



ENVIRONMENTAL DEGRADATION: LEGISLATIVE POLICIES IN INDIA

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ABSTRACT

The problem of Environmental pollution is not new in its origin. It is as old as the emergence of Homo sapiens on the earth and it was realized in the times of Plato 2500 years ago. But today Environmental pollution has reached at the level of creating hazard and threatening to the healthy existence of living beings on earth. Global warming, ozone depletion, green house effect, climate change, increase in sea water level are some of the hazardous outputs of environmental pollution. The Environment denotes surroundings whereas in its broader sense it gives inclusion of everything which is visible, invisible, seen and unseen, known and unknown, living and non-living things and their interaction in, on, under and above the earth surface. This global issue of Environmental Pollution though unavoidable in this modern era of development can be curtailed and eradicated by framing and implementing proper policies and legal frame work along with creating awareness and feeling of love towards environment and it's protection in the mind of people .

Keywords: Environmental Degradation, Pollution, Pollutants, Living beings, Sustainable Development, Policies, Legal Framework.

INTRODUCTION:

*What of thee I dig out,
Let that quickly grow over,
Let me not hit thy vital, or
Thy heart*

- Atharva Veda

This means that one can take from the earth and atmosphere only so much as one puts back to them.

It is difficult to define the word “Environment”. Its ordinary meaning relates to surroundings, but obviously it’s a concept which is related to whatever object it is which is surrounded. Einstein has once observed, “The environment is everything that isn’t me”.¹ The concept of environment can be understood in two ways. Firstly, in its narrow and etymological sense, environment denotes surroundings whereas in its broader sense it gives inclusion of everything which is visible, invisible, seen and unseen, known and unknown, living and non-living things and their interaction in, on, under and above the earth surface.

According to Encyclopedia Britannica, the term “environment” means the entire range of external influences action on an organism, both the physical and biological, and other organisms, i.e. forces of the nature surrounding the individual. Environmental protection act gives inclusive definition of “Environment” as it includes “water, air and land, and human beings, other living creatures, plants, micro-organisms and property”.²

¹ T. N. Godavarman Thirumalpad Vs Union of India, (2002) 10 SCC 606 at 618

² Sec. 2(a) of Environment (Protection) Act, 1986



Thus, environment can be said to include each and everything present above, on and below the earth's surface which may be biotic or a-biotic thing including water, air, rocks, soil, flora-fauna, all living and non-living beings including micro-organisms. Environment is a polycentric and multifaceted subject affecting the existence of all living beings on earth including humans.

ENVIRONMENT AND ITS POLLUTION

The problem of Environment pollution is not new in its origin. It is as old as the emergence of Homo sapiens on the earth and it was realized in the times of Plato 2500 years ago.³ Environment which includes everything present in the surroundings is essentially requires to be protected from being degraded mostly due to human activities. Man is the nature's best promise and worst enemy. However, different dimensions of the problem of Environmental pollution and its abatement, management and thereby protection of Environment have taken a serious in the present era. At present human interaction with the nature is so extensive that the environmental question has assumed proportions affecting all humanity. Industrialization, urbanization, population explosion, overexploitation of natural resources, poverty, depletion of traditional sources of energy and raw materials and the research for the new sources of energy and raw materials are some of the factors which have contributed to Environmental deterioration the world over. While the scientific and technological progress of a man has invested him with immense power over nature, it has also resulted in the unthinking use of power, encroaching endlessly on the nature.⁴

Industry is the central to the economics of the modern societies and indispensable motor of growth. It is essential to the developing states to widen their development base and meet the growing needs. Industry extracts material from the natural resources base and inserts both products and pollution into the human environment. It has power to enhance or to degrade the environment, it invariably does both.⁵

If for progress of the society industry is necessary, pollution is inevitable. Since progress and pollution goes together, there can be no end of progress and consequently, no escape from the environmental pollution. "Pollution" is a noun derived from the transitive verb "pollutes" which means to make foul or unclean, dirty, to make impure or morally unclean. "Pollution" also means the direct or indirect discharge by man of substance or energy into the aquatic environment resulting in hazard to human health, harm to living resources and aquatic ecosystems, damage to amenities on interference with other legitimate uses of water.⁶

The protection of Environment is a global issue and is not isolated for any specific area or nation. The problem of Environment pollution is an increasingly small world concerns all countries irrespective of their size, level of development and ideology. Notwithstanding political division of the world in to national units, the oceanic world is interconnected whole and wind that blows over the countries are also one.⁷ If any nuclear test is carried out in one corner of the world, the fall out may be carried by wind to any other part of the world and such fall out of any irresponsible disposal of radioactive element and waste from a remote energy plant in one

³ Hambro, E., "The Human Environment-Stockholm and after", Year Book of World Affairs, 20 (1974)

⁴ Shri. Sachidanand Pandey vs. State of West Bengal, AIR 1987 SC 1109, also T. N. Godavarman Thirumalpad vs Union of India, (2002) 10 SCC 606 at 622.

⁵ Our Common Future – The World Commission on Environment And Development, 206 (1987)

⁶ Karnataka Industrial Areas Development Board vs. C. Kenchappa, (2006) 6 SCC 371.

⁷ M. C. Mehta vs. Union of India, (1991) 2 SCC 353 at 354.

country may turn out to have greater hazardous impact on the neighbor countries than the danger of fully fledged war as threatening of which was occurred in Kouposhima Nuclear Plant in Japan.

Environmental pollution is defined under Environment (Protection) Act as “the presence in the environment of any environmental pollutant” and Environmental pollutant means, “any solid, liquid or gaseous substance present in such a concentration as may be, or tends to be injurious to the Environment”.⁸ It clarifies that the presence of any such substance exceeding its level in the Environment tends to pollute it and thereby becomes responsible for imbalance of Environment leading to cause hazardous effects on all living and non-living beings including Humans. Therefore, it is obvious that the Humans are the only beings which are adding and removing the things present in the Environment only for complying its selfish wishes. It is a basic right of all to live in a healthy and pollution free Environment.

At the same time the acute poverty in any under developed or developing country requires developmental process to be accelerated but if it is done at the cost of Environment, it will endanger thereby not only the present generation but also the future one. This issue is therefore answered by the “sustainable development” which is the crying need of an hour. “Sustainable development” is that development which meets the need of present generation without compromising the ability of the future generation to meet their needs.⁹

Environmental Degradation:

Indian Scenario

We are well aware that every anthropogenic activity will have its hazardous impact on Environment and Humans are the ultimate sufferer. Near about each and every human activity causes an adverse effect on the balance of the eco-system and thereby causing more and more harm to the Environment which cannot be restored. Environmental degradation is the state of crisis arising out of its pollution caused through various ways and in different forms.

India is the country which always has a concern about Environment and its protection that can be traced back to the period between 321 and 300 B.C. the ancient Indian law on Environmental protection is found in Kautilya’s Arthashastra¹⁰. It was said that protection of nature is the dharma of each and every individual in the society. People in India worship the objects of the nature. The trees, water, land and animals gained important positions in the ancient times.¹¹ Indian culture and religious heritage shows deep concern for protection and preservation of Environment.

Environmental Pollution was controlled rigidly in the ancient times. It was not an affair limited to an individual or individuals but the society as a whole has accepted its duty to protect the Environment.¹² The Indian society has, since time immemorial, been conscious of the necessity of protecting the Environment and Ecology. The main motto of social life has been “to live in the harmony with nature”. Sages and Saints of India lived in forests. Their preaching’s contained in the Vedas, Upanishads, smritis, etc. are ample evidence of the society’s respect for plants, trees, earth, sky, air, water and every form of life. It was regarded as a sacred duty of everyone to protect and preserve them. In olden days, people worshiped different trees, plants,

⁸ Sec. 2(c) and Sec. 2(b) of Environment (Protection) Act, 1986

⁹ Our Common Future – The World Commission on Environment And Development, 206 (1987)

¹⁰ Armin Rosencranz, Shyam Diwan and Martha L. Noble, Environmental Law and Policy in India - Cases, Materials, and Statutes, 27 (1991).

¹¹ C. M. Jariwala, “Changing Dimensions of Indian Environmental Law”, in P. Leelakrishnan (Ed.) Law and Environment, 1-25 at 2 (1992)

¹² T. N. Godavarman Thirumalpad vs. Union of India, (2002) 10 SCC 606.



rivers, sea and even planets which were treated as belonging to all living creatures. The children were educated not only in the schools but by their parents and grand-parents about importance and necessity of keeping Environment clean and protecting earth, rivers, trees, flora, fauna, forests, sea, animals, every living and non-living species life.¹³

India is a country of rites and rituals. Almost all religions in India realized the proximity of mankind with the nature. All religions regulated the conduct of mankind in such a manner which was conducive to the nature and not adverse to nature. In *Hinduism*, nature is considered as “a body of God”. From the Vedic period, Environment was part of ethos of ancient people. In Rig Veda, it is mentioned that the Universe consist of five basic elements as earth, water, air, fire and ether (space). These five elements provide the basis for the life in everything and man is ordained to conserve them. It is further ordained that nobody will destroy vegetation and no one shall kill animals which clearly shows the compassion for animals and plants. The *Holy Koran* declares that everything is created from water. Allah is considered to be the owner of land and mankind is the trustee or guardian whereas other living creatures are considered to be the beneficiaries.

Christians are baptized in water, as a sign of purification. Pope Paul VI, in his message to the United Nations Conference on the Human Environment stated that Environment and resources are for everyone; they are inalienable property of everyone, and there does not exist over this universal property discretionary sovereignty exempting from responsibility towards the humanity of today and tomorrow.¹⁴ In *Sikh Religion*, *Guru Nanak ji* said –

Air is vital force,
Water the progenitor,
The vast earth the mother of all,
Day and night are nurses fondling
all creation in their lap.(Jap Ji Sahib)

Thus, in ancient time, water, animals and plants mostly attracted a favorable attention of each member of the society. And it was the religion which controlled the activities of individuals.

But nowadays in India as elsewhere in the world, uncontrolled growth and consequent Environmental deterioration are fast assuming menacing proportions and all Indian cities and whole population are afflicted with the problem. Global warming, ozone depletion, toxic pollution, increase in sea water level and climate changes are some of the negative effects of the existing development strategy. Today, most of our rivers are polluted; deforestation has reached to extinction of forests’, huge emission of poisonous gases and other solid and liquid waste from industries, domestic and bio-medical waste has almost become a regular a phenomenon of the present day. Land erosion through wind and water has become the common feature. To prevent and control this hazardous pollution and degradation of Environment, which will lead to extinction and destruction of this beautiful creation of nature including humans, India has framed certain policies in the form of legislations and judicial measures, the effectiveness of which is again a question of great importance.

Factors responsible for Environmental pollution:

Environmental pollution results in to its degradation which is said to be caused because of the following factors-

1. Population Explosion: Growth of population leads to increase poverty, hunger, ill health, illiteracy and the continuing deterioration of the ecosystem on which we depends for our well being. It will affect the fulfillment of basic needs and standard of living of all. Modern thinkers

¹³ Fomento Resorts and Hotels Ltd. vs. Minguel Martins, (2009) 3 SCC 57.

¹⁴ The Stockholm Conference in June, 1972

are of the opinion that it is the only root cause for many problems. Increased population has multiplier effect requiring proportionate increase in all requirements necessary for the existence of the humans. Population growth causes abnormal exploitation of the natural resources. It leads to migration of the people and growth of urban areas, thereby creates new problems of ecological balance and leads to Environmental degradation.

2. Industrial Development: In today's era no country can survive its economy without industry and industrial development. Industry with modern technological developments has drastically polluted the Environment and has explicated natural resources to the extent that it cannot be reimbursed for years together only for the enrichment of national wealth. Industrial pollution causes increase in the concentration of poisonous gases in the air such as CO₂, CO, SO₂, etc. which raises atmospheric temperature, wastes and effluents pollutes the soil, water, air and very existence of living creatures on earth.

3. Urbanization: It is a state of things connoting an increase in the concentration of human population in defined territorial area where industries are generally established. An urbanization result into over exploitation of natural resources and all kinds of pollution also enhances economic disparities.

4. Deforestation: It leads to soil erosion, increases in the sediments of rivers, water reservoirs and river beds, changes in the climate and season cycle leading to cause floods or droughts and most importantly leads to ecological imbalance, gives birth to the new diseases brings change in the natural environment.

5. Modern Technology: Development of science and technology has created both advantageous and adverse effects on the nature and environment. These advantages benefiting the humans are playing vital role in causing environmental pollution. As the pollution of environment is associated with the productive processes carried out at large scale by using modern technique, creates several environmental problems of greater dimensions. Electronic, chemical, bio-medical, nuclear, organic and inorganic waste material produced and coming from industries and domestic garbage either in the solid, liquid or gaseous state has huge irrecoverable impact on the environment because of their toxicity.

6. Poverty: Poverty and population explosion in the society leads to excessive exploitation of the natural resources. Poor population of a country totally depends on these natural resources for meeting their basic needs like food, fuel, shelter and fodder for their cattle etc. Poverty is one of the basic reasons for environmental pollution.

Legislative policies in India:

Various legislative measures and state policies have been framed in India for the purpose of environmental protection, some of the cited below-

i) Sec.268 to Sec.290 of the IPC, penal law of the country deals with the offence of public nuisance and its punishment. Public nuisance includes pollution of air, water, soil, smoking, filth and other polluting activities. Kerala High Court held that smoking in the public place amounts to public nuisance and cases can be filed u/s. 290.¹⁵The Supreme Court of India held that smoking in the public place violates the fundamental right of passive smokers under Article 21 of the Constitution of India.¹⁶

ii) Criminal Procedure Code from Sec. 130 to Sec.143 and Sec.91 of the Civil Procedure Code envisages that a person may approach to a court of a Magistrate and District Court respectively for public nuisance by way of filing a criminal complaint or civil suit.

¹⁵ K. R amkrishanan vs. State of Kerala, AIR 1999 Ker. 385.

¹⁶ Murli S. Deora vs. Union of India, (2001) 8 SCC 765.

- iii) Under Law of Torts, special damage can be claimed from a person causing the nuisance.
- iv) The Water (Prevention and Control of Pollution) Act, 1974;
- v) The Air (Prevention and Control of Pollution) Act, 1981;
- vi) The Wild Life (Protection) Act, 1972;
- vii) The Prevention of Cruelty to Animals Act, 1960;
- viii) The Environmental Protection Act, 1986;
- ix) The National Environment Tribunal Act, 1995.

The Provisions in the Constitution of India:

Part III of the constitution, from Article 12 to 35 deals with fundamental rights. Articles like 15 (2) (b), 21 and 24 provides specific provision for environmental protection. According to Article 15 (2) (b), “No citizen shall on the grounds only of religion, race, caste, sex, place of birth or any of them be subjected to any disability, liability, restriction or condition with regard to; the use of wells, bathing Ghats, roads and places of public resort, maintained wholly or partly out of state funds or dedicated to the use of general public.” So it prohibits discrimination on the ground of sex, race, religion, caste, place of birth etc. to make use of the public places to the public in general. The public places which are part and parcel of human environment, should be made available to the public. The preamble to the constitution ensures socialistic pattern of the society and descent standard of life, which can be a pollution free environment.

Art. 21 states as, “No person shall be deprived of his life or personal liberty except according the procedure established by the law”. Art. 21 is very heart of the fundamental rights and other rights are just like ornaments to flourish this basic right. It has received expanded meaning from time to time after the decision of Supreme Court in *Maneka Gandhi vs. Union of India*¹⁷. It guarantees vital right to life with dignity, in a proper healthy environment, free from danger of diseases and infection, it was observed in *Dehradun Valley case*.¹⁸ It is the first case of this kind in India, involving issues related to the environment and ecological balance where R.L. and E Kendra and others in a letter complained to the Supreme Court about illegal mining in Mussoorie, Dehradun belt. As a result, the ecology of the surrounding area was adversely affected and caused threat to ecological balance.

The Supreme Court treated this letter as writ petition under Art. 32 and directed to stop the excavation (illegal mining) under Environmental (Protection) Act, 1986. The respondent contended that the writ was registered in 1983 and Environmental (Protection) Act was passed in 1986, hence don't have retrospective effect. The Court rejected the contention and held that provision of procedural law shall apply to ordinary criminal cases and not to environmental cases.

Art. 24 says that, “No child below the age of 14 years shall be employed to work in nay factory, mine or engaged in any other hazardous employment”, this provision is certainly in the interest of public health and part of the environment. Further Article 39(e), (f) under directive principles of the state policy provides for the protection of health and strength of children below the age of 14 years. The Supreme Court has held that the prohibition under Art. 24 could be enforced against any one, be it the state or private individual¹⁹.

Part-IV of the Constitution, containing article 36 to 51, deals with Directive Principle of the state policy which forms the fundamental feature and are designed to achieve socio-economic goals. Art. 47 provide 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.

¹⁷ AIR 1978 SC 597

¹⁸ *Rural Litigation and Entitlement Kendra vs. State of U.P.*, AIR 1988 SC 2187

¹⁹ *People's Union for Democratic Rights vs. Union Of India*, AIR 1982 SC 1473



The public health includes protection and improvement of environment without which public health cannot be assured. The state is directed to take steps towards organizing agriculture and animal husbandry on modern and scientific lines. In particular, it should take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other cattle. The state is also required to protect monuments and places and objects of national importance from spoliation, disfigurement, destruction, removal, disposal or export²⁰.

The Constitution of India also imposes a fundamental duty as of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures²¹.

The Judicial Approach towards Environmental Protection:

The judiciary in India, specifically the higher judiciary has shown its active role towards environmental issues and its protection while deciding cases. In *Indian Council for Enviro-Legal Action vs. Union of India*, Supreme Court has found that the private industrial houses by doing pollution, flouted the provisions of law, viz. Environment (Protection) Act, the Air Act, the hazardous wastes (management and handling) rules and accordingly held that the right to life was invaded and seriously infringed²². In another case of *B. L. Wadhwa vs. Union of India*, the Supreme Court held that non-availability of funds, machinery, etc. cannot plead as non performance of statutory obligation. It also directed to appoint Municipal magistrates for trial of offence under corporation act of Delhi²³. In *M. C. Mehta vs. Union of India*, Supreme Court held that mining activity in the vicinity of tourist resorts of Badkal Lake and Surajkund are bound to cause several impacts on the ecology and directed that mining activity should be stopped within 3km of the tourist resort²⁴.

In *T. N. Godavarman Trirumulpad vs. Union of India*²⁵, where the case was related with usefulness of traditional and modern shrimp (prawn) farming, the Supreme Court has held that commercial aquaculture farming and modern shrimp farming in the coastal area causes depletion of mangrove and ecosystem and therefore it is violative of Environment (Protection) Act and cannot be permitted. However traditional farming is pollution free and directed to constitute High Power Authority to scrutinize each and every case.

In *M.C. Mehta vs. Union of India*, famous as Ganga pollution case based on polluters pay principle where the tanneries are discharging untreated poisonous effluents into the river, the Supreme Court issued directions for unconditional closure of tanneries, relocation and payment of compensation by them for reversing the damaged ecology.²⁶ Also in *M.C. Mehta vs. Union of India*, *Taj Trapezium Case*, Court directed the industries situated near Taj Trapezium Zone to use natural gas instead of coak or coal as use of the same cause's serious impact on Tajmahal and people living in the vicinity. Otherwise industries were directed to stop functioning and relocate to other area.²⁷

²⁰ Article 48 & 49, M. P. Jain, "Indian Constitutional Law", LexisNexis Butterworths Wadhwa, Nagpur, 6th Edition, reprint 2012

²¹ Article 51A, M. P. Jain, "Indian Constitutional Law", LexisNexis Butterworths Wadhwa, Nagpur, 6th Edition, reprint 2012

²² (1996) 3 SCC 212

²³ (1996) 2 SCC 594

²⁴ (1996) 8 SCC 462

²⁵ (1997) 7 SCC 440

²⁶ (1997) 2 SCC 411

²⁷ (1997) 2 SCC 353



In *Church of God vs. State of Tamilnadu*²⁸, the Supreme Court has come down heavily on the practice of beating drums and use of loud speakers in place of worship. It was held that no religion prescribes such practice and has observed that “In our view in the civilized society in the name of religious activities which disturbs old and infirm persons, children and students in early hours or during day time or other activity cannot be permitted. It should not be forgotten that babies in the neighborhood are also entitled to enjoy their natural right of sleeping in peaceful atmosphere. Aged, sick people afflicted by psychic disturbances as well as children up to the age of six years are considered to be sensitive to noise. Their rights are also required to be honored”.

Conclusion:

Today Environmental pollution has alarmed hazard and threat to the healthy existence of living beings on earth. This global issue of Pollution though unavoidable in this modern era of development but by framing and implementing proper policies and legal frame work, it can be curtailed and eradicated. In India though the various laws and legal machineries are construed in this regard yet they fail to cause any deterrence in the society of punishment for polluting natural environment. From the economic point of view laws are totally counter-productive. They either slow down the production or provide industries the scope for indulging in more corrupt practices. It is easy to punish individual but corporations or groups can escape from it, more it does not remedy or compensate the loss caused to the environment.

In order to control this severe menace of environment pollution and degradation, strict laws and proper implementation machinery along with involvement of each member of the society by creating awareness and vigilance in this regard among the people can help out to curb this problem.

REFERENCES:

1. Hambro, E., “The Human Environment-Stockholm and after”, Year Book of World Affairs, 20 (1974);
2. Armin Rosencranz and Shyam Diwan, “Environmental Law and Policy in India”, Oxford University Press, New Delhi, 2001;
3. C. M. Jariwala, “Changing Dimensions of Indian Environmental Law”, in P. Leelakrishnan (Ed.) Law and Environment, 1-25 at 2 (1992);
4. Our Common Future – The World Commission on Environment and Development, 206 (1987);
5. S. C. Shastri, “Environmental Law”, Central Law Publication, Allahabad, 2008;
6. Dr. S. C. Tripathi, “Environmental Law”, Central Law Publication, Allahabad, 2010;
7. P. C. Jain, “Guide to Environmental Laws in India”, Wadhwa and company, Indore, 2001;
8. Dr. I. A. Khan, “ENVIRONMENTAL LAW”, Central Law Agency, Allahabad, 2000;
9. Dr. P. S. Jaswal and Dr. Nishta Jaswal, “Environmental Law”, Allahabad Law Agency, Faridabad, 1999 Reprint 2014;
10. M. P. Jain, “Indian Constitutional Law”, LexisNexis Butterworths Wadhwa, Nagpur, 6th Edition, reprint 2012;

²⁸ (1999) 9 SCC 121