

Editorial

LAWS TO NURTURE THE NATURE

Humanity has had a constitutive relationship with the environment as early as they laid foot on this Earth. It is often said that Earth is our home; Indian tradition, however, prefers to call Earth as mother. Truly we are earthlings and we depend totally on Earth for our growth, survival and development existentially - individually and socially. Unfortunately some of our activities are not promoting life on Earth; it is harmful to humankind, other living beings and to Earth itself. We often forget that earth is also home to other living beings including microbes, plants, animals, fish and birds. We have a responsibility not only to other human beings but also to all other living beings. The members of biotic community are our sisters and brothers and we are duty bound to protect and promote them. This is also important for our own survival and progress.

Laws are precepts of reason promulgated by someone who is in authority for the common good. Nature is fragile and precious and needs legal and political protection. We have made various local, national and international laws to keep the home clear and healthy. Green laws, protocols, sanctions and policies are rooted in nature and oriented to community. Ecological crisis is a common responsibility: everyone is affected and everyone is responsible. Now the laws are to be expanded to protect and promote the members of the biotic community. We have to open up our horizons to see life from a cosmic perspective complementing the human and the religious points of views.

This issue of the *Journal of Dharma* will critically and creatively examine the constitutional, legal and policy level provisions for environmental protection. Though the political constitutions binds the state and the citizens to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and most governments have a department or ministry of environment, we see continuous exploitation of the environment both by the state and citizens, mostly because of economic reasons and wrong developmental policies. A vision of authentic development, which offers a direction for progress that respects human dignity and the limits of materiel growth, must include human development with respect for all creation, global interdependence and the common good, an ethics of solidarity promoting cooperation and a just

structure of sharing in the world community, and especially for the poor. This issue of the *Journal of Dharma* explores the interface between “Environment and Law” from a variety of academic disciplines like anthropology, development studies, political science, sociology, economics, commerce and environmental history.

The thrusts of the article “Environmental Justice: A Historical and Philosophical Approach” by Davis Panadan are threefold: first, to examine the complexities presented by environmental inequity in the context of USA and Indian environmental justice movements; second, to explore the potential that exists within the current system in India to move environmental regulation forward in a responsible manner that makes good on a promise of a more just and fair society and, ultimately, an ecologically sustainable environment in the background of environmental justice principles; and, third, in the light of discussion, to suggest a triangular conception of the community of environmental justice, with present generation, future generation and non-human natural world at each of the vertices of a triangle in the background of Aristotelian framework of ‘fairness’ and ‘justice’.

Shampa I. Dev, in her paper “Jurisprudential Basis of the Right to Clean and Healthy Environment,” examines the basis of the right to clean and healthy environment. An increased understanding of the nature of the right, in turn, will further the job of devising effective strategies and policies to meet the interests of the environment and make the right a reality. The paper investigates how best the interest of the environment can be protected and examines the approach of the courts and the tools it has devised to combat the problem. Four strategies are explored in the paper: Firstly, protect environment rights by declaring it to be a right. This would protect it from mutilation at the hands of political processes and, thus, would be a safer option, but its dimensions have not yet been crystallised. To a limited extent it is protected as a cultural right vested in indigenous people on the basis of the relation they have with the land. Secondly, it can be protected by making it part and parcel of human rights. Thirdly, the Interest Theory suggests that the interest of the environment must be protected for its own sake by creating such an interest. Fourthly, the notion of Intergenerational Responsibility which establishes that the present generation has an obligation or duty to preserve and protect the environment for a correlative similar right which the future generation enjoys. The paper also examines the conflict between environment protection and developmental needs of humanity. Indian courts have referred to traditional Indian philosophy of ‘Dharma’ and have tried to

adopt a balancing approach by integrating environmental values with developmental values. Any theory that does not resolve the above conflict would clearly be insufficient.

According to Mohd Istajib Mokhtar and Raihanah Abdullah, "Faith Based Initiatives" (FBI) offer efforts of controlling environmental problems. Their article, "Islamic Environmental Jurisprudence and Conservation Practices in Malaysia," revisits the theoretical framework of Islamic jurisprudence regarding environmental conservation. Characterized as divine law, Islamic environmental jurisprudence covers three essential aspects: eco-theology, ethics and laws. Looking at the fundamentals, this study found that the environmental laws in Malaysia are already in compliance with Islamic law. However, when examined in depth, there are still loopholes that could be addressed. This study argues that the gaps in the existing laws could be filled through the integration of the principles of Islamic law, which are in line with the current needs concerning sustainable utilization and precautionary approaches.

Economic development coupled with ignorance and careless attitude, have exploited natural resources at alarming rates. Globally, industry is responsible for more than one-third of the primary energy consumption and carbon dioxide emissions. Regarding the question whether business has any obligation to help environment, it has been variously answered, sometimes in affirmation and sometimes in absolute negation. Over and above this dichotomy, another dichotomy can arise within the same individual depending on whether a decision is taken as a businessperson or simply as a citizen. The most popular endeavour so far to dissolve this rivalry has been what is called "New Environmentalism," where the business houses are encouraged to become green for their own profit. This strategy can yield good results but practical application of it comes to a grinding halt when the profitability of the organisation is at stake. Thus, the attempt to dissolve rivalry between business and environment has not yet been resolved. The problem seems to be one of 'understanding' as well as 'attitude', as the 'businessperson-self' and 'citizen-self' are distinguished and made rivals. As far as the environment is concerned, an attempt has to be made to merge the two selves into one 'pro-environment' self that keeps environment at par with business considerations and not simply as an 'add on'. "Revisiting the Relationship between Business and Environment," by Ipsita Roy and Ajit Kumar Behura, is an investigation into the laws and policies concerning business and environment.

In “The Environment: Role of Religion and Growth of Environmentalism,” the author Manjeri Subin Sunder Raj investigates those aspects of rights and duties which necessarily create a sort of mindset in human beings that fosters protection of the environment. Having tread a long path, the human society has had a plethora of laws enacted for the sole reason of protecting the environment. Though the world has witnessed a sea change as far as putting into practise those laws and principles, whether they have really been able to protect the environment and ensure its safety beyond a point is a question to be mooted and answered taking into consideration the precarious position that Mother Nature finds herself in. The author tries to rummage through religion and see as to whether it, with its principles and teachings, plays a role in fostering human duty of protecting the environment. The growth of environmentalism, and question as to whether it is a new religion is also looked into.

“Water Rights in India: Law, Ethics and Governance,” by Sairam Bhat and Sukant Singh Rawat, seeks to probe the legal structures which are in place to ensure orderly and judicious allocation of water amongst various stakeholders in the country, i.e., households, farmers, industries, etc. In formulating a policy for the same, a good consideration of both ‘Right to Water’ and ‘Right over Water’ is necessary. This article also deals with the issue of pollution and indiscriminate usage of water and the laws to regulate the same. The problem of water scarcity cannot be dealt with by incoherent and unstructured efforts; there is a need of integrated and multipronged approaches towards the mitigation of the problem of water scarcity. After detailing the issues and challenges involved in the problem of water scarcity, the paper investigates the legal framework at international conventions and the governance of water allocation at the national level. It is, however, noted that mere enactment of legislations or formulation of policies will not prove to be a panacea for the water related ills, proper enforcement and earnest compliance of these laws and policies would go a long way in curing this problem. Integrated Natural Resource Management is suggested as an answer for an overall combined policy towards conservation, protection and resource enrichment.

Wishing you critical and creative thoughts on the interface between Environment and Law, may I submit this issue of the *Journal of Dharma*!

Nandhikkara, Editor-in-Chief