

COAL ASH IN INDIA

VOL. 2
2020-21

An
**ENVIRONMENTAL, SOCIAL
AND LEGAL COMPENDIUM**
of coal ash mismanagement
in India

MAY 2021

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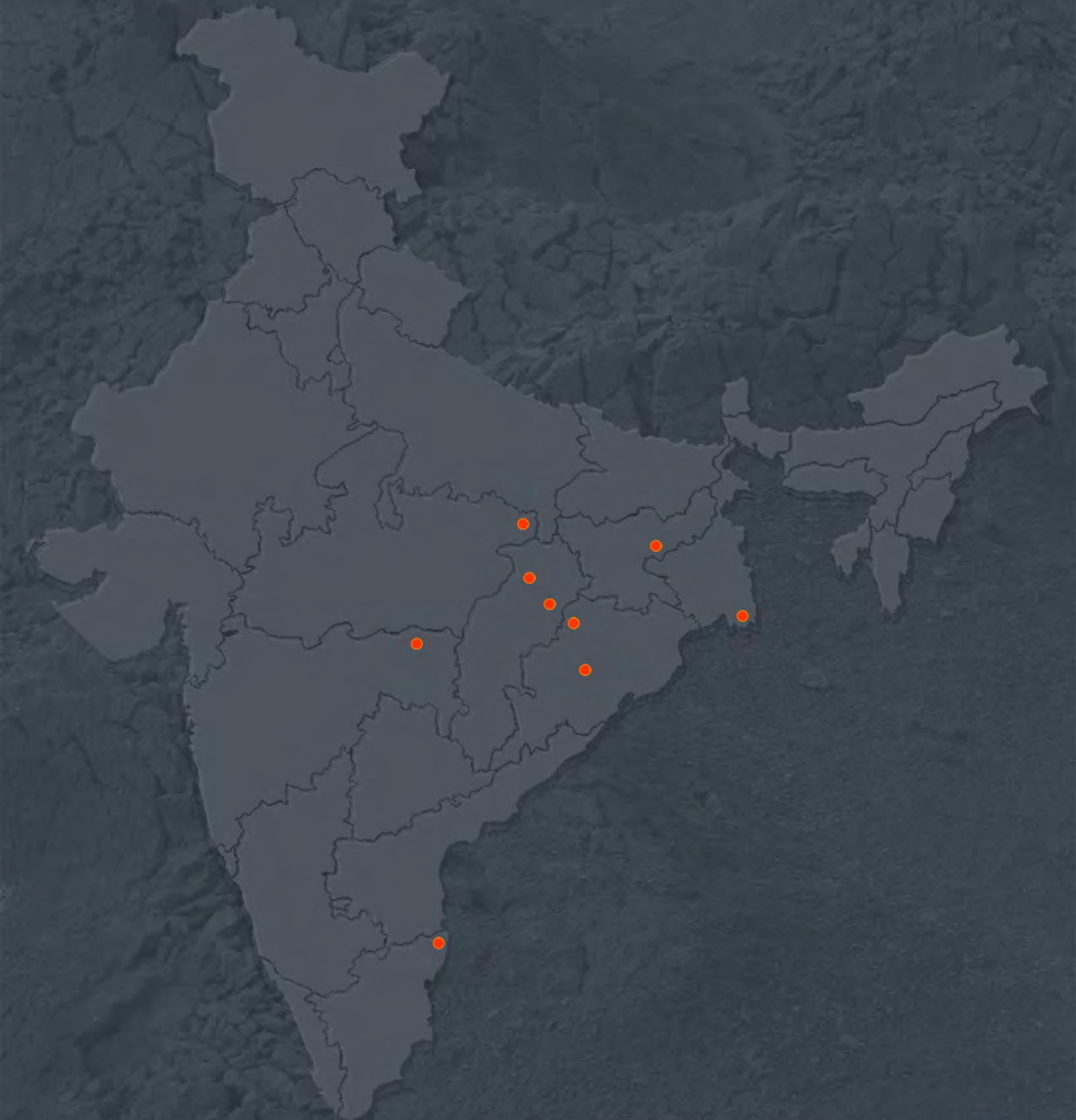
1.0 INTRODUCTION & BACKGROUND

In 2020, **Healthy Energy Initiative – India published Coal Ash in India: A Compendium of Disasters, Environment and Health Risks**, which provided an overview of the management of coal ash in India, and the threat it poses to human health and environment. The report documented 76 coal ash related accidents across the country over the last 10 years (2010-2020). Recognizing the presence of toxic chemicals and heavy metals like arsenic, nickel, mercury, lead, selenium etc. reports of chronic health conditions in various communities living close to coal facilities and those with direct exposure to coal ash was presented. Invoking the 'Precautionary Principle', the report recommended that strict guidelines that governed the siting of coal ash ponds and disposal of coal ash, high level of accountability on the side of the producer and treatment and remediation of contaminated sites and appropriate compensation was recommended.

Coal ash continues to be a large-scale pollutant, contributing to air pollution, soil contamination, ground water contamination and presents a significant radiation risk and chronic health impacts to people who live in proximity to these facilities. Despite this, incidents of spills, leaks and accidents are perennially reported in national and sub-national media. Reports of community struggles seeking intervention to address the fly ash menace is also noted. The objective of this report is to document incidents of fly ash spills, leaks and accidents and reports of community struggles to hold polluters accountable between April 2020 to March 2021. This report also presents a legal perspective on the avenues available to communities to legally ask for fly ash regulation and management in India, while prioritizing public and environmental health.

2.0 Incidents of Fly Ash Spills, Leaks and Accidents in different states

A total of 17 incidents from 7 states including Madhya Pradesh, Tamil Nadu, Odisha, Chhattisgarh, Jharkhand, West Bengal and Maharashtra were recorded by perusal of news media reports. Most of these locations are regions where the coal ash disposal is a perennial problem and leaks and accidents are routine. Ash pond collapse, air pollution from ash ponds and discharge of coal ash into rivers, streams and other waterbodies were the most prevalent incidents, indicating the dismal state of coal ash management in the country. Residents from these regions also reported that many power companies used the COVID-19 lockdown to dump waste indiscriminately in the villages and around the highways.



State wise break-up

WEST BENGAL

Tangruchar Village

South 24 Parganas

April 9, 2020

Two Bangladeshi barge ferrying fly ash sink in Hooghly

Sundarbans

May 5, 2020

Barges carrying toxic ash from India to Bangladesh keep sinking

JHARKHAND

Bokaro

July 2020

Air Pollution due to fly ash

CHHATTISGARH

Raigarh

July 2020

Dumping of flyash in low lying areas in Tamnar and Gharghoda blocks as reported by local residents to the Hon'ble NGT

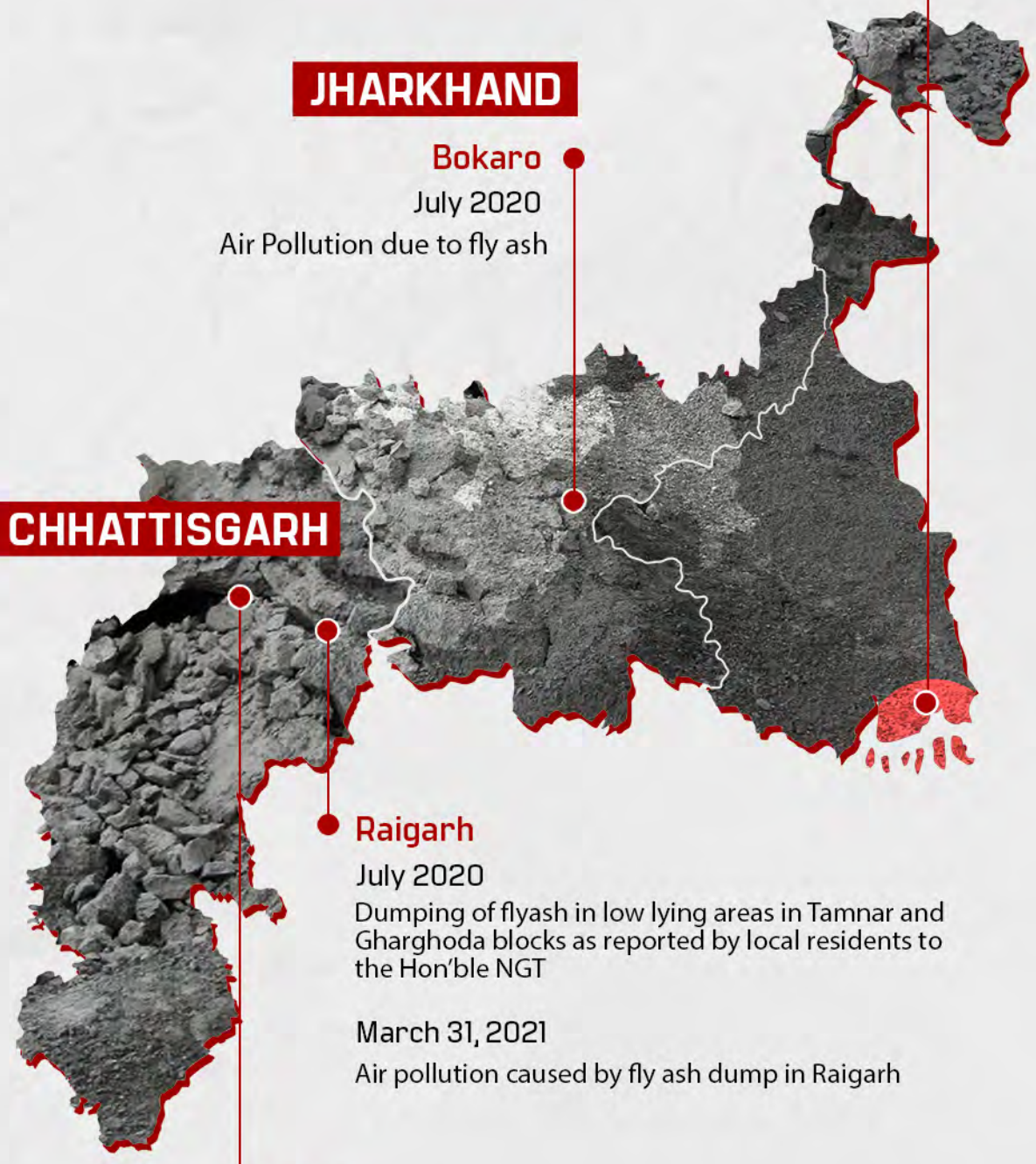
March 31, 2021

Air pollution caused by fly ash dump in Raigarh

Korba

2020

Rampant dumping of fly ash along the ring road and nearby villages by power plant as reported by local residents.





MADHYA PRADESH

Singrauli

April 10, 2020

Sasan UMPP's ash dump yard collapses in Madhya Pradesh

MAHARASHTRA

Nagpur

December 24, 2020

Khaparkheda fly-ash being discharged into Kanhan river again

TAMIL NADU

Ennore

August 15, 2020

Fish kill at Ennore creek worries fishermen

August 26, 2020

Toxic fly ash slurry from busted pipeline of North Chennai thermal plant floods village

October 20, 2020

Fly ash from power station leaks into Ennore creek

Seppakkam

August 26, 2020

Coal ash in food, constant thirst, itch: TN's Seppakkam is living hell for its residents

ODISHA

Jharsuguda

September 06, 2020
6 Injured In OPGC Plant At Odisha's Jharsuguda

January 19, 2021
Pollution-hit locals detain nine trucks carrying power plant ash in Odisha

Sukhanara nallah

October 27, 2021
NTPC fly ash discharge in Chhattisgarh sparks water contamination fears in Odisha

Angul

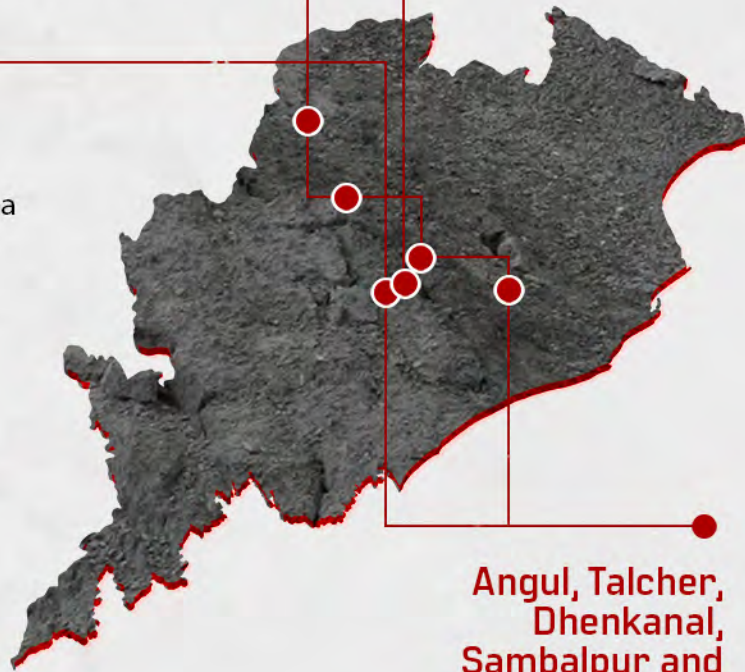
October 27, 2020
Angul set to lose 2,417 ha forests

March 03, 2021

Unused fly ash gives pollution headaches

Angul, Talcher, Dhenkanal, Sambalpur and Jharsuguda

March 19, 2021
400 Odisha villages near thermal power units hit





3.0

MEDIA VISIBILITY OF COMMUNITY AND ENVIRONMENTAL IMPACTS OF COAL ASH

Analysis of news media reports on coal ash also indicates a shift towards in-depth coverage of the environmental and community impacts of coal ash, that centralizes people and non-people, like biodiversity and changing nature of landscapes as being disadvantaged by the “development” narrative that coal-based industries often go by.

Media coverage of research studies and reports published by leading universities and think tanks present a multidisciplinary approach in understanding the impacts of coal ash. Similarly, coverage of the people’s struggles around coal based industries, seeking remediation of contaminated sites, clean up, reduction of pollution and compensation for loss of quality of life and livelihood were also prevalent.



NAGPUR, Maharashtra

AUGUST 28, 2020

PRESENCE OF MERCURY IN BIRDS NEAR THERMAL POWER PLANTS IN MAHARASHTRA PAVES WAY FOR MODERN ANALYSIS



<https://www.downtoearth.org.in/blog/pollution/presence-of-mercury-in-birds-near-thermal-power-plants-in-maharashtra-paves-way-for-modern-analysis-73097>



<https://www.thehindu.com/news/national/tamil-nadu/work-begins-to-dredge-ennore-creek-backwaters-of-fly-ash/article32216730.ece>

ENNORE, Tamil Nadu


SEPTEMBER 29, 2020

WORK BEGINS TO DREDGE ENNORE CREEK BACKWATERS OF FLY ASH

JHARSUGUDA, Odisha


AUGUST 11, 2020

MAD RUSH FOR COAL WASTE LEADS TO FACE-OFFS AMONG VILLAGERS

 <https://www.orissapost.com/mad-rush-for-coal-waste-leads-to-face-offs-among-villagers/>

SEPTEMBER 15, 2020

RELIEF FOR TATA POWER, VEDANTA: SC STAYS FINES IMPOSED BY NGT FOR NOT UTILISING ASH FROM THERMAL PROJECTS

 <https://www.financialexpress.com/industry/relief-for-tata-power-vedanta-sc-stays-fines-imposed-by-ngt-for-not-utilising-ash-from-thermal-projects/2083192/>

OCTOBER 27, 2020

JHARSUGUDA VILLAGERS STAGE PROTEST OUTSIDE VEDANTA PLANT, SEEK COMPENSATION FOR ASH POND BREACH


 <https://odishatv.in/odisha-news/jharsuguda-villagers-stage-protest-outside-vedanta-plant-seek-compensation-for-ash-pond-breach-488237>



ANGUL, Odisha


SEPTEMBER 17, 2020

ANGUL SET TO LOSE 2,417 HA FORESTS

 <https://www.dailypioneer.com/2020/state-editions/angul-set-to-lose-2-417-ha-forests.html>

MARCH 16, 2021

INTERNATIONAL ORG QUESTIONS INDIA DECISION TO DILUTE COAL PLANTS' POLLUTION NORMS

 <https://science.thewire.in/environment/questions-linger-over-indias-decision-to-dilute-coal-plants-pollution-norms/>



RAICHUR, Karnataka

OCTOBER 03, 2020

RAICHUR, ONCE A PREFERRED DESTINATION OF BIRDS, NOT ANY MORE



<https://www.deccanherald.com/spectrum/spectrum-statescan/have-you-tried-cutting-pani-yet-964199.html>



ANDHRA PRDAESH

DECEMBER 30, 2020

RAILWAYS' FIRST FLY ASH TRAIN FROM ANDHRA PRADESH TO KARNATAKA FLAGGED OFF IN VIZAG



<https://timesofindia.indiatimes.com/city/visakhapatnam/railways-first-fly-ash-train-from-andhra-pradesh-to-karnataka-flagged-off-in-vizag/articleshow/80046534.cms>

TANGRACHAR VILLAGE, West Bengal

OCTOBER 23, 2020

FLY ASH IN INDIA: A FREE MOVEMENT OF TOXICITY TO BANGLADESH



<https://india.mongabay.com/2020/10/fly-ash-in-india-a-free-movement-of-toxicity-to-bangladesh/>

Punjab

BHATINDA

2020

CHEMICAL TOXICITY RISK ASSESSMENT OF URANIUM IN THE FLY ASH FROM THERMAL POWER PLANT (GNDTPP) OF BATHINDA CITY, INDIA



<https://iopscience.iop.org/article/10.1088/1757-899X/928/7/072080/pdf>

RAJPURA

JULY 24, 2020

NGT DIRECTS 3 THERMAL PLANTS TO PAY RS 1.5 CR.



<https://www.tribuneindia.com/news/reviews/story/ngt-directs-3-thermal-plants-to-pay-rs-1-5-crore-117092>

HODLA KALAN VILLAGE

FEBRUARY 21, 2021

TALWANDI SABO THERMAL PLANT LIABLE TO PAY ₹85 LAKH TO FARMERS: NGT'S STATE PANEL



<https://www.hindustantimes.com/cities/others/talwandi-sabo-thermal-plant-liable-to-pay-rs-85-lakh-to-farmers-ngt-s-state-panel-101613915836600.html>



An emerging trend of courts imposing environmental compensation for environmental misdeeds and violations could also be seen. The legal standpoint on how effective environmental compensations are for improving the quality of life and livelihood in coal heavy areas is discussed in the next section.

4.0

LEGAL OVERVIEW



In order to understand the problem of coal ash mismanagement in India, a deeper analysis of the legal and policy implementation gaps is essential. The legal evaluation can be obtained through the orders of the NGT in several ongoing cases before the various benches of the tribunal.

4.1 Existing Case Laws and Legal Principles

The principle of no-fault liability is applied when an accident has resulted in environmental harm. Section 17(3) of the National Green Tribunal Act, 2010 states as follows:

“(3) The Tribunal shall, in case of an accident, apply the principle of no fault”

Therefore, the principle of no-fault liability for matters related to damage caused to the environment from any accident or adverse impact from any activity, operation or process, has been specifically stated in the National Green Tribunal Act, 2010. The Tribunal has the power to affix the liability for the damage caused due to the breach of ash pond.

The Principle of ‘No Fault Liability’ was elaborated by the NGT in the case of

Manoj Misra vs. DDA and Ors¹ (Original Application No. 65 of 2016) observed that:

“62. Unlike, the laws of other countries where the Courts or the Tribunals dealing with environmental issues are to determine first whether they could apply the principle of absolute liability or not and, if so, to what extent. In India, the Tribunal is mandated under Section 17(3) of the National Green Tribunal Act, 2010 to apply the principles of no fault. Thus, application of this principle is inescapable. This doctrine imposes an obligation upon the project proponent or body intending to carry on an activity to bear the consequences of its actions. The consequences would obviously include amongst others such as cost of restoration/restitution.

The Tribunal in the case of

Society for Preservation of Kasauli and its Environs vs. Bird's View Resort and Ors²

where the Tribunal discussed the elements, consequences and effects of Principle of absolute liability and held as under:

“The liability of the polluter is absolute for the harm done to the environment which extends not only to compensate the victims of pollution but is also aimed to meet the cost of restoring environment and also to remove the sludge and other pollutants.

¹ Original Application No. 65 of 2016

² Original Application. No. 69 of 2017 Decided on 30th May, 2017

It is clear from the judicial decisions of the NGT, that in cases of breach of ash pond, the project proponent cannot escape liability on the ground that it was an 'act of god'.

In

Bandh Aapda Sangharsh Samiti vs. Alaknanda Hydro Power Company Ltd³

Tribunal observed as follows:



"46. Even assuming the disaster of June, 2013 as the one involving fortuitous or sudden or unintended occurrence the injury that has resulted from such occurrence, to the human habitation needs to be regarded as the one resulted while handling the said plant or the process leading to manufacturing of power and, therefore, it is an "accident" within the meaning of said definition under Section 2 (a) of the NGT Act, 2010. In the given facts and circumstances, therefore, the principle of No Fault Liability under Section 17(3) of the NGT Act, 2010 makes the respondent no.1- Alaknanda Hydro Power Co. Ltd. liable to pay compensation for the injury caused to the human habitation."



The Judgments of the NGT has followed the law laid down by the Supreme Court in

M.C. Mehta v. Union of India (Shriram - Oleum Gas), (1987) 1 SCC 395

where it was held that



"31. an enterprise which is engaged in a 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 nature of the 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 the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part."

³ Original Application No. 03 of 2014

It is important to highlight that the Supreme Court specifically held in the

Oleum Gas leak case that



"If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards."



The Supreme Court also held that



"the larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity.."

4.2 Legal Position vs Practice:

The legal position is clear with respect to the liability of project proponents responsible for breach of fly ash – they are absolutely liable for both the damages and cost of restoration. Despite, this clear judicial precedents, the Courts and Tribunal have rarely fixed the liability on the violators which reflects both the damages caused and the cost of restoration. One of the reason for the same is that in most instances the cost of calculating the damage caused and cost of restoration is left to be decided by a third party to be selected by the project proponent itself. Thus, when the breach of Sasan Power Plant took place, the Madhya Pradesh Pollution Control Board directed Sasan Power Ltd, Singrauli, MP to **“Depute an institute of national repute to assess the quantum of environmental damage caused due to the breakage and flow of the fly ash outside the low lying area and industry premises in the adjoining area, agriculture fields, villages and in and along the natural water bodies including Rihand Reservoir”**.⁴ Given the fact that it will be the violator who will be deciding the agency which will calculate the damages, it is unlikely that a fair assessment of damages will take place.

In addition to the above, the calculation of damages usually takes place long after the breach has taken place. Thus not much evidence of damage is found. There is a need for rapid assessment of damages and development of a scientific restoration plan based on community consultation and monitoring.

Among the coal ash accidents documented over the last year, Singaruli in Madhya Pradesh has been the worst hit. Among these, Reliance Sasan’s accident on April 10, 2020 remains the worse due to the human casualties. An analysis of interim orders by the NGT in these ongoing cases (among others) shows a frequent application of “polluter pays” principle and “management” measures. In the cases of Essar Thermal, Reliance Sasan and NTPC Vindhyachal, an interim environmental compensation of Rs.10 crores each has been ordered.

While monetary compensation is an important mechanism to provide immediate relief in such cases, it also remains an inadequate approach given the complexity that surrounds such environmental disasters. While it is important to acknowledge disasters events as examples of poor industrial practices and bad engineering, they should not gloss over the fact that coal ash mismanagement in India is an ongoing toxic disaster – slowly poisoning our bodies and ecologies.



⁴ Directions dated 13-4-2020



4.3 Coal Ash Compensation and Remediation – The Way Forward:

In the previous report, we had argued that coal ash is toxic by nature and also presented a detailed analysis linking coal ash pollution with loss of public health and ecology. The available literature and science on the toxicity of coal ash makes a compelling case expanding the scope of relief provided by the tribunal.

Furthermore, the long-term impacts of such disasters have rarely been studied in the Indian context. Heavy metals like mercury arsenic etc., found in coal ash are known to have public health impacts. In addition, the associated loss of ecology and biodiversity is currently not even in the purview of policy makers and judiciary.

The issue of coal ash mismanagement calls for an all-inclusive approach that aims beyond providing interim relief to impacted communities, acknowledges the science behind coal ash toxicity, seeks to assess and monitor the long-term environmental health ramifications of exposure and most importantly affixes criminal liabilities for damages.





The Healthy Energy Initiative (HEI) is led by 'Health Care Without Harm' and is comprised of a network of partners made up of health professionals, health organizations, and academic research institutions, from around the world. The Healthy Energy Initiative in India is coordinated by Community Environmental Monitoring (CEM), a program of The Other Media. Based in Chennai, CEM addresses the plight of pollution impacted communities through environmental health monitoring skills training, information and organizing support, and emergency response services and funding.



Legal Initiative for Forest and Environment

Legal Initiative for Forest and Environment (LIFE) was formed in 2008 with the mandate of promoting environmental democracy i.e. access to Information, public participation and access to justice in matters relating to the environment. The mission of LIFE is based on the belief that effective environmental protection is possible if the affected people have a voice in the decision making process.

LIFE supports environmental democracy by focusing on Access to information. Public participation and Access to Justice. LIFE's vision is reforming Environmental Law by inspiring new conversation and promoting environmental democracy and justice through creative use of law and scientific evidence based advocacy.