The Queensland Government’s approval of the Adani Coal mine: an Earth Jurisprudence perspective

Roshan

30 January 2020

The Queensland Government’s approval of the Adani Coal mine: an Earth Jurisprudence perspective

According to the decision held by the Land Court of Queensland, announced on 15 December 2015, three mining leases were approved for Adani Mining Private Limited. The decision was announced considering in view the commendations held in the Mineral Resources Act of 1989 (MRA) and the Environmental Protection Act of 1994 (EPA). One of the defendant parties was the Environmental Protection Agency. Later on the statements released by Mr Davies, who belongs to the Environmental Protection Agency, revealed the acceptance of the fact that the current laws were inadequate for protecting and conserving the environment. Interestingly, the entire country is dependent on these laws, when it comes to defending any threat related to environment protection. He stated that,

“The decision released by the Court is not the reflection of what the court was supposed to hear. This decision is in fact, the replication of laws, on the basis of which it was decided. This decision is shortsightedness of the laws we depend over and failure of our, to rightly protect the environment, over which the future of our generations depend. I believe we should value more the land of ours, the climatic conditions we live under, our water resources and the iconic Great Barrier Reef. We need to protect all this from the aggressiveness we might face from the coal expansion[[1]](#footnote-1).”

This essay aims at analyzing the judgment released by the Land Court. It will also take into consideration, the limit to which the acts refereed above, holds worth in anthropocentrism. The critical analysis of the possible recommendations for a revised legal framework of setting will be represented as well. The essay will support the approach followed in Earth Jurisprudence.

After the coordinators’ general report about tie evaluation of the EIS, the public advertisement of Carmichael Mine was held. It was presented to the general public for the reason of objections under the EPA and MRA[[2]](#footnote-2). The Conservative group of the Land Services group of the Coast and Country (LSCC) was included as an objector. They were also among the early respondents to the the legal proceedings, mentioned above. LSCC raised their voice against the mining leases, which they believe stand against the substantial environmental concerns of the government and the general public. Their concerns included

1. Substantial and worse impact the ground water could face and the ecosystem related to it. It also included substantially the Doongmabulla Springs Complex (DSC);
2. Its effects on the biodiversity, primarily the endangered black- threatened finch (BHF) and the susceptible species of different plants including the waxy cabbage palm (WCP);
3. The large share of mining during the combustion of coal which produces Carbon dioxide (CO2). CO2 is a substantial hazard and impacts over the climate change in a negative manner. They believe that it furthers the threat for the Great Barrier Reef (GBR)’
4. Their final concern was related to the financial vulnerability caused by mining, since it stands against the wider public interest[[3]](#footnote-3).

For examining MRA and the EPA, it is viable to consider the elements of these acts. According to the MRA, the section 2 of the act talks about its objectives

The main and the principal purpose of the act mentioned, is to

1. inspire and facilitate interested individuals in exploring minerals
2. widen their knowledge related to mineral resources
3. limiting the land use disputes in consideration of the prospects for exploration and mining
4. inducing the responsibility about environment related to exploration and mining
5. ensuring a worthy financial output to the government
6. drawing an administrative framework to maximize and proactively regulate the mining of the minerals
7. ensuring a responsible land care management and administrative setup for prospecting the exploration and mining[[4]](#footnote-4)

An assessment of these objectives reveals that there’s no substantial intention to limit the degradation of the environment, which is a compulsory byproduct of the mineral extraction. In a more lucrative manner, it is right to note that the words, ‘inducing’ and ‘ensuring’, refereed in the clause (d) and (g) present some kind of a hope to mitigate the environmental threats. The spirit of the other text is related to appropriating the land use from totally an anthropocentric prospective. These clauses ensure the commercial and financial usefulness of these projects or such kind of development. In view of these clauses, it is right to argue that the environment substantiality is given a little weight and minimal consideration.

There are many different essential approvals required as per the Queensland Law of the Environmental Authority. According to the EPA, the objects set out in section 3 entails,

“The purpose of this act is to take care of the Queensland’s environment and in the same time allowing the development which improves the level of life, at present and for the future. This must be carried in a manner which protects the ecology and substantiate the development[[5]](#footnote-5).”

The objective of such clauses entails a more conversationalist approach, however, the agency eyed to attain this purpose by chalking out the guidelines for identifying and protecting the values ascribed to our environment. It wants to do that by introducing a range of factors including some regulatory mechanisms which will protect and preserve the environment from climatic hazards and by limiting other harmful activities[[6]](#footnote-6). Though this Act, aims at taking the requisite measures to protect any kind of harm to the environment, by any means, but there exist, some limits to it. For example, the harm cannot be limited or restricted if it is caused by a licensed activity[[7]](#footnote-7). The EP Act provides a patterned system of activities for approving and licensing the activities which pose a reasonable threat to the environment. It also assures mitigating a system of activity to allow minimal threat to the environment[[8]](#footnote-8).

There are different reasons as to why the EPA and MRA are considered in limited in scope to protect the environment, but the most prominent of them is the anthropocentricism attached to them. Anthropocentricism entails that the primary beneficiaries of the environmental activities are humans and not the environment, though both the humans and economy are inseparably linked[[9]](#footnote-9). Both the humans and the economy do not aim to conserve the environment, rather they aim at maximizing the threats to the environment, which as a result increase the threats to the environment. This is also apparent from the conclusion of the CAC Macdonald which goes on to write, ‘though there will be environmental damages created by the mines, I analyze that the adverse consequences are outweighed which will overflow from the development of the mines[[10]](#footnote-10).’

These are some of the reasons that the Earth, we live in continues to face threats and unprecedented environmental challenges which include species extinction, pollution of the air and water, climate change and the destruction of the eco-system. Despite the human efforts aimed at growing awareness and acknowledging the universal efforts to confront threats faced by the Earth, these threats are increasing. There are, also, a growing list of technical improvements which are aimed at curbing the threats to Earth[[11]](#footnote-11).

The paradigm or the infrastructural abilities of the EPA or MRA reflect the efforts based on the philosophies enshrined in the 17th century science and technology, which enshrines that all natural forces are here to benefit humans and they have nothing else to wonder about. The EPA and the MRA are part of the system which entails no dynamism in view of the dynamic nature of Earth, but they all facilitate and broadens the exploitation and the consumption of the Earth’s resources[[12]](#footnote-12). During all such changes, humans have remained busy in creating a world, which was centered on them and which represent their delusory nature. All such efforts of humans are separate from the nature, which Corman Cullinan mentions as the ‘wild law’ and as homosphere. In all our efforts we oversaw the biosphere, to which humans are inextricably linked[[13]](#footnote-13). Such aspects of human evolution suggest that we, the humans, have accepted our superiority over nature and the different natural processes[[14]](#footnote-14). This is all based on the notion that earth, nature and different natural phenomena have encapsulated the humans. The laws that we gradually drew out are not adamant of the fact that we are bound in planetary boundaries. The humans consider themselves as not being able to obey certain laws of physics and of the nature.

Humans’ paradigm of development and successes is out dated[[15]](#footnote-15). There are many different things like the GDP, we consider as the representative of our growth, which is truly wrong. The environmental crisis, we face today is adamant of the fact that humans are living under a wrong impression. The GDP is solely related to the number of products being produced and the human well-being. These conflicting aspects suggest that humans need to challenge and ultimately devalue the root causes of the system of governance, which includes the economic system as well. It is so derogatory to leave the health of the nature and progression to some artificial means, like the humans did in the case of EPA and MRA.

Jared Diamond’s book “collapse” talks about so many civilizations which were warped, since they were unaware of the threats they faced. These civilizations went down, since they learnt to live in a system, which they believe strengthens their ability to fight the menaces, which was actually wrong. It has also been explained by Karl Marx in his thesis, where he mentions that different philosophers have just interpreted the world, though, the real challenge is to change this[[16]](#footnote-16). A positive change comes, when we (the humans) let go of the small profits and eye toward greater benefit, as illustrated by Adani Mine. In our case, we humans need to shift our goals to develop a sustainable economic change and also need to evolve from the barbaric things we have been encountering.

Since, we are living in a new and improved world, therefore, we need to change this system of governance and; with the help of both the science and the tribal experience of the past, need to develop a more compatible system[[17]](#footnote-17). This all requires to adopt a new Earth Jurisprudence.

This new jurisprudence of the Earth will be related to the changed perspective of the Humans and will help to build an evolved framework of law, which will not only be beneficial for the human existence, but will monitor the human behavior with regard to the ecological changes. By developing this humans will be able to keep their activities within the context of the ecological sustainability. This new Earth Jurisprudence will help to give a legal cover to the animal species as well. These species will also get an advantage, since it will provide them a right to play within the ecosystem. These rights will include the right to life, thriving and existence. If one needs to understand the natural rights of nature, he or she needs to broaden his or her scope from the primitive thinking and requires to accept the humility, which some humans are not able to determine. Us humans need to understand that nature decides whatever is intrinsic or extrinsic. Humans need to rightly understand that their rights do not, by any way, cancel the rights of others.

This new framework of laws or jurisprudence will help to align the ecology of humans to sustain the life. They will help us to achieve what the central purpose of the environmental laws should be. The new Earth jurisprudence will help to create a new societal value stream as well, which will as well contribute positively to human social structure. These new structure relevant to Earth’s jurisprudence will eventually take into fold each area of the society which at present relies on nature in one way or another[[18]](#footnote-18). Nature will no longer be considered as the property, or will no longer be available to be exploited for certain gains. The rights of nature will ensure its integrity and will support a system which will be more everlasting. There will be no longer the exploitation of the earth’s resources as well[[19]](#footnote-19). The new Earth Jurisprudence will give a blow to the idea of anthropocentric ideas. It will finally be self- aggrandizing, if humans think that new jurisprudence will benefit them in any way[[20]](#footnote-20).

Establishing and writing the new rights of the nature will be an important step and will lead humans toward a more sustainable and ecological friendly change. It will also provide a counter balance to the so called corporate rights, human have been working over, for many long. Earth Jurisprudence or the natural rights of the Earth must not just be a fading effort. If it remained a fading system, it will lead the humans to a destructive future[[21]](#footnote-21).

However, if the humans are able to create and successfully implement the Earth Jurisprudence it will then allow the black- throated finch, the cabbage palm and the Great Barrier Reef a more sustainable and ecologically friendlier environment[[22]](#footnote-22). However, otherwise it is clearly depicted in the decision of the Land Court that conservation remains not more affordable in any way[[23]](#footnote-23). Earth Jurisprudence therefore, will help to determine that other species have the same rights on the surface of Earth as humans have.

There is an overwhelming bundle of proof that human-oriented Earth laws are not more reliable anymore. Humans need to accept the fact that their current paradigm is not responding to their problems. As Al Gore noted that ‘we are at a fork in the road, where we are as well as species[[24]](#footnote-24).’ Humans need to walk away from the different forms of energy, which are subsidizing their past[[25]](#footnote-25). Importantly, we all need to accept that change happens when we start accepting our duties for change[[26]](#footnote-26).

# ***Bibliography:***

A Articles / Books / Reports

• Diamond, Jared Collapse (Viking Press, 2006).

• Diesendorf, Mark and Hamilton, Clive Human ecology, human economy; ideas for an ecologically

sustainable future (Allen & Unwin, 1997).

• Dobson, Andrew (2006) ‘Ecological citizenship’: a defence’, Environmental Politics, 15(3): 447-51.

• Dobson, Andrew and Bell, Derek Environmental Citizenship (The MIT Press, 2006). • Gore, Al, Our Choice (Bloomsbury Publishing, 2009).

• Hamilton, Clive Growth Fetish (Allen & Unwin, 2003).

• Hanna, Susan S., Folke, Carl and Maler, Karl-Goran Rights to Nature Ecological, Economic, Cultural, and Political Principles of Institutions for the environment (Island Press, 1996) 4.

• Rock, FAss Joachim ‘Ecosystems and Human Well-being’ (2006) Vol 1 Ch 5 Univ. Potsdam, Institute of Geo-Ecology 1-2 <https://www.pik> potsdam.de/members/cramer/teaching/06/mea\_jrock.pdf.

B Cases

• Adani Mining Pty Ltd v Land Services of Coast and Country Inc & Ors [2015] QLC 48. • Adani Mining Pty Ltd and Another v Adrian Burragubba, Patrick Malone and Irene White on behalf of the Wangan and Jagalingou People [2015] NNTTA 16.

• Australian Conservation Foundation Incorporated v Minister for the Environment [2016] FCA 1042.

• Australian Conservation Foundation Incorporated v Minister for the Environment (No 2) [2016] FCA 1095.

C Legislation

• Environmental Protection Act 1994 (Qld)

• Environment Protection and Biodiversity Conservation Act 1999 (Cth).

• Law of the Rights of Mother Earth 2011 (Bolivia).

• Mineral Resources Act 1989 (Qld).

D Other

• Amos, Cameron and Swann, Tom Carmichael in Context Quantifying Australia’s Threat to Climate Action (November 2015) http://www.tai.org.au/sites/defualt/files/Amos%202015%20Carmichael%20in%20context%20.pdf.

• Constitution of Ecuador 2008, Chapter Seven: Rights of Nature. • Earth Law Centre, What do we mean by Inherent Rights of Nature? (2015)

<http://www.earthlawcenter.org/faq/>.

• Gore, Al Climate Reality Leadership Program, Delhi, India (2015).

• John Quiggin, Adani should bow out gracefully from its Carmichael coal mine (31 August 2016)

The Conversation https://theconversation.com/adani-should-bow-out-gracefully-from-its

carmichael-coal-mine-64608.

• Marx, Karl Theses on Feuerbach, 11th Thesis (Die Neue Zeit, 1888).

• People’s Tribunal for the Rights of Nature hosted by the Australian Earth Laws Alliance (AELA), Banco Court, QEII Courts of Law Complex in Brisbane, Queensland, 22nd October, 2016.

• Universal Declaration of the Rights of Mother Earth.

• US President Obama, State of Union Address (13 January, 2016).

1. Environmental Defenders Office, Land Services of Coast and Country media release (2015) http://www.edoqld.org.au/news/land-services-of-coast-and-country-media-release/. [↑](#footnote-ref-1)
2. Environmental Law Australia, Carmichael Coal Mine Cases in the Land Court & Supreme Court of Qld (2016) http://envlaw.com.au/carmichael-coal-mine-case/. [↑](#footnote-ref-2)
3. Ibid [↑](#footnote-ref-3)
4. Mineral Resources Act 1989 (Qld) s 2. [↑](#footnote-ref-4)
5. Environmental Protection Act 1994 (Qld) s 3. [↑](#footnote-ref-5)
6. Brisbane Regional Environmental Council, A Quick Guide to the Environmental Protection Act Qld (2014) http://brec.ozecol.org/epact.html [↑](#footnote-ref-6)
7. Ibid. [↑](#footnote-ref-7)
8. Ibid. [↑](#footnote-ref-8)
9. William & Mary Environmental Law and Policy Review, Why Environmental Laws Fail (2015) http://scholarship.law.wm.edu/wmelpr/vol39/iss1/2/. [↑](#footnote-ref-9)
10. Adani Mining Pty Ltd v Land Services of Coast and County Inc & Ors [2015] QLC 48 138 at 625. [↑](#footnote-ref-10)
11. Andrew Dobson and Derek Bell, Environmental Citizenship (The MIT Press, 2006) 155-6. [↑](#footnote-ref-11)
12. Wild Law explained: an interview with Cormac Cullinan (Directed by Steven Myburgh, YouTube, 2016) https://www.youtube.com/watch?v=hJiRd4aKjrw&t=381s. [↑](#footnote-ref-12)
13. Cormac Cullinan, Wild Law A Manifesto for Earth Justice (Green Books, 2003) 53. [↑](#footnote-ref-13)
14. Ibid. [↑](#footnote-ref-14)
15. FAss. Joachim Rock, ‘Ecosystems and Human Well-being’ (2006) Vol 1 Ch 5 Univ. Potsdam, Institute of GeoEcology 1-2 https://www.pik-potsdam.de/members/cramer/teaching/06/mea\_jrock.pdf. [↑](#footnote-ref-15)
16. Karl Marx, Theses on Feuerbach, 11th Thesis (Die Neue Zeit, 1888). [↑](#footnote-ref-16)
17. Cullinan, Above n 12, 139-141 [↑](#footnote-ref-17)
18. Earth Law Centre, What do we mean by Inherent Rights of Nature? (2015) http://www.earthlawcenter.org/faq/. [↑](#footnote-ref-18)
19. Cullinan, Above n 11. [↑](#footnote-ref-19)
20. Ibid. [↑](#footnote-ref-20)
21. Cullinan, Above n 12, 108-9. [↑](#footnote-ref-21)
22. Ibid, 145-46. [↑](#footnote-ref-22)
23. Susan S. Hanna, Carl Folke and Karl-Goran Maler, Rights to Nature Ecological, Economic, Cultural, and Political Principles of Institutions for the environment (Island Press, 1996) 4. [↑](#footnote-ref-23)
24. Al Gore, Climate Reality Leadership Program, Delhi, India (2015) [↑](#footnote-ref-24)
25. US President Obama, State of Union Address (13 January, 2016). [↑](#footnote-ref-25)
26. Gore, Above n 22. [↑](#footnote-ref-26)