INTERNATIONAL TREATIES AND LAW OF ENVIRONMENT IN INDIA

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INTRODUCTION

What is the object or purpose of International Environmental Law, is it an ethical statement, deterrence or a socializing instrument? If it is an ethical statement, which many of the framework or agenda conventions seem to be, is it merely inspirational? If it is anticipated as deterrence, why are there not more international forums for dispute resolution, empowered to enforce agreements? If it is intended as a socialization method, is it working?[i] To address environmental issues that India and other countries face, it is essential and very important to commence action at all levels like global, regional, national, local, and community. It is not adequate to have international agreements and instruments on environmental issues and various problems but completion, implementation and enforcement of these policies and agreements to a large extent determine their impact and effectiveness.

In the last few decades, there has been an increasing concern and consciousness about the need to protect the environment, nationally and internationally. Under the structure of the Constitution of India, a number of Articles are enumerated in which environmental duties to preserve the natural resources of the country have been stated[ii] like Articles 48-A and 51-A(g). Additionally, the Constitution also provides procedures[iii] in Article 252 and 253 for adopting national legislations in regard to the needs of the States.[iv] The Union or Central Government of India, in pursuance of the Stockholm Declaration of 1972 and acting under Article 253, adopted the Water (Prevention and Control of Pollution) Act, 1974 and the Water (Prevention and Control of Pollution) Cess Act, 1977[v].

In this present paper, an effort has been made to momentarily outline the various Indian legislations and international treaties relating to the environment, which are mainly and more relevant to protect and improve the environment in India. The enforcement, scope and limit of these legislations has also been critically examined and evaluated in systematically manner.

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SCALE OF LAW OF ENVIRONMENT

The philosophy of Indian environmental law are resident in the judicial interpretation of laws and the Constitution and include several internationally recognized principles and theories, thereby providing some semblance of consistency between domestic and global environmental standards. The post-independence era saw a spate of legislation with the active involvement of the judiciary in the nineties. The Forty-Second Amendment to the Indian Constitution in 1976 introduced principles of environmental protection in an unambiguous manner into the Constitution through Articles[vi] 48A and 51A(g). The Stockholm conference is honoured by references in the Air Act and the Environment Act, a result of effective applications of Article 253 of the Constitution, fulfilling India's international[vii] obligations, as well.

Apart from the constitutional mandate to protect and improve the environmental conditions, there are a series[viii] of legislations are available on the subject but more relevant legislations for our purpose are the Forest (Conservation) Act, 1980; the Wildlife (Protection) Act, 1972; the Environment (Protection) Act, 1986; the Air (Prevention and Control of Pollution) Act, 1981; the National Environment Tribunal Act, 1995; the National Green Tribunal Act, 2010; the Biological Diversity Act, 2002 and the Hazardous Wastes (Management and Handling) Amendment Rules, 2003 and The Water (Prevention and Control of Pollution) Act of 1974 was brought about with the object to prevent, control, and abate water pollution. The Supreme Court of India have interpreted Article 32 and Fundamental Right to Life and Personal Liberty of Article 21 to include the right to clean and healthy pollution and pollution free air and water. In the case of *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*[ix], the Supreme Court of India based its five comprehensive interim orders on the judicial understanding that environmental rights were to be implied into the scope of Article 21 of the Constitution of India.

The relaxation of *locus standi*, in effect, fashioned a new form and figure of legal action, variously termed as Public Interest Litigation or PIL and Social Action Litigation.[x] This is more professional and efficient in dealing with environmental cases, for the reason that these cases are concerned with the rights of the community rather than the individual. The Supreme Court of India in recent years has been adopting a holistic approach towards environmental cases. This is habitually done through comprehensive orders that are issued from time to time, while Committees appointed by the Supreme Court of India monitor the ground situation and

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condition. The derivation of this tendency may be seen in cases such as Ratlam case[xi] and Olga Tellis case[xii].

At the International level, International law as a rule signifies the laws of Nations that States feel themselves bound to scrutinize or monitor. In straightforward understanding, international environmental law comprises those substantive procedural and institutional rules and regulations of international law which have as their principal objective the protection and guard of the natural environment like the Precautionary and Polluter Pays theory.

The modern focus on environment is not new; the need for protection and sustainable use of natural resources of natural environment is reflected in the constitutional, legislative and policy framework as also in the international commitments of the country. India has played a vital and important role in the international forum relating to environmental protection. It was only later than the UN Conference on the human environment at Stockholm in 1972 that a well-developed framework of environmental legislations came into continuation; that the Constitution of India was amended[xiii] to include the provisions relating to environmental protection. A new authority for environmental protection identified as National Council for Environmental Policy and Planning within the Department of Science and Technology was set up in 1972. This Council afterward evolved into a full-fledged Ministry of Environment and Forests (MEF) in 1998. The Constitution of India calls upon the State to protect and improve the environment and to safeguard the forests and wildlife of the India. It also imposes a duty on every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures[xiv].

Later than the Rio Conference in 1992 the Environmental Action Programme (EAP) was formulated in 1993 with the purpose of improving services and integrating environmental considerations with various development programmes in India. Agenda 21 which is an outcome of the Rio Conference was implemented in India at a much larger level. India has been very active in implementing all the objectives of Agenda 21 with the active and energetic participation of all stakeholders like the Government, international organizations, business, non-governmental organizations, and citizen groups. in view of the fact that, the Rio Conference, extensive hard work have been made by our Government to integrate environmental, economic and social objectives into decision-making through new policies and strategies for sustainable development. As a nation deeply committed to enhancing the quality of life of its people and actively occupied with the international combination towards

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sustainable development, the Summit provided India an opportunity to recommit itself to the developmental principles that have long guided the nation[xv]. These principles are entrenched in the planning procedure of the country and therefore the need for a distinct national strategy for sustainable development was not felt.

India also played a vital and major role in implementing the Millennium Development Goals adopted at the WSSD in Johannesburg in 2002. Sustainability concerns have become a fundamental component of the planning procedure. The Ninth[xvi] Five-Year Plan explicitly recognized the synergy between environment, health, growth and development. Even in the Tenth[xvii] Five-Year Plan the reconciliation of population growth and economic growth with environmental protection is perceived as one of the major objectives.

Precautionary Theory: The precautionary theory provides the application and function of international environmental law where there is scientific ambiguity and uncertainty. The precautionary approach began to appear in international legal instruments in the mid-1980s. This theory got official recognition in Principle 15 of the Rio Declaration, which provides that where there are threats of serious or irreversible damage, lack of full scientific. Beginning with *Vellore Citizens Welfare Forum v. Union of India*[xviii], the Supreme Court of India has unambiguously recognized the precautionary theory as a principle of Indian environmental law. More recently, in A.P. Pollution Control Board v. M.V. Nayudu[xix], the Supreme Court of India discussed the development of the precautionary theory or principle in Indian atmosphere.

Polluter Pays Theory: The polluter-pays theory is the requirement and obligation that the costs of pollution should be borne by the person who is responsible for causing pollution and its consequential expenses. The polluter pays theory in treaty law can be traced back to some of the first instruments establishing minimum rules on civil legal responsibility for damage resulting from hazardous actions and activities[xx]. According to Principle 16 of the 1992 Rio Declaration "National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and environment." The Supreme Court of India has come to maintain a position where it calculates environmental damages not on the basis of a claim put forward by either party, but through an examination and inspection of the situation by the Court, keeping in mind factors such as the preventive nature[xxi] of the award.

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BOUNDARIES OF LAW OF ENVIRONMENT IN INDIA

The modern corpus of environmental law in India suffers from a various disability. It is myopic in dream, sectoral in approach and a knee jerk feedback to environmental problems. The Environment (Protection) Act, 1986, for instance, designed as an overarching umbrella legislation to deal with every conceivable feature of environment has by and large remained a law regulating problems and issues of pollution. Lack of vision, in foreseeing environmental problems, not evolving appropriate policies and plans besides non-dynamic, reactive (rather than being, pro-active) legislative laws, in tackling the difficult and ever challenging environmental issues and problems[xxii] appear to be at the root of the activist stance of the courts of law.

It is not that the environment has never been an issue and problem in India; it is just that the internalization of pro-environment and pro-ecological behaviour is absence in our environmental laws. Quite a few environmental legislations do not have the support of a policy document. The wildlife (Protection) Act, 1972, The Forest (Conservation) Act, 1980; Water (Prevention and Control of Pollution) Act, 1974; The Water (Cess) Act, 1977 and Air (Prevention and Control of Pollution) Act, 1981, are only a few examples of such stand-alone documents.

The approach and method adopted by the pollution control bodies may be conveniently called 'Command and Control', where laws exhibit a precautionary rather than a proactive role. The command being the laying down of standards and pollution limits, while the control being the power to remove water or power supply of erring units, the imposition of penalties and fines, or even imprisonment. The boundaries leading to weak fulfillment of environmental laws in India are as follows discussed:

Frail Enforcement: Enforcement is frail and environment management degenerates into disaster management. Consequently the impact of non-existent or merely formal inspection on enforcement draws a very weak response from firms towards fulfillment. In the case of *M.C. Mehta v. Union of India*[xxiii], a closure of all mines within a 5 km radius of Badkal Lake and Surajkund (a tourist place) was ordered after a report submitted by NEERI on the pollution caused by mining. Mining activities had been going on without any consent stipulated under the Air Act. There was total violation of the Mines Act of 1952 and the Explosive Act. The

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judgment was delivered on a Public Interest Litigation filed by Mr. M. C. Mehta alleging that the Haryana State PCB had failed to enforce norms and policies.

Lack of Flexibility: The formulation of legislations or laws and standards is over-ambitious. In such a situation the levels of fulfillment would be low. Absolute or complete standards have to be adhered to. These standards are usually neither technology based nor performance based, nor are they related to the volume of pollution being generated. Thus even with severe enforcement, the environment quality may continue to deteriorate. Over-ambitious standards discourage firms from making investments in pollution abatement technologies.

***Weak Monitoring System*:** Lack of technically expert manpower leads to improper monitoring as scientific assessment of the level of pollution generated by firms becomes complicated. According to the EPA, the State PCBs are required to have a technically competent Board of Members, in the case of the Rajasthan PCB, out of 15 members, 11 were from the bureaucracy with 1 technical member. In Maharashtra, out of 13 members, 6 were from the bureaucracy with 2 technical. In contrast was the PCB of Goa that had 15 members, out of which 10 were technical and 3 from the bureaucracy. In the case mentioned above it was held in the case of M.C. Mehta (above mentioned) that Keeping Delhi clean is not an easy task, but then it is not an impossible one either. What is required in initiative, selfless zeal and dedication and professional pride, elements which are sadly lacking here?

Lack of Funds: Another most important constraint is the lack of funds. A study found that low level of funding is one of the significant factors behind weak monitoring. Due to lack of funds, the PCBs lack adequate infrastructure facilities and services like laboratories and monitoring equipment, required for the execution of their responsibilities. Also, it was held that, the Municipal Corporation of India is wholly negligent in the discharge of their duties under law. They are authorities entrusted with the effort of pollution control cannot be permitted to sit back with folded hands on the alleged reason that they have no financial or other means to control pollution and protect the environment. 35

Lack of Effectual Punitive Actions: As mentioned before, there is lack of an effectual punitive and preventive mechanism in case of non-compliance. The penalties that are imposed on the firms in case of non-compliance are extremely stumpy and irrespective of the extent of fulfillment and the quantity and quality of emissions. A defaulting firm, irrespective of the extent of pollution, faces a fine of only Rs. 10,000 or imprisonment up to three months, which is bailable. Also the problem of pendency of cases in the Court room compounds the trouble.

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With justice delayed, justice is denied. At Moreover in the southern State of Kerala, the villagers have been fighting a legal case[xxiv] against the pollution of Chaliyar River by a rayon factory for 35 years. In Rajasthan, only two convictions have been obtained despite nearly 7,000 cases filed in Court against air and water polluters. Scarce inspectors, corrupt officials and lenient Courts aid the procedure of non-compliance.

ENVIRONMENT AND COURTS

In the case of *A.P. Pollution Control Board v. M.V. Nayudu*[xxv], the Supreme Court of India recognized and referred to the need for establishing Environmental Courts which would have the benefit of expert advice from environmental scientists/technically qualified persons, as part of the judicial procedure, after a sophisticated discussion of the views of jurists in various countries. Also, in M.C. Mehta v. Union of India[xxvi], where the Supreme Court of India held that in as much as environment cases involve assessment of scientific data, it was desirable to set up environment courts on a regional basis with a professional Judge and two experts, keeping in view the expertise required for such adjudication. Another judgment was *Indian Council for Enviro-Legal Action v. Union of India*[xxvii], in which the Supreme Court of India observed in well manner that Environmental Courts having civil and criminal jurisdiction must be established to deal with the environmental issues in a speedy manner.

In *Kanpur Tanneries or Ganga Pollution case*[xxviii], is among the most important water pollution case in India. It discusses the various legal provisions and the legal duties of municipal bodies and Pollution Control Boards. In this case, alarming details were about the extent of pollution in the river Ganga due to the inflow of sewage and waste matter from Kanpur, the Supreme Court came down heavily on the Municipality. It emphasized that it is the Nagar Mahapalika of Kanpur that has to bear the most important accountability for the pollution of the river near Kanpur city.

In the case of *Attakoya Thangal v. Union of India*[xxix], lack of sufficient ground water resources, drinkable water and huge scale withdrawals with electric or mechanical pumps which can reduce the water sources, causing seepage or imposition of saline water from the surrounding Arabian Sea was the reason for the Petitioner to approach the Supreme Court of India. The local administration had initiated a plan to augment water supply, by digging wells and by drawing water from those existing wells to meet increasing needs. The Petitioners, sought

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restraint of the administration from implementing the scheme, by the issuance of suitable writs or directions.

The Supreme Court of India held that 'The right to life is much more than the right to animal existence and its attributes are many fold, as life itself. A prioritization of human needs and a new value system has been recognized in these areas. The right to sweet and clean water and the right to free and natural air is attributes of the right to life for these are the basic elements which sustain life itself.'

A position of total lack of interest of the Government in the city of Cuttack, which had led to a very acute water pollution problem, was dealt by the Supreme Court in the case of *M.C. Mehta v. State of Orissa*[xxx]. The city was under the grip of a severe problem of water pollution ranging from sewage water clogging, direct inflow of sewage into the river to non-existence of a sewage treatment plant, thereby contaminating water and resulting in various types of water borne diseases. The Supreme Court of India held that the city of Cuttack, with its historic heritage, was in the centre a gigantic water pollution crisis on account of the inaction of the State in setting up of a waste treatment plant causing serious health and sanitation problems. After going into the constitutional provisions and the recommendations of the State Pollution Control Board which had made stark revelations about the conditions of drinking water and health in the city, the Supreme Court directed the State to immediately take necessary steps to prevent and control water.

In *Almitra H. Patel v. Union of India*[xxxi], the Supreme Court of India reiterated the observations made in *Wadehra's case*[xxxii]: Historic and famous city of Delhi, the Capital of India, is one of the most polluted cities in the world. The authorities and Government is responsible for pollution control and environment protection has not been able to provide natural clean and healthy environment to the residents of Delhi. The ambient air is so much polluted that it is difficult to breathe for a man. More and more persons are suffering from respiratory diseases and throat infections. Yamuna River, the main source of drinking water supply is the free dumping place for untreated sewerage and industrial waste matter. Apart from air and water pollution, the city is almost an open dustbin. Garbage strewn all over Delhi is a common sight. The Supreme Court directed the authorities to take immediate necessary steps to control pollution and protect the environment.

'Sustainable Development' means development that meets the needs of the present without compromising the ability or skill of the future generations to meet their own needs or desires.

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The Supreme Court in *Vellore Citizens Welfare Forum v. Union of India*[xxxiii], elaborately discussed the theory of 'sustainable development' which has been accepted as part of the law of the land in India. The precautionary principle and the polluter pays principle are fundamental features of sustainable development. The 'precautionary principle' makes it compulsory[xxxiv] for the State Government to anticipate prevent and attack the causes of environment degradation. The Supreme Court of India observed thus: "We have no hesitation holding that in order to protect the two lakes (Badhkal and Suraj Kund) from environmental degradation, it is necessary to limit the construction activity in the close vicinity of the lakes."

The 'polluter pays principle' demands that the financial costs of preventing or remedying harm caused by pollution should lie with the undertakings which cause pollution. The polluter pays principle has been held to be a sound principle and as interpreted[xxxv] by the Supreme Court of India, it means that the absolute liability for damage to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environment deprivation. Remediation of the injured environment is part of the process of sustainable development and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the spoiled ecological system.

The above mentioned study of these cases clearly reveals that the Supreme Court of India has played a very important role for protection and improvement of environmental conditions in India. The jurisdiction of the Court has been expanded and prolonged by way of Public Interest Litigation. The creative and inventive role of judiciary has been significant and deserving of praise.

CONCLUSION

The main challenge for India in implementing the international commitments is to struggle poverty and also development on sustainable basis. In June 1972, Mrs. Indira Gandhi, the then Prime Minister of India, emphasized at the first UN-sponsored Conference on environment that poverty is the most horrible form of pollution and the most urgent issue facing the international community. Since then, India has been reminding the industrialized world that so long as poverty remains the main stumbling block in its road to development, its hard work to defend the environment and protect resources would not bear the essential fruits. For India it is true that, as well as for other nations of the South, removal of poverty and environmental protection

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are two sides of the same coin. Throughout the past decade, India has ratified many of the international conventions and treaties related to environment protection and have taken a number of initiatives to execute them at the domestic level. Even though India has been very energetic in all the international forums relating to environmental protection and has signed almost all the multilateral agreements relating to the environment except a very few, still a lot needs to be done at the domestic level for their implementation. The actual challenge before India is how to conserve its environment, meet the basic needs of its growing population on an overburdened land, accomplish the necessary energy necessities of the people and yet leave a heritage for future generations so that they may also enjoy the gift of nature which the present generation is uncontrollably exploiting. Further, as directed by the Supreme Court of India, Environment studies shall be made a compulsory subject at school and college levels in graded system so that there should be general growth of awareness. Finally, protection of the environment and keeping ecological balance unaffected is a task which not only the government but also every individual, association and corporation must undertake. It is a social obligation and fundamental duty enshrined in Article 51 A (g) of the Constitution of India.

ENDNOTES

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[ii] Nature Lovers Movement v. State of Kerala, AIR 2000 Ker 131; Indian Handicrafts Emporium v. Union of India, AIR 2003 SC 3240.

[iii] Bombay Dyeing and Mfg. Co. Ltd. v. Bombay Environmental Action Group and Ors., AIR 2006 SC 1489; Narmada Bachao Andolan v. Union of India and Others, AIR 2000 SC 3751.

[iv] The State of West Bengal v. Kesoram Industries Ltd. and Ors., (2004) 10 SCC 201; State of Punjab v. Devans Modern Brewaries Ltd. and Anr., (2004) 11 SCC 26.
[v] Madireddy Padma Rambabu v. District Forest Officer Kakinada E.G. District and Ors., AIR 2002 AP 256.

[vi] Article 48 A: 'The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.' Article 51 A (g): 'to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.'
[vii] Intellectual Forum v. State of A.P., AIR 2006 SC 1350.

[viii] Indian Forest Act, 1927; the Factories Act, 1948 and the Atomic Energy Act, 1962.
[ix] AIR 1985 SC 652.
[x] Upendra Baxi, 'Taking suffering seriously: Social Action Litigation and the Supreme Court', International Commission of Jurists Review 37-49 (1982).

[xi] Municipal Council, Ratlam v. Vardhichand , AIR 1980 SC 1622.

[xii] Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180.
[xiii] Vide 42nd amendment in the Constitution of India.

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[xiv] Article 48 A and Article 51 A (g) of the Constitution of India.
[xv] Annual Report of MEF (2002-2003).
[xvi] Annual Report of MEF (1997-2002).
[xvii] Annual Report of MEF (2002-2007).

[xviii] AIR 1996 SC 2715.
[xix] AIR 1999 SC 812.
[xx] Indian Council for Enviro-Legal Action v. Union of India, AIR 1996 SC 1446.

[xxi] Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715.
[xxii] Evaluation of Environmental Laws and Proposals for Reforms- A Report, prepared by the Centre for Environmental Law Education Research and Advocacy Research Team (Mumbai (1998).
[xxiii] AIR 1996 SC 1977.
[xxiv] The Member-Secretary, Kerala State Board for Prevention & Control of Water Pollution, Kawadiar, Trivandrum v. The Gwalior Rayon Silk Manufacturing (Weaving) Company Ltd., Kozhikode and Ors., AIR 1986 Ker 256.
[xxv] 1999 (2) SCC 718.
[xxvi] 1986 (2) SCC 176.

[xxvii] 1996 (3) SCC 212.
[xxviii] M.C. Mehta v. Union of India, AIR 1988 SC 1037.

[xxix] 1990 (1) KLT 580.
[xxx] AIR 1992 Ori 225.
[xxxi] AIR 2000 SC 1256.

[xxxii] Dr. B.L Wadehra v. Union of India, AIR 1996 SC 2969.

[xxxiii] AIR 1996 SC 2715.

[xxxiv] M.C. Mehta v. Union of India, (1997) 1 Camp L.J. 199 (SC).

[xxxv] Indian Council for Enviro-Legal Action v. Union of India, AIR 1996 SC 1446.

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