

Environmental Policies, Laws and Legislations in India

Ruchi Jain¹, N. Upadhyaya², RenuBala Sharma³ and R. Upadhyaya⁴

^{1,2}Department of Chemistry, S.S. Jain Subodh Girls P.G. College, Sanganer, Jaipur, India-302029.

³Department of Commerce, S.S. Jain Subodh Girls P.G. College, Sanganer, Jaipur, India- 302029.

⁴Department of Business Management, Taxila Business School, Jaipur, India.

Abstract

The Constitution of India clearly provides that it the duty of the states to protect and improve the environment and to safeguard the forests & wildlife of the country. This reference to the environment has also been made by our Constitution makers in the Directive Principles of State Policy, as well as the fundamental rights. The Supreme Court of India is actively engaged in developing, interpreting and implementing new changes in the environmental Jurisprudence. As a result of judicial activism the Supreme Court of India has delivered a new normative regime of rights and insisted that Indian states cannot act arbitrarily to dislodge the ecological & environmental balance, but must act reasonably and in public interest on pain of its action being invalidated by judicial intervention.

Keywords : *Green Bench, Protection Act, Judicial Activism, Public Awareness, Environmental Jurisprudence.*

1. Introduction.

India is passing through the phase of urbanisation and industrialization. As India prepares to enter a new millennium, the degraded state of India's natural environment cannot escape comment or analysis. Some even believe that the deterioration in the environment is of such magnitude that all development must cease for the planet to survive. The last 2-3 centuries have experienced rapid industrial growth, population explosion, urbanization, migration. All these have contributed to the contamination of the environment in which we live [Pandey 1987].

This pollution has taken place globally, resulting in an unprecedented exhaustion of our natural resources. Various countries have realized the importance of a healthy environment. Added to these conditions which were detrimental to the state of our environment were others, which are even more worrisome. The industries which flourish all around the world release innumerable pollutants, which damaged the air, land and water [Air Pollution Report Card 2017-18, Lohchab 2017, UNEP 2017]. This has led to the various studies regarding quality and pollution of water in urban areas [Jain 2016]. The problem of overpopulation results in a crying need for more space and more food. Forests are cut and converted into residential, grazing or agricultural land. Natural resources are also over-exploited. Moreover, the use of fossil fuels is on the rise. Large amounts of CO₂ are released in the air. Automobile use has also increased. This external climate forcing mechanism has enhanced biodiversity extinction threats [Upadhyaya 2019]. Newer gadgets aimed at a more comfortable life style have added to the global warming and the overall pollution of the environment. Developmental projects have had their own impact on the environment.

2. Need for Public Awareness regarding Environmental Degradation and Conservation

The term "environment" includes air, water and land and, the interrelationships which exist among and between these basic elements and human

beings and other living organisms. Ecology is the source of the intricate web of relationships between the living and their living and nonliving surroundings. The protection of the environment is an absolute necessity. There is no doubt whatsoever that we cannot pollute or deplete the finite resources of the earth. Concerted attempts are being made to conserve these resources. How much more heinous, then, is the crime of pollution of these fast-depleting resources? In India, itself, it is very common to just dispose of the waste by-products of industry without a thought for the detrimental impact on our eco-systems [Lohchab 2017].

Over the years, there has been a serious concern over environmental degradation. The term environmental degradation refers to the deterioration in physical components, brought in by anthropogenic (man-made) process, to such an extent that it cannot be set right by the homeostatic mechanism (a self-regulatory mechanism) of environment. One just has to think back to the Bhopal tragedy to realize how dangerous such lapses can be [Broughton 2005]. The burning question that arises is whether enough is being done. To better understand this issue, we would do well to understand the essentials of environmental law and its impact on defaulters. The causes of environmental degradation include the following:

1. Growth in population;
2. Scientific and technological development at an accelerated pace;
3. Ambitious development projects, aimed at fast economic development;
4. Expanding industries, urban growth and agriculture;
5. Unscientific utilization of natural resources;
6. Poverty;
7. Affluence;
8. Ignorance and lack of environmental perception and lack of public awareness towards the environment;
9. The philosophical outlook of the society.

Environmental degradation is of two major types:

1. Extreme events or hazards: These include natural hazards (e.g. cyclones, earthquakes, droughts, etc.) and anthropogenic hazards (e.g. nuclear holocaust).
2. Pollution: Environmental pollution occurs when the environmental degradation crosses a critical limit so that it becomes lethal to living organisms. While pollution is always anthropogenic,

environmental degradation also includes natural factors. The term, pollution, refers to the unfavourable alteration of our surroundings, wholly or largely, as a by-product of man's actions through direct and indirect effects of changes in energy pattern, chemical and physical constitution and abundance of organisms.

For generating awareness about the environment and drawing political attention and public action, United Nations Conference on the Human Environment began on June 5, 1972 at the Stockholm. A resolution which calls for environmental conservation through global action, adopted by the General Assembly the same day, led to the creation of the United Nations Environment Programme (UNEP). John McCormick had written in his book Reclaiming Paradise that Stockholm was without doubt the landmark event in the growth of international environmentalism. It was the first occasion on which the political, social and economic problems of the global environment were discussed at an intergovernmental forum with a view to actually taking corrective action [McCormick 1995].

3.Environmental Laws and its effects

Environmental Law is a collection of legal principles, rules and regulations dealing with interaction of individuals in their natural surroundings. It governs human involvement in the land, waters and air around us, including any impact upon the atmosphere, organic and inorganic matter and living organisms, and less tangible concepts such as socio-economic, health and cultural impacts. Environmental Law ranges from widespread regulatory systems, developed by governments, to common law principles, relating to liability for the release of substances into the environment, either intentionally or negligently, which results in foreseeable harm to one's neighbours. In India it covers everything from pollution to forests and wildlife as well as dams, irrigation and electrical projects.

Environmental Law issues affect everyone. This affect could be either direct or indirect, depending upon the nature of one's business or activities. Individuals carrying on business or activities in certain industries such as: real estate; activities involving the use or alteration of substantial amounts of water, including the construction of wells; the transportation, handling and storage of various chemicals and other substances known to have environmental impacts; manufacturers; various construction activities; biotechnology; and activities involving the use of disturbance of fish

habitat or water frequented by fish, should expect to be more intimate with environmental law. Indirect affects would result where the activities of an individual or a company do not necessarily directly affect the environment but would result in an indirect affect being felt by the environment. This could be in cases where indirect pollution of the atmosphere or water takes place.

4. Legislation

Plato's phrase, 'Good people do not need laws to tell them, to act responsibly, while bad people will find a way around bad laws', is very relevant when one considers the present condition of our environment. The rapid mushrooming of industries led to the irrevocable contamination of the environment. The western countries however, were able to identify and acknowledge the attendant problems of this trend very early on. Thus, they adopted the concept of sustainable development. Unfortunately, the environmental concerns of the western countries were looked upon by India as some kind of conspiracy which was aimed at thwarting development programmes in our country. It is for this reason that our country showed a blatant disregard for any possible disadvantages of such a heightened rate of industrialization. This lack of caution can be seen in the setting up of chemical and other environmentally harmful industries in areas which were rich with natural resources. The discharge of poisonous gases by these factories resulted in severe pollution of the environment. Moreover, these companies started disposing their toxic waste in water sources as well as onto the fertile land. As a result, land and water were contaminated and rich fertile land was laid waste and became totally useless and non-productive. In order to prevent and control this environmental pollution, the Government of India has also started Legislating and implementing laws.

There existed several laws relating to the environment in India prior to independence. But a majority of them were conceived with the colonial concern for regulating resource exploitation rather than for protecting the environment. Post independence, environmental legislations took a long time to develop due to lack of understanding of environmental issues. To comply with the principles of the Stockholm Declarations adopted by the International Conference on Human Environment, the Water (Prevention and Control of Pollution) Act, 1974, was enacted. This Act created the Central and the State Pollution Control Board's to regulate and control pollution through issuing of consents or permits for discharging

trade effluents, setting standards for emission and discharge of effluents and imposing penalty for violation of the provisions of the Act. Subsequently, the Air (Prevention and Control of Pollution) Act was passed in 1981 to control air pollution. After Bhopal Gas disaster, the Environment Protection Act was enacted in 1986 giving the Central Government enormous powers to take measures to control pollution and protect the environment, including the power to order closure of polluting industries and to restrict establishment of new industries on environmentally hazardous sites. To ensure a healthy environment in India, Department of Environment was established in 1980, which turned into the Ministry of Environment and Forests in 1985. There are around thirty three different environmental statutes, rules and notifications that are in force in India. They range from the Water (Prevention and Pollution) Act, 1974 and the Forest (Conservation) Rules, 1981 to the Hazardous Wastes (Management and Handling) Rules, 1989 and Noise Pollution (Regulation and Control) Rules, 2000 [Pollution control Acts, Rules and Notifications CPCB 2010]. Under these laws, liability is imposed as follows:

- Criminal Liability;
- Tortuous Liability;
- Liability under the Constitution.

The National Green Tribunal was established under the National Green Tribunal Act 2010. This is a specialized body equipped to handle environmental disputes involving multiple issues. The main objective of establishment of National Green Tribunal was to dispose environmental protection and conservation of forest and other natural resources related cases effectively and expeditiously and to provide relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto and to enforce any legal right relating to environment. [Environmental and Pollution Laws 2017]

5. 5. Constitutional Provisions

The Indian constitution contains Fundamental Rights, Fundamental Duties as well as Directive Principles of State Policy that directly relate to environmental protection. Article 21 of the Constitution of India guarantees the right to enjoyment of life and its attainment and fulfilment. The Supreme Court has expanded the ambit of 'right to life' to include the 'right to live in a safe and healthy environment' and thus made the enforcement of environmental protection a justifiable right. The Parliament, by the 42nd Constitution Amendment Act, 1976 made the express provision for the

protection and promotion of the environment, with the introduction of Article 48-A and 51-A (g) which form part of the Directive Principles of State Policy and the Fundamental Duties respectively. The Article 48A of the Constitution, which was added to Part IV on Directive Principles of State Policy imposes a duty upon the government to protect and improve the environment and to safeguard the forests and wild life of the country. It is therefore the duty of the Government and semi-Government bodies to respect the above-said right of each and every citizen of India. At the same time citizens should also recognize their duty to protect and improve the natural environment as laid down under Article 51A (g) of the Constitution of India. Thus success to deal with this menace can be achieved only when the government and the citizens join hands and work in conformity to achieve clean and healthy environment. [Mehta 2007]

6. Current state of affairs

The current environmental situation in India is dismal. Natural resources are being depleted at an alarming rate. Almost all the rivers and lakes have become polluted. Even the most sacred river, the holy Ganga, Yamuna & Narmda have not been spared. There was a time when milk, incense and flowers were offered to the venerated river. Today however, huge quantities of waste, rubbish and toxic effluents are thrown into her sacred waters. Several stretches of the rivers have become highly polluted and water has become unfit for drinking or irrigational purposes. Similarly, several other rivers, lakes and water bodies have become polluted. India's forest cover is dwindling. Deadly pesticides which have been banned in the United States and European countries are exported to India, where they contaminate the soil and the water. Toxic dumps have further added to this growing contamination causing health hazards to all forms of life. We have reached a stage in history where we must shape our actions prudently and in such a manner so as to avert adverse environmental consequences. In such a scenario, the role of law and law enforcement agencies in ensuring environmental protection assumes high significance.

7.7. Judicial activism, Green Bench & Environmental Jurisprudence

Prior to 1986, the judicial intervention in an environmental case was confined to the concept of public and private nuisance and the development of tort jurisprudence remained sketchy and sporadic. But after 1984 Bhopal Gas disaster & Oleum Gas Leak, a new horizon of Public Interest Litigation

began and thereafter the Indian courts have acted on the understanding that the loss of natural resources cannot be replenished. It is easy to reform injuries that arise from human institutions but it is impossible to restore a polluted river or denuded mountain to its pristine glory or bring back the rain forests or the extinct species. In contrast to the soft approach of the administrative bodies, the Supreme Court of India, popularly known as "Green Bench", has attempted to compel the enforcement of environmental laws. The Supreme Court has actively promoted the peoples fundamental right to a healthy environment. This has been achieved through a positive interpretation of the Fundamental Rights and imposing affirmative obligations on the states in implementing its duties laid down in the Directive Principles of State Policy. Access to justice is the foremost human right.

In a country like India where a large part of the population is illiterate and ignorant of their rights or too poor to approach the courts, the Supreme Court evolves ways and means to bring justice to the masses. This has become possible primarily by expanding the ambit of Article 21 of the Indian constitution and secondly, by extending interpretation of locus-standi to persons or voluntary organizations working in the public interest to initiate legal proceedings on behalf of the affected people. NGO's and activists have approached the Supreme Court of India and several High courts to effectively use the existing legislations to secure environmental protection and bring about environmental justice through public interest litigations. By delivering landmark judgments, the Supreme Court has played a dynamic role in the growth of Indian environmental jurisprudence. These judgments have acted as a driving force in the country and secured environmental protection and the common man feels more assured of getting environmental justice through the courts. In this manner, our judiciary has used the tool of PIL quite effectively for the cause of environmental protection. At the same time, the judiciary has also shown wisdom in denying false petitions seeking to advance private interests through PIL, which is evident from the decision of the Supreme Court in Subhash Kumar vs. State of Bihar (AIR 1991 SC 420). PIL's contribution has been significant in the sphere of environmental law and Mr. M.C. Mehta was pioneer in bringing a large number of issues to the Court concerning environmental and ecological degradation. The Court's engagement with these matters has resulted in activating the statutory machinery established under various environmental laws. [Mehta 2007]

The dangers of liberalization, globalization and industrialization have paved way for the judiciary

towards the formulation of new doctrines and principles for the protection of the environment. Some of these doctrines have been borrowed from the field of public international law and Roman law and have been altered to suit the Indian requirements. Green Bench is a Bench to monitor and deal with cases on environmental matters. The Supreme Court directed the High Courts to constitute a special bench known as "Green Bench". In some of the High Courts such as Calcutta, Madhya Pradesh, Punjab & Haryana, the Green Benches were already functioning. It was also suggested by the Supreme Court that the environmental cases should be first raised before the High Court, which has the territorial jurisdiction over the area pertaining to the question. In such event, the High Court is in a better position to deal with to monitor the cases on environmental matters. The need of constituting such courts for dealing with all matters relating to environment both civil and criminal was emphasized by the Supreme Court.

Some of the key cases where the Supreme Court has delivered landmark judgments are:

7.1 The Dehradun Quarrying Case or "Doon Valley Case" or Rural Litigation and Entitlement Kendra vs State of U. P. (AIR 1985 SC 652)

This is the most important case in the field of environmental protection because this case is the first indication of the right to a clean environment [AIR 1985 SC 652]. A letter from NGO (Non-Governmental Organisation) was treated as a writ petition by the Supreme Court under Article 32 of the Indian Constitution. It was alleged in the letter that the illegal stone mining in the Doon Valley was causing an ecological imbalance and creating hazards to public health. It had devastating effects on the fragile ecosystem in the area, and several important questions of grave significance with regard to people residing in the Mussourie Hill Range were also discussed. The Supreme Court observed in this case that preservation of the environment and keeping the ecological balance unaffected is not only the task the Government has to undertake but it is a task that every citizen should undertake because it is their social obligation and it also the Fundamental Duty and Directive Principle enshrined in Article 51-A(g) and Article 48-A of the Indian Constitution.

7.2 M. C. Mehta vs Shriram Food and Fertilizer Industries AIR 1987 SC 965

This case is also known as "Oleum Gas Leak Case". A writ petition was filed in the Supreme Court by Advocate M. C. Mehta. It was against the gas

leakage from one of the units of Shri Ram Food and Fertilizer Industries resulting into the death of an advocate of Tis Hazari Court and illnesses of several other persons. The Supreme Court held in this case that an industry or an enterprise engaged in any hazardous activity, which may cause or pose a threat to public health has an absolute liability and it has also the duty to ensure that no one should be caused harm. The purpose of fixing the liability was to protect the life of the people guaranteed under Article 21 of the Indian Constitution. The Supreme Court has also observed that the applications for compensation filed against the Oleum Gas Leak under Article 21 of the Indian Constitution are for the enforcement of the fundamental right and such application for compensation must be entertained to develop the rule of strict and absolute liability in case of hazardous or dangerous industries which are in operation at the cost of human life and environment. The Supreme Court further observed, regarding the rule of strict and absolute liability, that the Court must evolve a new principle of liability by developing our laws to deal with an unusual situation arising in present or likely to arise in future on account of hazardous or dangerous industries. The Supreme Court also opined that we should not hesitate to evolve such principles of strict liability even though the same thing has not been done by the English Court[AIR 1987 SC 1086].

7.3 M. C. Mehta vs Union of India (AIR 1988 SC 1115)

This case is popularly known as "Ganga Pollution Case"[AIR 1988 SC 1037] This was a Public Interest Litigation for preventing nuisance caused by the pollution of the river Ganga. The Supreme Court issued important and specific directions for all the municipalities of the towns situated on the banks of the Ganga. The Supreme Court closed down about 157 tanneries and 191 other industries in U.P., Bengal and Bihar. It also ordered more than 5000 industries located in the Ganga basin to set up effluent treatment plants and pollution control devices.

7.4 Taj Mahal Case

The writ petition filed by M. C. Mehta vs Union of India [(1997) 2 SCC 353] was popularly known as "Taj Mahal Case". It was against the Sulphur dioxide emitted by the Mathura Refineries and Industries causing atmospheric pollution and due to which Taj Mahal, a monument of international fame and repute was being affected[AIR 1999 SC 3192]. It was therefore contended by the petitioner that preventive steps should be taken to save the degradation of Taj Mahal. The Supreme Court observed that the Taj

Mahal is the cultural heritage of India and it is also a source of revenue for the country as millions of tourists visit it every year. This important fact was taken into consideration by the Supreme Court while dealing with the petition. The Supreme Court adopted the path of Sustainable Development and gave direction that industries operating in the Taj Trapezium Zone (TTZ) with the use of coke/coal as industrial fuel must stop functioning and they must be relocated to the alternate site provided under Agra Master Plan. Supreme court directed the forest department to protect the plant, planted around the Taj [9 SCC 520, 2001].

7.5 Indian Council for Enviro-Legal Action vs Union of India [AIR 1996 SC 1466]

This case is also known as “Coastal Protection Case”. It is also known as H-Acid Case. The environmentalist organisation “Indian Council for Enviro-Legal Action” filed the writ petition before the Supreme Court by way of social action litigation against some chemical industries producing certain hazardous chemicals in an industrial complex at Village Bichhri in Udaipur (Rajasthan). The industries had not obtained the necessary licence, clearance or consent, from the statutory authorities. They had not installed any equipment for the treatment of highly toxic waste materials discharged from such industries. The highly toxic effluents were sufficient enough to poison the earth, the water and everything that came in contact with the same. The writ petition was filed complaining the above situation. The Supreme Court requested NEERI, i.e., “National Environmental Engineering Institute” to study the situation pertaining to the effects and consequences of these chemical industries situated at Bichhri Village and put up their report. The report of NEERI revealed that the Respondent did not carry out the order of the Supreme Court fully in the matter of removal of sludge and the Respondent did not even fulfil the undertaking given by them to the Court. The Respondent, without respecting the reports of officials and expert body, continued their illegal course of action leading to contempt for law. The Supreme Court held that the Respondent were responsible for all the damage to the soil, to the underground water and to the village [AIR 1996 SC 1466].

7.6 Vellore Citizen’s Welfare Forum vs Union of India [(1996) 5 SCC 687]

In this case the Supreme Court accepted the proposition of law that the “Precautionary Principle” and new concept of burden of proof in the environmental matter. The rules of Customary International Law, which are not against, or contrary

to the municipal law may find its place in the domestic law. It was also observed that the “Precautionary Principle” or “Polluters pays Principle” are part of environmental law of the country relating to the Constitutional provisions contained in the Articles 21, 48-A, and 51-A (g) and other statutory enactments such as Water (Prevention and Control of Pollution) Act 1974, Air (Prevention and Control of Pollution) Act 1981 and Environmental Protection Act 1986 [5 SCC 687, 1996].

7.7 M .Ganesan vs The Govt. Of Tamil Nadu [1998] RD-SC370 (30 July 1998)

In this case the issue was pertaining to pollution of river Bhavani from the effluents discharged by the industry. The Tamil Nadu Pollution Control Board under Section 33-A of the Act had issued directions, which were aimed at ensuring proper storage of the effluent in lagoons and for proper treatment and disposal of the treated effluent. The Supreme Court held that pollution is continuing because of the actions of the industry and no remedial steps taken to prevent pollution and contamination of river water. Factory failed to arrest unabated pollution which has become a health hazard and environmental enemy. The Court directed that the industry be closed and also directed the Board to submit a compliance report within ten days. The Court also directed the National Environmental Engineering Research Institute NEERI to conduct an inspection of the industry and submit a report stating if pollution control devices have been fixed by the industry and proper steps are taken to control pollution in accordance with the provisions of the Act. NEERI was directed to examine the surrounding area and inform the Court about the cost of restituting the area ecologically [AIR 1998 SC 2059].

7.8 M. C. Mehta vs Kamal Nath (1997)1 SCC 388

In the State of Himachal Pradesh, Span Motels Private Ltd. (SMPL)(owned by the Kamal Nath’s family), diverted the Course of river Beas to beautify the motel and also encroached upon some forest land up to 1989. The Hon’ble Supreme Court of India took notice of a news paper article that appeared in the Indian Express on 25-02-1996. Artical 32 of the constitution of India provides that any citizen can invoke write jurisdiction before the Supreme Court. The apex court ordered the management of the Span motel to remove all sorts of encroachments and hand over forest land to the state government. The Supreme Court applied the ‘Doctrine of Public Trust’ to the present case. This is a land mark case the court established principle of exemplary damages for the

first time in India. The Court said that polluter must pay a fine of Rs Ten Lakhs on the SPAN motel as exemplary damages and to pay to reverse the damage caused by his act [1 SCC 388, 1997].

7.9 M.C. Mehta vs Union Of India and Ors 1992 AIR 382, 1991 SCR Supl. (2) 378

In this case Cinema theatres all over the India were directed by the Supreme Court to exhibit two slides free of cost on environment in each show. The reliefs claimed under Article 32 of the Indian constitution. Otherwise their licenses will be cancelled. The Television network in the country ordered to give 5 to 7 minutes to televise programmes on environment apart from giving a regular weekly programme on environment. Environment has been included as compulsory subject in the school syllabus from academic session 1992 and University Grants Commission was also directed to introduce EVS subject in higher classes in different Universities [1992 AIR 382, 1991 SCR Supl. (2) 378, 1992].

8. Conclusion

Even after such judicial activism, the enforcement of these policy instruments has been very slow and tardy. It is time for NGO's, activists and concerned citizens to use the legislations and public interest jurisprudence effectively for the protection of the environment. To achieve this end, it is imperative that awareness be created at the grassroots level. The authorities will protect the environment only if there is a strong people's movement supporting environmental issues. The use of law and environmental awareness can play a major role in the protection of the environment and in safeguarding human rights. Hence, PIL has proved to be a great weapon in the hands of higher courts for protection of environment & our judiciary has certainly utilized this weapon of PIL in best possible manner.

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