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Lex Terra

News Updates on Environmental Law

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" 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

Photo courtesy: Kasturika Bhardwaj

About CELAR

The primary mission of Centre for Environmental Law, Advocacy amd 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 doe 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,

With the dawn of a new semester, *Lex Terra* is back with it's eleventh 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 out 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 goes 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.

Best wishes for the upcoming semester.

Thank you
Happy Reading!

Courtesy– Google

COCONUT TREE: TREE OR NOT?

Gitanjali Ghosh
Assistant Professor of Law
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Breaking news! The Goa Legislature has legislated to declare that the coconut tree is not a tree. A catchy line and everybody's first reaction is that they have never heard anything more absurd. However, the absurdity is rather latent than patent. In the interest of understanding the subject matter better, it is pertinent to look at it both botanically as well as legally.

Coconut (Cocos nucifera) belongs to the palm family (Arecaceae). Palm trees are botanically grouped botanically with grasses, sedges, bamboo, grains, lilies, onions, and orchids. In fact, there are subtle differences between trees and palms. Palms do not have bark or woody tissue as opposed to trees. Palms also do not produce a cambium layer that produces new growth each year. In other words, a cut through a palm's trunk would not show growth rings; a cut across a tree's trunk would. A palm's trunk is a mass of spongy, hardened material that expands as the palm grows taller. It actually has more in common with grass than with trees. Palm trees are actually grass giants.

Having deciphered the botany, it is necessary to comprehend the law in this regard. The Goa, Daman and Diu Preservation of Trees Act, 1984 (henceforth 'the Act') defines 'tree' as any woody plant whose branches spring from and are supported upon a trunk or body and whose trunk or body is not less than five centimetre in diameter at a height of thirty centimetres from the ground level and is not less than one metre in height from the ground level under Section 2(j). In 2008, the Goa Preservation of Trees (Amendment) Act inserted a very important provision i.e. Section 1-A, which categorically stated that the term 'tree' includes coconut trees for the purposes of the Act. Owing to this amendment, the coconut tree began enjoying several protections available to other trees under the Act.

At this juncture, it is pertinent to understand the protections available to trees under the Act. The first one are restrictions imposed by Section 8 of the Act on the felling and removal of trees without the permission of the Tree Officer (a Forest Officer of a rank not below that of an Assistant Conservator of Forests) who is appointed by the Conservator of Forests. It, however, provides an exception that the owner of the land may take immediate action to fell a tree which, if not immediately felled, would be grave danger to life or property or

Photo Courtesy: *http://blog.parrikar.com/wp-content/uploads/2012/08/Goa-Monsoon-Orlim-Coconut-Orchard.jpg*

traffic, and report the fact to the Tree Officer within 24 hours of such felling. Another laudatory provision is Section 10, which obligates every person who fells or disposes of any tree, to plant such number and kind of trees in the area from which the tree is felled or disposed of by him as may be directed by the Tree Officer. A penalty has also been provided for violations of the Act under Section 25 in the form of imprisonment that may extend to one year or with fine that may extend to one thousand rupees or with both.

The entire fiasco has been caused by the recent Goa Preservation of Trees (Amendment) Act, 2016 which has redefined the term 'tree' by omitting Section 1-A entirely thereby rendering coconut trees unprotected under the Act. Due to the omission of this provision, the coconut tree is not recognized as a tree under the Act anymore which berefts the coconut tree of all protections available to trees under the erstwhile law. Although there is a laudatory amendment in the form of raising the quantum of fine for contravention of the provisions of the Act from one thousand rupees to one lakh, the coconut tree is not to be benefited from it.

The question is not whether a coconut tree is a tree or not because botanical studies indicate that the coconut tree is in fact a palm and has more in common with grass than with trees. The real question in hand is that this move has taken away the protections available to a coconut tree and in this age of conflict between environmental needs and neo liberal agenda, the latter has been given an upper hand. The moot point is that the coconut tree needs to be protected from felling for ulterior motives and as long as such is the case, call it a tree or a spade for that matter.

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WHITE COMMONS: THE SNAPSHOT OF ANTARCTIC TREATY REGIME

Chiradeep Basak,
Assistant Professor of Law &
Knowledge Enthusiast

"Ten percent of the big fish still remain. There are still some blue whales. There are still some krill in Antarctica. There are a few oysters in Chesapeake Bay. Half the coral reefs are still in pretty good shape, a jeweled belt around the middle of the planet. There's still time, but not a lot, to turn things around."

-Sylvia Earle

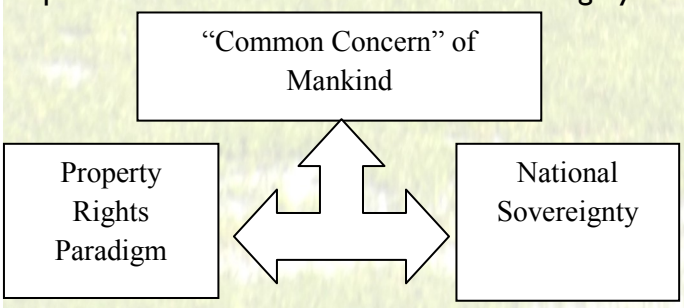
Long back in 350 B.C, Greeks guessed that if there is a north pole, which they used to call as '*Arktas*' (now Arctic), there should be a southern landmass too. The guess was based on a logic that we presently denote as ecological balance. Hence, they named the southern iciest, furthest and windiest landmass as '*Ant-Arktas*'. But at that time, the want of technology restrained human to cross the threshold of uncongenial wilderness towards Antarctica. But with evolution of technology, the rocks and omnipresent ice sheets of Antarctic could not hold the ships away from it. Sooner, an explorer named James Cook reached and said, '*I make to declare that the world will derive no benefit from it*'. But he didn't know that his declaration won't stand firm in near future. In following years several nations attempted to explore Antarctica. Russians, Brits, Americans and French voyagers has achieved many groundbreaking discoveries. Some of them like Captain Thaddeus Bellingshausen, William Smith, Edward Bransfield, Nathaniel Palmer, Captain John Davis, James Clark Ross, Caster Borchgrevink, Captain Scott, Douglas Mawson etc. has created history and brought Antarctica closer to mankind.

The vast ice sheet of Antarctica is two thousand meter thick and this is the reason behind several experiments in Antarctica. There is so much ice here that only few valleys of all Antarctica are virtually ice free. Everywhere else is ice which encases the continent. Surprisingly these ices are deceiving as much of the ice is on the move. Antarctica may appear to have a single coating of ice but not all the ice in the continent are the same. The majority exists as ice sheets that cover the land and slowly move towards the sea. From land's ending the ice goes on to shift over the point of the sea and beyond the ice is the seasonal ice that freezes the ice in winter. Researchers have classified three types of ice to detect how Antarctica affects the global climate. Six hundred miles from McMurdo station, is the West Antarctic Ice Sheet Divide, which the high point of world's largest ice sheet. According to Glaciologist, Desert Research Institute Kendrick Taylor- The ice of Antarctica comprises of several chemicals and gases which piles up layer by layer and finally compressed in to ice.

To know the atmospheric condition even further, the researchers are relying on Antarctic's rock. This is very challenging as the ice sheets grind across the land, they swallow up the rocks layer that details Antarctica's climate history. As an ice shelf extends over the sea, the warmer water slowly melts away the bottom of the ice dropping stones to the sea bottoms. Geologists explore the layers where

several aquatic creatures have adapted the changing conditions. In these basins marine life thrives in the salty freezing water. Geologists are sending drills through the ice deep down nearly 1000 ft of water to bore in to sea floor rock layers. But drilling on ice is a challenge itself. They are using techniques like hot water drilling. How far this process of massive drillings affects the continent is highly contentious.

From the facade of jurisprudence, two major schools portrays a contending views; positivist versus natural law school. One supports the principles of capitalism and recognizes it while another looks into the moral code independent of human needs. In other words one thought is reflecting egalitarianism while other focuses on individualism. From the approach of natural school of law, Grotius gave an insight w.r.t the standards of moral rules which have been guiding the states in global arena. From that nodal point, the altar for contemporary International law has generated. With the development of technology, the international relations too experienced changes. From commercial prospects, states became far more individualistic in their approach. This led to a new capitalistic form of society. Here, the property rights paradigm of global commons comes into action. It is unfortunate that this paradigm has incorporated an idiosyncratic dimension rather than collaboration. This form of economic eccentricity has in further stage affected the exploitation of natural resources itself. This paradigm has been receiving its impetus from the notion of national sovereignty.



The human effect on environment is irreversible. It is an immense intimidation to global ecosystem. The growth of Human is undoubtedly crafting an adverse effect on planet earth. The public, well before the politicians, have recognized the need to overcome the sterile debate which opposes the economical development and environmental protection. It is late but not too late for applying our good conscience and harmonizes all conflicting interests which are dwindling among us.

We know that Antarctic continent is covered by a massive ice sheet of 14 million square kilometers. This ice sheet represents ninety percent of global terrestrial ice and a major chunk of freshwater (around 70%). The Antarctic extends well beyond its vast land mass into an ocean of 36 million square kilometers. The southern ocean which surrounds it and extend northwards in a hydro geological barrier which separates it from three other great oceans. Without this southern ocean, which provides a unique source of food, no life would be possible in the land.

Antarctic is the refrigerator of planet earth as it maintains equilibrium of its climate. The ice sheets of this continent returns up to eighty percent of solar rays resulting in lowest temperature in the continent. This mechanism of refrigeration is the reason of the balance in temperature of global climate. The low temperature in the polar caps and the heat in the equator induce atmospheric and marine currents on earth. This situational and regional machinery together with the rotation and revolution of the planet maintains the life form in it.

One of Antarctic's uniqueness makes its vulnerable too. The purity of this favorable temperature is fit for several experiments. This acts a brilliant laboratory for the study of global process. One of

the vital source of information for greenhouse gases and nexus of the environment of planet eons ago is the trapped air bubble in ice.

The Antarctic: A challenge to Global Environment Policy

Major legislations w.r.t Antarctica**:**

- The Antarctic Treaty, 1959;
- Protocol on Environmental Protection to the Antarctic Treaty/Madrid Protocol, 1991;
- Convention on conservation of Antarctic Seals, 1972;
- Convention on the conservation of Antarctic Marine Living Resource, 1980;
- Convention on the Regulation of Antarctic Mineral Resource activities, 1988;
- Convention for the prevention of the pollution of the ship/MARPOL, 1973;
- International Convention for the regulation of Whaling, 1946.

Worst case scenario of Convention of Regulation of Antarctic Mineral Resources

(*Treaty signed in Wellington, June 2nd 1988: By representatives of 33 member states to the Antarctic treaty of 1959)*

With rise in oil prices, a major concern was felt for fulfilling future needs. In order to combat such situation, the member states to the Antarctic treaty decided to join hands and enact the Antarctic Mineral Resource Convention. **The extreme condition of Antarctica and the absolute necessity of maintaining the status quo on claims to territorial sovereignty led the negotiators to adopt a prohibitive legal text which largely take into account measures to protect the environment.**

The main critiques about this Convention are as follows:

- The developing countries are heavily dependent upon the primary resources that are exported from these developed countries. Extraction of such mineral resource is going to effect the economy of developing countries;
- It is highly questionable to leave the decision making over exploitation of the mineral resource of Antarctic, solely in the hands of 22 member states to this treaty;
- The harshest climatic condition of planet earth may cause an inevitable damage to any industrial establishment in Antarctic and which in turn may cause a severe irreparable damage to the global ecosystem;
- The fragile situation in Antarctic leaves a major question over the regulatory mechanisms of the treaty. As any industrial establishment in such a territory can violate any norms and above all, to combat a hostile and super dynamic environment
- The factor of human error remains unsolved. Even with scientific development, these errors are unavoidable. These errors may have relentless ecological cost. Glowing examples of Chernobyl accident and oil spills by Valdez are lessons. For any development issue, a vacuum of risk factor remains if preventive measures are not taken.

Legal status of Antarctic Treaty

With the enhancing intricacies in international arena, states entered into a negotiation and came up with Antarctic Treaty. But how far that has served the purpose is a matter of question. Gradually

several treaties came into force and this gave rise to a complex Antarctic Treaty system. It is unfortunate that this treaty has not been formally recognized but two medians of Antarctic Treaty System have clearly referred to this Treaty. They are:

- Article 1 Clause (e) of Protocol on Environmental Protection to the Antarctic Treaty;

- Article 2 of Convention on the Regulation of Antarctic Mineral Resource activities.

From the first article mentioned above, it is clearly evident that the intention of the contracting parties to the Antarctic Treaty has attempted to limit its scope. If we dig further, we can ascertain that the Madrid Protocol professes to supplement the Antarctic Treaty. The legal status of Antarctica has been clearly expressed n Article of Antarctica Treaty itself.

In addition to the given proviso, the Whaling commission has also recognized the political and legal status of Antarctica and Convention of Antarctic Seals. Hence, even though these conventions recognized the legal status of Antarctica in accordance with Antarctic Treaty, a question remains over the authority of the said treaty. As noted by R. Frank, the inclusiveness of Convention on Marine living resources under the Antarctic Treaty Regime is another major question in front of all. From this angle there have been two major views:

- The said convention recognizes a separate, distinct legal regime as the convention in itself has created autonomous governmental organs;

- Article 3 and 4 of the same convention accorded the fact that Antarctic treaty is also dealing with same issues i.e. environmental conditions. The subject matter of both looks into the same geographical territories and recognizes their mutual competencies.

On the critical part of it, the nonconforming legal status of the Antarctica as claimed by so called the "contracting parties" over sovereignty is going against the whole jurisprudence of Global Commons. As Vigni critically appraised it as, "Bi-focal Approach", which he defines as a loom creating the norms, establishing the same rights and duties for all the contracting state parties and that, can be differently interpreted by Non Claimant and claimant on the ground of their acknowledgement or denial of sovereign rights in Antarctica. With more state parties coming under the Antarctic treaty system, the chances of the institutionalization are pretty much inevitable. With reference to this, one can explore the provisions of Madrid Protocol. Hence, even though Antarctic Treaty System bears the feature of institutionalized system but still it is not rigid in this sense and hence, it reflects a distinct feature. To abhor such mingling-jingling, it is necessary to scrutinize the common thread of Antarctic Treaty System and other international instruments.

A Step towards the mitigation:

In order to solve the dispute over the prospective legislations related to common subject matter, one has to refer, the legal theories which contends to set up a priori; if the prevalent norms is contradicting or transgressing the new one. This can be done by:

- To locate the compatibility provisions of the treaties; as it gives the clear picture of the intention of the state parties (keeping the exception to objective interpretation of treaties)

- The attuned clauses in treaty do not give a lucid ladder among treaties but evoke other international norms which have a may be more or

less; a connecting link. From this portico, the provision of convention of Antarctic Mineral Resource activities recollects the provisions UNCLOS;

- The theoretical approach has been on the platform of contradiction of two separate international conventions on a similar subject matter. The third state parties responsibility is dubious. Here the third state party will not only include the non state parties to the convention but also the state parties who are the parties of other international conventions dealing with the same subject matter;

- The principle laid down in Vienna Convention, which affirms that all states stands equal in front of international law and hence obliged by the norms which they have manifestly accepted. This theory is based on the maxim pacta tertiis nec nocent nec prosunt which means that agreement neither harms nor benefit third persons.

- The penultimate theoretical approach is based on the extent and gravity of the content of the conventions which put a binding effect on all states; be it a party or not.

It is unfortunate that all these theories and principles have been held unsuccessful due to want of feasibility in mitigating all form of disputes. Therefore, a much pragmatic approach considering the policies on mind will be an appropriate solution in resolving the conflicts of overexploitation in Antarctic. This policy centered approach on the infrastructure of an objective analysis to evaluate the issues can pave a way for a better sustainable use of the global commons.

The Interface

For assessing the ambit of the international standards w.r.t Antarctic, the law of high seas is necessary to be considered. This can be understandable if we put light on Article VI of the Antarctic Treaty. Therefore, the chances of overlying are pretty much unavoidable. To draw a better harmony, the current law of sea is sufficient. But a question still remains over the compatibility principle. The Antarctic norms are somehow intended to frame a distinct framework from that of law of seas. Henceforth, the aforesaid proviso may not be the ultimate answer to this issue, although the paradigm of common heritage of humans and conservation of marine living resources finds its relevance w.r.t law of seas. Some of the major problems in this interface of Antarctic and Seas:

Legal status of Antarctic <————————> Law of Sea

One of the controversial provisions of Antarctic Treaty is para 2 of article IV. According to which, "No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica. No new claim or enlargement of an existing claim, to territorial sovereignty shall be asserted while the present Treaty is in force." Therefore, a clear expression is due regarding the law of sea when it comes for the issue of the delimitation of the marine zones. A crystal conclusion is needed w.r.t the intention behind the Antarctic Treaty. The complex rules of the seas are very much dynamic and have an affect over the sovereignty issue of Antarctic. When Antarctic Treaty came into force, the several concepts of sovereignty over seas didn't come into force. For example the modern law of sea has brought down the Exclusive Economic Zone under the ambit of customary law. One of the significant features of delimitation of marine zones requires a

clear geographical feature and Antarctica does not have it. The issue was in measuring the inner limit of the zones.

Hence, it is very clear from the above discussion that:

- The norms of United Nation Law on High Seas do not fit well in case of Antarctica;
- The contentious existence of the coastal states in this continent materializes an hindrance to the delimitation of zones;
- In addition, it does not give the impression to attribute to the rights of the state parties;
- Last but not the least non feasibility and problems associated with measurement of claimed and unclaimed region of Antarctica from two different delimitation systems less than two different normative structure. There is a high chance of power abuse by certain states over the sovereignty rights in Antarctica, which may finally affect the international law.

From the angle of common concern of mankind

Common heritage of Mankind is something which is based on the rule of common benefit and equitable sharing of those benefits. The UNCLOS has clearly specified the deep sea bed as one under this head. Therefore, the no state parties are very much into this principle and believe it to be appropriate from the context of Antarctica.

- But this principle of common heritage may not lattice with the situation of Antarctica. To begin with, the general concepts of sovereignty do not stand good when the commons goods is the subject matter. Quite the reverse, claims over Antarctica has been solidified under Article IV of Antarctic Treaty;
- The state interests are another point that has been taken care of smartly by the state parties. This rights are reserved for these developed states who conduct several scientific and geological research in Antarctica including the massive drilling;
- One of the major decisive factors of Common Heritage of Mankind is, the equitable Sharing of the resources. But the said Treaty does not talks about any equitable sharing of the resources among the contracting parties;
- The new regime of common heritage principle that has been adopted on the footing of sui generis of so called Common concern of humankind under the aegis of CBD (Convention on Biological Diversity);
- Even though this new principle, in itself a major step to protect the Antarctic environment but it circumvents the notion of Res communis;
- Although the common concern theory may face huge challenge from new claims under the International Law w.r.t Antarctica but it serves a wide purpose of environmental issues;
- Without disturbing the compatibility factor with sovereignty, the common concern principle looks beyond the boundaries and attempts to bring accountability form the exploiters towards the non state parties, who are affected passively as well as actively due to the conduct of the contracting parties in Antarctica. This safeguards the paradigm of common interest like ecological balance, climate change and biodiversity.

These are the common resources that seek a guarantee by means of universal acquiescence from all states. Necessary measures have to be taken by means of fundamental obligations from these states.

So the UNCLOS versus Antarctic Treaty issue needs to be interpreted not only from the feasibility but also ecological distinctiveness of Antarctica.

Conclusion

After the analysis of given subject matter, it can be concluded that the objective of the state parties is a very vital element to determine the willingness of the state parties to oblige with the norms. A concrete theoretical interpretation of international norms may lead to several conflicts. A policy framed loom should be a better means to minimize the conflict and bring the purpose of global commons into reality. As Antarctic is having a special status and it ascertains a widespread administration in itself. The contracting parties to Antarctic Treaty should respect the paradigm of commons concern and bring the protocol into action. As discussed earlier, the norms with greater degree of safeguarding measures should be respected and enforced. To lay a priori on the footings of universal principles by overlapping the Antarctic Treaty by other treaties won't serve the purpose. Hence, it is not favorable to craft Antarctic by bringing a hood over its head and undermine its lex specialis. Other norms should complement it rather than deflating it. It is apparent that certain rules of Antarctica have gained customary International Law pageant and hence, their applicability has gone beyond the arena f contracting states and included the third states.

In addition, the object of the Antarctic clauses can have an impact over other international law. But that should be explicitly clear on the grounds of concrete rationale of the norms. The imposition of obligations on third states on the basis of concrete rationale has not been duly recognized by the provisions of International Law. But the efficacy, aptness and suitability of Antarctic treaty system has been acknowledged by several third states and this good thing that has happened. The environmental factors are evolving and the impact doesn't care about territories and boundaries. The social-economical-ecological and political turf wars have to be harmonized to ensure a sustainable development. In spite of numerous global conferences and conventions, the unidirectional deterioration of environment is inevitable. In this critical situation, a proper management is necessary to regulate and monitor the exploitation of Global Commons. Before the world starts to repent for its deeds, special attention is to be given to Antarctic.

NOTES/ REFERENCES:

- Cousteau, Charrier, Introduction: The Antarctic A Challenge to Global Environment Policy in Joe Verhoeven et al, International Environmental Law and Policy Series 5 (Graham and Trotman Ltd, 1992).
- Article 1(e) of Protocol on Environmental Protection to the Antarctic Treaty envisages, "Antarctic Treaty system" means the Antarctic Treaty, the measures in effect under that Treaty, its associated separate international instruments in force and the measures in effect under those instruments."
- Article 2 of Convention on the Regulation of Antarctic Mineral Resource Activities states, "This Convention is an integral part of the Antarctic Treaty system, comprising the Antarctic Treaty, the measures in effect under that Treaty, and its associated separate legal instruments, the prime purpose of which is to ensure that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord…."
- Article 4 of Antarctic Treaty prescribes that.

"1. Nothing contained in the present Treaty shall be interpreted as:
a. a renunciation by any Contracting Party of previously asserted rights of or claims to territorial sovereignty in Antarctica;

b. a renunciation or diminution by any Contracting Party of any basis of claim to territorial sovereignty in Antarctica which it may have whether as a result of its activities or those of its nationals in Antarctica, or otherwise;

c. prejudicing the position of any Contracting Party as regards its recognition or no recognition of any other State's right of or claim or basis of claim to territorial sovereignty in Antarctica.

2. No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force."

- Patrizia Vigni, The Interaction between the Antarctic Treaty System and the Other Relevant Conventions Applicable to the Antarctic Area: A practical approach versus theoretical doctrines, 4 Max Planck Yearbook of United Nations Law, 483 (2000).

- R. Frank, The Convention on the Conservation of Antarctica Marine Living Resources, 13 ODILA 291(1983).

- Vigni, supra note 8 at p. 485

- Article 11 of Madrid Protocol enshrines the institutionalization of Antarctic Treaty System as , "Committee for Environmental Protection

1. There is hereby established the Committee for Environmental Protection.

2. Each Party shall be entitled to be a member of the Committee and to appoint a representative who may be accompanied by experts and advisers."

In this context, Vienna Convention on Treaties under article 31 para 4 goes in exception to para 1 which disregards the vitality of state parties' intention behind the interpretation of the treaties.

Notion of Continental Shelf as prescribed in Article 5 of Convention on the Regulation of Antarctic Mineral Resource activities.

- Article VI of Antarctic Treaty envisages, 'The provisions of the present Treaty shall apply to the area south of 60° South latitude, including all ice shelves, but nothing in the present Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to the high seas within that area.'

- See Article IV para 2 of the Antarctic Treaty, 1959

- Vigni, supra note 8, at 501.

- See id.

LIFTING THE LENTIL BAN: FSSAI IN ACTION

Saptarshi Das (5thYear) &
Sumedha Choudhury (4th Year)

It was just last year when the Maggi hullabaloo attracted health concerns and brought the Food Safety and Standards Authority of India (FSSAI) into the limelight. In 2016, the FSSAI will be expected to play even more important role as the Government now decides to undo the ban on Kesari Dal (Also known as *Lathyrussativus* & famously known among farmers as matara, tiora and khesaari).

Earlier the ban on Kesari Dalwas contained in Rule 44-A of the Prevention of Food Adulteration Rules, 1955. The provision iterated that, no person in any State shall sell/ offer/ expose for sale/ or have in his possession for the purpose of sale (of any description) or use an ingredient in the preparation of any food that is intended for sale, the following: -

- Kesari gram and its products.
- Kesari dal and its products.
- Kesari dal flour and its products.
- Mixture of Kesari gram and Bengal-gram/ any other gram.
- Mixture of Kesari dal and Bengal-gram dal/ any other dal.
- Mixture of Kesari dal flour and Bengal- gram flour/ any other flour

The ban is effectuated from such date, as the concerned State Government shall notify in the Official Gazette [Annexure-I under Prevention of Food Adulteration Act, 1954 contains the statement indicating the imposition of ban of Khesari Dal in the States and Union Territories.].But, with the enactment of the Food Safety and Standards Authority Act, 2006 (with an aim to establish a single reference point for all matters relating to food safety and standards, by moving from multi- level, multi-departmental control to a single line of command) the ban is now contained in the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011 [Chapter 2, 2.2 (2.2.1)].

The Kesari dal was popular among the farmers because of two main reasons –

Firstly, the kesari dal was a cheap alternative (in terms of cultivation as well as consumption) for the farmers.

Secondly, the dal could survive extreme climatic conditions and provided greater yield as compared to other pulses (approximately 500 kilograms per acre).

Despite such benefits to the pocket of the farmers, the dal was banned due to higher presence of harmful chemical called ODAP (Beta-N-oxalyl-a, Beta -diaminopropionic acid), which causes an irreversible motor-neuron disorder called neurolathyrism. The toxin in the pulse affects the central nervous system and paralyses the leg muscles and there is no cure to the woe. The toll on the health is seen only when the dal is consumed for a period of two to six months. News sources (such as the Economic Times, NDTV) state that ban has been under action since 1961. In India Today, an article "A Spreading Malaise" by N K Singh dated 03 March 1988 mentions that the ban primarily came into effect following a directive of the Supreme Court in 1982 in a case filed by a voluntary organization. Agriculture expert and Activist RakeshDeewan played a key role in approaching the Hon'ble Apex Court to ensure effective implementation of the Ban on Khesari Dal.

The lift on the ban of Kesari dal by the Government has come in the wake of rain deficiency over the past two years, which has affected the production level of pulses throughout the country ("The country's pulses production is stagnant at 17-18 million tonnes and imports 4-5 million tonnes to meet the gap."). The Indian Council of Agricultural Research (ICAR) has developed three new varieties of khesari dal - *Ratan, Prateek and Mahateara*. This innovation has sprouted

in collaboration with the State Agricultural Universities. In the new varieties of the dal, the toxicity is said to be negligible.Dr S Swaminathan, Director Indian Council Medical Research (ICMR) says, "When it is cooked, there will be negligible levels of toxins. Three varieties have been released. Research has been going on for at least six-seven years." Furthermore, Agriculture Minister Radha Mohan Singh said in a statement that these varieties have ODAP content in the range of 0.07- 0.1 per cent, which is safe for human consumption and that ICAR is taking active steps to replace the traditional high ODAP containing varieties of Khesari with its improved varieties. These three varieties are also expected to reduce nutritional deficiencies in the poor.

The FSSAI, which has been established under Food Safety and Standards Act, 2006 will have an active role to play in ensuring that the new varieties meet the safe standards of consumption. Briefly, the FSSAI has been created for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import to ensure availability of safe and wholesome food for human consumption. Promote general awareness about food safety and food standards. The authority has already sought Health Ministry's approval to hold public consultation on approval of three new khesari dal varieties - Ratan, Prateek and Mahateara, having low ODAP.

The conundrum that lies inherently and cannot be overlooked in the government's decision to promote the Kesari Dal is that of the long-term effects of the three new varieties and the short term problems that the government wants to tackle. The developed varieties are genetically modified crops and thus, the true impact of the same can only be learnt and felt over the years when it actually enters the food chain system. On the other hand, the need of the hour is to address the nutritional deficiencies and other policy decisions to maintain the financial health of the country. In the light of the above, it is pertinent to note that will changes in the nature of the commodities that are being consumed, the pressure on the FSSAI mounts. The institution will have to buckle up and ensure that the lacunae in laws are strictly addressed to and the purpose for which it has been created is met strategically and with efficiency.

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AN OVERVIEW OF THE DRAFT URBAN DEVELOPMENT POLICY, RAJASTHAN

Sweden Doley,
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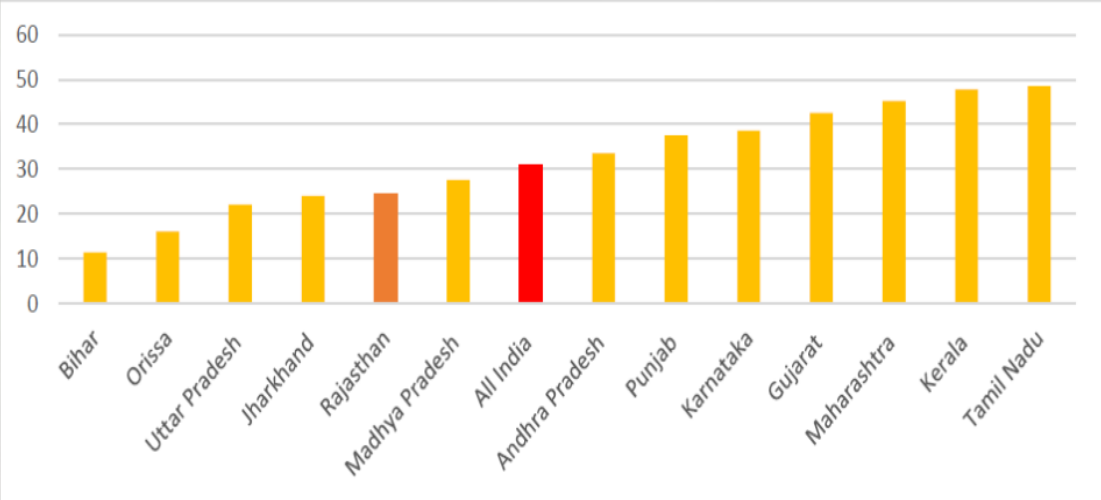
The recent years has witnessed India leaping towards rapid urbanisation. After two and half decades of continuous economic development, Indian cities are finally being able to catch up to modern urbanisation process with the rest of the world. As per the 2011 Census report, the total population living in urban areas is more than 377 million, i.e. the level of urbanisation stands at 31 percent. The benefit of this urbanisation process is that it would aid India in significant transformation of its economic structure. In the case of Rajasthan, with nearly 25 percent of its population living in urban areas, the state falls in the lower range of urbanisation across India.



Census 2011: Percentage of Urbanisation in India

Further, it can also be observed that the urbanisation process is concentrated only in the eastern parts of the state as while the number of smaller urban centre has been on the rise, there has been no increase of census towns in the western districts of Hanumangarh, Jaisalmer and Churu. In order to take the most out of India's rapid economic development, the state of Rajasthan needs to bring up policies to address the rising challenges and issues that restrain any opportunity emerging out of the rapid process of urbanisation and also maximise overall economic growth.

Hence, as its effort to cope up with these issues and challenges, the government of Rajasthan has come with the draft for Urban Development Policy which covers the areas of water supply and drainage system, waste management, development of cities and towns, transportation, and housing facilities, etc. It is important for the state of have a concrete policy for its urban development plans at this stage as it would help to draw out a well structured plan to help support its developmental goals. Through this draft policy, the state government of Rajasthan tries to understand and outline all the issues and challenges that it is facing at the present regarding the process of urbanisation and urban services like waste management, water supply, housing and sanitation, etc. It also seeks to bring out significant reforms and also involve multiple stakeholders.

This draft policy seeks to do away with the imbalance urbanisation process the state is facing today and tries to achieve an overall development model by providing equal opportunities to all groups of the society, reduce the unsustainable use of

natural resources and adverse impact on the environment and at the same time facilitate development of the state and make the lives of citizens more productive. For this, the policy framers have divided sector specific policy into two heads namely: infrastructure and services which includes sub-sectors like urban transport, waste management, water and sanitation systems, etc; and city competitiveness, which includes opportunities for economy and investments, housing facilities, drainage system, etc. Majority of the urban areas in Rajasthan does not have a planned transport and mobility system which creates hurdles and inconvenience in day to day commuting. To address these issues the policy outlines the need for introducing properly integrated land use and transport planning, multi modal public transport system which is affordable and easily accessible. Urban water supply being one of the most important critical urban infrastructures which greatly impacts the liveability and thereby improves city competitiveness, the state has taken the initiative to prepare a roadmap for establishing a network of water utilities covering the entire population and ensure the availability of quality and sustainable water supply system. The policy also addresses the need of stakeholders for actively participating in water management.

Apart from other infrastructural developments in sectors like sanitation, waste management and slum development, etc, the policy also seeks to contribute to the state's overall development by closely tapping the state's significant cultural heritage. Rajasthan being a place of historic and cultural importance attracts a considerable number of tourists throughout the year and thus, it requires that the historic and heritage sites are carefully conserved and are not left behind in the midst of the urbanisation process. An urban centre with carefully conserved cultural heritage would continue to draw more tourists and thereby boost the state's economy and attract significant investments. The policy has also an action plan for establishing Heritage Authority and Council for undertaking conservation and preservation process of heritage sites in the state. One of the objectives of the urban planning is also to bring out an inclusive development plan and address the rising problem of urban poverty by improving the management of infrastructures for social services like health, education, housing, slum development, etc. and provide necessary skills and training to the poor households to create a gainful source of livelihood. It also gives significant importance to disaster management where it gives more emphasis on preventive and mitigation measures of disaster and adaptation to disasters rather than solely dependent on post disaster management and also build up an expertise base of disaster management at the local level itself. The policy for the urbanisation process in the state has been formulated in a manner which would supplement the Centre's initiative of smart cities and Digital India as technological interventions are necessary to increase the efficiency of present infrastructure and make it more environmentally sustainable and socially inclusive.

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DAMS, ENVIRONMENT AND INDIGENOUS COMMUNITIES- THE LEPCHA EXPERIENCE

Anubhab Atreya, 1st Year

Large scale hydropower projects- or mega dam projects as they are commonly known, are a contentious issue in this point in history, especially for North Eastern India. The fast flowing rivers throughout the region make it a storehouse of potential hydropower energy, and from a simplistic standpoint, it is only fair that we tap into this resource. Adding value to this point is the fact that hydropower is seen as a 'clean and green' source of energy. Thus, increasing energy production through the means of hydropower projects helps a country to reduce carbon emission rates thereby meeting international norms. It is a scientifically acknowledged fact that man must ultimately shift to alternative sources of energy like hydropower, as oil reserves have reached near depletion across the world. Inherently, there is nothing wrong with the concept of hydropower projects; in fact, they are the way forward for a developing nation with large energy demands like India.

However, problems arise with the riders that a large scale hydropower project inescapably brings with itself, chief of them being large scale displacement of native communities, inundation of agricultural and community lands and ecological imbalance in the local ecosystem. Another crucial issue that arises with respect to the North East is the extremely high amount of seismic activity that the region witnesses. These issues are all important feeders of the activists discourse with regard to dams. Whether mega dams in the North East are a feasible and safe idea remains an unsettled issue. The way forward could be extremely varied ranging from small dams to other sources of energy. But what can be inferred definitely from the large number of hydropower projects which have already been built in the region is that the damage and the interference caused to the local ecosystem is irreparable.

A piercing example of the risks posed by large hydropower projects to the sheer existence of an indigenous community, its beliefs and its ecosystem is of the Lepcha of Sikkim. The Lepchas are a large indigenous community whose clans are found across Sikkim, Nepal, Bhutan and West Bengal. The Lepchas of Sikkim are a numerically small community constituting only 8% of Sikkim's total population. While the religion practised by the Lepchas is generally

Photo Courtesy: *http://static.dnaindia.com/sites/default/files/styles/half/public/2014/07/12/250053-water-dam.jpg?itok=B5A8n5pR*

Buddhism, components of the shamanistic religion which they traditionally followed have crept into their practices.

The Lepchas do not have any concept of heaven and hell in their depiction of the afterlife. For them, the soul of the dead travels to a sacred cave through the river and finds solace there. Each clan of the Lepcha is supposed to have a separate sacred cave and a sacred mountain peak. Thus, the river becomes a medium of transfer of the soul to the afterlife. The concept of afterlife and the last rites is something extremely integral to any religion or community. It is the same with the Lepchas.

The picturesque Dzongu Valley of Sikkim is inhabited by a large number of Lepcha populations. The Rongyoung Chu River which snakes through the Dzongu valley is a sacred river for the Lepchas. According to Lepcha beliefs, the Rongyoung carries the souls of the dead to the sacred caves. And it is on the Rongyoung that the Panang 280 MW Hydropower project had been proposed. If the project had been carried out, it would have obstructed the flow of the Rongyoung, thereby making it a 'dead' river. As with several other projects in Sikkim, it would obviously have resulted in extinction of several species of aquatic flora and fauna. Sikkim, being in a seismic zone, is also vulnerable to earthquakes. While it might be a difficult proposition to fathom for people born and brought up in the urban bubble, the Rongyoung River is a cultural and religious lifeline for the indigenous Lepchas of the Dzongu valley. With the obstruction of the Rongyoung Chu, the very basis of Lepcha religious practice would be taken away from the native community. The Lepchas, being numerically a minority, did not carry much weight politically. However after a prolonged agitation by the community, the Sikkim government has scrapped five hydropower projects including the Teesta Stage IV 520MW and Panang 280 MW project.

The Lepcha story is one of the many examples which highlights the grave impact hydropower projects can have on indigenous communities who depend on the local ecosystem for both economic sustenance and religious fulfillment. While there are provisions of mandatory Environmental Impact Assessment, Free Informed and Prior Consent, Public Hearings etc., there have been allegations of manipulation by the contractors and bidders. Like in most administrative processes in India, bureaucratic arm twisting and political meddling has affected the efficiency of the norms. The environmental costs of the hydropower projects often outweigh any economic benefit they bring to the society. It is high time that these norms are put under review and the loopholes corrected before more damage is caused to the environment and indigenous communities.

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NEWS BULLETIN

- Lidia Kharmih, 1st Year

NGT calls for noise pollution near airports to be standardised

After receiving complaints over the noise pollution in the area around the airport, the Supreme Court, in the month of November, 2015, had referred the matter to the NGT, saying that the parties would not claim any interim order before the tribunal. The Supreme Court had "directed expeditious disposal, preferably within 6 months".

On 27th January, 2016, having heard the pleas filed by the residents of Vasant Kunj, Bijwasan and Indian Spinal Injuries Centre (ISIC), alleging that the noise pollution was affecting the health of the residents of the nearby areas, a bench headed by NGT Chairperson Justice Swatanter Kumar directed the Ministry of Environment & Forests (MoEF), Directorate General of Civil Aviation (DGCA) and Central Pollution Control Board (CPCB) "to hold a meeting within two weeks from today and take a final view on the matter".

The hospital (ISIC) that is located near the Indira Gandhi International (IGI) Airport, claimed that the planes make noise between the range of 75 decibels and 94 decibels which is "clearly beyond the stipulated standards laid down under the Noise Pollution (Regulation and Control) Rules, 2000".

The final hearing has been scheduled for the 16th of March, 2016. (NEWS credit- The Statesman| 27th January, 2016)

----------Projects in Konkan denounced

A meeting was held on Monday, the 25th of January, 2016, by the CM along with Union Petroleum Minister Dharmendra Pradhan, in which they announced India's biggest 'green' refinery. Industries such as Bharat Petroleum, Indian Oil and Hindustan Petroleum Corporation Limited are to join the project, for which over 15,000 hectares of land has been acquired on the Vijaydurg plateau in north Sindhudurg district. Land on the Madban plateau, is also being acquired to set up the 9,900 MW Jaitapur Nuclear Power Project (JNPP), and this lies just north of the proposed oil refinery project. Also, French firm EDF have acquired Areva (another French company), the nuclear firm that was originally slated to provide technology for the JNPP. All these are located almost adjacent to each other, and fall within a 50-km radius.

Due to pending techno-commercial agreements, work on the JNPP has been on hiatus for the past recent years; however, there are no roadblocks for this project. In addition to these, there are also proposals for constructing a multi-purpose port at Ambolgad beach in Ratnagiri. The Environment Impact Assessment (EIA) report on the project proposes to have both forward and backward integration by developing, directly or through joint ventures and acquisitions, jetty-based industries such as a bauxite beneficiation plant, a steel plant and gas or coal-based thermal power plant, sugar refineries, a container hub and tank farms.

An environmental public hearing on the project that was scheduled for last week was postponed when residents living in the villages that will potentially be affected demanded a draft on the EIA report in Marathi, as the one prepared for the hearing was only in English.

Even with warnings from environmentalists that the cluster of industries will do more harm than good, the government seems firm on going ahead with the projects. Chief Minister Devendra Fadnavis told *The Hindu* that there was no reason for concern. He stated that "whatever location we finalise will be

in consultation with experts," adding that safety protocols will be followed, and that "it is too early to jump to conclusions".

There have been claims that a number of reports on the impact of industrial pollution on the environment remain hidden by the government. Environmental scientist Dr Gadgil said that it is important to make all information public before deciding on projects and that "analysing individual projects for their adverse impact on the environment won't do any good. An integrated approach is needed for projects coming up in ecologically-sensitive area like Konkan".

Locals of the area have also raised their voices against the projects fearing the repercussion on human and marine life; although the project report for the multi-purpose port mentions there is no human habitation nearby, Nate resident Mansur Solkar said that this is untrue as "human habitation can be found within one kilometre at Ambolgad". He added saying that "since it is a coastal project, an adverse impact on marine life is inevitable. This will affect fishing activity in the Vette and Ambolgad areas". Satyajit Chavan, president of the Jan Hakka Samiti, an umbrella body of various organizations fighting against JNPP, said, "Three anti-environment projects now stand next to each other. Does the government even know what it is doing when making [such] announcements? How can you call this development when these industries will destroy the sea and surroundings?" (NEWS credit- The Hindu| 28th January, 2016)

NGT directs IOC to obtain clearance before moving forward

Following a petition that was filed against the Indian Oil Corporation (IOC), claiming that they had constructed a 42-acre LPG bottling plant at Gangaikondan Taluk sans an Environmental Clearance from the authorities, the National Green Tribunal's Southern bench had said on Wednesday, the 27th of January, 2016, that the LPG bottling project can begin again only after obtaining clearance from the Union Ministry of Environment and Wildlife Board.

In the petition, it was asked for a post-facto clearance to not be given to the company. However counsel for IOC, Abdul Saleem, said that construction was started on the basis of consent to establishment under the Air and Water Act, after no reply was given to IOC when they had sought clarification from the Union Ministry as to whether or not an EC was required from the TN Pollution Control Board. They claimed to have done this after having obtained the land from State Industries Promotion Corporation of Tamil Nadu Limited (SIPCOT) for a lease of 99 years in February 2012. In his argument Saleem stated that in 2013, when the government had declared the area near the construction as Gangaikondan spotted deer sanctuary, the IOC again sent two letters seeking clarification in April 2015. The ministry replied saying that an EC was required for the project and the IOC correspondingly had applied for the consent.

A bench of judicial member Justice M Chockalingam and expert member PS Rao granted IOC permission to operate in April 2015. (NEWS credit- The Times of India| 28th January, 2016)

Camps on the Ganges are against NGT orders

In a quest to confirm the veracity of an affidavit filed on the 15th of January, 2016, by the state government before NGT, the counsel of Social Action for Forest and Environment visited areas adjoining the Ganges to verify that no beach or rafting camps have been set up along the river or its tributaries, as it is stated in the affidavit that no permission for any such activities has granted by the Forest Department. Along with the affidavit GPS locations complete with photographs were also submitted. However, on

checking, the counsel stated that the area has several camps and semi-permanent structures on the Ganga and its tributary river Havel.

Advocate Rahul Chaudhary, mentioned in his affidavit that he "found camps have been setup on the beaches of river Havel and two camps on river Ganga. Around 15 tents were found in existence on the bank of river Ganga around 1km from Byasi and many more 2km from Byasi on river. Semi-permanent structures were found along with tents on the bank of river Ganga beween Byasi and Koudiyla. Several Beach camps were found on the left side of the bridge at Shivpuri while coming from Rishikesh. There were around several such camps on 12 to 14 locations starting from the confluence of river Ganga till about 5km to 7km. Semi-permanent beach camps were also found on Neel Kanth Mahadev road in Paliyal, Taliyal, Ratapani and Phoolchatti villages on Havel river". He adds further that the state government is trying to mislead the Tribunal by filing an incorrect affidavit.

In another statement alleging the state government of infringement, Vikrant Tongad, founder president of SAFE said that, "the state government is deliberately furnishing wrong facts in front of the Tribunal, only to shield the beach camp operators running their camps in violations of NGT's order, as it is the camp operators who bring money to the government through all means. The government is least bothered about Ganges and its tributaries or the ecology related to it".

In defence for those who have set up beach camps however, Anirudh Rawat, a beach camp operator said that the people residing there have lost their means of livelihood, and so they have no way out for them but to set up their camps. He said that the operators will have a tough time feeding their families if they were to wait till a policy is formulated and permission is given to the operators, as the committee formed by the state government to formulate beach camp policy is still awaiting a report from Wildlife Institute of India. (NEWS credit- The Times of India| 27th January, 2016)

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