

**S**ince the early 1980's jurists around the world have been devising legal principles that seek to address a multitude of environmental issues facing us. Very often principles have emerged through crisis situations such as the Bhopal disaster in India or the ill effects of agent orange, a toxic chemical used by the U. S. military in chemical warfare. These new principles are referred to in this article as "eco - legal concepts" since they espouse both legal and ecological principles and have their genesis in these disciplines.

#### **ABSOLUTE LIABILITY**

The Bhopal disaster brought home the fact that the

Indian legal system did not have adequate legal principles to deal with the impacts of the gas explosion. The principle applicable at the time of the disaster to fix legal liability for compensating the victims, had been established at the turn of the century in the case of Rylands Vs. Fletcher<sup>1</sup> in England. The rule in Rylands case expounded the principle of strict liability for hazardous substances that escape from the owners land and cause damage. Yet the rule admitted of exceptions and defenses including the defense of "act of god" and "acts of third party". Thus a defendant could avoid liability if the escape of the hazardous substance was caused by an earthquake or sabotage.

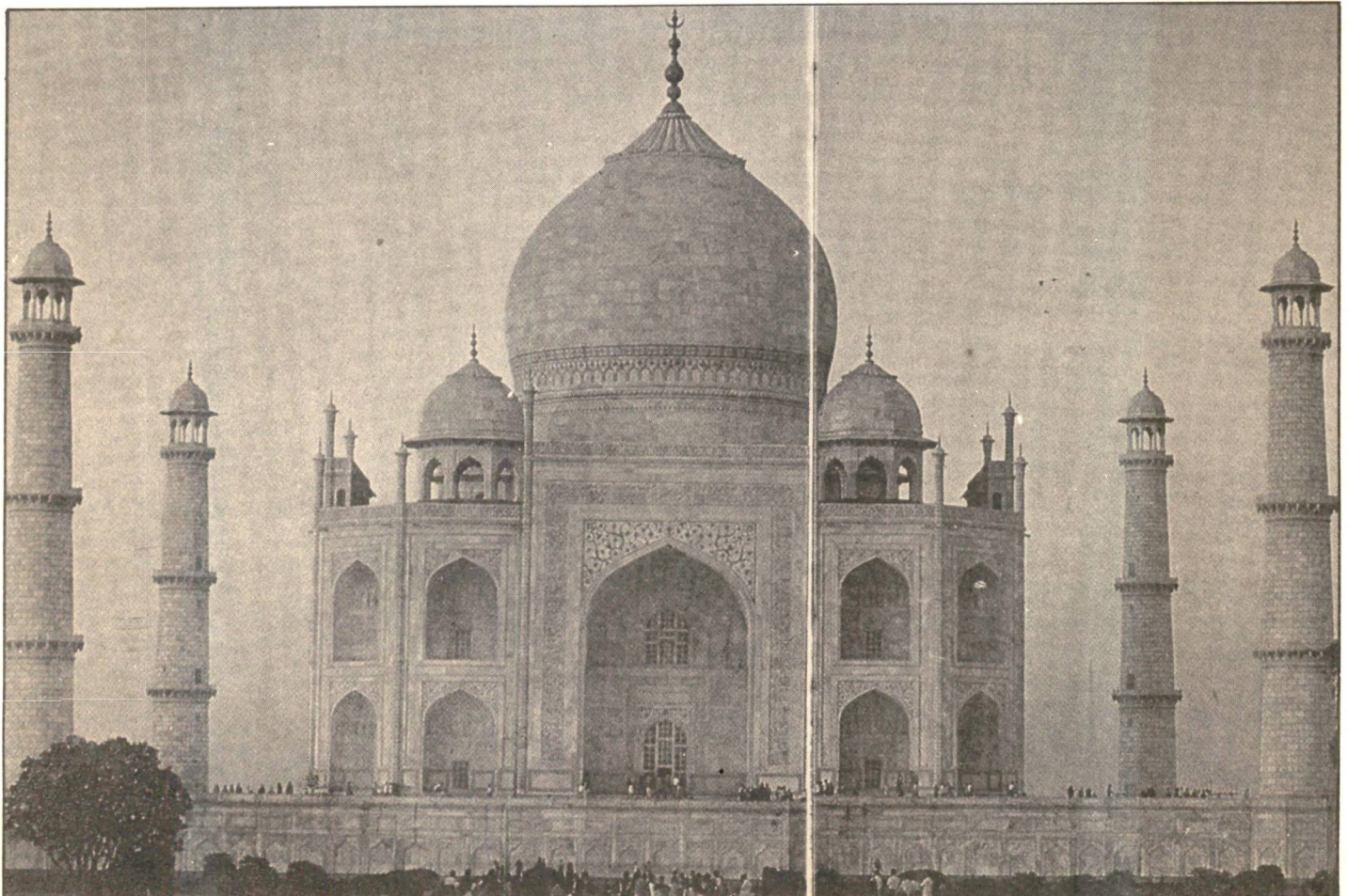
# **NEW ECO- LEGAL CONCEPTS**

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One of the several defenses in the Bhopal case was that of sabotage. The Indian Supreme Court in preparation for the Bhopal case established a higher degree of liability through a new eco-legal concept of "absolute liability". In the *Shiram Foods Case*<sup>2</sup> the Indian Supreme Court held that parties who brought hazardous substances onto their premises were "absolutely liable" for all and every damage done through the escape of such substances. There were no defenses admitted to this liability.

Since the *Shiram* case the concept of absolute liability has found its way into the working of international conventions (such as the Basel Convention) and into the laws of several countries.<sup>3</sup>

### PRECAUTIONARY PRINCIPLE

In many situations decision-makers do not have adequate information to draw conclusions or make good decisions affecting the environment. Paucity of information could arise in a number of ways, including through inadequate data bases or investigations. Often in the course of studying the environmental impacts of development projects the developer and decision-making agency are faced with a lack of information to make reliable findings.

The law has therefore evolved a rule called the "precautionary principle" which it applies to such situations. The concept demands that in the absence of reliable or adequate information, the conclusion or decision should be one that prevents or mitigates impact on the environment. Just as an accused would be set free in the absence of "proof" because he gets the benefit of the doubt, so also the environment must be kept safe from destruction or adverse impact where there is inadequate information. The precautionary principle has been included in the Rio Declaration of June 1992 and will find its way into the national jurisdictions of countries.

### HUMAN RIGHT TO THE ENVIRONMENT

The evolution of a human or legal right to the environment is yet another new legal concept. Here again the leadership in the SAARC region came from the Indian Supreme Court. In a series of landmark judgements the Court held that the right to life enshrined in the Indian Constitution included a human right to an environment adequate for health and well being. In the exercise of its human rights jurisdiction, the Indian Supreme Court has been instrumental in initiating the Ganga Action Plan, closing down several hundred industries to save the Taj Mahal from decay and forced the rehabilitation of quarries in the Dehradun Valley.

### POLLUTER PAYS PRINCIPLE

The "polluter pays principle" has its genesis in environmental economics. The concept seeks to pass the obligation of paying for environmental damage to the polluter. The costs of restoration and safety measures should be borne by those who pollute the environment and not the tax payer or the State. The application of the concept results in the internalisation of environmental costs. The law seeks to give effect to this principle through the recognition of a scale of fees for pollution licences and discharge of

waste that is based upon the quality and volume of the waste stream. Notional costs for restoration and preventive measures are sometimes added to such fees.

### CITIZEN SUITS

Although the primary responsibility of enforcing environmental law lies with government agencies, more often than not, such agencies are unable to execute their functions effectively. This is specially true of agencies in the developing world where resources, personnel and other constraints limit the capacity to respond to public complaints. Additionally, political interference very often dictates the enforcement policy followed by agencies.

The Judiciary, in several countries including India and Sri Lanka, have responded to this situation by allowing public spirited citizens to bring actions to enforce the law. These litigants referred to in England as "private Attorneys-General" have been allowed to bring litigation against recalcitrant government agencies as well as against environmental offenders.

Through such judicial activism and innovation, the concept of "citizen suits" have emerged and found itself into laws enacted by the legislature. In the U. S. A. several laws enacted by Congress<sup>5</sup> make provision for citizens to bring actions against defaulting government agencies and environmental offenders. Similar laws have been enacted in India, New Zealand, and Uganda. In some Latin American states, the judiciary has revived the ancient Roman concept of the "actio popularis". The Actio Popularis was an action allowed under the ancient Roman Law to Roman citizens to reprimand officials of the treasury for abusing or misusing public funds. The Courts in Colombia have expanded this action to encompass official acts which affect the environment.

Citizen suits in Sri Lanka have been successfully brought by NGOs and members of the public to abate public nuisances and to enforce public statutory environmental duties of government agencies<sup>6</sup> The new draft Environmental Law seeks to make provision for citizen suits in Sri Lanka.

### REFERENCES

1. *Rylands Vs. Fletcher*, (1868) LR 3 HL 330.
2. *M. C. Metha Vs. Union of India*, 1987 AIR (SC) 952 ; 1987 AIR (SC) 965 ; 1987 AIR 982 (SC) ; 1987 AIR (SC) 1086.
3. *The new draft law on the Environment prepared by the Environmental Law Task Force seeks to impose an absolute liability regime for hazardous waste and toxic substances.*
4. *M. C. Metha Vs. Union of India*, 1988 AIR (SC) 1037 ; 1987 AIR (SC) 1115 ; *R. L. & E Kendra, Dehradun Vs. State of Uttar Pradesh*, 1985 AIR (SC) 652 ; 1985 AIR (SC) 1259 ; 1988 AIR (SC) 2187.
5. *The Clean Air Act (1970 & 1977) ; The Clean Water Act (1972 & 1977)*
6. *Environmental Foundation Ltd. Vs The Land Commissioner*, 1 SAELR 53 ; *Keangnam Enterprises Ltd Vs. E. A. Abeyasinghe & eleven others*, 1 SAELR 01.