

DE JURE NEXUS LAW JOURNAL

Author:

Maitri Pachori

Symbiosis Law School, Noida

2nd Year, BA LL.B.

**COMPENSATION SYSTEM UNDER THE INDIAN ENVIRONMENT
LAW SYSTEM**

“What’s the use of a fine house if you haven’t got a tolerable planet to put it on”

~Henry David Thoreau

De Jure Nexus

The surroundings or conditions in which a human, animal, or plant lives or operates are referred to as an ‘environment.’ The interplay of humans and their surroundings is known as the human environment. It refers to people's interactions with their natural and physical surroundings. The connection between humans and the environment may be traced back to the dawn of time. There have been instances when this connection has taken the shape of civilized coexistence. The natural balance between human life and the environment must be preserved. This is a fundamental necessity for any life to thrive, primarily human life.

Uncontrolled human activities have wreaked havoc on India's ecosystem, and these ecological ills are limiting the country's social growth potential. Studies have shown the decreasing land amount, growing air pollution, depletion of water resources, loss of indigenous species of flora and fauna, and a backdrop of overwhelming poverty to detract from the Indian people's and country's good progress. As a result, India's fast development is accompanied by equally rapid environmental damage.

Within the overall framework of India's development strategy and international principles and standards, the government of India has created an environmental legal, and institutional

structure to tackle these problems. The Indian constitution explicitly states that it is the state's responsibility to "protect and improve the environment, as well as conserve the country's forests and animals."

The following are some of the most notable environmental legislation:

- The National Green Tribunal Act, 2010
- The Air (Prevention and Control of Pollution) Act, 1981
- The Water (Prevention and Control of Pollution) Act, 1974
- The Environment Protection Act, 1986
- The Hazardous Waste Management Regulations, etc.

The common law idea of 'nuisance' provides a legal framework for prosecuting environmental breaches. A public nuisance is addressed under the Code of Civil Procedure (1908), the Indian Penal Code 1860 ('IPC'), and the Code of Criminal Procedure 1973 ('CrPC').

The Environment Protection Act, 1986.

The Environmental Protection Act of 1986 is perhaps the most important piece of legislation on this subject. In response to the 1984 Bhopal tragedy, Parliament passed the Environment Protection Act, which established comprehensive national environmental regulation. Water, air, and land, as well as the inter-relationships that occur among and between them and humans, other living organisms, plants, microorganisms, and property, are all included in the Act's definition of "environment." The Act gives the central government the authority to take any actions it considers necessary to protect and improve the environment, as well as to prevent, regulate, and abate pollution. This Act, which acts as an "umbrella" legislation, allows the Central government to set new emission standards, regulate the location of industries, devise procedures for handling hazardous substances, protect against accidents that cause environmental pollution, and collect and disseminate information about environmental pollution.

Vellore Citizens Welfare Forum vs Union of India & Ors¹

¹ 1996 5 SCR 241, ILDC 443 (IN 1996), 1996 5 SCC 647, 1996 AIR 2715, JT 1996, 375 (passed on 28 August 1996)

Facts:

The Vellore Citizens Welfare Forum filed a public interest appeal under Article 32 of the Indian Constitution, alleging that several tanneries and other enterprises in Tamil Nadu are polluting the soil and water on a huge scale. According to the petitioner, the whole surface and subsurface water of the river Palar has been contaminated, resulting in the people of the region being unable to access drinkable water. Given the importance of the leather sector in terms of generating income for the state and employing thousands of people, tanneries and other polluting industries in Tamil Nadu have been urged to reduce pollution for many years. They were given the choice of building a cluster of common effluent treatment plants (CETP) or setting up individual pollution control systems. The Tamil Nadu Pollution Control Board had set criteria for effluent discharge, and the Central Government had provided significant funding for the building of CETPs. But it was a slow process.

Held:

Several industries were finally shut down by the Court. The Supreme Court stated that just because the leather sector is a key foreign exchange earner for India and provides jobs does not imply it has the right to harm the ecology, degrade the environment, or pose health risks.

The Supreme Court ordered the Central Government to take urgent measures to reduce pollution and safeguard the environment under Section 3(3) of India's Environment Protection Act, 1986. It directed the Central Government to form a body to deal with the problems caused by tanneries and other polluting industries in Tamil Nadu. This authority is responsible for determining the loss to the ecology/environment, as well as the individuals/families who have suffered as a result of the pollution and then determining compensation to undo the environmental damage and compensate those who have suffered as a result of the pollution. The Court also ordered the Madras High Court's Special Bench, known as the "Green Bench," to oversee the execution of its decisions. The precautionary principle and the polluter pay principle would be invoked by the newly formed authority. The Authority should decide the amount of compensation to be collected from polluters as a cost of fixing the environment's harm. If a polluter evades or refuses to pay the compensation ordered against him, they should order the closure of the industry he owns or manages.

The Principal of Absolute Liability

The principle of absolute liability states that if an enterprise is engaged in hazardous or inherently dangerous industry and any harm occurs as a result of such activity, the enterprise is absolutely liable to compensate for such harm and that it should not be an acceptable defense to the enterprise to claim that it took all reasonable precautions and that the harm occurred without its fault.

Even if the firm had taken all reasonable steps to guarantee that such occurrences would not occur, they would still be held accountable. The Bhopal Gas Disaster and the Oleum Gas Leak case sparked an awakening in India, which led to the development of the absolute liability principle.

The Supreme Court was concerned in the Oleum Gas Leak case about the mortality and harm caused by oleum gas leakage. Even though the court imposed strict criteria for resuming the industry, the court found the industry to be entirely responsible for the damage it created. “We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy,” the court stated. The court further held “(w)here an enterprise is engaged in a hazardous and inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous and inherently dangerous activity, for example, in the escape of toxic gas, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident...”.

Relevant precedents:

M.C. Mehta And Anr vs Union of India & Ors²

Facts:

² 1987 AIR 1086, 1987 SCR (1) 819 (passed on 20 December 1986)

Shriram's Food and Fertiliser Factory, Delhi, was located in the heart of a population of 2,00,000 people in the region of Kirti Nagar, and manufactured items such as hard technical oil and glycerine soaps. M.C. Mehta, a social activist lawyer, filed a writ petition in the Supreme Court seeking an order for the factory's closure and relocation to a site that poses no genuine risk to the public's health and safety. The Supreme Court permitted the factory to resume production and capacity pending the outcome of the petition. During the pending litigation, Oleum gas escaped from one of its units on December 4 and 6, 1985, inflicting significant injury to surrounding people as a result of the plant's gas leakage.

The leakage came from the explosion of the tank carrying oleum gas as a result of the collapse of the building on which it was constructed, and it caused terror among the residents. The people had barely recovered from the shock of the tragedy when, two days later, another leak occurred, this time a minor one, due to the escape of oleum gas from a pipe's joints, prompting the Delhi Legal Aid & Advice Board and the Delhi Bar Association to file compensation claims on behalf of those who had suffered damage as a result of the oleum gas escape.

In response to these two leaks, the Delhi government issued an order dated December 6, 1985, by the Delhi Magistrate, in line with sub-section (1) of Section 133 of the Code of Criminal Procedure. Shriram's employment of producing and processing hazardous and fatal chemicals and gases, such as chlorine, Oleum, Super Chlorine, phosphate, and others, have been ordered and required to end at their Delhi plant, to remove such chemicals and gases within 7 days and not store them in the same area again, or to appear in the District Magistrate Court on December 17, 1985, to show cause why this order should not be implemented.

Held:

The court decided that any company that engages in an intrinsically risky activity is “absolutely” liable to compensate all people who are harmed as a result of the accident. The notion of 'absolute liability,' which allows for no exclusions (such as the 'act of God,') was a defining aspect of the decision.

Union Carbide Corporation vs Union of India Etc³

Facts:

On December 3, 1984, approximately 45 tonnes of the hazardous chemical methyl isocyanate escaped from an insecticide plant owned by Union Carbide Corporation's Indian affiliate. The gas spread quickly across the heavily populated areas surrounding the factory, killing hundreds of people and causing panic as tens of thousands more sought to leave Bhopal. The death toll was believed to reach between 15,000 and 20,000 people in the end. Exposure to the poisonous gas caused respiratory difficulties, eye irritation or blindness, and other illnesses in half a million people. Investigations eventually revealed that the disaster was caused by poor operating and safety practices at the understaffed factory.

The Indian government launched a lawsuit against the Union Carbide Corporation in the United States in February 1985, seeking \$3.3 billion in damages. However, by 1986, all of these cases before the United States District Court had been moved to India due to a lack of forum. Meanwhile, the Bhopal Gas Leak Disaster (Processing of Claims) Act was passed in March 1985, empowering the Central Government to act as the sole representative of all victims in all kinds of litigation, ensuring that the disaster victims' interests are fully protected and compensation claims are pursued quickly. The Union Carbide Corporation was compelled to pay 350 crores in interim compensation in 1987 after suits were brought in the Bhopal District Court. However, because the interim order could not be issued, the UCC refused to pay the sum. This interim compensation sum was then lowered to 250 crores by the High Court. Both the Union of India and the UCC filed special leave petitions against the High Court's decision. Following this, a lengthy procedure ensued, culminating in a decision on October 3, 1991.

Held:

Except for the condition quashing the criminal proceedings, the Court confirmed the legality of the settlement order in all respects. The condition quashing the criminal proceedings alone

³ 1990 AIR 273, 1989 SCC (2) 540 (passed on 4 May 1989)

was found to be unjustified, while all other parts of the settlement order, including the amount of compensation agreed, were found to be lawful.

Following the events in Bhopal, it is apparent that a proper compensation process is required. The accident is still regarded as the greatest industrial disaster in history. To prevent similar incidents, such industries should be under continual monitoring and their operations should be monitored at least once every six months. Apart from that, the government should ensure that an appropriate compensation process is in place for the victims. It should guarantee that justice is served quickly and that victims receive adequate compensation.

Public Liability Insurance Act, 1991

The Public Liability Insurance Act of 1991 was approved by Parliament to offer public liability insurance for the aim of giving prompt assistance to those injured by an accident when handling any hazardous material and for matters related thereto. The Act mandates public liability insurance for facilities handling any hazardous chemical in order to give minimal redress to victims (other than workers) via the collector's decision procedure. Apart from protecting the rights of accident victims, such insurance would also offer protection and allow the sector to discharge its obligation in the event of substantial claims stemming from catastrophic incidents. However, the fact that this law provides instant relief will not stop victims from going to court to seek substantial compensation.

National Environment Tribunal Act, 1995

The National Environment Tribunal Act of 1995 established strict responsibility for damages resulting from any accident happening when handling any hazardous substance, as well as the formation of a National Environment Tribunal to handle lawsuits originating from such accidents. It makes the owner of an enterprise responsible for paying compensation in the event of a person's death or injury, or damage to property or the environment as a consequence of an accident. The mishap had to have happened while handling a potentially dangerous material. A claimant may also bring an application to the Tribunal for redress under the Public Liability Insurance Act of 1991.

National Green Tribunal (NGT or Tribunals)

The National Green Tribunal has had a beneficial impact on environmental adjudication in India in its nearly 10 years of operation. The judiciary, rather than the legislative, pushed for its formation since the latter is ill-equipped to deal with complicated environmental concerns involving a high degree of scientific uncertainty. While the NGT may be better able to address complicated environmental issues due to its technical competence, it lacks an appropriate framework for assessing compensation. It was established to revolutionize Indian environmental adjudication by efficiently dealing with sophisticated and technical-scientific issues including scientific ambiguity.

Compensation is crucial since it not only pays injured stakeholders but also represents the quality of the Tribunal's scientific research. It indicates the Tribunal's accuracy in assessing environmental harm in a case as well as how well it dealt with scientific ambiguity. Given that the Tribunal has members with technical expertise, it is fair to conclude that the Tribunal's compensation judgment is proportionate to or has a reasonable link with environmental harm in the vast majority of instances. The NGT, on the other hand, lacks a defined technique for quantifying environmental harm. It frequently relies too much on the Supreme Court's approach in mining cases, which has been taken out of context, to calculate the initial environmental compensation in vastly different instances.

NGT should assess the compensation on a case-by-case basis rather than adopting a blanket policy of giving a specific percentage of the project cost. This will not only deter potential polluters from polluting, but it will also empower the Tribunal to impose more severe and appropriate temporary fines in situations where pollution is more serious. Furthermore, the NGT's compensation assessment is clearly not based on any process or calculation. Initial compensation is awarded based on predefined guidelines rather than the complexities of each case, resulting in compensation that either drastically underestimates or overestimates the environmental harm.

The NGT has undoubtedly made environmental adjudication more efficient, but despite the technical competence, the technique used to calculate environmental compensation and quantify ecological harm has fundamental faults.

It's not that the NGT lacks the expertise to determine the extent of environmental harm. Rather, it lacks the motivation to ascertain the baseline situation since it is either too expensive or time

demanding. If this pattern of deciding compensation continues, the public's faith in the NGT's ability to properly arbitrate on environmental concerns is likely to deteriorate.

The NGT must address the arbitrariness of the compensation it imposes by assessing it on a case-by-case basis, ensuring that the compensation imposed is proportional to the environmental harm incurred.

Conclusion

In recent years, there has been an increase in the number of cases brought before the courts involving environmental contamination, ecological devastation, and conflicts over natural resources. The facts show that prosecutions initiated in ordinary Criminal Courts under the provisions of the Water Act, Air Act, and Environment (Protection) Act never reach a conclusion, either because of the workload in these Courts or because those in charge of conducting those cases lack a proper understanding of the importance of environmental matters. Furthermore, any directives issued by authorities under the Water Act, the Air Act, and the Environment (Protection) Act are promptly challenged in court by the industries. It takes years and years for such proceedings to come to a conclusion. Interim orders are frequently issued in the meanwhile, thereby preventing the authorities from enforcing their directives. As a result, it is critical to establish distinct machinery to reduce the delays that obstruct the execution of environmental regulations. Furthermore, judicial authorities may be unable of appreciating scientific and technological issues on their own. As a result, it is proposed that provisions be established for the formation of Environment Courts, which would consist of one judge and two specialists in ecological and other disciplines. For starters, we may have a two-tier system with one at the state level and the other at the national level, with the latter being expanded to the district level later. These courts may have the authority to hear both criminal prosecutions under different environmental laws and civil claims seeking compensation for victims of any conduct that causes environmental harm or contamination. State Environment Court decisions may be appealed to the National Environment Court, and the National Environment Court's decisions may be appealed to the Supreme Court.

Environmental policy is covered by more than 200 central and state laws. The more legislation there is, the more difficult it is to enforce. For effective enforcement, there is a need for a comprehensive and integrated environmental protection law. Everyone in society must have a good attitude in order for these laws to be enforced effectively and efficiently. We need social awareness from the bottom up, not legislation from the top down. To educate people about

environmental concerns, free slide shows in regional languages should be shown in cinemas and on television. Furthermore, as mandated by the Supreme Court of India, environmental studies will be made a graded topic at all levels of school and college in order to promote a broad increase in awareness.

Natural resource extraction must be done with the utmost care and attention so that ecology and the environment are not seriously harmed. To safeguard and develop the environment and maintain national wealth, the Central Government must engage in long-term planning in collaboration with state governments.

Finally, environmental conservation and maintaining ecological balance is a responsibility that must be undertaken not just by the government, but also by every individual, association, and company. It is a social obligation and basic duty established in India's Constitution, Article 51 A (g).

“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.

De Jure Nexus
LAW JOURNAL