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Facets of Tortious Liability for Environmental Harm in India

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ABSTRACT

Environmental concerns are affecting law and legal system throughout the world in profound new ways. With the growth of global environmental concern nations are uprooting the old laws and coming up with new environmental law and policy innovations. Environment activist, actors and non- governmental organizations are driving the development of new policy and laws.³ The present paper tries to analyse and interprets the application of torts' principles in India with respect to the matters related to environmental harm and also compares tortious liability and ex anti-safety regulation in providing a comprehensive remedy for damages caused to the environment. It also includes the judicial decisions which lead to the evolution and development environmental torts in India. This paper suggests the implementation of an effective regulation policies and using the combination of tortious liability and ex-ante safety regulation policy as a tool to control environmental harm.

Keywords: *tortious liability, environmental laws, ex-ante safety regulation, Legal policy, tort remedy, environmental harm.*

I. INTRODUCTION

In its broadest sense, environment is defined as including water, air, soil, flora and fauna,⁴ and environment pollution is introduction of wastes by man into any part of the environment⁵The environmental pollution is managed by certain environmental remedies and torts is one of them, tort is basically a civil wrong. It is concerned with the liability of persons for breach of duty of care towards others. It relates to recognition of interest that the law created in the absence of contractual obligation between the wrongdoer and the injured person. Deterring environmental degradation and compensating the victims of environmental harm are

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³ See Robert V. Percival, *The globalization of environmental laws*, 26 page ENVTL.REV,451 (2009); Tseming Yang and Robert V. Percival, *The emergence of global environmental law*, 36 ECOLOGY L.Q. 615 (2009)

⁴ The English Environment Protection Act 1990, defines the "environment" as consisting "of all, or any, of the [media] the air, water and land; and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground", see Section 1(2).

⁵Maneka Gandhi v. Union of India, AIR 1978 SC. 597

among the most important and difficult problems facing modern industrial societies.⁶

The potential of the remedies that are provided for violation of environmental law in law of torts is under question as it provides the compensation regime for the affected victims it does not provide any precautionary remedies, liability in tort and regulation of safety represent two very different approaches for controlling activities that create risks of harm⁷but tort provides cure rather than prevention. Hence there is a need for standard prohibitions, and other forms of safety regulation, which are public in character and operate in principle to alter behaviour; they are requirements imposed on human behaviour ex-ante-before the actual occurrence of harm.⁸

(A) Literature Review

In the viewpoint of Anshuman Mazumdar (2007), the Right to Life and Personal Liberty takes into its ambit the right to have pollution free environment. Marshall S. Shapo (1997) points that in such environmental harm tort is the first line of legal protection for persons threatened or injured, by such hazard. Pamela Corina Tolosa (2008) opined that ex anti-safety regulation are often considered preferable to tort law remedies as it is the chief and primary tool of environmental policy. Madhuri Parik (2013) thinks that applies only after something has happened and is not precautionary in approach. Mark Latham (2011), points out that government regulations do not implicate the tort remedies unless expressly stated in the law.

Jamie Cassels (1991) concludes that the biggest problem in mass litigation is simply because of the sheer number of people affected, yet the problem also is that the law provided can neither prevent the disaster nor it can alleviate the human agony once it has occurred.Pamela Corina Tolosa (2008), thus, in her research opined about the possibility of combining tort law with ex-ante safety regulations, as it is used as an alternative in most environmental law cases.

II. ENVIRONMENTAL TORT IN INDIA

India has seen an abundance of legislations covering various aspects of the environment to ensure its conservation. However, due to loopholes, and lack of implementation, these legislations have merely remained a text of powerless phrases that have lost their power during the course of time.⁹ The SC has interpreted the right to life and personal liberty as under Article 21 to mean a right to have pollution free environment¹⁰. However, Indian Environmental Law

⁶ Peter S. Menell(1991), The Limitation Of Legal Institution In Adressing Environmental Risks, at 93

⁷ John P.Brown,Toward an Economic Theory of Liability, 2 J. Legal Studies, at 323 (1973).

⁸StevenShavel , Liability For Harm Versus Regulation Of Safety, at 1(1983).

⁹ Anshuman Mozumdar*, Kartikey Mahajan and Krithika Ashok ENVIRONMENTAL TORTS: A STEP TOWARDSTHE LEGAL REVAMPING POLICY RELATED TO ENVIRONMENTAL PROTECTION, at 1(2007)

¹⁰ E.G. Rural Litigation Entitlement Kendra, Dheradun v. State of Uttar Pradesh, AIR SC 2187, M.C.Mehta vs.,

has seen considerable development and awareness in the last two decades, with the constitutional courts laying down the basic principles and laws on which the environmental justice system stands. The uncodified law of torts in India followed the English law in almost all aspects in its field. In India, common law was originally introduced by the Britishers and continues to apply here by virtue of Art. 372 (1)6 of the Indian Constitution. The English law was modified according to the peculiar conditions that prevailed in India.¹¹The remedies of modern environmental torts have their roots in these common law principles of nuisance, negligence, strict liability and trespass and other remedies for tort.

(A) Nuisance

Nuisance has been defined to be anything done to the hurt or annoyance of the lands, tenements or hereditaments of another and not amounting to trespass.¹²Nuisance may be public or private in nature. Hence acts interfering with the comfort, health or safety are covered under nuisance¹³. The interference may be due to smell¹⁴, noise¹⁵, fumes, gas, heat, smoke, inflammable substances like gunpowder¹⁶ vibrations etc. In *Ramlal v. Mustafabad Oil and Oil Ginning Factory*¹⁷, the High Court of Punjab and Haryana observed that once a noise is found to be above the prescribed threshold to attract the liability of public nuisance. In pollution related cases it is difficult for the plaintiff to establish the liability as the subject required more of technical evidences. Again, material harm attributable to the unreasonable conduct of the defendant is very difficult to prove especially in the pollution related cases.¹⁸

(B) Negligence

“Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affair.”¹⁹In the action of negligence the result is some kind of a loss, inconvenience or annoyance to another. The plaintiff must show:

- The defendant was under a duty to take reasonable care

Union of India, AIR SC 1037, (1998).

¹¹Dr. Madhuri Parikh, TORTIOUS LIABILITY FOR ENVIRONMENTAL HARM: A TALE OF JUDICIAL CRAFTSMANSHIP, at 77 (2013).

¹²Stephen, iii, 499.

¹³Winfield on Tort, 6thEdn, p.536

¹⁴Malton Board of health v. Malton Manure Co, (1879) 4 Ex D 302

¹⁵Lambton v. Mellish, (1894) 3 ch 163.

¹⁶Lister's case, (1856) 1 D&B 118.

¹⁷AIR 1968 P&H. 399

¹⁸TORTIOUS LIABILITY FOR ENVIRONMENTAL HARM IN INDIA-A REVIEW Volume 120 No. 5 2018, 463-475

¹⁹Blyth v. Birmingham Waterworks Co, (1856) 11 Ex 781,784.

- There was a breach of the duty of care.
- The consequential damage which must have caused by breach of duty and must be reasonably foreseeable as a consequence of the breach.

In *Naresh Dutt Tyagi v. State of Uttar Pradesh*²⁰, fumes and gases released from the pesticides leaked to a nearby property through ventilators that resulted in the death of four children and foetus in a pregnant woman's womb. It was held by the court that it was very explicitly a case of negligence.

The problem with cases of negligence is the difficulty in establishing connection between the negligent act of one and injury to other. It is also very difficult to prove if the effect of the injury remains latent for a long period.

(C) Trespass

“It is an unlawful interference with another's possession of property.” To constitute the wrong of trespass neither force, nor unlawful intentions nor damage is necessary. Every evasion of person's property, be it ever so minute, is a trespass.²¹ Thus, two primary component to establish a case of trespass are:

- i.) There should be intentional interference
- ii.) Such interference should be direct in nature

In the environment related issues of tort of trespass is very rarely invoked due to the fact that it is difficult to identify the source, high cost of litigation and unwillingness of the people to resort to such remedy. All these instances make it less popular amongst the people to invoke tort of trespass.

(D) Strict Liability

The rule of strict liability as enunciated in *Ryland vs. Fletcher* is another form of private law action in respect of environmental hazards. The rule provides that:

*“the person who, for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril and if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape”.*²²

The Supreme Court found it necessary to lay down some exception to the old rule of strict liability and evolved it as a new principle of Absolute Liability which is applied in majority of

²⁰1995 Supp (3) SCC 144

²¹ *Entick v. Carrington*, (1765) 19 St Tr 1066. *Laxmi Ram Pawar v. Sitabai Balu Dhotre* (2011)1 SCC 356.

²² *Rylands vs. Fletcher*, [1868] UKHL 1, (1868) LR 3 HL 330

cases in India. It is to be noted that despite the explicit and repeated endorsement of the rule of strict liability in environmental statutes in the case of industrial accidents, the Supreme Court continues to refer back to the principle of absolute liability illustrated in the Oleum gas leak case²³. For example, the Supreme Court in *Sterlite Industries v. Union of India*²⁴ referred to the Oleum gas leak case and applied this principle while issuing an order against the Sterlite Industries to pay a compensation of 100 Crores for damages caused.

III. POTENTIAL OF TORT IN CONTROLLING ENVIRONMENT POLLUTION

Tort law provides with the remedy for invasion of private rights in the form of compensation. The concern is to what extent tort law can be used in controlling pollution as it mainly deals with remedy for violation of private rights.

Environment pollution cases of tort in India majorly falls under four main categories –

(1) Nuisance, (2) Negligence, (3) Strict Liability and (4) Trespass.

According to Stephan Shavell “tort law should be assessed in terms of the contribution it can make to the control of environmental harms and other risks attached to it. The reason is that compensation can be achieved independently of tort law by other (and he implies, equally good and better) means²⁵. Tort law is two-sided, “looking both to harm and to the compensation of harm²⁶”. Because of its bilateral structure, the tort law suits the best in the environmental law context. However, it is responsibility-based mechanism for repairing. It’s not potential enough to control the risk or the harm altogether. A close study of the characteristics of tort law would reveal its actual potential in protecting the environment.

- (a) Tort law is applicable only after environmental damage has been caused.
- (b) It is more focused on cure, not the precaution
- (c) It is primarily concerned with reparation and not punishment
- (d) Tort law lays focus on negative outcomes affecting persons and property. The earth’s atmosphere does not fall under property as it is not subject to legal property regime. Therefore, the atmosphere cannot fall within the scope of tort law.
- (e) It is said that tort law focuses on harms not risks which is not completely true. For example, an important element of negligence calculus is the probability of the harm. The core-idea of foreseeability is also attached to the risk.

²³ M.C. Mehta v union of India, 1987 SCR (1) 819, AIR 1987 965

²⁴ Sterlite Industries (I) Ltd. Etc v. Union Of India And Ors, (2013) 4 SCC 575

²⁵ Stephen Shavell, Economic Analysis of Accidental Law 279 (1987)

²⁶ Peter Cane, The Anatomy of Tort Law 428, (Oxford: Hart Publishing 1997)

- (f) Tort liability is predominantly liability based on fault, where fault typically means negligence. The pre-condition of foreseeability of harm is pre-condition of liability under the principle of *Rylands v. Fletcher*²⁷. The polluter pays principle is usually assumed to regulate the principle strict liability.
- (g) Private law remedies in tort may require payment for environmental damage if it causes harm to the interests of certain individuals. There is no liability towards the environment, and no doctrine compensating the harm caused to it.
- (h) In cases where the victims are passive victims, it is difficult to prove any casual links between the emission of pollutants and increased incidence of disease. In many cases, it is simply impossible to distinguish the pollution effects and the general background of disease. In addition, many sources of pollution along with non-environmental factors can combine to create complex links to the extent to which it may not even be meaningful to ask what causes an ailment. It also creates difficulties for individual claimants, any deterrent effects of tort are lessened by the reduced likelihood of a successful claim.

In order to evaluate the potential of tort law in environmental matters as compensation and risk control mechanism, it is not only important to attend the rules and principles according to which tort liability is imposed, but also its judicial interpretation which gives it practical effect is of utmost importance. Therefore, a study of cases of environmental matters where tort law is applied is necessary to evaluate its potential.

IV. JUDICIAL INTERPRETATION IN EVOLVING TORTIOUS LIABILITY

The Indian Judiciary has played a remarkable role in implementing principles of tort law in environmental cases. The meaning and interpretation of tort law principles have been widened with the changing circumstances by the Supreme Court. The Supreme Court has evolved new principles of tort and given a new shape and direction to tortious liability in environment protection.

The *Bhopal Catastrophe*²⁸ has been proved eye-opening for the government institutions, environmentalist, social workers as well as the general public, bringing new awareness in the country. It forced the government and the judiciary to find out different means to prevent such tragedies in future. There was paucity of litigation in the field of torts due to many reasons that has been mentioned above. The proverbial delay, exorbitant court fee, complicated procedure

²⁷ *Rylands v. Fletcher*, (1868) LR 3 HL 330

²⁸ *Union Carbide Corporation v. Union of India*, (1989) SCC (2) 540

and recording evidence, lack of public awareness, the technical approach of the bench and the bar and absence of specialisation among lawyers are stated to be reasons for such conditions²⁹. It is also argued that the alleged paucity is not the reality, but a myth as thousands of cases are settled outside the court through negotiations³⁰.

It is not a disputed fact that Indian Courts do not award punitive damages in civil cases to deter the wrongful conduct³¹. But it doesn't mean that tort law has not been effective in environmental cases. The judicial surveillance and vigil is seen in the interpretation of principles of tort law in the age of science and technology.

The rule of strict liability was propounded in *Rylands v. Fletcher*. The rule is that a person who, in the course of non-natural use of his land, brings on his land something which is likely cause mischief if it escapes, and if it escapes, he is answerable to for all the damages. However, there are some exceptions to this rule such as, natural use of thing, act of god, act of third party, plaintiff's own fault or consent, statutory authority³².

In India, the concept of absolute liability was laid down in *M.C. Mehta v. Union of India*³³ where the court entertained a public interest litigation against the damage caused by an industry dealing with hazardous substance like oleum gas. The court observed that, if industrial accident took place on account of dangerous or hazardous activity, the enterprise involved in such activity is strictly and absolutely liable to all those who are affected and such liability is not subject to any of the exceptions which operate vis-a-vis tortious principle of strict liability under the principle laid down in the Ryland's case³⁴.

Furthermore, Chief Justice Bhagwati said: "The large and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident while carrying on the hazardous business³⁵."

In *Consumer Education & Research Centre v. Union of India*³⁶, the court formulated a different category of liability in respect of hazardous industries, like those producing asbestos. The court held that the compensation payable for occupational diseases during employment extends to the workers who have visible symptoms during the course of their employment and also the

²⁹B.M. Gandhi, Law of Torts 65 (1987)

³⁰See, J. B. Dadachandji, J.B.'s affidavit before US District Court in the Bhopal litigation. Indian Law Institute, Inconvenient Forum and Convenient Catastrophe: the Bhopal Case (1986) pp 81-82

³¹ Cummings, Stephan L., International mass tort litigation: *forum non conveniens* and the adequate affirmative forum in light of the Bhopal disaster, 16 Georgia Journal of International and comparative Law 109 at 136-142

³²Rylands v. Fletcher, (1868) 19 LT 220

³³M.C. Mehta v. Union of India, (1987) 1 SCC 395

³⁴Rylands v. Fletcher, (1868) 19 LT 220

³⁵M.C. Mehta v. Union of India, (1987) 1 SCC 395

³⁶Consumer Education & Research Centre v. Union of India

workers who develop symptoms after retirement.

In *Indian Council for Enviro-Legal Action v. Union of India*³⁷, the Court supported the Mehta dictum and pointed out rationale for fixing the absolute liability on hazardous industry and also applied the polluter-pays principle. The Court directed the Government to take all necessary steps and to levy the costs in case of failure to carry out remedial actions by the respondent.

In cases of personal injury³⁸, and unlawful confinement³⁹, the court has refused to limit the victim to the usual civil process. Petitioner can directly approach the Supreme Court under Article 32 of the Constitution. The Court has not only dealt with violation human rights, but has given equal importance to environmental harm and has imposed cost on the polluters for repairing the damage⁴⁰.

In *M.C. Mehta v. Kamal Nath*⁴¹, the Supreme Court held that “by its very nature pollution is a civil wrong. It is a tort committed against the community as a whole and not against a single person.” Therefore, a person is liable to compensate for damages arising out of his actions that is harmful to the environment. He is liable to both, the environment and to the persons who get affected. He can also be held to pay exemplary damages so that it may act as a deterrent for others not to cause pollution in any manner.

“Preservation of the environment and to keep the ecological balance unaffected is a task of not only governments but every citizen must undertake the responsibility to do the same. It is a social obligation and let us remind every Indian citizen that it is his fundamental duty as enshrined in Article 51 A(g) of the Constitution. This judicial attitude towards promoting a clean environment gained momentum throughout the country over the past few years.”⁴²

In the *Shriram Food and Fertilizer Case*⁴³, the court expressed serious concern for developing the rules and regulation to control corporations employing hazardous technology and producing toxic or dangerous substances.

In *River Ganga Pollution Case*⁴⁴, the Supreme Court declared that the nuisance caused by the pollution of the river Ganga is a public nuisance, which is widespread in range and indiscriminate in its effect.

³⁷Indian Council for Enviro-Legal Action v. Union of India

³⁸M.C. Mehta v. Union of India, (1987) 1 SCC 395

³⁹Rudul Shah v. State of Bihar, (1983) 4 SCC 141

⁴⁰ Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647

⁴¹M.C. Mehta v. Kamal Nath, (2002) 3 SCC 161

⁴²R.L. & E. Kendra v. State of Uttar Pradesh, (1985) 2 SCC 431

⁴³M.C. Mehta v. Union of India, (1987) AIR 965

⁴⁴M.C. Mehta v. Union of India, (1988) AIR 1115

Chief Justice Bhagwanti has observed that “in order to satisfy the need of the changing society and keep abreast with the developments taking place in the country, the law need to grow and widen its ambit”⁴⁵. Public interest litigation has been an effective tool in evolving the new doctrines of tortious liability. The judgments in *Ram Baj Singh v. Babulal*⁴⁶, *Ram Lal v. Mustafabad Oil and Cotton Ginning Factory*⁴⁷, *Krishna Gopal v. State of M.P.*⁴⁸, *Dhannalal v. ChittarsinghMehtapsingh*⁴⁹, *V. Lakshmipathy v. State of Karnataka*⁵⁰, *Ved Kaur Chandel v. State of H.P.*⁵¹, *Bijayananda Patra v. District Magistrate, Cuttack*⁵², clearly establishes that the conduct of a person (on his property) becomes a private nuisance when the consequences of his acts no longer remained confined to his

V. APPLICABILITY OF TORTIOUS LIABILITY WITH EX- ANTE SAFETY REGULATION

Tort law basically deals with remedy for violation of private rights and compensating a person for violation of his rights. A question arises about potential of tort law in controlling and curbing pollution as it focuses only on remedy for violation of a right. As per Stephan Shavell “tort law should be assessed in terms of the contribution it can make to the control of environmental and other risks attached to it. The reason is that compensation can be achieved independently of tort law by other means.”⁵³ Therefore, ex ante safety regulation is taken into account and highly preferred for tort law remedies because the chief tool of environmental policy⁵⁴. Reasons for applicability of tortious liability with ex- ante safety regulation in law of environmental torts are as follows:

- It is concerned primarily with reparation of the damage caused and not punishment to the wrongdoer and comes onto the scene when something has gone wrong. Hence in environment law violation cases the tort law will play key role.
- With the ex-ante safety regulation people will possess information about risky activities and precautionary measures which can be taken to cure, the desirability of allowing the parties to decide how to avoid or minimise risk will be enhanced, and thus, so will be the appeal to the tortious liability approach over the regulatory.

⁴⁵M.C. Mehta v. Union of India, (1987) 1 SCC 395

⁴⁶Ram Baj Singh v. Babulal, (1981) SCC OnLine All 556

⁴⁷Ram Lal v. Mustafabad Oil and Cotton Ginning Factory, 1968 SCC OnLine P&H 347

⁴⁸Krishna Gopal v. State of M.P., 1985 SCC OnLine MP 188

⁴⁹Dhannalal v. ChittarsinghMehtapsingh, 1957 SCC OnLine MP 190

⁵⁰V. Lakshmipathy v. State of Karnataka, 1991 SCC OnLine Kar 189

⁵¹Ved Kaur Chandel v. State of H.P., 1999 SCC OnLine HP 5

⁵²Bijayananda Patra v. District Magistrate, Cuttack, 1999 SCC OnLine Ori 65

⁵³Stephan Shavell, *Economic Analysis Of Accidental Law* 279 (Harvard University Press, 1987); See also, Richard B. Steward, *Regulatory Compliance Preclusion of Tort Liability: Limiting the Dual Track System*, GEO L.J. 88 (2000) 2183-83.

⁵⁴ Remedies For The Enforcement Of Environmental Rights, sodhganga, at 121.

- Tort liability is predominantly fault based liability and in tort fault typically means negligence. The pre-condition of foresee ability of harm is pre-condition of liability under the principle of *Rylands v.Fletcher*⁵⁵. The polluter pays principle is usually assumed to regulate the principle of strict liability.⁵⁶
- Private law remedies in tort require compensation to individuals for environmental damage if that environmental harm constitutes harm to certain individual interests. There is absence of any liability towards the environment, and absence of any principle compensating the environment for the harm caused to it. Hence through the ex-ante principle it would cure the incident at the first place as after damage no compensation is towards healing of the damage that is caused to the environment.

Hence as tort law is two sided, “looking both to harm and to the compensation of harm.⁵⁷” Because of its bilateral structure the tort law is best suited in the environmental law context. It is responsibility-based mechanism for repairing harm. It’s potential as a risk control is restricted to focus on harm.⁵⁸

VI. SUGGESTIONS

1. The existing Laws relating to Environment Protect are not adequate and there is a need for more stringent norms regarding the same. Environment laws India are not comprehensive to address incidents of pollution.⁵⁹The Maximum compensation in case of injury or death is Rs. 25000/- and Rs. 6000/- in case of damage to private property.⁶⁰The purpose of having penal actions for the first offence is not imprisonment is to ensure it has a deterrent effect on the perpetrators.⁶¹Hence strict interpretation of law is required.
2. These are the limitations in using the ex-post tortious liability for environmental harm. Therefore, it is necessary to implement the ex-ante safety regulation policies more strictly. It is the responsibility of the Government and the Courts to incorporate and effectively implement the ex-ante safety regulation policies.

⁵⁵*Raylands v. Fletcher*, LR3HC 330 (1968).

⁵⁶ Jamie Cassels, *Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?* AM. J. of COMP. L., 37, (1989).

⁵⁷ PETER CANE, *THE ANATOMY OF TORT LAW* 427-467 (Oxford: Hart Publishing 1997).

⁵⁸ *Nirma University Law Journal: Volume-2, Issue-2, January-2013* pg.78

⁵⁹ Govind Narayan Sinha, *A Comparative Study Of The Environmental Laws Of India And The Uk With Special Reference To Their Enforcement*, School of Law The University of Birmingham August 2003

⁶⁰ The Public Liability Insurance Act, 1991

⁶¹ *N.R. Nair and Ors. v Union of India*, AIR 2000 Ker 340

Combining both tortious liability and ex- ante safety regulation policies will work as an effective tool for controlling and curbing environmental harm.

3. Supreme Court may issue guidelines as per the powers vested in to make orders to implement the ex-ante safety regulation policies which have the effect of law by virtue of Article 141 of the Constitution of India. It mandates all authorities to act in aid of the orders of Supreme Court.⁶²

VII. CONCLUSION

Environmental protection is a major concern for India due to exhaustibility of natural resources and many other factors. Tort law has evolved as an effective tool in matters relating to environmental harm over time. The Supreme Court has never failed to fulfil its obligations with respect to environmental protection and taking necessary actions against the polluters. The High Courts have also shown dynamic and innovate approach in interpreting and analysing the principles of tortious liability to protect the environment. However, the principle of tortious liability only deals with the matters in which the environmental damage has already happened, but does not lay down any precautionary measures in this respect. Better would be no harm, than getting compensation for a harm as harm to nature can never be determined in monetary terms. Moreover, the compensation provided under tort law seems inadequate many a times. The principles of tortious liability need to be widened further in order to protect the environment from any harm. For that purpose, an amalgamation of principles of tortious liability and ex-ante provisions would be preferable in the current scenario to prevent the individuals, corporations, industries etc. to prevent any harm to the environment in the first place.

⁶² Vineet Narain and Ors. v Union of India, 1 SCC 226

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