



PROTECTION OF ENVIRONMENT: INDIAN AND INTERNATIONAL INITIATIVES *

INTRODUCTION

The Environmental Law is considered to be the emerging branch of law in India. With the passage of time need has been felt to protect the man kind and other living organisms on the earth which has put enormous pressure on the government to enact legislation for the protection of the environment. The term environment has been defined in the Environment Protection Act, 1986 which states that environment includes air, water and land and the inter-relationships which exist among those elements and human beings and other living organisms.

FACTORS RESPONSIBLE FOR ENVIRONMENT POLLUTION

There are several factors which are responsible for generating environment pollution. Some of the major factors are listed below:

- **URBANIZATION-** Urbanization is one of the major cause of the environment pollution. The level of air or water pollution produced in the cities are comparatively more than the villages. Automobiles are the foremost reason behind air pollution in the cities. The discharge of untreated sewerage into river causes water pollution. The growth of urbanization has no doubt caused an adverse effect on the environment.
- **INDUSTRIALIZATION-** The growth of industry has no doubt made significant contribution to the economic development of the country. But at the same time industry leads to air water and noise pollution. The emission of harmful gases from the chimneys of factories causes massive air pollution and the discharge of chemicals and untreated sewerages into the river leads to water pollution. The continuous running of machineries also cause noise pollution.
- **DEFORESTATION-** The desire of economic prosperity has led to the setting of industries which resulted in deforestation. Forests are responsible for conserving natural resources and prevents flood and protects wild life. Deforestation has also proved detrimental for the poor people and tribes.
- **POPULATION GROWTH-** According to the census 2011, the population of the country has exceeded 100 crores. Large population puts pressure on the carrying capacity of the earth and also leads to unsustainable consumption patterns.
- **LAND POLLUTION-** Deforestation has also led to land pollution. The excessive use of pesticides and throwing of garbage and biomedical wastes are liable for causing land pollution.¹

RIGHT TO LIVE IN HEALTHY ENVIRONMENT UNDER THE INDIAN CONSTITUTION.

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¹ Rajeev Yadav, *Essential causes responsible for increasing pollution in India*” available at <http://www.publishyourarticles.net/knowledge-hub/environmental-studies/10-essential-causes-responsible-for-increasing-pollution-in-india/3735/>

With the passage of time the issues related to environment has gained much importance. The right to live in a healthy environment has gained so much of importance that it has been included in Article 21 of the Indian constitution.

In the historic judgment of *Rural Litigation and Entitlement Kendra v. State of UP*,² the Supreme Court ordered the closure of certain limestone quarries in the Doon valley as it was causing deforestation and soil erosion. The Supreme Court clearly stated that the right to live in a healthy environment with minimal disturbance to ecological balance is a fundamental right and is included under Right to life enshrined in article 21 of the constitution.³

In *M.C Mehta v. Union of India*⁴, a case was filed against the leather tanneries as it was discharging the effluents into river Ganga. In this case Supreme Court stated that by the discharge from the leather tanneries disturbs the ecology of the indo-Gangetic plain which has an adverse effect on the life and health of the people. So it ordered the closing down of the tanneries.

RIGHT TO LIVELIHOOD

Right to life incorporated under article 21 of the constitution includes the right to livelihood. It is considered to be an essential component of the right to life. In *Olga Tellis v. Bombay Municipal Corporation*,⁵ a petition was presented before the Supreme Court against the eviction of pavement dwellers from their habitat. It was stated by the Supreme Court that no person shall be deprived of his life except according to the procedure established by the law. The Municipal Corporation was directed by the Supreme Court to provide alternate accommodation to the pavement and slum dwellers.

In *K.Chandra v. State of T.N*, it was stated that the procedure of displacing people from their habitat can be regarded as just fair and reasonable only when the displaced people are provided with alternate accommodation and basic amenities of the societies.

RIGHT TO HEALTHY ENVIRONMENT IN THE LIGHT OF FUNDAMENTAL RIGHT TO PROFESION, TRADE OR BUSINESS

The Constitution of India under article 19(1) (g) incorporates the provision pertaining to freedom to practice any profession, occupation, Trade or business. But an important question which rises here is that whether this right conferred by the constitution is absolute?

In *Abhilash Textiles v. Rajkot Municipal Corporation*⁶, in this case the petitioners were running the business of dyeing and printing. The Municipal Commission ordered them to stop the discharge of dirty water on the road as it caused pollution and disturbance to the public. The contention given by the petitioner was that they were carrying the business for the last 20 to 25 years and more than 20,000 employees were connected with the business. According to them the issue of the direction of stopping the discharge of water on the roads was violation of the fundamental right enshrined under article 19(1) (g). The question that came before the consideration before the Gujarat High Court was the fundamental right guaranteed under the Indian constitution is absolute? The Gujarat High Court stated that the fundamental right incorporated under article 19(1) (g) of the constitution is subject to reasonable restrictions. No business trade occupation having hazardous or detrimental effect on the society should be allowed to continue. It also stated that nobody is empowered to carry on the business activity which in turns caused health hazards to the entire society.

² AIR 1985 SC 652

³ Dr. J.N Pandey "The Constitutional Law of India" (46th Edition) 2009

⁴ AIR 1988 SC 1037

⁵ AIR 1986 SC 180

⁶ AIR 1988 GUJ. 57

In *Obayya Pujari v. KPSCB, Bangalore*,⁷ in this case the Karnataka High Court issued direction for the closure of stone crushing unit as it generated pollution. It stated that reasonable restrictions can always be imposed on the fundamental right to profession trade or business where the wellbeing and safety of the general public is involved.

INTER-RELATIONSHIP BETWEEN DIRECTIVE PRINCIPLES OF STATE POLICY AND ENVIRONMENT

The Directive Principle of State Policy is contained in Part IV of the constitution. It comprises of socio-economic goals which the nation desires to achieve. Article 47 of the constitution states that the state shall strive to raise the level of nutrition and improvement of public health. The term public health also includes clean environment without which the public health cannot be assured. Article 48A of the constitution states that the state shall put best effort to protect and improve the environment and to safeguard the forests and wildlife of the country. Whereas Article 51-A (g) confers upon every citizen of India the fundamental duty to protect and improve natural environment.

PROTECTION OF ENVIRONMENT UNDER INTERNATIONAL LAW

STOCKHOLM DECLARATION

The concept of Sustainable Development in general parlance may be defined as the development that meets the need of the present without compromising the ability to meet the needs of future generation. The concept of sustainable development gained widespread importance in Stockholm Declaration on Human Environment which was the result of the United Nations Conference on Human Environment in 1972. The conference was an imperative initiative in the development of the environment. 114 nations participated and formulated several provisions for the protection of the environment which were incorporated in the Stockholm declaration.

THE MONTREAL PROTOCOL (OZONE TREATY)

The Montreal protocol which came into effect in the year 1989 was mainly concerned with the elimination of ozone depleting substances like chlorofluorocarbons. The ozone treaty was mainly signed by the 48 nations. Developing nations like India and Malaysia refused to sign the treaty because of the partial and discriminatory provisions.

EARTH SUMMIT (1992)

The United Nations Conference on Environment and Development which is commonly referred as Earth Summit was held in June, 1992. The Conference mainly laid emphasis on the Sustainable Development and the establishment of healthy and productive life in harmony with nature. The declaration also imposes duty on the state to ensure that their activities does not affect the environment of other states.

CONCEPT OF PRECAUTIONARY PRINCIPLE

The Concept of Precautionary Principle was incorporated in Principle 18 of the Stockholm Declaration. In *Vellore Citizens Welfare forum v. Union of India*,⁸ in this case the Supreme Court held that the concept of sustainable development is the part of Customary International law in order to establish balance between ecology and development. It was also held that the precautionary principle and polluter pays principle is an essential feature of the Sustainable Development. It was also established that both the principle precautionary principle and the polluter pays principle is a significant part of the Indian Environmental law. The Supreme Court has explained the principle of sustainable development in the following words:

⁷ AIR 1999 Kant. 157

⁸ AIR 1996 SC 2715

- It is the utmost duty of the state government and statutory authorities to make best efforts to anticipate, prevent and attack the causes of environmental degradation.
- Measures should be adopted to prevent environmental degradation where there are threats of serious and irreversible damage.
- The burden to prove that the actions are not damaging for the environment is upon the person who is involved in any environmental activities.⁹

In *Narmada Bachao Andolan v. Union of India*,¹⁰ in this case the Public interest litigation was filed against the construction of large dam on Narmada River. Supreme Court in its decision balanced the developmental activities with the environment. In the opinion of the Supreme Court the construction of dam was neither nuclear establishment nor a polluting industry. The construction of dam will not cause ecological disaster and held that the principle of precautionary principle would not be applied to the present case and it does not violate article 21 of the constitution.

MAJOR POLLUTIONS IN INDIA

Water Pollution is considered to be the severe pollution prevalent in India which poses threat to the life of mankind and other living organisms. The major reason behind water pollution is the discharge of untreated sewerage and toxic waste into the river and sea. Several disease like cholera, diphtheria are the outcome of the water pesticides. The continuous use of pesticides in the agriculture are also responsible for increasing water pollution. The parliament under article 249 and 252 of the Constitution, the parliament is empowered to legislate on the subject of water. In order to put a check on the increasing water pollution the parliament enacted the Water (Prevention and Control of Pollution) Act, 1974. In *A.P. Pollution Control Board v. M.V. Nayadu*¹¹ the objective of the Water Act was discussed. The main objective of water pollution act was summarised as follows:

- To adopt measures for preventing and controlling water pollution and to maintain or restore the wholesomeness of water.
- To establish Central and State board and entrust upon them the duty of preventing water pollution
- The Act also confers several power upon the boards so they can efficiently discharge their duties.
- Provisions for stringent penalty has also been made for contravening the provisions of Water Act.
- Under the act, the Central and Water testing laboratories are also required to be established in order to determine the extent of pollution.

ESTABLISHMENT OF POLLUTION CONTROL BOARDS

According to section-3 of the Water Act, the Central government is empowered to establish central board. The composition of the central pollution control board are as follows:

- One full time chairman who possess special knowledge or practical experience in the affairs related to the environment.
- Five officials representing the central government are nominated by the central government to hold imperative portfolio in the board.

⁹ R. Gupta, *UGC NET*, Ramesh Publishing House, New Delhi, 2014

¹⁰ AIR 2000 SC 3751

¹¹ (2001) 2 SCC

- Five persons representing the state governments are also nominated by the central government.
- Three non-officials representing the interests of agriculture, fishery or industry or trade are nominated by the Central government.
- Two persons are nominated by the central government to represent the companies or corporations whose affairs are managed by the central government.
- One full time member secretary is also nominated by the central government.

STATE POLLUTION CONTROL BOARD

Section 4 of the water act talks about the constitution of state boards. The state government is empowered to establish State Pollution Control Board. The State Pollution Board shall consist of the following members:

- One full time chairman having adequate knowledge concerning the affairs of the environment is nominated by the state government.
- Five officials representing the state government are also nominated by the state government.
- Five persons representing the local authorities are also nominated by the state government.
- Three non-officials who represent the interests of agriculture, fishery or industry or trade are also nominated by the state government.
- Two persons representing the companies or corporations whose affairs are managed by the state government are also nominated by the state government
- One full time member secretary is also nominated by the state government.¹²

FUNCTIONS OF STATE POLLUTION CONTROL BOARD

Section- 17 of the water act contains provisions pertaining to the functions of the state pollution control board. The functions are listed below:

- To design a comprehensive plan with an objective to prevent, control or abatement of pollution of streams and wells.
- It also advises the state government in dealing with the matters related to the environment.
- It is the duty of the board to collect and disseminate information related to prevention and control of water pollution.
- It also lays down standards for the discharge of sewage and trade effluents.
- To provide coordination to the central pollution control board in taking measures for the prevention of water pollution.
- To advise the state government in regard to the location of industry.

OTHER PROVISIONS CONTAINED IN THE WATER ACT FOR PREVENTING WATER POLLUTION.

- Section-20 of the act confers power upon the state board to obtain information for the discharge of its functions.
- Section-21 of the act empowers the state board to take samples of trade or sewage effluents for determining the extent of water pollution.
- Section-23 confers upon the state board to enter the premises for carrying out the functions of the state board under the water act.
- Section-24 empowers the state board to prohibit the use of stream or well for disposal of polluting matter.

THE AIR (PREVENTION AND CONTROL OF POLLUTION) Act, 1981.

¹² The Water (Prevention and Control of Pollution) Act, 1974

The objective of the Air (prevention and control of pollution) Act are enumerated below:

- To adopt measures to prevent and control air pollution.
- Central and State boards are established to carry out the provisions of the act.
- It also lays emphasis on laying down the standards to maintain the quality of air.

FUNCTIONS OF THE CENTRAL POLLUTION CONTROL BOARD

Under section-16 of the Air Act the central board discharges the following functions:

- It plays an active role by advising the central government on the matters related to environment and preventing air pollution.
- It also prepares comprehensive nationwide program for the prevention and control of air pollution.
- It plays an important role in coordinating the activities of state board and to take initiatives to resolve disputes among the state boards.
- It also lays down standards for the quality of air.
- It is also responsible for collecting and disseminating information related to air pollution.
- It also establishes and recognizes laboratories to ensure that the central board carries out its operations efficiently.¹³

LEGISLATIONS ENACTED FOR PROTECTING THE ENVIRONMENT

With the growth of industrialisation and urbanisation the extent of pollution also increased soon and the situation became so alarming that an immediate need was felt for enacting laws for the protection of the environment and safeguarding all the forms of life on the planet.

1. ENVIRONMENT PROTECTION ACT, 1986- The main motto behind passing this act was to implement the decisions taken in United Nations Conference on Human Environment held at Stockholm in June, 1972. The main objective of the environment protection act are enumerated below:

- The primary objective was to enact general law on environmental protection and to cover the major areas of environmental hazards.
- To bring coordination in the activities of the regulatory agencies and to create authorities for the protection of the environment.
- To make stringent provisions for the punishment of those who endanger human environment and create health hazards.¹⁴

2. THE NATIONAL ENVIRONMENT TRIBUNAL ACT, 1995- This act was mainly passed to implement the decisions of the United Nations Conference that held at Rio de Janeiro in June 1992. The main objective of this act was :

- To make provisions for the strict liability for damages which takes place while handling any hazardous substance.
- To establish National Environment Tribunal for speedy disposal of cases pertaining to hazardous substances.
- To grant compensation to for the damage caused to person property or the environment.

The Tribunal in the exercise of its duties is empowered to regulate its own procedure and is guided by the principles of natural justice. The power of the civil court is vested in the tribunal. The tribunal comprises of one chairperson and such other number of vice-chairpersons, judicial members and technical members.¹⁵

¹³ Air (Prevention and control of Pollution) Act, 1981

¹⁴ Environment Protection Act, 1986

¹⁵ National Environment Tribunal Act, 1995

3. **NATIONAL ENVIRONMENT APPELLATE AUTHORITY ACT, 1997-** The National Environment Appellate Authority Act, 1997 was enacted with the objective to establish an environment appellate authority to hear appeals in regard to the areas where industrial operations should not be carried out or should be carried subject to the restrictions imposed.
4. **THE FOREST (CONSERVATION) ACT, 1980-** The Forest (conservation) Act, 1980 was enacted with an objective to check deforestation which has led to the environmental destruction.
5. **THE BIOLOGICAL DIVERSITY ACT, 2002-** This Act was enacted with the view to conserve the biodiversity and to protect the life support system from getting demolished.

CONCLUSION

It cannot be denied that the government has put efforts to prevent environmental pollution. But environment cannot be safeguarded without the active participation of the public. The major reason behind environment pollution is human intervention with the nature. It is utmost for every individual to understand that they owe some sense of responsibility towards the environment. The non-governmental organisation should also make efforts and coordinate with the government and formulate comprehensive plans for generating awareness. It is essential to educate the mass about the ill effects of pollution. It is necessary for the people to understand that their activities are endangering all forms of life on planet. Legislations no doubt plays an imperative role but they cannot be solely used as a weapon to protect environment from pollution. Hence, the active participation of public, government and NGO's are required to protect the environment from deterioration.