

DEGRADING ENVIRONMENT, EVOLVING LAWS AND IGNORANT US

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Abstract

Saddling through the ‘oxymoronus’ development, mankind is witnessing its 21st century of existence. Hitherto pollution has been an imp of which a panache could not have been found. It is a matter extreme gawkiness to face the unabated levels of pollution despite several efforts being taken for such a long time. At one place where people keep discussing about the ill effects of pollution, they have been showing their squanderous attitude of hedonism in their life. The idiosyncratic trifle between the need of development and snowballing pollution levels has made it an exigency to solve the pollution imbroglio.

Initially the paper will discuss the bitter-sweet sources of pollution such as the current religious practices, advertisements and e-waste problem, for which there is no such significant codified laws and on the other hand it has proved very hard to regulate them because of them being coveted. The later part of the paper will elaborate on the legal background of the pollution issue, which consists of the existing laws and then the judicial intervention in this field. Finally the paper ends with conclusions and suggestions by the author.

INTRODUCTION

Although substantial proportion of our country's population faces the effects of the snowballing pollution but at the same time is ignorant about it. If this remains the *status quo*, then this will upend our country's environment's beauty. It is not just that the human populations are the sufferers but flora and fauna of the country has also been affected badly. India once known for its rich biodiversity and heritage, now houses the most number of the twenty most polluted cities of the world and most number of polluted rivers in top five polluted rivers of the world. The consequences of the pollution has left a majority of the population high and dry as it has resulted in the cause of myriad water borne and air borne diseases. Pollution has also resulted in change of climate creating an indirect pressure on the agro-based industry of the country.

The tussle between the religious practice and faith and environmental issues can be greatly observed. Earlier, the ancient Hindus and Greeks used to worship nature as a gift from God. But nowadays the way in which worship is performed in any temple is too swanky in nature and involves a lot of tantrums and complexities. This also plays a major role in creating such a waste to which we don't have any answer to. The type of waste created by these comprises of flowers, leaves, the idol and fruits coated with vermilion, coconut skull, ashes of incense sticks and small diyas, ashes of dead person¹. These type of waste releases nitrogen compounds and foul smell in the air which pollute the environment. Somewhere the practice of ablution of the idol by milk, honey, curd and other edible stuffs add to the wastage problem. These wastes are not hazardous per se, but the amount at which they are produced pose a greater problem. Later either these are made to flow on streets or dumped in river creating water pollution. In recent cases, Supreme Court has tried to highlight the inter-relationship between religious faith and environmental concerns. The Court in a subsequent case², restricted the time of bursting the crackers during the festival of Diwali and observed that "*Shelter in the name of religion cannot be sought for bursting crackers and that too at odd hours.*"

Advertisements have become the fastest and the most popular way of promotion of any products, services etc. in this age. The practising of distributing pamphlets for promoting pubs, coaching centres, beauty salons etc. has become a common practise. People are often hired as distributors who are under a contract to distribute certain amount of pamphlets in a particular day. They distribute those pamphlets outside colleges, busy streets, and famous restaurants. Other people take them and throw them on the streets which makes the matter worse.

With the boom in the IT sector in the country, people have been tended towards the use of electrical appliances. With the changing lifestyle the nature of the waste has also changed posing a greater challenge ever in managing them. With the advent of Chinese gadgets and appliances of shorter life cycle and rapidly developing technology, the volume of e-waste has

¹ Hindus have a practice to flow the ashes of the dead in a river usually in Ganga

² In Re: Noise Pollution, AIR 2005 SC 3136

increased to a greater extent. They consist of mobile phones, CD's, TV's, monitors and other electrical appliances. There is actually no place distinguished as a proper one to throw them. These are non-biodegradable waste consisting different types of metals like copper, tin, silver, iron, steel etc. The various toxins present in those substances when mixed with the water bodies destroy the aquatic ecosystem and also affects life of human beings.

LEGAL BACKGROUND

- **LEGISLATIONS**

“Environmental pollution” means the presence in the environment of any environmental pollutant³ and “environmental pollutant” means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment⁴.

The year 1972 marked a turning point in the field of environmental laws and management in the country. As per the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in 1972, to take appropriate steps for the preservation of natural resources as well as the protection and improvement of human environment, the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment Protection Act, 1986 and several other legislations were enacted. The declaration of the 1972 Stockholm Conference on ‘Human Environment’ provides that the natural resources of the earth including air, water, flora and fauna should be protected.

Environment protection act was enacted in the year 1986, with the objective of providing for the protection and improvement of the environment. It empowers the Central Government to establish authorities [under section 3(3)] charged with the mandate of preventing environmental pollution in all its forms and to tackle specific environmental problems that are peculiar to different parts of the country.

The Water (Prevention and Control of Pollution) Act was enacted in the year 1974, with the objective to provide for the prevention and control of water pollution, and for the maintaining or restoring of wholesomeness of water in the country. The Water (Prevention and Control of Pollution) Cess Act was enacted in 1977, to provide for the levy and collection of a cess on water consumed by persons operating and carrying on certain types of industrial activities. This cess is collected with a view to augment the resources of the Central Board and the State Boards for the prevention and control of water pollution constituted under the Water (Prevention and Control of Pollution) Act.

The Air (prevention and control of pollution) act was passed in 1981 as a result of the decisions taken at the United Nations Conference on Human Environment at Stockholm in June, 1972, in which it was decided that appropriate steps would be taken for the preservation of the natural resources of the earth and other things including the preservation of the quality

³ Environment (Prevention and Control of Pollution) Act, 1981, s.2 (c)

⁴ Environment (Prevention and Control of Pollution) Act, 1981, s.2 (b)

of air and control of air pollution. By virtue of Article 253 of the Indian Constitution, this act was enacted. It was enacted to provide for the prevention, control and abatement of air pollution in India and for the establishment of such boards on which such powers can be conferred on and such functions can be assigned so as to regulate the aforesaid purposes. Under this act the State Government has got the powers to declare any area as 'air pollution control areas' to control the operation of industries, use of any particular type of fuel and burning of any such material that may cause pollution in the designated area. All the industries operating within the designated air pollution control areas are required to obtain allowance (permit) from the state boards. Standards of emission for automobiles can also be set by the virtue of this act.

The Public Liability Insurance Act enacted in the year 1991 has its main objective in providing for the damages to victims of an accident which occurs as a result of handling any hazardous substance. The Act applies to all owners associated with the production or handling of any hazardous chemicals.

The National Environment Tribunal Act was passed in the year 1995 to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment and for matters connected therewith or incidental thereto.

The National Green Tribunal Act passed in the year 2010 aims to establish a National Green Tribunal 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 relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues. The Tribunal is not supposed to be bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice. The Tribunal is mandated to make an assiduous effort for disposal of applications or appeals finally within 6 months of filing of them.

Article 48A of Indian constitution states that State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Article 51A states that it is the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living animals⁵.

- JUDICIAL INTERVENTIONS

⁵ T.N. Godavarman Thirumulpad (87) v. Union of India, (2006) 1 SCC 1 para 77: AIR 2005 SC 4256.

Early environmental laws in the most detailed perspective can be well traced in Kautilya's Arthashastra written around 300 BC.⁶ It put state or the ruler under an obligation not only to protect forest produce but also to set up new ones. Fines were also imposed for cutting the sprouts, branches or for destroying the trunks of the trees. A similar kind of an obligation can be observed in an ancient legal theory developed by Roman Empire, known as the 'Doctrine of Public Trust'. It was found on the ideas that certain common properties such as natural resources were held by the government in trusteeship for the free and unimpeded use by the general public. According to the Roman law these resources were either *res nullius* or *res communis* and under English law, Crown could own these resources but could not grant these to private owners to meet their private interest. This doctrine presupposes that natural resources should be made freely available to the public. The doctrine imposes three types of restrictions on the governmental authority: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third, the property must be maintained for particular types of uses.⁷ The Supreme Court of Ohio adopted the doctrine and said that state is a trustee for the public and cannot acquiesce the abandon of the trust property or enable a diversion of it to private ends different from the object for which the trust was created... the state is merely the custodian of the legal title, charged with the specific duty of protecting the trust estate and regulating its use...⁸. The US Supreme Court in the most celebrated case gave its disposition based on this doctrine and regarded the title over navigable waters of a lake as a title held in trust for the people of the state that they may enjoy the navigation of the waters, carry on commerce over them and have liberty of fishing therein freed from the obstruction or interferences of private parties.⁹ Reviewing number of U.S. Court decisions, the Indian Supreme Court, in the absence of any precedent in this field, imported this doctrine in the *Span Motels*¹⁰ case. It was observed that State is a trustee and under a legal obligation to preserve and maintain the natural resources which are meant for the free and unimpeded use by the public.

The rule of strict liability evolved in 19th century in *Rylands v. Fletcher* case¹¹. The basis of liability was justified by BLACKBURN, J. in his words as "The rule of law is that the person who, for his own purpose, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril; and if he does not do so is *prima facie* answerable for all the damage which is the natural consequence of its escape". The strict liability doctrine is subject to some exceptions like act of God, act of third party, plaintiff's own fault, statutory authority. These exceptions tend to limit the scope of the operation of this doctrine. The further years saw the shift from the traditional strict liability principle to the absolute liability principle. With the emergence of the chemical industries and use of more

⁶ V.Gupta, *Kautilyan Jurisprudence* 1 (1987)

⁷ Joseph L. Sax, "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", Vol 68:471, January 170, p. 477

⁸ *State v Cleveland & Pittsburgh R.R.*, 94 Ohio St. 61, 80, 113, N.E. 677, 682 (1916)

⁹ *Illinois Central Railroad Company v. State of Illinois*, 146 US 587 (1892)

¹⁰ *M.C. Mehta v. Kamal Nath*, 1997 (1) SCC 388

¹¹ *Rylands v. Fletcher*, (1868) LR 3 HL 330: LRI. Ex. 265

sophisticated and hazardous nature of commodities in the factories and industries, their regulation was felt as the most needful. Subsequently the doctrine of strict liability was felt inadequate and the requirement of a modified law which could regulate them more effectively was greatly felt. These activities could be regulated in two ways, firstly either completely prohibit the carrying on of such activities allow them to be carried on for the sake of public good or allow them to be tolerated on condition that they pay their way regardless of any fault. These activities could not be banned as they had a great social utility. The second way can be adopted only if runs in accordance with the statutory provisions laying down safety measures and providing for compensation for non-compliance. The last way lays down the concept of absolute liability. It basically says that the undertakers of the activity should have to pay damages for any mishap regardless of any carelessness on their part. Subsequently the honourable Supreme Court of India in *M.C. Mehta v. Union of India*¹² held that the given rule did not fully meet the needs of a modern industrial society with highly developed scientific knowledge and technology, where hazardous or inherently dangerous industries were necessary to be carried on as part of the development program and that it was necessary to lay down a new rule not yet recognised by English law, to adequately deal with the problems arising in a highly industrialised economy. The newly laid down rule in the above case: “Where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate *vis-à-vis* the tortious principle of strict liability. Furthermore this adopted doctrine was approved in *Indian Council for Enviro Legal Action v. Union of India*¹³ and it was held that the new rule laid down in the *Mehta* case¹⁴ was appropriate and suited to the conditions prevailing in our country.

The polluter pays principle is an extension of absolute liability principle. The polluter pays principle states that whoever is responsible for damage to the environment should bear the costs associated with it. “The polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology”¹⁵. This principle was not a part of Indian law hitherto it was invoked in the *Enviro-Legal Action* case. In the mentioned case the honourable court affirmed the absolute liability principle and extended it. Supreme Court also held that the ‘polluter pays’ principle which is a part of the basic environmental law of the land requires that a polluter bear the remedial or clean-up costs as well as the amounts payable to compensate the victims of pollution.¹⁶ In the case of *Vellore Citizens Welfare Forum v. Union of India*¹⁷, the principle was justified and further observed as the principle when interpreted means that the absolute liability for harm to the environment extends to not

¹² *M.C. Mehta v. Union of India*, (1987) 1 SCC 395: AIR 1987 SC 965

¹³ AIR 1996 SC 1446 : 1996(2) SCALE 44 p. 69: (1996) 3 SCC 212

¹⁴ (1987) 1 SCC 395: AIR 1987 SC 965

¹⁵ *Indian Council for Enviro-Legal Action vs. Union of India*, (1966) 3 SCC 212 at 215

¹⁶ *Indian Council for Enviro-Legal Action vs. Union of India* (Bichhri case) AIR 1996 SC 1446, 1466

¹⁷ (1996) 5 SCC 647

only to compensate the victims of pollution but also the cost of restoring the environmental degradation.

The precautionary principle is about the management of scientific risk. It is a fundamental component of the concept of ecologically sustainable development (ESD). Principle 15 of the Rio Declaration (1992)¹⁸ describes precautionary principle as:

Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

Wingspread statement on the precautionary principle states: “...When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically. The process of applying the precautionary principle must be open, informed and democratic and must include potentially affected parties. It must also involve an examination of the full range of alternatives, including no action. In this context the proponent of an activity, rather than the public, should bear the burden of proof.”

This principle was firstly invoked in *S. Jagan-nath v. Union of India*¹⁹. In the mentioned case, the court held that the ‘precautionary principle’ requires government authorities to anticipate, prevent and attack the causes of environmental pollution and imposes the onus of proof on the developer or the industrialist to show that his or her action is environmentally benign. This principle was also applied in protecting Taj and residents in the area from emissions generated by coal/coke consuming industries²⁰. In *AP Pollution Control Board v. Nayudu*²¹ the Indian Supreme Court applied the precautionary principle in a petition against the development of certain hazardous industries.

Courts have also appreciated that it is the fundamental rights of the citizens under the Article 21 of the Indian Constitution to include enjoyment of pollution free environment²².

The first indication of the right to a wholesome environment can be traced to the *Dehradun Quarrying case*²³. In the *Rural Litigation and Entitlement Kendra Dehradun v. State of U.P.*²⁴ case, the Supreme Court came to the ratio that the right to environmental protection can be considered as a part and parcel of ‘right to live’ under Article 21 of the Constitution. In *T. Damodar Rao v. The Special Officer, Municipal Corporation of Hyderabad*²⁵ case, the Andhra Pradesh HC held that “it would be reasonable to hold that the enjoyment of life and its attainment and fulfilment guaranteed by Article 21 of the Constitution embraces the

¹⁸ United Nations Conference on Environment and Development, Rio, 1992 (the “Rio Declaration”)

¹⁹ (1996) 9 SCALE 167; AIR 1997 SC 811; (1997) 2 SCC 87.

²⁰ *M.C. Mehta v. Union of India*, (1997) 1 SCALE 61; AIR 1997 SC 734.

²¹ JT 1998 (1) SC 162, 173 to 183; AIR 1999 SC 812, 819 to 823.

²² Supra n.6

²³ *Rural Litigation and Entitlement Kendra, Dehradun v. State of UP* AIR 1985 SC 652

²⁴ AIR 1985 SC 652

²⁵ AIR 1987 AP 171, 181

protection and preservation of nature's gifts without which life cannot be enjoyed. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoilation should also be regarded as amounting to violation of Article 21 of the Constitution". In *L.K. Koolwal v. State of Rajasthan*²⁶ case the Rajasthan HC said that preservation of the environment falls within the purview of Art. 21 as it adversely affects the life of the citizen because of the hazard created. In *Kinkri Devi v. State of Himachal Pradesh*²⁷ case, Himachal Pradesh HC said that if the preservation and protection of the ecology, the environment and the natural wealth and resources by the adoption of a long-term perspective planning is not heeded and effective steps in the direction of implementing the same are not taken with the utmost expedition, then there will not only be a total neglect and failure on the part of the administration to attend to an urgent task in the national interest but also a violation of the fundamental rights conferred by Articles 14 and 21 of the Constitution. In *Shantistar Builders v. Narayan K. Totame*²⁸ case, Supreme Court held that the right to shelter would also include 'the right to decent environment and a reasonable accommodation to live in. In *Subhash Kumar v. State of Bihar*²⁹, Supreme Court said that right to life includes right to live properly and have the benefit of all natural resources i.e. unpolluted air and water. In *Virender Gaur v. State of Haryana*³⁰ case it was said that Article 21 protects the right to life as a fundamental right. Enjoyment of life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation, without which life cannot be enjoyed. Moreover in cases like *K.C. Malhotra v State of Madhya Pradesh*³¹, *Hamid Khan v State of Madhya Pradesh*³², *M.C. Mehta v. Union of India*³³, *Madhavi v. Tilakan*³⁴, *Attakoya Thangal v. Union of India*³⁵, *V. Lakshmiopathy v. State of Karnataka*³⁶, respective High Courts have observed that environmental degradation violates the fundamental right to life.

- MAGNITUDE OF THE PROBLEM

Although the laws have been passed and judiciary's continued interventions have been existed, but these have failed to solve the problem of waste management in India. People still don't know where to throw the garbage. As a result, the pollution levels have increased drastically in less than a decade. The result is that it has led to the increased rate of lung disease affected patients posing not only a greater risk of damaged throat and lung to old people but also to new-born babies.

²⁶ AIR 1988 RAJ 2,4

²⁷ AIR 1988 HP 4, 9

²⁸ AIR 1990 SC 630

²⁹ AIR 1991 SC 420

³⁰ 1995(2) SCC 577

³¹ AIR 1994 MP 48, 52

³² AIR 1997 MP 191, 193

³³ AIR 1988 SC 1037

³⁴ 1988 (2) KER.L.T. 730, 731

³⁵ 1990 (1) KER.L.T. 580, 583

³⁶ AIR 1994 KAR 57, 67

Water pollution has led to the inflow of toxic chemicals to our diet causing many intestinal and stomach problems. Harmful effluents discharged in the river are fed on by the fishes and other aquatic animals which constitutes the diet of many people. Hence traces of arsenic and other deadly chemical compounds can be found in their food.

CONCLUSION

The Indian legislature has enacted laws for specific type of pollution³⁷ and also for the protection of the environment³⁸, wildlife³⁹, forest⁴⁰. The setting up of National Environment Tribunal, National Green Tribunal and the National Environment Appellate Authority by the central government shows the diligence of the centre to achieve the goal of clean environment. But affirmatively it can be stated that the essence of any law or enactment becomes nugatory unless the same is implemented and strictly enforced. It can be easily observed that the environmental issues has not been given due weightage as it deserves. Moreover apart from the laws and initiatives from the government, it requires some aspects of behavioural changes and initiatives from the public.

Among all the other country's major problems, waste management is the toughest, with no silver bullets in sight in near future. Hence prima facie it is very clear that the pollution levels take it as garbage, water pollution or air pollution cannot be reduced at a significant level, only their further emissions can be pooled down if managed well.

There is a dire need for the implementation of more strict rules and it should be very well ascertained that once environment has been polluted, then no form of monetary compensation or punishment would bring it back to its previous state. The Supreme Court in *T.N. Godavarman Thirumulpad v. Union of India & Ors.*⁴¹, said that "Environmental justice could be achieved only if we drift away from the principle of anthropocentric to ecocentric". The inference is very clear. It is the need of the hour that we form eco-friendly policies rather than those which are eco-centric in nature.

The system proposed by the law also can't act solely as a panacea for the problems of pollution. There should not be development at the cost of environment, but there should be sustainable development which is defined as "development that meets the needs of present without compromising the ability of future generations to meet their own needs"⁴².

SUGGESTIONS

There is a need to harmoniously devise eco-friendly policies that addresses the need of development and causes the least environment degradation possible.

³⁷ Water (Prevention and Control of Pollution) Act, 1974; Air (Prevention and Control of Pollution) Act, 1981; Noise Pollution (Regulation and Control) Rules, 2000

³⁸ Environment (Prevention and Control of Pollution) Act, 1981

³⁹ Wild Life (Protection) Act, 1972

⁴⁰ Forest Act, 1927

⁴¹ (2012) 3 SCC 277, para 14

⁴² *Karnataka Industrial Areas Development v. C. Kenchappa*

The existing laws should be reviewed and any flaws should be addressed in the least time.

It can be suggested that the use of plastic bottles should be discarded and should be replaced by glass bottles in case of water distributed in trains. The cups used for hot beverages should be replaced by mud cups that would not only provide employment to a large sector of unskilled labours but also be easier to dispose of anywhere.

The use of public transport should be encouraged and at the same time the services offered by them should be re-vamped. Safety, punctuality and cleanliness to be maintained. There networks to be enhanced and new buses to be started to improve the connectivity. Landfills are not even the penultimate solution to garbage problem.

The garbage buried inside land mixes with the soil and disturbs the composition of soil and makes them barren, thus reducing the pasture land. The most important initiative to take is to find the best way possible to dispose of the waste such that it harms the environment least and find a way to process, reuse or recycle the waste.