

TRENDS AND OVERVIEW IN MODERN INDIAN ENVIRONMENTAL INDUSTRIAL LAWS

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Abstract

“Make in India” seems to be the battle cry of India as one of the world’s fastest developing economies. Demographically speaking the Indian subcontinent is and has always been a “go-to” location when it comes to investment for production and industrialization. Now, with ever growing focus of the government towards rapid industrialization the environment finds itself under a lot of burden. This paper attempts to cover all aspects of Indian environmental laws especially with a special focus on industries to be set up. Apart from that, eminent judicial pronouncements have been discussed so as to explain how the judiciary seems to view this balance between the two needs; (1) for industrialisation, (2) for environment protection. Initiatives by the Governmental as well as the Non-Governmental bodies have also been enumerated. Corporate-environmental trends as well as suggestions regarding the same conclude the paper so as to help both the environment enforcers and corporations alike.

Keywords: Make in India, Industrial Law, Environment, Corporations, Governmental Plan

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INTRODUCTION

With the rapid globalization and industrialization of the Indian economy over the previous two decades, concerns over the adequacy of the environment and industrial laws in India have become more vociferous. While there is ongoing debate as to how robust the environment jurisprudence can be allowed to become with respect to the priorities of a developing country, there is no doubt that the near future shall see the growth of more sophisticated substantive laws and enforcement mechanisms.

Article 48A of the Constitution of India, provides that the ‘State’ shall endeavour to protect and improve the environment, and to safeguard the forests and wild life of the country. Further, Article 51A (g) of the Constitution of India states that it shall be the fundamental duty of every citizen of India to protect and improve the natural environment. Separately, Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. The Hon’ble Supreme Court of India has repeatedly held that the right to a clean environment is a fundamental right under Article 21 and citizens may approach the higher courts to get the same enforced against the State. For instance, in *Subhash Kumar v. State of Bihar*¹, the Hon’ble Supreme Court states, “*Right to life enshrined in Article 21 includes the right to enjoyment of pollution free water and air for the full enjoyment of life. If anything endangers or impairs the quality of life, an affected person or a person genuinely interested in the protection of society would have recourse to Article 32.*”

*Rural Litigation and Entitlement Kendra v. State of UP*², the Hon’ble Supreme Court of India for the first time dealt with the issue relating to the environment and development; and held that, it is always to be remembered that these are the permanent assets of mankind and or not intended to be exhausted in one generation.

Although, environment and its protection is principally a central subject, i.e. under the jurisdiction of the Central Government’s Ministry of Environment, Forests and Climate Change (MOEFCC), formerly known *Ministry of Environment and Forests, MoEF*, it requires a shared responsibility between the Centre and the States wherein under such Central laws,

¹ AIR 1991 SC 420

² AIR 1987 SC 1037

the State Governments formulate rules and regulations for a particular State concerned, which are implemented by the relevant State Departments.

Under Article 51(c) of the constitution of India, The State shall endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another. In association with the same, it would be quintessential to highlight that India is a signatory to some important conventions that have a direct bearing on environment protection and conservation. Some of the important conventions are as follows:

- a) The Stockholm Conference 1972;
- b) The Rio Declaration on Environment and Development and the Agenda 21, which is the operational programme for sustainable development, 1992
- c) The Kyoto Protocol 1997;
- d) The World Summit on Sustainable Development 2002;
- e) Paris Agreement on Climate Change, 2015.

Currently, in India, Environment law derives its sources from various legislations, judicial pronouncements, activism and enforcement by administrative bodies.

DOMESTIC LAWS GOVERNING ENVIRONMENTAL REGULATION

- *The Environment (Protection) Act, 1986*: This is the umbrella legislation for environment laws and environmental protection in India. Under the EP Act, the Central Government has the power to frame rules and regulations regarding various environment protection issues.
- *Environment (Protection) Rules, 1986*: The EP Rules provides for certain restrictions on the location of industries and provide for prohibition and restriction on the location of industries and on carrying out operations in different areas. Further, it is pertinent to note that environmental audits have made been made a statutory requirement under the EP Rules vide an amendment in 1992³.
- *Environment Impact Assessment Notification 2006*: Environment Impact Assessment is a technique which demands that the objectives of environmental concerns to be taken into account whenever social or economic developmental plans are constructed.

³ GSR 329 (E) dated 13 March 1992.

The EIA Notification sets out a process, consisting of a maximum of four stages, for applying for an EC, and the same is summarized below:

- (i) *Screening*
- (ii) *Scoping*
- (iii) *Public Consultation*
- (iv) *Appraisal*

EIA has to be accepted as a pre-condition in every development project.

- *Air Act*: Under the provisions of Air Act, the CPCB has been entrusted with the responsibility of preparation of nation-wide plan for control of air pollution. The Air Act empowers the SPCBs to notify standards for emission of air pollutants into the atmosphere from industrial plants and automobiles, or any other source (not being a ship or an aircraft). Along with the Air (Prevention and Control of Pollution) Rules 1982, the Air Act is the main guiding framework for the preservation of air quality in India.
- *Water Act*: The Water Act lays down that no person shall without the previous consent of the State board, establish or take any steps to establish any industry, operation or process, or any treatment and disposal system, that is likely to discharge sewage or trade effluent into a stream, well or sewer or on land. The EP Rules set standards for certain pollutants in water. Under the Water Act, consent of the SPCB is mandatory for releasing emissions in the atmosphere. Like the Air Act, the consent is obtained in two phases, namely: 'Consent to Establish' and 'Consent to Operate'.
- *HAZMAT Rules*: The HAZMAT Rules have been enacted in supersession of the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 to provide detailed guidelines pertaining to the handling, management, disposal of hazardous waste in India
- *Noise Pollution (Regulation and Control) Rules, 2000*: The Noise Pollution Rules were made to regulate and control noise producing and generating sources. Contravention of the Noise Pollution Rules leads to penalties stipulated under the EP Act. Noise was included under the definition of 'air pollutants' under the Air Act. The same was followed by the notification of ambient noise standards under the EP Act and the Air Act. Further, ambient standards in respect of noise for different categories areas (residential, commercial, industrial) and silence zones have been notified under

the EP Act. Regulatory agencies have been directed to enforce the standards for control and regulation of noise pollution.

- *Waste Management and Handling Rules:* In India, the four main categories of wastes is governed by separate rules: hazardous wastes, radioactive wastes, biomedical wastes and solid wastes. In exercise of the power conferred under Sections 5, 6, 8 and 25 of EP Act, the Government of India has framed the Bio-Medical Waste (Management and Handling) Rules of 1998, which have been superseded by the Bio-Medical Waste Management Rules, 2016 (“Bio Medical Rules”), to improve the collection, segregation, processing, treatment and disposal of these bio-medical wastes in an environmentally sound management thereby, reducing the bio- medical waste generation and its impact on the environment.
- *E-Waste Rules:* In addition to the above, the MOEFCC has recently notified the E-Waste (Management) Rules, 2016 (“E-Waste Rules”) (these rules supersede the E-Waste (Management and Handling) Rules, 2011), that recognise the producer’s liability for recycling and reducing e-waste in the country. The definition of ‘e-waste’ includes electrical and electronic equipment such as mainframes, personal computers, etc.
- *The Plastic Wastes Management Rules, 2016:* The Plastic Waste Rules (supersede the Plastic Wastes (Management and Handling) Rules, 2011), framed under the Environment Protection Act, 1986 (“EP Act”) have come into effect from March 18, 2016. The said rules are applicable to every waste generator, local body, Gram Panchayat, manufacturer, Importers and producer. By extending the concept of ‘Extended Producer Responsibility’ to plastic manufacturers, the Plastic Waste Rules seem set to achieve their goal.
- *Forests:* The Indian Forest Act, 1927 provides States with jurisdiction over both public and private forests, and regulates the extraction of timber for profit. The forests are divided into three categories: reserve forests, village forests and protected forests. Once an area is notified as a reserve forest, all previous individual and community rights over the forest will be extinguished, and access to the forest and forest products becomes a matter of State privilege.
- *Costal Regulation Zone:* The MOEFCC, pursuant to the Section 3 of the EP Act, has issued the CRZ notification dated February 19, 1991 with the aim to provide comprehensive measures for the protection and conservation of the costal environment. The CRZ specifies the activities permitted and restricted near the CRZ.

This regulated zone was further divided into four categories (CRZ I-IV) as per permitted land use.

- *Ozone Depleting Substances (Regulation and Control) Rules, 2000*: Under the Montreal Protocol, the MOEFCC pursuant to Section 6, 8 and 25 of the EP Act, has notified rules for regulation/control of Ozone Depleting Substances dated July 17, 2000 which has been amended by the Ozone Depleting Substances (Regulation and Control) Amendment Rules, 2014. As per the subsequent amendment certain restrictions have been imposed on the manufacturing, import, export and use of certain compounds.
- *Climate Change / Clean Development Mechanism*: India ratified the UN Framework Convention on Climate Change in 1993 and the Kyoto Protocol in 2002. Under the aegis of the MOEFCC, the Government of India has constituted the National Clean Development Mechanism Authority, i.e. the Indian DNA, for protecting and improving the quality of environment in terms of the Kyoto Protocol. The evaluation process of CDM projects in India includes an assessment of the probability of eventual successful implementation of CDM projects and evaluation of extent to which projects meet the sustainable development objectives, as it would seek to prioritize projects in accordance with national priorities.
- *National Environment Policy 2006 issued by the MOEFCC*: The National Environment Policy 2006 was approved by the Union Cabinet on May 18, 2006. The principal objectives of this policy are enumerated below:
 - Conservation of Critical Environmental Resources,
 - Intra-generational Equity,
 - Livelihood Security for the Poor etc.
- *Energy Conservation Act, 2001*: The EC Act provides for efficient use of energy and its conservation and for matters connected therewith or incidental thereto. The Bureau of Energy Efficiency was established on March 1, 2002 under the EC Act. The EC Act empowers the Central Government and, in some instances, State Governments to: specify energy consumption standards for notified equipment and appliances; direct mandatory display of label on notified equipment and appliances; prohibit manufacture, sale, purchase and import of notified equipment and appliances not conforming to energy consumption standards etc.
- *Twelfth Five Year Plan 2013-2017*: Environmental policies and perspectives have been a part of the Five Year Plans of the country, which have been adopted by the

Government of India since the 1950's for the socio-economic development of the country. The Twelfth Plan envisages on integrating environment considerations into policy making in all sectors of the economy – infrastructure, transport etc. However, Twelfth Five Year Plan 2013-2017 came to an end on March 31, 2017; and a six month extension has been given to the ministries to complete their appraisals. Further, the expert group on Low Carbon Strategies for Inclusive Growth appointed by the erstwhile Planning Commission had submitted an Expert Group report which includes an economy wise modelling and shall provide the policy norms required to implement the low carbon strategies up to 2030. The planning commission has also been replaced by the NITI Aayog, with Narendra Modi as its chairperson.

ACTIVE INITIATIVES

- *Odd-even & Diesel ban:* In view of the ever-increasing pollution levels in New Delhi the Government of Delhi took a land mark initiative to cure the same by implementing the odd-even rule, as per which private automobiles with an odd number as the last four digits could only be driven on odd dates and those with even number as the last four digits could only be driven on even dates. This experiment curb air pollution was largely a success and a significant drop was observed, it is expected to have long-term ramifications on the Indian automotive industry as well as reduce automobile pollution emission. The decisions as to the odd-even formula as well as the temporary ban on diesel cars in the national capital taken by the Delhi government and the Supreme Court and the NGT respectively, have upset powerful automobile lobbies.
- *India aims to become 100% e-vehicle country by 2030:* The Niti Aayog, having replaced the erstwhile Planning Commission proposed the New Green Car Policy, by virtue of which the aim is to make a switch from petrol and diesel run vehicles to electric vehicles and thus save the country \$60 Billion as well decrease carbon emission by an estimated 37%. NITI Aayog plans to achieve the target to make India a 100% e-vehicle country by 2030 included limits on the registration of gas cars, subsidies for the Electric Vehicles Industry (EVI), and use of taxes from gas car sales to create electric charging stations etc.
- *The Ganga Project:* PMO envisages a clean Ganga as his pet project. Only three days after swearing in as the 15th Prime Minister of India, decided to represent Varanasi in

order to serve 'Ganga Maa' and thus resigned from his original constituency of Vadodara. The Ganga Action Plan involves five ministries working in close co-operation and has in this light, been placed under the direct supervision of Water Resources Minister Uma Bharti.

- *Proactive Actions by NGT:* The NGT's efforts and actions towards proactive protection of environment in India are commendable and noteworthy. Suo moto actions by the judicial bodies are cardinal in regulating and meeting the demands as well as the needs of the society. The NGT has passed various Suo moto actions which will have a long term effect on India's environmental future. Some of them are:
 - *NGT at its own motion v. State of Himachal Pradesh & Ors.*⁴, Due to unregulated tourist activity in Himachal Pradesh and the consequent depletion of forest as well as problems with solid waste management the NGT took cognizance on its own motion. The court observed that vehicular pollution, high tourist activity and the subsequent deforestation require being compensated, maintained and restored in a manner that there is minimum degradation and damage to the environment. NGT ruled that to ensure hygiene, cleanliness and natural beauty of the glacier, it is cardinal that no commercial activity of any kind is permitted at Rohtang Pass Glacier.
 - *NGT at its own motion v. Ministry of Environment and Ors*⁵; In this case the Bhopal Bench of the NGT had instituted a suo moto case on the basis of a news article published by The Times of India in the Bhopal Edition dated April 10, 2013 published under the heading- *Dolomite mining a threat to Tiger corridor in Kanha- Foresters want ban on mining in Mandla District*. The Bhopal Bench of NGT in its judgment observed that 'mining is required to be taken up only if it is compatible with the objective of protecting the environment.'
 - *Chandrapal Singh v. State of U.P. & Ors.*⁶, The NGT imposed a nationwide ban on extraction/excavation of brick earth or ordinary earth in any part of the country without obtaining prior EC from the competent authority.
- *Direct action by MOEFCC:* 2016 was a hectic year for The MOEFCC on the international as well as national fronts. While at the international level, India steered

⁴ (2015) SCC Online NGT 476

⁵ Original Application No. 16/2013

⁶ Application No. 38/2011

the negotiations on amendment in Montreal Protocol for amendment for phase down of HFCs at Kigali, Rwanda, at COP-22 in Morocco, the International Solar Alliance was signed.

STATUS OF ENVIRONMENTAL ENFORCEMENT

Environment enforcement in India is carried out by either the higher judiciary (the Hon'ble Supreme Court of India or the High Courts of various States) or administrative bodies. The NGT was established to hear all matters relating to enforcement of environmental laws and regulations. Primarily, the various administrative bodies enforcing environmental laws in India are the MOEFCC and the various State-level pollution control boards.

Further, the higher judiciary in India was, from the 1980's, involved in the evolution of environmental jurisprudence, even when the laws were at a nascent stage. This developed through the instrument of public interest litigation. The activism of the higher judiciary regarding the cases related with violation of environment and human rights has acquired the name of judicial activism. Some of such instances are stated below:

In the case of *M.C. Mehta v. Union of India*⁷ (Oleum Gas Leak case), the Hon'ble Supreme Court held that any enterprise that is engaged in an inherently dangerous activity is 'absolutely' liable to compensate all those affected by an accident. The key feature of the judgment was the principle of 'absolute liability'. This case occurred due to the leak of 'oleum' gas on the outskirts of Delhi, significantly almost a year after the Bhopal gas leak disaster.

In *Union Carbide Corporation v. Union of India*⁸, The then chief justice Ranjanath Misra, in his concurring judgment observed that the view of the Supreme court in the Oleum Gas leak case, as stated above, that in toxic mass tort actions arising out of hazardous enterprise, the award for damages should be proportional to the economic capacity of the offender cannot be pressed to assail the settlement reached in Bhopal disaster case. In case of mass tort action like this quantification of damages can be held without attaching much importance to individual injuries. But the court refused this principle of 'damages are proportionate to the superiority of the offence' as the amount of US \$ 470 million was a result of settlement between Union of India and Union Carbide Corporation.

⁷ AIR 1987 SC 965

⁸ 1991 (4) SCC 584

The Hon'ble Supreme Court held that the Polluter Pays Principle means that absolute liability of harm to the environment extends not only to compensate the victims of pollution, but also to the cost of restoring environmental degradation.

In the case of *M.C. Mehta v. Union of India*⁹ (Calcutta Tanneries case), the Hon'ble Supreme Court took cognizance of the various tanneries causing environment pollution and toxic effluents in Calcutta. The Hon'ble Court directed that the State Government should shift all tanneries from the area and also assist in the construction of a common effluent treatment plant. The Hon'ble Court also imposed a fine on the tanneries for polluting the area, based on the cost estimated by the State Government, under the polluter pays principle.

In *Sterlite Industries (India) Ltd. v. Union of India & Anr*¹⁰, the No Objection Certificate and the environmental clearances issued by the Tamil Nadu Pollution Control Board for setting up a copper smelter plant in Melavittan village, Tuticorin were challenged before the Madras High Court. A Division Bench of the High Court heard all the writ petitions and disposed them off with a direction to the Sterlite Industries (India) Ltd. to close down its plant permanently. The Hon'ble Supreme Court in its judgement overturned the decision of the Madras High Court. It stated that there was a misrepresentation and suppression of facts made by the Sterlite Industries (India) Ltd. but they could not order the appellants to close down the plant as the plant contributes substantially to the copper production in India and copper issued in defence, electricity, automobile, construction and infrastructure etc. However, it levied a fine of INR 1 Billion on the Sterlite Industries (India) Ltd.

Further, in the case of *Vikrant Kumar Tongad v. Environment Pollution (Prevention Control) Authority & Others*¹¹, the NGT passed an order in relation to the adverse effects of burning of agricultural residue in various parts of the country which travels to NCT Delhi and pollutes the air and more specifically creates smog. The NGT issued various directions including the following:

- a) All the States which have issued notification prohibiting agriculture crop residue burning shall ensure that the notifications are enforced rigorously and proper action is taken against the defaulters.

⁹ (1997) 2 SCC 411

¹⁰ Appeal No. 2776-2783/2013

¹¹ OA No. 118/2013

- b) Any person or body that is found offending this direction would be liable to pay environmental compensation.
- c) In cases of persistent defaulters of crop residue burning, an appropriate coercive and punitive action could be taken by the concerned State Government including launching of prosecution under Section 15 of the Environment Protection Act, 1986.

The NGT covered new ground for the ‘polluter pays’ principle by invoking it in two landmark judgments are as follows:

- In the matter of *Srinagar Bandh Aapda Sangharsh Samiti v. Alaknanda Hydro Power Co. Ltd*¹², the NGT directed Alaknanda Hydro Power Co. Ltd., a hydroelectric power company, to pay Rs 9 crore as compensation to people affected by Uttarakhand floods in 2013 because the dam constructed by the company contributed to the flooding experienced by residents of the region.
- In the matter of *Samir Mehta v. Union of India & Ors.*¹³, the NGT imposed a fine of INR 100 crores on Delta Marine Shipping Co., a marine shipping company for the oil spill and ensuing ecological damage caused when one of the company’s ships sank off the coast of Mumbai in 2010.

These judgments set a precedent for shifting the monetary responsibility of rectifying ecological damage from the government to the private actors responsible for causing the damage.

CIVIL AND CRIMINAL PENALTIES OF ENVIRONMENTAL WRONGDOING

The Indian regulatory framework recognizes civil and criminal liability for environmental protection. Where the pollution leads to a “public nuisance” a remedy under the criminal law is also available under Section 268 of the Indian Penal Code, 1872. It should be noted that as per the provisions of Indian Penal Code, 1872, a common nuisance is not excused on the ground that it causes some convenience or advantage. Moreover, the Code of Criminal Procedure, 1973 is applicable with respect to powers of State Pollution Control Board officers, since it applies to searches and seizures under the authority of a warrant.

¹² Original Application No. 03 of 2014

¹³ Original Application No. 24 OF 2011 And M.A. NO. 129 OF 2012, M.A. NOS. 557 & 737 OF 2016

Further, the Public Liability Insurance Act, 1991, has provisions for issues connected with compensation and liabilities. In addition to the provisions under the Air Act, 1981, and Water Act, 1974, the Hon'ble Supreme Court has elaborated the doctrine of the polluter pays principle and absolute liability through a series of judgments starting from the *Bhopal Gas Leak* case where apart from civil proceedings, criminal proceedings were also initiated. The proceedings were initiated under Section 304 A, and Sections 336, 337, and 338 read with Section 35 of the Indian Penal Code. Section 304 A deals with causing death by negligence.

Further, Sections 336, 337 and Section 338 deal with the offences of endangering life and personal safety of others. This is read along with Section 35, which deals with the aspect of common intention. The accused were found guilty and were subjected to imprisonment and were also liable to fine.

However, in most cases it is seen that fines or compensation is considered enough penalty and the culprit does not usually face any imprisonment, unless such acts have endangered life per se.

NGO ACTIVISM AND ENFORCEMENT

Over the previous two decades, various Non-Governmental Organizations have taken up cudgels on environmental pollution and degradation in India as well as issues arising from the setting up of new plants in India, due to the perceived failure of the administrative machinery to enforce laws on environment in India.

Generally, NGOs working on environmental issues in India carry out their agenda in two ways:

- a) *On-site actions*: This involves spreading awareness about environment issues arising from operations of established industrial units or units which may be established in an area. Once local support is obtained, the NGOs then picket the industrial units and protest against the management of the said units. Appeals are made locally and nationally and to executive authorities Some instances include:
 - The *POSCO Pratirodh Sangram Samiti*, an NGO formed in Orissa is protesting the setting up of a POSCO plant in Orissa;
 - The *Narmada Bachao Andolan* in Madhya Pradesh has led a long-drawn fight against the damming of the river Narmada;

- Other international NGOs have actively campaigned at the ground level in India, for instance, NGOs like Survival International and Action Aid International have campaigned actively in India and abroad for halting work on Vedanta projects in Orissa.
- b) *Filing petitions in courts:* Many NGOs also file PIL's in the various High Courts and the Hon'ble Supreme Court of India regarding issues of public interest including environmental issues and concerns. Some of the NGOs active in environmental litigations are the Indian Council for Enviro-Legal Action and the M.C. Mehta Foundation.

The NGT acting upon a *petition filed by the environmentalist Y. M. Sengupta*¹⁴, has restrained the Municipal Corporation of Shimla and the State Government of Himachal Pradesh from raising or permitting any construction in the areas covered under the Notification dated December 7, 2000. Accordingly, the State Government of Himachal Pradesh has been compelled to put on hold the proposal to relax the 14-year-old ban on construction in these belts.

MANAGING CORPORATE ENVIRONMENT RISKS AND LIABILITIES

The management and operational team of the facility must be pro-active in identifying potential environmental risks and liabilities faced by the industrial unit. Some of the measures that the management may carry out to minimize such risks and liabilities may be as follows:

- c) preparation of a comprehensive disaster management plan outlining, *inter alia* the identification of potential threats emanating from the units, measures for the health and safety of workers and the local community from the adverse effects of the said disaster and channels of communication with the local authorities;
- d) preparation of an internal environment management policy outlining the risk mitigation measures, measures to comply with the environment regulations and the stipulations stated in the various environmental approvals etc.
- e) obtaining adequate insurance policies to cover liabilities arising from industrial/environmental accidents; constant interactions and liaison with the local communities and creation of local social infrastructure and developmental activities as part of the corporate social responsibility of the facility, etc.

¹⁴ *Yogendra Mohan Sengupta v. Union of India & Ors.*, Original Application No. 121 of 2014

Lately, the Central Government, through the MOEFCC, initiated the mainstream integration of environmental concerns into corporate policy by publishing the Draft Concept Paper on Institutionalizing Corporate Environment Policy¹⁵. The DCP aims to cover projects, activities, expenditure and monitoring of environmental initiatives of business organizations.

COMPANIES (CORPORATE SOCIAL RESPONSIBILITY) RULES, 2014

Pursuant to the enactment of the Companies Act, 2013, the Ministry of Corporate Affairs has notified the Companies (Corporate Social Responsibility) Rules, 2014. As per the CSR Rules every company including its holding or subsidiary, and a foreign company, having its branch office or project office, which fulfills the threshold limits prescribed under Section 135 of the Companies Act is required to spend, in every financial year, at least 2% of the average net profits of the company made during the immediately preceding three financial years, in pursuance of its corporate social responsibility policy. Further, Schedule VII of the Companies Act provides for a range of activities for companies to pursue as CSR activities, which *inter alia* include ensuring environmental sustainability, ecological balance, etc.

Liability of Parent Company on default of its subsidiaries: Multinational companies operate in various jurisdictions via subsidiary companies incorporated in local jurisdictions. Generally, the subsidiary company is responsible for its own acts and/or omissions since the law is pellucid that only in exceptional cases will a parent company be held liable for the acts and/or omissions of its subsidiary company.

A foreign parent can be held liable for its subsidiary's activity. In the case of *M.C. Mehta v. Union of India*¹⁶ (also known as the Oleum Gas Leak case), lethal gas was released by an Indian subsidiary's factory. Several claims were filed in US courts against the US parent entity. The Hon'ble Supreme Court observed that both entities were liable as the US parent controlled and was responsible for the Indian subsidiary's affairs.

BEST PRACTICES FOR SUCCESSFUL MANAGEMENT OF ENVIRONMENT REGULATORY ISSUES

The processes for applying for approvals requires extensive documentations, preparations of reports and proposals including detailed project report (DPR), EIA report, environment

¹⁵ Office Memorandum No. J-11013/41/2006-IA.II(I), dated 18 May 2012

¹⁶ AIR 1987 SC 965

management plan, forest management plan etc. Such reports, besides providing the details of the facility to be set up/expanded, would also include detailed plans as to the manner in which the proponent carries out mitigation measures regarding the possible adverse effects on the environment. For successful management of the regulatory issues and risks associated with the setting up/expansion of the facility, from an Indian environmental law perspective, the following actions may be considered:

- a) engagement of experts to prepare such reports and proposals including environmental engineers,
- b) the manual for each sector includes a Model terms of reference, which should be used as the baseline while seeking environmental clearance.
- c) All impacts of the Project must be studied in detail and a Comprehensive but focused EIA Report should be prepared and submitted. The inclusion of environmental policies and programmes are now standard operating procedures for most corporate organizations. International agencies which provide standard compliance certifications, such as the International Standard Organization, have been engaged by a significant portion of the surveyed companies to implement and have been granted certifications such as the 'ISO 14001' system etc.