

LEGALFOXES LAW TIMES

THE VIZAG GAS LEAK: SAFEGUARDING THE PUBLIC TRUST BY UPGRADING ENVIRONMENTAL LEGISLATIVE STANDARDS IN INDIA

By: Akanksha Goel & Avishikta Chattopadhyay

Abstract

The year has presented humans with a gamut of surprises and subjected them to an unprecedented turn of events. Humankind has experienced fatal calamities. The environment has faced its wrath as well both at the international and the national level. Environmental calamities began with the horrific far-spreading Australian bush fire. It created damage to the entire ecosystem of the island country. With the advent of the COVID pandemic, we hoped that the reduced level of human locomotion would result in a decreased amount of pollution and ultimately would enhance the quality of the environment. However, the mysteries of nature were unknown to us. India was subjected to two extremely dangerous industrial calamities occurring in two extremities of the peninsula- Andhra Pradesh in the South and Assam in the North East. Things turned even more misfortune when the dry states faced the bout of locust invasion. In such tumultuous circumstances, one needs a yardstick to fall back for guidance. This is where Law comes into play. Humans have drafted standards to help them in times when they are befuddled with choices. Therefore, Law is the stick to the blind. However, in certain instances law does not protect the interests of the needy. Such instances call for the reevaluation of the legal principles and propose amendments to the age-old rules. In this article, the authors aim to discuss in detail the implication of an antiquated rule disintegrating the Indian Environmental standards. The authors refer to the Vizag Gas Leak incident and engage in active discourse over the outdated environmental standards which are not meticulously enforced and therefore need to be carefully considered and altered to ensure that during calamities, India is not blindsided and can rely on the rules to expedite the recovery from the losses.

On the morning of 7th May 2020, a chemical leak took place at R.R. Venkatapuram village which lies on the outskirts of Visakhapatnam (Vizag), Andhra Pradesh. The deadly styrene gas leakage occurred from the chemical plant belonging to LG Polymers India Pvt. Ltd., causing deadly

fatalities leaving 11 people dead¹ and several others hospitalized. Further, it also caused irreparable damage to the environment. Unfortunately, India has had its share of such deadly chemical leakages since the 20th century. It has been thirty-five years since the Bhopal Gas Tragedy case², but the aftermath is still visible where a huge number of people in Bhopal who lost their lives to COVID-19 were survivors of the gas tragedy³ that occurred way back in 1984.

The National Green Tribunal (NGT) had taken suo moto cognizance of the Vizag case under sections 14 and 15 of The National Green Tribunal Act. Section 14 of the Act empowers the tribunal to settle disputes where environmental rights or any substantial questions related to the environment are involved. Section 15 discusses the power of the tribunal to grant relief, compensation, and restitution. The tribunal has actively been taking cases on suo moto cognizance where the environment has been damaged, thus helping to maintain a clean and healthy environment.

A five-member committee had also been appointed to look into the matter, which is being headed by a former Andhra Pradesh judge, B. Seshayana Reddy. There has been another high-power committee set up by the Andhra Pradesh (AP) government. According to a report submitted by the committee on 28th May 2020, a huge chain of technical and safety lapses⁴ has been found leading to the catastrophe. Notably, LG Chem sent a group of eight members to India to examine the defects. After due consideration, it has insisted by the Court that the Vishakhapatnam plant be charged with a hefty amount of \$ 6.6 million (Rs. 50 crores⁵) for causing severe damage to life-affecting public health and degrading the environment. This is just an initial fee that has to be submitted with the district magistrate. The real question however is whether the legislative framework of the country is helping in proper dealing with hazardous chemicals and whether the factories are complying with the environmental guidelines which they are supposed to follow.

A chemical leakage in any form is perilous to the entire ecosystem existing around them not to mention that it causes serious damage to the endangered species. Therefore, it is extremely

¹ Vizag gas leak: Death toll mounts to 11; AP govt announces Rs. 1 crore each to kin of those killed, THE TIMES OF INDIA (May 7, 2020, 17:01 P.M.), <https://timesofindia.indiatimes.com/city/visakhapatnam/vizag-over-1000-fall-sick-after-gas-leak-from-chemical-plant/articleshow/75590112.cms>.

² Union Carbide Corporation v. Union of India, (1989) 2 SCC 540 (India).

³ Most of MP's COVID-19 deceased were gas tragedy victims: Bhopal NGO, DECCAN HERALD (May 6, 2020, 15:35 P.M.) <https://www.deccanherald.com/national/north-and-central/most-of-mps-covid-19-deceased-were-gas-tragedy-victims-bhopal-ngo-834216.html>.

⁴ Sreenivas Janyala, Vizag Gas Leak: NGT panel lists string of lapses, indicts LG officials, AP depts, THE INDIAN EXPRESS (May 31, 2020, 8:06 A.M.), <https://indianexpress.com/article/india/vizag-gas-leak-lg-polymers-ngt-andhra-pradesh-government-6435109/>.

⁵ Shinjini Ghosh, Visakhapatnam gas leak: NGT directs LG Polymers India to deposit ₹50 crore, THE HINDU (May 8, 2010, 12:57 P.M.), <https://www.thehindu.com/news/national/andhra-pradesh/visakhapatnam-gas-leak-ngt-directs-lg-polymers-india-to-deposit-50-crore/article31532759.ece>.

necessary that the factories follow standard guidelines while dealing with the scheduled chemicals. However, it is alleged that the Vizag plant lacked federal environmental clearance but was still allowed to operate, which shows the dangerous side of the non-enforcement of certain laws in our country. Many other industries have also been operating without such clearance which increases the potential threat to the environment of our nation.

Styrene gas comes under the ambit of the hazardous chemicals defined under Rule 2(e) read with Entry 583 of Schedule I to the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989⁶. There are several allegations that the South Korean producer was not complying with the standards of the environmental protection that is expected for handling hazardous chemicals. There are also conjectures raised about the legal framework of the environmental protection standards of the country. It is not at par with the world standards which is also visible from the soaring air pollution and the deplorable 177/ 180 rank⁷ in the Environment Performance Index- 2018.

All human beings have a right to fresh air and a free environment from the time they are born which is further established by the Public Trust Doctrine. The Public trust doctrine states that certain natural assets are so inherently innate to humans that private ownership of such assets should be prevented. The roots of the Public Trust Doctrine can be traced back to the Roman doctrine of public trust and has frequent appearance in the common law countries. The public trust doctrine is the test of legal measures taken by the government that can be taken to increase sanctions for non-conformity with the standards of environmental protection. Not only should private ownership be prevented but the state should actively ensure that these assets get adequate protection so that humans can rightfully enjoy it. Jurisprudentially, the right to a free environment can be regarded as the natural right of human beings.

The public trust doctrine was previously implicitly applied in several judgments by the Supreme Court. However, in *M.C Mehta V. Kamal Nath*⁸ the public trust doctrine was rigorously explained which was further upheld in the cases of *Majra Singh v Indian Oil Corporation*⁹ and the *M.I. Builders (P) Ltd. v Radhey Shyam Sahu*¹⁰. The scope was further increased in the case of *Subhash Kumar v. State of Bihar*¹¹ where the Supreme Court increased the ambit of the right to life to

⁶ Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, Ministry of Environment and Forests, 1989 (India).

⁷ *Environmental Performance Index*, YALE, <https://epi.yale.edu/epi-topline> (last visited on July 1, 2020).

⁸ *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388.

⁹ *Majra Singh v Indian Oil Corporation*, (1998) J&K 44.

¹⁰ *M.I. Builders (P) Ltd. v Radhey Shyam Sahu*, (1999) 6 SCC 464.

¹¹ *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598.

include the enjoyment of pollution-free air and water. The court also directed the local government to implement policies for the prevention of pollution in the environment.

The legislative framework of the country is not silent in environmental clauses. Article 21 of the Indian Constitution guarantees an individual right to a clean environment. If anything endangers the same by violating the established laws we have a right to approach the Supreme Court through Article 32 so as to remove the cause. The 42nd Constitutional Amendment Act introduced the Directive Principle of State Policy (DPSPs) enshrined under Articles 39(b), 47, 48, and 49 which purportedly introduced the environmental clause in the Constitution. The amendment was largely influenced by the Stockholm Declaration on the Human Environment¹². Articles 48A and 51A also imposes the duty of the state as well as individuals to protect the environment.

The Aarhus Convention¹³ which suggests the interlinkage of environment rights and human rights is yet another important convention that focuses on the improvement of quality of one's life and takes into consideration the government's accountability and responsiveness. The same should be implemented in India as well to increase the government's role in environmental issues such as the ongoing one and other issues as well.

The Environmental Protection Act, 1986¹⁴ aims at protecting and improving the environment. According to Section 15 of the act, in cases where there is noncompliance with the directions or orders of the act, the punishment could be of five years of imprisonment or a fine of Rs. 1 Lakh or both. In case the failure continues to happen Rs. 5 thousand would be charged for each day and if it extends for one year the imprisonment could be increased up to 7 years. Through the Indian Council for Enviro-Legal Action v. Union of India¹⁵ and the Vellore Citizens Welfare Forum v. Union of India¹⁶. The three principles of sustainable development, polluters pay and precautionary principles were borrowed from the Rio Declaration on Environment and Development¹⁷ and inculcated in the Indian context. Polluters Pay Principle is the most important aspect to be covered upon while discussing Environmental degradation. According to it, the person responsible for polluting the environment should be the one responsible for bearing the costs of preventing it further. It helps in promoting sustainable development as given in the Rio Declaration. It acts as

¹² The Declaration of the United Nations Conference on the Human Environment, A/CONF.48/14/REV.1 (1972).

¹³ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Jun. 26, 1998, 2161 UNTS (1998).

¹⁴ The Environmental Protection Act, 1986, No. 29, Acts of Parliament.

¹⁵ Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212.

¹⁶ Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCC 647.

¹⁷ Rio Declaration on Environment and Development, A/CONF,151/26 (Vol. I), (1992).

an extension to the absolute liability and provides a remedy for the damage inflicted upon the environment.

The dual legislation which was introduced after the Bhopal Gas tragedy namely The Manufacture, Storage and Import of Hazardous Chemicals (MSIHC) Rules, 1989 and Chemical Accidents (Emergency Planning, Preparedness, and Response) Rules (CAEPPR), 1996 are the most important legislation for dealing with hazardous chemicals. The rules are obsolete and there have been several chemical accidents since then. Therefore, a revision in the rules was proposed in 2016 to ensure that the gaps in the legislation are amended. However, the revisions have not been put to effect yet.

THE WAY FORWARD

Despite having certain legislation for protecting the environment, there exists a gap in enforcing the same. They should be enforced efficiently so as to reduce the number of incidents which cause environmental damage. Furthermore, strict laws should be made for such companies that pose a threat or commit such an act so as to endanger the flora and fauna. The watchdogs i.e. the state and the local pollution control board should work more efficiently to stop the functioning of the companies working without an environmental clearance.

The environmental laws have been ignored for a long time in India, this incident should act as a wakeup call so as to enable the concerned authorities to start random checks and impose hefty fines on the companies which have not been complying with the norms. Moreover, the evasion of environmental clearance is also popular amongst various construction and mining companies, the same should be criminalized thereby preventing incidents such as the Bhopal gas tragedy, Oleum gas leak. Moreover, such ignorance violates the fundamental right of a clean environment guaranteed under Article 21 of the Constitution of India.

The increasing number of industrial accidents that harm the environment clearly depicts the faults in the current legislation and points out the dire need for a new legislation so as to control any such future accidents, which not only cause harm to the environment but to the human lives as well. Moreover more tribunals such as NGT should be set up so that no violator is spared and justice is not delayed. India should also be a signatory and comply with several international conventions and treaties so as to reduce the harm caused to our planet.

Following the horrendous incident of the Vizag gas leak, the Andhra Pradesh Government has also planned to introduce a new legislation- the Andhra Pradesh Environment Improvement Act (APEIA). This act would provide an improved form of compliance mechanism which is laid down for industries. The law is expected to “introduce a third-party audit system as well as installation

of real-time pollution monitoring equipment”¹⁸. Though such laws and legislations would help in reducing pollution and improving the environment in one state, central legislation is a must to improve the overall quality of the environment in the country.

The doctrine and the judgments provide that the government should be extra careful with the industries dealing with hazardous chemicals. However, with the Vizag gas leak, it is another blow at the environmental standards and legal framework offered by India. It also shows the lack of law enforcement within the country. Although humans have a natural right of enjoyment of the environment, they are prevented by the industries which do not abide by the guidelines laid down by the Environmental Ministry. The only way forward is through updating and upgrading the environmental guidelines and working on policy measures to ensure that such accidents are prevented in the future.



¹⁸ V. Raghvendra, Eco-compliance mechanism for industries to be revamped in A.P., THE HINDU (May 20, 2020, 23:17 P.M.), <https://www.thehindu.com/news/national/andhra-pradesh/eco-compliance-mechanism-for-industries-to-be-revamped-in-ap/article31635968.ece>.