



**NLSIU-CEERA
TWO-DAY WEBINAR**

**“FUTURE OF ENVIRONMENTAL LITIGATION IN
INDIA”**



ORGANISED BY
**NATIONAL LAW SCHOOL OF INDIA UNIVERSITY,
CENTRE FOR ENVIRONMENTAL LAW, EDUCATION, RESEARCH
AND ADVOCACY [CEERA], BENGALURU**

Date: 7th -8th August,2020

Our Websites: www.nlspub.ac.in, www.nlsenlaw.org,
www.nlsbas.com.

ACKNOWLEDGEMENT

We would like to acknowledge each and every participant and resource person for having actively participated in the Two-day webinar on “**The Future of Environmental Litigation in India**”, conducted on the 07th and 08th of August, 2020. In particular, we express our sincere gratitude to **Prof. [Dr.] M.K. Ramesh**, *Professor of Law and Chair on Urban Poor*, for sharing thought-provoking insights on the theme of the webinar and for his constant support and guidance in all our endeavours. We would also like to extend our profound gratitude to **Mr. Shyam Divan**, *Senior Advocate, Supreme Court of India*, **Mr. Sanjay Upadhyay**, *Founder, Enviro-Legal Defence Firm*, **Ms. Gauri Maulekhi**, *Trustee, People for Animal & Consultant, Animal Welfare Laws, India*, **Prof. [Dr.] Bharat H. Desai**, *Professor of Law, Jawaharlal National University*, **Mr. Abhayraj Naik**, *Co-Founder, Initiative for Climate Action*, **Ms. Mrinalini Shinde**, *Fellow, Legal Affairs Division, UNFCCC Secretariat*, **Mr. Ritwick Dutta**, *Founder and Managing Trustee, The Legal Initiative for Forest and Environment*, **Dr. Deva Prasad M**, *Assistant Professor, IIM Kozhikode*, **Mr. Nawneet Vibhaw**, *Partner, Khaitan & Co.* **Mr. Bibhu Prasad Tripathy**, *Advocate, High Court of Orissa*, **Prof. Armin Rosencranz**, *Dean, Jindal School of Environment & Sustainability, JGU*, **Ms. Shibani Ghosh**, *Public Interest Lawyer & Fellow at Centre for Policy Research* and **Prof. [Dr.] Arvind Jasrotia**, *Professor, Department of Law, Jammu University (Former Head & Dean* for sharing their thoughts and enlightening us with their experience and expertise on various topics pertaining to the main theme of the Webinar.

We would also like to thank the CEERA Team - **Ms. Madhubanti Sadhya**, **Mr. Rohith Kamath**, **Mr. Raghav Parthasarathy**, **Mr. Vikas Gahlot**, **Ms. Geethanjali K.V.**, **Ms. Lianne D’Souza**, for their help and support in organising this webinar and conducting it seamlessly.

Prof. [Dr.] Sairam Bhat

Professor of Law & Coordinator,

CEERA, NLSIU

as these, there is a need to reflect on the role of environmental litigation to best address environmental issues. In light of this, the webinar on “The Future of Environmental Litigation in India” aimed to understand and analyse the contours of environmental litigation in India and its future prospects as an instrument for achieving environmental justice.

The Webinar also invited paper presentations on the following themes:

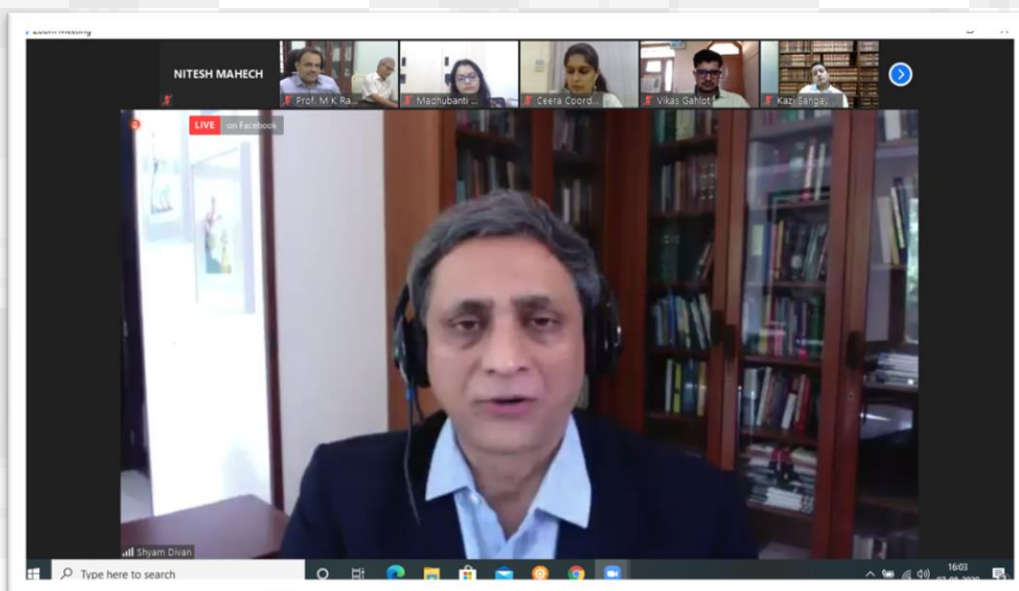
- ❖ Judicial/Legal Activism in ensuring Environmental Justice
- ❖ Environmental Justice/ and Public Interest Litigation
- ❖ Vindication of Rights in Environmental Law (human rights, rights of nature, animal rights)
 - ❖ Intersectional Environmentalism, human rights and health.
- ❖ Role of adjudicatory Bodies in interpretation and implementation of environmental legislation in India.
- ❖ Environmental non-compliance and role of the Judiciary
- ❖ Ex Ante and post facto litigation challenges
- ❖ NGT: Quasi-Judicial impact assessment.
- ❖ Environmental Justice and International law
- ❖ Application of Environmental Justice to combat global challenges

DAY 1: 07TH AUGUST, 2020

SESSION 1 - SETTING THE AGENDA – IMPACT OF LITIGATION ON ENVIRONMENTAL JUSTICE IN INDIA

The Two-Day Webinar commenced with the session on *Setting the Agenda- Impact of Litigation on Environmental Justice*. Ms. Madhubanti Sadhya, CEERA-NLSIU, began the proceedings by introducing the dignitaries for the first session of the Two-Day programme. For the first session, **Mr. Shyam Divan**- Senior Advocate, Supreme Court of India; **Prof. [Dr.] M. K. Ramesh**- Professor of Law, NLSIU; and **Prof. [Dr.] Sairam Bhat**- Professor of Law & Coordinator, CEERA, NLSIU were present. The Webinar took place via Zoom Video conferencing Software application. Subsequent to the introduction and welcoming of Resource Persons, the session began.

MR. SHYAM DIVAN- Senior Advocate, Supreme Court of India



The first session was graced by **Mr. Shyam Divan**, Senior Advocate, Supreme Court of India. He started the session on *Setting the Agenda- Impact of Litigation on Environmental Justice* by discussing that in the long-term, the future of environmental litigation is secure as a large number of healthy developments are going to take place over the next decade or decade in a half. He stated that a specialised bar is evolving and decision-making is improving because at the end of the day, whether it's the judiciary which contributes to the decision-making process through a dispute resolution machinery or whether it is just improved decision-making at the bureaucratic level, we will improve and move forward with the society. The cornerstone with this regard is the *National Green Tribunal* and how effectively it functions. There is a positive future of growth and development of environmental dispute-resolution but that is premised very largely on our capacity as a country and a system to have and to enable the *National Green Tribunal* to function well. The

second point he stated that we need a serious redesign as the fact and bottom-line of the matter is that the Pollution Control Board don't work despite of duties, responsibilities, and vision in the Acts. For a variety of reasons, they are unable to deliver which brings the third aspect that is the constitutional courts and the higher judiciary.

With regard to the third aspect, he referred one case named as *NGT Bar Association (Western Zone) v. Union of India* headed by a panel of three judges where it was said that "it is not in dispute that as of today, there are about 14 vacancies, 13 judicial members and 7 technical members, the tribunal is presently functioning with the strength of only 7 judges despite the mandate of the Act to ensure the minimum number of members shall not be less than 10. This is an appalling situation concerning the premier institutions such as the National Green Tribunal which is required to deal with the environmental issues that cannot be countenance. Then the Supreme Court went on to give further directions with regard to the existing vacancies being filled up."

He then stated that we have a statute that seeks to translate a policy of government that is to have specialist tribunal for decision-making. And with this, we need quick decision-making in the environmental field but our Constitutional Court is so overburdened with other cases that a specialist tribunal is required. The Law Commission and the Supreme Court said in the 1980's that they tried with other appellate authorities earlier for the environmental issues but it didn't work so they came up with the National Green Tribunal. Even the Act was passed in 2010 when the building of the tribunal was not available and ready. With this regard, Justice Singhvi at that time mentioning in the open court that perhaps post-independence, this is potentially the most important institution that has been established under law, and therefore, it must have adequate premises and it must be made operational sooner than later.

He further stated that his perception is not just the sub-competence or incompetence of the part of the Government of India but there is a deliberate design as there are vacancies but there are no appointments to the National Green Tribunal. And in this way, it is taking away the jurisdiction from the High Courts because now we have the specialist tribunal and so-called remedy, so now we cannot approach the High Court for redress. So, the local environmental issue through the dispute resolution process is that there is no establishment of enough benches at a minimum in the Tribunal. As it is not only the citizen but the country in every environmental issue that wins the case and at some level, the public interest is also served. So, with this backdrop where there is a deliberate non-appointment, it is the policy-shift where not only the personnel of NGT but the personnel of outside NGT should also be involved.

He then discussed that the greatest failure on our part as a country is that we have not build up even one institution at a national level. Unless we have a vibrant NGT with persons of capacity, persons of integrity and adequate persons, we will not be able to have an effective dispute-resolution. So, all the citizens should invest and

build environmental institutions and surely preserving, protecting, and expanding the NGT to secure the future of environmental litigation in India.

He then stated that there are federal issues involved as we have so many laws for environmental concerns like The Water (the Prevention and Control of Pollution) Act, 1974; The Wildlife (Protection) Act, 1972, etc but so far as the implementation of the laws are concerned, it lacks because the pollution control board does not have a prosecutorial capacity which requires the capacity to grab a sample, to store a sample, to record it with integrity, to send it all across to the lab to ensure the results, to communicate to the prosecutors, and to present it to the competent judge, and to do it quickly, we do not have all that in our system.

He then concluded that we should look as redesign element as our system has no institutional capacity and if we have improved decision-making in our country then it will be a retreat from dependence on our judiciary as the judiciary is the best for resolving contentious disputes at the highest level for probably laying down policy directions, interpreting and clearing up certain aspects of the law.

PROF. [DR.] M. K. RAMESH - Professor of Law, NLSIU



Prof. M. K. Ramesh

commenced the session by greeting all the panellists and started by discussing the environmental law in advocacy. He stated some factors that are responsible for environmental litigation such as:

- i. Environmentally sensitive judiciary as after the Bhopal Gas Tragedy Case and Oleum Gas Leak, we all know how it appears to be Magna Carta of a document and how to deal with the magnitude with so much suffering from the people and leading to Public Liability Insurance Act, 1991.
- ii. Human rights, environmental groups, and movements tackle their door for a group of laws for securing an environmental justice.
- iii. Constitutional and human rights anchors for espousing environmental causes and judicial approbation.
- iv. International legal developments.

He stated that the host of environmental litigation started with the Water Act, Air Act, Environmental Protection Act, etc to bring in the application of the law. He said that the very objective of these specialised laws should be understood to conserve and protect our environment. In every aspect of natural resource management like

forest trees, wildlife, water resource management, the advisors and the very people on the panel but there is exactly no one who is very well equipped with the environmental laws to aid and advise as to how decisions are to be made and how laws are to be enforced.

He then stated how is the approach of law practitioners and adjudicators with this regard. He stated that the days when there was something good to the environment, the law practitioners and adjudicators were so enthusiastic to see that this particular trend of environmental degradation deduct may arrested and so directions were issued to the administration. The courts of law found it very difficult to cop up with remarks that were coming on environmental issues and they really not had the kind of competence and expertise that are required for the environmental issues. So, we need specialism and lawmakers to do a professional job with this regard.

Then, the space of new legislation starts to secure “environmental justice” so that the Courts of Law may be able to deal with the environmental issues with such expertise and so we create the environmental tribunal by passing the Environmental Tribunal Act, 1995. But from 1955 to 2005, the law was a non-starter, and even one judge at the higher judiciary who was persuaded to take over that position declined. Then happened the Environmental Appellate Authority Act, 1997 which was a great start and after its great starting, it transformed into a super-bureaucratic arrangement. And later, National Green Tribunal, 2010 was passed striving to secure the mantle of “*ultimate justice dispensation mechanism*”. It invited mixed responses from the bureaucracy, judiciary, practitioners of law and civil society, body provoking the high priests of development to device means and mechanisms to clip its wings.

He discussed the prospects of environmental litigation by stating that if it is gazing the future, following are the challenges that would confront a law professional who wants to get into environmental law field:

- i. Waning interest of the courts- over enthusiasm of NGT.
- ii. Technical nature and looseness in the content and crafting of the environmental legislation- from policy paralysis to a deluge of policies and legislative instruments and relaxation of regulations and procedures, to “cut red tape” and expand the scope for more possibilities of investments in various sectors, hither to unchartered areas including forest area.
- iii. Weakening of environmental movements and their capacity to sustain.
- iv. Bureaucracy in cahoots with business- “ease of doing business”, the new mantra. The later part of the clarion call “with zero defect and zero effect” side-lined.
- v. Literal “crumbling” of global environmental law regime.

He then stated that if these are the challenges in a hopeless situation then the opportunities with this regard are:

- i. Best of times to re-invent the profession, earn more money, make a name while ensuring securing the concerns of conservation, and promoting environmentally sustainable development- not an exaggeration.
- ii. Not confine to court practice.

iii. Plenty of space and scope for exploration and innovation.

With this, he illustrated a few avenues like:

- i. Consultancy work not just for corporates but to the government as well to evolve means and mechanisms as to how to implement the law in real-time within India and abroad. Law practice has expanded in real-time and it is the opportunity for law practitioners to make the most of it.
- ii. Tender legal advice in drafting legal requirements, manuals of implementation, compliance, and impart training in the intricate aspects of law enforcement, interpretation, and compliance to policymaker, enforcer, professional, and the industry.
- iii. Negotiate between parties, draft claims, contracts to secure rights and interests of communities having traditional rights, practices of conservation, and sustainable utilisation of resources. For this, collect as fees and a small percentage of the benefits they derive through such transactions is the potential to tap into the biodiversity law regime.

He then concluded that for all this to happen, mastery over the environmental laws with ability to interpret and apply the “loosely crafted” regulations, to approximate to the objectives, to secure “environmental justice” is a must and welcomed the law professionals to the brave new world of environmental law practice that is highly challenging, exciting and exhilarating.

PROF. [DR.] SAIRAM BHAT- Professor of Law & Coordinator, CEERA, NLSIU



Then the session was commenced by **Prof. Sairam Bhat** by stating the context of this webinar on environmental litigation. He discussed few judgments with this regard such as Central Ayush Manufacturers Case followed by three recent verdicts two of which are from the Supreme Court and one from NGT. He referred *Sterlite Industries Ltd. v. Tamil Nadu Pollution Control Board* where issues have been raised regarding the power of NGT followed by another case of

Karnataka which was again an appeal from the NGT to the Supreme Court. He stated that the Supreme Court recently admitted the petition as to whether the NGT can accept suo-moto petitions as well for which the matter is not yet finally adjudicated upon.

He then stated that what is disturbing is the process and procedure in which the institution of National Green Tribunal operates. Also, what is also finally disturbing is the NGT's order applying strict liability initiative in the LG Polymer Case which is an absolute liability principle. With these backgrounds, he stated that the National Green Tribunal is not administrative tribunals nor constitutional tribunals and they do not have the power to judicial review. So, it is rightly for the Supreme Court to define and ambit on which the tribunal can function.

And then the session was followed by a Q & A round from the participants to the panellists. The session was concluded by **Prof. (Dr.) Sairam Bhat** by appreciating the efforts of CEERA team for conducting the webinar. He expressed his sincere gratitude to all the eminent guests for joining and sharing their perspectives and ideas on an important issue.

SESSION 2 - FUTURE OF ENVIRONMENTAL AND ANIMAL RIGHTS LITIGATION

The aim of the session was to provide the participants with an overview of the role of judges, judiciary and lawyers in the environmental litigation. The panels for the session have provided insights into the challenges faced by the environmental litigants and also provide various measures to further the research and initiatives in Environmental law matters. Animal rights litigation has been discussed at length from the historical perspective to contemporary issues.

MR. SANJAY UPADYAY - Founder, Enviro-Legal Defence Firm



Mr. Sanjay Upadhyay commenced the session by referring to the point that was highlighted by Mr. Shyam Diwan about how the perception of a lawyer who has spent so much time in Environmental. He stated that there are two approaches; it could either be challenging or lucrative. In highlighting the approach for which a future litigant must have, he stated that there are some shades of grey in this profession of

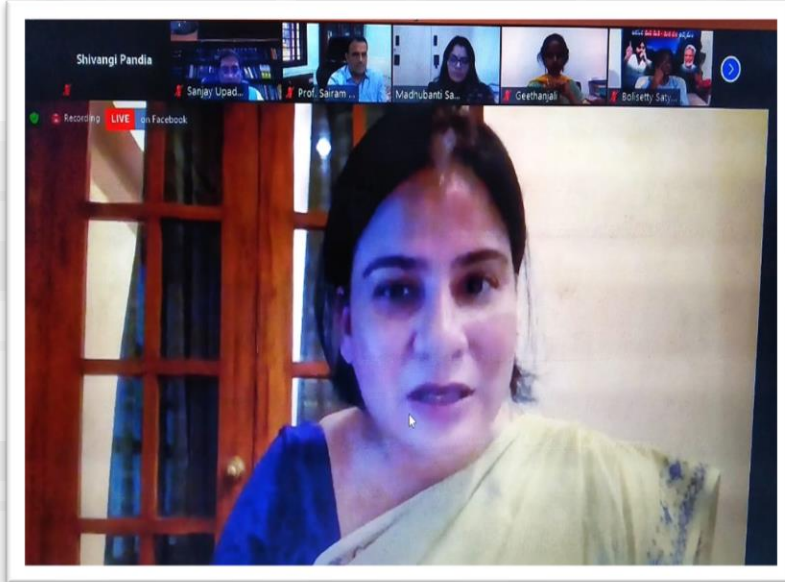
black & white, an environmental lawyer must not be aligned towards a single mindset as not all respondents are offenders and violators. He quoted what Adarsh Kumar Goel, NGT Chairperson had quoted on frivolous petitions being filed at NGT that, “50 per cent of petition nowadays have been filed by bribing the petitioners”. He then proceeded with discussing the challenges an Environmental litigator has to face.

- Firstly, in respect of the problem of identifying an environmental dispute, difficulty arises because the issues sometimes have the element of land disputes in them. There is also difficulty in collecting and gathering evidence to substantiate the claim, there is lack of data and research and most importantly the lack of judicial co-operation.
- The second issue he highlighted was the presence of Judicial/ Expert bias; he explained that NGT has a mix of judicial and expert members who tend to hold certain biases that undermine the very idea of justice. This presence of expert bias can colour the judgment of the person who is in a position to deliver a decision based on his own understanding and belief for a certain dispute.
- Thirdly, he stressed upon the stereotypical presumption highlighting the issue of excessive reliance on government departments and lack of knowledge. This has resulted in bias during a courtroom trial as it is believed that when you have a report from NEERI regarding the certain industry and if they have given green flag, the industry is okay to start with. This is again hampering our system as these agencies could be biased, and the report may have defaults.
- Fourthly, he emphasized on establishing and finding out the genuineness and credibility of the petitioner before admitting any claim. He then shed light on the issue of an ad-hoc delegation to retired judges for the appointment in the committees that are set up for reporting complaints, the existence of biases among lawyers as they start dictating the litigation & impose their opinion on the client, the issue of proxy litigation.

Based on the premise he established, he spoke about the challenges an environmental litigator may face. He stated that there is silver lining for the future of litigation on the environment. What is more important for us right now is to analyse how the unfortunate pandemic has, on the one hand, we see environment flourishing and also the fact that encroachment will increase at a rapid rate once the things get normal, the burden will increase all over again. He emphasized on the need for giving credence to the global environmental jurisprudence; he raised questions as to how will you operationalize them. We have a very ad-hoc and generic approach while giving compensation, but this is not sufficient. While concluding, Mr. Upadhyay pointed out that there is no incentive for an individual who is willing to work towards the cause of environmental protection and also stated that when an institution is not oiled with the process and burdened with cases, then the decisions are shaped by personal opinions and biases. With the right incentive and implementation mechanisms, environmental litigation in India surely will have a bright future.

MS. GAURI MAULEKHI - Trustee, People for Animal & Consultant, Animal Welfare Laws, India

The second presentation for the session was given by **Ms. Gauri Maulekhi**. Ms. Maulekhi began the session by briefly discussing the history of animal rights and



associated legislation starting from 1789. On advocating for the need to address animal rights, she quoted Jeremy Bentham, “what matters is that the animals suffer”. She also stated that from the beginning, we had law of ahimsa and all the acts amounting to ahimsa were codified under the head ‘cruelty’ in the Indian Penal Code, 1860. She stated that while codifying and

framing our laws, our approach was very human-centric, the preference of protection was given to only those species of animals which were important to us in some way or the other. She mentioned the case of Emperor v. Abraham, wherein the camels were taken from Rajasthan to Bengal on the train, while they were being transported, their eyes were stitched. The court, in this case, held that this does not amount to cruelty as this was not done in a public place. She stated that after this case, the need arises to include the private spaces and widen the scope of the law to include all species of animals.

After setting the agenda and briefing the audience about the development of animal rights jurisprudence in our country, she shed light on the existing legislation dealing with animal rights and contemporary issues and challenges. Ms. Maulekhi mentioned Section 3 of The Prevention of Cruelty to Animals Act, 1960 that lays down the duty of care on the person having charge of animals to take all measures to ensure the well-being of such animals and to prevent infliction upon such animal of pain and suffering. This act sets its premises on the duty of the people to act, and this is a duty-based approach to animal rights. She highlighted the fact that existing legislation we have like 1960 the Prevention of Cruelty to Animals Act, nowhere in the provision it could be seen that there are rights enshrined specifically for animals, the rights have been mentioned are defined from the point of view of ‘human necessity’. She also highlighted the lacuna in the current legislation, that it still provides for the age-old penalty of 50 Rs. That must have been enough, but now the same needs to be amended as such meagre amount is not enough to have a deterrence effect. Ms. Maulekhi, after having pointed out the loopholes and inadequacies in our laws and our understanding and approach towards the animal rights jurisprudence, provided that we must have a structure for animal rights and

their welfare. She pointed out that India has no department specifically dealing with animal welfare; there are huge gaps in the implementation of policies. She further mentioned that environment is not a capsule in its own, all the species are interlinked with each other, and protection of one would or may not help in the protection of others too. There is a dichotomist approach in that governments make policies that based on rights to clear the forests and at the same time make environmental protection laws. She said that there must be a balance; they should not overpower one another.

Ms. Maulekhi brought into light the issue of dairies and how their regulation has emerged as one of the most important issues in light of animal rights. She brought into light the case of a Delhi based dairy wherein the buffalos were kept together, the place where they were kept was small and shady, there was no proper ventilation in the area, the buffalos were brushing against each other, the drainage system was inefficient, and their stool was not treated before being discharged into rivers. She also pointed out that the buffalos who were healthy enough were sold and those found unfit for dairy purposes were sold to slaughterhouses. Ms. Maulekhi mentioned that this is the case of not just an industry causing massive pollution, but also committing gross violation of animal rights. The industries must be held liable to ensure that the buffalos are kept with proper spaces, ventilation, and their waste is treated, and for the environmental damage caused so far, they must be made liable to pay compensation.

Ms. Maulekhi, while concluding the session, stated that we have many laws for environmental protection and at times they seem to overlap each other resulting in ineffective implementation. In her opinion the dichotomy is present as duties are imposed on people, but the law has no teeth, most of the section lack proper penalties and the biggest problem is government subsidizing slaughterhouses without any regulations. She further stated that businesses of poultry farms must before setting up take consent from the Central pollution Control Board (CPCB). She analysed our current dependence on meat, and meat-based product stating that in the near future, a time would come when we will have to rely on plant-based meat.

SESSION 3 - TAKING PUBLIC INTEREST ENVIRONMENT LAW SERIOUSLY: RETROSPECT AND PROSPECTS ENVIRONMENTALISM: A RIGHTS BASED APPROACH

The session aimed at providing the participants with an overview of the legal framework for the environmental litigation with special focus on Public interest environmental law. The rights-based approach towards environmental litigation has been deliberated at length. Further, the session sheds light on the fact of how each one of us could contribute to the International Environmental Law.

PROF. [DR.] BHARAT H. DESAI – Professor of Law, Jawaharlal National University



Prof. Bharat H. Desai began the session by deliberating on the need for developing a legal framework for the growth of Public interest environmental law. He explained how the role and participation by lawyers, judges and various other stakeholders could help shape the future. He emphasized the role of contributors like researchers, teachers, law students, groundwork done by lawyers and the role of the judiciary. Sir began by quoting his article titled 'A Judge as a Philosopher: A Tribute to Justice PN Bhagwati', wherein he has mentioned that there are a very few judges who have left an indelible print in justice delivery system and Justice PN Bhagwati was one of them. Prof. Desai

further stated that the Justice Bhagwati's process and structure of access to justice in the higher judiciary were influenced by eminent scholars like Justice Upendra Baxi who chose to call litigation by public-spirited individuals as 'social action' and he has laid the premise of Public Interest Law in India. He stated that the initial sketch of this mosaic was prepared by Justice VK Krishna Iyer, by pushing the boundaries and where the architecture revolved around interpreting Article 21 and 22. He explained that were many cases that helped in the development of human rights jurisprudence from serious cases like preventive detention case that shook the conscience to ADM Jabalpur case, this series of contributing factors in interpreting human rights gave birth to Public International Environmental Law. Prof. Desai stated that when in retrospect, we see from the vantage point of view we will only be able to see through our own glasses and our own comfort, but the Hon'ble Justices have done what they felt right for the common good. The credit for providing flesh and bones and a constitutional basis to public interest litigation goes to Justice Bhagwati. Prof. Desai also acknowledged the work of lawyers like Kapila Hingorani who had, contributed to the access of justice movement by filing the writ of habeas corpus for several under trial prisoners. He further mentions Justice Bhagwati, wherein in a case, he has raised the question that 'are the courts able to give justice to everyone, even to those who didn't have the means'. Prof. Desai states that here the category of persons referred to is disabled, you need to give them a window. He explains this with an example and says that just like in bypass surgery, a healthy vessel is taken to help blood flow just like this, you need to create a structure for access to justice. He states that judges must be accommodated; they need to build a theoretical premise to give access to justice.

After establishing the premise on access to justice and its development, Prof. Desai deliberated on how to build a structural, legal framework for the growth of public interest environmental law; he states that:

- **Role of judges:** He states that judges must be accommodated; they need to build a theoretical premise to give access to justice. He further stated that the judges come from different background and possess a different set of values; these values keep hammering us in different situation of our life. But when a judge sits on a chair, he must use his judicial conscience and have a wider horizon of observing things. He also emphasized on the point that people have faith in the judiciary and such again needs to be empowered.
- **Groundwork by lawyers:** Sir highlighted the role of conscious Kapila Hingorani filed habeas corpus petition on 11 January 1979 in the Supreme Court on behalf of 19 under trial prisoners on the basis of reports published by K F Rustomji, Member of National Police Commission.
- **Contribution of researchers, law students and scholars:** Prof. Desai shared his experience of meeting M.C. Mehta when he was a student. He stated that he is one of those lawyers who have departed from the traditional approach and fought for the environment. He also highlighted the qualities of a well-read judge.
- **Role of research and development in the field of the environment:** Prof. Desai stressed upon the need to recognize and incentivize the need for research in environmental matters. He mentioned the case like the Bhopal Gas Tragedy, Doon Valley Case, the Shriram oleum gas leak case etc. after which the need for expertise in environmental laws was felt, that's where the roots of our National Green Tribunal lie. He stated that before the Bhopal gas tragedy case, the principle of absolute and strict liability was unheard of, we need to build our own environmental jurisprudence, and that is possible only through research.

While concluding Prof. Desai briefly discussed the pointers that will help in building the legal framework that includes the role of judges, the contribution of researchers, scholars, the role played by lawyers and our constitutional framework. He also suggested that initiatives and scholarships must be given to encourage development in environmental law.

MR. ABHAYRAJ NAIK – Co-founder, Initiative for Climate Action



Mr. Abhayraj Naik, in the beginning, stated that all the analysis that he has drawn is based on his own experience. He has emphasized on his orientation being more towards nature-based rights. His started with the presentation titled “Law’s Nature: Transformative Environmental Constitutionalism in the Supreme Court of India”,

while mentioning that the rights of nature to be deliberated and discussed upon at length. He further stated that his enthusiasm for the rights of animals, plants and land go back to deeper philosophical thinking onto legal history in India that is influenced by Bentham and Macaulay. He stated that I am curious about the fact that, 'Can we ever have a law not based on utilitarian approach? Can we have a less calculated procedure of law?' He advocates for a new approach to law-making that is uncompromising and fully non-deterministic, the law made is such that it is able to satisfy both reality and philosophical aspects, the conception of the law of course that challenges the contemporary consensus over norms, motivations and practices that constitute our social and political world and is narrative of the justice that goes beyond humanist capital-centrism approach. According to him on his canvas, he would like to present the idea that can we have a law that is not based on human needs, like for preservation of river Ganga or other rivers? He says that our very human-centric approach is being questioned, how we regulate this? How will judges feel powerful to push boundaries? Answering to that he said that rights of nature are an abstract idea and money herein is the driving factor, it can make an individual do anything. He pointed out the irony in the fact that we worship holy cow and on the other hand have battery cages for chicken. The rights for nature present a new frontier to our approach in framing our rights-based advocacy.

After setting the premise for the session, Mr. Naik discussed his journey and various incidents that shaped his interest in environmental litigation. He started his journey in 2001 with animal rights activism and also mentioned that as a student at NLSIU, Prof. M.K. Ramesh who was his environmental law teacher at that time had made him read the Christopher Stone's seminal article, he has appreciated and highlighted the need for scholarships for environmental scholars as was also earlier advocated by Prof. Desai. He quoted his article on Law's Nature wherein he has shed light on the work of Justice Radhakrishnan and how has he given a new set of direction for environmental rights and litigation. He further stated that Justice Radhakrishnan's judgements in 2014 to 2015 have opened up new areas of law and these judgements have ample and beautiful material to conceptualize how environmental rights are there in light of nature. He stressed upon the following five judgements given by Justice Radhakrishnan that forge new directions for legal recognition of nature:

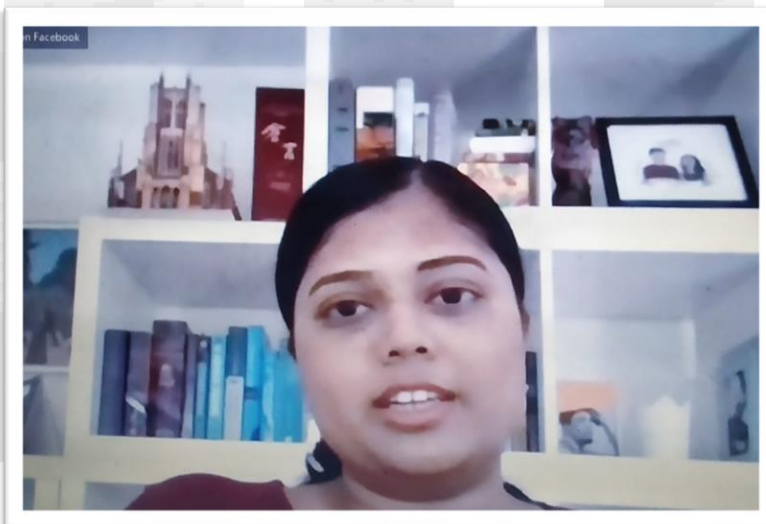
- Asiatic Wild Buffalo judgement dated 13 February 2012, Justices K.S. Radhakrishnan and Chandramauli Kumar Prasad issued a series of directions to the Chhattisgarh government to protect the endangered Asiatic wild buffalo.
- In the *Gir Lion* judgement dated 15 April 2013, the two judges declared that endangered Asiatic lions, found only in Gujarat's Gir forests, be provided with a second natural habitat at Madhya Pradesh's Kuno wildlife sanctuary. He stated that the new standard for eco-centric law was established, the approach was to do what was best for animals, here article 21 was connected to the rights of Gir lion. The idea of bio-diversity is being considered as a public trust.
- In the *Niyamgiri* judgement dated 18 April 2013, Justices K.S. Radhakrishnan, Aftab Alam and Ranjan Gogoi directed that a proposed bauxite mining project in Orissa's forests could not proceed without endorsement from local tribal village assemblies. He highlighted that in this Radhakrishnan took a non-utilitarian

approach and he deliberated about the Niyam Raja and stated that if we allow this, we must see what will it do to the god of that area.

- Finally, in the *Jallikattu* judgement dated 7 May 2014, Justices K.S. Radhakrishnan and Pinaki Chandra Ghose declared that jallikattu, a traditional bull-taming event in Tamil Nadu, as well as traditional bullock cart races in Maharashtra, were illegal.

While concluding he quoted Emile Hache and Bruno Latour, “Morality or Moralism? An exercise in sensitization”. He further contended that when we go to KFC, we don’t care of the chicken that must have been killed during the making or the marine pollution that the plastic is going to cause, it’s only through the sense of rights that we awaken. He stated that for the journey ahead we need to: co-ordinate legal litigant strategies, focus on specific scenarios and develop our plan of action, focus on implementation and granular details, co-ordinate with policy advocacy, build regional and international linkages and explore our constitutional amendments and the possibilities to have a law not based on utilitarian approach.

MS. MRINALINI SHINDE - Fellow, Legal Affairs Division, UNFCCC Secretariat



The next presentation was given by **Ms. Mrinalini Shinde** on the Paris Agreement. Ms. Shinde began by highlighting the aim of the Agreement to strengthen the global response towards climate change, especially in the context of sustainable development with a special focus to eradicate poverty. She highlighted the need to control the steadily increasing global average

temperature. Another aspect highlighted by her was in regard to Article 5 of the Agreement, whereby she argued the need to reduce the release of greenhouse gases. She also highlighted that since the global climate is changing and there are many varied regional changes, the parties to the Paris Agreement should ensure that people are provided with enough resources to adapt to the changing environment; this argument was in line with Article 7 of the Agreement. She put forth that in the true spirit of the Agreement, the adaptation process should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems and should be guided by the best scientific tools at the disposal of the states. Also, knowing that not all states are equally equipped with the necessary tools and scientific understanding, she puts forth the essence of Article 10 of the Agreement which advocates cooperative

action on technology development and transfer, including, but not limited to, providing additional financial support to developing countries. She then explained the technology mechanism that serves the UNFCCC and the Agreement; that it consists of two bodies, viz. Technology Executive Committee and the Climate Technology Centre and Net. Whereas the TEC acts as the policy arm, the CTCN takes up the responsibilities of implementation arm. She then delved into the mandate of Article 11 of the Agreement, which is capacity-building. She highlighted that capacity-building means enhancing the capacity and ability of the developing country Parties to take effective climate change action including, inter alia, implementing adaptation and mitigation actions and facilitating technology development. The importance of capacity-building was so recognized that in 2015, the COP decided to establish the Paris Committee on Capacity-Building with the aim to address gaps and needs, both current and emerging, in implementing capacity-building in developing country Parties and further enhancing their efforts in regard to coherence and coordination in capacity-building activities under the said Convention.

She also emphasized on the need, under the Agreement's Article 13, of having an effective and enhanced transparency framework for action and support with built-in flexibility which takes into account Parties' different capacities and builds upon collective experience, in order to build mutual trust and confidence and also to provide flexibility in the implementation of the provisions of this particular article to those developing countries that need it in light of their capacities.

Perhaps, the most important and essential aspect is that of implementation, thus, highlighting the importance of Article 15 of the agreement, it was said that a committee that is expert-based and facilitative in nature should be set up to pay particular attention to the respective national capabilities and circumstances of the parties. Coming close to the conclusion, the importance of NGOs in rendering quality opinions and takeaways was highlighted, and their role as observers to the UNFCCC process was applauded.

DAY 2: 08TH AUGUST, 2020

SESSION - 4 REGULATORY AND ADJUDICATORY CHALLENGES TO ENVIRONMENTAL LITIGATION

The session was moderated by **Ms. Madhubanti Sadhya** and she introduced the panellists for the session. At the beginning of the session, Ms. Madhubanti Sadhya first gave a presentation on statistics of environmental litigation in India with the help of data readily available on the website of the National Green Tribunal. The cases instituted right from the inception in the year 2010 till 31st May, 2020 including the cases of all the benches as well as the other zonal benches is 32, 626 cases instituted out of which 29,760 cases have been disposed off and 2,866 cases are pending.

She then discussed the bird's eye view of the functioning of NGT in 2020 by putting the data of the first 6 months of the year. The cases have gone down after the on-set of the pandemic in the month of March and thereafter, NGT started picking up the cases in the month of June but unfortunately, the reasons for the pendency are high from the cases itself could not be gathered from the data on NGT.

Then, **Ms. Lianne D'Souza** continued the presentation by discussing the cases from the State of Karnataka and the Supreme Court of India. She stated that there is a comparative study of cases in a decade wise manner. The statistics of the Supreme Court clearly show that from the year 2010 onwards, there has been a significant jump in the number of cases pertaining to environmental matters. Although since 1980's when courts have taken pro-active steps in judicial activism, environmental matters have been a significant factor in terms of courts deliberating on these matters. However, from 2010 onwards, there has been more than double jump in the number of cases in the Supreme Court pertaining to environmental concerns. It shows a very positive and appreciable effort on the part of the Apex Court of India.

She then discussed the cases in the High Court of Karnataka by stating that the same trend is also observed. Although, the number of cases in the High Court of Karnataka is quite low in comparison to the Apex Court cases. Since 2010 onwards till the year 2020, the number of cases in the High Court of Karnataka as well as increased by a significant jump which shows a lot of positive action on the part of the judiciary in handling cases and taking issues pertaining to environmental matters much more seriously and addressing them from a very different perspective.

She then stated the environmental-related offences in terms of the number of cases reported, the number of cases that have been compromised and also the cases that have been taken to the trial. As per the National Crime Records Bureau, the report of 2018 has set to be the most updated and the latest report. The report says that in comparison with 2016 to 2018 clearly shows that the reporting in terms of environmental cases was quite low as evidenced in 2016 where there were only 4,732 cases but after 2016, there has been much more action in terms of reporting of cases in taking cognizance of cases in 2017 and 2018. It shows the environmental matters

from a criminal perspective have been taken more seriously and there have been an increasing number of cases reported.

She then discussed the demarcation in various acts and statutes that concern environmental issues. There were about 7,947 cases reported in the Noise Pollution Acts (Central and States) and as in 2018, about 2,768 cases reported in the Forest Act and the Forest Conservation Act, 1927 as per the latest statistics provided by the National Crime Records Bureau in 2018. And cumulatively, there has been a significant jump in the number of cases in the Environmental Protection Act as well. However, the violation under the Air Act, 1981 and the Water Act, 1974 have not been reported in a systematic manner as under the Noise Pollution Act which probably reflects the trend in terms of reporting and terms of cases being compromised and taken to trial. But the overall of these offences clearly shows that the environmental matters are also been taken seriously and they have also been time and again brought within the purview of these courts to adjudicate these matters in a steady manner.

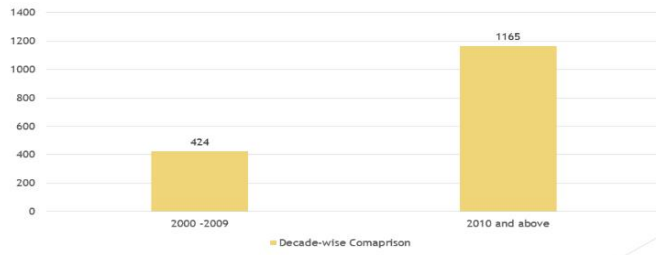


BIRD'S EYE VIEW OF FUNCTIONING OF NGT IN 2020

Year	Month	No. of cases					
		Total Cases dealt with	No. of Cases Disposed	No. of cases for which Report is Awaited	No. of cases left Pending (cases which were dealt with but not finally disposed- not to be confused with total number of pending cases)		
			Total	Pending for less than 1 year	Pending for more than 1 year		
2020	June	137	55	0	82	42	40
	May	79	26	1	52	31	21
	April	9	0	1	8	1	7
	March	303	81	10	212	111	111
	February	480	164	4	312	133	179
	January	443	148	1	294	136	158

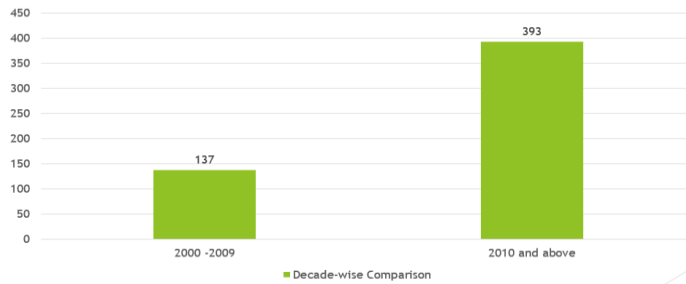
SUPREME COURT OF INDIA

(Environment related cases instituted in the Supreme Court between 2000 and 2020)



HIGH COURT OF KARNATAKA

(Environment related cases instituted in the High Court of Karnataka between 2000 and 2020)



OVERVIEW OF ENVIRONMENT RELATED OFFENCES

(Latest statistics provided by NCRB in 2018)

The Forest Act and
The Forest
Conservation Act,
1927
(2768)

The Wildlife
Protection Act, 1972
(782)

The Environmental
Protection Act, 1986
(86)

The Air Act 1981 &
The Water Act, 1974.
(17)

Noise Pollution Acts
(Central & State)
(7947)

MR. RITWICK DUTTA - Founder and Managing Trustee, The Legal Initiative for Forest and Environment



The session was then commenced by **Mr. Ritwick Dutta** and he started by discussing the concept of environmental litigation in India. He stated that the victims in many of the cases are the poor and tribal people but it also attributes to the fact that the forest department has a well-defined structure to file

complaints and register offences. As a litigant today, we have a choice as to where to approach like Appellate Authority under the Air and Water Act, District Courts, High Courts, Supreme Court, and NGT. However, in the District Courts, due to so much work that environment has been very low in the priority, and therefore, this itself has been a failure as the district courts have not really come with major judgments, recording of cases are poor and also it takes a lot of time.

With respect to the High Courts, he stated that it remains an important forum for environmental litigation. however, NGT has a very limited jurisdiction so if any issue is filed before NGT like issues of urban planning or town planning laws, NGT is bound only to the statutes which are there and it cannot go beyond that. He then stated that in litigation strategy also, Article-32 and 226 are also an issue as there are people who approach the Supreme Court directly under Article-32 like for example, around 32 petitions have been filed challenging the EIA Notification.

He then discussed the need of National Green Tribunal as we have already Article-32 and 226 in case of violation of a legal right so the importance of NGT is the fact with respect to appeal. Under the normal law, the court has complete discretion in case of Public Interest Litigation filed under Article-32 or 226 but under Section-16 of the NGT Act, 2010, it is the statutory right of every person to challenge an environmental clearance or forest clearance before the National Green Tribunal. NGT is bound under the law to undertake a merit review. Unfortunately, NGT has not performed the role of an appellate body in a way that it should have been and in case of appeals, 99% of them are getting dismissed which is a cause of concern because, in an appeal, a government decision is either to be upheld or to be quashed.

He then stated the approach of the court in which interim injunctions are given. He said that the interim injunctions are of two kinds, *firstly*, stopping the project and *secondly*, the project proponents are free to proceed on their own risk and they will not raise the issue of equity later at any stage. The next is reverting it back to the decision-maker that the court usually does. He stated that despite the huge amount

of legacy of judicial activism, the courts have been very conservative when it comes to big projects and that is why he said that the cancellation of projects are very rare.

He further discussed that when the decisions of the experts comprising of professors, scientists, etc. of the regulatory bodies are challenged before the court then the Supreme Court in numerous cases have said that it comes to challenging the decision taken by experts, we cannot substitute our own decision with that of the views of the experts but at the most, we can revert it back.

However, he stated that in Tata Cellular Case, the Supreme Court said that this fact of restricting ourselves to only the decision-making process and not the merit of the decision is limited only to the High Courts and Supreme Courts and it does not apply to tribunals as tribunals are expert above experts and therefore, they can substitute their own views in place of the views of the experts.

He then concluded by saying that if we want to actually challenge the environmental decisions in the court of law, then never make the mistake of relying on the polluter pays principle, precautionary principle, and sustainable development because these will not help us to win the case as in almost every single case where we managed to get the orders, it is not by applying the principles of environmental law, Article-14, 21, 41 or 51A(g) of the Constitution but by applying the principles of administrative law like a duty to give reasons and nobody can be a judge of his own cause.

DR. DEVA PRASAD M - Assistant Professor, IIM Kozhikode



Then **Dr. Deva Prasad** commenced the session by greeting all the panellists and started by discussing the environmental matters and how to adjudicate them. He stated the recent developments in the international forum with regard to the environmental matters like the UN Guiding Principles on Business and Human Rights which can be

used to actually bring in more corporate accountability and ask for compensation as well as civil liability perspective because these guiding principles on business and human rights basically touch upon the aspects of respect, protect and remedy framework.

He then discussed the Plachimada case where human rights and other issues had come up. The issue of the right to water, right to livelihood, right to health in this case was all coming into play. But even now there is no aspect of civil liability or

compensation for the victims or people who got affected being coming into picture. He then further discussed Hindustan Unilever Case which got a lot of fame because of media attention and what was interesting in this case was that there was no compensation for the victims.

He stated that how to bring in civil liability and compensation is completely lacking in the Indian context and this is something very important if we look from the human rights perspective as the remedy framework. He then discussed the DLF Case where the Supreme Court provided with the fine of 1 Crore upon DLF and the main reason for such a fine is because the regulatory bodies never actually stopped DLF at the right time and they actually never look at the consequences that can be brought into picture.

He further touched upon another aspect that there are interesting developments happening in other parts of the world like the United Kingdom and Canada. He stated that we have been witnessing the fact that we can bring in the liability upon subsidiaries especially in transnational corporation or in multinational corporation. Interestingly, the United Kingdom Court has ruled on the corporate accountability perspective and said that the subsidiary of Vedanta functioning in a country could also be held accountable for environmental violations. He also said that we have enough judgments on the polluter pays principles and sustainable development but are we actually progressing with the kind of ways the other countries are using the corporate accountability in environmental litigation is something we need to actually touch upon and look into it.

He then discussed the aspect of climate change litigation on which the United States and the Netherlands have very interesting judgments coming out in 2019 like the *State of the Netherlands v. Urgenda Foundation* which was given by the Supreme Court of Netherlands. This judgment touches the very important aspect of how the state was held responsible as it is the duty of care to the citizens to ensuring that climate change violations are controlled. He stated that it is the duty of the state to ensure that there is a climate change mitigation plan which would be implemented on the corporates to reduce the carbon emissions and concluded by saying that the environmental litigation is no more the traditional way but it is also bringing in the corporate law also in this context.

And then the session was followed by a Q & A round from the participants to the panellists.

SESSION – 5 QUASI-JUDICIAL ACTION AND ENVIRONMENT

MR. NAWNEET VIBHAW - Partner, Khaitan & Co



Mr. Nawneet Vibhaw started by introducing the kind of work an environmental law specialist does at a tier 1 law firm. He said that it is important to understand that there is no contradiction between environmental law and corporate law, in fact, environmental law informs sound business decisions which avoid controversy

and bad reputation resulting from violation of environmental norms. He added, emphasising the importance of informed business decisions, that all the good work that a company does may get overshadowed by one incident based on a wrong evaluation of environmental harm.

He also highlighted the vast scope of environmental law practice, encouraging student-attendees to consider it as a career option, mentioning some places like Think Tanks, NGOs, Law Firms, etc. which they could join for furthering their interest in environmental law.

Coming to the subject of environmental laws in India, he stated that India has many laws which cover almost every aspect of environment protection. However, there are two problems. Firstly, the laws are not implemented vigorously, and secondly, the adjudication of cases is not satisfactory. For the latter, he explained that this is due to the tendency of the NGT to outsource its work to various committees. As a caveat he added that committees are not bad per se, but become a problem when such outsourcing is regularised and becomes the norm rather than the exception.

He went on the list the issues with adjudication of environmental law cases, stating that the Appellate authority remains severely underutilised, as it only deals with matters falling under the Air Act and the Water Act and also because many states still don't have Appellate Authorities, despite the mandate which has not been taken seriously by them. He also said that he did not fully understand the need for an appellate authority when the NGT already functions, which is a good example of a quasi-judicial authority.

Looking at alternative methods of quasi-judicial adjudication of environmental matters, he pointed out that the State Pollution Control Boards (SPCB) can also be allowed to deal with disputes at its own level by giving them quasi-judicial powers. This is a debate that needs deep research in the near future.

Highlighting some limitations of the NGT, he called for more consistency in the manner of dealing of cases. The CPCB has rules for calculation of quantum of penalty but they are hardly ever utilised by the NGT. As a result, the deterrence that should be created by imposition of penalties on violators does not work. Following a fixed mechanism without prejudice will create necessary deterrence in the minds of violators, preventing violations of environmental laws.

He also stated that the NGT Act limits the jurisdiction of the NGT to only 7 statutes. This acts as a barrier for taking up environmental matters which do not fall within these statutes. Instead, the Act must not define the NGT's jurisdiction by statute, but by subject matter, to cover all environmental matters which may arise. Repeating his emphasis on the argument against regularising outsourcing work to committees, he stated that a more robust environmental governance system will perhaps work to reduce the burden on the NGT.

Another issue that he realises was that judges at the NGT were not trained with updated legal developments in environmental law. Some judgements delivered still talk about strict liability when the rule has been Absolute Liability for quite some time now. He recommended that judges and members of NGT should be given refresher trainings from time to time at specialist institutions. Further, there is need for more diversity at the bench, including stakeholders from various places. He also mentioned that the regional benches do not function adequately, and need to step up their work efficiency.

He mentioned that the Pollution Control Boards have recently began functioning in a better manner than before, however they can still do better. They need to be better trained in technicalities of the environment and need to be given more salary, which will reduce corruption. He gave the example of western countries to call for better technical training and said that the government should be more proactive in updating knowledge.

Answering a question on whether fines are a sufficient deterrence, Mr. Vibhaw stated that they are not sufficient because the amounts mentioned in the statutes are very low and not updated over time. The NGT can impose higher penalties, which is good, but there is a need to fundamentally change judicial and executive behaviour towards the environment by changing the system from the principle of polluter-pays to the principle of prevention.

Concluding his statements, he said that the NGT has sufficient powers, which can be used adequately to adjudicate environmental matters and should operate on the adage "where there is a will there is a way." Even while operating within the defined boundaries, the NGT has sufficient power to deal with matters while avoiding overreach into the jurisdiction of the Supreme Court.

MR. BIBHU PRASAD TRIPATHY – Advocate, High Court of Orissa

Mr. Bibhu Prasad Tripathy began his talk by recounting his early days in litigation where the court became his new "laboratory" and he saw the real implication of the



laws which he had previously only studied. He highlighted the role of law schools and research, stating that it is extremely important for training people as well as for inculcation of social and democratic values.

He recounted one of his earliest cases where his client was a complainant

under the noise pollution law. He mentioned this anecdote as an example of the importance of being outspoken about one's rights and being persistent even if the judges may seem biased against the client's cause in order to protect the larger cause of environment protection.

Taking a strong objection to the establishment of specialised adjudicatory bodies, Mr. Tripathy said that it is time to consider having multi-specialisation, one-stop bodies for adjudication of various matters.

He further pointed out that even though Appellate Authorities have quasi-judicial powers, the issue is that not everyone is empowered to file appeals there. The relevant provision states "Any person" who is aggrieved by an order can file an appeal. However, it is not clear whether this "person" includes companies or general public. Another issue is that there are many vacancies in the Appellate Authorities in states, for example in Orissa it has been functioning only intermittently and usually lacks a chairperson.

Moving on to the capacity of the SPCBs, he stated that various reports such as the Bhattacharya Committee Report, the Menon Committee Report, etc have pointed out that persons appointed to the SPCBs do not have sufficient knowledge about the environment. Therefore, the appointments to the SPCBs need to be made from the body of experts and not based on political interest, noting that most appointments made are ex-MLAs, MPs and bureaucrats.

Talking about the meaning of quasi-judicial powers, he stated that it falls somewhere between the blurred lines of administrative and judicial functions.

He further pointed out that Activists and lawyers fighting for environmental justice face problems while placing their cases in the courts because of the ease with which government counsels' request for dismissal of such applications is accepted by the courts.

He stated that there is need to build capacity of judicial members because the environment is not normally the priority for normal courts where other pressing matters such as criminal matters take precedence. In his experience as member of the Disciplinary Committee at the Orissa Bar Council, Mr. Tripathy has noticed that

NGT orders that were challenged at the High Court of Orissa lie pending for long years despite the obvious urgency of such matters and in ignorance of the legal requirement of quick disposal of environmental matters (example- 6 months at NGT).

Answering a question on how the stakeholders' capacity can be built, he said that there is a need for coordination among government officials and departments. There is also a need for an institution at the government level to train officials from diverse backgrounds in order to encourage sensitivity among them regarding environmental issues.

Regarding the framework of compensation in environmental litigation, he mentioned that the NGT and the High Courts have been passing orders for monetary compensation in all cases where it was appropriate. The NGT Act provides for compensation and restitution principles. He added that even if order for compensation is not passed in some cases, this should not discourage filing of cases seeking the same as it is important to at least raise awareness on the need to compensate victims of violations. It creates and fosters debate in court corridors, at the Bench and the Bar, paving way for progressive thought and judgement in the future. Concluding his remarks, Mr. Tripathy commented that while the NGT has done a phenomenal job at environmental adjudication, it is time to re-evaluate whether the NGT is the answer environmental problems in India.

SESSION – 6 CLIMATE CHANGE LITIGATION

PROF. ARMIN ROSENCRANZ - Dean, Jindal School of Environment & Sustainability, JGU



Prof. Armin Rosencranz began his talk by listing out three recent significant trends in the field of environmental-climate activism:

1. Environmental litigation is the only tool that nations have in the international space to seek climate justice for their citizens.
2. Young people are leading the climate justice effort and are compelling governments to do more toward reducing climate change.

3. Large and highly effective bodies of climate deniers have grown. It is very unfortunate. Climate affirmers also, however, continue to grow in number.

He then went on to list several cases of importance in the debate around climate change in the USA such as the most recent case of Juliana vs. United States of America which was dismissed on procedural grounds of separation of powers, but raised many arguments related to climate action which are worth noting.

He also mentioned the Ridhima Pandey case where a young kid aged 9 years filed a case against the Union of India for its failure to protect the environment. The case raises several issues such as deficiency in the EIA process, creation of National Greenhouse Gas Inventory, maintenance of records on carbon budget etc.

Prof. Rosencranz moved to the subject of climate change economics, explaining that the cap and trade method of trading emissions is the main remedy in the western countries for climate change. The method works on the market-based approach, where the government limits the permissible emission from particular industries over a fixed period of time.

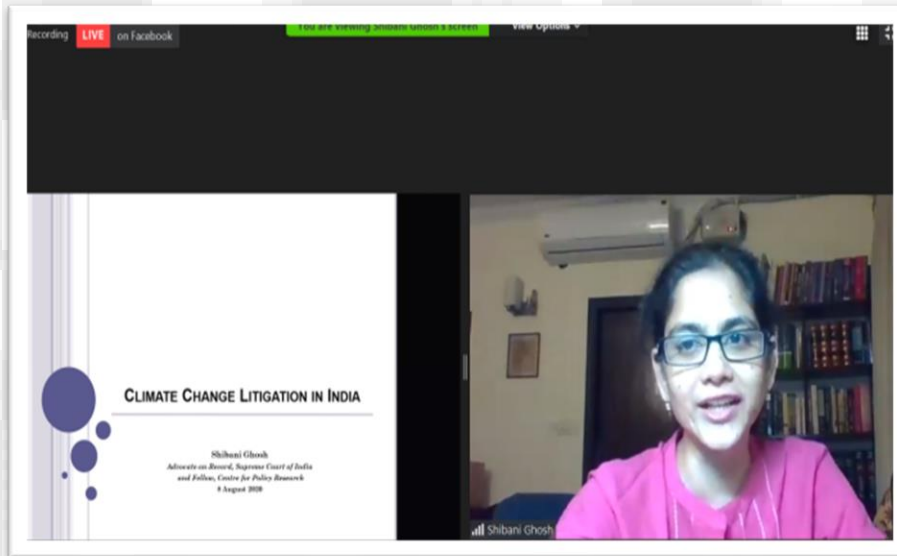
Highlighting one of the overlooked but alarming effects of climate change, he mentioned the issue of salinization of river deltas. Due to the rise in sea level caused by global warming, sea water has started flooding river deltas which are highly fertile tracts of land, making them infertile for crop production and messing with the ecological balance of delta ecosystems. This has already started creating issues in the Ganga-Brahmaputra Delta.

Answering a question on the role of courts in climate change and climate justice, Prof. Rosencranz said that the role of courts in such matters is only residual. The courts can only push the government to perform its duties and obligations. Climate matters are mostly an issue of policy and action.

In the Urgenda climate case against the Dutch government, an NGO sued the government to compel it to do more for climate change related issues. It was heard last year in 2019, and raised the issue of curtailing carbon emissions. This is a leading example in recent times of community against the government.

Lastly, he mentioned the India case of Gbemre v. Shell Petroleum Development Company of Nigeria Ltd. and Others where the tribal representatives referred to the African Charter on Human and Peoples Rights to affirm the right to clean environment as part of the fundamental right to life and dignity. In this case the Nigerian federal court ordered that oil companies should stop the practice of gas flaring near the Niger Delta. The court agreed that the practice of gas flaring is unconstitutional as it violates the guaranteed fundamental rights of life and dignity of human persons provided in the Constitution of Nigeria and the African Charter. With this, he ended his remarks on climate litigation.

MS. SHIBANI GHOSH - Public Interest Lawyer & Fellow at Centre for Policy Research



Ms. Shibani Ghosh began her remarks by stating that she has identified 14 landmark cases in India in the field of climate justice. Before moving on to list out these cases, she explained the basic concept of climate litigation,

highlighting various perspectives in the world. The broad definition of climate litigation is litigation that is motivated by concerns about climate change or climate change policy. She mentioned the definition of climate litigation given by Markell and Ruhl (2012) which states that climate litigation is “*any piece of federal, state, tribal or local administrative or judicial litigation in which the party filings or judicial decisions directly and expressly raise an issue of fact or law regarding the substance or policy of climate change causes and impacts.*” According to Ms. Ghosh, this definition best defines Indian climate litigation.

She went on to list the main problems in climate litigation, referring to those identified by Peel (2011) and explaining them in the Indian context. Some of these issues include the “drop in the ocean” problem, the “death by a thousand cuts” problem, the problem of proof, “how many links in the chain” problem and the problem of judicial legitimacy.

On climate legislation, she noted that India lacks a climate legislation, with the exception of the NAPCC 2008 with its mission which is only a policy document of persuasive value in adjudication. But there are several “hooks” available in the existing law which can be utilised for climate litigation. These include rights-based litigation and Public Interest Litigation, Articles 21, 47, 48A and 51A(g) of the Constitution of India, the Environment Protection Act, Air Act, nuisance and negligence under criminal and tort laws as well as application of the principles of precaution and inter-generational equity and public trust doctrine.

Coming back to the first point, she explained the categorisation of 14 landmark cases which she arrived at by following the scheme given by Peel:

1. Parties or the court refers to climate impacts of a government decision/inability of the government to regulate certain activities.

- a. Cases: Om Dutt Singh (NGT, 2015); Sukhdev Vihar (NGT, 2017); Society for protection of Environment and Biodiversity (NGT, 2018); Rohtang Pass case (NGT, 2014)
2. Parties approach the court for better implementation of law or policy/ courts use climate language:
 - a. Cases: Gaurav K. Bansal (NGT, 2015); Ratandeep Rangari (NGT, 2015); Ridhima Pandey (NGT, 2019); ICELA HCF23 case (NGT, 2015)¹
3. Parties request for directions for creation of new policies/ or realignment of existing processes in light of climate concerns:
 - a. Cases: Windfarm Case (MGT, 2015); Wilfred (NGT, 2016)
4. Government uses climate concerns to defend its own decision:
 - a. Cases: None found.

In the concluding remarks, she discussed the potential and prospects in the field of environmental litigation. She feels that climate litigation likely to grow, but will remain in the periphery of environmental litigation in the near future due to more pressing environmental concerns that currently occupy the field. The directions in which climate litigation might grow may be in adaptation claims, keeping in mind that India is a highly vulnerable country; mitigation claims, as emissions are increasing rapidly, etc. she emphasised the need for an “Activist” and “Specialist” judiciary, relaxed evidentiary rules in the NGT and in PILs relating to climate concern, and increase in the attention of the judiciary on engagement with international law. These will be necessary changes which need to be made in order to further the cause of climate justice in India.

PROF. [DR.] ARVIND JASROTIA - Professor, Department of Law, Jammu University (Former Head & Dean)



Prof. Arvind Jasrotia began his speech by stating certain preliminary observations. These included:

1. Environment is not different from human sphere. Climate change is also a human development challenge.
2. Climate activity and science should be thoroughly discussed.
3. Climate Change is an existential crisis for humanity and it is the constitutional mandate and international obligation of the government to minimise the damage caused by climate change.

He mentioned the Urgneda case, where the court held that there is a duty of care that is cast on the government in matters of climate action. In the HFC23 case, the court said that HFC23 comes under the definition of environment problem simply because it “may” be harmful to the environment. This case has explored new possibilities.

He traced the history of climate litigation in India, saying that a decade ago cases pertaining to mitigation claims were very few. However, since then, India has fought a long battle, concluding at Paris 2015 to include the principle of Common But Differentiated Responsibilities (CBDR). India now has a commitment to reduce its emissions by 20-30%, however, if the recent proposed changes to the EIA process are given a green light, the goal might not be accomplished.

According to Professor Jasrotia, the impact of climate change on human health is the biggest concern. Additionally, climate change also impacts planetary health. Therefore, human health and planetary health are both interlinked. Adaptation claims in courts should focus on health impacts due to factors such as heat waves, etc. It is a fertile field for climate litigation, with a certain degree of novelty of approach. Recently, an Australian law student has filed case against the Australian government for not making clear climate change risks to investors in government bonds. This is a very novel approach, which we can learn from. In the Indian context, we have many fields which can be linked to climate litigation, such as energy security, poverty, human development. There is need to link the cause and actual impact of climate change in order mainstream climate change debates in the judicial sphere. Climate change impact can be looked at from a rights-based approach, linking it with health impacts. Health impacts should also be included in other types of litigation, such as child rights, etc.

Answering a question on whether anthropocentric approach should be abandoned for the eco-centric approach to climate action, Prof. Jasrotia opined that rights of nature is a utopian concept but it should form part of the Constitution of India. The eco-centric approach cannot be divorced from the anthropocentric approach, as they are intertwined, but it is true that we should move towards the eco-centric approach.

Concluding his remarks, he stated that mitigation, adaptation, finance and oversight are the 4 building blocks of climate protection. Article 21, environmental and health impacts can all be clubbed together to effectively litigate climate change matters.

The session was concluded with a brief question and answer session wherein many thought-provoking insights on climate change litigation was provided by the distinguished panellists. With this, the two-day webinar concluded on a positive note.

PROGRAMME SCHEDULE

DAY 1: FRIDAY, 07TH AUGUST 2020

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<p>3:00 PM TO 4:00 PM</p> <p>SESSION - 1</p> <p>SETTING THE AGENDA - IMPACT OF LITIGATION ON ENVIRONMENTAL JUSTICE IN INDIA</p>		<p>4:15 PM TO 5:15 PM</p> <p>SESSION - 2</p> <p>FUTURE OF ENVIRONMENTAL AND ANIMAL RIGHTS LITIGATION</p>
		<p>5:30 PM TO 7:00 PM</p> <p>SESSION - 3</p> <p>TAKING PUBLIC INTEREST ENVIRONMENT LAW SERIOUSLY: RETROSPECT AND PROSPECTS</p> <p>ENVIRONMENTALISM: A RIGHTS BASED APPROACH</p>
<p>MR. SHYAM DIVAN <i>Senior Advocate, Supreme Court of India</i></p> <p>PROF. [DR.] M. K. RAMESH, <i>Professor of Law, NLSIU</i></p> <p>PROF. [DR.] SAIRAM BHAT, <i>Professor of Law & Coordinator, CEERA, NLSIU</i></p>	<p>S E S S I O N B R E A K</p>	<p>MR. SANJAY UPADHYAY <i>Founder, Enviro-Legal Defence Firm</i></p> <p>MS. GAURI MAULEKHI <i>Trustee, People for Animal & Consultant, Animal Welfare Laws, India</i></p>
		<p>PROF. [DR.] BHARAT H. DESAI <i>Professor of Law, Jawaharlal National University</i></p> <p>MR. ABHAYRAJ NAIK <i>Co-Founder, Initiative for Climate Action</i></p> <p>MS. MRINALINI SHINDE <i>Fellow, Legal Affairs Division, UNFCCC Secretariat.</i></p>

DAY 2: SATURDAY, 08TH AUGUST 2020

10:00 A.M. ONWARDS: PAPER PRESENTATIONS

<p>3:00 PM TO 4:00 PM</p> <p>SESSION - 4 REGULATORY AND ADJUDICATORY CHALLENGES TO ENVIRONMENTAL LITIGATION</p>		<p>4:15 PM TO 5:15 PM</p> <p>SESSION - 5 QUASI-JUDICIAL ACTION AND ENVIRONMENT</p>		<p>5:30 PM TO 7:00 PM</p> <p>SESSION - 6 CLIMATE CHANGE LITIGATION</p>
<p>MR. RITWICK DUTTA <i>Founder and Managing Trustee, The Legal Initiative for Forest and Environment</i></p> <p>PROF. [DR.] SAIRAM BHAT <i>Professor of Law & Coordinator, CEERA, NLSIU</i></p> <p>DR. DEVA PRASAD M <i>Assistant Professor, IIM Kozhikode</i></p>	<p>S E S S I O N B R E A K</p>	<p>MR. NAWNEET VIBHAW <i>Partner, Khaitan & Co.</i></p> <p>MR. BIBHU PRASAD TRIPATHY <i>Advocate, High Court of Orissa</i></p>	<p>S E S S I O N B R E A K</p>	<p>PROF. ARMIN ROSENCRANZ <i>Dean, Jindal School of Environment & Sustainability, JGU</i></p> <p>MS. SHIBANI GHOSH <i>Public Interest Lawyer & Fellow at Centre for Policy Research</i></p> <p>PROF. [DR.] ARVIND JASROTIA <i>Professor, Department of Law, Jammu University (Former Head & Dean)</i></p>

PAPER PRESENTATIONS – 08th August, 2020

10:00 A.M. – 1:00 P.M.

<p align="center">PARALLEL SESSION – 1 Moderators Ms. Madhubanti Sadhya Mr. Vikas Gahlot</p>	<p align="center">PARALLEL SESSION – 2 Moderators Ms. Geethanjali KV Ms. Lianne D’Souza</p>	<p align="center">PARALLEL SESSION – 3 Moderators Mr. Raghav Parthasarathy Mr. Rohith Kamath</p>
<ul style="list-style-type: none"> - <i>Sand Mining Regulatory Regime in India and the Major Sustainability Challenges: A Critical Review - Aneesha Dominic</i> - <i>Liability Dimension of The Baghjan Gas Leak Case in Assam under the Legal Framework - Dr. Matiur Rahman & Jayanta Boruah</i> - <i>Revisiting the Stringent Laws Relating to Animal Cruelty -Khushboo Natholia & Prerna Chhabra</i> - <i>Is it possible to create a Zero-Waste environment in West Bengal? – Monalisa Saha</i> - <i>Environmental and Energy Justice – Divya Dhupar</i> - <i>Impact of Coal Mining on Environment and Health: Role of Law and Judiciary in Combating the Same - Priya Bhatnagar</i> 	<ul style="list-style-type: none"> - <i>Addressing Environmental Disputes in India Through ADR Methods: Awaiting the Green Signal? – Dr. Kim Couto</i> - <i>Role and Relevance of the Draft EIA Notification, 2020 for the Protection of Environment - Dr. Rana Navneet Roy & Rajat Tiwari</i> - <i>Objective Policies, laws & guidelines will reduce litigation - RP Ganesan</i> - <i>Environmental Protection- Outside the Realm of Existing Legislative Framework? - M. G. Kodandaram</i> - <i>Racial Disparity: An Impediment to Environmental Justice – Mahek Khandelwal & Smarak Chakraborty</i> - <i>The Right to Healthy Environment: A Tool for Eco Justice – Lekshmi Priya L.</i> - <i>The Need for Uniform Regulatory Frame Work on Environmental Protection with</i> 	<ul style="list-style-type: none"> - <i>Environmental Justice and International Law: Evaluating through A Human Rights-Based Approach – Dr. Anita Yadav & Puja Raghavan</i> - <i>Climate Justice in India: Gender Perspective - Vidya Ann Jacob & Renuka Joseph</i> - <i>Combating Climate Change and Securing Environmental Justice in Indian Scenario - A Need Centric Approach – Susmita Dhar</i> - <i>Environmental Justice apropos Kyoto Protocol: Analysing how the power of the Government can be used in protecting the Environment – Darshitha P.</i> - <i>Carbon Trading Market Regulation: Refurbishing the International Environment Law - Shanvi Aggarwal & Abhishek Rudra</i> - <i>Application of Environmental Justice to Combat Global Challenges – Swetha Suresh</i>

<ul style="list-style-type: none"> - <i>The Doctrine of Public Trust as a Tool to Rejuvenate Natural Fresh-Water - Akshit Gupta & Shantanu Roy Chowdhury</i> - <i>An Overview of the laws governing Wildlife protection in India in Consonance with Environmental Laws and International Conventions - Ayesha Noor</i> - <i>Intensive Pig Farming- Mapping the Changing Contours of Animal Laws - Sanjana S Jain & Vishnu Mangalvedkar</i> - <i>Vindication of rights of environmental Law (Human rights, Rights of nature, Animal rights) – Om Shandilya</i> - <i>Prospective litigation in the field of environmental law vis-à-vis NGT, Manual Scavengers, Climate Change and Pollution Control Authorities in India – Rahul Tiwari</i> - <i>Access to justice and Environmental Justice - A Study of India and South Africa – Nivedita Chaudhary</i> - <i>A Critique of The Public Trust Doctrine with Focus on its Conflicts with Religion – Adithi Gurkar</i> - <i>Corporate Social Responsibility during COVID-19: Elevated by ESG but Defeated by Compliance – Nidhi Singh</i> 	<p style="text-align: center;"><i>Specific Reference to Principles of Environmental Justice - Pavan V & Abhishek Sharma P</i></p> <ul style="list-style-type: none"> - <i>Trade-off between Economic Freedom and Environmental Justice: Analysing the trends in Environmental Litigation and Judicial Pronouncements in India vis-à-vis Environmental Economics – Sandeepani Neglur</i> - <i>Protecting Public Health by Safeguarding the Environment: Role of Public Interest Litigations - Pranav Narsaria & Torsha Dasgupta</i> - <i>Judicial Activism in upholding the Environmental Justice: An Analysis in the perspective of Indian Legal Scenario - Suravi Ghosh</i> - <i>Evaluation of Judiciary’s Role in Conservation of Forests - Shivangi Pandia</i> - <i>Recent Activist Trends in NGT: Judicial Restraint and Judicial Overreach – Divya Tripathi</i> - <i>Indian Judiciary – The Guardian of Indian Environmental Enigma – Govind Singh</i> - <i>COVID 19 Pandemic and Bio-Medical Waste Management Laws – Hiranmayee Mishra & Smitha Satapathy</i> 	<ul style="list-style-type: none"> - <i>The Environmental Affairs Non-Compliance: Threatens and Warns Vis A Vis Role of Judiciary – Aradhya Singh</i> - <i>Role of Judiciary and Regulatory bodies in Enviro-legal regime of Common Effluent Treatment Plants (CETPs) – Aniruddha S Kulkarni & Amit Thakkar</i> - <i>Environmental Justice to Combat Global Challenges: Why is it Essential for a Sustainable Future? – Nitesh Mahech & Pankhuri Bhatnagar</i> - <i>Climate Change Litigation in India: Mapping the Role of the National Green Tribunal – Nikita Pattajoshi</i> - <i>Intersectional Environmentalism: The Indian Perspective – Ahana Bag</i> - <i>Special Jurisdiction of the NGT: The Need of the Hour - Achint Jain & Abhinav Aggarwal</i> - <i>Environmental Justice: Judicial Activism at Grassroots – Sujjan G. J. Megalamane</i> - <i>The Ultimate Feasible Way Towards Sustainable Development – Kratima Divakar</i>
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BOOK OF ABSTRACTS

Sand Mining Regulatory Regime in India and the Major Sustainability Challenges: A Critical Review

- Aneesha Dominic

Abstract

‘Sand’ is a word which no one needs a description. There would be several numbers of images that would come to one’s mind while thinking of this simple world. It may be a windblown sand in a desert, or sand in a beach or even one’s own house built strongly with cement and sand mixture. But probably there would be no one who would have thought of a world without sand. ‘Sand Mining’ is a not a new word for us. And it has proved itself to be a trending issue, always. But rare does one think this as a wreaking havoc. It is undisputed that sand mining activities form an integral part in the economic development of any country. But the main issue arises when the sand is extracted in a much faster rate than it can be replenished. Thereby the environmental cost to be payed is so huge. The recent floods that affected Kerala and other parts of the country simple shows how sand mining have contributed to the same. So, this underlines the need for sustainable sand mining, where sand extraction and environmental protection can have a fair balance.

When the global scenario of sand mining is been analysed, it is quite evident that the world cities are built on sand. And no development can be thought of without this natural resource. But with the increase in global urbanisation rate, the demand for sand is also been considerably increasing. And literally the world is running out of sand which portrays the global sustainability challenge. Even though there are number of international documents which deal with the need for sustainable development and natural resource protection, there is no single international obligation that elicits the need for sustainable sand mining except the recent UNEP reports. Sand can be said to be a lucrative commodity in India. There are a series of legislations and guidelines which is said to aim at improving the regulatory regime of mining industry in India but it is undisputed that several loopholes do exist in the present laws. The recent National Mineral Policy of 2019 and Draft EIA notification of 2020 are simply examples of such devastating moves. It is been seen that legislature always tend to undermine and dilute the stringent regulations put forward by the judicial wing. So, the researcher through this paper aims to portray the depth of this menace and the gaps in laws regulating them. An overview of the international and national sand mining regime and need for sustainable sand mining means is been focused. The legislative, judicial and administrative actions to regulate the sand mining regime in India and its effectiveness are aimed to be highlighted through this paper.

Liability Dimension of The Baghjan Gas Leak Case in Assam under the Legal Framework

- Dr. Matiur Rahman & Jayanta Boruah

Baghjan oil well disaster in upper Assam caused long term environmental damage and technically speaking to both ecology and economy. This extensive damage should be looked into from eco-centric rather than anthropocentric point of view. Facts remain that the leaking of Baghjan 5 gas well of Oil India Limited (OIL) caught fire around 1pm on 9th of June 2020 triggering chaos and panic in several nearby villages. The disaster caused massive damage to flora, fauna and biodiversity. According to the expert reports, the OIL must pay several thousand crores to the victims as compensation and also must pay for eco restoration. From jurisprudential point of view, polluter pays principle is an international mandate and thus for sure OIL has got no other option but to pay for it. Apart from this, OIL is a State within the meaning of Article 12 of the Constitution of India and therefore must conform with the mandates of Article 48-A of the supreme law of the land. The Green Tribunal in the meanwhile interfered passing repeated directives to ensure environmental human rights of the victims including eco restoration. The Public Liability Insurance Act, 1991 is a panacea to ensure justice to both the victims and the biodiversity.

This paper will therefore focus on the concerned topic as regards the applicability of the legal provisions in making Justice seemed to have been done for the victims of this Baghjan disaster.

Keywords: Baghjan; Ecocentrism; Environmental Disaster; Compensation; Oil India

Revisiting the Stringent Laws Relating to Animal Cruelty

- Khushboo Natholia & Prerna Chhabra

Abstract

The recent incident where a pregnant elephant in Kerala died after eating a pineapple filled with firecrackers has created an outrage in the whole nation. It brought in limelight the plight of the innocent and speechless animals. All the social media accounts and print media was flooded with the post related to the above-mentioned incident. People were shocked to hear about the cruel and inhumane act done by the so-called-human beings. The public demanded strict action against the wrongdoer and also pointed

towards the need of legislating stringent laws to protect the animal. It has re-opened the gates for the debate that whether animals have any legal rights? If they have rights, then who is responsible to address their grief to the courts? This is not the only incident of animal abuse in India, there are many shocking instances of cruelty against animal which include rape, killing by giving poison, sodomy, beating, sacrificing the life of the beautiful animals in the name of religion etc. The Constitution of India imposes a fundamental duty on every Indian citizen to have compassion for all living creatures under article 51A(g). In addition, there are various statutory and constitutional provisions which protect the rights of animals and punish the wrongdoer by imposing imprisonment or fine or both. One such legislation is the Prevention of Cruelty to Animals Act, 1960 which was enacted with a twofold objective. Firstly, to forestall the unnecessary agony and suffering on animals. Secondly, to revise the existing laws related to animal cruelty. Also, there are various NGO's working for the rights of animals and providing them safe and healthy environment to live. Even after all this, the animals are subject to cruelty and are at the mercy of the NGO's or court or media or the general public to address their grievances and get them justice. This article highlights instance of animal cruelty and revisits the laws enacted to prevent animal abuse and safeguard their interest.

Keywords- Animal cruelty, rights, duties, legislations, stringent laws and courts

Is it possible to create a Zero-Waste environment in West Bengal?

-Monalisa Saha

Abstract

The author in this paper has done a holistic study on the waste management system in place in urban locales in India, especially the one in place in the state of West Bengal. Her study is premised on her hypothesis that the existing environmental regulatory system in India is not keeping pace with rapid urbanisation which in turn has been negatively impacting the health of all living beings in the era of Climate Change.

She begins by defining urbanisation and explaining how there are many ill-impacts of this phenomenon, but that she would limit her scope to the study of Urban Waste Management System in the state of West Bengal, India. Her primary focus in this paper has been on the way waste is handled once it is generated in West Bengal, but she emphasises that the focus should ideally shift to reduction of waste or adapting to zero waste habits soon. For this purpose, she has studied elaborately contemporary practices employed by non-governmental entities who have worked in preventing and managing waste beyond their legal duties and outside

the scope of supervision of the government. She offers in her conclusion that if appropriate modifications are made in the legal regulatory framework the face of waste management in the state of West Bengal can alter substantially.

Key Words: zero-waste, waste management in West Bengal, plastic, climate change, carbon footprint, Central Pollution Control Board, West Bengal Pollution Control Board

Energy and Environmental Justice

- ***Divya Dhupar***

Abstract

Environmental Justice entails that all members of each and every community have the right to participate in governmental policy, decision and implementation methods of projects, policy or legislations. These objective dictates that people should be have a say in governmental action that affects their overall well-being and quality of life. Environmental justice ensures that members of the most marginalized communities participate in debate and discourse on issues that have a potential on infringing legal rights and the overall quality of life. The term further entails that benefits of the aforementioned policy, legislation or projects should be equitability distributed among all the members of the society.

Energy Justice on the other hand, has been concretized as one of the foundations of energy law. The term signifies that the energy system developed should be of such nature that costs and the benefits of energy services are distributed equitability among all the members of the society. This principle goes beyond its applicability to the government and includes multinational energy corporations within its ambit Energy justice is further divided into three sub divisions namely Distributional Justice, Procedural Justice and Recognition Justice.

The primary issues under consideration of energy justice is the access and affordability of energy services.

Environmental and Energy justice have similar theoretical foundations and emerged at approximately the same time, Yet the achievements of both principles have been deemed to be commendable at best. This begs to question as to whether these two principles are independent of each other? The next question that baffles scholars and jurists is whether there is an overlap of goals the aforementioned principles seek to achieve?

Through the course of the article the author will determine the foundation, development and the ultimate goal of these principles. The application and use of these principles will be examined in India with respect to the access and affordability.

Impact of Coal Mining on Environment and Health: Role of Law and Judiciary in Combating the Same

-Priya Bhatnagar

Abstract

Mining is a very important economic activity, especially that of coal. In India 80% of mining is done in the coal sector. Coal is a favourable fuel for India since its available in abundant and is affordable, but at the same time it is more pollutive at regional as well as global level. It directly or indirectly affects all the natural resources like water, air, and soil and overall environment in and around the area where mines are being excavated. Thus environment distress has become one of the major impediments for the growth of coal industry in times to come. In countries like United States, United Kingdom, and other European countries, the downfall of coal has already set in for the reasons of effect on climate change, global warming and deterioration of the local environment and health. These countries are shifting towards renewables sources of energy. Though the substitution of coal with renewables will take time but nonetheless it is on their priority list. But India still is far way behind these countries in getting away with coal as many sectors and industries are very much dependant on the same.

A number of environment defies continue to confront the coal mining like fires in the mines, dust control specially haul road dust consolidation, control and treatment of water contamination due to metal and other discharge from mines, reparation of water table that is altered due to mining operations, change in the land use pattern, soil erosion, illegal mining using unscientific methods etc. This brings out the fact that there is dire need to improve the environment management techniques whereby the harm caused is mitigated to the minimum. From all the issues concerned with environment, increase in greenhouse gases and acid rain are the ones need to be addressed immediately.

The environmentalist have questioned the viability of the coal mines in achieving sustainability and have named it a dirty fuel. It has become challenging for coal mining industry to achieve it. Some pollution is bound to occur because of the inherent nature of the industry but maximum pollution occurs due to the inability and carelessness of the industry to deal with it.

Though coal mining contributes to nation's economy but it also greatly affects the entire ecological system which includes health and livelihood of the inhabitants.

There are laws and policies to govern mining activities in the country but the question here is how much these regulations have aided in resolving or subsiding the environment and health issues emerging from mining. In this background it becomes imperative

to study in detail the aftermath of coal mining in India on environment and health along with the laws and their execution on the same. This paper aims to highlight the concerns emerging out of coal mining in India, while discussing the legal framework at present along with the gaps that needs to be filled by law and its proper implementation.

The Doctrine of Public Trust as a Tool to Rejuvenate Natural Fresh-Water Resources

- Akshit Gupta & Shantanu Roy Chowdhury

Abstract

Often, we disassociate ourselves from being occidentalist and try to adopt more indo-centric ways to tackle water pollution. Lord Buddha born around 2500 years ago in eastern India used to reprobate those who used to defecate in rivers , he adhered a strict principle in Buddhism that no monk will defecate in rivers .It was an admonishment on his part that if we do not seriously mediate on ways to stop polluting our river and environment then in future humanity will be in an moral and environmental turpitude . Article 21 of the Indian Constitution safeguard our right to access free clean water and rivers, but the question arises that is people of India have equal right to access clean water and other resources, we also have to review the situation by the lens of article 14 and 15. As India is a victim of various socio legal caste based complexities and in the case of accessing water bodies and rivers various discrimination happens both with an individual person or whether it is a state.

In all common law countries, natural resources are considered as the sovereign protectorates of the state, nurtured for the benefit of all. This theory of Public Trust implies the vested care-taking role of the authority in the matters of conservation and improvement of the unclaimed nature. Yet, it has been a an event of utter obnoxiousness that certain gifts are perceived as entitlements by an elite select.As witnesses in the landmark judgement of *M.C. Mehta vs. Kamal Nath*, we are encroaching upon the natural architecture of the environment for the contentment of our desires. Yet, with evolving times, the public domain is becoming aware of its rights and it's consistently exercising it's right to accountability upon the authority. The fast- paced environmental projects and conversation schemes bear ode to this endeavour of the common populace, with aid from the legal activists. However, the broad gap between proper execution and specimen demonstration is yet to be bridged. The rampant mismanagement and indifference of the government in the upkeep of natural ecosystems and corresponding enlargement of artificial structures has resulted in massive destruction to the natural as well as man-made habitats. For this study, we magnify the scope of rivers and the tampering done, with respect to their course or discharge basin, hand that have wide-ranging consequences. It is no nature that the vast parts of Assam and other North-Eastern states face inundation every year, this mischief of the Brahmaputra River is

proliferating every annual. In a report by The Indian Express, the Brahmaputra river faces alterations in its course every new monsoon, due to the impediments created by artificial embankments of cities and towns that are undergoing expansion, the river builds up huge volumes and discharges it into low-lying areas, hence submerging much of the vulnerable wildlife . The Kaziranga National Park is facing a similar fate this season.

This study will try and implement the various variables of inclusive growth, which includes substances of awakened litigation and profuse activism by the general public, jointly moving towards the achievement of proper and equitable utilization of natural resources, and their due care and conversation.

An Overview of the laws governing Wildlife protection in India in Consonance with Environmental Laws and International Conventions

- ***Ayesha Noor***

Abstract

Wildlife includes both flora and fauna that grow in a wild area without the intrusion of humans. However, human encroachment on forests has become a threat to wildlife. The rapid increase in the population of India is a key factor that contributes to the rapid increase of deforestation. To provide shelter and sustenance to the proliferating population, large tracts of forest land are being cleared and converted to agricultural fields or are being used to build homes. As man is gradually encroaching on forests, the wild animals are left with no alternative but to proceed towards city limits which ultimately leads to their indiscriminate killing.

This paper aims to analyse and critically evaluate the various wildlife protection laws that are operational in India in addition to the perusal of landmark judgements. The paper analyses the laws pertaining to endangered animal and plant species and inspects the mechanisms that safeguard and ensure the survival of such species. The paper aims to study the International Conventions in relation to Wildlife protection and conservation and attempts to distinctively sieve out norms and protocols that can be incorporated in Indian laws. It is imperative to understand the interdependence of Wildlife and the Environment, hence the paper shall also discern certain environmental laws that are a threat to the survival of animals.

The existing legal regime in India caters to the need of wildlife conservation but there are certain aspects of the law that need amplification, which shall be summarised in the following paper. The research methodology used in the paper is doctrinal. By the

effective evaluation and expansion of the existing laws there can be a wider interpretation of wildlife conservation laws that shall help in the protection of wildlife.

Keywords: deforestation, endangered species, international conventions, environmental laws, threat to survival.

Intensive Pig Farming- Mapping the Changing Contours of Animal Laws

-Sanjana S Jain &Vishnu Mangalvedkar

Abstract

The growing demands of the consumers have fueled the shift to intensive pig farming and the usage of gestation crates. Such adoptions are a result of corporate aggression and are aimed at profit maximization. The authors have resorted to demystify the conflict between animal welfare concerns and economic concerns. Further, the existence of a close link between animal welfare, animal health and foodborne diseases which can pose a risk to the health of the humans, has made it essential to consider the situations in which the pigs are reared and slaughtered. In this backdrop, Intensive farm techniques adopted in the pig farms and their implications on human and animal health forms the subject matter of the paper. As per the Behavioral Scientists, the natural behaviour of pigs is constrained while being housed in the Gestation crates, which is a matter of grave concern. And the resulting violation of constitutional rights of animals and The Prevention of Cruelty to Animals Act, 1960 is taken note of. After a comparative study of various countries and their take on using gestation crates, further required advances in this matter at hand shall be proposed. Considering the sentience and cognitive abilities of pigs, the paper proceeds towards exploring the alternative housing systems which could address the welfare concerns. The authors shall also highlight the current position of law along with existing grounds which could be invoked for approaching the courts and advocating the rights and entitlements of the voiceless. After mapping the changing contours of animal laws, the possibility of conferring legal personhood to animals shall also be analyzed. By relying on the link between animal welfare, animal health and ecosystem, the arguments favoring strict legislation has been deduced. Model legislation concerning the rearing of pigs based on recommendations of the Law Commission Report 26 shall be presented and its requirement examined on the touchstone of animal welfare jurisprudence. Internationally recognized five freedoms which were mentioned in the cases of AWBI v A Nagaraja and the case of People for Animals v. Md. Mohazzim forms the basis of the model legislation. The amendments to the existing legislation which are required to realize the objective of the proposed legislation shall be suggested. In conclusion, the actions that can be pursued by the authorities in charge, to widen the frontiers of justice and to extend it to the animals are courted in the due course.

Keywords- Animal Welfare, Behavioral Science, Gestation Crates, Intensive Pig Farming, Model Legislation.

Vindication of Rights of Environmental Law (Human Rights, Rights of Nature, Animal Rights)

- Om Shandilya

Abstract

This study presents a vivid as well as extended description of the need of reciprocity between the co-existing creatures in the environmental system. The study illuminates the grey area where the essential presence and support of human cooperation becomes extremely important to maintain the ecological balance inter alia every contrasting activities, beliefs, prejudice, speciesism, etc at every given cost. This list can extend endlessly. Further, the study subtly highlights the need of the hour to strike a digestible balance between the rights and the duties of Homo sapiens towards the taxonomical ranking. The description involves the tools of Mythology, Law, Science, Arts, etc wherever needed to substantiate the idea with the holistic approach to counter preferential environmental treatment of the creatures.

The UN's 1982 World charter for nature unequivocally quotes "every form of life is unique, warranting respect regardless of its worth to man". The Charter objectively lays down the reasons why human beings must remain neutral while according with the intersectional environmentalism. Inherently, it serves as an alarm for ignorance which the world is defraying everyday post 2000s. The 42nd amendment to the Indian Constitution is historic in many ways, providing guidelines for every class of matter. From environmental point of view, the amendment through two insertions, i.e. Article 48 A & 51 A (g) extends the duty on the citizens & the government to collectively protect the environment. Additionally, this description also scrutinizes the validity of education, old age beliefs, dust ridden customs, etc which continually affect the effectiveness which the flora and fauna needs to be acknowledged with. Additionally, it rejects the idea of speciesism, i.e. humans are more important than animals, which causes humans to treat animals badly. Suggestion and proposal for improvements have also been provided to main the nature of the text.

Keywords: Flora & Fauna, Speciesism, Law, Redress, Resolution, etc

Prospective litigation in the field of environmental law vis-à-vis NGT, Manual Scavengers, Climate Change and Pollution Control Authorities in India

-Rahul Tiwari

Abstract

The current study is doctrinal and qualitative in nature which interpret and analyse various published papers, books and judgments. This paper is divided into two part. The first part deals with the human rights violation of the manual scavengers and how the State has failed to provide an alternate waste management technique in India and what measures could be adopted. The second part co-relate the same poor and improper waste management technique and inhumane manual scavenging and its impact on the climate change, along with the role of NGT and the pollution control bodies in India. The second highlights how waste management of any state is directly proportional to the fluctuating the climate change and will explain all the factors in details.

Manual scavenging has always been a practice which has prevailed since the ancient Indian society. The dehumanizing tradition of manually extracting night soil comprising taking away human faeces from dry lavatories with bare hands, or brooms, carrying excrement and baskets to disposal chucking locations are not only horrific, but the greatest extent of abuse of human rights. In 1993 and later in the year 2013 the Government approved a competent law banning manual scavenging inhuman and oppressive practice. A further element of this research focus on the insightful analysis of legal domain, administrative initiatives, and judicial statements, rehabilitation mechanisms. Climate change has lately gained the attention of everyone. By next century, the planet's surface rate is expected to increase by about 2°C, with catastrophic consequences on our wildlife, flora, fauna and humanity. In addition, major shifts have also been noticed in the chemical makeup of the environment, due to a rise in greenhouse gas pollution, primarily methane, carbon dioxide and nitrous oxide. Every developing country is facing the issues of improper waste management of the industrial waste but the improper waste management of human excreta is neglected. The same waste (Human excreta) damages the sewer and sanitation facilities and are disposed into rivers, contaminating the water bodies or it creates landfills.

Here the researcher finally linked the issues of manual scavengers, climate change to the environmental litigations and the role of NGT regarding that. The paper questions the current role of environmental litigation and the limited role of NGT and finally proposes various recommendations, as to how NGT can be made more resourceful and the environmental litigation and what futures hold in these issues, focusing on the aspects of role of technology too. It highlights the current loopholes in the functioning of NGT and the administrative malfunction of the various pollution control regulatory bodies and its direct impact on the environment in the contemporary time and the lack of access to justice to the manual scavengers.

Concluding it, this article will therefore recommend corrective measures and progressive moves to deliver the scavenging community into our country's public consciousness, along with providing better alternative for waste disposal and render a substantial participation to its growth.

Keywords: Manual Scavenging, sanitation, waste management, climate change, sustainable development.

Access to Justice and Environmental Justice - A Study of India and South Africa

- ***Nivedita Chaudhary***

Abstract

Ever since the UN Declaration on Human Rights came into being in 1948 it sought to protect various fundamental human rights. This in turn prompted various constitutions of the world to assure various rights including socio-economic rights like right to dignity, education, health, and shelter. One such socioeconomic right that has owned a great deal of attention in numerous national and subnational constitutions is right to a quality environment due to ongoing ecological urgency. In 2019, Global Environment Outlook of United Nation's also warned the nations about this environmental urgency and urged the decision makers of all the nations to take instant action to address grave environmental issues to achieve the Sustainable Development Goals.

In this backdrop, various nations came up with various measures including legislative, judicial and even administrative to implement this constitutional right to environment. This research article, therefore, attempts at exploring the constitutional mandate in terms of environment at two developing nations namely India and South Africa. Further, it examines the procedural justice framework of environmental justice which requires effective access to judicial and administrative proceedings, including redress and remedy in terms of environmental matters. Therefore, the article mainly analyses notion of Indian judicial activism on the fragile issue of environment protection and evolution of environment jurisprudence in these two developing nations. The article also examines the extent and depth of environmental jurisprudence in these two countries and whether formulation of this jurisprudence has resulted into environmental justice.

This research article is divided into three parts. Part I briefly describes environmental law in India, providing a backdrop for the remainder of the analysis. Part II describes major features of environmental law in South Africa which has been chosen as an illustrative case study as it has environmental provisions in its constitution. Finally, Part III discusses judicial interventions for the implementation of environmental law, returning to India and directly comparing the Indian experience to that of South Africa.

A Critique of the Public Trust Doctrine with focus on its conflicts with Religion

- ***Adithi Gurkar***

Abstract

The doctrine of public trust has evolved over the years to emerge as one of the core principles for the judiciary to substantiate the legitimacy of governmental action that interferes with the use by the general public of natural resources. The incorporation of this doctrine into our legal system has resulted in the imposition of a much required check upon governmental authorities who seek to divest State control over such natural resources in favour of private parties. However it has also created conflicts especially with regards to discussions concerning what extent of governmental interference in what is considered by some as belonging to a public trust is justified. This becomes of particular significance when the claims of worship and the rights of devotees also become an undeniable part of the discourse. This paper shall first begin a critique of the doctrine in relation to the tragedy of commons, it shall then explore the myth of state ownership with regards to wildlife and analyse its role in the development versus devotion debate with regards to sacred places of worship.

Addressing Environmental Disputes in India Through ADR Methods: Awaiting the Green Signal?

– Dr. Kim Couto

Abstract

Environmental degradation, pollution, environmental hazards have been witnessed on a large-scale in India, since decades. Unprecedented damage to natural resources has resulted in the enactment of several legislations in India to prevent, prohibit and punish acts and omissions resulting in harm to the environment. The recognition of the right to a pollution-free environment by the Supreme Court of India, as an integral part of the fundamental right to life under Article 21 of the Constitution has seen the emergence of a rich environmental jurisprudence with legal doctrines and principles being developed and applied by the Indian judges in various cases. Greater social awareness and concern about the environment, claims by victims affected by environmental damage and violations of environmental laws and regulations have resulted in an upsurge in cases before the Indian courts in the hope that remedial action is taken expeditiously.

Environmental litigation is a broad term referring to all kinds of actions for protection of the environment. Till date, the Courts continue to be seen as the panacea for all evils including environmental disputes. Thousands of cases concerning the environment

are pending before the Indian courts. ¹ Delay in disposal of these cases would defeat the very purpose and intent of the laws meant to protect the environment.

In different parts of the world, ADR methods are being used to resolve environmental disputes. Can the positive experiences of the US, Australia and some Central and Eastern European countries with ADR in environmental matters, serve as an example for environmental dispute resolution in India? Various scholars argue that besides involving less costs and time, adopting ADR methods in environmental disputes may allow for specific needs and aspirations to be taken into account, rather than a one-size-fits-all approach. ADR proponents also believe that some environmental concerns need to be addressed with means other than legal action. Environmental dispute resolution through ADR methods would provide a more holistic approach, allow for a broader perspective of the problem and thereby a more effective solution to the problem at hand.

Detractors however, view environmental disputes as being complex and technical in nature such that cannot be handled and resolved through mere negotiations. Rosemary Lyster mentions certain apprehensions about the use of ADR techniques in environmental matters. In her view, the private character of ADR processes would result in serious environmental matters of public concern being “negotiated amongst a few identifiable interested and affected parties.”

International environmental law instruments have clauses for dispute settlement through ADR techniques. Indian legislations demonstrate limited or nil recognition to the use of mediation or conciliation in resolving environmental disputes, which may hamper justice. In this paper, the author suggests that the increasing relevance of ADR globally in various disputes is extending to the area of environmental disputes as well. There is need for deep thought and suitable action by the law makers and change in mindset of all concerned.

Role and Relevance of the Draft EIA Notification, 2020 for the Protection of Environment

- Dr. Rana Navneet Roy & Rajat Tiwari

¹ According to available data from the NCRB, over 21,000 cases of environmental violations are pending before the Indian courts in 2016, available at <https://www.downtoearth.org.in/news/environment/courts> last accessed on 28/7/2020. At present, 2,866 cases are pending before the National Green Tribunal available at <https://greentribunal.gov.in/last> accessed on 29/7/2020.

The Centre for Science and Environment’s State of India’s Environment 2020 Report mentions that Courts will take 9 to 33 years to clear the backlog of cases for violations under forest, wildlife, environment protection and air pollution laws, available at <https://www.cseindia.org> last accessed on 28/7/2020

Abstract

The earth is a single planet which we all share. This place is so precious that we all are going to leave for our coming generations and unfortunately, we are exploiting the same as if we have another alternate planet to shift after exhausting the resources of earth. It is rightly said that when the situation is indecisive it is always fruitful to look into the wisdom of the past and therefore the shloka from the “*samayochita padya malika*” which reads as follows:

न कूपखननं युक्तं प्रदीप्ते वह्निना गृहे ।

चिंतनीया हि विपदामादावेव प्रतिक्रिया ॥

The shloka means that it is not wise to start digging a well when your house is on fire. One must be prepared for calamities well in advance.

The current Pandemic has left many imprints on the human conscience and on the one hand it has made people to think consciously for the conservation of the environment and on the other, governments across the globe are also preparing long term sustainable development policies in furtherance of the environmental conservation. In furtherance of the same, the Ministry of Environment, Forest and Climate Change (MoEFCC) has proposed recently a draft Environmental Impact Assessment (hereinafter referred as EIA) Notification 2020 for making the process more transparent that seeks to replace the existing Notification which was issued in 2006.

The EIA is a process of great pertinence as it evaluates the environmental impact of any infrastructural development or industrial project. It is a process whereby people’s views are taken into consideration for granting final approval to any developmental project or activity. It is basically, a decision-making tool to decide whether the project should be approved or not. Although certain areas are also there in the draft notification which draw the criticism including the provision of post facto approval of project wherein the clearances for projects can be awarded even if they have already started the construction or other activities without securing environmental clearances. Apart from this, the categorization of some projects as strategic is another area of criticism which seems to be contradictory to the projected intention of legislation, i.e. transparency, wherein for a “strategic project”, the government shall disclose no information to public.

In the above backdrop, the paper intends to explore different aspects of the concept of EIA and put some lights upon the lacunas and merits of the proposed EIA draft notification by a comparative analysis with the existent EIA Notification 2006 and with the other countries across the globe.

Keywords: EIA, sustainable development, strategic, public participation, post facto approval, transparency.

Objective Policies, Laws & Guidelines that will Reduce Litigation

- ***RP Ganesan***

Abstract

Presence of an endangered tree species in NH alignment, led to litigation, still in stay since 2012, as MoEFCC / forest dept could not file a reply affidavit as they do not have objective policy / guidelines to deal with the same. As of now, EIA collects information whether endangered species found in alignment, but no one has ready list of endangered trees and what is remedial measures. Objective guidelines shall be if threatened species found in NH alignment, compensate 1:100 for Critically Endangered (CR), 1:50 for Endangered (EN), 1:25 for Vulnerable (VU), 1:10 for Near Threatened (NT) and 1:5 for Least Concern(LC), instead of 1:3 normally. Actually, it can be done without any additional cost, land, manpower, if done in compensatory afforestation (CAMPA)

In the above referred case, (WP-C 16655/2012, Madras-HC), compensation for trees is arbitrary. As there is no clear guidelines to calculate it, field level forest officers calculate arbitrarily without knowing difference between cost, value and compensation. Good that compensation for land has been specified objectively in RFCTLARR 2013, instead of market value which was subjective earlier. International conventions / treaties are yet to be understood clearly. IUCN classifies threatened species objectively. India is yet to adopt it. There is lack of uniformity across central and state laws wrt classification of threatened species. WPA 1972 says “Specified plant” whereas Tamilnadu forest act says “scheduled plants”. Red sanders tree was in endangered category by mistake, after objective assessment, IUCN classified as Near Threatened, but BSI has reservations as they do not define objectively yet. ATREE scholar’s report confirms that there is no recovery plan for endangered TREE species, as available for TIGER.

CITES restricts / regulates international trade of endangered species of wild origin and facilitates cultivated specimen to meet the demand which reduces smuggling from wild, a conservation model called “CIRCA-SITUM”

Lack of understanding of IUCN and CITES of above points, led to restrictions for FARMERS dry land tree Red Sanders wood export for decades which would have costed India more than lakh crore including forex, environmental loss. As Red Sanders has been removed from endangered category on July 2018, a separate policy in Feb 2019 by DGFT for FARMERS Red Sanders wood export encouraged farmers to plant more than MILLION TREES in 2020, increasing. It is only a start, if restrictions are removed for all tree species grown in farm land, as envisaged by NITI Aayog in 2016, I am sure India will become green by 40 %.

Judgements become law, but not becoming part of guidelines. An apex court judgement said, provide demarcated FMB in land acquisition. Since it has not become part of guidelines, the same mistake continues and litigation for decades.

Judges have big challenge, understanding emerging complex environmental issues. NGT was solution but clear demarcation will help speed up the judgements. Online objective guiding manual, updating annually based on developments will reduce ambiguity, help working officials and judges.

Environmental Protection-Outside the Realm of Existing Legislative Framework?

– M. G. Kodandaram

Abstract

The volumes of international laws in the form of declarations, agreements, treaties and such other legal and regulatory instruments have not succeeded in containing the continued damage on our planet. The National environment laws have also failed to sustain or arrest the decline in the health of the environment. This clearly vindicates that it is beyond the realm of these legislations, to prevent the environmental deterioration that is worsening by the day. As experience and time speak, the present environmental legislations could be, at the most, the instruments to punish the violators through pecuniary penalty, seldom a deterrent, thanks to inherent deficiencies in construction and implementation of such laws.

The National legislations have failed to live upto the set objectives due to poor implementation of the promised measures by the governments and administrations. Even in instances where, as in India, the judicial activism had some catalytic impact, the implementations of environmental laws have remained a bane. The geographical limitations of country-specific laws in resolving the environmental issues that are global in nature, have further rendered them incompetent and inefficient.

The global concerns, be it increase in pollution and toxicity of air, water and land, deforestation etc., have remained uncontainable. The International legal instruments serve as a mechanism for mutually accepted commercial practices under the label of sustainable development. Global legislations may help in providing monetary compensation to the victims and in some cases, to the concerned country and have little to offer either for preservation and restoration of natural ecological balance on the earth.

The reason, among others, for poor performance of the legislative route could be the anthropocentric approach in creation and execution of environmental laws. These laws are aimed at protecting and benefiting humans, not the environment in which humans

live. These laws reflect deep division in meeting the interests of other natural partners- both living and non-living, and thus ethical efforts to preserve the earth cannot be achieved through these flawed corridors.

Therefore it is felt that there is need for an additional alternate approach, based on the realisation that human beings are totally dependent on other biotic and physical partners on this earth for their survival and have to necessarily play a positive and inclusive role in not disturbing the laws of the nature. An internationally acclaimed code of conduct in the form of imperative environmental ethical regulations should be put in place for all citizens of all countries, and the governments to embrace and practice the same in the interest of survival of the human race on this planet. Effective environmental protection is achievable only by preparing the people for such collective and conscious movement.

Key words: planet, earth, protection, international environmental laws

Racial Disparity: An Impediment to Environmental Justice

- ***Mahek Khandelwal & Smarak Chakraborty***

Abstract

Getting rid of systemic racism is the way to achieve environmental and climate justice according to leading journalists as the protests against police brutality in the US reveal racial inequalities in multiple spheres of life. A toxic dump in the Rio Grande Valley or the case of poisoned tap water with non-potable levels of E.Coli. The one thing they have in common is they are all examples of environmental racism where populations of colour are burdened by disproportionate policies and practices that force said populations to be subject to environmental hazards that pose a risk to their health. Benjamin Chavis, in 1982 had rightly used the term environmental racism to describe racial discrimination in environmental policy-making, the enforcement of regulations and laws, the deliberate targeting of communities of colour for toxic waste facilities, the official sanctioning of the life-threatening presence of poisons and pollutants in our communities, and the history of excluding people of colour from leadership of the ecology movements. The environment should not be a prerogative right. In spite of that, with every step of technological advancement of mankind, minority communities are made more vulnerable to environmental hazards than other privileged communities. Even though people of colour have strived to bring in a change with respect to the environment, there has been very little effort and progress made from the side of the policy makers to include these groups in the primary discussions and policy

formulations. There are umpteen number of policies to curb industrial emissions and other forms of pollutants, but are inferior to ensure environmental justice.

This article examines the disproportionate impact of environmental pollution on racial minorities, analysing the explanations for it and analysing the development of this issue in the international policy process. The authors draw up an analysis of such policies and their roots in the sustainable development goals. The authors will also strive to provide suggestions which are environmentally justiciable while simultaneously being socially and racially conscious.

Keywords: racial policy, pollution, environmental justice, SDG, minority

The Right to Healthy Environment: A Tool for Eco Justice

- ***Lekshmipriya L***

Abstract

The Right to Healthy Environment in its myriad dimensions undoubtedly holds the future of humankind. The essentiality of this humble right is colossal in the light of its inter-relationship with various human rights. Government cannot afford to overlook this right if it seeks to exist. Time and again, it has made itself apparent over the years particularly during disasters. The procedural rights it encompasses such as right to information, right to participation, acts as an important tool to ascertain the quality of environment, improve, reverse damages, prevent disasters or assess post disaster impacts. Its importance especially in relation to sustainable development has led to its recognition as a human right internationally and domestically in most nations including India. The environmental defenders, NGOs and Judiciary have been proactive in using this right as a tool to make the Government and private actors accountable for their actions affecting the environment. The impact of this right has resonated in some positive transformation but has also led to silencing the voices of many brave environmental defenders globally. A conflict of interest between the Government and Citizens is the major reason for the continuing association of fear and lack of governmental support with the exercise of this right. The success of this tool lies only with its recognition by the Government as an important human right and should remain the sole interest in tune with the constitutional mandate of safeguarding the best interests of its citizens before any monetary or other interest.

Keywords: environmental rights, accountability, responsibility, human right, fundamental right, procedural rights, conflict of interest, participatory democracy, right of public access, sustainable development, right

The Need for Uniform Regulatory Frame Work on Environmental Protection with Specific Reference to Principles of Environmental Justice

-Pavan V & Abhishek Sharma P

Abstract

The evolution of human life on this planet has a trajectory past linked with the changes in the Environment impacting the lives of the people. Environmental Protection was ordained as a divine task in the ancient times inspiring a sense of spiritual mystery. The commercial viability for the ecological products and the demands of the urbanization has afflicted the Environment with irreparable damages. The consequences of the Environmental degradation need no special mention for there have been many celebrated and reliable works assessing the cause and the extent of damages. Environmental Protection is now a global concern, as the world nations are in agreement that protection of the Environment is inevitable for the material success and human existence. The role of State and its authorities in regulating the Commercial use of Environment is apposite to analyse the evolution of the regulatory mechanisms for Environmental protection. Legislations constitute the major source of the regulatory frame work in the States for Environmental protection, but they are mired with technicalities which cannot be comprehended by all and the process of amendments makes it strait laced to the demands for modifications in the changed circumstances. The Judicial guidelines have played an important role in the Environmental protection and it is relevant to note that the bulk of Law relating to Environmental Protection is inspired by the precedents.

There has been synthesis of the prominent Judicial principles as laid down by the Courts in the across the globe in the form of Principles of Environmental Justice to combat the global challenges relating to Environmental protection. The term Principles of Environmental Justice as a collective term refers to popular Judicial Principles which were instrumental in combating the rising cases of Environmental degradation. Courts across the globe have taken aid of such principles in their jurisdiction to solve cases relating to Environmental protection. However, Principles of Environmental Justice have no legal sanctity for it is neither a piece of enacted Legislation nor is it having customary value having legal sanctity under the Public International Law. The applicability of the same leads to diffusion in the regulatory frame work on the Environmental Protection which consists of the Legislations and Judicial Precedents and thwarts the attempts to have a uniform regulatory approach towards Environmental Protection.

The authors herein intend to assess the legality of the Principles of the Environmental Justice in context of the Municipal and International Law relating to Environmental Protection and to examine the need for a Uniform Regulatory Frame work on Environment Protection. The doctrinal method of research is followed to trace the evolution of the prominent principles of Environmental Justice, to ascertain the Judicial acceptance of such principle in the Courts of USA and India and to suggest the ways to integrate the said principles into the Municipal Laws of the State for better implementation and to attain uniformity in the regulatory frame work.

Key Words: Principles of Environmental Justice, Legislations, Judicial Principles, Regulatory Framework, Environmental Protection.

Trade-off between Economic Freedom and Environmental Justice: Analysing the trends in Environmental Litigation and Judicial Pronouncements in India vis-à-vis Environmental Economics

- **Sandeepani Neglur**

Abstract

The growth in the industrial output and the gradual increase in the GDP of India seems beneficial from the angle of economic growth, but when looked through the lens of environmental protection, the same could be viewed as a predicament. The growing trend among various judicial pronouncements over the past two decades or so has been solely in favor of protection of environment. But now, various economic factors have to be taken into account while pronouncing decisions in cases of grave environmental issues in order to balance the two conflicting interests. Over here, the concept of environmental economics steps in, as a growing and evolving field, in order to understand the intricacies of the litigation taking place and provide solutions in order to bridge the gap between the two goals. Environmental economics produces various tenets or concepts which can help and aid in understanding the nature of judicial pronouncements. Two prominent ones amongst the same are internalization of cost and risk allocation which can be applied to various judicial decisions.

Anything which negatively affects the environment in any manner is viewed as a negative externality and the cost of the same is the one which the society must fully bear. However, environmental economics on the other hand, offers solutions as well where the legislation and the judiciary must force the industrialists or the Government in some cases as well to “internalize the cost” as a whole, thus forcing the burden on the producer to adopt eco – friendly methods or exit the market and the same which is the idea behind polluters pay principle evolved in *Indian Council for Enviro-Legal Action v. Union of India, (1989)*. Another concept of

environmental economics is allocation of risks. Environmental economics provides a chance to view various environmental doctrines and principles through the lens of risk allocation. Precautionary principle, Prevention principle, Polluters Pay principle, Public trust doctrine and many other such principles allocate risks on different parties and the same is done in order to attain a Pareto optimal situation.

Various legislations, policy decisions of the Government and the judicial pronouncements of the Indian Judicial System have been analysed and explained, through the means of these concepts in order to understand the true nature of the trade – off taking place between the two goals, highlighting the need and necessity of re conciliation between the same as a form of solution. The author, through the means of this paper, aims to bring to light various environmental concepts and their application on judicial pronouncements in order to arrive at interesting conclusions for the same. The author has used doctrinal method of research by relying on various primary and secondary sources of evidence

Keywords: Economic Growth, Environmental Economics, Environmental Justice, Pareto optimality and Judicial Pronouncements

Protecting Public Health by Safeguarding the Environment: Role of Public Interest Litigations

-Pranav Narsaria & Torsha Dasgupta

Abstract

Right to a clean and healthy environment has become intrinsic with safeguarding public health and the right to life of the persons under the Constitution of India. This evolution in jurisprudence has come as a result of the evolution of public interest litigations in environmental cases. The common underlying link in all these environmental litigations is the protection of public health.

In this paper, the Authors' will be focusing on the overlap between public health concerns and the safeguarding of the environment. For this the Authors' will be tracing the history of public interest litigation in India, and how the courts have consistently used Article 21 (right to life) and public health as a touchstone to evolve environmental protection principles through these public interest litigations.

Judicial Activism in upholding the Environmental Justice: An Analysis in the perspective of Indian Legal Scenario

- **Suravi Ghosh**

Abstract

Since the primitive time the main objective of social life is to live in harmony with Nature. *Ahimsa Parama Dharmah* (non-violence) is the rule of highest order and this very rule is equally applicable in regard to the relationship of man and nature. India has inherited a rich culture of compassion, affection and respect towards the Nature. But it is pathetic to say that with the progress of time the more man is empowered by scientific as well as technological advancement, the more they become harmful to each and every ingredient of Nature. With the rapid acceleration of industrialization and exponential growth of population, a huge disruption occurs in Nature. The over exploitation in an untested and unprecedented scale has made the entire human race vulnerable and resulted in eco-imbances and acute environmental degradation. To defend such kind of degradation is the need of the hour because the ultimate goal of development of a country lies in the broad terms of 'Sustainability'. It is the pious obligation of mankind to reserve as well as preserve the mother Nature for the future generation. With the view of its somatic effect, many initiatives have been taken in India including enacting several legislations, enforcing different kinds of rules and regulations and implementing various kinds of International Conventions within the purview of Indian environmental jurisprudence. It will never be an over statement to state that Indian environmental ethics in regard to environmental protection and preservation have been accepted as well as upheld by Indian judiciary time and again. Through the activist as well as innovative approach of Indian Judiciary the whole purview of environmental justice is continuously getting its dynamic outlook. To preserve the environment, Indian Judiciary time to time has evolved and modified the principles of environmental jurisprudence. Legislative framework and judicial activism are the two wheels of the chariot of environmental justice. Without the intervention of judiciary it is quite impossible for the legislatures to ensure environmental protection from a holistic point of view.

Key Words:

Eco-imbances, Sustainability, Environmental jurisprudence, Indian judiciary, Environmental Justice.

Evaluation of Judiciary's Role in Conservation of Forests

- **Shivangi Pandia**

Abstract

India, being a developing country, faces the challenge of developing itself while at the same time preserving and protecting its environment. The waves of industrialization, globalization and urbanization have adversely influenced the natural resources like air, water, and forests. Environment protection was last on the list of priorities in India's post-independence era due to the need of industrialization and the problem of political disturbances. This has resulted in rapid destruction of vegetation cover, wildlife, rivers, and deforestation throughout the world. There is imminent need to conserve and utilize the resources in sustainable manner as they constitute the basic components of human development and maintain the ecological balance. Industrialization and the want of development have caused major forests areas to be cleared for the establishment of industries and plants. While such destruction takes toll on forests at rapid pace, re-forestation does not keep pace with it. This has led to an imbalance in the ecology. Forests form a very important part of our ecosystem; they render the climate equable, prevent soil erosion, help in perennial stream flow of rain-fed rivers, shelter species of flora and fauna, preserve gene pools and sustain tribal livelihood. Forest is the natural wealth. When it comes to preservation of forests, there is a trilogy between human rights of tribals, development, and conservation of forests. The preservation of forests in many cases is also linked with sustaining livelihood of the tribals.

In the last two decades, major developments have taken place in environmental jurisprudence in India. Various legislations have been enacted for the conservation and protection of forests, and corresponding duties have been imposed by Articles 51 (a) and 48 of the Constitution of India. Supreme Court has contributed majorly by interpreting various statutes enacted and also by providing with mechanisms for implementation of the policies. Further, through the various judicial pronouncements, the judiciary has levied a duty on the individual as well as on the state. The role of Indian judiciary in litigation relating to the conservation of the forests can be termed as that of an "activist". The prominent example of activist role of judiciary in conservation and protection of the forests is the *Godavarman Case*, wherein the court defined the term "forest" and also laid down various situations in which no forest can be acquired for non-forest purposes without taking the consent of the Central Government.

The paper will analyse why we need to conserve the forests and the rights associated with it. There is a need to balance both the development and the conservation, providing a good governance model. This paper will then deal with the various acts enacted and the drawbacks in their implementation. At the end, the paper concludes by critically analysing various landmark judgments and doctrines evolved.

Recent Activist Trends in NGT: Judicial Restraint and Judicial Overreach

– Divya Tripathi

Abstract

Right from the beginning of the phase of “judicial activism” its founding fathers, mainly Justice Krishna Iyer, have been attacked by their peers for transcending the boundaries of ‘judicial restraint’. Their followers continue to contend that under the garb of ‘judicial activism’ judiciary tries to enter into the shoes of other two branches of government. So, amidst all high hopes and expectations on NGT with time, did it really take things for granted and usurped role of other institutions and considered itself legislator and executor in the process? And, also is excessive juridical restraint shown by tribunal in some of the recent cases good for Indian democracy? These questions are the matter of the facts and therefore remain to be seen and analysed which forms the main thread of this paper. It is a cliché that excess of everything is bad even if it be excess of something good. So, is it that under the smoke screen of “judicial activism” we see glaring examples of “judicial overreach”? In a democracy we have to assure about checks and balances else, too much power to one institution will turn it a despot posing threat to credentials of democracy itself. The basic agenda of this paper is to go to the root of the working of NGT and then describe how “judicial activism” evolved. The author through this paper attempts to find out the balance between ‘judicial activism’ and ‘judicial restraint’.

Indian Judiciary – The Guardian of Indian Environmental Enigma

– Govind Singh

Abstract

“There is nothing more frightful than ignorance in action.”- Johann von Goethe.

With industrialisation and urban development increasing at an astounding rate, the disregard towards the environment has started to reveal a picture of the looming future consequences. India is witnessing rampant environmental degradation which is surging at a rapid pace. Despite extensive legislations in place to conserve the environment, Indians have turned a blind eye towards environmental protection and non-compliance of environmental laws is quotidian. Turning out to be a silver lining amongst all

this, the Indian Judiciary has played a remarkable and indispensable role in the development of Environmental Jurisprudence in India. Although Judiciary in India enjoys apex political insulation, judges are aware of the need for tactical balancing to safeguard the authority and legitimacy of their institution. In this paper, the author examines how the Indian Supreme Court has pro-actively intervened to ensure compliance of Environmental laws in the past few decades. Outlining the contemporary enviro-legal context, this paper aims to lift the veil on the pressing concerns and roadblocks in the enforcement of Environmental Laws in India. The author has made an attempt to analyse important constitutional interpretations vis-à-vis Environment, made by the Judiciary which resulted in the genesis of important doctrines and principles such as the 'Polluter pays principle', 'Public trust doctrine', 'Precautionary principle' etc. The paper also explores how judges have often taken charge to correct failures in enforcement when they do not expect any remedial action from organized constituencies. This paper also envisages probing the mechanisms adopted by the courts to ensure the enforcement of their judgments. The paper undertakes a detailed study with regards to the shortcomings in the capacity of implementation authorities and how Indian courts have dealt with non-compliance of their directions in the past. The author has also attempted to scrutinize the strength of the court's reasoning, the transparency of its functioning, and the timeliness of its remedies; which are all essential components of the rule of law.

COVID 19 Pandemic and Bio-medical Waste Management Laws

-Hiranmayee Mishra & Smita Satapathy

Abstract

Integrated Bio-medical waste management is crucial part of sustainable development strategies as they have a cascading impact on environment and human health. With already existing challenges of Bio-medical waste generation and disposal, COVID 19 pandemic have raised concerns over handling, disposal and treatment of bio-medical waste. Rising concerns over PPE Kits and other medical waste have been prominent concerns now. While the United Nations have delineated waste management public service to fight the pandemic, India have also taken proactive steps in this direction. The new Guidelines of the Central Pollution Control Board along existing Bio-medical Waste Management rules ensures for scientific disposal of bio-medical waste generated due to diagnostics and treatment of quarantined or COVID 19 patients. Additional precautions during storage and collection, separate leveling of COVID 19 waste, segregation of bio-medical waste and additional safety of waste handlers and sanitation workers have been the key aspects of the Guidelines. Key judicial decisions by the NGT and the constitutional courts have also added to the vista of the laws on Bio-medical waste management. The NGT have raised concerns over unauthorized health care facilities engaged in unscientific disposal of biomedical waste and effectiveness of monitoring mechanisms and also have stated that concerted efforts are needed to mitigate the possible risks. PIL concerning breach of guidelines, improper handling of

biomedical wastes and more specifically special measures to protect sanitation workers have been vehemently responded by several High Courts. This article peruses bio-medical waste management as a facet of environmental protection, the COVID 19 pandemic and the laws relating to Bio-waste management in India. It also highlights how key concerns of Bio-waste management that have been dealt by the Courts in India.

Environmental Justice and International Law: Evaluating through A Human Rights-Based Approach

– Dr. Anita Yadav & Puja Raghavan

Abstract

Climate change has seen manifestations in natural disasters through cyclones, floods and heatwaves across the world posing as a defining challenge of the time. Therefore, one of the most striking questions is international law addressing the impacts of global change in climate especially in light of economic and environmental burdens placed on differing countries. The United Nations Framework Convention on Climate Change (UNFCCC) calls for climate justice through ‘principles of equity and common but differentiated responsibilities’² This understanding is seen in the Rio Declaration and the Kyoto Protocol where the recognition of differences in the economic, technical and environmental problems is identified.³

Environmental justice finds its conceptual birth in the United States of America where the Environmental Protection Agency (EPA) defines ‘environmental justice’ as ‘the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.’⁴ In international law, there exists no legal definition to the same, however, it has been discussed through several principles and RR Kuchn argues in ‘*A Taxonomy of Environmental Justice*’ that it can be understood in the context of distributive justice,

² Unfccc.int, <https://unfccc.int/resource/docs/publications/handbook.pdf> (last visited Aug 3, 2020).

³ Damilola S Olawuyi, *Advancing Climate Justice in International Law: An Evaluation of the United Nations Human Rights- Based Approach*, 11 Florida A & M University Law Review (2015).

⁴ Environmental Justice | US EPA, US EPA, <https://www.epa.gov/environmentaljustice> (last visited Aug 3, 2020).

procedural justice, corrective justice and social justice.⁵ The North-South dimension of environmental justice brings up the 'North's' dominant position in the decision making positions in the International Monetary Fund ('IMF'), The World Bank, the World Trade Organization ('WTO') and other multilateral treaties⁶. Through the decision-making bodies, the North is said to have influenced policies that are tilted in the favour of developed countries and not developing countries.

This paper aims to focus on the tilt in decision-making powers between the North and South while evaluating environmental justice and delving into the literature of environmental justice based on a human rights-based approach. The paper will identify the paradoxes and questions that need to be answered in the theoretical frameworks in part one and in part two through examples of environmental discrimination will evaluate the question on practical implementation and the lacuna in status quo.

Climate Justice in India: Gender Perspective

- ***Vidya Ann Jacob & Renuka Joseph***

Abstract

International climate change negotiations are convened not only with the goals of mitigating of and adapting to climate impacts, but also looking at mechanisms to lessen climate-induced human rights violations, and achieving feasible sustainable development. The possible solutions to these challenges are interlinked. The link between climate change mitigation and human rights violations can be addressed

through climate justice. Climate change is the outcome of formidable anthropogenic activities. The impacts of climate change on people vary depending on their social status, gender, poverty and access to resources. People have different adaptation requirements depending on how they sustain their livelihood and the role that they play in their families and communities, which make them vulnerable to climate impacts. Developing nations like India are grappling with climate change as the rise in sea levels and climatic catastrophes are increasing both in intensity and frequency. There are indisputable evidences that, our planet is subject to climate variability and the disaster experiences because of the same are gendered and that women are the most vulnerable group during and after such climatic disasters.

⁵ RR Kuchn, *A Taxonomy of Environmental Justice*, 30 Environmental Law Reporter 10681 (2000) (last visited Aug 2, 2020).

⁶ Carmen G Gonzalez, *Environmental Justice and International Environmental Law*, Routledge Handbook of International Environmental Law (2012).

Women are known to be better managers of climate resilient techniques when it comes to cropping patterns, green energy resources and sustainable usage of resources at homes. Yet, their contributions are sidelined, and least importance is given to their works on sustainable living. The 4th Session of the UN Assembly in March 2019 at Nairobi, witnessed 193-member nations coming together, acknowledging the inequality faced by women and girls, and also giving importance to the “power of their knowledge and collective action”, to allow women to lead environmental decision making from local to international level.

This paper looks at how climate change affects women on the dimensions of floods, water scarcity, energy production and energy poverty, and climate related displacement. As part of the study it would be analysed how women are, continue to and can serve as agents of adaption and mitigation. For example, with regard to energy usage, how can women use clean energy sources in developing nations for cooking, where women and children are affected by use of unclean fuel combustion causing health hazards. Similarly, how water scarcity could not only impact agricultural women farmers but also have an adverse impact on sanitation and hygiene.

The solution for addressing climate change concerns lie with different stakeholders in the society, for example multilateral institutions, domestic and local bodies, and the corporate communities. These institutions must work together ensuring capacity building and financial aid in promoting and encouraging women to take lead in action to tackle climate change.

Women should be brought in the fore not only in international policy and protocol making but also ensure they have been given decision-making power at the local and domestic level. It is important for nations who have pioneered in helping women make decision at their domestic level share their knowledge and experiences to help other nations. The paper concludes by giving recommendation at the international and domestic level for countries to ensure gender sensitive clauses are incorporates to ensure climate justice.

Combating Climate Change and Securing Environmental Justice in Indian Scenario - A Need Centric Approach

– Susmita Dhar

Abstract

“Let me led towards eternity from Death” is the prayer of Human Soul from the time of the Vedas, which is now at a stake due to the global challenge of Climate Emergency. We the Human Beings are children of the Mother Nature. All the species have right to enjoy the Natural Environment with free and fair manner with dignity, irrespective of class, creed, race, birth. We the most intellect

species has the duty to protect preserve and pass of our Environmental resource towards our next generation .Right to Environment include Right to life which is violated today because of Climate Change. Environment is our surroundings comprising of physical, biotic, ,abiotic, socio, political and cultural components. Anthropogenic activities are main cause of the degradation of Environment and acceleration of global warming. The composition of the global atmosphere is changing for comparable time due to global warming which led to climate change. Today Climate Change is not only an Environmental Issue in the globe but also connected to Socio political, Economic and scientific issues, which ultimately create an emergency and challenge for the global commons .Climate Change is real and causing unprecedented heat waves ,flood, drought, public health emergency ,super cyclones, rising of sea level ,ocean acidification ,biodiversity loss etc. Every single activity of Climate change can harm Human Right to life and cause injustice .Environmental Justice secure no one should suffer, while enjoying Environment, it should just fair and reasonable. So Environmental justice and Human Right to life is a co related issue. So to secure Environmental justice we need to know how to combat climate change, otherwise fair and meaningful treatment for all in environmental enjoyment and development, enforcement and implementation of policies are not possible. Injustice is everywhere so is in enjoyment of nature by all. Natural degradation due to human activities are the concern of the World today Nay India. India is the fourth largest emitter of the green house gases which are liable for climate change. India is also facing Climate change and vigilant in the UNO Framework conventions towards protection of our Natural Environment .India has plethora of green legislations to protect biodiversity and but no direct legislation on Climate change and technology transfer to combat it. In this Article the Author try to discuss on the issue of climate change, combating of it and Environmental Justice issue in Indian scenario and Indian legal mechanism, Indian concept of combating Climate change, lacking of Climate change legislation Etc. The object of my study to point out that to combat climate change worse effects we need concrete legislation in near future on it directly ,by securing a future separate legislation on climate change in India can bring new era in Environmental jurisprudence and securing Environmental Justice in India. Through Doctrinal Methodology the author will prove the hypothesis that we are lacking direct environmental legislation on Climate Change in India, we can combat Climate emergency in a better way with a strong legal mechanism.

Key Words: Environment, Climate Change, Environmental justice, Global Warming, Legal Mechanism.

Environmental Justice apropos Kyoto Protocol: Analysing how the power of the Government can be used in protecting the Environment

- ***Darshitha P***

Abstract

The Kyoto Protocol is an International Agreement which focally aims to reduce the carbon dioxide and greenhouse gas emissions into the atmosphere. It mandates ratified industrialized countries to cut back emission of greenhouse gases and sets limits on such emission. There's an important component apropos Kyoto Protocol i.e. institution of the market mechanisms with respect to the trade of emission permits as elucidated within the case of *Subhash Kumar v. State of Bihar, 1991*. This Judgment looked into numerous aspects of environmental law and tried to enforce environmental justice and did inspect the facet of assorted laws as an entire setting and the way it affects the setting as an entire. Environmental justice claims that "All have the right of safe, healthy and clean setting" whereby, setting refers to the wildlife, as an entire setting or in a very specific geographic area, particularly as plagued by human activity. When the ecosystem does not work in the proper efficient cycle, it creates setbacks and degradation for all the components of the Ecosystems in the World, such as desertification, climate change, rising sea levels, pollution, species extinction, Global Warming etc. which by all means contributes to more than 100 most dangerous diseases in the world which contributes to the death of 12.6 million people every year. The environment has to be saved and protected by saving all components of the Ecosystems by implementing the efficient renewable methods such as Reduce, Reuse and Recycle. This Research Paper focally interprets and inspects power of the Central Government and the State Government in application of Environmental Justice to combat global challenges. *This Paper elucidates and aims to provide research on the ambit and inclusivity of the Kyoto Protocol under United Nations Framework Convention. The paper mainly aims to establish the scope of the Restrictions set under the Constitution to protect the environment. This paper also emphasizes and aims to critique on the landmark case of Subhash Kumar v. State of Bihar and Others, 1991 apropos Environmental Laws, Statutes and Environmental Justice. In Furtherance, the paper aims to elucidate the restrictions under Article 51-A(g) of the Constitution of India, 1950 which states that "it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures". The Focal aim of this Research Paper is to elucidate on an efficient Modus Operandi so as to implement Environmental Laws and Statutes effectively in order to attain Environmental Justice.*

Key Words: *Article 51-A(g), Environmental Justice, Kyoto Protocol, United Nations Framework Convention.*

Carbon Trading Market Regulation: Refurbishing the International Environment Law

- Shanvi Aggarwal & Abhishek Rudra

Abstract

The paper is an endeavour to bring the concern of carbon trading market regulation to light while chalking out the loopholes in the current market strategies as adopted by the renowned market systems like European Union Emissions Trading System, Clean Air Act of United States of America and China using the cap and trade system as tool of regulation. Moreover, the paper analyses how in the absence of any proper regulatory mechanism that is required as a global mechanism and unitary in execution as a part of the International Environment Law, namely the extension of the *Kyoto Protocol*. The information gap among the policymakers with respect to the issue is twofold: first, the economic value of potential damages arising from climate changes are highly uncertain, and secondly, there is a lack of reliable information on the cost of moderating gases used in carbon trade, which, the paper will be addressing as to how significantly they reduce the quality of the climate policy debate.

The paper also gives an insight into the origin and limitation of carbon trading market that bears evidence of the changing regime for the climate change and monetizing of Green House Gases as a trade between the developing and developed countries and would go on to analyse the possibility of whether countries would take Clean Development Mechanism measures if there were no carbon markets. It is pertinent that while the carbon market institution serves to communicate and propagate a common social value of emissions reduction, it creates a dangerous over-reliance on markets for addressing environmental concerns. The authors make an attempt to conclude a balance between a global unitary regulation and social value of carbon trading market while drawing a parallel between the bargaining power of the developed countries and the countries that put genuine efforts to contribute to environmental sustainability.

Keywords: Cap-and-Trade, Carbon Trading, Legality, Policies, Regulation, Transaction Cost

Application of Environmental Justice to Combat Global Challenges

– Swetha Suresh

Abstract

Across the world, Environmental Injustice takes place due to the wide gap between environmental laws and its implementation in real life. In the 21st century, Climate Change is a significant issue, with about 97% of the scientists agreeing that Climate Change is caused by human activities. The Environmental Justice system is one among the very few systems in which the consequence of an act has a huge impact on a large number of people. The effect of Climate Change has already been witnessed by people

throughout the world such as the people of Ecuador and its Galapagos Island. Due to the injustices and the practise of environmental racism, many targeted countries like china has already been affected adversely. Thus, in the current situation adaptation is as important as mitigation. Immediate action is imperative in the current situation and we have to protect and restore forests and cut carbon emissions. But today, we are further degrading the environment where the consequences are going to be catastrophic. When it comes to carbon emission, India accounts for about 4.5% of the global greenhouse gas emissions. Though it is tough for a developing country like India to take actions against Climate Change without cooperation and aid from developed countries, it would become even harder for India to cope up and deal with the effects of Climate Change in the future if action is not taken immediately. Despite having many acts and laws with regard to Environmental Justice in India, policy formation processes in India are often at variance with global practices and latest insights from natural and social sciences. It seems that only recently with public interest, social media awareness, climate change fear and effects of environmental degradation coming to light, India is very suddenly and very publicly coming face to face with the environmental problems that communities, lawyers, judges, experts and policy makers are finally attempting to holistically respond to the problems. Even after so much pressure, access to environmental information and statistics to common public by the government is non-existent in India. Despite signing and ratifying many international conventions and treaties which has a global impact such as the Paris Agreement 2015 in which India agreed to reduce its coal extraction and shift to renewable sources of energy by 2030, there has only been an insignificant improvement. Thus, the future of Environmental Justice is in the hands of the people who are in power and also, this situation demands all the people to come together to render justice. This paper concentrates on how the current scenario demands environmental litigation in India and its powerful impact on Environmental Justice within the nation and to combat Climate Change globally.

The Environmental Affairs Non-Compliance: Threatens and Warns Vis A Vis Role of Judiciary

- Aradhya Singh

Abstract

There is no doubt that the number of recent International environmental treaties furnish for a non-compliance procedure (NCP) to address the failure by contracting parties properly to implement their treaty obligations. This resort to non-compliance procedures is indeed a proof to realization and affirmation of growing awareness on the inherent limitation of the present rules prescribed subjecting to breach and state responsibility addressing the harm. It is well settled that compliance improves efficiency and protects from penalties, Poor compliance causes critical environmental blowbacks in the form of severe water shortages, productivity losses and toxic air. however, robust compliance procedures are often expensive. The judicial system plays a pivotal role as the

courts hear cases regarding constitutional challenges to environmental regulations, permitting and enforcement therewith, and also criminal enforcement. While the judiciary addresses the environmental non-compliance issues, rulemaking and settlement come as a major aspect of a complex bargaining process. The environmental statutes prescribe for both civil and criminal liability, therefore violations are addressed and the perpetrators are punished. The judicial structure ensures execution and uniform application of the laws, and also that the compliance is met; moreover, judges play the role of an activist. Environmental compliance is a critical part of environment regulation. While regulatory actions have prioritized economic growth for several decades, the costs of environmental degradation due to industrial and developmental projects are no longer possible to ignore.

Role of Judiciary and Regulatory bodies in Enviro-legal regime of Common Effluent Treatment Plants (CETPs)

– Aniruddha S Kulkarni & Amit Thakkar

Abstract

Development of Small and Medium Scale Industries during 1970s-80s and problems associated with the wastewater management led to the emergence of Common Effluent Treatment Plants (CETPs). Individual industries were facing challenges in achieving the desired standards under the Pollution Control Statutes. CETPs promised to solve many problems of individual industries in clusters such as cost of treatment, space constrain, infrastructure for small quantity of wastewater, installation, managerial responsibility, etc.

Based on the judgement of the Hon'ble High Court wherein with the financial and technical aid by Central and State Governments, the individual units could pull their resources and manpower and by owning up the collective responsibility towards the environment and the society, the Government of India came out with an innovative concept of CETPs. Central Pollution Control Board (CPCB) has played a pivotal role in laying down guidelines for smooth functioning of CETPs and keeps updating them according to the changing industrial practices.

Intention of the CETPs was to introduce modern and environment friendly technology in common treatment of trade effluents especially in industrial clusters engaged in same or similar kind of manufacturing or processing activities. Government encouraged

installation and functioning of CETPs not only in controlling the water pollution but even for supporting growth of small and medium scale entrepreneurs in environment friendly manner.

Many Indian cities and towns like Vellore, Kanpur, Malegaon, Surat, Kolkata, etc., are having variety of high pollution potential industries which are operating since decades. Further, Pollution Control Boards and the Judiciary had taken steps to redress the environmental woes from such industries. The Supreme Court of India by applying various environmental principles like Precautionary Principle, Polluter Pays' Principle, Principle of Sustainable Development, tried to bring in some balance between environmental degradation and restoration on one hand and sustainable industrial growth on the other.

This paper aims to study and analyse the issues involved in functioning of the CETPs. It also highlights the role of National Green Tribunal in taking up the task of smoothening the creases in administrative and technical difficulties with operation of CETPs and role of the Pollution Control Boards in achieving environmental standards.

Environmental Justice to Combat Global Challenges: Why is it Essential for a Sustainable Future?

- ***Nitesh Mahech & Pankhuri Bhatnagar***

Abstract

In the era of globalization, environmental justice has become a major issue in the discourses of environment that calls for environmental justice and equity. Every environmental concern is inherently a global concern because of the interconnectedness of our ecosystems and communities. Also, every interaction we make with the environment causes small changes that ripple out throughout the world and eventually affects all living organisms. The COVID-19 pandemic is the best example of this- how one person coming into contact with a bat in China affected the every person and every country in the world. However, even though these issues transcend state boundaries, some communities and countries are affected much more than others. Historically, it has been observed that environmental issues leave a deeper impact on marginalized or minority communities. Therefore, this research paper explores the intersectionality between environmental law and social justice. It also attempts to uncover the underlying assumptions that may contribute to and produce differential exposure and unequal protection. It brings to the surface the ethical and political questions of 'who gets what, when, why, and how much'. Further, it is a relatively new movement which embraces the principle that all communities are entitled to equal protection and enforcement of environmental, health, employment, housing, transportation, civil rights laws and regulations which impact our quality of life. Numerous studies have documented instances of

environmental injustices and found that disproportionate exposure to environmental risks is correlated with race and class. So, at the end, this paper elucidates the application of environmental justice to combat global challenges with suggestions and why is it essential for a sustainable future? As an equitable distribution of resources is crucial for achieving sustainable development and environmental justice seeks to achieve this equitable balance and challenging the existing institutions and systems that allow environmental injustices to continue.

Keywords: Sustainability, sustainable development, environment, equity, justice, vulnerabilities and responsibility.

Climate Change Litigation in India:

Mapping the Role of The National Green Tribunal (NGT)

- ***Nikita Pattajoshi***

Abstract

The National Green Tribunal, established in 2010, has in the short term since its establishment strongly influenced environmental litigation in India. While it is true that the spectrum of environmental litigation in India has changed over the years, owing to the advent of the National Green Tribunal in 2020, climate change litigation seems to be still elusive. Climate change litigation has already failed to get its fair share in the Indian courts. Indian courts with all their activism, in most of the decisions have made a rhetoric reference to climate change, but have failed to integrate the climate concerns into their decisions or outcomes of the case. This is primarily because environmental litigation before the Courts has assumed a rights- based litigation format. However, since we are yet to recognise a 'right to no-climate change' or a corresponding enforceable duty on part of the State to mitigate causes of climate change, under any statute or international obligation, no rights based litigation will succeed before the Courts. In this context, it is expected that with the NGT ushering in, climate change litigation will see the light of the day and the level of judicial engagement with climate changes will proliferate. This is owing to two specific reasons; the presence of expert members on the Panel and the multitude of interdisciplinary issues that the Tribunal gets to hear. The presence of a body of scientific knowledge within the Tribunal will have wider policy impact on the issues discussed before the Forum. This feature shall be particularly helpful for climate change litigation wherein the claims shall, more often than not, revolve around climate change goals, measures undertaken by the Government, implementation of targets etc. which need to be discusses on basis of some scientific yardsticks.

However, the assumption that the Green Tribunal will turn out to be a favorable forum for climate change litigation is problematic. It is particularly problematic since the mandate of the Tribunal is restricted to the enactments listed under the Act. It remains to

be seen if issues or questions of law pertaining to climate change adaptation and mitigation measures can be obliquely brought under the Environmental Protection Act, 1986 and thus under the mandate of the Tribunal or the Tribunal will display some activism in expanding its mandate to climate change issues through means. This paper is an attempt to map the road ahead for the Tribunal in dealing with climate cases, based on prominent climate cases already heard/decided by it.

Keywords: Rights based litigation – Indian Courts – Green Tribunal – scientific knowledge – restricted mandate.

Intersectional Environmentalism: The Indian Perspective

- **Ahana Bag**

Abstract

Equity and environmental justice often finds itself at crossroads of problems related to the two original institutions, society and the environment. Intersectional environmentalism bears the burden and has the potential of opening up a version of environmentalism that protects both man and nature. However, these pressing social and environmental decisions often present a dilemma, where one is required to be prioritised over the other, and quite naturally the brunt is borne by the less privileged and less represented sections of the population, the plight of whom do not occur to the well thinking and right minded advocates of environmental justice. The Lancet Commission on Pollution and Health noted that pollution kills nine million people worldwide annually and ‘threatens human societies’, and simultaneously *American Journal of Public Health* released that non-whites had 1.28 times higher burden than the overall population on exposure to particulate matter. UN Copenhagen Climate Summit, 2009 saw the leak of “*The Danish Text*”, that revealed and confirmed the mythical existence of the “inner circle”, which include the United States of America and the United Kingdom, this agreement was poised to abandon the Kyoto protocol, the legally binding treaty that held these nations acceptable for their historic emissions and hence, mandated steeper reduction targets. Mithika Mwenda representing the Pan African Climate Justice Alliance, had dubbed the conference “*a matter of life and death for the friends and families of those that are here*”, signing of which would be like a death warrant for nations like Haiti and Bangladesh. It was made clear in the international stage that developed nations were willing to bargain the lives and livelihoods of ethnic minorities in order to maintain business as usual. In a domestic scale, the problem is equally grave. Tribal populations and forest villages in India, as well as caste minorities get the short end of the stick when environmental justice is imposed without consideration. These communities have been rendered invisible with centuries of marginalization, but they have never been more out of their depth, as

there are now, as the rule of law, imposes restrictions on their livelihoods. Ironically, these communities are the most interconnected with the nature the earth, the Chipko movement to this day stands as beacon of intersectional environmental activism, and injustices done unto these very communities screams of social inequality, of a silenced people. The paper elaborates on the Indian scenario of Intersectional Environmentalism, and analyses the existing case laws and legislations that paints the perspective of environmental justice and marginalised societies in India. It also attempts to draw parallels with international movements and suggests policies that might be a step towards Intersectional Environmentalism in India.

Key words: Intersectional Environmentalism, Copenhagen Climate Summit, Kyoto Protocol, Danish text, Marginalised communities, Chipko Movement, India

Special Jurisdiction of the NGT: The Need of the Hour

- Achint Jain & Abhinav Aggarwal

Abstract

The National Green Tribunals were established in the year 2010, replacing the largely unsuccessful national environment appellate authority. The Supreme Court; in numerous cases, as well as the Law commission in 2003, acknowledged the need for setting up of specialised environmental tribunals in India. In furtherance of this, the NGT Act, 2010 came into being with an aim to dispose of civil cases relating to environmental protection and conservation of forests and other natural resources, including enforcement of any legal rights related to the environment.

Primarily, the NGT has the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. Such questions arise out of the implementation of the enactments specified in Schedule I of the Act. It can even grant compensation in matters relating to death or other disabilities, as mentioned in Schedule II. These provisions give NGT vast powers to deal with any matter, which is even remotely concerned with environment. Beyond this, the jurisdiction of this Tribunal only seems to grow wider with time. In the very recent case of Director General, NHAI vs. Aam Aadmi Lokmanch, the Supreme Court further enlarged NGT's jurisdiction by ruling that even maintenance

of highways on hill tops and any incident related to it shall come within the jurisdiction of tribunal as it is a matter which concerns environment and thus the word environment has a broader meaning.

Just last year, the Apex Court recognized the existence of a “special jurisdiction” with the NGT, for enforcement of environmental rights in Mantri Technoze Pvt. Ltd. vs Forward Foundation

However, despite the vast mandate given by the act and many other judgments by the Supreme Court, the NGT has failed to perform to its potential with half of its seats being vacant as well as a low rate of case disposal. Thus, like any other tribunal in India, it has also been caught up amongst the evil of tribunalisation of justice. Therefore, reforms are needed for a true tribunal which can really play a pro active rule and change the environment scenario in the country where every year a new environmental concern springs up.

In light of this, through this paper, we try to shed light upon the powers of this Tribunal and how it can use its special jurisdiction more efficiently in helping making environmental protection effective.

Environmental Justice: Judicial Activism at Grassroots

– Sujan G. J. Megalamane

Abstract

Environmental Justice in India has the least priority in India’s 20th century era due to fast moving world and large scale modernization and development of the urban areas in the country. However, the basic meaning of Environmental Justice is defined as the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to the development, implementation and enforcement of environmental laws. The Bhopal Gas Tragedy acting as the eye opener for environmental protection in the country, lead the heat on Supreme Court and High Court, where they worked hard case to case for making environment as a fundamental right and then extending its meaning to right for compensation, clean water and air. Though Judiciary has acted in manner of activism to drive down the number of Environmental Crimes, yet there is no refinement in the quality of the environment around the country. Judicial Activism in India implies the authority of the Supreme Court and the High Court not the Subordinate Courts, but at least in matters of Environmental Cases, it is necessary that the Subordinate Courts also should have enough jurisdictions to take a step of activism ensuring Environmental Justice in the society. Environmental justice can only be attained by collaborative efforts made by all the pillars of the government with the support of its

citizens. Active participation of the citizens is very much necessary in ensuring protection of the environment as it is mainly concerned with their health. The developmental programs of the government compromising the environment's life are endangering the sustainability of the society as well. Hence the precise implementation of the environmental policies and laws at the subordinate level is very important and the role judicial activism by the subordinate courts plays a very precious role in ensuring the environmental justice in the future days of the country. Key words: Judicial Activism, Subordinate Courts, Environmental Justice

Future of Environmental Litigation in India: Exploring the Possibility of Climate Change Litigation in Indian Context?

- ***Dr. Deva Prasad M.***

Abstract

A crucial development witnessed in the field of environmental litigation is the sudden wave of climate change litigation. This phenomenon is evident across many jurisdictions, such as Netherlands, United States, Australia. Interestingly the major victory for climate change litigants under the case of *Urgenda Foundation v. State of Netherlands* (2019) opens up the possibility of similar climate change litigation actions in other jurisdictions also. In the *Urgenda Foundation* case, the Supreme Court of Netherlands clarified the state's responsibility to take pro-active actions in reducing climate change and its impacts. The court had relied upon the obligations under the European Convention of Human Rights as well as international law such including no harm in principle in asserting the state's duty. Can similar litigation arise in the Indian context? Does the application of constitutional law, environmental law, and human rights framework require a qualified analysis? The article attempts to provide a clarity on this aspect.

Moreover, the climate change litigation has taken a different shape as tort law based litigation against the corporate actors where the duty of care is questioned. In certain instances, the litigation has taken the shape of shareholder litigation for non-disclosure of business risk due to climate change. Similar actions against the corporate actors in India context and its feasibility needs to be analysed.

The End