

# “Environmental Pollution and Legal Framework in India”

**Dr. Naresh**

Assistant Professor CR Institute of Law, Rohtak

## **ABSTRACT:**

Environment and development are two sides of the coin. Any one of these cannot be sacrificed for the other. On the contrary both are equally important for our future. Thus the responsibility lies on Supreme Court and High Courts to deal with these cases with caution of high degree. Only we can achieve our goal i.e. to secure a healthy developed country for our next generation. There is no dearth of laws related to environmental protection in India but their enforcement has been far from satisfactory. There is a need for effective and efficient enforcement for constitutional mandate. The paper analyses the statutory provisions relating to different kinds of pollution in the Indian legal system.

**INTRODUCTION:** Environmental law is an instrument to save and improve the environment and to control or prevent any act or omission polluting or likely to pollute the environment. Environmental pollution as a subject matter of legislation in the Indian laws until as late as 1974. Prior to 1974, the only recourse available to citizens against pollution of any nature was ordinary civil and criminal laws. Suits claiming tortious liability were also possible. However, there was nothing in the nature of regulatory or preventive enactments. The focus of the country was on economic growth and increase in production and incomes. It took years to realize that unless growth was made equitable and environment-friendly it could lead to many adverse impacts and negativities.

In *Re. Noise Pollution*,<sup>1</sup> The apex Court was of the opinion that there is need for creating general awareness towards the hazardous

effects of noise pollution. In our country the people generally lack consciousness of the side effects which noise pollution creates and how the society including they themselves stand to benefit by preventing generation and emission of noise pollution. The Supreme Court states that there has to be balance between environment and sustainable development.

## **PROVISIONS IN STATUTES WITH CASE LAW:**

### **A. THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974.**

In 1974, the parliament came out for the first time with a comprehensive legislation for controlling water pollution by enacting the Water (Prevention and Control of Pollution) Act<sup>2</sup>. The Act was passed with the aim of prevention and control of water pollution and of restoring the wholesomeness of water

quality. The Act provides for the constitution of a Central Board and State Board for the prevention and control of water pollution under Section 3 and 4 of the Act. The Central Board may advise the Central Government on water pollution issues; coordinate the activities of state pollution Control boards, sponsor investigation and research relating to water pollution, and develop a comprehensive plan for the control and prevention of water pollution.<sup>3</sup>

In *State of MP. v Kedia Leather And Liquor Ltd*<sup>4</sup>, the Supreme Court deprecated the negligence shown by the State Pollution Control Board in discharging its statutory functions and held that the board is expected to discharge its functions without directions being issued by this court in that regard. The court also observed that no purpose would be served in maintaining such a statutory board. The Supreme Court issued directions to the chief secretary of MP and the Chairman of the State Board to identify and take appropriate actions against the Board officers who were responsible for the failure.

In *M C Mehta v Union of India*<sup>5</sup>, the tanneries were discharging effluents in Ganga and they were not setting up primary treatment plant in spite of being asked to do so for several years. They also did not put up their appearance in the Supreme Court to express their willingness to take appropriate steps to establish the pre-treatment plant. In View of these circumstances the court directed them to stop working up their tanneries. Section 21 of the Act provides 'detailed procedures for sampling effluents. In *Delhi Bottling Co. Pvt. Ltd. v Central Board for the Prevention and Control of Pollution*,<sup>6</sup> the Central Board took a sample of trade effluents from bottling companies

discharge stream. The Board analysed the sample and determined that the trade effluents did not conform to the requirements of the consent order granted to the company. The Gujarat High Court held that the provisions of Section 21 relating to sampling are mandatory and must be substantially complied with by the prosecuting board. Section 25 of the Water Act puts restrictions on new outlets and discharges. In this regard, it has been held in *A.P. Pollution Control Board v M.V. Nayudu*<sup>7</sup>, the Supreme Court has clarified that prohibition of Section 25 extends even to establishment of the industry or taking of steps for that process. Therefore, before the consent of the Pollution Control Board is obtained, neither can the industry be established nor can any steps be taken to establish it. Since in the present case all these actions of the respondent were contrary to the Water Act, the respondent Company could claim no equitable relief. The Court also held that the appellate authority under the Water Act, in this case, erred in holding that the principle of 'promissory estoppels' was applicable to this case. The scope of Section 33 of the Water Act is discussed in *Pondicherry Papers Ltd. v Central Board for Prevention and Control of Water Pollution*. In this the Central Board acting as the state board for Pondicherry, applied to a magistrate's court under Section 33 of the Water Act seeking injunction restraining a paper company from discharging effluents until a company constructed a water treatment plant as required by the conditions of the boards consent order. The company filed a motion to quash the injunction on the grounds that a magistrate does not have the authority under Section 33 to order compliance with the consent order. It was held that the Water (Prevention and Control

of Pollution) Act is social welfare legislation, enacted for the purpose of prevention of pollution of water and for maintaining wholesomeness of water. Therefore, the Act has to be strictly enforced and every effort should be made to carry out the true intent of the legislation.

#### **B. The Water (Prevention and Control of Pollution) Cess Act, 1977:**

The Water Cess Act, 1977 was enacted with the object to meet part of the expenses of the Central and State Pollution Control Boards by imposing cess (tax) for water consumption by local authorities and certain designated industries. The cess will be used to implement the Water Act. The Act allowed a polluter 7006 rebate of the assessed cess upon installing effluent treatment equipment as encouragement of capital investment in pollution control.

*In Bombay Dyeing & Manufacturing Co. Ltd. Vs. Bombay Environmental Action Group and Others*,<sup>8</sup> the Supreme Court has held, It is often felt that in the process of encouraging development the environment gets sidelined. However, with major threats to the environment, such as climate change, depletion of natural resources, the eutrophication of water systems and biodiversity and global warming, the need to protect the environment has become a priority. At the same time, it is also necessary to promote development. The harmonisation of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same.

The Indian judiciary has time and again recognized this principle as being a fundamental concept of Indian law. The Central Government after consultation with the Central Board made the Water Pollution (Procedure for Transaction of Business) Rules, 1975.

#### **C. AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981**

The Air Act, 1981, contains several interesting features. First, the Act grants discretion to each State Government to designate particular area as 'air pollution areas.' Polluters located outside such air pollution control area cannot be prosecuted by the State Board, but every industry operator within an air pollution control area must obtain a permit or consent order from the State Pollution Control Board. Second, the Act authorised a Magistrate to restrain an air polluter from discharging emissions, and empowers both the Central and State Boards to give directions to industries which, if not followed, can be enforced by the Board closing down the said industry or withdrawing its supply of power and water. Third, penalties have been increased so that the polluter's cost of non-compliance is substantial. Lastly, citizens cannot sue to enforce the Act to gain compliance by the industries, but require the board to provide the emissions data needed to build a citizens suit. Under Section 3 and 4 of the Air Act, the Central Board for prevention and control of Water Pollution constituted under the Water Act will also exercise the powers and functions of the central board for prevention and control of Air Pollution under the Air Act. Similarly in any state in which the Water Act is 'in force and the State

Government has constituted a State Board, then such State Board shall be deemed to be the State Board for the prevention and control of Air Pollution.

In *Managing Director, A.P.S.R.T.C. v. S. P. Satyanarayana*<sup>9</sup>, The Supreme Court referred to the White Paper published by the Government of India that the vehicular Pollution contributes 70% of the air Pollution as compared to 20% in 1970. This Court gave comprehensive directions to reduce the air pollution on the recommendation of an Expert Committee of, Bhure Lal appointed by this Court keeping in mind the doctrine of Sustainable Development.

*In Naveen Chemicals Co. Ltd. v NoiaIa*,<sup>10</sup> a writ petition was filed by the petitioner complaining that the grinding of stone into powder by the respondent is causing pollution in the atmosphere and it was having adverse impact in the products of the petitioner. The Supreme Court directed the UP, Air Pollution Control Board to inspect the area for air pollution under Section 17(1) (f) of the Air Act. Section 19 of the Air Act, gives a power to the State Government to declare any area as air pollution control area. The State Government may also alter any air pollution control area or prohibit the use of any fuel or chemical which may cause air pollution in such area. In *Taj Trapezium Case*,<sup>11</sup> pursuant to the courts order, in Agra, four air monitoring stations were established but the air quality did not improve and there was 100 percent violation, in this view of the matter the Central Pollution Control Board as well as the UP, Pollution Control Board was directed to find out the reason responsible for such violation. The Supreme Court directed the closure of 292 industries responsible for polluting the air around *Taj Trapezium*

*Zone (TTZ)*. One of the functions of the State Boards prescribed under Section 17 is to lay down the standard for the emission of air pollutants from automobiles. Section 20 provides that to ensure that the standards for the emission are complied with, State Government gives such instructions as may be deemed necessary to the authority in charge of motor vehicles under the Motor Vehicles Act, 1988. In this regard the Supreme Court has directed inter-alia that the entire fleet of buses, which are operating in Delhi, be converted into single fuel CNG mode by 31st March 2001. The Air Act also provides that no person shall establish or operate any industrial plant in an air pollution control area without the previous consent of the State Board. In *Oleum Gas Leak Case*<sup>12</sup>, a notification had been issued under Section 19(1) of the Air Act declaring union territory of Delhi within the control area of pollution. The Shriram Chemical Plant fell in the controlled area and it had to obtain consent order under Section 21 of the Air Act. The Supreme Court while permitting to restart the plant after the leakage of the oleum gas, held that the Central Board shall inspect the site and if at any stage it found that the conditions in the consent order relating to the plant were not complied with and the Suspended Particulate Matter emitted by the stacks of boiler was more than 150 mg/Nm<sup>3</sup>, it could take whatever actions as was warranted by the law.

#### D. THE ATOMIC ENERGY ACT, 1962

The legal control of nuclear energy and eradication substances in India is governed by the Atomic Energy Act, 1962, and the Radiation Protection Rules, 1971. The Act aimed at to prevent radiation hazards,

guarantee public safety and the safety of workers handling radioactive substances and ensure the disposal of radioactive wastes.

### **E. THE WILD LIFE (PROTECTION) ACT, 1972**

The Wild Life (Protection) Act, 1972 was passed by Parliament under Article 252(1) of the Constitution. The Act made provisions for control of wild life by formation of Wildlife Advisory Boards, regulations for hunting wild animals and birds, establishment of sanctuaries and national parks, trade in wild animals, animal products and trophies and provisions were made to impose penalties by court for violating the Act. An amendment in the Act of 1982 introduced provisions permitting the capture and transportation of wild animals for the scientific management of animal populations.

Section 18 of the Act provides that the State Government may, by notification, declare its intention to constitute any area other than an area comprised within any reserved forest or the territorial waters as 'a sanctuary if it considers that such area is of adequate ecological, faunal, floral geomorphologic, natural or zoological significance for the purpose of protecting, propagating or developing wild life or its environment. Such a notification shall specify, as nearly as possible, the situation and limits of such area. In *Tarun Bharat Sangh v Union of India*,<sup>13</sup> the petitioner through public interest litigation brought to the notice of the Court that the State Government of Rajasthan, though professing to protect the environment by authorising mining operations in the area declared as 'reserved forest'. In order to protect the environment and wildlife within the protected area, the Supreme Court issued

directions that no mining operation of whatever nature shall be carried on within the protected area.

### **F. THE FOREST (CONSERVATION) ACT, 1980**

Alarmed at India's rapid deforestation and the resulting environmental degradation, the Central Government enacted the Forest (Conservation) Act in 1980. As amended in 1988, Section 3 of the Act requires the approval of the Central Government before a state 'dereserves' a reserved forest, uses forest land for non-forest purposes, assigns forest land to a private person or corporation, or clears forest land for the purpose of reforestation. The Operation of Section 2 has been discussed in a number of cases.

The Kerela High Court in *Nature Lovers Movement v State of Kerela*<sup>14</sup> considered the question of regularization of diversion of forest-land subject to certain conditions issued by the Central Government. The Court in this case reconciled between the preservation of environment and development of economy. The Court took notice of conditions laid down by the Central Government and which were substantially complied with by the State Government. The State Government has also framed a compensatory food scheme. The Court asserted that the Forest (Conservation) Act, 1980 has no retrospective operation but operates prospectively. And thus the prior approval required in Section 2 of the Act.

### **THE ENVIRONMENT PROTECTION ACT, 1986:**

The Environment (Protection) Act was passed to protect and improve human environment and to prevent hazards to

human beings, other living creatures, plants and property. This Act is said to be an ‘Umbrella’ legislations passed to provide a framework for the Central Government towards co-ordination of activities of various Central and State agencies established under previous laws such as Water Act, Air Act, etc. A cursory analysis of its preamble makes it obvious that the objectives behind the present enactment are three-fold, namely:

1. Protection of Environment,
2. Improvement of Environment, and
3. Prevention of hazards to:
  - a) Human beings,
  - b) Other living creatures,
  - c) Plants, and
  - d) Property.<sup>15</sup>

The Act is a small piece of protective and progressive social legislation, and is able to achieve greater importance and sensational attention in all walks of life. It has put possible deterrent control over the polluters of environment by making them liable to penal action, and its scope has been widely extended by the courts, so as to make the polluters liable to pay not only the compensation to the Victims of pollution but also costs to restore the disturbed ecology and environment. For a proper understanding of its objectives and for an effective implementation of the various provisions thereof, the Act requires possession of, and, acquaintance with multifarious knowledge, such as the knowledge of assessment and forecasting of the pros and cons of the pollutants and the problem of pollution, socio-economic needs and the aspirations of the people, knowledge of exploitation of natural and other material sources of the earth and the consequences of exhausting the same in the coming years.

The Section 3 of the Act authorised the Central Government “to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment. Section 3(3) permits the central government to constitute one or more authority. Under Section 5 of the Act, such an authority may issue binding directions in writing to any person, officer or authority.

In the *Bichhri Case*,<sup>16</sup> the Supreme Court examined the scope of Sections 3 and 5 of the Act: Section 3 and 5 clothe the Central Government with all such powers as are ‘necessary or expedient for the purpose of protecting and improving the quality of the environment’.

In *Vellore Citizens Welfare Forum v Union of India*, turning to Section 3(3) of the Act, the court observed that the main purpose of the Act is to create an authority or authorities under Section 3(3) of the Act with adequate powers to control pollution and protect the environment. The Supreme Court directed the Centre to constitute an authority under Section 3(3) with all necessary powers to deal with the situation created by the tanneries and other polluting industries in the state.

The scope of Sections 3, 4 and 5 was explained in *Sneha Mandal Co-op. Housing Society Ltd. v Union of India*.<sup>17</sup> The Court observed that the Act authorise the Central Government plenary powers to take all steps and measures as it deems necessary or expedient for the purposes of protecting and improving the quality of environment. The Act also contemplates appointment of several authorities for the purposes of overseeing the effective implementation of

the environment protection policy envisaged by the Act. Section 5 of the said Act gives specific powers to the Central Government to monitor the implementation of the Act. Section 7 of the Act specifically provides that no person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollution in excess of the prescribed standards. It provides that certain standards have to be maintained and no person or an industry can be permitted to cause damage to the environment. If any person is found guilty of causing damage to the environment then he can be asked to pay 'exemplary damages' for polluting the environment. Section 8 provides that persons handling hazardous substances are required to comply with procedural safeguards where the discharge of any environmental pollution in excess of prescribed standards occurs or is apprehended to occur due to accident or any unforeseen act or event, the person responsible for such discharge and the person in/charge of the place where discharge occurs or is apprehended to occur shall be bound to mitigate or reduce the environmental pollution. One of the objects of the Environment (Protection) Act is to provide for deterrent punishments to those who endanger human environment, safety and health. Section 15 provides that any person who fails to comply or contravenes any of the provisions, rules, orders or directions of this Act then for each such contravention he shall be punishable. In this regard the Supreme Court in *M C Mehta v Kamal Nath*<sup>18</sup> has clarified that if a fine is to be imposed upon the person who is found guilty of having contravened any provision of the Act, he is to be tried for that specific offence under the relevant provision of law

and then on being found guilty, he may be punished either by sentencing him to undergo imprisonment as contemplated by the Act or with fine or with both.

#### **G. THE PUBLIC LIABILITY INSURANCE ACT, 1991**

The Public Liability Insurance Act, 1991 was enacted to provide for public liability insurance and immediate relief to the persons affected by accident in handling any hazardous substance and for matters connected therewith and incidental thereto. This Act provides Mandatory Public Liability Insurance for installing and handling hazardous substances to provide minimum relief to the victims. Such insurance, safeguard the interests of the victims of accidents. The act would provide and enable the industry to discharge its liability through settling large claims arising out of major accidents. It should be on the principle of "no fault" liability. However, availability of immediate relief would not prevent the victims for alternate remedy to go to courts for claiming large compensation.<sup>19</sup> In the background of the principle of *the Oleum Gas Leak case* and *The Bhopal Litigation*, the Act was passed to consolidate the law relating to product liability particularly in relation to hazardous activity. It seeks to provide relief to the members of the general public who become the victims of industrial accidents. In effect, the Act is also an answer to reflections of the Supreme Court in *Charon Lal Sahu's case*, where a call had been made to enact such legislation.

#### **H. THE NATIONAL ENVIRONMENT TRIBUNAL ACT, 1995**

Decisions were taken at the United Nations Conference on Environment and Development held at Rio De Janerio in June, 1992, in which India participated, calling upon the states to develop national laws relating the liability and compensation to the victim of pollution and other environmental damages. It was considered essential to implement the decisions of the aforesaid conference regarding the protection of environment and payment of damages to persons, property and the environment while handling hazardous substances. Cases seeking compensation for damages to human health, property and the environment, particularly contamination of sub-surface water, are increasing. It is proposed to establish a National Environment Tribunal for effective and expeditious relief and compensation for damages to human health, property and the environment.

#### **I. THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY ACT, 1997**

This Act requires the Central Government to establish a body (National Environment Appellate Authority) to hear appeals in respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards Under the Environment (Protection) Act, 1986 and for matters connected therewith or incidental thereto.

Restrictions on industrial activity may be imposed by the Centre under Section 3(1) and 3(2) (v) of the EPA, and as we have seen this power has been exercised by the Union Government to regulate industrial activity

along the coast as well as in ecologically sensitive regions.

In *AP Pollution Control Board v Prof M. V. Nayuau<sup>20</sup>*, the Supreme Court held that in addition to its statutory jurisdiction, the Appellate Authority also had an advisory role to play in complicated environmental matters that were referred to it by the Supreme Court or the High Courts. The Court also observed that in our view in the context of emerging environmental jurisprudence relating to environmental matters, as is the case in matters relating to human rights, it is the duty of this Court to render justice by taking all aspects into consideration. With a view to ensure that there is neither danger to the environment nor to the ecology and, at the same time, ensuring sustainable development, this Court in our view can refer scientific and technical aspects for consideration and opinion to expert bodies such as the appellate authority under the National Environmental Appellate Authority Act, 1997.

#### **J. NATIONAL GREEN TRIBUNAL ACT 2010**

National Green Tribunal Act, 2010, a central legislation enacted by the Parliament considering the provision of Article 21. The tribunal is a special fast-track court which disposes the cases of environmental issues speedily. National Green Tribunal provide for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right related to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto'. In Rio



Summit on Environment and development, 1992, India pledged to give judicial and administrative approach and remedies for the victims of the pollutants and other environmental damage. This is the first body which applies the “polluter pays” principle and principle of sustainable development. This court can rightly be called ‘special’ because India is the third country after Australia and New Zealand to have such a system. The coming into force of the NGT Act implied an automatic repeal of two existing laws: The National Environmental Tribunal Act 1995 and the National Environment Appellate Authority Act 1997, and therefore the closure of the National Environment Appellate Authority (NEAA) a quasi judicial body empowered to hear appeals against the environmental approvals granted (or not) to projects. All the cases pending before the NEAA were to be heard by the NGT. Its closure created a judicial vacuum, as there was no forum for new cases and the pending cases were left in limbo. Without the appointment of at least one other member besides the chairperson, the NGT couldn’t function. While the MOEF continued to grant regulatory approvals, there was no judicial redressal mechanism to challenge it. This situation might have continued indefinitely if it hadn’t been for the Supreme Court that the MOEF regularly report on the progress. As a result, there judicial members and four expert members were appointed on May 5, 2011 and the NGT held its first hearing on May 25, 2011. The NGT’s mandate is much wider than that of its predecessor, the NEAA. It can entertain cases rising “substantial questions relating to the environment” which arises from the implementation of seven laws, including those on air pollution, water pollution,

environment protection and bio-diversity. It isn’t just an appellate body, but also has original jurisdiction to decide certain categories of cases. It can award compensation and direct restitution of damaged ecology and property. Since its establishment, the NGT has pronounced some major judgments. On the issue of delay in bringing matters to the notice of the tribunal, the NGT has adopted a liberal position, thereby keeping the doors of the NGT open longer for justice seekers.

### **CONCLUSION:**

Number of environmental protection legislations have been enacted as per constitutional demand but in reality the principles are just on papers. Lack of incorporation of sustainable development in India is one of the reasons for deterioration of the environmental status in India. Therefore, judiciary has taken up the daunting task of maintaining the balance and harmony for sustainable development by implementing the principles of rules of law and accountability. While it is perhaps too soon to evaluate the NGT, its very existence brings a much-required degree of prominence to environmental legal issues in India. To meet the growing challenges of increasing adverse environmental impacts and to integrate the environmental concerns, many initiatives were taken in India with a view to protect and improve the environment. Still, we can say that the nation is now becoming more aware of the environmental concerns and such laws exemplifies the legal domain of the same. Moreover, still it is a long way out for making the state as a whole “conscious” of the “asset” that is ‘the’ environment and ecology.

---

## ENDNOTES

- [1] AIR 2005 SC 3136
- [2] Act 6 of 1974
- [3] Section 16, Water (Prevention and Control of Pollution) Act, 1974
- [4] (2001) 9 SSC 605
- [5] AIR 1988 SC 1037
- [6] AIR 1986 Del. 15
- [7] (2001) 2 SSC 62
- [8] (2006(3) SSC 434
- [9] AIR 1998 SC 296
- [10] 1987 All L.J.13.
- [11] MC Mehta v. Union of India, (AIR 2002) SC 3696
- [12] MC Mehta v Union Of India,(1986) 2 SCC 176.
- [13] 1993 Supp. (3) SSC 115
- [14] AIR 2000 Ker. 131
- [15] Somprakash Rekhi V Union of India, AIR 1981 SC 212, 221, 222.
- [16] Indian Council for Enviro-Legal Action v Union of India, AIR 1996 SC 1446. , AIR 1996 SC 2715
- [17] AIR 2000 Bom. 121.
- [18] (2000)6SCC213
- [19] S N. Singh, Public Liability Insurance Act, 1991- Scope for Making Provisions More Effective, Corporate Law Ado.,1991, p. 233
- [20] AIR 1999 SC 812.
-