

## Law and Environment

---

### Economics, Law and Pollution Control

When we descend from the exalted plane of pure theory of Economics with a beautiful simple description of policy measures, carved out of economic analysis, we find an entirely different world which confound us in the practical life. The social conditions, the complexity of legal apparatus designed for pollution control, the actual requirements of the society, make us feel that the law for pollution control is over-elaborate causing confusion. The lawyer may say that economic models are highly simplistic, unrelated to the complex realities of the world. The real fact is that the real world is *complex* and the laws have to reflect the variety of motivations displayed by people and institutions and of circumstances in which they operate. However, the abstractions involved in economic models should not be considered as intellectual toys, but they *do* highlight the implications of different policy objectives and identify some of the advantages and disadvantages of different forms of legal control. It was England which recognised the complementarity between the lawyers and economists even in early days.

The involvement of law in protecting people from polluting activities is not a new phenomenon. Instances of statutory intervention in Britain can be found during Edward I reign, when an Act was passed in 1273 to prohibit the use of coal which was thought to be injurious to health. In addition to such governmental intervention, for centuries, individuals have had recourse to the private law to increase their freedom from uncompensated pollution damage. In this chapter, we shall study in brief the legal policy and environmental protection in India and the extent of the effectiveness of these laws.

### Fundamental Right

In India, the growth of environmental jurisprudence is a very recent phenomenon and this has come out due to the pioneering efforts of eminent lawyers, active judges, law academics and responsible citizens. The Constitution of India, as originally adopted, was environment-blind and the fundamental rights did not contemplate about immunity from pollution of air and water and survival of forests or wildlife or any right

to habitat. Even the directive principles of State policy were devoid of such recognition and concern. In the period 1950-1980, there was not much concern on the part of the State or Society about the systematic degradation and destruction of the environment in the quest for industrial development and maximisation of the GNP. It was only after Stockholm conference in June 1972, the environmental consciousness was stirred up at the global level and India too took some actions to implement certain concepts in fundamental rights.

Thus, the *Forty-second Amendment to the Constitution* was enacted in 1978, whereby it has been made a fundamental duty on every citizen for improving and protecting environment. Article 51 A(g) says: "It shall be the duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures." The obligation to improve the environment and to safeguard the forest and wildlife has been imposed on the State by way of laying down the same in the Chapter on directive principles which the State has to observe in its policy making and action programmes (Article 48A). Parallel to the generation of these ideas from the provisions of the 42nd Amendment, there was a tide of judicial activism extending new dimensions to the concept of "the right to life" and "procedure established by law" in Article 21. This judicial enthusiasm went to the extent of finding out the right to a clean environment in the right to life in Article 21.

The first case where the Supreme Court recognised the right to life through healthy surroundings was in the case *Rural Litigation and Entitlement Kendra V. State of U.P.* (AIR 1985, SC,652) regarding quarrying operations in Mussoorie. In that case, Justice Ranganatha Mishra emphatically stated that the "preservation of environment and keeping ecological balance unaffected" is a task which "every citizen must undertake" as a social obligation and as a part of fundamental duty under Article 51A. In the case *Kinkri Devi V. State* (AIR 1988) the High Court of Himachal Pradesh followed the observations of the Supreme Court and pointed out that if a just balance is not struck between development through tapping of natural resources and the protection of ecology and environment, there will be a violation of fundamental rights conferred by Articles 14 and 21 of the constitution. The threat to ecological balance resulting in the deterioration of the quality of environment was thus apparently treated as involving a threat to right to life. In other words, the right to a clean environment was indirectly recognised as an ingredient of the right to live.



### Legal Policy and Environmental Protection

In legal matters, India still follows blindly the tradition left by the British. Laws are framed in set pattern without ever enquiring whether such laws are the right instruments for the purpose. Our country is poverty-stricken and the socio-economic fabric is very complex. Most of the laws exhibit lack of social and environmental knowledge. By their very nature, these laws pose problems, not of legal nature, but something outside legal, mostly socio-economical. Hence in-depth studies are required and the study demands an expertise which lies outside the purely legal domain. It is only when we study the laws in their socio-economic setting, together with the legal theories that back them, the appropriate measure for their improvement can be suggested.

#### Tiwari Committee's (1980) findings

The Tiwari Committee, after a brief review of the environmental legislations in the country, indicated some shortcomings which may be briefed: (i) Many of the environmental laws are outdated and obsolete. (ii) The laws lack statements of explicit policy objectives. (iii) Many laws are mutually inconsistent. (iv) They lack adequate provisions for helping the implementing machinery. (v) There is no procedure for review to find out the efficacy of the laws.

The Committee suggested some recommendations: (i) A comprehensive review should be made about some of the Central and State Acts, such as the Insecticides Act, 1968, the Water (Prevention and Control of Pollution) Act, 1974, and the Indian Forest Act, 1927. After review, reformation should be made. (ii) New legislations should be framed for areas of action, not covered by the present law, such as those coming under toxic substances. (iii) The introduction of "Environment Protection" in the Concurrent List of the Seventh Schedule.

Apart from the findings of the Tiwari Committee, the following points should be contemplated about legal policy in environmental protection:

In our country, there are lot of cases of duplication of laws. For example, the ISI sets standards for consumer goods. The Minimal National Standards (MINAS) which sets standards for the quality of water and air, is, in terms of its functions, a duplication of the ISI. In actual practice the Pollution Boards are, in terms of their strategy, a duplication of the Food Adulteration Control Boards. Although the Food Adulteration Act of 1954 is different from the Water (Prevention and Control of Pollution) Act of 1974, in so far as the former makes

get in a traditional way having no potential to environmental matters in a traditional way having no potential to environmental problems. There should be scientific inputs to the judicial process of the court to get modernized adjudication.

Now, we can study briefly some of the important Acts for the protection of the environment:

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

The principal purpose of this Act is the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water streams and wells. 'Stream' is defined to include: "Sea or tidal waters to such extent or, as the case may be, to such point as the State Government may, by notification in the Official Gazette, specify in this behalf."

The Act comprises of 64 Sections covering various types of pollutions in water and the Act provides for a Central Board and State Boards for implementing the purpose of the Act. Wherever necessary, Joint Boards could also be set up. The Act empowers the States to take appropriate emergency measures in the event of causing pollution. The Act also provides for prosecution, imposing penalties for contravening the standards laid down by the Board.

This Act was amended in 1988 and after the amendment, it was made compulsory on the part of any industry or unit to take prior permission of the Board to start any unit that may discharge effluents Section 33A of the Act empowers the State Board to stop supply of electricity or water or any other service, if the Board finds a particular



unit is not following the standards and causing pollution. In the event of default, penalty may go up to the extent of six years imprisonment and also fine to the extent of Rs. five thousand for every day, if the default continues.

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

This Act was the outcome of the recommendations of the Stockholm Conference in 1972 and through this Act, all possible steps were taken to prevent air pollution by means of integrated measures with water pollution control Boards. This Act consists of 54 Sections, divided into seven Chapters. This Act was amended in 1987 by which 'noise pollution' was also brought under the definition of air pollution, and the Act now applies to all polluting industries.

Section 16 of the Act gives powers to the Central Board to plan comprehensive programmes for improvement of the quality of air by laying down standards. The Central Board has to coordinate with State Boards and also extend technical assistance and guidance. The latter can also lay down standards for emission from industrial units, automobiles or from any other source, on the basis of the standard laid down by the Central Board. The State Boards are empowered to inspect any factory premises, check any control equipment for abatement of pollution and set right the defects, if any, by means of suitable action. The State Boards are expected to collect information and disseminate information regarding air pollution. Under Section 21 of the Act, no one can start an industry mentioned in the schedule list, without obtaining the consent from the State Board.

Besides, the Section IV of the Act has given lot of powers to the Pollution Boards; the principal powers are:

(a) The Board can regulate or check the burning of any fuel which has not been approved by the Board. (b) The Board can prohibit using unapproved appliances by the units in the pollution control area. (c) The Board has power to give instructions relating to standards for emissions from automobiles to the authority concerned in charge of Motor Vehicles Registration. (d) As stated already, the Board can inspect any place, check any equipment or manufacturing process or any related records or documents. (e) The Board has power to obtain information of all types required regarding the pollutants emitted into the air by the industrial units. (f) The Board has power to set up one or more State Air Laboratories to perform its functions effectively. (g) The Board has power to take samples of air or emission from any chimney or flue or

duct or any other outlet in such manner and procedure as prescribed in the Act for purposes of testing.

According to Section 33 of the Act, "persons carrying on any industry listed in the schedule or operating any industrial plant in any air pollution control area shall not discharge or cause or permit to be discharged the emission of any pollutant in excess of the standard laid down." In the event of discharging pollutants in excess of the standard laid down, it is the duty of the person in charge of the industrial unit to intimate the fact to the Board and such authorities, as stipulated by the Act. The State Board and the concerned authorities should take remedial measures, as early as possible and expenses incurred together with interest should be recovered by the Board from the industry concerned.

Section 37 deals with procedures of penalties for the violators of the law. Accordingly, whoever fails to comply with the provisions of Section 21 (5) or Section 22 will be punished with imprisonment for a period which may extend to three months or a fine of Rs.10,000 or both. If the offence is continued after the conviction for the first failure, person or industry is liable to be punished with an additional fine extending to Rs.100/- for each day during which the pollution continues. Generally, it is stated, the matter does not go to the extent of imprisonment and the penalties are very nominal.

### **THE ENVIRONMENT (PROTECTION) ACT, 1986**

Though, there is a host of legislation in India aimed at protecting the environment from pollution and maintaining the ecological balance, the environment has not been considered in its totality. The Environment (Protection) Act, 1986 was expected to fill this lacuna and provide an adequate overall Act to protect and preserve the ecosystem. This Act is a seminal enactment strengthening the hands of the Central Government in overseeing environmental protection. This is not an operative legislation, but an enabling legislation. The Act arms the Central Government for a comprehensive control of environmental pollution by the industrial and related activity.

The Act is framed with Four Chapters: Chapter I: Preliminary; Chapter II: General Power of the Central Government; Chapter III: Prevention and Control and Abatement of Environmental Pollution; and Chapter IV: Miscellaneous.

Section 2 deals with the definition of 'Pollutions' which has been laboriously done, running to more than 25 lines divided into 7 subdivisions. With all the verbose 'definitions', the section exhibits lack



of understanding of the modern concept of environmental pollution and the factors that lead to the imbalance in the ecosystem. The lengthy definitions give accents only to physical conditions of air and water and it has not considered environmental ills like noise, traffic, mass transport systems, slums, congestions etc. Similarly, the definition 'environmental pollutant' in Section 2(b) is also deficient.

Chapter II of the Act gives details of the 'General Powers of the Central Government' to take measures to protect and improve environment; appointment of Officers and their powers and functions and also rules to regulate environmental pollution.

Chapter III describes prevention, control and abatement of environmental pollution. Section 7 makes it obligatory on the part of industrial units not to allow emission or discharge of pollutants in excess of the standards; and Section 10 deals with powers of entry and inspection. Section 11 tells the procedure to be followed to take samples of air, water, soil or other substance from any factory, premises for analysis. Section 12 contemplates about the establishment of environmental laboratories and functions of laboratories. Sections 13 and 14 deal with the appointment of Government Analysts and the reports of the Analysts as evidence of facts. Section 15 deals with the penalty for contravention of the provisions of the Act and rules orders and directions. "Whoever fails to comply with or contravenes any of the provisions of the Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or a fine extending to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention." Section 16 deals with offences by Companies; and Section 17 about offences committed by Government Departments. But the penal provisions of Sections 16 and 17 get diluted by the loophole provided in these sections, namely, 'lack of knowledge'.

Under Chapter IV 'Miscellaneous', the Section 24 makes this Act totally 'ineffective' as well as completely destroying the Act. This Section postulates that if an offence committed under this Act is also an offence under any other Act, the offender shall be punished only under the other Act. Section 24(2) States: "Where any act or omission constitutes an offence punishable under this Act and also under any other Act, then the offender found guilty of such offence shall be liable to be punished under the other Act, and not under this Act."

Where is the need for this Section, totally destroying the purpose of the Act? We have the Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control Pollution) Act 1981, the Factories Act, the Forest Act, the Wildlife (Protection) Act, the Poisons Act, the Insecticides Act and a host of other pieces of legislation covering almost all aspects of environmental pollution. Then, where is the need for this Act, and that too for this Section, obliterating the entire Act itself? The Environment (Protection) Act, 1986 is only a 'Paper Tiger' without tooth and claws, enacted to pamper the feelings of the environmentalists.

### THE FOREST CONSERVATION ACT

In Chapter 14, we studied in detail about the role of the forest in India, the deteriorating conditions of the forest, the forest policy etc. We shall briefly study about the Forest Conservation Acts.

The general law relating to forest in British India was contained in the Indian Forest Act, 1878 and its amending Acts. The Forest Act of 1927 consolidated the pre-existing laws. The Forest Act of 1927 in its preamble declares that it places emphasis on regulation of transit of forest produce and the duty leviable on timber and other forest produce. This law had its origin in the old British colonial era when population was limited and the people were not aware of the environmental hazards for the future. The classification of forests such as 'Reserved Forests' and 'Protected Forests'; prohibition of cutting of trees from reserved forests; reservation of trees in protected forests and the restrictions imposed on the destruction of the forests, levy of penalties etc., in the Forest Act of 1927 *should not be construed* as an attempt towards protection of the environment. On a deeper scrutiny of the Acts, during the British period, we can find that they were after revenue and forest produce, and not the preservation of the ecosystem. The policy of reserving forests deprived the tribal people of the forest, of their age old rights and privileges. The British policy of *commercialised* forest supplying raw materials for the forest based industries turned the rural and tribal poor people into labourers. It is only after the attainment of independence and that too after the Stockholm conference, the need for preserving the forests for ecological balance was felt and actions were taken for the preservation of the forests.

The Forest Conservation Act of 1980 provided that 'Reserve Forests' shall not be made dereserved without the prior permission of the Central Government; and the notified forest land and forests (according to



The Forest Conservation Act of 1980 was amended in 1988 and it prohibited the assignment of forest land "by way of lease, or otherwise to any private person" or non-government body, for reforestation. Further the amendment prohibited clearance of any forest land of naturally grown trees for the purpose of re- afforestation. Further, the diversion of forests for 'non-forest' uses such as cultivation of tea, coffee, rubber, spices etc., has been totally prohibited. The amendment of the Act has gone against the interest of the poor and tribal people who used to grow fruits, medicinal plants etc. It is said that Forest Conservation Act is pro-industry and anti-poor.

### Review Questions

1. Indicate 'Tiwari Committee's' findings relating to law and environment.
2. Discuss about the provisions contained in The Water (Protection and Control of Pollution) Act, 1974.
3. Briefly analyse Air (Prevention and Control of Pollution) Act, 1981.
4. Where is the need for the Environment (Protection) Act, 1986? Comment on the provisions of this Act.
5. 'Forest Acts are anti-poor and pro-industry' — Do you agree?

### Write Short Notes on:

- a. Forty-Second Amendment to the Constitution
- b. Science and Technology and Judiciary
- c. The Forest Act of 1927
- d. Right to Clean Environment.