

Environment and Economic Management – Role of Legislation and Judiciary

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ABSTRACT

India is a developing country. In the year 2012, 21.9% of its population lived below the official poverty line. This is a considerable figure. Due to poverty, lack of awareness and education, these people are unable to adopt environment friendly lifestyles and measures. Poverty is a prominent contributing factor to pollution. The Indian government has passed various legislations for the cause of protecting environment in line with the directions of the Indian Constitution and international conventions.

This research undertakes to study the role of legislation in environment management for sustainable economic progress.

Keywords: sustainable development, pressure groups, public interest litigation, fundamental rights, Judicial activism

I. INTRODUCTION:

During the 1960s and 1970s people began to think that human existence would be threatened unless they adjusted their relationship with the environment. Now, it has been realized that environmental problems are not limited to local, regional or national level but several of them have a global impact. The nations of the world have come together to severally and jointly address the issue of environment pollution and solve and minimise its dangers.

Air and environment pollution is threatening the ecological balance of our planet earth. It has jeopardized the very existence of flora and fauna of earth. It poses grave danger to human health and life. The scientific and technological revolution has caused depletion of resources. Excessive use of fossil fuels, deforestation, desertification, loss of fertility of soil, changes in atmospheric conditions, etc. have resulted in serious problems like the Greenhouse effect, depletion of ozone layer, rise of world temperature, etc. Environmental problems are border-less. They

have global dimension and impact. At last, the world community has woken up to their dangers.

This research undertakes to study air pollution in particular as a contributor to environment pollution and degradation along with the policy and legislative remedies that have been subscribed to, by the Indian state for the protection of environment.

The world have come together to severally and jointly address the issue of environment pollution and solve and minimise its dangers.

II. LITERATURE REVIEW:

Genesis of the economic-environment problem:

There exists a close relationship between a healthy environment and economic condition of the community at large. The problem of Environmental pollution is the problem of both developed and underdeveloped countries. In developed countries there are problems of over-production, nuclear radiations, over exploitation of resources, industrial wastes, industrial accidents and luxurious lifestyles of people contribute to environmental pollution. In contrast poverty is the worst contributing factor in under developed countries. Poor people do not think of environment protection. They survive by whatever method they can afford best. However, in order to attain sustainable development environment protection constitutes an integral part of developmental process and it cannot be considered in isolation. Peace, development and environment are interdependent and indivisible. Integration of environment and development concerns and greater attention to them will lead to the fulfillment of basic needs, improved living standards for all, better protected and managed ecosystem and a safer, more prosperous future.

Indian scenario - According to the World Bank estimate, India loses a whopping \$ 80 billion annually on account of sickness and death from pollution and economic costs attributable to resource degradation. The loss due to poor

environment is pegged in excess of \$ 20 billion in purchasing power parity terms, according to the World Bank Annual Environment review released in Oct. 1998. Deteriorating water quality due to poor sanitation, industrial effluents and pesticide run-off, lack of clean water, poor solid waste management and air pollution are the key environmental problems.

2.1 Constitutional Commitments

Indian Constitution is perhaps one of the rare Constitutions of the world which contains specific provisions relating to environment protection. It puts duty on the State as well as citizens to protect and improve the environment. Judicial interpretation has made the right to live in healthy environment as *sanctum sanctorum* of human rights. Now it is considered as an integral part of right to life under article 21 of the Constitution.

Articles 32 and 226 of the Constitution empower the Supreme Court and the High Courts, respectively, to issue directions, orders or writs, including writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. The writs of mandamus, certiorari and prohibition are generally used for environmental matters. The Indian judiciary has made an extensive use of these constitutional provisions and developed a new 'environmental jurisprudence' of India. In India most of the matters have been brought before the judiciary through Public Interest Litigation or PIL.

2.2 People's response and role of judiciary in India

In India people's response to ecological crisis is very positive. In certain cases they have formed the pressure groups and exerted influence on the government to take decision on certain developmental projects only after making proper environment impact assessment (EIS), for example Silent Valley Movement in Kerala. The role of non-governmental organisations (NGOs) in this regard is very important. The scientific and academic community has contributed their share in environmental decisions by new researches, for example, National Environmental Engineering Research Institute, Nagpur (NEERI); The Centre for Science and Environment, New Delhi; The Centre for Environment Education, Ahmedabad, are few institutions among many others in the country which are continuously engaged in conducting research in the field of environment. Some people have shown their deep concern for environmental issues by filing public interest

litigations (PIL) and got favourable directions from the Courts in appropriate cases. In this regard the name of Mr. M.C. Mehta comes in the forefront who single-handedly has filed a number of public interest litigations in the Supreme Court relating to different aspects of environment protection. The environmental activists, lawyers, judges and local people have made their significant contribution to the cause of environment protection.

Some examples of people's action for protection of environment area as follows:-

- 1) 'CHIPKO' and 'APPIKO' movement in Karnataka for saving forests from exploitation.
- 2) Silent Valley Project Movement was led by Kerala Shashtra Sahitya Parishad (KSSP).
- 3) Narmada Bachao Andolan- a movement against Narmada River Valley Project led by Baba Amte and Medha Patkar.
- 4) Tehri Bandh Virodhi Sangharsh Samiti (TBVSS)- a movement against the construction of Tehri dam led by Shri Sunder Lal Bahuguna.

2.3 Obligation to implement International agreements:

India is a contracting party or signatory to numerous international treaties and agreements relating to regional or global environmental issues. India has been playing a leading role from the 1972 UN Conference on the Human Environment at Stockholm to the 1992 UN Conference on Environment and development at Rio de Janeiro and in Earth Summit Plus Five of 1997 at New York. Thus, India is under an obligation to translate the contents and decisions of international conferences, treaties and agreements into the stream of national law. Article 51 (c) provides that 'the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organised people with one another.' Article 253 of the Constitution specifically empowers the Parliament 'to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.' Entries no. 13 and 14 of the Union List, which includes subject matters over which the Parliament can make laws, provides 'participation in international conferences, associations and other bodies and implementing of the decisions made thereat' and 'entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.'

2.4 Fundamental Duties:

Article 51-A(g) of the Constitution of India specifically deals with the fundamental duty with respect to environment. It provides:

It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.

Article 51-A(j) further provides:

It shall be the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievements.

The fundamental duties are intended to promote people's participation in restructuring and building a welfare society. They cannot be directly enforced. However, in due course of time, the judicial activism provided an impetus to achieve the underlined objectives of the fundamental duties, particularly Article 51-A(g) relating to the environment.

2.5 Directive Principles of State Policy:

The directive principles represent the socio-economic goals which the nation is expected to achieve. Article 47 is one of the directive principles of State policy and it provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. The improvement of public health will also include the protection and improvement of environment without which public health cannot be assured.

The Constitution (Forty-second Amendment) Act, 1976, added a new directive principle in Article 48-A, dealing specifically with protection and improvement of environment. It provides:

The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

2.6 Fundamental Rights:

Principle 1 of the Stockholm Declaration finds reflection in Articles 14, 19 and 21 of the Constitution of India dealing with the right to equality, freedom of expression and right to life and personal liberty respectively. The Permanent People's Tribunal regards the 'anti-humanitarian effects of industrial and environmental hazards not as an unavoidable part of the existing industrial system, but rather as a pervasive and organised violation of the most fundamental rights of humanity. Foremost among these are the right to

life, health, expression, association and access to justice. All these rights are secured to the people of India under the Constitution of India under Part III dealing with fundamental rights. In order to treat a right as a fundamental right it is not necessary that it should be expressly stated as one in Part III of the Constitution dealing with fundamental rights. The provisions of Part III and IV, dealing with fundamental rights and directive principles respectively, are supplementary and complementary to each other. Fundamental rights are but means to achieve the goals of the directive principles. They must be construed broadly in the context of the directive principles unless the context otherwise provides. Thus, through the tool of fundamental rights the judiciary in India has provided impetus to the Human Rights approach. Various fundamental rights are explained as under:-

- (a) Right to life and right to live in a healthy environment
- (b) Right to livelihood
- (c) Fundamental freedom of speech and expression
- (d) Right to know
- (e) Freedom to carry on trade or business-
- (f) Right to Equality

2.7 Remedies for the Enforcement and Writ Jurisdiction

Right to enforce the fundamental rights by moving the Supreme Court is itself a fundamental right under Article 32 of the Constitution of India. Writ jurisdiction is conferred on the Supreme Court under Article 32 and all the High Courts under Article 226 of the Constitution. Under these provisions the Supreme Court and the High Courts have the power to issue any direction or orders or writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever is appropriate. Generally, environmental law provides for a system of regulation by statutes. However, in India, most of the environmental jurisprudence has been developed through writ jurisdiction.

III. NEED TO ESTABLISH ENVIRONMENT COURTS

The Supreme Court has asked the High Courts to constitute a special 'Green Bench' to monitor and deal with cases on environment matters. Green Benches are already functioning in some of the High Courts such as Calcutta, Madhya Pradesh, Madras, Allahabad and Punjab and Haryana High Courts. The Supreme Court has also suggested that environmental matters should first be raised before the High Court having the territorial jurisdiction over the area in question as

the High Court is in a better position to monitor the case.

3.1 Sustainable Economic Development and Judiciary in India

The term 'sustainable development' means economic development that is conducted without depletion of natural resources. It is a process for meeting human development goals while sustaining the ability of natural systems to continue to provide the natural resources and ecosystem services upon which the economy and society depend. While the modern concept of sustainable development is derived most strongly from Brundtland Report, it is rooted in earlier ideas about sustainable forest management and twentieth century environmental concerns. It has come to focus more on economic development, social development and environmental protection. Sustainable Development rests on the three pillars of (1) International Human Rights Law (2) International Environmental Law (3) International Economic Law. Its principles are-

- a) Inter-Generational Equity,
- b) Use and Conservation of natural resources,
- c) Environmental Protection,
- d) The Precautionary Principle,
- e) The Polluter Pays Principle,
- f) Obligation to Assist and Co-operate,
- g) Eradication of Poverty, and
- h) Financial Assistance to the Developing Countries.

3.2 Common Law and Other Statutory Remedies

Modern Environmental Law has its roots in the Common Law principles of Nuisance. In fact, the remedies under the law of tort, to abate environmental pollution is the oldest legal remedy. Nuisance created by environmental pollution can also be controlled and regulated under the statutory provisions if the Indian Penal Code and Criminal Procedure Code. Even under Civil Procedure Code, there USA provision to control public nuisance.

(A) Common Law Remedies

The term 'Common Law' is derived from Latin words *Lex communis*. It is a body of customary law in England which is based upon judicial decisions. The Common Law continues to be in force in India under Article 372 of the Constitution in so far it is not altered, modified or repealed by statutory law. The Common Law remedies against environmental pollution are available under the law of Torts. Tort is a civil wrong other than breach of trust or contract. Any

tortious action results in damage to property, person or reputation of another person and the affected party can claim damages, compensation or injunction or both. The most important tortious liabilities for environmental pollution are the following:-

- (i) Nuisance
- (ii) Trespass
- (iii) Negligence

Rule of strict liability:

The liability under this rule is strict and it is no defence that the things escaped without that person's wilful act, default or neglect or even that he had no knowledge of its existence. He is liable to compensate for the damages caused.

The rule of strict liability is subject to the following exceptions:

- 1) An act of God (e.g., flood, earthquake, etc.);
- 2) The act of third party; (e.g., Sabotage)
- 3) The plaintiff's own fault;
- 4) The plaintiff's consent;
- 5) The natural use of the land by the defendant; and
- 6) Statutory authority.

The doctrine of Strict liability is very useful in cases of environmental pollution, particularly in those cases where the harm is caused by the leakage of hazardous substances.

Injunction:-

It is a judicial process by which the person causing or likely to cause pollution is prohibited to do so. Injunction is of two types, temporary and perpetual. For the grant of temporary injunction, the following conditions should be satisfied-

- a) Existence of a prima facie case;
- b) Likelihood of irreparable loss or injury; and
- c) Balance of convenience requires the issuance of the injunction.

Perpetual or permanent injunction is provided by the courts to permanently restrain the person doing tortious act. The remedy of injunction is very useful in cases of trespass. This is also available in case of nuisance.

(B) Statutory Remedies

(i) Law of Crimes and Environment Protection: Indian Penal Code, 1860 makes various acts affecting environment as offences, Chapter XIV of the Indian Penal Code containing sections 268 to 294-A deals with the offences affecting the public health, safety, convenience, decency and morals. The sole object of Chapter XIV is to safeguard the public health, safety and convenience by causing those acts punishable which make environment polluted or threaten the life of the people. Section

268 of the Indian Penal Code defines public nuisance and section 290 provides for punishment for public nuisance in cases not otherwise provided for. Thus, under these provisions any act or omission of a person which caused injury to another person by polluting the environment can be controlled. Under section 268 of IPC, inter alia, noise pollution can also be controlled.

Sections 269 to 271 make a negligent act likely to spread infection of disease dangerous to life, punishable. The punishment provided for such act is imprisonment up to six months, or with fine, or both.

Sections 272-276 deal with the adulteration of food, drinks and drugs. Section 277 can be used to control water pollution in certain cases. This section provides that fouling of water of public spring, well or reservoir rendering it less fit for purposes for which it is ordinarily used, shall be punishable with an imprisonment up to three months, or with fine up to rupees five hundred, or both. It must be noted that the act of fouling water must be voluntary and not due to ignorance.

The IPC can be used to prevent pollution of atmosphere noxious to health of persons in general. Thus, no trade, business or manufacturing process can be carried out in the residential area which produces noxious and offensive smell. The IPC can also be used to prevent the negligent handling of poisonous substances, combustible materials and explosive substances which may cause environmental pollution. Under Sections 426, 430, 431 and 432 of IPC, general pollution caused by mischief can be controlled as the same is punishable.

Similarly, the provisions of the Criminal Procedure Code, 1973 can also be invoked to prevent pollution of almost kinds. Chapter X Part B contains sections 133 to 143 and Part C having section 144, can provide most effective and speedy remedy for preventing and controlling public nuisance causing air, water and noise pollution. The object and purpose behind section 133 of Cr.P.C. is essentially to prevent public nuisance. However, all the statutory provisions in the criminal law have some limitation, like, the punishment provided for the offending act is not much and fails to act as a deterrent.

(ii) Civil Procedure Code and public nuisance:

Section 91 of the Code of Civil Procedure provides the right of action in case of public nuisance. It provides that in case of public nuisance or other wrongful act affecting or likely to affect, the public, a suit for declaration and injunction or

for such other relief as may be appropriate in the circumstances of the case may be instituted-

a) By the Advocate General, or

b) With the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.

This section does not limit or affect any other right of suit which may exist independently of its provisions. However, the limitation is that the penalty for such offences is merely Rs. 200/- which is too meagre for a person to initiate prosecution.

IV. NATIONAL ENVIRONMENT POLICY

The Ministry of Environment and Forests is the nodal agency in the administrative structure of the Central Government, for the planning, promotion, co-ordination and overseeing the implementation of environmental and forestry programmes. The Ministry is also the nodal agency in the country for the United Nations Environment programme (UNEP). The principal activities undertaken by the Ministry of Environment and Forests consist of conservation and survey of flora, fauna, forests and wildlife, prevention and control of pollution, afforestation and regeneration of degraded areas and protection of environment, in the framework of legislations. The main tools utilized for this include surveys, impact assessment, control of pollution, regeneration programmes, support to organizations, research to solve solutions and training to augment the requisite manpower, collection and dissemination of environmental information and creation of environmental awareness among all sectors of the country's population. There are different policies for forests, water environmental pollution. But the experience in implementing these policies over the years has brought out the need for a comprehensive policy approach to management of the environment in the country. Therefore, a new national environment policy was announced on 2006. The following are the objectives of the national environment policy:

- 1) Conservation of Critical Environmental Resources
- 2) Inter-generational Equity
- 3) Efficiency in Environmental Resources Use
- 4) Environmental Governance in the Management of resources
- 5) Enhancement of Resources
- 6) Livelihood security for the poor
- 7) Integration of Environmental Concerns for socio-economic development

3.2 Strategy for conservation of Environmental Resources

The following strategy may be adopted for conservation of environmental resources in India:

1) Air Pollution-

The following are elements of an action plan for air pollution:-

a) To accelerate the national programmes of dissemination of improved fuel wood stoves and solar cooker for rural women. To provide incentive based instruments for controlling air pollution.

b) To provide adequate investments in low pollution mass transport systems with the help of public and private partnership. To give greater legal standing to local community and NGOs to undertake monitoring of environmental compliance, to promote reclamation of wastelands by energy plants.

- 2) To reduce Land degradation.
- 3) To conserve Forests.
- 4) To conserve Wildlife.
- 5) To protect biodiversity.
- 6) To protect Wetlands.
- 7) To conserve Man-made heritage.
- 8) Identification and protection of environmentally sensitive zones.
- 9) Strategy for sustainable Mountain development.
- 10) Strategy for sustainable Coastal resources.
- 11) Strategy for conservation of freshwater resources.
- 12) Abatement of air, water, noise and soil pollution.

3.3 Shortcomings of Environment Legislations and Policy for Environment

In 1980, the Central Government appointed Tiwari Committee to review the environmental legislations and recommend measures for ensuring environment protection. After reviewing the various environmental legislations the Tiwari Committee pointed out the following shortcomings :-

- 1) Many of the laws are outdated;
- 2) They lack statement of explicit policy objectives;
- 3) They are mutually inconsistent;
- 4) They lack adequate provisions for helping the implementing machinery;
- 5) There is no procedure for reviewing the efficacy of laws.

4.3 Suggestions made by the Committee

- 1) Comprehensive review and reformation of some Central and State Acts.

2) New legislation for area of action not covered by the present laws.

3) The introduction of 'Environment Protection' in the Concurrent list of the Seventh Schedule.

V. CRITICISM

Chhatrapati Singh has pointed out that the Committee's observations were the results of a macro-level analysis. That is, an analysis in which conclusion is inferred merely by looking at the formal characteristics of numerous laws and not relating itself to the actual socio-economic conditions of the implementation of these laws. He further pointed out that the experience of those who were really involved in litigation has shown that at the micro-level of actual application the nature of the problems involved in environmental legislation were of a type which were not at all covered by these observations. Hence, while not disagreeing with the pertinent observations of the Tiwari Committee, it must be emphasized that they failed really to get to the heart of the problems. Our environment laws are not weak laws but are often neither effective nor conducive in the attaining of the desired goals.

At the micro level, following are some of the major problems in our legal policy:-

(1) Our environmental laws work on the deterrent theory of criminal justice administration. However, the retributive value of the penalties fails to deter because there is total disparity between retribution and the economic benefits of non-compliance.

(2) The laws fail to provide any incentive for compliance since the deterrent theory on which they operate does not take the cost benefit analysis into account.

(3) From the economic point of view, the laws are totally counterproductive. They either slow down the production or provide the industries the scope for indulging in more corrupt practices, such as maneuvering the activities of the concerned Boards through economic or political malpractices.

(4) It is easier to punish the individual but very difficult to punish intangible things such as corporations or groups when they are properly organized. It is very easy in environmental problems to lay the responsibility on a specific person or body. This was evident in the Bhopal Gas Tragedy case, where the blame shifted from the manager to some workers and then to the incorporeal body called the Union Carbide.

3.4 Recommendations

For operational purposes, one must assume a 'co-operative' model of society, in which the major task of the executive becomes one of

finding alternatives through which the various agencies of the society can co-operate with each other to attain the common ends. Unfortunately, we have continued our colonial heritage of policing a conflicting society; thereby putting the Boards against the industries and the producers against the environmentalists as enemies of each other, rather than finding means by which they can co-operate. The enactment of the Parliament, that is, the Environment (Protection) Act, 1986 has taken care of some of the above mentioned suggestions. Under this act, all kinds of environmental pollution can be controlled.

VI. CONCLUSION

The above study shows that India is not sleeping on the issues of pollution and environment protection. The Indian society, its religions and sects have since time memorial, encouraged conservation and protection of environment. Valuing one's environment is deeply embedded in the ethos of Indian culture. India has a chequered political history and has been ruled by foreign rulers for centuries. The most recent being the British who ruled India for a couple of centuries and through whom western knowledge and technology as well as various modern concepts, system of existing law and judiciary were first introduced. They were who legislated first upon environment protection in India. India attained independence in 1947. It has not looked back since then. It gave itself one of the most vibrant Constitutions of the world. The above study elucidates how the Indian Constitution and legislations stand apart from others in that

they contain written provisions and commitments to Environment Protection and Economic Management. Moreover, it has a responsible judiciary that has exhibited its versatility time and again in interpreting laws for the public good and protection of environment. The Constitution has empowered the Indian Parliament to legislate upon preventing and controlling various forms of pollution, conserving natural resources and protecting the environment.

India is a committed member of the United Nations. It is a signatory to various international conventions, declarations, pacts and treaties. India is a responsible World Member. In India Environment Improvement Trust (EIT) is working for environment and forest protection since 1998. A group of Green Volunteers set a goal of Green India Clean India Concept. Starting in the 1990s, reforms were introduced. Since then, for the first time in Indian history, major air pollutant concentrations have dropped in every five years period. During 1992-2010, satellite data confirms India's forest coverage has increased for the first time by over 4 million hectares, a 7% increase. Various State Governments have banned indiscriminate use of plastic and polythene bags. People are encouraged to use bio degradable products. Massive public awareness programmes are being run by government. A national cleanliness drive of 'Swachh Bharat Abhiyan' has been launched by the present Government. Rivers and canals are being cleaned nationwide as well as forestation drives have been undertaken. The public response is increasingly positive.

Table I:

International Conventions, Treaties and Institutions that India is signatory to, in the context of the present paper	
1.	United Nations Framework Convention on Climate Change
2.	The United Nations Educational, Scientific and Cultural Organisation
3.	United Nations Convention to Combat Desertification
4.	Ramsar Convention
5.	Asia Pacific Forestry Commission
6.	International Union for Conservation of Nature and Natural Resources
7.	United Nations Forum on Forestry
8.	International Tropical Timber Organisation
9.	International Network for Bamboo and Rattan
10.	International Whaling Commission Convention on Conservation of Species of Wild Animals
11.	Convention on International Trade in Endangered Species of Wild Flora and Fauna

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