



**CENTRE FOR ENVIRONMENTAL LAW, EDUCATION,
RESEARCH AND ADVOCACY (CEERA),**

**NATIONAL LAW SCHOOL OF INDIA UNIVERSITY,
BENGALURU**

in association with

CENTRAL POLLUTION CONTROL BOARD, NEW DELHI

Organises

**Five Day Online Capacity Building Workshop on
“ENVIRONMENTAL LEGISLATIONS, INTERPRETATION,
ENFORCEMENT, LEGAL AND STATUTORY
REQUIREMENTS – CASE STUDIES”**

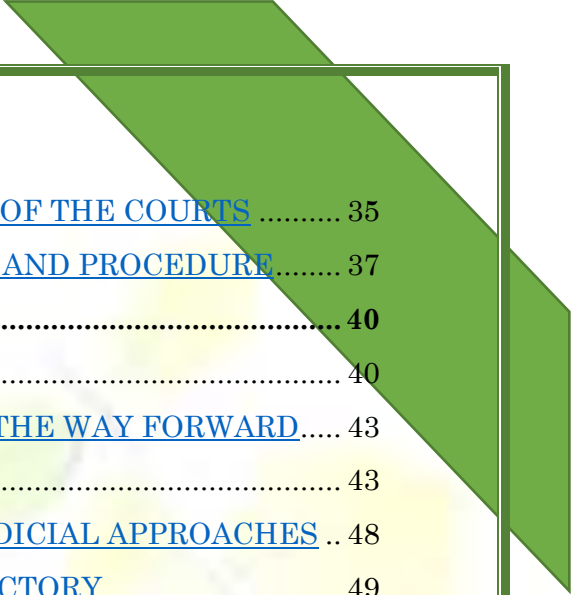
REPORT OF THE PROGRAMME

CONDUCTED FROM 8th TO 12th FEBRUARY, 2021

WEBSITES: nlspub.ac.in; nlsabs.com; nlsenlaw.org

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ACKNOWLEDGEMENT

The Centre for Environmental Law, Education, Research and Advocacy (CEERA) extends its sincere gratitude to the **Central Pollution Control Board** for providing this opportunity to conduct a **Five - Day Online Training Programme on “Environmental Legislations, Interpretation, Enforcement, Legal and Statutory Requirements – Case Studies”** from 8th February, 2021 to 12th February, 2021.

CEERA would like to express our sincere gratitude to our Vice-Chancellor, **Prof. [Dr.] Sudhir Krishnaswamy**, for his encouragement.

We are thankful to **Prof. [Dr.] M K Ramesh**, our mentor and guide, for providing his rich insights and for his relentless support to the team at CEERA.

We would also like to thank all our Resource Persons **Prof. [Dr.] Shanthakumar, Dr. Srinivas Ravindra, Mr. MDN Simha, Ms. Preethika Pulinja, Prof. [Dr.] T. R. Subramanya, Mr. Hemant Bagai, Mr. Shujath Bin Ali, Mr. D. R. Ravi Shankar, Mr. Naveen Gudikote, and Mr. Nandakumar Krishnachar** for their relentless support and contributions towards making the Training Programme a success. We also extend our sincere gratitude to all the officers and participants who participated in the Training Programme and contributed to the deliberations

Finally, we would like to thank the CEERA Team - **Ms. Madhubanti Sadhya, Mr. Rohith Kamath, Mr. Raghav Parthasarathy, Mr. Vikas Gahlot, Ms. Geethanjali K.V. and Ms. Lianne D’Souza**, for their help and support in organising this webinar and conducting it seamlessly.

Prof. [Dr.] Sairam Bhat
Coordinator, CEERA
Professor of Law, NLSIU

ABOUT THE COURSE

The Five-Day Training Programme is designed with the main aim of delivering lectures and conducting discussions on case studies. During the initial sessions, the focus was on understanding the Constitutional and jurisprudential background of the topics along with their interpretations. Emphasis was laid on environmental legislations including

Environment Protection Act, 1986; Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. Discussions on several contemporary issues and developments in the area of environmental law and management, both at the national and international level were taken up. Recent judicial orders and decisions were also deliberated upon as a part of the discussion. Resource persons from legal academia, law practitioners, activists, industry experts were chosen to deliver sessions, to make the effort interdisciplinary. The Training

Programme also focussed on case studies of major events followed by discussions. Participants were given ample scope to understand the legal dimensions of environmental law along with gaining insights from each other's experience during the training sessions. The participants were tested at the end of the Training Programme through an objective type examination based on the sessions discussed during the course of the Training Programme.

DELIBERATIONS WERE CARRIED OUT ON THE FOLLOWING BROAD THEMES

- Overview to the Legal Regime on Environment and the Constitutional Mandate ➤ Statutory Enforcement Mechanisms on control of Pollution
- Laws related to Collection, Disposal and Management of Waste
- Health, Business and Environment: Procedure of Environmental Clearances, Compliance and Corrective Action;
- Legal and Policy Regime on Pollution and Climate Change in India
- National Green Tribunal and its Directions to Pollution Control Boards including Environmental Compensation levied by NGT.
- Criminal Law Enforcement and Pollution Control: Procedural Issues, Collection of Evidence, filing of Complaint case and success ratio of complaint case.
- Clean Technology and Environmental Protection: Law and Compliance



- Environmental Compensation levied by CPCB/SPCBs various Environmental laws.
- Suggesting amendments to environmental laws.

ABOUT NLSIU

The National Law School of India University, the Nation's premier law university, came into existence through a Notification under the National Law School of India University Act (Karnataka Act 22 of 1986). It signified the culmination of efforts by the Judiciary, the Bar Council of India, the Karnataka Bar Council, the Bangalore University and the Government of Karnataka to reform legal education and to establish a centre of excellence for legal education and research in India. The Law School has undertaken many research projects funded by the UGC, the Government of India, the Government of Karnataka, the Department of Women and Child Development, UN agencies, the World Bank, HIVOS, Department of Justice etc.



The Projects have served to strengthen research and teaching at the Law School. The National Law School of India University since its inception has taken proactive steps in organizing conferences, seminars, workshops, refresher courses and certificate courses to update academicians, law teachers, students, industry personnel in different subject areas.

ABOUT CEERA

Centre for Environmental Law Education, Research and Advocacy (CEERA), established in 1997 is a benefactor of the Ministry of Environment and Forest (MoEF), Government of Karnataka, the Bar and the Bench in India and abroad. Building an environmental law database, effectively networking among all stakeholders, building up an environmental law community and policy research in the area of environment are CEERA's main objectives. To achieve the aforesaid, CEERA has incessantly and successfully been able to build functional and professional linkages with government agencies and non-governmental organisations in India, the South Asian Region and at International levels. CEERA annually organises, a University Grants Commission recognized, One-week Law



Teacher's Refresher Course. CEERA, has been partnering with Central Pollution Control Board in organising Training Programmes for the officers of various State

Pollution Control Boards and other industry professionals for over eight (8) years. One of the first in India, to successfully be granted a World Bank project and thereafter being a steady choice for the Ministry of Environment Forest and Climate Change, CEERA has been entrusted with research projects and workshops to impart training to Forest Officers, Revenue Officers, Officers of the Central Pollution Control Board and also of the Government of Karnataka. CEERA is proud to have completed a two-year Research Project granted by the United Nations Development Programme (UNDP) under the Global Environment Facility (GEF), and as one of the deliverables, organised, convened and conducted over twenty workshops at Institutions of national repute creating awareness on the Biodiversity Law and Access and Benefit Sharing (ABS) in less than 2 years. Two research publications on the scanty research area of biodiversity laws were also the outcome of this project.



CEERA has several publications in the area of environmental law, the law and public policy along with Newsletters, CEERA March of the Environmental Law, NLSIU's first e-Journal – Journal on Environmental Law, Policy and Development and manages two websites viz., www.nlsenlaw.org, wherein the law and policy on Environment is regularly updated, and www.nlsabs.com, a dedicated portal wherein the law and policy on Biodiversity Access and Benefit Sharing is updated periodically. All our publications are duly updated on our online portal www.nlspub.ac.in, which is open for subscription to all readers.



SUMMARY OF PROCEEDINGS

Day 1: February 8th, 2021

SESSION 1: INAUGURATION AND SETTING THE AGENDA

PROF. [DR.] SUDHIR KRISHNASWAMY, Vice Chancellor, NLSIU

PROF. [DR.] SHANTHAKUMAR, Director, GNLU

PROF. [DR.] M. K. RAMESH, Professor of Law, NLSIU

PROF. [DR.] SAIRAM BHAT, Professor of Law & Coordinator, CEERA, NLSIU

The Five-Day Online Training Programme on ‘Environmental Legislations, Interpretation, Enforcement, Legal and Statutory Requirements - Case Studies’, commenced with a welcome address by **Ms. Madhubanti Sadhya**, Teaching Associate, CEERA, NLSIU. A brief introduction about the Centre’s activities, initiatives and research projects was given to the participants and the 10th edition of the workshop was introduced.

The introductory note was followed by a keynote address by **Prof. [Dr.] Sudhir Krishnaswamy, Vice Chancellor, NLSIU**. At the outset, Dr. Krishnaswamy addressed the ongoing calamity of the Uttarakhand Glacier Burst. He addressed the problematic situation of the Himalayan region due to the human interventions. The occurrence of this accident highlighted the fact that we failed to understand the severity of the environmental



problems. Another important issue flagged by Dr. Krishnaswamy was NITI Aayog’s proposal to initiate a study that seeks to examine the unintended economic consequences of judicial decisions delivered by NGT and SC that have hindered and stalled big-ticket projects on environmental grounds.



Taking over from Prof. [Dr.] Sudhir Krishnaswamy, **Prof. [Dr.] Shanthakumar, Director, GNLU** addressed the panel. He initiated his address by elucidating upon the inter-relationship between different aspects of environment. He highlighted the issue of the fall in the number of migratory birds in a bird sanctuary in Gujarat, which was caused due to the prioritization of the boating activities

for the tourists that required the raising of water level, which is unsuitable for the migratory birds. He emphasized the importance of interrelationship which is required to be considered before we can have an affective understanding of environmental law problem. He then raised the point about the development of environmental law in the 20th century and the role it is playing presently. He concluded his address by mentioning that the development after the Stockholm Convention gave constitutional status to environmental considerations.

Taking over from Prof. [Dr.] Shanthakumar, **Prof. [Dr.] M.K. Ramesh** gave a short address highlighting the 24th year of the capacity building exercise conducted by CEERA.



Lastly the programme was addressed by **Prof. [Dr.] Sairam Bhat** who highlighted the presence of 20 Representations from 9 state control boards as well as 10 participants from the industry. He then talked about the year 2020 which has initiated a new era of public health issue, drawing everyone's attention to the wide-ranging impact that climate issues can have.

SESSION 2: HISTORY OF ENVIRONMENTAL LEGISLATIONS IN INDIA AND CONSTITUTION AND ENVIRONMENTAL LAW

PROF. [DR] SAIRAM BHAT, Professor of Law & Coordinator, CEERA, NLSIU



The second session was conducted by **Prof. [Dr.] Sairam Bhat** who introduced the participants to the synopsis of the course. He started with a brief discussion about various legislations present in India. The legislations are majorly divided into two categories: Substantive and Delegated legislations. The majority of the environmental law comes from the delegated legislations. These laws are given by the executive wing of the government. The delegated legislation in the form of Rules, regulations etc. are no less important than the substantive legislation passed by the legislature. He then went on to highlight that maximum environmental law is coming from the judiciary as they have become very active, even over-active. This shows the dynamic nature of the judicial intervention in the field of environmental law. Moving forward, he raised the question on whether NGT has the power of criminal punishment. He then answered in negative as it is not a court of criminal trial. Section 14 of the NGT Act, 2010 stipulates that it can only address the civil matters and thus cannot anyone behind bars for a criminal offence.

Dr. Bhat then stated that the legislative process for the Indian Environmental Law is more central than local. He then raised the questions as to why were these laws majorly central and that why should the State Pollution Control Board should implement these central laws? This highlights that although there is uniform environmental legislation, but no uniform implementation of the same.

Another question that was raised was whether after the formation of NGT can someone file a PIL at the High Court and if yes, then what is the reason behind the formation of

NGT. It was stated that NGT was supposed to be a special body which was only concerned with the environmental issues. It was also highlighted that the High Courts are popular choice among the litigators because NGT is usually hard to reach because they are less in number and because they get better remunerated for their services at the High Court.

Nationally we have various forms of Legislations: Acts, Rules, Ordinance, Notification, Bye laws and Circulars. It was explained that while Acts and Rules are permanent in nature, Ordinance is a temporary rule making power. Notifications stem from the parent act and their violations for the same are punished under the parent act. Rules are procedural in nature, while Notifications can be a combination of both procedural and substantive law.

Dr. Bhat then shifted the focus towards the International laws which are present in the form of Treaty, Declarations, Protocol and Agreements. He then went on to discuss the differences between the same. Treaties provide for binding international legal obligations. They are enforceable. Agreements on the other hand are binding according to the consent of the party and hence cannot be enforced on them. Protocol and declarations have lesser enforceable value.

SESSION 3: ENVIRONMENTAL LEGISLATIONS IN INDIA: OVERVIEW

PROF. [DR.] MK RAMESH, Professor of Law, NLSIU



Prof. [Dr.] M K Ramesh commenced the second session of the day by talking about the ancient heritage of India with respect to the environment and environmental awareness. He talked about how Indian ethos considered nature and natural resources as belonging to the community long before the conception of the Public Trust Doctrine. Further, Prof. Ramesh talked about how the Indian environmental

law has evolved in different waves rather than in one continuous pattern due to continuous invasions from various parts of the world throughout the history. He talked about how the most significant external impact was however, from the British during the

British Raj. The concept of Eminent Domain and how the British Crown has a sovereign right over all of the natural resources in the country as opposed to the Indian concept of Commons i.e., all-natural resources belong to the community and society, not to any one person or sovereign, was also explained by Prof. Ramesh. Further Prof. Ramesh moved to the post-independence era and how the Indian Parliament has enacted environmental legislation. He talked about how most enactments regarding environment were mostly done in the British era and further explained that almost all the present legislation in environment were in pursuit of international treaties, agreements and declarations to which India was a signatory. The enactments done in the British era later on aligned with the Stockholm Declaration and other such international laws. Further, Prof. Ramesh mentioned an interesting point about how the Indian Constitution in its original text never mentioned the word Environment and that only after the 42nd Amendment did the Constitution have anything to say about environment through Article 48A. Further Prof. Ramesh explained how the Indian Constitution has the concept of Sustainable Development ingrained within it, right from the beginning.

Prof. Ramesh further talked about how India being a socialist economy until the 1990s had a lot of catching up to do with economic transition and how it impacted the economy and ecology. Another interesting matter was mentioned by Prof. Ramesh, about how India's population is disproportionately high when compared to the natural resources. India's population is 17% of the world population whereas the natural resources are just 2% of the world. These factors that are unique to India are not taken into consideration. Hence, India's ranking in the Environmental Performance Index (168 out of 180) and other similar certifications cannot be taken into proper consideration. Further Prof. Ramesh discussed how environmental laws have always intermingled with other laws like Taxation Laws (Agricultural Cess), Tort Laws. Explaining further, the case of *Donoghue v. Stevenson* was discussed to understand Extended Producer Responsibility. The manufacturer is responsible even after selling the product. The law of public nuisance and how the general administration and the environmental administration are working in harmony to mitigate public nuisance was also discussed. Prof. Ramesh then went onto discuss how the Central Pollution Control Board and the respective State Pollution Control Boards have a great and important role to play in the environmental administration of the country. Explaining further he mentioned that there is no other such agency or body in the government and that the CPCB and SPCBs are not mere departments of the government but have a special role in the administration. The evolution of environmental laws has a lot to do with building institutions and

infrastructure around the environmental administration, explained Prof. Ramesh. The pollution control board has very wide powers over many different laws of the country. On a concluding note, Prof. Ramesh explained how India has taken initiative in climate control and how India in Paris created the International Solar Alliance and was the only major economy along with France to initiate such an action.

SESSION 4: CASE LAW APPROACHES

MS. MADHUBANTI SADHYA, Teaching Associate, NLSIU

MR. VIKAS GAHLOT, Teaching Associate, NLSIU

As this was a session based on different cases, the session began with a few questions by **Mr. Vikas Gahlot**. He asked the participants whether pollution control board's



permission is required for conducting cultural event? Is it obligatory for the pollution control boards to respond to approval application? Can polluters pay principle be used as pollute and then pay principle to give permissions? To which one of the participants answered that pollution cannot be permitted

at any cost. Another important question was posed to the participants as to whether National Green Tribunal has jurisdiction to decide cases related to floodplains, wetlands or cultural events?

To explain the questions further **Ms. Madhubanti Sadhya** brought forward the case of *Manoj Mishra v Delhi Development Authority* which was a landmark case with regards to environmental clearance for cultural event. The brief facts of this case were explained by Ms. Madhubanti. The Art of Living foundation was holding a World Cultural Festival on the floodplains of the river Yamuna. Delhi Pollution Control Committee said that as this was a cultural event the DPCC did not have any say in the matter, but the participants were of the view that Pollution Control Boards can deal with such matters. Art of Living approached various authorities including the Delhi Development Authority,

Delhi Pollution Control Committee, Ministry of Water Resource, etc. DDA granted the permission subject to conditions that if they pollute they have to pay compensation. The petitioner then approached the NGT seeking its intervention to stop this cultural event and to impose fines to the authorities. The petitioner contended that according to Section 14 of the NGT Act, Tribunal had the jurisdiction to deal with such cases. According to Section 33A of the Water Act & Section 31A of the Air Act the Pollution Control Boards have the power to give directions in environmental matters. The NGT held that Section 14 should be interpreted liberally. The NGT held that it has ample jurisdiction in environmental matters. It also held that prior approval is required. Based on the sheer scale of the event, the construction required etc. it cannot be said that it is a simple cultural event. It is a complete project in itself. Further, the NGT held that, it is obligatory for the PCB's to respond to the approval applications i.e. either accept it or deny it. In any case it was expected from the PCB to issue direction in exercise of its powers under section 25 and 33A of Water and Air Act respectively. Polluter pays is a principle of adjudication. DDA should not have granted permission based on that. This case was further explained by Prof. Sairam Bhat who explained the role of NGT and how it has wide powers to adjudicate over all civil matters in relation to environmental laws.

Day 2: February 9th, 2021

SESSION 1: COMMON AND CRIMINAL LAW REMEDIES FOR ENVIRONMENTAL PROTECTION

PROF. [DR.] SAIRAM BHAT, Professor of Law & Coordinator, CEERA, NLSIU



The session started on a lighter note where Prof. [Dr.] Sairam Bhat conveyed through famous cases and controversial public instances, the inspiration to study human rights in environment. The purpose was to see how criminal and civil law have a role to play in environmental issues. Example from the Bhopal gas tragedy, banning of

Jallikattu on grounds of animal cruelty, Salman Khan's conviction in Black Buck case etc. were taken.

In the second segment of the lecture, Prof Bhat shifted the focus towards statutory remedies available to deal with the menace of water pollution, under Water (Prevention and Control of pollution) Act 1974. It was informed that these remedies are concurrent remedies. Under section 24, 25 and 26 of the Act, the state pollution control board can take cognizance of the complaint for violating any of the provisions in these sections. However, there is no uniformity in the format for filing of the complaint. The discussion then moved towards how State Pollution Control Board can adopt innovative online and offline measures to not only create awareness but also encourage the public to come forward with their complaints. It was also informed that water (prevention and control of pollution) Act 1974, Air (prevention and control of pollution) Act 1974 and Environment (Protection) Act 1986 are a combination of civil and criminal statutes as the Pollution Control Boards are empowered to take both civil and criminal action. It is the idea of intentional violation (also represented by the phrases "wilful", "intentional", "knowingly") that differentiates civil and criminal liability. Thus, PCB can take both civil and criminal action, based on administrative discretion, evidence and gravity of the offence.

In case of criminal action, the Pollution Control Board can file a criminal case to Judicial Magistrate First Class or Metropolitan Magistrate under section 43 and 44 of the Water Act 1974.

Further, it was discussed whether an ordinary citizen can prosecute the offender under the Act. Sec 49(1)(a) of the Act. The same was answered in the negative as no court can take cognizance of an offence except complaint made by a board or an officer. However, under sec 49(1)(b)- any person can also file a complaint after giving 60 days' notice along with his intention to make a complaint, to the Board.

SESSION 2: ADMINISTRATIVE GOVERNANCE IN ENVIRONMENTAL LAWS

PROF. [DR.] M K RAMESH, Professor of Law, NLSIU



The interactive session by **Prof. [Dr.] M K Ramesh** started with a general question to the audience i.e., “what is the statutory role of environmental administrators (Pollution Control Boards) in environmental governance?”

Three types of roles were discussed

- Preventive role i.e., role to protect the environment
- Controlling role- to control/limit the pollution causing activities
- Proactive role- which includes the role of restoration i.e., bringing the environment back to its original condition and function.

Over time there has been expansion of role to be played by PCB in environmental administration across sectors like Noise pollution, Coastal Areas management, Hazardous waste management etc. For all specialized statutory functions, Pollution control board is the nodal agency for implementation of these regulations, rules and statutes. Thus, the boards has a very wide role which is proactive in nature.

In the next segment, substantive, procedural and institutional problems in performing or fulfilling the statutory obligations by officers of Pollution Control Boards was discussed. The special focus was on institutional problems. Within the institution, political interference and conflict of interest due to representation from various departmental organizations was seen as the biggest hinderance. Further, the State Pollution Control Boards find themselves in dilemma to follow the directions of both Central Pollution control board and state government, especially in the case of clash of opinions between CPCB and state Government. There is a fear of sanction from Central government and

state government over state PCB. Outside the organization, there is a problem of lack of harmonious functioning and support from other governmental departments and local bodies, in giving effect to directions of the PCBs.

In the last segment of the lecture, various reforms and steps to improve environmental administration were discussed, with special focus on re-organization of the structure and functions of State Pollution Control Board. Some reforms suggested were as follows

- a. Re-imagining the role of PCB as not merely a controller of pollution but a specialised agency for conserving and protecting environment as a whole. This needs relooking at environment as a whole and not in water-tight compartments.
 - b. A single, comprehensive legislation to cover various aspects of environmental conservation, protection, maintenance, management, non-degradation, restoration, recovery and reclamation of natural resources with specific divisions within its umbrella. This it to ensure harmony and coordination in functioning and administration
 - c. Bringing more clarity in relationship between pollution control administration with other agencies, reviewing the existing relationship between SPCB, CPCB, state and central govt
- Revamping composition and qualification of members of the pollution control boards to make it truly autonomous and professional
 - The concerns over climate change and the action plans to mitigate and in building capacity to adapt to its adverse

SESSION 3: CLEAN TECHNOLOGY AND ENVIRONMENTAL LAW

DR. SRINIVAS RAVINDRA, CEO & Co-Founder, Ecochoice Naturals Private Limited and Director CSD



The session on clean technology was presided over by **Dr. Srinivas Ravindra**. Srinivas Ravindra was quick in addressing the global scenario of clean technology as he elaborated on low carbon electricity and coal power generation achievements. However, he highlighted that CO₂ emissions were still high. He explained the concept of clean technology in simple terms as he claimed

that there was no universal or legal definition for the same. The four areas of clean

technology, namely, transportation, energy, materials and water, were identified by him. While stressing on the need for climate resilient crops, Professor Srinivas showcased a comparison between clean technology implemented in 2018 and potential implementation in 2026. He discussed the two general policy objectives of advancing research and development and promotion of Clean Technology. He went on to highlight the lack of policy for deployment of technology. After doing the same, he emphasised the need for a pervasive transformation of energy economics system. The response to clean technology varied in each industry and Srinivas provided different incremental changes in the processes that would allow for improvement in regulation. He analysed the findings of surveys on Clean Technology in OECD countries. He analysed the same by noting certain factors that influenced Clean Technology and explained the Stimulus Response Model and the Multivariate Response Model to better understand the same. The barriers to the transfer of Environmental Goods such as tariff barriers and non-tariff barriers were elaborated on by him. He proceeded to explain the types of policy instruments and their implementation based on the available choices. He concluded the session by discussing the pros and cons of environmental policy towards clean technology and provided some case studies regarding the same (ODS case, Hindustan Zinc v. Rajasthan ERC case).

SESSION 4: ENVIRONMENTAL LITIGATION

MR. ROHITH KAMATH, Advocate and Consultant, CEERA, NLSIU

MS. LIANNE D' SOUZA, Research Fellow, CEERA, NLSIU



The session began with **Ms. Lianne D'Souza** explaining the difference between right in personam and right in rem. She proceeded to discuss the difference between civil and criminal liability and remedies under those forms of law. Then Public Interest Litigation was discussed in depth and the difference between a PIL and Class Action lawsuit was provided by her. Certain principles of environment litigation, namely, Precautionary

Principle, Polluter Pays Principle, Sustainable Development Principle and Principle of Inter-generational Equity were discussed with case laws.



Thereafter the appointment of committees for environmental litigation was highlighted by **Mr. Rohith Kamath**. The session came to its climax when the participants were informed of the Role of the Pollution Control Board. The discussion answered the following questions - Can PCB be summoned by the

Courts? Can Officers be fined for non-implementation? How is the money paid? Can PCB request for a bank guarantee? Why is there a rise in non-compliance under Environmental Law? The questions were answered with relevant case laws. Thereafter, basic concepts of the process of the law such as Writ Jurisdictions, Injunctive Reliefs, Criminal Sanctions and penalties were discussed in depth. The session came to an end after a short discussion on the role of Amicus Curiae, Ad-hoc Procedures and Novelty and Arbitrability of Environmental Disputes.

Day 3: February 10th, 2021

SESSION 1: NATIONAL GREEN TRIBUNAL: CHALLENGES, OPPORTUNITIES AND DIRECTIONS TO POLLUTION CONTROL BOARDS

PROF. [DR.] SAIRAM BHAT, Professor of Law & Coordinator, CEERA, NLSIU



The session by **Prof. [Dr.] Sairam Bhat** pertained to a discussion on the adjudicating mechanism of the National Green Tribunal and remedies available to citizens, especially under the Water Act, 1974. Practical functioning and implications of the procedure were discussed. The session saw active participation of the attendees.

Dr. Bhat discussed citizens' perspective on remedies available under the Water Act, 1974, *inter alia*, complaints under Sections 24, 25, 26; PCB filing a criminal case to the Chief Judicial Magistrate under Sections 43, 44; 60 days' notice by citizens (Section 49); emergency cases being handled under Section 133, Code of Criminal Procedure, 1973 ('CrPC'); civil damages for negligence as per the law of tort; citizens filing police complaint under Section 277, Indian Penal Code, 1860 ('IPC'); aggrieved persons approaching the Appellate Authority under Section 28 of the Water Act; seeking compensation (NGT) for person, property and environment; filing a PIL. Professor then delved into detail regarding forums where an environmental wrong can be adjudicated upon.

Dr. Bhat discussed about the Appellate Authorities in detail while answering questions regarding the quasi-judicial nature of the bodies. Certain observations were made regarding how Appellate Authorities were partially functional. Discussing the procedure of appeals, it was advised that for smooth functioning, orders of State PCBs should mention where one can subsequently appeal. It was advised that if Appellate Authorities are fully functional, then appearances of parties before NGT can be minimized, thereby further emphasizing the need to firstly exhaust the local remedies.

Subsequently, a discussion on authorities that could take cognizance of environmental wrongs followed. It was noted that the power was highly in favour of the Centre. A

discussion on the 'authorised officer' regarding such matters, ensued. With respect to the Environment Protection Act ('EPA'), it was highlighted that the Central Government had delegated powers to states only in certain cases. The point was further buttressed by noting that High Courts have often stated that SPCBs can take cognizance of only limited offences under the EPA. An important 2017 Bombay HC judgment, *Vinod Mahajan v. State of Maharashtra* was noted. Herein, the citizen had given notice under Noise Regulation Rules, 2000. Rule 7 herein stated that notice must be given to the 'prescribed authority'. It was highlighted that the Central Government has authorised the District Collector as the relevant authority in this regard. Thus, EPA is not to be considered as a blanket law to be applied by the SPCBs. Further, the question of police taking cognizance under Section 19, EPA was deliberated upon. With respect to Section 5 of the EPA, it was questioned whether SPCBs could prosecute Commissioner of Municipal Corporation. This was answered in the affirmative.

Furthermore, certain Additional Remedies present with citizens were discussed. These remedies included imposing fines (read with Heera Naik case); publication of names of second offenders (Section 46 of Water Act); provisions under IPC (Sections 268, 269, 272, 277, 278, 281, 287, 289, etc.); and Section 133 of CrPC.

The session concluded with Dr. Bhat raising a question on whether provisions of IPC and CrPC can be included in the charge sheet along with those under the Water Act, leaving room for discussion on one of the principles regarding interpretation of statutes, i.e., primacy of special laws over general laws.

SESSION 2: INTERPRETATION OF ENVIRONMENTAL LEGISLATIONS

PROF.[DR.] M K RAMESH, Professor of Law, NLSIU



Prof. [Dr.] M K Ramesh facilitated the conversation by means of raising several pertinent questions regarding the topic. Firstly, the need for interpretation of legislations was discussed. Questions that were raised included: Should law require interpretation? Who can interpret laws? It was noted that Court is the

agency to help one untangle the terrain of law. Interpretations are required to clarify the objective of respective legislations and for their better understanding and implementation.

This was followed by a discussion, rather a justification of why can laws not be in a simple conversant language. It was highlighted by the Professor that plain language often leaves scope for varied interpretations. Law deals with a host of situations and captures it within a legislation. Thus, to bring some exactness to the underlying meaning of law and to restrict multiple unfeasible interpretations, law needed a comprehensive language. Prof. Ramesh highlighted the need for varied applications and not varied interpretations of law. The need for rules of interpretation thus arises to proximate the intent of the lawmaker. The discussion then highlighted the role of Courts and law practitioners to interpret laws.

The third question posed was regarding the need for special interpretation regarding environment laws. Owing to the inter- disciplinary approach of environmental laws, such need was justified. Prof. Ramesh then delved into the nature of environment laws which was highlighted to be that of social welfare laws.

It was highlighted how environmental laws were given liberal interpretations for the purpose of meeting the ends of social welfare and environmental justice. This was highlighted by the case of *Pondicherry Paper Mills Ltd. v. PCB*, 1978 where the HC upheld the District Court's powers of giving injunctive relief which was not provided for in the environmental legislation. The Hon'ble HC held that the lower court had an 'implied power' to uphold the 'letter and spirit' of law. Any appropriate order could be passed for the advancement of the law.

This was followed by the *Rayons Limited* case, 1989, wherein the constitutionality of the Water (Prevention and Control of Pollution) Cess Act, 1977 was upheld although the Centre had created a law regarding a subject (water) that came under the State's ambit. SC herein held that the concerned Act should not be viewed in isolation but as an appendage to the Water Act, in order to materialize its objectives. Thus, liberal interpretation of law was favoured for purposes of social welfare.

This was followed by a discussion on the significance of Section 24(2) of Environment Protection Act ('EPA') on the legislation's umbrella effect. It was noted that the threshold of penalties under specific environmental legislations had been increased as compared to

that under the EPA which gave a basic framework for concerned environmental legislations. It was noted that such penalties did not apply to the SEZ Act.

The session concluded with Dr. Ramesh emphasizing that environmental laws do not require strict interpretation rather a strict application. Therefore, the liberty of interpretation has been granted for such social welfare laws. He congratulated the attendees for their zeal to keep learning about environmental laws. Furthermore, he hoped that India performs better in the Global Environment Index in the near future.

SESSION 3: ENVIRONMENTAL LAW COMPLIANCE AROUND POLLUTION CONTROL

MR. MDN SIMHA, Former Member Secretary, Karnataka State Pollution Control Board



The third speaker of the day was **Mr. MDN Simha**, who is a former member secretary of the Karnataka State Pollution Control Board. He focused on the topic, Environmental Law Compliance around Pollution Control. In view of this, he first looked at the common objective of the SPCB (“State Pollution Control Board”) and the industries which is to ensure compliance and demonstrate compliance respectively.

Mr. Simha then moved on to talk about Regulatory Scenario and Compliance Issues with the SPCBs. According to the Damodaran Committee for “Reforming Regulatory Environment for doing Business in India”, one of the main factors which adversely impact the growing of business in India is the Plethora of regulations – Regulatory Overload;

While in 1974 there was only 1 Act which dealt with environmental rules, over the years, the number has greatly increased with a number of complex, stringent and overlapping regulations in the form of acts, rules, guidelines, etc. Along with these, there are numerous provisions in the IPC, CrPC, Common Law, the Employment of Manual Scavengers & Construction of Dry Latrines (Prohibition) Act, 1993, the Prevention of Money Laundering Act, 2002, etc., which aim to conserve the environment.

There are also different procedures which the PCBs have to follow, such as classification of the industries, consent management, online monitoring issues, etc. Furthermore, the NGT and the courts have issued numerous directions for environmental protection which increases the procedures for the SPCBs.

While the presence of extensive regulations might *prima facie* seem advantageous, it actually leads to numerous adverse effects on both the SPCB and the organisations. They face increased pressure for implementation, and increased risk for non-implementation along with increased workload, complexity, costs, etc. On the organisation front, there is an increased pressure of compliance and the subsequent risk of non-compliance. Any form of non-compliance would result in high costs in the form of environmental compensation, business interruption, financial loss, reputation loss, liability for prosecution, etc.

Therefore, the Damodaran Committee made certain recommendation for resolving these complexities by making the regulations transparent, simple and clear. They also suggested establishing a Regulatory Review Authority to examine the stock the existing regulations.

Mr. Simha then examined the Compliance Issues prevalent in the country. There are certain elements of compliance, like having valid consent, installing necessary pollution control devices, testing the effluents, filling regular returns, etc, which need to be adhered to on all cases. These different constituents of compliance broadly form 4 types of compliance mechanism:

1. Compliance-based Compliance (Compliance for Compliance's sake) – This means to do the minimum required to comply and disregard the objective and spirit of the law.
2. Negotiated Compliance – The authorities and organisations negotiate with regards to the time needed for compliance and the level of compliance.
3. Ethics-based Compliance – This means doing what is right regardless of what the law says.

4. Beyond Compliance – This means complying with not only the state-mandated regulations but also other forms of regulations.

Another method would be for the SPCBs to publish “Enforcement Policy” to ensure fairness and avoid arbitrariness.

Lastly Mr. Simha talked about how Behaviour Sciences should be used along with law and policy to tackle these various problems posed to the environment. Many environmental problems are rooted in human behaviour and understanding this, would be the solution to many of the problems. Compliance Psychology and Environmental Psychology would also supplement this aim of understanding why the environment gets polluted.

Mr. Simha concluded by looking at certain structures and mechanisms which need to be established to ensure this compliance is realised. First is the formation of an Information Management System to manage the records and data and second is the establishment of the Zero Liquid Discharge (ZLD) system for all industries to that there is an absolute recycling of all effluents and substances produced in these factories.

SESSION 4: POLLUTION CONTROL COMPLIANCES: ISSUES AND CHALLENGES

MS. PREETHIKA PILINJA, Senior Legal Manager, HAL

The fourth speaker for the day was **Ms. Preethika Pilinja**, Legal Manager at HAL. Her topic of discussion in this session was Pollution Control Compliances: Issues and Challenges. Ms. Pilinja first looked at certain statistics which show that road dust forms the largest source of air pollutants in Delhi. One



way of combating this air pollution is using the Air Act, particularly Chapter IV of the act. However, this chapter only deals with pollution from industrial units and automobiles and not various other sources of air pollution. Nevertheless, there has been no prosecution since the inception of the act because although the act does not take into account various new sources of air pollution.

Both the Air Act and the Water Act both deal with the powers of the PCBs. This power is in stark contrast to the EPAs present in the United States in many regards. The EPAs have a wider scope of ensuring compliance through fines, sanctions and other procedures whereas the PCBs only have criminal proceedings and can only make applications to the courts for restraining practices causing pollution. This coupled with the fact that PCB has a much smaller staff and lower annual budget contributes to it being less effective than the EPAs.

Ms. Piliņa then moved on to the Implementation Issues faced by the PCBs. The first challenge arises in an overemphasis on monitoring and inspecting large industries. While this is important, it isn't exactly the dominant source of pollution. The different SMEs (which contribute to almost 70% of the industrial pollution load), municipal sources, transport, etc., are disregarded. The second challenge is the disproportionately high amounts of time spent by the SPCB staff on issuing consents at the expense of their compliance monitoring and enforcement responsibilities. Along with this there are numerous instances where cases crumble on maintainability issues for not following certain complicated procedures without even delving into the pollution aspect and merits of the case. Ms. Piliņa then takes up a case study of *Suma Traders v. KSPCB* to better illustrate this challenge because in this case, the court struck down the order the Chairman of the SPCB as certain technical procedure wasn't followed without going into the fact that the petitioner was actually engaging in environmental degradation.

Ms. Piliņa further talked about the Enforcement Issues regarding the pollution control laws. Statistics regarding this enforcement say that Indian courts take between 9 and 33 years to clear the backlog of environmental law violation cases at the current pace. Due to this, the rate of conviction under the Air Act and the Water Act in all the Indian states is almost nil. One such example is prosecuting companies under Section 47 of the Water Act. The different complicated facets of this provision need to be met before any proceeding can happen, which just increases the workload of the officer. The case *Amrut Banaspati and Co. Ltd. v. UP Pollution Control Board and Ors.* best elucidates such complexities which impede conviction under this act.

Lastly, Ms. Piliņa takes up an important case study of *Vikash Bansal, M/s Haryana Paneer Bhandar v. DPCC*, which is one of the few cases where the accused was actually convicted and sentenced to 2 years imprisonment, for the offence of polluting water bodies due to the release of untreated effluents under different sections of the Water Act.

However, when this case was appealed, the higher court referred it to mediation where the parties came to a settlement such that the accused didn't have to go to prison.

SESSION 5: PROBLEM SOLVING EXERCISE

MS. MADHUBANTI SADHYA, Teaching Associate, NLSIU

MS. GEETHANJALI K.V., Legal Associate, CEERA, NLSIU

MS. LIANNE D'SOUZA, Research Fellow, CEERA, NLSIU



The final session for the day commenced with a short discussion by **Ms. Madhubanti Sadhya**, Teaching Associate, CEERA, NLSIU. She mainly focused on the PCB's Role in Hazardous Chemical Accidents. The main regulation in this aspect is the Manufacture Storage and Import of Hazardous Chemicals (MSIHC) Rules, 1989.

There is a certain protocol which needs to be followed by the occupiers in such chemical accidents. Firstly, the occupier needs to notify the PCB within 48 hours of the major accident and furnish the reports. Secondly, the PCB has to undertake full analysis of the accident and send the information within 90 days to the Ministry. Thirdly, the occupier needs to notify the PCB of any steps taken to avoid repetition. Fourthly, the PCB needs to inform the occupier of any lacunae which it needs to rectify to avoid future accidents.

Furthermore, there also exist the Chemical Accidents (Emergency, Planning, Preparedness and Response) Rules, 1996, which complements the MSIHC Rules. This has a 4 years crisis management system, which the PCBs have representations in 3 tiers. Another regulation is the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. Under this, the occupiers are bound to inform the SPCBs of the accident and file a report through the application appended in the Schedule.

There is also the National Disaster Management Act, 2005 under which a National Disaster Management Plan (NDMP) was formulated. The PCBs have a role to play under this plan as well.

The PCBs also have a role under the Guidelines on Implementing Liabilities for Environmental Damages due to Handling and Disposal of Hazardous Waste & Penalty, 2016. If there is any form of illegal dumping, then the regional SPCB offices and nodal agencies have to inspect the site, take an initial sample and report the same to higher authorities. There also needs to be an in-house team, termed as “Hazardous Waste Incident Response Team” which should have expertise in hazardous waste management. There are also different valuation of liabilities mentioned for different cases of hazardous waste mismanagement.



Following this, the session proceeded with a practical discussion exercise by Ms. **Geethanjali K. V.**, Legal Associate, CEERA, NLSIU and **Ms. Lianne D'Souza**, CEERA, NLSIU. Their main topic of discussion was Understanding Regulatory Compliances in the Mining Sector. Firstly Ms. Geethanjali looked at the different laws regulating this sector, namely, Mines Act, 1952, Mines and Minerals (Development & Regulation) Act, 1957 (MMDR Act), National Mineral Policy, etc. Along with these specific acts, the other environmental acts like the Air Act, Water Act, Environment Act, etc., which also have provisions applicable to the mining industry.

Ms. Lianne then moved on to mainly focus on the Role of The Pollution Control Board In Granting Permission In Setting Up Mines In The Mining Sector. Although there is no direct provision under the MMDR Act, which empower the PCBs, through consensus to operate under the Air Act and Water Act, the PCBs have a significant role in ensuring certain environmental compliances in the mining sector.

The EIA (Environmental Impact Assessment) Notification provides that all forms of mining projects falling under the A and B1 projects under the Schedule, require environmental clearance before they start. Even the improvement and expansion of any

existing mining project, requires a new EIA and a new clearance because such expansion may cause increased pollution loads and affect the public as well. The SPCBs have the primary role in conducting public consultation and public hearing for both new projects and expansions within 45 days. But if the PCB fails to conduct the consultation within these 45 days, then the regulatory authority can appoint a new agency to conduct this public consultation as this is a mandatory requirement.

Once an application has been filed by a project proponent, there needs to be a minimum of 30 days' notice given to the public from conducting a consultation. "Public" here refers to all those who have a plausible stake in the project. For this consultation, the SPCB not only have to publicise the EIA summary report which is submitted by the project proponent but also any background research about the project which the SPCB may have conducted about the pros, cons, consequences, etc.

Finally, Ms. Geetanjali elucidated the further responsibilities of the PCB in establishing mines. Along with these clearances and public consultation, the SPCB need to grant "Consent to Establish" for any new mines as per Section 25(1) of the Water Act and Section 21(1) of the Air Act. After this, once the criteria for "Consent to Establish" has been followed by the mines, the SPCBs have to grant the "Consent to Operate". Post all of this, the SPCBs have to keep receipt of periodical reports regarding their air, water, noise emissions and conduct regular inspections of the mines according to the requirements mentioned in the guidelines. In case of any default in compliance, the SPCBs can take action ranging from issuing notice and directions to even revoking consent or ordering closure of the mines.

Day 4: February 11th, 2021

SESSION 1: BASEL CONVENTION AND HAZARDOUS WASTE MANAGEMENT

PROF. [DR.] T. R. SUBRAMANYA, Dean, School of Legal Studies, CMR University



In this session, **Prof. [Dr.] T. R. Subramanya** went into an elaborate discussion on the history of the Basel Convention, with examples. Professor Subramanya spoke about the emergence of the developing countries' dilemma with respect to the disposal and management of hazardous waste by citing two examples. The first related to the realisation of the ill-effects of cadmium and industrial waste in Japan after the outbreak of the itai-itai- disease in 1912. The second related to the problems caused by the dumping of waste caused by the asbestos industry from 1946 onwards. The other instances that spurred the need for sound chemical and hazardous waste management measures were as follows.

- Hooker Chemical Corporation in 1968, disposed of some 80,000 tons of mainly chlorinated organic waste at the 15-acre site from 1953 to 1975, particularly inclusive of tetrachlorodibenzo-p-dioxin (TCDD). In September 1983, EPA of US put this industrial landfill on its list of the most hazardous sites. This raised issues with respect to the contamination of soil and water.
- Another instance referred to when Midwest Solvent Corporation, which is engaged in the business of reclaiming solvents and in the business of storing and disposing of various solid and hazardous wastes had dumped around 24,000 gallons of a 50-gallon capacity of

waste in the state of Indiana. This act attracted significant attention when this waste caught fire and led to a massive fire breakout in the landfill.

- In 1980's a Houston based company, PCB started dumping hazardous plastic waste within the Mexican territory which highlights the treatment of Latin American countries as dumping yards of waste by the United States.
- In the mid-1980s, Italy could only process 20 percent of the toxic waste it generated. The small fishing village of Koko, Nigeria, made international headlines in 1988 when it was discovered that two Italian firms had arranged for the storage of 18,000 drums of hazardous waste with Koko residents. The containers were disguised as building materials and offloaded into a local man's vacant yard for \$100 per month. Furthermore, the acts of dumping hazardous waste in Nigeria by Italy was investigated more closely when the Nigerian government realised that the vegetation in the village was disappearing due to the toxicity of the waste.
- Later on, in the sub-continent of South America, a Philadelphia based MNC began to dump around 13,476 tonnes of waste which resulted in a public outcry in the Latin American countries. The first country that took a positive step was Bermuda, which outrightly rejected the export and dumping of waste from the US.
- The final and most significant incident involved the Banana Gate Scam in 1975. A US based company entered into an agreement with the government of Costa Rica to provide pesticides to Banana cultivators. These pesticides resulted in various health defects of the growers and farmers which stirred up the agriculturalists in Costa Rica. Interestingly, 1341 women approached the court seeking compensation from the company as their husbands were sterile owing to the pesticides and therefore sought for divorce.
- One country that has taken a positive step against the toxic imperialism of the west is Kenya. In 1956, the President of Kenya opposed the dumping of hazardous waste in the country by invoking the clauses of the Agreement on Self-Determination.
- Ivory Coast followed suit by becoming the first country among the OECD group of nations to take positive action against violators who allowed for dumping of hazardous waste.
- Nigeria also imposed death penalty as punishment for those who violated the rules against the dumping of hazardous waste.
- Following this, 39 Latin American countries took measures to prevent the dumping of hazardous waste.

On a concluding note, Professor Subramanya laid emphasis on how the Basel Convention sought to resolve these problems, as evidenced above. After deliberating upon the provisions briefly, he also threw light on the demerits of the Convention. The first demerit

is that the definition of Hazardous Waste defers from country to country which renders the definition ambiguous. Secondly, the Convention makes no mention of transfer of technology. Thus, while the Convention reflects a positive step in the regulation of hazardous waste management on a global level, it is not devoid of certain flaws.

SESSION 2: WASTE MANAGEMENT COMPLIANCE

MR. SHUJATH BIN ALI, General Counsel, Ramky Enviro Engineers Ltd.



Mr. Shujath Bin Ali began the session by giving a perspective about the evolution of waste management in India. Antecedent to which, the disposal of waste did not pose a significant requirement to the nation, as the population was limited, while the area of land available for waste disposal was

relatively large. However, owing to various factors, including but not limited to rapid economic growth, industrialization and overpopulation, there was an overwhelming increase in the production of all kinds of waste. The improper disposal of hazardous, bio-medical and many other types of wastes started to pose a threat to the environment and the health of living beings. Therefore, the enforcement of existing rules and regulations became imperative in the process of ensuring safe and responsible waste disposal practices in India.

Since the waste generation levels were steadily increasing and reaching dangerous levels, the Ministry of Environment, Forest and Climate Change framed an umbrella legislation called the Environment Protection Act, 1986 and all waste management related legislations fell within the purview of this umbrella legislation. Further, the Pollution Control Board not only have the authority to utilise sections 15 and 16 of the Environment Protection Act, but additionally may prosecute and provide for environmental compensations all while encompassing umbrella legislation provisions.

The session moved on discussing the basic structure of waste management rules. This segment involved the explanation of the framework of the legislations governing waste managements. The components of the framework generally remain the same regardless

of the legislation and contain the standard inclusions. He explained the actual depth of rules, including the technicalities would be mentioned in the schedules, while the forms play an essential role in the day-to-day enforcement of rules from a professional aspect.

The following legislations, their respective rules were discussed:

1. Hazardous and Other Wastes (Management, Handling & Transboundary) Rules, 2016.
2. Manufacture, Storage and Import of Hazardous Chemical Rules, 1989.
3. Solid Waste Management Rules, 2016
4. Bio-Medical Waste Management Rules, 2016

The above-mentioned rules were discussed in detail and important rules in each of the legislations were highlighted. The discussion ranged from transportation and storage, to accident reporting and liability related issues. Since the legislations are elaborate, a brief overview of the laws was provided.

SESSION 3: LEGAL FRAMEWORK RELATING TO HAZARDOUS WASTE MANAGEMENT AND HANDLING IN INDIA

MR. HEMANT BAGAI, Managing Director, Terrapro Recycling Solutions Pvt. Ltd



Mr. Hemant Bagai's lecture focused on the practical aspects regarding Hazardous Waste Management from a corporate viewpoint. He shed light on the relevant legislations with the help of MOMs and joiners from his meetings with the Ministries of Environment, Finance and the

CPCB.

The session began with a general definition of what constitutes Hazardous Waste ('HW'). Mr. Hemant then proceeded to discuss the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, which had its roots in the Environment Protection Act. After discussing the definition of HW under Rule 3(17), Mr. Bagai commenced with an overview of the various Rules and Schedules under the legislation. He noted that E-Waste was also a form of HW. Schedules I, II and III were briefly discussed along with Rule 2 (where HWM Rules are not applicable), Rule 4

(responsibilities of occupier and steps to be followed, viz. Prevention, Minimization, Reuse, Recycle, Recovery, Utilization and Safe Disposal) Rules 18 and 19 (regarding transportation of HW). This was followed by a discussion on the rules regarding information on storage, handling and disposal of HW to be given to the TSDF.

A detailed discussion on the Authorization procedure regarding HW followed, in light of Forms 1 and 2. Certain pre-conditions like occupier having Consent to Establish (CTE) and Consent to Operate (CTO) were also discussed. Mr. Hemant then presented a redacted sample of an HWM Authorization format of the Haryana government for the aid of the attendees. This was followed by discussing the importance of Field Inspection Reports. It was also highlighted that SPCBs are required to provide reasons for refusal if authorization is not granted. Right to Appeal against Refusal (Rule 24) to the Appellate Authority (Environment Secretary of the State) was later discussed.

This was followed by an extensive discussion on the Utilization of HW. Rule 9 regarding authorization of SPCB on the basis of guidelines or SOPs provided by the CPCB was discussed. In cases where these are not available, CPCB's approval for trial run is required. A sample of the MoM of one such meeting regarding Orient Paper Mills (for using brine sludge to make bricks) was presented. The Expert Committee had to be furnished with details on proposed usage, product, and process of manufacturing. The Committee could also make its recommendations.

Subsequently, the Import and Export of HW (Rules 11- 14) was explained in light of the Basel Convention. MoEF&CC is the nodal agency herein. Import for disposal is not permitted. It was elaborated that import of Part A (Schedule III) items require Prior Informed Consent ('PIC') and permission of the Ministry while PIC is not required for Part B items. Import of Schedule VI items is not allowed.

Rules 13 and 14 which deal with procedure regarding making application to Ministry were later discussed. Treatment, Storage and Disposal Facility ("TSDF") under Rule 16 was discussed along with its three types- secured landfill, incineration facility, combination of both secured landfill and incineration facility. SPCB is herein required to monitor operators who must maintain records of HW handled in Form 3 and file annual returns to SPCB in Form 4. Mr. Hemant then presented a list of TSDFs operational in India.

This was followed by a discussion on the concept of Extended Producer Responsibility ('EPR') in the context of E-waste. It was noted that E-Waste Managements Rules, 2016, included EPR with targets. EPR added to the primary responsibilities of the producer, and emphasized on take back scheme and recycling for disposal purposes. Schedules III and III(A) herein provide targets to be met. Reporting nodal authority is the CPCB. To

monitor the details and implementation of EPR, a sample EPR Plan was presented. Deposit Refund Scheme, as used abroad, was discussed. This was followed by a discussion on Forms 9-12 of the 2016 Rules.

The session culminated with Mr. Hemant addressing a practical loophole, i.e., movement of HW happening currently without intimation to the concerned PCB since it is not mandatory. This has kept the PCBs from keeping a check on such movement of HW. Thus, the need for proper guidelines and stricter implementation is felt.

SESSION 4: APPOINTMENTS AT PCB: DIRECTIONS OF THE COURTS

MR. ROHITH KAMATH, Advocate and Consultant, CEERA, NLSIU

MS. LIANNE D'SOUZA, Research Fellow, CEERA, NLSIU



Ms. Lianne D'Souza started off the session with an introduction to the appointment of the members of the Pollution Control Board. She highlights the provisions of the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974. The key phrase mentioned in both the legislations is that the Chairman of the Board should be a person having “special knowledge or practical experience” in the matters relating to environmental protection. This phrase is not defined in any legislation in India, which has started a lot of debates on the subject. It has raised the question whether anyone with a degree in environmental studies become the Chairman of a Pollution Control Board.

She then raised the question about the authority that constitutes the state control board. The answer to the same is State Government which is led by the Chief Minister of the state who decides the chairman of the State. Then a question that comes to light from the same is whether the Chief Minister has complete discretion over the selection of the Chairman or does he is assisted by someone.

To answer the same, Ms. Lianne discussed the case of Jagannatha Pillai and anr v. State of Karnataka where a Prof. of Zoology was appointed as chairman of the State Board, which was challenged as he was considered to not have any practical experience. The Court was of the opinion that the government should constitute an expert committee who will nominate the members and report the same to the Chief Minister, who shall then take the decision.

Another question that followed up was whether the Chief Minister is obligated to choose from the nominations of the search or expert committee. This was answered with the help of the case of Barada Kanta Mishra v. State of Orrisa, where the court held that even though the Expert committee is present for the task of nominating the Chairman of the Board, the Chief Minister is not obligated to choose from those nominations, but in case he does not nominate from the recommended names, he has to justify the reason behind this decision. It was also highlighted that anyone can challenge the appointment of the Chairman by filing the writ of quo warranto at the High Court.

Ms. Lianne then raised the question whether National Green Tribunal can decide the matters relating to appointment of members of the board? It was answered with the help of the case of Techhi Tagi Tara v. Rajendra Singh Bhandari and Ors. where it was held that the NGT can decide cases which are civil disputes concerning a substantial question relating to the environment. The court held that the appointment of the chairman will not be settled by NGT because it not a civil dispute as no rights were violated. Thus, only the High Courts and the Supreme court have Jurisdiction over such matters.

Taking over from Ms. Lianne, Mr. Kamath starts with the power to file complaints. He discusses the provisions under Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974, which provides that complaints can be made by either a board or any officer authorised in this behalf, or by any aggrieved person. He then talks about the requirement of providing a notice of not less than 60 days in a prescribed manner. Additionally, the complaint cannot be tried by any court inferior to that of the Metropolitan Magistrate or a Judicial Magistrate of the first class.

Mr. Rohith Kamath then moves to the second part of his presentation where the discussion was conducted with the help of a few questions. After having a brief overview about who can file a complaint, he moved on to discuss about who can sign a complain. He answered the question with the help of the case of *P. Pramila v. State of Karnataka*, where the chairman of the board had a general tendency of delegating his authority. The question that was raised in the case was whether the affixation of signature come under the ambit of administrative function? It has held that such delegation of power was unconstitutional as the complaint should always mention the person against whom the complaint is filed.

Moving on to the next question, it was asked that who can the board file a case against? This was answered with the help of the case of *Gujarat Pollution Control Board v. Nicosulf Industries*. It was held that the board can file a complaint against all those persons who are in charge of the business, including the Directors and Non-Executive Directors. However, whenever we have to name a non-executive director, we have to bring out the cause-and-effect relationship about how that particular person is liable under the Air or Water Act.

The next question asked was whether sanction from government is necessary for prosecution of officers of PSU or Govt. Company? In the case of *MPCB v. State of Maharashtra* it was provided that sanction in case of statutory violations is not required. Section 197 of CrPC is not applicable for offences committed under the Air and Water Act by PSUs.

Lastly, it was asked that what will be the form and manner of complain to be drafted? It was answered with help of the case of *UPPCB v. Bhupendra Kumar Modi*, which stated that a complaint should be complete in all aspects. It is necessary to state the facts and circumstances that caused the violation, and how the person named in the complaint is liable for the same.

SESSION 5: ENVIRONMENTAL CRIMES: PRACTICE AND PROCEDURE

MR. D.R. RAVI SHANKAR, Lead Partner, Lex Nexus

MR. NAVEEN GUDIKOTE S., Founding Partner, RMN Legal



The speaker, **Mr. D. R. Ravi Shankar** started speaking about the basics of what is a crime. He wanted to gauge the participants understanding of the criminal aspects of law and further moved to environmental crimes. Mr. Ravi Shankar said that environmental crimes are *the* most heinous crimes a person can commit as it not just has a present effect but also an effect on the posterity. Further Mr. Ravi Shankar explained the need for stringent laws with regards to environmental crimes. Citing the Taj Trapezium MC Mehta case, he quoted the Supreme Court when he said that environmental crimes have a cascading effect on the future generations. Speaking further he talked about the genesis of environmental crime with respect to Forest Act of 1927 which was very conservative. He further mentioned about section 133 of the Criminal Procedure Code and how it was only in the later stages the Water Act, Air Act and the Environment Protection Act came along. To make the session lively the speaker asked how many criminals had been convicted in environmental crimes. To which one of the participants replied 135 cases were initiated but not a single decision was taken with regard to such cases. PCB officials are discouraged from filing criminal proceedings as there is a long and tedious bureaucratic procedure to be followed for initiation of proceedings, opined Mr. Ravi Shankar. He further said that there should be a separate mechanism for initiating criminal proceedings against offence in environmental laws.

The initiation process starts with the sample collection process. If there is any legal lacunae then pollution control boards will fail in prosecution said the speaker. Hence, proper homework needs to be done and the paperwork must be perfect said Mr. Ravi Shankar. He further asked what is a complaint? A statement containing facts that would disclose an offence before the magistrate. Further the speaker asked why not police complaint be made. To which he then answered Complaint in colloquial terms means First

Information Report in technical terms. Its just a report. Complaint does not include police report. Magistrate will take cognizance after a complaint is filed Documents produced and then process issued. Once charges are framed evidence will be examined then examination of witnesses takes place. The speaker further mentioned no special court for environment matters. An interesting point was mentioned by Mr. Ravi Shankar that the PCB officers who initiate criminal proceedings more often than not feel harassed by going to the court premises. He suggested that a new court exclusively for environmental crimes can be accommodated within the State Pollution Control Board premises for streamlining the process of initiating criminal proceedings. He further suggested that Pollution Control Boards should have special and technical prosecutors or advocates for prosecuting such matters and also reverse burden mechanism must be adopted. Further Mr. Ravi Shankar said that Cr. P. C., is applicable only when specific procedure is not prescribed under any other law. Environmental laws are based on absolute liability hence they must have specific prescribed procedure for prosecution.

At the end the speaker took some questions. Some of the important questions were, What will be the stance when same court has two opinions in similar matters? Mr. Ravi Shankar answered that it depends on facts and circumstances of each case and that human error must also be factored in. To explain further he gave a few examples like sampling error not admissible. Mahazar was very vague in one case. Only on this ground conviction was set aside.

What precautions should be taken during preparing complaint? Mr. Ravi Shankar answered that there are no precautions to be taken per se but a checklist of all the necessary paperwork would be helpful.

As a last message, to the participants from the industry Mr. Ravi Shankar said that there is a large gap between local and international standards for compliance. He further urged the industry participants to either challenge the policy or lodge complaint with the concerned authorities. With this message Mr. Ravi Shankar conclude the session.

Day 5: February 12th, 2021

SESSION 1: INDUSTRIAL ACCIDENT REPORTING

MR. NANDAKUMAR KRISHNACHAR, Head-Legal, Syngene International Limited



The aim of the lecture was to understand the mandatory statutory reporting of Industrial Accident to various authorities in case of any unfortunate incident. For this purpose, the speaker took the case study of fire incident which took place on 6th December 2016 in one of the facilities of Syngene International Ltd.

On 6th December 2016, a major fire broke out in Lab A situated on first floor of the building at around 7 PM. Within 10 to 20

minutes, the fire had spread to other labs and areas on the same floor and on other floors. Fortunately, there was no bodily injury or loss of life, however assets worth 350 crore were destroyed.

With respect to accident reporting activities, following is required (depending on the type of incident).

- Incident reporting- done in case of Near miss accidents i.e., accidents which did not cause men/material loss or in case of an injury, there is no loss of man hours for more than 2 days. For such incidents reporting is done as a part of Form 23 to Department of factories on a monthly basis.
- Reportable- If a person has suffered injury and there is a loss of man hours for more than 2 days, Form 17 will be filed. This also includes Identifying the person who has suffered injury and reporting the description of the accident, date and time of the occurrence, cause of accident, description of injury suffered and treatment being given to the victim. This is done to ensure proper treatment and rehabilitation of the victim
- Major accident (such accidents requires deep investigation. The incident of 6th December falls under this category)- the establishment where the incident took place has to undertake all of the above and then inform/file reports to following departments

- electrical inspectorate (to testify that accident happened cos of electrical short-circuiting).
- Filing FIR at the concerned Police station
- Intimating the Fire Department (for preparing fire accident report),
- labour office (this is especially important in case of any bodily damage),
- Informing PCB
- Informing DCGI and
- Informing SEBI (for listed companies, to be done within 24 hours)
- INSURANCE company for claiming damages.

After this, three inspection reports (which were filed by Syngene International) were discussed

Inspection report no. 1. It included

- Notice of dangerous occurrence in form 17A
- List of persons who were working on 12/12/2016 in the Lab A
- Eye witness who observed the fire at the beginning stage and management shall produce them to office for recording their statement
- Batch book of experiment carried out in first floor lab A on 12/12/2016
- Detailed internal investigation report to prevent future accidents
- Photographs and CDs
- List of solvents handled and stored in racks
- MSDS of chemicals handled in A-lab
- S2- Block dismantling and repair work shall be carried out by only after submitting a report to dept
- A register shall be maintained, and only authorized persons shall be allowed to go inside

Inspection Report No 2. It included

- List of equipment and facilities got damaged by this fire accident
- The dimension details of s2 block
- Program logic controller details of the FAS located in S2 block ground floor
- Log in and out details of A lab employees on 12-12-2016
- Details of batch books and all fluorination reactions since from beginning
- Internal investigation report conducted by mgt and action taken to prevent re-occurrence of this type of incident in future.

CAPA from internal investigation report required another 18 line items and compliance report of the same

- The entry of unauthorized personnel's inside the S2 block of the factory premises shall be prohibited. Only investigation personnel's in PPE kits to be allowed
- No repair works to be taken up by management at the fire accident spot till completion of investigation
- Safety audit shall be conducted and action plan be drawn, safe operation procedures shall be generated and the permission from the dept shall be obtained after presenting detailed action plan for repair work
- All the plant and machineries shall be shut down safely and shall not start manufacturing activity until obtaining the written permission from the dept
- Stability certificate to be submitted from a structural engineer before taking up any work at S2 block

Inspection report no 3. It included

- The technical details of experimental set up of fluorination reactor including the magnetic stirrer with all details with pictorial representation
- The list of other reactions scheduled on that day in A-lab of first floor, S-2 block
- The list of operators/supervisors who were working after 5:30 pm on that day
- The power change over details on 11-12-2016 and on that day from KEB power to back up
- CCTV Footage details and installed details location wise with backup control devise location
- Fume hood technical details with respect to their construction details, type of materials used, the supplier details and the electrical fittings details
- Exact loss statement from the fire accident
- The corrective Actions and Preventive actions taken to prevent this type of accident in future in the other depts/lab/blocks of the above said factory
- 6 sets of photographs taken during the course of investigation along with CD
- The safety measures and other precautionary measures to be taken care of or included at the design/erection stage of the S-2 Block to avoid the spread of fire from one fume hood to another fume hood, one lab to another lab, one dept to another dept and one floor to another floor
- Training details to employees with respect to fire fighting
- List of chemical reactions/processes carried on in the above said factory in all depts

In the last segment of the lecture, taking up of rehabilitation activities was discussed.

Once clearance is given by the concerned authorities to take up rehabilitation or damage, the next step is to prepare a report in such a way that the entire plan of rehabilitation is

divided into separate activities which indicates the steps needed to be taken up for each activity, hazards involved in every activity, protection measures which needs to be undertaken and the SOPs which are to be adopted for rehabilitation activities. This shall also include undertaking structural changes which mitigate the risk and chances of fire spreading.

**SESSION 2: REFORMS IN ENVIRONMENTAL LAW: THE WAY FORWARD
ENVIRONMENTAL FUNDS AND COMPENSATION**

PROF.[DR.] SAIRAM BHAT, Professor of Law & Coordinator, CEERA, NLSIU

MR. ROHITH KAMATH, Advocate and Consultant, CEERA, NLSIU

MS. MADHUBANTI SADHYA, Teaching Associate, NLSIU



The first part of this session focused on funds established under several environmental legislations and to understand how these funds function, what their purpose is and to see the role of Pollution Control Board in managing or administering these funds (if any)

Name of the fund	Established under	Purpose of the fund	Role of PCB	Other remarks
CAMPA (Compensatory Afforestation Management and Planning Authority)	Genesis found in the decision of SC in TN Godhavarman v. UOI (2002) Statutory	To collect funds as compensation and net present value of the forest land for conversion of forest land to non-forest use or for	NA	Certain exemptions have been given to certain usages of the forest land like setting up of schools etc. Fund is being administered by state CAMPA and central CAMPA as per forest conservation act.

	recognition given under Compensatory Afforestation Fund Act 2016. It established fund at central and state level	de-notification of forests for industrial or other uses		
ERF (Environment Relief Fund)	Public Liability Insurance Act 1991 (section 7A) 2008 Notification by Ministry of Environment, Forest and Climate change established this	any industry that deals with hazardous substances have to compulsorily take up this insurance to compensate for any unfortunate incident of these hazardous substances, to OTHER persons (within and beyond the	Since 2015, Pollution control board is under a mandate to issue "consent to operate" to entities dealing with hazardous substances, only after	Amount credited to ERF is the amount equivalent to premium of insurance policy taken by the owner, income from investment, amount transferred by owner as compensation for damage to the environment under the National Environment Tribunal Act (NETA) (now NGT Act) United insurance corporation is the fund manager since 2008. A lot of money deposited in this fund has remained unutilized

	fund scheme	premises). Based on no fault liability.	they obtain Public Liability Insurance	
National Biodiversity Fund	Biological Diversity Act 2002-established at National, state and local level	to provide benefits to people/communities engaged in development of biological resources.	NA	Authorities established to administer the fund include chairperson of National biodiversity authority and other ex-officio members from various govt departments
CER (Corporate Environment Responsibility)	2018 office memorandum dated 1 st may 2018-EC for projects under 2006 EIA notification-Corporate Environment Responsibility (CER) by	Defined as “duty of the corporation to mitigate its impact in the natural environment”	NA	<p>CER features in the fourth stage of the EC process i.e., in the stage of “appraisal”.</p> <p>Under this fund, percentage of capital investment is to be channelled into specified activities such as sanitation, health and education in the “Affected area” around the project (independent of other requirements)</p> <p>Quantum of CER decided by EAC based on “due diligence”. Max permissible levy based on (a) the total capital investment in the project (B) whether the project is greenfield or brownfield.</p> <p>Criticism</p> <ul style="list-style-type: none"> • Focuses on social and economic development. The aspect of environment is missing. • significant overlap with CSR-CAMPA- Land Acquisition Act

<p>project proponent</p> <p>2020 OM dated 30th sept 2020- EACs (expert appraisal committee) to prescribe “Specific conditions in physical terms” for the project proponent to follow-part of environment management plan (EMP)</p>			<p>for most projects, no implementation guidance is given by the EAC, it is left to the discretion of project proponent.</p> <p>ECs for some projects mention that at least 2% or 1.5% of the total project cost. This is indeterminate and a vague condition.</p>
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The second part of the session, which was **presided over by Mr. Rohith Kamath** involved a discussion on the statutory reforms needed to ensure effective implementation of environmental laws, especially the provisions relating to the role of PCB Officers. Highlights of the discussion is as follows:



There is multiplicity of legislations, Rules, Orders and Notifications and cross referencing to various legislations like CrPC for taking cognizance of offence etc. There is a need to have a single, comprehensive statute to ensure harmony and easy implementation

Currently, PCBs are not empowered to impose penalties. One of the alternatives is encashment of Bank Guarantee for breach of provisions of “consent to operate”. However it is not a legal remedy and is based on practical convenience. Further, there is no uniformity in recognition of encashment of bank guarantee. Thus, there is a need to empower PCBs to impose penalties and to statutorily recognize encashment of Bank guarantee.

- Currently, Section 15 of Environment Protection Act provides for stringent penalty (imprisonment and fines) for violation of the provisions. However, this provision is diluted by the overriding effect of Section 24(2) which provides that Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act. This needs reform to remove the dichotomy between section 15 and 24 and the laws need to be made more stringent.
- Currently there are restrictions on search, seizure and collection of samples by the officers of PCB which affects their working. For eg: restrictions on search and seizure beyond reasonable time (i.e. beyond office hours). Reform requires empowerment of PCB Officers to undertake search and seizure at all time. Further, the statutes need to recognize use of Electronic records by PCB
- Delegation of responsibility for prosecution of offences- the provisions of the various Acts are obscure. Delegation aspects need to be reformed and made more clear, by providing how delegation is to be made, who shall have the power of delegation and to whom can the powers be delegated.
- The powers of PCB to deal with environmental emergencies is not given. Statutory reforms need to empower PCB to deal with such emergencies

- There is a need to redefine hazardous substances. Currently, the hazardous substances are divided into watertight compartments like solid, liquid and gaseous and doesn't recognize other forms like bio weapons or biological aspects. This needs to be incorporated
- Currently, there is a discretion of the member secretary to decide the end use of consent fee collected by PCB and hence there is a scope of this discretion being misused. Thus, there is a need to have guidelines for using the consent fee by authorities.

SESSION 3: COASTAL ZONE REGULATION AND JUDICIAL APPROACHES
PROF.[DR.] SAIRAM BHAT, Professor of Law & Coordinator, CEERA, NLSIU
MR. RAGHAV PARTHSARATHY, Teaching Associate, NLSIU



The session began when **Mr. Raghav Parthasarathy** introduced the concept of Coastal Regulation Zones. He did so by showcasing the Coastal Regulation Zones as identified by CRZ Notification of 1991. Then he proceeded to highlight basic concepts such as high tide line, low tide line, creeks, 500-metre zone and the 200-metre zone. He provided a comparative analysis between the

CRZ Notifications of 1991, 2011 and 2019. He outlined a clear difference between the three notifications by looking at parameters such as classification of coastal areas. He showcased the different aspects of conservation included in the 2011 notification and how it varied from the notification of 1991. The government released the 2019 notification with a change in the classification. They introduced the concept of CRZ IA, IB. He proceeded further by providing his insight about the calculation of the low and high tide lines using nautical miles and went on to discuss the difference between the three notifications based on prohibited activities and how there was addition of such activities based on their effects on the environment. Thereafter, Regulated Activities were discussed. The Role of the Coastal Zone Management Authority was defined through which the central government

established authorities at both the state level and the central level. The role was further discussed by outlining their functions such as issuing clearances, recommendations to NCZMA and MoEFCC and preparing CZMPA. The case study of Adarsh housing society scam was discussed. He concluded the session by discussing one last case study of the Maradu Apartment order



Prof. [Dr.] Sairam Bhat began by discussing the Right to Healthy Environment under Article 21 of the Constitution of India in the Preamble of the National Green Tribunal and also highlighted the significance of the Stockholm Declaration in the same. He provided an introduction on the National Green Tribunal by discussing its inception and the role played by Mr. Jairam Ramesh and the Supreme Court

in the same. Thereafter, he stated that an Environmental dispute was a dispute about pollution, and it involved a lot of science and technology as opposed to laws and policies. He posed a question to the audience by asking them if lawyers were competent authorities to be discussing the environment, to which he provided them with an answer by stating that there was a clear requirement of relevant authorities who had backgrounds in science. He backed his point by stating that courts initially created green benches and they required certain authorities with science backgrounds to discuss environmental laws. He then explained the expanded role of the NGT through which it can rule on cases involving as deaths as it was deemed to be a human rights court. He concluded by highlighting that the year of 2020 was not a great year for the role of the NGT as its powers were questioned and were curtailed accordingly. On a concluding note, Prof. Bhat discussed the relevant sections of the Act in question.

SESSION 4: LEARNING ASSESSMENT AND VALEDICTORY TEAM CEERA

In the final session of the day, the participants were tested on their understanding of the sessions conducted during the course of the Training Programme with an objective based learning assessment inclusive of 30 multiple choice questions. Three best participants

were identified based on the test scores and the results were announced; the three best participants being Mr. Vivek Pandey, Mr. Ricky Jain and Ms. Shreya Padukone.

Post the learning assessment, the Training Programme was brought to an end with a short valedictory session presided over by **Prof. [Dr.] Sairam Bhat.**
