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LAW OF ENVIRONMENT IN INDIA: PROBLEMS AND CHALLENGES IN ITS ENFORCEMENT

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Abstract

There is no deficiency of available legislations on environmental protection in India but enforcement of these legislations has been far from satisfactory. There is urgent need for the effective, successful and well-organized enforcement of the Constitutional mandate and other environmental legislations or laws in India. The creative and innovative role of India Judiciary and National Green Tribunal [NGT] has been significant and laudable in this era. Pursuant to the provisions contained in Articles 48–A and 51–A[h] of the Indian Constitution, various Public Interest Litigations have been instituted in the Supreme Court against several industries for failing to provide sufficient pollution control and also against Pollution Control Boards to direct them to take proper measures to ensure pollution control in Indian perspective. For the purpose of effective, successful and well-organized enforcement of these legislations, it is required to set up an Adjudatory Body in each State in India, which should consist of legal as well as technical experts. Caring for regulating and protecting the environment is essentially a desire to see that national development should proceed along the rational sustainable laws. Protection of the environment and keeping ecological balance in Indian scenario unaffected is a task which not only the Government but also every individual, association, society, industry and corporation must undertake. It is a social compulsion and fundamental duty enshrined in Article 51–A[g] of the Indian Constitution.

Keywords: Environmental Protection, Air Pollution, Water Pollution, Public Interest Litigation, Constitution of India, National Green Tribunal and Judiciary.

1. Prologue

Nowadays, the protection, conservation and improvement of environment are main and major issues or problems in India and as well as all over the world. The term environment includes of both physical environment and biological or ecological environment. The physical environment includes issues relating to land, water and air and the other hand biological environment includes issues relating to plants, animals and other organisms. Both physical and biological environment are mutually dependent and connected each other. The major factor in India like Industrialization, urbanization, explosion of population, over-exploitation of natural resources, disruption of natural ecological balances, destruction of a multitude of animal and plant species for economic reasons, which have contributed to environmental worsening. Thus, it is true that, one country's deprivation of environment degrades the global environment for all the

countries¹ in the world. The problem of environmental pollution is of international level and India is no exception to it.

In this present paper, an effort has been made to momentarily outline the various Indian legislations relating to the environment, which are mainly and more relevant to protect and improve the environment in India. The enforcement of these legislations has also been critically examined and evaluated in systematically manner. Lastly, some suggestions also have been provided by the author.

2. Constitutional and Legislative Mandate

The Stockholm Declaration of 1972 was the first major effort to conserve and protect the human environment at the international level. As a result of this Declaration, the States were required to approve legislative mandate to protect and improve the environment in concerned State. Consequently, for that reason Indian Parliament inserted two Articles, i.e., 48–A and 51–A in the Indian Constitution in 1976.² Article 48–A of the Constitution rightly directs that the State shall endeavour to protect and improve the environment and safeguard forests and wildlife of the country. In the same way, Clause [g] of Article 51–A 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.

With the collective effect of Articles 48–A and 51–A [g] it appears that the ‘State’ as well as the ‘citizen’ are now under constitutional responsibility for the protection, experience and improvement of the environmental situations of India. Every generation owes a duty to all succeeding generations to develop and conserve the natural and original resources of India in the superlative possible way. The phrase ‘protects and improves’ appearing in both these Articles 48–A and 51–A[g] seems to reflect an affirmative Government action to improve the quality of environment and not just to preserve the environment in its polluted form.

Apart from the constitutional mandate to protect and improve the environmental conditions, there are a series³ of legislations are available on the subject but more relevant legislations for our purpose are the **Forest [Conservation] Act**, 1980; the **Water [Prevention and Control of Pollution] Act**, 1974; the **Wildlife [Protection] Act**, 1972; the **Environment [Protection] Act**, 1986; the **Air [Prevention and Control of Pollution] Act**, 1981; the **National Environment Tribunal Act**, 1995; the **National Green Tribunal Act**, 2010; the **Biological Diversity Act**, 2002 and the **Hazardous Wastes [Management and Handling] Amendment Rules**, 2003 etc.

The **Water [Prevention and Control of Pollution] Act**, 1974 provides for the prevention and control of water pollution and the maintaining or resorting of the integrity of water. This Act prohibits any poisonous, noxious or polluting material from entering into any source, stream or well. This Act provides for the formation of Central Pollution Control Board in Center and the State Pollution Control Board in State. It is mandatory that new industries are required to obtain prior approval of such Boards before discharging any trade waste matter, sewages into sources of water. No person shall, without the prior consent of the Board, use a new or altered outlet for the discharge of sewage or trade waste into any stream or well or sewer or land. The consent of the Boards shall also be required for continuing an existing discharge of sewage or trade waste matter into a stream or well or sewer or land.

¹ Divan Shyam and Martha L. Noble [1991], Environmental Law and Policy in India, M.N. Tripathi Pvt. Ltd., Bombay, at p. 25.

² These Articles Inserted by the Constitution [42nd Amendment] Act, 1976.

³ The **Indian Forest Act**, 1927; the **Factories Act**, 1948 and the **Atomic Energy Act**, 1962.

In the **Ganga Water Pollution case**,⁴ the owners of some tanneries near Kanpur were discharging their trade waste matter from their industries in Ganga River without setting up primary treatment plants. The Apex Court said that the financial capacity of tannery factories should be treated as irrelevant, while they are required to set up first aid plants. The Court directed to stop the running of these tanneries and also not to let out trade waste matter from the tanneries either directly or indirectly into the Ganga river without subjecting the trade waste matter to a permanent process by setting up primary treatment plants as approved by the State Pollution Control Board.

The **Water [Prevention and Control of Pollution] Cess Act, 1977** aims to provide levy and collection of a cess on water consumed by persons carrying certain industries, factories and local authorities to boost the resources of the Central Board and the State Boards constituted for the prevention and control of water pollution. The object is to realize money from those whose actions lead to pollution and who must bear the expenses of the maintaining and running of such Boards. The industries and factories may obtain a rebate as to the extent of 25 percent if they set up treatment plant of sewage or trade waste matter or effluent.

The **Air [Prevention and Control of Pollution] Act, 1981** has been designed to prevent, control and abatement of air pollution in the climate. The main sources of air pollution are industries, factories, automobiles, domestic fires and vehicles etc. The air pollution adversely affects heart and lung and reacts with hemoglobin in the blood and air pollution also causes dangerous disease like asthma and mental tension which leads to increase crimes in the society.

This Air Act defines an air pollutant as any solid, liquid or gaseous substance having noise present in the atmosphere in such concentrations as may be harmful to human beings or other living beings or plants or property or the environment. The Act provides that no person shall establish or operate any industrial plant in an air pollution control area without the prior consent of the State Board. The Central Pollution Control Board and State Pollution Control Board constituted under the Water Act will also have powers and functions under the Air Act. The main and important function of the Boards under the Air Act is to improve the quality of air and to prevent, control and abate air pollution in the territory of country. The consent granted by such Board may be provisional in respect of the growing of the height of the stack and the provision of various control equipment and monitoring equipment. It is expressly provided that persons carrying on industry and factory shall not allow emission of air pollutant in excess of standards laid down by such Board.

In Delhi, the public transport system including buses and taxis are operating on a single fuel CNG mode on the directions⁵ given by the Supreme Court. Primarily, there was a lot of opposition from bus and taxi operators. But now they themselves realize that the use of CNG is not only environment friendly but also economical. But the latest Delhi Government passed an order for 'odd and even formula' to the Delhi Transport Authority on the directions given by the National Green Tribunal. According to this formula one day fixed for vehicle have odd number and next day fixed for vehicle have even number. Noise has been taken as air pollutant within the meaning of Air Act. Sound becomes noise when it causes annoyance or irritates or cross the standard decibel limits. There are many sources of noise pollution like factories, vehicles, reckless use of loudspeakers in marriages, religious ceremonies, religious places, etc. Use of

⁴ Bhavani River v. Sakthi Sugar Limited AIR 1998 SC 2059.

⁵ M.C. Mehta v. Union of India AIR 1998 SC 2963.

crackers on festivals, winning of teams in the games, and other such occasions causes not only noise pollution but also air pollution both. This Air Act prevents and controls both these pollutions.

The **Environment [Protection] Act**, 1986 was enacted to provide for the protection and improvement of the quality of environment and preventing, controlling and abating environmental pollution. The Act came into existence as a direct result of the Bhopal Gas Tragedy. The term 'environment' refers to water, air and land, in addition to the interrelationships that exist between water, air, land, humans, other living beings, plants, micro-organisms and property. The given definition of environment is so broad that its scope includes all living beings including plants and micro-organisms and their relationship with water, air and land.

This Act has given huge powers to the Central Government to take actions with respect of planning and execution of a nation-wide programme for prevention, control and abatement of environmental pollution in India. It empowers the Government to lay down principles for the regulate industrial locations, prescribe procedure for managing hazardous substances, quality of environment, establish safeguards for preventing accidents, emission or discharge of environmental pollutants and to collect and disseminate information regarding environmental pollution etc. Any infringement of the provisions of this Act, rules, orders or directions made there under is punishable with imprisonment for a term which may extend to five years or with fine up to one lakh rupees or with both. This Act is an umbrella legislation designed to present a frame work for Central Government bringing together of the activities of various Central and State authorities established under previous laws like the Water Act and the Air Act.

The National Environment Tribunal Act, 1995 was conceded to provide for strict obligation for compensations produced by any accident that happens while behavior any dangerous material in factories. This Act provides for establishment of a National Environment Tribunal for effective, speedy and expeditious disposal of cases arising from such accident. This imposes legal liability on the owner of an enterprise to pay damages or compensation in case of death or injury to any person; or harm to any property or environment resulted from an accident but the accident must have occurred while handling any hazardous substance. A claimant may also make an application before the National Environment Tribunal for such relief.

The **National Environment Appellate Authority Act**, 1997 has been passed to provide for the establishment of a National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, factories, operations or processes shall not be carried out or shall be carried out subject to certain protections under the **Environment [Protection] Act**, 1986. After the establishment of this Authority, no Civil Court or other authority shall have jurisdiction to entertain an appeal on matters of environment on which the Authority is so empowered under this Act. It is obvious that this Act has been made with intention to provide speedy justice on environmental issues and problems in India.

The **Wildlife [Protection] Act**, 1972 was passed with a view to provide for the protection of wild animals, plants and birds. This Act prohibits hunting of birds and animals as specified in the schedules of this Act. This Act also prohibits damaging, uprooting, picking, destroying etc. any specified plant from any forest. This Act is administered by a Director of Wildlife Preservation with Assistant Directors and a Chief Wildlife Warden with other Wardens and their staff. This Act provides for State Wildlife Advisory Board to advise the State Government in formulation of the policy for protection and conservation of the wildlife and specified plants and in assortment of zones to be declared as Sanctuaries, National parks, etc.

The **Forest [Conservation] Act, 1986** was enacted with a view to analysis and check deforestation of forests. This Act provides that no demolition of forests or use of forestland for non-forest purposes can be permitted without the earlier approval of the Central Government. The conservation of forests includes not only preservation and protection of existing forests but also re-forestation. Re-forestation should go on to replace the disappearance forests. It is a continuous and integrated⁶ process. This Act is projected to save a laudable purpose and it must be enforced strictly for the benefit of the general public in Indian atmosphere.

The **Water Act** and the **Air Act** in India are administered by the Central Government, State Governments, Central Pollution Control Board and the State Pollution Control Board. These Boards have been vested with broad powers to issue any direction including the direction to order closure or stoppage of the supply of water, electricity or any other service to the polluting unit. It may be noted that parallel powers are also vested to the Central Government under the **Environment [Protection] Act**.

Under the **Environment [Protection] Act**, the Central Government has framed the **Environment [Protection] Rules, 1986** laying down standards for the emission or discharge of environmental pollutants with respect to some main industries in India e.g., cement, caustic soda, electroplating, sugar industry, man-made fibers, oil-refinery, cotton textile, thermal power plants, stone crushing unit, composite woolen mills etc. There are some other agencies also framing the standards, namely Central Pollution Control Board, State Pollution Control Boards, Bureau of Indian Standard and Local Authorities. There seems to be a plethora of pollution control standards for the same type of industries. Although, under the **Environment [Protection] Act, 1986**, the power has been conferred upon the Central Government to lay down the standards of quality of air, water, soil, etc. It is hoped that this will ensure equality of standards throughout the country. Lots of the standards have not yet been laid down as specific under the respective Pollution Control Acts, may be due to non-availability of gadget to measure the parameters of pollution. This will negatively affect the process of enforcement of laws in India.

It is obviously clear that there is no lack of legislations on environment protection in India. But the enforcement of these legislations or laws has been far from satisfactory conditions. What is needed is the effective, speedy and efficient enforcement of the constitutional mandate and the other environmental legislations in India.

3. Judicial Involvement

The fundamental right of a person or citizen of India, to pollution free environment is a part of basic jurisprudence of the land. Article 21 of the Indian Constitution guarantees a fundamental right to life and personal liberty and the Supreme Court has interpreted the right to life and personal liberty to include the right to natural, clean and healthy⁷ environment. The Supreme Court through its various landmark⁸ judgments in the field of environment have held that the mandate of right to life includes right to clean and healthy environment, drinking-water and pollution-free atmosphere.

In this view Sri Ram Food and Fertilizer case⁹ is an important case. In this case a major leakage of Oleum Gas in Bhopal affected a large number of persons, both amongst the workmen and public.

The Apex Court held that where an enterprise involves in hazardous or inherently dangerous activity and

⁶ Anupama Minerals v. Union of India and Ors AIR 1986 AP 225.

⁷ Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh AIR 1988 SC 1037.

⁸ Subhash Kumar v. State of Bihar AIR 1991 SC 420; M.C. Mehta v. Union of India AIR 2000 SC 1997.

⁹ M.C. Mehta v. Union of India AIR 1987 SC 1086.

in the conduct of such dangerous and inherently dangerous activity causes harm to anyone by accident resulting in the release of poisonous gas, the enterprise shall strictly and is solely accountable for paying recompense to all those affected by the accident and such liability is not subject to any exemption. Such liability called the 'absolute liability'.

This case is related to the Taj Mahal situated in Agra. In Taj Mahal's case,¹⁰ the Apex Court issued directions and guidelines that coal and coke-based industries or factories in Taj Trapezium [TTZ] which were damaging Taj Mahal should either modify over to natural gas or to be replaced or relocated outside Taj Trapezium. Again, the Apex Court directed to protect the plants planted around Taj Mahal by the Forest Department. The Divisional Forest Officer [DFO], Agra is directed to take instant steps for seeing that water is supplied to the plants. The Union Government is directed to release the funds without delay and without waiting for receipt of the proposal from the Uttar Pradesh Government on the basis of the copy of the report. Funding may be afterward settled with the Uttar Pradesh Government, but in any set of conditions for want of funds the officer is directed to see that plants do not wither away.

In the present context smoking in public places is an offence in India. In 2001, the Supreme Court imposed ban on smoking of tobacco¹¹ [biri, cigarette] in public places all over the country because smoking causes harm not only to the smokers then too to non-smokers who are enforced to inhale the second-hand smoke. More than 3 million people die per year in India as a result of smoking tobacco including bidis, cigar and cigarettes. One lakh Indians get lung cancer per year due to smoking. Certainly, lung cancer kills 95 percent of its victims. That is why the Apex Court ruling has immense social and cultural value. But no one cares for this ban. We know that the cigarettes, bidis and other tobacco items are openly sold in tobacco-free railway stations, bus stands, cinema houses and other public places. So, it is the great social awakening which can only help us to prevent dangerous smoking.

In the Dehradun Valley case,¹² haphazard and dangerous limestone quarrying in the Mussoorie Mountain range of the Himalayas, dynamite eroding hills, and thousands of acres of limestone quarries disrupted the valley's hydrological system. The Apex Court ordered the closing of limestone quarrying in the hills and observed:

"It will undoubtedly cause hardship to them, but it is a value that has to be compensated for protecting and protecting people's right to live in a clean and healthy environment with minimal disturbance of the ecological balance."

The Apex Court has highlighted the importance of protection of public health. In Subba Rao v. State of Himachal Pradesh,¹³ the Apex Court ordered the shutting down of a bone factory which was polluting the environment by its sharp smell and making the life of the people unhappy. The Court held that no one can do business at the cost of public health. With a view to preserve and protect the environment and control pollution within the vicinity of tourist resorts of Badkhal and Surajkund, the Supreme Court directed¹⁴ the stoppage of mining activity within two Kilometers radius of these two tourist resorts.

In Municipal Council, Ratlam v. Vardhichand and Ors,¹⁵ the Supreme Court observed that the grievous failure of local authorities to provide the basic amenity of public conveniences drives the depressed slum-

¹⁰ M.C. Mehta v. Union of India AIR 1999 SC 3192; See also, M.C. Mehta v. Union of India [2001] 9 SCC 520.

¹¹ Murli S. Deora v. Union of India [2001] 3 SCC 765.

¹² Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh AIR 1985 SC 652.

¹³ AIR 1989 SC 171.

¹⁴ M.C. Mehta v. Union of India [1996] 4 SCC 351.

¹⁵ AIR 1980 SC 1622.

dwellers to ease in the streets, on the sly for a time and openly thereafter, because under nature's pressure, bashfulness becomes a luxury and dignity a difficult art. A responsible city council constituted for the purpose of protecting public health cannot shirk its duty by pleading financial incompetence.

In *Almitra H. Patel v. Union of India*,¹⁶ the Supreme Court reiterated the observations made in *Wadehra's* case:¹⁷

“The capital of India, Delhi is an old and well-known city which is one of the polluted cities in the world. The authorities and government are responsible for pollution control and environmental protection is not able to provide natural clean and healthy environment to the residents of Delhi. The ambient air is so polluted that it is difficult for humans to breathe. More and more people are suffering from respiratory diseases and throat infections. The Yamuna River, the main source of drinking water supply, is a free dumping place for untreated sewerage and industrial effluents. Apart from air and water pollution, the city is almost an open dustbin. Garbage scattered all over Delhi is a common sight.”

The Supreme Court directed the authorities to take immediate necessary steps to control pollution and protect the environment.

‘Sustainable development’ means development that meets the needs of the present without negotiating on the capacity or skills of upcoming generations to see their own needs or desires. In case of *Vellore Citizens Welfare Forum v. Union of India*,¹⁸ the Apex Court elaborately discussed the theory of ‘sustainable development’ which has been accepted as part of the law of the land in India. The protective principle and the polluter pay principle are fundamental features of sustainable development. The ‘precautionary principle’ makes it mandatory¹⁹ for the state government to anticipate the causes of environmental degradation to prevent and attack them. The Apex Court observed that:

“Now we have no hesitation to believe that in order to save the two lakes i.e., Badhkal and Surajkund from environmental degradation, it has become necessary to completely stop the construction activity around the lakes.”

The ‘polluter pays principle’ that the financial cost of preventing damage caused by pollution or treatment should be with those enterprises that cause pollution. The polluter pays theory has been recognized as a sound principle and, as interpreted by the Apex Court, means not only to compensate the victims of pollution but also to restore the environment, absolute liability for damages also increases the cost. Remediation of the injured environment is part of the process of sustainable development and thus the polluter is liable to pay the cost to separate victims as well as the cost of reversing the damaged ecosystem.

The above study of these cases clearly shows that the Supreme Court has played a very important role for the protection and improvement of the environmental situation in India. The jurisdiction of the Court has been further expanded through Public Interest Litigation. The creative and inventive role of the judiciary is significant and praiseworthy.

4. Enforcement of Laws

We have noticed that in the past few years there is an increasing trend to the number of cases relating to the environmental pollution, ecological destruction and conflicts over natural resources coming up before

¹⁶ AIR 2000 SC 1256.

¹⁷ B.L. Wadehra v. Union of India AIR 1996 SC 2969.

¹⁸ AIR 1996 SC 2715.

¹⁹ M.C. Mehta v. Union of India [1997] 1 Camp L.J. 199 [SC].

the Courts. In most of these cases there is need for Environment Court and natural scientific expertise as an essential input to inform judicial decision-making. These cases need expertise at a high level of scientific and technical superiority. The experience shows that the prosecution launched in ordinary Criminal Courts under the provisions of the **Water Act**, the **Air Act** and the **Environment [Protection] Act** never reach their conclusion either because of the work load in these Courts or because there is no proper appreciation of the significance of the environment matters on the part of those in charge of conducting of those cases. Moreover, any orders approved by the authorities under the **Water Act**, the **Air Act** and the **Environment [Protection] Act** are instantly questioned by the industries in the Courts. Those procedures take years and years to reach conclusion. Many a times interim orders are passed in the meantime which effectively disables the officers from ensuring the implementation of their orders.

Therefore, it is absolutely essential to set up more separate machinery like National Green Tribunal to cut down the delays which are hindering the implementation of environmental laws. Moreover, judicial officers alone may not be able to appreciate the logical and technical aspects. It is, therefore, submitted that the provisions be made for the establishment of the Environment Courts with one judge and one expert from the ecological and other sciences. To begin with, we may have a two-tier system one at the State level and the other at the National level which may later be extended even at the district level. Such Environment Courts may be vested with the jurisdiction to decide both criminal prosecution cases under the various environmental laws and civil cases for compensation to victims of any activity leading to environmental spoil or pollution. The Courts should be permissible to conduct brief proceedings for speedy disposal of cases. The decisions of State Environment Courts can be appealed to the National Environment Court and the decisions of the National Environment Courts can be appealed to the Supreme Court.

5. Conclusion

We have more than 200 Central and State legislations and laws which deal with environmental issues and problems. It is true that more laws mean more difficulties in enforcement. So, there is a need to have a complete and integrated law on environmental protection for meaningful enforcement in India. But it is not enough to pass the legislations. A positive approach on the part of everyone in society is essential for effective, speedy and efficient enforcement of these legislations. The Environment Protection Laws have failed to bring about the desired results. Consequently, for the purpose of efficient and effective enforcement of these laws, it is necessary to set up the Environment Courts; with one Judge and two technical experts from the field of Environmental Science and Ecology. These Courts should be allowed to adopt summary proceedings for speedy disposal of the cases. Initially we may have such courts at the state and national level which can later be extended to the district level on a need-based principle. To discourage protracted litigation, the provisions should be restricted to a single appeal. For strict enforcement of environmental laws, only misrepresentation and technical flaws should be disregarded by the courts. The jurisdiction of the Courts has been expanded by way of PIL. The Apex Court has played an important role in directing the administrative officers from time to time to take necessary steps to improve the environment. What we need is social awareness from below, not law from above, no law works smoothly unless the interaction is voluntary. In order to educate people about the environmental issues, there should be exhibition of slides in the regional languages at cinema houses and television free of cost. Further, as directed by the Supreme Court, environment studies shall be made a compulsory

subject at school and college levels in graded system so that there should be general growth of awareness. Finally, protection of the environment and keeping ecological balance unaffected is a task which not only the government but also every individual, association and corporation must undertake. It is a social obligation and fundamental duty enshrined in Article 51–A[g] of the Indian Constitution.
