



LEX TERRA

Center for Environmental Law, Advocacy and Research
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LEX TERRA

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ABOUT CELAR

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

The main objectives of CELAR can be elucidated as follows:

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

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

MESSAGE FROM THE CHIEF MENTOR

It is, unfortunately, true that inadvertently as well eloquently, we humans are responsible for the liquidation of this planet without truly appreciating the negative consequences of minor things we do for 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 move, we as a legal institution, are continuously striving to bring environmentally benign 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 environmentally benign 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**

EDITORIAL

The Editorial Board is pleased to present Issue 35 of Lex Terra, an initiative by the Centre for Environmental Law, Advocacy, and Research (CELAR) of National Law University and Judicial Academy, Assam. It is well known that the human world is no isolated tower, rather it is closely intertwined with the animal world. In recent times, our growth and expansion have pushed us deeper into the domains of the animal world, something which was to be avoided. This has led to increased contact between humans and wildlife and has opened up Pandora's box. In this issue, the selectively curated articles are fine explorations of the contents that arose out of such interactions while also providing the way forward for a healthy coexistence.

In the first article, Karan Nimish Vakil has reviewed Professor Abhishek Chakravarty's article titled 'Covid-19: India Must Act Quickly to Open the Eyes of Its Laws to Exotic Species' and Mrs. Maneka Sanjay Gandhi's article titled 'Need for Laws to Prevent Smuggling of Exotic Animal Species in India'. According to the author, even though the concerns of Professor Chakravarty and Mrs. Gandhi stem from a very progressive point of view, they do not particularly hold much ground in the current Indian legal landscape. The possibility of a virus resulting from a zoonotic spillover in India is argued to be extremely bleak, if not non-existent. To counter their arguments further, the loopholes in India's existing laws relating to exotic animal species are highlighted. In addition, the author argues that relevant legal provisions are already in place to avoid any zoonotic spillover and concomitant virus. The author concludes by pointing out the more suitable reasons for bringing in amendments to the present Indian laws on exotic animal species.

Himanshi Bhatia in the second article explains how the phenomenon of diseases to "spillover" from the animal kingdom to humans is attributed to the environmental exploitation caused by humans themselves. The author's approach in the article is three-pronged. First, spillovers are explained and the deleterious effect of spillovers on society at large is determined. Second, the national and international instruments and efforts brought about to counteract spillovers, epidemics, and pandemics are identified. Lastly, the author gives a series of recommendations on how the prevailing situation can be ameliorated.

The third article by Jayanta Boruah shows the interwoven relationship between Common Property Resources (CPRs) and Sustainable Development Goals (SDGs), that is, without the former, the latter cannot be achieved. The author has elucidated the importance of CPRs in achieving Sustainable Development. Since the landless poor are the most affected by CPRs, the author explains the importance of endowing upon the poor certain ownership rights over properties to achieve these goals. The author ends with a conclusion that reducing the commercialization of Natural Resources by manifolds will help enhance the management of Natural Resources and, hence, help achieve Sustainable Development.

The year 2020, among other things, has seen the poignant death of a pregnant elephant caused by consuming a fire-cracker laden pineapple in the Palakkad region of Kerala, India. This has shocked the conscience of millions. Dr. Taniya Malik, in the fourth article of this issue, examines this horrifying incident from an enviro-legal perspective and vehemently advocates for the strict prohibition of inhumane practices to ward off wildlife. The author also discusses relevant sections under Indian statutes such as the Wildlife (Protection) Act of 1972, and the Prevention of Cruelty to Animals Act of 1960 to establish the illegality of the usage of explosive snares.

The concluding piece for this issue of Lex Terra, written by Udit Singh, addresses the plight of manual scavengers in India while assessing the 'Right to Healthy Environment' as guaranteed by the Indian Constitution. Despite laws and regulations prohibiting manual scavenging, the situation remains dire. The article also discusses Divya Bharathi's documentary, which highlights the different challenges of manual scavenging. The non-implementation of many laws and norms relating to manual scavenging is also discussed in the piece, drawing inferences to the State's role in safeguarding the rights of manual scavengers and the harsh living circumstances that they witness.

On sifting through the excellent contributions of Issue 35, it has truly been a fruitful experience for the Editorial Board. We hope to keep contributing to the field of Environmental Law with this and the forthcoming issues of Lex Terra. We would like to thank Dr. Chiradeep Basak, Assistant Professor of Law, NLUJAA, for his assistance and encouragement at every step, which helped us complete this edition of Lex Terra. Mere words cannot do justice to exclaim how grateful we are to him. We are also grateful to the peer reviewers who have taken out the time from their busy

schedules to scrutinize and select the articles for this issue. We would like to express our gratitude to the Honourable Vice-Chancellor of NLUJAA, Prof. (Dr.) V.K. Ahuja for his keen interest and guidance, which made this issue of the webzine possible. Lastly, we thank the esteemed Registrar of NLUJAA, Dr. Indranoshee Das, for her continuous support throughout this endeavour.

All and any errors are, of course, ours and ours alone. We hope you enjoy reading Issue 35 of Lex Terra.

It is said that those who protect, respect and save other animals lead the way in protecting and saving humanity and earth. Indeed, every effort in that direction, academic or otherwise, is bound to make the world a better place.

Thank you.

Lex Terra Editorial Board
2021 - 2022

**DELINKING INDIA'S LAWS TO EXOTIC SPECIES WITH THE OUTBREAK OF
ANOTHER PANDEMIC**

Karan Nimish Vakil*

Introduction

From a restaurant in Mumbai's *Lokhandwala* suburb, to a pet fair in Pune, to a house raid in Bangalore, to illegal pet shops all over the country, smuggling exotic animal species into India seems to have become a racket of mounting concern, as explained by Mrs. Maneka Sanjay Gandhi in her article titled '*Need for Laws to Prevent Smuggling of Exotic Animal Species in India*' for the New Delhi Times.¹ Mrs. Gandhi's article is almost a lament for more comprehensive laws to tackle this issue, and for better enforcement at the ground level. It concisely encapsulates the problem, its extent, and why it continues to persist.

On the other hand, Professor Abhishek Chakravarty's article for The Wire titled '*Covid-19: India Must Act Quickly to Open the Eyes of Its Laws to Exotic Species*'² explains the interplay between the various laws that govern (or allegedly rather fail to govern) exotic animal species in India and highlights zoonotic spillovers as a risk that is being run as a consequence.

India's recent history has reminded us that the legislature tends to be reactive rather than proactive: the National Investigation Agency was established only after the 26/11 attacks in Mumbai, rape laws were amended in 2013 as a reaction to the 2012 (Nirbhaya) Delhi gang rape and murder, and the Fugitive Economic Offenders Act, 2018 was only enacted after Vijay Mallya and Nirav Modi had fled to the UK. Following this trend, one may be tempted to believe, like Professor Chakravarty, that the covid-19 pandemic will be the catalyst to change and improve India's laws to exotic animal species. However, this may not be the case. For reasons that will be discussed in the course of this essay, the covid-19 pandemic may not be the answer to forcing a transformation of India's laws to exotic animal species. Further, it will be argued that India's existing laws to exotic animal species, while certainly far from exemplary, are already in place to such an extent to avoid any zoonotic spillover and

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¹ Maneka Sanjay Gandhi, *Need for Laws to Prevent Smuggling of Exotic Animal Species in India*, NEW DELHI TIMES (Aug. 14, 2018), <https://www.newdelhitimes.com/need-for-laws-to-prevent-smuggling-of-exotic-animal-species-in-india/>.

² Abhishek Chakravarty, *COVID-19: India Must Act Quickly to Open the Eyes of Its Laws to Exotic Species*, THE WIRE SCIENCE (Jun. 11, 2020), <https://science.thewire.in/environment/covid-19-india-exotic-animals-wildlife-trade-environment-ministry-advisory/>.

concomitant virus. Lastly, after arguing the aforesaid, this essay will proceed to point out those reasons that should be stressed on when arguing for the need for revising India's laws to exotic animal species.

Why the Covid-19 Pandemic might *not* be the Long-Sought Justification to Tighten India's Laws to Exotic Animal Species

It is estimated that there are 1.5 million viruses in wildlife that we do not know about. These viruses become 'zoonotic' when they jump from animal species to humans in a process called a zoonotic spillover. Zoonotic virus outbreaks have been increasing at an alarming rate between 1980 and 2010, with the number of these outbreaks almost tripling within this period of 30 years.³

Since the beginning of the covid-19 pandemic, the *Huanan* Seafood Wholesale Market (which, in reality, sold a lot more than seafood) in China's infamous Wuhan province has become the case study of choice to study zoonotic spillovers. Barring conspiracy theories of the virus being a man-made creation, this market is widely believed to be where the virus originated. This market is said to have sold over 120 wild animals across 75 species, including but in no way limited to foxes, crocodiles, wolf puppies, salamanders, snakes, peacocks, porcupines and camels.⁴

Another example of such markets, though less scrutinized by the global media, are the bushmeat markets in the Congo Basin (comprising of parts of Gabon, the Republic of the Congo, the Democratic Republic of the Congo, Angola, South Sudan, and The Central African Republic). This is where Ebola is believed to have originated. As per a 2002 study, 24 different animal species were being sold in these markets, with gorilla, antelope, chimpanzee, pangolin, elephant, bats, rodents and colobus being just some of the types of meat available for purchase off the counter.⁵

³A *Call to Stop the Next Pandemic*, WWF (Jul. 2, 2021), <https://www.worldwildlife.org/stories/a-call-to-stop-the-next-pandemic>.

⁴Peter J. Li, *Wuhan Coronavirus Another Reason to Ban China's Wildlife Trade Forever*, SOUTH CHINA MORNING POST (Jan. 29, 2020), <https://www.scmp.com/comment/opinion/article/3047828/first-sars-now-wuhan-coronavirus-heres-why-china-should-ban-its>.

⁵Glyn Davies, *Bushmeat and International Development*, SOCIETY FOR CONSERVATION BIOLOGY (May 28, 2002), <https://conbio.onlinelibrary.wiley.com/doi/abs/10.1046/j.1523-1739.2002.01636.x>.

The existence of a high level of biodiversity concentrated in a small spatial area results in what is called the 'amplification effect'. According to this, "biodiversity increases the risks of zoonotic disease spillover because it raises the number of possible vectors for transmission".⁶ The chances of a zoonotic spillover are also significantly increased by the open presence of body fluids of the infected animal such as saliva, blood, urine, mucous and faeces.⁷

Unlike the *Huanan* market in China and the bushmeat markets in Africa, where the demand for exotic animals is for the consumption of their meat (and also for traditional medicine), the demand for exotic animals in India is primarily as pets or live showpieces, as can be understood from Mrs. Gandhi's article. This is due to reasons such as culture and cost. India has more vegetarians than the rest of the world put together.⁸ Further, despite what has been depicted for decades in western popular culture, perhaps most infamously in the Indiana Jones franchise's *Indiana Jones and the Temple of Doom* (the archaeologist is served 'chilled monkey brain', served in the very skull of the primate to which it belonged), the consumption of exotic animals does not find a place in the vast majority of Indian cuisine. This is, of course, not to say that there is no consumption of exotic animals in India; the northeast is notorious for its wet markets, which are miniature versions of the type found beyond India's eastern borders. There have also been shocking instances, such as that of monkey slaughtering for meat consumption in the state of Chhattisgarh⁹, but these instances are few and far between. As far as the cost factor is concerned, it can surely be said that the vast majority of Indians cannot afford to import exotic animals for the consumption of their meat. Hence, with little demand for the meat of exotic animals, this illegal activity sustains itself in India on demand for pets or live showpieces.

Indian wet markets boast a significantly humbler variety of products than their far-eastern counterparts. One empirical study conducted in Nagaland showed only eight different species of animals being sold for consumption over an entire non-calendar year,¹⁰ while South Delhi's

⁶ Benedict McAleenan and William Nicolle, *Outbreaks and Spillovers*, POLICY EXCHANGE 2020 <https://policyexchange.org.uk/wp-content/uploads/Outbreaks-and-Spillovers.pdf>.

⁷ Zoonotic Diseases, CENTERS FOR DISEASE CONTROL AND PREVENTION, (Jul. 14, 2017), <https://www.cdc.gov/onehealth/basics/zoonotic-diseases.html>.

⁸ SARI EDELSTEIN, 'FOOD SCIENCE AN ECOLOGICAL APPROACH' (Jones and Bartlett Learning 2014).

⁹ Rashmi Drolia, *Monkey Meat: Illegal Monkey Meat Trade Rampant in Chhattisgarh*, TIMES OF INDIA, (2014), <https://timesofindia.indiatimes.com/city/raipur/Illegal-monkey-meat-trade-rampant-in-Chhattisgarh/articleshow/33642249.cms>.

¹⁰ Subramanian Bhupathy, *Wildlife Exploitation: A Market Survey in Nagaland, North Eastern India*, SAGE JOURNALS (Jun. 1, 2013), <https://journals.sagepub.com/doi/10.1177/194008291300600206>.

Indian National Army Market, which is known to sometimes illegally sell stingrays¹¹, can hardly even qualify as a biodiversity hotspot.

While pet fairs are not uncommon in India, such as the one in Pune “display(ing) exotic birds, fish and pedigreed dogs” as described by Mrs. Gandhi, they too lack the levels of biodiversity required for there to even be a perceived threat of a zoonotic spillover. Further, since the exotic animals on display at these pet fairs are obviously alive, the absence of the animals’ bodily fluids (that would, of course, be exposed in a wet market) dilutes the already minimal risk of a zoonotic spillover. Other instances recorded by Mrs. Gandhi of keeping exotic animals as pets or live showpieces also all seem to be at the micro-level.

Owing to the arguments above, it can be concluded that the Covid-19 pandemic might not be the long-sought justification to tighten India’s Laws to Exotic Animal Species, since the possibility of a virus resulting from a zoonotic spillover in India seems extremely small, if not non-existent. The substantive text Professor Chakravarty’s article itself seems to tacitly acknowledge the drawbacks in its title, as after pointing out “the heightened risk of zoonotic spillovers”, the alleged link between India’s laws to exotic species and a pandemic of the nature of covid-19 is neither elaborated nor explained.

India’s existing laws to exotic animal species, while certainly far from exemplary, are already in place to such an extent to avoid any zoonotic spillover and concomitant virus

While the initial arguments above state that the ongoing Covid-19 pandemic may not be the long-sought justification to tighten India’s laws to exotic animal species, these supplementary arguments will now proceed to explain how India’s existing laws are already well in place to avoid a zoonotic spillover and concomitant virus.

Professor Chakravarty’s article summarizes India’s laws to exotic species under different Acts such as the Wildlife Protection Act, 1972, the Customs Act, 1962 etc. The article also points out their drawbacks and how collectively, India’s laws to exotic species are inadequate inasmuch that they fail to clamp down on the illegal trade of exotic species. However, while

¹¹ Krishna S, *Don't Fear or Judge the Wet Market Too Quickly*, THE WIRE SCIENCE (Sep. 1, 2020), <https://science.thewire.in/environment/coronavirus-pandemic-wet-markets-wild-foods/>.

this may be true, it can also be pointed out that as far as the particular risk of a zoonotic spillover is concerned, India's laws to exotic species are actually fairly comprehensive.

Mrs. Gandhi and Professor Chakravarty both speak of a loophole in the Wildlife Protection Act, 1972. By this, they are referring to the fact that the Act excludes from its ambit exotic species that are native to areas beyond the Indian subcontinent. As a result of this, Indian wildlife authorities are rendered powerless when the findings of a raid are foreign species. However, given the arguments above, that due to culture and cost, the very demand for foreign exotic species in India is minimal, it can be argued that the existing legislation already encompasses the majority of species that are being illegally smuggled into or within India. This argument is also bolstered by a simple calculation. By Mrs. Gandhi's own estimate, "smuggling and transactions of foreign species worth INR 8-10 crores take place every day". This would mean that the annual worth of smuggling and transactions of foreign species is approximately INR 3000 crores (US\$2 billion). Now according to the World Wildlife Fund, "the illegal trade in wildlife comprises the fourth largest global illegal trade after narcotics, counterfeiting of products and currency, and human trafficking, and is estimated to be worth at least US\$19 billion per year."¹² This would mean that India's illegal wildlife trade of foreign species forms approximately 10% of the total market. Hence, it can be argued that the Wildlife Protection Act, 1972, while not ideal, still serves to target the majority of the types of species (mostly domestic) that are trafficked from and within India. Insomuch, it can be said that the law is well in place to such an extent so as to at least limit any unnatural biodiversity hotspots and avoid a possible zoonotic spillover.

While Professor Chakravarty's article discusses various pieces of Indian Legislation, and also international law, it fails to make so much as a reference to the Food Safety and Standards Act, 2006 (FSSA). In avoiding a zoonotic spillover, the provisions of the FSSA are arguably the most important. While the FSSA does not contain any special provisions for exotic species, it ensures health and sanitation levels that are akin to international standards for every provider of food from petty food manufacturers to large scale businesses. This is especially relevant for wet markets, where chances of zoonotic spillovers are highest. Further, the FSSA also provides stringent punishment for contravention of its provisions. Section 56 of the FSSA provides a

¹² *Fighting Illicit Wildlife Trafficking: A Consultation with Governments*, WWF (Nov. 23, 2020), https://wwf.panda.org/discover/our_focus/wildlife_practice/problems/illegal_trade/wildlife_trade_campaign/wildlife_trafficking_report/.

fine that may extend up to INR 1 lakh for unhygienic or unsanitary conditions for processing or manufacturing of food, and Section 59 of the FSSA provides for imprisonment that may extend up to 7 years and a fine that may extend up to INR 10 lakh for manufacturing, selling, storing, distributing or importing any article of food for human consumption which is unsafe.

As stated earlier, it is not within majoritarian Indian culture to consume the meat of exotic animals. This being said, there are pockets scattered over India where consumption of exotic animals does occur. Perhaps the most prominent and contemporary example of this is the consumption of dog meat in the north-east of India. Here, local legislation has played a significant role in curbing the trade and consumption of exotic animals. As recently as July 2020, the State of Nagaland “decided to ban the commercial import and trading of dogs, and well as the sale of dog meat, both cooked and uncooked.”¹³ Another north-eastern State, Mizoram, is also in the process of ending its dog meat trade.¹⁴ This has implications on trade at the domestic level as well as the cross-border level, since dogs are illegally traded across into China for meat consumption. Therefore, even without revising India’s Central laws, State laws seem to be playing a significant role in correcting wet markets, at least to such an extent that zoonotic spillovers are not any kind of perceived threat.

Lastly on this point, along with there being some respite for Indian laws to exotic species, there may also be some respite for the authorities who have been charged by Mrs. Gandhi for doing a job that could at best be described as perfunctory. Corruption and complacency of the Executive is not alien to India by any stretch of imagination, and the wildlife authorities are no exception. However, Indian customs authorities at airports have been doing a praiseworthy job of thwarting illegal smuggling of exotic animals before they can even enter the country. Despite Mrs. Gandhi claiming a refusal to learn or apply the provisions of CITES (Convention on International Trade in Endangered Species), a Joint Director of the National Academy of Customs (India) has stated that they “routinely conduct training and capacity building sessions for officers to cover wildlife products, species and derivatives”, and that “customs officers are regularly updated on the several multilateral environmental agreements under the global Green Customs Initiative, which includes CITES”. Further, despite the previously mentioned

¹³ Roderick Wijunamai, *With Dog Meat Ban, India Is Still Trying to ‘Civilise’ the Nagas*, SCROLL.IN (Jul. 8, 2020) <https://scroll.in/article/966757/with-dog-meat-ban-india-is-still-trying-to-civilise-the-nagas>.

¹⁴ Bikash Singh, *Mizoram Has Taken the First Step towards Ending Its Dog Meat Trade: Humane Society International*, THE ECONOMIC TIMES (Mar. 24, 2020), http://www.ecoti.in/_JZNsa.

loophole in the Wildlife Protection Act, 1972, officials “routinely deport any seized creatures who survive the journey, back to the airport they originated from. Incoming foreign species pose the biggest threat to a potential zoonotic spillover, and India scores as high as 82% in the country enforcement index, with officials having made 71 of the 97 possible seizures at airports.¹⁵ Hence, it can once again be seen how, while far from flawless, the Indian machinery is to a certain extent successful in combatting the trade of exotic species.

Reasons that should be stressed when arguing for the need for revising India's laws to exotic animal species

Given the arguments above and that a zoonotic spillover does not carry much weight in the argument for better laws to exotic species in India, this essay will now turn to briefly examining those reasons that should be stressed on when arguing for this much-needed cause.

The first reason is the most obvious, and is from an eco-centric perspective, that exotic species are simply not meant to be kept as showpieces or killed for their meat. All species have intrinsic value, and it is ethically wrong for humans to use them as resources. This reason is at its heart a moral one, and has, unfortunately, more often than not been inadequate in the past to push policymakers towards being more environmentally conscious. Yet, it seems to be growing in traction, especially over recent years, albeit though not yet in India.

Mrs. Gandhi makes a reference to exotic species being “released” after being illegally transported away from their native habitats. This is where the real threat to the environment lies. The Gaia hypothesis, formulated by James Lovelock, stresses on the existence of extremely complex self-regulating systems that maintain conditions wherein the living components of each ecosystem will thrive. The danger to the ecosystem here is that the exotic species could be an invasive species, meaning that it could severely upset and harm the equilibrium of the new ecosystem in which it has been placed. A good example of such disturbance to equilibrium by an invasive species in the Cane Toad in Australia, which caused a concerning level of depletion of native species. It must be noted here that the Cane Toad was brought to Australia entirely legally to serve as a natural pesticide for sugarcane crops in

¹⁵ Mahima Jain, *Excess Baggage: How Wildlife Is Trafficked by Air in and out of India*, MONGABAY (Aug. 16, 2020), <https://india.mongabay.com/2020/07/excess-baggage-how-wildlife-is-trafficked-by-air-in-and-out-of-india/>.

western Australia.¹⁶ If such catastrophic results ensued from a deliberate, scientifically backed action, then the possible consequences of an illegal import and release of an exotic species can only be left to the imagination. And while an invasive species may not be as severe as a global pandemic, as a threat it is still more real in the given set of circumstances that we have in India. While the ultimate disturbance to the equilibrium of an ecosystem will be the consequence of a chain reaction of several smaller disturbances, there are also more immediate and direct consequences that need to be considered. Mrs. Gandhi makes reference to a man who died in the State of Uttar Pradesh as a result of a snake bite from an African pit viper, illegally imported and simply gotten rid of when the owner grew bored of it. This is not just a problem in India but around the world; there are estimated to be between 5000 and 10000 captive tigers in the United States¹⁷, many whom once released pose an immediate threat to the lives of people in that area.

Lastly, it may yield positive results to make non-environmental arguments to tighten India's laws to exotic species. Mrs. Gandhi mentions that "while openly advertised, the trade is entirely in black". Perhaps a tax revenue angle would push the Indian legislature to fill the lacunae in the existing laws to exotic animals, because however important the arguments above, they are in reality unlikely to be taken and understood with the urgency that they actually demand.

¹⁶ *Cane Toad*, NATIONAL GEOGRAPHIC (Nov. 23, 2020), <https://www.nationalgeographic.com/animals/amphibians/c/cane-toad>.

¹⁷ Sharon Guynup, *Captive Tigers in the U.S. Outnumber Those in the Wild. It's a Problem*, NATIONAL GEOGRAPHIC (Dec. 12, 2019), <https://www.nationalgeographic.com/animals/2019/11/tigers-in-the-united-states-outnumber-those-in-the-wild-feature/>.

**PANDEMIC AND ENVIRONMENTAL LAW: SPILLOVER MITIGATION AND
LEGAL CONSIDERATIONS**

Himanshi Bhatia*

Introduction

“The most serious outbreak on the planet earth is that of the species *Homo sapiens*.”

- David Quammen¹

The pandemic that shook the modern way of life and made society reconsider their past choices is the result of a newly detected coronavirus in the city of Wuhan, China. This time it is speculated that wild bats are the source of the virus, but one thing remains certain that this is another disease from the animal kingdom. When a pathogen that has previously only existed in animals is transmitted to a human, the event is called a “*spillover*”, and the pathogen becomes a *zoonotic disease*.²

Nevertheless, the question which arises is, what are the factors contributing towards such spillovers? The blame for such outbreaks does not fall upon animals but on *Homo Sapiens*, i.e., humankind, which has disrupted the ecosystem. Eminent virologist Stephen S. Morse rightly said, “*Viruses have no locomotion, yet many of them have travelled around the world. They can't run, they can't walk, they can't swim, and they can't crawl. They ride.*” Humans have turned out to be prominent virus carriers as ecological disturbance by them causes the diseases to emerge in the first place. Such pandemics represent the unintended consequences of the actions humans undertake every day. They reflect the convergence of two forms of the crisis on our planet: the first is the ecological crisis, and the second is a medical one.³

The eminence of this article lies in the concluding question of ‘*What could be the measures to cease such spillovers in the future? Why are such pandemics not new to the world due to constant environmental annihilation by humans? Furthermore, what regulatory steps have been taken and need to be taken in Environmental Law to overcome such outbreaks?*’ This article shall thus be arguing the proposition that ‘considering the case of frequent outbreak of

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¹ DAVID QUAMMEN, SPILLOVER: ANIMAL INFECTIONS AND THE NEXT HUMAN PANDEMIC (2012).

² Rebecca Lipman, *Zoonotic Diseases: Using Environmental Law to Reduce the Odds of a Future Epidemic*, 33 VIRGINIA ENV. L. JOURNAL 154 (2015).

³ *Supra* note 1 at 30.

disease in the 21st century, the phenomenon of pandemic shall be subsumed by the greater responsibility of the nations, on prevention of human intervention into the wildlife by expanding the Environmental Law framework.'

Human Intervention Factors

Among humans, most disease outbreaks are due to zoonosis, which is an event of infection being transferred from animals to humans. Approximately seventy-five percent of current emerging infectious diseases are zoonotic, and roughly sixty percent of all known human pathogens originated in animals.⁴ It might seem like humans are victims of these pathogens, but what if these outbreaks increase because of humans' actions themselves? Some of the pandemic causing determinants are as follows:

- **Land Reclamation Activities**

The expansion of agriculture is considered among the most impactful human-led activity on the environment. It has transformed habitats and is one of the most significant pressures for biodiversity as nearly 77% of the global land is being used by humans for farming.⁵ This activity has increased exponentially in the last few decades, inducing the emergence of adverse diseases.

The expansion in agriculture, embracement of rice cultivation, and establishment of large and modern pig farms attributed to the increase in the "*Japanese encephalitis*" incidence in India from 1970 to 1980. Leptospirosis has increased in India during the past 20 years due to increased farming and inadequate rodent control.⁶ Another infectious disease epidemic in the Western Ghats, "*Kyasanur Forest Disease*" or "*Monkey Fever*," is associated with forest loss which spreads by infected ticks and affects people typically living and working in the Western Ghats, presumably due to greater human exposure to infected animals and ticks.⁷ The outbreak of Lyme disease in the United States and temperate regions has also been claimed to be caused due to extensive scale deforestation and fragmented forests.

⁴ *Supra* note 2 at 153.

⁵ Hannah Ritchie and Max Roser, *Land Use*, OURWORLDINDATA.ORG (Sep., 2019), <https://ourworldindata.org/land-use> (last visited on July 24, 2020).

⁶ Gowri Yale, V. Bhanurekha, *et.al.*, *Anthropogenic factors responsible for emerging and re-emerging infectious diseases*, 105 CURRENT SCIENCE ASSOCIATION 941 (2013).

⁷ Neha Jain, *Spillover: Encroachment Into Forest S Increases Risk Of Contracting Diseases From Animals*, MONGABAY (Feb. 17, 2020), <https://India.Mongabay.Com/2020/02/Spillover-Encroachment-Into-Forests-Increases-Risk-Of-Contracting-Diseases-From-Animals/> (last visited on July 25, 2020).

- **Change in Human Consumption Pattern**

In many parts of the world, wild animals are enthusiastically hunted for their meat. There was a recent “wild flavour” movement in which wild animal delicacies surged in popularity in China. The growth in demand for wild animal meat led to increased wild animal hunting, and consequently, more people came into contact with wild animals at the market or in restaurants.⁸ Similarly, in West African countries, hunting wild animals for human consumption, also termed “*Bushmeat*”, hunting is the next leading threat in infectious diseases spillover. Approximately 1 to 3.4 million tonnes and 67 to 164 million kg of bushmeat consumption have been reported in Central Africa and the Amazon Basin, respectively.⁹

The recent outbreak of COVID-19 and its antecedent version SARS (Severe Acute Respiratory Syndrome) in 2003, which broke out in Southern China, was also caused due to Chinese “*wet markets*” itself where wild exotic animals were slaughtered and kept in tiny spaces with unhygienic conditions providing conducive environment for such frequent spillovers. Likewise, the spread of the Ebola virus is linked with the consumption of infected chimpanzees by the local villagers in the Congo basin of Africa.

By way of logging, road building, slash-and-burn agriculture, hunting and consuming wild animals, clearing forest to create cattle pasture, mineral extraction, urban settlement, chemical pollution, mining the oceans unsustainably for seafood, climate change, and other “civilizing” incursions upon the natural landscape – there is a severe strain on entire ecosystems.¹⁰

Legal Framework

International and environmental organizations have framed various laws and guidelines for the nations on circumstances leading to such spillovers and precautions to be taken when pandemics occur. But these policies are not serving the purpose of prevention of future spillovers as even till now, “*zoonosis*” is not the focal point of such statutes. The legislations and organizations directly dealing with zoonotic diseases are more concerned about their actions after the outbreak. According to them, spillovers and new zoonotic diseases will

⁸ *Supra* note 2 at 157.

⁹ *Supra* note 6 at 942.

¹⁰ *Supra* note 1 at 30.

occur frequently, and the best alternative is to upgrade the public health system for their timely cessation. However, as the proverb says, “*prevention is better than cure*,” the global approach must have a preventive rather than defensive outlook towards these diseases.

- **International Initiatives**

- One Health

- One Health approach was adopted in 1984 by various international organizations and scholarly bodies. It introduced the combination of human, animal, and environmental components to address global health challenges that have an ecological correlation.¹¹ It is a globally accepted model for research on epidemiology, diagnosis, and control of zoonotic diseases, envisaged by international organizations, and is embraced by many nations to align multidisciplinary research in the field of zoonotic infections.

- Tripartite Guide – On Zoonotic Diseases

- This tripartite collaboration has been taken up by World Health Organization (WHO), Food and Agriculture Organization (FAO), and World Organisation for Animal Health (OIE), who work in partnership to make “One Health”, a comprehensive tool for accounting challenges in the field of public health, animal health, and the environment surrounding us.

- It guides the government managerial staff on zoonotic disease threats at an administrative level. This includes the various ministries responsible for human health, animal health, wildlife, and the environment.¹²

- Global Health Security Agenda (GHSA)

- It is a group of 69 countries, international organizations and non-government organizations, and private sector companies that have come together to achieve the vision of a world safe and secure from global health threats posed by infectious diseases.¹³ This

¹¹ Satesh Bidaisee, Calum N. L. Macpherson, *Zoonoses and One Health: A Review of the Literature*, JOURNAL OF PARASITOLOGY RESEARCH (Jan. 30, 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3928857/> (last visited on July 25, 2020).

¹² THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, THE WORLD ORGANISATION FOR ANIMAL HEALTH, ET. AL., *TAKING A MULTISECTORAL, ONE HEALTH APPROACH: A TRIPARTITE GUIDE TO ADDRESSING ZOOONOTIC DISEASES IN COUNTRIES* (2019).

¹³ Global Health Security Agenda, <https://ghsagenda.org/> (last visited on July 24, 2020).

initiative aims to bring together various nations, regions, international organizations, and the non-governmental sector to accelerate and optimize global health security.

International Health Regulation (IHR)

196 WHO Member States adopted the IHR Agreement in 2005 as a responsive step towards strengthening the health systems after the outbreak of the SARS epidemic in southern China in 2003. The objective of these regulations is to prevent, control, and provide a public health response against the global spread of disease in ways that are in consonance with and restricted to public health risks and avoid unnecessary interference with international traffic and trade.¹⁴

These were some of the steps initiated at the global level by International Organisations though they are not inclusive in the sense that there is still persistent neglect towards the prevention of spillover itself. Few other countries have tried to address zoonoses directly, but there has been no favourable outcome until now. China had prohibited the hunting of wild animals for consumption earlier, but despite these regulations, the Chinese “wet markets” are still stacked with exotic wild animals. Similarly, various African nations have restricted “bushmeat hunting”, but it is still prevalent in large parts of the Congo Basin.

• Indian Legal Framework

When we discuss Indian legislations in the area of controlling an outbreak of infectious diseases and protection of the environment vis-à-vis wildlife conservation, these are some of the steps taken up by the Government in accordance with the WHO guidelines:

National Centre for Disease Control (NCDC)

NCDC is a department under the administrative control of the Directorate General of Health Services, Ministry of Health and Family Welfare, Government of India, which was formerly known as the National Institute of Communicable Diseases (NICD). It is the only department within the Indian Ministry that has a separate division for zoonosis, with a mandate for controlling emerging and re-emerging diseases along with notifying public health emergencies of international concern (PHEIC) to WHO, and responding to requests for verification of information of similar events, reinforce field investigations for early

¹⁴ World Health Organization, International Health Regulations (2005), art.2.

diagnosis and technical guidance to the States for the prompt and effective response to PHEIC.¹⁵ It also has the responsibility to develop guidelines for establishing and training rapid response teams (RRT) deployed in all states at the district level.¹⁶

The Wildlife (Protection) Act, 1972

One of the primary Acts dealing with the protection of wildlife also recognizes the importance of immunization of the livestock to prevent the spread of infectious diseases through infected animals.¹⁷ It also prohibits the commencement of business/trade concerning scheduled animals¹⁸ in terms of cooking, taxidermy, captivity, etc.¹⁹ Such preventive measures have assisted in curbing the scope of the spread of infection from the unknown wild carriers.

The Prevention and Control of Infectious and Contagious Diseases in Animals Act, 2009

The primary purpose of this Act is to prevent, control, and eradicate the infectious and contagious diseases affecting animals. It aims prevention of the outbreak or spread of contagious diseases from one state to another and to meet the international obligations of India for their exports on the same matter. Likewise, it guides every owner or charge of the infected animal with the liability to segregate such animals from other healthy animals and all steps for quarantining infected animals.²⁰

Advisory on Exotic Animals

The Union Ministry of Environment, Forest, and Climate Change (MoEFCC) on June 1, 2020, issued an advisory to streamline and formalize the process of importing live exotic animals.²¹ In response to the recent SARS-CoV-2 (COVID-19) outbreak, the Government of India has tried to align the import of exotic animals which were not covered under the Wildlife Protection Act, 1972, but are mentioned under the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as they

¹⁵ World Health Organization, *International Public Health Hazards: Indian Legislative Provisions* 15 (2015).

¹⁶ *Id.* at 16.

¹⁷ The Wild Life (Protection) Act, 1972 (Act 53 of 1972), § 33A.

¹⁸ *Id.*, § 49A.

¹⁹ *Id.*, § 49B.

²⁰ The Prevention and Control of Infectious and Contagious Diseases in Animals Act, 2009 (Act 27 of 2009), § 5.

²¹ *Environment ministry issues advisory to import live exotic animals*, DOWNTOEARTH (June 05, 2020), <https://www.downtoearth.org.in/news/wildlife-biodiversity/environment-ministry-issues-advisory-to-import-live-exotic-animals-71597> (last visited on July 24, 2020).

were beyond the purview of the forest departments. This advisory will help ascertain the population of exotic animals within the country to keep the check on zoonosis.

The Way Forward

Notwithstanding the fact that quite a few legislative actions are being taken up at the International and National levels in areas of quick response towards future outbreaks and the up-gradation of the public health system, minimal operations are functioning on the subject of the prevention of zoonoses itself. With frequent epidemic outbreaks in the 21st century, it is apparent now that the world requires a sustainable approach, with shared leadership among all stakeholders comprising national, international, and non-governmental organizations. To promote an inclusive structure for surveillance, diagnosis, and prevention of emerging animal disease threats, some of the recommendations which can be placed by the organizations in future policies can be summarised as follows:

- **Establishment of Liability and Incentive Regime**

One of the primary factors contributing to the transition of an epidemic to the later stage of a pandemic is the delay in reporting the outbreak of infectious disease by the particularly affected nation. Most countries avoid reporting the disease to WHO because of their concerns dealing with the trade or travel sanctions by the international community.²² To avoid such setbacks, as was recently witnessed in the case of COVID-19, the traditional liability regime can be created by global organizations wherein if any nation fails to report the spread of contagious infectious diseases within a reasonable time, then it shall be imposed with sanctions of strict liability. On the other hand, countries should be encouraged to report promptly any such epidemic incidence at the international level by way of incentives in the form of early economic packages and illustration of them as reliable and “good global citizens.”

- **Synthesis of Major International and National Organisations**

The integrated approach against the emergence and re-emergence of pandemics can only be acknowledged when there will be coordination among different organs with a sustainable goal. The issue of environmental degradation and catastrophic diseases concerns every department or institution. For instance, the World Trade Organisation (WTO) can look into

²² KEUSCH GT, PAPPAYOANOU M, ET.AL., INCENTIVES FOR DISEASE SURVEILLANCE, REPORTING, AND RESPONSE (2009), <https://www.ncbi.nlm.nih.gov/books/NBK215309/> (last visited on July 26, 2020).

the trade related to exotic or wild animals and their problems. Likewise, the World Bank can provide funding to developing nations with spillover hotspots for surveillance and research in such areas. With regards to the national level, synthesis can take place among different departments and ministries. The “Division of Zoonoses” shall not function under the Health Ministry only but other ministries and departments concerning Environment, Forest, Wildlife Protection, Agriculture, etc., and shall work together towards the goal of curbing epidemics in the country.

- **Public-Private Partnership**

The major drawback in terms of sustainable development concerning public health is the lack of a private-public partnership. In the private sector, the global food supermarket and restaurant chains are directly interested in preserving animal and human health, as emerging zoonotic diseases have severe economic repercussions.²³ A large portion of food operations and agricultural activities are managed by the private sector; therefore, they can play a crucial role in the research and funding process. To bridge this gap, there can be a partnership among private players and the Government to form a response team against the future occurrence of pandemics.

- **Prohibition of Tourism in Areas of Spillover**

The “Marburg Virus” source was found to be bats present at the “Python Caves” in Uganda. The medical fraternity established that miners working in the caves were infected with it, but the concerning point was that this virus travelled from Africa to Germany because tourists who visited caves subsequently fell prey to it. Such tourists do not have any compelling reasons to visit spillover sensitive areas.

Therefore, if a site has a demonstrated risk of spillovers, there must be a prohibition on tourism. If the relevant disease is not sufficiently lethal or otherwise dangerous enough to warrant an outright ban, a law mandating certain safety precautions may be appropriate. Such a statute could require that all individuals going into an area wear protective gear or stay in the area for only a limited amount of time.²⁴

²³ KEUSCH GT, PAPPANOANOU M, ET.AL., SUSTAINABLE FINANCING FOR GLOBAL DISEASE SURVEILLANCE AND RESPONSE (2009), <https://www.ncbi.nlm.nih.gov/books/NBK215328/> (last visited on July 26, 2020).

²⁴ *Supra* note 2 at 168.

Conclusion

Nature has judiciously given space to every species on the planet, and humans must respect the freedom of other species. The zoonoses appear to be a failsafe mechanism placed by nature to contain the dreadful conquest of one species over others. Frequent epidemics and the recent COVID-19 outbreak are just a glimpse of what the future could look like if we as a global community do not take any initiative towards environmental protection in the long run. At the individual level itself, this is when we must assist our Government and the International Organizations in achieving an aim towards a sustainable world that maintains the equilibrium of human development and sanctity of nature.

MANAGING COMMON PROPERTY RESOURCES FOR ACHIEVING SUSTAINABLE DEVELOPMENT GOALS

Jayanta Boruah*

Introduction

As human civilization progressed, population rates also started increasing and it's a well-known theory that human wants will always be unlimited while resources for satisfying such wants will keep on getting limited. Thus, proper management of available limited resources becomes a matter of utmost importance. Common Property Resources (CPRs) are those sets of resources that are not under the ownership of any particular individual, rather they are managed by a group of individuals or by a definite community at large.¹

This makes it clear that why management of CPRs becomes important especially in developing and least developed countries since most of the population in such countries remain below the poverty line and lacks private ownership over property for maintaining their livelihood and so they are directly dependent on CPR.² 193 countries across the world have officially adopted the concept of Sustainable Development (SD) after witnessing the huge genesis of destruction by the traditional model of development and to achieve SD, Sustainable Development Goals (SDGs) have been fixed that is to be realized by 2030.³ An analysis of these SDGs provides that greater importance has been given to eradicating poverty through just the distribution of resources.

While on the other hand even though urbanization,⁴ rural-urban migration,⁵ industrialization,⁶ and all such other activities are taking place, the dependence of the poor people especially rural

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¹ OECD, <https://stats.oecd.org/glossary/detail.asp?ID=391> (last visited Apr 08, 2020).

² Sudarshan Prasad Regmi, *Common Property Resources and Their Linkages with Livelihood in South Asia: A Review*, RESEARCHGATE (2011), https://www.researchgate.net/publication/228533585_Common_Property_Resources_and_Their_Linkages_with_Livelihood_in_South_Asia_A_Review.

³ Resolution adopted by General Assembly on 25 September 2015, UN General Assembly (Apr 09, 2020, 12:12 AM) <https://documentsddsny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement>.

⁴ Urban Population (% of total population)- India, United Nations Population Division, World Urbanization Prospects, 2018 Rev. The World Bank (Apr 08, 2020, 10:33 AM) <https://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS?locations=IN>.

⁵ Harpeet Singh, *Increasing Rural to Urban Migration in India: A Challenge or an Opportunity*, 2(4) INT. J. APPL, 447-450 (2016), <http://www.allresearchjournal.com/archives/2016/vol2issue4/PartG/2-3-152.pdf>.

⁶ Indian Manufacturing Sector in India Industry Report Dec. 2019, IBEF (Apr 08, 2020, 10:43 AM) <https://www.ibef.org/industry/manufacturing-sector-india.aspx>.

people on CPRs are not decreasing,⁷ which indicates that community ownership requires far more consideration in the policymaking process if sustainable development is to be achieved. But empirical researches have shown that such CPRs are decreasing both in respect of their area and quality due to population explosion,⁸ industrialization⁹, and also because of improper State management through legal frameworks.¹⁰ Therefore, it becomes relevant to understand how the management of CPR can become beneficial in achieving the SDGs.

Conceptualizing CPR and SD

Although there were instances of community management over property from time immemorial¹¹ they were mostly referred to as Open Access Resources (OAR), while CPR as a concept gained recognition after Garrett Hardin publicized Tragedy of the Commons in 1968.¹² There have been several interpretations to this concept, however, commonly CPRs are regarded as those Natural Resources whose use is subtractive and is claimed by a group of indivisible individuals.¹³

These CPRs are different from OARs because OARs are exclusively accessible to all without any norms regarding management and their concerns for deterioration are mostly ignored, while CPRs are accessible to only a particular group having customary or State Rules governing their management and their deterioration is always under consideration as they are basically for common good.¹⁴ Thus, CPRs can be understood as such resources that are utilized by a group of people residing in a community having certain common needs to be satisfied from such

⁷ Chapter II- Issues in Common Property Resources: An Overview, SHODHGANGA (Apr 08, 2020, 10:49 AM) https://shodhganga.inflibnet.ac.in/bitstream/10603/120634/7/07_chapter%202.pdf.

⁸ Garette Hardin, *The Tragedy of Commons*, 162(3859) AAAS (1968), <http://www.jstor.org/stable/1724745>.

⁹ *Id.*, at 41.

¹⁰ Ajit Menon & G. Ananda Vadivelu, *Common Property Resources in Different Agro-Climatic Landscape in India*, RESEARCHGATE (2006) <https://www.researchgate.net/publication/42763952>.

¹¹ Soutrik Basu, Joost Jongerden, et al, *Development of the drought tolerant variety Sahbhagi Dhan: exploring the concepts commons and community building*, INT. J. COMMONS (2017), https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/7220/509.pdf%3Fsequence%3D1%26isAllowed%3Dy&sa=U&ved=2ahUKEwjR3uuh7NnoAhU4wTgGHf4qAmMQFjAAegQIBRAB&usg=AOvVaw0YCp27Q_AG5qTGazNdWpWB.

¹² *Supra* note 7.

¹³ G.K. KADEKODI, COMMON PROPERTY RESOURCE MANAGEMENT: REFLECTION ON THEORY AND THE INDIAN EXPERIENCE. (Oxford University Press 2004).

¹⁴ Unit 1- Common Property Resources and Sustainable Development, Natural Resources and Rural Development, GYANKOSH (Apr 09, 2020, 12:20 AM) <https://www.google.com/url?q=http://egyankosh.ac.in/bitstream/123456789/42041/1/Unit1.pdf&sa=U&ved=2ahUKEwj8nKqaxdnoAhXbdn0KHS6EBDQQFjABegQIABAB&usg=AOvVaw3S4Xa9uzEWWqkT-hJPc9Rc>.

resources for common good. This element of common good may be held to be a distinct element that separates it from other sorts of Property Ownerships over Natural Resources.¹⁵

While the concept of SD argues for an inverse relationship between environmental protection of Natural resource exploitation during the enhancement of country-specific developmental goals¹⁶ it strives for maintaining a balance between elements of natural capital and socio-economic elements.¹⁷ SD primarily focuses on the principle of securing intergenerational equity based on the notion that economic ends are the mean and not an end for any society sustaining the existence of humanity.¹⁸ It has been witnessed that the traditional models of economic development have led to a significant amount of exploitations of Natural Resources¹⁹ but at the same time, it has also been realized that economic utilization of such Natural Resources is also needed for human survival.²⁰ Thus, the concept of SD aims for efficient utilization of such resources for comprehensive economic growth without comprising the available stock of such limited resources.

Based on the above discussions, we can argue that since CPR is also a category of Natural Resources, sustainable management of such resources also becomes important for achieving SD.

Management of CPR for Achievement of SDGs

It was in 2012 when proposals for SDGs were proposed at Rio+20 and in July 2014, UN General Assembly accepted it as a post-2015 Agenda bringing an end to the Millennium Development Goals and initiating the beginning of SDGs to be achieved by 2030.²¹ These SDGs are based on the Principles of SD that were continuously evolving since their inception.²²

¹⁵ Jayanta Boruah, *Common Property Resources and Sustainable Development under Indian Legal Framework*, 3(1) GIBS LAW J., 207, 207-221 (2021).

¹⁶ Priscilla Schwarz, *Sustainable Development in International Law*, 5 NON-ST. ACTORS & INT'L L. 127 (2005).

¹⁷ Mihaela Elvira Gherasim & Gheorghe Tanase, *The Fundamentals of Sustainable Development*, 4 CONTEMP. READINGS L. & SOC. JUST. 446 (2012).

¹⁸ Gail E. Henderson, *Rawls & Sustainable Development*, 7 MCGILL INT'L J. SUST. DEV. L. & POL'Y 1 (2011).

¹⁹ Jerry Taylor, *The Challenge of Sustainable Development*, 17 REGULATION 35 (1994).

²⁰ David G. Victor, *Recovering Sustainable Development*, 85 FOREIGN AFF. 91 (2006).

²¹ Paula Caballero, *A Short History of the SDGs* (Apr 07, 2020, 02:22 AM) <http://deliver2030.org/wp-content/uploads/2016/04/A-short-history-of-the-SDGs-Paula-Caballero.pdf>.

²² *Sustainable Development Goals and the relationship to a past 2015 global development*, SUSTAINABLE DEVELOPMENT GOALS KNOWLEDGE PLATFORM (Apr 09, 2020 01:11 AM) <https://www.thecommonsjournal.org/article/10.18352/ijc.673/>.

SDGs are a set of 17 Goals that were to be realized for achieving SD within 15 years²³ due to the increasing awareness for safeguarding the planet.²⁴

The importance of CPR in the achievement of SDGs can briefly be explained in the following manner:

1. Goal 1 speaks for alleviating poverty²⁵ and for securing to the poor equal rights in economic resources and other services including the Right to have access over Land,²⁶ for which the poor must have ownership rights over property, and in the absence of such rights, CPR can be utilized by such poverty-stricken people for maintaining their livelihood.²⁷ So, extending the quality of CPR is expected to provide a minimum level of expectation to the poor of having rights in utilizing certain categories of properties with the objective of common welfare that becomes necessary for achieving SDG 1.
2. Goal 2 speaks for maintaining food security²⁸ by increasing agricultural productivity and also for empowering indigenous communities and other marginalized sections of the society.²⁹ It further provides for enhancing the capacity for adapting to climate change-related disasters due to extreme weather conditions.³⁰ In such cases, CPR can play an active role both in maintaining community-oriented agricultural development as well as in adapting to climate change disasters.³¹
3. Goal 5 provides for securing ownership rights for women to mitigate gender inequalities with the help of legal framework and other customary laws³² and even to achieve this goal, CPR management can be attributed to being of utmost relevance. Since due to the feminization of verity, females mostly remain at the receiving end in matters related to the distribution of ownership rights over the property.³³ However, management of CPR does not provide ownership rights to individuals, therefore it can

²³ *About the Sustainable Development Goals*, UN (Apr 07, 2020, 02:47 AM) <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>.

²⁴ *Secretary General's Remarks to the press at COP22*, UN (Apr 07, 2020, 02:43 AM) <https://www.un.org/sustainabledevelopment/blog/2016/11/secretary-generals-remarks-to-the-press-at-cop22/>.

²⁵ Sustainable Development Goal 1.

²⁶ *Id.* at Target 1.4.

²⁷ N S Jodha, *Depletion of Common Property Resources in India: Micro-Level Evidence*, JSTOR (1989), <https://www.jstor.org/stable/2807930?seq=1>.

²⁸ Sustainable Development Goal 2.

²⁹ *Id.* at Target 2.3; See indicator 2.3.2.

³⁰ *Id.* at Target 2.4.

³¹ *Supra* note 7.

³² Sustainable Development Goal 5.

³³ Carol S. Robarbost, *Gender and Property Rights: A Critical Issue in Urban Economic Development*, URBAN INSTITUTE (July 4, 2011), <https://www.urban.org/sites/default/files/publication/27491/412387-Gender-and-Property-Rights.PDF>.

be expected to provide opportunities to the female members within a community for their welfare and empowerment.

4. Goal 11 argues for increasing the standards of every household and securing a proper human settlement. This goal is primarily focused on the aspects of urbanization indexes,³⁴ however, community settlement over Natural Resources can also be targeted under this goal.³⁵ For instance, Target 1 speaks for access for all to affordable housing and basic services which if not possible through distribution of private ownership amongst the poor might become possible by allowing them a share in the management of CPR. Similarly, Target 3 provides for sustainable human settlement and inclusive participation in management which can also be achieved through the management of CPR. In the like manner, the other targets also provide for reducing the burden of economic losses due to environmental damages which can be reduced through community sharing of such burden.
5. At last, the most important goal is Goal 15 that speaks about the conservation of services related to the ecosystem like freshwaters, mountains, etc. by considering International Treaty Obligations³⁶ and to achieve a huge amount of afforestation and reforestation at a global level.³⁷ This goal focuses mainly on conserving Biological Diversity including Natural Resources like CPRs.³⁸

Besides these Goals, the World Fraternity has adopted several other Conventions and Treaties to achieve Community Participation and to secure protection of their Cultural Heritage and the Traditional Knowledge associated with the conservation of Natural Resources.³⁹ In Johannesburg Conference, it was argued that to secure adequate success in the process of conservation of Natural Resources, it is highly essential to enhance capacity building of the local communities by sharing the benefits with them, arising out of the utilization of Natural Resources under their possession.⁴⁰ This idea gave rise to the concept of Access and Benefit

³⁴ Sustainable Development Goal 11.

³⁵ *Id.* at Target 11.3.

³⁶ Sustainable Development Goal 15, Target 15.1.

³⁷ *Id.* at Target 15.3.

³⁸ *Id.* at Target 15.2.

³⁹ *Section III Strengthening the Role of Major Groups Chapter 26 Recognizing and Strengthening the Role of Indigenous People and Their Communities*, Core Publications Agenda 21, UN DEPT OF ECONOMIC & SOCIAL AFFAIRS, (Apr 07, 2020, 0:311 AM) https://www.un.org/esa/dsd/agenda21/res_agenda21_26.shtml.

⁴⁰ HANDBOOK ON BIODIVERSITY LAWS: ACCESS AND BENEFIT SHARING, CENTRE FOR ENVIRONMENTAL LAW, EDUCATION, RESEARCH & ADVOCACY, NATIONAL LAW SCHOOL OF INDIA UNIVERSITY, BENGALURU (National Printing Press 2016).

Sharing which aims for empowering the local communities for sustainable management of their Natural Resources.⁴¹

Conclusion

There exists a clear relationship between CPRs and SDGs. And there is no doubt that humanity cannot progress without considering its poor counterparts for which maintaining the livelihood of the poor becomes of utmost importance. However, the landless poor and those who rarely have any property under their possession are directly dependent on CPRs. But, these CPRs are getting destroyed due to unregulated economic development⁴² and also due to negligence of the Governments in most cases⁴³ coupled with ignorance of the poor sections.⁴⁴ The above discussion so far has provided a brief idea regarding the importance of CPR in achieving Sustainable Development. But such management requires not only conservation of Natural Resources but also empowerment of the poor communities by enabling them to have certain ownership rights over properties. Privatization and commercialization of Natural Resources shall be reduced to enhance community rights for common ownership over Natural Resources for achieving common welfare and sustainable management of such Natural Resources. Therefore, the relationship between CPR and SDGs is well established where it becomes clear that without achieving sustainable management of CPRs, we won't be able to realize the SD.

⁴¹ Ibid.

⁴² Rohit Jain, 4th Annual Workshop on Common Property Resources and the Law, Partners for Law in Development, (2002) pdf.

⁴³ E. P. Chaithanya, *The Ownership Over Common Property Resources State Versus Community Rights*, 2(1) IJPSLIR (2012).

⁴⁴ Usha Ramanathan, 4th Annual Workshop on Common Property Resources and the Law, Partners for Law in Development, (2002) pdf.

**REGULATION OF THE USE OF EXPLOSIVE SNARES AGAINST WILD ANIMALS:
A LEGAL PERSPECTIVE**

Dr. Taniya Malik*

The brutal death of a pregnant wild elephant in the Palakkad region of Kerala, India, last year has shocked not only the environmentalists but also the entire nation. While the national and global outrage amongst the people persists, and investigation into the horrific incident is underway, this article highlights a more significant concern regarding the practice of use of explosive snares such as firecrackers, poison laden fruits or eatables, often used to chase wild animals by the farmers of this region. If this practice is not immediately banned, similar incidents will occur again, lest we learn from our mistakes. At present, we are also not aware whether the farmers of other states are following similar practices. Hence, it becomes a wildlife issue of national importance, and that is why immediate action is needed on behalf of the Government of Kerala or any other state where this practice exists.

The man-animal conflict has again raised its ugly head, with helpless animals at the receiving end. Without even going into ethical and moral issues at stake here, at the outset, it is pertinent to mention that this practice will be deemed to be completely illegal under the provisions of the Indian Wildlife (Protection) Act, 1972¹ (hereinafter, 'WPA'). Section 9 of the WPA expressly prohibits hunting any wild animal specified in Schedules I to IV of the WPA. As per sections 11 and 12 of the WPA, hunting wild animals is permitted only in some instances, where a prior permit from the Chief Wild Life Warden or the authorised officer has been duly obtained. Further, Section 2(16) of the WPA broadly defines 'hunting' and includes within its ambit an act or attempt to kill, poison, trap, bait, injure or destroy any part of the body of any wild animal.

Since the act of 'hunting' has been defined in such broad terms under the WPA, the deliberate act of making firecracker-laden fruits or eatables, meant for the consumption of wild animals that stray into the fields, to chase them away is a clear violation of the WPA.

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¹ The Wildlife (Protection) Act, 1972, No. 53, Acts of Parliament, 1972 (India).

Some news reports are doing rounds that these firecracker laden fruits are meant to chase away wild boars but accidentally were consumed by the unassuming pregnant elephant. However, under the provisions of the WPA, wild boars are also listed as a protected species, which finds their place in schedule III of the WPA. Thus, the only instances when wild boars could be killed are when they are a threat to human life or property. However, even in this case, the written permission from the Chief Wild Life Warden or the corresponding authorised officer is required.² In these circumstances, the unilateral omission of such a practice by the farmers without obtaining the relevant permission from the concerned authorities amounts to a clear violation of the provisions of the WPA. Thus, these illegal acts should be strictly prohibited.

As a humane alternative, farmers can adopt protective measures such as fencing, trenching the boundaries of their fields, installing sound or light equipment, or even using air-firing guns to chase wild animals away. Resorting to measures such as the use of explosive snares, scattering firecrackers or poison-laden fruits or eatables around the boundaries of their fields, amounts to a clear violation of the right to life of a wild animal, which even the Hon'ble Supreme Court of this country has recognized.

The Supreme Court, in the case of *Centre For Environment Law, WWF-I v. Union of India & Others*,³ has categorically laid down that Article 21 of the Constitution of India protects not only human rights but also casts an obligation on human beings to protect and preserve a species from becoming extinct, and the conservation and protection of the environment is an inseparable part of the right to life.⁴ In the same case, the Supreme Court has stressed that while examining our actions for the protection of endangered species, our approach should be eco-centric and not anthropocentric. Thereby, we must apply the “*species’ best interest standard*”, that is, we must focus our attention on safeguarding the interest of species. As the Indian elephant is an endangered species in India, it is our legal duty to apply the species’ best interest standard and take immediate steps to prohibit any local practice that has the potential to cause death or grave injury to the animal. With deep anguish, it is pointed out that the Kerala State Wildlife Department failed to take any proactive and preventive steps to stop

² The Wildlife (Protection) Act, 1972, No. 53, Acts of Parliament, 1972, § 11 (India).

³ *Centre for Environment Law, WWF-I v. Union of India & Others*, (2013) 8 SCC 234 (India).

⁴ INDIA CONST. art. 48A.

local farmers from using explosive snares to chase wildlife away, despite being aware of its rampant use.

Soon after the death of the pregnant elephant in Kerala, noted animal rights activist Mr. Shubham Awasthi had filed a Public Interest Litigation (hereinafter, 'PIL') before the Supreme Court of India to declare, inter-alia, the practice of using barbaric means and explosives to ward off animals as unconstitutional, illegal, and violative of Articles 14 (right to equality) and 21 (right to life) of the Constitution. The PIL also sought to enhance the punishment given under the Prevention of Cruelty to Animals Act, 1960, (hereinafter, 'PCA Act') for causing animal cruelty.⁵ Thereupon, the Court had issued a notice to the government, and as of September 2020, the proceedings are pending.

Perturbed by the very same incident, the National Green Tribunal (Southern Zone, Chennai) bench comprising of Justice K. Ramakrishnan and Saibal Dasgupta had also taken *suo motu* cognizance of the incident and set up a joint committee composed of forest and wildlife officials to probe the incident, and ascertain the steps to be taken to protect the wildlife and minimize the man-animal conflict in future.⁶ However, the committee is yet to submit its report.⁷

In light of the preceding statutory provisions, constitutional provisions, and judicial precedents, it is submitted that the State Wildlife Departments must take emergent measures to prohibit the use of explosive snares, firecrackers, and poison-laden fruits or eatables to drive wild animals away by farmers across India.

At the same time, it is pertinent to mention that the acute shortage of wildlife protection personnel in the country exacerbates the weak implementation of the WPA. Thus, there is an urgent need to address the shortage of staff and equipment in the wildlife protection forces on a pan-India basis. The WPA was enacted with the noble intention of protecting the precious wildlife of this nation, which is already under severe threat because of habitat destruction and illegal poaching in our protected forests. If the flagrant violations of the WPA, such as the

⁵ Shubham Awasthi v. Union of India & Ors., WP (Civil) No. 557/2020 (India).

⁶ National Green Tribunal Southern Zone v. Ministry of Environment Forest and Climate Change Rep. by Its Secretary, Org. App. No. 77/2020 (India).

⁷ Kerala elephant death: National Green Tribunal registers suo moto case, NEW INDIAN EXPRESS, (Aug. 31, 2021, 10:00 AM), <https://www.newindianexpress.com/states/kerala/2020/jun/06/kerala-elephant-death-national-green-tribunal-registers-suo-moto-case-2152942.html>

one that has come to light continue to be committed, then the time is not far when such practices will be replicated in other parts of India, and our wildlife will suffer an irreparable loss. Indeed, we cannot let such an eventuality take place lest we have become devoid of any conscience.

In addition, to supplementing the enforcement of the WPA, the legislature should immediately undertake an upward revision of the punishment provided under the PCA Act for inflicting unnecessary pain or suffering upon animals. At present, the PCA Act only prescribes a fine of up to 50 rupees for first-time offenders and consequently, has ceased to have any deterrent effect.⁸

It needs to be remembered that elephants are a revered species in India. The reverence arises from the absolute non-violent nature of this animal, despite it being physically so powerful. Left to themselves, elephants are highly social, intelligent, intuitive, and sensitive animals. It is us who have destroyed their natural habitat and robbed them of their home and sources of food. Therefore, it is our responsibility to look after them and protect their fundamental rights. Needless to say, we owe this responsibility to all wild animals, not just to the elephants.

Our hearts once again go out to the hurt, helpless, yet resilient soon-to-be mother elephant, and our heads hang in shame that our legal system could do nothing to protect her and her unborn calf. Such practices are against Indian values and ethos, which have always advocated *ahimsa* or adopting a non-violent attitude towards all forms of life. Hence, we have to ensure that her death does not go in vain and similar incidents do not occur in the future. Time has come to speak up for those who cannot speak.

⁸ The Prevention of Cruelty to Animals Act, 1960, No. 59, Acts of Parliament, 1960, § 11 (India).

**RIGHT TO HEALTHY ENVIRONMENT VIS-À-AIS MANUAL SCAVENGING IN INDIA:
ASSESSING THE LIABILITY OF STATE**

Udit Singh*

Introduction

In the 21st century, with the advent of modern technology and the latest machines, it is a disgrace and slur on the principles of equality and justice that manual scavenging is still prevalent in India. Despite the legislations and rules on the prohibition of manual scavenging, the situation is dreadful. There are about 1.8 lakh households across India still engaged in manual scavenging, according to the Socio Economic and Caste Census 2011. Maharashtra has the highest number of manual scavengers at 63713¹. It seriously raises a question on the implementation of the laws and policies prohibiting manual scavenging and brings attention to the responsibility of the State in this regard. In a catena of cases, the Supreme Court of India held the right to a healthy environment as a part of fundamental right under Article 21 of the Constitution of India, 1949². In *Consumer Education & Research Centre v. Union of India*³, the Apex Court held that workers right to a healthy environment consists of working in a hygienic working condition in the workplace and leisure to workmen which comprised better standard of life, connoting the traditional and cultural heritage of a person. The Court further held that compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread-winning to himself and his dependents should not be at the cost of the health and vigour of the workman. Indian Council of Medical Research (ICMR) has documented a range of medical conditions associated with manual scavenging, which includes: infectious diseases, respiratory diseases, musculoskeletal conditions, and can be highly fatal, attributing to carbon monoxide and methane poisoning, especially when most manual scavengers work without any protective equipment.⁴ In this context, the working conditions of the people involved in manual scavenging violates the constitutional protection of the right to health.

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¹ Anagha Ingole, *Scavenging for the State: Manual Scavenging in Civic Municipalities*, 51(23) EPW (2016).

² *Subhash Kumar v. State of Bihar* 1991 A.I.R. 420 (India); *Virendra Gaur & Ors. v. State of Haryana* 1994 Suppl. (6) S.C.R. 78 (India); *M.C. Mehta v. Union of India*, A.I.R. 1996 S.C. 2715 (India).

³ *Consumer Education & Research Centre v. Union of India*, 1995 A.I.R. 922 (India).

⁴ Shriyuta Abhishek, *How Ineffective Healthcare System is Adding to the Woes of Manual Scavengers in India*, YOUTH KI AWAAZ (Sep. 5, 2021, 5:22 PM), <https://www.youthkiawaaz.com/2019/08/health-needs-of-manual-savengers-does-our-health-system-care>.

The present article focuses on the liability of the State with regard to manual scavenging in India. It reviews the documentary '*Kakkoos*'⁵ directed by Divya Bharathi to highlight the various issues of manual scavenging. The article restricts its scope to the issue of the State escaping its liability vis-à-vis right to healthy environment in the cases of manual scavenging. It highlights the neoliberal approach of State in violating the human rights of the manual scavengers and thereby causing gross injustice to the victims. The article also focuses on the non-implementation of various laws and rules related to manual scavenging which shows the failure of the State to protect the rights of manual scavengers which leads to inhumane living conditions of the people engaged in manual scavenging.

Review of the Documentary '*Kakkoos*'⁶

Kakkoos (which means human faeces in Tamil) is a documentary directed by Divya Bharathi, which depicts the conditions of living of people who are trapped in the occupation of manual scavenging in the State of Tamil Nadu. The scenes of the documentary show the ground reality of manual scavenging, destroy the claims made by the state government on manual scavenging and depict the failure of the authorities in implementing the government order of March 15, 2015, which abolishes engagement of any person, directly or indirectly, by any local authority, person or agency for hazardous cleaning of sewer or septic tank⁷. The living conditions of manual scavengers in other parts of the country are not better than shown in the documentary. In this sense, the issues of manual scavenging shown in the documentary are Pan-Indian in nature. The director of the documentary makes it clear that the occupation of manual scavenging is the result of age-long exploitation of the Dalit community and an indicator of caste-based discrimination. She explains that manual scavenging is the worst form of untouchability and is a violation of Article 17 of the Constitution of India, 1949 (hereinafter Constitution) which prohibits untouchability in any form.

In one of the scenes in the documentary, two ladies who are employed as "sanitary workers" were asked to remove a dead dog. When both of them went to the spot, worms were already feeding on the rotten dead body of the dog. They wrapped their hands with paper to remove the body and cremated it. They were instructed that it was part of their job. Both of them vomited on the spot and could not eat for the whole day. *Kakkoos* shows that manual

⁵ Divya Bharathi, *Kakkoos*, YOUTUBE (Jun. 14, 2017) <https://www.youtube.com/watch?v=-UYWRoHUUpkU>.

⁶ *Ibid.*

⁷ G.O. (Ms) No.40, GOVERNMENT OF TAMIL NADU, https://www.tn.gov.in/dtp/gorders/maws_e_40_2015_ms.pdf.

scavenging symbolises feudal atrocities and denies dignity and liberty to the people engaged or employed in this dreadful occupation. It also questions the government's silence on the issue of implementation of the prohibition of manual scavenging laws and the issue of engagement of independent contractors to escape the liability. In another incident, one of the workers was struck by electricity while cleaning garbage and died on the spot. The fellow workers said that the contractor did not give the deceased family any compensation. Also, the workers recruited for sweeping jobs in various institutions such as banks or schools are told to clean toilets. These "sanitary workers" are given houses on the outskirts of the town or near the crematorium. Although they clean the whole town, there are no people to clean their locality. Reptiles fall from the roof of their houses, and if the workers complain, they are asked to vacate the houses. There are no hospitals nearby their locality and no facility for drinking water. Their children face discrimination in schools due to their castes and therefore are forced into the occupation of manual scavenging. One of the female workers said that while cleaning with acid, it is difficult for them to breathe. She was admitted to the hospital for two days because of the health issues due to the use of acid.

The documentary investigates the issue of manual scavenging from various perspectives, such as the caste-based occupation and discrimination, non-implementation of manual scavenging laws, state liability, among others. Although caste-based discrimination is the root cause of manual scavenging but other issues such as the loophole in the definition of manual scavenger under The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (hereinafter Act of 2013), as the definition exempts the sewage workers and persons who clean excreta with the help of devices and protective gears, implementation of laws prohibiting manual scavenging and the rehabilitation of manual scavengers, registration of manual scavengers in the government record, health risks in manual scavenging, the role of judiciary in the cases related to manual scavenging (as no person has been convicted till date despite the fact that engaging or employing a manual scavenger is a punishable offence under the Act of 2013⁸), segregation of the manual scavengers in terms of housing as they are provided houses only on the outskirts of the city, responsibility and role of media, minimum wages to the scavengers, violation of labour laws by the independent contractors, government escaping its liability under the veil of its neoliberal policy etc. are also required to be looked at.

⁸ Staff Writer, *No Reports of People Being Convicted for Employing Manual Scavengers: Centre*, THE WIRE, (Sep. 5, 2021, 4:29 PM) <https://thewire.in/rights/manual-scavenging-ramdas-athawale-parliament-questions>.

The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act of 1993 prohibits the construction of dry latrines in 1993 only, but the practice of cleaning the human excreta by manual scavengers is still prevalent. The documentary shows that manual scavengers have to 'take care' of the dead bodies of humans and animals, no matter the stage of decomposition it is in, on the false promises of government jobs and money they never get. In rules made under the Act of 2013, it is provided that forty-four protective gear shall be given to the workers, which means personal safety gear and safety devices that are to be provided, worn or used by *safai karamcharis* or sanitary workers in respect of cleaning of sewers and septic tanks that may be necessary for the specific nature of work to be carried out, as including and not limited to the materials referred to in Rule 4 to –

- (i) avoid any exposure of human skin to substances, which can lead to disease, along with all breathing equipment which prevents inhalation of gases that can lead to ailments, and also includes any sensory equipment for detection of gases present inside the sewers or septic tanks;
- (ii) avoid any injuries while carrying out cleaning work.⁹

But the workers shown in the documentary said that no safety tools were provided. Even boots and gloves which are provided do not fit in size to the individuals. Also, the media is showing that the deaths are caused during the cleaning of water tanks and not septic tanks. The survey conducted by the government for recognition and registration of the manual scavengers is not accurate, and data have been forged. Here, the State has ignored its responsibility and thereby tries to escape its liability by hiding and forging the data. The women in the manual scavenging are suffering from serious health issues. Scavenging exposes them to noxious gases, impairing their gastrointestinal, musculoskeletal, respiratory, cardiovascular, and reproductive organs. They suffer from rashes, rotting of skin, permanent hair loss, nausea, breathlessness, palpitations, sore throat, loss of libido, and bear frequent infections¹⁰. The double burden of discrimination they experience as women and as members of the most marginalised social groups adds to their woes. The pandemic has heightened their distress. In the absence of dedicated institutional arrangements to support these women, the question of who would take

⁹ The Prohibition of Employment as Manual Scavengers and their Rehabilitation Rules, 2013, Rule 2(g), Ministry of Social Justice and Empowerment, Government of India.

¹⁰ Shubham Kumar and Priyanka Preet, *Manual Scavenging: Women Face Double Discrimination as Caste and Gender Inequalities Converge*, 55(26-27) EPW (2020).

the lead in ensuring their empowerment and rehabilitation remains unanswered¹¹. The director of the documentary calls privatisation of cleaning jobs as the state violence to further oppress the people who are already oppressed heavily by the caste.

The documentary concludes that scavenging should be mechanised speedily. The laws should be strict with regard to the prohibition of manual scavenging. Also, along with more stringent laws, there is a need for the proper implementation of these laws. The present laws are not being implemented properly, thereby providing no relief to the manual scavengers till date. The director of the documentary also argues that instead of just getting caught into trade unionism, the Left movements should raise the politics of annihilation of caste. Dalit movements and Left movements shall join hands only then true liberty for these people is possible because without talking of class issues, the Dalit movements cannot go forward.

Whether State remains a Welfare State with regard to Manual Scavenging?

Among the various issues related to manual scavenging in the documentary the focus of this article is to address the issue of liability of state vis-à-vis manual scavenging in India. One of the major issues of liability of State arises because of the privatisation of the scavenging sector as State is escaping its liability under the veil of independent contractors. The issue is not only restricted to the liability of State in providing compensation to the victims but it extends to cover underlying issues such as:

- Why is State not prosecuting and taking actions against the independent contractors or officials for engaging or employing manual scavengers?
- Why is State escaping its liability against the victims of manual scavenging under the veil of independent contractors or a private individual who has engaged a manual scavenger? Is State itself beneficiary of manual scavenging?
- Is caste a determining factor for people employed as manual scavengers?
- Why is State not directly recruiting persons for scavenging jobs instead of recruitment by independent contractors? Is there any economic issue involved?

¹¹ V R Raman and Kanika Singh, *Invisible and unheard: India's Women Manual Scavengers*, THE INDIAN EXPRESS (Jul. 30, 2021, 7:52 PM) <https://indianexpress.com/article/opinion/invisible-and-unheard-indias-women-manual-scavengers-7221194>.

In today's modern world, State is considered to be a welfare state therefore it shall promote the living conditions of the people. The Constitution in the preamble itself, provides that State shall be a socialist state and State shall protect the liberty and dignity of individuals which are fundamental to everyone. Articles 15 and 16 of the Constitution prohibits discrimination in any form and in public employment. Article 17 of the Constitution prohibits untouchability in any form. Also, Article 38 provides that State shall promote the welfare of the people. Article 39(c) of the Constitution provides that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Article 39(e) provides that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Articles 42 and 43 of the Constitution provides for just and humane conditions, maternity benefit, living wages etc. for workers. Despite of all these safeguards under the Constitution and legislations to the workers, the living conditions of the scavengers have not been changed. Despite the legislations and rules, the State has not been able to prohibit manual scavenging.

The Supreme Court of India in *Delhi Jal Board v. National Campaign Etc. & Ors.*¹² while discussing the above mentioned constitutional provisions, observed that Parliament and State Legislatures have enacted several laws for achieving the goals set out in the preamble, but their implementation has been extremely inadequate and tardy and the benefit of welfare measures enshrined in those legislations has not reached millions of poor, downtrodden and disadvantaged sections of the society and the efforts to bridge the gap between the haves and have-nots have not yielded the desired result. This is a serious question to be raised- why is State not able to implement the laws related to manual scavenging. Is the State helpless because of its economic policies? If yes, then what is the need of these policies which do not promote the welfare and living conditions of people. This only shows that we are shifting from socialism (which is an integral feature of the Constitution) to capitalism. The State shall promote welfare of people along with economic reforms.

Why is the State Escaping its Liability?

In the 21st century, most democratic states are implementing neoliberal policies. Neoliberalism summarily means a policy model implemented by the State where the control of economic

¹² *Delhi Jal Board v. National Campaign Etc. & Ors.*, 2011 (7) SCALE 489 (India).

factors is being transferred from the public sector to the private sector. It promotes economic growth through increasing competition by deregulation of various social and welfare laws, thereby limiting the role of State, increasing corporate influence in governance and promoting inequality.¹³ This shows that State is deviating from its major role of welfare state to neoliberalism which is a significant factor for deprivation of the scavengers and working class. The prevailing condition of manual scavengers portrays the failure of legislations such as The Untouchability Offences Act of 1955, Protection of Civil Rights Act of 1977, Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act of 1993 as the practice of manual scavenging is still prevalent, and the government is only showing the false data in this regard.

The main reason for the non-eradication of manual scavenging is that the State itself is a beneficiary of it.¹⁴ A research study found that government agencies or contracts under government agencies are the largest beneficiaries of manual scavenging. Though the case of the Pune Municipal Corporation (PMC) was taken up for the study, the purpose was not to take one particular city corporation to task, as these conditions prevail in most corporations. The case study of PMC was taken to stress that if the third best functioning corporation in the country (Press Trust of India 2011) cannot ensure eradication of manual scavengers and better working conditions for sewage workers, then the situation in the rest of the country could be worse.¹⁵ Many state governments have often falsely reported abolition of this practice in their states.¹⁶ Also, the State is hiding itself under the veil of independent contractors as the independent contractors pay less than the wages prescribed by the government and if the State directly recruits these workers, it has to pay much more than what is paid by the contractors.

Therefore, the State absolves its liability by outsourcing these recruitments to independent contractors. Also, the contractors hire the workers on a temporary basis and continuously threaten the workers that they will lose their job if they do not do the work as instructed by the supervisor.

¹³ S G Vombatkere, *Impact of Neoliberalism: The Changing Paradigm*, DECCAN HERALD, (Jul. 13, 2016, 00:12 AM), <https://www.deccanherald.com/content/557523/impact-neoliberalism.html>.

¹⁴ *Supra* note 1.

¹⁵ *Supra* note 1.

¹⁶ Nalini Ravichandran, *No let up in Manual Scavenging*, NEW INDIA EXPRESS (21 Apr., 2009 12:47 AM), <http://www.newindianexpress.com/cities/chennai/article60543.ece>.

The largest employers of manual scavengers are railways, followed by municipalities and cantonment boards, but government organisations are filing false affidavits that they are not employing manual scavengers. Apart from this, the second issue is whether State has failed in its responsibility to eradicate caste hierarchy and untouchability, which prevents people from lower caste to get humane and civilised jobs. The State has also failed to stop the employment of manual scavengers by local households. Also, State has failed its duty in providing access to criminal justice system to the victims of manual scavenging despite the fact that engaging or employing a manual scavenger is a punishable offence under Section 8 of the Act of 2013. The State is not providing alternative jobs to manual scavengers therefore people engaged in manual scavenging neither register themselves as manual scavengers with the inspector's office nor they quit this occupation because they do not have any other alternative, as shown in the documentary '*Kakoos*'. Also, if any other institution hires them for sweeping jobs, they are ultimately asked to clean the toilets. There is no implementation of rehabilitation schemes under which they can be engaged in any alternative jobs. Also, manual scavengers receive constant threats and abuse from the contractors if they try to raise any issue.

Because of all the above-mentioned factors along with the neoliberal approach, State is escaping its liability. The Act of 2013 clearly provides that even a private person shall not engage any manual scavenger. Now if any person engaged by a private party dies during performing their duties as manual scavenger, State will escape its liability stating that the person is engaged by a private party. Here the role of judiciary comes into picture. But again, is it logical to approach judiciary every time? Is it not the responsibility of State to do welfare to the people and improve their living condition? State shall not escape its liability taking the defense of sovereign and non-sovereign functions or independent contractors as in torts. The other lacuna on the part of State is the construction of toilets of single pit. The irony is that most of the toilets constructed by government consists of single pit which is filled very easily then manual scavengers are called to clean these toilets. The liability of the State should be strict in the issues related to manual scavenging.

Steps Taken by Judiciary

In December, 2003 the Safai Karamchari Andolan, along with six other civil society organisations as well as seven individuals belonging to the community of manual scavengers, filed the present writ petition under Article 32 of the Constitution on the ground that the continuation of the practice of manual scavenging as well as of dry latrines is illegal and

unconstitutional since it violates the fundamental rights guaranteed under Articles 14, 17, 21 and 23 of the Constitution of India and the 1993 Act. In this regard, the Supreme Court of India in *Safai Karamchari Andolan v. Union of India*¹⁷ held that manual scavengers shall be provided rehabilitation, and in cases of sewer deaths, a compensation of 10 lakhs shall be provided. The Court also directed state and union territories governments to fully implement various provisions of the Act of 2013 and take actions for non-implementation of the provisions of the Act.

The facts in the case of *D. Nagasamy v. State*¹⁸, State that four persons died while manually cleaning the septic tank situated within the compound of Dindugal Thalapakatti Restaurant. Coming to know of the incident, the Village Administrative Officer of Thoraipakkam Village gave a complaint to the respondent police on the ground that the accused persons, without arranging for any safety or precautionary steps, have made the deceased persons do manual scavenging, and due to this rash and negligent Act, four persons have died by inhaling toxic gas in the septic tank. The Madras High Court quashed the criminal proceedings against the accused for the death of four manual scavengers engaged to clean septic tanks of the accused's restaurant on the ground that the principle of vicarious liability cannot be invoked in criminal proceedings. The Court did not find any case against the restaurant and therefore dismissed the proceedings against the accused.

In the case of *Rajesh and Anr. v. Delhi Jal Board and Ors.*,¹⁹ the facts state that deceased persons were the sold bread-winners of the families of the petitioners, who died while cleaning the sewerage engaged by private individuals in the Bawana Industrial Area. The issue was whether State shall be held liable for the death of manual scavengers engaged by the private individuals. The Delhi High Court answered it in affirmative and held that Delhi State Industrial and Infrastructure Development Corporation Limited (hereinafter DSIIDC) should have taken necessary steps to ensure that the sewers are not opened for cleaning purposes by anybody. Any mishap occurring indeed would suggest a lapse on the part of DSIIDC. Moreover, as stated above, the grant of the compensation would not await a decision as to who was negligent in compelling the deceased persons to go into the sewer lines. The liability being strict, this Court is of the view that the DSIIDC shall pay an amount of 10 lacs each to the

¹⁷ *Safai Karamchari Andolan v. Union of India*, 2014 (4) SCALE 165 (India).

¹⁸ *D. Nagasamy v. State*, CrI. O.P. No. 10100/2017, decided on December 21, 2018.

¹⁹ *Rajesh and Anr. v. Delhi Jal Board and Ors.*, W.P. 7030/2012, decided on February 27, 2018.

petitioners. Therefore, the Court held the State as strictly liable and held that the State could not take the defence of the independent contractors as it is the duty of the State to maintain and clean the sewers.

In this context, there is a mixed response from the judiciary. The Hon'ble Supreme Court has time and again reiterated that provisions of the Act of 2013 shall be fully implemented, but the government is not acting as per the directions of the Supreme Court. Therefore, it is implied that the State is not serious about the right to healthy environment and welfare of the manual scavengers as it is one of its beneficiaries and does not want to take responsibility and pay compensation for the deaths and inhumane living conditions of manual scavengers.

Conclusion and Suggestions

Democracy is the rule by the majority, but it protects the interests of the minority from exploitation by the majority. The Constitution of India, 1949, provides that the State has a duty to promote the welfare and living conditions of the people. There is a need to fully eradicate manual scavenging and implement the existing laws and rules in this regard. The State has to realise its duty and responsibility towards the issue of manual scavenging. The Supreme Court has directed the government many times to take measures for eradication of manual scavenging, which is purely caste-based discrimination.

The State shall not forget the welfare of the people under the light of its neoliberal policy. The implementation of existing laws is necessary to deal with the current situation of manual scavenging. The State has a great responsibility towards the people of this country; it should act in accordance and not against the welfare of the people.

The State shall conduct and collect some genuine and realistic data of manual scavengers and provide rehabilitation to them. Also, the basic requirements and enhancement of the scavenging community have been ignored by the State. Even if the State is engaging independent contractors, there must be effective coordination between private and public authorities. NGOs should also be involved to deal with the issue. The various political and pressure groups shall raise the issue of the prohibition of manual scavenging. The State shall prohibit dry latrines in railways which is the largest institution that uses dry latrines. The State shall promote the construction of toilets with two pits instead of one pit under the Swachh Bharat Abhiyan. There should be some monitoring system to look at the practice of manual scavenging, and local

authorities shall also discourage the construction of dry latrines. The scavenging job should be mechanised speedily. In this regard, the State shall perform its duty to promote the welfare of the people, and it shall not escape its liability by simply privatising the cleansing sector.



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