



AIJACLA 

Annual International Journal on Analysis of Contemporary Legal Affairs

Vol. 1

January, 2021

About the Journal

An International,
Double-blind,
Peer-reviewed and
Annually published
Journal.

Contact Details

Email:

aequitasvictoria@gmail.com

Helpline Number:

8473808112

Office Address:

H/o Shri Sarthak Aryan,
C/o Shri Subodh Kumar,
Old Madhya Bihar Gramin
Bank Building,
Sakurabad
P.O.: Sakurabad,
Dist: Jehanabad,
PIN: 804425 (Bihar).



Published By

**Aequitas Victoria
Foundation**

www.aequivic.in

AEQUITAS VICTORIA FOUNDATION PRESENTS
ANNUAL INTERNATIONAL JOURNAL ON ANALYSIS OF CONTEMPORARY
LEGAL AFFAIRS

ABOUT THE JOURNAL

Annual International Journal on Analysis of Contemporary Legal Affairs (AIJACLA) is an annual international double-blind peer-reviewed journal in the field of law. The journal deals with contemporary affairs primarily within the discipline of law but also encourages interdisciplinary research works from any discipline provided the relation of the subject-matter with the legal institutions, legal instruments, or any other legal matters shall be established and highlighted to meet the eligibility criteria of the journal.

Broadly the Journal welcomes research works from each branch of law like: Human Rights, Humanitarian Rights, IPR, Environmental Law, Public and Private International Law, Air and Space Law, Drone Law, Martial Law, Sports Law, Fashion Law, etc. It even encourages contributions from panel discussion or conference reports based on the topics of recent developments in the field of law. Further, case commentaries, law book reviews, legislative and policy analysis are also welcomed. The journal will also publish contributions that are not expressly from the discipline of law but establishes a relation with any of the legal matters and gives it an interdisciplinary character.

However, comments regarding decisions pending before any Court of Law or any other subject matter across the globe which if published might lead to Contempt of Court, if interpreted from the perspective of Indian Jurisprudence, will not be published even if the matter does not violate any of the Indian Laws or does not amount to any offense in any other laws.

SCOPE

The scope of this journal extends to the entire world transcending all national boundaries of the States. It is an international journal aimed at establishing a global network of research and analysis in the field of law. The medium of publication will be primarily **American English** subject to the majority opinion of the Board of Editors, Expert Committee, and the Board of Advisors in conformity with the Core Team including the Managing Committee.

The Journal is expected to be a globally open accessed journal subject to the technical limitations and international or regional laws in force or existence anywhere either internationally or nationally.

The journal intends to cover all fields of law including-

1. International Conventions passed by International or Global Bodies;
2. Regional Conventions, Rules, Policies, etc. passed by Regional Organizations that are recognized globally;
3. Rules, Policies, By-laws, etc. passed by any Inter-state bodies provided such matters influence the relationship between two or more countries that are recognized as sovereign under the international rules;
4. Any other Conventions, Laws, Rules, etc. that are not directly recognized by any international or global bodies or agencies but are going to influence or has an impact on the diplomatic relationships between two or more countries;
5. Cases decided by International Adjudicating Authorities;
6. Any Laws, By-laws, Enactments, Policies, etc. passed by a proper legislative authority, competent courts, authorities with proper legal recognitions in any sovereign country;
7. Conference, Seminar, Colloquium, etc. reports that are based on topics of law;
8. Lectures from eminent professionals in the field of law, or lectures on legal topics from eminent personalities;
9. Researches made on Theories relevant to the field of Law;
10. Any researchable topic from any discipline provided the subject-matter of such research shall properly establish the nexus with the legal institutions, instruments, or any other subject-matter of law; and
11. Results of researches carried out independently either as an individual, group, or as an organization in the field of law.

However, the journal shall not publish any material related to the following either in whole or in part subject to the approval of the Board of Editors, Expert Committee, Board of Advisors in conformity with the Core Team including the Managing Committee-

1. Comments regarding decisions pending before any Court of Law or any other subject matter across the globe which if published might lead to Contempt of Court, if interpreted from the perspective of Indian Jurisprudence, will not be published even if the matter does not violate any of the Indian Laws or does not amount to any offense in any other laws;
2. Political opinions even if based on legal topics that are suspected of influencing voting behavior of the citizens of any sovereign country against the provisions of an established legislations either international, regional, or local, or is expected to incite rebellion or conflict against any popularly established government; provided such materials may be published considering the authenticity of the sources, the justification of the author(s), the need and demand of the time or situation and above all the decision of the Board of Editors, Expert Committee, Board of Advisors in conformity with the Core Team along with the Managing Committee;
3. Any discriminatory opinions regarding racial, gender, or any other class of people, or comments in favor of any particular group, institution, organization, party, community, etc.; provided such materials may be published considering the authenticity of the sources, the justification of the author(s), the need and demand of the time or situation and above all the decision of the Board of Editors, Expert Committee, Board of Advisors in conformity with the Core Team along with the Managing Committee; or
4. Any other immoral, offensive, comments, or comments against any established custom or culture.

OBJECTIVES

1. To provide a platform for Indian Legal Professionals including Judges, Academicians, Advocates, and Students for showcasing their research skills;
2. To build an endeavor of research and analytical altitude amongst the young legal professionals under the experience and guidance of the senior legal experts;
3. To highlight the possible developments needed in the area of law through research and analytical spirits;
4. To encourage the habit of critical analysis and argumentative behavior amongst the law students; and
5. To help in policy formulation and legal drafting in India by expressing suggestions brought forward through research skills.

BOARD OF EDITORS

Editor-in-Chief

Prof. (Dr) Chintamani Rout

HOD. Department of Law
North-Eastern Hill University, Shillong

Senior Editor

Prof. (Dr) Yugal Kishore

Professor of Law, ICFAI Law School,
ICFAI University Dehradun, Former
Professor, Registrar, Vice-Chancellor
National Law University and Judicial
Academy Assam

Senior Editor

Dr. Heru Susetyo

Assistant professor, Faculty of Law,
Universitas Indonesia, Jakarta,
Indonesia.

Chairman of the Center for Islam and
Islamic Law, Faculty of Law,
Universitas Indonesia, Jakarta,
Indonesia.

Senior Editor

Mrs. Ronaldah Lerato Karabo Ozah

Director- Litigation, Research and
Advocacy and Lecturer, Centre for
Child Law, University of Pretoria, South
Africa.

Senior Editor

Dr Dhruvajyoti Das

Associate Professor, Department of
English, Cotton University

Senior Editor

Dr. Sachin Ghimire

Medical Anthropologist and Filmmaker
Assistant professor, Department of
Public health, Manamohan Memorial
Institute of Health Sciences(MMIHS),
Kathmandu, Nepal.

Senior Editor

Senior Editor

Senior Editor



Dr. Matiur Rahman

Assistant Professor, University Law
College Gauhati University

Associate Editors

Mr. Animesh Jha

Assistant Professor, Dharmashastra
National Law University, Jodhpur

Associate Editors

Ms. Moushita Dutta

LLM, McGill University, Montreal,
Canada.

Mrs. Mageswary Siva Subramaniam

Lecturer with Faculty of Law,
Multimedia University (Malacca
Campus), Malacca, Malaysia.
Visiting lecturer, Lingnan University,
Hong Kong

Associate Editors

Mr. Animesh Jha

Assistant Professor, Family Law,
Dharmashastra National Law University
(DNLU), Jabalpur.

Mrs. Rima Borthakur

Former Senior Manager, Document
Review department in Thomson Reuters
(Pangea3), New York City.

Associate Editors

Mr. Prithvi Raaj Choudhury

LLM, McGill University, Montreal,
Canada.

Associate Editors

Mr. Amey Pandey

Co-Founder CLAT Junction, Working
with Safe in India Foundation

EXPERT COMMITTEE

**Prof (Dr) Bhaskar Kumar
Chakravarty**

Visiting Professor of Law Royal Global
University, Former Professor Dean and
Head Department of Law, Gauhati
University, Founder Head of
Department of Law, Tezpur University

Dr Gautami Dutta

Principal R.K.B. Law College

Dr Anup Kumar Ray

Principal, Goalpara Law College

Prof (Dr) Atul Chandra Talukdar

Dean School of Social Science &
Humanities, University of Science &
Technology Meghalaya

Dr Ajay Kumar Das

Principal, Jorhat Law College

Dr Md. Sultan Haidar Alam

Principal NERIM Law College

Dr Kasturi Gakul

Assistant Professor of Law
National Law University and Judicial
Academy Assam

Dr Bimal Kumar Baishya

Associate Professor (Rtd.), University
Law College Gauhati University

Dr Sujata Bhattacharyya

Principal Nowgong Law College

Advocate Dr Lalan Prasad Thakuria

Editor Nyaijyoti, All Assam Lawyers
Association

REVIEW COMMITTEE

Mrs. Dimpay Saikia

Assistant Professor, Nowgong Law
College

Designation: Member Content
Assessment Committee

Rashmi Gogoi

Research Scholar Gauhati University
Designation: Member Content
Assessment Committee

Mrs. Karishma Saikia

Assistant Professor, Nowgong Law
College

Designation: Member Content
Assessment Committee

Darshana Deepak Das

MA in English Litt (Specialization in
Indian Literature), PGT in Potential and
Concept Academy, Working as an SME
in AMF Edu Solutions
Designation: Member Content

Suyash Pranay Tripathi

PGDCPLP, National Law School of
India University Bangalore, LLM
National Law University, Odisha
Designation: Member Content
Assessment Committee

Anya Behera

LLM from National Law University and
Judicial Academy Assam, LLB from
KIT School of Law Bhubaneswar
Designation: Member Content
Assessment Committee

Rashi Gupta

LLM National Law University and
Judicial Academy Assam, LLB
Vivekananda Institute of Professional
Studies, New Delhi
Designation: Member Content
Assessment Committee

Alekh

LLM, National Law University and
Judicial Academy Assam, LLB KIT
Law School Bhubaneswar
Designation: Member Content
Assessment Committee

Srishti

Student at Chanakya National Law
University, Bihar
Aadya Ambastha
Student at Chanakya National Law
University, Bihar
Designation: Format Assessment
Committee

Ishan Mishra

Student
ICFAI Law College, Dehradun
Designation: Format Assessment
Committee

Assessment Committee

Girisha Sinha

LLM National Law University and
Judicial Academy Assam, LLB KIT
Law School Bhubaneswar
Designation: Member Content
Assessment Committee

Prachi Prem

Student at Chanakya National Law
University, Bihar
Designation: Format Assessment
Committee

Monalisa Choudhury

Student at National Law University,
Assam
Ishan Mishra
Student at ICFAI University Dehradun
Designation: Format Assessment
Committee

Pranay Rathore

Student at Fairfield Institute of
Management and Technology, New
Delhi
Designation: Member Plagiarism and
Ethics Review Committee

Riya Kumari

Student at University Law College,
Hazaribagh
Designation: Member Plagiarism and
Ethics Review Committee

Shreya Gupta

Student at JIMS Engineering
Management Technical Campus, Noida
Designation: Member Plagiarism and
Ethics Review Committee

Prachi Nayan

LLM National Law University and
Judicial Academy Assam, LLB, ICFAI
Law School, Dehradun
Designation: Member Content
Assessment Committee

Saloni Sharma

Student at Fairfield Institute of
Management and Technology, New
Delhi
Designation: Format Assessment
Committee

Bomkesh Mandal

Student at National Law University,
Assam
Riya Sharma
Student at Fairfield Institute of
Management and Technology, New
Delhi
Designation: Format Assessment
Committee

Basuri Poddar

Student at National Law University and
Judicial Academy Assam
Designation: Member Plagiarism and
Ethics Review Committee

CORE TEAM (MANAGING COMMITTEE)

Mrs Nidhi Tiwari

Hon'ble Secretary

Ms Vidisha Dixit

Hon'ble Member

Mrs Pranati Boruah

Hon'ble President

Mr Subodh Kumar

Hon'ble Treasurer

Mr Jayanta Boruah

Hon'ble Member (Founder)

Mr Manik Chandra Boruah

Hon'ble Member

Mr Sarthak Aryan

Hon'ble Member (Co-Founder)

ADMINISTRATIVE SECTION

Executive Committee

Chief Executive Officer

Ms Kashmiri Khanam

Assistant Professor, Dhubri Law
College, Research Scholar, Central
University of Haryana

Executive Officer

Ms Saloni Sharma

Fairfield Institute of Management and
Technology, New Delhi
Executive Officer

Ms Darshee Madhukallya

National Law University and Judicial
Academy Assam

Content Designer

Ms Abhishree Kashay

National Law University and Judicial
Academy Assam

Event Manager

Ms Basnuri Poddar

National Law University and Judicial
Academy Assam

Executive Officer

Ms Gautami Chakravarty

KIT School of Law Bhubaneswar

Executive Officer

Ms Riya Kumari

University Law College, Hazaribagh

Content designer

Bonaini Deori

Advocate, Gauhati High Court

Content Designer

Ms Nijhum Roy

National Law University and Judicial
Academy Assam

Event Manager

Ms Puja Bardhan

West Guwahati Commerce College

Event Manager

Ms Nargis Choudhury

Former Lecturer, School of Law and
Judicial Sciences, Apex Professional
University, Arunachal Pradesh

Executive Officer

Mr Chetan Anand Mahapatra

National Law University and Judicial
Academy Assam

Executive Officer

Ms Shreya Gupta

JIS Engineering Management Technical
Campus, Noida

Content Designer

Ms Dikshita Nanda Nath

Advocate, Gauhati High Court

Content Designer

Mr Arunabh Chakravarty

Department of English, Gauhati
University

Event Manager

Mr Debanjan Das

National Law University and Judicial
Academy Assam

Disciplinary Committee

Chairman

Mr Manik Chandra Boruah

Rtd. Police Officer, Assam Police
Hon'ble Member Managing Committee,
Aequitas Victoria Foundation

Mrs Nidhi Tiwari

Hon'ble Secretary, The Managing
Committee, Aequitas Victoria
Foundation

Mr Jayanta Boruah

Former Assistant Professor NERIM
Law College, Advocate Gauhati High
Court and Research Scholar North-
Eastern Hill University, Hon'ble
Member The Managing Committee
Aequitas Victoria Foundation

Advocate Rajendra Singh

Suryavanshi

Advocate, Supreme Court of India

Mr Subodh Kumar

Hon'ble Treasurer, The Managing
Committee, Aequitas Victoria
Foundation

Grievance Redressal Committee

Chairman

Dr Matiur Rahman

Assistant Professor
University Law College Gauhati
University

Dr Ajoy Kumar Das

Principal, Jorhat Law College

Advocate Dr Lalan Prasad Thakuria

Member, All Assam Lawyers
Association

Mrs Roseleen Deori

Assistant Professor
Nowgaong Law College



VOLUME 1
(Editorial Special Issue)
2020

AJACLA

Ms Vidisha Dixit
Hon'ble Member The Managing
Committee Aequitas Victoria
Foundation

Media Cell

Mrs Kangkana Goswami
Assistant Editor NE News

Mr Sandeep Deo
Founder, India Speaks Daily
Mrs Prity Deka
Assistant Manager, Axis Bank

Mr Bishaldeep Kakoti
Founder, The Youths Mind

IT Section

Ishita Gupta

United College of Engineering and
Research, Prayagraj

Mr Sarthak Aryan

National Law University and Judicial
Academy Assam, Hon'ble Member The
Managing Committee Aequitas Victoria
Foundation

TABLE OF CONTENTS

SI No.	Title of Papers and Names and Designations of Authors	Page No.
SECTION A: RESEARCH PAPERS		
1	Affirmative Principle: Making, Breaking and Shaking (MBS) Approach of Judiciary <i>-Dr Rangswami D, Assistant Professor of Law, Karnataka State Law University, Hubballi, Karnataka</i>	1 - 17
2	Clinical and Continuing Legal Education- Interface for Confidence Building Between Law Students and Legal Professionals in Contemporary India <i>- Dr. Md. Sultan Haidar Alam, Principal, NERIM Law College</i>	18 - 29
3	A Critical Appraisal of the Legal Service Authorities Act with Special Reference to Lok Adalat <i>- Dr. Dhiraj Bhusan Sarmah, Former Faculty of Law, University Law College, Gauhati University & Dr. Plabita Saikia, Advocate, Gauhati High Court</i>	30 - 49
4	Establishment of DNA Data Bank in India: A Legal Analysis <i>- Dr. Ranjit Sil, Assistant Professor, Department Of Law, North-Eastern Hill University, Shillong</i>	50 - 64
5	Ecocentric Approaches of the Restorative Justice Theory Vis-à-vis the Legal Issues of Civil and Criminal Liability of the Baghjan Blowout Case in Assam <i>- Dr. Matiur Rahman, Assistant Professor of Law, University Law College, Gauhati University</i>	65 - 76
6	A Comparative Study on Secondary Patenting on Pharmaceutical: Striking A Balance Between Competition Law and IPR <i>- Dr. Kakumani Katakya, Faculty of Law Gauhati University</i>	77 - 90
7	Community and Environmental Protection- - In Search of the Lost Spring of Happiness of the North-Eastern Region <i>- Dr. Sujata Bhattacharyya, Principal, Nowgong Law College</i>	91 - 106
8	National Emergency: A Comparative Analysis of Emergency Laws in India USA and Germany <i>- Abhishek Kumar Khaund, Advocate. Gauhati High Court</i>	107 - 124
9	Legal Frameworks Relating to Use of Pesticides on Horticultural Activities Vis-à-vis Climate Change <i>- Bonani Deori, Advocate, Gauhati High Court & Mritunjoy Barman, Advocate, Gauhati High Court</i>	125 -145
20	The Arms Act, 1959: A Legal Analysis and Comparative Study with USA <i>- Bikash Sen Deka, Advocate, Gauhati High Court</i>	146 -168
11	Comparative Study on Intergovernmental Tax Immunities under the Federal Constitutions of Australia, Canada, India and USA <i>- Bandita Das, Advocate, Gauhati High Court</i>	169 - 177
12	Unlawful Activities and Prevention Act: Balancing National Security with Citizen's Rights <i>- Girisha Sinha, Research Assistant under Advocate Ritesh Kumar Patna High Court</i>	178 - 191
13	An Analysis of the Legal Framework of the Co-operative Banks in India	192 - 215

	- Bidikha Gogoi, Advocate, Gauhati High Court	
14	Parole- The Reformative Instrument of Punishment in Prisonization	216 -228
	- Nayana Medhi, Former Faculty of Law, Indraprastha University	
15	Assam Police and Its Organizational Structure	229 - 271
	- Dr. Anup Kr. Ray, Principal, Goalpara Law College	
SECTION B: ARTICLES		
16	Anti-Defection Law: A Conflict Between the Right to Dissent and the Integrity of the Political Party	273 - 281
	- Apurva Mehta, B.A. LL.B. (Criminal Law Hons.), 5th Year, National University of Study and Research in Law, Ranchi	
17	Contempt of Court: An Urgent Requisite to Re-Explore	282 - 287
	- Paras Gupta, B.A.LL.B.(Hons.), Institute of Law, Kurukshetra University	
18	Lack of Uniform Code of Conduct to Address the Judges in India	288 - 294
	- Saloni Sharma, 3rd Year B.B.A.LL.B, Fairfield Institute of Management and Technology & Riya Sharma, 3rd Year B.B.A.LL.B, Fairfield Institute of Management and Technology	
19	Rejuvenating the Right to Equality and Life under the Paradigm of Transformative Constitution	295 - 301
	- Dr. Daisy Changmai, Faculty of Law, National Law University and Judicial Academy Assam, Former Principal of Dibrugarh Hanumanbux Surojmal Kanoi Law College	
20	Genital Mutilation- An Appeal for Legislative Response in India to Outlaw the Menace	302 - 311
	- Dr. Karavi Barman, Assistant Professor, N.E.F Law College, Guwahati	
21	Surrogacy in India: A Legal Perspective	312 - 319
	- Dr. Shrutimala Goswami, Assistant Professor, NERIM Law College & Arunav Barua,, Research Scholar, Assam Don Bosco University	
22	Merger and Amalgamation of Companies in India: AN Analysis of Its Impact on Various Stakeholders	320 - 330
	- Purbaja Sarmah, Advocate, Gauhati High Court	
23	Human Rights Crisis amongst IDPs in Assam: Issues and Challenges	331 - 337
	- Dr. Gautami Dutta, Principal, Dr. R.K.B. Law College, Dibrugarh	
24	Protective Discrimination under the Constitution of India	338 -345
	- Pallabi Nath, LL.M 1 st Semester, Tezpur University	
25	Mob Lynching as a New Offence Emerging in India: A Study with a Special Reference to Assam	346 - 355
	- Nargis Choudhury, Former Faculty of Legal Studies, School of Law and Juridical Sciences Apex Professional University, Pasighat, Arunachal Pradesh	
26	The Doctrine of Pious Obligation and Its Relevance under the Hindu Law in the Present Time	356 - 363
	-Titikhya Barkataki, LL.M, 1st Semester, Gauhati University	
27	COVID-19 Pandemic: Justice Demands for Increasing Deterrence in India	364 - 370

- Jayanta Boruah, Research Scholar, North-Eastern Hill University, Former Assistant Professor of Law & Advocate & Sarthak Aryan, BALLB (3rd Year) National Law University and Judicial Academy Assam

SECTION C: LEGAL ESSAYS

- 28 **Traditional Ecological Knowledge and Biological Diversity Act, 2002: A Critical Analysis** 371 - 378
- Dr. Ravi Kanta Mishra, Assistant Professor, Department of Law, North-Eastern Hill University
- 29 **Trial by Media: A Hindrance in the Path of Justice and Fairness** 379 - 384
- Bidisha Barman, Advocate, Gauhati High Court & Kaustabh Moni Sarma, Advocate, Gauhati High Court
- 30 **Payment of Rent in Commercial Lease Contracts in Context of the COVID Crisis** 385 -391
- Clarissa D'Lima, Student Kirit P. Mehta School of Law, NMIMS Deemed-to-be University, Mumbai
- 31 **Adultery was Never a Crime: It is a Moral Wrong** 392 - 397
- Aadarsh Kumar Shrivastava, B.A.LL.B. 10th semester, Government New Law College Indore MP
- 32 **The Legal Protection for Consumers in Conducting E-Commerce Activities in India** 398 - 403
- Dikshita Nanda, Advocate, Gauhati High Court
- 33 **"Rarest of Rare Case"- Capital Punishment** 404 - 408
- Devika Warriar, Bharata Mata School of Legal Studies, Kerala
- 34 **Mob Lynching in India: A Threat to Mankind** 409 -413
- Nabanita Baruah, Student (BALLB 7th Sem), Department of Law, NERIM Law College
- 35 **Biomedical Waste Management during COVID-19 Pandemic in India** 414 - 418
- Farzin Naz, Advocate, Gauhati High Court
- 36 **Impact of Lockdown on Migrant Workers whether a Humanitarian or Human Rights Crisis?** 419 - 426
- Nikhil Moitra, Student, National Law University and Judicial Academy Assam
- 37 **Right to Privacy and Data Protection Law in India with a Brief Comparative Analysis with UK and USA** 427 - 433
- Bandana Saikia, Student, Symbiosis Law School Pune
- 38 **Rise of Pedophiles amidst Coronavirus Outbreak** 434 - 440
- Bulbul Kumari, Student, Dharmashastra National Law University, Jabalpur
- 39 **Arrest of Tax Evaders under the Central Goods and Service Tax Act 2017** 441 - 446
- Hunseng Tungkhang, Student, NERIM Law College

SECTION D: CASE COMMENTARY

- 40 **M/S. Nandhini Deluxe v. M/S. Karnataka Cooperative Milk Producers Federation Ltd** 447 - 454
- Natesh Kumar, B.COM; LL.B.(HONS.), School of Law, SASTRA Deemed University
- 41 **The Interpretation of the Law of Limitation by the Indian Supreme Court during the COVID-19 Pandemic** 455 - 457
- Dr. Smarita Mohanty, Member, State Consumer Disputes Redressal Commission, Odisha
- 42 **Vineeta Sharma v. Rakesh Sharma** 458 - 460

	- <i>Namrata Chakrabarty, Advocate, Gauhati High Court</i>	
43	Dunlop Pneumatic Tyre Co. Ltd. V. Selfridge & Co. Ltd.	461 - 463
	- <i>Chetna Priyam, BA LLB (Hons.), ICFAI University, Dehradun</i>	
44	Anuradha Bhasin v. Union of India	464 - 467
	- <i>Sristi Ray, Student, National Law University and Judicial Academy Assam & Kanika Chugh, Student, National Law University and Judicial Academy Assam</i>	
45	Ashok Kumar Kalra v. Surendra Agnihotori (SLP No. 23599 of 2018)	468 - 470
	- <i>Monalisa Choudhury, Student, National Law University and Judicial Academy Assam</i>	
46	Committee of Creditors Essar Steel India Limited Through Authorized Signatory v. Satish Kumar Gupta and Ors.	471 - 475
	- <i>Rajat Gupta, Student, National Law University and Judicial Academy Assam & Vaishnavi Pandey, Student, National Law University and Judicial Academy Assam</i>	
SECTION E: LEGISLATIVE ANALYSIS		
47	Relevance of Narcotics Drugs and Psychotropic Substances (NDPs) Act, 1985	476 - 480
	- <i>Shivangi Pandey, LL.B.(CONST. LAW SPZ.) (5th Year), University of Petroleum & Energy Studies, Dehradun</i>	
48	Analysis of the Assisted Reproductive Technology (Regulation) Bill, 2020	481 - 485
	- <i>Masia Baruah, Student BALLB 6th Semester, NERIM Law College</i>	
SECTION F: BOOK REVIEW		
49	Just Mercy: A Story of Justice and Redemption	486 - 487
	- <i>Aniket Jadhav, Student, Government Law College, Mumbai</i>	
50	Book Review on Judiciary, Judges and Administration of Justice	488 - 489
	- <i>Ishan Mishra, Student, ICFAI University, Dehradun</i>	

SECTION (C) LEGAL ESSAY

TRADITIONAL ECOLOGICAL KNOWLEDGE AND BIOLOGICAL DIVERSITY

ACT, 2002: A CRITICAL ANALYSIS

Section:	C
Category:	Legal Essay
Paper Code:	LE-RM-12
Page Number:	371 - 378
Date of Publication:	February 10, 2021
Citation:	Dr. Ravi Kanta Mishra, Traditional Ecological Knowledge and Biological Diversity Act, 2002: A Critical Analysis, 1, AJACLA, 371, 371-378, (2021).

DETAILS OF AUTHOR(S)



Dr. Ravi Kant Mishra

Assistant Professor

Department of Law

North-Eastern Hill University, Shillong

Email id: mishrasiddhi@yahoo.com

ABSTRACT

Biodiversity means a variety of living species and it becomes very essential for humanity to survive on this planet. Biodiversity is so important that without it, life is not possible. However, humanity over the last few centuries has depleted almost all biological resources in a manner that it has now become very necessary to conserve them for the survival of the entire ecosystem. On one hand conservation of biodiversity is the need of the hour and on the other hand, its sustainable utilization is also essential for maintaining the livelihoods of the majority of the population. India is a biodiversity hub and so biodiversity-conservation laws play an important role in regulating access to such resources. However, on the other hand, a majority of India's population is also dependent on biological or genetic resources for maintaining their livelihood. The utilization of such biological resources in a sustainable manner is also dependent on the traditional knowledge possessed by the local communities transmitted from generation to generation even though not documented. Thus, for sustainable utilization of biological resources, the conservation of such traditional knowledge is also essential. This is the reason why analysis of the Indian Legal Framework regulating the access of biological resources becomes important. This essay will therefore analyze the role played by the Indian Legal Framework in the conservation and protection of biological resources and the associated traditional knowledge in India.

KEYWORDS

Biodiversity, Conservation, Livelihood, Sustainable Utilization, and Traditional Knowledge

INTRODUCTION

Biodiversity Act, 2002, deals with the biodiversity conservation, management, and access to biological resources, sharing of benefits, patent constitution, power and function of National Biodiversity Authority and State Biodiversity Board. This Act was enacted by the Parliament in the year 2002 and received the assent of the President of India on 5th February, 2003. Interestingly, the Biological Diversity Act, 2002 had not mentioned the conservation of Biodiversity except Section 37 in which covers the establishment of Biodiversity Heritage Sites. Though conservation and management is analyzed in-depth and under various sections of Indian Forest Act, 1927, Wildlife (Protection) Act, 1972, Forest (Conservation) Act, 1980, etc. Similarly, most of the states of India enacted the Forest Act, to conserve and manage the Biodiversity of forests.¹

The Biological Diversity Act, 2002, which extends to the whole of India has provisions for the state governments regarding the establishment of State Biodiversity Board, functions, access to Bio-resource, commercialization, etc. The enabling provisions of the Biological Diversity Act, 2002

having bearings on the state governments are mentioned in detail but this Act is almost silent about traditional ecological conservation and protection. This paper focuses on the various provisions of this Act related to traditional ecological knowledge of forest dwellers and tries to critically analyze related sections thereof.

TRADITIONAL ECOLOGICAL KNOWLEDGE (TEK)

Conventional arrangement of knowledge discovers its premise in a line of insight created over numerous ages towards a homogenous presence of humankind with key components, for example, characteristic assets and climate; holistic customary logical usage of the land and woods is assuming a vital function in the presence and food of this information base. Albeit typically not reported on a material medium, it is commonly passed from age to age and by listening in on others' conversations in severe certainty with a devout reason for such exchange. All in all 'Traditional knowledge' alludes to convention-based abstract, masterful or logical works; exhibitions; developments; logical disclosures; plans; imprints, names and images; undisclosed data; and any remaining custom-based advancements and manifestations coming about because of intellectual

¹ E.g. State of Nagaland enacted a series of Acts, Rules to conserve and protect the Biodiversity of the Nagaland viz. Nagaland Forest Act, 1968, The Nagaland Rules for the Protection of the Establishment and Control of Forest Villages, 1969, Nagaland Rules for Protection of Forest from Fire, 1961, The Nagaland Jhum Land Act, 1970 etc.

activity in the mechanical, logical, artistic or aesthetic fields.² incorporates biology, otherworldliness, human and creature connections, and much more.⁵

Whereas, Traditional Ecological Knowledge³, also referred to as Indigenous Knowledge or Native Science, indicates the evolving knowledge acquired by indigenous and local peoples over hundreds or thousands of years through direct contact with the environment.⁴, this knowledge is explicit to an area and incorporates the connections between plants, creatures, regular wonders, scenes, and timing of occasions that are utilized for lifeways, including however not restricted, to chasing, fishing, catching, agribusiness, and ranger service. TEK is a source of knowledge, practice, and conviction, advancing by versatile cycles and passed on through ages by social transmission, about the relationship of living creatures (human and non-human) with each other and with the climate. It envelops the world perspective on indigenous individuals which

TEK is comprehensive and the skill concerning the environment tended to, depends on reliance practices of numerous species and is extraordinarily isolated from other, even close by, biological systems.⁶ TEK perceptions, supportability practices, and dynamic investment in TEK asset use and the executives depend on data information bases that can reach back several years.⁷

SIGNIFICANCE OF TEK

The utilization of TK adds to calculated pluralism and extends the scope of approaches and data expected to tackle natural issues.⁸ Though the interests of various groups associated with it are very

² Supra note 1.

³ The intellectual roots of traditional ecological knowledge are in ethno-science (mainly ethnobotany) and human ecology. The field started with the documentation of lists of species used by different indigenous groups, and elaborated a science of folk taxonomies of plants and animals, and later, of other environmental features such as soils.

⁴ Isabel Ruiz-Mallén & Esteve Corbera, Community-Based Conservation and Traditional Ecological Knowledge: Implications for Social-Ecological Resilience, 14(4), ES, 2013, -Traditional ecological knowledge has been historically instrumental in ensuring biodiversity conservation and enhancing local livelihoods, (Oct. 2020, 18, 09:12 PM), www.jstor.org/stable/26269393.

⁵ Robin W. Kimmerer, Traditional Ecological Knowledge Section, 4(4) BESA 312-314, 2006.

⁶ It can help to clarify, enhance, and even augment knowledge that is long believed to have been studied exhaustively. TEK offers an integrated system of environment and timing knowledge that adds a dimension where none has been fully examined previously. It is the Indigenous science that puts faces and names in congruence with places and events, and assists in the long-term assessment of what exactly is going on, by looking at long-held trends from the past (Oct. 2020, 22, 03:20 PM), <https://blog.ucsusa.org/science-blogger/the-importance-of-traditional-ecological-knowledge-tek-when-examining-climate-change>.

⁷ First time the tribal members (as recorded in the blog of Union of concerned Scientists) shared TEK about why the deer in the Western Oregon region were losing hair. Years prior to western scientific information finding an exotic lice species responsible for what is now termed Hair Loss Syndrome Native tribal members identified the very patterns that had been noted and passed them along through a combination of TEK and TK data.

⁸ Ravi Kant Mishra, IPR manage of Indigenous Knowledge in Meghalaya: A Need for a Thorough Look, 22(2), SLJIL, 69-116, 2010.

unique for example for some indigenous groups, the more extensive social and social parts of TK are exceptionally huge, and this is one reason why managing conventional environmental information has gotten politically unstable.⁹

Politically coordinated groups of indigenous people are starting to affirm authority over their insight frameworks for at least two reasons. To start with, some indigenous groups have seen their insight and natural assets (for instance, therapeutic plants) transformed by others into profitmaking products. Subsequently, they have begun to pose the inquiry of who profits by the chronicle of their insight and to examine how they, at the end of the day, can control their insight and items.¹⁰

Second, TK has become an image for some groups to recapture power over their social data. Recovering their TK has become a significant technique in numerous parts of the world for developments of social rejuvenation. Such rejuvenation isn't only a social exercise; it is about strength and political control.

The requirement for indigenous groups to control their insight must be adjusted against the significance of customary biological information as the normal

⁹ Karl Folke, *Traditional Knowledge in Social-ecological Systems*, 9(3), ES (2004), (Oct. 2020, 18, 12:45 AM), <https://www.jstor.org/stable/26267675>.

¹⁰ Rajshree Chandra, *Intellectual Property Rights: Excluding other Rights of other Peoples*, 44(31), EPW, 86-93, 322, (2009).

legacy of mankind. There are unmistakable and useful reasons why conventional environmental information is significant for the remainder of the world's kin.¹¹ It is significant for community-based preservation by associating human qualities with protection esteems. Some customary frameworks are of extraordinary interest for biodiversity protection since they depend on different usage rules that circulate asset use pressures in existence. At last, conventional biological insight is a wellspring of motivation for natural morals. Conviction frameworks of numerous indigenous groups fuse the possibility that people are essential for the common habitat, and their relationship with nature might be portrayed as tranquil conjunction.

BASIS FOR PROTECTION OF TEK

The basic parameters for the protection of TEK is found in the principles¹² established in the Convention on Biological Diversity, 1992(CBD), expanded in the Nagoya Protocol, 2011, and reinforced in the United Nations Declaration on the Rights of Indigenous Peoples, 2007 (UNDRIP). These principles provide Indigenous knowledge

¹¹ Ruifei Tang & Michael C. Gavin, *A Classification of Threats to Traditional Ecological Knowledge and Conservation Responses*, 14(1), CS, 57-70, (2016),

-For instance, it is a source of biological knowledge and ecological insights. Indigenous knowledge is important for the sustainability of difficult-to-manage ecosystems such as tropical forests.

¹² Ravi Kant Mishra, *Protection of Biological Diversity and Environmental concerns in India*, in Naveen Kumar (eds), *Forest and Environment in India: Law, History, Culture and Modern Approaches*, 19-30, (Guwahati, EBH Publishers, 2015).

holders with a right to share in the benefits¹³ obtained from the use of their knowledge, emphasizing the need for Free, Prior Informed Consent to be given by the knowledge holders before access and use of that knowledge on mutually agreed terms.¹⁴

These standards have prompted critical worldwide discussion on the interrelationship among TEK and IPR, especially licenses and plant raisers' privileges created from hereditary assets. The part of TEK in this setting is critical as it brings into the condition the more extensive cultural property of indigenous and local communities. Meanwhile, Art. 11 of UNDRIP recognizes the right of Indigenous peoples “to practice and revitalize their cultural traditions and customs and extends to the right to maintain, protect and develop the past, present and future manifestations of their cultures”. The states’ parties are expected to develop with indigenous people’s effective compensation mechanisms ‘concerning their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs’. {{{{It is in this backdrop, that India as a signatory to these international instruments adopted *sui generis* legislation to protect these rights and in

¹³ For example, the CBD provides member states with the opportunity to establish regimes that regulate foreign and domestic access to valuable genetic resources and traditional and indigenous knowledge while enabling benefit-sharing mechanisms for such access. CBD Art. 8 j, 10(c) & 18(4).

¹⁴ Ravi Kant Mishra, Access and benefit Sharing’ and the Nagoya Protocol: The Myth and Reality, CLJ, 151, (2016-17).

pursuance of this passed the Biological Diversity Act, 2002.

BIOLOGICAL DIVERSITY ACT AND TEK

Human life depends for its survival on biological diversity and ecological systems¹⁵ yet we have always interacted with this natural environment in ways that are humanly insensitive to its ecological integrity.¹⁶ As far back as old Mesopotamia, individuals utilized horticultural techniques that demolished the richness of the land and the nature of the drinking water. What's more, some Native Americans-since quite a while ago commended for their enthusiasm for the earth-utilized techniques for agribusiness which, whenever rehearsed on a more extensive and more escalated scale, would demonstrate ruinous to the earth.¹⁷ The trouble of plowing the world's dirt, drinking its water, and utilizing its air without harming its regenerative limits is a perpetual challenge.¹⁸

India enacted a national legislation (i.e. The Biological Diversity Act, 2002) with the intent to protect biodiversity almost nearly a decade after

¹⁵ Ian F. Spellerberg, Biological Diversity, 20 (1), NZJE, 119-120, (1996),

-Human activity threatens the very survival of biological entities on which its life depends.

K.C. Kim and R.D. Weaver (eds.), Biodiversity and Landscape: A Paradox of Humanity, (Cambridge: U.K., Cambridge University Press, 1994).

¹⁶ Paul Wapner, On the Global Dimension of Environmental Challenges, 13(2), PLS, 173-181, (1994).

¹⁷ G. Day, The Indian as an Ecological Factor in the North-eastern Forest, 34, Ecology, 329, (1953).

¹⁸ Supra note 13.

signing the Convention on Biological Diversity in consonance with it. The main objective of this Act is “...to regulate access to biological resources of the country to secure an equitable share in benefits arising out of the use of biological resources and associated knowledge relating to biological resources...”¹⁹

This law envisages the National Biodiversity Authority (NBA) at the top of a three-tiered mechanism²⁰ regulating access to biological resources in India and puts stringent limits on access to biological resources or related knowledge particularly for all foreigners. Under this Act, the people groups from developed and developing nations are treated similarly, paying little heed to their beginning while it separates national companies from international companies.²¹ Even though the arrangements of the TRIPS understanding set out that the foreign companies should be treated on equal standards with domestic companies, this Act doesn't appear to have a general riding impact on the current laws on wildlife and forests. It is additionally uncertain that if there should be an occurrence of a contest which law will win. Besides, the solid arrangements to manage access by outsiders are not coordinated at the national level where local knowledge holders are not given solid authority over their assets and knowledge.

¹⁹ Biological Diversity Act, 2002.

²⁰ Ibid.

²¹ Ibid.

This made it mandatory for all to make prior intimation of the intention to obtain biological resources for commercial utilization,²² to the authority concerned. It further provides that all inventors should obtain the prior consent²³ of the NBA²⁴ before applying for IPR where the invention is based on any biological resource obtained from India, and grants the authority the power to “impose benefit sharing fee or royalty or both or impose conditions including the sharing of financial benefits arising out of the commercial utilization of such rights”. Given the absence of an extraterritorial ward of the NBA and its powerlessness to screen applications abroad, however, the viability of such an arrangement will remain uncertain.

This Act accommodates the setting up of biodiversity funds at public, state, and local levels. Advantage is offered straightforwardly to people or groups of people just when organic assets or related information is received straightforwardly through them. The ABS methods specified under this Act follow the arrangements of worldwide laws and strategies, especially CBD.²⁵ The whole strategy as depicted in this Act contributes generously to

²² Sec. 2 (d) states that bio-survey and bio-utilization means survey or collection of species, subspecies, genes, components and extracts of biological resource for any purpose and includes characterization, inventorisation and bioassay.

²³ The objective of the concept of Prior Informed Consent (PIC) is to protect the rights of TEK holders or stake holder by recognizing their bargaining power.

²⁴ Supra note 40.

²⁵ supra note 21, 40.

encourage a worldwide system of 'access and benefit' sharing on traditional knowledge and genetic resources.²⁶

Overall, one of the striking features of the regime is that it completely obliterates common property arrangements whose importance and extent in the context of the management of biological resources²⁷ are still immense. The Act brings together property rights either in the possession of the state through sovereign allocation or in the possession of private innovators through the monopoly of intellectual property rights.²⁸ It doesn't, notwithstanding, give a system to the privileges of any remaining holders of genetic resources and related knowledge. The outcome is that resources and information that are not designated to private parties through licensed IPR or arrogated by the state to itself, will be considered uninhibitedly accessible.²⁹

Even though this Act is an honorable endeavor to ensure the rich natural variety of India alongside a solid instrument to secure the privileges of the inhabitants, there are various reasons why it is an

²⁶ Ibid.

²⁷ Ibid.

²⁸ Supra note 40.

²⁹ India is one of the seventeen recognized mega bio diverse countries of the world. The very existence of biodiversity is everywhere in the biosphere. It occurs both on land and in water, from high altitudes to deep ocean trenches and it includes all organisms, from microscopic bacteria to more complex plants. Although many tools and data sources have been developed, biodiversity remains difficult to measure precisely. With only 2.5% of the land area, India already accounts for 7.8% of the global recorded species.

intricate one to explore,³⁰ e.g. there is no adequate explanation available in the Act to differentiate between key terms such as 'by-products' and 'value-added products' which has caused a lot of confusion, because 'by-products' are included in the definition of 'biological resources' whereas 'value-added products' are excluded from the same; thus, it is causing unnecessary difficulty in ascertaining whether one lies under the purview of the Act, or not. Coherent and detailed examples from the concerned authorities will go a long way in getting rid of such confusion.³¹

CONCLUSION

The test for a biodiversity-rich nation like India isn't just to save its natural abundance alone, but to likewise guarantee that its protection and use converts into the prosperity of its people groups. Organic assets and the information related to them can produce abundance, where the term reaches out its simple financial worth. On the off chance that biodiversity laws themselves add to imbalances, either through their substance or in their execution, at that point the requirement for such laws comes into question. If allowing admittance to biodiversity makes a natural and a livelihood crisis, at that point the law and its implementers should be

³⁰ Mimi E. Lam "Building Ecoliteracy with Traditional Ecological Knowledge: Do, Listen, and Learn, 12(4), FEE, 250-251, (2014).

³¹ Ajeet Mathur. Who Owns Traditional Knowledge? 38(42), EPW, 4471-4481, (2003).

investigated.³² A law, for example, biodiversity conservation law should, by ideals of its substance and reason, do the trick to persuade individuals about its expectation. Indeed, even a ground-breaking biodiversity law, is rent incapable in an approach milieu that easily and as often as possible commands movements over biological resources from communities to enterprises, encouraging resource misutilization and biodiversity pulverization.

Biodiversity protection is firmly identified with other worldwide natural changes and globalization issues, for example, environmental change, land use and land cover change, and economical turn of events. In the course of the only remaining century, people have been changing environments more quickly than in any similar period ever, thus biodiversity or the assortment of qualities, species, and biological systems has declined quickly. This misfortune is compounded by the deficiency of information on biodiversity particularly among individuals with a close relationship with the normal environment. Social mindfulness is one of the vital viewpoints for the preservation and manageable utilization of biodiversity. According to the Supreme Court of India, seven minutes of naturally related projects

should be communicated regularly on National TV.³³ The other aspect of protection is that prior informed consent (PIC)³⁴ of the legal holder³⁵ of traditional ecological knowledge is needed to be documented as a protective or defensive measure.

³² George W. Wenzel, Traditional Ecological Knowledge and Inuit: Reflections on TEK Research and Ethics, 52(2), 113-124(1999),
-Traditional Knowledge Associated with Genetic Resources. Unraveling the Nagoya Protocol: A Commentary on the Nagoya Protocol on Access and Benefit-Sharing to the Convention on Biological Diversity.

³³ MC Mehta v. Union of India & Othrs. AIR 1992 SC 382.

³⁴ PIC includes the right of indigenous and local communities to oppose any access to their resources and associated traditional knowledge to be it for cultural, spiritual, social, economic or other.

³⁵ Joe McCarter, et. al., The Challenges of Maintaining Indigenous Ecological Knowledge. 19(3), ES, (2014), (Oct. 2020, 22, 10:00 PM), www.jstor.org/stable/26269617.