

Ecological Destruction vis-à-vis Environmental Jurisprudence in India: A Survey

Kirti Singh Chauhan and Surender Singh Chauhan*

Jaipur National University, Jagatpura, Jaipur, Rajasthan, India
**Indira Gandhi Centre for HEEPS, Department of Environmental Science,*
University of Rajasthan, Jaipur, Rajasthan, India
E-mail: sschauhan_2006@rediffmail.com

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ABSTRACT Judicial awakening and activism for protection of the environment in India began formally after the 1972 Stockholm Conference on Human Environment. The term judicial activism denotes a process where at one end there are the logically principled rules in the hands of court and at other end there are demands, desires for expectations of society pressing it to accommodate with the framework of law. This process of accommodation by court is called the civilization of law and in term is known as activism. Environmental provisions are introduced in the Constitution of India by its 42nd amendment in 1974 under Article 48 (A) and 51 (A) (g) as a “fundamental duty” for every state and citizen of India to protect and improve the natural environment. Several laws pertaining to the protection of the environment were enacted in India prior to it. There were a number of public laws existed which had environmental overtones. The Indian Penal Code, 1860 and the Code of Criminal Procedure, 1898 (amended in 1973) dealing with “public nuisance” assume special significance in this regard. The Environmental Protection Act, (EPA) of 1986 against industrial pollution and the Conservation of Forest and Natural Ecosystems Act of 1994 to stop deforestation and habitat destruction are, among others, good pieces of legislation for the protection of the environment in India. Public Interest Litigation (PIL) to prevent environmental degradation has been increasing in India and the judiciary has come to rescue the people on a number of occasions. There are several historic judicial decisions serving both man and environment in India.

INTRODUCTION

Society is shocked over a single case of homicide but when millions of people are suffering from various types of environmental problems and face the dangers of collective genocide, reactions are very lukewarm. Pre independence, in British India, several laws were enacted which had environmental provisions. These are the Indian Penal Code (1860) and the Code of Criminal Procedure (1898) to deal with the fouling of air and water under the title “Public Nuisance”, the Police Act (1861) for prevention of noise, the Poison Act (1919) for pesticide control and the Indian Forest Act (1927) for forest and wildlife management.

Laws on forests, mines and minerals, water and other common natural resources of mankind were enacted more for their appropriation, privatization and utilization rather than for their protection (Singh 1988). These laws remained unresponsive to fulfill the needs and to solve the problems of the society. Urbanization, industrialization and population have enhanced the problem of environment degradation.

Ultimately it was the call of hour in post independence era to enact certain laws to meet the drastic problems endangering the human life. Unfortunately, the trend continued in India even after independence. As a result, vast sections of the Indian population, particularly in the rural areas, were deprived of their legitimate rights of the free and common local resources which nature had provided for their livelihood.

Here, it is not out of place to mention an inventory of legislature enactments made in India to achieve the objectives for the protection and conservation of environment. The need to mention an inventory is to depict the legislated trends in India which are as follows-

LIST OF INDIAN LAWS WITH ENVIRONMENTAL PROVISIONS (CENTRAL AND STATE ENACTMENTS)

1. For Protecting Water Bodies

- (i). The Orissa River (Pollution and Prevention) Act, 1905
- (ii). The River Board Act, 1948

- (iii). The Maharashtra (Prevention of Water Pollution) Act, 1969
- (iv). The Merchant Shipping Act, 1970
- (v). The Water (Prevention and Control of Pollution) Act, 1974
- (vi). The Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Marine Zone, Act, 1976
- (vii). The Water (Prevention and Control of Pollution) Cess Act, 1977
- (viii). The Water (Prevention and Control of Pollution) Cess (Amendment) Bill, 1991 (N.B. The Cess Act relates to special taxation on water use)
- (ix). The Water (Prevention and Control of Pollution) Cess (Amendment) Act, 2003
- (vii) Bombay Wild Animals and Wild Birds Protection Act, 1951
- (viii) The Cruelty Against Animals Act, 1962
- (ix) The Wildlife (Protection) Act, 1972
- (x) The Forest (Conservation) Act, 1980
- (xi) Kerala Preservation of Trees Act, 1986
- (xii) The Conservation of Forest and Natural Ecosystems Act, 1994
- (xiii) The Wildlife (Protection) Amendment Act, 2002
- (xiv) The Biological Diversity Act, 2002
- (xv) The Biological Diversity Rules, 2004
- (xvi) The Forest (Conservation) Rules, 2005

2. For Protecting the Atmosphere

- (i) The Bengal Smoke Nuisance Act, 1912
- (ii) The Bombay Smoke Nuisance Act, 1912
- (iii) The Indian Boilers Act, 1923
- (iv) The Mines and Minerals (Regulation and Development) Act, 1947
- (v) The Factories Act, 1948
- (vi) The Industries (Development and Regulation) Act, 1951
- (vii) The Gujarat Smoke Nuisance Act, 1963
- (viii) The Air (Prevention and Control of Pollution) Act, 1981

3. Controlling the Hazards of Noise in Society

- (i) The Madhya Pradesh Control of Music & Noise Act, 1951
- (ii) The State of Bihar Control of the Use of Loudspeakers Act, 1955
- (iii) The Rajasthan Noise Control Act, 1963
- (iv) Air Act, 1981
- (v) The Environmental (Protection) Act, 1986
- (vi) The Environmental (Protection) Second Amendment Rules, 2006

4. Protection of Forest and Wildlife of India

- (i) The Elephant Preservation Act, 1879
- (ii) The Indian Fisheries Act, 1897
- (iii) Wild Birds and Wild Animals Protection Act, 1912
- (iv) The Indian Forest Act, 1927
- (v) Bengal Rhinoceros Act, 1932
- (vi) Haily National Park Act, 1936

5. Preventing Radiation Hazards

- (i) The Atomic Energy Act, 1962
- (ii) The Radiation (Protection) Rules, 1971

6. Preventing the Spread of Pesticides in the Human Environment

- (i) The Mysore Destructive Insects and Pests Act, 1951
- (ii) The Andhra Pradesh Agricultural Pests and Disease Act, 1954
- (iii) The Poison Act, 1919
- (iv) The Assam Agricultural Pests and Disease Act, 1964
- (v) The U.P. Agricultural Disease and Pests Act, 1954
- (vi) The Drug and Cosmetic Control Act, 1951
- (vii) The Kerala Agricultural Pests and Disease Act, 1958
- (viii) The Seeds Act, 1965
- (ix) The Insecticide Act, 1968

7. Protection of National Monuments from Environmental Degradation

- (i) The Ancient Monuments and Archaeological Sites and Remains Act, 1958
- (ii) Antiquities and Art Treasures Act, 1972
- (iii) The Ancient Monuments Preservation Act, 1974

8. For Food Preservation

- (i) The Prevention of Food Adulteration Act, 1954

9. For Sustainable Land Use and Urban Development

- (i) The Bihar Wastelands (Reclamation,

- (ii) Cultivation and Improvement) Act, 1946
- (ii) The Andhra Pradesh Land Improvement Schemes Act, 1949
- (iii) The Acquisition of Land for Food Control and Prevention of Erosion Act, 1955
- (iv) The Delhi Restriction of Uses of Land Act, 1964
- (v) The Urban Land Ceiling and (Regulation) Act, 1976

10. Management of Hazardous Substances

- (i) The Hazardous Wastes (Management and Handling) Rules, 1989
- (ii) The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989
- (iii) Manufacture, Use, Import, Export and Storage of Hazardous Microorganisms or Genetically Engineered Organisms and Cells Rules, 1989

11. For Protection from Industrial Hazards

- (i) The Environment (Protection) Act, 1986

12. For Protection from Problems Created by Automobile Transport

- (i) The Motor Vehicle Act, 1988
 - (ii) The Motor Vehicle Rules, 1989
- (Source: Naresh Kumar, *Environmental Protection Laws in India*, 2006).

MARCH AGAINST ENVIRONMENTAL DEGRADATION IN INDIA

The United Nations Conference on Human Environment held in Stockholm, Sweden in 1972 was instrumental in arousing global awareness of the deteriorating human environment. Several heads of nations assembled there and India was represented by the late Prime Minister, Mrs. Indira Gandhi, who in India initiated several measures and enacted laws for environmental protection. She also made constitutional obligations on the people of India to safeguard and protect the environment of their country.

CONSTITUTIONAL JURISPRUDENCE OF ENVIRONMENTAL PROTECTION IN INDIA

Environmental Provisions are introduced into the Indian Constitution by 42nd Amendment Act,

1974. Article 48A and 51A(g) enjoin upon the State and the citizens of India to “Protect” and “improve” the environment and to “safeguard” the forests, lakes, rivers, wildlife and hills of the country. Article 51A(g) makes it a “Fundamental duty” of every citizen to protect the environment.

Article 51A(g)

Part IVA of fundamental duties provides under 51A(g) “that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures”. India is the first country in the world to make the control and prevention of environmental pollution a constitutional obligation (Chauhan 2001).

Article 47

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. The improvement of public health may be related to the improvement of the environment.

Article 48A

The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. To make it effective, entries 17(A) and 17 (B) (protection of wild animals and birds) have been added to the concurrent list. Forests, wild animals and birds play an important role in the prevention and control of environmental pollution and the maintenance of ecological balance.

Article 21: The Right to Live in a Clean and Peaceful Environment

The honorable Supreme Court of India, while laying down the scope of Article 21 of the Constitution of India, held that the fundamental right of protection of life and personal liberty envisaged under this Article also embraces not only physical existence of life but also quality of life.

Article 21 of the Constitution says that “no person shall be deprived of his life or personal liberty except according to the procedure by law”.

It also laid down in *Chhettriya Mukti Sangharsh Samiti (Regional Liberation Front) vs. State of Andhra Pradesh* (1990), 4 Supreme Court Cases 499, and *Subhash Kumar vs. State of Bihar* (1991), 1 Supreme Court Cases 598, the right to unpolluted environment and preservation. Later the Supreme Court widened the right to life in order to include the right to live with human dignity and decency in a clean and peaceful environment.

Article 32

Article 32 of the Constitution of India speaks that a citizen has the right to have clean air and water and, if anything endangers or impairs the quality of air and water in derogation of laws, a citizen has the right to have a recourse to law for removing that pollution.

The judiciary in India began to recognize the right to clean environment as part and parcel of fundamental right. "The right to clean water and the right to clean air are attributes of the right to life, because these are the basic elements which sustain life itself." A restriction on the licensed mining operations was viewed as the price to be paid for protection of the right of the people to live in a healthy environment. These are a series of landmark cases recognizing the right to life (Diwan 1990).

In the first, *M.C. Mehta vs. Union of India case* (AIR 1987, SC 965), in the matters of Shriram Food and Fertilizers Industries Oleum Gas Leakage Case, the Court observed that leakage of "toxic gas" from a factory posed seminal questions on the scope of the right to live. In the second Mehta case (AIR 1987, SC 982), the Court created an absolute liability on the polluter to pay compensation to victims, basing this on the right to constitutional remedies against violation of fundamental rights. The Court observed that "where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous and inherently dangerous activity the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability".

In the third Mehta case, (AIR 1988, SC 1037), concern for life, health and ecology weighed

against unemployment and loss of revenue when the Court, in the matter of the Ganga River Pollution Case, directed the closure of the polluting industries (tanneries) in Kanpur, if they did not set up primary treatment plants. The Court observed that "A tannery cannot be allowed to continue to be in existence just because it claims that it has no funds to install a primary treatment plant." In the last Mehta case in the series, the demand by a public-spirited person to enforce statutory duties under specific laws was considered to be the one for enforcement of fundamental rights because the matter related to protecting the lives of the people (Leelakrishnan 1988).

National Committee on Environment (1980)

The first national committee to consider the issues related to environmental legislation was appointed in 1980. The Committee identified five areas of environmental concern (1) Land and Water Management; (2) Natural Living Resources; (3) Environmental Pollution; (4) Human Settlements; (5) Environmental Education and Awareness. It enlisted about two hundred laws pertaining to environmental protection.

INTERPRETATION OF SOME INDIAN LAWS

(a) Indian Penal Code (IPC), 1860

In the IPC "public nuisance" is defined as any such activities which degrade or spoil the surroundings and make normal life problematic for the people. It is made punishable under IPC Section 290, Sections 269 and 270 punish the offender for his negligence by which any infectious diseases dangerous to life may spread. The fouling of the water in a public spring or reservoir so that it becomes unfit for use is a public nuisance and is punishable. Section 278 of the IPC provides that whoever voluntarily vitiates (pollutes) the atmosphere at any place so as to make it noxious to the health of people in the area is a public nuisance and is punishable. Using open land as a latrine and thereby vitiating the atmosphere may also amount to a public nuisance. This should also be applicable to the throwing of domestic waste on public or private land or on the streets. Sections 284, 285 and 286 of the IPC deal with poisonous substances and explosive

matter which may endanger the lives of people living in the area. Under Section 268 the IPC recognizes excessive noise as a public nuisance and a crime (Shrimali 1988).

(b) The Factories Act, 1948

The Factories Act, 1948, in India has imposed the liability to prevent pollution on the “occupier” of the factories. Under Section 12 of the Factories Act, 1948, the occupier is duty-bound to follow effective arrangements in every factory for the treatment of waste and effluents arising from the manufacturing process carried on therein, so as to render them innocuous and for their self-disposal. If the occupier fails in his duty, he attracts the penalties imposed thereon.

Under Section 92 of the Factories Act, 1948, the occupier and the manager shall each be guilty of any offence, punishable with imprisonment for a term which may extend to two years or with a fine which may extend to Rs. 1,00,000.00, or with both, and if the contravention continues after conviction, with a further fine which may extend to Rs. 1,000.00 for each day that contravention continues.

(c) The Wildlife Protection Act, 1972, and Amendment Act, 2002

The Wildlife Protection Act, 1972 and the Amendment of 2002 have proved very effective in wildlife conservation in India. The penalty under Section 51 of the Act is compulsory imprisonment for one year which could extend to seven years together with including a minimum fine of Rs. 5,000.00 for hunting and trading in animal skins, bones, horns and tusks.

(d) The Environmental Protection Act, 1986; and Amendment Act, 1991

The EPA, 1986 was enacted to cover wider areas of environmental degradation and protection. The word “environment” includes the living as well as the non-living components of the ecosystem – air, water, soil, land, buildings, human beings, plants, animals and micro-organisms. An environmental pollutant is any solid, liquid or gaseous substance injurious to the environment. Section 3(2) (vi) and (vii) of the EPA places on Central Government responsibility for laying down procedures and safeguards for

the handling of environmentally hazardous substance, both chemical and biological (microorganisms), and for the prevention of accidents. The EPA also notified Ambient Air Quality Standards in respect of noise for different categories of areas, automobiles, domestic appliances and construction equipment. The Act has twenty-six sections divided into four chapters and empowers Central Government to seize any equipment from the polluting industries and to stop the supply of essential services like water and electricity to them. It raises penalties against violations and lays more emphasis on monetary sanctions than on imprisonment. All complaints regarding pollution are to be lodged with an authority who is to act within sixty days, failing which one can move to court. The scheme of labeling of environmentally friendly products as “Ecomark” for household and other consumer products under the EPA was notified on 21 February 1991.

(e) The Motor Vehicle Act, 1988

The vehicular pollution control law in India is enacted by the Motor Vehicle Act, 1988. It penalizes users for non-compliance. Standards for vehicle emissions are fixed and a penalty is imposed for non-compliance. The Indian Standard Institution (ISI) has a fixed emission standard for petrol vehicles (Standard IS-9057-1979). For carbon monoxide it should not exceed 3% by volume of exhaust gas during idling. Vehicles which have complete five years or 80,000 km distance shall emit CO not exceeding 5% by volume. The ISI has also fixed smoke emission levels for diesel vehicles (Standard IS-8118-1976). Smoke density shall not exceed 65 Hartridge smoke units in urban areas. The policy of “polluters must pay” continues. But the law should also force automobile manufactures to design and produce vehicles that can meet emission standards for a minimum of five years or up to 50,000 km. The Motor Vehicle Act, 1988 also punishes owners for poor maintenance of their vehicles, which causes greater emissions.

(f) The Hazardous Wastes and Chemicals (Management and Handling) Rules, 1989

These rules were notified under the Environmental Protection Act, 1986. The rules provide control for the generation, collection,

treatment, transport, storage and disposal of hazardous wastes. The import of hazardous wastes from other countries purely for dumping and disposal in India is not permitted. Non-compliance or contradiction of any section of these rules is punishable under the EPA, 1986.

Guidelines on the siting of hazardous wastes treatment and disposal facilities have been provided to industries. Eight extremely hazardous substance – hydrogen cyanide, carbon disulphide, thionyl chloride, phosgene, ammonia, chlorine, oleum and hydrogen fluoride – have been identified and their use highly restricted in India. A notification restricting the use of benzidine and benzidine-based dyes and banning the use of pentachlorophenol (PCP), which has severe adverse environmental effects, has been issued in India. With a view to providing immediate relief to the victims of accidents arising from the handling of hazardous substance, the Public Liability Insurance Act has been made effective. A set of rules on the transportation of hazardous chemicals by road has been notified under the Motor Vehicle Rules, 1989.

(g) The Conservation of Forests and Natural Ecosystems Act of India, 1994

The sixty-seven year-old Indian Forest Act of 1927 has been replaced by the Conservation of Forests and Natural Ecosystems Act, 1994. At the heart of the proposal is the concept of community management of the forests. The Act proposes to create new categories of forests “village forests”, which would be virtually handed over the village communities for management and maintenance with rights to the forest produce. For the first time the concept of “biodiversity conservation” is being introduced into the Indian Forest Protection Act. The new law will also permit the State Government to take over “village forests” or even ancient “sacred groves” if they form part of the delicate ecosystem” where the biodiversity is at risk of being eroded.

There is provision for stiffer penalties for smugglers and poachers, including powers to confiscate vehicles used by them.

(h) The Biological Diversity Act of India, 2002

Biodiversity encompasses the variety of all life on earth. India is one of the 12-mega diverse countries of the world. With only 2.5% of the land

area, India already accounts for 7.8% of the global recorded species. India is also rich in traditional and indigenous knowledge, both coded and informal. India is a party to the Convention on Biological Diversity (1992). Recognizing the sovereign rights of States to use their own biological resources, the Convention expects the parties to facilitate access to genetic resources by other parties subject to national legislation and no mutually agreed upon terms (Article 3 and 15 of CBD). Article 8(j) of the Convention on Biological Diversity recognizes contributions of local and indigenous communities to the conservation and sustainable utilization of biological resources through traditional knowledge, practices and innovations and provides for equitable sharing of benefits with such people arising from the utilization of their knowledge, practices and innovations. Biodiversity is a multi-disciplinary subject involving diverse activities and actions. The stakeholders in biological diversity include the Central Government, State Governments, institutions of local self-governmental organizations, industry, etc. One of the major challenges before India lies in adopting an instrument, which helps realize the objectives of equitable sharing of benefits enshrined in the Convention on Biological Diversity.

After an extensive and intensive consultation process involving the stakeholders, the Central Government has brought Biological Diversity Act, 2002 with the following salient features:- i. to regulate access to biological resources of the country with the purpose of securing equitable share in benefits arising out of the use of biological resources; and associated knowledge relating to biological resources; ii. To conserve and sustainable use biological diversity; iii. To respect and protect knowledge of local communities related to biodiversity; iv. to secure sharing of benefits with local people as conservers of biological resources and holders of knowledge and information relating to the use of biological resources; v. conservation and development of areas of importance from the standpoint of biological diversity by declaring them as biological diversity heritage sites; vi. protection and rehabilitation of threatened species; vii. involvement of institutions of state governments in the broad scheme of the implementation of the Biological Diversity Act through constitution of committees. This act makes it mandatory that National Biodiversity Authority (established under

this act) will deal with all the cases of access by foreigners and its approval will be required before obtaining any intellectual property rights on an invention based on a biological resource from India or on its traditional knowledge. NBA enjoys the powers of a civil court and flouting the law could lead to fines and imprisonment (Chauhan 2004).

JUDICIARY: A CUSTODIAN OF CLEAN ENVIRONMENT

The Judiciary in India has come out as the guardian and custodian of the Indian Environment. It has played a significant role from time to time in saving the ecosystems of India from destruction unleashed by short-sighted developmental policies of the Government of India. Several environmentally-conscious lawyers, citizens, environmental groups and non-government organizations have risen to the occasion and approached the judiciary in the interests of the public. In the present setup, judicial access to environmental jurisprudence has acquired a comprehensive scope in various dimensions. So it is hardly possible by sketch almost all the decided cases of the apex court. For the purpose of present intensive study few turning cases are to be discussed here.

(a) Protection of Doon Valley in the Himalayas: A Milestone

The ecosystem of Doon Valley in the Mussoorie Hills of Himalaya was being destroyed by illegal and unauthorized mining activities for dolomite. In *Rural Litigation and Entitlement Kendra vs. State of Uttar Pradesh* (AIR 1987, SC 359) an order was passed by the Supreme Court stopping all fresh quarries. Certain mines were also ordered to be closed. The Court observed that: "We are not oblivious to the fact that natural resources have got to be tapped for the purpose of social development but one cannot forget at the same time that tapping of resources has to be done with requisite attention and care, so that ecology and environment may not be affected in any serious way, there may not be depletion of water resources, and long-term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation." It was the milestone decision given by Supreme

Court for environment conservation and protection.

(b) Protection of Sariska Tiger Reserve in the Aravalli Hills, 1993

The internationally acclaimed Tiger Reserve in the Aravalli Hills ecosystem of India was being destroyed by ambitious mining activities for recovering marble by the Government of Rajasthan. The Supreme Court of India in *Tarun Bharat Sangh (NGO) vs. Union of India* (AIR, 1992, SC 514) ordered the closure of all the four hundred marble mines around the Sariska Tiger Reserve which threatened wildlife, in accordance with the provisions of the Forest (Conservation) Act, 1980.

(c) Protection of the Taj Mahal

The Taj Mahal in Agra – the ancient monument of the 16th century AD and one of the seven wonders of the world – was threatened with destruction by heavy sulphur dioxide emissions and acid rain emanating from the nearby Mathura Oil Refinery. The Supreme Court Order (1995) placed strictures on the refinery authorities to reduce sulphur dioxide emissions to within permissible limits, or to face closure.

(d) Reducing the Hazards of Chemical Industries

In an important case of *Sriram Foods and Fertilizers Industries (M.C. Mehta vs. Union of India – AIR, 1987, SC 965)*, the problem was that a large number of hazardous products in populated areas were posing a risk to the community at large. The Supreme Court of India observed: "We cannot possibly adopt a policy of not having chemicals or other hazardous industries merely because they pose a hazard or risk to the community. If such a policy was adopted, it would mean the end of progress and development..... We can only hope to reduce the element of hazard or risk to the community by taking all necessary steps for locating such industries in a manner which would pose least risk or danger to the community and by maximizing safety requirements in such industries."

(e) Preventing the Pollution of the River Ganga and the River Yamuna

The River Ganga and the River Yamuna of

North India remain badly polluted by industrial effluents. The Supreme Court Order (1995), under the provisions of the EPA, 1986, asked for the removal of the polluting industries settled on the bank of the River Ganga in Kanpur and Hooghly in Calcutta, and those on the bank of the River Yamuna in Delhi.

Earlier in the *M.C. Mehta vs. Union of India* Ganga pollution case (AIR 1988, SC 1115), the court had observed that the pollution of rivers was a public nuisance and issued specific directions to all the municipal corporations of India not to drain untreated raw sewage into river. In yet another judgement (AIR 1988, SC 1037), the Supreme Court directed all those polluting industries to stop and close down, particularly tanneries in Kanpur which were discharging their effluents into the River Ganga.

(f) Protection of Silent Valley Biodiversity in the Western Ghats

Silent Valley – the seat of rich biodiversity in the Western Ghats of India – was threatened with destruction in the 1970s because of the construction of a dam for hydropower generation by the Government of Kerala. Upon the plea of Kerala Sastra Sahitya Parishad (KSSP), an NGO and World Conservation body, the judiciary in Kerala came to the rescue of the fragile ecosystem (Prasad, 1984). The construction of the dam was immediately stopped. If it had not been, the richest biodiversity in the world, after Amazonia, would have been completely destroyed.

(g) Doctrine of Legitimate Expectancy

Legitimate expectancy should not beyond the policy and should be preventive in nature and the similar expectancy rests with the environmental laws. The view gains strength in *PTR Exports (Madras) Pvt. Ltd. vs. Union of India* (AIR 1966 SC, 3461). The court narrated that the decision maker has the choice in the balancing of the pros and cons relevant to the change in policy. The choice of policy rests with the decision maker and not with the court. As held in the *PC limited Vs. Union of India* (AIR 1990, SC 1801), the legitimate substantive expectation merely permits the court to find out if the change in the policy which was the cause for deflating the legitimate expectation was irrational or perverse or one which no reasonable

person could have made. In the present case the decision of local authority in industrial zone, can never be said to be irrational or perverse. In fact, it is reasonable, proper and warranted by constitutional and statutory policy of promoting public health along with preventing pollution and health hazards.

PUBLIC INTEREST LITIGATION (PIL): AN INSTRUMENT OF ENVIRONMENTAL PROTECTION IN INDIA

Public interest litigation and environmental jurisprudence has emerged as a growing mechanism for environmental protection in India and the leading figure has been the eminent lawyer, Mr. M.C.Mehta, the winner of the UNEP 500 award (Baxi 1979). Most of the cases discussed above arose in the form of PIL initiated by a public-spirited citizen or by public interest environmental groups and NGOs rather than by the affected party. In India, class action against “public nuisance” can be brought under Section 91 of the Code of Civil Procedure and Section 133 of the Code of Criminal Procedure. Of late, the courts have found Section 133 of the Code of Criminal Procedure a useful weapon for the protection of the environment. While a single resident or a group of residents in a locality have been permitted to move under it, a reading of Section 133 of the Code of the Criminal Procedure shows that the District Magistrate can take action after appraising himself of the situation, either on police report or on receipt of any other information. Invoking the provision, courts in India have asked for affirmative action. Municipalities have been directed to provide basic amenities for a healthy life and any factors causing nuisance in residential localities have been ordered to be wound up (Chauhan 1998).

COMPULSORY ENVIRONMENTAL EDUCATION IN THE SCHOOLS AND COLLEGES OF INDIA: A JUDICIAL DECISION

With directives from the Supreme Court of the India, environmental education has been made compulsory at all levels of education in India. In the *M.C. Mehta vs. Union of India* case (1991), the Supreme Court of India observed: “Having regard to the grave consequences of the pollution of water and air and the need to protect and improve the natural environment which is

considered one of the fundamental duties under the constitution, we are of the view that it is the duty of Central Government to direct all the educational institutions throughout India to teach for at least one hour in a week a lesson relating to the protection and improvement of the natural environment, including forests, lakes, rivers, and wildlife, in the first ten classes. Central Government shall get text-books written for the said purpose and distribute them to educational institutions free of charge. Children should be taught about the need for maintaining cleanliness by the introduction of short-term courses. This should be done throughout India.” The University Grant Commission (UGC) of India under the directives of the Supreme Court (Order No. 860 of 1991) along with the latest decision of Supreme Court (2003) introduced compulsory environmental education at all levels of college education in arts, science and commerce faculties and environmental law, ecosystem, biodiversity, health and sanitation are important components (Sinha 1991).

CONCLUSIONS

As we all know, law is not the only instrument that regulate and control the behavior of individual and society but there are some other factors too those are more effective in regulatory process in the society. Law does not attract social acceptance where as for the present purpose social participation is comparatively result oriented.

Intensified and widespread environmental education to arouse ecological consciousness and environmental awareness among the masses is urgent for environmental protection law to be meaningfully implemented. Further, there should be some suitable alternatives to the people dwelling rural areas before imposing any rule on them and prohibiting from those actions which damage the environment, as only slogans of pollution and deforestation are not suffice because it does not fulfill there basic needs of kerosene, diesel and fuel wood.

Punishment for violators of the law should be made more stringent. Imprisonment must be made compulsory, along with fines, and the responsibility should be fixed on the highest authority and not on the poor managers and workers of environment.

The foregoing survey explicitly concludes

that there are certain areas pertaining to the degradation of the human environment which have to be brought under the purview of the law. The piling of domestic waste in the cities for which only municipal authorities cannot be made solely responsible but the behaviour of the residents generating the waste and throwing it carelessly on roadsides and in the neighborhood has also to be corrected. It is apt to mentioned that indiscriminate use and misuse of life – sustaining water in houses, industries and agriculture is another serious cause for concern, especially when this vital resource is fast depleted from beneath the earth. Similar is the case of energy resources. The waste of water and electricity which happens more carelessly in public places, offices and public institutions is nasty for humanity and is morally as indefensible as genocide. States responsibility is not over merely by putting beautiful and attractive slogan for water conservation on the public place. In fact there should be adequate provisions to regulate and control such activities, in violation the act may lead to the conviction. There are laws governing all other underground resources of the earth – metals and minerals – but why not water? There has to be law to curb the criminal waste of these essential and indispensable resources of mankind which are vital for our very survival.

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