

**DAMS DEVELOPMENT AND RIGHTS OF INDIGENOUS
PEOPLES: A LEGAL PERSPECTIVE ON THE PROPOSED
TIPAIMUKH DAM IN NORTHEAST INDIA**

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i. Abstract

Tipaimukh dam is a proposed 1500 MW hydroelectric project in Northeast Indian State of Manipur. According to the Indian government a large scale hydroelectric dam is necessary for the overall electricity demand of the country and to generate local employment, promote pisciculture, tourism, navigation, flood control and irrigation. The local people are against the dam because it will submerge thousands of houses and will destroy the livelihood of indigenous Hmar and Zeliangrong Naga peoples. It will also destroy the biological diversity of the area including endangered species of flora and fauna.

Most of the literature in the field is focused on the socio-economic and environmental effects of the dam. In my research I will examine the building of the dam from a legal perspective. I will adopt a comparative critical framework to analysis the laws and regulations that could enable the government to build such a dam and also the legal instruments that the people could use to oppose the dam. I will also build my argument on case studies of successful court cases and people's movement from India and around the world. As the indigenous peoples are closely related to the environment and land, I will focus on laws relating to the protection of indigenous people's land rights and protection of the environment. I will also look at alternative sustainable sources of producing electricity that could be adopted to save the people and environment.

There is a strong chance that the government might decide not to proceed with the project due to its adverse effects on the people and environment, but if it does then the people will have to go to the court as the last resort. My research will be focused on the legislation and precedents that could be useful in such a court case.

ii. Declaration

I declare that the thesis entitled ‘Dams Development and Indigenous Peoples: A Legal Perspective on the Proposed Tipaimukh Dam in Northeast India’ has not previously been submitted for a degree nor has it been submitted as a part of requirements for a degree to any other university or institution other than Macquarie University.

I also certify that the thesis has been written by me and any help and assistance that I received have been appropriately acknowledged. To the best of my knowledge this thesis is not a copy of another person’s work other than duly acknowledged in the text.

Sheikh Salauddin (40188248)

10 October 2016

iii. Acknowledgement

It is my pleasure to thank and acknowledge my supervisor Francesca Dominello for her guidance and support. I also thank Macquarie Law School for providing me with a study room and other support throughout my study period.

iv. List of abbreviations

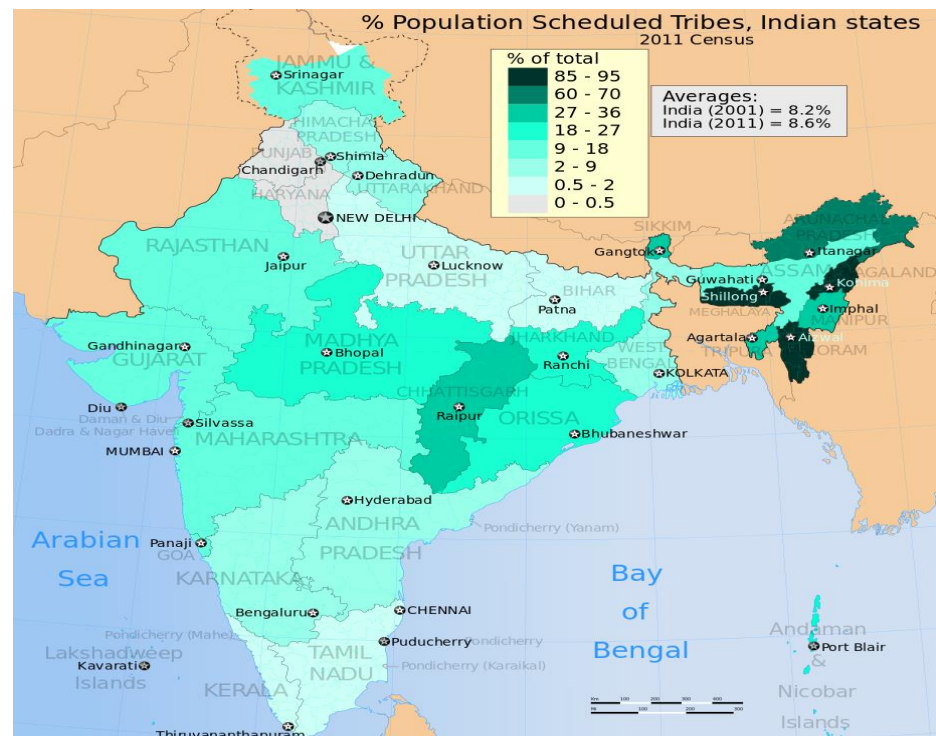
The following abbreviations have been used throughout the text:

ADB	-Asian Development Bank
ASEAN	-Association of South East Asian Nations
BFCB	-Brahmaputra Flood Control Board
CATD	-Committee Against Tipaimukh Dam
CCDD	-Citizens Concern for Dam and Development
CDM	-Clean Development Mechanism
CWC	-Central Water Commission
DANIDA	-Danish International Development Agency
DFID	-Department for International Development
DPR	-Detailed project report
EIA	-Environmental Impact Assessment
FAC	-Forest Advisory Committee
GW	-Gigawatt
HAS	-Hmar Students Association
JICA	-Japan International Cooperation Agency
JRC	-Joint Rivers Commission
LARR	-Land Acquisition, Rehabilitation and Resettlement Act 2013
MLRRA	-Manipur Land Revenue and Reform Act 1960
MoEF	-Ministry of Environment and Forest
MOU	-Memorandum of Understanding
MW	-Megawatt
NEEPCO	-North Eastern Electric Power Corporation Limited
NBA	-Narmada Bachao Andolan
NGO	-Non-Government Organizations
NHPC	-National Hydroelectric Power Corporation
NLUP	-New Land Use Policy of Manipur 2014
PESA	-Panchayats (Extension to the Scheduled Areas) Act 1996
SIPHRO	-Sinlung Indigenous Peoples Human Rights Organization
THP	-Tipaimukh Hydroelectric Project
UNDRIP	-United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	-United Nations Educational, Scientific and Cultural Organization
UNFCCC	-United Nations Framework Convention on Climate Change
WB	-World Bank
WCD	-World Commission on Dam

1. Introduction

We are not myths of the past, ruins in the jungles, or zoos, we are people and want to be respected - Rigoberta Manchu.¹

There are about 370 million indigenous people around the world with unique traditions, distinct cultures and different practices with respect to their lands, ways of living and religions.² Unfortunately the number of indigenous peoples and their cultures are massively declining due to mega infrastructure projects like dams and highways, urbanisations, mining and logging. It is estimated that there are about 84.3 million indigenous (locally called Adivasis) peoples living in India and that is almost 8.6 percent of total population (Map-1).³



Map-1: 2011 Census Scheduled Tribes distribution map India by State⁴

¹ Rigoberta Manchu, 1992 Noble Peace Prize winner; <www.doonething.org/heroes/pages-m/menchu-quotes.htm>.

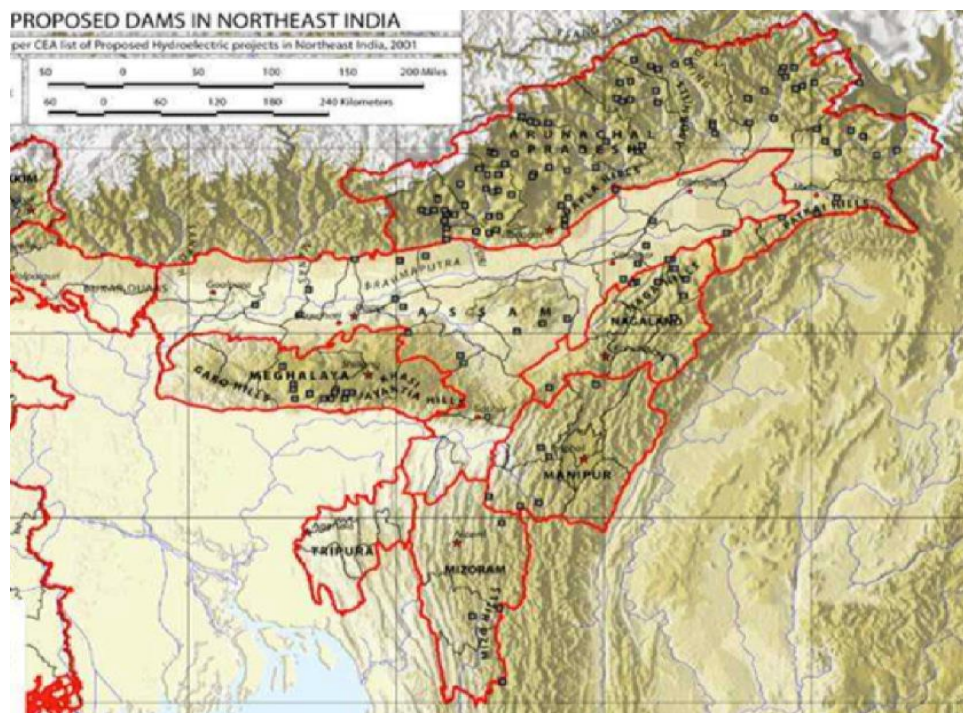
² Y K Sabharwal 'Plenary Session: Rights of Indigenous Peoples' (6 March 2016) The Supreme Court of India <www.supremecourtindia.nic.in/speeches/speeches_2006/ila-toronto.pdf>.

³ 'Indigenous peoples in India' (8 April 2016) International Work Group for Indigenous Affairs, <<http://www.iwgia.org/regions/asia/india>>; 2011 Indian Census data.

⁴ 'File: 2011 Census Scheduled Tribes distribution map India by state and union territory' (11 August 2016) Wikimedia Commons <https://www.wikimedia.org/wiki/File:2011_Census_Scheduled_Tribes_distribution_map_India_by_state_and_union_territory.svg>.

The largest concentrations of Indian indigenous peoples live in the seven states of northeast India, otherwise called the ‘Seven Sisters’,⁵ and their cultures are under immense threat and some are at the point of extinction due to the enormous number of mega dams planned for this region. The situation in the area can be likened to a ‘cultural genocide’,⁶ as it is a deliberate destruction of indigenous peoples’ culture and heritage by the government.

The Indian Central Government along with state governments are planning to build more than 168 hydroelectric dams in its northeast region with installed capacity of 63 328 MW (Map-2).⁷ One of the proposed dams is the Tipaimukh Hydroelectric Project (‘THP’) in Manipur State on the Barak River. The government argues that the dam will bring significant growth and development in the area, but the people argue that the dam will have significant adverse effects on the local indigenous tribal peoples and destroy the ecological balance of the area.



Map-2: Central Electricity Authority (CEA) list of Proposed Hydroelectric projects in Northeast India, 2001.⁸

⁵ Seven States are Assam, Mizoram, Nagaland, Tripura, Meghalaya, Manipur and Arunachal Pradesh.

⁶ Cultural genocide is a term used to describe the deliberate destruction of the cultural heritage of a people or nation for political, military, religious, ideological, ethnical, or racial reasons; ‘About cultural genocide. What is it?’ (17 December 2010) Cultural Genocide <<http://www.juhaculturalgenocide.blogspot.com.au/2010/2/about-cultural-genocide-what-is-it.html?m=1>>.

⁷ Hemanta Saikia ‘Political economy of big Dam in North East India’ [2012] 1(1) *Basic Research Journal of Social and Political Science* 1-11.

⁸ Yang Yong ‘World’s Largest hydropower projects planned for Tibetan Plateau’ (5 March 2014) China dialogue <<https://www.chinadialogue.net/article/show/signgle/en/6781-world-s-largest-hydropower-project-planned-for-Tibetan-Plateau>>.

India, with more than 1.3 billion people, ranks third in the world in dam building after USA and China.⁹ About 300 million people in India do not have access to power.¹⁰ The Narendra Modi government has set an ambitious goal to supply twenty-four-hour power supply to all its citizens by 2022.¹¹ Since 1947, India has built significant numbers of dams and now it has over 4000 dams. Out of all those dams 4% are hydroelectric dams.¹² It is estimated that 15.22% (42 663 MW) of total electricity generation (280 GW) in India comes from hydroelectric projects. The northeast part of India is considered as the future powerhouse with the capacity of producing almost 63 000 MW of electricity through hydroelectric projects.¹³

The Tipaimukh dam was originally designed in 1926 as a flood control measure. It was first commissioned by the Government of India in 1984 on Barak River in Manipur State after the proposal was submitted by Central Water Commission ('CWC') at the request of Assam Government. The site selected was 500 metres downstream from the confluence of the Barak River (second largest drainage system in the northeast of India) and about hundred kilometres north of neighbouring country Bangladesh's border in the Tipaimukh village. The responsibility of preparing the Detailed Project Report ('DPR') was given to Brahmaputra Flood Control Board ('BFCB') in 1995. The final approval for the Tipaimukh Hydroelectric Project was given in 1999 to North Eastern Electric Power Corporation Limited ('NEEPCO'). The project was signed in 22 October 2011 and is being executed as a joint venture of the National Hydroelectric Power Corporation ('NHPC'), Satluj Jal Vidyut Nigam Limited and the Manipur Government.¹⁴ It will be a 162.80 metres high rock filled dam with an annual estimated generation of 3805.74 million units in a 90 percent dependable year, with an installed capacity of 6x250 MW and with firm power generation of 434.44 MW.¹⁵ The dam was also planned for the purpose of flood control and irrigation in the States of Manipur

⁹ 'Large Dams in India' (10 August 2016) Department of Economics, Yale, <http://www.econ.yale.edu/~rp269/website/papers/dams_OUP_Nov30.pdf>.

¹⁰ Annie Gowen, 'India's huge need for electricity is a problem for the planet', *The Washington Post* (online), 6 November 2015 <https://www.washingtonpost.com/world/asia_pacific/indias-huge-need-for-electricity-is-a-problem-for-the-planet/2015/11/06/a9e004e6-622d-11e5-8475-781cc9851652_story.html>.

¹¹ Ibid.

¹² Above n 9.

¹³ Jason Overdorf, 'How many dams can one state hold', *The Global Post* (online), 23 April 2012 <<http://www.pri.org/stories/2012-04-23/part-1-how-many-dams-can-one-state-hold>>.

¹⁴ Imtiaz Ahmed 'Teesta, Tipaimukh and River Linking: Danger to Bangladesh-India Relations' (2012) 47.16 *Economic and Political Weekly*, <<http://www.epw.in/journal/2012/16/river-interlinking-uncategorised/teesta-tipaimukh-and-river-linking-danger#sthash.K6wUgfOF.dpuf>>.

¹⁵ 'Environment ministry not keen on Tipaimukh hydroelectric project', *The Times of India* (online), 9 June 2013 <<http://timesofindia.indiatimes.com/home/environment/development-issue/environment-minister-not-keen-on-Tipaimukh-hydroelectric-project/articleshow/20503606.cms>>.

and Mizoram of India.¹⁶ According to the local indigenous Hmar and Zeliangrong Naga peoples the dam will have irreversible adverse effects on them and the environment in the area. It will destroy the livelihood and life of local tribal groups and effect the habitat of many flora and fauna.

Along with Hmar and Zeliangrong Naga peoples, the area is rich with other groups of indigenous tribal peoples like Hrangkhawls and Darlongs of Tripura, Biats of Meghalaya, the Sakechepts of Assam and Korem tribes of Manipur, all of whom have vibrant unique cultures. There have been huge protests against the dam from the local indigenous peoples, civil society and the cross-border neighbour Bangladesh. The local people have voiced their concerns in the public consultations meetings and the Forest Advisory Committee ('FAC') of the Ministry of Environment and Forest ('MoEF') has rejected the application for forest clearance. Currently, there are positive signs that indicate that the dam may not proceed. But in the event that it does, my research aims to contribute to the literature by examining the issue in its legal context and consider what legal arguments the government could advance to support building the dam, and what arguments could be raised to challenge the dam and protect the rights of the indigenous peoples. My overall aim is to establish a legal framework that can be used to challenge the dam and identify possible alternatives and future direction

2. Research plan and Methodology

My research is focused on the 1500 MW Tipaimukh dam which is one of the largest proposed dams in northeast India after Dibang Hydropower project (3000 MW) and Subansiri Lower Hydroelectric project (2000 MW). I want to legally oppose the building of the dam because it is against the interest of the indigenous peoples of the area and will destroy cultural practice of local indigenous peoples. As an indigenous rights activist, I want to show that it is possible to oppose the dam from a legal perspective in the hope that other dams that are causing cultural genocide in the area can be opposed in the same way.

In taking this approach my research will fill a gap in the literature. Most of the literature on this issue is focused on the socio-economic and environmental effects of and the dam. The focus is usually on how the ambition of the Indian government to become 100 percent self-sufficient by building the dam will affect the lives of many local indigenous peoples, farmers,

¹⁶ Ibid.

and fishermen, and how it will destroy the ecology and life of lower riparian people.¹⁷ But there is little research identifying the law that authorises the government to build such dams and which indigenous peoples could use to oppose such projects. There is extensive literature on the water issues and water resources management in India. Most of this literature is focused on the legal aspect of water resources management in general, ownership of water and dispute resolution, conservation, water pollution, environmental decision making, water law and water sector reforms.¹⁸ But in my research, I will focus my attention on the protection law can offer to the rights of indigenous peoples with regard to the building of Tipaimukh dam. I will identify and examine the state, national and international laws and legal principles that support the dam and also the legal principles and laws that could be used to challenge it from an indigenous peoples' rights perspective. My research also builds on examples of projects successfully challenged through courts of law and people's movement in India and other parts of the world. Moreover, my research applies a practical approach, where I will discuss the effects of the dam as a cause of action, find laws, regulations and cases to support both sides of arguments. The thesis will conclude by identifying possible alternatives and future directions to promote sustainable energy in northeast India.

My research methodology will be doctrinal and comparative. It will critically analyse the relevant laws to identify those that empower the government authority to build dams and also, I will find the laws, regulations, policies and legal principles that could support indigenous peoples to challenge the development decision. My research methodology will also compare my case study to other cases in India and around the world where development projects have either failed because of poor planning or because they have been successfully challenged. My research will find common arguments and similarities from those case studies from Australia, Canada, India, Malaysia and United States of America. I will form a legal hypothesis in favour of challenging the dam that promotes the rights of indigenous peoples.

3. Literature review

The development process and issues relating to the proposed Tipaimukh dam is a current and ongoing process. At present the Indian government is at the end of a consultation process with the affected peoples, including the neighbouring Bangladesh government. As I

¹⁷ Gowen, above n 10.

¹⁸ Ramaswamy R Iyer (ed) *Water and the laws in India* (SAGE Publications New Delhi; Washington DC 2009); Philippe Cullet et al *Water governance in motion* (Foundation Books, 2010).

mentioned earlier most of the literature on this issue is focused on the socio-economic and environmental effects of the dam and there is little research on the laws enabling the governments to build such dams and the legal rights of the indigenous people that could challenge such projects. My literature review will focus on the effects of the dam that will be the cause of action in my hypothetical case. But before discussing the adverse effects of the dam I will discuss the possible benefits of the dam as put forward by the government. I need to understand the rationale of the government so that I can logically set up my legal argument to oppose the building of the dam.

3.1 Benefits of hydroelectric dams

The Central Electricity Authority of India has carried out studies to assess the potential of hydroelectric powers in India. A study during 1978 to 1987 shows that the hydropower potential of the country is 84 040 MW at 60 percent load factor from a total 845 projects.¹⁹ The government has flagged a potential of 168 hydroelectric dams producing 63 328 MW of electricity in northeast India.²⁰ Only the state of Arunachal Pradesh has signed Memorandum of Understanding ('MOU') with many corporations to build 103 large Dams (mainly on the Subansiri Siang, Dibang, Lohit Rivers) to generate about 30 000 MW electricity.²¹

Large scale hydroelectric dam development is necessary for the overall demand of the country rather than the demand of northeast India, which is expected to require only 2 percent of the total electricity. Arunachal Pradesh has the highest concentration of economic hydroelectric potential but will have only 200 MW of estimated peak demand by 2016-2017.²² Most of the generated electricity will be exported to the other parts of India and National Hydro Power Corporation ('NHPC') generally provides 12 percent of total generated power to the state government as royalty.²³

¹⁹ V.V.K. Rao 'Hydropower in the Northeast: Potential and Harnessing Analysis' (Background paper No 6, World Bank, September 2006) <www.indiawaterportal.org/sites/indiawaterportal.org/files/hydropower_in_the_Northeast_potential_and_harnessing_analysis.pdf>.

²⁰ Arnab Roy Chowdhury and Ngamjahao Kipgen, 'Deluge Amidst Conflict: Hydropower Development and Displacement in the North-east Region of India' (2013) 13.3 *Progress in Development Studies* 195-208.

²¹ Ibid.

²² Rao, above n 19.

²³ K J Roy, Chandan Mahanta and Partha J Das '*Hydropower Development in Northeast India: Conflicts, Issues and Way forward*' India Water Portal <http://www.indiawaterportal.org/sites/indiawaterportal.org/files/hydropower_development_in_northeast_joy_et_al.pdf>.

Well planned and appropriately placed dams have many advantages. The Indian government thinks the areas in northeast need special attention to encourage growth and that an increase in demand of power would create employment opportunity and economic activities. Development of Hydroelectric projects in remote areas would create infrastructure like roads and communication.²⁴ The dams also work as effective flood control measures. The State of Manipur has a long history of floods and originally the Tipaimukh dam was planned in 1926 to control flood in the area. The water in the reservoir can be used for irrigation and water tourism can be promoted to boost economic activities in the area.²⁵ According to the government, the Tipaimukh project will have huge positive effects on energy and economic status of the northeast region. Currently the Barak valley has capacity for about 30-32 MW of electricity whereas the energy demand is about 95-110 MW. If the proposed Tipaimukh dam is built, then the project will have significant positive effect in the area.²⁶

The Environmental Impact Assessment ('EIA') claims that, apart from solving power shortage problem, the Tipaimukh Hydroelectric Project will produce other beneficial effects on the region like, more employment, increased pisciculture, tourism, navigation, flood control and irrigation.²⁷ Once built, the Tipaimukh project can apply for carbon credit under Clean Development Mechanism ('CDM') of United Nations Framework Convention on Climate Change ('UNFCCC'). The National Hydroelectric Power Corporation of India is planning to receive carbon credit from most of the hydroelectric projects and profit by these green power generating projects.

Electricity produced from hydroelectric projects are green energy and such projects can apply for carbon credit under Clean Development Mechanism of UNFCCC. Clean Development Mechanism certificate for carbon credit was granted to 96 MW Jorethang Loop Hydroelectric Project in Rangit River in Sikkim run by DANS Energy Private Ltd.²⁸ Some more projects are under consideration for the certification; among others the 500 MW Teesta IV

²⁴ Chowdhury and Kipgen, above n 20.

²⁵ Ibid.

²⁶ Pradip Kurmi and Ruchira Gupta, 'Paucity of Energy in Barak Valley: A Review of Tipaimukh Hydroelectric Project and an Alternative Scheme for Development' [2016] 5(2) *International Research Journal of Social Sciences* 52-55 <<http://www.isca.in/IJSS/Archive/v5/i2/9.ISCA-IRJSS-2015-295.pdf>>.

²⁷ Vibha Arora and Ngamjahao Kipgen 'We can Live without power but we cannot live without our (sacred) land: Indigenous Hmar Oppose the Tipaimukh Dam in Manipur, India' [2012] 61(1) *Sociological Bulletin* 109-128.

²⁸ Jiten Yumnam 'An assessment of Dams in India's North East Seeking Carbon Credit from Clean Development Mechanism of the United Nations Framework Convention on Climate Change' (February 2012) Citizens Concern for Dams and Development and Supported by International Rivers <<https://www.internationalrivers.org/resources/an-assessment-of-dams-in-e-india-seeking-carbon-credits-from-clean-development-mechanism>>.

hydroelectric project and 105 MW Loktak hydroelectric project are significant ones. In contrast, according to several studies, mega dams actually contribute in deepening climate crisis as dams emit greenhouse gases from reservoirs and the destruction of forest.²⁹ The indigenous peoples see those projects more as a money grab which ignore their rights and will destroy their livelihoods. The thesis will now consider these arguments.

3.2 Disputing government's assessment by people

In the planning process and on paper the dam has many possible benefits, but in reality the dams in this region create lots of problems. The northeast region is home to more than 200 culturally diverse indigenous groups,³⁰ and most of the development projects regarding natural resources are carried out without involving them, so they feel disconnected and alienated. Specifically considering the northeast region of India most of the projects lack proper Environmental Impact Assessment, Social Impact Assessment ('SIA') and lack community participation in decision making.³¹ Most of the time the authority undermines the recommendations of the World Commission on Dams ('WCD'),³² and lacks accountability in project development.³³ The projects do not take a human rights approach and do not consider alternative and more sustainable approaches. Poorly planned and executed dams can have huge adverse socio economic, cultural and environmental effects. According to the World commission on Dams, it is estimated that between 16 and 38 million people have been dislocated by large dams in India and a large proportion of them are marginal indigenous peoples.³⁴

The people want transparency in the public consultancy process.³⁵ They want public education and awareness about the effects of the dam so that their decisions are informed and free from any influence. They want the authority to be democratic, accountable, enjoy public

²⁹ Ibid.

³⁰ 'Tribes of Northeast India' (14 August 2016) Greener Pastures <<http://www.thegreenerpastures.com/tribes-of-north-east-india#.V-55vjQmLCQ>>.

³¹ Ibid.

³² The WCD recommended seven broad strategic priorities to guide decision making: (1) gaining public acceptance; (2) comprehensive needs and option assessment; (3) addressing existing dams; (4) sustaining rivers and livelihoods; (5) recognizing entitlements and sharing benefits; (6) ensuring compliance; and (7) sharing rivers for peace, development and security.

³³ Protecting Rivers and Rights- World Commission on Dams Recommendations in Action: Briefing Kit by International Rivers (July 2010).

³⁴ Douglas P Hill 'Trans-boundary water resources and uneven development: crisis within and beyond contemporary India' (2013) 36.2 *South Asia: Journal of South Asian Studies* 243-257.

³⁵ David Buhril 'Enquiring Tipaimukh Dam: Development or Destruction?' (2009).

confidence, and promote women's participation and gender equality.³⁶ Any kind of big projects should look for public acceptance and should have consultation and participation of the people who will be affected.³⁷ Affected local people should get reasonable benefits of the projects as well. But the Memorandum of Understanding ('MOU') signed in April 2009 with the central government indicates that the states would be guaranteed only five percent of the total power output. There is nothing specifically allocated to the benefit of the tribal people. In reality, unless the electricity is free the tribal people will not be able to afford the cost of electricity as they would have already lost their livelihood and source of income.³⁸

The people are also afraid because there have been previous development projects which have failed. The people of northeast India have suffered enough to understand the devastating effects of hydroelectric projects. The Dumbur Hydroelectric project in Tripura displaced 2558 families and affected more than 6500 more families. The Ranagadi Hydroelectric project failed to generate the expected 173 MW of electricity but displaced lots of people. People were left with housing without electricity and schools without teachers. Ithai Barrage of Loktak Multipurpose Hydroelectric project commissioned in 1984 already destroyed Loktak wetland's ecosystem and the livelihood of farmers and fishermen by submerging 80 000 acres of agricultural land.³⁹

The government is aggressively pursuing the construction of Mapithel Dam against the will of the people and without considering the rights of indigenous Tangkhul Naga, Kuki and Meitei communities.⁴⁰ The authorities already blocked the Thoubal River to fill the dam and as a result in January 2015 a big chunk of agricultural and forest land was submerged in Louphong and Chandong village. Subsequently the rise of water will submerge many more villages and forest land.⁴¹ In 2004 the excess water released from the Kopili Hydro Project was believed to be the cause of flood in vast areas of Nagaon, Marigaon and Kanrup districts affecting more than ten thousand people.⁴²

³⁶ Thounaojam Somokanta 'Sociological understanding of risks: an empirical case study of Tipaimukh dam in Manipur, India' (2014) 8.4 *International Journal of Innovation and Sustainable Development* 363-379.

³⁷ Buhril, above n 35.

³⁸ Chowdhury and Kipgen, above n 20.

³⁹ R.K. Ranjan, 'Ithai Barrage: A Fatal Threat to Natural Drainage System of Manipur Valley', *the Imphal Free Press* (online), 22 April 2014 <<http://ifp.co.in/page/items/20746/20746-ithai-barrage-a-fatal-threat-to-national-drainage-system-of-manipur-valley>>.

⁴⁰ Jiten Yumnam 'Mapithel Dam: An Inside Look' (8 July 2015) *International Rivers*, <<https://www.internationalrivers.org/blogs/328-22>>.

⁴¹ Ibid.

⁴² Roy, Mahanta and Das, above n 23.

People are displaced due to hydroelectric projects and require resettlement. The states in the northeast region are also facing problems due to displacement and resettlement. The State of Tripura and Arunachal Pradesh are facing long lasting challenges due to the influx of displaced people from other states and neighbouring Bangladesh. The Dunbar Hydroelectric project is a very good example of the failed resettlement and conflict. It displaced about 60-70 thousand people without proper resettlement. It failed to produce the expected amount of electricity and in 2007 the water level of the dam dropped and a big chunk of the land resurfaced. Reclaiming the resurfaced land gave rise to conflict between local indigenous peoples and Bengali refugees⁴³. Since 1971 Bengali refugees are living in several northeast states and non-indigenous leaders are using these refugees as a weapon against the indigenous peoples. Now about 40-60 percent of indigenous lands belongs to other people.

The indigenous peoples of northeast India are also losing their cultural identity and their lands due to the projects in their neighbouring Bangladesh. Kaptai Hydroelectric project in Bangladesh provides another example of such long term problems. This project, built in 1957 as the Karnaphuli Hydropower Scheme in Chittagong hill tracts of East Pakistan (now Bangladesh), submerged 54 000 acres of cultivable land and completely displaced and destroyed the life of 18 000 indigenous Chakma families. Lack of rehabilitation and compensation made many of the indigenous people leave the country and become international refugees in neighbouring India. Most of the displaced people moved to Arunachal Pradesh of northeast India and local people still have conflicts with the Chakma refugees. Even after almost seventy years, about 65 000 Chakma refugees are still living as stateless people waiting for Indian citizenship.⁴⁴

The northeast India has long history of violent armed militancy against the Indian government. If the construction of Tipaimukh dam starts there is a big possibility that the armed groups will start violent protests. The armed wing of Hmar community already declared that they will not allow an inch of their land to be grabbed, captured and annexed in the name of national development.

⁴³ In 1971, during the war of independence of Bangladesh millions of Bengali refugees came to India to save themselves from Pakistani army and few thousands decided to stay in India as refugees even after the war ended.

⁴⁴ 'Dams and Development: A New Framework for Decision-making: the Report of the World Commission on Dams' (World Commission on Dams 2000); Chowdhury and Kipgen, above n 20.

3.3 Socio economic and cultural effects of dam

The northeast India consist of seven states (Assam, Mizoram, Nagaland, Tripura, Meghalaya, Manipur and Arunachal Pradesh) which are called the ‘Seven Sisters’. Almost one fourth of the total population of these states are indigenous tribal people and home to over 145 indigenous communities, but they hold a very marginal position in the Indian political scene. These people like to live within their own communities and live and earn their living from the forest. They show very little interest in other people’s affairs. Even during the British rule (before 1947) these communities were kept separate from the rest of the mainland people due to their unique natures.

Unlike the government, the people of the area have different opinions on the likely effects of the Tipaimukh dam. According to the Environmental Impact Assessment at least 313 households will be submerged, but according to the people it will be many more.⁴⁵ A majority of the tribal people will lose their livelihood as they rely on the land for agriculture, horticulture and animal husbandry. It would also destroy the shifting cultivation (Jhum) of the wet rice fields. The traditional water courses will also be submerged and destroy the source of income for the people living on the rivers. Some migratory fish habitats will be lost along with the source of income of the fishermen. The traditional watercourses along the Barak River will be disconnected from the state capital to the upper Barak.

The Barak valley is very critical for thousands of people including indigenous Hmar people. There are many sites in the valley that are spiritually and religiously significant to them. The river itself is very significant to the identity of the people as it is the source of drinking water, irrigation, horticulture and navigation. This source of cultural knowledge will be lost if the dam is built. The Dam will submerge thousands of houses and will destroy the livelihood of indigenous Hmar and Zeliangrong Naga peoples making it hard to maintain their cultures. The river is also very important for the indigenous Hrangkhawls and Darlongs of Tripura, Biats of Meghalaya, the Sakecheps of Assam and Korem tribes of Manipur and will significantly alter their lifestyle and their culture will suffer. During the planning process of the projects the displaced indigenous people are promised resettlement and rehabilitation, but in reality the scenario is different. According to the government’s draft National Rehabilitation Policy 75 percent of displaced people have been waiting for rehabilitation

⁴⁵ Arora and Kipgen, above n 27.

since 1951 and out of all displaced persons 40 percent are indigenous peoples.⁴⁶ The indigenous peoples are more vulnerable to change because they are more reliant on forest for their livelihood, Jhum (shifting cultivation) and rivers for food security.⁴⁷ To adapt to the change takes generations and in most cases indigenous people do not cope with cultural changes and ultimately lose their cultural identities. Also, the demography of the affected areas is changing due to huge influx of outside workers and affecting social economic and political situation.

According to the Environmental Impact Assessment, the proposed project will displace 1461 Hmar families from 14 villages over an estimated area of 291.50 sq. km. If it gets the greenlight then the dam will also affect 77 and 14 villages in Manipur and Mizoram respectively by destroying their source of income and livelihood. It will also submerge 60 km of national highway no. 53 in three different points with two major bridges of national highway no. 39.⁴⁸

There are possibilities of conflict between tribal and non-tribal groups because of the present and future possible benefit of the project. Moreover, states create more complications and conflicts by aiding some of the Non-Government Organizations ('NGO') that support the construction of the project. NGOs like All Assam's Council for Peoples Action and Manab Sewa Sangha support the state.⁴⁹ The tribal people are so concern and desperate to stop the project that they are ready to do anything. In the process the indigenous Hmars and Zeliangrong Nagas have come together in a rare act of reconciliation and submitted a memo to the prime minister of India to stop the construction of the dam.⁵⁰

Not only will they lose their livelihoods and ways of living, the people in the Tipaimukh area are living in fear of their lives because in 2008 the Manipur government militarised the Mon Bahadur road (under the *Armed Forces Special Powers Act 1958*) which is the main service road to Tipaimukh dam and armed forces were also deployed in the construction area and

⁴⁶ Walter Fernandes et al, *The Draft National Rehabilitation Policy (2006) and The Communal Violence Bill (2005): A Critique of the Rehabilitation Policy of the Government of India* (Mahanirban Calcutta Research Group 2007) 23.

⁴⁷ Yumnam, above n 28.

⁴⁸ M Anowar Hossain 'Tipaimukh Dam in India: Probable Disaster for Bangladesh' (2005) International River Symposium <<http://archive.riversymposium.com/2005/index.php?element=06HOSSAIN+MAnowar>>.

⁴⁹ Renu Modi, *Beyond Relocation: The Imperative of Sustainable Resettlement* (Sage Publications India, 2009) 224.

⁵⁰ Chowdhury and Kipgen, above n 20.

catchment area.⁵¹ Indigenous peoples are peace loving people and become very frightened when they see military in their area. Moreover, due to the history of insurgency there is a constant presence of military and armed forces in the area, and indigenous people do not accept military presence in their life normally and do not express their opinion in fear of retribution.

3.4 Environmental effects

Manipur is a part of sensitive Indo-Burma biodiversity hotspot with vast endemic plant and animal species.⁵² The proposed dam is likely to submerge 300 sq. km of land and affect Tipaimukh, Keimai, Tamenglong, Churachandnapur and some areas of the Mizoram State and will be the cause of huge loss of ecological biodiversity.⁵³ The Environmental Impact Assessment undertaken by the authority already acknowledged the project will be the cause of huge deforestation, disturbance of forest environment due to the movement of heavy machinery and settlement of migrant labour. Also the impact of blasting and tunnelling will cause disruption to native flora and fauna. Despite objections from the concerned people, civil society and relevant organisations, environment clearance was given by the Ministry of Environment and Forest on 24 October 2004 for the destruction of 10 million trees and 27 000 bamboo culms.⁵⁴

The construction of the dam will have severe adverse effects on the people and ecology of the area, it will submerge a total of 30 860 hectares of land out of which 27 777.50 hectares of forest will be subjected to clearance along with native flora and fauna. The proposed dam will destroy the habitat of many endangered species including clouded leopard, slow loris, pig-tailed macaque, barking deer, gibbons, leopards, grey shia, serow and rufous necked hornbill- the state bird of Manipur.⁵⁵

⁵¹ Jiten Yumnam and Pushparani Koiyam, 'Tipaimukh Dam Plan and Uncertainties in Manipur' (Centre for Research and Advocacy, Manipur and United Voluntary Youth Council, October 2014); above n 31

⁵² R K Ranjan 'Tipaimukh' (2003) 11.1 *The Ecologist Asia* 76-79.

⁵³ Kurmi and Gupta, above n 26.

⁵⁴ Yumnam and Koiyam, above n 51.

⁵⁵ 'Dam(ned) Communities: Violence and Eviction in Manipur Region' (26 June 2015) Days of Action for Development Justice <<http://www.peoplesgoals.org/devjustice/campaigns/manipur>>.

3.5 Effect due to seismic activities

The proposed Tipaimukh dam is located in one of the highest earthquake prone areas of the world. The Seismic zoning map of India has placed the Tipaimukh area in a zone five (V) which is the highest level of seismic hazard potential. It is located at the triple junction of the three continental plates; namely, the Indian, Eurasian and Burmese plates.⁵⁶ Data shows, in the last 100 years, hundreds of five and above magnitude of earthquakes have occurred in this area and three of these earthquakes were seven or more in magnitude. Between 1953 and 1992 this region had experienced 21 earthquakes of more than 6.5 magnitudes.⁵⁷

Due to the tectonic setting of the Indo-Myanmar range most of the previous earthquakes have taken place in a 50 km focal depth or less. Seismic activity in a shallow depth are more disastrous than deeper ones. According to the experts the calculated safety factor of the Tipaimukh dam implies that an earthquake of seven or more magnitude will destroy the dam throughout its operational life of 50-100 years and can trigger the collapse of dam slope that can result in serious destruction of life and property.⁵⁸

There are several potential effects of earthquake on a rock filled dam. As the Tipaimukh dam will be rock filled, an earthquake can cause ground rupture, slope failure, faulty displacement, crest settlement or permanent deformation of foundation soil. Also large dams like Tipaimukh can increase the frequency of earthquakes by reservoir induced seismicity which can happen two ways; by increased weight of the reservoir, and by the water leaking into cracks underground or along a fault.⁵⁹

Some experts believe that it is not a problem to build dams in high seismic areas. There are scientists and engineers who believe dams can be designed to withstand the highest stress of earthquake by modified dam footing design, by reinforcing the dam structure, and by site improvement techniques. According to geologist H N Srivastava,

⁵⁶ Md. Rafiqul Islam and Mohammed Omar Faruque 'Seismic Slope Stability of the Tipaimukh Dam of North-eastern India: A Numerical Modelling Approach' [2013] 2(3) *Earth Science* 73-87.

⁵⁷ Arora and Kipgen, above n 27.

⁵⁸ Islam and Faruque, above n 56.

⁵⁹ Ibid.

The argument that dams should not be built in highly seismic zones is not only unsound from the point of view of the national economy, but is also not supported by the trends of seismic activity as in the case of high dams built in similar regions elsewhere.⁶⁰

Earthquakes have become more regular and every continent is facing increasing numbers of devastating earthquakes with many people losing their lives. The recent earthquake in Japan and following tsunami is a stark reminder to the people what an earthquake can do. Thousands of people died, a number of cities became unliveable and nuclear power stations became long term disaster zone. The recent earthquake in Nepal is close to the Tipaimukh dam site that killed thousands of people and, for a country like Nepal, it will take them many years to recover. Just in August 2016 we saw an earthquake in Italy that killed a few hundred people. As mentioned earlier, the state of Manipur faces earthquakes more regularly than any other places on earth. In January 2016 there was a 6.8 magnitude earthquake that hit Manipur killing 9 people.⁶¹ The area that was hit by earthquake was mostly rural so the death toll was not high. Considering the recent seismic activities in the area it is clear that if one of those mega dams is destroyed by the earthquake there will be disaster.

3.6 The effects of dam on neighbouring Bangladesh

Bangladesh is a country with an area of 147 570 sq km and a population of about 160.0 million. India surrounds the country in three sides (i.e., West, North and East), sharing some 3715.18 kilometres of common border (this is about 93% of Bangladesh's entire land borderlines). Bangladesh's other neighbour is Myanmar which is on the south-east border. Almost the entire country lies in the active delta of three of the world's major rivers the Ganges, the Brahmaputra, and the Meghna ('GBM'). It is also estimated that on a yearly basis, about 77 percent of water supply comes from surface water sources.⁶²

The water bodies/wetlands shelter 267 fresh water fish species and about 80 per cent of the animal protein intake in the daily diet of the people comes from fish. The fisheries sector, contributes about 6 percent to the Gross Domestic Product ('GDP') and 12 percent to the

⁶⁰ H. N. Srivastava, *Forecasting Earthquake* (National Book Trust, New Delhi 1983).

⁶¹ 'Earthquake hits India's Manipur state' *BBC News* (online) 4 January 2016, <<http://www.bbc.com/news/world-asia-india-35219069>>.

⁶² 'Bangladesh: Climate Change & Sustainable Development' (Report no-21104BD, World Bank, 10 October 2000).

export earning of Bangladesh. The fisheries sector provides full time employment to an estimated 2.0 million people. Wetlands are part and parcel of human life and also home of 125 species of water fowls, 17 species of mangrove trees and about 30 species of medicinal plants.⁶³

Bangladesh gets about 7-8 percent of its water from Barak Valley.⁶⁴ If the Tipaimukh dam is constructed in the Barak River, it will dry out the corresponding Surma and Kushiara Rivers in Bangladesh in dry seasons (November to May), which will have devastating effect in the north-east division of Bangladesh.⁶⁵ The Surma and Kushiara Rivers are also the source of water for the Mighty Meghna River (part of GBM⁶⁶ catchment) that flows through Bangladesh. Any kind of disruption to the flow of the water will cause interference to the long-established ways of living by drastically altering the river regime. Disrupting river flows downstream will have serious implications for aquatic life, riparian communities, groundwater recharge, impacts on flora, fauna and overall bio-diversity. The Tipaimukh dam will also be the cause of floods, droughts, soil erosion, siltation (river bed rise) and salinity.⁶⁷

Historically Bangladesh has very long relations with India regarding Transboundary Rivers. Bangladesh shares 54 cross boundary rivers with India.⁶⁸ On 24 November 1972 India and Bangladesh, recognising the importance of resolving disputed water issues, established the Joint Rivers Commission ('JRC') to ensure that the most effective joint efforts were adopted to maximise the benefits from common rivers. But up until today Bangladesh has only entered into one treaty with India regarding cross boundary rivers and that is the *Bangladesh-India Treaty on Sharing the Waters of the Ganges River 1996* (signed 12 December 1996). This treaty was made after the expiry of 1977 Agreement on Sharing of the Ganges' Waters. As a follow up to the 1996 Treaty, the India-Bangladesh Joint Committees of Experts ('JCE') have been set up on both sides for monitoring its implementation.⁶⁹ Bangladesh and India are now working on the Teesta River treaty and finding common ground on the Tipaimukh dam.

⁶³ Ibid.

⁶⁴ Md Saidul Islam and Md Nazrul Islam 'Environmentalism of the poor: the Tipaimukh Dam, ecological disasters and environmental resistance beyond borders' (2015) 2:27 *Bandung: Journal of the Global South*.

⁶⁵ Ibid.

⁶⁶ The Ganges, Brahmaputra and Meghna basin.

⁶⁷ Islam and Islam, above n 64.

⁶⁸ Sazzad Hossain 'Ganges water treaty between Bangladesh and India, 1996 and its prospects for sub-regional cooperation' Paper submitted at Mekong River Commission Summit <www.mrcsummit.org/presentations/track3/1.3-b-Conges-water-treaty-MirSajjad.pdf>.

⁶⁹ Ibid.

To stop the devastating effects of the proposed dam the politicians, civil society, environmental groups, human rights organisations, student and community groups held hundreds of rallies and protests in Bangladesh and around the world. Alongside demonstrations and rallies, the support groups also started an online campaign against the dam. Bangladeshi expatriates living in different countries observed rallies and programmes outside Bangladesh including different cities in India, Canberra, Tokyo, New York and London. To gain public awareness, the protests group arranged a long march from the city of Sylhet in northeast of Bangladesh to Tipaimukh dam site on 29 November 2009. It was attended by British Member of Parliament George Galloway and his delegation. The demonstration described the dam, with its potential impact of both depriving the Sylhet Division⁷⁰ of vital water and threat of serious flooding, as a weapon of mass destruction.⁷¹

Bangladesh has always had concerns about dam building and water diversion projects in the upper riparian country India. India has undertaken many projects to transfer water from surplus basins to the deficits by interlinking its rivers, and many of these rivers are common rivers between Bangladesh and India. After the bitter experience of the 'Farakka Barrage' on the Ganges and water diversion from the Teesta River, Bangladeshi people are very pessimistic about the Tipaimukh project. Farakka Barrage is a water diversion project in the Indian State of West Bengal and about 16.5 kilometres from the border of Bangladesh.⁷² This barrage was commissioned in 1975 to divert surplus water to Bhagirathi and Hooghly Rivers, and as a result the downstream areas in Bangladesh faced devastating consequences. Bangladesh suffered huge drought and decreased agricultural production, fishing, navigation and human health, and in the long run the characteristic of many Bangladeshi rivers have changed along with the ecosystem of southwest part of Bangladesh.⁷³ Bangladeshi people know that a strong upper riparian country like India can use technology, infrastructure and military power to exploit water resources without considering the rights of the lower riparian country.

⁷⁰ North-eastern division of Bangladesh.

⁷¹ 'British MP marches to border: protest dam', *The New Indian Express* (online), 30 November 2009 <<http://www.newindianexpress.com/world/article162505.ece>>.

⁷² Mohammad Abul Kawser and Md. Abdus Samad 'Political history of Farakka Barrage and its effects on environment in Bangladesh' (2016) 2:16 *Bandung: Journal of the Global South*.

⁷³ Ibid.

4 Current developments

From the literature review it is clear that the proposed dam will have severe devastating effects on the local indigenous peoples, ecosystem and people of Bangladesh. The goal of my thesis is to find the laws and regulations to oppose the dam, but before that I want to discuss the current developments of the dam. From the activist's point of view it is important to follow the moves of the regulatory authority and government to devise further courses of action. The planning for Tipaimukh dam was made many years ago but the process is still ongoing. The people who are against the dam are reinforcing their opposition on many fronts. The agencies in favour of the dam are constantly pressuring the regulatory authority for permission for forest clearance and trying to pursue other means to force the people to accept the consequences of the dam. In addition to these developments the cross-boundary neighbour Bangladesh have started new negotiations with the Narendra Modi government of India for a better outcome that does not disadvantage them.

4.1 Continuing opposition to the dam

In the approval process of the Tipaimukh dam five public hearings were held in Tamenglong, Keimai, Mizoram, Tipaimukh and Churachandpur Districts during 2004-2008. The public hearing in Keimai district could not be organised due to public protest.⁷⁴ The EIA report was submitted in August 2007 by the Agriculture Finance Corporation based in Mumbai India.⁷⁵ The tribal peoples, civil society and many other organisations argue that the public hearing conducted during the EIA process was merely ceremonial, it did not follow proper process, and lacked accountability. Public participation was not there because the meetings were conducted with the protection of armed men from Assam Rifles and Manipur Police. The Action Committee against Tipaimukh Project is an umbrella organisation for 25 other groups that are protesting against the dam.⁷⁶ Among those organisations the most active are Committee Against TD ('CATD'), Hmar Students Association ('HAS'), Citizens Concern for Dam and Development ('CCDD') and Sinlung Indigenous Peoples Human Rights

⁷⁴ Jiten Yumnam, '*High Tipaimukh dam negotiations sans people*', (6 October 2016) E-Pao <http://e-pao.net/epSubPageExtracto.asp?src=news_section.opinions.opinion_on_building_of_Tipaimukh_dam.High_Tipaimukh_dam_negotiations_sans_peoples>.

⁷⁵ Arora and Kipgen, above n 27.

⁷⁶ Ibid.

Organization ('SIPHRO').⁷⁷ These organisations are regularly engaged in activities like mass demonstrations, massive rallies, citizens' concerns, submissions to consultation meetings, international advocacy etc. In an open letter the Naga Women's Union of Manipur declared the Tipaimukh dam as state supported human rights abuse.⁷⁸

4.2 The FAC decision

Under The *Forest Conservation Act 1980* any development for non-forest purposes must get approval for environment clearance and forest clearance from the Forest Advisory Committee ('FAC') of the Ministry of Environment and Forest ('MoEF'). Immediately after the flawed public consultation meetings and public hearings from 2004 to 2008 the MoEF gave the Tipaimukh project Environment clearance on 24 October of 2008.⁷⁹ But the local people and the advocacy groups continued their oppositions to the dam and argued that the decision did not follow the will of the people and was granted based on an incomplete Environmental Impact Assessment and Social Impact Assessment.

Later, the Ministry of Power and National Hydroelectric Power Corporation ('NHPC') applied to the FAC for the diversion of 22777.50 hectares of forest land to proceed with the project. The proposal was discussed by the FAC in its meeting on 11 and 12 January 2012 and the committee acknowledged that the project involves diversion of large forest land and felling of more than 78 lakh (7.8 million) trees in Manipur alone.⁸⁰ The FAC decided to form a sub-committee consisting of experts in the field of ecology, wildlife and hydrology for an on-the-spot assessment of the impacts on the flora, fauna and socio economic conditions of the local residents. The sub-committee Chaired by Dr Mohammad Firoz Ahmed was also instructed to suggest appropriate measures like reduction of dam height so that the project

⁷⁷ Jhimli Bhattacharjee 'Dams and Environment Movement: The Cases from India's North East' [2013] 3(11) *International Journal of Scientific and Research Publication*.

⁷⁸ Islam and Islam, above n 64.

⁷⁹ Iboyaima Laithanbam, 'Activists welcomes rejection of Tipaimukh dam by FAC', *The Hindu* (online) 9 August 2013 <<http://www.thehindu.com/news/national/other-states/activists-welcomes-rejection-of-tipaimukh-dam-by-fac/article5006409.ece>>.

⁸⁰ Forest Advisory Committee Meeting, Agenda No. 3, 11-12 July 2013 <http://forestclearance.nic.in/writereaddata/FAC_Minutes/101129123412131con11and12July2013.pdf>.

can go through. But the sub-committee failed to inspect the proposed forest land due to some unavoidable reasons as pointed out by the FAC.⁸¹

The Forest Advisory Committee in pursuance of the Ministry of Environment and Forest ultimately decided to proceed without the report of the sub-committee. On 11 and 12 July 2013, the FAC reviewed the application of forest clearance and rejected it with the following observations:⁸²

- Since the *Forest Conservation Act 1980* came to force a total of 118 184 hectares of forest land was diverted for the execution of 497 hydroelectric projects in the entire country, but only the Tipaimukh project requires clearance of 24 329 hectares of land which is one fifth of total land cleared for the said 497 hydroelectric projects.
- The forest land required for this project is more than 100 times the average rate of forest diverted for hydroelectric project approved under The *Forest Conservation Act 1980*.
- Per megawatt required of forest land (16 hectares of land per megawatt) for this project is much higher than the average per megawatt required for the existing hydroelectric projects in the country.
- The required forest land for this project is almost two-thirds of the average annual rate of diversion for non-forest purpose (35 890 hectares annually).
- The project requires diversion of 7.8 million trees and 27 000 bamboo culms in the state of Manipur alone.
- The forest is home to several flora and fauna listed under the schedules of *Wildlife (Protection) Act 1972*. The forest is the known habitat of Jungle fowl, Barking deer, Wild Boar, Assamese macaque, Leopard, Clouded Leopard, Slow Lorries, Golden Cat, Hoolock Gibbon, Capped Langoor, Pangolin, Hog Badger, Himalayan Black Bear, Great Indian Hornbill and many more flora and fauna.
- The Principal Chief Conservator of Forest of Manipur observed that no compensatory measures would help in mitigating the adverse impact of the loss of forest on the habitat, flora, fauna, biodiversity, micro-climate and environment.

⁸¹ Ibid.

⁸² Ibid.

- Also according to the Chief Conservator of Forest (Central), North Eastern Regional Office, compensatory measures may not prove effective for the loss of huge stretch of critically important forest and wildlife habitat.
- The project involves displacement of 12 villages with the population of 2027 Scheduled tribes of 557 families.
- Several representations were made against the proposal by the individuals, civil society and environmental groups.
- The project will generate 826 jobs that is not commensurate with the loss of land and natural resources that is main source of livelihood of the tribal population.⁸³

The FAC made it clear that the ‘...very high ecological, environmental and social impact/cost of the diversion of the vast tract of forest land will far outweigh the benefits likely to accrue from the project.’⁸⁴ Considering all the above circumstances the FAC decided not to approve the diversion of forest land for the development of the proposed dam. The committee recommended the government and related agencies to explore other avenues like scaling down the project to a smaller sized one.

The FAC sent a strong message to the government about the need to protect the social and natural environment, but unfortunately the decision made by the FAC is not binding upon the authority. The concerned Minister can overturn the decision and still proceed with the plan. In response to the FAC’s rejection of forest clearance, the government authority has responded that they have identified 1279 new sites in northeast India to build mini small scale hydroelectric projects.⁸⁵ This decision has made the people of northeast region more concerned about their livelihood and the protection of environment because small scale hydroelectric projects that produce less than 5 MW of electricity do not come under the Manipur Hydro Power Policy 2012 and can operate without strict regulations.

4.3 Negotiation with Bangladesh

After the present Government of India with Mr Narendra Damodradas Modi as its Prime Minister came to power, they engaged in new negotiations with Bangladesh on many matters

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Laithanbam, above n 79.

including the cross border water issues. When the conservative nationalist party was in power in Bangladesh they did not have warm relations with India, but in 2009 when alleged pro-Indian Sheikh Hasina government came to power in Bangladesh the negotiations regarding Tipaimukh dam started and since then have proceeded at a rapid pace. On 28 August 2012, the Indian government agreed to give two more years to Bangladesh so that Bangladesh can conduct their own Environmental Impact Assessment on their side and India will conduct their own Environmental Impact Statement on their side.⁸⁶ The problem is that the next day the Indian government granted \$200 Million in foreign Aid to Bangladesh (another \$800 million promised) and the terms of reference for the EIAs of both governments are very hard to access. This situation has made the people very skeptical about the progress of negotiations between the people and the governments.⁸⁷

5. Case laws and people power

As noted, my research contributes to the literature by considering the issue of building the Tipaimukh dam in its legal context and to consider what legal arguments favour building the dam and how these arguments could be challenged in order to promote the rights of indigenous peoples and the environment affected by the dam. In adopting this approach, I will draw on Indian law, but I will also ground my research on court cases and peoples' movements, both in India and abroad, where the rights of the people prevailed over government's development plans. These cases provide models that could be used to challenge the building of the dam in my case study. They illustrate well how people can influence government and use the law to protect their rights. I have adopted this approach in view of the fact that India is a common law country and in absence of precedents in India or in addition to present precedents, the Supreme Court of India can accept the references from other common law countries like Australia and Canada. The case references from other common law countries are often mentioned in the Supreme Court of India to strengthen the argument of the parties. In this regard, Justice K G Balakrishnan,⁸⁸ Chief Justice of Indian Supreme Court, stated that: 'All of us will readily agree to the observation that constitutional systems in several countries, especially those belonging to the Common-law tradition have

⁸⁶ Yumnam and Koijam, above n 51.

⁸⁷ Ibid.

⁸⁸ K G Balakrishnan is the 37th Chief Justice of India (duration 14 January 2007 – 12 May 2010).

been routinely borrowing doctrine and precedents from each other.⁸⁹ The Supreme Court of India has also considered the decisions of United States of America. In the case of *Maneka Gandhi v Union of India*,⁹⁰ the Indian Supreme Court relied on United States decisions to decide fairness, reasonableness and non-arbitrariness concerning restrictions on the issue of passport to the plaintiff.⁹¹

5.1 Indian experience

A very significant and notable example concerning the protection of indigenous rights through judicial intervention is the *Niyamgiri Case*.⁹² In 2003 the Indian state of Orissa signed a memorandum of understanding with Vedanta Resources of UK to set up an open cast 670 hectares Bauxite mine in Niyamgiri hills and setup an alumina refinery. This area is native to the local Dongria Kondh tribe and they consider the Niyamgiri hill as their sacred place and have worshipped the Niyamgiri hill for many centuries. They argued that the development will destroy their culture and undermine their customary rights to manage their own affairs. From the beginning the local tribe and civil society launched huge protests nationally and internationally. The people alleged that the project violated the provisions of several Indian laws e.g. the *Forest Rights Act 2006*, the *Forest Conservation Act 1980*, and the *Environmental Protection Act 1986*. The people argued that the tribal people cannot be relocated under *Forest Rights Act 2006* unless they are a threat to the endangered wildlife. The alumina refinery was built despite the protest, but the Forest Advisory Committee ('FAC') of the Ministry of Environment and Forest ('MoEF') refused to give permission to the second stage of forest clearance. This was because the conditions of EIA had not been followed and because of the huge social impact of the project on the native tribal people. This writ petition was brought before the court by the petitioner against the Ministry of Forests' decision not to give permission to the second stage of forest clearance for the mining. In its decision the court made it clear that the state holds the natural resource as a trustee for the people. It recognised the individual, community and cultural rights of the native tribal people under the *Panchayat (Extension to scheduled Area) Act 1996* and the significance of Gram

⁸⁹ K G Balakrishnan, 'The role of Foreign Precedents in a Country's Legal System' (Lecture at Northwestern University, Illinois, 28 October 2008).

⁹⁰ (1978) AIR SC 597.

⁹¹ Balakrishnan, above n 89.

⁹² *Orissa Mining Corporation v. Ministry of Environment and Forest* (2011) WP (civil) No. 180.

Sabhas in decision making.⁹³ The court ruling made it clear that public consultations in Gram Sabhas take place independently and completely without any influence. Later the Dongria community unanimously rejected the proposed project in 12 consultation meetings and ultimately the central government blocked the \$2 billion mining project.

Another important example is the Loharinag Pala Hydropower project. This project was planned by the National Thermal Power Corporation Ltd ('NTPC') to have an output capacity of 600 MW in the Bhagirathi River. But the work was stopped in 2009 after professor G D Agarwal, one of India's eminent scientists, came close to dying due to his fasting in protest of the project. At last in 2010 the project was officially scrapped by the government because it recognised the religious importance of the river and also on the ground that the social and environmental costs outweighed the financial costs of the project.⁹⁴ The government also declared that area of the Bhagirathi River was environmentally sensitive so that no new projects can be planned in the future.⁹⁵

Another very successful achievement of the affected people and their long term protest is the closing down of Karnataka Pulpwood Ltd ('KPL') in the Indian state of Karnataka. In 1984 the State of Karnataka leased 28 350 hectares of reserved forest lands to Karnataka Pulpwood Ltd for eucalyptus plantations. In the approval process the state government overlooked the claims of local villagers that they depended on the land for their livelihood. As a result, 'save the common lands movements' was launched to claim back the land. An initial petition and meeting with the chief minister to cancel the agreement did not work out. Later, in 1986, the people filed a Public Interest Litigation ('PIL') in the Supreme Court which granted a stay order to maintain the status quo regarding the possession of the land, but the operation continued.⁹⁶ In the meantime, the residents of the surrounding villages launched a Satyagraha (holding firmly on the truth) in November 1987. All the protests and struggles by the people made the legislators rethink their position and later 72 legislators from different political parties brought effective pressure on the government to close the KPL. Eventually, on 3 October 1991, the government wound up the KPL after 7 years in operation.⁹⁷

⁹³ The Gram Sabha is a meeting of all adults of an area and any person who is 18 years old or more and who has the right to vote is a member of the Gram Sabha <<http://www.zahie.com/categories/details/india/gram-sabha-in-india.html>>.

⁹⁴ 'Loharinag Pala hydel project to be scrapped', *The Hindu* (online), 21 August 2010 <<http://www.thehindu.com/news/national/loharinag-pala-hydel-project-to-be-scrapped/article584356.ece>>.

⁹⁵ Ibid.

⁹⁶ K N Ninan & S Puttaswamalah 'People Power' the Down to Earth 31 March 1998 <www.downtoearth.org.in/blog/people-power-21438>.

⁹⁷ Ibid.

The Indian court system plays a vital role in the conservation of ecological balance and protection of indigenous rights. In particular, it is through Public Interest Litigation (PIL) in the Supreme Court of India that applicants have managed to get results in favour of the people and the environment. The Supreme Court plays a very important role in ‘...protecting the rights of tribal people and thus balancing the symbiotic relationship between the forest dwellers and the goal of forest conservation’.⁹⁸ In preserving the rights of the indigenous people and the environment, the Supreme Court not only gives directions but also can form committees to enforce these directions and ask for further reports regarding the progress of the directions. In the case of *TN Godavarman Thirumalkpad v Union of India*,⁹⁹ the court ordered the government to cease all non-forest activities, and as a result the wood based industries, mining and quarrying activities in the forest were stopped immediately. The court formed central and state committees to enforce the directions of the case and issued orders to enforce the provision of the *Forest Conservation Act 1980*.¹⁰⁰ Also in *Shree Bhagawati Tea Estates v. Government of India*,¹⁰¹ the Supreme Court, while upholding the legality of *Kerala Private Forests Act 1971*, recognised the importance of forest to address the livelihood concerns of the poor and the marginalised.¹⁰²

In recent years, the north and northeast parts of India have experienced some devastating floods. In 2013 the state of Uttarakhand was swept by devastating flood and the people blamed many unplanned dams on the Ganges river for the flood. To find out the cause of the flood an expert committee was formed and the 11-member expert committee recommended that 23 dams on the Alaknanda and Bhagirathi Rivers (two main tributaries of river Ganga) be scrapped. The Supreme Court responded by stopping the construction work of these dams and asked for a review committee to examine the environment clearance given to six of those dams.¹⁰³

⁹⁸ *Samatha v. State of AP* (1997) AIR SC 3297, cited in P. Madhuri ‘The Forest Conservation in India and the Role of Indian Supreme Court: A Critical Analysis’ [2013] 13(4) *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* 55-61.

⁹⁹ (1997) AIR SC 1228.

¹⁰⁰ P. Madhuri ‘The Forest Conservation in India and the Role of Indian Supreme Court: A Critical Analysis’ [2013] 13(4) *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* 55-61.

¹⁰¹ (1996) AIR SC 201.

¹⁰² *Ibid.*

¹⁰³ Janaki Kenia, ‘Indian government to review hydroelectric dams in two river basins’, *The Guardian* (online), 30 May 2015 <<https://www.theguardian.com/environment/india-untamed/2015/may/30/indian-government-to-review-hydroelectric-dams-two-river-basins>>.

The Indian Supreme Court is very proactive in the matter of environmental protection and most probably one of the leading Supreme courts in the world in this matter. To protect the environment, the Supreme Court of India issued a very important direction regarding control of pollution. In *MC Mehta v. Union of India*,¹⁰⁴ the Supreme Court of India directed the government to take necessary action to control the high pollution in the city of Delhi as being the most polluted city in the world and to mitigate the hardship of the people. From all these instances, it is clear that with the help of appropriate legislation and court system, the rights of the people can be protected.

Another example of people's power is the protest against the Narmada dam in the States of Madhya Pradesh, Maharashtra and Gujarat. Narmada is the fifth largest river in India and about 1312 km long.¹⁰⁵ The idea of damming Narmada River was considered during late 19th century and by 1980s the Indian governments draw a master plan to build 30 large dams, 135 medium dams and 3000 small dams on the Narmada and its tributaries.¹⁰⁶ A pressure group called Narmada Bachao Andolan (NBA) was formed to give a voice to the people who were affected by the planned dams. In 1990 the Bargi Dam was finished and this dam displaced about 114000 people from 162 villages. The government, however, did not offer any resettlement and only little cash compensation. The Sardar Sarovar Dam was the largest dam planned in the Narmada River, and NBA argued that the benefits would never justify the irreversible loss of forest, fisheries, farmland, culture and livelihood of thousands of displaced people.¹⁰⁷ The NBA's campaign even convinced the World Bank to withdraw its support from the project. In 1994 the NBA filled a writ petition in the Supreme Court of India to stop the construction of the dam. The court initially stopped the construction of the dam, but later approved the dam with clear direction for the rehabilitation of the affected people. Substantial compliance conditions were imposed for environment clearance and also ensure steps to protect, restore and improve the environment.¹⁰⁸ The judgment of the case gave many positive directions and observations in favour of the people, which could be used as a valuable reference in any future public interest litigation.

¹⁰⁴ (2015) 43 SCD 193.

¹⁰⁵ Dinah L Shelton and Donald K Anton 'Problems in Human Rights and Large Dam' (2011) *GW Law Faculty Publications & Other Works*, Paper 1075.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid*; *Narmada Bachao Andolan v Union of India* (2000) 10 SCC 664.

5.2 International experience

I will now discuss a few international cases to develop my argument. We need to understand the practices around the world regarding the preservation of indigenous rights and protection of the environment. I will cite a few examples where, with constant pressure and protest from community and the help of the legal system, people have managed to retain the ownership over traditional land and stop potentially harmful development by forcing the government to reverse their decisions. There are many instances around the world where people have used their organisational power, effective advocacy and networking to successfully overturn development decisions by government or private corporations. Whenever a development has the potential to destroy the environment, the cultures of indigenous peoples, the livelihood of the people or people's normal way life, there is always a political consciousness among the people to rally together against such developments or decisions. This discussion will enable us to compare the Indian cases with the cases around the world. For this purpose, I will use examples from Australia, Canada, Malaysia and USA.

5.2.1 Australia

To begin, I will discuss one of the most significant legal actions that gave the indigenous people the traditional ownership over land in Australia. It is the *Mabo Case*.¹⁰⁹ The decision of this case is very significant because it recognised the land rights of the Meriam people and declared they were the traditional owners of the Murray Islands in the Torres Strait. This case mainly challenged two concepts of the then Australian legal system, the first one is the concept of terra nullius, that is the assumption that the Aboriginal and Torres Strait people had no concept of land ownership before the British arrival in 1788 and second, that the ownership of all land belonged to the Crown and abolished any existing native title rights.¹¹⁰

This case was filed in the High Court of Australia in 1982 by Eddie Koki Mabo with four others against the State of Queensland and the Commonwealth of Australia claiming native title over the Murray Islands. But before the hearing of the case started the Queensland government enacted the *Queensland Coast Islands Declaratory Act 1985 (Qld)* that retrospectively extinguished the rights of the Meriam people over the Murray islands. As a

¹⁰⁹ *Mabo v. Queensland (No 2)* [1992] HCA 23.

¹¹⁰ 'Mabo Case' (15 August 2016) Australian Institute of Aboriginal and Torres Strait Islander Studies, <<http://aistsis.gov.au/explore/articles/mabo-case>>.

result, Eddie Mabo and others filed a second case known as the *Mabo v. Queensland (No 1)*¹¹¹ before the High Court of Australia challenging the validity of the Queensland Act. The High Court decided that the Queensland Act was invalid because it was inconsistent with the provisions of the *Racial Discrimination Act 1975 (Cth)*.¹¹²

The judgment of the original case known as the *Mabo v. Queensland (No 2)*¹¹³ was delivered by seven Justices of the High court on 3 June 1992 and six of those justices declared that the claim of Meriam people was valid and the people are entitled to the possession, occupation, use and enjoyment of the Murray Islands. This judgment was a landmark decision that overturned the concept of terra nullius in Australia and inserted the doctrine of native title in Australian law.¹¹⁴ It recognised that the indigenous people lived in Australia for thousands of years and had title to the land and prompted the Commonwealth government to enact the *Native Title Act 1993 (Cth)* in recognition and protection of native title. This was a great achievement for Aboriginal and Torres Strait Islander peoples to reclaim their rights over land. However, we need to keep in mind that the *Native Title Act 1993 (Cth)* only gave claimant parties the right to negotiate in good faith in the matter of any development projects like grants of exploration and mining tenements (including oil and gas interests),¹¹⁵ but not the right to veto. In reality the indigenous peoples in Australia are far behind in having their civil rights protected and their social and economic conditions improved. A developed country like Australia needs to be more proactive to achieve these rights and will have to fast track the constitutional recognition of indigenous peoples. Thus, while the Mabo decision was a great victory, the lesson to be learned from this is that these cases represents only small steps in protecting the rights of indigenous peoples. This needs to be borne in mind in my case study of the Tipaimukh dam.

Besides protecting rights of the indigenous people, the legal system and the general population have played a very important role in the protection of environment and ecological diversity in Australia. The *Tasmanian Dam Case*¹¹⁶ is a classic example in Australia where the opposition from the people and the government resisted the building of a hydroelectric dam. This is the last known proposed hydroelectric dam in Australia and had the potential of

¹¹¹ *Mabo v. Queensland* (1988) HCA 69.

¹¹² Above n 110.

¹¹³ Above n 109.

¹¹⁴ Ninan and Puttaswamalah, above n 96.

¹¹⁵ 'What is the right to negotiate?' (July 2014) National Native Title Tribunal <<http://www.nntt.gov.au/futureacts/Pages/Negotiation.aspx>>.

¹¹⁶ *Commonwealth v. Tasmania* (1983) 158 CLR 1.

destroying ecological balance around Franklin River in Tasmania. In 1978, the Hydro Electric commission, a body owned by the Tasmanian Government proposed the construction of a hydroelectric dam in the Gordon River that would flood a large section of the Franklin river in South-West Tasmania. But the environmental groups and the Federal government was against the proposed dam. In 1982 UNESCO declared the Franklin area a world heritage site and in 1983 the federal government passed the *World Heritage Properties Conservation Act 1983* that prohibits clearing, excavation and other activities in world heritage areas. But the Tasmanian government challenged these actions arguing that the *Australian Constitution* gave no authority to the federal government to make such regulation. The High Court held that the federal government had legitimately prevented the construction of the dam. This case ended the proposed hydroelectric dam in Tasmania and since then there are very few plans in Australia to build dams of this kind.

Again, constant and persistent opposition to projects that have potential of harming the environment and the culture of people can force the government to change their policies and enact laws. Huge protests against the coal seam gas exploration by the people and media is another example of collective power in Australia. In some parts of New South Wales and Victoria coal seam gas extraction is a big issue. There has been a huge outcry and opposition against the coal seam gas operation. Most of the community near coal seam gas operations do not want them near them for fear of environmental degradation of farming lands and contamination of the ground water. The Victorian government even decided to introduce legislation in the parliament to permanently ban unconventional gas exploration including coal seam gas and fracking.¹¹⁷

Also the NSW government requested NSW chief scientist Professor Mary O’Kane to conduct a comprehensive review of coal seam gas activities focusing on human health and environmental impacts. After the review the chief scientist set out some recommendations as priority for conducting coal seam gas operations in NSW:

- Better science and information to deliver world’s best practice regulation.
- Pause, reset and recommence gas exploration on our terms
- Strong and certain regulations

¹¹⁷ ‘Victorian unconventional gas exploration ban to end fracking and CSG extraction’, *ABC news* (online) Australia, 30 August 2016, <<http://www.abc.net.au/news/2016-08-30/victoria-to-ban-csg-fracking-and-unconventional-gas-exploration/7796944>>.

- Sharing benefit
- Secure NSW's gas supply needs.

People are constantly arguing their case in many community meetings and protests in rural NSW. Government already backed off from some coal seam gas exploration projects and some are delayed due to the protests.

People are also against coal powered power generators that can be very harmful for human health and the environment. A 600 MW coal powered power plant was proposed by the Coal Technology Company HRL in Victoria but the whole community was against it. Subsequently a five-year long campaign by Greenpeace, Environment Victoria, Quit coal and many others was successful in stopping the last proposed coal powered power station in Victoria. They succeeded by persuading the government to cancel \$100 million grant for HRL.

5.2.2 Canada

Canada is another common law country that took a very significant step towards the establishment of native title rights of the aboriginal peoples. The rights of the aboriginal peoples were strengthened by the *Delgamuukw v British Columbia*,¹¹⁸ where the court acknowledged that the aboriginal peoples derive their native title from their historic occupation, use and possession of their tribal lands.¹¹⁹ This case describes the nature of protection given to aboriginal title under section 35(1) of the *Constitution Act 1982* and also finds how aboriginal title may be proved and outlines the test for infringement of aboriginal title.¹²⁰ The test of determination of native title under *Delgamuukw v British Columbia* was further tested in the *Tsilhqot'in v British Columbia*,¹²¹ where the court granted the Tsilhqot'in people ownership over 1750 square km of land with the right to use and control the land and reap the benefits from it and also reinforced the legal duties of the government to consult with the aboriginal groups in the case of any development projects.¹²²

¹¹⁸ (1997) 3 SCR 1010.

¹¹⁹ Mary C Hurley 'Aboriginal Title: The Supreme Court of Canada Decision in *Delgamuukw v British Columbia*' (Law and Government Division, Library of Parliament, Canada January 1998).

¹²⁰ Ibid.

¹²¹ *Tsilhqot'in Nation v British Columbia* (2014) 2 SCR 257.

¹²² Tonda MacCharles, 'Supreme Court grants land title to B. C. First Nation in Landmark case', *the Toronto Star*, 24 June 2014
<https://www.thestar.com/news/Canada/2014/06/26/supreme_court_grants_land_title_to_bc_first_nation_in_landmark_case.html>.

In Canada, a recent Federal Court ruling was a big victory for a group of aboriginal people against a \$7.9 billion Northern Gateway pipeline project that was planned from the oil sands of Alberta to British Columbia in Canada's West coast.¹²³ This project was planned by a Canadian crude oil and liquid pipeline and storage company Enbridge Inc. and opposed by aboriginal groups called First Nations and Yinka Dene Alliance and many environmental groups. This pipeline was planned across a large section of First Nations land that would potentially affect First Nations communities in many ways. This project was approved by the previous conservative government in 2014. In response aboriginal communities along with environmental groups filed a lawsuit in the Federal Court to overturn the approval.¹²⁴ The Federal Court of Appeal overturned the permit to build the pipeline due to lack of consultation with the aboriginal communities or inadequacies in consultation process. The court made it clear in its 153-page judgment,¹²⁵ that there were no real and sustained effort to pursue meaningful two-way dialogue to address the concerns of the aboriginal communities.¹²⁶ After the judgment the pipeline will need new approval from the government but it seems the new government does not want to pursue this project, and flagged that they want a moratorium on oil tanker traffic along the northern coast of British Columbia and this measure will make this pipeline unfeasible.¹²⁷ More good news for the aboriginal people is that the new Canadian Prime Minister Justin Trudeau is against the pipeline. Opposing the pipeline, he said 'on the Northern Gateway pipeline, I've said many times, the Great Bear Rainforest is no place for a crude oil pipeline.'¹²⁸ This court decision is very important for the preservation of the culture and heritage of many aboriginal communities in Canada. This judgment reveals serious flaws in the government's system of aboriginal consultation and can help the government to introduce more refined system of consultation. After this judgment, it was clear that the government will have to look at the system of not only consultation but also consent of the affected people.¹²⁹

¹²³ Matt DiLallo, 'Enbridge Inc's Northern Gateway Pipeline Isn't Looking Good', *The Motley Fool* (online), 18 July 2016 <<http://www.fool.ca/2016/07/18/the-outlook-for-enbridge-incs-northern-gateway-pipeline-isnt-looking-good>>.

¹²⁴ 'Canadian court overturns approval of oil pipeline opposed by indigenous groups', *The Guardian* (online), 1 July 2016 <<http://www.theguardian.com/world/2016/jun/30/Canadian-court-overturns-oil-pipeline-northern-gateway>>.

¹²⁵ *Coastal First Nations v British Columbia (Environment)* [2016] BCSC 34.

¹²⁶ Above n 124.

¹²⁷ Ibid.

¹²⁸ DiLallo, above n 123.

¹²⁹ Eli Cain 'Small Victory for Canada's First Nations Reveals Large Problems' (19 July 2016) The Council of Hemispheric Affairs <<http://www.coha.org/shall-victory-for-canadas-first-nations-reveals-large-problem>>.

5.2.3 Malaysia

Malaysia is a common law country and one of the South Asian countries where a 1997 landmark High Court decision recognised the native title for the indigenous peoples. In the case of *Adong bin Kuwau & Ors v Kerajaan Negeri Johor & Anor*,¹³⁰ the High Court decided that the indigenous peoples have the rights to their ancestral land based on a continuous and unbroken occupation since the time immemorial and have right to live on their lands as their forefathers' lived.¹³¹ This recognition of native title successfully followed in more successful High Court cases in Malaysia. In *Nor Anak Nyawai & Ors v Borneo Pulp Plantation Sdn Bhd & Ors case*,¹³² the plaintiffs claimed that the defendant timber company had trespassed and damaged their ancestral land by hiring contractors to clean their land for commercial timber development. The plaintiff also claimed that they have native customary rights over the disputed lands including the gardens, farms, the rivers and the jungles for hunting, fishing and gathering forest produce.¹³³ The court decided that the indigenous peoples have pre-existing rights under native laws and the government did not have clear indication to eliminate such customary rights.¹³⁴ The court also declared that the natives are free to exercise their customary rights in the disputed area and ordered to rectify the defendant's title by excluding the disputed area.

In another case, *Sagong bin Tasi & Ors v Kerajaan Negeri Selangor & Ors*,¹³⁵ the plaintiffs claimed that 38 acres of land used to construct a highway leading to the Kuala Lumpur International Airport was their ancestral land and they claimed compensation for the loss of the land. But the defendants regarded the land as state land and only offered compensation for plaintiffs' crops, fruit trees and buildings. In deciding this case the High Court took reference from the native title cases from Australia and Canada. The court specially considered *Mabo (No 2)*¹³⁶ and *Wik Peoples v Queensland*¹³⁷ from Australia and *Delgamuukw*¹³⁸ from Canada, and held that the plaintiffs have the rights over the land and

¹³⁰ (1997) 1 MLJ 418.

¹³¹ Alexander Xanthaki 'Land Rights of Indigenous Peoples in Southeast Asia' [2003] 4(2) *Melbourne Journal of International Law* 467-496.

¹³² (2001) 1 MLJ 241.

¹³³ Peter Crook 'After Adong: The Emerging Doctrine of Native Title in Malaysia' (2005) 3 *Journal of Malaysian and Comparative Law* 71-98.

¹³⁴ *Ibid.*

¹³⁵ (2002) 2 MLJ 591.

¹³⁶ *Mabo v. Queensland (No 2)* [1992] HCA 23.

¹³⁷ (1996) 187 CLR 1.

¹³⁸ *Delgamuukw v British Columbia* (1997) 3 SCR 1010.

also interests in the land.¹³⁹ The court found that the plaintiffs are entitled to compensation under the *Land Acquisition Act 1960*.¹⁴⁰ Some of these foreign cases were also referred in the earlier *Adong* and *Nor Anak Nyawai* cases.

As seen in the Malaysian cases, the High Court of Malaysia considered many case references from other common law counties and it is acceptable practice to do so. We have also seen how *Mabo* and *Delgamuukw* inspired the High Court of Malaysia. In my case study, I focus on these particular success stories as they are steps in the right direction towards upholding the rights of the indigenous peoples. However, I must acknowledge that as much as these cases illustrate how positive steps can occur, they are in the minority. Ultimately the success and longevity of these cases depends on the political will of the nation in which they occur and that would depend on how robust the legal system is in that particular nation to protect the rights of indigenous peoples.

5.2.4 United States of America

Any proactive leader who is the head of the government can form policies, and can also successfully persuade the parliament to enact laws and regulations that are favourable to the people and environment. In the same way that the Canadian Prime Minister Justine Trudeau took a moral stance against the development in the Canadian prime natural environment, former President of United States of America Barak Obama decided to veto against the stage three of Keystone XL pipeline on the basis that it would undercut America's efforts to lead on climate change.¹⁴¹ Despite the approval from both houses of the Parliament, President Obama decided that it was not in the interest of the people and officially rejected the TransCanada's application to build the pipeline. This proposed dirty oil pipeline united the community across USA and there has been more than 750 direct action and protests against it all over USA. The seven years long campaign resulted in a denial of presidential permit for construction of the pipeline. The President said that the pipeline's projected contribution to climate change was not in the national interest.

¹³⁹ Crook, above n 133.

¹⁴⁰ *Land Acquisition Act 1960* lays down the laws for land acquisition in Malaysia; Ibid.

¹⁴¹ Rebecca Leber, 'Four reasons Obama Rejected the Keystone XL Pipeline: Not all of them make environmentalists happy', *The New Republic* (online), 7 November 2015 <<http://www.newrepublic.com/article/123369/four-reasons-obama-rejected-keystone-xl-pipeline>>.

In India, the Prime Minister is a very powerful person and has vast power to form policies and laws that could favour the indigenous people to retain their land and practice their cultural traditions. It is possible to convince the Prime Minister through the advocacy that the Tipaimukh project will destroy the culture and livelihood of the indigenous people and will have long term effects on the ecology of the area. Following the example of his counterparts in Canada and USA the Prime Minister of India can decide against the proposed project.

It is clear that people in India and around the world have successfully challenged many development decisions by the government and corporations. In the case of the Tipaimukh dam, if the authority decides to proceed with the construction, then we have many instances in India and around the world that we could follow to form a challenging case in the court of law. As a common law country the cases in Australia, Canada and Malaysia can form a part of our arguments against the proposed dam. So, challenging the project is not going to be new territory for us, but the challenge has to be supported by laws. In the next section I will discuss what are the laws and policies available to the government to force the indigenous people to accept the project. This will give us better understanding of the government's position and help us form arguments against them.

6. Legal authority of the Governments

In view of the discussion of the cases in the previous section, I will consider the legal arguments grounded in Indian law in favour of the Tipaimukh dam in this section, and against it in the next. Since independence in 1947 the Parliament of India has enacted many laws that empowers the government to acquire people's land for public purposes. All the laws are enacted in line with the provisions of the *Constitution of India* that was adopted on 26 November 1949.

6.1 Legal authority of the government under the *Constitution of India*:

Article 31A of the *Constitution of India* provides the legal authority to acquire lands for development like dams and roads. According to art 31A, the acquisition of land, building or

structure is possible by the state provided that the payment of compensation at a rate which shall not be less than the market value.¹⁴² The acquisition of the land follows the legal principle '*Eminent Domain*'. This principle allows the government to acquire any private land and convert it to public use with payment of compensation.¹⁴³

In India, it is the obligation of the governments to provide ways for citizens to have personal freedom and economic solvency. Directive Principles of State Policy of the Indian *Constitution* contains provisions that allow the government to make laws and policies so that the people have jobs to provide for their family, effective communication, education and overall economic emancipation. Among other articles, art 41 of the *Constitution* sets out the provisions for jobs, education and growth. It says '(t)he state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want'. Also, art 43 of the *Constitution* aims to promote agriculture, industries and better ways of life.¹⁴⁴

The *Constitution* is the basis of the law, but the actual law that governs the acquisition of land and compensation is the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013* ('LARR'). This law came in to force on 1 January 2014 and replaces the *Land Acquisition Act 1894*. The main law that regulates land matters in the State of Manipur is the *Manipur Land Revenue and Reform Act 1960* ('MLRRA'). Both LARR and MLRRA provide for the acquisition of land for the state and corporate bodies for public purposes such as dam building.

¹⁴² Article 32A of the *Constitution of India* states: '...it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof'.

¹⁴³ Oxford Dictionary.

¹⁴⁴ Article 43 of the *Constitution of India* states: 'The state shall endeavour to secure, by suitable legislation or economic organisation or in any other way to all workers, agriculture, industrial or otherwise, work a living age, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas'.

6.2 Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013

The *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013* ('LARR') is the main piece of legislation that regulates the acquisition of land, rehabilitation and resettlement. The preamble to the Act defines its purpose to

...ensure, in consultation with institutions of local self-government and Gram Sabhas established under the constitution, a humane, participative informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owner of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired...

Section 2 of the Act empowers the government to acquire land for its own use, hold and control, including for public sector undertaking and public purpose. There is an extensive list of projects that are included under the heading 'public purpose' in this Act. Land can be acquired for projects like electricity generation, mining activities, water harvesting, water conservations and any infrastructure facility as may be notified in this regard by the central government.¹⁴⁵ The Department of Economic Affairs of the Ministry of Finance by notification number F. No. 13/6/2009-INF declared a Master list of Infrastructure Sub Sector for which land can be acquired. This list includes land acquisition for energy projects like electricity generation, electricity transmission and electricity distribution. Not only that, this Act also eases the path for acquisition of land for public private infrastructure projects.¹⁴⁶

Under LARR if the land is acquired by private companies then at least eighty percent of those affected families have to give their prior consent, but if it is for a public private partnership then the prior consent of at least seventy percent of those affected is enough. The process of obtaining consent shall be carried out along with the social impact assessment study and also no land shall be transferred by way of acquisition in the scheduled areas in contravention of any law.¹⁴⁷ In acquiring land for public purposes the appropriate government shall carry out a Social Impact Assessment in consultation with the concerned Panchayat, Municipality or

¹⁴⁵ *The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013* s 2(1)(b)(vii).

¹⁴⁶ *Ibid* s 2(2)(a).

¹⁴⁷ *Ibid* s 2(2)(b).

Municipal Corporation in the affected area. The government also should ensure that adequate representation has been given to the representatives of Panchayat and Gram Sabha in the process,¹⁴⁸ and make sure that a public hearing is held at the affected area with adequate notification.¹⁴⁹ While undertaking social impact assessment the authority shall consider how the project will affect the livelihood of the families in the region and its effects on infrastructure, community amenities, traditional tribal institutions and many other facilities.¹⁵⁰ The government must also carry out Environmental Impact Assessment study simultaneously with the Social Impact Assessment.¹⁵¹

Section 41(1) of the Act provides that no acquisition of land shall be made in the scheduled areas,¹⁵² but s 41(2) further provides it can be done only as a demonstrable last resort. Section 41(4) also says the involuntary displacement of the scheduled castes or the scheduled tribes' families is possible after prescribed development plan is prepared.

The government adopted the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill 2015* known as the Land Bill which created five special categories of land use: 1. Defence, 2. Rural infrastructure, 3. Affordable housing, 4. Industrial corridors and 5. Infrastructure projects including public private partnership ('PPP'). All of these are exempted from requiring Social Impact Assessment (SIA).¹⁵³

6.3 *Manipur Land Revenue and Reform Act 1960*

The *Manipur Land Revenue and Reform Act 1960* ('MLRRA') sets out the provisions of land ownership and land acquisition. The government of Manipur acknowledges that 10 percent of the geographical area of the state is valley areas and the remaining 90 percent is hill areas and 60 percent of the total population of the area lives in valley areas.¹⁵⁴ According to the census

¹⁴⁸ Ibid s 4.

¹⁴⁹ Ibid s 5.

¹⁵⁰ Ibid s 4(5).

¹⁵¹ Ibid s 4(4).

¹⁵² As described in the Fifth Schedule of *Indian Constitution*.

¹⁵³ 'Land Bill: Six facts you need to know', *The Hindu* (online), 11 March 2015 <<http://www.thehindu.com/news/national/land-bill-six-facts-you-need-to-know/article6978832.ece>>.

¹⁵⁴ The *Manipur Land Revenue and Land Reform (Seventh Amendment) Bill 2015*, <http://www.satp.org/satporgtp/countries/india/states/manipur/documents/papers/Manipur_Land_Revenue_and_Land_Reforms_Seventh_Admendment_Bill_2015.pdf>.

of 2011 the population density in valley areas is 730 while in the hill areas it is 61.¹⁵⁵ For this reason there is tremendous pressure on the land in valley areas and the government is planning to control the sale and use of land more cautiously and strictly. The government is also planning to develop the hill areas so that the pressure on the valley areas neutralise.

The MLRRA was enacted in the jurisdiction of the State of Manipur except in the hill areas, but the state government by notification in the Official Gazette can extend the whole or any part of any section of the Act to any of the hill areas of Manipur.¹⁵⁶ So the Act actually covers the whole of Manipur State including valley and hill areas. Section 99(1) of the MLRRA defines land ownership. It says '[e]very person who at the commencement of this Act holds any land from the government for agricultural purposes, whether as settlement-holder or as a pattadar¹⁵⁷ and his successors-in interest shall subject to the provisions of sub-section (2), become the owner thereof as and from such commencement.' But sub-s (2) says, 'no rights shall accrue under sub-section (1) in respect of lands which- (i)...(ii) have been acquired by the government for any purpose according to the provisions of any law in force for the time being relating to acquisition of land.' The government already extended the jurisdiction of this Act to indigenous tribal lands. In a recent notification, 89 villages in the Churachandpur district and 14 Villages in the Tamenglong and Senapati districts each had been brought under the Act.¹⁵⁸ By contrast, 1161 villages of 5 hill districts were notified as hill areas under the Act.¹⁵⁹

6.4 *Armed Forces Special Powers (Assam and Manipur) Act 1958*

The *Armed Forces Special Powers (Assam and Manipur) Act 1958* enables members of the armed forces to exercise certain special powers in disturbed areas in the state of Assam and Manipur. Under s 3 of the Act the government can declare any area as disturbed or dangerous and decide that these areas need intervention from armed forces. If the government faces protest and opposition by the people, they can mobilise armed forces in areas for energy

¹⁵⁵ Ibid.

¹⁵⁶ Ch1 s 1 the *Manipur Land Revenue and Reform Act 1960*.

¹⁵⁷ According to the *A.P. Rights in Land and Pattadar Pass Book Act 1971* 'Pattadar' includes every person who holds land directly under the government, under a Patta whose name is registered in land revenue accounts as Parradar and who is liable to pay land revenue'.

¹⁵⁸ P. Binodini Devi, *Land System of Manipur* (Akansha Publishing New Delhi 2006); quoted in K. Daimai 'Land Rights of Tribal and State Land Laws: Manipur' the *Naga Journal* (online), 29 August 2011 <<http://www.nagajournal.com/articles/land-rights-of-tribal-and-state-land-laws-manipur/>>.

¹⁵⁹ K. Dainai 'Land Rights of Tribal and State Land Laws: Manipur' *Naga Journal* (online), 29 August 2011, <<http://www.nagajournal.com/articles/land-rights-of-tribal-and-state-land-laws-manipur/>>.

projects, mega dams, oil and gas exploration. Section 4(a) of this Act says ‘...for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order...’. This Act also enables personnel of the armed forces to arrest anybody or enter any premises without warrant. This Act also gives immunity to the soldiers and personnel of the armed forces in case of violation of human rights. As s 6 of the Act says ‘no prosecution, suit or other legal proceeding shall be instituted except with the previous, sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.’

6.5 Central and State Government Policies and other relevant laws

There are other laws, regulations and policies that provide for the governments to acquire private and indigenous lands for the purpose of development. These include,

- India Look East Policy
- New Land Use Policy of Manipur 2014
- Industrial and Investment Policy of Manipur 2013
- Manipur Hydro Power Policy 2012
- The *Electricity Act 2003* etc.

6.5.1 India Look East Policy

India Look East Policy was adopted in 1991 during the time of Prime Minister V P Narasimha Rao. This policy was adopted to counter the emerging influence of China in the region and also to develop and stabilise the problematic underdeveloped northeast region that was in the midst of insurgency.¹⁶⁰ Until the 1970s India held the view that the east was less developed than the west, so most of its ties were with the west rather than the east. But this approach changed in the 1980s and 1990s when China increased business and economic relations with eastern countries other than India. Also the emergence of Association of South

¹⁶⁰ R Danielle ‘India’s new Asia-Pacific strategy: Modi acts East’ (Lowy Institute for International Policy December 2014) <<http://www.lowyinstitute.org/files/indias-new-asia-pacific-strategy-modi-acts-east.pdf>>.

East Asian Nations ('ASEAN') countries as more technologically and economically advanced made India realise that it had missed big opportunities beforehand. Also after India became a nuclear power,¹⁶¹ most of the developed and developing countries saw it as emerging economic power in the world. In particular, the ASEAN countries wanted economic and diplomatic relation with India to balance the power of emerging China.

The Indian government and other Indian multinational companies invested heavily in Myanmar to explore oil and gas so that the gas could be imported to India to produce electricity and for other commercial use. Myanmar has a 1653 km border with northeast India, but there is no infrastructure like pipeline to transport gas or oil to India. India wanted Bangladesh to give it a communication corridor as Bangladesh is situated in between India and Myanmar, but Bangladesh declined. In the meantime, Myanmar decided to sell the gas to China. If India had constructed a gas pipeline in its northeast region they could have the gas, but they were looking to Bangladesh for a possible pipeline who declined to give them a corridor. As a result, the central government realised the importance of the northeast region and the India Look East Policy reflects this. Thongkhohal Haokip,¹⁶² in his writing 'India's Look East Policy: Its Evolution and Approach' has described,

[t]he north-eastern states lag behind in economic development and this gap has widened since independence. The sense of neglect has resulted in various forms of unrest in the region. With the launch of the Look East Policy, India sees the region not as *cul-de-sac* but as a gateway to the east, thereby attempting to link the North-eastern region with Southeast Asia through a network of pipelines, road, rail and air connectivity. This is expected to initiate economic development and help the eight north-eastern states to develop infrastructure, communication, trade, investment, logistics, agro-business and other commercial activities...¹⁶³

So now India is looking seriously towards the development of its northeast region to enable communication with eastern countries. The central Indian government and northeast state governments have undertaken projects like roads, hydropower dams, high power electricity lines and many more economic activities to increase development of the region. All of these

¹⁶¹ India tested its first nuclear weapon in 1974.

¹⁶² Assistant Professor, Centre for the Study of Law and Governance, Jawaharlal Nehru University, New Delhi, India.

¹⁶³ Thongkhohal Haokip 'India's Look East Policy: Its Evolution and Approach' (2011) 18.2 *South Asian Survey* 239-257.

projects require enormous investment and it can only come from multinational corporations or international financial organisations who in turn will invest in the region for future benefit.

But problems arise when these activities overlook the human rights and environmental protection in the region. As discussed earlier, dam building has already displaced millions of indigenous peoples and destroyed the ecological balance in the region.¹⁶⁴ For instance, to boost the economic activity in the area the government wanted to acquire 10 000 acres of land in the State of West Bengal for a special economic zone to be developed by the Indonesian real estate giant the Salim Group. But on 14 March 2007, the situation got violent when the people declined to leave their land and the government sent 2500 policemen to capture the land. As a result, 14 farmers were killed by police and more than 100 people were declared missing.¹⁶⁵

6.5.2 New Land Use Policy of Manipur 2014

The New Land Use Policy of Manipur 2014 ('NLUP') was adopted to improve productivity and minimise demand on land resources, but the United Naga Council, a representative wing of Naga tribes, describes it as 'just another ploy to dilute the land ownership of the tribal people'.¹⁶⁶ Due to the imbalance of land ownership and land utilisation, the government of Manipur shifted its focus towards land management, development and agriculture. According to the Planning Department of Manipur Government 'at the heart of NLUP is to utilize the most precious resource rural people has i.e. Land- in an intelligent and scientific approach with their inherent genius and traditional knowledge'.¹⁶⁷ The government also acknowledged that the state is desperately crying out for a major thrust in inclusive development and address the challenges of India Look East Policy and ASEAN free trade realities. New Land Use Policy considers the traditional Jhum or Shifting cultivation of tribal people as harmful

¹⁶⁴ Anna Louise Strachan, Harnit Kaur Kanf and Tuli Sinha 'India Look East Policy: A Critical Assessment- Interview with Amb. Rajiv Sikri' (Institute of Peace and Conflict Studies, October 2009) <http://www.ipcs.org/pdf_file/issue/SR85-SEARPInterview-Sikri1.pdf>.

¹⁶⁵ G. Raghuram & Simi Sunny 'Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement ordinance 2014: A Process Perspective' (Indian Institute of Management, July 2015).

¹⁶⁶ United Naga Council 'New Land Use Policy, Manipur' (4 July 2014) the Other media, <www.theothermedia.in/unc-press-statement-new-land-use-policy-manipur>.

¹⁶⁷ 'New Land Use Policy/Project of Manipur 2014: an approach paper' (Planning Department, Government of Manipur 2014) <<http://admin.indiaenvironmentportal.org.in/files/file/Approach%20Paper%20on%20NLUP%20Manipur%202014.pdf>>.

to forests and reduces productivity of the land. It aims to change both Jhum and non Jhum cultivation towards better land use system.¹⁶⁸

6.5.3 Industrial and Investment Policy of Manipur 2013

Industrial and Investment Policy of Manipur 2013 was adopted to drive industrial growth by attracting private investments and provide an investment climate by removing barriers to competition and growth. This policy will provide investment friendly environment for rapid industrial development in Manipur, generate more employment opportunities, improve infrastructure facilities, ensure supply of quality power, and ensure optimal utilisation of both natural and physical resources.¹⁶⁹ Together with the India Look East Policy, this policy will facilitate and provide an investor friendly environment and lays down a roadmap for both public and private investment and partnership. This policy encourages hydropower dams and energy projects, and facilitates trade and investments from neighbouring countries as well as other countries. Manipur is heavily populated with indigenous and tribal people but this policy wants to promote industrial culture and infrastructure which is opposite to the cultures of the indigenous peoples. The problem is that this policy does not acknowledge the vast majority of indigenous peoples in any shape or form. It does not talk about protecting the values and cultures of indigenous societies while talking about infrastructure and economic development.

6.5.4 Manipur Hydro Power Policy 2012

Manipur Hydro Power Policy 2012 was adopted for the development of all hydro projects with the capacity of 5 MW and above. According to this policy the state of Manipur has a potential of producing 2190 MW of electricity through hydro power which will be sufficient to meet the local requirement for domestic and industrial uses. So, the state is committed to provide an attractive and investment friendly atmosphere for the hydropower developers and has given this top priority as a major industry. The State Power Department has also identified a number of hydro power project sites and one of those is the proposed Tipaimukh dam. The state government also acknowledges that the big hydro power projects will be a source of major revenue and provide long term financial benefits for the state. The projects

¹⁶⁸ Ibid.

¹⁶⁹ Preamble of the Industrial and Investment policy of Manipur 2013 (IIPM, 2013).

will also help provide employment for the local people as well as ensure irrigation and drinking water supply for the people.

The Department of Industries and Commerce of Manipur has always prioritised dam and energy projects to facilitate trade and investment promotion with multi-national companies as their investment attracts a high volume of capital. The ‘Power Sector Reform’ presented by the Power Department of Manipur supports the participation of the private sector and privatisation of electricity companies and sets its goal to generate hydro power capacity to 2000 MW.¹⁷⁰ The Manipur Government already signed many Memorandum of Understanding (MOU) with North Eastern Electric Power Corporation (‘NEEPC’) to build many mega dams. Some of these dams are Irang Hydroelectric project (60 MW), Tuivai Hydroelectric Project (51 MW) and Pabram Hydroelectric Project (190 MW).¹⁷¹

The planning and signing of the hydroelectric projects were made easy by the *Electricity Act 2003*. This Act was passed by the central government to regulate the electricity sector and make way for the privatisation of the power grid. Under this Act the central government de-licensed the electricity generation sector. As a result, it was easy for the Manipur government to sign the MOUs with the North Eastern Electric Power Corporation for many hydroelectric projects.

6.6 Supports from International Financial Institutions

The governments also have backing from international financial institutions like the World Bank (‘WB’), the Asian Development Bank (‘ADB’) and the Japan International Cooperation Agency (‘JICA’). All these agencies have social and environmental policies that should be followed during any development, but sometimes the benefits of corporations prevail over these policies. The Asian Development Bank and the World Bank are showing constant interest in the developments of infrastructure and hydroelectric projects in the northeast region of India. Recently the World Bank has commissioned a study about the hydropower

¹⁷⁰ ‘Power Sector Reform’ (Power Department Manipur April 2013) <http://planningcommission.nic.in/plans/stateplan/Presentations13_14/mani_power13_14.pdf>.

¹⁷¹ ‘Fact Sheet on Mega Dams in Manipur’ (26 June 2015) Days of Action for Development Justice <<http://peoplesgoals.org/devjustice/campaigns/manipur/fact-sheet-on-mega-dams-in-manipur/>>.

potential in the region. The Japan International Cooperation Agency also provides technical and financial support to the hydropower and other development projects in the area.

None of these agencies are directly funding the Tipaimukh dam, but the World Bank is funding a high voltage Transmission and Distribution power line in northeast region that will potentially carry the electricity produced by the Tipaimukh project and twenty more projects around the area. So the World Bank has an obligation to make sure the electricity carried by their funded projects is produced according to their social and environmental policies and does not destroy the life and livelihood of the indigenous peoples. The World Bank has funded many projects in India and one of those was the Sardar Sarovar dam in the state of Gujarat. The Bank committed \$450 million for the dam, but later withdrew itself from the projects because of the Narmada Bachao Andolan (Struggle to save the Narmada River) that highlighted the violation of social and environmental policies and the damning report from independent Morse Commission.¹⁷² The Morse Commission reported that both the World Bank and the government of India failed to 'carry out adequate assessments of human impacts of the Sardar Sarovar projects.'¹⁷³ The commission report also highlighted the failure of the parties to consult the people potentially to be affected by these projects and a large portion of population of those at risk from Sardar Sarovar Projects are tribal peoples.¹⁷⁴

I have discussed some laws and policies of the government that empowers it to build hydroelectric dams. In the next chapter I will discuss the laws and instruments that could be used to uphold the rights of the indigenous peoples and support people's argument in the court against the decision to build the dam. In this section I will also discuss international laws relating to the indigenous rights and protection of the environment.

7. Laws and regulations supporting people

Since the British colonial period, India has enacted numerous laws to protect indigenous peoples. After independence in 1947 some of those laws stayed as they were and some were modified to keep up with the times. Since the adaptation of the *Constitution* in 1949 the

¹⁷² 'New Independent Review Documents Failure of Narmada Dam' (11 June 2008) International Rivers <<https://www.internationalrivers.org/blogs/227/new-independent-review-documents-failure-of-narmada-dam>>.

¹⁷³ Bradford Morse and Thomas R. Berger 'Sardar Sarovar – Report of the Independent Review' (1992) *Ottawa: Resource Futures International* xi-xxv and 349-58.

¹⁷⁴ Ibid.

Indian government has enacted many laws in line with constitutional provisions to safeguard the rights of tribal people and conservation of forest.

7.1 Provisions of the *Constitution of India*

The *Constitution of India* not only provides for the acquisition of land but also for the protection of the tribal people. According to art 300A '[n]o person shall be deprived of his property save by authority of law'. Schedule V and VI of the *Constitution* set out the provisions for the protection of tribal peoples and also lays down the rules for administration and control of scheduled areas and scheduled tribes. Most of the scheduled areas are occupied by the scheduled tribes and the provisions were made to preserve the cultural identity of the tribes and save them from extinction. The scheduled areas are declared by presidential order and scheduled tribes are identified by the tribal advisory council.¹⁷⁵ To save the tribal people, they were given special preference under schedule five of the *Constitution*.¹⁷⁶

Article 46 (directive principle of state policy) of the *Constitution* talks about giving special treatment to the weaker section of the community especially to the scheduled castes and scheduled tribes. It states;

The state shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitations.

Tribal people are essentially related to their environment and lands. In order to protect the tribal peoples, the protection of environment is essential. Under art 48A of the Directive Principles of State Policy:

The state shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

¹⁷⁵ Schedule V s 4(2): 'It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor'.

¹⁷⁶ Schedule V s 5(1): 'Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof... '.

There are other general provisions of the *Constitution* that also safeguard the rights of indigenous people. Articles 14 (Equality before law), 15 (Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth), 16 (Equality of opportunity in matters of public employment), 17 (Abolition of Untouchability) and 19 (Freedom of speech) are some of the fundamental rights protected by the *Constitution* that could serve as important safeguards of the indigenous peoples' rights. To recognise the importance of indigenous peoples the *Constitution* has provisions to reserve seats for scheduled castes and scheduled tribes in the House of the People (Parliament).¹⁷⁷ Also to protect the rights and welfare of the indigenous peoples the Ministry of Tribal Affairs was created in 1999 by the government. It is the duty of the Minister to reduce social injustice towards the indigenous peoples and improve their socio-economic position by keeping their social and cultural identity intact.

Often the Supreme Court of India, in deciding cases relating to the rights of the citizen and protection of environment, cites the provisions of the *Constitution*. Those provisions are important benchmarks and the ultimate goal in any matters before the court because they prevail over any other laws. Most of the Public Interest Litigation is brought before the court for the violation of the constitutional rights. Apart from the *Constitution* we will find out how other specific laws recognise rights of the tribal indigenous peoples and laws relating to the protection of environment. We will find the laws that give the traditional forest dwelling tribal people the right to self-determination and decide how to manage their own land and own affairs.

There are specific Indian laws to protect the rights of indigenous peoples in India. The following are some laws and regulations that recognise those rights.

- *Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006*
- *Panchayats (extension to Scheduled Areas) Act 1996*
- *Santal Pargana Tenancy Act 1949*
- *Environmental Protection Act 1986*
- *Forest Conservation Act 1980*
- *Wildlife Protection Act 1972*

¹⁷⁷ *Constitution of India* art 330.

7.2 Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006

The *Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006*, otherwise known as the *Forest Rights Act 2006*, was enacted to recognise the rights of forest dwellers and tribal people. According to the preamble of the Act, this is ‘an act to recognise and vest the forest rights and occupation in forest land in forest dwelling scheduled tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded...’ Besides recognising the rights of forest dwelling scheduled tribes, this Act emphasises the ‘conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling scheduled tribes and other traditional forest dwellers’.¹⁷⁸ This Act also intends to address the long standing insecurity of the forest dwelling scheduled tribes who were forced to relocate due to state development interventions.

According to s 3(1) of this Act, the forest dwelling scheduled tribes and traditional forest dwellers have the ‘right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood.’ They have the right of ownership, access to collect, use and dispose of minor forest produce traditionally collected within and outside their boundaries, they have entitlement over fish and other produce of water bodies and seasonal resources. They also have rights of settlement of all forest villages or unsurveyed villages or villages in forests and also the right to protect, conserve or manage any community forest resources and right of access to biodiversity and community rights to traditional knowledge related to biodiversity and cultural diversity. This Act also protects any rights traditionally enjoyed by the forest dwelling scheduled tribes or other traditional forest dwellers excluding the right to hunt or trap any species of wild animal.

Besides the enjoyment of rights, the forest dwelling scheduled tribes have duties to protect the wild life, forest and biodiversity, and they must ensure the catchment areas and water resources are protected along with their cultural and natural heritage.¹⁷⁹ Under this Act no

¹⁷⁸ *Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006*, Act 2 of 2007; <www.tirbal.nic.in>.

¹⁷⁹ The *Forest Rights Act 2006* s 5.

forest dwelling scheduled tribes will be resettled unless it is established under the *Wild Life (Protection) Act 1972* that their activities or impact upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat. Such resettlement is only possible with the free and informed consent from the Gram Sabhas of the area regarding the proposed resettlement package and obtained in writing.¹⁸⁰

7.3 *Panchayats (Extension to the Scheduled Areas) Act 1996*

The *Panchayats (Extension to the Scheduled Areas) Act 1996* ('PESA') specifically gives self-governing power to the tribal people and the Gram Sabha to decide their own future. On 8 August 2014, in reply to a written question in Lok Sabha (Parliament), the Minister of the Tribal Affairs Shri Jual Oram¹⁸¹ specifically mentioned the protection of tribal people under the PESA Act.¹⁸² According to him;

The salient feature of the Panchayats (Extension to the Scheduled Areas) Act 1996 (PESA) and the modalities worked out to grant rights to tribals in the country are:

- (i) Legislation on Panchayats shall be in conformity with the customary law, social and religious practices and traditional management practices of community resources:
- (ii) Habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs: and shall have separate Gram Sabha.
- (iii) Every Gram Sabha to safeguard and preserve the traditions and customs of people, their cultural identity, community resources and the customary mode of dispute resolutions.
- (iv) The Gram Sabhas have role and responsibilities in approving all development work in the village, identify beneficiaries issue certificates of utilizations of funds; powers to control institutions and functionaries in all social sectors and local plans.
- (v) Gram Sabhas or Panchayats at appropriate level shall also have powers to manage minor water bodies; power of mandatory consultation in matter of land

¹⁸⁰ Ibid s 4(2).

¹⁸¹ Shri Jual Oram is a member of 16th Lok Sabha (Parliament) of India and Cabinet Minister of Narendra Modi Government.

¹⁸² 'Protection of Tribals Under PESA Act' (8 August 2014) Press Information Bureau, Government of India, Ministry of Tribal Affairs, <www.pib.nic.in/newsite/printrelease.aspx?relid=108320>.

acquisition; resettlement and rehabilitation and prospecting licenses/mining leases for minor minerals; power to prevent alienation of land and restore alienated land; regulate and restrict sale/consumption of liquor; manage village markets, control money lending to STs; and ownership of minor forest produce.¹⁸³

From the reply of the Minister of Tribal Affairs it is clear that under the *Panchayats (Extension to the Scheduled Areas) Act 1996* the tribal people are in charge of customary law, social and religious practices and traditional management practices of the tribal community and also they are in charge of approving development work in their area, and they must be consulted in case of any land acquisitions, resettlement and rehabilitation.

7.4 *Santal Pargana Tenancy Act 1949*

There are other tribal specific laws in India that were enacted to safeguard the existence of particular tribes and their land rights. The *Santal Pargana Tenancy Act 1949* is one such Act that was enacted to protect the land rights of Santal tribes in six districts of the State of Jharkhand. Although this Act does not specifically deal with the acquisition of land by the government or any corporations, it does deal with the restriction on land transfer and land ownership of the indigenous peoples. This Act recognises that the indigenous peoples are most vulnerable and need protection. That is why the right to transfer land and administration of land regulation was given to the local village headman who is in charge of settlement of land holdings and collection of revenue.

7.5 *Right to Information Act 2005*

According to World Commission of Dams Strategic Priority 1 ‘decisions affecting indigenous peoples should be taken according to their free, prior and informed consent’.¹⁸⁴ For free, prior and informed consent the people need access to information, and to achieve this goal the *Right to Information Act 2005* is a valuable legislation. This Act helps the ‘citizens to secure access to information under the control of public authorities, in order to promote transparency

¹⁸³ Ibid.

¹⁸⁴ Above n 33.

and accountability...'¹⁸⁵ This Act forces the public authority to 'publish all relevant facts while formulating important policies and announcing the decisions which affect public.'¹⁸⁶ The information must be disseminated in a cost effective manner and in local language and must be easily accessible.¹⁸⁷ Moreover the person requesting the information shall not require to give any reasons or personal information for such request.¹⁸⁸ This Act can be a valuable instrument for the advocacy groups and public to gain information about the government policies and decision that will affect the life of indigenous peoples. The only limitation for the people is that the authority is not bound to give information if the information prejudicially affects the security, strategic, scientific or economic interests of the state.¹⁸⁹

7.6 Environment, forest and wildlife protection laws

The indigenous peoples are reliant on their local environment. There is a close relationship between indigenous peoples and their lands. They use the land for building homes, raising their families, cultivation and worship of their gods. They use the forest for hunting and gathering foods. If we take the indigenous peoples from their lands and surrounding environment, then they will lose their cultural identity and livelihood. So, it is very important to save the land and environment for the sake of the indigenous peoples. The northeast region on India has a rich and unique natural environment. In India, any kind of development activities in the forests need to follow strict rules under environmental and forest protection laws and regulations. In this chapter I will discuss some environmental and forest protection laws that are very important for the protection of natural environment and the survival of indigenous peoples. With the prospect of the proposed Tipaimukh dam, the natural environment and ecosystem of the area is under threat in many ways and these laws will come very handy for us to defend the rights of indigenous peoples and oppose the development proposal.

7.6.1 *Environment (Protection) Act 1986*

The central government of India has enacted the *Environment (Protection) Act 1986* to implement the decision taken at the United Nations Conference on the Human Environment

¹⁸⁵ Preamble of the *Right to Information Act 2005*.

¹⁸⁶ The *Right to Information Act 2005* s 4(1)(c).

¹⁸⁷ Ibid s 4(4).

¹⁸⁸ Ibid s 6(2).

¹⁸⁹ Ibid s 8(1)(a).

held at Stockholm in June 1972.¹⁹⁰ According to the preamble of the Act this is '[a]n Act to provide for the protection and improvement of environment and for matters connected there with'. India felt the need to adopt such legislation after the disastrous consequences of the Bhopal tragedy.

According to s 3(1) of this Act 'the Central Government shall have power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.' For the purpose of this Act the central government will act as an umbrella for the states and co-ordinate the actions by the state governments and other authorities.¹⁹¹ For the protection of the environment and controlling pollution, the central government will take measures to restrict the areas where any industries, operations or processes will take place, or lay down the measures or safeguards to be followed for this purpose.¹⁹² The central government has the power to give directions to any authority for the closure, prohibition or regulation of any industry or operation and also stoppage of supply of electricity or water or any other services and any such direction is binding upon the authority.¹⁹³

This Act gives power to the central government to overturn any laws or regulations enacted by the states that are inconsistent with this Act.¹⁹⁴ Under this Act, whoever fails to comply with the provisions of this Act, or the rules made or orders or directions issued thereunder, can be imprisoned for maximum of five years with fines.¹⁹⁵ As discussed in the literature review, if the proposed Tipaimukh dam is built then the surrounding area will face severe environmental degradation with the loss of millions of trees and bamboo culms and extinction of endangered flora and fauna. So, the proposed dam is a clear violation of the *Environment (Protection) Act 1986*.

7.6.2 *Forest Conservation Act 1980*

With each day India is becoming more and more industrialised. Infrastructures like road networks, dams and industries are built at a rapid rate and many more development activities

¹⁹⁰ Preamble of the *Environment (Protection) Act 1986*, Act no 29 of 1986; <www.envfor.nic.in/legis/env>.

¹⁹¹ *Ibid* s 3(2).

¹⁹² *Ibid* s 3(2)(v).

¹⁹³ *Ibid* s 5.

¹⁹⁴ *Ibid* s 24.

¹⁹⁵ *Ibid* s 15(1).

are taking place all over India. The most obvious casualties of the development activities are the forest and its surrounding environment. To save the country from rapid loss of forest the *Forest Conservation Act* was enacted in 1980. This was further strengthened by the *Forest Conservation (Amendment) Act 1988*. This Act mainly places restrictions on the use of forest for non-forest purposes,¹⁹⁶ and makes sure that the conversion of forest land for non-forest purposes by the state government, any authority, corporation, agency or any other organization not owned, managed, or controlled by state government cannot be made without the prior approval and permission of the central government.¹⁹⁷ Also, under this Act, permission must be given by the central authority before clearing any naturally grown trees from the forest land or any portion thereof.¹⁹⁸

Under s 3 of the Act the central government has constituted the Forest Advisory Committee (FAC) to grant approval for activities regarding non-forest purposes and also any other matter connected with the conservation of forest which may be referred by the central government. The central government shall refer every proposal to the committee received under this Act and the committee must in its advice consider the habitat of the area or any endangered or threatened species of flora and fauna.¹⁹⁹ As discussed in the current development regarding the Tipaimukh dam, the FAC already rejected the forest clearance application because of very high ecological, environmental and social impact/cost of the project.

7.6.3 *Wildlife Protection Act 1972*

The state of Manipur also comes under the *Wildlife Protection Act 1972*. This Act was enacted to protect wild animals, birds and plants of India. The proposed dam site is home to unique and endangered flora and fauna. Under this Act no wild animals can be killed unless the animal is dangerous to human life,²⁰⁰ and only with a grant or permit for special purposes like education and scientific research²⁰¹. Under s 17A of this Act no person can uproot, damage or destroy any plant except for education and scientific research purposes. This Act

¹⁹⁶ Section 2 (explanation) of *Forest Conservation Act 1980*- Non-forest purpose means the breaking up or cleaning of any forest land or portion thereof for –(a) the cultivation of tea, coffee, spices, rubber, palms, oil bearing plants, horticultural crops or medicinal plants; (b) any purpose other than reafforestation.

¹⁹⁷ The *Forest Conservation Act 1980* s 2(iii).

¹⁹⁸ Ibid s 2(iv).

¹⁹⁹ Rule 7 of the Forest (Conservation) Rules 2003.

²⁰⁰ The *Wildlife Protection Act 1972* s 11.

²⁰¹ Ibid s 12.

also preserves the right of certain scheduled tribes who depends on forest by killing animals and collecting plants for survival.²⁰²

It is certain that the laws and regulations are there to protect the tribal indigenous people. It is the duty of the government to administer the laws for the benefit of the people, and not to exploit them. Government must recognise that the indigenous and tribal peoples are in danger and must have strong leadership to uphold the laws. Not only people but the environment is also in decline. Only government can protect the environment by protecting the trees and animals.

8 International safeguards

India is one of the biggest economic superpowers in the world. Since the present Prime Minister Narendra Modi has come to power he has been roaming around the world to strengthen the economic ties of India with other developed and developing countries. As discussed earlier, India is seeking major economic partnerships with ASEAN countries along with Australia, USA and UK. Besides free trade agreements India is seeking foreign investment for major development projects like mega-dams, pipelines, interstate highways, high voltage transmission and distribution powerlines and many other projects. India is also seeking investment from International Monetary Organizations like the World Bank, the Asian Development Bank, the Japan International Cooperation Agency, the Department for International Development in the UK and the Danish International Development Agency ('DANIDA').

To attract any kind of investment the Indian government must ensure that they follow human rights principles and adhere to best practice. Before making any kind of investment, international organisations must make sure that the places or countries in which they are investing are not violating human rights. This is especially necessary for indigenous rights and the environment because worldwide indigenous tribal peoples and their cultures are rapidly declining.

To safeguard the indigenous peoples and protect their cultures from extinction the world community has come together at different times to establish international treaties and

²⁰² Ibid s 65.

conventions. As a signatory, some of these international treaties are binding upon India. Other treaties that India is not a signatory and are not binding upon it still have significant moral force. Some international instruments that could be useful in favour of indigenous people and environment are,

- *Universal Declaration of Human Rights ('UDHR')*
- *UN Declaration on the Rights of Indigenous People 2007 ('UNDRIP')*
- *International Covenant on Civil and Political Rights ('ICCPR')*
- *Indigenous and Tribal Peoples Convention 1989 (ILO Convention 169)*
- *Convention on Biodiversity 1992*
- *UN Framework Convention on Climate Change 1992*

8.1 *Universal Declaration of Human Rights*

The *Universal Declaration of Human Rights* ('UDHR')²⁰³ represents the international conscience on human rights protections. According to this document all human beings have the right to life and livelihood.²⁰⁴ No human being can be deprived of his or her wellbeing, or rights to food, clothing and housing.²⁰⁵ If the Tipaimukh dam is built thousands of indigenous people will lose their basic human rights. They will lose their livelihood and means of living, and most of all they will lose their cultural identities. The UDHR declares that everyone has the right to own property and 'no one shall be arbitrarily deprived of his property.'²⁰⁶ Regarding cultural rights it says 'everyone has the right to participate in the cultural life of the community...'²⁰⁷

8.2 *United Nations Declaration on the Rights of Indigenous People 2007*

To protect the rights of indigenous people the United Nations General Assembly adopted the *United Nations Declaration on the Rights of Indigenous People 2007* ('UNDRIP').²⁰⁸ This document recognises the rights that 'constitute the minimum standards for the survival,

²⁰³ The *Universal Declaration of Human Rights* ('UDHR') adopted 10 December 1948, UN Doc A/810 at 71.

²⁰⁴ Ibid art 3.

²⁰⁵ Ibid art 25.

²⁰⁶ Ibid art 17.

²⁰⁷ Ibid art 27.

²⁰⁸ The *United Nations Declaration on the Rights of Indigenous People* ('UNDRIP') 2007 adopted 13 September 2007 (non-legally binding) Code A/RES/61/295.

dignity, and well-being of the indigenous peoples of the world'.²⁰⁹ It also affirms that 'indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such.'²¹⁰ India is a signatory to UNDRIP. Although this is a non-legally binding document, it has considerable moral force. It sets out the norms that the signatory countries can follow to promote the protection of indigenous people.

This document recognises that the indigenous people have suffered historic injustice due to colonisation and dispossession of their lands, territories and resources and there is an urgent need to respect and promote their inherent rights. It represents a show of respect for indigenous knowledge, culture and traditional practices. This document also recognises the indigenous peoples' right to self-determination and self-government in the matter relating to internal and local affairs.²¹¹ Article 10 of UNDRIP specifically is about the land rights of indigenous people. It says;

Indigenous people shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

In our case, the government already militarised the surrounding areas of the Tipaimukh dam and the consultation process for the project was completed without proper participation of indigenous peoples. These practices are against the provisions of UNDRIP. Article 30 (1) of this declaration is about military occupation in indigenous lands. It says;

Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

This declaration also emphasises that proper procedures and active participation are used in the consultation process. It also gives the 'indigenous peoples the right to determine and

²⁰⁹ Ibid art 43.

²¹⁰ Ibid preamble.

²¹¹ Ibid art 4.

develop priorities and strategies for the development or use of their lands or territories and other resources.’²¹²

8.3 *International Covenant on Civil and Political Rights*

The *International Covenant on Civil and Political Rights* (‘ICCPR’)²¹³ recognises the inherent dignity, and equal and inalienable rights of human beings and ‘the ideal of free human beings enjoying civil and political freedom and freedom from fear...’²¹⁴ This international treaty declares that all peoples have the right to self-determination and determine their political status and freely pursue their cultural development.²¹⁵ India is a signatory to this treaty and ratified it on 10 April 1979. As a signatory, India has an obligation to preserve the cultural rights of indigenous peoples. Article 27 of this treaty states;

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

8.4 *International Labour Organization Convention 169*

The *Indigenous and Tribal Peoples Convention 1989*²¹⁶ otherwise known as *International Labour Organization Convention 169* is a legally binding instrument that concerns the rights of Indigenous peoples. To date only 22 countries have ratified this treaty and it is still open for ratification. Even though India is not a signatory to this treaty, this treaty works as an international reference point and it has been cited by UN bodies, regional human rights organisations and national courts.²¹⁷ This treaty gives the indigenous peoples the right to self-determinations. Article 7(1) of this treaty says;

²¹² Ibid art 32(1).

²¹³ *International Covenant on Civil and Political Rights* (‘ICCPR’) adopted 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

²¹⁴ Ibid preamble.

²¹⁵ Ibid art 1.

²¹⁶ *Indigenous and Tribal Peoples Convention 1989* adopted 27 June 1989 (entered into force 5 September 1991).

²¹⁷ ‘*Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169) Handbook for ILO Tripartite Constituents*’ (International Labour Office, Geneva, 19 February 2013).

The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the land they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development.

Not following the principles of international law will put any country in a disadvantageous position. Any international corporation or country will not put their goodwill or reputation at risk by investing or coming to an agreement with a country that does not follow the international norms, especially if they ignore the human rights of their own citizens. New communication technologies allow the news of human rights violations to travel very fast around the world. The withdrawal of funding due to human rights violations is not new. We have already seen this in the case of child labour. Many international fashion houses have withdrawn their investment from many developing countries due to the exploitation of child labour and inhuman conditions in the workplace. If it becomes apparent by the international financial organisations that India is not doing enough to protect the rights of indigenous tribal peoples in its northeast part, then they could decline to invest money in major infrastructure projects so as to not put their reputations in danger.

Alongside above mentioned international laws and instruments protecting indigenous rights, we have other international environmental laws that could play an important role in the preservation of indigenous rights and maintenance of ecological balance. International environmental laws are designed to help countries adopt state legislation and other procedures to protect the environment by reducing pollution, preserving forests and waterways, and protecting overall biological diversity. The indigenous peoples are essentially related and dependent on the land, forest and surrounding environment. So, saving the environment helps saving the indigenous people.

8.5 International environmental laws

Not only human rights but also the environment plays a very vital role in the case of international relation. India is a party to major international environmental protection conventions and bound to follow the directions given. One of those conventions is the

Convention on Biological Diversity 1992,²¹⁸ that recognises that the conservation of biological diversity is a common concern for all humankind,²¹⁹ and biological diversity is being significantly reduced by certain human activities.²²⁰ The preamble of this convention appropriately describes the relation between the indigenous peoples and biological diversity and the importance of the indigenous peoples in this regard acknowledges:

[t]he close and traditional dependence of many indigenous and local communities embodying traditional lifestyle on biological resources and the desirability of sharing equitable benefits arising from the use of traditional knowledge, innovation and practice relevant to the conservation of biological diversity and the sustainable use of its component.²²¹

Article 14 of the Convention requires the signing parties to introduce appropriate Environmental Impact Assessment proceedings for any projects that are likely to have significant adverse effect to the biological diversity and incorporate public participation in the process. The countries will also develop national strategy, plans and programs for the conservation and sustainable use of the biological resources,²²² and enact necessary legislation to protect threatened species and population.²²³ This Convention gives the countries necessary directions and tools so that they can protect biodiversity in their own countries by various means. It also makes provision for international cooperation for underdeveloped and developing countries. There are provisions for financial, technological and scientific assistance for the parties. If countries have willingness and commitment towards the protection of the environment, the conventions are there to help.

The *United Nations Framework Convention on Climate Change 1992* ('UNFCCC')²²⁴ is the convention that was adopted to fight the global warming by different measures. India signed this convention on 10 June 1992 and ratified it on 1 November 1993. It is also a binding agreement that requires signatory countries to reduce greenhouse gas emission by protecting carbon sinks. This agreement requires the signatory countries to enact effective environmental legislation and protect terrestrial and marine ecosystem sinks and reservoirs of

²¹⁸ The *Convention on Biological Diversity 1992* adopted 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993).

²¹⁹ Preamble of the *Convention on Biological Diversity 1992*.

²²⁰ Ibid.

²²¹ Ibid.

²²² Art 6 of the *Convention of Biological Diversity 1992*.

²²³ Ibid art 8(k).

²²⁴ The *United Nations Framework Convention on Climate Change 1992* ('UNFCCC') adopted 4 June 1992, 1771 UNTS 107 (entered into force 21 March 1994).

greenhouse gases like forests. It is true that climate change is real and due to climate change the glaciers of the Himalayas are melting and permanently changing the river regimes of northeast India. Increasing water and sedimentation along with poorly planned hydroelectric dams are making whole river systems unpredictable and they pose a greater threat to the human and natural environment. The proposed Tipaimukh dam is going to be a part of this problem and will pose a bigger threat to the indigenous peoples and environment of the area.

The Indian government argues that more electricity is required for the overall development of the country and to secure jobs and growth. For this reason, it wants to use hydropower potential in northeast India to produce electricity by ignoring the rights of indigenous peoples. But my argument is that hydropower is not the only option the government has. Northeast India can produce enough electricity by other sustainable means that will preserve the inherent rights of the indigenous peoples as well as preserve the biological diversity in the area. In the next section I will discuss some of the alternative sources of producing electricity.

9. Alternative source of power

Electricity is an essential commodity of life. It is the driving force behind economic and technological advancement of a nation and overall it makes human life more enjoyable. But the question is how the electricity is produced and how the process of producing electricity affects the life of people and their environment and to what extent? Does the production of electricity strike a balance between the benefits and adverse effects?

Worldwide electricity is produced in many ways. Different countries have different views about the production of electricity and they use different methods to produce electricity depending on the laws and policies of that particular country. Currently worldwide electricity is produced through generators run by coal, gas, nuclear energy, solar and wind. According to the World Coal Association, 41 percent of the world electricity is produced by coal powered generator.²²⁵ But coal is also the most polluted way of producing electricity and there is a global movement to move away from coal as a source of energy and find alternative sources. A more efficient, sustainable and less polluted way of producing electricity is nuclear power, but in case of any accident it can have long term devastating effects for humans and the environment. Understandably, countries are very reluctant to adopt this method. Other

²²⁵ World Coal Association, <www.worldcoal.org/coal/uses-coal/coal-electricity>.

countries have hydro power generators to produce electricity that have very low pollution levels, but very high adverse effects on the human and natural environment. This is why most developed countries are not building any more hydroelectric projects. According to Forest Advisory Committee, the effects of producing electricity from the Tipaimukh hydroelectric dam will be enormous and forest land required for this project is more than 100 times the average rate of forest diverted for hydroelectric projects approved under *The Forest Conservation Act 1980* and many times more harmful than its benefits.²²⁶ As electricity is essential we have to look for other alternative sources like wind, solar or nuclear power.

It is the obligation of the government to produce enough electricity so that it can fulfil its constitutional obligations toward its citizens. It is true that hydropower can contribute towards the government's goals of preserving people's right to work, education, reduction of unemployment, support during old age and sickness. But while more sustainable sources like solar and wind are available the government does not need hydropower to reach its goal. According to the Central Electricity Authority India already produces about 42 850 MW electricity from renewable sources overtaking hydropower that produces by about 42 783 MW.²²⁷ India is on track to becoming the world's largest producer of electricity from renewable sources.²²⁸

Scientists are already looking for alternative sources of energy in northeast India. Apart from hydroelectric projects, the most viable energy source in the area would be solar and wind. Although wind power is very environment friendly it is not seen as very good source of power in this area because the concentration of wind power is in certain part of the area.²²⁹ But northeast India has huge potential for solar power generators. As per the Energy and Resources Institute ('TERI'), the State of Assam has the potential of producing 4.4 to 5.6 KWh of solar power per square meter per day. Assam has approximately 240-260 days of clear weather every year. If the solar projects are designed well, they will reduce dependency on all other sources. A few small scale projects have seen the light of day already. In October 2012 a 100 MW solar project was launched by the National Institute of Technology ('NIT') Silchar and 90 percent of the cost of the project was sponsored by the Central government.

²²⁶ Above n 80.

²²⁷ Kaavya Chandrasekaran, 'Capacity for renewable energy in India hits 42850MW; surpasses capacity of hydel projects', *The Economic Times* (online), 10 June 2016 <<http://economictimes.com/industry/energy/power/capacity-for-renewable-energy-in-india-hits-42850-mw-surpasses-capacity-of-hydel-projects/articleshow/52860042.cms>>.

²²⁸ Ibid.

²²⁹ Kurmi and Gupta, above n 26.

The governments are also looking at bio-gas projects and distributing solar lamps to the people.²³⁰

10 Conclusion showing encouraging signs

The enormous number of hydroelectric dams planned by the Indian governments through its National Hydroelectric Power Corporation is going to cause huge disturbance to the lives of indigenous peoples and their environment. In 2005 the International River Network prepared a briefing paper for the national and international financial institutions that highlighted the violations of national and international standard and regulations of dam building by the National Hydroelectric Power Corporation. It accused the authority of social and environmental negligence and gross violation of human rights.²³¹ It also highlighted the flawed process of public consultation and irregularities of Environmental Impact Assessment and Social Impact Assessment. As a result, many financial organizations like the World Bank and the Asian Development Bank are reassessing their position and financial commitments. In some cases, they are withdrawing themselves from the projects.²³²

The World Commission on Dams have reviewed 1000 dams in 79 countries and observed that ‘dams have made an important and significant contribution to human development’ but ‘in too many cases, an unacceptable and often unnecessary price has been paid to secure those benefits, especially in social and environmental terms by people displaced...and by natural environment.’²³³ The proposed Tipaimukh dam will forever change the landscape of the area and change the life and livelihood of the indigenous peoples. Not only the people but also the Forest Advisory Committee acknowledged that the dam will cause catastrophe in the area and its adverse effects will be 100 times more than the acceptable level. People are trying their best to oppose the dam with the support of advocacy groups and even rival tribal groups are working together to advance the common good. Now it is time for the government to support them by cancelling the project.

It is clear that the laws and regulations are there to protect the people, but problems arise when the application of those laws becomes clouded due to the goodwill of the people in

²³⁰ Ibid.

²³¹ ‘Financing Dams in India: Risks and Challenges’ (International River Network, Delhi Forum, February 2005) <https://www.internationalrivers.org/files/attached-files/financingdams2005_text.pdf>.

²³² The World Bank had withdrawn their \$450 million funds from the Sardar-Sarovar project in Gujrat India.

²³³ Above n 33.

power. People are cynical because of all the previous experiences they have regarding failed hydroelectric dams. They are also concerned about the incompetence and corruption in government and administration. People know that even though they agree to resettle for the sake of greater good they will not get proper treatment from the government and its authorities.

In the *Niyamgiri case*,²³⁴ the central government decided not to proceed with the project due to public backlash and social impact of the project on the indigenous peoples. The people of Manipur hope that the governments will understand the effects of the dam on the people and environment and cease to pursue the construction of the Tipaimukh project. But if the government fails to protect these interests, the aggrieved parties will have to knock on the doors of the court and within the legal framework challenge the construction of the dam and thereby promote the rights of the indigenous peoples who will be adversely affected by the dam and protect the ecological balance of the area that is essentially their means of living.

In *Narmada Bachao Andolan v Union of India*,²³⁵ the court made it clear that the court will not exercise its jurisdiction in the field of policy decision, but it will 'defend the values of the constitution and the rights of Indians.'²³⁶ Most legal systems demand that specific procedures in the form of social, economic, cultural and environmental impact assessment be followed for any projects that will have significant impact on the environment and also make sure that public consultation is informed, participatory and grants access to justice.²³⁷ In the *Narmada Bachao Andolan* case, the Supreme Court of India recognized that most of the hydrology projects are located in remote and inaccessible areas, where local population are either illiterate or have marginal means of employment and displacement will undoubtedly disconnect them from their past, culture, custom and traditions.²³⁸

Large dams can provide the source of water and electricity for millions of people, but it can be as devastating as well. Large dams can destroy social and economic circumstances of people, dams can have impacts on human health, dams cause huge disruption to natural ecosystem and, above all, they threaten the livelihoods of millions of peoples who depend

²³⁴ Above n 92.

²³⁵ (2000) 10 SCC 664.

²³⁶ Benoit Mayer 'Judicial Review of Human Rights Impacts of Hydroelectric Projects' (Centre for International Sustainable Development Law 2012).

²³⁷ Ibid.

²³⁸ Ibid; *Narmada Bachao Andolan v Union of India* (2000) 10 SCC 664.

on fisheries, wetlands and agricultures.²³⁹ As discussed in my thesis the Tipaimukh dam is against the public interest and will only cause destruction to the environment and destroy indigenous peoples' lives, livelihood, cultural and spiritual existence. As observed in the *Narmada Bachao Andolan* case, the role of the Supreme Court is to '...uphold the rule of law and harness [its] power in public interest.'²⁴⁰ Thus, in the interest of the indigenous peoples and the environment, the Tipaimukh dam should be scrapped as soon as possible.

For thousands of years the indigenous peoples are living on this planet peacefully on their own lands in the hope of raising the future generations with the same values and cultures. They just want to live in peace and harmony with others without any interference, and they will welcome anybody who does not want to grab their lands. Indigenous rights advocate Rebecca Adamson²⁴¹ once said:

In every indigenous community I've been in, they absolutely do want community infrastructure and they do want development, but they want it on their own terms. They want to be able to use their national resources and their assets in a way that protects and sustains them. Our territories are our wealth, the major assets we have. And indigenous people use and steward this property so that they can achieve and maintain a livelihood, and achieve and maintain that same livelihood for future generations.²⁴²

²³⁹ Above n 105.

²⁴⁰ Above n 236.

²⁴¹ Rebecca Adamson is an American born indigenous rights advocate and founder and president of First Peoples Worldwide.

²⁴² 'Rebecca Adamson' (16 August 2016) Do One Thing < www.doonething.org/heroes/pages-a/adamson-quotes.htm>.

Bibliography

Articles/Books/Reports

Ahmed, Imtiaz, 'Teesta, Tipaimukh and River Linking: Danger to Bangladesh-India Relations' (2012) 47.16 *Economic and Political Weekly*

Arora, Vibha, 'We can Live without power but we cannot live without our (sacred) land: Indigenous Hmar Oppose the Tipaimukh Dam in Manipur, India' [2012] 61(1) *Sociological Bulletin* 109-128

Balakrishnan, K G, 'The role of Foreign Precedents in a Country's Legal System' (Lecture at Northwestern University, Illinois, 28 October 2008)

'Bangladesh: Climate Change & Sustainable Development' (Report no-21104BD, World Bank, 10 October 2000)

Bhattacharjee, Jhimli, 'Dams and Environment Movement: The Cases from India's North East' [2013] 3(11) *International Journal of Scientific and Research Publication*

Birnie, Patricia and Alan Boyle, *International Law and the Environment* (Oxford, 2nd ed, 2002)

Borrows, John, 'Sovereignty's Alchemy: An Analysis of *Delgamuukw v. British Columbia*' (1999) 37 *Osgoode Hall Law Journal* 537-596

Buhril, David, 'Enquiring Tipaimukh Dam: Development or Destruction?' (2009)

Chowdhury, Arnab Roy and Ngamjahao Kipgen, 'Deluge Amidst Conflict: Hydropower Development and Displacement in the North-east Region of India' (2013) 13.3 *Progress in Development Studies* 195-208

Crook, Peter, 'After Adong: The Emerging Doctrine of Native Title in Malaysia' (2005) 3 *Journal of Malaysian and Comparative Law* 71-98

Cullet, Philippe et al *Water governance in motion* (Foundation Books, 2010)

‘*Dams and Development: A New Framework for Decision-making: the Report of the World Commission on Dams*’ (World Commission on Dams, 2000)

Danielle, R, ‘India’s new Asia-Pacific strategy: Modi acts East’ (Lowy Institute for International Policy, December 2014) <<http://www.lowyinstitute.org/files/indias-new-asia-pacific-strategy-modi-acts-east.pdf>>

Devi, P. Binodini, *Land System of Manipur* (Akansha Publishing, New Delhi, 2006)

Environment, Department, Ministry of Forest and Environment, Government of Bangladesh, *Vulnerability of Bangladesh to Climate Change and Sea Level Rise: Concepts and Tools for Calculation Risk in Integrated Coastal Zone Management* (Bangladesh Centre for Advanced Studies, December 1994)

Faruque, Abdullah Al, *Essentials of Legal Research* (Palal Prokashoni, Dhaka, 2010)

Fernandes, Walter et al, *The Draft National Rehabilitation Policy (2006) and The Communal Violence Bill (2005): A Critique of the Rehabilitation Policy of the Government of India* (Mahanirban Calcutta Research Group 2007) 23

‘Financing Dams in India: Risks and Challenges’ (International River Network, Delhi Forum, February 2005) <https://www.internationalrivers.org/files/attached-files/financingdams2005_text.pdf>

Forest Advisory Committee Meeting, Agenda No. 3, 11-12 July 2013 <http://forestclearance.nic.in/writereaddata/FAC_Minutes/101129123412131con11and12July2013.pdf>

Gain, Philip (ed), *Bangladesh Environment Facing the 21 st Century* (Society for Environment and Human Development, Dhaka, 2nd ed, 2002)

Haokip, Thongkholal, 'India's Look East Policy: Its Evolution and Approach' (2011) 18.2 *South Asian Survey* 239-257

Haque, Mahfuzul, *Climate Change: Issues for the Policy Makers of Bangladesh* (Environment and Development Alliance, 1996)

Hill, Douglas P, 'Trans-boundary water resources and uneven development: crisis within and beyond contemporary India' (2013) 36.2 *South Asia: Journal of South Asian Studies* 243-257

Hossian, Sazzad, 'Ganges water treaty between Bangladesh and India, 1996 and its prospects for sub-regional cooperation' Paper submitted at Mekong River Commission Summit <www.mrcsummit.org/presentations/track3/1.3-b-Conges-water-treaty-MirSajjad.pdf>

Hunter, David, James Salzman and Durwood Zaelke, *International Environmental Law and Policy* (University Casebook Series, Foundation press, 2nd ed, 2002)

'Indigenous peoples in India' (8 April 2016) International Work Group for Indigenous Affairs, <<http://www.iwgia.org/regions/asia/india>>

Islam, Md. Rafiqul and Mohammed Omar Faruque 'Seismic Slope Stability of the Tipaimukh Dam of North-eastern India: A Numerical Modelling Approach' [2013] 2(3) *Earth Science* 73-87

Islam, Md Saidul, and Md Nazrul Islam 'Environmentalism of the poor: the Tipaimukh Dam, ecological disasters and environmental resistance beyond borders' (2015) 2:27 *Bandung: Journal of the Global South*

Iyer, Ramaswamy R (ed) *Water and the laws in India* (SAGE Publications New Delhi; Washington DC 2009)

Kawser, Mohammad Abul and Md. Abdus Samad, 'Political history of Farakka Barrage and its effects on environment in Bangladesh' (2016) 2:16 *Bandung: Journal of the Global South*

Kurmi, Pradip, and Ruchira Gupta, 'Paucity of Energy in Barak Valley: A Review of Tipaimukh Hydroelectric Project and an Alternative Scheme for Development' [2016] 5(2) *International Research Journal of Social Sciences* 52-55

Madhuri, Parikh, 'The Forest Conservation in India and the Role of Indian Supreme Court: A Critical Analysis' [2013] 13(4) *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* 55-61

Mary C Hurley 'Aboriginal Title: The Supreme Court of Canada Decision in *Delgamuukw v British Columbia*' (Law and Government Division, Library of Parliament, Canada, January 1998)

Mayer, Benoit 'Judicial Review of Human Rights Impacts of Hydroelectric Projects' (Centre for International Sustainable Development Law, 2012).

Metz, Bert (ed) et al, *Climate Change 2007: Mitigation of Climate Change* (Cambridge University Press, 2007)

Modi, Renu, *Beyond Relocation: The Imperative of Sustainable Resettlement* (Sage Publications India, 2009)

Morse, Bradford and Thomas R. Berger 'Sardar Sarovar – Report of the Independent Review' (1992) *Ottawa: Resource Futures International* xi-xxv and 349-58

'*New Independent Review Documents Failure of Narmada Dam*' (11 June 2008) International Rivers <<https://www.internationalrivers.org/blogs/227/new-independent-review-documents-failure-of-narmada-dam>>

'New Land Use Policy/Project of Manipur 2014: an approach paper' (Planning Department, Government of Manipur 2014) <<http://admin.indiaenvironmentportal.org.in/files/file/Approach%20Paper%20on%20NLUP%20Manipur%202014.pdf>>

Parishad, Bangladesh Unnayan, University of Waikato Centre for Environmental and Resource Studies and University of East Anglia Climatic Research Unit, *Bangladesh, greenhouse effect and climate change: briefing documents* (Bangladesh Unnayan Parishad: Distributor, Book Club International, Dhaka, Bangladesh, 1994)

Parry, Martin (ed) et al, *Climate Change 2007: Impacts, Adaptation and Vulnerability* (Cambridge University Press, 2007)

‘Power Sector Reform’ (April 2013) Power Department Manipur
<http://planningcommission.nic.in/plans/stateplan/Presentations13_14/mani_power13_14.pdf>

Protecting Rivers and Rights- World Commission on Dams Recommendations in Action: Briefing Kit by International Rivers (International Rivers, July 2010)

‘Protection of Tribals Under PESA Act’ (8 August 2014) Press Information Bureau, Government of India, Ministry of Tribal Affairs,
<www.pib.nic.in/newsite/printrelease.aspx?relid=108320>

Raghuram, G, and Simi Sunny, ‘Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement ordinance 2014: A Process Perspective’ (Indian Institute of Management, July 2015)

Ranjan, R K ‘Tipaimukh’ (2003) 11.1 *The Ecologist Asia* 76-79

Rao, V V K, ‘Hydropower in the Northeast: Potential and Harnessing Analysis’ (Background paper No. 6, the World Bank, September 2006)
<www.indiawaterportal.org/sites/indiawaterportal.org/files/hydropower_in_the_Northeast_potential_and_harnessing_analysis.pdf>

Roy, K J, Chandan Mahanta and Partha J Das ‘*Hydropower Development in Northeast India: Conflicts, Issues and Way forward*’ India Water Portal
<http://www.indiawaterportal.org/sites/indiawaterportal.org/files/hydropower_development_in_northeast_-_joy_et_al.pdf>

Saikia, Hemanta, 'Political economy of big Dam in North East India' [2012] 1(1) *Basic Research Journal of Social and Political Science* 01-11

Shelton, Dinah L and Donald K Anton 'Problems in Human Rights and Large Dam' (2011) *GW Law Faculty Publications & Other Works, Paper 1075*

Solomon, Susan (ed) et al, *Climate Change 2007: The Physical Science Basis* (Cambridge University Press, 2007)

Somokanta, Thounaojam 'Sociological understanding of risks: an empirical case study of Tipaimukh dam in Manipur, India' (2014) 8.4 *International Journal of Innovation and Sustainable Development* 363-379

Srivastava, H N, *Forecasting Earthquake* (National Book Trust, New Delhi, 1983).

Strachan, Anna Louise, Harnit Kaur Kanf and Tuli Sinha 'India Look East Policy: A Critical Assessment- Interview with Amb. Rajiv Sikri' (Institute of Peace and Conflict Studies, October 2009) <http://www.ipcs.org/pdf_file/issue/SR85-SEARPInterview-Sikri1.pdf>

'*Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169) Handbook for ILO Tripartite Constituents*' (International Labour Office, Geneva, 19 February 2013)

Yumnam, Jiten, 'An assessment of Dams in India's North East Seeking Carbon Credit from Clean Development Mechanism of the United Nations Framework Convention on Climate Change' (February 2012) Citizens Concern for Dams and Development and Supported by International Rivers <<https://www.internationalrivers.org/resources/an-assessment-of-dams-in-india-seeking-carbon-credits-from-clean-development-mechanism>>

Yumnam, Jiten, and Pushparani Koijam, 'Tipaimukh Dam Plan and Uncertainties in Manipur' (Centre for Research and Advocacy, Manipur and United Voluntary Youth Council, October 2014)

Yumnam, Jiten, 'Mapithel Dam: An Inside Look' (8 July 2015) International Rivers, <<https://www.internationalrivers.org/blogs/328-22>>

Xanthaki, Alexander, 'Land Rights of Indigenous Peoples in Southeast Asia' [2003] 4(2) *Melbourne Journal of International Law* 467-496

Cases

Adong bin Kuwau & Ors v Kerajaan Negeri Johor & Anor (1997) 1 MLJ 418
Coastal First Nations v British Columbia (Environment) [2016] BCSC 34
Commonwealth v. Tasmania (1983) 158 CLR 1
Delgamuukw v British Columbia (1997) 3 SCR 1010
Mabo v. Queensland (No 2) [1992] HCA 23
Mabo v. Queensland (1988) HCA 69
MC Mehta v. Union of India (2015) 43 SCD 193
Narmada Bachao Andolan v Union of India (2000) 10 SCC 664
Nor Anak Nyawai & Ors v Borneo Pulp Plantation Sdn Bhd & Ors (2001) 6 MLJ 241
Orissa Mining Corporation v. Ministry of Environment and Forest (2011) WP (civil) No. 180
Sagong bin Tasi & Ors v Kerajaan Negeri Selangor & Ors (2002) 2 MLJ 591
Samatha v. State of AP (1997) AIR SC 3297
Shree Bhagawati Tea Estates v. Government of India (1996) AIR SC 201
T.N. Godavarman Thirumalkpad v. Union of India (1997) AIR SC 1228
Tsilhqot'in Nation v British Columbia (2014) 2 SCR 257
Wik Peoples v Queensland (1996) 187 CLR 1

Legislations and policies

Constitution of India
Constitution Act 1982 (Canada)
Electricity Act 2003 (India)
Environmental Protection Act 1986 (India)
Forest Conservation Act 1980 (India)
Land Acquisition Act 1960 (Malaysia)

India Look East Policy

Industrial and Investment Policy of Manipur 2013

Manipur Hydro Power Policy 2012

Manipur Land Revenue and Land Reform (Seventh Amendment) Bill 2015

New Land Use Policy of Manipur 2014

Panchayats (extension to Scheduled Areas) Act 1996 (India)

Queensland Coast Islands Declaratory Act 1985 (Qld, Australia)

Racial Discrimination Act 1975 (Cth, Australia)

Right to Information Act 2005 (India)

Santal Pargana Tenancy Act 1949 (India)

Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (India)

Wildlife Protection Act 1972 (India)

World Heritage Properties Conservation Act 1983 (Cth, Australia)

Treaties

Bangladesh-India Treaty on Sharing the Waters of the Ganges River 1996 (signed 12 December 1996)

The Convention on Biological Diversity 1992 adopted 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993)

Indigenous and Tribal Peoples Convention 1989 adopted 27 June 1989, ILO Convention 169 (entered into force 5 September 1991)

International Covenant on Civil and Political Rights ('ICCPR') adopted 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)

Universal Declaration of Human Rights ('UDHR') adopted 10 December 1948, UN Doc A/810 at 71 (1948)

United Nations Declaration on the Rights of Indigenous People 2007 ('UNDRIP') adopted 13 September 2007 (non-legally binding) Code A/RES/61/295

United Nations Framework Convention on Climate Change 1992 ('UNFCCC') adopted 4 June 1992, 1771 UNTS 107 (entered into force 21 March 1994)

Newspaper Articles

'British MP marches to border: protest dam', *The New Indian Express* (online), 30 November 2009 <<http://www.newindianexpress.com/world/article162505.ece>>

Chandrasekaran, Kaavya, 'Capacity for renewable energy in India hits 42850MW; surpasses capacity of hydel projects', *The Economic Times* (online), 10 June 2016 <<http://economictimes.com/industry/energy/power/capacity-for-renewable-energy-in-india-hits-42850-mw-surpasses-capacity-of-hydel-projects/articleshow/52860042.cms>>

'Canadian court overturns approval of oil pipeline opposed by indigenous groups', *The Guardian* (online), 1 July 2016 <<http://www.theguardian.com/world/2016/jun/30/Canadian-court-overturns-oil-pipeline-northern-gateway>>

Dainai, K, 'Land Rights of Tribal and State Land Laws: Manipur' *Naga Journal* (online), 29 August 2011, <<http://www.nagajournal.com/articles/land-rights-of-tribal-and-state-land-laws-manipur/>>

DiLallo, Matt, 'Enbridge Inc's Northern Gateway Pipeline Isn't Looking Good', *The Motley Fool* (online), 18 July 2016 <<http://www.fool.ca/2016/07/18/the-outlook-for-enbridge-incs-northern-gateway-pipeline-isnt-looking-good>>

'Earthquake hits India's Manipur state' *BBC News* (online), 4 January 2016, <<http://www.bbc.com/news/world-asia-india-35219069>>

'Environment ministry not keen on Tipaimukh hydroelectric project', *The Times of India* (online), 9 June 2013 <<http://timesofindia.indiatimes.com/home/environment/development-issue/environment-minister-not-keen-on-Tipaimukh-hydroelectric-project/articleshow/20503606.cms>>

Gowen, Annie 'India's huge need for electricity is a problem for the planet', *The Washington Post* (online), 6 November 2015 <https://www.washingtonpost.com/world/asia_pacific/indias-huge-need-for-electricity-is-a-problem-for-the-planet/2015/11/06/a9e004e6-622d-11e5-8475-781cc9851652_story.html>

Kenia, Janaki, 'Indian government to review hydroelectric dams in two river basins', *The Guardian* (online), 30 May 2015 <<https://www.theguardian.com/environment/india-untamed/2015/may/30/indian-government-to-review-hydroelectric-dams-two-river-basins>>

Laithanbam, Iboyaima, 'Activists welcomes rejection of Tipaimukh dam by FAC', *The Hindu* (online), 9 August 2013 <<http://www.thehindu.com/news/national/other-states/activists-welcomes-rejection-of-tipaimukh-dam-by-fac/article5006409.ece>>

'Land Bill: Six facts you need to know', *The Hindu* (online), 11 March 2015 <<http://www.thehindu.com/news/national/land-bill-six-facts-you-need-to-know/article6978832.ece>>

Leber, Rebecca, 'Four reasons Obama Rejected the Keystone XL Pipeline: Not all of them make environmentalists happy', *The New Republic* (online), 7 November 2015 <<http://www.newrepublic.com/article/123369/four-reasons-obama-rejected-keystone-xl-pipeline>>

'Loharinag Pala hydel project to be scrapped', *The Hindu* (online), 21 August 2010 <<http://www.thehindu.com/news/national/loharinag-pala-hydel-project-to-be-scrapped/article584356.ece>>

MacCharles, Tonda, 'Supreme Court grants land title to B. C. First Nation in Landmark case', *the Toronto Star*, 24 June 2014 <https://www.thestar.com/news/Canada/2014/06/26/supreme_court_grants_land_title_to_bc_first_nation_in_landmark_case_html>

Overdorf, Jason, 'How many dams can one state hold', *The Global Post* (online), 23 April 2012 <<http://www.pri.org/stories/2012-04-23/part-1-how-many-dams-can-one-state-hold>>

Ranjan, R K, 'Ithai Barrage: A Fatal Threat to Natural Drainage System of Manipur Valley', *the Imphal Free Press* (online), 22 April 2014 <<http://ifp.co.in/page/items/20746/20746-ithai-barrae-a-fatal-threat-to-national-drainage-system-of-manipur-valley>>

Sarwar, Mostofa 'India's river linking plan: Consequence on major fisheries of Bangladesh' *The Daily Star* (Dhaka) 19 September 2003

'Victorian unconventional gas exploration ban to end fracking and CSG extraction', *ABC news* (online) Australia, 30 August 2016, <<http://www.abc.net.au/news/2016-08-30/victoria-to-ban-csg-fracking-and-unconventional-gas-exploration/7796944>>

Other online Sources

'About cultural genocide. What is it?' (17 December 2010) Cultural Genocide <<http://www.juhaculturalgenocide.blogspot.com.au/2010/2/about-cultural-genocide-what-is-it.html?m=1>>

Cain, Eli, '*Small Victory for Canada's First Nations Reveals Large Problems*' (19 July 2016) The Council of Hemispheric Affairs <<http://www.coha.org/small-victory-for-canadas-first-nations-reveals-large-problem>>

'*Dam(ned) Communities: Violence and Eviction in Manipur Region*' (26 June 2015) Days of Action for Development Justice <<http://www.peoplesgoals.org/devjustice/campaigns/manipur>>

'*Fact Sheet on Mega Dams in Manipur*' (26 June 2015) Days of Action for Development Justice <<http://peoplesgoals.org/devjustice/campaigns/manipur/fact-sheet-on-mega-dams-in-manipur/>>

'*File: 2011 Census Scheduled Tribes distribution map India by state and union territory*' (11 August 2016) Wikimedia Commons <https://www.commons.wikimedia.org/wiki/File:2011_Census_Scheduled_Tribes_distribution_map_India_by_state_and_union_territory.svg>

Hossain, M Anowar '*Tipaimukh Dam in India: Probable Disaster for Bangladesh*' (2005) International River Foundation, <<http://archive.riversymposium.com/2005/index.php?element=06HOSSAIN+MAnowar>>

'*Large Dams in India*' (10 August 2016) Department of Economics, Yale, <http://www.econ.yale.edu/~rp269/website/papers/dams_OUP_Nov30.pdf>.

'*Mabo Case*' (15 August 2016) Australian Institute of Aboriginal and Torres Strait Islander Studies, <<http://aistsis.gov.au/explore/articles/mabo-case>>

Ninan, K N, & S Puttaswamalah '*People Power*' (31 March 1998) Down to Earth <www.downtoearth.org.in/blog/people-power-21438>

'*Rebecca Adamson*' (16 August 2016) Do One Thing < www.doonething.org/heroes/pages-a/adamson-quotes.htm>.

Sabharwal Y K '*Plenary Session: Rights of Indigenous Peoples*' (6 March 2016) The Supreme Court of India <www.supremecourtfindia.nic.in/speeches/speeches_2006/ila-toronto.pdf>

'*Tribes of Northeast India*' (14 August 2016) Greener Pastures <<http://www.thegreenerpastures.com/tribes-of-north-east-india#.V-55vjQmLCQ>>

United Naga Council '*New Land Use Policy, Manipur*' (4 July 2014) the Other media, <www.theothermedia.in/unc-press-statement-new-land-use-policy-manipur>

World Coal Association, <www.worldcoal.org/coal/uses-coal/coal-electricity>

'*What is the right to negotiate?*' (July 2014) National Native Title Tribunal <<http://www.nntt.gov.au/futureacts/Pages/Negotiation.aspx>>

Yong, Yang, '*World's Largest hydropower projects planned for Tibetan Plateau*' (5 March 2014) China dialogue <<https://www.chinadialogue.net/article/show/single/en/6781-world-s-largest-hydropower-project-planned-for-Tibetan-Plateau>>

Yumnam, Jiten, '*High Tipaimukh dam negotiations sans people*', (6 October 2016) E-Pao
<http://e-pao.net/epSubPageExtracto.asp?src=news_section.opinions.opinion_on_building_of_Tipaimukh_dam.High_Tipaimukh_dam_negotiations_sans_peoples>