



FACULTY OF JURIDICAL SCIENCES

COURSE: LL.B.

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SUBJECT: Environmental Laws

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Lecture-7



LECTURE 7: Polluter Pays Principle

POLLUTER PAYS PRINCIPLE

Polluter pays principle is the double edge sword There is an absolute liability on harm to the environment, the person who is responsible for Environmental pollution should pay the penalty and compensation for the people.

- Principle 16 of Rio Declaration Endeavours to promote the polluter pays principle
- Polluter shall be responsible for the act done and must contribute for the growth of an environment.

M.C.Mehta v Kamalnath, 1997 (1) SCC 388

- Decided by Justice Kuldeep Singh and Justice S Saghir Ahmad. Span Motels had also encroached upon an additional area of land adjoining leasehold area, motel has used earthmovers and bulldozers to turn the course of river Beas, create new channel to divert water flow

- Court observed that area being ecologically fragile and to be converted to private ownership, court relied upon the public trust doctrine; state is the trust of all documents. Public at large is the beneficiary of seashore

- Court quashed the leases and directed the HP to take over the area of land and to restore it to the original natural conditions, applied polluter pays principle and asked for payment of damage

- The Polluter is Responsible for compensating and repairing the damage caused by his omission; this is the quintessence of polluter pays principle

Indian Council for Enviro Legal Action v Union of India, AIR 1996 SC 1446

- The petitioner, the Indian Council for Enviro-Legal Action brought this action to prohibit and remedy the pollution caused by several chemical industrial plants in Bichhri village,

Udaipur District, Rajasthan.

- The Respondents operated heavy industry plants there, producing chemicals such as oleum (a concentrate form of sulphuric acid), single super phosphate and the highly toxic “H” acid (the manufacture of which is banned in western countries)
- The Supreme Court gave its verdict on the long impending judgment on the Bichhri case, Writ Petition No. 967 of 1989. It imposed a fine of Rs 38.385 crores on Hindustan Agro Chemicals Ltd (HACL) with compound interest since 1997 for the remediation of over 350 hectares of land in Bichhri.
- The Court also slapped a fine of Rs 10 Lakh on HACL for keeping the litigation alive for almost 15 years even though the court had disposed the petition in 1997, imposing the fine.
- Polluter Pays Principle according to which polluter must pay for the damage done to the human beings and environment.
- An azo dye and untreated toxic sludge was discharged into the open compound which, in due course of time, flowed through a canal across entire area and the rain water washed the sludge deep into the bowels of earth.
- It caused pollution of river water and underground water upto 70 feet below the ground within a radius of seven miles of the village *Bichhari*, It further left the fields of this area infertile. As a result of which residents of *Bichhari* and of nearby villages had to migrate to other places.
- Looking at the widespread ramification of the hazardous or inherently dangerous activities, persons or the institutions would be held 'liable absolutely', though they have taken all reasonable care while carrying out such activity.
- The liability to compensate is twofold; to compensate the victims of pollution for inconvenience and health loss and the other, to restore the environmental degradation.
- It was also ordered by the court that the Central Government must determine the amount required for carrying out remedial measures and the status report submitted by the National Environmental & Engineering Research Institute (NEERI) in the year 1994 be made a basis

to compute it. NEERI in its report, had stated that rupees 4,00,00,000/- would be needed to reverse the power of soil and water contamination.

S. Jaganath v UOI, AIR 1997 SC 811

- Judgement delivered by Justice Kuldip Singh & Justice Sagir Ahmad. Laws Applicable: PIL Under A. 32, Provisions of EPA, 1986, Provisions of CRZ Notification 1991, and Provisions of Water Act, 1974. Cost benefit analysis of aquaculture industry vis-a-vis Eco- restoration

- In this case, it was found that the shrimp culture industry in Chilka & Pulikat lakes (Orissa), adjacent to high sea, was causing salinity of soil and the drinking water, turbidity of water courses with detrimental implication on local fauna and flora.

- The Petitioner through PIL has sought the enforcement of CRZ Notification, 1991 for prohibiting intensive and semi intensive type of prawn farming in ecologically fragile coastal area an Constitution of national Coastal Management Authority for safeguarding the marine life.

-Due to commercial Aquaculture farming there is a considerable degradation of mangrove ecosystems, pollution of potable waters and reduction in fish catch

- The court observed that most of the coastal land have been converted in to shrimp farm which were used for food crops and traditional fishing.

ISSUE

Whether Intensive and Semi- intensive farming type of prawn farming in the ecologically fragile area allowed

JUDGMENT

- The Aesthetic qualities and recreational utility of the said area has to be maintained Court ordered that No part of the agricultural land shall be converted into shrimp culture Farm. An Authority shall be constituted under the central government under sec 8(3) of EPA, 1986.

- Aquaculture industries functioning at present within 1KM radius of Chilka lake must compensate the affected persons Aquaculture functioning outside the CRZ Should obtain permission and clearance from authority within prescribed time failing which they shall stop working.

