

## **The Tragedy of Baghjan – Willful Disregard of Environmental Wellbeing: An Analysis of the Legal Implications Stemming from the Disaster**

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### **Abstract**

*The conflict between development and environment is not a new one. Most of the time, in the name of development, it is nature who needs to sacrifice itself. The recent Baghjan blowout in Assam which subsequently led to a huge fire again proves the hypothesis that development outweighs environment. Drilling in search of natural resources in a biologically diverse area brings detrimental outcomes especially to the nearby ecology and human lives. Due to the fire in the oil field, more than 6000 people had to leave their home and seek shelter elsewhere in search of a safety, away from their disrupted roots, and the impact on the Dibrusaiakhowa National Park which is adjacent to the Baghjan oilfield is unimaginable. India has seen many industrial disasters including the tragic Bhopal Gas leak but the question here is - did the stakeholders learn anything from the events? It is always the common people and the environment that has to suffer. The Baghjan fire exemplifies how law makers failed to cope up with the country's international obligations and municipal laws as well as the spirit of the Indian Constitution to protect and improve the environment.*

**Keywords:** *absolute liability, negligence, industrial disaster, environmental obligations, parens patriae.*

### **I. Introduction**

Amid the twin crises of COVID-19 pandemic and ongoing flood situation in Assam, on May 27, 2020 oil well No. 5 of Baghjan oil field, operated by Oil India Limited (hereinafter referred to as OIL), started sprawling natural gas in an uncontrollable manner. It happened as a private company authorized by OIL

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was performing a major maintenance process known as ‘work over’ of the well. They tried to control the blowout immediately after the incident happened but the effort was too little – too late as almost two weeks later, the blowout caught fire. After the incident, a blame-game started as OIL tried to impose liability on the private company, a company that had been authorized by OIL itself for the work over process.

It is pertinent here to mention that the Baghjan area is in the periphery of the famous Dibru-Saikhowa National Park which is known for its wildlife and vibrant forest cover. The Dibru-Saikhowa National Park, which was designated as Biosphere Reserve in 1997, is surrounded by Brahmaputra and Lohit rivers in the north and Dibru river in the south. It is the largest salix-swamp forest in north-east India and home to many aquatic, terrestrial and aerial organisms including greater adjutant, grey heron, yellow bittern, Asian open-bill, white-winged wood duck, hornbill etc. to name a few. Also, the Maguri-MotapungBeel which is a thriving habitat to numerous species also lies in the vicinity of the blowout area. Therefore, there is no need to emphasize on the point that the surrounding biodiversity is heavily harmed by the blowout and subsequent fire. Also, apart from Environmental damage, more than 6000 people had to leave their homes as OIL for the authorities evacuated the surrounding villages of Baghjan area due to the safety concerns involved.

After the blowout which eventually led into conflagration, on June 24<sup>th</sup>, in response to various petitions filed in the National Green Tribunal (NGT), a committee was formed by the NGT. It was headed by retired Guwahati High Court Judge Brojendra Prasad Katakey<sup>1</sup> and was tasked to look into the matter. The preliminary report submitted by said committee one month after its formation suggested that there was ‘mismatch between planning and execution’ of OIL which led to the blowout and the panel was unanimous in its view that both Dibru-Saikhowa National Park and Maguri-Motapung wetland was extensively damaged. It also pointed out that the fire caused “*irreparable*

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<sup>1</sup>BAHJAN BLOWOUT: PANEL FAULTS OIL ON SAFETY, THE HINDU  
,<https://www.thehindu.com/news/national/other-states/baghjan-blowout-panel-faults-oil-on-safety/article32216308.ece>( last visited on 29<sup>th</sup>July 2020)

*physical harm and damage to privately-owned property of the survivors in the affected villages”.*<sup>2</sup>

In light of the aforementioned facts, the paper looks into the rights and liabilities of the stakeholders involved. It takes into consideration the relevant international environmental law norms and analyses their treatment. Furthermore, it delineates how the Constitutional provisions pertaining to the safety of the environment have been curtailed, and discusses the interrelationship between humans and their environment on the basis of judicial pronouncements. It also argues that absolute liability should be imposed on OIL which amounts to ‘state’ under the definition provided in Article 12 of the Indian Constitution, and finally, tries to peruse the applicability of the *parens patriae* doctrine, as evolved in the Union Carbide Case, in the present issue.

## II. Overview of the Incident

Apart from the picturesque views and greenery, the North Eastern state of Assam has a rich history and cultural heritage. It has a well-established connection with the journey of oil wells in India too. Digboi, which is situated almost 500 kilometres away from the present day capital of Assam is known to be the first oil well of India.<sup>3</sup> Eight years after Edwin. L. Drake drilled the world’s first oil well in 1859 in Pennsylvania, oil was discovered in the area of Digboi in the year 1867 while building railway tracks. It is known as the oil city of Assam precisely because the first oil well in Asia was found at Digboi. After Digboi, at many places in Tinsukia district of Assam, crude oil was found. This was said to be the beginning of the *golden* era of Assam and oil companies started working on utilizing the resources from the newly discovered oil fields. One of the major companies that has worked in Assam exploring the reserves of petroleum in the region is the Oil India Limited(OIL); formerly a Joint venture between Government of India and Burmah Oil Company Limited, UK and now a fully owned enterprise of the Government of India.

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<sup>2</sup>Ibid.

<sup>3</sup>CHRONOLOGY OF E&P EVENTS IN INDIA, NATIONAL DATA REPOSITORY MINISTRY OF PETROLEUM & NATURAL GAS, GOVERNMENT OF INDIA

[https://www.ndrdgh.gov.in/NDR/?page\\_id=609](https://www.ndrdgh.gov.in/NDR/?page_id=609)

In 1991, OIL identified another oil field in Tinsukia district based on seismic data in the Baghjan area. Since then they have been operating in Baghjan and in the year 2003, the first oil well was drilled. The presence of commercial hydrocarbons in the area led to more and more exploration and till date, 19 oil wells have been drilled in Baghjan.<sup>4</sup> The workover operation however was not carried out by the Oil India Limited. They had hired a Gujarat based private company 'John Energy Limited' for the purpose.<sup>5</sup> At around 10.30 A.M on May 27, 2020 while the working officials were replacing the tubing spool, a major flow of natural gas and condensate occurred at the oil well which was uncontrollable, and ultimately led to a blowout. Following this major blowout, people from neighbouring villages were immediately evacuated and sent to a safer place. On June 09, thirteen days after this blowout, the uncontrolled spewing natural gas caught fire. This fire was not unexpected as natural gas was leaking since almost two weeks in that area. Though the reason of the fire is not yet known, yet *prima facie* evidence hints towards gross negligence on the part of the said company which was assigned the task.

Two precious lives were lost as the blowout led to the deaths of two firefighters who were engaged in trying to get the incident under control. The blowout, apart from jeopardizing human lives, also became a threat to the environment. The Baghjan area is well known for its vibrant biodiversity. Well No. 5, where the said incident happened, is adjacent to the Maguri-Motapung wetland which is a precious natural capital of that region. It is home to many species of flora and fauna, including the critically endangered Gangetic river dolphin as well as a host of migratory birds that seasonally make this wetland their habitat. Due to

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<sup>4</sup>PRE- FEASIBILITY REPORT FOR DRILLING OF ERD WELLS IN BAGHJAN AREA IN TINSUKIA DISTRICT IN THE STATE OF ASSAM  
<http://environmentclearance.nic.in/writereaddata/EC/2802201995FU0QPTPrefeasibilityReport.pdf>).

<sup>5</sup>SUSHANT TALUKDAR, AGHAN GAS WELL BLOWOUT: NGT PROBE FINDINGS ON CAUSE OF GAS AND OIL LEAK WILL BE CRITICAL FOR OIL INDIA LIMITED TO FOLLOW UP ON ITS SHOW CAUSE NOTICE TO JOHN ENERGY LIMITED FOR THE BLOWOUT NEZINE 2  
<https://www.nezine.com/info/QWE4UXh0YzJ0L0hKUKlOTWdYOS9rUT09/baghjan-gas-well-blowout:-ngt-probe-findings-on-“cause-of-gas-and-oil-leak”-will-be-critical-for-oil-india-limited-to-follow-up-on-its-show-cause-notice-to-john-energy-limited-for-the-blowout.html> ( last visited on 26<sup>th</sup> June 2020)

the blowout and eventual fire, the wetland has suffered extensively.<sup>6</sup> The wetland is also part of the Dibru-Saikhowa National Park making it an eco-sensitive zone.

More than two months have passed since the blowout, and the disaster still evades control of the concerned authorities with the fire continuing to burn unabated. Two things must be noted. Firstly, the blowout was the result of gross negligence on part of the concerned authorities due to them not following the requisite safety norms. Secondly, the effort to put out the fire reeks of what can only be described as too little, too late, since large scale damage has already been caused to both the entire ecosystem as well as the people of the region, with their lives having been disrupted completely. The question arises here is - who will take responsibility for the blowout and how will it undo the deleterious impact that the entire tragedy has caused on both the environment and human lives?

### **III. Relevant International Environmental Law Framework and Its Violation**

The relatively recent structuration of international environmental law does not in any way confer a modern touch to humanity's concern for the environment; if anything, this organization only paved the way for a formal legal arrangement in dealing with issues pertaining to the environment. The current regime sees its humble beginnings in the Stockholm Conference of 1972, for although a number of international instruments did exist prior to this, they were by and large limited by constraints arising from socio-political limitations stemming from the lack of a collective framework.<sup>7</sup> Despite the rapid developments that have occurred in the field, however, unsanctioned violations of the existing norms and obligations continue to be violated, and the same also stands true for the Baghjan tragedy.

A brief look at the existing framework of international environmental law mechanisms relevant to the aforementioned tragedy sheds light that a number of

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<sup>6</sup>ASSAM GAS FIRE TO HAE LONG-TERM IMPACT ON BIODIVERSITY HOTSPOT, NATIONAL HERALD 12 Jun, 2020 <https://www.nationalheraldindia.com/national/assam-gas-fire-to-have-long-term-impact-on-biodiversity-hotspot>( last visited on 12<sup>th</sup> June2020)

<sup>7</sup>EDITH BROWN WEISS, THE EVOLUTION OF INTERNATIONAL ENIRONMENTAL LAW 54 ( JAPANESE YEARBOOK OF INTERNATIONAL LAW 01, 03 2011).

them have been violated. The Baghjan area, as already elucidated, is a vibrant hotspot of biodiversity owing to the large variety of flora and fauna. A host of perennial rivers, an adjacent national park as well as a protected wetland which was declared an Important Bird and Biodiversity Area (IBA) in 1996 contribute to the unique biological diversity and environmental importance of the area. The ensuing implications of oil mining and the subsequent fire and dispensation through leakage of hazardous oil into the surrounding area has adversely affected the entire ecology of the region, and placed a burden on the biodiversity by hampering their survival in a most severe manner. This is clearly a contravention of the United Nations Convention on Biological Diversity (hereinafter referred to as CBD), an instrument that India had ratified in the year 1994.<sup>8</sup> Article 8 of the CBD places an overbearing responsibility to identify and demarcate areas of high biological diversity and environmental significance as protected areas, and subsequently, ensure that these protected areas are shielded and safeguarded from activities that may prove to be unpropitious towards the conservation of such biodiversity. Para (d) of the aforementioned article clearly delineates that states have a responsibility to “*promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings*”<sup>9</sup> These considerations have been set aside by both the State as well as the concerned authorities engaged in the oil mining operations.

Furthermore, the complete destruction of the lifelines in the Maguri-MotapungBeel, a thriving ecosystem of wetland ecology, is a violation of the Ramsar Convention on Wetlands, an instrument that India became a party to in the year 1982.<sup>10</sup> Although the Maguri-MotapungBeel does not fall within the list of Ramsar sites in India, Article 4(1) of the Convention states “*Each Contracting Party shall promote the conservation of wetlands and waterfowl by establishing nature reserves on wetlands, whether they are included in the List or not, and provide adequately for their wardening*” thereby placing an equal responsibility on protecting both the wetlands that fall within the list of Ramsarsites as well as those which do not. As such, considering that the

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<sup>8</sup><https://www.cbd.int/countries/?country=in>.

<sup>9</sup> Convention on Biological Diversity, Article 8.

<sup>10</sup><https://www.ramsar.org/wetland/india>.

wetland contains an estimated 36 species of mammals, 500 species of birds, 105 species of butterflies, and 108 species of fish as well as the presence of the critically endangered Gangetic River Dolphin (*Platanistagangeticagangetica*)<sup>11</sup>, it is evident that the ecological importance of these wetlands cannot be overstated. Despite these factors, however, the resultant unabated leakage and contamination of the wetlands with oil and other allied chemicals of hazardous nature during this entire tragedy have caused unfathomable destruction to the delicate ecosystem.

The Maguri-Motapung Beel is also home to a large number of migratory birds which use this region as their seasonal retreat, with one report placing the number of species that inhabit this wetland as high as 330.<sup>12</sup> Many of these species are endangered in different levels and require stringent protection from further exploitation of any kind. The Convention on the Conservation of Migratory Species of Wild Animals, also known as the Bonn Convention, an instrument that India is a party to, highlights the importance of protecting migratory species. Article 2(g) of the same defines 'habitat' as "*any area in the range of a migratory species which contains suitable living conditions for that species*"<sup>13</sup> thereby making it explicitly apparent that the oil spill and subsequent pollution of the wetland is nothing less than destruction of the sacrosanct habitat that these migratory birds used to flock to.

The concept of Environmental Impact Assessment, as elucidated under Article 17 of the Rio Declaration on Environment and Development, which proclaims "*Environmental impact assessment, as a national instrument, shall be undertaken for 44 proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority*"<sup>14</sup> has become an important instrument so as to ensure that the

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<sup>11</sup>Laxmi D Bhatta et al. ECOSYSTEM SERVICE CHANGES AND LIVELIHOOD IMPACTS IN THE MAGUNI-MOTAPUNG WETLANDS OF ASSAM, INDIA, 5(2) LAND 15, 27 2016).

<sup>12</sup>GAS WELL BLOWOUT AS ASSAM'S BAGHJAN THREATENS NEARBY BIODIVERSITY ZONE ANI NEW, <https://www.aninews.in/news/national/general-news/gas-well-blowout-at-assams-baghjan-threatens-nearby-biodiversity-zones20200614110834/>. (last visited on 14<sup>th</sup> June, 2020)

<sup>13</sup>Convention on the Conservation of Migratory Species, Article 2(g).

<sup>14</sup>Rio Declaration on Environment and Development, Article 17.

impact on the environment is minimal and does not affect it in any profound manner that is detrimental to the overall goals of the Rio Declaration. It is worth noting that the International Court of Justice has also recognised the importance of EIA norms in separate judgments, and in the *Pulp Mills Case*, the Hon'ble Court noted that this principle had become a binding norm of public international law.<sup>15</sup> Although this judgment was proclaimed in relation to the norms being utilized in a transboundary setting, in pursuance of the considerations made in the Espoo Declaration, it is worth highlighting that this proclamation by the Hon'ble Court speaks volumes about the importance of the principle with regard to public international law. National legislative authorities have also highlighted the importance of Environment Impact Assessment by drafting the Environmental Impact Assessment Notification of 1994, with Clause 9 of Schedule I of the same containing '*Exploration for oil and gas and their production, transportation and storage*,'<sup>16</sup> thereby explicitly mandating the requirement of EIA clearance for purposes related to the exploration of oil. The fact that EIA norms were ignored before carrying out oil exploration in the region,<sup>17</sup> a regulation which was a must owing to the eco-sensitive nature of the area in question, promptly points towards serious transgressions with regard to the Rio Declaration's guideline mandating the importance of carrying out EIA plans. At this point it is also pertinent to note that recently, a few months prior to this disaster in January, 2020, the Environment Ministry had waived off the necessity to obtain prior environmental clearances for oil and natural gas exploration on both offshore and on shore sites, thereby putting at great risk to the environment. This again raises questions on the viability of giving preference to economic development but flouting or ignoring the existing environmental law obligations.

Attention must also be drawn to Principle 16 of the Rio Declaration is another relevant provision. It highlights what has basically come to be known as the

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<sup>15</sup>Pulp Mills on the River Uruguay (Arg. v. Uru.), Judgment, 2010 I.C.J. Rep. 14, ¶ 204.

<sup>16</sup>Environmental Impact Assessment Notification of 1994.

<sup>17</sup>JAYANTA KALITA, OIL INDIA SKIPPED PUBLIC HEARINGS BEFORE EXPANDING DRILLING IN ASSAM'S BAGHJAN THE WIRE <https://thewire.in/environment/exclusive-oil-india-skipped-public-hearings-before-expanding-drilling-in-assams-baghjan> (last visited on 21<sup>st</sup> June 2020)

'polluter pays' principle wherein the enterprise are responsible for causing harm to the environment must bear the cost of pollution. This doctrine has been internalised by the national courts of the nation, and has been referred to in *M.C. Mehta (Badkhal and Surajkund Lakes Matter) v. Union of India*<sup>18</sup> as well as *Bhavani River v. Shakti Sugars Ltd.*<sup>19</sup> with the Court placing a responsibility on the polluter to not only compensate the victims for their loss, but also to restore the original environmental status prior to the pollution.

Finally, it is pertinent to highlight the lack of instruments dealing with onshore exploration of petroleum. There exists a lacuna within the ambit of international environmental law when it comes to dealing with onshore industrial disasters pertaining to the domain of oil and natural gas. The existing infrastructure does not contain any legal instruments that pertain in their entirety to this niche domain. The international legal order is principally concerned with maritime pollution resulting from offshore pollution, stemming either from offshore mining of petroleum related products or oil spills during the transport of petroleum in the high seas through leakage and discharge. Instruments such as the *International Convention on Civil Liability for Oil Pollution Damage, 1969* and the *International Convention for the Prevention of Pollution from Ships (MARPOL Convention), 1973* deal exclusively with civil liability stemming from pollution of offshore maritime bodies. International incidents such as the Norco Shell Plant Explosion in USA in the year 1988, the PDVSA Amuay Refinery Explosion in Venezuela in the year 2017, as well as local tragedies such as the Dikom oil field fire of 2005 in Assam, located a mere 30 kilometres away from the currently ongoing fire at Baghjan, and each of these incidents mandate the necessity of increasing international cooperation and legislation in terms of onshore industrial disasters pertaining to the domain of oil and gas exploration so as to ensure a greater degree of international compliance and cooperation on the issue in a manner similar to what has been envisaged for offshore oil disasters.

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<sup>18</sup>M.C Mehta v. Union of India &Ors 1996 AIR 1977.

<sup>19</sup>Bhavani River v. Shakti Sugars Ltd 1998 AIR 2059.

## IV. Corpus of Municipal Laws Relevant to Present Issue

### IV.I Constitutional Framework

The rights enshrined in the Indian Constitution can only be ensured when 'life' is sustained in the first place. Without an environment, life cannot sustain, and hence, the importance of a healthy interrelation of human and environment is something that simply cannot be overstated. A healthy and productive life can only exist if there is a harmony between life and nature.

Protection and nourishment of the environment is a mandate given by the Constitution of India. It is a fundamental human right to live in an unpolluted environment. In light of the Baghjan fire it can be argued that the whole incident violated one of the most important fundamental rights of a person residing in India. Article 21 of Indian Constitution ensures that no person shall be deprived of his life and personal liberty. This is one of the most dynamic articles in the Indian Constitution and it has evolved in many ways, mostly through judicial pronouncements. The wording '*Right to Life*' includes right to food, shelter, health, environment etc. In light of the tragedy at Baghjan, it has to be argued that the fundamental right of life was violated of the people residing in neighbouring areas. In the *Francis Caroline case*, Justice Bhagawati remarked - "*right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something more than just physical survival*"<sup>20</sup>. This line is more than enough to emphasise on the need for a clean environment to sustain life. Furthermore, in *Subhas Kumar v. State of Bihar*<sup>21</sup> Hon'ble Apex Court opined that for full enjoyment of life, the right to enjoyment of pollution free water and air is necessary. In the present issue of the blowout in Baghjan, due to the negligence of OIL the nearby area got polluted due to spewing of natural gas in its raw form, this pollution also extending to the nearby water bodies. It is pertinent here to mention that many people of the area used the Maguri-Motapung wetland to catch fish and procure water for household works. By polluting this, the management of well No.5 of Baghjan deprived its neighbouring population from enjoyment of their fundamental right to life.

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<sup>20</sup>Francis Caroline Mallin v. Delhi Administration AIR 1981 SC 746.

<sup>21</sup>Subhash Kumar v. State of Bihar &Ors. 1991 AIR 420.

Alongside Article 21, some other articles relevant to the present issue may also be highlighted. Under Part IV, Article 48A, which states “*The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country*”<sup>22</sup> places a direct responsibility on the State to protect the environment. Though not enforceable in a Court of law, the Directive Principles enshrined under Part IV direct the State to ‘endeavour’ to safeguard the wildlife and forests of India. In the case of *Kinkri Devi*, Justice P.D Desai observed

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“*There is both a constitutional pointer to the state and a constitutional duty of the citizens not only to protect but also to improve the environment and to preserve and safeguard the forest, the flora and fauna, the rivers and the lakes and all other water resources of the country. The neglect or failure to abide by the pointer or to perform the duty is nothing short of betrayal of the fundamental law which the state and indeed the every Indian is bound to uphold and maintain*”<sup>23</sup>

The ecological significance of the region has already been highlighted previously, and it can be safely construed that in foregoing the necessary safety regulations in setting up oil mining operations, a negligence which led to the blowout and subsequent damage to the biodiversity of the region, the State has failed to adhere to the responsibilities placed on it by Article 48A.

Another constitutional provision that can be read along with Article 48A is 51A(g). Article 51A which imposes some fundamental duties to its citizens, ask its citizens to protect and improve the natural environment which includes forests, lakes, rivers etc. The word ‘protect’ and ‘improve’ clearly states the intention of the lawmakers that the surrounding environment has not only to be protected but we need to try to improve the condition of it. Reliance may also be placed on the *T.N Damodar Rao* case, wherein court pointed out that in view of Articles 48-A and 51-A(g), it is clear that protection of the environment is not only the duty of every citizen but it is also the “obligation” of the State and all other State organs including courts.<sup>24</sup> But sadly, the Baghjan tragedy forces us to

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<sup>22</sup>CONSTITUTION OF INDIA, Article 48A.

<sup>23</sup>*Kinkari Devi v. State of Himachal Pradesh &Ors.* AIR 1988 HP 4.

<sup>24</sup>*T.N Damodar Rao v. Special Officer Municipal Corporation, Hyderabad* AIR 1987 Andhra Pra. 171

think that the state has no duty towards saving the environment and it has only to do with 'development' at the cost of environment and human lives.

#### IV.II Statutory Framework

Apart from the Constitutional provisions there are various statutory provisions which are relevant in this issue. Keeping the spirit of Stockholm Conference of 1972, but only after the Bhopal Gas tragedy the Government decided to enact Environmental Protection Act of 1986 under Article 253 of Indian Constitution. Section 3 of Environment Protection Act 1986 empowers the central government to take steps that can protect and improve the environment. Sub section 2 (v) and (vi) in particular. These provisions clearly states that the Central government can restrict areas where any kind of industrial work won't be carried out to protect the environment. Also if it is necessary to carry out work, it mandates to take adequate safety measures. It also asks the central government to lay down procedure and safeguards for the prevention of accidents which will be detrimental to the environment. The Ministry of Wildlife and Environment's *Guidelines for Taking Non-Forestry Activities in Wildlife Habitats*, under 3.5.1 specifies that activities within 10 kilometres from the boundaries of National Parks and Wildlife Sanctuaries i.e. the eco-sensitive zones will require to obtain recommendations of the Standing Committee of the National Board for Wildlife (NBWL). The NBWL is a statutory body created according to the provisions of Section 5A of the Wildlife Protection Act, 1972. Despite its statutory validity however, often the NBWL is placed in *fait accompli* situations wherein other relevant stakeholders pressurize the authorization of projects irrespective of the environmental viability of the same, and similar allegations have also been raised with regard to the current Baghjan oil field.<sup>25</sup>

The Water (Prevention and Control of Pollution) Act, 1974 and the Section 21 of the Air (Prevention of Control of Pollution) Act, 1981 both mandate the necessity of environmental clearances from the Pollution Control Boards.

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<sup>25</sup>ANUPAM CHAKRAVARTY, LEAKING OIL INDIA WELL THAT CAUGHT FIRE YESTERDAY SHOULD HAVE BEEN FLAGG DOWN TO EARTH  
<https://www.downtoearth.org.in/news/environment/leaking-oil-india-gas-well-near-assam-s-dibru-saikhowa-national-park-catches-fire-71662> (last visited on 9<sup>th</sup> June 2020)

However, the same were not taken prior to commencing operations, and the Pollution Control Board of the state of Assam has after investigation directed OIL to close its existing operations since they have been going on without the requisite clearances.<sup>26</sup>

Thus, these provisions clearly states that the Central government can restrict areas where any kind of industrial work won't be carried out to protect the environment. Also if it is necessary to carry out work, it mandates to take adequate safety measures. It also asks the central government to lay down procedure and safeguards for the prevention of accidents which will be detrimental to the environment. Looking at the rich bio-diversity of the region, the government could disallow OIL from drilling oil from that area. it is now evident that no such safety measures were taken beforehand. They not only permitted drilling, but also didn't take any preventive measures to avert accidents. In Assam, it was not the first time that a huge blowout in an oil well happened which subsequently led to huge fire. In 2005, in the abandoned Dikom oil well of Dibrugarh District was burning and it took around three months to finally control the blaze.<sup>27</sup> This shows the remissness of the involved stakeholders in adhering to the environmental laws.

The Public Liability Insurance Act, 1991 was setup in order to ensure that victims of industrial disasters receive immediate relief against their losses. Section 2(a) of the same defines 'accident' as "*an accident involving a fortuitous or sudden or unintended occurrence while handling any hazardous substance resulting in continuous or intermittent or repeated exposure to death of, or injury to, any person or damage to any property but does not include an*

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<sup>26</sup>RATNADIP CHOUDHURY, ASSAM POLLUTION PANEL WANTS BAGHJAN OIL FIELDS CLOSED, SAYS NO CLEARANCE NDTV <https://www.ndtv.com/india-news/assam-pollution-panel-wants-baghjan-oil-fields-closed-says-no-key-clearances-224958>( last visited on 20<sup>th</sup> June 2020)

<sup>27</sup>UTPAL PARASHAR, BLOWOUT IN ASSAM GAS WELL MAY TAKE FEW WEEKS BEFORE IT'S UNDER CONTROL HINDUSTAN TIMES <https://www.hindustantimes.com/india-news/blowout-in-assam-gas-well-may-take-a-few-weeks-before-it-s-under-control/story-5VTfE1F2IFmCdUqHgJnonM.html#:~:text=In%202005%2C%20it%20took%20nearly,a%20depth%20of%203%2C729%20metres> (last visited on 2<sup>nd</sup> June 2020)

*accident by reason only of war or radio-activity.*"<sup>28</sup> Furthermore, Section 3 of the same envisages no-fault liability when it states "*Where death or injury to any person (other than a workman) or damage to any property has resulted from an accident, the owner shall be liable to give such relief as is specified in the Schedule for such death, injury or damage.*"<sup>29</sup> Thus, it is evident that this legislation may prove to be an useful instrument for alleviating the injuries sustained by loss of livelihood by the victims of the Bhopal tragedy, albeit it is accepted that the nature of this solution is merely temporary. However, the dated legislation pertains pecuniary sums which do not hold relevance in light of modern times, the amount to be paid as compensation being a meagre Rs. 25,000, an amount which is in no way justiciable in the present time.

#### **V. Applicability of *Parens Patriae* in Present Issue**

An important concept that was dealt with in the Union Carbide case was that of *parens patriae*. The tragedy is touted as one of the biggest industrial disasters that the world has ever seen, with one report by Amnesty International putting the 20-year death toll from incidents directly related to the Gas Tragedy at 20,000, with more than 5,00,000 people affected.<sup>30</sup> Considering the grave nature of the incident, the government decided to pursue the legal battle on behalf of its citizens by clubbing together their interests under the doctrine of *parens patriae*.

The doctrine finds its humble beginnings in the common law practice of sovereign prerogative<sup>31</sup> wherein the Sovereign was regarded as the "*the general guardian of all infants, idiots, and lunatics*"<sup>32</sup> In the instant case, this doctrine was invoked by passing the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 (hereinafter referred to as Bhopal Act). The constitutional validity of passing such an act was challenged by aggrieved private parties who considered that the State had infringed their right to contest in Court their grievances, in the

<sup>28</sup>Public Liability Insurance Act, 1991, Section 2(a).

<sup>29</sup>Id, Section 3.

<sup>30</sup>Amnesty International, *Clouds of Injustice: Bhopal Disaster 20 Years On* (2004) (Retrieved from

<http://web.amnesty.org/library/Index/ENGASA200152004?open&of=ENG-IND>).

<sup>31</sup> Lisa Moscati Hawkes, *Parens Patriae and the Union Carbide Case: The Disaster at Bhopal Continues* 21(1) CORNELL UNIVERSITY LAW JOURNAL 181, 187 (1988).

<sup>32</sup> Pfizer, Inc. v. Lord, 522 F.2d 612, 616 (8th Cir. 1975).

case of CharanlalSahu, before the Hon'ble Supreme Court. However, it was observed by the Hon'ble Court that the State was well within its rights to invoke the doctrine and protect the interests of its citizens when it remarked

*“The connotation of the term ‘parens patriae’ differs from country to country...according to Indian concept ‘parens patriae’ doctrine recognized King as the protector of all citizens as parent. The Government is within its duty to protect and to control persons under disability. Conceptually, the ‘parens patriae’ theory is the obligation of the State to protect and take into custody the rights and privileges of its citizens for discharging its obligations.”*<sup>33</sup>

It was also observed that such appraisal is not violative of Article 14 since it fulfills the test of reasonable nexus by considering the victims *ejusdem generis*.

Thereby, considering the nature of tragedy that has befallen the inhabitants of the villages near the Baghjan oil fields, these people having lost their homes as well as livelihood, it is pertinent to note that they may be unable to avail the requisite legal services, this constraint being detrimental to their pursuit of justice, and thereby, it stands to reason that in the interests of justice, equity and fairness, the State government undertake the responsibility to contest the legal rights of these citizens by invoking the doctrine of *parens patriae*. Moreover, the environmental and ecological impacts that have disastrously affected the surrounding region, mainly the Maguri-Motapung wetland, necessitate that the liable parties be held responsible for the damage caused. Since the environment is intrinsically linked to the interests of the people in the region, them being dependent on the natural resources for their survival and livelihood, it becomes all the more necessary to take consideration of the environmental implications and affix liability. Thereby, the pursuit of justice, both for the victims as well as for the larger issue of environmental degradation, the applicability of the doctrine of *parens patriae* may very well be a viable option that the State can explore.

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<sup>33</sup>Charan Lal Sahu Etc Etc v. Union of India & Ors. 1990 AIR 1489.

Furthermore, since the doctrine extends to include the entirety of State, and it has been held by the Hon'ble High Court of Kerala in the case of *N.V Thomas*<sup>34</sup> that the Court also falls within the ambit of the term 'state' as envisaged under Article 12, a wide interpretation may even go as far as to connote the Court's ability to invoke the doctrine of *parens patriae* on behalf of the aggrieved victims.

Caution must be taken nonetheless to ensure that the rights of the disgruntled victims as well as their interests regarding the environmental factors that are intrinsic to their life are not tread upon by the State if it does indeed desire to take up their grudges before the judiciary, and the treatment meted out to them does not seem indignant in a manner that the victims of the Bhopal Gas Tragedy believed the efforts of the State was.

#### **VI. Tortious Liability in Light of the Disaster in Baghjan**

As has already been highlighted, OIL had authorised another Gujarat based company for the workover in oil well No. 5 in Baghjan, which ultimately caught fire. This does not, however, mean that OIL should avoid responsibility for the disaster. It is because under tort laws, an employer is vicariously liable for the wrongdoing of the employee. The latin maxim which is applicable in common law *qui facit per alium, facit per se* suggests the same. As OIL is a government owned Public Sector Undertaking (PSU) it can be said that it falls within the ambit of 'state' as defined in Article 12 of Indian Constitution. Though Article 12 doesn't directly refer to PSUs as state, yet in many Supreme Court's judgements it is now clear that PSUs are within the definition of 'State' under Article 12. The Preamble of Annual Report of the legal department of Oil India Limited clearly stated OIL to be 'state' under Article 12. Hence, for the negligent act of any company that OIL hires, it is the State which is liable.

In this present case, the concept of absolute liability applies more aptly than strict liability. The concept of strict liability emerged after the infamous *Rylands vs. Fletcher*.<sup>35</sup> After this case, the court observed that if there has been a non-natural use of the land, if the land has some dangerous things which escape

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<sup>34</sup>State of Kerala v. N.V Thomas 1976 AIR 490.

<sup>35</sup>Rylands v Fletcher [1868] UKHL 1.

might bring loss to others etc. and then if some hazard occurs, then it is the defendant who is liable for the damage and has to pay damages to the plaintiff. Furthermore, in strict liability the defendant cannot take the defence of taking proper care. Here, though there are some exceptions to the rule of strict liability but 'taking proper care' is not one of them. The concept of strict liability is a very old one and in Indian scenario it is not suitable. Hence, justice Bhagwati came up with the concept of 'absolute liability', where the scope is much wider and unlike strict liability, this is without any exception. According to the concept of absolute liability, an enterprise which is engaged in hazardous or inherently dangerous industry owes an absolute and non-delegable duty to the community. It was the landmark case of *M.C. Mehta v. Union of India*, also known as the *Oelum Gas Leak Case*, wherein Indian judiciary, for the first time, talked about absolute liability. There are certain basic differences between strict and absolute liability. Firstly, those enterprises which are related to hazardous or dangerous activity fall within the concept of absolute liability. Secondly, the rule of strict liability confines itself to non-natural use of land but in case of absolute liability complete natural use of land also can bring liability to the owner if it has caused any damage to others. While delivering the verdict of the *M.C. Mehta case*, Hon'ble Justice Bhagwati remarked,

*"We are of the view that an enterprise, which is engaged in hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an Absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity the enterprise must be absolutely liable to compensate for such harm and it should be no answer to enterprise to say that it has taken all reasonable care and that the harm occurred without any negligence on its part."*<sup>36</sup>

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<sup>36</sup>M.C Mehta v. Union of India &Ors. 1987 AIR 1086.

It was also observed by the Hon'ble Supreme Court that the rule developed in *M.C Mehta* was not subject to any exceptions determined in *Rylands v. Fletcher*.<sup>37</sup> A similar stance was also taken by the Court when it proclaimed "*once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity.*"<sup>38</sup> Here, in the present issue, it can be noted that OIL was dealing with dangerous substances which had the potential to destroy its surroundings and environment. Thereby, it can be safely surmised that OIL is absolutely liable for the disaster and hence proper compensation has to be provided to the victims. The Apex court while discussing the measure of compensation payable by the enterprise it observed that, the amount of damages that should be paid by the enterprise has to have a correlation to the magnitude of the damage occurred and capacity of the enterprise. The Hon'ble Supreme Court had noted in the review petition of the *Union Carbide Case* "*it is true that even to the extent a settlement goes, the idea of its fairness and adequacy must necessarily be related to the magnitude of the problem and the question of its reasonableness must be assessed putting many considerations into the scales.*"<sup>39</sup> The whole point of this argument is that the act of compensating must also have a deterrent effect on the enterprise so that they be extra cautious next time while they are dealing with these Substances.

## VII. Conclusion

Human life is only sustained in the most pristine manner when it is lived in consonance with the other organisms who cohabit this planet. However, as the tragedy at Bhopal has shown, bureaucratic lethargy, coupled with corporate negligence and the indifference of the State can spell disaster for both man and environment. It goes without saying that the liability for such a tragedy lies on the uncaring disposition adopted by these three stakeholders, albeit in different levels.

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<sup>37</sup>Union of India v. Prabhakaran Vijay Kumar (2008) 9 SCC 527.

<sup>38</sup>Indian Council for Enviro-Legal Action v. Union of India 1996(3) SCC 212.

<sup>39</sup>Union Carbide Corporation v. Union of India 1992 AIR 248.

Negligent conduct and willful miscarriage of the safety norms concerned are the bedrock that tie down the question of liability on two distinct parties – OIL, which time and again neglected the relevant legal obligations in pursuance of profit, and the State which turned a blind eye when these obstructions were being committed; the collective apathy of these two stakeholders ultimately resulting in the chaos that has enveloped the lives and the environment in the region of Baghjan. The negligent conduct on behalf of OIL stems from the fact that they were operating in Baghjan without the requisite clearances from the State Pollution Control Board as well as the mandated EIA clearance. The preliminary report of the Justice Katakey Committee also hints towards an inconsistency on OIL's part. The State becomes a party to this negligence on account of them having allowed the continuance of such conduct by the enterprise for the better part of two decades, only after the tragedy has befallen realizing that the norms have been flouted by the concerned corporate stakeholders.

It must also be noted that the nature of vicarious liability stems from the liability of the employer concerning an action of the employee, and therefore, it is OIL which is to be held accountable for the entire fiasco here, albeit it must be stated that the private enterprise should also be held accountable for their irresponsibility on the issue. The principle of absolute liability, read together with vicarious liability firmly places OIL as the entity liable for the mishap. Furthermore, being 'state' within the meaning of Article 12, it is evident that OIL, and thereby the State bear the highest levels of responsibility. For one, the relevant environmental norms were flouted without caution, and heed wasn't paid to safety norms which could have prevented such a disaster. Imposition of *fait accompli* practices concerning clearance, which owing to the delicate of the region concerned may have been rejected had the proper channels been pursued, further points towards the liability accrued by the State via its bureaucratic apathy.

The willingness to disregard both international and municipal legal doctrines related to the protection of the environment sheds light on an attitude that is marred in laxity towards such a monumental issue. It is perhaps pertinent to treat this tragedy as an exemplary cause of dereliction of duty, and treat it

accordingly when damages are being considered, so as to ensure that the liability attributed and responsibility placed is equally exemplary.

An increasingly dangerous trend has placed economic development in preference of environmental sustainability, and this sentiment exists at both the corporate level as well as on part of the State. No monetary amount, levied as compensation, can bring back the glorious ecology of the region to its pre-contamination phase, and yet, imposition of a large enough compensation for the people affected as well as for cleaning up of the environmental impact caused may prove to be a good enough deterrent for future incidents. In hindsight, just like the Bhopal Gas Tragedy highlighted three decades earlier, there is a need for greater accountability and therefore, corporate liability, against major industrial disasters. Greater enforceability of environmental norms, national legislations or international instruments, is another need of this hour. The current regime of regulatory processes is broken beyond repair as we have come to see time and again. A more efficient regulatory framework coupled with stringent application of existing norms may be the only way forward that guarantees safety of both human and environment in a sustainable manner.