



REPORT OF THE TRAINING PROGRAMME

IN-PERSON TRAINING PROGRAMME

on

**CRIMINAL LAW PROCEDURE AND EVIDENTIARY ASPECTS
IN ENVIRONMENTAL LAW**

organised by

**Centre For Environmental Law, Education, Research
and Advocacy, National Law School Of India
University, Bengaluru**

For

**OFFICERS OF KARNATAKA STATE POLLUTION
CONTROL BOARD (KSPCB)**

DATE: JANUARY 18TH & 19TH, 2023

VENUE: Conference Hall, Training Centre, NLSIU, Bengaluru.

ACKNOWLEDGEMENT

The Centre for Environmental Law, Education, Research and Advocacy (CEERA) extends its sincere gratitude to the Karnataka State Pollution Control Board (KSPCB), for providing this opportunity to conduct a **Physical Training Programme on “Criminal Law Procedure and Evidentiary Aspects in Environmental Law”** for the officers of KSPCB in two batches on January 18th and 19th, 2023.(Wednesday and Thursday)

CEERA would like to express 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 relentless support in all our endeavors.

The Centre extends its profound gratitude to Shri Mahesh Thimmaiah, Shri H.S. Ravindrappa, and Mr. Raghav Parthsarthy for their 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 Workshop and contributed to the deliberations.

Finally, we would like to thank the CEERA Team - **Ms. Anuja Shah, Mr. Rohith Kamath, Mr. Vikas Gahlot, Ms. Aparna Sojan, Mr. Jaibatraka Mohanta, and Ms. Gayathri Gireesh**, for their help and support in organizing this workshop and conducting it seamlessly.

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

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 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



The Centre for Environmental Law, Education, Research and Advocacy (CEERA), established in 1997 is a benefactor of the Ministry of Environment, Forest & Climate Change (MoEF&CC), 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 the 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 has also been regularly engaged in capacity building and training of practitioners, government servants, academicians, and scholars on various legal topics. CEERA has been partnering with Central Pollution Control Board in organising Training programs for the officers of various State Pollution Control Boards and other industry professionals for over 9 years. One of the first in India, to successfully be granted a World Bank project and thereafter world bank's 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.



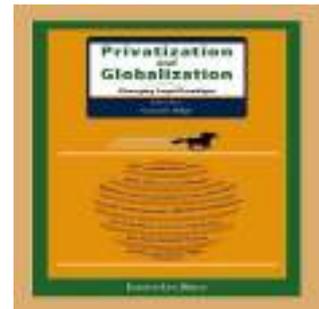


CEERA is proud to have completed a two-year Research Project granted by the United Nations Development Programme (UNDP) under the Global Environment Facility (GEF), and as one of the deliverables, organised, convened, and conducted over twenty workshops at Institutions of national repute creating awareness 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.

In 2018, CEERA was granted a Research Project by the Ministry of Law and Justice to conduct research on 'Strengthening Legal Provisions for the Enforcement of Contracts'. This Project had explored all the possible avenues of reformation in the Contractual and Commercial Law to uplift the dire situation of contractual enforcement in India. As one of the deliverables under this project, National Seminar was conducted over the course of two days where 251 participants from various parts of the country had shown enthusiasm and interest.



CEERA had also organised a three-day International Conference on 'Liberalization and Globalization: Changing Legal Paradigm in 2016, with an objective to examine the impact of Liberalization, Privatization and Globalization (LPG) in India - specifically on the various laws enacted and amended subsequent to Liberalization. It was attended by about 150 participants globally and had around 100 paper presentations as well. As an outcome of the conference, a book containing the best research papers, were published by CEERA in NLSIU Book Series-3, which was released to mark 25 Years of Economic Liberalisation and Globalisation.



CEERA has made 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., enlaw.nls.ac.in, wherein the law and policy on Environment is regularly updated, and abs.nls.ac.in, 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 ceerapub.nls.ac.in which is open for subscription to all readers. Currently CEERA is implementing a three-year project for MOEFCC on Chemicals and Waste Related Multilateral Environmental Agreements.



Currently, CEERA is working as an implementation agency on the Two-Year Project on “Digital Legal Literacy – Dissemination and Assessment” granted to it by the Department of Justice, Ministry of Law and Justice. major projects granted to it by Department of Justice, Ministry of Law and Justice. The project focuses on the dissemination of legal literacy and is to be implemented in aspiration districts across 6 states of India. Furthermore, CEERA is also working on the two-year project on “Towards the development of a Robust Legal & Policy Framework in Protection, Promotion and Standardisation of Indian Businesses: Enhancement and Implementation of the AatmaNirbhar Bharat Vision” granted to it by the Indian Council of Social Science Research (ICSSR). The project focuses on proposing a Plan to Promote (Make in India), Protect (Indian enterprises) and Standardize (Indian products) and prepare a Policy on the Promotion, Protection, and Standardization of the Make in India Initiative towards the achievement of AatmaNirbhar Bharat.

KSPCB REPORT

ESSENCE OF THE PROCEEDINGS

DAY – 1: JANUARY 18, 2023 (WEDNESDAY)

INAUGURAL CEREMONY

SHRI. MAHESH THIMMAIAH, CHIEF ENVIRONMENTAL OFFICER, KSPCB

**PROF. (DR.) SAIRAM BHAT, PROFESSOR OF LAW AND CENTRE
COORDINATOR, CEERA, NLSIU**



The One-Day Training Programme on “*Criminal Law Procedure and Evidentiary Aspects in Environmental Law*” for Karnataka State Pollution Control Board officers organised by the Centre for Environmental Law Education, Research and Advocacy (CEERA), National Law School of India University (NLSIU), commenced with **Ms. Gayathri**

Gireesh, CEERA NLSIU welcoming all the officers and esteemed guests to the programme.

The guests were then given a quick overview of the centre’s aims, operations, and existing and planned research projects, as well as its many publications and webpages. Since its founding, CEERA has been engaged in membership in a number of international and governmental organisations. It has cooperated with the Central Pollution Control Board (CPCB) and the Ministry of Environment, Forest, and Climate Change (MoEF&CC). In order to do this, it holds several conferences and seminars where it trains government employees such as forest rangers and tax collectors.

Shri. Mahesh Thimmaiah, highlighted upon the procedural aspects in environmental law cases. Emphasis was laid upon the role of task force of Karnataka State Pollution Control Board (KSPCB), to improve the conviction rate in environmental violations. The lapses and loopholes in the system, that lead to acquittal of offenders were highlighted. Further information revealed that the goal and concentration of this training programme would be the legal process involved in the beginning of criminal proceedings and the related court process. doctors, governmental representatives, etc. Driving the attention of the officers towards the need and importance of

the training programme. Concluding the introductory note, Sir thanked **Prof. Sairam Bhat**, and the training programme commenced with the first technical session.



SESSION 1: CRIMINAL LAW PROCEDURE AND EVIDENTIARY ASPECTS IN ENVIRONMENTAL LAW

PROF. (DR.) SAIRAM BHAT, PROFESSOR OF LAW AND CENTRE COORDINATOR, CEERA, NLSIU

Prof. (Dr.) Sairam Bhat commenced his session by appreciating the role of the Karnataka State Pollution Control Board in discharging its duties. Further, discussing the other regulatory bodies, that assist the country's legal system in dealing with environmental law cases. The division of powers, as civil and criminal in each regulatory body was touched upon by Dr. Bhat.

To highlight the grievousness of the situation, statistics signifying low conviction rates was put forth. According to NCRB data, Conviction Rate in Wildlife Protection Board is 18%, less than 3% for the Water Board while the Biodiversity Board, has no available data after 2014. The low conviction rates throughout regulatory bodies, bring forth the need of proper evidences. Improving the conviction rate, was attributed to two pillars of criminal law. First, procedural regulations must be followed while filing an environmental law criminal case. Second, the case should be backed with strong and legal evidences to establish the case.



Dr. Bhat discussed the theoretical concepts of Evidence, and touched upon the different categories of evidence as-direct and circumstantial. The need of direct evidences and reliable witnesses, was put forth through the case study of Salman Khan, Black Buck Killing case. Advocate **Vikas**, discussed the case in detail, impressing upon

the facts of absence of direct evidence and presence of a single witness which turned hostile. The conclusion of Salman Khan, being “innocent in law” put the officers in thought about the need of strong evidence.

The case study brought the training to the aspect of Burden of Proof. The concept of Innocent unless proven guilty along with the shifting of burden of proof was discussed by Dr. Bhat. The higher degree of substance on the State, to prove the case, makes it even more important for the officers, to be well acquainted with procedural and evidentiary regulations.

Dr. Bhat also credited KSPCB for renewing Section 48 of the Water Act of 1974, which deals with offences committed by government departments, when talking about the idea of “Deemed Guilty”. To further clarify, the presumed guilty provision is only a presumption of guilt in which the onus of proving innocence rests with the accused.

The concept of “Mens Rea”, “Knowledge” and “Intention” was also touched upon. Thus, knowledge in this context refers to the criminal intent or mens rea. Mens rea, according to the speaker, is what distinguishes a civil lawsuit from a criminal one. Therefore, carelessness, wilful violation, and motivation must all be present for the industry to be subject to criminal punishment.

Dr. Bhat continued his talk on the collecting of samples after educating the officers on the significance of following procedures. The samples gathered in accordance with the applicable laws are viewed as a source of proof, or rather as a way to exercise authority. On this point, he made clear that the method used to gather the evidence—rather than its collection itself—becomes crucial in determining whether or not the evidence would be admitted into evidence in a court of law.



The Haryana Paneer Bhandar case, was discussed by **Ms. Aparna Sojan** to highlight the need for following the procedural regulations. The State could not materialise the conviction, due to failure to issue a Show-Cause Notice. Further, the importance of proper and immediate sampling was emphasized, when the

State could not prove the charges under Section 24 and 25 of the Water Act, 1974. Dr. Bhat continued to talk about the collecting of samples. The samples gathered in accordance with the applicable laws are viewed as a source of proof, or rather as a way to exercise authority.

The difference of filing cases against Private Companies and Government Offices, was put forth by Dr. Bhat, by discussing the principles of Section 47 and 48 of the Water Act, 1974. The speaker brought to light how, there exists no provision of compounding of offences, under any of the environmental legislations. However, the powers of the High Court, to take cognizance and do justice to parties by compounding offences can be done.

Before concluding, Dr. Bhat, touched upon the recourses available with the officers, in case of any obstruction in discharge of their duties.

- A public official may file a complaint under Section 186 of the Indian Penal Code against people or businesses who prevent him from doing his public obligations. In this regard, he emphasised that although having the authority to enter and search the sector, neither the industry nor its personnel are required to testify against themselves in accordance with their right against self-incrimination under Article 20 of the Indian Constitution. He said, “While you have the freedom to enter the industry, they have the right to remain silent”. as a result. They must help with the inspection procedure, though.
- Section 197 of the Criminal Procedure Code provides the officers with even further immunity. The same rule forbids public employees suspected of any crime from being fired without permission from the government. Without the authorization from the head of the department, no case can be instituted against a Public Officer.

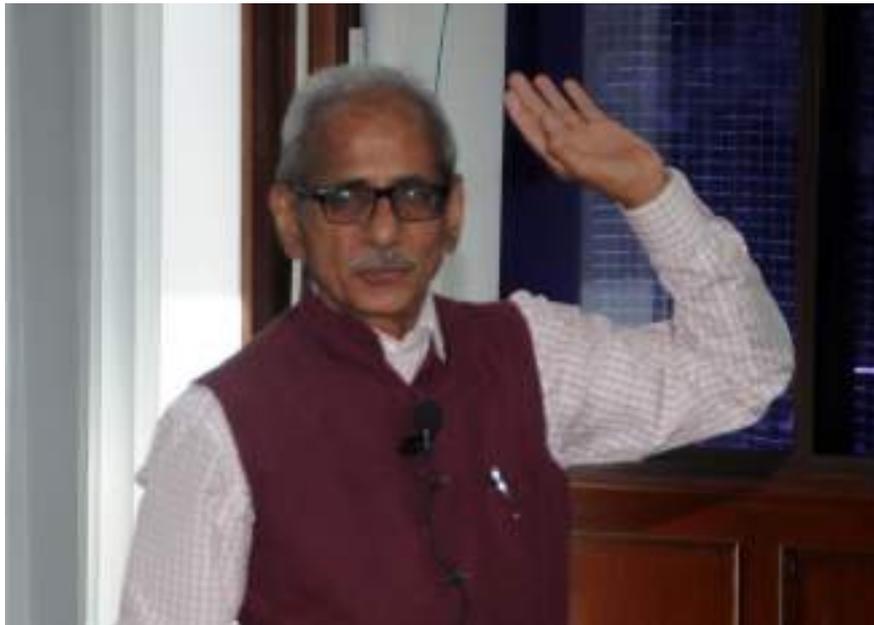
Dr. Bhat observed cases such as – Heera Naik’s Case, V.T Wilson’s case and V.C. Chinnappa Goudar’s case to be some of the prominent cases responsible for shaping the Pollution Control Regime as it stands today. The creation of NGT and the restriction of its powers to Civil cases,

was touched upon by Dr. Bhat, to assist officers, in deciding upon the correct forum to file case.

On this note, Dr. Bhat ended the session leaving the officers with many ounces of knowledge at their disposal.

SESSION 2: COMMON LAW AND CRIMINAL LAW STRATEGIES FOR ADDRESSING THE ENVIRONMENTAL PROBLEMS

PROF. (DR.) M.K. RAMESH, PROFESSOR OF LAW AND FORMER I/C VICE-CHANCELLOR, NLSIU



Prof. (Dr.) M.K. Ramesh gave a quick review of the Common Law system as it was passed down from the British Legal System to begin the second session of the training program's day. The respected speaker stressed how India's legal system, which is made up of laws and customs that have arisen as a result of

court decisions, has influenced environmental jurisprudence there.

Dr. Ramesh then asked, “Is pollution control the sole domain of the Pollution Control Board, or is any other body permitted to engage in the same?” In order to address this, the speaker explained to the officers the significance of the Pollution Control Board as the Nodal Agency in matters of pollution, environmental degradation, and every other function as set forth in the environmental legislations, specifically the Water (Prevention and Control of Pollution) Act of 1974, the Air (Prevention and Control of Pollution) Act of 1981, and the Environment (Protection) Act of 1986. The existence of legislation and the role of judiciary was highlighted by the speaker.

The words of the Supreme Court becoming the Law of the Land, and the courts having a great say while deciding upon a position of law was highlighted. Further, the existing common law principles, that govern the area of Environmental Law, were emphasized upon by the speaker.

- Law of Nuisance – Anything which is irritating, annoying, or causes inconvenience or mischief to another and it can be of two types: - Private and Public. Causing problems to a third party, and the ways to penalise the same are still being practiced in India.



- *Sic utere tuo ut alienum non laedas* – Introducing latin phrase to the officers, the concepts of good neighbour and bad neighbour were highlighted. Environment being a common property needs to be protected by each individual. This straightforward

legal maxim states, “Be a nice neighbour”. In light of this principle, one is therefore required to utilise his property in a way that would not causing one's neighbour injury, distress, or discomfort.

- Law of Negligence - Failure to use caution is negligence. Therefore, one must fulfil their responsibility to take care in order to avoid neglect. In light of this, the speaker cautioned the officers to properly carry out their responsibilities as stipulated by their governing legislation to avoid being held accountable for carelessness.
- Strict Liability Principle - According to this "No-Fault Liability" principle, whoever uses their land in a way that harms their neighbour will be fairly held accountable for it. This includes anyone who accumulates something on their property or engages in behaviour that is not natural to how the land is used.
- Trespass- The concept of entering into a foreign property, without permission of the owner is defined as the act of Trespass. The police were informed that physical access alone does not constitute trespass since the legal definition of trespass is so broad. Instead, even without a physical entrance, it constitutes trespass. The speaker also referenced the Allahabad High Court decision in *Ram Baj Singh v. Babulal (AIR 1982 All 285)* in this context to clarify the ideas of trespass and public annoyance.
- Solid Waste Management- The importance of management and the general administration taking care of the public resources was discussed. The effects of pollution and waste management were discussed. The case of *B Gopala v Karnataka State Pollution Control Board* was highlighted to emphasize upon the work of the State to protect common resources.
- Public Trust Doctrine- The resources being a property of the people was explained through reference to Kamal Nath Case and Spam Motel Case.

In praising the 73rd and 74th Amendments to the Constitution, which established the Panchayati Raj System, the speaker finished the debate. Municipalities are required to carry out their duties and functions as a result of these amendments, and in this regard, J. Krishna

Iyer's famous ruling in *Ratlam Municipal Corporation v. Vardhichand*—in which the Court outlined the municipality's obligations as being non-negotiable and non-sharable—was discussed with the officers. Budgetary restrictions, as claimed by the State, did not stand up well in this instance. Further the duty of the State was emphasized upon by the speaker under Article 48A. The Bhopal Gas Tragedy along with the Fukushima disaster were mentioned by Dr. Ramesh, to show the redressal mechanism followed by the District Courts.

Finally, Dr. Ramesh stressed the significance of Pollution Control Boards in regulating the activities of other agents that work along similar lines. Strategies in Common Law can re-energize the efforts of the State to take care of the Environment.



SESSION 3: PANEL DISCUSSION

MR. ROHITH KAMATH, ADVOCATE AND LEGAL CONSULTANT, CEERA, NLSIU

MR. RAGHAV PARTHSARTY, ADVOCATE, BENGALURU

MR. PARAM SHAH, ADVOCATE, BENGALURU



The speakers introduced the importance of procedure and evidence in Environment Law, and gathered the officers' attention towards the principles to be adopted while collecting evidences. The session began by elaborating upon the case studies of Vizag Steel Power Plant and the Uphar Cinema Tragedy. The cases brought to attention the repercussions of lackadaisical attitude of officers during

inspection and sampling.

The question of lack of knowledge about the owner of the premises causing environmental damage was addressed in the discussion. The fall-back on the occupier liability was highlighted. **Mr. Kamath**, discussed the premises of obtaining details about the occupier residence from the Registry office. The words of Justice K S Radha Krishnan, of people holding “managerial responsibility”, can be held liable.

The need of show-cause notice and the same being a mandatory aspect was discussed. A show-cause notice being a precautionary measure for the Board to prove “knowledge”, was suggested by the speakers. Section 21(4) of Water Act and 26(4)(b) of Air Act that show “forthwith” and “without delay” respectively, make delayed evidence inadmissible.

Moving forth with the procedural aspect, Mr. Kamath, explained the type of cases as Warrant and Summons. The nature of the same and the cognizance being taken by the Magistrate along with the powers under Section 200 of CrPC, was discussed at length. Taking cognizance of an offence, needs to be done in accordance with law. The aspects of NBW were discussed and how the same can be discharged on the same day as of its issuance. Thus, agility and awareness of the officer about legal procedures was emphasized upon.

Further, **Mr. Kamath** and **Mr. Parthasarathy**, moved onto discuss the need of procedural regularity in the sampling process. “Time being the essence”, was put forth by the speakers. The manner of sampling and the correct way of collection was highlighted. Testing of a sample, in the Board’s own lab, was criticized by the speakers, highlighting the need of independent source of testing, to ensure the correctness and fairness in the report. Thus, to show the receipt, an independent report is necessary.



The pre-trial and post-trial procedures of notice, filing, collection, drafting and arguing were discussed. The powers of the High Court, being wide to provide proper redressal was highlighted. Damages and liability are important aspects in criminal cases, provided the allegations are specific. The LG Polymer case was discussed, to signify how too many parties, without any substantive proof and evidence, makes the case detrimental.

As the conversation continued, it was pointed out that the Pollution Control Board does not possess all of the authority that police officers do; for example, while police officers can search and seize property, they cannot make arrests. The Pollution Control Board is responsible for supervising the activities of other agents who work along similar lines.

He mentioned that the general trial procedure including the pre-trial evidence does not apply to the cases instituted by the Pollution Control Boards, which is an advantage to the Boards. It was noted by the officers that the chain of causation in any given case was critical for the conviction of the offenders, and the need for a Standard Operating Procedure in carrying out inspections and sampling, and accordingly concluded the session.

Usage of modern-day tools like GPS Camera were highlighted by Mr. Kamath. Court might not consider photo evidence in images. Thus, tools help in establishing proof beyond reasonable doubt. Further, the alternative modes of summons being technologically adaptable and compatible was put forth.

CONCLUDING REMARKS

The Member Secretary made a final observation, stating that the Board's officials must analyse applications carefully and promptly submit notifications of noncompliance. He went on to describe a few situations that the Board had carefully avoided. He also considered the necessity of creating a standard operating procedure for the Board's officials. In light of this, he emphasised the requirement that extended training programmes be organised as soon as possible for the Board officials in collaboration with CEERA, NLSIU, ideally for a longer period.



OFFICERS INTERACTING



GROUP PHOTO

DAY – 2: JANUARY 19, 2023 (THURSDAY)

INAUGURAL CEREMONY

SHRI. MAHESH THIMMAIAH, CHIEF ENVIRONMENTAL OFFICER, KSPCB

**PROF. (DR.) SAIRAM BHAT, PROFESSOR OF LAW AND CENTRE
COORDINATOR, CEERA, NLSIU**



The Second Batch of the One-Day Training Programme on “*Criminal Law Procedure and Evidentiary Aspects in Environmental Law*” for Karnataka State Pollution Control Board officers organised by the Centre for Environmental Law Education, Research and Advocacy (CEERA), National Law School of India University (NLSIU), commenced with **Shri. Mahesh Thimmaiah, KSPCB’s Chief Environmental Officer** welcoming all the officers and esteemed guests to the programme.

The guests were given a quick overview of the centre’s aims, operations, and existing and planned research projects, as well as its many publications and webpages. Since its founding, CEERA has been engaged in membership in a number of international and governmental organisations. It has

cooperated with the Central Pollution Control Board (CPCB) and the Ministry of Environment, Forest, and Climate Change (MoEF&CC). In order to do this, it holds several conferences and seminars where it trains government employees such as forest rangers and tax collectors.

Shri. Mahesh assured his officials that the training will enable them to comprehend the legal facets of the Board’s operation. In light of this, he emphasised the importance of inspection, sampling, and other tasks that must be performed in accordance with the method. The current training session being the 4th session was mentioned, to signify how the training programmes have been an ongoing activity for CEERA. The importance of Criminal Procedure Codes, as action Rules, having jurisdiction over environment related matters was put forth by Shri. Mahesh. The common path between the two was highlighted. The passing of special Law a harmony between the two was applauded. Suggesting the officers to follow the procedure was suggested to improve the extremely low success rate of 3% in criminal environmental law cases. Finally, he said that the program’s main goal was to provide officials legal authority over certain procedural matters.

The inaugural session was concluded by **Ms. Gayathri Gireesh**, after acknowledging all the dignitaries present. With the backdrop having been set by our esteemed guest speakers, the session proceeded toward the first discussion set of the day.



SESSION 1: CRIMINAL LAW PROCEDURE AND EVIDENTIARY ASPECTS IN ENVIRONMENTAL LAW

PROF. (DR.) SAIRAM BHAT, PROFESSOR OF LAW AND CENTRE COORDINATOR, CEERA, NLSIU

The second session of the day by **Prof. Dr. Sairam Bhat**, opened with the statement, “Public Interest Litigations (PIL) are the future of Environmental Litigation.” The peculiarity of a PIL was highlighted by the speaker. The case of *Ratlam Municipal Corporation v Vardichand (1979)*, was discussed to differentiate between private international litigation and public interest litigation concept. The development of Environment Jurisprudence was mentioned, to show the consideration of the Indian Judiciary towards the Environment. The development was discussed through the lens of judicial approach. Cases such as *Taj Trapezium*, *Judges White Collar Case*, *MC Mehta*, were referred to show the development of the courts towards environmental protection. The historical advancement was put to rest through the case of *Gopal Gas Tragedy*, when the creation of an Environmental Tribunal was suggested in 1995.

To highlight the grievousness of the situation, statistics signifying low conviction rates was put forth. According to NCRB data, Conviction Rate in Wildlife Protection Board is 18%, less than 3% for the Water Board while the Biodiversity Board, has no available data after 2014. The



low conviction rates throughout regulatory bodies, bring forth the need of proper evidences. Improving the conviction rate, was attributed to two pillars of criminal law. First, procedural regulations must be followed while filing an environmental law criminal case. Second, the case should be backed with strong and legal evidences to establish the case.

Dr. Bhat discussed the theoretical concepts of Evidence, and touched upon the different categories of evidence as-direct and circumstantial. The need of direct evidences and reliable witnesses, was put forth through the case study of *Salman Khan, Black Buck Killing* case. Advocate **Vikas**, discussed the case in detail, impressing upon the facts of absence of direct evidence and presence of a single witness which turned hostile. The conclusion of *Salman Khan*, being “innocent in law” put the officers in thought about the need of strong evidence.

The sections 21(4)(a) of the Water Act and 26(4)(b) of the Air Act were discussed, with a focus on the terms “forthwith” and “without delay”. “Forthwith” means the sample should be sent to the lab immediately but there is no specific time limit, while “without delay” implies that if there is any delay, the evidence will not be admissible. Emphasis was placed on the importance of timeliness in inspection cases. It was also noted that lab reports should be independent and unbiased, and that witnesses should be neutral in order to ensure transparency in the work. It

was also mentioned that witnesses from the office or industry cannot be accepted as they are affected parties.



The Haryana Paneer Bhandar case, was discussed by **Ms. Aparna Sojan** to highlight the need for following the procedural regulations. The State could not materialise the conviction, due to failure to issue a Show-Cause Notice. Further, the importance of proper and immediate sampling was emphasized, when the State could not prove the charges under Section 24 and 25 of the Water Act, 1974. Dr. Bhat continued to talk about the collecting of samples. The samples gathered in accordance with the applicable laws are viewed as a source of proof, or rather as a way to exercise authority.

Karantaka Pollution Control Board v. Shri Heera Naik, was discussed by **Ms. Anuja Shah**, highlighting the Judgment. She explained that;

- The court while deciding the present case relied on the Patna High Court judgement of *Arun Kumar Singh vs. the State of Bihar and Ors.*¹ where under Section 141 of Negotiable Instrument Act, the Court held that the definition of Company as given in it is wider than the definition of Company in the Companies Act and it includes any-body corporate.
- The Explanation of section 141(1) (a) therefore, makes it clear that the definition of Company as given is wider than the definition of Company in the Companies Act and it includes any-body corporate. Section 5 of the Patna Municipal Corporation Act also shows that the Company is a body corporate. Therefore, there cannot be any doubt that Patna Municipal Corporation is a Company under the N.I. Act."
- The Supreme court in the present case agreed with the above interpretation of Explanation (a) by the Patna High Court and held that the Explanation of Section 47 of Act, 1974 and the Explanation (a) to Section 141 of the Negotiable Instruments Act are *pari materia*.
- Therefore, looking to the purpose and object of Act, 1974, Supreme Court opined that Section 47 can be resorted for offences committed by body corporate, and the Karnataka State Pollution Control Board, by filing a complaint before the Magistrate for taking cognizance of offence under Section 49, did not commit an error.



¹ Arun Kumar Singh vs. the State of Bihar, Unreported Judgements, Cr. Misc. No. 7268 of 2005 (Patna HC).

- Section 49 embraces cognizance of all offences under the Act. Whether the offences are covered by Section 47 or 48 has no bearing on the power of the Court to take cognizance of an offence. Karnataka State Pollution Control Board has filed complaint for taking cognizance specifically referring to Section 49 of the Act, 1974. Thus, in event any offence is committed by anyone, its cognizance can be taken under Section 49. The Court however, reiterate that offences by a body corporate are to be covered by Section 47, since in event offences by body corporates are not covered by Section 47, the benefit of Section 47(1) proviso shall not be available to those body corporates, which cannot be the intention of the Legislature. Therefore, it was concluded that offences by body corporate like City Municipal Council are covered under Section 49 treating it to be offence as by company as provided in Section 47.

The High Court erred in quashing the complaint filed by Karnataka State Pollution Control Board against the respondents.

Lastly, Dr. Bhat concluded by underscoring and stressing the importance of the evidentiary rules of procedures to be followed by the Pollution Control Boards in overseeing its functions and improving the conviction rates.

SESSION 2: COMMON LAW AND CRIMINAL LAW STRATEGIES FOR ADDRESSING THE ENVIRONMENTAL PROBLEMS

PROF. (DR.) M.K. RAMESH, PROFESSOR OF LAW AND FORMER I/C VICE-CHANCELLOR, NLSIU



Prof. (Dr.) M.K. Ramesh gave a quick review of the Common Law system as it was passed down from the British Legal System to begin the second session of the training program's day. The respected speaker stressed how India's legal system, which is made up of laws and customs that have arisen as a result of court

decisions, has influenced environmental jurisprudence there.

Dr. Ramesh posed the question of whether the Pollution Control Board has exclusive authority in controlling pollution or if other entities are also allowed to do so. The speaker then discussed the importance of the Pollution Control Board as the primary agency responsible for addressing

pollution, environmental degradation, and other related issues as outlined in various environmental laws, such as the Water (Prevention and Control of Pollution) Act of 1974, the Air (Prevention and Control of Pollution) Act of 1981, and the Environment (Protection) Act of 1986. He also emphasized the importance of legislation and the role of the judiciary in this matter.

The session then proceeded to cover the important common law environmental principles, presently acting as guiding principles for judicial pronouncements, namely:

- **The Good Neighbour Principle-** To explain further, the speaker explained that the good neighbour principle, in its real sense will only apply to something which will cause, in real terms, inconvenience, harm and annoyance.
- **Polluter Pays Principle-** It holds that the one who damages the environment must bear the expenses for its restoration. In this context, the speaker also mentioned that the entire regime of the Pollution Control is based upon this Principle.
- **Doctrine of Public Trust-** State and State Agencies, including PCB are public trustees. Trust is reposed upon them.

To further elaborate on the offence of nuisance, Dr. Ramesh dealt with the case of Ram Baj Singh v. Babulal (AIR 1982 All 285), which was a good example of nuisance caused by dust from crushing bricks causing nuisance to a medical practitioner. The common law remedy— of an injunction which was granted in this case was also discussed in this context.

Dr. Ramesh also discussed the relationship between Section 133 of the Criminal Procedure Code, which grants authority to District Magistrates and other Executive Magistrates to issue orders for the removal of nuisances, and the provisions under the Water Act. To illustrate this relationship, the speaker referenced the Kerala High Court's judgment in the case of Krishna Panicker v. Appu Kuttan Nair [1993(10 KLJ 725 (DB)], which was discussed to establish that the Water Act does not repeal the law of public nuisance under the Criminal Procedure Code. This is because the Water Act, as a special law, only overrides the general law if they both operate in the same field. In this case, one law relates to pollution control, while the other relates to maintaining public order and tranquility. The speaker also highlighted the prominent role played by the Pollution Control Board, referencing the judgment passed by Honorable Justice Michael Saldanha in B Gopala v. KSPCB (2000 Karnataka HC), which confirms that the Pollution Control Board is the primary agency. This ruling remains valid to this day.



The speaker addressed the issue of jurisdiction, in which two bodies may claim authority over the same function. In such cases, it is important for the two bodies to work together and not in isolation. The speaker also mentioned that there are other agencies that may perform related functions, but the Pollution Control Board remains responsible for training and equipping them with the understanding of their roles and functions. The speaker emphasized that the Pollution Control Board is the main agency in charge of pollution control, but other agencies such as bio-medical waste management and the health department can assist. The Pollution Control Board is legally required to oversee, guide, monitor, and train its assisting agencies.

The session ended with questions from the officers on the role of the Board in overseeing the functions of other related agencies.

SESSION 3: PANEL DISCUSSION

**MR. ROHITH KAMATH, ADVOCATE AND LEGAL CONSULTANT, CEERA, NLSIU;
MR. RAGHAV PARTHSARTY, ADVOCATE, BENGALURU AND
MR. PARAM SHAH, ADVOCATE, BENGALURU**



The speakers discussed the importance of procedures and evidence in environmental law and emphasized the principles that should be followed when collecting evidence. They used case studies such as the Vizag Steel Power Plant and the Uphar Cinema Tragedy to illustrate the consequences of officers' lackadaisical attitude during inspections and sampling. They also addressed the issue of not knowing the owner of a premise causing environmental damage and the concept of occupier liability. **Mr. Kamath** discussed obtaining details about the occupier's residence from the registry office and the idea that people holding "managerial responsibility" can be held liable. The speakers also discussed the importance of a show-cause notice as a precautionary measure for the Board to prove knowledge and

the inadmissibility of delayed evidence as per Section 21(4) of the Water Act and 26(4)(b) of the Air Act.

Mr. Kamath then explained the types of cases as Warrant and Summons and the nature of them and the cognizance taken by the Magistrate along with the powers under Section 200 of the Criminal Procedure Code. The importance of procedural regularity in the sampling process was also discussed, with the speakers emphasizing that time is of the essence and the need for independent sources of testing to ensure the correctness and fairness of the report. The speakers also discussed the pre-trial and post-trial procedures, including notice, filing, collection, drafting, and arguing and the powers of the High Court to provide proper redressal. They also discussed the importance of evidence and liability in criminal cases and the need for a Standard Operating Procedure in carrying out inspections and sampling.

The speakers also mentioned that the Pollution Control Board does not have all the authority that police officers do, for example, while police officers can search and seize property, they cannot make arrests. The Pollution Control Board is responsible for supervising the activities of other agents who work along similar lines. The use of modern tools such as GPS cameras were also highlighted as a way to establish proof beyond reasonable doubt. The session



ended with the officers noting that the chain of causation in any given case was critical for the conviction of offenders and the need for a Standard Operating Procedure in carrying out inspections and sampling.

CONCLUDING REMARKS

The Member Secretary made a final observation, stating that the Board's officials must analyse applications carefully and promptly submit notifications of noncompliance. He went on to describe a few situations that the Board had carefully avoided. He also considered the necessity of creating a standard operating procedure for the Board's officials. In light of this, he emphasised the requirement that extended training programmes be organised as soon as possible for the Board officials in collaboration with CEERA, NLSIU, ideally for a longer period.



GROUP PHOTO