and scope of sustainable development within international law. It explores how sustainable development has been integrated into India's domestic jurisprudence and analyzes the nature and scope of the right to sustainable development as a fundamental human right. The author further examines whether recognizing this right in Indian jurisprudence would contribute to the development of a sustainable society. In this article, the author firstly provides a brief overview of sustainable development's international journey, highlighting key developments in three phases. Secondly, the author focuses on India's journey towards sustainable development, discussing its gradual integration into domestic laws and judicial expansion; and lastly delves into the discourse surrounding the right to sustainable development as a human right, considering its advantages and disadvantages.

Finally, the publication of this issue would not have been possible without the assistance and encouragement of Lex Terra's pillar of strength and Editor-in-Chief, Dr. Thangzakhup Tombing, Assistant Professor of Law, NLUJA, Assam. We would also like to express our gratitude to Prof. (Dr.) V.K. Ahuja, Vice-Chancellor of NLUJA, Assam, for his keen interest and guidance, which made this issue of the publication possible. We also thank the esteemed Registrar of NLUJA, Assam, Dr. Nandarani Choudhury, for her continuous support and for being our source of motivation throughout this endeavour. Lastly, the small but dedicated team of peer reviewers and editors deserve a special mention. This issue and all the publications in the past would not have been a reality without your sincere efforts and active engagement.

# EVALUATING INDIA'S CLIMATE ACTION PLANS FROM A GREEN FEDERALISM PERSPECTIVE

*Rishabh Dwivedi\**

## I. GLOBAL THREAT: CLIMATE CHANGE

The rapid development of the economy in the past century has had a significant and irreversible effect on the environment and ecology. The summers have become hotter, rainfall patterns have become more unpredictable, and global weather patterns have been altered. These changes, caused by climate change, negatively impact food production, crop patterns, the environment, and human lifestyles. The world's forest cover is decreasing, glaciers are melting, and global warming is increasing.<sup>1</sup> The Earth's average temperature data showed a warming of 0.85.<sup>2</sup> The issue of climate change and environmental preservation has been a topic of global discussion since the 1972 Stockholm conference and continues to be a focus at recent events such as COP27 in Sharm el-Sheikh, Egypt. These conferences have acknowledged that climate change and environmental degradation are a global problem. Collective action is needed to address it.

These conferences made Nation-states to align economic development goals with environmental protection through legislative policies and frameworks.<sup>3</sup> India, for example, has made significant progress in addressing climate change and ecological issues through constitutional amendments and the passage of various laws such as the Wild Life (Protection) Act, 1972, Water (Prevention and Control of Pollution) Act 1974, Air (Prevention and Control of Pollution) Act 1981, and the National Green Tribunal Act 2010. These laws aim to protect air, water, and the environment and establish a quick and effective way to handle environmental cases. The Indian government has also formulated specific regulations related to coastal zones and waste management, among others, to safeguard the environment further.

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<sup>1</sup> Daniel Glick, *The Big Thaw, As the Climate Warms, How Much, and How Quickly, Will Earth's Glaciers Melt?* NATIONAL GEOGRAPHIC (last visited Jan. 26, 2023), <https://www.nationalgeographic.com/environment/global-warming/big-thaw/>.

<sup>2</sup> Shuja Asrar, *How rise in Earth's average global temperature is affecting our planet* TIMES OF INDIA (last visited Jan. 26, 2023) <https://timesofindia.indiatimes.com/home/environment/global-warming/how-rise-in-earths-average-global-temperature-is-affecting-our-planet/articleshow/72039042.cms/>.

<sup>3</sup> Const. (42<sup>nd</sup> Amendment) Act, 1976.

India does not have specific legislation for climate change. It primarily uses scattered environmental laws and government commitments under international agreements<sup>4</sup> to address it. The government has therefore created the National Action Plan on Climate Change (NAPCC) to address climate change issues holistically.<sup>5</sup> The National Action Plan governs the Indian climate change regime on Climate Change (NAPCC), established by the Prime Minister's Council on Climate Change in 2008. The plan aims to balance economic development with reducing carbon emissions and greenhouse gas in the atmosphere. The NAPCC adopts a 'co-benefit approach' by addressing development and climate change issues.<sup>6</sup> The plan lays out specific goals for the Indian government to achieve in reducing greenhouse gas emissions and attaining sustainable development. To achieve these goals, it plans to enact eight national missions to fight climate change over the long term. The NAPCC also obligates state governments to create policies to combat climate change based on their specific geographical needs. The paper assesses the advancement of state action plans against climate change and the necessity of greater involvement from state and local governments. It studies the existing state climate action plans within India's federal system and introduces "green federalism" as a potential solution, calling for greater participation from local entities and communities to tackle the issue.

## **II. INDIA'S CLIMATE CHANGE POLICY: NAVIGATING THE INTERPLAY OF CENTRAL AND STATE GOVERNMENTS**

India's current climate change policy is intricate by the country's federal structure, where central and state governments have different responsibilities over environmental and climate change issues. This often results in state governments needing to be more hesitant to take action to protect the environment and instead relying on the central government for funding. It is, therefore, essential for both the central and state governments to work together to address climate change by taking necessary measures.

Over the past few years, there has been an ongoing debate about the responsibilities of central and state governments in tackling climate change. Supporters of a strong central government

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<sup>4</sup> Paris Agreement, UNFCCC, Apr. 22, 2016, and Kyoto Protocol, UNFCCC, Dec. 11, 1997, 2303 UNTS 162.

<sup>5</sup>Climate Change Programme, "Department of Science & Technology", <https://dst.gov.in/climate-change-programme>, (last visited Jan. 26, 2023).

<sup>6</sup> Parul Kumar & A. Naik, "India's Domestic Climate Policy is Fragmented and Lacks Clarity", ENGAGE, <https://www.epw.in/engage/article/indias-domestic-climate-policy-fragmented-lacks-clarity>, (last visited Jan. 26, 2023).

role contend that the establishment of uniform measures and standards by the central government would mitigate negative externalities and spillover effects between states.<sup>7</sup> They say states may hesitate to take action on climate change because of the financial cost. They believe the central government should play the primary role in creating a comprehensive climate change policy for the country. On the other hand, others argue that giving more authority to state governments would lead to a more decentralized approach to addressing climate change.<sup>8</sup> It is important to note that implementation of policy at the local level can only determine the effectiveness of actions taken by a nation-state.

Here comes the concept of “Green Federalism” or “Environmental Federalism”. Green Federalism embodies constitutional federalism's expansion into the environmental domain. It recognizes that addressing climate change and protecting the environment is a shared responsibility among the central government, state governments, and local bodies. To effectively combat climate change, it advocates for the decentralization of power and policies related to environmental protection among different levels of government, including the central government, state governments, municipalities, and local councils.

### **III. IS THE STATE ACTION PLAN ON CLIMATE CHANGE (S.A.P.C.C) JUST A TOOTHLESS LEGISLATION?**

The Indian government response to the pressing challenges posed by climate change, the Indian government established the N.A.P.C.C. in 2008. This comprehensive plan outlines concrete steps for reducing carbon emissions and greenhouse gases through sustainable development. The N.A.P.C.C. embraces a “co-benefit approach”, incorporating eight sustainable missions to balance economic growth with addressing climate change concerns. These are namely,<sup>9</sup> “National Solar Mission, National Mission For Enhanced Energy Efficiency, National Mission On Sustainable Habitat, National Water Mission, National Mission For Sustaining The Himalayan Ecosystem, National Mission For A Green India, National Mission For Sustainable Agriculture, and National Mission On Strategic Knowledge For Climate Change.”

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<sup>7</sup> D.M. Konisky & N.D. Woods, “*Environmental Federalism and the Trump Presidency: A Preliminary Assessment*”, 48(3) JOURNAL OF FEDERALISM 345 (2018).

<sup>8</sup> D.M. Daley & J.C. Garand, “*Horizontal Diffusion, Vertical Diffusion, and Internal Pressure in State Environmental Policymaking 1989-1998*”, RESEARCHGATE, [https://www.researchgate.net/figure/Box-Plot-of-State-Hazardous-Waste-Regulation-Scores-Over-Time\\_fig1\\_237968050](https://www.researchgate.net/figure/Box-Plot-of-State-Hazardous-Waste-Regulation-Scores-Over-Time_fig1_237968050), (last visited Jan. 26, 2023).

<sup>9</sup> Centre for Science and Environment, “*Coping with Climate Change: An Analysis of India's National Action Plan on Climate Change*”, (2018), <http://www.indiaenvironmentportal.org.in/files/file/coping-climate-change-NAPCC.pdf>, (last visited Jan. 26, 2023).



The N.A.P.C.C. endeavors to establish a thorough framework and heighten awareness of climate change among diverse stakeholders, such as scientists, government entities, NGOs, private organizations, and the general public. The eight National Missions under the N.A.P.C.C. have successfully attained their objectives, and the central government continuously oversees and updates them. For example, the National Solar Mission has exceeded its 2022 target with an installed capacity of 31,101.68 MWp by September 2019.<sup>10</sup> Similarly, the National Water Mission aims to improve water efficiency by 20%,<sup>11</sup> and the government proposed to create the Jal Shakti Ministry to ensure better water management and to provide “HarGhar Jal” (water to every household) under the Jal Jeevan Mission by 2024.<sup>12</sup>

After the N.A.P.C.C. was formed, it became mandatory for state governments to create their own State Action Plan on Climate Change (S.A.P.C.C.) based on the national plan. However, the central government encourages states to tailor their plans to their specific geographical needs and align them with their development goals in light of the changing climate. This is important because different states in India have unique environmental concerns depending on their location, such as coastal states having different issues than Himalayan states. The S.A.P.C.C. includes a description of the state's geographical location and climate, statistics on changes in forest coverage, and the impact of climate change on areas such as health, agriculture, and biodiversity. After identifying vulnerabilities, the plan outlines strategies to address specific climate change and environmental concerns in agriculture, water resources, and sustainable habitat sectors.

The S.A.P.C.C. has proven effective in India, as several states including Gujarat, Tamil Nadu, Haryana, Maharashtra, Karnataka, Kerala, Punjab, Uttarakhand, and Himachal Pradesh have made significant progress in reducing greenhouse gas emissions, advancing the use of clean energy, and preserving resources through sustainable practices. Coordination between national and state action plans has fostered collaboration between the central and state governments, resulting in states such as Gujarat, Madhya Pradesh, and Rajasthan implementing solar policies

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<sup>10</sup> Ministry of New and Renewable Energy, “*Programme/Scheme wise Physical Progress in 2019-20 & Cumulative up to Feb, 2020 (table)*”, <http://164.100.94.214/physical-progress-achievements>, (last visited Jan. 26, 2023).

<sup>11</sup> Ministry of Jal Shakti, Department of Water Resources, River Development & Ganga Rejuvenation, “*National Water Mission under National Action Plan on Climate Change*”, <http://mowr.gov.in/schemes-projects-programmes/schemes/implementation-of-national-water-mission>, (2011), (last visited Jan. 26, 2023).

<sup>12</sup> *Ibid.*

based on the National Solar Mission and working closely with the central government to bring these initiatives to fruition.

The S.A.P.C.C. faces several challenges hindering its implementation. These challenges include a lack of funding due to political reluctance and fiscal constraints, a failure to involve all stakeholders in the planning process, a lack of coordination between different departments.<sup>13</sup> The state action plan on climate change also faces additional challenges, such as a lack of innovation, a failure to devolve power to local self-government, public participation, and research. The existing plans often align with national action plans without considering the unique geographical requirements of each state. Local government and communities must be consulted and involved in formulating and implementing these plans to make them more holistic and effective. Moreover, there is a need for research and data collection to understand the impact of climate change in each state and to devise more specific and impactful solutions. It is crucial to revise the existing state action plan on climate change and establish an operational system that addresses the issue at the grassroots level.

#### **IV. GREEN FEDERALISM: A PATH TO TACKLING CLIMATE CHANGE IN INDIA**

The concept of green federalism is not new to India the roots of this lie in the concept of federalism where federalism is considered to be part of the basic structure<sup>14</sup> of the constitution earlier under the constitution only the concept of decentralization and distribution was there however after the enactment of 73rd and 74th constitutional amendment paved the way for devolution of power between local bodies and emergence of green or environmental federalism.

The Green federalism advocates for the decentralization of power in decision-making in environmental and climate policy at the state and local levels. By giving states and localities more control over environmental policies and programs, green federalism aims to make policy more responsive to local conditions and more effective in achieving environmental goals. This regional approach is used addressing specific concerns related to climate change and natural

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<sup>13</sup> Oxford Policy Management, “India's 'State Action Plans on Climate Change: towards meaningful action”, <https://www.opml.co.uk/files/Publications/corporate-publications/briefing-notes/id-state-action-plan-climate-india.pdf?noredirect=1>, (2017), (last visited Jan. 26, 2023).

<sup>14</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461 (S.C. India).

resource management.<sup>15</sup> This approach promotes good governance, transparency, and the inclusion of local perspectives by distributing power and responsibilities among different levels of government and involving the public in decision-making. Supporters of Green Federalism argue that it is a more effective way to address environmental issues than a top-down approach where the central government controls state governments. They believe that local authorities are best suited to implement policies to combat climate change, taking into account the area's unique characteristics.

Green federalism in India could help address climate change by empowering states, local communities, and the private sector to take an active role in combating the issue. This approach encourages states to create and execute their own climate change plans, tailored to their unique circumstances and resources, while fostering innovation and experimentation among states. It also enhances the role of local communities by giving them more control over natural resources and involvement in decision-making processes, and invites the private sector and civil society to actively participate in policy and program development and implementation. This approach reduces the burden on the central government and allows states and localities to take on a greater role in addressing climate change. For example, cities such as Indore and Bengaluru have effectively managed their waste through community and municipal level efforts. Indore was able to become the cleanest city in India for three consecutive years, due to the dynamic role of the municipality and cooperation from the local population. Bengaluru, on the other hand, has implemented a sustainable waste management system by starting solid waste segregation at the source.<sup>16</sup> Furthermore, the Department of Environment in Lucknow has initiated a District Climate Resilience Plan (D.C.R.P.) in the districts of Jhansi and Chitrakoot, designed to address climate change challenges locally, drawing inspiration from the S.A.P.C.C.<sup>17</sup> This plan seeks to tackle environmental and ecosystem issues, as well as the impact on the community as a whole.

## V. CONCLUSION

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<sup>15</sup> Ishwara Bhatt, “*Why and How Federalism Matters in Elimination of Disparities and Promotion of Equal Opportunities for Positive Rights, Liberty and Welfare?*” 54(3) JOURNAL OF THE INDIAN LAW INSTITUTE 324 (2012).

<sup>16</sup>National Institute of Urban Affairs, “*Urban Solid Waste Management in Indian Cities*” (2015), [https://pearl.niua.org/sites/default/files/books/GP-IN3\\_SWM.pdf](https://pearl.niua.org/sites/default/files/books/GP-IN3_SWM.pdf) (last visited Jan. 26, 2023).

<sup>17</sup> District Climate Resilience Plan in Jhansi and Chitrakoot (Climate Action Network South Asia) (last visited Jan. 26, 2023).

The adoption of the Green Federalism model is crucial in India's fight against climate change. Decentralization of power to the state and local levels, accompanied by capacity building and financial independence, will ensure that local authorities are better equipped to tackle environmental issues specific to their region. A bottom-up approach, as opposed to a top-down approach, will promote public participation and increase accountability. It's important that the central, state, and local governments work together in a coordinated effort to address the challenges posed by climate change.

## **ADVERSITY OF SEISMIC SURVEY ON AQUATIC CREATURES: CASE ANALYSIS – JANARDHAN BEZBARUA V. OIL INDIA LTD.**

*Royan Bage\**

The Brahmaputra River in Assam experiences pollution due to the state's poor waste management system. Such water pollution is the result of waste materials discharged into the river from households and industrial areas.<sup>18</sup> Presence of pollutants in water bodies leads to water pollution.<sup>19</sup> The river is useful for irrigation as well as its flood to maintain grassland and deposit fresh alluvium to make soil fertile in the river valley. Brahmaputra river ends up becoming a tourist spot since greenery at all its sides. With the incapability of the state, measures must be undertaken by the Central Government to prevent water pollution.<sup>20</sup> Treatment of waste materials from industrial areas and regulatory standards must be set to ensure proper disposal of such effluents. Town – wise estimation of sewage amount must be conducted in order to construct such a number of treatment plants as to meet the requirement.

Seismic survey includes dynamite blasting resulting in adverse impact on aquatic animals along with every possibility of flood as a consequence of high intensity 'air gun' utilized for seismic survey.<sup>21</sup> The fishes do respond to seismic noise, reducing the presence of fishes at reef habitats as well as disturbance in their important life functions. The sounds emerging from seismic surveys cause endocrinological stress among the fishes. Use of high intensity 'air gun' results in landslides pushing debris and sediments into the river that raises the riverbed thus, increasing the probability of floods. The learned counsel representing OIL India Ltd. puts forward the Environmental Impact Assessment (EIA) study conducted by Gauhati University which mentions green signal to proceed with seismic survey since such survey is harmless to aquatic eco -system. The concerned study highlights any effect of seismic sound upon marine animals, be it on their behaviour or swimming pattern is short term.

### **I. IMPRACTICALITY OF EIA STUDY**

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<sup>18</sup> The thirdpole, <https://www.thethirdpole.net/> (last visited on Dec. 15, 2021).

<sup>19</sup> The Environment (Protection) Act, 1986, § 2, cl. 1, No. 29, Acts of Parliament, 1949 (India).

<sup>20</sup> The Environment (Protection) Act, 1986, § 3, cl. c, No. 29, Acts of Parliament, 1949 (India).

<sup>21</sup> Pburnley, <https://pburnley.faculty.unlv.edu/> (last visited on Jan. 30, 2023).

The Environmental Impact Assessment (EIA) study ensures less probability of adversity as a consequence of a seismic survey conducted in the Brahmaputra River. Such uncertain events can be tackled by the mitigating measures highlighted in the study itself. The defendant confirms seismic airguns to be used at low intensity having no adverse impact on marine animals but such use would not help in finding hydro – carbon reserves. The need of hydrocarbons for economic benefit would lead to use of air guns at high intensity affecting aquatic life.<sup>22</sup> The air released by the seismic gun is some sort of gaseous substance which at high intensity becomes harmful for river creatures.<sup>23</sup> The air energy from seismic guns constitutes a substance which is harmful, eventually making it a pollutant. The purpose of the seismic survey is to seek hydrocarbon reserves for economic gain having an unfavourable outcome on the marine eco – system.

The defendant on the grounds of Environment Impact Assessment study wants to establish seismic surveys beneficial for the livelihood of people since the purpose of economic gain is to be fulfilled and on the other hand highlights mitigating measures to counter probable precariousness. Such mention from the end of defendant is not conviction about nil adversity, instead trickery performed in order to proceed with seismic survey and to escape from future liability in case of pollution caused by concerned survey. Flood is guaranteed with the use of seismic air guns at high intensity since finding hydro – carbon reserves is the ultimate objective. Use of such study authority stands ineffective to prove only benefits and nil adversity with respect to utilization of air guns for seismic survey.

## **II. EFFECT ON AQUATIC ANIMALS**

Defendant is assuring no harmful effect on the aquatic animals by the use of air gun for seismic survey and on the other hand stating any effect would be of short-term nature. Air guns would be used at low intensity, in order to seek hydrocarbon reserves, findings would not restrict at one place, instead move onto several places disturbing the natural behaviour of fishes eventually, experiencing abnormal circumstances not meant for ordinary living. Low intensity air gun for seismic survey is used by obliging fishes to travel to a different area in order to conduct safe seismic survey but it does not last at one place instead shifts and carry out in numerous places in search of hydro – carbon reserves forcing fishes to displace continuously. Abnormality sets in their lives since normal living becomes a dream, restrictions take place and

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<sup>22</sup> Indian Enviro Legal Council v. Union of India, 1996 SCC (3) 212.

<sup>23</sup> The Environment (Protection) Act, 1986, § 8, No. 29, Acts of Parliament, 1949 (India).

normal life functions tend to be uphill tasks constituting unnecessary circumstances resulting in death of aquatic life. The continuous shifting of fishes reduces their abundance at reef habitat along with suffering of endocrinological stress constitutes two very significant disadvantages of seismic survey with respect to Brahmaputra River pollution. Big fishes like the whales also suffer from seismic surveys since air guns adversely impact on their behaviour. The young whales are sensitive to high frequencies since without such use of seismic guns, there is less probability of figuring out hydro – carbon reserves in the Brahmaputra River.

### *2.1. With Respect To 'Precautionary Principle'*

Incapability of the state government urges unhealthy environmental activities like seismic survey which requires Central government intervention to take measures in order to prevent river pollution. A step by step process has to be inculcated with primary efforts of the State Government, followed by concerned statutory authorities in addition to implementation of innovative measures in order to tackle water pollution.<sup>24</sup> The requirement of Central Government's interference is a must with respect to the scenario since the root cause of the problem is the incapability of the State Government to regulate such economic activities. In order to look after the seismic survey a monitoring group did establish a state government concerned statutory authorities eventually, no difference in the attempt to curb water pollution since indirectly an incapable entity would make things better. Use of seismic survey guns as per the defendant has nil chances to prevent water pollution, hence, need arises of innovative alternative measures. Even if suitable scientific measures are absent, the process of conserving the Brahmaputra River must not halt, some way or the other it has to be preserved. The most probable primary method must be to impose such rules, orders and directions to mitigate uncertainty and in contravention of such must welcome punishment. The defendant mentioned mitigating measures but did not explain. Maybe it was just their gesture and nothing else as it would be impractical for them and somehow wanted to proceed with the seismic survey without caring about the health of the river Brahmaputra.

### **III. CONCLUSION**

The defendant had used several tactics eventually making them winners of the case. Such cases must go for appeal since thoughtful insights have to be undertaken to comprehend the reality

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<sup>24</sup> Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCR 241.

of the whole issue. The defendant using the Environment Impact Assessment study established such a theoretical framework to convince the judge overlooking the practicality of the matter.



# E-WASTE: AN EMERGING ENVIRONMENTAL CATASTROPHE TO THE GATEWAY OF NORTH-EAST

*Sajidur Rahman\* & Dr. Mridula Sarmah\*\**

## I. INTRODUCTION

*“Sooner or later, we will have to recognize that the Earth has rights, too, to live without pollution. What mankind must know is that human beings cannot live without Mother Earth, but the planet can live without humans”.*

*-Evo Morales*

India is a significant market for electrical devices. Modern and high-tech electronics and gadgets show that India is a very promising place. On the other hand, India ranks poorly in cleanliness. Clean India is our dream. The Prime Minister of India inaugurated the Swachh Bharat Abhiyan in New Delhi on October 2, 2014, to promote cleanliness and proper garbage disposal management. It puts focus on awareness and aims to ensure 100% collection and scientific processing/disposal, reuse/recycling of Municipal Solid Waste. Although the mission has been more well-known in recent years, the word ‘e-waste’ is still new to the general public.

India is confronted with the difficult task of disposing of waste safely and scientifically. The Central Pollution Control Board of India states that per capita trash creation is rising exponentially.<sup>25</sup> Indian households create different types and amounts of garbage depending on their social and economic level, location, climate, and commercial activity. However, defunct electronic gadgets, which have become an inseparable part of daily life owing to increased dependency on e-commerce, e-governance, e-mails, and e-services for varied presentations, are a regular component of household waste. These recyclable electronics are referred to as e-waste.

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<sup>25</sup> *Report on Implementation of Solid Wastes (Management and Handling) Rules, 2000*, CENTRAL POLLUTION CONTROL BOARD (Jan. 19, 2023, 10:04 AM), <https://cpcb.nic.in>.

According to the Organisation for Economic Co-operation and Development, e-waste is ‘any appliance using an electric power supply that has reached its end-of-life’.<sup>26</sup> The concept of recycling e-waste barely exists in India.

## II. E-WASTE: A MOUNTING ENVIRONMENTAL PROBLEM

India is now the 5<sup>th</sup> greatest producer of e-waste in the world, with an estimated 1.85 million tonnes of e-waste discarded in 2016 - roughly 12% of the total worldwide e-waste output that year. 70% of e-waste comes from computers, 12% from telecoms, 8% from medical equipment, and approximately 7% from electric equipment.<sup>27</sup> Government, public, and private enterprises create 75% of e-waste, while families contribute 16%.<sup>28</sup> E-waste is disposed of in open dumps, waterways, and landfills, which is harmful to the environment and human health. E-waste includes metals, mercury, lead, and flame retardants. E-waste also includes non-decaying polymers that produce harmful gases like dioxin and furans, poisoning land and water.<sup>29</sup>

Assam ranks as India’s 6<sup>th</sup> most prolific source of e-waste. Assam generates almost 14,000 tonnes of e-waste annually. Unfortunately, only 5 states registered waste re-processors deal exclusively with Lead Acid Battery Plates and Lead Scrap.<sup>30</sup> Most e-waste is handled by the unorganized sector and ends up in open dumps, waterways, or landfills. Due to its harmful consequences on the environment and human and animal health, the State is anxious.

In a fast-growing state like Assam, informal, unprepared, and inexperienced e-waste management is degrading the environment. Due to hazardous waste dumping, including e-waste, the ‘Bharalu’ river is darkening throughout the city. Dumping of e-waste will continue, leading to water pollution and the subsequent harm to aquatic life and human life, unless sufficient awareness is established among people.

Also, a very good initiative has been taken to tackle this problem where Earthful Foundation, a non-government organization led by playback singer Angaraag Mahanta (Papon) recycled more than 2 tonnes of e-waste from Guwahati city in a massive e-waste awareness-cum-

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<sup>26</sup> Mathias Schlupe, *Waste Electrical and Electronic Equipment Management*, 4 ELSEVIER J. 397-403 (2014).

<sup>27</sup> Kamlesh Jain, *Time to Reboot*, TOXIC LINKS REPORT (Jan. 20, 2023, 10:55 AM), <http://toxicslink.org/docs/Time-to-Reboot.pdf>.

<sup>28</sup> Shivangee Sarmah, *E-Waste and its Problem*, 5 JOURNAL OF ENVIRONMENTAL PLANNING AND MANAGEMENT (2021).

<sup>29</sup> Prakash Rai, *Electronic Waste in India: An Analytical Study*, 3 ILI LAW REVIEW (2018).

<sup>30</sup> Govt. of Assam, “Recyclers/Reprocessor having environmentally sound, POLLUTION CONTROL BOARD (Jan. 19, 2023, 08:04 PM), <https://pcb.assam.gov.in/portlets/waste-management>.

collection drive in Guwahati from January 4 to 12, 2023. The drive was launched in association with the Assam state office of the World Wildlife Fund-India (WWF-India).<sup>31</sup>

### III. PROGRESSIVE E-WASTE LEGISLATION AND REGULATIONS IN INDIA: AN ANALYSIS

In the framework of laws protecting the environment, waste management has long been a pressing concern. This issue was hidden for a long time. No worldwide or national E-waste estimate existed until lately. The Basel Convention was established in 1989 to decrease hazardous waste transfers between states, particularly from industrialized to less developed countries.<sup>32</sup> The Basel Convention adopted the Mobile Phone Partnership Initiative in 2002 to eliminate e-waste.<sup>33</sup> Following the passage of the Nairobi Declaration,<sup>34</sup> the Secretariat was entrusted with implementing environmentally sound e-waste management.<sup>35</sup>

The Constitution of India requires the state and people to conserve and safeguard the environment. The Forty-Second Amendment of 1976 included Article 48A<sup>36</sup> under Directive Principles of State Policy and Article 51-A(g)<sup>37</sup> under Fundamental Duties to safeguard the environment in the Constitution of India. The Directive Principles of State Policy are non-enforceable yet serve as guidance for state goals. In addition, Article 21 of the Indian Constitution guarantees life and personal liberty to everyone.<sup>38</sup> The Supreme Court of India interpreted Article 21 broadly to encompass 'The Right to Wholesome Environment' in Rural Litigation Case<sup>39</sup>, which expanded its scope to include environmental protection.

Concurrently, in the year 1986, the government enacted the Environment Protection Act<sup>40</sup> to safeguard the environment and prevent harm to people, animals, the environment, and property in the aftermath of the Bhopal Gas Tragedy. As a piece of overarching law, this Act dealt with

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<sup>31</sup> *Electronic waste collection, awareness drive underway in Guwahati*, THE SENTINEL, Jan. 7, 2023, at A1.

<sup>32</sup> *TrafficinAndDisposal,ControlOfToxicWastes*, UNGENERALASSEMBLY, <https://www.unep.org/resources/report/basel-convention> (Jan. 19, 2023, 11:04 AM).

<sup>33</sup> *The Mobile Phone Partnership Initiative (MPPI)*, UN ENVIRONMENT PROGRAMME BASEL CONVENTION, (Jan. 19, 2023, 10:04 AM) <http://www.basel.int>.

<sup>34</sup> *Nairobi Declaration of Returnees in Somalia*, REGIONAL TREATIES, AGREEMENTS, DECLARATIONS AND RELATED, <https://www.refworld.org/25878c8ghj4.html> (Jan. 21, 2023, 11:24 AM).

<sup>35</sup> Tamisha Pyne, *Sustainable Development*, 5 THE ICFAI JOURNAL OF ENVIRONMENTAL LAW (2019).

<sup>36</sup> "The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country".

<sup>37</sup> "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures".

<sup>38</sup> "Right to life".

<sup>39</sup> *Rural Litigation v. State of Uttar Pradesh*, A.I.R. 1988 S.C. 2187 (India).

<sup>40</sup> The Environment (Protection) Act, 1986, No. 29, Acts of Parliament, 1986 (India).

e-waste indirectly via its treatment of hazardous substances. The Water (Prevention and Control of Pollution) Act, 1974<sup>41</sup>, and the Air (Prevention and Control of Pollution) Act, 1981<sup>42</sup> are both examples of other laws that indirectly deal with e-waste.

Under the Environment Protection Act, of 1986, the Central Government enacted the Hazardous Waste (Management and Handling) Rules in July 1989. However, the 1989 Rules were limited. Thus, the regulations were changed in 2000, and 2003, with a final notice of the Hazardous Waste (Management, Handling, and Transboundary Movement) Rules, 2008.

In 2005, an Indian private member Shri Vijay J. Darda, who was a Member of Parliament from Maharashtra, presented The Electronic Waste (Handling and Disposal) Bill, which expired in July 2010.<sup>43</sup> This law appropriately denounced the inappropriate disposal of electronic trash, which harms humans and the environment, and advocated for regulation.<sup>44</sup> In 2011, the Ministry of Environment, Forests, and Climate Change issued the Electronic waste (Management and Handling) Rules under Section 6 of the Environment (Protection) Act, 1986 to address the growing problem of e-waste disposal and recycling. These standards were implemented to handle, transport, store, and recycle e-waste safely and reduce hazardous material use in electronic equipment manufacturers.

Later in 2016, regulations regarding e-waste were updated and renamed E-waste (Management) Rules, 2016. Furthermore, the concept of Extended Producer Responsibility was introduced. With this idea in mind, companies would be responsible for ensuring safe e-waste disposal.<sup>45</sup>

Offences against the environment are addressed in the IPC, and some of these provisions relate to the pollution produced by e-waste. Sections 268<sup>46</sup>, 269<sup>47</sup>, 270<sup>48</sup>, 277<sup>49</sup>, 278<sup>50</sup>, 284<sup>51</sup>, and

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<sup>41</sup> The Water (Prevention and Control of Pollution) Act, 1974, No. 06, Acts of Parliament, 1974 (India).

<sup>42</sup> The Air (Prevention and Control of Pollution) Act, 1981, No. 14, Acts of Parliament, 1981 (India).

<sup>43</sup> Karan Gupta, *E-Waste in India*, ACADEMIA, (Jan. 20, 2023, 07:07 PM), <https://www.academia.edu/7512197>.

<sup>44</sup> Abhishek Kumar Awasthi, *E-waste in India: A Critical Study*, SAGE JOURNALS, (Jan. 19, 2023, 05:05 PM), <https://journal.sagepub.com>.

<sup>45</sup> Kailash Rai, *E-waste with special reference to Extended Producer Responsibility*, REVIEW OF ECONOMIC STUDIES, (Jan. 17, 2023, 09:45 PM), <https://academ.ic.oup.com/restud>.

<sup>46</sup> Public nuisance.

<sup>47</sup> Negligent act is likely to spread infection of disease dangerous to life.

<sup>48</sup> Malignant acts likely to spread infection of disease dangerous to life.

<sup>49</sup> Fouling water of a public spring or reservoir.

<sup>50</sup> Making the atmosphere noxious to health.

<sup>51</sup> Negligent conduct with respect to poisonous substances.

290<sup>52</sup>, for example, deal with offences concerning public health and safety and to some degree also relate to e-waste.

Unlike environmental law, these sections clearly define mens rea. These clauses are cognizable, allowing police to act willingly. Individuals may file FIRs for violating any provision.

However, the judiciary has also been instrumental in safeguarding the environment from the start and shaping environmental jurisprudence in India. The judiciary has made numerous landmark environmental preservation judgements and is expanding the right to life to include the right to a healthy environment.<sup>53</sup> However, there is now a void in the law since the judiciary has not addressed the punishment concerns surrounding e-waste. Seeing this, one may get a sense of how seriously this problem is taken in India.

When it comes to e-waste, the courts have only dealt with a few cases, most of which have to do with customs<sup>54</sup> and the effects of e-waste on the environment and human health.<sup>55</sup>

#### **IV. CONCLUSION**

This research contends that electronic commodities have become a corollary to the way we live because of the increasing reliance on technology in both personal and professional settings. Despite the existence of such regulations, relatively few complaints are filed. As a result, we might infer that environmental crimes are still undervalued compared to other types of wrongdoing. The lack of seriousness and laxity in the application of the fines and sanctions established by these laws and regulations is a contributing factor. One obvious weakness is the lack of uniformity in environmental degradation penalties. It is also determined that the 'Polluter Pays Principle' of International Environmental Law does not coincide with this legislation and provisions.<sup>56</sup>

As a result, e-waste will continue to pile up, but there is something that can be done i.e, agreeing upon efficient procedures for its disposal. As knowledgeable and concerned citizens, we should raise awareness to guarantee that our old electronics only go to approved recycling merchants,

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<sup>52</sup> Punishment for public nuisance in cases not otherwise provided for.

<sup>53</sup> Subhash Kumar v. State of Bihar, A.I.R. 1991 S.C. 598 (India).

<sup>54</sup> Commissioner of Customs, Kochi v. Divine International, 2012 Kerala H.C. 784 (India).

<sup>55</sup> Nagrik Upbhogta Margdarshak Manch v. State of Madhya Pradesh, 2015 W.P. 6069 (India).

<sup>56</sup> Stephen Lyod, *Disposal System, and Impact of E-Waste*, INTECHOPEN (Jan. 23, 05:15 PM), <https://www.intechopen.com/book/disposal-system-of-e-waste>.

not the local junk dealer. Effective government and public cooperation are key to reducing, if not eradicating, the e-waste problem.

## V. SUGGESTIONS

(a) Foremost we can create a GREEN spot at different locations wherein e-waste can be deposited. To minimize our negative effects on the environment, we should collaborate with several recyclers that focus on covering certain regions.

(b) Secondly, the further procedures should be followed:-

- **Sorting:-** There is a process of sorting that occurs after the materials have been received at the facility.
- **Data Destruction:-** Once the materials are collected, then the data available in the devices should be destroyed.
- **Shredding:-** After sorting and dismantling, electronic waste is shredded into quarter-sized pieces. This product should undergo further machine sorting before being shipped downstream for final processing.
- **Reuse:-** After the raw materials are processed, they should be sold to manufacturers and other purchasers for incorporation into brand-new goods.

(c) Thirdly, a simple reading of the different environmental legislation does not provide a clear picture of the provision of e-waste and also the penal provisions are not stringent in India. As a result, a legislative effort is urgently needed to tackle this menace.

# HARMONY OR HATRED: A CONFLICT ABOUT COEXISTENCE

*Anik Majumder\**

## I. INTRODUCTION

How can humanity progress if we don't reconcile with nature and mend our ties with it? Undoubtedly, the most critical aspect of rearticulating human evolution is recognizing the requirement of being fair to the planet and other living forms. We need to reconnect with nature and live peacefully with it to advance as a civilization. The interconnections between humans and animals, which may result in either favorable or hostile interactions, are essential facets of human existence. The supposed "human-wildlife conflict" is a perfect example of how environmental changes affect people and how an increasing global population affects such changes. This phrase typically refers to any human-animal interaction that hurts human social, economic, or cultural life and the preservation of wildlife populations or the ecosystem.

There has been a battle to the death between humans and animals in India, which may escalate into a full-scale conflict. Animals are often killed for self-defense or as punishment for interference in civic space, which can lead to species extinction. We are not discussing politics here. And what is more, the government has yet to start to pay attention to whatever is going on now.

Regarding human-animal conflict, 2021 was particularly unpleasant for tigers, leopards, and people alike. As for press reporting, at the end of December, 81 individuals, 41 tigers, and 174 leopards had already perished in Maharashtra that year.<sup>57</sup>

A total of 126 tiger fatalities were recorded in 2021.<sup>58</sup> This has been the maximum value recorded in India in more than ten years. Across Assam, human-elephant confrontations have proven to be increasingly severe. People and wild elephants have both been bleeding to death

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<sup>57</sup> VIJAY PINJARKAR, 2021 saw 2nd highest man-animal conflict toll, THE TIMES OF INDIA, Dec 25, 2021, <https://timesofindia.indiatimes.com/city/nagpur/2021-saw-2nd-highest-man-animal-conflict-toll/articleshow/88481739.cms>.

<sup>58</sup> The details of tiger mortality for the year 2021, NATIONAL TIGER CONSERVATION AUTHORITY, 2021, <https://ntca.gov.in/tiger-mortality/#mortality-details-2021>.

in the process. Sixty-one lives were lost by elephant assaults this year, and 72 wild elephants have also perished.<sup>59</sup> As a result, most of these are presumed to be “revenge killings.”

If we examine this conflict from a materialistic perspective, we will miss the complexities involved. It’s not merely a case of animals harming crops or cattle. Over the years, there have consistently been unpleasant interactions between humans and animals. The state has recently witnessed a surge in man-animal conflicts, with increasing human casualties, especially leopard and tiger attacks, in and around the concrete towny settlements. The roots of such a wave of competition are obscure, but some factors have been recognized. Current population expansion, diminishing forest area, animal trafficking, and disturbance of bare wildlife corridors have all been highlighted as contributing factors to conflict spikes.

## **II. CO-EXISTENCE WITHIN THE BLURRED LINES**

This world is being dramatically altered by the human population boom and its related industrial growth. Since urban spaces are insufficient to meet the growing necessities, boundaries are being extended toward the forest territory, causing wetlands and woodlands to dry up. Although this has fuelled a substantial rise in infrastructure and transportation networks around the world, as a result of all this, the wildlife around us gets displaced and abandoned. People are under the impression that India does not have strong wildlife conservation laws. On the contrary, we have some of the most stringent legislation to protect wildlife and habitats. All conservationists must familiarize themselves with these laws to contribute effectively.

We are experiencing a significant environmental shift due to the increased human population and industrialization. Given the limited space in urban areas to suit the demands of the rising population, borders are being expanded, approaching forested territory, leading to the depletion of wetlands and forests. Despite the massive expansion of infrastructure and transportation systems throughout the globe, these endeavors are displacing and abandoning the wildlife surrounding us.

### *2.1. India Needs Stronger Laws to Protect the Wildlife*

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<sup>59</sup> Chapter 2, 2.15 Project Elephant, ANNUAL REPORT 2021-22, Government of India Ministry of Environment, Forest and Climate Change See also; Sumir Karmakar, Humans and elephants die in equal numbers in Assam's worsening human-jumbo conflicts, DECCAN HERALD, 2021, <https://www.deccanherald.com/national/east-and-northeast/humans-elephants-die-in-equal-numbers-in-assams-worsening-human-jumbo-conflicts-1062549.html>.



However, although being a well-intentioned move, the Wildlife Protection Amendment Bill 2021 is still constrained and insufficient for maintaining species in the Indian ecosystem. The Standing Committee was also asked to review the legislation that the MoEFCC had presented to the legislature. It found that it lacked specific provisions to address its concerns concerning the conflict between wildlife and humans. To simplify the process of enforcing the rules of the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES)<sup>60</sup>, toward which India is a signatory, the bill amends the existing Wildlife Protection Act of 1972. The major Legislation will be excessively complicated and burdensome by the suggested methodology in the Bill. Since the 1972 Act's fundamental construct has always been prohibitive, this would introduce contradictions. As opposed to this, the underlying theme of CITES is facilitative or enabling. It is necessary to enact strict laws and implement them to protect wildlife.

There are presently six schedules in the WLPA, 1972, which grant varying degrees of protection to animals and plants. There is a listing of species in Schedule V that are allowed to be hunted unrestrictedly since they are regarded as vermin. It should be emphasized that the word “vermin” is not defined in the WLPA's 62nd section;<sup>61</sup> however, the central government is allowed to designate any wild animal not on Schedules I or II as vermin. Several states have recently petitioned the national government to classify creatures as vermin to reduce conflict between humans and wildlife, particularly elephants, Indian porcupines, bonnet macaques, common langurs, and barking deer.<sup>62</sup>

The Wild Life (Protection) Amendment Bill 2021<sup>63</sup> has decreased the number of schedules from six to four. A proposal exists to eliminate Schedule V; in doing so, the Centre will have the arbitrary power to label any species as “vermin”. This would enable animals to be freely hunted. As a result, the number of animal species so classified may rise.

The Act includes no discussion of what the legalization of commercial hunting would signify for Indians' more significant traditional attitudes about animals. Are communities expected to retain empathy for wildlife even though the government pushes people to consider wildlife as commodities that can be bought and sold? There is considerable skepticism about hunting being

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<sup>60</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, Article II, 3 March 1973.

<sup>61</sup> The Wild Life (Protection) Act, 1972, (§)62 Act No. 53 of 1972, Acts of Parliament. (India).

<sup>62</sup> Anupam Chakravarty, Rajeshwari Ganesan, Rajit Sengupta, Enemies of the state? DOWN TO EARTH, (Friday 15 July 2016), <https://www.downtoearth.org.in/news/wildlife-biodiversity/enemies-of-the-state--54628>.

<sup>63</sup> The Wild Life (Protection) Amendment Bill, 2022, Bill No. 159-C of 2021, (02.08.2022), (India).

the optimum way to achieve conservation and social equity. Given that wild animals and humans share space in India, how can we remedy a conservation paradigm that now imposes a significant burden on our vulnerable citizens?

### *2.2. Human-Wildlife Conflict: Overlapping Habitats*

There is no easy answer to ensure that humans and animals have an egalitarian future; our efforts could be more effective in significantly lowering HWC or building a sustained and mutually beneficial coexistence between people and wild animals. For the given cause, a more consistent monitoring mechanism for HWC and its drivers is required. The objective of HWC management must be to strengthen the security of both humans and animals while also creating mutual advantages from interdependence. Comprehensive HWC management practices enable species to thrive in locations where they would otherwise go extinct. Aside from global cooperation, effective engagement of local governments can help minimize HWC and encourage human-wildlife coexistence.

The concentration of animals in and near protected areas, wildlife corridors, or even other regions where humans and wildlife interact negatively impacts communities. The most apparent and immediate negative consequences of nature on people include injuries and the loss of human life, in addition to animals, crops, or other property. Farmers close to remote wild regions eventually lose their harvests to herbivores, and wild animals are preyed upon by wild animals in multiple zones. Individuals going on fishing or hunting expeditions or migrating from one community to another might encounter deadly encounters with giant herbivores or predators, leading to their death. The rural population endures considerably more due to the death of domesticated animals and the neglect to reimburse farmers for agricultural losses. For damages of life or property caused by animal harm, almost every state and territory offer ex-gratia compensation. However, there is a big issue with this method; under the present setup, there is hardly any government policy to completely recompense individuals who lose cattle to a predator or a residence to an animal. Farmers and communities mostly get ex-gratia payments that only make up a small percentage of their economic damages. Farmers often retaliate because of this, which frequently results in the killing of wildlife.

Social, cultural, legal, and equity concerns have increased human and wildlife conflicts. This has already resulted in a decrease in people's dedication to conservation activities. As a consequence of wildlife conflicts, several species are on the verge of extinction. Nonetheless,

they have the potential to harm livelihoods, houses, food production systems, and other vital communal assets.

It is vital to highlight that while specific issues outline the best following actions, a proactive and community-based strategy would be one of the most successful strategies for avoiding and moderating non-lethal conflicts between humans and animals. Conservationists must work with local and regional institutions to improve human-wildlife conflict mitigation, beginning with interventions most comparable to the government's functionality and making progress to more complex organizations tailored to our country's unique ecological and cultural needs. Moreover, we need to work towards pragmatic processes that consider the well-being of individual animals. Furthermore, conservationists should work with local governments to restructure the relationship between communities and governments to increase cooperation and responsiveness on the part of both parties.

### **III. WAY FORWARD TO ENSURE A HARMONIOUS COEXISTENCE**

Since the dawn of time, humans have relied on vigilance and deterrence, supported by their willingness to use violence against wildlife that might threaten their lives. Regrettably, the event of HWC has shifted the emphasis from finding solutions to fanning propaganda and spreading falsehoods. Interdisciplinary perspectives are vital to comprehending this problem, recognizing what is required to mitigate it, and having access to the relevant expertise and abilities. An outlook involving a harmonic coexistence strategy should be used to protect both humans and wildlife from harm. The said method will thus balance human development and well-being with environmental conservation.

It is necessary to create measures to prevent human-wildlife confrontations. It is feasible to provide adequate room for both humans and wildlife. Numerous nonlethal methods exist for resolving conflict, and these techniques are typically preferred for species conservation. Establishing corridors will allow wildlife to move freely between human-populated and developed regions. It would protect animals from roadside fatalities and keep them away from human habitats, preventing HWC. Some ideas include safeguarding wildlife habitat areas from poachers and constructing buffer zones. Due to the rising human population, altered resource utilization, and anthropogenic stresses, forest area has diminished and degraded in value. In the long term, decreasing woodland devastation and reforestation could lessen the conflict.

Human-wildlife coexistence demands public policy, which can be handled through various strategic approaches. Individuals can employ different techniques to resolve wildlife and conservation conflicts comprehensively, including education, effective communication, ecomanagement, cooperative and participatory planning, risk analysis, perception-changing strategies, and community-based management of natural resources. Politically stable structures, national legislation, treaty obligations, competent law enforcement, and wildlife-friendly agricultural and economic procedures are significant policy initiatives.

In addition to the techniques discussed, it is crucial to recognize that potential global trends in primary resource usage and land use planning will present more significant problems for cohabitation shortly. On top of that, wildlife offers us additional motivation for protecting and preserving our woodlands. With woods, we would have clean water and a healthy ecology on which we depend. This issue may be effectively managed by a global community engaging collectively to conserve animals, encourage community-based conservation efforts, and expand existing holistic techniques for managing conflict.

If all these new restrictions strike the appropriate balance between eradicating human cruelty towards the environment and encouraging understanding between them, humans and animals can coexist in a far more peaceful concord. We should remember that the first step in resolving human-animal conflict is acknowledging that humans depend on wildlife. Cooperation and coexistence are essential for our continued survival.

# ECOCIDE: AN INTRODUCTION TO THE (PROPOSED) INTERNATIONAL CRIME OF DAMAGE TO THE ENVIRONMENT

*Arafat Ibnul Bashar\**

## I. INTRODUCTION

The impact of wars and armed conflicts on the environment has been ignored for a long time. Although Article 8(2)(b)(iv) of the Rome Statute of the International Criminal Court clearly makes it a crime to launch an attack intentionally with the knowledge that such an attack will cause severe damage to the natural environment, there has been no application of this in reality. Till now, no one has been convicted of a crime under this provision. Again, causing damage to the environment in the conflict areas, which may be indirectly related to conflict, falls under the scope of this provision. The need to take steps regarding the protection of wildlife and natural reserves during conflicts has been felt since the use of Agent Orange, a chemical herbicide and defoliant by the US Military in the Vietnam War.<sup>64</sup> After the Iraqi military set fire to more than 600 oil wells along with many oil filled low lying areas while retreating from Kuwait in 1991, the work in this field began.<sup>65</sup> In progression to this work, the concept of ecocide came into being.

## II. DEFINING ECOCIDE

The Whitaker Report, which was commissioned by the Sub-Commission on the Promotion and Protection of Human Rights on the question of the prevention and punishment of the crime of genocide, in 1985, stated the need to broaden the definition of genocide to include ecocide alongside cultural genocide or ethnocide, defining ecocide as

*“adverse alterations, often irreparable, to the environment – for example through nuclear explosions, chemical weapons, serious pollution and acid rain, or destruction of the rain forest – which threaten the existence of entire populations, whether deliberately or with criminal negligence.”<sup>66</sup>*

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<sup>64</sup> Jonathan Watts, *Make environmental damage a war crime, say scientists*, THE GUARDIAN (10 November 2022), <https://www.theguardian.com/law/2019/jul/24/make-environmental-damage-a-war-say-scientists-geneva-convention>.

<sup>65</sup> *Ibid.*

<sup>66</sup> See United Nations Economic and Social Council Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, Thirty-eighth session, Item 4 of the provisional agenda,

In 2020, Polly Higgins, an environmental lawyer and campaigner, first proposed to the United Nations International Law Commission – a body of experts working for the development and codification of international Law, to amend Rome Statute and include the crime of ecocide.<sup>67</sup> The definition proposed by her can be stated as follows:

*“the extensive damage to, destruction of or loss of ecosystems of a given territory, whether by human agency or by any other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished”.*<sup>68</sup>

Later, in June 2021, an Independent Expert Panel for the Legal Definition of Ecocide convened by the Stop Genocide Foundation, after thorough deliberation, produced a definition for the crime of ecocide, which is as follows:

*“unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts”.*<sup>69</sup>

The panel proposed that the crime be included alongside other international crimes such as genocide, war crimes, crimes against humanity, and crimes of aggression in the Rome Statute.

### **III. FEATURES OF ECOCIDE AFTER THE EXPERT PANEL’S DEFINITION**

It can be noticed that although the need for having a crime of ecocide arose due to severe damage to the environment in connection to the armed conflicts, the definition that has been proposed by the expert panel does not require the crime to be committed in the context of an armed conflict. It makes sense since the Rome Statute already has a provision regarding damage to the environment in the context of armed conflicts.

The definition takes an eco-centric approach, where damage to the environment, without any connection to humans is criminalized. However, the definition borrows words such as – *severe, widespread and long-term damage* – from the jurisprudence of the International Humanitarian

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E/CN.4/Sub.2/1985/6, Revised and updated report on the question of the prevention and punishment of the crime of genocide - The Whitaker Report E/CN.4/Sub.2/1985/6, 2 July 1985.

<sup>67</sup> See Juliette Jowit, British campaigner urges UN to accept 'ecocide' as international crime, THE GUARDIAN, (12 November 2022), <https://www.theguardian.com/environment/2010/apr/09/ecocide-crime-genocide-un-environmental-damage>.

<sup>68</sup> Higgins & South, *Protecting the planet: a proposal for a law of ecocide* 59 CRIME LAW SOC CHANGE 257 (2013).

<sup>69</sup> Ariella Shalev, Ecocide Law, Foundation for Democracy & Sustainable Development, (12 November 2022), <https://www.fdsd.org/ideas/ecocide-law/>.

Law,<sup>70</sup> which has a strict anthropocentric view. The reason behind such may be to garner acceptance of this definition. A definition that includes elements that are already part of the accepted jurisprudence should be more favorable for the states.

#### IV. ECOCIDE AS AN INTERNATIONAL CRIME

As stated earlier, the concept of the crime of ecocide came into notion due to severe damage caused to the environment during and in connection to the armed conflicts. Nevertheless, with time, the notion has deviated to damage to the environment during peacetime as well. The reason behind such a draft may be the fact that damage to the environment, even during peacetime, can constitute a threat to international peace. The protection of the environment has been long considered a concern for the whole international community. Environmental issues such as global warming due to climate change, protection, preservation and enhancement of biological diversity and fauna and flora of the earth, depletion of the ozone layer, etc., have been identified as the ‘common concern of humankind.’<sup>71</sup> Such obligations are termed *erga omnes* in international law – obligations that are owed by the states to the international community as a whole. As such, any state may complain about the breach of such in the proper forum. As such, the draft of the definition tries to portray ecocide as an international crime.

Besides, invocation of *erga omnes* obligation, destruction of the environment, natural resources and wildlife has severe trans-border ramifications. Trafficking of such resources through international borders poses severe security concerns, not to mention pollution and destruction even within the territory of a particular state may result in trans-boundary harm to other countries. As such, the prevention of such crimes often needs coordinated efforts by countries.

Although there are sufficient grounds to promote ecocide as an international crime, there are no formal legal instruments addressing them as such. In the absence of any legal instrument or uniform state practice, ecocide cannot be identified as an international crime in the legal sense. The initiative to include ecocide along with other international crimes might stem from the idea that long-term damage to the environment will have the same effect on human existence as any other international crime.

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<sup>70</sup> Ariella Shalev, Ecocide Law, Foundation for Democracy & Sustainable Development, (12 November 2022), <https://www.fdsd.org/ideas/ecocide-law/>.

<sup>71</sup> I Abdullah Al Faruque, Environmental Law: Global and Bangladesh Context 18 (New Warsi Book Corporation 2017).

## **V. CRITICISM OF ECOCIDE AS AN INTERNATIONAL CRIME**

The definition drafted by the expert panel has received its fair share of criticism. The criticism of the definition is not necessarily the criticism of the concept itself. However, the inclusion of ecocide being included alongside crimes like genocide etc. has received backlash. The reason is, like other international crimes in the Rome Statute, ecocide is not directed towards a group or a particular part of the population. Even though damage to the environment is detrimental to human existence, there is no intention to ‘get rid’ of any group of people.

Irrespective of this argument, there is no disagreement that the international community considers damage to the environment as abhorrent and criminalizing such will be welcomed.

## **VI. CONCLUSION**

At present, around 10 countries have included the crime of ecocide in their criminal code, formally addressing it as ecocide. Vietnam became the first country to include a crime of ecocide in its domestic penal law, followed by Russia. The growing attitude of the countries in adding this crime in their domestic penal laws shows approval towards the concept of the crime of ecocide. Although the definition of ecocide in these domestic instruments varies from the definition proposed, continuous deliberation on this issue, even in the form of criticism, will help to develop the concept. Recently, the right to a clean, healthy and sustainable environment has been declared a human right by the UN General Assembly. In order to uphold this right, it is essential to criminalize the acts that will encroach upon this right, whether in the form of an international crime or not.



# CLIMATE CHANGE AND THE ROLE OF PATENT ACT, 1970

*Bilal A Nazeer\**

## I. INTRODUCTION

Climate change is an unfortunate reality and its effects are visible, not just from the Science fiction Hollywood movies, but in real life. Change in monsoon months, unprecedented floods, increase in the frequency of heat waves and cold waves, and global warming are some of its visible examples. The International community has recognized the importance of addressing the issue and Paris Agreement adopted by the Conference of Parties in 2015 was a positive step towards it.<sup>72</sup> India, as a signatory to the Paris Agreement and a country with rich and vulnerable biodiversity and ecosystem, has a great stake in controlling climate change. North East India, which is one among the most ecologically fragile regions of India, is already under the threat of climate change. The mean temperature of the North East region has increased by 0.8-degree Celsius in winter and 1.09 degree Celsius during monsoons.<sup>73</sup> This has led to the increase in drought as well as floods in the region thereby resulting in the loss of lives and livelihood of the people and the scientific studies have already projected that the frequency of droughts and floods are likely to increase in the future.<sup>74</sup> Patent Act, 1970, even if it is not a statute addressing environmental issues, has a role to play in this age of technology. This paper analyses the provisions in the Patent Act, 1970 that could have an impact in fighting climate change.

## II. CLIMATE CHANGE AND PATENT LAW: AN UNLIKELY PAIR

The United Nations Framework Convention on Climate Change has defined climate change as the change in climatic conditions due to the alteration of global atmosphere caused by direct or indirect human activities.<sup>75</sup> Since climate change is an environment issue, solutions are usually sought through statutes that focus on environment laws. Unlike the Climate Change Act, 2008 of the UK, there is no single statute that addresses the issue of climate change in India. But the

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<sup>72</sup> Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

<sup>73</sup> Roy, Aniruddha & Kolady, D. & Paudel, Bindu & Yumnam, Anjoo & Mridha, Nilimesh & Chakraborty, Debasish & Singh, Nongmaithem. (2021). Recent trends and impacts of climate change in North-Eastern region of India-A review. *JOURNAL OF ENVIRONMENTAL BIOLOGY*. 42. 1415-1424. 10.22438/jeb/42/6/MRN-170.

<sup>74</sup> *Id.* at p 1421.

<sup>75</sup> United Nations Framework Convention on Climate Change, May 9, 1992 1771 U.N.T.S. 107, 165; S. Treaty Doc No. 102-38 (1992); U.N. Doc. A/AC.237/18 (Part II)/Add.1; 31 I.L.M. 849 (1992).

policy is spread across 8 Missions through the National Action Plan on Climate Change (NAPCC), 2008.<sup>76</sup> An acceleration in getting positive results in controlling climate change can be achieved through the use of patent law in addition to NAPCC. The Paris Agreement aims to reduce the increase in Global temperature by 2.0°C, preferably 1.5°C.<sup>77</sup> This cannot be achieved without the help of technological innovations. Green technologies that can replace or improve upon existing technologies need to be developed at a faster rate, without compromising the economic development of the country. Where there is a chance for development in technology, there is a scope for patent laws too.

Patent law can tackle the issues of climate change in 2 ways. 1) Promotion of green technologies - Since the primary aim of patent law is to foster innovations by encouraging the creators through monopoly, individual inventors and corporations can be persuaded into investing in green technology through the temptation of patent reward. For example, new methods of using renewable sources of energy that replace fossil fuels can be patented, if they satisfy the standards of patentability. 2) Patent exclusions – Excluding the technologies or innovations that cause environmental pollution of any form, from patent eligibility. Technologies that make use of fossil fuels, or products that run on non-renewable sources of energy could be kept out of the patent limits to discourage investment in the area or divert the investment to green technologies. Since the cost of production in green technologies is higher and its return on investment is much lower compared to the traditional technologies, companies are generally not interested in R&D investment in green technologies.<sup>78</sup> Using the above-mentioned scope in the patent law can pressurise the industries to join the green technology band wagon. But the use of patents as a tool to promote the development of green technologies comes with its own share of problems. Since green technologies or technologies that aim to reduce the emission of greenhouse gases are much more research oriented, they involve large capital investment. This will result in the concentration of technologies with bigger corporations rather than start-ups or domestic companies. The technology has the chance of being priced higher, which causes the problem of unaffordability to the large section of society who might then return to the cheaper alternatives. Refusal of the Corporations to grant licences

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<sup>76</sup> National Solar Mission, National Mission for Enhanced Energy Efficiency, National Mission on Sustainable Habitat, National Water Mission, National Mission for sustaining the Himalayan Ecosystem, National Mission for a Green India, National Mission for sustainable Agriculture, National Mission on Strategic Knowledge for Climate Change.

<sup>77</sup> Paris Agreement Under the United Nations Framework Convention on Climate Change art. 2(1)(a), opened for signature Dec. 12, 2015, T.I.A.S. No. 16-1104.

<sup>78</sup> Ofer Tur-Sinai, Patents and Climate Change: A Skeptic's View, 48 ENV'T L. 211, 213–17 (2018).

to domestic players or making restrictive licensing terms can also result in the technology being inaccessible or unaffordable.<sup>79</sup> Therefore, if not used wisely the patent regime can become counterproductive and hinder the use of technology to fight climate change.

### III. SCOPE OF THE PATENT ACT, 1970

As the advantages and disadvantages of using the patent system in fighting climate change are already established, whether the Patent Act, 1970 can be used for the same needs to be analysed. Since India is a party to the TRIPS Agreement, it cannot discriminate between technologies when granting patents.<sup>80</sup> Therefore, inventions based on any technologies needs to be granted patent if they satisfy the 3 standards of patentability, novelty,<sup>81</sup> inventive step<sup>82</sup> and capable of industrial application.<sup>83</sup> Which means that the innovations based on green technologies and traditional technologies that result in the emission of greenhouse gases can be patented if they satisfy the standards. In surface, this could mean that an inventor will continue with his traditional technology because there are no additional benefits given by the patent law even if he replaces his technology with a green technology. However, the patent ineligibility provisions of the Act can be used to turn the tables.<sup>84</sup> Even though TRIPS calls for a non-discriminatory principles in regards to patent eligibility, it gives flexibility to the member countries in excluding certain types of inventions from patent eligibility.<sup>85</sup> According to the Agreement, the member countries have the freedom to exclude an invention from patent eligibility if it causes serious prejudice to the environment.<sup>86</sup> India has used this flexibility in s.3(b) of the Patent Act, 1970. According to the section an invention that can cause serious prejudice to the environment or plant, animal or human life can be excluded from patentability.<sup>87</sup> Prejudice to the environment does not just mean air pollution or deforestation but also includes any activity that has the possibility of breaking the stability of the environment. Emission of greenhouse gases is therefore causing prejudice to the environment

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<sup>79</sup> Joshua D. Sarnoff, *The Patent System and Climate Change*, 16 VA. J.L. & TECH. 301 (2011).

<sup>80</sup> Article 27.1, TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994).

<sup>81</sup> Patent Act 1970, s.2(1)(i), (39 of 1970).

<sup>82</sup> *Id.* at s. 2(1) (ja).

<sup>83</sup> *Id.* at s.2(1) (ac).

<sup>84</sup> *Id.* at s.3.

<sup>85</sup> Article 27.2 and 27.3, TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994).

<sup>86</sup> *Id.* at Art 27.2.

<sup>87</sup> Patent Act 1970, s.3(b), (Act 39 of 1970).

as there is no greater threat to it than climate change. Technologies or inventions that emit greenhouse gases can therefore be brought under this provision and denied patent protection. Thus, the inventor choosing to use traditional technologies owing to the higher cost-profit ratio can be forced to invest in green technologies.

The threat of overbroad monopoly on the green technologies thereby causing unaffordability of the technology can also be addressed by the Patent Act, 1970 in three ways i) stricter interpretation of patentability standards, ii) Compulsory licences and iii) Government use.

### *3.1. Patentability Standards*

As laid down by TRIPS Agreement, patent needs to be conferred on any inventions, including green technology, if they satisfy the three standards of patentability which are novelty, inventive step and industrial application.<sup>88</sup> Since these standards are not defined by the Convention member states have the freedom to expand or narrow the scope of each of these standards to determine what kind of technologies needs to be patented in their territory. If an environment friendly technology needs to be widely used for fighting climate change, but is not accessible to the masses, the country can always strictly interpret the standards so that the technology is kept out of patent protection. This will allow the competitors to produce the same technology which will result in the decrease in prices. Therefore, using the stricter standards of the Patent Act, 1970 can be used as a tool to promote environment friendly technologies.

### *3.2. Compulsory Licence*

In India a patent is granted subject to certain conditions which the patentee has to follow after its reward. One among the major condition is that the enforcement patent rights must enable the promotion of technological innovation and must also result in the transfer and dissemination technology.<sup>89</sup> The patent rights should be enjoyed in such a way that both producers and users of technology are at mutual advantage and the invention contributes to the social and economic welfare.<sup>90</sup> Making a technological innovation unaffordable or inaccessible goes against this established principle. The Act has laid down the actions that can be taken in such cases and Compulsory licensing is one among them. On an application by any interested party, the

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<sup>88</sup> Art 27.1, TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197.

<sup>89</sup> Patent Act 1970, s.83(b), (Act 39 of 1970).

<sup>90</sup> *Id.*

Controller of Patents can grant compulsory licence over an invention if, even after 3 years since the patent grant, the reasonable requirement of the public is not met<sup>91</sup> or the invention is not available at an affordable price<sup>92</sup> or the invention is not worked in India.<sup>93</sup> The provision of “reasonable expectation of the public” and “affordability” can be used in the case environment friendly inventions. The reasonable expectation behind granting patents over such green technology is obviously to make a positive impact on the environment. If the invention is not accessible, due to the low production and supply by the inventor, then expectation of the public can be deemed to be not met. Similarly, if the invention is priced at an unreasonably high price, then again, the invention cannot be used by a large section of the public. compulsory licence can be granted over an environment friendly or green technology under both these circumstances.

### *3.3. Government Use and Acquisition*

The fight against climate change is one among the major public purposes into which any government must put its effort into. Because, unlike any other social or political issues, climate change and environmental degradation can have global effects and can hamper the life and livelihood of millions without any discrimination, particularly of those in ecologically fragile regions. Therefore, using environmentally friendly inventions should be the primary aim of the state rather than any private industries. If the state does not have enough resources to invest in developing such inventions, the state can either promote the private players for the same or acquire them. The Indian Patent Act has also exploited this option. Under the Act, the Government can either use a patented invention<sup>94</sup> or acquire the patented invention<sup>95</sup>, if it thinks that the act is necessary for public interest. In order to protect the interest of the inventor, the Act also stipulates that royalty or compensation must be paid to the inventor during such use or acquisition.

## **IV. CONCLUSION**

Thus, environmental laws are not the only statutory interventions which the Parliament can make in the case of fulfilling its obligations under the Paris Agreement or protecting the

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<sup>91</sup> *Id.* s.84(1)(a).

<sup>92</sup> *Id.* s.84(1)(b).

<sup>93</sup> *Id.* s.84(1)(c).

<sup>94</sup> *Id.* s.100(1).

<sup>95</sup> *Id.* s.102(1).

environment in general. As seen above the patent law is also a regime that can create a positive impact on protecting the environment or fighting climate change. However, using the above-mentioned provisions including compulsory licences and government use is not an easy task as the State would be under immense pressure from developed countries and industries. This was evident from the public outcry of developed countries and multinational pharmaceutical companies when the compulsory licensing provision was used for the first time by the Controller of Patent which was upheld by The Bombay High Court in the case of Bayer Corporation v. Union of India.<sup>96</sup> Both the provisions of Compulsory licensing and government use have not been used ever since in India. Therefore, the Patent Act, 1970 has enough tools to counter Climate change and all it needs now is a strong arm to wield the weapon.

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<sup>96</sup> Writ Petition No. 1323/2013 (Bom. HC).

# NORTH EAST'S DESIDERATUM: A QUEST FOR JUSTICE

*Sai Datta Majji\* & Vaishnavi Yadav\*\**

## I. INTRODUCTION

North East India, a mere mention of it makes the listener hanker for fanciful snow-capped trees, lush green hills and nirvanic nature. Apart from being a tourist destination, it is home to 135 recognized tribes and 2.72 million population. Unfortunately, the Centre and the States have propelled the rest of the world into oblivion about its development. A juxtaposition of the hunky-dory declarations of the Governments and the grim truth will only unfurl the lethargic attitude of the Centre. Interestingly, the State Governments of the seven sisters have rather remained double-crossing vigilantes depending on the political feasibility. The horrors of the irresponsible temporary executive know no bounds. The Centre is reminded of this region only in the hour of need. The region has been the Centre's poster child in almost all international forums for environmental protection. Even in the recent G20 summit, the baby face of the region has been rightly exploited by the Centre. This paper sincerely attempts to highlight the gap between the averments of the Government and the real needs of the North East.

## II. WIDENING GAP BETWEEN THE DEVELOPMENTAL POLICIES AND ASPIRATIONS

### *2.1. Trifling Budgetary Allocations*

No doubt, the recent Union Budget for the FY 2022-23 has a comprehensive and progressive outlook. However, only those sectors which serve the interest of the Centre have been adopted in the budget. Proclaiming it as Green Budget is a sham. This budgetary trajectory with debilitating finances has been in vogue for quite a long time. Only 3,079.40 crores have been allocated to the MoEFCC which is just about 40 crores over the previous year's proposal.<sup>97</sup> The Centre has bamboozled the region by slashing off the allocations to biodiversity

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<sup>97</sup> Government of India, Ministry of Finance, Union Budget, Demands for Grants of Central Government 2023-2024.

conservation, environmental education and awareness, National Biodiversity Authority and many more by more than one-third from its previous allocations.

Further, it has been more than a year since the North East Industrial Development Policy has gone stale.<sup>98</sup> The policy finds no place in the 2023-24 Union Budget which already unleashed mayhem amongst investors. This will handicap the growth of the region which will be forced to rely again on outdated unsustainable sources of revenue. No doubt, the present budget shells out plenty of funds to the region, but not for the deserving causes.

### *2.2. Passage to ASEAN*

When it comes to reaching the East, the North East states have been the Centre's golden goose. It was always envisaged as a future expressway to the ASEAN and South East. It must be noted that the Chicken's Neck (Siliguri corridor) is the only land route for India to connect with the North East. There is ample opportunity to explore the inland waterways which are three times cheaper than the roadways.<sup>99</sup> Through excellent inland water navigation, the Indian dream of the Act East Policy can be achieved.

Envisaging the same, the Indo-Bangladesh Joint Rivers Commission was set up in 1972 through a bilateral treaty to reap the benefits of the inland waterways. Six of the eleven i.e., 54.4 percent of the marine routes designated in the protocol are located in Assam. Regrettably, only two of them are operative.<sup>100</sup> The rest suffer from rich deposits of silt from the Himalayan streams. The negligence of the Centre has whittled down the transport industry in the region. The recent budget heralds the intentions of the Government to improve the connectivity through roads, railways and air modes only.

### *2.3. Frivolous attitude towards the Kunming–Montreal Global Biodiversity Framework*

The vow taken by the Central Government at the Paris Agreement for Nature, 2022, seems to be a joke. Taxonomy of a species happens once in a decade and the North East has been the proud contributor in this regard. The region is a treasury of many unrecorded species of flora and fauna. However, the current green cover stock is menacing. The region lost 95% of its

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<sup>98</sup> Ministry of Commerce and Industry, F.No.10(6)/2016-DBA-II/NER, North East Industrial Development Scheme (NEIDS), 2017 (Notified on April 12, 2018).

<sup>99</sup> PRESS INFORMATION BUREAU, <https://pib.gov.in/newsite/printrelease.aspx?relid=171853> (last visited on Feb. 9, 2023).

<sup>100</sup> BIWTA, Statistics of Transit trade cargo transported under PIWT&T between Bangladesh and India (route-wise Transit cargo statement from 2015-16 to 2020-21).



vegetation as of 2021.<sup>101</sup> Even the Standing Committee on Science & Technology, Environment and Forest expressed its concern about the same.<sup>102</sup> Failure to comply with the target would result in embarrassment of the Government at the international forum. At a time when the country wants to raise its ranks and emerge as an undisputed global power, such flaws will dent its image.

#### *2.4. Natural Catastrophe and Aleatory schemes*

Life in the North East is not all flowery and dreamy. It is a frequent host of natural calamities. Earthquakes, floods and landslides are common phenomena in the region.<sup>103</sup> Of the three, flooding is the only adversary whose impact can be easily mitigated. While mankind cannot ever fully avert natural calamities, he can always arm himself with the knowledge to mitigate the aftermath. This usually involves capital-intensive methods and compromises. Apart from the naturally stirred catastrophe, man has been an active contributor to his own peril. The unthoughtful and negligent planning of the Government in the guise of development is the main challenge posed to any developing State.

The locals have always vehemently protested against any kind of heavy industry. At the same time, whether it is the reckless attitude of the Government or its decampment from public and environmental accountability, the 2020 draft of the Environmental Impact Assessment notification tilts either way. The draft recommends a system that has no teeth to bite. One bitterly criticized provision in the draft is legalizing the post facto environmental clearance. No economic ambition can engulf the responsibilities that the State owes to the public. Simultaneously, ousting of the requirements of EIA portrays a nasty picture of the intentions of the Government, which definitely seems to be not in public interest.

Not to mention, malnutrition is haunting the future prospects of the North East. A 1% reduction in adult height can be equated with a 1.4% reduction in productivity.<sup>104</sup> Alarming, 46.8% of the children in Meghalaya are subjected to stunting which is resulting in almost 20% fewer

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<sup>101</sup> Centre for Science and Environment, State of India's Environment in Figures 2021 (Issued on February 25, 2021).

<sup>102</sup> Parliament of India Rajya Sabha, Standing Committee on Science and Technology, Environment, Forests, and Climate Change, Report No. 324 - Status of Forests in India (Issued on February 12, 2019).

<sup>103</sup> ENVIS CENTRE, MINISTRY OF ENVIRONMENT & FOREST, GOVT. OF INDIA, [http://asmenvis.nic.in/Content/Hazards\\_840.aspx?format=Print](http://asmenvis.nic.in/Content/Hazards_840.aspx?format=Print) (last visited on Feb. 8, 2023).

<sup>104</sup> Group, W.B., 2006. Repositioning nutrition as central to development: A Strategy for Large-Scale Action (Washington, D.C., DC: World Bank Publications).

earnings as adults.<sup>105</sup> Neither the center nor the state devised a permanent solution in this direction.

### 2.5. *EIA in absentia*

The Government turned a blind eye to the EIA statutory requirements in the clearances issued to the Etalin mega hydroelectric project which sought butchery of 2.7 lakh trees. Mining clearance in Saleki Forest, drilling and testing of the hydrocarbon in Saikhowa National Park portray the Government in a bad light. The Baghjan fire incident and the coal mining in the Dehing Patkai forest expose the despotic approach of the Governments. Post-mining procedures are completely ignored by the industries and the common man pays the price. To date, no coal mining in Meghalaya secured a license under the Mines and Minerals (Development and Regulation) Act, 1957, rendering all the existing mining illegal. The practice of Acid Mine Drainage (AMD) has blessed people with acidic drinking water. The only solution for restoration has been claimed to be developed by IIT Guwahati which is still in the preliminary stage.<sup>106</sup>

The contamination of the Lukha river has become an annual phenomenon since November 2007. The color turns deep blue with all the fish dead and floating. Once contaminated, neither the water can be domesticated nor can the fish be eaten. The Hydropower project in Upper Siang, Arunachal Pradesh, is conceived only as a counter-attack on the Chinese Medog Hydropower plant. The plant comes with buffer storage of 9 billion cubic meters. Alas, the fate of farmers and the residents downstream and other environmental concerns are in the doldrums. The Gumti Dam in Tripura, Loktak hydroelectric project and the Tipaimukh project in Manipur is a reminder of the unthoughtful developmental strategies of the Government. Pagladiya project in Assam was also not well received by the locals. Finally, the recent blowout in Bhagjan, Assam is the cherry on the cake.

While the Government is backed by the hedonic calculus, no such argument can subserve the interests of the natives of the region. It is the home of the locals and the unmindful projects have rendered the habitations inhabitable subjecting them to inhumane pollutants and catastrophes like floods. The above-mentioned projects have come into limelight due to the

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<sup>105</sup> Dr. Shoba Suri, *Malnutrition in Northeast and How This Can Be Addressed*, OBSERVER RESEARCH FOUNDATION, (Feb. 09, 2023), <https://www.orfonline.org/research/malnutrition-in-northeast/>.

<sup>106</sup> PRESS INFORMATION BUREAU, <https://pib.gov.in/PressReleasePage.aspx?PRID=1837581> (last visited on Feb. 9, 2023).

large-scale devastation caused by them and which were, therefore, not well received by the public.

### III. CONCLUSION

The existing one is an inaccurate model of governance which fails the aspirations of the North East people. Despite allocating considerable funds under the new budget, the core concerns are not really catered. The irony lies in the fact that the development has been framed based on the center's perspective and not that of the people of the region. Biodiversity is a part and parcel of the rich heritage of the North East and therefore, its conservation is of utmost importance. The salami slicing of the coffers of biodiversity and other environmental authorities will have its impediments in the long run. Hence, they must be made good immediately.

The Act East Policy is very much achievable due to the strategic placement of the region. However, the dream can be realized only by dredging the marine routes forming part of the Indo–Bangladesh Commission, 1972, immediately. Bangladesh maneuvered the situation very recently by awarding China Harbour Engineering Company the contract to dredge the route from Ashuganj to Agartala.<sup>107</sup> The project is financed by the World Bank. It is a lost opportunity for India on multiple fronts. First, Chinese intelligence will have more presence on this route. Second, the project could have been a life-saving drug for the Dredging Corporation of India which is plagued with dwindling financials and is almost redundant. Setting it as an example, all the contracts of unearthing the silt from all 11 routes could be awarded to the Corporation. Thus, the traffic at Siliguri can be eased and valuable time can be saved, simultaneously making transport much cheaper. The Kunming–Montreal Global Biodiversity framework is not just a challenge but a question of the integrity of the Government. Restoring the region to its zenith will boost the image of the country at international forums. More funds must be shelled out to meet the targets.

The casualties and the destruction of residential buildings caused by floods can be completely averted through some of the indigenous solutions. The Chang Ghor (bamboo houses) of Mising Community in Dhemaji district, Assam is a marvelous design of construction. The design has been tested and proven to sustain flash floods. This indigenous technology did not get due recognition it deserves. It can be a ray of hope for the hydroelectric projects which end up

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<sup>107</sup> Sukanya Singh, *Chinese firm wins \$71m Bangladesh dredging contract*, Central Dredging Association (Feb. 08. 2023, 3:52 PM), <https://dredging.org/news/industry-news/projects/77/chinese-firms-wins-71m-bangladesh-dredging-contract.com>.

disturbing habitations on the coast and, hence, are unable to muster public support. Intensive housing schemes with better drainage planning on the Chang Ghor lines will create a win-win situation for both sides. Malnutrition is on the verge of plaguing future generations. It is the basic responsibility of the Centre to make sure that the children are nourished. Despite all the glorifying schemes of the center, surveys show that the health of the children of the North East region is not at par with the rest of the country.

The Apex Court in a plethora of cases has expressed that the requirement of EIA is an indispensable part of the project clearance mechanism. It acts as a primary net to filter out and highlight the consequences of a project. When the alarm system itself is turned off, the intentions of the Government are questionable. The Government needs a humanistic touch instead of a commercial approach. A Government that is voyaging in a direction opposite the public will serve no purpose. When it has decided to borrow financial support from international players like World Bank to meet its infrastructural goals i.e., roads and railways, why not repeat the same for basic concerns like malnutrition, sustainable housing schemes and other sensible ventures? There is still time for the 'Sarkar' to rectify and not lose ground. The region needs not a center that sells its dreams to the people, rather it needs one which dreams and walks with the people.

# RAT-HOLE MINING IN MEGHALAYA: LEGALITY, EFFECTS AND ALTERNATIVES

*Trisha Shivkumar\* & Agrim Sinha\*\**

## I. INTRODUCTION

The state of Meghalaya is geographically situated amidst the Garo, Khasi and Jaintia hills which are endowed with large supplies of coal. Coal is one of the major minerals produced in Meghalaya. It is a significant source of revenue for Meghalaya with an estimated 754 crores in 2019-2022. While coal mining in Meghalaya is an important industry, there are certain issues that arise with it. One of the prominent issues is that of rat-hole mining. Rat-hole mining is a process that involves digging narrow and short tunnels where only one person can fit in to extract coal.<sup>108</sup> The process is done primarily through rigorous manual labour, with only the use of primitive tools to assist coal miners. Rat-hole mining is done by clearing vegetation and digging vertical pits to extract coal.<sup>109</sup> The entire process has adversely impacted environmental and labour and has come into legal scrutiny for the same.

In 2014, considering its unscientific and harmful nature the National Green Tribunal (NGT) had placed an interim ban on rat-hole mining. The National Green Tribunal had issued orders to constitute a committee to address issues of environmental damage.<sup>110</sup> The Supreme Court in 2019 directed the Meghalaya State Government to transfer from the Meghalaya Environment Protection and Restoration Fund (MEPRF) to the Central Pollution Control Board Rs. 100 crores for the same purpose.<sup>111</sup> In 2022 the Meghalaya High Court appointed Justice Katakey to head the committee to recommend measures that the government must take to comply with the previously mentioned orders.<sup>112</sup> Despite this, there has been resistance to implementation

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<sup>108</sup> Jayanti Kalita, *Northeast Diary: Is Meghalaya trying to legalise rat-hole coal mining*, (12 November 2022), THE TIMES OF INDIA <https://timesofindia.indiatimes.com/india/northeast-diary-is-meghalaya-trying-to-legalise-rat-hole-coal-mining/articleshow/95467928.cms>.

<sup>109</sup> Baniateilang Majaw, *Meghalaya- Small but not so Beautiful*, WORLD AFFAIRS: JOURNAL OF INTERNATIONAL ISSUES 18, 4 (2014), <https://www.jstor.org/stable/10.2307/48505126>.

<sup>110</sup> All Dimasa Students Union, Dima-Hasao Dist. Committee v. State of Meghalaya, 2014 SCC OnLine NGT 2307.

<sup>111</sup> State of Meghalaya v. All Dimasa Students Union, Dima-Hasao Dist. Committee (2019) 8 SCC 177.

<sup>112</sup> Meghalaya HC appoints retired judge as head of panel for measures on coal-related issues THE ECONOMIC TIMES (Apr. 20, 2022). <https://legal.economictimes.indiatimes.com/news/industry/meghalaya-hc-appoints-retired-judge-as-head-of-panel-for-measures-on-coal-related-issues/90950258>.

of this ban, with certain calls to legalise rat-hole coal mining.<sup>113</sup> This article seeks to analyse the legal arguments in favour of banning and in favour of legalising rat-hole mining and conclude on viable options for the future.

## II. ARGUMENTS TO LEGALISE RAT-HOLE MINING

There are two primary arguments that are cited to legalise rat-hole mining. First, to ensure that a law is enacted without being struck down, the law must be constitutionally valid. The Sixth Schedule of the Indian Constitution includes provisions for the administration of tribal areas in certain states including Meghalaya.<sup>114</sup> These areas are administered by Autonomous District Councils, and it is argued that NGT's interim ban violates their autonomy.<sup>115</sup> The purpose of the provisions of the Sixth Schedule is to protect the unique customary laws and customs of Meghalaya. Paragraph 3 of the Schedule provides that District and Regional Councils make laws regarding the allotment, occupation for the use of non-agricultural purposes.<sup>116</sup> This is to ensure that the tribes that have their own community and land-holding systems, must prevail. The question is whether the NGT's interim ban attacks the autonomy of these communities' unique practices relating to ownership and control of land.

The next primary argument is related to coal mining as an economic activity. As mentioned above, coal is a primary source of revenue for Meghalaya. Additionally, approximately six to seven million tonnes of coal from here are exported to Bangladesh.<sup>117</sup> Rat-hole mining allows extraction of coal in a cheaper manner, as minimal equipment is used, and is thus a preferred method by coal barons.<sup>118</sup> Regulations on this activity can impact production of coal and thereby revenue generated. The ban has impacted revenue received by Jaintia and Garo ADC's thereby affecting several families. Cess from coal that is used to fund education also declined affecting salaries of teachers and other government employees resulting in protests and

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<sup>113</sup> Baniateiling Majaw, *Ending Meghalaya's Deadly Occupation: India's National Green Tribunal's Ban on Rat-Hole Mining*, LAW AND POLITICS IN AFRICA, ASIA AND LATIN AMERICA 49, 1 (2016) <https://www.jstor.org/stable/26160091>.

<sup>114</sup> The CONSTITUTION OF INDIA, Sixth Schedule (1950).

<sup>115</sup> *Supra* n-203.

<sup>116</sup> The CONSTITUTION OF INDIA, Sixth Schedule para 9 (1950).

<sup>117</sup> *Supra* n-199.

<sup>118</sup> *Supra* n-203.

strikes.<sup>119</sup> Further, coal workers also have apprehensions about such a ban, as this is a source of employment.<sup>120</sup>

### III. ARGUMENTS TO BAN RAT-HOLE MINING

While addressing the first claim that the ban affects constitutional rights provided by the Sixth Schedule, first the local customs must be understood. In the Jaintia Hills there has been a trend of conversion of traditionally community owned land (*Ri Raid*) into private land (*Ri Kynti*).<sup>121</sup> The concentration of land in the hands of a few has resulted in making it easier to mine coal from these lands. First, under the local customs there are no regulations of *Ri Kynti* land which means the landlords are free to use it however they desire.<sup>122</sup> Second, there is no law governing whether rat-hole mining is permissible, which enables it. The amended National Mineral Policy of 2008 mandates scientific mining for sustainable development.<sup>123</sup> There is evidence of the unscientific nature of rat-hole mining and its adverse effects on the environment as is detailed below. Legalising rat-hole mining would completely violate this policy. Importantly, legislation banning rat-hole mining neither impinges on the right to any traditional practice, nor bans coal mining. It merely regulates the process used for mining coal, and not the use of land itself. Under the federal structure of India, the Sixth Schedule provides for more local autonomy in matters related to land. However, this must be carefully balanced with fundamental rights provided to all citizens of India. In the landmark Dehradun Valley Judgement in 1985 relating to mining of limestone in a sensitive ecological region, the Supreme Court put a stop to unscientific and uncontrolled mining in a phased manner. It highlighted the importance of sustainable development in such regions acknowledging the adverse effects on land and water. The Court here held that Article 21 guaranteeing the right to life encompasses the right to a healthy environment.<sup>124</sup> Coupled with this under Article 47, the State has the responsibility of improving the standard of living of the people.<sup>125</sup> In the case of *Olga Tellis*, Directive Principles of State Policy are fundamental and serve as a “beacon of light to the interpretation of the Constitution.”<sup>126</sup> They are considered intrinsic in governing the country

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<sup>119</sup> *Meghalaya: NPP chief slams Congress for doing nothing to reverse ban on coal mining* India Today, (16 Jan 2023), [https://www.indiatodayne.in/meghalaya/story/meghalaya-npp-chief-slams-congress-doing-nothing-reverse-ban-coal-mining-498234-2023-01-16?utm\\_source=rssfeed](https://www.indiatodayne.in/meghalaya/story/meghalaya-npp-chief-slams-congress-doing-nothing-reverse-ban-coal-mining-498234-2023-01-16?utm_source=rssfeed).

<sup>120</sup> *Supra* n-203.

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*

<sup>124</sup> *Rural Litigation and Entitlement Kendra v. State of UP*, (1985) 2 SCC 431.

<sup>125</sup> The CONSTITUTION OF INDIA, art. 47 (1950).

<sup>126</sup> *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545.

and must be read harmoniously with fundamental rights. The right to a healthy environment corresponds to citizens living in better conditions and with a sound standard of living. Higher standard of living is not development at the cost of the environment as those results in pollution, climate change, lack of vegetation, depletion of resources and extinction of species. A healthy environment is therefore essential to maintaining a good standard of living. Considering these factors, constitutional jurisprudence has developed in a manner that balances development and profits with environmental protection. No citizen of any area can be denied their fundamental rights, and this extends to the State of Meghalaya as well.

Rat-hole mining, while providing economic gains to the government and businesses, bears a human and environmental cost. This process involves digging vertical layers after clearing the land. Coal is extracted by hand or archaic tools and dumped on nearby grounds. The remnants of this, as well as the consequential toxic waste that is discharged destroys the ecosystem. Combustion residues in the small, noxious spaces affect the health of labourers and pollute sources of ground and surface water.<sup>127</sup> This form of mining causes loss of fertile soil and vegetation. A prime example of its damaging effects is the River Lukha which is integral to the survival of species in the Jaintia Hills. Unscientific methods of coal mining have been pinned down as the reason for its destruction, and as the cause of dead fish found in the river.<sup>128</sup>

Besides environmental concerns, there have been several contentions regarding the rights of labourers who work in dangerous conditions. There have been several instances of death of rat-hole miners on the job. While labour puts their life on the line, big business people benefit from the profits made off the cheapest source of energy- coal.<sup>129</sup> Coal is also the most polluting source of energy due to its extraction process, and the environment ultimately pays the price.

#### **IV. THE WAY FORWARD**

To ensure a sustainable future for the state of Meghalaya it is important to rectify damage caused and find alternative sources of revenue and employment. The quality of the River Lukha has improved through a detoxification process using algae implemented by the government. The District Mineral Fund covered the expenses of this process.<sup>130</sup> To reverse the effects of the

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<sup>127</sup> Supra n-199.

<sup>128</sup> *Ibid.*

<sup>129</sup> Baniateilang Majaw, *The Structural Problems of Rat-Hole Mining in Meghalaya*, ECONOMIC AND POLITICAL WEEKLY 54, 21 (2019), <https://www.epw.in/engage/article/structural-problems-rat-hole-mining-meghalaya>.

<sup>130</sup> *Detoxing pilot project has brought river back from the dead*, THE HINDU (2021), <https://www.thehindu.com/news/national/other-states/detoxing-pilot-project-has-brought-a-river-back-from-dead-meghalaya/article36926683.ece>.



damage and to ensure alternatives to lower revenue from coal, there are several other potential avenues to combat the same, as given below.

First, tourism in Meghalaya has slowly become a big source of revenue for the state. The revenue earned is lower than the amount the government was losing from the revenue from the taxes of the rat hole mining.<sup>131</sup> However, it remains at its nascent stage and is yet to reach its unreal potential. This is because before the digital revolution brought affordable internet services to India, the majority of people worldwide and even within India did not know about the abundant beauty in the state. It is home to picturesque landscapes, beautiful waterfalls and has a rich culture and heritage. Due to the internet the unexplored parts of the state have been exposed to tourists worldwide. The state has also launched different festivals to give an initial boost to the already slowly booming tourism industry. It has also been helped by betterment of connectivity, expansion of the hospitality sector and better law and order situation in the state. Airport and train connectivity have been slowly improving. Recently the first direct flight between Imphal and Shillong (Meghalaya) was started under the 'UDAN' scheme of the Central government.<sup>132</sup> The Ministry of Civil Aviation and Airport Authority of India with the help of various State governments have made constant efforts in making good airports. Recently the State Cabinet has approved the Tourism policy 2023, the last Tourism policy was made in 2011 which helped in betterment of tourism in the State. However, many things have changed from then to now and keeping this in mind the state has made a more detailed policy. The aim of this policy is to investigate various aspects of tourism sustainability, usage of technology and employment generation. The Chief Minister of Meghalaya Shri Conrad Sangma reiterated the point on better connectivity as one of the integral things to fulfil this goal.<sup>133</sup>

Another area which would help Meghalaya increase its revenue is expansion of Micro Small and Medium Enterprises. This can be done with the help of new age technology as it will help in better marketing and production, in this process enhance its reach. Meghalaya Start-up

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<sup>131</sup> *Covid-19: Meghalaya's annual tourism revenue dips to Rs 3 cr from Rs 20 cr*, East Mojo(2021), <https://www.eastmojo.com/meghalaya/2021/03/09/covid-19-meghalayas-annual-tourism-revenue-dips-to-rs-3-cr-from-rs-20-cr/>.

<sup>132</sup> Ministry of Civil Aviation, New milestone achieved in strengthening aerial connectivity with North East India (Aug. 4, 2021), <https://pib.gov.in/PressReleasePage.aspx?PRID=1742142>.

<sup>133</sup> *Meghalaya Cabinet Approves State Tourism Policy* THE SHILLONG TIMES (Jan. 11, 2023). Meghalaya Cabinet approves State Tourism Policy 2023 - The Shillong Times.

Policy 2018<sup>134</sup> was launched in 2018 with the aim to emerge as one of the leading “Startups Hub” in 2023 and launch at least 500 startups in this period. The state had made a list that is needed such as ‘Startup Ecosystem’ and ‘Funding’ in the 2018 policy. Prime Startup hub<sup>135</sup> is a dedicated space for youth and budding entrepreneurs in the State. They function as incubation centres for startups. Its effect has been seen in the State's Startup Ranking 2021<sup>136</sup> released by the Ministry of Commerce and Industry in which Meghalaya was placed in the ‘Best Performer’ category. It is important to note that many niche agricultural products which are in a lot of demand, especially in the European market. The state has also been active in empowering women through schemes like ‘Innovation Scaleup Loan.’ Opening of a micro food processing unit by the government is one of the few steps taken in the right direction by the State and Central governments. This fast growth is testament to the unbelievable potential in this field.

## V. CONCLUSION

The issue of rat-hole mining has been a longstanding concern in the state of Meghalaya. NGT’s interim ban has been met with resistance despite its proven detriment to the environment. Coal mining as an important economic activity of the state must be regulated carefully to balance legal, economic, and environmental interests. While the ban is constitutionally valid and is in the interests of the health and well-being of the environment and the people, there must be alternatives to ensure a sound economy for the state. Tourism and food processing are growing sectors with abundant potential. It is also important to note that the State has an eye on sustainable growth, not overlooking environmental degradation for growth.

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<sup>134</sup> Meghalaya Startup Policy (Draft), 10<sup>th</sup> Meghalaya Legislative Assembly (2018). [draft\\_meghalaya\\_startup\\_policy\\_2018.pdf](#) (startupindia.gov.in).

<sup>135</sup> Government of Meghalaya (Planning Department), Meghalaya State Startup Portal, PRIME Startup Hubs - PRIME (primemeghalaya.com).

<sup>136</sup> Department of Promotion of Industry and Internal Trade, State’s Startup Ranking 2021, Result (startupindia.gov.in).

## RIGHT TO SUSTAINABLE DEVELOPMENT: – A QUEST FOR BUILDING SUSTAINABLE SOCIETY

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### THE BACKDROP

India, one of the largest democracies of the world and second most populated country, historically known as the 'golden bird' for abundance of its natural resource-base and none too easily replenishable diversity, is now at cross-roads in terms of depletion of natural resources, over polluted environment and extinction of species. To quote a few instances from the Indian perspective, i.e. be it unusual and unpredictable rains causing damage to the crops, cloud bursts resulting in human casualty and displacement, flooding of rivers in Jammu and Kashmir, protection of endangered species while relocating them from one state to another etc. At the global front the situation is equally alarming for example, the cascade of extremely deadly weather events in the 2020 and 2021 such as wildfires raging in Australia<sup>137</sup>, Brazil<sup>138</sup>, Siberia<sup>139</sup> and California<sup>140</sup>, heat waves in USA<sup>141</sup> and UK<sup>142</sup>, severe flash flood in UK<sup>143</sup> and

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<sup>137</sup>*Australia fires: A visual guide to the bushfire crisis*, BBC NEWS, (January 31, 2020) <https://www.bbc.com/news/world-australia-50951043>.

<sup>138</sup> *Brazil wildfires surge again in 2020*, PHYS.ORG, (January 3, 2021) <https://phys.org/news/2021-01-brazil-wildfires-surge.html>.

<sup>139</sup>Yulia Davydova, *Record breaking fires in Seberia*, Greenpeace, (August 18, 2021) <https://www.greenpeace.org/international/story/49171/russia-record-breaking-fires-siberia/>.

<sup>140</sup> *California wildfires*, BBC NEWS (October 11, 2021) <https://www.bbc.com/news/topics/cjyq4rd3x3zt/california-wildfires>.

<sup>141</sup> Sarah Trent, *U.S. Heat Waves 2021: Understanding What's at Play, Including Climate Change*, The Wall street Journal (August 19, 2021) <https://www.wsj.com/articles/us-excessive-heat-wave-11629392901>.

<sup>142</sup> *UK heatwaves*, BBC NEWS, (October 15, 2021) <https://www.bbc.com/news/topics/clw2rl7ekd6t/uk-heatwaves>.

<sup>143</sup>*London cleans up after flash flooding drenches homes, subway*, THE TIMES OF INDIA, (July 26, 2021) [http://timesofindia.indiatimes.com/articleshow/84754195.cms?utm\\_source=contentofinterest&utm\\_medium=txt&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/84754195.cms?utm_source=contentofinterest&utm_medium=txt&utm_campaign=cppst).

China<sup>144</sup>, cloud bursts in India, Uttarakhand<sup>145</sup>, long running drought in Zimbabwe<sup>146</sup> and Madagascar<sup>147</sup>, super cyclones that unleashed floods in India<sup>148</sup> and Bangladesh<sup>149</sup> etc.

The above scenario presents a gloomy state of environmental governance wherein resources are depleting at faster pace, rivers are crying with pollution and dying, wetlands being converted, encroached and urbanized, air pollution makes life uninhabitable, particularly in metro towns, underground water channels are being contaminated, over extraction of underground water leading to depletion of water tables, climate instability etc becoming a regular phenomenon and a matter of serious concern. Contemporary scholars and journalists find the above conditions alarming calling it environmental or climate emergency. This has become a global phenomenon and thus a common concern of human-beings for their survival and existence including that of the other species. The contemporary move is to recognise right to sustainable development as a fundamental right, or rather more appropriately a human right, which may offer a better and stronger claim for the mankind to strive building a sustainable society, making the planet earth a much better and safer place wherein not only the human-beings but all other species as well may co-exist and survive.

Accordingly, this paper seeks to raise and address a few questions viz. the origin, meaning, nature and scope of sustainable development and how far the same is reflected in the International Law regime? What has been the journey of sustainable development in India and

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<sup>144</sup>Brittyn Clennett and Malka Abramoff, *At least 25 dead after flash flooding in China causes years' worth of rain in 3 days*, ABC NEWS, (July 22, 2021) <https://abcnews.go.com/International/25-dead-flash-flooding-china-years-worth-rain/story?id=78977511>.

<sup>145</sup>*Uttarakhand: 5 dead, 2 missing after cloudburst in Pithoragarh*, Hindustan times, (August 30, 2021) <https://www.hindustantimes.com/cities/dehradun-news/cloudburst-in-uttarakhand-7-feared-dead-3-bodies-recovered-101630306662981.html>.

<sup>146</sup>Andrew Mambondiyani, *Droughts or storms? The dire dilemma of Zimbabwe climate migrants*, (September 16, 2021) <https://www.aljazeera.com/features/2021/9/16/droughts-storms-dire-dilemma-zimbabwe-climate-migrante>.

<sup>147</sup> *Madagascar on the brink of first climate-induced famine, UN warns*, (September 3, 2021) <https://www.aljazeera.com/news/2021/9/3/madagascar-is-on-brink-of-first-climate-induced-famine-un-warns>.

<sup>148</sup> Samrat Sharma, *Yaas in 2021 after Amphan in 2020 - the Bay has turned into a basin of cyclones*, (May 26, 2021) <https://www.indiatoday.in/diu/story/yaas-in-2021-after-amphan-in-2020-the-bay-has-turned-into-a-basin-of-cyclones-1806963-2021-05-26>.

<sup>149</sup>*Cyclone Yaas Swamps India and Bangladesh*, NASA EARTH OBSERVATORY, (May 26, 2021) <https://www.earthobservatory.nasa.gov/images/148371/cyclone-yaas-swamps-india-and-bangladesh>.

how far the same has been internalised in the domestic jurisprudence? Thereafter, an attempt has been made to analyse the nature and scope of the right to sustainable development as a fundamental right, or as it may be called a human right as it is called that all fundamental rights are human rights? Finally, whether the urge for recognizing the right to sustainable development as a human right in Indian jurisprudence will help building a sustainable society? Part one of this paper presents a brief journey of sustainable development—a select international scenario in three phases. The second Part brings out a detailed analysis of its journey at domestic level presented in order of its gradual journey, judicial expansion of the emerging recognition of the right and further recognition of this right as law of the land. The last part of this raises a discourse on the right to sustainable development as a human right—its advantages and disadvantages and the paper concludes with its findings and conclusions

## **PART – I, JOURNEY OF SUSTAINABLE DEVELOPMENT: A SELECT INTERNATIONAL SCENARIO**

### *The Initial Phase:*

The concern about sustainability can be traced back to Malthus (1766–1834) and William Stanley Jevons (1835–82) and other eighteenth- and nineteenth-century thinkers who were worried about resource scarcity, especially in the face of population rise (Malthus) and energy (coal) shortages (Jevons). The issue was raised in the 1950s in the writings of Fairfield Osborn (1953) and Samuel Ordway (1953). It was not until the 1960s and the 1970s, however, that a significant segment of public opinion expressed such unease.<sup>150</sup> The plausible solution which was explored in 1960s and has been developed rigorously since then lie in the concept of sustainable development as a bane of all-out economic development, without caring for the mother earth, were evident in the fact of rivers catching fire, birds and other species getting adversely affected and extinct<sup>151</sup>.

The term ‘sustainable development’ is combination of two different words i.e., ‘sustainable’ and ‘development’ wherein ‘sustainability’ means ‘a characteristic or state that can be maintained indefinitely’ whereas the term ‘development’ means ‘increasing the society's ability to meet human needs and to improve quality of human life.’<sup>152</sup> Further a ‘sustainable society’

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<sup>150</sup> WRITES, BAKER, SUSAN, SUSTAINABLE DEVELOPMENT, 18-48 (Routledge).

<sup>151</sup> RACHEL CARSON, THE SILENT SPRING (Houghton Mifflin, 1962).

<sup>152</sup> Caring for the earth.

is one that lives within self - perpetuating limits of its environment. However, that society is not a no-growth society. It is rather a society that recognizes the limits of growth and looks for alternative ways of growing.<sup>153</sup> Further, the development that is likely to achieve lasting satisfaction of human needs and improvement of quality of life<sup>154</sup> which exhorts mankind that future generations should be left with no worse off than the current generation.<sup>155</sup> According to the Supreme Court, the term 'sustainable development' is not an empty slogan, it is required to be implemented taking a pragmatic view.<sup>156</sup> The term Sustainable Development is value loaded term which seeks to ensure integration between economic development and environment protection. Its significance lies in futurity i.e. impact of present actions on future generations and brings in the principle of equity within its ambit and scope. Its value lies in the fact of promoting and ensuring quality of life over economic growth. In a sustainable society, humans live in harmony with nature, conserving resources for their progeny so that everyone enjoys social justice and a high quality of life. It improves the quality of our lives, protects ecosystems, safeguards natural resources and its benefits include; ensuring a safe and healthy future & habitat for all and encourages conservation of resources.

*The Second Phase:*

The contemporary journey of sustainable development may be traced with the United Nations Conference on Human Environment, organized in Stockholm in June 1972. Even though the entire document as an outcome of the Conference, named the 'Stockholm Declaration 1972' did not use the term 'sustainable development' in the entire document, however, it came to recognize the 'fundamental right of man to freedoms, equality and adequate conditions of life in an environment of quality that permits him life of dignity and well-being. The right, when viewed from the lens of sustainable development as a human-right, it may be inferred that all the above rights taken together as fundamental rights are nothing but the human rights wherein a right to live in a healthy and unpolluted environment becomes an integral human right. Further, the 'declaration' also imposed a solemn responsibility on human beings to protect and improve environment for the '*benefit of present and future generations*' wherein the responsibility to protect and improve environment engulfs two important notions: (i) the

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<sup>153</sup> JAMES COMER, THE VALUE FOR QUESTIONING FOR A SUSTAINABLE SOCIETY (1979).

<sup>154</sup> ROBERT ALLEN, HOW TO SAVE THE WORLD, 1980.

<sup>155</sup> TOM DITTEN BURJ, ENVIRO. AND H.R. ECONOMICS 1984.

<sup>156</sup> Susethat v. State of Tamil Nadu, AIR 2006 SC 2893.

principle of intergenerational equity, and (ii) the principle of equity as a tool of environmental governance. Similar rights and responsibilities have been cast on the State.<sup>157</sup> As stated earlier, the Brundtland Commission was appointed by UNEP, an offshoot of Stockholm Conference, in the year 1983, headed by Gro Harlem Brundtland, commonly known as Brundtland Commission which submitted its report in the year 1987 titled as “*Our Common Future*”. The Commission defined, the term ‘sustainable development’ to mean the ‘development that meets the needs of present generation without compromising on the ability of the future generations to meet their own needs’<sup>158</sup> which has now become a universally accepted definition amongst the legal fraternity. The report emphasized on the integration of economic and ecological sustainability, rejecting the orthodox notion that environment and development are antithesis of each other. On the contrary it emphasises that development and environment are in sync with each other and both are complementary and mutually supportive of each other. According to Alexander Kiss, ‘environment and development are two sides of the same coin and not separate’. Paul Hawkins writes that they are not in competition with each other or Govies Gobbs & Jonathan Lash writing that collaboration between environment & development will solve the problem of sustainable development. Accordingly, a more comprehensive and encompassing definition of sustainable development may be found in the World Bank Report (1992) which provides that,

Sustainable development obliges humanity to use, develop, manage and care for environment and planetary resources in a manner that supports the stewardship of all creations and continuity of cultural and spiritual heritage of each community as well as maintaining harmony between people and nature for present and future generations.

**(Emphasis Added)**

Further, the UN Conference on Environment and Development was organised at Rio de Janeiro in the same year, i.e. in 1992 and the very title of the conference suggested Sustainable Development as a theme.<sup>159</sup> The conference made an immense contribution to make sustainable

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<sup>157</sup> Refer, Principle 2 and 21 of the Stockholm Declaration. So far as sustainability of natural environment as integral to the right of sustainable development is concerned one may look at various provisions of the World Charter for Nature (1982).

<sup>158</sup> Brundtland report.

<sup>159</sup> The United Nations Conference on Environment and Development organised at Rio de Janeiro from 3 to 14 June 1992 is considered to be one of the largest ever conference on environmental governance.

development as a tool of environmental governance and to ensure human well-being. Accordingly, Principle 1 of the Rio Declaration becomes very relevant as it provides that, *‘the human beings are at the centre of concern for sustainable development and they are entitled to a productive and healthy life....’*<sup>160</sup> At this juncture, this first clause needs consideration for two reasons. *Firstly*, the movement for ensuring a sustainable society which started with protection of human environment through anthropocentric lens remained all pervasive even at the Rio conference and, *secondly*, sustainability of Earth’s ecosystem became a concern for ensuring a better living and quality life ignoring the contribution of other species in ensuring sustainability, i.e. the development was centred around welfare of human beings, ignoring the contribution of other species in maintaining ecological balance.

Further the provisions of Principle 3 of the Declaration made sustainable development more emphatic and effective by providing that *“the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generation”*. Through this Principle, along with Principle 4, put to rest the orthodox view-point that the environment protection and development cannot go hand in hand and concluded that environment and development is the key to ensure sustainable society.<sup>161</sup> The principle of Rio Declaration relevant in the present context are: (i) the principle of common but differentiated responsibility, <sup>162</sup> to reduce and eliminate unsustainable patterns of production and consumption,<sup>163</sup> people’s participation generally and participation of women, youth and indigenous people in particular in environmental management and development with a right to access to information concerning the environment and in decision making processes,

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<sup>160</sup> Principle 1 of Rio Declaration reads, “Human beings are at the Centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.”

<sup>161</sup> Principle 3 and 4 of the Rio Declaration, 1992 read as under:

“The right to development must be fulfilled so as to equitably meet the developmental and environmental needs of present and future generations.” Further Principle 4 states that “In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.” (Emphasis Supplied). This also settled the conflicting claims of rights emerging out two separate Declarations of the United Nation, i.e. the Stockholm Declaration 1972 recognising fundamental right to live in a healthy environment and the other the United Nation Declaration on Right to Development, 1986, providing a solution through the principle of equity and integration between the two with an ultimate object of ensuring sustainability.

<sup>162</sup> See the provisions of Principle 7 of the Rio Declaration 1992.

<sup>163</sup> Principle 8 of the Rio Declaration 1992 provides that “to achieve sustainable development and a higher quality of life for all people, states should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.”



effective access to judicial and administrative proceedings including redress and remedy etc.<sup>164</sup> This Declaration<sup>165</sup> also provided various tools for achieving/promoting sustainable development through various principles of international environmental law, viz. precautionary and preventive principle<sup>166</sup>, polluter pay principle<sup>167</sup> and the principle relating to ‘environmental impact assessment’ (EIA).<sup>168</sup>

#### *The Contemporary Phase:*

The journey of sustainable development continued in a much vigorous and effective manner at Johannesburg in 2002 at the World Summit on Sustainable Development as a sequence to the Stockholm Conference on Human Environment 1972. The Summit called on all countries to take immediate steps to formulate national sustainable development strategies and to initiate implementation efforts.<sup>169</sup> Further in its political agenda it was declared that “we assume a collective responsibility to advance and strengthen the implementation and mutually reinforcing pillars of sustainable development, i.e. economic development, social development and environment protection.<sup>170</sup> This Summit made ‘sustainable development’ as an

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<sup>164</sup> See, for details, Principle 8 of the Rio Declaration, 1992. See also Principle 20 recognising the right of women to participate having vital role in environmental management development; Principle 21 acknowledging creativity, ideals and courage of youth to forge a global partnership in order to sustainable development and ensure a better future for all; and the principle 22 which recognised the vital role of indigenous people and their communities having vital role in environmental management and development because of their knowledge and traditional practices.

<sup>165</sup> In addition to the Rio Declaration, this Conference on Environment and Development handed down four more documents, viz. (i) the UN Framework Convention on Climate Change (UNFCCC), (ii) UN Convention on Biological Diversity (UNCBD), (iii) Forest Principle, and (iv) the Agenda 21 (a blue print on environmental governance in 21<sup>st</sup> Century). One of the provisions of UNFCCC needs mention as it for the first time recognised the right to sustainable development through the provisions of Article 4 which reads as under:

<sup>166</sup> Principle 15 of Rio Declaration 1992 provides that “In order to protect environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

<sup>167</sup> Principle 16 states that the “National authorities should endeavour to promote the internalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.”

<sup>168</sup> Principle 17 provides that “Environment impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.”

<sup>169</sup> For details, see, Vth Ed, SHASTRI S.C, ENVIRONMENTAL LAW 467-471 (Eastern Book Co., 2015).

<sup>170</sup> Principle 6 of Rio Declaration on Sustainable Development, 2012 which provides that, “We recognise that people are at the centre of concern for sustainable development and in this regard, we strive for a world that is just, equitable and inclusive and we commit to work together to promote sustained and inclusive economic growth, social development and environment protection and thereby to benefit all.”

international agenda with noteworthy initiatives towards this endeavour. Further the United Nation notified the Millennium Development Goals (MDGs) 2015 in the year 2005 and as resolved at the Rio+20 Summit on Sustainable Development, 2012, these MDGs were suitably modified based on Agenda 21 (1992) and were made limited in number, aspirational in contents and easy to communicate. These MDGs were notified as Sustainable Development Goals 2030.<sup>171</sup> It may be noted that the journey of sustainable development at international level marked its beginning to prevent toxification of the environment and prevent unbridled use and exploitation of natural resources. However, increased inequalities and marginalization were sought to be addressed through various developments during the last 50 years. The right of sustainable development is yet to achieve the quest of building a sustainable society.

## **PART – II, JOURNEY AT THE NATIONAL LEVEL**

As the initial thrust of the international community was to prevent and control pollution in order to ensure sustainability of the ecosystem, similarly the developments at the domestic front too were on prevention and control of pollution.<sup>172</sup> The recognition of the right to sustainable development at the international environment law as a fundamental right to freedoms, equality and adequate conditions of life in an environment of quality that permits life of dignity and well-being at the Stockholm Declaration, 1972<sup>173</sup> for mankind paved the way for its internalisation in the domestic environmental jurisprudence. Another interesting facet was that the right-duty corollary motivated the Indian Parliament to introduce suitable amendment in the Constitution through the Constitution (Forty-second Amendment) Act, 1976 adding Article 48-A<sup>174</sup> and 51-A(g)<sup>175</sup> which strive towards sustainable development. However, unfortunately the Parliament refrained from adding explicitly fundamental rights to the environment in the

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<sup>171</sup> There are 17 Goals in all and they include: (i) no poverty, (ii) zero hunger, (iii) good health and well-being, (iv) quality education, (v) gender equality, (vi) clean water and sanitation, (vii) affordable and clean energy, (viii) decent work and economic growth, (ix) industry, innovation and infrastructure, (x) reduction of inequality, (xi) sustainable cities and communities, (xii) responsible consumption and production patterns, (xiii) climate actions, (xiv) life below water, (xv) life on land, (xvi) peace, justice and strong institutions, and (xvii) partnership for these goals.

<sup>172</sup> See, the Water (Prevention and Control of Pollution) Act, 1974.

<sup>173</sup> Principle 1 of Stockholm Declaration, 1972.

<sup>174</sup> Article 48-A inserted under the Directive Principles of State Policy reads as under:

*“The State shall endeavour to protect and improve the environment and to safeguard forests and wild life of the country”*

<sup>175</sup> Article 51-A(g) reads that every citizen of India shall have a duty ‘to protect and improve natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures’

Constitution. The credit goes to the Supreme Court of India to recognise such a right in Article 21 of the Constitution.

*Judicial Expansion of the Right: Emerging Recognition of the Right*

The first landmark decision of the hon'ble supreme court striving to ensure sustainability of the earth and laying down the contemporary environmental jurisprudence is of *Ratlam Municipal Corporation v. Vardichand*,<sup>176</sup> wherein Justice Krishna Iyer in an appeal reminded the Municipal bodies of their constitutional obligation under Article 47 to ensure sanitation and public health did not accept the state arguments based on paucity of funds or lack of manpower but issued directions the municipal corporation Ratlam to take measures to ensure that people are not forced to live in an insanitary/unhygienic conditions. Further in *Sachidanand Pandey v. UOI*<sup>177</sup> the apex court held that “whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48-A and Article 51-A (g). When the court is called upon to give effect to the Directive Principles of State Policy and Fundamental Duties the court is not to shrug its shoulders and say that the priorities are a matter of policy and thus a matter for the policy makers... In appropriate cases court may go further but how much further must depend upon the circumstances of the case. The court may always give necessary directions.” Similarly the apex court in *RLEK*<sup>178</sup> case, popularly known as Dehradun lime queries case, being the first case in the country involving the issues relating to environment and ecological imbalance and the questions that arose for consideration of the court were ‘of grave moment and significant’ according to court and the court observed that, “we are not oblivious of the fact that the natural resources have got to be tapped for the purpose of social development but one cannot forget at the same time that tapping of resources have to be done with requisite attention and care so that the ecology and environment may not be affected in any serious way...”<sup>179</sup> Accordingly, the apex court held that the “preservation of the environment and keeping the ecological balance unaffected is a task which not only governments but also every citizen must undertake. It is a social obligation and let us remind every citizen that it is his

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<sup>176</sup> AIR 1980 SC 1622, wherein insanitary and unhygienic conditions prevailing in Ratlam town were brought before the court and the court accepting it as the primary duty of the municipal corporation directed them to ensure cleanliness so as allow people to live in an unpolluted environment. See also, *Dr. B.L. Wadhwa v. UOI*, AIR 1996 SC 2969 (Clean Delhi City case) and *Almitra H. Patel v. UOI*.

<sup>177</sup> *Supra* n-40.

<sup>178</sup> *Rural Litigation and Entitlement Kendra v. State of U.P.* (1985) 2 SCC 431.

<sup>179</sup> See, Vth Ed, S.C. Shastri, ENVIRONMENTAL Law p. 46 (Eastern Book Co. Lucknow 2015).

fundamental duty...”<sup>180</sup> Even various High Courts in India have taken proactive measures to ensure and promote implied sustainable development by recognising that the people are allowed to live in a clean and healthy environment. For example, the Andhra Pradesh High Court in *T Damodar Rao v. Special Officer, Municipal Corporation of Hyderabad*<sup>181</sup> case, the court categorically declared that the right to environment was a part of the right guaranteed under Article 21. It was stated that ‘*the slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be regarded as amounting to violations of Article 21 of the Constitution*’. The Rajasthan High Court in *Koolwal’s*<sup>182</sup> case observed,

We can call Article 51-A ordinarily as the duty of citizens but in fact it is the right of the citizens as it creates the right in favour of the citizens to move to the court to see that the state performs its duties faithfully and the obligatory and primary duties are performed in accordance with the law of the land. Omissions or commissions are brought to the notice of the court by the citizens and thus Article 51-A gives right to the citizens to move to the court for the enforcement of the duty cast on the instrumentalities, agencies, departments, local bodies and statutory authorities created under the particular law of the land.<sup>183</sup>

**(Emphasis supplied)**

The Kerala High Court in *F.K. Hussain v. Union of India*<sup>184</sup> case recognised the fundamental right to sweet and potable water, and declared that ‘one of the attributes of right to life is right to potable water as it is one of the basic elements which sustains life itself. In *Kinkri Devi*<sup>185</sup> case the Himachal Pradesh High Court moved a step ahead and declared that ‘improper and unplanned exploitation of the natural resources in the name of socio-economic development is the violation of right to life under Article 21. Around the same years, the apex court also finally recognised and declared that, “right of enjoyment of pollution-free water and air for full

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<sup>180</sup> Supra, n-45.

<sup>181</sup> AIR 1987 AP 171.

<sup>182</sup> L.K. Koolwal v. State of Rajasthan, AIR 1988 Raj 2; *see also*, Attakoya Thangal v. Union of India, 1990 KLT 580.

<sup>183</sup> Id.

<sup>184</sup> AIR 1990 Ker 321.

<sup>185</sup> *Kinkri Devi v. State of Himachal Pradesh*, AIR 1988 HP 4 cited in S.C. Shastri, “Environmental Law”, Vth Ed, Eastern Book Co. Lucknow, 2015 at p.71.

enjoyment of life is a part of right to life guaranteed under Article 21 of the Constitution.”<sup>186</sup> This decision on one hand came to recognise the enjoyment of pollution free water and air which has been construed to mean the right to live in a healthy and unpolluted environment. While the decision of the apex court in *Chhetriya Pradushan Sangharsh Samiti v. State of U.P.*<sup>187</sup> recognised that ‘every citizen has a fundamental right to have the enjoyment of ‘quality of life’ and living as contemplated by Article 21 of the Constitution’. The hon’ble apex court further declared that ‘anything which endangers or impairs by conduct of anybody, either in violation or in derogation of laws, the quality of life and living by the people is entitled to be taken recourse of Article 32 of the Constitution’.<sup>188</sup>

This over a decade plus long journey of implied sustainable development through the lens of the right to live in a pollution free environment as an integral part of the right to life, not only recognised the right which was articulated through Principle 1 of the Stockholm Declaration, 1972 but gradually its other facets, viz. ...’life in a quality environment that permits a life of dignity and well-being’ paved their way through the above cited decisions of the Indian courts.

#### *The Right to Sustainable Development Recognised*

Post recognition of the right to live in a pollution free environment led to various innovative and path-breaking initiatives. As during the period of initial phase, it was noted that the developments at the international level have moved to a newer pedestal focussing primarily on sustainable development by exhorting nations of the world to strive to internalise integrated approach in environmental governance through striking a balance between environment and development.<sup>189</sup> As the Rio Declaration 1992 came to recognise various principles of seminal importance for promoting sustained economic growth and shed the orthodox idea that environment protection and the development are sworn enemies or opposed to each other.<sup>190</sup>

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<sup>186</sup> *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420 (One may note here that the PIL was dismissed with a cost of Rs. 5000 imposed on the petitioner as frivolous ‘private interest’ petition but the right to live in a healthy environment came to be explicitly recognised as integral to Article 21 of the Constitution of India.

<sup>187</sup> AIR 1990 SC 2060, wherein a letter written to the Supreme Court against Jhunjhunwala Oil Mills near Sarnath in District Varanasi (U.P.) was treated as a petition under Article 32.

<sup>188</sup> See, Vth Ed, S.C. Shastri, ENVIRONMENTAL Law p. 70 (Eastern Book Co. Lucknow 2015)

<sup>189</sup> As stated earlier, the report of the Brundtland Commission (1987) titled as “Our Common Future” became the blue print for discussion at the Conference on Environment and Development, 1992 at Rio de Janeiro which mandated the sustainable development to be the need of the hour.

<sup>190</sup> One may note that the isolated treatment to the twin ‘declarations’ of the United Nations, i.e. the Stockholm Declaration, 1972 recognising the fundamental right to live the life in a quality environment which permits him a

Therefore it was all more important during this conference, popularly called the ‘earth summit’ to popularise the idea of sustainable development and convince the nations of the world that environment and development need be taken as two sides of the same coin and not opposed or in conflict with each other. The Rio Declaration also recognised the tools and gave the mechanism for promoting sustainable development.<sup>191</sup> Guided upon the international environmental law developments and as an emerging third world economy, India also took various initiatives in this endeavour of promoting the right to sustainable development during the phase under consideration.<sup>192</sup>

Soon after the right to live in a pollution free environment was recognised, the Indian apex court and other High Courts continued their endeavour of promoting sustainable development and implicitly recognising the right to sustainable development as integral part of the right to life under article 21. This journey is critically evaluated in this phase through the court decisions. A petition under Article 32 was filed by Mr. M.C. Mehta, a stalwart championing the cause of environment protection in India, without alleging any infringement or violation of fundamental right with a prayer to the apex court to issue appropriate directions for promoting environmental education and awareness among the masses which would help citizenry better in striving to discharge their constitutional obligation—a social obligation, relating protection and improvement of environment under Article 51-A(g) of the Constitution. The hon’ble apex court, accepting the petition, issued various directions, as prayed in this regard.<sup>193</sup> The court observed:

We are in a democratic polity where dissemination of information is the foundation of the system. Keeping the citizens informed is an obligation of the government. It is equally the responsibility of the society to adequately educate every component of it so that the social level is kept up.

The directions in aforesaid petition regarding spread of education and awareness on environmental matters may be viewed for recognising sustainable development as a judicial vision. The apex court also has not stopped there it has moved forward recognising the right to

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life of dignity and well being and other being the United Nation’s Declaration on the Right to Development, 1986 gives this notion that both cannot go hand in hand.

<sup>191</sup> For details, refer Part I of this paper.

<sup>192</sup> The legal and policy reforms undertaken or initiated by the nation are not being discussed here as the scope of this paper is limited to the journey of right to sustainable development.

<sup>193</sup> M.C. Mehta v. Union of India, (1992) 1 SCC 358

access to<sup>194</sup> and dissemination of information<sup>195</sup>, to know status environmental health<sup>196</sup>, and the right to environmental education.<sup>197</sup>

The right to equality in the context of environment, the apex court not only struck down the arbitrary or discriminatory actions of the state but also internalised various principles of international environmental law in domestic jurisprudence. A combined reading of all these provisions and the aforesaid decisions of the courts bring out the fact that the right to sustainable development started creeping-into the domestic legal framework. Further, the Indian judiciary, in quest of sustaining the sustainable development in the domestic front internalised various other principles of international environmental law, viz. Polluter Pay Principle<sup>198</sup>, Preventive and Precautionary Principle<sup>199</sup>, the doctrine of public trust and the principle relating environment impact assessment<sup>200</sup> which the court calls the essential feature of sustainable development. A few important decisions need specific mention here to substantiate this stride. In *Vellore Citizen Welfare Forum v. Union of India*<sup>201</sup> case, the apex court, speaking for the majority through Kuldip Singh, J. internalised the ‘polluter pay principle’ and ‘precautionary principle’ as part of domestic environmental jurisprudence and (H)e, accordingly, directed an ‘authority’ to be constituted under section 3 (3) of the Environment Protection Act, 1986, to implement the principle of polluter pays and assess the damage caused by the industrial pollution and also the compensation to be recovered from the polluters as the cost of reversing the damaged environment. Another principle as one of the salient principles of sustainable development is the precautionary principle which engulfs three-fold requirements for its implementation, viz. (i) that environmental measures to be taken by authorities, must be such that it ‘anticipates, prevents and attacks the causes of

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<sup>194</sup> *Bombay Environmental Action Group v. Pune Cantonment Board* (W.P. 2733/86), wherein Hon’ble Justice Dharmadhikari observed that Article 19 (1) (a) of the Constitution takes in its import the disclosure of information in regard to the functioning of the government and the right to know about it which is implicit in the right of free speech and expression guaranteed under Article 19 (1) (a). (Emphasis Added)

<sup>195</sup> *Life Insurance Corporation v. Mannubhai D Shah*, AIR 1993 SC 171

<sup>196</sup> *Supra* n-64

<sup>197</sup> *Supra* n-63; See, also Principle 10 of the Rio Declaration, 1992 in this regard.

<sup>198</sup> *Supra* n-31

<sup>199</sup> *Supra* n-32

<sup>200</sup> *Supra* n-33

<sup>201</sup> AIR 1996 SC 811, *see also*: *Indian Council for Enviro-Legal Action v. Union of India*, AIR 1996 SC 1446; *S. Jagannath v. Union of India*, AIR 1997 SC 811; and *M.C. Mehta v. Kamal Nath*, AIR 2000 SC 1997

environmental degradation, (ii) that where there are threats of serious or irreversible damage then any lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation, and (iii) that the onus of proof shall be on the defendant (respondent) to show that his action is enviro-benign. The *Vellore* case was the starting point in this direction.<sup>202</sup> The case of *A.P. Pollution Control Board v. M.V. Nayudu*,<sup>203</sup> is yet another decision of the period under review wherein the apex court supported the stand that the precautionary principle has become the law of land and the courts have not to wait for its universal acceptance or its implementation through the municipal law. Yet another milestone was achieved through the decision of *M.C. Mehta v. Union of India*,<sup>204</sup> wherein the apex court traced, through ancient Roman Empire, modified in the writings of Prof Joseph L Sax, and internalised the doctrine of public trust which, according to court, primarily rests the principle that certain resources like air, sea, waters and forests have such a great importance to the people as a whole that it would be wholly unjustified to make them to a subject of private ownership.

In view of the expanding right to Sustainable Development, the Kerala High Court in *P.A. Jacob* case pronounced that ‘compulsory exposure of unwilling persons to dangerous levels of noise amounts to clear infringement of their constitutional guarantee under Article 21.’<sup>205</sup> Similarly, the apex court in *Murli S. Deora* case held that, ‘smoking in any form in public places is a health hazard and violative of right to life under Article 21.’<sup>206</sup> Insecticides and medicines which are health hazards and endanger life are a type of pollution and violative of right to life.<sup>207</sup> Further according to the apex court, the right to life includes right to livelihood, better standards of life, hygienic conditions in workplace and leisure.<sup>208</sup> Further the ‘right to

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<sup>202</sup> *Supra* n-79; see also, *M.C. Mehta v. UOI*, AIR 1997 SC 734

<sup>203</sup> AIR 1999 SC 812

<sup>204</sup> (1997) 1 SCC 388

<sup>205</sup> *P.A. Jacob v. Supdt. of Police*, AIR 1993 Ker 1, also see, *Maulana Mufti v. State of West Bengal*, AIR 1999 Cal 15, *Bijoyananda Patra v. District Magistrate Cuttack*, AIR 2000 Ori 70, and *D.D. Vyas v. Ghaziabad Development Authority*, AIR 1993 All 57.

<sup>206</sup> *Murli S. Deora v. Union of India*, AIR 2002 SC 40

<sup>207</sup> *Ashok v. Union of India*, AIR 1997 SC 2298.

<sup>208</sup> *Consumer Education and Research Centre v. Union of India*, (1995) 3 SCC 42; also see, *Virender Gaur v. Union of India*, (1995) 2 SCC 577; also see, *Karuna Society for Animals & Nature v. Union of India* (2016) 14 SCC 303



sleep peacefully, right to leisure, and have a clean environment is a part of right to life under Article 21 read with Article 19, was stated by Calcutta High Court in *Burrabazar* case.<sup>209</sup>

Amidst this kind of endeavour of the Indian judiciary for ensuring sustainable development impliedly, a new paradigm came to be added by the apex court which raised a new debate over the right to sustainable development as a fundamental right under Article 21 of the Constitution. In N.D. Juyal's case the apex court speaking through Mr. Rajendra Babu, J. held that "adherence to sustainable development is a *sine qua non* for maintenance of symbiotic balance between right to environment and the right to development."<sup>210</sup>

**(Emphasis Supplied)**

The court further held that, the "*concept of sustainable development is to be treated as an integral part of right to life under Article 21 of the Constitution.*" This view-point of the court examined in the context makes it clear that the right to life includes the right to a healthy environment and accordingly the right to sustainable development is also a fundamental right under Article 21. Thus, the agenda of the right to sustainable development has been recognised in the Indian environmental jurisprudence.

*The Right to Sustainable Development: Law of the Land*

In *Bombay Dyeing & Manufacturing v. Bombay Environmental Action Group*<sup>211</sup> case, the apex court re-iterated and observed that, "the development of the doctrine of sustainable development is a welcome feature but while emphasising the need of taking into account the ecological impact, a delicate balance between it and the necessity for development must be struck."

**(Emphasis Added).**

However, the apex court in another case<sup>212</sup> stated that what the court should follow is the principle of sustainable development and find a balance between developmental needs and

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<sup>209</sup> *Burrabazar Fireworks Dealers Association v. Commissioner of Police*, AIR 1998 Cal 121.

<sup>210</sup> *N.D. Juyal v. Union of India* (2004) 9 SCC 362, at 382 (para 25)

<sup>211</sup> (2006) 3 SCC 434

<sup>212</sup> *Intellectuals Forum, Tirupati v. State of A.P.*, AIR 2006 SC 1350, (The apex court also held that "the responsibility of the state to protect environment is now a well-accepted notion in all countries. It is this notion that, in international law, gives rise to the principle of responsibility for pollution emanating within one's own territories. The same enunciates from the principles of Stockholm Declaration (1972)

environmental degradation. The apex court in *T.N. Godavarman case*<sup>213</sup>, invoking the *triveni sangam*, i.e. the trinity of Article(s) 21, 48-A and 51-A(g), introduced ecocentric approach which, according to court, ‘finds its place under Article 51-A(g) which stresses moral imperatives to respect intrinsic value, interdependence and integrity of all life forms’. This brings a departure i.e. from anthropocentric to eco-centric approach in overall sustainable development. Echoing the similar sentiments hon’ble apex court in *Karnataka case*<sup>214</sup> held that the time now has come to suspend all mining in the area on the basis of sustainable development which is a part of Article 48-A, 51-A(g) and 21 of the Constitution. Alongside this, the apex court also further expanded the nature and scope of the right to environment (sustainable development) through its subsequent decisions, viz. in *Amarnath Shrine board*<sup>215</sup> case the apex court clearly articulated that the right to life means the right to live with human dignity and the quality of life as understood in its richness making further the intergenerational equity principle as integral part of Article 21.

In addition to the apex court’s endeavour to internalise the right to sustainable development, it has also ensured an all-inclusive or comprehensive development through its decisions. A few such decisions need specific mention here to have a comprehensive understanding of the right to sustainable development. As it may be said that sustainable development cannot be thought of in absence of ecological balance and therefore it is essential to include concern for protection of other species, which are of or no potential value, keeping in mind their contributions in maintaining ecological balance and healthy environment. The hon’ble apex court in *Centre for Environment, WWFI v. Union of India*,<sup>216</sup> emphasized on the need to adopt an ecocentric

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<sup>213</sup> *T.N. Godavarman v. Union of India*, (2012) 4 SCC 362 (per Radhakrishnan, J.), the court also struck down the plea of state government of Chhattisgarh claiming paucity of funds for implementation of Centrally sponsored “Integrated Development of Wildlife Habitat, 2009” scheme under Article 48-A of the Constitution of India.

<sup>214</sup> *K. Guruprasad Rao v. State of Karnataka*, (2013) 8 SCC 418 at p.481; also see, *The Goa Foundation v. Sesa Sterlite Co. and Ors.*, MANU/SC/0087/2018 wherein the court speaking about the preservation and protection of mineral wealth, the indifferent attitude of the officials and flagrant violation of the ‘environmental rule of law’ observed that, “rapacious and rampant exploitation of our natural resources is the hallmark of our iron ore mining sector-coupled with a total lack of concern for the environment and the health and well-being of the denizens in the vicinity of the mines. The sole motive of mining lease holders seems to be to make profits (no matter how) and the attitude seems to be that if the Rule of law is required to be put on the backburner, so be it. Unfortunately, the State is unable to firmly stop violations of the law and other illegalities, perhaps with a view to maximize revenue, but without appreciating the long-term impact of this indifference. Another excuse generally put forth by the State is that of development, conveniently forgetting that development must be sustainable and equitable development and not otherwise”.

<sup>215</sup> *Amarnath Shrine, re.*, (2013) 3 SCC 247

<sup>216</sup> MANU/SC/0373/2013 was called upon to decide the necessity of a second home for Asiatic Lion (*Panthera leo persica*), an endangered species, for its long-term survival and to protect the species from extinction as an issue rooted on eco-centrism.

approach, i.e. “species best interest standards”. Hon’ble justice Radhakrishnan held that Article 21 of the Constitution of India protects ‘*not only the human rights but also casts an obligation on human beings to protect and preserve a specie becoming extinct*’, conservation and protection of environment is an inseparable part of right to life. The court in order to safeguard the wild life, through “ecocentric approach—speciesism” included that it : (i) denies any claim of ownership over wild animals; (ii) species have right to live and exist; (iii) obligation on the human beings under Article 21 is to protect and safeguard endangered species etc. Yet another decision by Radhakrishnan, J. in *Jallikattu*<sup>217</sup> case, the court explaining the concept of speciesism<sup>218</sup> held that, “*every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word “life” has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution.*”

**(Emphasis Added)**

Having stated the fundamental right of the animals the court further elaborated nature and scope of the right by making a combined interpretation of the provisions of the Prevention of Cruelty to Animals Act (PCA), 1960 read with Article 51-A (g) & (h),<sup>219</sup> recognized a number of rights of animals for their well-being and welfare.<sup>220</sup> The court categorically stated that the “rights and freedoms guaranteed to the animals under Sections 3 and 11 of the PCA<sup>221</sup> have to be read along with Article 51A(g) & (h) of the Constitution, which is the *magna carta* of animal rights.

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<sup>217</sup> Animal Welfare Board of India v. A Nagraja & Ors (2014) 7 SCC 547; also see, Regional Deputy Director v. Zavaray S. Poonawala and Ors,

<sup>218</sup> Oxford English Dictionary defines the term as “*the assumption of human superiority over other creatures, leading to the exploitation of animals*”. Further the term was coined by Richard Ryder in his various works on the attitude to animals, like, “*Animal Revolution, Changing Attitudes towards Speciesism*” (Oxford: Basil Blackwell, 1989), *Animal Welfare and the Environment* (London: Gerald Duckworth, 1992) etc.

<sup>219</sup> Article 51-A (h) reads, “*to develop the scientific temper, humanism and the spirit of inquiry and reform*”.

<sup>220</sup> Such rights include: the right not to be subjected to cruelty; Right to live in a healthy and clean atmosphere; right to get protection from human beings against inflicting unnecessary pain or suffering; right to get food, shelter; right to dignity and fair treatment; right, not to be beaten, kicked, over-ridden, over-loading; and right against the human beings not to be tortured and against infliction of unnecessary pain; or suffering.

<sup>221</sup> For details, see the provisions of section 3, 11 & 28 of the Prevention of Cruelty to Animals Act, 1960

In the case of *Common Cause v. Union of India and Ors*<sup>222</sup>, the primary contention revolved around the validity of the grant of 'ex-post facto' Environmental Clearances (EC) on which the court held that, "the grant of an Environmental Clearances (EC) cannot be taken as a mechanical exercise. It can only be granted after due diligence and reasonable care since damage to the environment can have a long-term impact. The concept of an *ex post facto* or a retrospective EC is completely alien to environmental jurisprudence... and that an Environmental Clearance will come into force not earlier than the date of its grant."

In *Paryavaran Suraksha Samiti and Ors v. Union of India and Ors.*,<sup>223</sup> the directions were sought to be issued to ensure that no industry (which requires 'consent to operate' from the concerned Pollution Control Board) should be permitted to operate unless it has a functional effluent treatment plant, which is capable to meet the prescribed norms for removing the pollutants from the effluent, before it is discharged and that no objection certificates should be given only after such effluent treatment plant becomes properly functional. The Hon'ble Court showing concern towards the serious implications of the such industrial activities upon the environment allowed the prayer and held that, "the industry requiring consent to operate, can be permitted to run, only if its primary effluent treatment plant, is functional" with directions to the concerned governments to issue notice to all such industries by way of public advertisement to make their effluent plant functional within three months from the date of the order the Court and to carry inspection after the expiry of three months to ensure the compliance of the order. The court also directed that those industries who fail to do so shall be restrained from any further industrial activity. One finds a sustainable development approach of the court.

In *Ratnagiri Nagar Parishad v. Gangaram Narayan Ambekar and Ors.*,<sup>224</sup> the respondents (plaintiffs) had approached the hon'ble apex court, alleging in their original suit, that appellants have been allotted the land for setting up of a Solid Waste Disposal Project, located around 10 kms. away from the limits of the Ratnagiri city at a hilly and sloppy area which will entail serious health problems for the villagers in the locality and will also inevitably pollute the river

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<sup>222</sup> MANU/SC/0930/2017 wherein it was brought to the notice of the court that the leases granted in various districts in Odisha have rapaciously mined iron ore and manganese ore, apparently destroyed the environment and forests and perhaps caused untold misery to the tribal people in the area.; see also *Common Cause v. Union of India and Ors.* (2019) 11 SCC 674 on illegal mining; *State of Meghalaya and Ors. v. All Dimsa Students Union* (2019) 8 SCC 177 and *Natural Resource Allocation in Re, Special Reference No. 1/2012* (2012) 10 SCC 1.

<sup>223</sup> (2017) 5 SCC 326

<sup>224</sup> MANU/SC/0435/2020

waters. Moreover, on this river, Sheel Dam is located on the boundary of Fanasavle village, which provides water supply to Ratnagiri city. The trial Court had dismissed the suit, but the first appellate Court allowed (decreed) the same, which decision has been upheld by the High Court in the Second Appeal. Accordingly, the defendants (appellant here) have challenged the order of the High Court. It was admitted by the defendant witnesses that in Ratnagiri city there is a collection of 15 to 16 trucks of solid waste per day. If such a huge wastage is going to be stored on the suit property, which is having slope towards the river, then, definitely it will pollute river water. The apex court held that “taking any view of the matter, the civil suit, as filed by the Respondent Nos. 1 to 19 (Plaintiffs) ought to have been dismissed, as was rightly done by the trial Court.” However, it did not completely close the doors of justice for the appellants by stating that, “indeed, the dismissal of the suit would not come in the way of the Plaintiffs or any other person affected by the proposed Project to make representation to the appropriate authority, considering the proposal for grant of statutory permissions under the concerned environment laws, and if that decision is not acceptable, to carry the matter further in appeal before the NGT or any other forum, as may be permissible by law” and accordingly all the questions in that regard were left open by the court. But for these directions, it would lead to victimization of the water body due to pollution and might result in miscarriage of justice.

### **PART – III, RIGHT TO SUSTAINABLE DEVELOPMENT- WHETHER A HUMAN RIGHT?**

The final declaration of Stockholm (1972) called as the Stockholm Declaration, 1972, is perceived as a statement of human rights as well as acknowledgement of the same wherein the Principle 1 provided that the “man shall have a fundamental right to freedoms, equality and adequate conditions of life in an environment of quality that permits him a life of dignity and well-being and he bears a solemn responsibility to protect and improve the environment for the benefit of present and future generations” and thus the need to preserve environment was not placed in opposition to economic development. Further, it is an accepted axiom that human rights claim offers a better opportunity for safeguarding the environment as one of the human rights among a variety of rights. The linkages between the two, i.e. the protection of human rights and environment protection are on one hand clear but at the same time ambiguous too. For example, where a human rights activist would advocate the idea of human right to life, health, property, culture, decent living conditions in a quality environment for majority of human populace and if these rights realised in the pursuit of affluence rather than moderation,

then it is likely to have adverse effect on natural resources and environment. However, an environmentalist may argue that there is a structural contradiction between fulfilling existing needs for growing the population and effective protection of environmental goods. Thus, he would never ever endorse the idea of development at the cost of environmental degradation and depletion of natural resource-base, making the two to be in conflict with each other. However, this notion was discarded long ago<sup>225</sup> and may be for this purpose the new jurisprudence from the lens of sustainable development came to be evolved which on one hand seeks to accept the fact that environmental degradation has adverse impact on quality of life which denies full enjoyment of human rights whereas failure to protect and promote human rights prevents progress towards environmental protection and sustainable development. Further where human rights are weak, civil societies cannot effectively raise their environmental issues. The advantages and disadvantages of internalisation of human right to sustainable development are as under:

#### *Advantages and Disadvantages of Human Right to Sustainable Development*

So far as the relationship between human right to environment (or right to sustainable development), it may be conceived in two ways, viz. (i) environment protection may be cast as a means to the end of fulfilling human rights standards, and (ii) that the legal protection of human rights is an effective means to achieving the ends of conservation and environmental protection. Environmental devastations caused through large developmental projects, the human right abuses may become more severe. Thus, for full realisation of a broad spectrum of human rights would constitute a society and a political order in which claims for environmental protection are more likely to be respected. A more ambitious variant of this view provides that there is and should be an inalienable human right to a satisfactory environment, and the legal means should exist to enforce this right in a consistent and effective manner.<sup>226</sup> The advantages of human right to sustainable development are that: (i) a human right based claim is stronger, i.e. a claim to an absolute entitlement, (ii) that the procedural dimensions of an environmental right can provide access to justice and mobilise redress where other remedies have failed, (iii) it may stimulate concomitant political activism on environmental issues where concerned

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<sup>225</sup> See, the UN Conference on Environment and Development, 1992 a conference in quest of striving to integrate the twin aspects, i.e. environmental needs and developmental needs and thereafter enough waters have flown since so far as discussed earlier parts of this paper.

<sup>226</sup> For details, see, ALAN E. BOYLE AND MICHAEL R. ANDERSON, (EDS), HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION p. 3 (Clarendon Press, Oxford).

citizens and non-governmental organisations may raise general statement of right than a highly technical, bureaucratic regulation expressed in legalese, and (iv) that it may provide the conceptual link to bring local, national and international issues within the same of legal judgement. In this context it would be pertinent to note that Anderson writes that the real value of human right is that it is available as a trump-card precisely when legal arrangements fail which came to endorsed in the silent valley hydro-electric power project case in Kerala, wherein the Kerala High Court dismissed the petition filed agitating group against commissioning of a power project in a dense forest cover by stating that, “We cannot substitute our judgement for that of the government on the question as to whether a national asset is to be more conveniently utilised as hydro-electric project with prospects of greater power generation or retained in its pristine glory or preservation of forests and wildlife, soil erosion and avoidance of other deleterious effects on community.” However, the project was set aside through an executive order based on the recommendations of a committee constituted by the government keeping in view the growing political agitation and unrest in the State. Thus, the claim of human right to sustainable development is likely to contribute towards promoting a sustainable society. However, its disadvantages cannot be ignored which include: (i) it is not clear as to what extent the claim of human right to sustainable development will be effective and efficacious in providing redress in the matters that involve highly techno-scientific issues, (ii) Human right-based approach may be used by affluent groups or ‘cosmetic environmentalists’ to protect elite environmental interests at the cost of dispossessed or environmentally vulnerable communities, (iii) the expansion of human right-based approach to sustainable development may displace other forms of legal remedy viz. tortious remedies or negotiated settlements which may at times prove to be better option.

In addition to the above the unique problems related to sustainable development also need consideration viz. the conceptual understanding about definition, nature and scope of the term ‘sustainable development’ involving issues such as what is to be sustained, for whom it is to be sustained and for how long it is to be sustained. Further the underlying values of sustainable development, viz. futurity of the concept, i.e. impact of present actions on the future generations, quality of life, i.e. well-being of anthropocene alone or it includes specie(ism), equity both intra and inter-generational equity, participation of all stake-holders in decision making or the decision of decision makers alone etc. The quest of building a sustainable society through this human right to sustainable development also needs attention on the other adjoining

concerns, viz. population explosion, industrial de-plosion, competitive implosion, and privatisation of environmental goods etc.

### *What Comes Out? The Findings and Conclusion*

The brief description of the journey of right to sustainable development reflects that it has a slow and steady beginning. The idea of sustainable development that started in the early 60s got momentum through various international law developments and came to become integral to the economic and environmental concerns in a balanced manner. The international environmental jurisprudence marked the journey of sustainable development in a haphazard manner, followed by its initial recognition and finally it has become an expanding concept for building a sustainable family of nations of the world. At the domestic front, the sustainability of nature was well enshrined in various ancient texts and literature yet the blind-fold rush for the development resulted in environmental degradation and depletion of resources which had to be tackled through international law developments and the commitments that were given to the international community at various conferences and declarations. Thus, the concept of sustainable development did not take birth at the initial stage. However, parliament by constitutional amendment has given some recognition to sustainable development but it hardly reached the ground level. Judiciary gets the credit for providing nutrition to the sapling of sustainable development which has now been developed as a banyan tree. Such development not only gives a wavelength for the growth of sustainable development but tries to bring a sustainable society in India, a lesson for countries to witness. The Indian judiciary has not only internalised and made it integral in contemporary governance but has opened new vistas of sustainable development through the tool of right—call it a fundamental right or human right and the contemporary discourse revolves around the idea of the right to be sustainable as a human right.

Though it is inappropriate to conclude this paper in the light of various unresolved riddles pointed here, any work that has been undertaken must be brought to logical end and accordingly, this present paper will also have to be concluded. Even though the initiatives on promoting sustainable society both at the international and domestic levels are praiseworthy. The judiciary deserves special mention here for exhibiting extraordinary commitment with conviction in building a sustainable society to ensure that life of every single specie is safe, protected and maintained alongside the sustainability of earth's ecosystem. The gradual yet positive shift in approaches to environment protection displacing anthropocentric approach to



eco-centric approach is likely to prove an important milestone in the times to come. Amidst these praiseworthy efforts, there is also an urgent need to address certain questions raised earlier so as to bring clarity about the sustainable development, fundamental (human) right to sustainable development so that the underlying values of sustainable development may be given an impetus and a sustainable society—a society to make full enjoyment of life in all its richness albeit in harmony with nature could be reinstated.



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