ISSN : 2455 0965

Lex Terra

News Updates on Environmental Law

ISSUE 18 | JUNE 2016

"The environment is where we all meet; where all have a mutual interest; it is the one thing all of us share."

—Lady Bird Johnson

"*Lex Terra* is an initiative by the members of Centre for Environmental Law, Advocay and Research(CELAR) of National Law University. Through *Lex Terra*, we are making an effort to put forward the various facets related to Environment from different sources which is published every fortnight among the society so that a community of environmentally conscious people emerge out of the legal and non-legal fraternity.

Each edition of *Lex Terra* highlights some noteworthy eco-news, both at global as well as national arena.

This newsletter is extensively prepared by the members and researchers of CELAR, the members of NLUA.

INSIDE THE ISSUE

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Photo courtesy: Pushpanjali Medhi

About CELAR

The primary mission of Centre for Environmental Law, Advocacy amd Research (CELAR) of National Law University, Assam is to engage in advocacy and research on public interest environmental issues. For the purpose, it will organize workshops and seminars to educate and develop skills, convene conferences to promote exchange of ideas, conduct training programmes for capacity building in environmental law issues, undertake research on legal concerns and publish periodically, newsletters and journals.

The objectives of the CELAR are as follows:

- To inspire and educate students by providing hand-on advocacy experience and direct exposure to the issues.
- Strengthen access to justice by undertaking high quality multi– disciplinary research on contemporary legal issues pertaining to environment.
- Advocate for reforms in environmental law through scientifically sound legislative proposals.
- Organise training programmes for strengthening the legal capacity building on environmental laws doe civil servants, law enforcement authorities, non-governmental organizations and media personnel.
- Publish periodically journals and newsletters on environmental law.

— Professor (Dr.) Yugal Kishore,

Centre Head, CELAR

Message from Team *Lex Terra*

Dear Readers,

It is with much joy and anticipation that we present to you the eighteenth issue of CELAR's fortnightly newsletter, *Lex Terra.*

We congratulate the team for its continuous and praiseworthy collective efforts.

The team of *Lex Terra* wishes to thank all of those who supported this initiative. We would like to express out gratitude to our respected Vice– Chancellor, Prof. (Dr.) Vijender Kumar for his continuous support and timely inputs. We would like to thank Prof. (Dr.) Yugal Kishore, the Centre Head of CELAR for his help and encouragement. We would like to thank Mr. Chiradeep Basak, Centre Co-ordinator of CELAR, who has been a source of inspiration from the outset, along-side his unrelenting contribution to all phases of the job, from planning, to setting clear goals and appraising the outcome. Lastly, we would also like to extend our gratitude to our faculty advisors, Ms. Shannu Narayan and Mr. Nayan Jyoti Pathak for their ideas and relentless support.

Based on our publication's impact factor as well as some requests and suggestions by academicians from other law schools, we now share our publication with all law schools, administrators along with a pool of eminent environmental activists, researchers and lawyers in India and overseas. We are also accepting short articles for publication . **So if you are willing to be part of this venture, kindly contribute.**
Our issues goes online every 1st and 16th of each month.
Please keep pouring down your support and concern for mother nature.

Thank you!

Happy Reading!

ADVOCATING STATE WIDE PRESENCE OF NGT

Avinash Singh ,
V Year, MATS Law School,
Raipur (Chhattisgarh)

It is cardinal principal of any law to work that requisites the proposition of ample reach to its subject matters that it deals to serve and said principle when comes to environment laws of the realm has witnessed to be flouted by sincere omissions consigned while accreting the NGT that is often depicted as the guardian of modern environmental warfare. Even with the presence of impeccable power like as of "contempt" that runs in parallel with powers of High Court and the power to review that locates to be rare in cases of tribunal power structuring and consequently it is crystal clear that the mode and objective of legislature was serious towards the environmental concern to be optimized in consonance with that of laid down industry standards. Though with the advent of the near to perfect blend of expert and judicial mind in the tribunal that more often than not prevent the Apex Court to interfere in the decisions of the NGT orders that verifies the efficacy of the said forum but there was a basic though entrenched oversight occurred with that of the 2010 piece of legislation that doesn't requires it to constitute a bench in each state of India and thus dividing and leaving the environmental guardian to have easy access to issues of nearby places and leaving the distant part of India into ongoing environmental hazard.

The issues pertaining to present comment is to put an awakening tone to the government that must make such mandatory provisions so as to constitute the NGT benches in every state and remove the disparity of the distance and approachability that rescinds innumerous bona-fide environmental concerns to reach to the pro-environment forum and sometimes even a sufficient hazard is already caused till the time any issue reaches to the NGT that makes it alarming requisite to place such NGT benches around India and not mere leaving it with the five pillared structure. In the very initial letters of the 186th Law Commission Report on "Proposal to constitute Environment Courts" it was mentioned that such courts (Present day National Green Tribunal) must be constituted in the each states (though alternative was given as group of states) but it became relatively more appreciable to constitute such courts in each state when law commission suggested on the term of "accessibility to citizens". Now when the very origin of such organization i.e. NGT is not chased as per the aspirations of its inventors then it would be a reasonable remark to quote that such organization would not be proficient to comprehensibly justify the purpose of its derivation and hence needed a tweaking with that of the legitimate public good that it seeks to hand

out. NGT was rather criticized for its various lacunas that may even extend from the necessity of sufficient funds to that of unavailability of proper infra and facing a generalized criticism of deploying government officials that may put a bias approach toward the government in case they violate any such environmental law. Well with that of some macro critics relating to real world functions of NGT, it was also argued in some strata of legal congregation that removing the power of High Court to review in blatant violation of the constitutional powers of the Courts and it also has some related matter to the broad topic in present i.e. constitution of benches of NGT in each state that would be clarified next.

It is very elementary standard of maintainability of any case in either of the constitutional courts i.e. High Court or Supreme Court that there must not be any alternative remedy present in any other forum and only after exhausting the said remedy, one can approach to the courts of law that reasons its base in the upholding efficiency, reducing litigation and devoting time to more important matters of which recent exemplar could be evidenced in case of *Commissioner of Income Tax vs. Chhabil Dass Agrawal* wherein presence of efficacious alternative remedy by any statuary body bars the courts to entertain any petition for the said subject matter and hence the same was applied in case for the NGT as well. Now the question is not the substantial challenge to the reciprocity of the constitutional power of High Court and Supreme Court to consider a substantial affair in issue rather the motive is to provide a practical issue that is currently being faced by the public due to absence of benches of NGT in each state. North eastern part of the Indian remains to be most affected because of its intricate geographical positioning that makes it difficult to conveyance from places such as Kolkata that is much difficult if it would be otherwise some regional respective city in case the benches would be constituted in each state. It is not only the litigation cost of the person who is either affected by the environmental concerns but it becomes harassingly perverse when someone in the interest of public in large fails to approach to NGT due to various challenges that the distance plays in seeking justice. Litigation cost in case of the concerned High Court would have been relatively low but going with the "maintainability challenge" it seems that matter would be only decided on merits if they don't come in array of the NGT jurisdiction.

In the "Magna Carts " of NGT i.e. 186th Law Commission Report of whom framework was devised from several international bodies around globe functioning for similar subject matter of environment protection it was stressed that each state must have Environmental Courts (today NGT) and hence the philosophy and methodology must be respected by developing a state wide affiliation network of NGT in observance of environmental concerns and hence amplifying

inclusive justice to environment and its protectors.

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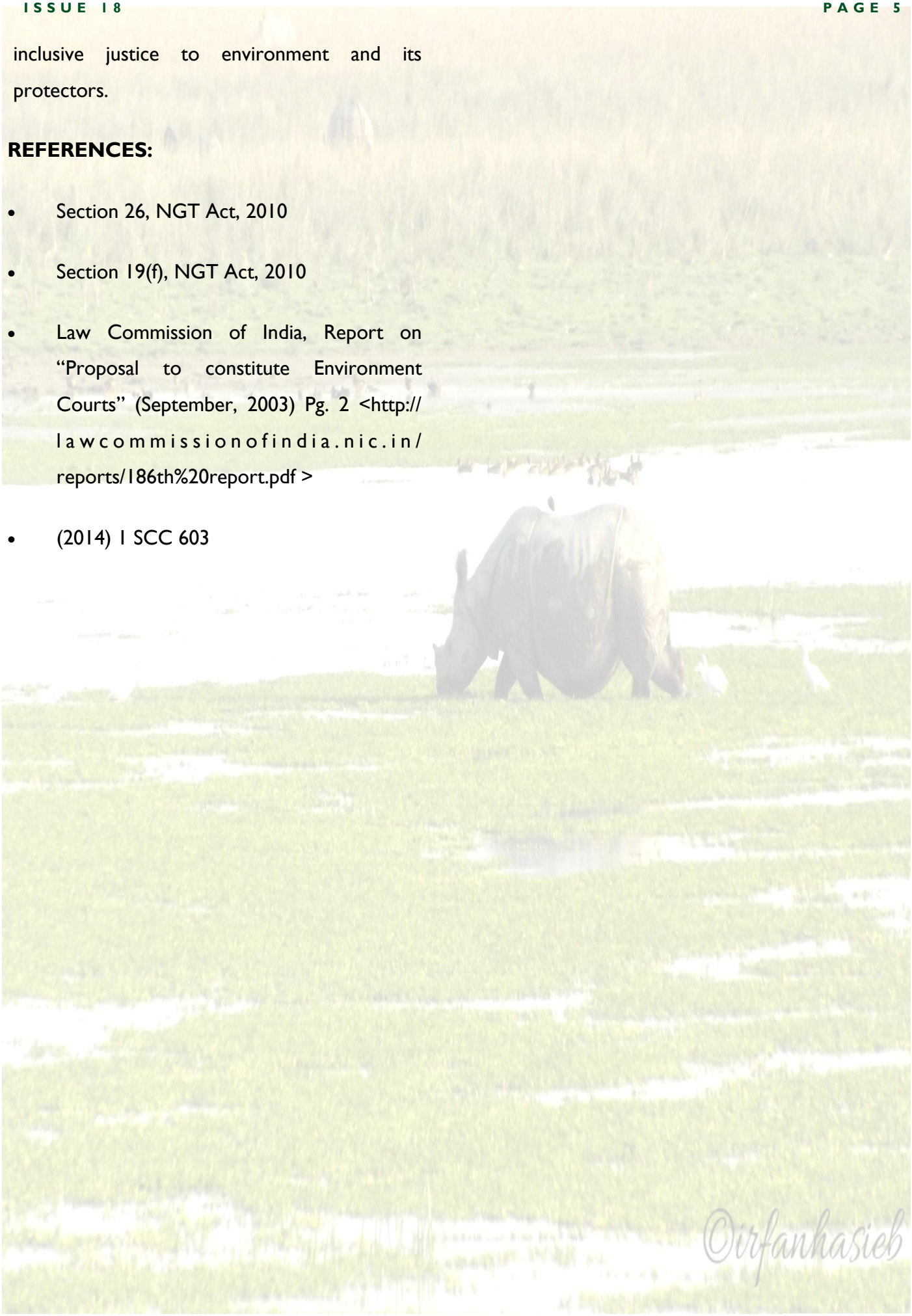

CIVIL LIABILITY FOR NUCLEAR DAMAGES

Avilash Kumbhar
NLU Oridsha

Nuclear power is the fourth-largest source of electricity in India with 21 atomic reactors in operation currently in seven nuclear power plants with an aggregate installed capacity of 5780 MW. India's nuclear power industry is undergoing rapid expansion with plans to increase nuclear power output to 64,000 MW by 2032. India, however, confronts one obstacle in its nuclear system and it is the inadequate supply of Uranium. India will find it difficult to go beyond 10,000 MW of nuclear capacity based on known indigenous Uranium resources.

Looking at the ecological disaster faced by the world, it can be said without uncertainty that harnessing nuclear vitality is the need of great importance to handle the dwindling energy sources. Nuclear power has figured in discussions internationally, been the reason for dissents and played evil in diplomatic talks between nations. Nuclear energy is, in numerous places, competitive with fossil fuels energizes for power generation, in spite of generally high capital expenses and the need to internalize all waste disposal and decommissioning expenses. If the social and environmental expenses of fossil fuels are additionally considered, the financial aspects of nuclear force are remarkable. India has turned into the most recent victim of the 'nuclear discussion' with the Kundakulam and Jaitapur disaster have put the people at loggerheads with the government with the latter truly being at a loss of words.

KUNDANKALAM DEBATE

On December 5, 2008, amid the official visit of Russian Prime Minister Dmitry Medvedev to India, an agreement was signed by the two nations on the development of four additional units at the Kudankulam site and cooperation on developing new sites which also exempted Russia from any nuclear liability.

Some of the main reasons why people are protesting against installation of Koondakulam power plant can be categorized as follows:

- The government of Tamil Nadu has pronounced area of 2-5 km inside the sterilization zone which would bring about the displacement of people occupying that region and any disaster will make situation worse.
- The waste from the power plant if not treated appropriately might be dumped into the ocean which would affect the fish and marine life. It might affect the food security of the whole Southern Tamil Nadu and Southern Kerala.

- Volcanism is the major safety concern at Kudankulam. Places around Kudankulam have experienced small volume of volcanic eruptions in the years 1998, 1999, 2001 and 200 and the nearest eruption occurred at just 26 kilometers away from the KKNPP site.

Despite all the advantages that nuclear power is supposed to offer it is a very costly affair. With regards to nuclear power it is said that it is the initial capital cost that is high and from there on it is not an expensive business. Further, there is considerable resistance from locals in view of the associated dangers with any nuclear plant and this has been further heightened with the recent damage to nuclear installations in Fukushima Japan caused by an earthquake and subsequent tsunami. Further, India with its hidden nuclear installation has almost open public debate on the security related issues. This is exacerbated by the way that the Atomic Energy Review Board works under the managerial control of the legislature and is not completely free.

CIVIL LIABILITY FOR NUCLEAR DAMAGE

The Bhopal Gas Tragedy in the year 1984 has raised many questions which are needed to be answered -

- Who would be liable to pay compensation for the victims of the Bhopal Gas Tragedy?
- What are the steps that should have been taken to ensure immediate compensation to the victims?
- Would the presence of a structured legal regime made the difference?
- Did India pay for the absence of a liability regime in terms of human lives, livelihoods and irreversible environmental degradation?

- The above question has brought about a hue and cry regarding the need to have a legal regime to compensate for damage. Whatsoever be the safety standards, even the best cannot completely exclude the possibilities of nuclear accidents.

ABSENCE OF ABSOLUTE LIABILITY

The Bill only takes care of 'liability' and not the 'absolute liability' while The Convention on Supplementary Compensation for Nuclear Damage [CSC] creates provision for both as such exclusion may create ambiguity regarding the real intent of the parliament. Calculating absolute liability immediately after an accident is not possible but the Bill must ensure that absolute liability is provided for and the responsibility jointly shared between the operator and the government.

"Preventive measures" have been defined under Section 2(n) as to any reasonable measures which are taken by a person after a nuclear incident which has resulted in preventing or minimizing the damage referred to in sub-clauses (i), (v), (vii) of clause (f) subject to the approval of the central government. However, the definition coined is not pretty clear and creates ambiguity.

LIABILITY OF THE CENTRAL GOVERNMENT

At an initial stage Section 7 of the Bill had stated that the central government should be liable to pay only in the circumstances–where the liability exceeds the amount of liability of an operator specified under sub-Section (ii)(6). This clause however creates a distinction between the operator and the government when both are persons being referred is same under the Indian context. Another bone of contention is that a public sector operator while setting up a plant is bound by the liability rules and insurance cover requirements.

Section 5 lays down certain situations where the damage has been caused by armed conflict, hostility, civil war and terrorism; the operator won't be liable. With the latest amendment the central government may assume the liability of a nuclear installation which is "not operated by it" by notification if the act is done in good faith and for public interest. This amendment, however, does not talk as to about joint venture plants.

SUPPLIERS LIABILITY

The operator is the one who is held principally liable but this provision in the Bill digresses from the globally accepted position on nuclear liability in two ways:

- Section 17(b) empowers the operator to subsequently stake a claim for any compensation it may pay from a supplier whose product or services may have patent or latent defects or is has been found out to be substandard. The main flaw here is that the test to find out supplier's liability is pretty subjective. This in turn leads to ambiguity regarding consequences a supplier could face.
- The ability of the operator to recover the compensation amount from the supplier subsequently has been based on international treaties like the Convention on Supplementary Compensation 1997.

Section 46 of the Act would thus enable the operator to recover claims for compensation from supplier in cases other than that of nuclear disasters, like the industrial disasters.

In this regard there are few questions that arise:

- Atomic Energy Regulatory Board has the power to review foreign supplier designs or only the domestic designs?
- Will the foreign suppliers permit the AERB to review its designs? Even after foreign suppliers agree to comply by AERB, the question now arises is regarding the institutions competence to deal with such matters.

EXEMPTION FROM LIABILITY

The issue to be dealt here is regarding whether any limitations be put to liability and could insurance cover for the same be allowed which would make any project unviable. This is so because the operator of the nuclear plant will never be able to secure either insurance or the pre-requisite capital for the project. The limit which was earlier set at

Rs. 500 crores has been raised to Rs. 1,500 crores under clause 6(2). This hike in the cap set for the operator's liability will enable to strike the right balance between making the legal and regulatory regime making it attractive enough for potential private .The dense population of India and the less evolved tort law of India make it necessary that the cap to operator liability in the Bill are hiked.

A man could take all necessary steps but still it cannot prevent a natural disaster from happening. It could reduce the damage but cannot prevent it. Therefore, section 5 (l)(i) states that an operator shall not be liable for any nuclear damage where such damage is caused by a nuclear incident directly due to a grave natural disaster of an exceptional character. However, the operator could use this excuse to escape from liability towards the damage caused. There are three issues arising out of this exemptions clause.

- Issue of burden of proof.
- Inconsistency with international practice and jurisprudence of the Supreme Court of the availability of clause 5(1)(i) as a defense by the operator.
- The ambit of exemptions is too wide.

The creation of above provision meant that the Central Government would be held liable when the operator successfully argues the exemptions. One of the main reasons for deleting the clause is conformity with jurisprudence regarding absolute liability developed by the Supreme Court of India. The Supreme Court has specifically differentiated between concepts of strict liability absolute liability and negligence in several cases. It has also evolved the idea of near absolute liability. The Supreme Court discussed the liability of persons operating hazardous industries in *M.C. Mehta* v *Union of India*:

> "The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part."

COMPENSATION UNDER ARTICLE 21

Article 21 states that compensation could be awarded under Article 32 for violations of Article 21 for infringement of the fundamental right is gross and such infringement on a large scale affects the fundamental rights of a large number of persons. The larger and the more prosperous an enterprise is the greater must be the amount of compensation.

Nuclear damage, should it occur, affects a large number of persons and would thus attract the ratio brought about in *M. C. Mehta* v. *Union of India*, thereby allowing the courts to award public law compensation under Article 32. Keeping this in contention when a cap is done regarding the total it may seem unconstitutional as it prevents the possibility of a full compensation to victims, fails to

hold the government accountable. This act of limiting is like pre-judging the liability without taking into consideration the facts and circumstances of the accident.

POLLUTERS PAY PRINCIPLE

"The 'Polluter Pays' principle as interpreted by this court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology."

The main object which can be inferred from the Court's usage of the polluter pays principle is that the damage caused due to pollution, both on human beings as well as the environment, the compensation must be done in full. With the greater awareness among people, the precautionary principle and 'polluter pays' principle have to be implemented with punitive costs.

CONCLUSION

This paper has examined the different features of nuclear power generation as far and wide as possible. At first by discussing the significance of nuclear energy by ideals of it being a clean source of power, the predominant characteristics of nuclear energy were highlighted. Yet the examinations later on uncovered that nuclear power is basically a necessary evil.

The extent to which India is concerned, late advance demonstrates that the country is likewise prepared to make the colossal step in turning into an overwhelming nation in the power segment. Provisions like limiting the total liability, capping of operator's liability, right of recourse against the supplier were changed yet are still porous. The researchers are of the opinion that the operator's liability ought to be expanded further and there ought not to exist any route by method for which the supplier's legal responsibility can be limited. India does not give off an impression of being bowing before global superpowers and have a strong legislation on nuclear liability which has no escape clauses on making the supplier liable in the occasion of a nuclear disaster.

One must not forget that everything has a price to pay. The world has encountered three noteworthy nuclear disasters and another can't be managed. Subsequently the legislators wishing to understand their vision of tackling nuclear energy at a noteworthy scale must endeavor towards joining a danger free strategy for harnessing nuclear energy to improve the world and make it more secure place to live in. To change our future we should carefully lead our present. So any choice in regards to nuclear power ought not to be taken in haste and proper discussion must be attempted before launching any advancement in the nuclear power programs.

The extent to which India is concerned about its nuclear power, it is all dedicated to the harnessing of nuclear energy. In spite of the fact that concerns are there encompassing the nuclear plants in topical

times as clear from the challenges in Jaitapur and Kundakulam, however the measures adopted by government demonstrate that the India is resolved in not surrendering nuclear energy as a conceivable source of harnessing energy.

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CONSTITUTION ADMINISTRATION AND JUDICIARY RESPONSE TOWARDS ENVIRONMENT

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INTRODUCTION

The man's mission for improvement is the major factor responsible for environmental Degradation and ecological Corruption. It was suitably said by Mahatma Gandhi:

"There is a sufficiency in the world for man's need but not for man's greed"

Man, which is the best making of God, is always debasing the environment of this planet. Man has been misusing stupidly instead of using carefully the assets of the earth."Environment" is gotten from an old French word *environner,* meaning to encircle. Distinctive individuals have given diverse meanings of environment. Albert Einstein once remarked, "The environment is everything that is not me." Oxford Dictionary defines environment as the natural conditions, e.g. land, water and air, in which we live.

The longing for more has prompted this condition. The development of human advancements and then the development of industrial revolution and subsequently globalization, liberalization and modernization of business sectors have created genuine damage to the nature of this planet.

CONSTITUTIONAL RESPONSE

The Constitution of India came into force on 26th January, 1950. It is the pre-eminent law of India laying down the framework for defining the fundamental principles, determining the structure, procedures, powers and duties of the government, elucidating the fundamental rights, directive principles and fundamental duties of the citizens of India. Originally, the Constitution did not give procurement's to Ecological Insurance except for a couple of articles like Articles 47 & 48 in the Directive Principles of State Policy. In 1976, when the forty-second amendment of the Constitution was passed, it gave particular procurement for the protection of the environment and its improvements, in the manifestation of Fundamental Duty and Directive Principles of State Policy. Further, the enactment of Environment (Protection) Act in 1986 was a real and far reaching venture towards the protection as well as insurance of environment. The significant environmental legislations passed by the Parliament are The Water (Prevention and Control of Pollution) Act,

1974; The Air (Prevention and Control of Pollution) Act, 1981; and the Environment (Protection) Act, 1986. In total, there are about 200 central and state legislations on Ecological insurance / Environment Protection.

FUNDAMENTAL RIGHTS

In India, the fundamental rights of the citizens are mentioned in the Part III of the Constitution from Articles 12 to 35. In India, number of NGO's has been shaped for the natural insurance for example; Centre for Science and Environment (CSE), Indian Association for Environmental Management (IAEM), Green Future Foundation etc. Apart from these, some environmental international organizations also work in India at the local level, independently or in collaboration with some other organizations like World Wildlife Fund (WWF), Greenpeace etc. Also a number of fortnightly, monthly, quarterly and annual newsletters, journals and magazines like; Down to Earth, Journal of Education for Sustainable Development (JESD), International Journal of Ecology and Environmental Sciences etc. are published to inform citizens about the condition of the environment. However, with the passing of the Right to Information Act, 2005, right to information has been given the status of a fundamental right under Article 19 (1) of the Constitution. This privilege has turned into a conspicuous intends to gather data about ecological issues.

Article 21 says "No person shall be deprived of his life or personal liberty except according to procedure established by law."

The Maneka Gandhi's case revolutionized the scope of the Article 21 of the Constitution i.e. right to life with the involvement of the scope of environmental protection.

DIRECTIVE PRINCIPLES OF STATE POLICY (DPSP)

Ecological treaties, conventions and agreements made at the international level by separate nations, calls upon the legislature of the countries to take measures for environment protection. Therefore, the Legislature of India included this duty in the Part IV of the Constitution that is from Article 39 to Article 43 which deals with the Directive Principle of State Policy. These are those guidelines to be acknowledged while framing the laws and policies by the Government of India including state and local governments. These are not enforceable by the courts but are necessary to establish the public arena.

FUNDAMENTAL DUTIES

Our rights need to affirm our obligations. Legislature of India adopts the security of environment as the fundamental duty of a citizen of India. The key fundamental duties of the citizens of India form the Part IV A of the Constitution and were included by the Constitution (Forty-second Amendment) Act, 1976. These obligations are the ethical commitments followed by the citizens of India so as to maintain the solidarity of the country. Article 51A (G) of the fundamental duties is applicable to the insurance of nature. It states "to protect and improve the natural environment including forests,

lakes, rivers and wild life, and to have compassion for living creatures."

THE ADMINISTRATIVE RESPONSE

The principal step in the field of environment management took place in 1972 when 24th United Nations General Assembly decided to convene a conference on the Human and Environment and asked a report from each member country on the nature's domain. In April 1981, National Committee on Environment Planning was constituted. It did a lot of noteworthy work like; environment appraisal of development projects, mankind settlements. For more comprehensive tools for the administrative and legislative aspects, the Government of India constituted a High Power Committee under the Chairmanship of the Deputy Chairman of the Planning Commission, Shri N.D. Tiwari. The Tiwari Committee submitted its report to the Prime Minister Smt. Indira Gandhi in September 1980. It recommended the creation of separate department of Environment and it came into being within the Ministry of Science and Technology under the charge of Hon'ble Prime Minister. During 1985, the Departments of Forest and Wildlife were annexed and finally, the Ministry of Environment and Forests was thus created.

MINISTRY OF ENVIRONMENT AND FORESTS

The Ministry of Environment and Forests is the key organization in the regulatory structure of the Government of India dealing with the implementation of policies, projects and programmes for the protection of environment including conservation and protection from pollution of the natural resources. The hierarchical structure of Ministry includes different divisions, associated and autonomous offices, agencies, public sector undertakings (PSUs) and self governing grant-in-aid institutions. All these organizations/agencies/institutions have strengthened and fortified in carrying out the exercises for the security of environment in India. The administration of the environment policies is completed by around 900 staff individuals of the Ministry of Environment and Forests. Posts of Group "A" have 169, Group "B" 264 and Group "C" 441 workers. Aside from this, there is a Right to Information Cell (RTI Cell) in the Ministry which carries out the activities relating to the execution of RTI Act of 2005.

ENVIRONMENT INFORMATION SYSTEM

Understanding the requirement for environment information, the ministry set up an Environmental Information System in 1983 acronymed as ENVIS. It was implemented as a comprehensive network in environmental information collection, collation, storage, retrieval and dissemination. Presently, ENVIS system consists of 76 network partners out of which 46 partners are on subject-specific and 30 partners would on state related issues. These network accomplices are known as ENVIS Centers and are located in the outstanding organizations/ institutions/ Universities/ State/ UT Government Departments throughout the nation.

OTHER MINISTRIES OF GOVERNMENT OF INDIA

However, Ministry of Environment and Forests of the Government of India alone is not involved. For

instance, before the creation of Ministry of Environment and Forests, the Ministry of Law, Justice and Company Affairs dealt with the Water contamination problems. The Ministry of Petroleum and Natural Gas has also initiated various steps through the companionship, Petroleum Conservation Research Association (PCRA) to promote energy conservation in the transport, industrial, agricultural and provincial parts.

JUDICIAL RESPONSE

Judiciary is one of the balancing pillars and mainstays of democracy. The role played by the judiciary in the protection of environment is no less than that of the law making body and executive organ of the government. The capacity to invoke the original jurisdiction of the Supreme Court (Apex Court) and the High Court's under Articles 32 and 226 of the Constitution, respectively, is a wonderful step forward in giving assurance to nature. In simple words, when officials fail to perform its role and functions, then the judiciary strides in to perform them. The introduction of Public interest litigation and unwinding of locus standi in the 1980s has further reinforced its part. With the advent of the Public Interest Litigation, anybody can file legal petition for the interest of public. Any individual who finds anything going ahead illegal anywhere in the country can knock the door of the Apex court under Article 32 of the Constitution or in the high court's under Article 226 of the Constitution or before the Court of magistrate under Section 133 of the Code of Criminal Procedure, 1973. The Public Interest Litigation can also be documented by composing a letter to the court. Public interest litigation in this manner, turn into a noteworthy progressive step to restore the despairing of masses through judiciary in India which has been the nation of inherited injustice. It has been found from the Indian Apex Pre-eminent Court (Supreme Court of India) Case Reports that out of 104 environmental litigations from 1980-2000 in the Supreme Court of India, 54 were filed by individuals who were not specifically the influenced parties and 28 were filed by NGOs on behalf of the affected parties.

One of the popular names in public interest litigation pertaining to environment protection is of lawyer Mahesh Chandra Mehta. He has brought a number of environment issues to the Courts of India. His landmark cases include Taj Mahal Case, Ganga Pollution Case, Vehicular Pollution Case, and Delhi Ridge Case.

The Taj Mahal Case was filed by Mahesh Chandra Mehta (M. C. Mehta) in the 1984 and the historic judgment was delivered by the Supreme Court in December 1996. The apex court gave various directions including banning the use of coal and coke and directing the industries to switch over to Compressed Natural Gas (CNG).

In the Ganga Pollution case, three landmark judgments and a number of Orders against polluting industries numbering more than fifty thousand in the Ganga basin were passed from time to time.

In the Vehicular Pollution Case, the Supreme Court delivered a landmark judgment in 1992 recommending measures for the nationwide control of vehicular pollution.

In the Delhi Ridge Case, the Court directed NCT of Delhi to declare it as 'Reserved Forest'.

ENVIRONMENT TRIBUNAL - National Green Tribunal Act, 2010

The new act provides for the establishment of National Green Tribunal (NGT) with- an uncommon fast-track court for expedient and speedy adjudication of environment-related civil litigations. The new tribunal might comprise of members who are experts and specialized in the field of environmental, nature and furthermore related sciences.

DIVERGENT ROLE OF JUDICIARY & ARBITRARINESS OF JUDICIARY

It has been found in number of environment related cases that judiciary has been veering off from its role of protecting and safety of the environment. The judgments of courts in India have not been always pro-environment, as was in the case of *Calcutta Taj Hotel* case. In this case, the petitioner through the public interest litigation (PIL) opposed the negotiating away of four acres of land belonging to Calcutta Zoo to the Taj Group of Hotels. They wanted to avoid the construction of the Hotel near the Zoo because they argued that multi-storied building in the vicinity of the zoo would disturb the animals and the ecological balance and would affect the bird migration which was a great attraction. But the Court permitted the construction of a hotel near the land belonging to the Calcutta Zoological Garden with certain preconditions, stating that tourism was important to the economic progress of the country, thereby underlining the constant controversy between development and the environment. The part of the judiciary in India sometimes has been arbitrary as well as subjective in the insurance of environment.

CONCLUSION & SUGGESTIONS

At the worldwide level, the expanding industrialization, urbanization, modernization and population growth have essentially contributed to the ecological corruption. The depletion of the natural resources, the extinction of many species, the flaws in the ecosystem, exhaustions of the ozone layer, all have become necessary issues to be addressed without delay in order to survive on this planet Earth. Genuine and true efforts should be made for educating the nation's huge massive population and their authorities about the adverse effects of large populations through extraordinary designed IEC (Information, Education and Communication) programmes.

Broadly categorized, following are some of the suggestions for the protection of environment.

There is an urgent need to examine with sincere intent the approach of the policies and laws, their downsides, limitations, clarity and consistency in order to remove their shortcomings.

Cooperation of the public should be a top priority and need.

Awards and grants should be conferred on the members of the public at all levels so that they are motivated towards the protection of environment and their efforts should be given due acknowledgement prominently.

Waste recycling reusing and generation of energy from waste should be exposed widely.

E-waste administration is a new test for waste management in India and around the world.

An efficient and effective public transportation system should be developed and encouraged.

More steps are needed and expected to control deforestation as present status is grave.

Since NGOs play a dynamic and pivotal role in the protection as well as in the insurance of environment by performing numerous functions including observing of the government's performance, therefore, to compliment it, government should recognize and acknowledge the role of NGOs and energize them in the preservations of the environment by defining their rights and obligations; & by providing more grants for the improvement in the nature of environment.

It has been all around well considered now that the environment of the planet Earth is not a sector but is the most important dimension of every sector of the Universe.

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GLOBAL ENVIRONMENTALISM AND INDIAN JUDICIARY: CHANGING CONTOURS OF JUDICIAL VERDICTS

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I. INTRODUCTION

The phenomenon of global environmentalism has emerged as crucial in a post-colonization and globalised world. Globalization has triggered a reaction where the societies across the globe are becoming increasingly connected. The cross border transactions have had a negative impact on the global environment. This large scale detrimental repercussion on the environment has put forward the immediate need of having mechanisms to combat the effects. The philosophy of global environmentalism is one of the central thought processes that have been targeted towards curbing the adverse effects of globalisation and industrialisation. It finds its roots in answering the concerns related to effect on natural environment and global human health due to rapid industrialization, modernisation and growth of population. Post publication of Silent Spring, which is considered to be the starting point of global environmental philosophy, it has played a significant role in political considerations and policy framework. It also has had an equally consequential effect on the decisions and judgements of the court worldwide.

This essay is primarily aimed at analysing how the phenomenon of global environmentalism has sculpted the thought process of the judiciary in its decisions regarding environmental issues and disputes. The essay is divided into two parts in which the authors look into the principles of global environmentalism and thereafter move into analysis of the impact of the principles on the decisions of the court, restricting it largely to the post liberalisation Indian society. The authors proceed with the hypothesis that global environmentalism has influenced the judicial verdicts substantially through analysis of decisions of the Indian courts, with reference to the foreign judgements wherever the need be felt.

II. GLOBAL ENVIRONMENTALISM: ORIGINS AND PRINCIPLES

Exploitation of the environment can be argued to be rooted in the Judaeo – Christian belief that man forms a separate entity and the entire nature has been created for rule and benefit of the human beings, which aggravated post invention of newer scientific technologies. Environmentalism opposes this outlook and proposes for a harmonious relationship of the human society with the nature and other species. The supporters of envi-

ronmentalism base their argument on the scientific observation that the earth has a specific carrying capacity beyond which it is impossible to sustain itself and human life. Environmentalism is an umbrella term for the wide range of movements and efforts that are being made towards sustainable use of the environment and thereby making an effort to check the destructive impact on it.

The primary reason that can be cited in favour of the need of a global outlook in the environmentalist movements is that there has been a shift towards a more global ecosystem. One of the glaring examples of this can be seen as global warming that has affected ice caps throughout the globe and consequentially the raising the level of world seas. As a corollary, a greater interaction between countries has been witnessed in the present scenario and has been the reason for intermingling of environmental issues within the realm of international legal frame work. At the same time it has been witnessed that the domestic courts are using principles of global environmentalism while deciding the litigations before them.

III. GLOBAL EVIRONMENTALISM AND JUDICIAL VERDICTS

A. Sustainable Development

One of the foremost norms of global environmentalism, on which it is primarily based, is the concept of sustainable development. Sustained efforts from the environmentalists resulted in success in form of adoption of UN Charter for Nature and Principles of Sustainable Development in 1982, where the global community recognised the principle of sustainable use of resources for preservation of species and benefit of future generations. Several countries having had accepted this in their policy framework, it can be argued to have acquired the character of erga onmes obligation. Identifying it as a principle of the international environment law and obligation of compliance by all the nations, the Indian courts, on several instances, have used Sustainable Development principles in their decisions. It has been used as the guiding principle by the Indian apex court in celebrated Vellore Citizens Welfare Forum and Narmada Bachao Adolan cases.

In Vellore Citizens Forum, where the question was regarding harmful effluents being discharged from the tanneries and other industries and thereby causing irreversible damage to the river and groundwater, the Supreme Court, took cognisance of findings of Brundtland Report, agreements under Agenda 21 and Statement on Forestry Principles. On these principles, which form a part of the customary international law, the court opined that there can be no hesitation in ingraining them into the Indian domestic law. The court in the present case has further extrapolated the principles of global environmentalism to include polluter pays principle and precautionary principle.

B. Polluter Pays Principle

The polluter pays principle has been developed by the courts throughout the globe on lines of global environmentalism, to have a deterrent effect on the potential polluters. It can be argued that this is an extension of the absolute liability principle. Though

it has been termed as part of 'old environmentalism' and lacking force as a part of customary international law, it has been extensively used by the Indian courts in their decisions. The Supreme Court built upon the concept of absolutely liability decided through Oleum Gas Leak case and noted in Indian Council for Enviro-Legal Action v. Union of India, that the polluter pays principle places the financial liability on the undertakings that cause the damage or pollution through their activities. Pursuant to the principle, the court rejected the argument of exceptions to strict liability and made the respondents liable to pay of improvement and restoration of the environment in the affected areas.

This principle also finds place in the global legal framework and has been frequently used in international environment law. In the Trail Smelter case, where the pollution caused on the United States side by smelter plants in Canada was challenged before the International Joint Commission and thereafter before the arbitral tribunal, the court placed the responsibility for the pollution. Though it did not use the polluter pays principle in a strong sense, the Court ordered Canada to pay the damages for transnational pollution and to devise a new regime to control it.

C. Precautionary Principle

Furthermore, based on the broad principles of sustainable development is the precautionary principle. In its core, it can be said to be drawing force from the arguments of environmentalism which aims at a shift from the assimilative capacity to taking preventive measures in anticipation of adverse impact of polluting activities. The Vellore Citizens Forum case took note of the principles enumerated in World Charter for Nature 1982 and Principle 15 of the Rio Declaration and incorporated precautionary principle in context of Indian domestic law. The court, in its verdict, directed the state government and the authorities to undertake measures to arrest the environmental degradation, as an obligation. Further it was noted that a lack of certainty of the threat to the environment cannot be used as an excuse for postponing the measures to curb the environmental degradation. The principle has also found use in other landmark judgement of AP Pollution Control Board v MV Nayadu where the court reiterated the dictum of Vellore Citizen and noted that it is better to be on the side of caution than to err in environmental damage.

In TN Godavarman Thirumalpad v. Union of India, the court placed precautionary principle in respect to the India's treaty obligations. It can be said to be in consonance with the principles of environmentalism which requires the nations to comply with the international environmental obligations. Even though India follows a dualist system and there was an absence of domestic legislation, the court made it obligatory on the government to adhere to the precautionary principles as treaty requirements.

D. Intergenerational Equity

Intergenerational equity also forms an equally important part of the concept of sustainable development. As a result a system of rights and obligations for the present generation has been created, whereby the obligation to conserve the natural and

cultural resource base has been placed on the current generation while conferring the right to use the legacy as well.

Intergenerational equity has been discussed in the landmark decision of the Supreme Court of Philippines in Minors Oposa v. Secretary of the Department of Environmental and Natural Resources and has laid down the principle of recognizing intergenerational responsibility by conferring recognition to the rights of the generations that are unborn yet. The plaintiffs in this case were a group of minors representing their own and their succeeding generations who sought an order for discontinuance of existing and future timber licensing agreements alleging that such deforestation caused environmental damage. Recognizing the right to a balanced and healthful ecology and the capability of the minors to sue on behalf of their succeeding generations, the court upheld the case of the plaintiffs on the basis of 'intergenerational balance'. But what makes the judgement all the more relevant in the intergenerational equity discourse is that such assertion over the rights of the future generations constitutes an obligation of the present generation, which must be duly observed by them seriously and responsibly. While sustainable development forms an important part of environmentalism, it itself comprises of many sub-issues of which intergenerational equity is one. Such precedent is an early example of the incorporation of the idea of environmentalism in the judiciary while delivering justice in cases involving environmental degradation.

The principle of intergenerational equity has also found its place in the Indian judiciary. In State of Himachal Pradesh v. Ganesh Woods, a writ petition was filed to restrain large scale deforestation of Khair trees in the state and it was granted. The decision was taken while noting the actual meaning of intergenerational equity and that no generation has the right to selfishly impede the development of its successor. While pressing again on the obligation of the State in this view, the Court based its decision on intergenerational equity. In another T.N. Godavarman v. Union of India, the Court took a practical recognition of the intergenerational principle by recommending framework to impose costs against defaulters and grant compensation. Therefore, it can be said that this principle is being increasingly adopted by the judiciary in India.

E. Transnational Pollution and Inclusion of Non-affected parties

Globalization has resulted in large scale trade and exchange of resources across the borders. This has led to the phenomenon of transnational pollution, where the globe is affected as a whole. The central crusade of the environmentalism movement has been against global environmental damage and this, consequentially resulted in establishment International NGOs (Non-Governmental Organisations) or EMOs (Environment Movement Organisations). In the international legal environment, a judicial trend has been witnessed for inclusion of these organisations in the enforcement of the principles. This has been reflected in the verdicts of the Indian Supreme Court which has mooted for the inclusion of NGO and other organisations in representative

capacity for the grassroot communities through relaxation of locus standi and allowing class actions. Added to this, the judicial activism of the judges, especially Justice Kuldip Singh has impacted the Indian Judiciary by inclusion of principles of environmentalism. The traditional concept of locus standi has been reduced through the principle of Public Interest Litigation (PIL) which has allowed the NGO's and other groups working towards environment protection. First time in 1983, the Supreme Court of India allowed initiation of environmental proceedings through an NGO. In the said case, a letter from Rural Litigation and Entitlement Kendra, Dehradun was treated as a writ petition under Article 32 of the Constitution. Supreme Court took cognizance of the letter which complained of illegal quarrying taking place in the fragile environment of Himalayas and ordered the State Government to take appropriate steps. It has to be noted that 54 out of the 104 environmental cases filed in the Supreme Court during the period 1980–2000, were instituted by a non-affected party. This was followed by a wide array of environmental litigations where petitions were filed by a third party.

F. Clean Environment as a Basic Human Right

The global environmental movement is focussed on the concept of a model of development which has human beings as the central and integral part of it. This is reflected through United Nations Conference on the Human Environment held in Stockholm, which declared that 'Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and …". This formed the beginning point of interaction of human rights with environment law. The discourse has been taken by jurisprudence developed by the Indian courts in plethora of cases such as Subhash Kumar vs. State. of Bihar, Oleum Gas Leak and Vellore Citizens Welfare Forum. The apex court of the nation, basing its reasoning on the Stockholm Declaration principles, has interpreted Right to Life under Article 21 of the Indian Constitution to include a right to enjoyment of pollution free water and air for full enjoyment of life. In Shanti Star Builders vs. Narayan Totame, the Supreme Court coupled the right to clean and decent environment with right to food, right to clothing and thus expanding the scope of Article 21. In the cases that followed, the Supreme Court tried to ensure the right by devising new mechanisms such as the 'Polluter Pays Principle' and 'Precautionary Principle' through Vellore Citizens Welfare Forum and 'Absolute managerial liability' principle in the Oleum Gas Leak case which has been already looked into in the preceding sections. In the present scenario, right to environment, which was mooted aggressively by the global environmental movement, finds a safe place within the Indian constitutional framework.

IV. CONCLUSION

In the present times, it can be witnessed that the principles of global environmentalism have been aggressively mooted worldwide and judiciary is taking note of it. From Trail Smelter, Gabčíkovo–Nagymaros and Minors Oposa in the foreign juris-

dictions, these principles are being increasing used by the Indian courts too. Post Vellore Citizens, Godavarman, Ganga Pollution, MV Nayadu a slew of related cases, it can be safely deduced that the verdicts of Indian courts have been based on principles of sustainable development, intergenerational equity, inclusion of third parties which are encompassed under the phenomenon of global environmentalism, thus reflecting its impact on the judicial verdicts.

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VANISHING WATER BODIES: THE JUDICIAL PARADIGM

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India nowadays is going through such a strenuous phase of draught with millions of people crossing miles in search of the blue gold for their mere sustenance. India was the land of more than a hundred rivers, enriching our soil and preserving life in its lap. Being a subcontinent surrounded by sea on three sides, the Himalayas on the north with its glaciers being the spring board of many rivers, and an enormous number of streams, lakes, tanks, ponds and wetlands, India was fairly lucky in terms of supply of water either for agriculture or for other purposes. But the panorama has changed. Now a glance around shows the pitiable state of the lives of both human and the wild, craving for drinking water, the withering fields, the diminishing forests and the depleting ground water. Such drastic change occurred in the last couple of decades. The destruction of water bodies is prima facie the pitfall of modern civilization. Encroachment and filling up of water bodies is one of the facets of such destruction and is primarily an eco- unfriendly act. The ill effects are twofold: firstly, it destroys the water resources, and secondly, the soil used for such filling is obtained by pulling down hills and mountains which are considered to be the seat of biodiversity and the sources of springs. So through this act of spoilage we are closing forever, the chances of future restoration of this ecosystem.

The filling up of water bodies are mainly done for construction purposes either by the state or by private persons. These activities are done in the name of "development". What really happens is unlawful encroachment of the water bodies and construction of flats and shopping malls for satisfying the monetary interest of a few who consider it as a mere investment opportunity. The aftermath is borne by rest of the population for the whole their lives. The painful fact is that the benefits are accrued only to the wealthy and the buildings remain uninhabited when lakh of people are out striving for basic shelter, making the whole scenario a mockery. Studies conducted by various organizations shows that more than 50% of the water bodies in India are destroyed. The cities, in their hurry to expand are eating away all the drains, aquifers and small tanks which constitute the sponge zones in controlling the floods. The dread fullness of the Chennai flood is still green in our memory. It is largely blamed on water body encroachments. By constructing buildings on water bodies and runways on wetlands, we have damaged our natural drainage basins. The rate of disappearing water bodies and wetlands has reached an alarming level, and the impact is being felt beyond the environmental sphere, and into the socio-economic sphere. We are also losing other important ecosystem services such as lakes that offer drinking water and that support biodiversity, recharge aquifers and provide recrea-

tional space.

How can the people involved in encroachment and in filling up the water bodies be identified and held responsible? There are no specific central legislations dealing with the matter. Some states like Tamil Nadu, Kerala, West Bengal, etc. have their own legislation for protecting the wetlands and other water bodies. But the destruction of water bodies is rampant there in spite of these legislations.

The Water (Prevention and Control of Pollution) Act, 1974 states in its objective the maintenance or restoration of the wholesomeness of water and for establishing the Pollution Control Board for the same purpose. The definition of pollution include such alteration of the physical, chemical or biological properties of water, to render such water as harmful or injurious to public health or safety, or to the life and health of animals or plants or of aquatic organisms. The Act deals with subterranean water also. Transformation of water bodies into solid lands alters the properties of water. Hence, we can say that the Pollution Control Board has the power and duty to protect them. In *Mohan Vaniya Viniyog Pvt. Ltd.* v. *State of West Bengal*, the Calcutta High court held that the pucca structures after illegally filling up the water bodies had adverse effect on underground streams and sources of water. Eventually such changes pose a serious danger of drying them up altogether and obliterating the existence of the water bodies themselves. In such a scenario the state board would be entitled to question the propriety and legality of the act of filling the water bodies.

The Wetlands (Conservation and Management) Rules, 2010 established a central Wetlands Regulatory Authority. But it does not include in its ambit paddy fields or wetlands other than those which are located in ecologically sensitive areas or sanctuaries, those that are situated in high altitude and those wetlands having a width of 500 hectares or more if situated in low altitude. The land filling of wet lands is also not dealt with. The Rules are toothless with serious flaws as they only regulate the activities upon wetlands and not enough for the protection of water bodies. National Water Policy, 2012 recognizes that natural water bodies and drainage channels are being encroached upon and diverted for other purposes. Groundwater recharge zones are often blocked. The policy states that water needs to be managed as a common pool community resource held by the state under Public Trust Doctrine to achieve food security, support livelihood, and ensure equitable and sustainable development for all. It pointed out the need for a National Framework Law as an umbrella statement of general principles governing the exercise of legislative or executive powers. Encroachments and diversion of water bodies and drainage channels must not be allowed, and wherever it has taken place, restoration of such places to a feasible extent should be implemented and maintained properly. Urban settlements, encroachments and any developmental activities in the protected upstream areas of water bodies and key aquifer recharge areas should be strictly regulated.

Under the Public Trust Doctrine, the state is the trustee of all natural resources, of which the beneficiaries are the community members. Some things are common to mankind like the air, water,

the sea etc. The state holds the resources in trust for the people. Private control is excluded and the trustee is charged with the duty of preserving the resources to make them available for certain public purposes. No one has the right to abuse or dispose of the property. Any dealing with the property has to take into account the entitlements of others. Whatever be the approach, the fundamental emphasis is on communal rather than private rights. These resources are meant for public use, and they cannot be converted into private ownership. In cases where the protector negates communal rights, it implies a denial of the application of the Public Trust Doctrine. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public, rather than to permit their use for private ownership or commercial purposes. Property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; the property may not be sold even for a fair cash equivalent. The state has a positive duty to protect the people's common heritage of streams, lakes, marshlands and tidelands. So it turns out that the state is bound to take remedial measures so as to restore the degraded environment.

Let us see how the judiciary dealt with the issue. In *Hinch Lal Tiwari* v. *Kamala Devi*, it was held that land recorded as a pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose. The material resources of the community like forests, tanks, ponds, hillocks, mountains, etc. are nature's bounty and they maintain delicate ecological balance, hence they need to be protected for a proper and healthy environment, to enable people to enjoy a quality life. It was observed appropriate vigil is the best protection against attempts to seek allotment in non-abadi sites. Underlining the importance of maintaining ponds, the court further observed that the restoration of ponds, and their development and maintenance as a recreational spot will be in the best interest of the villagers, which will help in maintaining ecological balance and protecting the environment, and that such measures must begin at the grass root level.

The Supreme Court in *Intellectuals Forum, Tirupathi* v. *State of A. P. & Ors*., took a different view. This case is related to the preservation and restoration of the status quo of two historical tanks, which are situated in the suburbs of Tirupathi town. Alienation of the tanks was done by the development authority and the Devaswom board. The court observed that public trust is more than an affirmation of state power to use public property for public purposes, but it is an affirmation of the duty of the state to protect the people's common heritage of streams, lakes, marshlands and tidelands. Distinction must be made between the government's general obligation to act for the public benefit, and the demanding obligation as a trustee of certain public resources. Tank is a communal property and the state authorities are the trustees who hold and manage such properties for the benefits of the community and they cannot be allowed to commit any act or omission which will infringe the right of the community and alienate the property to any person or body. In the present case the Right to shelter does not seem to be so pressing so as to outweigh all environmental con-

siderations. The court became a little lenient here because of the rural exodus in search of livelihood, the gap between demand and supply of sites and services, the inability of the urban poor to gain access to land markets and their low income scenario to make both ends meet. The housing and habitat policy aims to ensure equitable supply of land, shelter and services at affordable costs. These ground realities prevented the court from ordering complete restoration and revival of the two tanks. Therefore only further constructions were banned.

Following the apex court's verdicts, Allahabad High Court in *Om Prakash Verma & Others* v. *State of U. P.* gave directions to Government authorities to take action to evict the unlawful encroachments on water bodies and the payment of penalty. Here a number of writ petitions were filed regarding how land containing tanks and ponds, vested with the management of Panchayat is often encroached upon by the individuals who use the same in their personal interest and for their personal benefits.

The apex court stroked again in *Jagpal Singh & Ors.* v. *State of Punjab & Ors.*, where the village pond was filled and constructions were made thereon. The apex court held that even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularizing such illegalities must not be permitted because it is Gram Sabha land, which must be kept for the common use of villagers of the village. The common interest of the villagers should not be allowed to suffer merely because the unauthorized occupation has subsisted for many years. Court observed that over the last few decades, however, most of the ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country. Directions were given to all state governments in the country to prepare schemes for eviction of illegal/ unauthorized occupants from Gram Panchayat lands, and restoration of the same for the common use of villagers of the village.

The court also observed that neither the long duration of such illegal occupation, nor the huge expenditure in making constructions thereon, or political connections should be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted where lease has been granted to landless laborers or members of Scheduled Castes/ Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land. These public utility lands in the villages were for centuries used for the common benefit of the villagers of the village. They were generally treated as inalienable in order that their status as 'community land' must be preserved. The protection of the commons rights of the villagers is so important that even the vesting of the property with the state does not mean that the common rights of villagers are lost by such vesting.

In *Manoj Misra* v. *UOI and Ors.*, the issue involved was the unrelenting encroachments on the flood plain of the river Yamuna. The flood plains and

river bed of the Yamuna are under increasing pressure of alternative land use for various purposes, which are driven primarily by growth of the economy at the cost of the river's integrity as an ecosystem. The tribunal held that according to the Principle of Comparative Hardship that where the injury is much greater in proportion to the benefit that would accrue as a result of such activity, the activity must be stopped in the larger interest of the public and of public health. Where the planning processes are left to the government and to the public bodies, it is inherent that overriding considerations of public health and danger to life must be issues to which top priority consideration is bestowed. No amount of technical pleas can justify a situation where a large number of people are exposed to health hazards because of industrial or any other activity, causing pollution of air or water. Even if these persons have an interest in the land, they cannot carry on an activity which is environmentally improper and is completely injurious to human health, just to make some money. The natural drains cannot be permitted to be concretized or covered, as it would not only destroy the flora and fauna but would destroy the ecology of the entire area.

The expert Committee appointed to report on the condition of various drains in Delhi recommended that there should not be any concretization or covering of drains particularly the natural drains in Delhi. Natural drains are those drains which are naturally occurring, formed by the watershed of the area draining into it and those that exist naturally with a fully unlined base originally. Although many modifications have been made to the natural drains over the years these drains would still continue to be considers as natural drains. In *Vanashakti Public Trust and Anr.* v. *Maharashtra Pollution Control Board and Ors.*, the tribunal held that the Right to carry on business cannot be permitted to be misused or to pollute the environment so as to reduce the quality of life.

Thus it would be preposterous to suggest that a trespasser with or without the connivance of the officials who enters into occupation of Government land, gradually defaces its identity then puts forth a plea that it is no longer a water body or a water channel and seeks for regularization of his trespass be rewarded with a patta. If such acts of encroachers are to be treated as pardonable and be rewarded for the illegal act in the form regularization, it would be an absolute degradation and collapse of the public trust vested with the state to protect the lands and water bodies. What the government has failed to see is the cause as to why these water bodies, lakes, tanks, etc. have fallen into disuse. Most of the cases of disuse were man-made, and there appears to be a cartel which systematically works with a view to grab Government property. Rather than putting a monetary value on the land occupied by the water bodies, it is time to recognize the ecosystem services provided by these shrinking water sources. Else the smart cities will only end up digging their watery graves. Sustainable Development means the development that can take place and which can be sustained by the nature and ecology with or without mitigation. The term "welfare" is always related to the living generation and generations to come.

Poet Rahim says, learn to preserve water, as without water, nobody lives, nothing survive. "Without water, Pearl does not attain lustre, Man does not retain vigour, Lime does not gain effervescence".

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