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ENVIRONMENTAL PROTECTION IN INDIA

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Abstract

Word "environment" is most regularly utilized portraying "natural" condition and means the whole of all living and non-living things that encompass a life form, or gathering of life forms. Environment incorporates all components, factors, and conditions that have some effect on development and improvement of certain creature. Condition incorporates both biotic and a-biotic elements that have effect on observed organism. Environmental issues are getting serious in India as a result of the interacting impacts of increasing populace thickness, industrialization and urbanization, and poor ecological management practices. Except if stringent regulatory measures are taken, natural frameworks will be irreversibly corrupted. Absence of political responsibility, absence of a complete natural arrangement, poor ecological mindfulness and useful discontinuity of the general population organization framework, poor broad communications concern, and predominance of destitution are a portion of the main considerations in charge of expanding the seriousness of the issues. Natural issues in India are very intricate, and administration methodology must be produced to accomplish coordination between different practical divisions and for this, political pioneers must be persuaded of the need to start ecological protection measures.

Key-Words

Environmental Issues, India, Problem, Pollution

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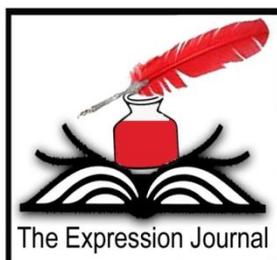
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Role of Legislation in the Protection of Environment

Indian environmental law has a rich heritage. The significance of environmental law is found in ancient times, medieval period and in the modern era. Ancient scriptures such as Vedas, Puranas, Smritis, Samhita, and Bhagwadgita etc. carry several tenets on environments. Legislations, pertinent to environment in India were drafted as early as in 1953 with the Shore Nuisance (Bombay and Kolkata) Act. There are about 250 environmental legislations in India.

1. Air Pollution:

- (a) The Air (Prevention and Control of Pollution) Act 1981.
- (b) The Factories Act, 1948.
- (c) The Industries (Development and Regulation) Act 1951.
- (d) The Mines and Minerals (Regulation and Development) Act 1947.

2. Water Pollution:

- (a) The Water (Prevention and Control of Pollution) Act 1974.
- (b) The Water (Prevention and Control of Pollution) Cess Act 1977
- (c) The Coast Guards Act, 1978.

3. Noise Pollution:

- (a) The Factories Act, 1948.
- (b) The Industries (Development and Regulation) Act, 1951.
- (c) Code of Criminal Procedure 1973.
- (d) The Indian Penal Code, 1860.

4. Hazardous Wastes:

- (a) The Insecticides Act, 1968.

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- (b) The Prevention of Food Adulteration Act, 1954.
- (c) The Factories Act 1948.
- (d) The Industries (Development and Regulation) Act, 1951.
- 5. Radiation:**
 - (a) The Atomic Energy Act 1962.
- 6. Pesticide:**
 - (a) The Destructive Insects and Pests Act, 1974.
- 7. Wildlife**
 - (a) The Wild Life (Protection) Act, 1972.
- 8. Forest and Parks:**
 - (a) The Indian Forest Act, 1927
 - (b) The Forest Conservation Act, 1982.
- 9. Mineral Resources:**
 - (a) The Miners Act, 1952.
 - (b) The Mines and Minerals (Regulations and Development) Act, 1957.
- 10. Archaeological Monuments:**
 - (a) His Historical Monumental Preservation Act.
 - (b) The Ancient Monuments and Archaeological sites and Remains Act, 1958.
- 11. General Enactments on Environment.**
 - (a) The Environment (Protection) Act, 1986.
- 12. Tribunal & Appellate Authority**
 - (a) The National Environmental Tribunal Act, 1955.
 - (b) The National Environmental Appellate Authority Act, 1997.

Constitution Provision:

Directive Principle of State Policy:

- (a) Article 42: The state shall make provision for just and human conditions of work.
- (b) Article 43: Securing living wage is not enough. State shall endeavour to ensure decent standards of life.
- (c) Article 47: State to raise the level of nutrition and standard of living and to improve public health.
- (d) Article 48: State to organize agriculture, animal husbandry.
- (e) Article 48A: State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.
- (f) Article 49: State to protect every monument and place of historic interest to be of national importance from spoliation, disfigurement, destruction etc.
- (g) Article 51-A (g): It specially deals with fundamental duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wild life, and to have compassion for living creatures.

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Role of Judiciary:

J Krishna Iyer says. The bureaucratic machinery, which defunctionally, has passion for files, not for the people. Whereas, the judiciary is trying its best to balance the environment and development.

Judiciary has played a vital role in the growth and development of environmental law. As a watchdog or sentinel on the qui vive it has maintained the sanctity and the dignity of the constitution. It has provided flesh to the bare skeleton selection of the constitutional provisions. The laws as such do not possess any self-propelling mechanism and unless put into action, they remain dormant and bring justice to none. Judiciary has put life in the otherwise dormant laws and has tired to better our country's environment. Besides the function of interpretation and application of the law, Judiciary perform the educative function of bringing an awareness of the major problems of pollution, through various decision from time to time. Judiciary has always guided the government policy. It is the judicial activism which has created awareness in the minds of executives and legislative.

Sustainable Development:

The principle of sustainable development underlies the environmental and economic policies. The Brundtland Report emphasizes that sustainable development implies integration of environmental and developmental policies in decision making at all levels. It has rejected the old concept that environment and development cannot coexist. On the contrary, it has emphasized that both are complementary and supportive to each other. The principle of sustainable development implies that environment should not be sacrificed for the sake of the development and the development should not be sacrificed in the name of the environment, but harmony and balance must be maintained between the two. It has emphasized that economic development must continue without environmental pollution.

Should industrialization take a back seat while the country concentrates on environmental issues, which is only incidental to industrialization? It is submitted that there is an obsession about the environment in some sections of the society. They fail to understand that in the West a clean environment is infact the benefit of industrialization. Has the time not come to realize people's welfare – enshrined in arts 38, 41 and 43 of the Constitution of India – and achieve industrialization? Can anyone deny that these ideals are not to be kept in mind when development measures are formulated by the state? However, here is a conflict. We cannot forget the message of environmental protection and ecological preservation embodied in arts 14, 21, 47, 48A and Fifth and Sixth Schedules of the Constitution as interpreted by the judiciary. It is interesting to peruse how in a thought provoking academic piece on environment and industrialization, Justice Katju reacts to these questions, and to the concept of sustainable development.

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He disapproves emphasis on the environment at the expense of rapid industrialization. The closure of industries leads thousands of workers, along with their wives and children, to destitution. Are such workers and their wives and children not human beings? Balancing between environment and industrialization becomes important only when there is excessive industrialization. In India, there is a need for rapid industrialization. Protection of environment is incidental to industrialization. The environment enthusiasts have overlooked this fact.

The Supreme Court of India in *Vellore Citizens Welfare Forum v. Union of India*, elaborately discussed the concept of sustainable development which has been accepted as part of the law of the land and observed. "We have no hesitation in holding that sustainable development as a balancing concept between ecology and development has been accepted as a part of the customary international law through its salient features have yet to be finalized by the International law jurists". In *A.P. Pollution Control Board Vs M.V. Nayudu*. Supreme Court said, Environmental concern are in our view, of equal importance as human rights. In fact both are to be traced to article 21 which deals with fundamental right to life and liberty. While environmental aspect concern life human rights aspect concern liberty.

In *ND Jayal v. Union of India*, the Supreme Court considered constitution of a dam as a symbol of wholesome development, and held that the right to sustainable development is a Fundamental Right. The concept cannot be singled out, but is to be treated as integral part of life under art 21. Holding that EPA aims at sustainable development, the court said: Acknowledge of this principle will breathe new life into our environment jurisprudence and constitutional resolve. The object and purpose of the act to provide for protection and improvement of Environment could only be achieved ensuring the strict compliance of its direction.

However "The Precautionary Principle" and "The polluter pays" principle are essential features of sustainable development:

- (a) Precautionary principle
- (b) Polluter Pays principle
- (c) Precautionary principle

(A) Precautionary Principle

Precautionary principle as a tool for environmental protection got international recognition in the Rio Conference on Environment and Development 1992 (Rio Declaration). Principle 15 of the Rio Declaration states, "In order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation".

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The Precautionary Principle speaks of a precautionary approach in the matters of development so as to ensure that a substance or activity posing threat to the environment is prevented from adversely affecting the environment, even if, there is no conclusive scientific proof of linking that particular substance or activity to environmental damage. The terms “substance” and “activity” here means and implies those substances and activities which are introduced as a result of human intervention.

Indian Council for Enviro-Legal Action case discussed above accepted this principle along with the “polluter pays principle’ as part of the legal system. In Vellore Citizens Welfare Forum v. Union of India” and Andhra Pradesh Pollution Control Board v. MV Nayudu, the Supreme Court applied the precautionary principle directly to the facts of the cases.

The Precautionary Principle in the context of the municipal law means:

- (1) Environmental measures by the State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation.
- (2) Where there are threats of serious and irreversible damages, lack of scientific certainty should not be used as a reason for postponing measures – to prevent environmental degradation.
- (3) The onus of proof is on the actor or the developer / industrialist to show that his action is environmentally benign.

The Supreme Court applying this principle in the Vellore Citizens Forum Case laid down that the precautionary principle” and “the polluter pays principle” are essential features of sustainable development and that they have been accepted as part of the law of the land. The Court had no hesitation in holding that the precautionary principle and the polluter pays principle are part of the environmental law of the country. The Court also observed that even otherwise, the above said principles are accepted as part of the customary international law and hence there should be no difficulty in accepting them as part of our domestic law. The Court further observed that the burden of proof in such cases would shift on the persons who want to change the status quo that is the developers etc. This is a significant change in the environmental jurisprudence as traditionally the burden of proof in such cases lies on the persons who oppose development and wants a less polluted state. In A.P. Pollution Control Board v. Prof. M.V. Nayudu, the Supreme Court referred to the formulation of the precautionary principle and the new burden of proof. The court observed that the principle precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also be justified by concern or risk potential. The precautionary principle suggest that where there is an identifiable risk of serious and irreversible harm, including, for example, extinction of species, wide spread toxic pollution,

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major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment.

It appears to us that the “precautionary principle’ and the corresponding burden of proof on the person who wants to change the status quo will ordinarily apply in a case of polluting or other project or industry where the extent of damage likely to be inflicted is not known. When there is a state of uncertainty due to lack of data or material about the extent of damage or pollution likely to be caused then, in order to maintain the ecology balance, the burden of proof that the said balance will be maintained must necessarily be on the industry or the unit which is likely to cause pollution. On the other hand where the effect on ecology of environment of setting up of an industry is known, what has to be seen is that if the environment is likely to suffer, then what mitigative steps can be taken to offset the same. Merely because there will be a change is no reason to presume that there will be ecological disaster. It is when the effect of the project is known then the principle of sustainable development would come into play which will ensure that mitigative steps are and can be taken to pressure the ecological balance.

(B) The Polluter Pays Principle

The question of liability of the respondents to defray the costs of remedial measures may be looked into from another angle which has now come to be accepted universally as a sound principle viz. the polluter pays principle.

The Polluter Pays Principle envisages that the liability in case of harm or loss caused to the environment extends not only to compensate the victims of pollution but also includes the cost of restoring the environmental degradation. This principle is duly recognized at international level and has a global sanction. The European Community Environmental Policy sets out the main postulates of this principle in the following terms:-

- (a) Preventive action is to be preferred to remedial source.
- (b) Environmental damage should be rectified at source.
- (c) The polluter should pay for the costs of measures taken to protect the environment, and
- (d) Environmental policies should form a component of the European Community’s other policies.

The Supreme Court in *M.C. Mehta v. Kamal Nath* followed Polluter pays principle that the polluter pays principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the Sustainable Development and so such polluter is liable to pay the cost of the individual sufferers as well as the cost of reversing the damaged ecology.

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Indian Council for Enviro-Legal Action v Union of India, tells the tragic story of a village in Rajasthan. Its living environment become highly polluted by the sludge that was left out even after the closure of the 'rogue' industries licensed to produce 'H' acid. The Supreme Court directed the Central Government to determine and recover the cost of remedial measures from the respondents. Section 3 of EPA expressly empowers the Central Government (or its delegate, as the case may be) to 'take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment'. Similarly, s 5 clothes the Central Government or its delegate with the power to issue directions for achieving the objects of the Act. Read with the wide definition of 'environment' in s 2 (a), ss 3 (2) 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. The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. In the present case, the said powers will include giving directions for the removal of sludge, for undertaking remedial measures on the offending industry, and to utilize the amount so recovered for carrying our remedial measures.

Industrial Pollution

An industry, on the one hand is the first class enemy of the environment, and on the other, it is one of the major contributors to the economic development of the country. The most dangerous pollutions caused by industry include air, water and noise. They are sufficient to heavily and extensively effect the existing environment.

(I) Food and fertiliser industry

The multi-dimensional issues relating to environment pollution were raised in M.C> Mehta where the sole question was whether Sriram should be allowed to restart the caustic chlorine plant. The flashback of this case was that, there was a major leakage of oleum gas from one of the units of Sriram affecting a large number of persons, both amongst workmen and public, and it was alleged that an advocate practicing at the Tis Hazari Court died due to the leakage. Hardly had the people got out of the shock of this disaster, when within two days there was another minor oleum gas leakage. In view of these incidents, the inspector and assistant commissioner of factories issued orders prohibiting Sriram from operating their plants.

The Supreme Court in this case was confronted with the problem of how to balance the pollution hazard of the chlorine gas over the. (i) safety arrangements made by Sriram (ii) interests of workmen (iii) scarcity of chlorine, and also (iv) production of downstream products. The court, realized that 'it was none too easy a task and with considerable hesitation, bordering almost on trepidation reached the conclusion that the caustic chlorine plant should be allowed to be restarted subject to certain conditions. While balancing development and environment it tilted the scale in favour of development. It showed its

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helplessness when it pointed out that it was not possible “to totally eliminate hazard or risk inherent in the very use of science and technology, otherwise, it would mean the end of all progress and development. It further stated that such an approach was “essential for economic development and advancement of well-being of the people.

(II) Tanning Industry

The Tanning industry also source of pollution

In M.C. Mehta there were 74 tanneries which discharged their trade effluent, at first, into the municipal sewerage and then the waste water joined the river Ganga. A public interest litigation was brought under article 32 of the Constitution of India to restrict the tanneries from discharging their trade effluents in Ganga till such time as they put up necessary treatment plants for treating the trade effluent. On behalf of some of the tanneries it was urged that they would not be able to meet the enormous expenditure on the treatment plant. But the court, rejecting the argument, rightly held that no tannery could be allowed to continue unless it makes provision for the treatment plant a part and parcel of the tannery establishment.

The result in this case was that the tanneries, which had failed to take the minimum stages required for treatment of trade effluents, were ordered by the court to be closed down. Justice K.N. Singh, agreeing with Justice Venkataramiah, “added few words” dealing with the status of river Ganga in the Hindu belief and mythology and its importance. When one reads the “supplementing opinion, he will find that the heart of the learned judge is weeping on account of the present state of affairs of the river Ganga. The anger of the learned judge can be seen with respect to the pollution Ganga when he says, “closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people. The emotional attachment of Justice Singh with Ganga may be attributed to his long and close association with the river at Allahabad.

(III) Distillery

In U.P. Pollution Control Board v. Modi Industry

Modi Distillery had a distillery plant in Modi Nagar, Ghaziabad. It manufactured industrial alcohol. In the manufacturing process, the unit, it is stated discharged highly noxious and polluted trade effluents into the Kali river. The Water Board, at first required the distillery to get the consent order of the Board before discharging its waste water. The industry delayed the matter unduly and when it ultimately filed the application it was incomplete in many respects. The Board, in order to proceed against those who were responsible for the conduct of its business, required the company to furnish the particulars and name of all those person personally responsible for conduct of business of the company. Bu the industry did not furnish the above details. The Board initiated an action against the industry in the court of the judicial magistrate under the Water (Prevention and Control of

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Pollution) Act 1974. Meanwhile the industrialist moved the High Court the ill-drafted application by the Board Wherein prosecution was launched against the distillery instead of Modi Industries.

U.P. Pollution Control Board v. Modi Industry

(IV) Slaughterhouse

An abattoir, having its plant in the agricultural area, was not permitted to further run its business, It was alleged that the abattoir was likely to pollute the river water used by human beings and animals and in no circumstances should it be permitted to run the plant. The Supreme Court upheld the order of cancellation of permission in the public interest. In this case. Unfortunately, no light is thrown on the ecological problem, whereas the aspects of environment problem involved were, first use of agricultural land for non-agricultural purposes, and second, pollution which could be caused by a large meat export industry.

(V) Dolomite stone pulverizing industry

In Chaitanya Pulverising industry, a single judge Bench of the Karnataka High Court made a distinction between the prohibitory and remedial measure. In the case of those industries which were to be established and likely to pollute the environment, prohibitory orders could be issued. As regards an established industry, only a remedial measure was warranted. The court distinguished the established industries because it. "apart from causing loss to the owner has a serious consequence of paralyzing the industry affecting the livelihood of employed persons. And therefore in such cases it concluded that "the consequences may be more hazardous than the air pollution

(i) Electronics Industry

The effect of X-ray radiation on the environment in the transmitter assembly room also attracted a writ petition before the Supreme Court. Though the medical examination of employees working in that zone did not show any clear proof of injury or ill-effect on their health, yet the court did not end up here. Being concerned for the future complications of radiation, it laid down certain guidelines for protection of workers which included routine check-up of safety devices as well as medical check-up and appropriate insurance of the employees. Effect of radiation are visible in the long run and are serious. Medical scientists now advice only a minimum exposure to such radiation.

(ii) Sugar Industry

Kisan Sahakari Chini Mills is another example where the industry polluted the water but refused to pay the cess imposed under the Water (Prevention and Control of Pollution) Cess Act. 1977 (Cess Act). The objects and reasons of this Act stated that the cess was imposed "to financially help the water boards for the prevention and control of water pollution. In this case The Allahabad High Court, held that the word 'vegetable' should be given a wider amplitude to include sugarcane as well so that the legislative intent did not get lost in bewilderment and as such the sugar industry was subject to cess liability. The

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High Court further rightly did not accede to the that a substantial question of law of general importance was not involved in the present case. IN the instant case there was no big industrialist involved; rather it was a saharak unit but still the approach in the protection of environment had no difference. It is expected at least from the cooperative units to cooperate In the protection of environment.

The sugar industry cannot be denied to be one of the sources of pollution of water, air but it emits foul smell as well. Further, the water polluted by the sugar industries also causes soil pollution. And thus, it cannot avoid the cost of prevention and control of water pollution.

(iii) Thermal power Industry

The question of establishment of a super thermal power industry in a forest area was one of the subject matters in *BanwasiSeva Ashram v. State of U.P.* The industry required 1796 acres of forest area for its project. The Government of Uttar Pradesh, while the matter regarding the forest land was pending and the court had issued a general direction not to dispossess the occupants of the said land, initiated proceedings for acquisition of the above forest area. The Supreme Court, consisting of Bhagwati C.J. and Justice Ranganath Mishra (as he then was) passed an order favouring establishment of the super thermal power plant. The learned judges in this case tilted the balance against the environment. They took the stand that although such plant would have “long term adverse effects on national economy as also on the living process”, yet in view of the fact that India has “suffered a tremendous set-back in industrial activity for want of energy,” a scheme to generate electricity “cannot be deferred.”

M.C. Mehta v. Union of India AIR 1988 SC 1037

The Supreme Court was of the view that, having regard to the adverse effect that the effluents would have on the river water, the concerned tanneries should setup at least primary treatment plants and that was the minimum which the tanneries should do in the circumstances of the case. The court after express reference to the Water Act, 1974, the Environment Act, 1986 and to the 1972 Stockkhholm Conference, directed for the stoppage of work in the tanneries which were discharging effluents in Ganga and which did not set up primary treatment plants for the proper treatment of the waste water. The Court held that the financial incapacity of the tanneries to set up primary treatment plants was wholly irrelevant and that such tanneries hand no right to exist just as those industries which had no financial viability to pay minimum wages to their workers had no right to exist. The court issued the necessary directions for the closure of these tanneries, which have failed to comply with its orders. In this context, the Court observed that closure of tanneries may bring about unemployment, loss of revenue. But life, health and ecology have greater importance to the people. The Court issued certain directions to the Kanpur Nagar Mahapalika and other authorities for compliance, which are:

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- (a) The Kanpur Municipal Corporation should submit its proposals for effective prevention and control of water pollution within six months to the Pollution Control Board constituted under the Water Act. 1974.
- (b) The Kanpur Nagar Mahapalika should get the dairies shifted to a place outside the city or arrange for removal of waters accumulated at the dairies.
- (c) The Mahapalika should lay sewerage lines where the same were not constructed as also to increase the size of the existing sewers in labour colonies.
- (d) The Mahapalika should construct public latrines and urinals for use of poor people free of charge.
- (e) The Kanpur Municipal Corporation should ensure with the help of police that dead bodies or half burnt bodies were not thrown into the river, and
- (f) The Kanpur Municipal Corporation should not issue licences to new industries unless adequate provision has been made for the treatment of trade effluents flowing out of the factories.

In Subhash Kumar v/s State of Bihar

The right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has a right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.

In *M.C. Mehta v. State of Orissa*, the Orissa High Court highlights the need for the government and the concerned authorities to be alert to the environmental problems. The court held that the authorities should wake up before the matter slips out of their hands. Their approach should not smack of mercenaries. The court directed the state government to immediately act on the report and take necessary steps to prevent and control pollution of water, which was supplied for human consumption by the discharge of municipal sewage and domestic waste water.

In Vellore Citizens Welfare Forum v/s V.O.I. the Court observed:

It is thus obvious that the Environment Act contain useful provisions for controlling pollution. The main purpose of the Act is to create an authority or authorities under S.3 (3) of the Act with adequate powers to control pollution and protect environment. It is pity that till date no authority has been constituted by the Central Government. The work which is required to be done by an authority in terms of S.3 (3) read with the other provisions of the Act is being done by this court and other courts in the country. It is high time that the Central Government realizes its responsibility and statutory duty to protect the degrading environment in the country. If the conditions in the five districts of Tamil Nadu, where tanneries are operating, are permitted to continue then in the near future all rivers / canals

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will be polluted, underground waters contaminated agricultural lands turned barren and the residents of the area exposed to serious diseases, It is, therefore, necessary for this Court to direct the Central Government to take immediate action under the provisions of the Environment Act”.

In *M.C. Mehta v. Union of India* the Supreme Court followed the ratio laid down in *Vellore Citizens Welfare Forum* case regarding the concept of ‘Sustainable Development’ In this case, in order to prevent environmental degradation around Badkhal and Surajkund lakes in the State of Haryana which are popular tourist resorts almost next door to the capital city of Delhi and in order to protect them from environmental degradation the Supreme Court ordered that no construction of any type should be permitted now onwards within 1 km radius of Badkhal and Surajkund lakes. This order was in modification of earlier order prohibiting any construction activity within 5 kms radius of these two lakes. The present order was based upon two expert reports prepared by the Central Pollution Control Board and the National Environmental Engineering Research Institute (NEERI) where in it was opined that large scale construction in the vicinity of these tourist resorts might disturb the rain water drain which in turn might badly affect the water level as well as the water quality of these water bodies.

In *M/s Ambuja Petrochemicals Ltd. v. A.P. Pollution Control Board* the petitioner questioned a writ petition the order of the A.P. Pollution Control Board directing the petitioner to close down its industry. The order effective measures to prevent water pollution. The order for closure was issued on the ground that the petitioner contravened the condition of the consent order by the non-operation of the effluent treatment plant which resulted in the discharge of untreated effluents into Dhosani Tank causing damage to surface and ground water and to the surrounding environment. He was given a show cause notice under section 33A of the Water Act before closure order was finally issued. The main issue before the High Court was whether or not the closure order suffered from any illegality. Since there was no complaint of any procedural unfairness or malafides, the court dismissed the petition, holding that it was satisfied that every aspect of the matter required to be considered by the Board was taken into consideration and that the order was not based upon any extraneous or irrelevant grounds.

Air Pollution

In *Attakoya Thangal v. Union of India* the Kerala High Court held that the denial of fresh air to breathe and sweet water to drink is denial of the right to live. It is, perhaps, the worst that can be done to any generation. No state or society should do it. These are the basic elements, which sustain life itself. In this case tubewell digging to draw water from ground channels was successfully questioned on the ground of environmental degradation.

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(1990) Ker. L.J. 580

In *Chaithanya Pulverising Industry v. Karnataka Pollution Control Board*, the question was whether a polluting industry was to be prohibited from carrying on its activity, or if it were to be prohibited, should it be given an opportunity for mitigating pollution. In *MC Mehta v. Union of India*, the

AIR 1987 Kant 82

(2001) 9 SCC 235.

In *AFD & C Ltd. v. Orissa State Pollution Control Board*, the secretary of the Board issued a direction under 31-A of the Air to close down the petitioners' cattle and poultry feed factory, and shift the same to an isolated place. While this writ petition against the direction was pending, the Board challenged. The Board's report unequivocally indicates that there is possibility of foul odour in the nearby locality on account of preparation of poultry feed. Foul odour was coming from the room where the dry fishes have been stored. Even the directions issued by the Board indicate that there was problem of odour due to storing of poultry feed materials.

The court quashed the direction for the closure. In effect the court demolished the basis for refusing to renew consent. It directed the authorities to reconsider the application for renewal. Can the order of the court be upheld as one that furthers the object of the Act? Will not there be instances where releasing of foul smell into the atmosphere leads to air pollution? By the time the Board writes a detailed finding the harm may have taken place.

In *MC Mehta v. Union of India*, the issue involved is the extent of air pollution caused by the brick kilns operating in Taj Trapezium, which are one of the major sources of air pollution. The Supreme Court gave directions based on the report submitted by National Environmental Engineering Research Institute (NEERI), some of which are as follows:-

1. All licensed brick kilns within 20 km radial distance of Taj Mahal and other significant monuments in Raj Trapezium and Bharapur Bird Sanctuary shall be closed with effect from 15 August 1996. State of Uttar Pradesh is to render all possible assistance to the licensed brick kiln-owners in the process of relocation beyond Taj Trapezium, if the owners so desire. The closure order is, however unconditional.
2. Closure of all unlicensed and unauthorized brick kilns operating in the Taj Trapezium with immediate effect.
3. No new licences shall be issued for the establishment of brick kilns within 20 km radial distance from Taj Mahal, other monuments in Raj Trapezium and Bharatpur Bird Sanctuary.

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In *VedKaur Chandel v. State of Himachal Pradesh*, the fifth respondent wanted to establish a tyre re-treading company adjacent to a road. The petitioner challenged this as violating Himachal Pradesh Roadside Land Control Act 1968, and alleged that it has the potential to pollute the rivers used for drinking water, and to cause noise and air pollution. The Director of Industries contended that the industry is not a polluting industry, and it needs no site clearance. The Pollution Control Board gave only a conditional grant.

The Court found that the process as envisaged by the fifth respondent's proposed unit is absolutely eco-friendly. It is free from any polluting agent, which may cause air or water pollution of any kind whatsoever. The court directed the State Pollution Board to ensure that the respondent no 5 complies with all laws pertaining to the environment.

AIR 1999 HP 59

In Krishna Gopal v. State of Madhya Pradesh the Court remarked:

Some forms of air pollution may be more pervasive, subtle and cumulative in their effects. But that which most immediately obtrudes itself on the eyes, the nose and the ears of the average citizen is exhaust smoke from motor vehicles. It has been calculated on the basis of a survey that more than half of these on the roads inadequately consume the hydrocarbons of their fuel which both wasters scarce petrol or diesel and allows lethal gases notably carbon monoxide to escape.

(1986) CRLJ 396

For protecting the computation of environment the court issue some direction in *MurliPursuhootam is union of India* case:

1. The State Government of Kerala shall provide, at least, one smoke meter and gas analyser (or any other approved instrument to measure carbon monoxide and other pollutants emitted by automobiles) each at all the major District Centres.
2. The State Government shall expedite steps to provide such equipment at other places also as early as possible.
3. The State Government shall issue such instructions as are necessary to all authorities in charge of registration of motor vehicles within three months in order to comply with the legislative mandate contained in s 20 of the Air Pollution Act.
4. Second respondent and Director General of Police, Kerala, shall issue necessary instructions to their subordinate officers (falling within the purview of r 116 (1) within three months from today to effectively carry out their functions envisaged in r 116 of the Central Motor Vehicles Rules.

In *MC Mehta v. Union of India*, the attention of the court was focused on the delay to convert diesel vehicles to CNG by the Central Government, thereby frustrating the orders of the Supreme Court (based on the BhureLal Committee report) in *MC Mehta v. Union of India*. The plea of the Central Government that there was a shortage of CNG supply as a

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major chunk of it went to the industrial sector was met with the following observation by the court, 'Not only is there no shortage of CNG as far as the transport sector is concerned, but even if there be such a shortage, if crude oil can be imported and supplied to the refineries for manufacture of petrol and diesel, there is no reason why CNG, if need be, cannot be imported, so that it ensures less pollution. This case also collected significant information and literature on the evils of air pollution and the threat to public health.

21 AIR 2002 SC 1696

22 (1998) 6 SCC 63

The apex court in *Murli S Deora v Union of India* why in such a situation, a non-smoker should be afflicted by various diseases, including lung cancer, or of heart, only because he is required to go to public places. Will not this evil indirectly deprive his life without any due process of law? The answer is obviously 'yes'. Undisputedly, smoking is injurious to health, and may affect the health of smokers, but there is no reason that health of passive smokers should also be injuriously affected. In any case, there is no reason to compel non-smokers to be helpless victims of air pollution.

Noise Pollution:-

The Encyclopaedia Britannica defines noise as 'any undesired sound' and the Encyclopaedia America states it as unwanted sound. The American Jurisprudence analyses noise as an unwanted sound that produces unwanted effects, a sound without value.

16 Encyclopedia Britannica 558 (1968)

20 Encyclopedia Americana 400 (2nd ed. 1969)

15, American Jurisprudence, 914 (2nd 1972)

The Orissa High Court in *Bijayanand Patna v. District Magistrate, Cuttack*, observed that since 'the problem of noise pollution has already crossed the danger point and 'noise like a smog is threatening as a slow agent of death'. Some immediate measures are required to be taken. The Court suggested that to deal with this menacing noise pollution separate courts regarding noise pollution be established, and the Central Government and State Governments should come out with adequate legislative measures to prevent this fast growing menace and 'permanent monitoring bodies' should be appointed to make periodic review of the situation and suggest remedial measures.

AIR 2000 ORI 70

In Church of God in India v. KKRMC Welfare Association the court observed:

'undisputedly no religion prescribes that prayer should be performed by disturbing the peace of other nor does it preach that they should be through voice – amplifiers or beating of drums. In our view, in a civilized society in the name of religion, activities which disturb old or inform persons, students, or children having their sleep in early hours or during day time or other persons carrying on other activities cannot be permitted.... Aged, sick, people

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afflicted with psychic disturbances as well as children upto 6 years of age are considered to very sensible to noise. Their rights are also required.

AIR 2000 SC 2773

Mufti Sayed MdNoorur Rehman Barkati v. State of West Bengal Calcutta High Court sustained the prohibition on the use of microphone for the call of azan before 7am in the morning.

In M.C. Mehta v. Union of India, the Supreme Court found that mining operation in Badkal lake and Surajkund area were causing air pollution and noise pollution (as per report of NEERI). Therefore, the Court ordered for closure of mining operation within two km. radius of the tourist resort of Badkal and Surajkund and to develop 200 metre green belt all around the boundaries of the two lakes. Thus, it was a measure, as envisaged by Section 3 of the Environment (Protection) Act, 1986 to maintain the quality of environment and to control prevent and abate environmental noise pollution.

AIR 1996 SC 1977

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