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Critical Analysis of Environmental Protection Laws in India with special reference to Industrial Development

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ABSTRACT

An unprecedented rise in climate change, deforestation, air, water, and other forms of pollution have posed a serious threat to the environment and its living beings. All living beings, including individuals, wildlife and vegetation, are negatively impacted by environment's degradation which is a result of human activities.

India is among one of the top ten industrialised nations of the world. Since 1991, India experienced rapid industrial expansion. This has led to industries and environmental challenges. Rapid industrial development has benefited human civilization economically and brought material pleasure to citizens of industrialised nations, but it has also exacerbated a variety of environmental issues. Massive amounts of pollutants are released as a result of growing industrial expansion which adversely affects the environment in various ways. Today, Industries and factories are major contributor to environmental pollution.. Significant urban and industrial pollution is a result of rapid economic and industrial growth. A pollution-free environment may just be an ideal fantasy in the industrial age, far from becoming a reality.

The necessity of the hour is proper balance between the two, i.e., development on the one side and a clean environment on the other. Plans for sustainable development appear to be a way to strike a compromise between these two factors. The researcher was forced to conduct this research after the aforementioned debate opened her eyes to the seriousness of the environmental issue and the rate at which it is deteriorating.

Keywords: *environment, environmental protection, industrial development, preservation.*

I. INTRODUCTION

There was no distinct environmental policy in the early years of independence, and no effort was made to develop any explicit policy or law for environmental preservation. The Indian Constitution adopted in 1950 originally included no provision regarding environmental protection. It was The Stockholm Declaration of 1972 which shifted the Indian government's

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focus to the broader aspect of environmental preservation. In 1972, the National Council for Environmental Policy and Planning was established, which was later renamed as the Ministry of Environment and Forests (MoEF) in 1985. In the same year, The Wildlife (Protection) Act, 1972 was passed. In India, direct legislation on environmental preservation was first implemented in 1974 in the form of water law (pollution prevention and control) followed by The Forest (Conservation) Act, 1980 and The Air (Prevention and Control of Pollution) Act, 1981. Finally, In 1986, an extensive environmental legislation in the form of 1986 Environmental Protection Act was implemented covering all aspects of environment. The Act was enacted with the prime motto of providing protection and improvement of environment and the things associated with it. It empowers the central government to enhance and maintain environmental quality, minimise and regulate pollution at its source, and limit or prohibit the establishment and operation of any industrial facility on environmental grounds. In 2010, The National Green Tribunal Act was established in response to the Rio Summit, 1992 to provide legal and administrative remedies for the victims of pollution and other environmental damage. Recently, in 2016 Compensatory Afforestation Fund Act was enacted by Parliament. This Act seeks to manage the funds collected from authorities who divert the forest land for non forest purposes through a well-defined institutional mechanism.

II. CONSTITUTIONAL PROVISIONS REGARDING ENVIRONMENTAL PROTECTION IN INDIA

The Stockholm Declaration and rising public awareness of the environmental issue and the worldwide movement for Environment Conservation led the Indian government to pass the 42nd Amendment to the Constitution in 1976. By this Amendment Article 48-A was inserted to Part IV of the Constitution. This Article imposes a duty on the state to protect and improve the environment and safeguard the forests and wildlife of the country.. The said amendment also added Part IV A to the Constitution which deals with Fundamental Duties. Article 51-A(g) imposes a constitutional duty on the citizens of India to protect and improve the natural environment and have compassion for all living creatures. Thus, the Indian Constitution puts an obligation on both State and Citizens to preserve and improve the natural environment.

The Preamble of Indian Constitution begins by proclaiming that ‘people of India solemnly resolve to constitute India into a socialist country.’ This shows that our Constitution affords us with the socialist pattern of society. It aims at solving societal issues first, rather than on focusing at individual problems. Thus, public interest and general welfare has been given utmost importance under our Constitution.

In Our Constitution, subjects like Forests, Protection of wild animals and birds etc are included in the Concurrent list. Thus, both Centre and State have power to make rules for the preservation of forests, wildlife etc.

Article 253 of the Constitution states that “Parliament has the power to make any law for the whole or any part of the country for executing any treaty, agreement, or convention with any other country,” Pursuant to this article, Parliament has the power to pass legislation addressing any matters connected to the preservation of the environment. A number of Acts, including the Environmental (Protection) Act of 1986 and the Air (Prevention and Control of Pollution) Act of 1981, were passed under this provision to implement the Stockholm Conference.

The Right to a Clean Environment is one of the implied Fundamental Rights recognised by Judiciary.

According to Article 14 of the Constitution, everyone is entitled to equality before the law and equal protection under the law. Article 14 implicitly mandates the state to act fairly when enacting environmental protection measures.

According to Article 21, "no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law." The court has held on numerous occasions that this Article inherently guarantees the right to an environment, free from risk of disease and infection.

The majority of cases involving environmental pollution and ecological imbalance are filed in accordance with Articles 32 and 226 of the Indian Constitution. Any party may challenge any action that endangers people or the environment by filing a PIL (Public Interest Litigation) with the Supreme Court of India under the well-known fundamental right known as Article 32, or the Right to Constitutional Remedies.² The Supreme Court has the power to make any decision or order that grants immunity from such hazardous activities.

III. JUDICIAL APPROACH

Judiciary has played a crucial role in interpretation of the laws meant to safeguard the environment. There have been a number of historic decisions that clearly demonstrate the judiciary's active engagement in environmental preservation. After the introduction of PIL, Judiciary has time and again given widest interpretation to Fundamental rights to safeguard the environment. In the case of *Municipal Council, Ratlam vs Shri Vardhichand & Ors*³ The

² Justice T S Doabia, *Environmental & Pollution Laws In India (Set of 2 Volumes)* , Lexis Nexis

³ 1980 AIR 1622, 1981 SCR (1) 97

Supreme Court declared that the right to life includes the right to a healthy environment.

The 1985 MC Mehta vs Union of India (The Shriram gas leak case)⁴ is a historic judgement in the field of environmental activism. This case played a significant role in striking a balance between economic development and environmental protection.

In this case, a writ petition was filed by a social activist and environmental lawyer M.C. Mehta under Article 21 and 32 of the Constitution before the Supreme Court of India seeking the removal and relocation of Shriram Food and Fertilisers Limited, which was established in a thickly populated Kirti Nagar area of Delhi and was engaged in the production of hazardous chemicals like caustic soda, chlorine, oleum, and some other chemicals and fertilisers.

While the petition was still pending in court, a major leakage of Oleum gas took place from one of the plant's units on December 4 and 6, 1985. This incident took life of a Tis Hazari Court advocate and severe health issues to nearby residents. The Delhi Legal Aid & Advice Board and the Delhi Bar Association filed a claim for compensation for the victims along with the original petition of M.C. Mehta and also pleaded to not allow the closed establishment to restart. The case was originally considered by a bench of three judges, who decided to allow the reopening of the closed establishment under certain specific conditions. Considering the constitutional importance of the case, it was referred to a larger bench of five judges.

Justice P.N Bhagwati stated that seeking closure of such hazardous industries is not a solution as it will do no good to the society as well as the nation. It will impact the growth and development of the country and the closure of such industries would bring unemployment to thousands of workers. Closure of Shriram individually would bring unemployment to 4000+ workers. Though these industries are disastrous to the public, complete closure of such industries is next to impossible.⁵

The Supreme Court made it clear in its decision that closing these industries would impede the development of the nation. The Supreme Court emphasised upon the social, legal, and economic aspects of society, defending both the environment and the rights of the general public. Thus, the final decision taken by the judges was to relocate such factories to less populated areas so that they wouldn't endanger human life.

The Honorable S.C. in this case enunciated the principle of Absolute Liability and stated that in case of industries like Shriram that are engaged in inherently dangerous activities, the rule of

⁴ 1987 AIR 1086, 1987 SCR (1) 819

⁵ <https://www.legalserviceindia.com/legal/article-9689-m-c-mehta-v-union-of-india-air-1987-sc-965-oleum-gas-leak-case.html>

absolute liability will be applied. That means Any industry engaged in hazardous activities cannot escape from its liability by bringing their case into any one of the exceptions laid down in the case of *Ryland v. Fletcher*. It will be held absolutely liable if it causes harm to the environment or the public.

In *M.C. Mehta v. Union of India*⁶ (popularly known as Ganga Pollution Case), petitioner requested a writ/direction/order in the form of mandamus prohibiting the respondents from dumping hazardous effluents into River Ganga unless they incorporate adequate treatment plant to treat the effluents The Court ordered the tanneries to establish primary treatment plants if not Secondary treatment plants. The Court further ruled that the financial capacity of the tanneries should be not be considered while requiring them to establish primary treatment plants.

In the famous case of *Rural Litigation and Entitlement Kendra & Ors v. State of U. P. & Ors*⁷, popularly known as Doon Valley Case) a writ petition was filed in Supreme Court by Rural Litigation and Entitlement Kendra regarding the unauthorised and illegal operation of limestone quarries in the Mussoorie Hill range, India. It was asserted that the quarries caused a hazard to healthy environment and had a negative impact on the area's perennial water springs. During the pendency of the petition, Court constituted a Committee with the task of investigating the lime stone quarries. Additionally, the Indian government established a working group to examine the mining of lime stone quarries in the Dehradun-Mussoorie region. The Court ordered the closure of some limestone quarries. The Court was well acquainted with the fact that after this order the workers working in that field is going to lose their job. The Court stated, "This would obviously cause problems, but it is a cost that must be borne in order to defend and safeguard the right of people to live in a healthy environment with the minimal disruption of ecological balance and without unnecessary hazards for them.

The court, in this case, also emphasised on the need of industrial development for national economic growth. If, however, industrial growth were to be attained through haphazard operation of the mines, which would result in loss of life, loss of property, loss of necessities like water supply, and creation of ecological imbalance, there might not ultimately be real prosperity and economic growth. It was important to establish the right balance. All of these characteristics should be taken into account by the proper authorities when giving leases, and they should also include suitable safety measures.⁸

⁶ 1988 AIR 1115

⁷ R.L. & E. Kendra, Dehradun v. State of up AIR 1985 SC 652

⁸ P. Leelakrishnan, *Environmental Law in India*, Lexis Nexis

In another case,⁹In order to return the Doon Valley to its original character, the Hon. SC of India directed to suspend the cement factory's operations in the region where the mining activity had been disrupted. The Court also ordered to declare the Doon Valley area as non-industrial. However, the government was asked to provide a different location for the applicant's cement factory.

IV. DOCTRINES AND PRINCIPLES EVOLVED BY COURT

The doctrines and principles evolved by courts have significantly contributed to the environmental jurisprudence in India.

1. Strict Liability

Also known as 'No Fault Liability' was evolved in the case of *Rylands v. Fletcher*¹⁰. The rule is that the person who for his own purposes brings on his lands 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.

2. Absolute Liability

The rule of absolute liability was evolved in India in the case of *M.C Mehta v. Union of India*¹¹ popularly known as Oleum gas leak case.

3. Public Trust Doctrine

Public trust doctrine is a legal principle which establishes that certain natural and cultural resources are preserved for public use and the government is required to maintain them for the public's reasonable use. In *M.C. Mehta v. Kamal Nath*¹², the Supreme Court for the first time applied this doctrine to an environmental problem. The court noted that state is the trustee of the earth's natural resources like water, air and wetlands. Thus it is the duty of the State to protect these resources for the general public who are beneficiary and not to make them the subject of private ownership.

4. Doctrine of Sustainable Development

The Indian judiciary has observed in a number of pronouncements that ordering Industries to halt production will have an adverse impact on country's economic and social condition. It will cause unemployment and poverty and lead the nation towards destruction and devastation. Consequently the judges opined that pollution limit should be within the sustainable capacity

⁹ *A.R.C. Cement Ltd. v, State of up* 1993 Supp (1) SCC 57

¹⁰ (1868) LR 3 HL 330

¹¹ 1987 AIR 1086

¹² (1997) 1 SCC 388

of the environment.

In *Vellore Citizens Welfare Forum v. Union of India*¹³, the Supreme Court opined, the traditional concept that development and ecology are opposed to each other, is no longer acceptable, sustainable development is the answer. Sustainable Development means to fulfil the need of present generation without compromising the needs of future generation. Sustainable development is a balancing concept between ecology and development.

5. Polluter Pays Principle

This Principle holds the polluter liable for the pollution caused by him to the environment. It is a principle based on common sense that those who cause pollution should bear the costs of managing it to avoid harm to human health or environment.

In the 1996 case of *Indian Council of Enviro-Legal Action v. Union of India*¹⁴, the 'polluter pays principle' was applied and defined for the first time in India. In this case, Justice Dalveer Bhandari observed that the financial burden to pay for the damage done to the natural environment rests upon the industry which caused pollution and this burden cannot be shifted to the Government.¹⁵

6. Precautionary Principle

The Precautionary Principle is one of the most popular legal concepts in the area of environmental law today. This Principle provides that those who cause pollution should bear the costs of managing it to prevent harm to human health or the environment. It encourages "action taking" to antedate and avoid harm to the environment. Precautionary Principle is vigorously supported by our Indian Judiciary.

In the case of *Vellore Citizens Welfare Forum v UOI*¹⁶ the court observed that the Precautionary Principle and the Polluter Pays Principle are indispensable features of Sustainable Development.

In the case of *AP Control Pollution Board vs. Prof. M. V. Nayadu*¹⁷, the Supreme Court considered the Precautionary Principle in great detail. The Court ruled that it is preferable to go wrong in taking caution and avert environmental harm than to wait for the issue to develop into an irreversible problem.

¹³ AIR 1996 SC 2715

¹⁴ 1996 AIR 1446

¹⁵ The concept of polluter pays and its potential in India Available at <https://blog.iplayers.in/the-concept-of-polluter-pays-and-its-potential-in-india/>

¹⁶ AIR 1996(5) SCC 647

¹⁷ 1999(2) SCC 718

In the case of *Narmada Bachao Andolan v UOI*¹⁸ the Apex Court stated that when the issue involves environmental damage, the burden of proof is on the party arguing that his actions do not harm environment. In addition, he must also satisfy the court that his actions won't cause environmental deterioration.

V. DRAWBACKS IN MAJOR ENVIRONMENTAL LEGISLATIONS AND DIFFICULTIES IN ITS ENFORCEMENT

The Environment Protection Act, 1986 is the pioneer of environmental laws in India. Undoubtedly, this Act contains a number of effective provisions but there are certain limitations and drawbacks which dilutes its effectiveness. A major drawback of this Act is its complete centralization. Since wide powers is given to the Centre and no power is conferred on the States, the former is liable to its arbitrariness and misuse. The penalties prescribed by the Act are inadequate and not sufficiently severe. Also, the offenders can escape their liability by proving things like the exercise of due diligence or commission of offence without knowledge.¹⁹ The definition of pollutant as given in the Act does not include pollution caused by noise, overburdened transport networks, and radiation waves, all of which contribute to the deterioration of the environment.

The Act also makes no mention of citizen engagement in environmental preservation. Citizens must be involved in environmental preservation to promote understanding and empathy for the environment. Section 24(2) of the Act questions its very intent and purpose by providing that if any act or omission constitutes an offence punishable under this Act and also under any other law then the offender shall be punished under that other law and not under this Act. The Act doesn't provide any provision regarding the prosecution of offenders. The Act also makes no attempt on environmental impact assessment.

The Wildlife Protection Act, 1972 is a comprehensive legislation which ensures protection and conservation of wildlife in India. This Act includes several important provisions for the protection and conservation of wildlife including declaration of protected areas, establishment of the Wildlife Advisory Board, Prohibition of Hunting, Stringent penalties etc. Despite the stringent provisions and strict penalties, the enforcement of the Act has not been very effective and illegal activities like hunting and poaching still persists.

The Water (Prevention and Control of Pollution) Act of 1974 aims to provide for the prevention

¹⁸ 10 S.C.C. 664

¹⁹Drawbacks_of_the_Environment_Protection_Act Available at <https://blog.iplayers.in/environment-protection-act-1982>

and control of water pollution and maintaining or restoring of wholesomeness of water (in the streams of well or on land). The Act gives State Boards regulatory authority and empowers them to set and enforce effluent standards for factories that discharge pollutants into water bodies." The same function is performed by Central Board for union territories. These boards control the discharge of industrial effluents by granting, rejecting, or conditioning applications for consent to discharge.

The Air (Prevention and Control of Pollution) Act, 1981 aims to improve the quality of air and to prevent, control and abate air pollution in the country. The Framework of this Act is similar to its predecessor i.e. the Water Act. The Act enlarged the authority of the central and state boards established under the Water Act in order to include air pollution control.²⁰

"A careful reading of The Air (Prevention and Control of Pollution) Act, 1981 reveals that it is primarily concerned with the administrative details of the composition of state pollution control bodies, their powers and functions." It doesn't focus on the operational aspects pollution and control mechanisms.²¹

National Green Tribunal established under the National Green Tribunal Act, 2010 is not competent to hear all kinds of Environmental issues. It can hear only those issues relating to environment that are connected to the implementation of laws listed in Schedule I of the NGT Act. As a result, it is difficult for a common man to understand when and when not to go to NGT for help.. Another limitation of NGT is improper implementation of its rulings. Neither the government nor the stakeholders fully comply with NGT's rulings. Its decisions are sometimes pointed out as being impractical to implement within a specified timeframe. The insufficient number of its regional benches also interferes with the speedy delivery of justice. The tribunal is also criticised for not using any formula based mechanism for determining compensation.

VI. CONCLUSION AND RECOMMENDATION

There is no shortage of Environmental Protection Laws in India but their effective implementation is quite inadequate. Despite various Rules and Acts established by the Indian Parliament, the condition of the environment is deteriorating rapidly. Thus, in order to keep our Environment free from all kinds of pollution, more effective steps need to be taken in dealing with major polluting industries at all levels. Environmental legislations have little

²⁰ Anthwal, Sushma Juyal, Critical Study on Environment Protection Issues With Laws and Policies In India With Special Reference To Industries Available at <http://hdl.handle.net/10603/296678>

²¹ Ibid

chance of succeeding unless it is followed by a series of promotional measures. However, the most important step will be to create environmental awareness among the general public through the use of media, awareness campaigns, the integration of environmental issues in general education and the promotion of public participation in environmental matters.

The role of the judiciary in maintaining a balance between industrial development and environmental protection is remarkable and admirable. Judiciary has time and again maintained that if Industries will be ordered to shut down, it will have an adverse impact on country's economic and social condition. It will cause unemployment and poverty and lead the nation towards destruction and devastation. On the other hand, the environment in turn cannot be safeguarded if development does not take environmental concerns into account. Thus, the issue of environment versus Industrial development has led to the concept of sustainable development. Sustainable development plans appear to be one way to achieve a balance between development and ecology. A sustainable industry would allow for economic growth while maintaining environmental quality and combating significant environmental concerns.²²

In view of the aforementioned discussion, the researcher recommends the following suggestion:

1. The environmental laws existing in our country needs to be amended, keeping in view of the changing dimensions of the world climate.
2. Public awareness & environmental education are crucial conditions for its successful implementation.
3. There is a pressing need to strengthen the judiciary's hands by establishing distinct environmental courts and giving them power to deal with all kinds of environmental problems, so that unlike National Green Tribunal, Courts can play its role more effectively.
4. Industries should be encouraged to adopt green methods of production.
5. The installation of Common Effluent Treatment Plants (CETPs) must be made compulsory during industrial setup, and the Registrar and other regulatory organisations should be given the responsibility to monitor it.
6. Emission of polluting substances must be controlled and upper limit should be clearly defined. In case of violation of upper limit, strict punishment is to be imposed.

²² E. Bhaskaran, Industrial Development and Environmental Safety Available at https://www.researchgate.net/publication/234058242_Industrial_Development_and_Environmental_Safety

7. It is necessary to encourage industries to promote sustainability and recycling of their products.
8. Industries should not be allowed to set up at residential areas in order to prevent health hazard to people residing in that locality.
