

Legal Aspects of Environment in India.

(Environment and Indian Law)

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Abstract-Environmental pollution which has become a world-wide problem is receiving considerable attention these days. Today, more than ever before, there is considerable concern about deterioration of environment arising from environmental pollution-water, air, noise, radiation and others. For, such pollution has huge adverse impact on human health and the hazards it poses are too numerous. There is a need to strike balance between environment and development popularly referred to as ‘sustainable development’. The environment of the developing countries in general and India in particular is faced with twin pressure of population and development, resulting in deterioration and depletion of the natural resources at an alarming fast rate. There is a felt need for environmental protection and its effective management. An important facet of environmental management and sustainable development is the environmental regulations and its effective implementation. The paper focuses on the legal and regulatory aspects (issues and implications) of environment and its preservation in Indian context. The legal regime for environmental conservation becomes important as it highlights the problems and suggests measures to make the system of regulatory environmental management more effective and proactive. (*Abstract*)

Key Words: Environmental Pollution, Indian Environmental Regulations, Sustainable Development, Indian Environmental Jurisprudence, Environmental Management. (*key words*)

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I Introduction

Environmental pollution, which has become a world-wide problem, is receiving considerable attention these days. Today, more than ever before, there is considerable concern about deterioration of environment arising from environmental pollution-water, air, noise, radiation and others. Such pollution has huge adverse impact on human health and the hazards it poses are numerous. The environment of developing countries in general and India in particular is faced with twin pressure of population and development, resulting in deterioration and depletion of the natural resources at an alarming fast rate. The reckless industrial growth, consumerism and changing life styles has led to overexploitation and destruction of natural resources to such an extent that our future generations may discover that life support system has been damaged beyond repairs. Today human interaction with nature due to industrialization, urbanization, and population explosion in developing countries and in India has become so extensive that the environmental issues have assumed such proportions as to affect all humanity. It is need of the hour to strike balance between ‘environment’ and ‘development’ popularly referred to as ‘sustainable development’ [1]

The economy is a wholly owned subsidiary of the environment not the reversal. (Herman E Daly) [2]

II Research Methodology

The paper focuses on the regulatory and legal aspects (issues and implications) of environment and its protection/preservation in the Indian context popularly known as ‘Environmental Law’. The research paper is an outcome of library research based on secondary data collected and analyzed from the Indian environmental regulations and environmental jurisprudence i.e. statutory law and

court rulings (case law) in India. The paper introduces the major laws in India on environment, the role of enforcement mechanism under these laws and the role of Judiciary, in particular the Supreme Court of India and its judicial activism in protecting environment and safeguarding the interest of community and nation as a whole.

III Indian Environmental Laws

The environmental movement in India has its genesis in the United Nations Conference on Human Environment. (Stockholm June 1972) to draw the world's attention towards the global problem of environmental pollution. In this conference in which India also participated, a realization was dawned that a legal framework is necessary to deal with environmental hazards which got a Constitutional recognition in India. The Constitution of India which is a basic and supreme law of the land has made many significant provisions under fundamental rights and fundamental duties of Indian citizens and under the directive principles of state policy with regard to control of environmental pollution, environmental preservation and its improvement, ecological balance and sustainable development. The relevant Indian constitutional provisions are mentioned under the references.[3].

International treaties and resolutions at International conventions have also made significant contribution in shaping environmental legislation in India. There are more than 200 enactments in India for control of environmental pollution which are administered by central and state governments. The most important amongst the environment laws in India is the Environmental Protection Act 1986 (EPA) which an umbrella legislation and a comprehensive law. This Act is not only for protection of environment but also a measure step towards tackling the pollution problem boldly and effectively as compared to all previous legislations. In addition to protection of environment it deals with regulating the control and discharge of pollutants particularly the handling of hazardous substances. The Act is a skeletal and a general legislation. It gives wide powers to central govt. to make rules for the protection of environment

from pollution. Both State and Central water and air pollution control boards are the bodies responsible for enforcing pollution control. The EPA Rules 1986 provide the maximum permissible level of emission or discharge of environmental pollutants from industries. It also provides the standards for automobile exhaust (auto-vehicle pollution) and the standards for manufacture of automobiles. There are separate rules relating to handling and management of hazardous substances including bio-medical wastages. There are also separate rules about Noise pollution. The Act and the rules made there under provide stringent sanctions (punishments, penalties & fines) for a violation of the Act.

The terms/expressions 'environment' and 'environmental pollution' has been defined under Indian regulations as under:-The natural environment comprises of the sum total of all conditions and influences which affect the life and development of an organism. Accordingly it includes natural resources like water, air, soil and all living organism. In environmental statute "Environment" includes water, air and land and the inter-relationships which exist among and between water, air, land and human beings, creatures, plants, microorganism and property [4]

Environmental pollution is a sudden or slow contamination by human activities to such an extent that it may be presently or potentially harmful to the human life as well as to other living forms existing in the total ecological community. In environmental statute, 'environmental pollution' means the presence in the environment of any environmental pollutant. The law itself defines 'environmental pollutant' as any solid, liquid, gaseous substance present in such concentration as may be, or tend to be, injurious to environment. [5]

The other relevant and significant regulations in India concerning environmental issues and implications are mentioned under the references.[6]

IV Indian Environmental Jurisprudence

The Indian Judiciary (Supreme Court and High Courts) has made epoch making contribution to this

domain through court verdicts and directions and thereby laid down the principles of environmental jurisprudence. The right to clean and wholesome environment and maintaining ecological balance as a part of fundamental right to life and personal liberty under article 21 of the Indian constitution and can now be enforced through writ jurisdictions and public/social interest litigations (PIL). The right to livelihood which is included in the right to life conferred by article 21 can be asserted to prevent environmentally disruptive product with danger to uproot villagers and consequently deprive them of their livelihood. The natural resources have to be tapped for the purposes of social and economic development, but we need to be very careful in tapping the natural resources so that ecology and environment are not affected in any serious way. Prevention of the environment and keeping the ecological balance unaffected is a task which not only govt. but also every citizen must undertake. It is a social obligation and let every Indian citizen be reminded that it is his fundamental duty as enriched in Article 51A (g) of the Indian Constitution. [7]

The right to healthy environment and its protection and the right to development are group i.e. public rights. The court also confirmed the right of compensation to the victims of oleum gas. It was ruled by Apex Court that although leather industry is a major foreign exchange earner for India and provided employment, it does not mean that this industry has a right to destroy the ecology, degrade the environment or create health hazards. The Apex Court noted the finding in *Oleum Leak Case II* under which an enterprise which engaged in hazardous and inherently dangerous activity which results in harm to any one is strictly and absolutely liable to compensate all those who are affected by accident. The court also endorsed the 'polluter pays' principle under which the financial costs of preventing and remedying damage lie on those who cause the pollution.[8]

The Apex Court said that in exercising powers under article 142 of the constitution and in assessing the need of 'complete justice' of a cause or matter, the apex court will take note of the express prohibition in any substantive statutory provision based on fundamental principle of public policy and regulate

the exercise of its power and discretion accordingly and awarded the compensation.[9]

The Supreme Court held that there was almost no dispute that the discharge of the trade effluents from the tanneries was polluting the river Ganga and thus causing considerable damage to human life. The Court justified the closure of polluting tanneries by saying that closure of tanneries might bring unemployment, loss of revenue, but life, health and ecology had greater importance to the people.[10]

It was held by Supreme Court that it was state's duty to take effective steps to protect the environment and provide environment absolutely free from pollution. Supreme Court gave directions to ensure that in the master plan for Delhi no hazardous and noxious industrial units will be permitted to operate and the existing units of this type shall be shifted on priority basis. No new heavy and large scale industrial units shall be permitted in Delhi. The Apex Court has held that smoke emitted from chimney of a bakery caused air pollution in such a manner as was injurious to health, safety and convenience of the people living in the close proximity of the bakery.[11]

The Apex Court handled the matter concerning failure of a municipality to prevent the discharge of an alcohol plant of malodorous/stinking fluid into the public streets. Supreme Court directed the Span Motels to remove constructions and encroachments on the banks of river Beas and not to discharge untreated effluents into the river. Span Motels were also directed to pay compensation to restore the environment. The Supreme Court directed the Haryana pollution control board to control the pollution caused by the stone crushers and mine operators in Faridabad. [12]

v Observations and Findings

There are many more such cases where the Indian Judicial Activism concerning environment issues are exhibited. Indian judiciary has made a significant contribution in this area through court rulings. It is observed that most of the environmental laws in India suffer from in-built loopholes even at the legislative stage that they are virtually unenforceable or implemented inadequately. The law enforcement

mechanism in India is also found to be inadequate and to some extent inefficient or corrupt. It is also observed that there is lack of concern, awareness, and education, responsive and responsible behavior amongst Indian citizens about environmental issues.

VI Conclusions

As we know the nature provides the most hygienic and healthy environment for survival and enrichment of human life but the mad race for materialistic advancement and changed life styles have imbalanced the ecosystem leading to scarcity of natural resources, health hazards and natural disasters. There are ways and means to achieve and maintain ecological balance for sustainable development viz. environmental awareness, education, counseling, population control, protecting and increasing forest cover, tree plantations etc and last but not the least is putting in place effective legal frame work for environmental protection.

In a developing country and economy like India, with alarming conditions of environmental degradation and lack of awareness of its causes and consequences, if remains unattended, mere enactments and amendments of legislation are not enough.

VII Suggestions

What is more important is effective implementation of environmental laws for sustainable development. The author is of the view that law alone cannot be and should not be a 'panacea' for solving environmental problems faced by mankind. We need to look at other options as stated earlier to handle the problems. It is not the responsibility of the govt. alone but also citizens' duty to keep clean and healthy environment. Citizens' support, cooperation and participation can be achieved through awareness and education. However it cannot be denied that law and legal system has its own role to play and has made a positive contribution to tackle the environmental concerns. There is a need for fair, honest, competent and responsive environmental regulations enforcement machinery A time has come to 'Live with the Nature' rather than 'Conquering the Nature'.

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