



Laws And Institutions Relating to Environmental Protection in India: Challenges for Enforcement

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“Earth provides enough to satisfy every man's needs, but not every man's greed.”

-Mahatma Gandhi

Abstract

The development of Indian environmental law has happened, for the most part, over the last three decades, with a significant level of polarization around the latter half of this period. Therefore, a paper detailing “recent developments in India” would necessarily involve a thorough discussion of most relevant environmental issues and their consequences. The development of the law in this area has seen a considerable share of initiative by the Indian judiciary, particularly the higher judiciary, consisting of the Supreme Court of India, and the High Courts of the States. The paper will dwell on this aspect and its effect on the strength of the legal framework. Legislative schemes and initiatives have been created in most areas involving the environment, albeit with some degree of overlap. The role of the administration, although a critical factor in the success of any environmental management programme, has seen its share of problems of scale and definition. The essence of the existing law relating to the environment has developed through legislative and judicial initiative.

Through this article I would like to focused on the following matters

- a) Phases of the Evolution of Environment Law
- b) The Constitutional Framework, Legislative Measures for Protection of Environment
- c) Role of Indian Judiciary in Environmental Protection
- d) Development of Environmental Law Principles
- e) Challenges for Enforcement of Environment Legislation Effetely etc.

This research paper is totally based upon secondary source of data such as books, magazine, newspaper, articles etc.

Key words: - Environment, Legislation, Sustainable Development, PIL, Hazards.

Introduction

Word "environment" is most commonly used describing "natural" environment and means the sum of all living and non-living things that surround an organism, or group of organisms. Environment includes all elements, factors, and conditions that have some impact on growth and development of certain organism. Environment includes both biotic and a-biotic factors that have influence on observed organism. A-biotic factors such as light, temperature, water, atmospheric gases combine with biotic factors (all surrounding living species). Environment often changes after some time and therefore many organisms have ability to adapt to these changes. However tolerance range is not the same with all species and exposure to environmental conditions at the limit of an certain organism's tolerance range represents environmental stress. Environment is the immediate surrounding space around man. It includes a biotic and biotic component. So environment not only means our environment but also varies of issues connected with human activity and its impact on natural resources. It has been observed that in recent past far reaching changes have taken place. Man has played a key role in modifying the environment in his constant efforts towards improving the standard of living¹ today, the conservation, protection and improvement of human environment are major issues all over the world. Human environment consists of both physical environment and biological environment. Physical environment covers land, water and air. Biological environment includes plants, animals and other organisms. Both physical and biological environment are inter-dependent. Industrialization, urbanization, explosion of population, over-exploitation of resources, disruption of natural ecological balances, destruction of a multitude of animal and plant species for economic reasons are the factors which have contributed to environmental deterioration.² Environment is defined as the surroundings in which the organism lives. The environment may be the physical environment, the chemical environment or the biological environment. Organisms are dependent on the environment to fulfill their needs; man is also constantly interacting with the environment in order to fulfill his needs. These needs include the basic needs of oxygen, food and shelter in addition to the social needs like entertainment, medicines, etc. The things that man requires for his survival and comfort are called the resources. The environment is a reservoir of resources. Maintaining the

¹ L.D Saini, Environmental Education, Kalyani Publisher, Ludhiana, p 1.

²Sachidanand Pandey v. State of West BengaAIR 1987 SC 1109.

natural resources of the environment and their careful use is called conservation. The conservation of environment involves the conservation of the natural resources.³

The Constitutional Framework

Stockholm Declaration of 1972 was perhaps the first major attempt to conserve and protect the human environment at the international level. As a consequence of this Declaration, the States were required to adopt legislative measures to protect and improve the environment. Accordingly, Indian Parliament inserted two Articles, i.e., 48A and 51A in the Constitution of India in 1976⁴. Article 48A of the Constitution rightly directs that the State shall endeavour to protect and improve the environment and safeguard forests and wildlife of the country. Similarly, clause (g) of Article 51A imposes a duty on every citizen of India, to protect and improve the natural environment including forests, lakes, river, and wildlife and to have compassion for living creatures. The cumulative effect of Articles 48A and 51A (g) seems to be that the 'State' as well as the 'citizens' both are now under constitutional obligation to conserve, perceive, protect and improve the environment. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way⁵. In the Constitution of India it is clearly stated that it is the duty of the state to 'protect and improve the environment and to safeguard the forests and wildlife of the country'. It imposes a duty on every citizen 'to protect and improve the natural environment including forests, lakes, rivers, and wildlife'. Reference to the environment has also been made in the Directive Principles of State Policy as well as the Fundamental Rights. The Department of Environment was established in India in 1980 to ensure a healthy environment for the country. This later became the Ministry of Environment and Forests in 1985. The constitutional provisions are backed by a number of laws – acts, rules, and notifications. The EPA (Environment Protection Act), 1986 came into force soon after the Bhopal Gas Tragedy and is considered an umbrella legislation as it fills many gaps in the existing laws. Thereafter a large number of laws came into existence as the problems began arising, for example, Handling and Management of Hazardous Waste Rules in 1989.

Major Constitutional Amendments Related to Environment

The 42nd Constitution Amendment Act, 1976, inserted specific provisions for environmental protection in the form of Directive Principles of State Policy and Fundamental Duties. Article 48A (Directive Principles) enunciates that 'the state shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country'. Article 51A (g) (Fundamental Duties): 'To protect and improve the natural environment including forests, lakes, rivers, wildlife and to have compassion for living creatures'. Two entries 17A – Forests and 17B – Protection to wild animals and birds were added in the Concurrent List.

The 73rd and 74th Constitutional amendments of 1992 recognized the three-tier structure of the government by devolution of power to the local bodies' viz. panchayats in rural areas and municipalities in urban areas. With the passage of bills by the state legislatures and devolving powers and allocating revenue sources, these local bodies can become institutions of self-government. The eleventh schedule contains environmental activities such as soil conservation, water management, social forestry and non-conventional energy that panchayats can undertake. The twelfth schedule lists activities such as water supply, public health and sanitation, solid waste management and environmental protection which the municipalities can undertake.

Role of Indian Judiciary in Environmental Protection

The Supreme Court and the High Courts have played an active role in the enforcement of constitutional provisions and legislations relating to environmental protection. The fundamental right to life and personal liberty⁶ has been held to include the right to enjoy pollution free air and water. In *R.R. Delavoi v. The Indian Overseas Bank case*⁷ the Madras High Court pointed out: 'Being aware of the limitations of legalism, the Supreme Court in the main and the High Courts to some extent for the last decade and a half did their best to bring law into the service of the poor and downtrodden under the banner of Public Interest Litigation. The right of a person to pollution free environment is a part of basic jurisprudence of the land. The Supreme Court has interpreted the right to life and personal liberty to include the right to wholesome environment.'⁸

Judicial and Quasi-Judicial Bodies for Environmental Protection are the Courts or Authorities established under various environmental Protection Legislations for interpretation and effective implementation of these statutes.

³ *Our Environment Introduction*, Available at <http://www.tutorvista.com/content/science/science-ii/environment/introduction.php>.

⁴ *Inserted by the Constitution (Forty-second Amendment) Act, 1976.*

⁵ *State of Tamil Nadu v. Hind Store*, AIR 1981 SC 711; see also *Rural Litigation and Entitled Ji: at Kendra v. State of Uttar Pradesh*, AIR 1987 SC 359.

⁶ Article 21 of the Constitution.

⁷ AIR 1991,

⁸ *Rural Litigation and Entitlement Kendra, Dehradun V. State of U.P.*, AIR 1988 SC 1037.

Public Interest Litigation (PIL)

This is a new remedy available to public spirited individuals or societies to go to the court⁹ for the enforcement of the fundamental right to life (including clean air and water) contained in Article 21. A Public Interest Litigation (PIL) can be filed in any High Court or directly in the Supreme Court. It is not necessary that the petitioner has suffered some injury of his own or has had personal grievance to litigate. PIL is a right given to the socially conscious member or a public spirited NGO to espouse a public cause by seeking judicial redressal of public injury. Such injury may arise from breach of public duty or due to a violation of some provision of the Constitution. Public interest litigation is the device by which public participation in judicial review of administrative action is assured. It has the effect of making judicial process little more democratic¹⁰

***M. C Mehta v State of Orissa*¹¹**

A writ petition was filed to protect the health of thousands of innocent people living in Cuttack and adjacent areas who were suffering from pollution from sewage being caused by the Municipal Committee Cuttack and the SCB Medical College Hospital, Cuttack. The main contention of the petitioner was that the dumping of untreated waste water of the hospital and some other parts of the city in the Taladanda canal was creating health problems in the city. The State, on the other hand contended that a central sewerage system had been installed in the hospital and that there is no sewage flow into the taladanda canal as alleged. Further, it was asserted that the State had not received any information relating to either pollution or of epidemic of water borne diseases caused by contamination of the canal. Also, the health department shrugged off the responsibility for supply of drinking water and passed the buck to the Municipality which refuted the contentions of carelessness and callousness.

The Court reprimanded the authorities and directed the government to immediately act on the matter. Also, the court recommended setting up of a committee to take steps to prevent and control water pollution and to maintain wholesomeness of water meant for human consumption amongst other things. A responsible Municipal Council is constituted for the precise purpose of preserving public health. Provision of proper drainage system in working conditions cannot be avoided by pleading financial inability.

***M. C Mehta v Union of India*¹²**

On the eve of his retirement, J. Kuldeep Singh delivered the judgment in the Taj Trapezium case, culminating a long and arduous battle fought by M. C Mehta for over a decade. The case was first placed in 1984, wherein the petitioner warned of damage to the Taj Mahal from air pollutants from the Mathura refinery. It was alleged by the petitioner that the sulphur dioxide emitted by the Mathura refinery and the industries when combined with Oxygen-with the aid of moisture-in the atmosphere forms sulphuric acid which has a corroding effect on the gleaming white marble of the Taj. Industrial/Refinery emissions, brick-kilns, vehicular traffic and generator sets are primarily responsible for polluting the ambient air around Taj Trapezium. The petition states that the white marble has yellowed and blackened in places. It is inside the Taj that the decay is more apparent. Yellow pallor pervades the entire monument. In places the yellow hue is magnified by ugly brown and black spots. Fungal deterioration is worst in the inner chamber where the original graves of Shah-Jahan and Mumtazmahallie. The Court observed that the Taj, apart from being cultural heritage, is an industry by itself. More than two million tourists visit the Taj every year. It is a source of revenue for the country. Various orders were passed by the Court. The Court created a Taj Trapezium which consisted of 10, 400 sq. Kms in the shape of a trapezium to regulate activities in relation to air pollution. Industries were asked to shift to ecofriendly fuel and use less the use of diesel generators, and asked the State to improve power supply the city. Tanneries operating from Agra were asked to shift from the Trapezium.

***Bangalore Medical Trust v B. S Muddappa*¹³**

In this case it was held that absence of open space and Public Park, in present day when urbanization is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may give rise to health hazard. To say, therefore, that by conversion of a site reserved for low lying park into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility.

***M. C. Mehta (Badkhal and Sujratkund Lakes Matter) vs. Union of India*¹⁴**

The court held that Articles 21, 47, 48A and 51A (g) of the Constitution of India give a clear mandate to the state to protect and improve the environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The "precautionary principle" makes it mandatory for the State Government to anticipate, prevent and attack the causes of environment degradation.

⁹Under Article 32

¹⁰ Available at <http://www.ngosindia.com/resources/pil.php>, Last visited on 10.12.2015, at 3:40 IST.

¹¹AIR 1992.

¹² AIR 1997 SC 734.

¹³AIR 1991 SC 1902.

¹⁴W.P. (C) No.4677/ 1985 decided on Oct.11, 1996.

Development of Environmental Law Principles

The Court has successfully isolated specific environmental law principles upon the interpretation of Indian statutes and the Constitution, combined with a liberal view towards ensuring social justice and the protection of human rights. The principles have often found reflection in the Constitution in some form, and are usually justified even when not explicitly mentioned in the concerned statute. There have also been occasions when the judiciary has prioritized the environment over development, when the situation demanded an immediate and specific policy structure.¹⁵

• The Precautionary Principle

Beginning with *Vellore Citizens' Welfare Forum v. Union of India*¹⁶, the Supreme Court has explicitly recognized the precautionary principle as a principle of Indian environmental law. More recently, in *A.P. Pollution Control Board v. M.V. Nayudu*¹⁷, the Court discussed the development of the precautionary principle.¹⁸ Furthermore, in the *Narmada* case¹⁹, the Court explained that “When there is a state of uncertainty due to the lack of data or material about the extent of damage or pollution likely to be caused, then, in order to maintain the ecology balance, the burden of proof that the said balance will be maintained must necessarily be on the industry or the unit which is likely to cause pollution.”

• The “Polluter Pays” Principle

The Supreme Court has come to sustain a position where it calculates environmental damages not on the basis of a claim put forward by either party, but through an examination of the situation by the Court, keeping in mind factors such as the deterrent nature of the award.²⁰ However, it held recently that the power under Article 32 to award damages, or even exemplary damages to compensate environmental harm, would not extend to the levy of a pollution fine.²¹ The “polluter pays” rule has also been recognized as a fundamental objective of government policy to prevent and control pollution.²²

• The Doctrine of Public Trust

To further justify and perhaps extract state initiative to conserve natural resources, the Court enunciated Professor Joseph Sax's doctrine of public trust, obligating conservation by the state. In *M.C. Mehta v. Kamal Nath*²³, the Court held that the state, as a trustee of all natural resources, was under a legal duty to protect them, and that the resources were meant for public use and could not be transferred to private ownership.

Challenges for Enforcement of Environment Legislation Effectively

We have more than 200 Central and State legislations which deal with environmental issues. More legislation means more difficulties in enforcement. There is a need to have a comprehensive and an integrated law on environmental protection for meaningful enforcement. It is not enough to enact the legislations. A positive attitude on the part of everyone in society is essential for effective and efficient enforcement of these legislations. The powers vested to the Pollution Control Boards are not enough to prevent pollution. The Boards do not have power to punish the violators but can launch prosecution against them in the Courts which ultimately defeat the purpose and object of the Environmental Laws due to long delays in deciding the cases. Thus, it is imperatively necessary to give more powers to the Boards. You must be aware that despite all this legislative activity the state of the environment in India continues to be gloomy. The rivers and the lakes continue to be choked with sewage and industrial waste. The air quality in some major cities has gained the dubious distinction of being worse than that of the American cities like Chicago and New York. Forests continue to disappear, and the consequent loss of soil has led to the scourge of floods with sickening regularity. What can the country do to reverse the process and restore a balanced state of the environment? Although the legislative measures taken and the administrative set-up is sufficiently indicative of the Government's concern, the implementation does not reflect a sound appreciation of the issue involved in eco-management and development. Environment is a resource—perhaps the most precious of all the Earth's resources. It should be treated as such. The measures adopted by the Government until now do not reveal an equal emphasis on the management and development aspects of this vital resource. Often these measures reflect a fire-brigade approach rushing to the spot of fire, after it breaks out. The strategy should lay equal emphasis on attacking the cause of fires. An ounce of prevention in the field of environment is literally worth a gallon of cure. Take for example the river pollution in India. It is well known that the major source of pollution of rivers is domestic sewage, which municipalities nonchalantly dump in the nearest rivers. Ninety percent of

¹⁵M.C. Mehta v. Union of India, (1987) 4 SCC 463. The Court held: “life, public health and ecology has priority over unemployment and loss of revenue problem.”

¹⁶AIR 1996 SC 2715.

¹⁷AIR 1999 SC 812.

¹⁸See also S. Jagannath v. Union of India (Shrimp Culture case), AIR 1997 SC 811.

¹⁹Narmada Bachao Andolan v. Union of India, AIR 2000 SC 3751

²⁰See also the explanation for the principle of absolute liability in M.C. Mehta v. Union of India (Oleum Gas case), AIR 1987 SC 965, and its subsequent application in Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212.

²¹M.C. Mehta v. Kamal Nath, AIR 2000 SC 1997.

²²Ministry of Environment and Forests, Government of India, Policy Statement for Abatement of Pollution, para 3.3, February 26, 1992.

²³(1997) 1 SCC 388.

the pollution of Ganga stems from the 100-odd littoral municipal waste dumpings. The colossal cleaning-up operation, Ganga Action Plan, will be an exercise in futility if it is not accompanied by a massive effort to prevent the municipalities from dumping their wastes in the river. Every one knows that the technology for treating municipal waste exists. But it costs money and most of the municipalities cannot afford it. If the Environment (Protection) Act is taken seriously, all the municipalities abutting the Ganga will have to be prosecuted. The Act, rightly, makes no distinction between private and public polluters. But that would be taking a very restrictive view of the law.

The more modern view is that the law must guide and help people and establish a trend of acceptance. Environmental law has little chance of acquiring effectiveness unless accompanied by a whole set promotional measures, ranging from direct financial subsidies to cost sharing, for example, in installing treatment plants. Litigation is an expensive affair. Environment litigation is more expensive than other types of disputes, since it involves expert testimony, technical evidence and so on. State Boards will have to be able to afford the expertise and the administrative backing. Most of the State Boards suffer from inadequate expertise and funds to pursue their objectives. There is, therefore, a tendency to seek to exercise gentle pressure on the polluting industry and pursue settlements outside the courts. There is nothing fundamentally wrong with out-of-court settlement of environmental disputes. In fact, in some developed countries, like the United States, a preference is shown toward such a procedure. But in India, officially initiated and sanctioned out of court settlements may aggravate the perennial problem of corruption. Sharing the costs of anti-pollution measures taken by the industry seems to be a better strategy than state-sponsored expensive and lengthy prosecutions. Admittedly, the state of environment of the country is not rosy; the imperatives of development have sometimes come into sharp conflict with those of the environment; the administrative machinery set up to solve the problems of environment has often failed in its task; the laws enacted to meet the challenge have been generally inept. But these are the failings of a nation wrestling with hundreds of problems on thousands of fronts. The water of survival, which is what the sorry state of the nation's environment poses to the country, inquires first and foremost the will to survive. The Government and, more importantly, the people have demonstrated it in abundance. The rest is a matter of skill and experience, which we seem to be acquiring slowly but steadily.²⁴

Conclusion

Environment is an important part of human life and a healthy environment is a must for human existence. Therefore, it is crucial that we take care of our surroundings and help nature maintain ecological balance so that we could hand over to the coming generations the environment as we found it, if not any better. In the recent past there has been a lot of damage to the ecology. Air, water and soil have been polluted and there appears to be no decisive end to it. The scientific advancement and rapid industrialization has taken its toll. Nowadays protection of the environment is very important as the world is moving into a new era without considering any of the major problems of pollution with rapid industrialization. The best way to protect the environment is conservation. Conservation is the philosophy and policy of managing the environment to assure adequate supplies of natural resources for future as well as present. Tropical forests are being destroyed at an ever-increasing rate. Estimates of the extent and rate of loss vary, but it appears that nearly half of the world tropical forests already have been lost, and the remainder will all but disappear in the next two to three decades. The loss is incalculable. These forests provide habitat for an estimated half of the world plant and animal species, provide water and fuel for much of the world population, and influence regional and global climate. Commercial logging, clearance for agriculture,

²⁴J DURGA, What are the Difficulties faced in Enforcement Environmental Legislation?, Available at www.Preservearticles.com/