

PANEL DISCUSSION REPORTS

**ROAD TO  
PLACHIMADA**

2<sup>nd</sup> September 2013



Centre for Economy Development and Law



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# ROAD TO PLACHIMADA

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The blend of environmental, developmental, sociological, economic, political and legal aspects involved in compensating the victims of Plachimada encouraged the Centre for Economy, Development and Law to conduct the discussion on the impact of Plachimada struggle and the contribution of The Plachimada Coca-Cola Victims Relief And Compensation Claims Special Tribunal Bill 2011 in the Indian environmental jurisprudence.

## PANEL DISCUSSION REPORT

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# **PANEL DISCUSSION REPORT ON THE PLACHIMADA COCA COLA VICTIMS RELIEF AND COMPENSATION CLAIMS SPECIAL TRIBUNAL BILL, 2011**

## **I. ROAD TO PLACHIMADA – AN INTRODUCTION:**

The Indian population largely rely on ground water for the agricultural activities. It is estimated that by 2025, sixty percent of India's aquifers will be in the critical danger of drying up.<sup>1</sup> Big corporations like Coca-Cola have established more than sixty bottling plants in India based on the ground water resources. The adverse environmental impacts such as the depletion of ground water and pollution caused protest in various parts of the country. The protest of villagers in Plachimada, situated in the Palakkad district of Kerala, is one of such struggle. In addition to Plachimada in Kerala, Wada in Maharashtra and Mehdiganj in Uttar Pradesh too have experienced the severe water crisis and pollution which has harshly affected the agricultural productivity of those villages. The Plachimada unit was shut down in 2004 as a result of people's protest. Plachimada struggle is unique because the protest is from the part of the illiterate poor farmers of Perumatti Panchayath.

Concealing the closure of the Plachimada bottling unit, the company has spread misleading information in foreign countries that the Coca-Cola Company in India has won the prestigious Golden Peacock Environment Management Award from the Institute of Directors, which grants the award in association with the World Environment Foundation, for four consecutive years. In addition to this they also articulated, in 2005 the Confederation of Indian Industry (CII) recognized the Hindustan Coca-Cola Kaladera plant as a 'Water Efficient Unit'. They went to an extent of spreading that The Energy and Research Institute is an independent body which analyses the company's water management practices in India. At, this time, The Centre for Science and Environment in its test report revealed that Coca-Cola and Pepsi soft drinks sold in India contain high level of pesticides which would upset the public health. But The Energy Research Institute did not detect any such problems and ignored the fact that the Plachimada plant was shut down in 2004.

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<sup>1</sup> Ajith Athrady, India's Groundwater Table to Dry Up in 15 Years, DECCAN HERALD (Mar. 7, 2012), <http://www.deccanherald.com/content/56673/indias-ground-water-table-dry.html>.

## **II. MILESTONES OF THE PLACHIMADA STRUGGLE:**

The notable protest against Hindusthan Coca cola Beverages Pvt. Ltd. in India took place in a village in Palakkad district, an important agricultural region, popularly known as the rice bowl of Kerala. The plant is situated in Plachimada which is a part of the Moolathara village. The two adjacent villages are Perumatty and Vandithavalam. These three villages together constitute Perumatty Grama Panchayath of Chittur Taluk. Sokanassini River in the north, Tamilnadu and Pattancherry Panchayath in the south, Tamilnadu in the east and Pattancherry Panchayath in the west form the boundary of Perumatty Panchayath. This region gets very little rainfall compared to the other parts of Kerala.

The majority of residents of Perumatti Panchayath came from rural Tamilnadu and settled there about 30 years ago. It is home to people from several scheduled castes and scheduled tribes like Eravalar and Malasar. Many of them are land less agricultural labours. They depend upon agriculture as their means of livelihood. The major agricultural products cultivated by them are rice, coconut, groundnut, vegetables, horse gram, maize mango, sugar cane, and banana. Ground water and Canal irrigations are used for agricultural and domestic purposes. According to a study by Jananeethi, a social organization in Kerala, the Panchayat has a diverse soil profile ranging from red soil, black cotton soil, clay soil etc.<sup>2</sup>

The Hindustan Coca-Cola Beverages Private Limited (HCBPL) applied to Perumatty Panchayath for setting up a bottling plant at Plachimada on 8<sup>th</sup> October 1999. The permission for setting up the plant and installing 2,600-horsepower electric motor to run the unit was obtained on 27<sup>th</sup> January 2000. The plant was commissioned in March 2000 in order to produce its popular brands such as Coca cola, Fanta, Sprite, Limca, Kinely Soda, Maaza and Thumps Up<sup>3</sup> by offering fulltime jobs for 1200 residents.

After six months of its working the local people began to notice the drying up of wells, hardness in the water and the water-rich agricultural lands turning drought- stricken. Slowly they felt increasing hair-loss, burning of eyes, cough, vomiting, pain in limbs, and anaemia in children, abdominal pain etc. There was a sharp increase in the proportion of underweight children. The local people began to protest against the company, demanding immediate

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<sup>2</sup> Report on “Aptitude of Environmental and human Rights Ramifications by HCCBPL at Plachimada”, Jananeethi, July 2002.

<sup>3</sup> C.R.Bijoy “Kerala’s Plachimada Struggle : A Narrative On Water And Governance Right” 41/41 Economic and Political Weekly (2006) at p.4333

closure.<sup>4</sup> The major complaint was regarding the deterioration of ground water due to the over exploitation by the company. The wells in the locality were contaminated with toxins and fertilisers. The depletion of groundwater was the paramount concern in Plachimada since approximately eighty percent of the residents depended on agriculture for their livelihood.<sup>5</sup>

Though different Non-Governmental organisations conducted studies about the environmental issues of Plachimada each came with different results. They are:-

- Hardness of water caused by the manufacturing process.<sup>6</sup>
- Water from wells of the area has an unpleasant, strong and bitter taste that causes varieties of illness such as burning sensations in the skin, greasy sticky hair, and stomach disorder and skin deformities.<sup>7</sup>
- Insufficiency of water and decline of agricultural productivity.<sup>8</sup>
- There is no field evidence to indicate over exploitation of ground water. The depletion could be due to the deficiency of rainfall.<sup>9</sup>
- The presence of heavy metals like Lead and Cadmium in the sludge discharged by the company is more than the approved limits.<sup>10</sup>

Besides, the company dumped the sludge in agricultural fields and river-beds. The Kerala Pollution Control Board (KPCB), after examining sludge samples found Cadmium in high quantity as per the Hazardous Waste (Management and Handling) Rules 1989. The Board directed the company to take immediate action to stop discharge of the hazardous waste. The KPCB in 2003 examined the sludge samples collected from the premises of the company and pointed that the concentration of Cadmium and other metals were higher than the prescribed limit provided by the Schedule 2 of the Hazardous Waste (Management and Handling) Rules 1989 as amended in 2003 and hence the solid waste generated in the Company will not come

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<sup>4</sup> See the Special Volume of Keraleeyam on Plachimada issue Vol.90 (2005).

<sup>5</sup> Sujith Koonan, "Legal Implications of Plachimada a Case Study" (Int'l Env'tl. Law Research Ctr., Working Paper No. 2007-05, 2007), available at <http://www.ielrc.org/content/w0705.pdf>.

<sup>6</sup> See, Keraleeyam *Supra note.4*; See also Report on "The Environmental and Social Problems Raised Due To Coca Cola and Pepsi in Palakkad District" Yuvajanavedi November, 2002.

<sup>7</sup> Sathish chandran, "Adverse Environmental impact of Hindustan Coca cola beverages private limited" cited in Sujith Koonan, *Supranote.5*

<sup>8</sup> See Report of Yuvajanavedi *Supra note.6*

<sup>9</sup> R.N.Athavale, "Water management at coca cola plant at Moolathara village, Palakkad District" (Report 2002)

<sup>10</sup> British Broad Casting committee report dated.25<sup>th</sup> July 2003

under the said rules.<sup>11</sup> Later the KPCB wrote to the president of Perumatty Panchayath that the water in the Panchayath well shall not be used for drinking purposes.<sup>12</sup> Later, the study conducted by Central pollution control Board revealed that the fertilisers used by the farmers contain Lead and Cadmium more than the permissible quantity.

The real legal battle started when the Perumatty Grama Panchayath refused to renew the licence of the Company by passing a resolution on 7<sup>th</sup> April 2003. The Panchayath issued a show cause notice to that effect on 9<sup>th</sup> April 2003. The Panchayath prescribed eight conditions for renewing the licence which were not accepted by the Company. Though the company's representative appeared for the hearing, the Panchayath stood firm on its earlier decision. The Panchayath decided to cancel the licence of the Company by a resolution dated 5<sup>th</sup> May 2003. It was challenged by the company before the High Court of Kerala.<sup>13</sup>

The High Court of Kerala directed the Department of Local Self Government to make "appropriate orders". However the dispute did not end at the level of Department of Local Self Government. Panchayath issued second notice on 18<sup>th</sup> September 2003. Again, the Company approached the High Court of Kerala through its second petition. The court directed the company to reply to the notice. Meanwhile the Department of Local Self Government passed an interim order, questioning the Panchayat's action of cancelling the Company licence which was challenged by the Panchayath before the High Court.<sup>14</sup>

The major issue raised before the High court of Kerala was the right of the land owner to extract ground water from its land and the power of the Panchayath to regulate the use of ground water by a private individual. The court invalidated the closure of the Company and held that it was beyond the authority of the Panchayath. Relying upon the Public Trust Doctrine, the single bench recognised the use of ground water in reasonable quantity and the duty of the state to protect ground water. However, 'the Panchayath can at best say no more

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<sup>11</sup> See Sujith Koonan, "Ground water : Legal aspects of Plachimada Dispute" available at [http://www.ielrc.org/content/a\\_1008.pdf](http://www.ielrc.org/content/a_1008.pdf) ; See also Kerala State Pollution Control Board, "A Study Report On The Presence Of Heavy Metals In Sludge Generated In The Factory Of M/S Hindusthan Coca Cola Beverages Private Ltd. Palakkad" ( September 2003)

<sup>12</sup> *Id.*

<sup>13</sup> *Hindusthan Coca cola Beverages Pvt. Ltd. v. Perumatty Grama Panchayath and Another* The High Court of Kerala the Original petition no. 13513 of 2003, judgement 16<sup>th</sup> May 2003

<sup>14</sup> *Perumatty Grama Panchayath v. State of Kerala*, 2004 (1) Kerala Law Times 31

extraction of groundwater will be permitted and ask the company to find alternative sources for its water requirements'.<sup>15</sup>

At this time there were no legislations that deal with the management or control of groundwater. The Kerala government enacted the Kerala Ground Water (Control and Regulation) Act in 2002 and notified in 2003. Thus the provisions of the Act did not apply to decision of High Court. Subsequently the matter came to appeal before the Division Bench. The Division Bench observed that in the absence of any statutory restrictions, the owner of the land has the right to extract ground water from his land or it is a part of proprietary rights. The division bench rejected the allegations of pollution and quality problem of the products of the company.<sup>16</sup> Though it was held that the Panchayath was ill equipped to examine technical matters, the court did not declare that it was beyond the authority of the Panchayath.<sup>17</sup>

As per the decision of the Court an expert committee has been appointed to investigate the matter. The committee observed the scarcity of water in the locality and reported that it may be due to the declining rainfall. The committee suggested that the average use of ground water by the company could be an average of five lakh liters per day and also directed it to reduce consumption in proportion to the decrease in rainfall. Aggrieved by this decision the Panchayath moved Supreme Court of India through a Special Leave petition in order to justify its refusal to renewal of the licence. The Supreme Court Monitoring Committee constituted by the Supreme Court of India in Writ petition No. 657/95 noticed that the drinking water source adjacent to the company was contaminated due to the illegal dumping of wastes by the Company.<sup>18</sup>

### **III. THE PLACHIMADA COCA-COLA VICTIMS RELIEF AND COMPENSATION CLAIMS SPECIAL TRIBUNAL BILL, 2011**

In March 2004, the bottling plant was initially shutdown as per the direction of Kerala Pollution Control Board. But the fight against the company continued. The Kerala

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<sup>15</sup> *Id.* at Para. 12

<sup>16</sup> *See* Sujith Koonan, *Supra note*.11

<sup>17</sup> *Id.*

<sup>18</sup> *Research Foundation for Science, Technology and Natural Resource Policy v. Union of India*, Supreme Court of India, Writ Petition No. 657 of 1995, Order dated 14 October 2004.

government appointed a High Power Committee to look in to the issue in May 2009. The committee submitted its report in March 2010.

With a view to compensate the villagers who were harmed by the Coca-Cola Corporation the Kerala legislative Assembly passed Plachimada Coca-Cola Victims Relief and Compensation Claims Special Tribunal Bill, 2011 on 24<sup>th</sup> February 2011. The major developments that lead to the Bill are the following<sup>19</sup> :-

- The Kerala Ground Water (Control and Regulation) Act, 2002,
- The closure order issued by the Kerala Pollution Control Board in 2004.
- Intervention of Central Pollution Control Board.
- Findings of the Supreme Court Monitoring Committee on the hazardous waste.<sup>20</sup>
- Report of High Power Committee constituted by the Kerala government submitted in March 2010.

The Bill intends to constitute a three member tribunal consisting of a chairperson, an administrative member and an expert member for adjudication of disputes between company and the people and to award compensation to the victims.<sup>21</sup> The bill covers the dispute between the victims in Perumatty Panchayath and the Coca-Cola Company. The state government can extend the application of the Act to any other Panchayath. The subject matter under dispute can be any act in violation of laws relating to environment. Violation of pollution control laws are also comes under the ambit of the tribunal.

The tribunal has original jurisdiction to entertain applications for compensation. Besides any other “court or authority” can transfer the cases under the same subject matter to the tribunal.<sup>22</sup> But it does not include High Court or Supreme Court. Although the high court can refer any matter pending before it relating to the company.<sup>23</sup> The tribunal is vested with the powers of a civil court under the Code of Civil Procedure, 1908.<sup>24</sup> The proceeding of the

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<sup>19</sup> See Sujith Koonan, “Constitutionality of the Plachimada Tribunal Bill, 2011: An Assessment” Law, Environment and Development Journal (2011), p. 151, available at <http://www.lead-journal.org/content/11151.pdf>.

<sup>20</sup> The Supreme Court Monitoring Committee on Hazardous Wastes was constituted as per the order of the Supreme Court in *Research Foundation for Science, Technology and Natural Resource Policy v. Union of India*, Supreme Court of India, and Writ Petition No. 657 of 1995, Order dated 14 October 2004.

<sup>21</sup> S.3 and S.4 of The Plachimada Coca-Cola Victims Relief and Compensation Claims Special Tribunal Bill, 2011 available at <http://www.niyamasabha.org/bills/12kla/plachimada%20victims.pdf>.

<sup>22</sup> S.9

<sup>23</sup> S.10

<sup>24</sup> S.13

tribunal is deemed to be judicial proceedings.<sup>25</sup> The order of the tribunal is appealable to the High Court of Kerala.<sup>26</sup>

The Bill has to be sent for the approval of the President. The legislative assembly sent the Bill to the Ministry of Home affairs but it retained the Bill. The Ministry of Home Affairs distributed the Bill to other seven Ministries for comments or objections. Only three Ministries have responded that they have no objections. Other Ministries remain silent. Later the Cabinet returned the bill to the Kerala Legislature. The president has not signed the bill as of today.

This Bill's delay demonstrates the uncharted territory that is being dealt with in the groundwater debate, and the ability for corporate pressures to shape how legislation develops.<sup>27</sup> The Bill remains stagnant and the government has not released any additional statements concerning the matter. This divergence from the general practices demonstrates the influence that large corporations can have over regimes and in some cases judicial bodies.<sup>28</sup>

In the meantime, the Indian Parliament approved to constitute the National Green Tribunal in order to replace the existing National Environment Appellate Authority in 2009.<sup>29</sup> The National Green Tribunal Act was passed on 18<sup>th</sup> October 2010. The National Green Tribunal can review cases that pertain to "substantial questions relating to the environment," encompassing issues in relation to air pollution, water, and bio-diversity. Here rises the question: Do we need a special tribunal to deal with the Plachimada issue in the presence of National Green Tribunal?

In addition to releasing public relations statements addressing the groundwater depletion accusations, Coca-Cola's attorney, K. K. Venugopal, sent a legal opinion letter to the

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<sup>25</sup> S.14

<sup>26</sup> S.16

<sup>27</sup> See Sujith Koonan, *Supra note*.19

<sup>28</sup> Ankur Paliwal & Savvy Soumya Misra, Home Ministry Delayed Plachimada Bill, DOWN TO EARTH (Oct. 22, 2011), available at <http://www.downtoearth.org.in/content/home-ministry-delayed-plachimada-bill>. See also See Alyssa Carroll, comments on "Have a Coke and a Smile": Is the Aqueduct Alliance Coca-Cola's Solution to Escape Future Liability for Groundwater Depletion?" *Global Business & Development Law Journal* / Vol. 26, 2013 at p.485

<sup>29</sup> See George Rock Pring & Catherine Kitty Pring, "Greening Justice, Creating And Improving Environmental Courts And Tribunals" published in 2009.

Ministry of Home Affairs questioning the constitutional validity of the disputed legislation.<sup>30</sup> The Ministry of Home Affairs forwarded the content of the letter to the Kerala Government for consideration along with the bill.

Considering the constitution of Plachimada Special Tribunal it is alleged that there exists a jurisdictional problem in the presence of Natural Green Tribunal constituted under the National Green Tribunal Act 2010 to deal with the environmental disputes. It is also said that Kerala's new legislation is based on a lack of constitutional power<sup>31</sup> because of the overlap between the functions of legislative and executive branches. The power of the Kerala government has also been questioned on the ground that the Kerala Assembly passed a resolution in 1968 which vests the power to pass laws for the State on 'prevention of water pollution from domestic and industrial waste' in Parliament, and therefore the Bill is outside the scope of the Kerala legislature to the extent that it covers matters referred to in the 1968 resolution.<sup>32</sup>

Another question is that whether state legislature can constitute a tribunal for settling the dispute between a private company and residents of a Panchayath. The subject matter addressed under the Bill has not been mentioned explicitly in the constitutional provision dealing with tribunals, that is, Article 323-B.<sup>33</sup> The state government has the power to set up tribunals in relation to the matters not listed in Article 323-B provided that it is competent to make laws on such matters.<sup>34</sup> This means that the state government can make laws to set up tribunals even on matters not listed in Article 323-B provided the subject matters to be addressed by such tribunals are mentioned in List II or List III.<sup>35</sup> Further it is said that the term environment is not specifically included in any list. Thus it comes under the residuary powers of the government.<sup>36</sup>

The victims of Plachimada cannot approach the National Green tribunal as it is barred by the limitation. Even if the time limit is relaxed in the Green Tribunal the burden of proving the

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<sup>30</sup> See Ankur Paliwal & Savvy Soumya Misra *Supra note.28*

<sup>31</sup> *Id.*

<sup>32</sup> C. Gouridasan Nair, 'Plachimada Tribunal Bill: Centre Seeks Clarifications', THE HINDU, 17 September 2011.

<sup>33</sup> See Sujith Koonan, *Supra note.26* at p.19

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id* at p.10

harm is on the person who claims compensation. It surely increases the hardship of the victims. In Plachimada most of the victims are illiterate and poor. They will not be able to make proper representation. On the other hand the big MNC's like Coca cola can easily escape from the liability. The Bill undisputedly finds the liability of Coca Cola Company. Moreover the Plachimada Special Tribunal Bill requires that funds shall be set aside for the victims.<sup>37</sup> Thus the validity of the Plachimada Tribunal Bill cannot be doubted on the ground that it is not signed by the president.

The larger question here is when will the Plachimada victims get justice? No matter whether it may be through the Plachimada Special Tribunal Bill or through The National Green Tribunal.

#### **IV. RECORDINGS FROM THE PAPER PRESENTATION SESSION:**

The blend of environmental, developmental, sociological, economic, political and legal aspects involved in compensating the victims of Plachimada encouraged the Centre for Economy, Development and Law, of the Government Law College, Thrissur to conduct this discussion on 2<sup>nd</sup> September 2013. The discussion aims to analyse the impact of Plachimada struggle and the contribution of THE PLACHIMADA COCA-COLA VICTIMS RELIEF AND COMPENSATION CLAIMS SPECIAL TRIBUNAL BILL 2011 in the environmental jurisprudence. The panel, chaired by A. Suhurth Kumar (Associate Professor, Govt. Law College Thrissur), consisted of Mr. C.R. Bijoy (Researcher and Social Activist), Mr. Sujith Koonan (Assistant Professor Amity Law School, New Delhi) and Adv. Ravi Prakash K.P. (Social Activist).

The discussion started with a warm welcome address by Mr. Abhilash Gopinath, Assistant Professor, Government Law College, Thrissur who is the Executive Director of the Centre for Economy, Development and Law. In the welcome note he mentioned that the major point of discussion will be the contribution of The Plachimada Coca-Cola Victims Relief and Compensation Claims Special Tribunal Bill 2011 to the Indian Environmental Jurisprudence. Professor (Dr.) Mercy Thekkekkara, Principal, Government Law College, Thrissur, rendered the inaugural address. She explained the history of the Bill briefly. Thereafter, she raised the

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<sup>37</sup> See Alyssa Carroll, comments on "Have a Coke and a Smile": Is the Aqueduct Alliance Coca-Cola's Solution to Escape Future Liability for Groundwater Depletion?" *Global Business & Development Law Journal* / Vol. 26, 2013 at p.485

question whether the compensation assessed by the High Power Committee is adequate to compensate the damage caused to water, soil, air and other natural resources of the area. Further, she voiced her strong concerns about the present condition of the Bill. The appeal process provided in the bill may lead towards a very long legal battle. So even if the Bill is passed, it hardly affects the delivery of justice to the victims. Moreover she stressed on the need for strong political and social consciousness to deal with the present issue. She concluded by calling upon the student community to discuss and act upon these social issues.

#### **IV.1. Preliminary Observation – Prof. A. Suhurth Kumar (Associate Professor, Government Law College, Thrissur)**

The preliminary observation was made by the chairman of the panel, Professor A. Suhurth Kumar, Associate Professor, Government Law College, Thrissur. He started by referring to the findings of Justice Kuldip Singh, well known as the ‘Green Judge’, in 1978. Taking spirit from the principles of Roman law, Justice Kuldip Singh had held that the right to safe environment is a fundamental right. He also pointed out the need for an adjudicative mechanism to deal with environmental issues. The importance of empowering the people was also mentioned by the Honourable Justice. Such an empowerment, according to Justice Kuldip Singh, should enable the common man to approach the court if his right is denied, taken away or violated by governmental bodies, quasi-governmental bodies, individuals or groups of individuals. Professor A. Suhruth Kumar expressed his disappointment in the fact that Legislation in the form of the National Green Tribunal Act came only in 2010 – more than three decades after Justice Kuldip Singh made the above observations. Reminding us that the Kerala legislature initiated such an Act only in the year 2011, he raised doubts regarding the need, scope, and importance of such a state legislation. The major problem is that, How can the objectives of the Bill be achieved in the presence of National Green Tribunal Act, 2010, the central legislation?

Speaking about the possibility of the Bill which extends beyond the problems of underground water exploitation, he enumerated the following five points as the main issues that necessitated the Bill. They are:-

- i. A private company has ruthlessly exploited the water resource of an area.
- ii. The company has irresponsibly dumped harmful wastes in the area.

- iii. The company, in addition to environmental pollution has caused the loss of agricultural productivity of the area.
- iv. Health of the residents has been affected to a large extent.
- v. The actions of the company have caused adverse consequences both socially and financially.

In the view of Professor the private company is responsible for the plight of the residents of Perumatty Panchayath. He added that the Tribunal should ensure compensation to the victims as early as possible, and make the company pay the price for all the actions to be taken to solve the problems caused by it. He criticized the delay caused in materializing the Bill and expressed hope that the Tribunal would soon be in action. He also emphasized the fact that the tribunal should work based on the basic principles such as sustainable development, polluter pays principle and the precautionary principle.

Professor A. Suhruth Kumar raised the following criticism on the Bill:-

- i. The validity of decision of the three member tribunal, i.e. how and to what extent the members of the tribunal can investigate and come to the right conclusion.
- ii. How is it possible that one part of the Bill refers to the tribunal as a Quasi-Judicial body, giving a civil character to the process of resolution and another part of it refers to the proceedings as judicial proceedings and relates it to the provisions of the Indian Penal Code, 1860?
- iii. Further the provisions of the Bill gives finality to the decision of the tribunal, and contradict the same by stating that the first appeal can be taken to the High Court.

Professor A. Suhruth Kumar concluded his talk by urging the panel and students to ponder over and discuss the above issues. He also warned that any unreasonable delay in passing this Bill and consequent denial of justice to the victims would turn the general public against the very idea of such laws and tribunals and the basic ideology of justice.

#### **IV.2. C. R. Bijoy (An independent researcher and social activist)**

The panel discussion was started by C. R. Bijoy, an independent researcher and social activist. He recalled that the public in Plachimada decided to handle the issue themselves

because they were doubtful about the trustworthiness of the authorities. He examined the need for the said Bill by asking why the existing laws, like the Kerala Ground Water (Control and Regulation) Act, 2002, Water Prevention and Control of Pollution Act, 1972, Factories Act 1948, Hazardous Waste Management and Handling Rules 2008, Land Utilization Act 1957, Easement Act 1882, Bio diversity Act 2002 and many more, were not applied in the Plachimada issue. Answering himself, he said that the Government was not able to apply them to the present situation due to the lack of pressure from the people, political parties and interest groups for the same.

The Coca-Cola production unit in Plachimada started in the year 2000 and was closed down in the year 2002 due to public protests. The issue that sparked the protests was the exploitation and deterioration of ground water of the area due to the activities of the unit. The Government, including the Perumatty Panchayath ignored the protests in the early stage, branding it as a political agitation. Another allegation against the protest was that, the youth of the area was taking revenge against the company for not being given the promised jobs. The people continued their protest which forced the Perumatty Panchayath to refuse renewal of license of the Company and a notice was issued to that effect. This forced the company to approach the Honourable High Court of Kerala. The Company alleged that the Local Government is acting beyond its jurisdiction. The Panchayath contended that the power to reject the license was well within their jurisdiction. Though the High Court referred the matter to the Department Of Local Self Government it was futile. The major issue then was the right of the land owner to extract water from his land and whether the Panchayath has the authority to reject license? The single bench upheld the right of land owner to extract ground water in the absence of any legal restraints concerning the subject matter. Aggrieved by this decision the Panchayath appealed to the Division Bench. The Division Bench held that the renewal of license could be done only on the basis of adequate data and appointed a Committee to look into the issue. Unfortunately, the question of pollution was not in the picture then.

The committee observed that the scarcity of water in the locality is due to declining rainfall. The main solution propounded by the Committee was to restrict the ground water usage of the Plachimada Coca-Cola production unit to 5 lakh litres of water per day. The court ordered the Panchayath to issue a license based on such conditions. The Coca-Cola

Company was not ready to accept the conditions put forward by the Perumatty Panchayath and approached the court again. This time, the court ordered that the company could start production within one week deeming the license was obtained, if the license was not renewed within that period. Then the Panchayath renewed the license with a condition that the company will have to fulfil all the requirements of procuring a license just as a new company would.

The company was shut down later, when the Pollution Control Board refused to renew their license for the want of proper clearance. The Board found that the application of the Company was incomplete to the effect that it did not mention Cadmium and Lead as being part of their waste material, when the existing law required them to mention such hazardous wastes in the application.

At this stage, the Kerala Ground Water Authority set up a Committee to examine the situation at hand. Being a departmental committee, they decided to leave the matter to a High Power Committee. The High Power Committee was set up with terms of reference focusing on identifying and quantifying the problem at hand and its solutions. The compensation amount the Coca-Cola Company owed to the residents of Plachimada was assessed and accepted by the committee to be about 216.26 core rupees. The amount was not assessed scientifically but was deduced by putting together the claims submitted by the residents of the area upon the Committee's request.

The panellist then expressed his disappointment in the current condition of the Bill and observed the following:-

- i. The state government could have requested the central government for an Ecological Authority as done by the Tamil Nadu state government, to look into all the issues related to pollution in the state instead of passing the Bill.
- ii. There remains confusion regarding the jurisdiction of state to make this legislation as the topic in question comes under List II. Because, the Kerala legislature along with some other legislature had passed a resolution in 1968 transferring the power to pass laws for the State on 'prevention of water pollution from domestic and industrial waste' to the Parliament. This would not have been a bar to legislate on the subject,

as a decision of a few state legislatures does not have the power to amend the constitution. Moreover, the Kerala Ground Water (Control and Regulation) Act, 2002 was a legislation of this kind.

- iii. The proposed law does not overlap the jurisdiction of national green tribunal as there exists a cut off period of 5 years for approaching the tribunal which was set up in 2011 and thus the Plachimada issue which surfaced in the year 2002 is time barred. So a new Bill is necessary.

The Bill which was unanimously passed by the State Legislature was not accepted by the Governor but was sent to the President for assent, although it does not interfere with the jurisdiction of the Supreme Court, High Court or even the National Green Tribunal. As per the procedure, the Bill went through the Ministry of Home Affairs. It received good remarks from most of the Ministries and some Ministries made suggestions for a stronger Bill. But the Coca-Cola Company, with the advice of eminent advocates, presented their cause in such a convincing manner that the Governor of Kerala was asked to answer to the issues they raised. Although the state sent a fitting reply to the company, it could not change the fate of the Bill and no more progress has happened ever since.

Next, Mr. C. R. Bijoy spoke about the campaigns taken up against the Coca-Cola Company in other parts of the world. When the Coca-Cola Company's bottled drinking water 'Dasani' was launched in England, it was claimed to be better than 'Kent' water. Later 'Dasani' was found to contain a cancerous substance, Bromide and the company was forced to withdraw the product. The panellist pointed out that no issue taken up against the Company in Asian countries has been this successful. Plachimada is the only place in Asia where the situation forced the Coca-Cola company to shut down their plant, something which similar struggles from Kaladera, Jaipur and Mehandiganj, Lucknow have failed to achieve.

The international campaign against the Coca-Cola Company as we see it today owes its development to the Plachimada issue and the Columbian issue. In Columbia, a tussle with drug lords had resulted in the death of many employees of the Coca-Cola Company. This campaign was backed hugely by the students of America and Europe. He said that the stand taken by the students of Michigan University forced the university authorities to refuse to

withdraw their contracts with the Coca-Cola Company for vending machines in the campus. This alone caused the Company a loss of about one and a half lakh million dollars.

He explained that the company claimed innocence in both the Columbian and the Asian issues and expressed their willingness in letting independent bodies evaluate the situation. It was decided that the International Labour Organization would look into the Columbian issue and the Energy Research Institute in India, under the leadership of Dr. Pachauri, would look into the issues raised in India. However, the Plachimada plant will not be included in the investigation process as it has been closed down. He pointed out that the Coca-Cola Company agreed with the Energy Research Institute to bear the full expense of the investigation procedure. But the Company had held that they could withhold any information asked in the process of investigation and also that they will not answer any questions as to why there is a problem with the water resources of the area, if any problem was indeed found out.

Mr. C. R. Bijoy concluded his words by adding that the Bill in question and its progress play a major role in the future of the international campaign against the Coca-Cola Company and the report of the Energy Research Institute.

#### **IV.3. Mr. Sujith Koonan (Assistant Professor, Amity Law School, New Delhi)**

Mr. Sujith Koonan discussed about the law relating to environmental liability in India. He explained the Plachimada Tribunal Bill with more emphasis on the concepts of liability and compensation. He raised a relevant question to the audience that for whom and whose interest this bill was passed and when did this people come into the picture?

The Professor said that The Hindustan Coca-Cola Company has been exploiting people, causing environmental degradation by over extraction of ground water and thereby causing, scarcity of drinking water. There has been a steady decline in the agriculture production due to the irresponsible disposal of sludge by the Company. The presence of metals like Cadmium, Lead and Chromium in the sludge affected the general health of people and caused skin ailments, breathing problems and other disabilities.

He said that, “the term industry never covers the premises beyond the premises of the industry. Why isn’t there a law to cover the issues of the people residing near the industries?” He stated that significant legal developments have happened since the Bhopal (1984) incident to address these challenges. The milestone in this development is the expansion of the scope of ‘risk’ caused by industries to include people and environment outside the industrial premises. Earlier, liability of an industry was limited to its own premises, as in case of liability towards employees. Then he raised the question that why the Environmental Protection Act, which was passed in 1986 is silent about any strict provisions in this regard.

Later remarks made by him were based on the momentous decision of the Supreme Court in *Sriram Food and Fertiliser Industries v Union of India*<sup>38</sup>. He pointed out that, the court went to the extent of applying the absolute liability principle as an emotional reaction of the Bhopal incident. Moreover, the court held that the remedy should not be merely compensative; it should also be punitive in nature. The speaker expressed his unhappiness in the fact that this view of the Supreme Court has not influenced the later judgments or legislations. One of the latest and perhaps the most important part of the legal developments in India is the National Green Tribunal Act in 2010 which provides for the establishment of the National Green Tribunal to deal with the issues of liability and compensation in case of damage to environment caused by the industries.

He observed that our law has expanded by looking in to matters in a purely jurisprudential manner by citing the Liability and Compensation Act which incorporates “to any person or to any property and environment”. He remarks about important prior Tribunals they are:-

- i) Tribunal for Bhopal Gas Tragedy 1987
- ii) Vellore Forum

After mentioning that the Government should not be pressurized to take up these issues but should act by itself, the speaker led the attention of the audience to the question why the Plachimada Coca-Cola Victims Relief and Compensation Claims Special Tribunal Bill, 2011 was sent for Presidents approval?

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<sup>38</sup> (1986) 1 Scale 341

The Plachimada Tribunal Bill passed on 24<sup>th</sup> February 2011 aims to adjudicate disputes relating to compensation for the damage the company's Cola bottling plant caused in the village. It intends to realize 216.26 Crores of rupees from the soft drink giant. Unfortunately the Bill is yet to become an Act because of the delay being caused in obtaining the mandatory President's assent. The Coca-Cola Company claimed that the provisions of the Bill are unconstitutional. Sri R.S. Gavai, the then Governor of the State of Kerala, sent the bill for the President's assent through the Home Ministry. The Ministry which received the Bill on 30 March 2011 is silently awaiting comments from various Ministries. These comments have to be consolidated and forwarded to the President.

The Plachimada High Power Committee had observed that there is no need to send the Bill to the President. Former Law Minister Sri Vijay Kumar had said that the President's assent is vital to give judicial validity to the Tribunal. His successor Sri K.M. Mani has opined that the President's assent is important for the approval of the tribunal as it deals with environmental compensation which comes under the ambit of the residuary powers of the parliament. Instead of setting up a Special Tribunal the Coca-Cola Company wants compensation to be given under the National Green Tribunal.

Assuming that the Special Tribunal comes in to force, he expressed his enthusiasm in knowing how far the victims can convince the court about their exploitation and suffering and whether the Tribunal will be able to render justice to the victims. According to the speaker, the fundamental problem here is that the majority of the victims would not be able to effectively convey the nature of the injury they suffered. This is because the majority of the victims are poor illiterate agriculturalist. They may not be able to compete with this huge MNC. More over if the constitution or the decision of the Tribunal has been delayed for ten years the victims are denied their rights and their claims remain only in papers. If the award of tribunal is against the victim or they are not adequately compensated. The only remedy available for them is to appeal. There is also possibility that the company may also prefer appeal in order to get the award reversed or minimized. It will take further time. Further he opined that Government should step into the shoes of victims. He suggested that the following methods will be more effective to deal with the matter.

- i) Class Action Suit
- ii) Pro- active Steps

The class suits or the collective representation of the people instead of individual suit will help to avoid unnecessary delay that will be caused by the procedural formalities to each victim if they move individually. The Public Interest Litigation will enable the court to extend its helping hands to all defendants. In India the apex court considerably relaxed the strict rules of locus standi to enable the public spirited individuals and organizations to file suits on behalf of the deprived sections of the society. The remedies under the Public Interest Litigation spread beyond the mere award of compensation. It can even make guidelines in the absence of any legislation.

Active steps must be taken to avoid the uncertainty of realizing the Bill and ensuring its proper implementation. Strong undertakings by the people have a key role in this regard. Mr. Sujith Koonan concluded by severely criticizing the Polluter Pays Principle and remarked that the principle gives right to the rich sections of the society to pollute the environment and blind fold the poor.

#### **IV.4. Adv. Ravi Prakash K.P (Social Activist)**

Adv. Ravi Prakash in his opening statement itself pointed out that in the Plachimada's war for justice; neither the people nor the law was capable of rendering justice. He highlighted the facts and issues that rose in the bill and underlined that the MNCs like Coca-Cola have the potential and power even to rule the Parliament and impose pressure upon the Government. He criticized the delay caused in passing the Bill, which further expose the extent of influence of the Coca-Cola Company in the decision making bodies. Thereafter, he compared the speedy enactment of law relating to Special Economic Zone and the delay in realizing the Plachimada Special Tribunal Bill. He brought the attention of the audience to the arguments raised by Advocate, appointed by Cocacola Company. It is connected with the Easement Act of 1882 which does not clearly state to whom the right over water resources in India is given? And he emphasized that it is anonymity in this issue.

The Learned Advocate stated to the gathering how a company betrayed people who had great aspirations that, when the company starts functioning, they will lead a better life with more opportunities to grow and flourish. Their dreams were shattered as the Company neither offered jobs to the local unemployed nor worked for the upliftment of the society.

Instead they cheated the people and deposited sludge in their village, contaminating both the land and water resources.

The people could no longer keep their mouth shut and their struggle to close down the company began. They received support from all over the world. They are still waiting for justice with firm faith in the various departments of Government and judiciary. He mentioned similar issues present in various parts of the state that are neglected by the Government. He observed that the people of Plachimada are being denied their right to live, a fundamental right granted by Article 21 of the Indian Constitution. He concluded by sharing his hope that the prayers of the Plachimada residents will be answered soon.

#### **IV.5. Sri. Sharath( representative of Keraleeyam )**

Mr. Sharath explained the circumstances that led to the formation of Plachimada Samara Samithi and the selection of Sri. Vilayodi Venugopal as the President. Later on strike was organized in various forms. He remarked that the movement has been supported by all the political parties throughout Kerala. He also discussed about some of the actions that would be taken up by the Plachimada Samara Samithi in the near future, which included a plan to produce alternative drinks.

#### **V. RECORDINGS FROM THE INTERACTIVE SESSION**

The **major questions** raised by the audience are the following.

- Do we need a special legislation to compensate the victims of Plachimada?
- Is the state government competent to make the impugned legislation?
- Is the consent of the President essential for the impugned state legislation?
- What are the alternative methods that can be adopted to deal with the Plachimada issue?
- How can the concept of sustainable development be applied in this case?
- Why is the proposed Bill limited only to the Plachimada issue? How far is a comprehensive legislation helpful to deal with similar cases?
- How far does the provision for prior notice in the Water Act help the Company to escape from liability?
- Is it really practicable for the poor, agriculturalist victims to fight against the Multinational Company?

- What is the remedy for the future problems such as diseases that may result from the pollution?
- How can we quantify the life and health of present and future generations so as to determine the compensation amount?
- Why are we not taking any preventive steps?
- Why can't we ensure that each company coming forward to establish itself in a state can do so only by abiding by certain rules and regulations and aiding the development of the state?
- Is there any legal measure to deal with the rehabilitation of the affected people?

**The response** from the panel began with Mr. C.R. Bijoy, stating that law is a political instrument. It has to be used for specific purpose to evolve strategy for winning. He asked the audience if the real problem in Plachimada is The Coca Cola Company, their products or the right over water. He opined that the major reason for the issue in Plachimada is the failure in ground water governance. He established his point by quoting one of the residents of Plachimada who had said that“our problem is not cola but water”. Hence it leads to the following questions:-

(i) Who has the right over water?

And

(ii) What is the criminal liability of the company?

Mr. C. R. Bijoy further stated that now the Coca-Cola Company is running on loss. In the light of the Global Economics one can see that the Company's growth rate is negative, by working out the cost. The question is, who will bear the external cost? He pointed out the situation in Alaska where the third generation people are getting a share in the profit of a company, though the incident took place at the time of World War II. But here, in issues like that of the Plachimada, the Bills and Acts are silent about the future compensation.

Lastly, he mentioned that the pressure imposed on legislature has a very vital role in the law making process for materializing the governmental policies. It is a clear reflection of the political and social power structure of the society. He observed that there are two types of laws. The first category deals with the laws that emerge as result of conflicts in the society. And the second category deals with the laws that evolve to resolve the conflict that exist in

the society. The law reflects the socio-political structure of the society. He concluded by stating that the major loop hole in the present issue is the lack of proactive measures.

Following, Mr. C.R. Bijoy, Mr. Sujith Koonan responded to the questions raised by the audience. He stated that the bill does not affect the Powers of High Court and thus there is no need for the assent of the President. Regarding the need for a comprehensive legislation, he pointed out the difficulties for the enactment of such a law when National Green tribunal Act, 2010 is in effect. It is not possible to refer the Plachimada issue to the National Green Tribunal because of the time bar provided under the Act. Alternative mechanism was said to be possible citing the example of Vellore Forum. The panellist criticized the principle of sustainable development. In his view there is every possibility of this concept being used as a loophole. According to him the Bill Itself provides a loophole to the offenders by not including in it, the future diseases that might affect the sufferers in Plachimada.

Adv. Ravi Prakash started his response by appreciating the National Green Tribunal Act, 2010 as it is a step forward in the Indian Environmental Jurisprudence. He then opined that the Plachimada Tribunal Bill itself has the tendency to delay justice which is equal to the denial of justice if the dispute continued through appeals to High Court and Supreme Court. Unfortunately we don't have any legal mechanism to deal with the rehabilitation of the affected people. He also criticised that the Pollution Control Board for being inefficient in handling this issue. In his opinion, the Board has to work round clock and initiate inspection without warnings to realize its real objects. In his view point sustainability is a relative concept. Adv. Ravi Prakash concluded by stating that the concept of sustainable development varies according to interests of the group that pressurizes its creation.

On the whole, the discussion provided deep knowledge about the sociological, legal, environmental and economic aspects of the Plachimada issue which gave shape to THE PLACHIMADA COCA-COLA VICTIMS RELIEF AND COMPENSATION CLAIMS SPECIAL TRIBUNAL BILL, 2011. The panellists also discussed about the hurdles that lie in the way of the Bill becoming an Act. Before winding up the discussion, Mr. Sathish, Assistant Professor, Government Law College, Thrissur rendered the vote of thanks to the panellists, students and teachers who initiated the discussion and made it a grand success.