



REPORT OF THE TRAINING PROGRAMME

IN-PERSON TRAINING PROGRAMME

on

**PROCEDURAL 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 02 & 03, 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 “Public Procurement, Contracts and Arbitration in the Drinking Water Sector”** for the officers of KSPCB in two batches on January 02nd and 03rd, 2023.

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 Dr. Shanth Thimmaiah, Shri Shrinivasulu, Shri Mahesh Thimmaiah, Shri H.S. Ravindrappa, Shri M.D.N. Simha, and Adv. Derick Anil 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.



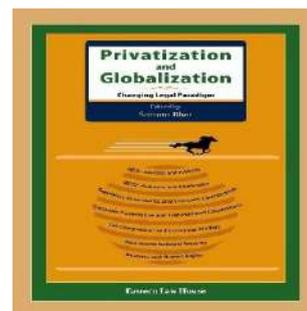


CEERA is proud to have completed a two-year Research Project granted by the United Nations Development Programme (UNDP) under the Global Environment Facility (GEF), and as one of the deliverables, organised, convened, and conducted over twenty workshops at Institutions of national repute creating awareness 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
MINUTES OF THE PROCEEDINGS
DAY – 1: JANUARY 2, 2023 (MONDAY)

INAUGURAL CEREMONY

DR. SHANTH A. THIMMAIAH, CHAIRMAN, KSPCB

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



The One-Day Training Programme on “Procedural 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 Aparna Sojan, Research Fellow,**

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

Following this, a brief introduction of the centre’s activities, initiatives, and ongoing and upcoming research projects, along with its various publications and websites that the centre operates was shared with the participants. CEERA since its inception has been working in association with numerous Government agencies and International Organizations. It has worked in collaboration with the **Ministry of Environment, Forest and Climate Change (MoEF&CC)** as well as the **Central Pollution Control Board (CPCB)**. In pursuant to this it conducts multiple conferences and seminars where it imparts training to forest officers, revenue officers, government officials, etc.

The inaugural session was graced by dignitaries who collectively set the tone of the programme and gave an overview of the agenda for the discussions and deliberations that were to follow. **Prof. (Dr.) Sairam Bhat, Professor of Law, NLSIU and Centre-Coordinator, CEERA**, commenced his address by welcoming the esteemed guests and the officers invited for the said programme. To encapsulate the broad theme of the training programme, he informed the officers that CEERA, NLSIU, in response to the Karnataka High Court order passed by Hon’ble Justice Suraj Govindraj has undertaken this training programme to educate and train



officials on initiating criminal proceedings under the Air and Water (Prevention and Control of Pollution) Acts. Dr. Bhat further informed the purpose and focus of this training programme to be on the legal procedure involved in the initiation of criminal proceedings and the judicial process involved in the same. Dr. Bhat finally concluded his speech on the note that the session was to be a collaborative exercise between CEERA and KSPCB, resulting in a capacity-building exercise for KSPCB.

The proceeding further was taken over by **Dr. Shanth A. Thimmaiah, Chairman of the Karnataka State Pollution Control Board**. He began his address by sharing that only a handful of cases out of 338 cases filed under the Air and Water (Prevention and Control of Pollution) Acts before the Karnataka Courts have resulted in a conviction, and the reason for the same has been ascribed to the lapses involved in the compliance of the law. Realizing the importance of the same, Dr. Thimmaiah highlighted the importance of understanding the technical and legal aspects to be followed in filing criminal cases. Lastly, he assured the officers that this training programme conducted by CEERA would equip them to understand and appreciate the procedure involved, owing to its experience in this field.

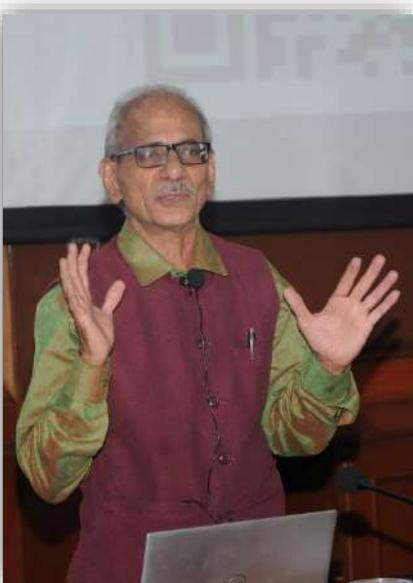


The inaugural session was concluded by Ms. Aparna Sojan, acknowledging all the dignitaries present. With the backdrop having been set by our esteemed guest speakers, the session proceeded toward the first discussion set of the day.



SESSION 1: 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



The first session of the day of the training programme commenced with **Prof. (Dr.) M.K. Ramesh**, giving a brief overview of the Common Law system as inherited from the British Legal System. This legal system composed of legal rules and traditions, developed by way of judicial decisions, was emphasised by the esteemed speaker to have shaped environmental jurisprudence in India.

Proceeding further, Dr. Ramesh, posed the question “Is pollution control the exclusive preserve of the Pollution Control Board, or is any other agency authorised to engage in the same? With a view to addressing the same, the speaker informed the officers of the importance of the Pollution Control Board as the Nodal Agency in matters

of pollution, environmental degradation and every other function as enshrined under the environmental legislations; namely, the Water (Prevention and Control of Pollution) Act, 1974; Air (Prevention and Control of Pollution) Act, 1981; and the Environment (Protection) Act, 1986. He further stressed that the Pollution Control Board be an administrator of legislation, educator, interpreter, guide, researcher and lastly, the judge while exercising its functions. He further laid special emphasis on the powers of the Pollution Control Board by explaining that orders of the Pollution Control Board have a similar status as that of a decree in a Civil court.



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

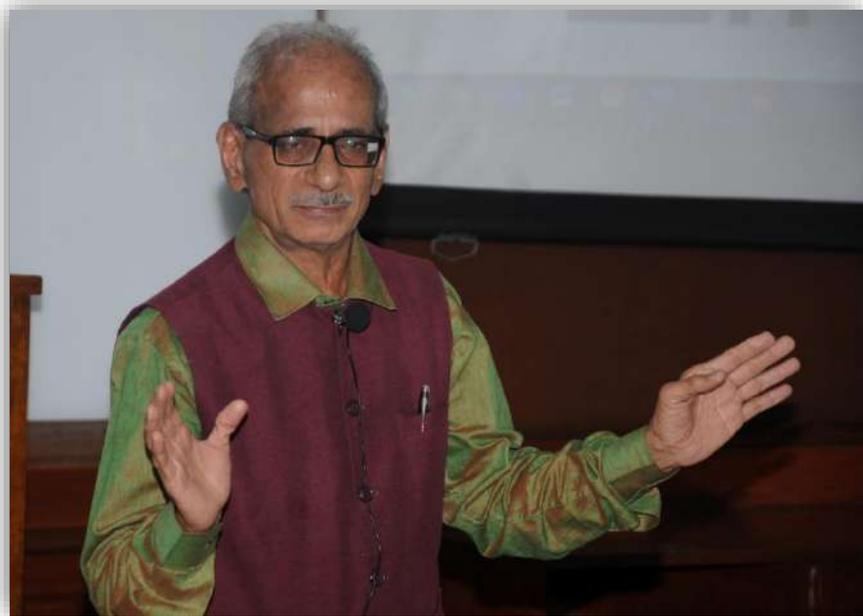
- ***Sic utere tuo ut alienum non laedas*** – This is a simple principle of law that says “Be a good neighbour”. Therefore, by way of this maxim, one has the obligation to use his property in such a manner so as to not cause

harm, inconvenience, or alarm to one’s neighbour.

- **Strict Liability Principle** – As per this “No Fault Liability” principle, anyone who in the course of the use of his land, either accumulates something or does something which is a non-natural use of the land and as a result of such use, an adverse effect is caused to the neighbour, then the one causing such harm will be fairly held liable for the same.
- **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.
- **Trespass** – In simple terms, trespass is entering without obtaining permission. It was shared with the officers that the definition of trespass is so wide, in the legal sense, that it does not restrict physical entry alone to be trespass. Rather, even when there is no physical entry, it amounts to trespass. In this context, the Allahabad High Court judgment on Ram Baj Singh v. Babulal (AIR 1982 All 285) was also discussed by the speaker to explain the concepts of public nuisance and trespass.
- **Walking into the mischief of another** – This principle holds that when one voluntarily walks into the place of pollution, with a prior understanding of the activities carried out at that place, at a later instance, he is estopped by filing an action caused due to the nuisance.
- **Law of Negligence** – Negligence is nothing but the failure to take care. Therefore, to avoid negligence, one has to carry out the duty to take care. On this note, the speaker advised the officers to duly discharge their duties as enshrined under their governing legislation to avoid being liable for negligence.

Following the discussion on these key environmental principles, the Dr. Ramesh highlighted the importance of these principles by informing the officers that, today, most judicial orders on environmental matters are usually governed by these principles and not solely by legislation. In addition, the speaker further observed that these principles, namely — the Law of Nuisance, Law of Trespass and Law of Negligence are the Parents of Law concerning environmental protection and its conservation.

Dr. Ramesh in pursuance to the purpose of this session, which was whether the duties of the pollution Control Board can be carried out by any other agent, the speaker explained that any other body, such as municipal corporations established under statutes is empowered to carry out the functions to abate



pollution. However, they are still governed, guided, educated, trained and regulated by the Nodal Agency – the Pollution Control Board.

The speaker concluded the discussion by commending the role of the 73rd and 74th Amendment to the Constitution that brought in the Panchayati Raj System. By virtue of these amendments, municipalities are obliged to perform their duties and functions and, in this context, the landmark judgment made by J. Krishna Iyer in *Ratlam Municipal Corporation v. Vardhichand*, was discussed with the officers, whereby the Court laid down the duty of the municipality to be non-negotiable and non-sharable. Therefore, budgetary constraints as contended by the State did not hold well in this case.

Lastly, Dr. Ramesh concluded by underscoring and stressing the importance of the Pollution Control Boards in overseeing the functions of other agents working on the same lines.

SESSION 2: PROCEDURAL 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. In light of the same, 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.

While discussing the concept of “Deemed Guilty,” Dr. Bhat further owed credit to KSPCB for reviving the dormant provision of — Section 48 of the Water Act, 1974 which deals with offences by Government Departments. To explain further, deemed guilty provision is simply a presumption of guilt, wherein the burden of proof lies upon the accused. This is contrary to the usual criminal proceedings, wherein the State is bound to provide evidence against the accused.



Before delving into the importance of procedure & compliance while initiating criminal proceedings, the speaker highlighted some of the beneficial provisions under the relevant environmental laws —

- The precise inclusion of a minimum term of punishment as provided under the Water Act, with strict applicability to the extent that even the Magistrate is not empowered with any discretionary power.
- Additionally, to underscore the robustness of this law, Dr. Bhat highlighted that the Probation of Offenders Act would not apply to the punishments prescribed under the Water Act.
- Section 186, Indian Penal Code allows a public officer to file a complaint against persons or industries obstructing him from discharging his public duties. In this context, he stressed the fact that although they are empowered to enter and search the industry, the industry or

its employees are under no obligation to give evidence against themselves as per their Right against self-incrimination under Article 20 of the Constitution of India. Therefore, he reiterated by stating that “While you have the right to enter the industry, they have the right to remain silent. However, they must assist in the inspection process.”

- Section 197, Criminal Procedure Code is another immunity available to the officers. The same prevents public servants accused of any offence, from being removed from his office without government sanction.

Proceeding further with the discussion, a distinction between the powers of the officers of the Pollution Control Board and police officers was dissected, by highlighting that not all powers of the police officers are available to the Pollution Control Board, as while they can search and seize, however, they cannot arrest.

In addition to enlightening the officers on the importance of procedural compliance, Dr. Bhat proceeded with his discussion on the collection of samples. The samples collected under the relevant legislation are seen as a source of evidence, or rather a source of exercising power., On this note, he conveyed that it isn't the collection that's important, rather the procedure followed for its collection becomes imperative in deciding whether the evidence will be admissible or not in the Court of Law.

To substantiate this, Dr. Bhat referred to Article 21, which states that “No person shall be deprived of his life or personal liberty except according to the procedure established by law.” Furthermore, he stated that whenever there is a lapse in the procedure, the benefit of doubt goes to the accused. Therefore, by relying upon the same, he remarked that the procedure is more important than the substance.

Following this, Dr. Bhat offered the officers, a glimpse into the world of criminal litigation and the recording of evidence. In light of the same, he reiterated that the procedure is the key in criminal matters. Additionally, any evidence that is gathered must be corroborated and every piece of evidence must be proved beyond doubt. Therefore, the conviction on a single piece of evidence rarely happens.

Towards the last leg of the session, Dr. Bhat touched upon the very crucial aspect of Mens Rea in environmental offences by taking support of the proviso under Section 47 of the Water Act, which states that no person shall be liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such an offence.

Therefore, knowledge here means the guilty intention or mens rea. The speaker highlighted mens rea to be the differentiating factor between a civil action and criminal action. Therefore, to invoke criminal sanctions against the industry, negligence, intentional violation and motive must be present.

Therefore, in the context of Section 47 of the Water Act, not everyone in the company can be held liable. For the purpose of understanding who is responsible and who has had knowledge, the speaker advised the officers to examine the documents and records by calling for information. Therefore, by the application of mens rea, the one who had knowledge would only be held liable in case of a company.

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

SESSION 3: PANEL DISCUSSION

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

SHRI M.D.N SIMHA, CHIEF ENVIRONMENT OFFICER (RETD.), KARNATAKA STATE POLLUTION CONTROL BOARD

SHRI. H.S. RAVINDRAPP, LAW OFFICER, SENIOR, KARNATAKA STATE POLLUTION CONTROL BOARD

For the purpose of the training programme, a questionnaire was shared with the officers to be filled up. The responses of which were displayed and discussed by the panellists during the session. This panel discussion focussed primarily on the procedural aspects of criminal proceedings.



Firstly, the role of an investigation officer was discussed. During this discourse, Dr. Bhat gave his input on the adversarial system which was inherited by India from its colonial masters, the Britishers. He stressed the fact that in this system the accused shall be presumed innocent until proven guilty. Therefore, as per this system, the law enforcing officers are required to conduct investigations to prove the guilt and are additionally, required to prove that the investigation was done with genuine due diligence. Further emphasis was laid down by Dr. Bhat while informing the officers that an inspection report itself constitutes an investigation report.

Secondly, the collection of samples under the Water and Air Acts were discussed by the panellists. The samples collected under the relevant legislation are seen as a source of evidence, or rather a source of exercising power. It was conveyed to the officers that the procedure followed for its collection becomes imperative in deciding whether the evidence will be admissible or not in the Court of Law. Therefore, by relying upon the same, the speaker remarked that procedure is more important than substance. Additionally, during the discussion over the same, types of samples as legal and non-legal samples were examined and it was informed that routine samples done in their own laboratories, were non-legal samples, thereby not accepted as evidence in the Court of Law.

Then the discussion leaned towards the topic of authorization and delegation i.e., which officer is authorized to take samples during the inspection? Who can file a complaint against an accused from the board and whether that power can be delegated to the other officers of the board? During this discussion, it was highlighted that if authorization is not there, then the evidence also becomes inadmissible.



The discussion then further pivoted towards consent-related violations in environmental cases and whether they are civil or criminal in nature. In response to the same, it was addressed that consent to industries is given under section 25 (4) of the Water Act and is punishable under the S. 44 of the said Act, and so in that sense, consent-related violations are criminal in nature. It was further stated that if the accused is not within the jurisdiction of the Court before which the case is filed, then S. 202 (1) CrPC can be invoked, under which the magistrate is obliged to conduct a thorough investigation of whether or not there is sufficient ground for proceeding against the accused.

Following the discourse, a 10-point formula evolved as a part of the discussion to be kept in mind by the Board while filling a complaint, formulated by CEERA:-

- i. Application for consent
- ii. Consent letter issued.
- iii. Visit report
- iv. List of witness
- v. Authorisation and Administrative Approval
- vi. Vigilance sample/ Legal Sample
- vii. Warning letters issues, if any (Show-cause notice), Reply for the said notices
- viii. Copy of hearing
- ix. Previous communications with the industries in the past
- x. Sample
- xi. Details of the sample, Report and communication with the government analyst
- xii. Acknowledgment of the notices issued.



During the last stage of the discussion, the officers shared their input and raised queries relevant to the discussion, followed by the panellists addressing the same. Following this, the panel discussion came to an end.

SESSION 4: CRIMINAL PROSECUTION: COLLECTION OF EVIDENCE AND THE TRIAL PROCEDURE

ADVOCATE DERICK ANIL, HEAD OF ASSOCIATES, DERICK ANIL ASSOCIATES

The last session was an engaging discussion carried out by Shri. Derick Anil, who encouraged the participants in appraising the nuances of evidence and procedural aspects of courts. It is to be noted that the deliberations forayed into matters connected with the Burden of Proof, Stages of Summons and Warrants Cases, and other intricacies. On the matter relating to the burden of proof, Shri. Derick mentioned that the cases being of criminal nature, the burden of proof rests on the prosecution to prove beyond a reasonable doubt, and advocated the necessity to have an independent witness to testify the violations in the case.

He discussed the intricacies comprising of identifying and holding accountable the occupier of the said plant, and went on to deliberate on the actions that the officers need to undertake in case, they are unable to identify the occupier of unmanned premises. It was identified that Section 2(w) of the Code defines a summons case as "a case relating to an offence, not being a warrant case" in a negative sense. On the other hand, a "warrant case" refers to a case involving a crime punished by death, life in prison, or a period of imprisonment longer than two years.

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.



MINUTES OF THE PROCEEDINGS

DAY – 2: JANUARY 3, 2023 (TUESDAY)

INAUGURAL CEREMONY

The training programme for the 2nd Batch of Karnataka State Pollution Control Board officers began with **Shri. Mahesh Thimmaiah, Chief Environmental Officer, KSPCB**, delivering the welcome address. Shri. Mahesh informed his officers that the training would equip them with an understanding of the legal aspects of the functioning of the Board. In light of the same, he emphasised the significance of inspection and sampling as well as functions to be in compliance with the procedure. Lastly, he informed the core purpose of the programme was to legally empower the officers in the procedural aspect.



Proceeding further, **Prof. (Dr.) Sairam Bhat, Professor of Law, NLSIU and Centre-Coordinator, CEERA, NLSIU**, commenced his address by informing the officers of the purpose and focus of this training programme to be on the legal procedure involved in the initiation of criminal proceedings and the judicial process involved in the same. Dr. Bhat concluded his address by hoping the session to be a collaborative exercise between CEERA and KSPCB, resulting in a capacity-building exercise for KSPCB.



The inaugural session was concluded by **Ms. Anuja Shah**, 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: 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 initiated his session by stating that the Pollution Control Board is the primary manager of the environment. Following this, he highlighted the functions of the Pollution Control Board which include – the role of monitoring, regulating, controlling and issuing orders. In short, the speaker informed the officers, that the Board is a combination of administrator, monitor, implementer and educator having the same status as that of a District Court.

Moving further, Dr. Ramesh discussed the Common Law system as one of the inherited concepts from the British legal system and the speaker informed that one such important inherited branch of law is the Law of civil wrongs, commonly known as Tort law.

He then steered his session 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.

Following this, the speaker went on to discuss the world's worst industrial environmental disaster, known to humankind – The Bhopal Gas Tragedy. He highlighted this to be the biggest example of negligence at multiple levels. He informed the officers that for the first time, an incident of such grave nature was initiated in a District Court. During this discussion, the speaker appreciated the role of judges in applying environmental principles such as law of nuisance and trespass and absolute liability, by way of which the Union Carbide Corporation was adjudged to pay a compensation of Rs. 250 Crores. It was further informed to the officers that this incident prompted the nation to contemplate and enact the Umbrella Legislation on Environment – The Environment Protection Act, 1986. Consequently, the Act has been brought in to tie together the work done by the Board and to bring all legal regimes under one line to avoid the recurrence of another tragedy.



Dr. Ramesh then shed light on the relationship between Section 133 Cr.P.C., which empowers a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate to make a conditional order for the removal of nuisance and the provisions under the Water Act. To establish the relation, the Kerala High Court's Judgment in Krishna Panicker v. Appu Kuttan Nair {1993(10 KLJ 725 (DB))} was discussed. In this case, the special law, the Water Act, did not repeal the law of public nuisance under the Cr.P.C. This is because, the special law overrides general law, only if, both operate in the same field. In the instant case, one relates to pollution control; the other refers to the maintenance of public order and tranquillity.

Lastly, to lay emphasis on the prominent role played by the Board, the judgment passed by Hon'ble Justice Michael Saldanha in B Gopala v. KSPCB (2000 Karnataka HC) was discussed to explain that the Pollution Control Board is the primary agency. Even to this day, this rule has not been overruled and it is the law of the land on this matter.

Therefore, the question of jurisdiction comes in only when two bodies claim authority over the same function. In the same regard, the two agents by law must complement each other as departments or agents cannot work in isolation or compartments. Lastly, for assistance, he stated that there exist agencies that may perform their functions, however, the role of the Board remains to train and equip the agencies with the understanding of their roles and functions. Therefore, the Pollution Control Board is the prime point in the matter of pollution, however, other support agencies like the Bio-medical waste agencies and the Health Department can assist. Although the nodal agency is the Pollution Control Board, it is required by law to oversee, guide, monitor and train its assisting agencies.

With this, the session came to an end and it was followed by questions from the officers on the role of the Board in overseeing the functions of other agents working on the same lines.

SESSION 2: PROCEDURAL 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 “Law has taken its course even if ten guilty persons escape rather than have even one innocent suffer.” Following this, the objective of this training programme was highlighted at the onset of this session i.e., to examine the procedural and evidentiary aspects in environmental law.

In the context of discussing criminal offences under the

Water Act, the landmark Paneer Bhandar Case was delved by the speaker. On this note, he highlighted that polluting a stream, well or land has been an offence since 1974 when the Water Act came into force but however convictions under environmental laws are minute in number that they fail to deter the public from causing pollution. Through a few case studies on the Water Act, a legislation enacted 46 years ago, the practical nuances of implementation of the said law were deliberated.

Further in the general context of the adversarial system *viz.*, “the state is required to prove the crime beyond reasonable doubt” and the difficulty in imposing the concept of “Deemed Guilty” was highlighted by taking support of the provisions under the environmental legislation.

Pivoting from the previous topic of discussion, other problems faced by the Pollution Control Board, in general, was brought into light such as the obstruction caused by the workers, non-cooperation etc. As a matter of the Board’s rights and powers under Section 188, IPC was highlighted i.e. if anyone disturbs the process of the state, then that itself becomes an offence.

Following this, in the context of delegation of power it was brought to light that “procedure of law is far more important than evidence” by taking support of the case, Subash Sachdeva v. State of Rajasthan. This case was discussed by the speaker to have been brought into the limelight that delegation of powers under the Environmental Act can be done under Sections 5, 15 and 19 using the power delegated to them by MoEF under the Environment Protection Act.

Moving towards the evidentiary aspects the words “forthwith” and “without delay” of section 21 (4) (a) of Water Act and section 26 (4) (b) of the Air Act, respectively, were highlighted. The word “forthwith” in the context of the section meant that the sample should be sent to the lab immediately but no time limit was prescribed whereas the words “without delay” were used more in the context of if there’s any delay the evidence will not be admissible. A Further emphasis was laid on the aspect that in the inspection cases TIME is of the essence. It was further discussed that “independent report should be created by the labs and that subject matter and personal bias should never come in context of the witnesses i.e., independent and neutral witnesses should be used so that evidence gets corroborated. In other words, If you are taking someone from the office or industry itself as a mahazar witness it can never be accepted because they are the affected parties and the witness should be independent, as that shows transparency in the work.

In the end of the session, it was once again highlighted with the case of Abrimani Polypacks v. Dwarkanath, adjudged in Madras High Court that how important procedural aspect is as compared to the evidentiary aspect, in this case, even though the pollution control body had all the evidence against the industry but since they didn’t follow certain provisions of the Act(s) for the collection and analysis of the sample the evidence was dismissed and the case was lost.

SESSION 3: PANEL DISCUSSION

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

SHRI. MAHESH THIMMAIAH, CHIEF ENVIRONMENTAL OFFICER, KARNATAKA STATE POLLUTION CONTROL BOARD

SHRI H.S. RAVINDRAPPA, LAW OFFICER, SENIOR, KARNATAKA STATE POLLUTION CONTROL BOARD

The session was commenced by Shri. H. S. Ravindrappa, Senior Law officer, Karnataka State Pollution Control Board, by examining certain issues of disposing of the cases by either discharging them or by means of acquittal. Regarding authorization and delegation of power it was further highlighted by him that under section 15 of the Water Act and under section 11(a) of the Air Act, it is necessary for the officers to get authorization of the Chairman of the Board before filling the complaint.

Sir, further discussed about certain privileges that public servants have i.e., cases of malicious prosecution can’t be brought against them while they are under course of employment or working at an official capacity as per section 197 of the CrPC.



It was also highlighted by the panelists, that as per Section 19 of the National Green Tribunal Act, the Code of Civil Procedure and the Indian Evidence Act does not apply on National Green Tribunals and instead they are guided by the principles of natural justice., therefore, this simplifies their adjudication process.

Section 49 of the Water Act was also brought into light i.e., no court can take cognizance under this case unless it is brought forward by the member of the “board” or any other member authorized by the board. The meaning and interpretation of the word “person” was also discussed as mentioned in clause I(b) of the above-mentioned section.

Advocate Rohith R Kamath, who participated in the panel discussion, identified the impediments faced by the officers in carrying out the Spot Mahazar, and insisted that the same be carried out at the place in which such samples are collected, if any.

In this session it was highlighted by Dr. Bhat that sample is crucial evidence. The samples collected under the relevant legislation are seen as a source of evidence, or rather a source of exercising power. It was conveyed to the officers that the procedure followed for its collection becomes imperative in deciding whether the evidence will be admissible or not in the Court of Law.

SESSION 4: CRIMINAL PROSECUTION: COLLECTION OF EVIDENCE AND THE TRIAL PROCEDURE

**ADVOCATE DERICK ANIL, HEAD OF ASSOCIATES, DERICK ANIL ASSOCIATES
SHRI. SRINIVASULU, IFS, MEMBER SECRETARY, KSPCB**



Shri. Derick Anil led an interesting debate during the previous session and urged the participants to consider the subtleties of evidence and court procedure. It should be noted that the discussions included complex issues such as the burden of proof, the stages of summons and warrants cases, and other issues.

Regarding the burden of proof, Shri. Derick stated that criminal cases have an increased

responsibility on the prosecution to establish guilt beyond a reasonable doubt. He also argued that it is essential to call an impartial witness to testify about the alleged violations.

He deliberated on the hurdles involved in locating and prosecuting the owner of an unmanned plant and continued by deliberating on the steps that the officers should take in the event that they are unable to locate the owner of such premises. It was identified that Section 2(w) of the Code defines a summons case as "a case relating to an offence, not being a warrant case" in a negative sense. On the other hand, a "warrant case" refers to a case involving a crime punished by death, life in prison, or a period of imprisonment longer than two years. 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.



As concluding remarks, the Member Secretary observed that the officers of the Board are required to be diligent in the processing of applications, and forwarding reports pertaining to violations. He further narrated a few instances wherein the Board had diligently avoided administrative fallouts. He further deliberated the need for developing a standard operating procedure for the officers of the Board. Accordingly, he emphasised the need for elongated training programmes to be organised in due course for the officers of the Board in association with CEERA, NLSIU, preferably for a longer duration.