

# **Constitution of India and Environmental Governance: Administrative and Adjudicatory**

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## **Lecture 50**

### **Environmental Tribunals Act**

As we saw in the first two segments of this module on environmental justice dispensation. It was true that the higher judiciary came up with a path making effort in rendering environmental justice beyond the rule book and contribute immensely to environmental jurisprudence. But as we saw toward the end of the last segment that strains were beginning to show the willingness on a part of the higher judiciary, the difficulty in tackling highly complex environment related issues started taking its toll and also the kind of reactions that started coming which was initially like a whisper started getting louder of the judiciary guilty of overreach.

Be that as it may, development started taking place in both finding an appropriate formula of a solution in a form of relief for those who get affected by environmental accidents because there was no formula, the codes were actually coming up with their own custom made formula for each occasion.

So, the need for evolving a formula for compensation in such instances of suffering an account of an environmental damage being caused, industrial accidents taking place etc. And second, the need for specialized bodies in the next two segments that is what we precisely attempt. As to want these developments have been at the law-making level and working of that law.

First, we will examine the formula that was worked out for getting environmental relief by way of compensation expeditiously quite unlike as it happened and as it continues to haunt our system, the Bhopal gas tragedy. And that was the Public Liability Insurance Act and it was followed by an institutional creation through another law the Environment Tribunal Act. First, we will begin with the Public Liability Insurance Act, PLIA.

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## I. Public Liability Insurance Act(PLIA),1991



- **BACKGROUND:** Growth of hazardous industrial operations and the increasing incidence of putting lives at risk, with little legal support for relief - Bhopal Gas Tragedy- litigation in the apex court- expression of concern by SC about the inordinate delays for relief for the victim- its insistence on the Govt. to evolve a robust legal frame to ensure speedy disbursement of compensation to industrial victims and creation of an industrial disaster fund- It also provided the broad contours of such a legislation, anchored to the "no-fault liability" principle – PLIA, 1991
- **OBJECT:** To provide immediate relief to persons (other than workmen) affected by accidents occurring while handling hazardous substances, through the insurance amount paid by the owner of the hazardous substance
- **SALIENT FEATURES:**
  - Imposes, 'No Fault Liability' against the owners of hazardous substances;



The law was made in the year 1991. What exactly is its background? The growth of hazardous industrial operations and the increasing incidents of putting the lives at risk, with little legal support for relief. The symbol of that, the most tragic one at that, was the mass disaster of the Bhopal gas tragedy. And you know how the litigation went on for a long time and still alive to some extent even now at the highest court level.

There was a very clear expression on the part of the Supreme Court, especially with regard to inordinate delays for relief to the victims. The court was very clear and insisted the government to evolve a robust legal frame to ensure speedy disbursement of compensation to industrial victims and creation of an industrial disaster fund.

But, the Court did not limit that. It is not just about immediate relief. But what is the basis for that kind of a relief? And for that, the Supreme Court even provided the broad contours of such a kind of principle bases in a legislation and they insisted that it should be anchored to what is refer to as no fault liability principle. We will discuss that as we get into details of this law.

The result of such a constant demand expressed by the highest court, what began with the ministry leading to the making of the Public Liability Insurance Act in 1991. It makes it very

clear at the outset why for this law has been brought in to existence? Obviously, to provide immediate relief to persons other than the workmen in that place who are affected by accidents occurring while handling hazardous substances through an insurance amount paid by the owner of the hazardous substances.

Let us quickly have a look at what does this law contain? Its salient features. As I did mention it is anchored to the principle of no-fault liability, imposed against the owner of hazardous substances and operations on resulting from that.

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*the owner of a hazardous substance, must have an insurance policy for a claim for compensation for injury to or death of any person, on account of the any hazardous substance, without going into any requirement of establishing fault on the part of the owner;*

- *Every owner of any hazardous property, before handling that property, shall take one or more insurance policy, whereby he gets insured against the liability, over claim of relief;*
- *Who can claim relief: a) the person who has sustained the injury, b) the owner of the damaged property, c) the legal representatives of the deceased, and d) the authorized agent of the above mentioned;*
- *Any application for claim or relief under this Act shall be made to the collector, within five years of the occurrence of the accident – determination of the quantum of relief, after holding an enquiry by him;*
- *the Award is binding on the parties and the insurer – the amount shall be paid within 30 days from the date of announcement of the award;*



It requires the owner of hazardous substance, must have an insurance policy for a claim for compensation for injury to or the death of any person, on account of any hazardous substance, and this is very important please note that is where no fault liability exist without going into any requirement of establishing fault on the part of the owner.

This actually describes that the accident. An accident is an unforeseen event, unplanned event, unintended even. That is why you call it as an accident. You did not want that to happen, you did not visualize that happening, there is nothing like a premonition of accident happening, you did not plan that to happen but it happened, it is a mishap.

Earlier, one would escape any kind of liability by claiming an accident and here the idea is the very fact that you are in possession of a dangerous object which has the potential of causing harm and so whether it actually causes harm or not, whether it actually gets snatched away from you and somebody suffers on account of that the very position of it will impose the responsibility on you and you become liable should any mishap were to occur.

So, intention, motive is inconsequential. That is why it called no fault liability. You are not at fault, it just happened. But it happened because of the fact that you had that with you. Of course, you did not realize it, of course you did not desire that it should have some kind of appropriate, some kind of a problem to somebody but it just happened.

The very fact of it happening and somebody is suffering is enough to make one liable. No fault liability. Every owner of a hazardous property before handling the property in advance should take an insurance policy. By which he gets insured against the liability over monitoring claim for relief.

Now, who can claim relief? Number 1, the person who has sustained the injury. Number 2, the owner of the damaged property. Number 3, the legal heirs or representatives of the deceased person. And finally, the authorized agent of all the above ones.

Any application for claim or relief under this law has to be made to the district collector. The executive magistrate of a particular district. Within what time? Within five years of the occurrence of the accident. And would the quantum of relief be calculated? The collector makes an enquiry lot after holding wide ranging consultations and enquiry, he will determine the quantum of relief.

So, it is not that you are going a court for a relief, you are making an application to the collector from whom you are going to collect the relief. The quasi judicial authority, the executive magistrate of the district collector would be performing the task of justice dispensation to you through this.

The award is binding on the parties and the insurer and the amount shall be paid within 30 days from the date of announcement of the award. So, the idea of an insurance policy is very clear, that in the absence of an insurance policy what would have been a payoff the one who has been responsible for somebody suffering I do not have adequate cash, I did not have enough money to pay and to checkmate that there is insurance requirement has been brought in that you should have it in advance with you that is a kind of necessary preparation for you before you start the operations.

That means you will have to be extremely careful and even with that care if something happens you have to pay and to reduce the burden on you, you plan for payment in advance by paying to the insurance company. And if it is a responsibility of insurance company to process the application and follow the instructions of the district collector of the exact amount of compensation payable to the one who has suffered injury or lost property or damage of his property on account of this.

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- Penalties for violations: Both imprisonment- which extends from 3 months to 7 years ) and fine (-which extends from Rs.1000 to Rs.1 lakh)
- Environment Relief Fund (ERF), as required under the Act(s.7), established by the Central govt., to provide immediate relief to victims of accidents , under this Act- notified, in 2008 (Nov.)- till March 2019, the fund has grown from Rs 283 Crores to Rs 810 Crores.
- The Relief given under this Act will be in addition to the Relief that may be Awarded under the National Green Tribunal Act, 2010
- NOTE THAT PLIA, IS A RISK COVERING MECHANISM AND A FRAME, EVOLVED FOR SECURING RELIEF FOR THOSE AFFECTED BY HAZARDOUS SUBSTANCES AND OPERATIONS- NO SEPARATE INSTITUTION CREATED FOR SECURING RELIEF PROVIDED UNDER THE ACT- RELIEF, IF DENIED OR NOT ADEQUATELY MADE AVAILABLE , TO BE SOUGHT AND SECURED THROUGH THE FORMAL LEGAL PROCESS



The penalties for violations supposing the order is given that you need have to pay so much money by way of compensation. The executive magistrate order is like that of a court of law that is why it is called as a quasi-judicial authority. And supposing one defies the order and does not

follows the orders, then law clearly provides for imprisonment that may extend to 3 months to 7 years and a fine which may range from 1000 rupees to 1 lakh rupees.

This is over and above the money that is payable by way of compensation. In order to make things easier and streamlined an environmental relief fund there is provision under this act section 7 which requires the establishment of what is referred to as Environment Relief Fund ERF by the central government to provide immediate relief to victims of accidents under this Act. This was notified in the year 2008, the law was made in 1991 under the provision was there in existence in 1991. It took 17 long years because even the insurance companies were taking a lot of time and paying relief. Under this garb of a number of enquiries and clarifications that they wanted to see in the result that there used to be even then delays in compensation payment.

And so, section 7 makes it very clear that quick immediate relief is something that is called for and its incompetent on the government to establish a relief fund. And it became a reality in the year 2008. And it has been by way of statistics made available till the end of last year, sorry till early last year March 2019 the total amount that was created as a corpus has grown from 283 crores to start with to 810 crores and a lot of relief was immediately without delay, were paid.

And please note that the relief given under this Act, under this Act is definitely in addition to the relief that we have been awarded under the National Green Tribunal Act, 2010. What does that mean? We have a specialized justice dispensation mechanism established after 2010 and I will be discussing that in detail later.

Suffice it to say for the timing that from 2010 onwards is very regular, professionally organized, expert infused body is established which would deal with environmental issues and then decide on them and there some compensation may be awarded there.

The relief that you get under this particular law through the payment of insurance money is and immediately paid out of environmental relief fund these are immediate relieves and this is a thing that has to be paid whether other kinds of relief are going to be made available later but this is an immediate relief, assured relief and the Public Liability Insurance Act will stay in operation now.

Any relief that is been given under any other law is independent of that and nothing would upset anything here. Please note this Act is a risk covering mechanism and a frame evolved for securing relief for those affected by hazardous substances and operations, the law does not create any new separate institution for securing relief under this law.

If the relief is denied or not adequately made available as a normal process and we have a formal legal process provided in this based upon a principle of no-fault liability and through which one can get the relief, immediate relief for the trauma that one had to go through on account of an accident of the description given under this law.

So, it is to act as a kind of a shock absorber for the other reliefs or in addition to this. That should be noted.

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## **II. National Environment Tribunal Act, 1995**



### **GENESIS, PRINCIPAL FEATURES, AND CURRENT STATUS:**

*Oleum Gas Leak Case- Principle of Absolute Liability- Supreme Court's direction to setup a National Environmental Court to provide relief from the damages caused by the handling of Hazardous substances-Justice P.N.Bhogawati, suggested for the setting up of an Environment Court and prepared the draft bill, for the govt, that included establishment of Court at two levels: National and States, on the lines of Consumer Law- did not pass muster with the govt.*

- \* National Environment Tribunal Act, 1995: 31 sections, with elaborate provisions for the establishment of a National Environment Tribunal, with Benches with in it, to hear and decide upon compensation for the death of or injury to a person and damage to property and environment caused by accidents in handling of Hazardous Substances and activities- comprises of a Chairman, Vice-Chairman and a number of Judicial and Expert Members, with the requirement that in each Bench constituted to decide on different issues to have equal representation of a Judicial and*



Let us just move on to another law that was made. While Public Liability Insurance Act is a wonderful device, is a tool, principle and mechanism to seek and secure relief, we have another law which attempted to create an institutional arrangement for environment justice delivery. The first major National attempt in the form of National Environmental Tribunal created under the National Environment Tribunal Act of 1995. National Environment Tribunal Act, what is this about? We have heard about National green tribunal is this different from that? Yes, this is

different from that. Is it still in existence? We will see about that. And that is what I intend discussing it right now.

Let us just look to the background and one of its principal features and then look to the question that was raised its current status is it still there? Remember, I discussed with you very early on in this course a very important case decided by the Supreme Court of India in the year 1986 referred to as the Oleum Gas Leak case.

Which actually laid down the principle of Absolute Liability, if you recall. A liability that is there on the part of someone on account of his activities for whatever reason is going to cause harm, injury and loss to somebody. He will become absolutely liable, no exceptions. That is why it is absolute liability, not an ordinary liability which have exceptions but absolute liability without exceptions. And in given this decision and laying down this principle in this particular case the Supreme Court had directed setting up of a National Environmental court to provide relief from the damages caused by the handling of the hazardous substances.

At that time the Supreme Court headed by justice P.N. Bhagwati and he retired very soon after delivering this judgement and it was this Justice who had suggested for the setting up of an environmental court and when the government assumed to prepare a draft and help them in that exercise, he prepared a draft bill also for the government which included establishment of a court at two levels, national level and at a state level very similar to the consumer redressal mechanism under that Consumer Protection Act whereby two level grievance redressal mechanism exist for consumers who have either had a problem with the defective object or suffered a deficiency of service under those two circumstances they initially go to the State authority which would decide on this or at the next level go to the national one.

On similar lines, a proposal was made, a draft bill prepared and that was there with a government for a while. And in 1995, the National Environment Tribunal Act came into existence. What does it contain? Well, it has 31 sections having elaborate provisions for the establishment of a National Environment Tribunal. With benches within it to hear and decide upon compensation



for the death of or injury to a person and damage to property and environment caused by accidents in handling hazardous substances and activities.

Look at the composition it comprises of a chairman, a vice chairman and a number of judicial and expert members. Judicial member we can understand somebody who is drawn from the judiciary primarily from high courts after the retirement for a particular period of time they could be nominated and they become a judicial member. Who is an expert member?

An expert member is someone who has academic and research qualifications on certain areas of specialization that have a bearing on environmental management, conservation, sciences and subjects in relation to that. And it just, works like a court of law. In the High court and in the Supreme Court there are several judges. But here the case we have what is called as a single judge bench, two judges bench or a number of judges sitting in judgement like division bench or anything like that.

The more important cases, which requires a larger number of judges to sit and deliberate and decide, that is what is called as the division bench. Full bench is the entire court. All the judges will sit together and then hear the case and decide normally this happens in constitutional cases issues concerning constitutional amendment and things like that.

Anyway, just like that as it happens in Supreme Court or in a high court the National Environment Tribunal also functions in benches and there is a very, very specific requirement, that in each bench which decides a problem independently and separately of the other bench, there is a mandatory requirement that each bench shall have an equal representation of a judicial and a non-judicial expert member. That means, it cannot be one member becoming a judge and then deciding an issue in the bench, it should have at least two members or multiples of 2. But the basic requirement is each bench should comprise of as many judicial members as there are expert members.

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*a Non-Judicial Expert Member- not bound by the Procedures of CPC- free to lay down its own procedure –Award of the Tribunal, to be executed as a Decree of a Court of Law- non-compliance with its Order/Award shall be punishable with imprisonment, which may extend to three years or with fine(- which may extend to ten lakh rupees) or with both- appeal from its decisions would lie with the SC*

*-STANDS REPEALED BY NATIONAL GREEN TRIBUNAL ACT(NGT), 2010*

*-EXCEPT, PROVIDING THE TEMPLATE FOR NGT, THIS ACT REMAINED ON PAPER, IN HYBERNATION FOR 15YEARS-NEVER BROUGHT INTO EXISTENCE- REMAINS, AS A FORGETTABLE, NON-EXISTENT AND INCONSEQUENTIAL FOOTNOTE, IN THE ANNALS OF THE EVOLUTION OF ENVIRONMENTAL COURTS IN INDIA!*



So, judicial and non-judicial ratio is equal. So, for one judge, one expert; two judges, two experts like that. The idea is essentially on matters pertaining to points of law that judges will bring in a skill on matters pertaining to sciences and expertise certain areas of environment. The non-judicial expert member who is adept in those issues will sit and deliberate and together they give the decision on behalf of the National Environment Tribunal.

It is not bound by the procedures of Civil Procedure Code. It is free to lay down its own procedures. The award of the Tribunal to be executed just like a decree of a court of law. If you do not follow, if you do not respect, if you do not comply with its order or award, it is punishable with imprisonment extending to three years or with fine that may go up to 10 lakh rupees or with both.

If one is aggrieved by the decision given by the Environment Tribunal, the appeal from its decisions would lie with the Supreme Court. A very impressive law made in 1995. Did it deliver any judgement? Did it decide any case? What has been its contribution to environmental justice? The answer comes in the next few lines. Number 1, this law that was made in 1995 got repealed by the National Green Tribunal Act.

So, from 2010 onwards this is not there it was there. Yes, It was there between 1995 to 2010. What did it do? Well, I must say this act remained in hibernation for 15 years. Have you heard of

that? Making law it is so much of preparation but never bring that into existence. Actually, that is a fact. No appointments were made when the law was made to occupy the members of the Tribunal, membership of the tribunal not just for one year or two year or anything like that no chairman was nominated when offer was made and that is through the recommendation of the Chief Justice of India.

The very person who was requested to take the mantle, declined. And so there was neither a head chairman nor members to this body the ministry did not really actually fill in the positions of membership and so it remain only on paper, hibernated for 15 years and became extinct after that. A forgettable, non-existent and inconsequential footnote in the annals of the evolution of environmental courts in India. A very pathetic state of affairs. If the state was not serious in bringing is specialized quote in existence a tamasha or a drama was created in 1995.

But actually, in terms of content there is nothing much problematic about it, it was pretty good. Only thing is the government did not really proceed further other than making the law from paper to practice, it never graduated into. And so, no case law. Nothing to discuss about it except splitting that it provided the inspiration for the making of the National Green Tribunal much much later, 15 years hence.