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ENVIRONMENTAL LIABILITY INSURANCE AND SUSTAINABLE DEVELOPMENT WITH SPECIAL REFERENCE TO BAGHJAN GAS LEAK CASE

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ABSTRACT

The Baghjan Gas Leak Case in Assam has again shown the devastating impact of anthropogenic activities for economic development on Natural ecosystem. The case is in reference to leakage of an oil well under the ownership of Oil India Limited (OIL) which has subsequently led to severe damage of the ecosystem of the nearby areas along with causing the death of many livestock and individuals. This case is not the only instance where human greed for material development has led to a loss of ecosystem rather there were many such instances in the past like- Bhopal Gas Tragedy, Oleum Gas Leak Case, etc. after which the Central Government in India was forced to pass the Public Liability Insurance Act of 1991 for implementing a new kind of insurance called the Environmental Liability Insurance for ensuring the security of both the present and the future generations from harmful activities possessing the potential of grave ecological damage on the lines of Sustainable Development. It indicates that environmental liability insurance has a close link with the concept of sustainable development. This paper will, therefore focus on the relevance of Environmental Liability Insurance (ELI) in India for the purpose of mitigating the consequences of harmful anthropogenic activities for eco-restoration so that we can achieve sustainable development.

KEYWORDS: *Baghjan Case; Compensation; Eco-restoration; Environmental Liability Insurance; and Sustainable Development*

INTRODUCTION

Baghjan Gas 5 well burst upon at around 1:00 PM on June 09, 2020¹ and along with it the story of humanity destroying the ecological balance was again repeated. This incident caused a lot of damage to human life and property as well as to the biodiversity of the entire region.² It called for immediate actions in order to meet the damages incurred by the ecosystem. The expert's reports revealed that OIL should be made liable to pay crores of compensation for compensating the victims and eco-restoration.³ In order to meet such incidents, the owners of hazardous industries were made liable to adopt environmental insurance policies by virtue of Polluter Pays Principle on the lines of International Environmental Jurisprudence.⁴ In this regard, the Public Liability Insurance Act, 1991 is a panacea in India. Further, since such incidents not only pose a threat to the present generation but also makes the future generations vulnerable, for which it becomes necessary to rely on the Principle of Sustainable Development. Thus, any actions that are adopted to mitigate human actions causing such damages will automatically come under the scope of Sustainable Development. This paper will,

¹Nabarun Guha, *Fire at Assam Oil Well after Gas Leak threatens Life, Livelihood and Biodiversity*, SCIENCE WIRE (Aug 31, 2020, 02:13 AM) <https://science.thewire.in/environment/assam-oil-well-fire-baghjan-tinsukia/>.

² SimantikDowerah, *Baghjan fire Oil India's failure to stand by local community after blaze, protect ecology ruins its image in Assam*, FIRSTPOST (Aug 31, 2020, 02:11 AM) <https://www.firstpost.com/india/baghjan-fire-oil-indias-failure-to-stand-by-local-community-after-blaze-protect-ecology-ruins-its-image-in-assam-8464251.html>.

³ Amarjyoti Borah, *Assam Baghjan Well fire: Expert Penal cites major lapses by OIL before NGT*, GAON CONNECTION (Aug 31, 2020, 02:23 AM) <https://en.gaconconnection.com/assam-baghjan-well-fire-expert-panel-submits-stinging-report-before-ngt-citing-major-lapses-by-oil-india/>

⁴ *Environmental Liability Insurance*, INSURANCE INFORMATION INSTITUTE (Sept. 17, 2020, 01:15 AM) <https://www.iii.org/article/environmental-liability-insurance>.

therefore make an attempt to highlight the relevance of Environmental Liability Insurance in achieving Sustainable Development by analyzing the consequences of Baghjan Case.

CONCEPT OF SUSTAINABLE DEVELOPMENT

Sustainable Development advocates for a balance in the relationship of environmental protection with that of natural resource exploitation that is carried for the sake of enhancing the country's GDP.⁵ It attempts to balance natural capital with various emerging socio-economic demands within a society.⁶ It bridges the gap between the needs and the conflicts in order to establish a cordial relationship between protections of the environment with that of economic development. Since economic development shall be treated like a mean and not an end in itself for any society to achieve sustenance in the long run as its ultimate goal for which Sustainable Development strives for maintaining inter-generational equity.⁷ Now, it has been a universally accepted fact that conventional models of development have depleted the natural resources in such a manner that if such models of development are not restricted immediately, then it might get very difficult rather impossible for humanity to survive.⁸ However, certain scholars have also argued that economic exploitation of natural resources cannot be reduced to nil, since if done so then such resources will have no material value for humanity which might again ultimately lead to devaluation of such resources.⁹ The concept of Sustainable Development, therefore provides for rational utilization of resources and its exploitation in such a manner that it serves

⁵ Priscilla Schwarz, *Sustainable Development in International Law*, 5 Non-St. Actors & Int'l L. 127 (2005).

⁶ Mihaela Elvira Gherasim & Gheorghe Tanase, *The Fundamentals of Sustainable Development*, 4 Contemp. Readings L. & Soc. Just. 446 (2012).

⁷ Gail E. Henderson, *Rawls & Sustainable Development*, 7 McGill Int'l J. Sust. Dev. L. & Pol'y 1 (2011).

⁸ Jerry Taylor, *The Challenge of Sustainable Development*, 17 Regulation 35 (1994).

⁹ David G. Victor, *Recovering Sustainable Development*, 85 Foreign Aff. 91 (2006).

the best interests of humanity without compromising with the balance of the ecosystem. But the question arises when such exploitations lead to instances like Bhopal Gas Tragedy, Oleum Gas Leak Case and now recently Baghjan Gas Leak Case in Assam that how to provide for eco-restoration against the damages caused by such instances. As a solution to such questions, the concept of polluter pays principle was adopted at the international level and in India, the concept of Environmental Liability Insurance by virtue of Public Liability Insurance Act can be regarded as an extended version of such a principle.

FACTS AND CIRCUMSTANCES OF THE BAGHJAN GAS LEAK CASE

The Oil Field in Baghjan where the incident took place is located in Tinsukia District of Assam, India near Baghjan Village, which has a population of around 4,488 people.¹⁰ It is surrounded by “*Dibru-Saikhowa National Park*”, “*Maguri Mutapong Beel*” and “*Nandapa National Park*” via the “*Dihing Patkai Wildlife Sanctuary*”. These regions also form a part of the “*Indo-Burma Biodiversity Hotspot*”.¹¹ The Gas Well 5 which got burst open is located at a distance of only 900 meters away from the National Park and is also very near to the Biodiversity Hotspot Region as well as the surrounding forests.¹² This shows how devastating this particular incident has been for the entire ecosystem.¹³

¹⁰ Sadiq Naqvi, *Blowout in Oil India Well threaten National Park in Upper Assam*, THE TELEGRAPH, (Aug 31, 2020, 03:11 AM) <https://www.downtoearth.org.in/news/pollution/blowout-at-oil-india-well-threatens-national-park-in-upper-assam-71464>.

¹¹ *Dibru Saikhoa National Park Tourism*, HOLIDIFY (Aug 31, 2020, 03:23 AM) <https://www.holidify.com/places/dibru-saikhowa-national-park/>.

¹² *Blowout in Oil India Well threatens National Park in Assam*, DOWN TO EARTH (Aug 31, 2020, 03:12 AM) <https://www.downtoearth.org.in/news/pollution/blowout-at-oil-india-well-threatens-national-park-in-upper-assam-71464>.

¹³ Ananya Singh, *Baghjan Oil Well Fire threatens Survival causes “irreversible” Ecological Damage*, THE CITIZEN (Aug 31, 2020, 04:12 AM) <https://www.thecitizen.in/index.php/en/NewsDetail/index/13/18917/Baghjan-Oil-Well-Fire-Threatens-Survival-Causes-Irreversible-Ecological-Damage>.

The inferno from the gas leak reached an altitude of around 300 feet in the air¹⁴, and after this incident, many tea garden labourers from the nearby tea gardens were forced to surrender their livelihood and to flee from the vicinity of that region in search of a safer location. It caused the lives of several individuals and livestock of the common local peoples along with destroying their houses in the village.¹⁵

Immediately after this incident, the Pollution Control Board of Assam (PCBA) issued a “Closure Notice” against OIL on June 19, 2020, directing OIL to close down all its operational and drilling processes in Baghjan.¹⁶ However, later the same notice was rescinded by PCBA on the assurance from OIL to answer all the questions put forwarded by PCBA.¹⁷ While the National Green Tribunal (NGT) ordered OIL to pay an interim compensation of 25 crores to the victims and also directed for constituting an Expert Committee to investigate the matter and to provide solutions for better management of its aftermath.¹⁸ The Expert Committee, in its report, mentioned serious deficiencies in the operation of OIL and held OIL to be responsible for such a huge disaster.¹⁹

¹⁴ *Baghjan Blowout Fire and Panic*, ASSAM TRIBUNE, June 10, 2020.

¹⁵ *Supra* note 13.

¹⁶ Tora Agarwala, *Assam Pollution Control Board tells OIL to shutter Baghjan ops*, INDIAN EXPRESS (Sept 16, 2020, 01:11 AM) <https://indianexpress.com/article/north-east-india/assam/pollution-control-board-assam-issues-closure-notice-to-baghjan-oilfield-ops-6468411/#:~:text=OIL's%20set%20Dup%20in%20Baghjan,environmental%20transgressions%20by%20the%20PSU.>

¹⁷ *Special Correspondent, Pollution Control Board revokes Closure Notice to OIL*, THE HINDU (Spt. 17, 2020, 02:13 AM) [https://www.thehindu.com/news/national/other-states/assam-pollution-control-board-revokes-closure-notice-to-oil/article31896673.ece.](https://www.thehindu.com/news/national/other-states/assam-pollution-control-board-revokes-closure-notice-to-oil/article31896673.ece)

¹⁸ *NGT accepts a new case against OIL for Baghjan blowout*, THE WIRE (Sept. 16, 2020, 02:33 AM) [https://thewire.in/environment/ngt-accepts-a-new-case-against-oil-for-baghjan-blowout.](https://thewire.in/environment/ngt-accepts-a-new-case-against-oil-for-baghjan-blowout)

¹⁹ *(Baghjan Gas Leak) NGT Expert Committee finds prima facie violations of eco norms, directs relief to 3 classes of people in initial report*, BAR AND BENCH (Sept. 17, 2020, 01:10 AM) [https://www.barandbench.com/news/litigation/baghjan-gas-leak-ngt-expert-committee-finds-environmental-law-violations.](https://www.barandbench.com/news/litigation/baghjan-gas-leak-ngt-expert-committee-finds-environmental-law-violations)

ROLE OF ENVIRONMENTAL LIABILITY INSURANCE IN BAGHJAN CASE

ELI is an effective tool for implementing the Polluter Pay's Principle, which states for making the polluter liable to pay for the damages caused by such polluter to the environment. It covers the expenses that are to be incurred in the processes for eco-restoration after environmental accidents. In other words, it attempts to make up for the expenses of addressing issues such as contamination of air, land, water as well as damages to biodiversity after the occurrence of any environmental accidents.²⁰ Under the Indian Jurisprudence, ELI means for compensating the damages that arise from both common law claims as well as under PLI Act of 1991.²¹ In simple language, it means that one who pollutes the environment is absolutely liable for restoring the ecosystem in addition to paying compensation to the victims. It highlights the fact that remedying the loss to the ecosystem through anthropogenic activities is inclusive within the concept of Sustainable Development.²²

The Indian Judiciary observed that in a country like India, the Principle of Strict Liability is not an adequate means to address the loss suffered due to environmental hazards for which the concept of "Absolute Liability" was introduced under which the previously granted exceptions under the Strict Liability Rule emanating from Common Law System were suspended.²³ Now, those who will pollute the environment will be absolutely liable to pay for its

²⁰ *Environmental Liability Insurance*, ABI (Sept. 17, 2020, 02:12 AM) <https://www.abi.org.uk/products-and-issues/choosing-the-right-insurance/business-insurance/liability-insurance/environmental-liability-insurance/>.

²¹ Sukanya Pal, *A Compulsory Environmental Insurance for Industries*, DOWN TO EARTH (Sept. 17, 2020, 01:35 AM) <https://www.downtoearth.org.in/coverage/environment/a-blueprint-13720>.

²² Pragma Ohri, *India: Need for Sustainable Development*, MONDAQ (Sept. 18, 2020, 02:13 AM) <https://www.mondaq.com/india/clean-air-pollution/559702/need-for-sustainable-development>.

²³ Dr. Matiur Rahman, *Environmental Liability Insurance in India*, 6, INDIAN JOURNAL OF APPLIED RESEARCH, 821, 821-823, (2016).

restoration irrespective of the cause required for such restoration without any exceptions.²⁴ For making such a liability practicable, the concept of mandatory insurance was brought into existence which can be referred to as Green Insurance or ELI.

The PLI Act of 1991 provides for such a kind of insurance. The Act by virtue of Section 3 makes the owner of every industry liable to pay for compensation to persons who have suffered injuries due to accidents up to an amount of Rs. 12,300.00 for meeting medical expenses: while in cases of fatal accidents an additional amount of Rs. 25,000.00 to persons who suffer injury due to such fatal accidents: and in addition to these, an amount of Rs 25,000 shall be paid by the owner if any person suffers from permanent disability due to such accidents or an amount proportionate to the percentage of disability as certified by the appropriate authority in cases if a person suffers from a partial disability. The Act by virtue of Section 2(e) provides for the meaning of the term 'insurance' which is different from other general kinds of insurance as it stands for insurance against the liability of the owner to pay compensation to the victims. In other words, insurance here means third party insurance. The Act provides for the establishment of an Environmental Relief Fund u/s 7A which is defined as a fund u/s 2(ha) of the said Act This Act has even made liability of owners to pay for environmental damages as a mandatory liability for insurance are to be taken by the owners mandatorily u/s 4 of the Act. This shows that this Act has recognized the absolute liability of the owners to pay for the pollution caused due to any activities carried by such owners or accidents caused due to such activities.

²⁴ *Supra* note 22.

The Act also provides for the procedures that are to be followed by the District Collector in distributing the amount of compensation to the victims that have been collected from the owners under Section 7 of the Act. The Collectors have been granted with the powers of Civil Court under this Act for the purpose of examining witnesses and collecting evidences on oath.²⁵ Further, the Central Government in India has also launched the Environment Relief Fund Scheme of 2008. The United Indian Insurance Company Ltd is the Fund Manager. For administering the relief fund, a separate account has been made maintainable in any nationalized bank in the name and style of “United India Insurance Company Ltd. Environment Relief Fund A/C”.²⁶ This is how the PLI Act serves the purpose of protecting the environment against harmful anthropogenic activities by making scope for compulsory insurance which resembles the quality of ELI in India.

ENVIRONMENTAL LIABILITY INSURANCE AS A METHOD FOR ENSURING SUSTAINABLE DEVELOPMENT

A Reservoir of Socio-legal Discourse

The Brundtland Report, 1987 provided for several management and business strategies in order to highlight the need of companies and corporations for adopting environmental concerns in building their strategies. At present, the concept of Corporate Social Responsibility has become very popular by virtue of which the companies in the contemporary world accept the responsibility of not doing any harm to the environment in their process of manufacturing or production. Corporate Social Responsibility is a concept that makes the

²⁵ *Ibid.*

²⁶ *United India Insurance Co. Ltd. Appointed as a Fund Manager under the Environment Relief Fund Scheme, 2009, SCC ONLINE (Sept. 20, 2020, 02:13 AM) <https://www.sconline.com/blog/post/2015/07/29/united-india-insurance-co-ltd-appointed-as-a-fund-manager-under-the-environment-relief-fund-scheme-20081/>.*

companies liable to adopt such strategies through which they will be responsible for causing any harm to the environment and will take effective steps for reducing pollution and contamination of the ecosystem while carrying out their production and marketing related activities. The adopting of Environmental Liability Insurance by a company can also be looked upon as a mark of fulfilling its Corporate Social Responsibility which can be regarded as one of the strategies for achieving sustainable development.

CONCLUSION

The Baghjan case like Oleum Gas Leak and Shriram Fertilizers cases is an eye-opener for proving that how companies in the corporate sector are undermining their responsibilities and liabilities of protecting the environment for both the present and the future generations. The concept of sustainable development demands corporate social responsibility for business ventures to adopt, and environmental liability insurance also falls within the domain of such corporate responsibilities. Further, such a kind of insurance is also governed by the Polluter Pays and Precautionary Principles. In India, although there is no express provision for environmental liability insurance, still the mandatory insurance provided under PLI Act resembles the characteristics of ELI. However, we must also acknowledge that there have been inconsistencies in the justice delivery mechanism in India whenever instances of human anthropogenic activities damaging the environment have appeared, which becomes evident from the Bhopal Gas Leak Case. In the Baghjan case also the amount of 25 crore rupees as compensation has been alleged to be highly inadequate, for the purpose of eco-restoration. It is a very difficult task to quantify environmental damages and to calculate the adequate amount of compensation required for mitigating such

damages. On the other hand, it is also to be acknowledged that in the Baghjan case, OIL has been found not complying with Environmental Impact Assessment requirements for which the construction of oil wells by OIL has been alleged by many scholars as unconstitutional since OIL is a State within the meaning of Article 13 of the Indian Constitution.

An efficient mechanism for quantifying environmental damages is therefore required so that the process of eco-restoration can be duly maintained whenever any inevitable accident takes place. For this purpose, adequate and effective research shall be conducted on a comparative basis. Further, the law must be stricter enough for making the companies adhere to the liabilities of causing no harm to the environment and to avoid negligence on their part in maintaining hazardous substances for better safety of the ecological balance.

