

JOURNAL ON ENVIRONMENTAL LAW POLICY AND DEVELOPMENT

ISSN (O) 2348 – 7046

Vol. 7

2020

1. **NGT: A Tribunal in Trouble?**
Sairam Bhat and Lianne D'Souza
2. **Climate Change Effects and Internal Displacement in Nigeria: Legal and Institutional Challenges**
Izuoma Egeruoh-Adindu
3. **Interrelationship between Environment and Human Rights**
Kudrat-E-Khuda
4. **Assessment of Climate Action Plans in India: A Perspective of Green Federalism**
M.P. Chengappa and Nishita Shrivastava
5. **Mitigation and Adaptation Strategies of India for Implementing Paris Goals- A Critical Analysis**
Shelley Ghosh
6. **Role of UN vis-a-vis ASEAN to Combat Transboundary Environmental Damage: A Case Study of Implementation of Good International Practices**
Nishant Kumar and Deepak Kumar Chauhan
7. **Environment, Biodiversity and Intellectual Property Rights: Need for a Harmonious Ecosystem**
Amruta Das and Madhusudan Dash
8. **Emphasizing Sendai Framework Mandates on Disaster Risk Reduction in the wake of Covid – 19**
Ashutosh Raj Anand and Kisley Sori
9. **Bio-Medical Waste Management: A Social Responsibility and a Legal Necessity**
Saksham Mahajan and Manas Aggarwal
10. **Off-Shore Wind Energy: Regulation & Legal Mechanism in India**
Sundar P.L.

BOOK REVIEWS

11. **Nature Conservation in the New Economy: People, Wildlife and the Law in India**
by Eds. Ghazala Shahabuddin and K. Sivaramakrishnan
M.K. Ramesh
12. **Post-Growth Thinking in India: Towards Sustainable Egalitarian Alternatives**
by Eds. Julien-Francois Gerber and Rajeswari S. Raina
M.K. Ramesh
13. **Idea and Methods of Legal Research by Ishwara Bhat**
G.B. Reddy



NATIONAL LAW SCHOOL OF INDIA UNIVERSITY

Centre for Environmental Law, Education,
Research and Advocacy (CEERA)
Bengaluru, India





**NATIONAL LAW SCHOOL OF INDIA
UNIVERSITY**

UGC-CARE LISTED JOURNAL



ISSN (O) 2348 – 7046

Vol - 7

2020

Journal on Environmental Law Policy and Development

JELPD 7 (2020)

**Centre for Environmental Law, Education,
Research and Advocacy (CEERA)**

For Subscription

Contact:

Centre for Environmental Law, Education, Research and Advocacy (CEERA)

National Law School of India University,

P O Box 7201, Nagarbhavi, Bangalore-560 272

Ph: 080-23160527

Email: ceera@nls.ac.in

ISSN (O) 2348- 7046

Copyright: © CEERA, NLSIU, 2020.

Mode of Citation: JELPD 7 (2020)

Disclaimer: The views expressed by the author/s in the journal are their personal and do not reflect the views of the National Law School of India University.

Check our websites:

-www.nlsenlaw.org

-www.nlsabs.com

-www.nlspub.ac.in

JOURNAL ON ENVIRONMENTAL LAW POLICY AND DEVELOPMENT [JELPD]

Volume 7 (2020)

Patron

PROF. (DR.) M.K. RAMESH

Professor of Law, National Law School of India University, Bengaluru

Chief Editor

PROF. (DR.) SAIRAM BHAT

Professor of Law and Coordinator of Centre for Environmental Law, Education, Research and Advocacy, National Law School of India University, Bengaluru

Editorial Advisory Board

PROF. (DR.) ARMIN ROSENCRANZ

Dean, Jindal School of Environment and Sustainability, Jindal Global University

SHRI SHYAM DIVAN

Senior Advocate, Supreme Court of India

PROF. (DR.) S. SHANTHAKUMAR

Director, Gujarat National Law University

PROF. (DR.) KIRK W. JUNKER

Faculty of Law, University of Cologne

PROF. (DR.) JOLYON FORD

Associate Professor, ANU College of Law, The Australian National University

Editorial Committee

Madhubanti Sadhya, Teaching Associate, CEERA, NLSIU

Rohith Kamath, Consultant – CEERA, NLSIU

Raagya Zadu, Ph.D Scholar, NLSIU

Raghav Parthasarathy, Teaching Associate, CEERA, NLSIU

Vikas Gahlot, Teaching Associate, CEERA, NLSIU

Geethanjali K V, Legal Associate, CEERA, NLSIU

Lianne D'Souza, Research Fellow, CEERA, NLSIU

BETWEEN US

The pandemonium of nCOVID-19, has altered our lives forever. In the new normal that we are getting used to, the conversations, conferences and discourses in all educational institutions are now online. No guarantee exists that we would be back to the “old normal” soon, where the spontaneity goes with face to face interactions in the academic environment. Amidst this unprecedented gloom, there are a lot of things to cheer and feel happy about. In observing ‘social distancing’ and staying at home to stay safe, each of us has the most unexpected but very welcome opportunity to reconnect with the members of the family and spend quality time with them. In addition, it has provided a great opportunity to read a lot, turn inwards, reflect, re-organise and rejuvenate our learnings, deepen and sharpen our research skills and abilities. It has enabled me to explore new techniques for teaching and reach out to the student community. It is actually a beginning of the new order that we should engage in online teaching. After over 40 years in this profession and being “digitally differently-abled” this has been a new opportunity to re-invent myself! Further, as a teacher in Environmental Law, the time, at my disposal, has also helped me in accessing trans-disciplinary learning of law, hitherto little explored by me, to enrich my understanding of the subject. I will be sharing that learning with you, in this issue of the Journal, in the Book-Review Section.

Prof. Sairam and his Team, with their indefatigable spirit, have been able to produce yet another winner of a volume of environmental law literature, covering a wide variety of areas on the subject, in this issue. This has been accomplished, despite the existence of abundant scope and space excuse, not to produce one. These Environmental Bravehearts nay, “warriors” are in no way less than the “Corona Warriors”, in letter and spirit, in overcoming all odds in meeting the deadline and serve a rich smorgasbord of environmental law learning. I am very proud of their accomplishment and in the demonstration of the true spirit of the Law School- never say die!

Prof. (Dr.) M. K. Ramesh
Professor of Law
NLSIU, Bengaluru

EDITORIAL

Challenges to environment protection are rampant and a daunting task. With strengthened global consensus in the protection of environment by the international community, there is a greater requirement for a strength-oriented approach at the grass roots. Urbanization is one of the biggest drivers of land use change which largely occurs with little or no assessment of the environmental impact of future or present land use change. Effects of urbanization are compounded by climate change which also interplays with existing environmental concerns such as air and water pollution, accumulation of untreated waste, encroachment of green belts, water scarcity, leading to higher incidences of heat waves, droughts, cloud burst, riverine floods, rise in temperatures, higher incidence of diseases etc. Land degradation caused on account of improper waste segregation, management and disposal is one of the major problems faced by most developing countries. Despite having in place several legislative and policy measures, the leverage of existing law in regulation of waste-management, municipal, industrial, plastic, construction and bio-medical, is miniscule and requires constant scrutiny.

Centre for Environmental Law, Education, Research and Advocacy [CEERA], National Law School of India University, Bengaluru has been pivotal in organizing various Seminars and Certificate Courses on Environment and allied areas, including Energy Security, Climate Change, Chemical and Hazardous Waste Management, etc. towards enabling a greater dissemination of research and training on national and international legal policies. The Centre has been the steady choice of various ministerial and government departments including Union Public Service Commission, Hindustan Aeronautics Limited and the Central Pollution Control Board for the past two decades towards organizing training programs for their personnel and other regulatory bodies.

Currently, we are undertaking a Three-year Ministry of Environment, Forest & Climate Change -Global Environment Facility project on 'Collaborative Engagement for Research, Training and Development in Handling of Chemical and Hazardous Waste under various Multilateral Environmental Agreements (MEA)', wherein we are required to undertake extensive research and training at the grass-root level on the impact of the MEAs and advise the Ministry on various aspects covered therein. In November 2019, under the aegis of this project, we published the Handbook on Chemical and Hazardous Waste Management and Handling in India.

In pursuit of our objectives, this 7th Volume of the Journal of Environmental Law, Policy and Development, endeavours to provide for the dissemination of legal awareness in one of our core competencies, *viz.* Environmental Law.

In consonance with the Journal's objective, the volume contains ten manuscripts. First, is our article titled *NGT: A Tribunal in Trouble?*. With 2020 marking ten years of the establishment of the National Green Tribunal, an insight into its functioning is imperative. Although to its credit, the NGT has passed a few remarkable orders, the Tribunal seems to have suffered a setback. The Supreme Court and various High Courts have acted in a manner setting the boundary limits for the NGT to function. The authors discuss the path breaking cases relating to *Sterlite Industry* and *the Mantri Techzone* and analysing that the tribunal is indeed in trouble.

A doctrinal research paper by Izuoma Egeruoh-Adindu on *Climate Change Effects and Internal Displacement in Nigeria: Legal and Institutional Challenges*, delves into the issue of internal displacement and migration in Nigeria due to climate change. The author concurs with the existing research that developing countries like Nigeria will bear the greatest cost, as a result of constant emission of greenhouse gases in these regions. The author identifies the need for synergy and expansion of the mandates of the institutional stakeholders to mitigate internal displacements consequent to flood and other natural disasters in Nigeria. Using doctrinal research methodology, the author has underscored the role of law in achieving the aim of the research.

Kudrat-E-Khuda's article on *Interrelationship between Environment and Human Rights: An Overview on Legal Context* explores the inter-relationship between environment and human rights considering the adverse impact on human health due to environmental degradation and vice versa. The article actively encourages implementation of human rights obligations and responsibilities for informing and strengthening the development of overall environmental issues.

Dr. M.P. Chengappa and Nishita Shrivastava's article titled, *Assessment of Climate Action Plans in India: A Perspective of Green Federalism*, explores the concept of Green Federalism with a focus on the grass root levels advocating the bottom to top approach. The author critically analyses the state climate action plans adopted currently, on the touchstone of the federal structure of the country. The authors put forth the idea of 'green federalism' as a last resort to fight climate change and argue for the active involvement of local bodies and people to combat the menace of climate change.

Dr. Shelley Ghosh's article on *Mitigation and Adaptation Strategies of India for Implementing Paris Goals- A Critical Analysis* explores how India aims to implement its mitigation and adaptation strategies as is reported in its Intended Nationally Determined Contribution (INDC) Report submitted to UNFCCC as a part of its commitment to the Paris Agreement. The paper also highlights India's limitations and critically explores the possibility of successful implementation of its INDC post 2020.

Nishant Kumar and Deepak Kumar's article titled *Role of UN vis-a-vis ASEAN to Combat Transboundary Environmental Damage: A Case Study of Implementation of Good International Practices*, analyses the contribution of the ASEAN, United Nation Organisation (UNO) along with International Court of Justice (ICJ) to the development of consensus and cooperation concerning transboundary environmental harm among ASEAN members.

Amruta Das and Madhusudan Dash have contributed on *Environment, Biodiversity and Intellectual Property Rights: Need for a Harmonious Ecosystem*, wherein they explore the convergence of biodiversity with Intellectual Property Rights, international regulatory standards and India's defense in justifying national obligations vis-à-vis compelling pressure of developed economies.

Ashutosh Raj Anand's article, *Emphasizing Sendai Framework Mandates on Disaster Risk Reduction in the Wake of Covid – 19*, explores the UN World Conference on Disaster Risk Reduction emphasizing the Sendai Framework and attempts to delineate its relevancy in the present crisis and in promoting avowed principles of sustainable development.

Saksham Mahajan and Manas Aggarwal's article on *Bio-Medical Waste Management: A Social Responsibility and a Legal Necessity*, focuses on the need and importance to manage Bio-Medical Waste in a proper and efficient manner as well as the evolution of the legal regime related to management of Bio-Medical Waste in India. The article also provides a comparative study between the Indian legal regime and the legal scenario across the globe with respect to management of Bio-Medical Waste.

P.L. Sundar in his article, *Offshore Wind Energy in India: Legal Regulatory Mechanisms*, provides a comprehensive picture about the policy governing the offshore wind energy sector in India mainly from an environmental aspect and further touches on intricacies of onshore wind energy to draw up similar trends that could be extrapolated. The article also explores the prospective technological developments and practices that are emerging in other economies that could shape the framework in India. The article suggests measures to mitigate or avoid the impact of offshore wind energy technology on the biodiversity and environment and explores the different trends of siting employed in other economies on various factors. It makes a critical observation on the clearances required for wind energy projects and clarifies the categorization of "offshore wind energy" projects.

Prof. (Dr.) M.K. Ramesh has contributed book-reviews on the titles *Nature Conservation in The New Economy: People, Wildlife and the Law in India* and *Post-Growth Thinking*

in India: Towards Sustainable Egalitarian Alternatives, that seek to enthrall the reader to plunge into the same.

Prof. *G.B. Reddy* in his Book Review on *Idea and Methods of Research*, succinctly delves into the contours of best practices to research methodology discussed in the book, evoking the curiosity in the minds of readers.

Comprehensively, this volume seeks to deliberate on the novel challenges faced in the protection of the environment and attempts to strengthen regulatory approach towards the same, and CEERA is pleased to publish the same to kindle the readers' interest in the study of Environmental Law.

As the Chief Editor, I commend and express my sincere thanks to the dedicated efforts of the Editorial Advisory Board and Editorial Committee for their effective coordination and their contribution as editors of the transcripts received from the authors.

Prof. (Dr.) Sairam Bhat
Professor of Law & Coordinator of CEERA,
NLSIU

CONTENTS

1. NGT: A Tribunal in Trouble? <i>Sairam Bhat and Lianne D'Souza</i>	1
2. Climate Change Effects and Internal Displacement in Nigeria: Legal and Institutional Challenges <i>Izuoma Egeruoh-Adindu</i>	8
3. Interrelationship between Environment and Human Rights <i>Kudrat-E-Khuda</i>	39
4. Assessment of Climate Action Plans in India: A Perspective of Green Federalism <i>M.P. Chengappa and Nishita Shrivastava</i>	69
5. Mitigation and Adaptation Strategies of India for Implementing Paris Goals- A Critical Analysis <i>Shelley Ghosh</i>	91
6. Role of UN vis-a-vis ASEAN to Combat Transboundary Environmental Damage: A Case Study of Implementation of Good International Practices <i>Nishant Kumar and Deepak Kumar Chauhan</i>	105
7. Environment, Biodiversity and Intellectual Property Rights: Need for a Harmonious Ecosystem <i>Amruta Das and Madhusudan Dash</i>	128
8. Emphasizing Sendai Framework Mandates on Disaster Risk Reduction in the wake of Covid – 19 <i>Ashutosh Raj Anand and Kislav Soni</i>	144
9. Bio-Medical Waste Management: A Social Responsibility and a Legal Necessity <i>Saksham Mahajan and Manas Aggarwal</i>	157

10. Off-Shore Wind Energy: Regulation & Legal Mechanism in India
Sundar P.L. 168

BOOK REVIEWS

11. Nature Conservation in the New Economy: People, Wildlife and the Law in India
by Eds. Ghazala Shahabuddin and K. Sivaramakrishnan
M.K. Ramesh 200

12. Post-Growth Thinking in India: Towards Sustainable Egalitarian Alternatives
by Eds. Julien-Francois Gerber and Rajeswari S. Raina
M.K. Ramesh 203

13. Idea and Methods of Legal Research by Ishwara Bhat
G.B. Reddy..... 206