

# Lex Terra

## News Updates on Environmental Law

ISSUE 10

16 JANUARY 2016

“What's the use of a fine house if you haven't got a tolerable planet to put it on?”

— Henry David Thoreau

The rate at which we are exploiting the Earth at present is at its highest. A bit of awareness can help change this. *Lex Terra* is a mode of creating awareness. An effort made by the Seventh Semester Environmental Law Specialisation Students of B.A.,LL.B, it is an extension of a classroom exercise which the students under Asstt. Prof. Chiradeep Basak intend to put forward to the entire family of NLU-A. A bit of contribution here and a bit of contribution there from each one of us is what the Earth desperately needs at this point of time. Through *Lex Terra*, the students intend to highlight important happenings in the field of Environment which we all must be aware of.

Every issue of *Lex Terra* would be a collection of various Environment specific news items which will be touching various facets of environmental law as well. Law is the best instrument to usher in any kind of change and change in our approach towards our interaction with the environment is a necessity right now.

### INSIDE THE ISSUE

About CELAR	Page 2
MESSAGE FROM <i>LEX TERRA</i>	Page 2
THE SALIENT FEATURES OF PARIS DOCUMENT: (Policy Brief Part 2) - Chiradeep Basak	Page 3-4
THE HAND THAT ROCKS THE CRADLE: MANAGING EARTHQUAKES IN THE NORTHEAST INDIA - Rashmi Patowary	Page 5-7
NEWS CONTRIBUTION ON GLOBAL CARBON BUDGET, 2015 - Sweden Doley	Page 8
INTELLECTUAL PROPERTY RIGHTS IN PLANT VARIETIES - Gautam Krishna Deka	Page 9-10
ANALYSIS OF CAG REPORT ON NIRMAL BHARAT ABHIYAN - Irfan Hasieb	Page 11
JALLIKATTU – THE DILEMMA THAT TAMIL NADU FACES - Shweta Sachdeva	Page 12
NEWS IN BRIEF- Lidia Kharmih	Page 13-15
NATIONAL GREEN TRIBUNAL AND ITS COMPELLING ATTITUDE - Neil Dutta	Page 16-17

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## About CELAR

The primary mission of Centre for Environmental Law, Advocacy and Research (CELAR) of National Law University, Assam is to engage in advocacy and research on public interest environmental issues. For the purpose, it will organize workshops and seminars to educate and develop skills, convene conferences to promote exchange of ideas, conduct training programmes for capacity building in environmental law issues, undertake research on legal concerns and publish

periodically, newsletters and journals.

The objectives of the CELAR are as follows:

- To inspire and educate students by providing hand-on advocacy experience and direct exposure to the issues.
- Strengthen access to justice by undertaking high quality multi-disciplinary research on contemporary legal issues pertaining to environment.
- Advocate for reforms in environmental law through

scientifically sound legislative proposals.

- Organise training programmes for strengthening the legal capacity building on environmental laws do civil servants, law enforcement authorities, non-governmental organizations and media personnel.
- Publish periodically journals and newsletters on environmental law.

— **Professor (Dr.) Yugal Kishore,**  
Centre Head, CELAR

## Message from Team *Lex Terra*

Dear Readers,

*Lex Terra* is back with its tenth issue for all the would be legal eagles and scholars of NLU, Assam. With your continuous support, she will maintain her tempo and share all relevant news vis-a-vis environment, through this virtual interface.

We congratulate the *Lex Terra* team for its praiseworthy collective efforts.

The team of *Lex Terra* wishes to thank all of those who supported this initiative. We would like to express our gratitude to our respected Vice-Chancellor, Prof. (Dr.) Vijender Kumar for his continuous support and timely inputs. We would like to thank Prof. (Dr.) Yugal Kishore, the Centre Head of CELAR for his help and encouragement. We would like to thank Mr. Chiradeep Basak, Centre Co-ordinator of CELAR, who has been a source of inspiration from the outset, along-side his unrelenting contribution to all phases of the job, from planning, to setting clear goals and appraising the outcome.

Lastly, we would also like to extend our gratitude

to our faculty advisors, Ms. Shannu Narayan and Mr. Nayan Jyoti Pathak for their ideas and relentless support.

Our issues go online every 1st and 16th of each month. Contributions for the next issues are invited. The same will be reviewed and then published online. Maximum of 10 write ups will be part of this segment.

Please keep pouring down your support and concern for mother nature.

Thank you  
Happy Reading!

# THE SALIENT FEATURES OF PARIS DOCUMENT: THE GROUNDSWELL OF CLIMATE ACTION

*Chiradeep Basak,  
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## POLICY/LEGISLATIVE BRIEF- PART- II

It's been a month since global community has adopted PARIS DOCUMENT FCCC/CP/2015/L.9/Rev.1. This legislative brief is in continuation of previous write up titled, THE SALIENT FEATURES OF PARIS DOCUMENT: WITH RESPECT TO ADOPTION, INDCs AND DECISIONS TO GIVE EFFECT TO THE AGREEMENT (NLU, Assam-CELAR's Lex Terra Issue 8). This brief will highlight the following elements, as enunciated in Paris document namely, Mitigation, Adaptation, Loss and Damage, Finance, Technology Transfer and Capacity Building.

**Mitigation-** the document decides that parties shall submit to the secretariat their nationally determined contributions at least 9 to 12 months in advance to the relevant meeting of the Conference of Parties serving as the meeting of the parties to the Paris Agreement (CMP-Paris). This has been done to ensure clarity and transparency. The document requests the AWG on the Paris Agreement to develop further guidance on features of the nationally determined contributions for consideration and adoption by the CMP-Paris at its first session. The document also ensures submission of quantifiable information on the reference point/time frame for implementation, scope, coverage, planning, methodological approaches for estimating and accounting for anthropogenic GHGs emissions, as appropriate removals; how the party considers that its nationally determined contribution is fair and ambitious, in the light of its national circumstances, and how it contributes towards achieving the objective of the convention. The document also requests the secretariat to come up with an interim public registry in first half of 2016 for the recording of nationally determined contributions. The document further recommends that the CMP-Paris to adopt rules, modalities and procedures on the basis of voluntary

participation authorized by each party involved in real, measurable and long term benefits related to the mitigation of climate change, specific scopes of activities and reductions in emissions that are additional to any that would otherwise occur, verification and certification of emission reductions resulting from mitigation activities by designated operational entities.

**Adaptation-** The document requests the Adaptation Committee and the Least Developed Countries Expert Group to jointly develop modalities to recognize the adaptation efforts of developing country parties and take into account its mandate and its second three year workplan, and with a view to preparing recommendations for consideration and adoption by the CMP-Paris. The adaptation committee shall also review the work of adaptation related institutional arrangements under the UNFCCC, with a view to enhance the coherence of their work, as appropriate in order to respond adequately to the needs of the parties. The adaptation committee will also consider methodologies for assessing adaptation needs with the view of assisting developing countries, without placing any undue burden on them. The document also requests the parties to strengthen regional cooperation where appropriate and where necessary establish regional centers and networks in particular in developing countries. The adaptation committee shall also work in collaboration with the standing committee on finance and other relevant institutions, to develop methodologies and make recommendations for consideration and adoption by the CMP-Paris. The document further requests the GEF (Green Climate Fund) to expedite support of LDCs and other developing countries for subsequent implementation of policies, projects and programs.

**Loss and Damage-** The Paris Document has followed the line of Warsaw International Mechanism on Loss and Damage associated with Climate Change impacts. The document also ensures to establish a clearing house for risk transfer that serves as a repository for information on insurance and risk

transfer, in order to facilitate the efforts of Parties to develop and implement comprehensive risk assessment strategies. The executive committee of the Warsaw international mechanism to establish a task force to complement, draw upon the work of and involve, as appropriate, existing bodies and expert groups under the convention including the adaptation committee and the least developed countries expert group, as well as relevant organizations and expert bodies outside the convention.

**Finance-** The agreement set a new collective quantified goal from a floor of USD 100 billion per year, taking into account the needs and priorities of developing countries. The agreement recognizes the importance of adequate and predictable financial resources, including for result based payments, as appropriate, for implementation of policy approaches and positive incentives for reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks; as well as alternative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests while reaffirming the importance of non carbon benefits associated with such approaches; encouraging the support from public and private, bilateral as well as multilateral sources, such as the Green Climate Fund, and alternative sources in accordance with relevant decisions by the COP. The agreement also decides that the Green Climate Fund and the Global Environmental Facility, the entities entrusted with the operation of the Financial Mechanism of the convention, as well as LDCs fund and the special climate change fund, administered by the global environmental facility, shall serve the agreement. The agreement also urges the institutions serving the agreement to enhance the coordination and delivery of resources to support country-driven strategies through simplified and efficient application and approval procedures, and through continued readiness support to developing country parties, including the least developed countries and small island developing states.

### **Technology Development & Transfer**

- the agreement recognizes the crucial role to be played by the technical executive committee to guide enhanced implementation of the results of technology needs assessments. The agreement decides to strengthen technology mechanism and requests the executive committee and the climate

technology centre and network, in supporting the implementation of the agreement, to ensure technology research, development and enhancement of endogenous capacities and technologies. The SBSTA has been requested through this agreement to undertake and update technology needs assessments, as well as the enhanced implementation of their results, particularly technology action plans and project ideas, through the preparation of bankable projects. SBSTA has also been requested to facilitate the provision of enhanced financial and technical support for the implementation of the results of the technology needs assessments, assessments of technologies that are ready for transfer and enhancement of enabling environments for and the addressing of barriers to the development and transfer of socially and environmentally sound technologies.

**Capacity Building-** The agreement established the Paris Committee on Capacity Building with an aim to address gaps needs, both emerging and current, in implementing capacity building in developing country parties and further enhancing capacity building efforts, including regard to coherence and coordination in capacity building activities under the Convention. The agreement launched a work plan for the period 2016-2020 with the objectives of assessment as regards cooperation among existing bodies under the convention, identify capacity gaps, recommend to address those gaps, promote development and dissemination of tool and methodologies for the implementation of capacity building; foster global, regional, national as well as subnational cooperation; explore how developing country parties can take ownership of building and maintaining capacity over time and space; identify opportunities to strengthen capacity at national, regional, subnational level; foster dialogue, coordination, collaboration and coherence among relevant processes and initiatives under the convention including through exchanging information on capacity building activities and strategies established under the convention and provide guidance to the secretariat on the maintenance and further develop web-based capacity building.

*Oirfanhasieb*

## THE HAND THAT ROCKS THE CRADLE: MANAGING EARTHQUAKES IN THE NORTHEAST INDIA

*Rashmi Patowary, Student*

The New Year wishes and the Season's Greeting were still warm when the 6.7 Richter Scale Earthquake (with its epicentre at the Tamenglong in Manipur) shook the North East India. Such high intensity earthquakes in the region is a constant reminder of the fact that the 'seismic faultlines' of the region are still vulnerable and hyperactive, not to forget the Great Earthquakes that shook Assam in 1897 and 1950 (with magnitude 8.5 and above). Scientists have been warning that the 'return period' of such big earthquake in the eastern Himalayas is long overdue. A series of these recent earthquakes have caused in the region - Manipur 6.7 (Jan 2016), Nepal 7.3 (May 2015) and Sikkim 6.9 (2011); have re-ruptured the plates that had already developed cracks during previous temblors. This has led to conditions which might trigger multiple earthquakes which may go up to 8.0 in magnitude. International experts (prominently) Roger Bilham, the seismologist of University of Colorado and an authority on the subject, are of the opinion that "the current conditions might trigger at least four earthquakes greater than 8.0 in magnitude. And if they delay, the strain accumulated during the centuries provokes more catastrophic mega earthquakes. Harsh Gupta, former director of the National Geophysical Research Institute, Hyderabad, is more specific in his warning: "Moderate magnitude to great earthquakes in the northeast India region is found to be preceded, generally, by well defined earthquake swarms and quiescence periods. On the basis of earthquake swarm and quiescence period, an area bound by 21 deg N and 25½ deg N latitude and 93 deg E and 96 deg E longitude is identified to be the site of a possible future earthquake of M 8 + 1- ½ with a focal depth of 100 +/-40 km. This earthquake should occur any time from now onwards."

In the midst of the aforementioned facts and findings, it is pertinent to note that there has been a sea change in terms of the impact that such a mega earthquake may have. For instance, the population in the region has boomed from 8 million (1951) to over 50 million (today). The land of the region has been replaced by numerous modern infrastructure. Today, it has a network of

roads, bridges, railways, airports, etc. It has more than a million residential and commercial buildings. However, but many of those fail to comply with the specifications of earthquake-resistant designs and processes. The recent earthquake has demonstrated the vulnerability of the existing infrastructures. This calls for an evaluation of the existing plans and policies with regard to disaster management in the mountains of the North East India.

Post-Nepal disaster assessment, the National Institute of Disaster Management (NIDM) has warned of enhanced risk around the "ring of fire garlanding the entire north India especially the mountains". This was also highlighted at a recent meeting organized by the Centre in Itanagar where policy-makers from 11 hill states had participated and resolved to develop a common building code for mountains. Currently, we have administrative machinery in the form of the National Disaster Management Authority (NDMA) and disaster management agencies in almost all states borne from the National Disaster Management Act, 2005 (NDM Act, 2005). With the enactment of the NDM Act, 2005 (which is stated to have brought a paradigm shift in India's approach to disaster management), the states were permitted to enact their own legislation on disaster management. This legislation is in the concurrent list of the constitution. The focal point of this piece of legislation lies on preparedness, prevention and planning. This was a significant change from the earlier strategy, which was largely response and relief centric in nature. Under the Act, NDMA as the apex body is mandated to lay down the policies, plans and guidelines for Disaster Management to ensure timely and effective response to disasters. So far, it has released 24 National Guidelines covering different disasters and some crosscutting themes. A nine-step process has been followed that includes review of the present status and assessment of critical gaps. Taking on board the Nodal Agencies, Ministries/ Departments of Government of India and State Governments/ Union Territories, academic, scientific and technical institutions and NGOs and obtaining feedback from public representatives, the aforesaid review has been done and consequently the guidelines have been framed in the light of the same. Thus, in 2007 the NDMA had released its comprehensive

guidelines on management of earthquakes. It highlights 'six pillars of seismic safety' — earthquake-resistant constructions, retrofitting of lifeline structures, regulation and enforcement, awareness and preparedness, capacity development and response. A brief overview of the 'six pillars' are as follows:-

### **Earthquake-Resistant Constructions**

State Governments (SGs) will facilitate the implementation and enforcement of relevant standards for seismically safe design and construction of structures on buildings and structures falling within their administrative control.

Students of engineering colleges, architecture colleges, Industrial Training Institutes (ITIs) and polytechnics will be provided with adequate exposure to earthquake-resistant design and construction techniques.

The competent authorities will scrutinize the designs of all new structures specified in the model byelaws. This will be done through a general compliance review and mandatory technical audit process by qualified professionals as recommended by an expert group under the Ministry of Home Affairs (MHA).

### **Seismic Strengthening & Retrofitting of Lifeline Structures**

SGs will draw up programmes for seismic strengthening and retrofitting of selected existing structures. These programmes will be drawn up phase wise.

SGs will carry out structural safety audit of all dams, bridges and flyovers, and undertake phased retrofitting of all weak structures.

Specific allocations will be made for carrying out disaster preparedness efforts in the annual plans.

### **Regulation and Enforcement**

In consultation with their respective State Earthquake Management Committees (SEMCs) and Hazard Safety Cells (HSCs), the SGs/State Disaster Management Authorities will establish the necessary techno-legal and techno- financial mechanisms.

SGs /SDMAs will adopt the model techno-legal framework for ensuring compliance of earthquake-resistant design and construction practices in all new constructions.

SGs will review, revise and update the town and country planning Acts, land use and zoning regulations, building bye-laws and DCRs. This process

will be repeated at least once every five years.

### **Awareness and Preparedness**

In collaboration with professional bodies of engineers, architects and urban planners, the SGs and knowledge institutions will initiate programmes to sensitize their members on the importance of undertaking earthquake-resistant design and construction practices.

In collaboration with their SEMCs, HSCs and Non- Governmental Organizations (NGOs), the SGs /SDMAs will organize awareness programmes for specific target groups of stakeholders on various aspects of earthquake management.

All public health facilities will develop their own Disaster Management (DM) plans, with the scope for enhancing their surge capacity in the event of disaster.

### **Capacity Development**

SGs must endeavor to strengthen earthquake education by incorporating the best available technical and non-technical inputs on seismic safety in educational curricula. They will encourage knowledge institutions to undertake research, teaching and training.

SGs will proactively support application-oriented research and development activities to address current challenges, offer solutions, and develop new techniques.

SGs will make available earthquake safety related materials so that different groups of stakeholders can gather the information relevant to them. They will set up websites and portals to disseminate all earthquake safety related information to the various stakeholders.

### **Response**

NDRF battalions will assist the state government/ district authorities in training communities. Further more, youth organizations such as the National Cadet Corps (NCC) and National Service Scheme (NSS) and Nehru Yuva Kendra Sangathan (NYKS) will provide support services to the response teams at the local level under the overall guidance and supervision of the local administration.

State governments will compile a list of such equipment and identify suppliers of such specialized equipment and enter into long-term agreements for their mobilization and deployment in the event of an earthquake.

The DM plans at the state and district levels will address the concern of setting up of relief camps for the people whose houses have been damaged by an earthquake and the provision of basic amenities in such camps.

State governments will coordinate with the hospitals (government and private) to facilitate effective and adequate hospital response after earthquakes. The designated hospitals will identify the surgical teams that can be deployed in the field at short notice and arrange for their transport, medical equipment and supplies

After an earthquake, information centres will be set up to provide medical response information to the public, relatives of victims and media.

The National Institute of Disaster Management, in collaboration with the United States Geological Service had developed a scenario of the 1950 earthquake recurring in 2011 and the findings were horrifying. Based on these, a roadmap was developed for earthquake risk mitigation in the North East, but implementation has been dismal. It is also sad to note that, even the activities to be taken up under each of the above discussed six pillars (which were to be implemented in two phases, the first completing in June 2009 and the second phase in January 2010 have been not been completed (even remotely).

The Manipur earthquake must push the SGs, the NDMA, the MHA and the Ministry for Development of North Eastern Region to get their together and actively work for the effective implementation of the action plan. Simultaneously, SGs of the north east should muster and collaborate to pen a special strategy for the region i.e. to say fruticfy a code especially keeping in view the needs of the region.

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Oirfanhasieb

## NEWS CONTRIBUTION ON GLOBAL CARBON BUDGET, 2015

*Sweden Doley,  
Student*

Carbon Budget is a tolerable amount of green house gases that can be emitted in a specific period of time. The concept is of utmost importance when we talk about environmental awareness and climate change due to the increase of Green House Gases (GHGs) emissions in alarming rate. However, the emission of GHGs cannot be stopped at once. As such, we have to limit ourselves to emitting only a specific and limited amount of GHGs at a specific period of time. The emission of GHGs within the “budgeted” amount is of utmost important to us in order to prevent catastrophic climate change because of our reckless use of the earth’s energy and unchecked emission of GHGs. It is called as GLOBAL CARBON BUDGET because the “budget” amount of emissions is the total amount of GHGs emitted by the entire world. The carbon budget approach means that maintaining the emission of GHGs within a limit to cumulative global emissions, scientifically consistent with limiting global temperature increases and thus climate change. The main objective of carbon budget is to limit the average increase in global temperature within 2 degree Celsius. Crossing this internationally

agreed upon target would lead to severe change in climate, global rise in sea levels, increase rate of forest fires and other adverse impacts on the climate.

The Inter-Governmental Panel on Climate Change recently identified the world’s carbon to be 1 trillion tonne and going by the present rate, the remainder of this budget will be used up in the next three decades. According to research estimates of the University of East Anglia and the Global Carbon Project, the global carbon emissions are projected to stall. If we look into last year’s global carbon emissions from fossils and industry, it grew by 0.6 %, thus marking a year on year slow down of carbon emissions. The projection for 2015 is expected to be even a small decrease from the current rate. The research reveals that emissions could be decreased by 0.6 % this year as well. This is indeed a satisfactory outcome of the Carbon Budget initiative as it clearly shows the decrease in emission, considering the fact that this rate was between 2 to 3 % back in the early 2000s. However, though this may be a overwhelming result, there is a long way from zero emissions as in spite of the decrease in emission rate, we are still emitting a massive amount of carbon dioxide – around 36 billion tonnes annually.

The research shows that this significant reduction in the rate of emissions is largely account for China’s decrease in coal use. In 2014, more than half of new energy needs in China were met from renewable sources such as hydro, nuclear, wind, and solar power. As per the Carbon Budget 2014, the major contributors to global emissions are China (27%), the United States (15%), the European Union (10), and India (7%). Whether a slower growth in global emissions will be sustained depends on the use of coal these countries and elsewhere. While China’s emission rate has decreased to 1.2% in 2014 from 6-7% during the last decade, it is now for India to decide whether to adopt a low or high emission pathway for its rapid economic development policy. However, India might be able to pull off a balance strategy considering that it has already kick started its shift to large scale production of renewable energy under its National Action Plan on Climate Change parallel to its economic development.

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# INTELLECTUAL PROPERTY RIGHTS IN PLANT VARIETIES

- Gautam Krishna Deka,  
Student

Intellectual Property Rights are certain rights guaranteed by governmental authorities to persons for the creations of their minds. These rights give the creator certain rights over their product for its use for a certain period of time. These products are created from the efforts of the human intellectual mind and are given legal rights by the required authorities. Some common types of intellectual property rights are patent, trademark, copyright, industrial design rights and plant varieties, all these cover music, literature, and other artistic works, discoveries, inventions, symbols, and designs. Intellectual property rights have evolved throughout the centuries but it was in the late 20th century which found its common place in the globalised world.

A grant of plant variety rights gives the creator of the new plant variety absolute right to produce for sale and propagating material of the variety. New plant varieties are granted legal protection to support commercial plant breeders to invest the resources, labour and time needed to improve existing

plant varieties by ensuring that breeders receive adequate remuneration when they market the product of those improved varieties. In the absence of exclusive rights to breeders, the dangers of free riding by third parties would be considerable. This is because the genetic material within plants that define their distinctive and commercially valuable features is naturally self-replicating, for example by reproduction of seeds or other propagating material. Self-replication makes innovations incorporating biological material particularly vulnerable to exploitation by parties other than the innovator. IPRs in plant varieties thus provide some assurance to breeders that they will be able to recoup the risks and costs of a value-added innovation that is based upon an underlying biological resource.

Internationally there are two major treaties that regulate the system of plant varieties are the International Union for the Protection of New Varieties of Plants (UPOV) and the TRIPs agreement administered by World Trade Organisation (WTO). The UPOV adopts a unique system of protection mainly made to the needs of the plant breeders. WTO members by using the TRIPs Agreement requires to pro-

tect new plant varieties using patent rights. In India to provide an effective system for protection of plant varieties, The Protection of Plant Varieties and Farmers Act, 2001 has been set up for the protection of plant breeders and to encourage the development of new varieties of plants. This act also focusses on accelerating agricultural development of the country and stimulate investment for research. Such protection of plant breeders will ensure availability of high quality seeds and providing material to the farmers which will give opportunities to the farmers to cultivate crops of high quantity with good quality. The criteria to determine the eligibility to grant the rights of a new plant variety is that, it should be new, it is distinct, uniform and stable and should of acceptable denomination. There are certain exclusions of plant variety protection if the product created used for private and non-commercial purposes, for experimental and research purposes or for the purpose of breeding other varieties.

Any type of agriculture affects the environment whether it is subsistence, organic or intensive. So, it is natural

that genetically modified crops would also affect the environment. Many scientists have agreed that genetically engineered crops may either have positive or negative impact depending upon the agricultural practices such as pesticide and herbicide use and cropping pattern. These plant varieties may accelerate the damaging effects of agriculture or contribute to more sustainable agricultural practices and conservation of natural resources. These transgenic crops may have direct effects including, gene transfer to conventional crops, trait effects on non-target species and other unintended effects. Although scientists differ in their views on these risks, they agree that environmental impacts need

to be assessed on a case-by-case basis and recommend post-release ecological monitoring to detect any unexpected events.

With the increase in the population pressure there is a growing demand for food which needs to be fulfilled, the farmers are adopting modern farming techniques instead of traditional cultivation. The farmers also prefer to grow high yielding hybrids instead of local varieties. Moreover to promote agrobiodiversity conservation, farmers should be given incentives for cultivation of traditional varieties so that the biodiversity shall remain maintained while attaining high production and profitability.

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## ANALYSIS OF CAG REPORT ON NIRMAL BHARAT ABHIYAN

*Irfan Hasieb*

The Comptroller and Auditor General (CAG) of India is a body established by the Constitution of India, whose primary duty is to audit all receipts and expenditure undertaken by the Government of India and the various State Governments. The CAG also acts as the external auditor of the Government Corporations and further heads the Indian Audit and Accounts Department. The reports of the CAG are considered as very important and are also considered as matters of public importance. Recently, the CAG reviewed the Nirmal Bharat Abhiyan (NBA), which was a programme following the principles of Community-Led Total Sanitation (CLTS) initiated by the Government of India in 1999.

The CAG Report on NBA found a lot of discrepancies. Described it as alarming, in fund allocation and its misuse and a failure in implementation of the programme. The programme was expected to deliver and achieve the total sanitation goals, which was one of India's Millennium Goals. However, as per the Report almost 60.69% of the Indian population still defecate in public. As per the Report, some of the primary reasons which led to the failure are lack of intent at the implementation level, lack of effective monitoring and periodic evaluation of the programme.

The programme had an objec-

tive of constructing 426.32 lakh and 469.76 lakh Individual Household Latrines (IHHL) for people Below Poverty Line (BPL) and Above Poverty Line (APL). However, against this objective, only 52.15% and 44.18% target was achieved. Moreover, 33% of the constructed toilets were defunct in the 53 districts that were audited for the purpose (which is attributable to poor quality construction, incomplete structure and non-maintenance among various other factors). Another disturbing factor was that in the past five years, almost Rs. 10, 000 crores were spent on rural sanitation. But, there are hardly any results to be seen. Cases of financial irregularities, improper disbursement of funds, diversion of funds for other unrelated activities and even misappropriation of the allocated funds have been cited in the Report. Further in 9 states, it was found that an amount of Rs. 212.14 crore remained unutilized at the implementation level.

The latest effort on the part of the Government to achieve total sanitation in India is the launch of the Prime Minister Narendra Modi's pet project - The Swachh Bharat Mission. It has been estimated that to achieve the target by 2019, the Government has to allocate 3.60 lakh crore for the same. The fact that sanitation is very important for the well-being of a person since proper sanitary habits can help curb the spread

of numerous diseases has been realised by many. According to the World Health Organisation (WHO) polluted water forms the basis of spread of a lot of diseases and this is primarily due to the inappropriate sanitary habits of the people. Many people in India still defecate in the open and hence, there is an urgent need that steps must be taken to make people realise the importance of proper sanitation at a war footing with a lot of urgency. Insufficient sanitation amenities and lack of awareness frequently result in a number of health problems such as intestinal worms, most commonly the human roundworm and the human hookworms.

Hence, the CAG report has rightly suggested the Government to step up its drive for Information, Education and Communication that will lead to a rise in demand for basic sanitation facilities. The Report also suggests the Government to tie-up with various corporate houses to rope in their support through Corporate Social Responsibility (CSR) initiatives. It has also stressed on effective monitoring and periodic evaluation of the programme which was earlier missing.

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## JALLIKATTU — THE DILEMMA THAT TAMIL NADU FACES

The Government's decision to allow jallikattu and thus, lift the 2014 ban on the cruel sport that, tames bulls in a show of power and strength by the participants. It is said to be one of Tamil Nadu's oldest blood sport that is held in village festivals across the state. What began a sport representing power and strength - became a means of entertainment and fun at the cost of the poor animals that were used by the people. Forcing and pulling bulls by nose ropes into the narrow closed enclosure of vadi vassal, subjecting it to all forms of torture, fear, pain and suffering by forcing it to go the arena and also over-powering it at the arena by the Bull tamers, are not for the well-being of the animal. Jallikattu is stated to be a tradition going back centuries, having been canonised in Tamil literature and popular culture but also a major source of income for bull-owners in the State. It has received flak from all sides owing to the time that the ban has been sought to be revoked (BJP in a bid to appease others has taken this 'politically' fuelled decision). The seals of Indus valley civilization and even addresses made by English Colonial Administrators also depict it.

The judgment in Animal Welfare Board of India v. A. Nagaraja & Ors. (2014) 7 SCC 547 reiterated that, the Constitution of India, 1950 through its provisions encouraged and adopted an eco-centric approach as opposed to the anthropocentric approach. A bare perusal of the case shows that the Bench looked with deep concern into the wel-

fare and general being of the bulls and came out with the decision to outlaw the sport that was played in the name of 'tradition'. The evidence of the cruelty meted out to the animals - who are otherwise docile and avoid disturbances and noise - as provided by the Animal Welfare Board was solemnly looked into to determine that the sport indeed was grossly in violation of the Prevention of Cruelty Act, 1960, Constitution of India, 1950.

Welfare and well being of bulls is also considered to be a significant part of Tamil Nadu's culture which seems to have missed the Centre's eye whilst they were so eagerly ready to lift the blanket ban on the sport, challenging the judgment of the Apex court. The notification as endorsed by the Centre allowed the event subject to certain safeguards in place for the animals used therein.

However, when the Animal Welfare Board of India, PETA, Compassion Unlimited plus Action (CUPA) approached the Supreme Court, People for Animals (PFA) and various other animal groups, it gave an interim order staying the event until the points of law could be decided.

Several supporters of Jallikattu other than citing the cultural angle invoke the fact that the sport has in fact fostered the various breeds of bulls to thrive, which were exhibited in these events. An intricate connection is said to exist between the events of jallikattu and farming which follows a chronological order: once farming is completed, farmers take their bulls to such events over the next few months; spectators and visitors mark the top bulls

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and seek them out in the markets in the months from December - April all over the State. Normally, male calves are sold and taken for slaughter, only jallikattu saved them from this untimely death. It will also deter evolution and the genetic pool of healthy bulls would stand depleted. The Convention on Biological Diversity and heritage status worldwide, it is customary that these ancient traditional practices are left as they are but with rules to organise and regulate them.

With such positions and conflicting facts present in the matter, the Supreme Court's say will definitely be one to look forward to, to see how these are balanced together.

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## NEWS IN BRIEF

Lidia Kharmih, Student

### Recent developments on the 'Odd-even' formula

#### **Delhi Government claims 50% decline in air pollution**

Ahead of the Delhi High Court ruling to continue with the 'Odd-even' formula, the Government of Delhi claimed a 50% decline in the air pollution caused by vehicular traffic in the capital. The Government released a statement that said, "More than 50% drop in air pollution primarily caused by vehicular traffic has been recorded according to the latest ambient air data collected by mobile teams of Delhi Pollution Control Committee on Saturday (09 January 2016) at 18 locations, through mobile dust samplers on using the light scattering technique". They also added that the PM 2.5 air pollution levels on Saturday showed recordings of less than 100 micrograms/m<sup>3</sup> at nine locations, which is more than 50% less than average recordings since the 'Odd-even' regulations were initiated. However there may be more factors that have contributed to the improvement in the quality of air, as scientist have stated that the present weather conditions of the capital will facilitate improved results of the 'Odd-even' formula. (NEWS credit- NDTV, 10 January 2016)

#### **Odd-even trail to run full course, as intended in the original proposal**

On 11 January, 2016, a bench consisting of Chief Justice G. Rohini and Justice Jayant Nath said that the court would "not interfere with the ['Odd-even'] notification". The scheme that was implemented as a measure to control the life-threatening air pollution in the capital city will continue till Jan. 15<sup>th</sup> as originally proposed in the notification. This was after petitions were filed by various individuals, including one by Shweta Kapoor, a lawyer, who had said that the government has "failed to check the main cause of concern of pollution in Delhi and is targeting mercilessly and arbitrarily the helpless citizens of this city". The court however decided that the petition filed was "premature". In its 12 page order the court stated that, "Implementation may have caused hardship to a section of the society, however, the power of judicial review cannot be extended to determine the correctness of such a policy decision or to find out whether there could be more appropriate or better alternatives". To this, the bench added, that "law is well settled that on matters affecting policy, courts will not interfere unless the policy is unconstitutional or contrary to statutory provisions or arbitrary or irrational or in abuse of power", and that, "since, the policy decisions are taken based on expert knowledge of the persons concerned, courts are normally not equipped to question the correctness of a policy decision". The court did however ask for the contents of the petitions to be taken into consideration by the government before moving on with any further action. (NEWS credit- NDTV, 11 January 2016)

### -----HC Decision taken in favour of the people, says Gopal Rai

The number of deaths that have been caused due to the high level of air pollution in the state of Delhi have been estimated at 10,000 to 30,000 annually, by the Centre for Science and Environment (CSE). With Delhi being ranked the 5<sup>th</sup> most populated metropolis in the world, millions of civilians are at risk to a varied of respiratory diseases and/or other related problems, and the people of Delhi have spoken out- Transport Minister, Gopal Rai had said on Monday (11 January 2016) that the decision of the Delhi High Court to not interfere with the 'Odd-even' formula that was proposed in the Aam Aadmi Party (AAP) Government's notification was taken in favour of the people. Mr. Rai told ANI in New Delhi, "We hope that till 15<sup>th</sup> of January, we will get sufficient data. And as announced earlier that the first phase of this odd-even formula will run for 15 days then we will take the suggestion of experts on how to implement it in the long run". (NEWS credit- THE HUFFINGTON POST, 11 January 2016)

### Locals rise against the pollution caused by industries in the Singrauli area of Sonbhadra district

In the year 1998, a study was conducted that revealed high levels of mercury, found in the fishes and in the water of the Singrauli region. The study also showed results that 66% of the 1,200 people tested for mercury poisoning had more than 5ppb (parts of mercury per billion). The study was conducted by the Lucknow-based Indian Institute for Toxicology Research (IITR), but it was never made public, because, as stated by Ms. Sunita Narain (then CSE Director General), the study was funded by NTPC Limited. (NEWS credit- THE HINDU, 20 October 2012)

Another study conducted in the year 2012 by the Centre for Science and Environment, New Delhi, reported that the samples of drinking water that were tested were found to be unfit for consumption. The report showed high levels of fluorine, and faulty filters that did not effectively remove the fluorine and caused an increase in the calcium content in the water. Residents of the area showed adverse health effects, symptoms of both fluoride and mercury toxicity.

To speak out against the pollution and disregard of the authorities, the natives of the Singrauli area of Sonbhadra district have now formed a forum called Singrauli Pradooshan Mukti Vahini. On 11 January 2016, the forum, supported by Banwasi Seva Ashram, assembled at GIC Ground, Dudhi to voice their concerns.

A committee had been constituted by the NGT on August 2014 for overseeing the potential hazards of industrial development in Singrauli area. The NGT reported that in some places the level of mercury was found to be 19 times higher than the prescribed limit. Adults and children alike are found to be suffering from fluoride toxicity that includes dental fluorosis, skeletal fluorosis, depressed activity of thyroid, disruption. The area has 10 thermal power plants having a total installed capacity of 21000 MW (6 plants in UP and 4 plants in MP). The NGT reported that these plants generate about 35 million tonnes flyash per year and 14.61 tonnes mercury per year. Shubha Bahen of Banbasi Seva Ashram told TOI that, "the situation is getting worse with the increasing level of pollution in air, surface water, ground water, and soil adversely affecting the human health". (NEWS credit- THE TIMES OF INDIA, 12 January 2016)

### **NGT ceases illegal mining along Neugal river**

Mining along the Neugal river between Alampur and Bundla in Palampur has been banned by the National Green Tribunal as of 11 January 2016, after a petition was filed by Baljeet Singh Bhatelia, against the illegal mining that was taking place along the river. Previously, the issue had been brought to the state government's notice by the NGO People's Voice, but Neelam Sood (People's Voice President) claims that no action was taken against the mining mafia. Even in his argument, his advocate Hamender Chandel mentioned that despite the state government's knowledge of the situation, no steps to eradicate the problem were taken. The petition identified the loss of revenue to the state which amounted to crores of rupees, and the threat to the drinking water supply schemes which are fed by the Neugal river. The Deputy Commissioner and Superintendent of Police, Kangra, have been directed by the Tribunal to effectively administer the ban and implement the orders of the NGT. (NEWS credit- THE TRIBUNE, 12 January 2016)

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### **NGT orders deforestation in Sindhudurg to be monitored**

On 08 January 2016, the Principal Secretary of Revenue and Forests was instructed by a bench consisting of Justice VR Kirangaonkar and member Ajay Deshpande to issue instructions to Sindhudurg district officials "to strictly enforce the existing regulations related to cutting of trees in the non-forest areas and [consider] issuing suitable comprehensive advisory/guidelines, to reiterate existing provisions within six weeks". This was after an application was filed by Jayant Baregar, a resident of Sindhudurg, alleging large-scale tree-cutting in the area. The NGT stated that, "the issue related to illegal tree-cutting on a large scale is important for protection of the environment in Sindhudurg district. There cannot be duality of opinion that illegal deforestation would seriously impair environment and ecology..." As a considerable area of Sindhudurg was identified as eco-sensitive by the Gadgil committee in view of its rich and unique bio-diversity, the NGT observed in its order that it was crucial to preserve the area. Although Mr Baregar's application was disposed of on the grounds of wrongful interpretation of the Maharashtra Felling of Trees (Regulation) Act and the rules made under the Maharashtra Land Revenue Code, the bench did caution the State government on the need for firm implementation of these regulations in Sindhudurg. (NEWS credit- THE HINDU, 13 January 2016)

# NATIONAL GREEN TRIBUNAL AND ITS COMPELLING ATTITUDE: A PROMISING START FOR ENVIRONMENTAL DEVELOPMENTS IN THIS NEW YEAR

*Neil Dutta, Student*

A new year has ushered in and the National Green Tribunal (NGT) is determined than ever, in protecting the cause of the national environment. Within a week, the National Green Tribunal has passed three significant orders, which are more of a warning than of a direction. Seldom has the Court acted in such capacity whereby it uses judicial authority to compel the State work on its terms. The NGT hearing a petition filed by RELA (Readiness for Empowerment through Legitimate Action) against the State Government of Andhra Pradesh, Odisha, Maharashtra and Telengana with regard to illegal sand mining activities without prior approval environment approval and the failure of the State Government to take serious action, the National Green Tribunal specifically said in the Order dated 07-01-2016 that -

“All the State Governments shall ensure that there is no illegal, unauthorized and mechanized mining of the river beds contrary to/without Environmental Clearance and the consent of the Pollution Control Boards.”

Environmentalists and Environmental Activists are now gripped by the compelling character of this matter and are earnestly looking forward to its decision, which will hopefully change the existing dilapidated conditions of the national rivers. The matter is listed for final hearing in February.

Another significant case, which concretized the “no nonsense” attitude of the Tribunal, can be noticed in the order of the Eastern Bench of in the matter instituted by Environmentalist Subhas Datta. In this matter, the petitioner highlighted the occurrence of severe ecological catastrophe due to heavy water pollution during the Annual Gangasagar Mela, which is held in Sagar Island in West Bengal for one long month. The petitioner highlighted that; the Gangasagar Mela organized by the State Government is not strategically located as like Kumbh Melas in different cities of India with project superior waste disposal management techniques. Unlike Kumbh Melas, Gangasagar Mela which hosts a similar number of gatherings every year occur in an island creates hindranc-

es for the authorities for proper disposal of waste materials. Furthermore the construction of illegal establishments that encroaches significant portion of open lands has also compelled the NGT in issuing the following orders:

Video Footage of the Gangasagar Mela premises during its 30 days in entirety must be captured through the usage of Drones, which shall include prime areas of pollution and waste disposals. The State Government to the Tribunal for taking such necessary reformatives shall submit such records and protective actions for controlling pollution in the Mela area as the Tribunal deems fit.

The State Government must demolish illegal Construction in the Sagar Premises and the report of such shall be submitted to the Tribunal.

The Eastern Bench of the NGT in a matter instituted by the same petitioner has expressed its bitter disgust and dissatisfaction over the actions of State Government in combating encroachments issues in Sunderbans areas. The Tribunal pre-



viously directed the State Government to remove illegal encroachments and construction from the core and semi core areas of the Sunderbans National Park. However, the affidavit along with the report submitted by the State Government in the Tribunal in regard to the progress of the same has invited utter discontent from the Bench. The Bench noticed that the State Government's actions are grossly uncooperative. It is not following the orders of the Tribunal. The Tribunal gave the State Government another chance to remove such illegal establishments and encroachments, failing of which the Tribunal would take the matter in hand and would appoint appropriate agency/agencies to remove such encroachments. The Tribunal ended with a threat that if the State Government fails to implement such directions of the Tri-

bunal, it might resort to the assistance of Army Personnel in removing such illegal establishments and encroachments in and around the mangrove forests.

All these three matters clearly project the level of pro-activist approach of the Tribunal in its mission of protecting the ecological hotspots of India, be it the use of new technology in the Gangasagar Mela 2016 or threatening to use the assistance of Military in removing encroachment from Sunderbans, the Tribunal has definitely struck a chord amongst the environmental activists. The sterner attitude of the Tribunal in this New Year would definitely see new developments and cooperative participations from the State Government and its agencies, which is the utmost necessity of a sustainable era.

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