



Emerging trends of pollution: A critical appraisal of combating law in India

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Abstract

Because of various human activities, all the components of the human environment are getting polluted. The air, water, soil and the other components of the environment have become unfit for human consumption. The pollution levels have gone beyond reparable limits. People of the country are unavoidably consuming the polluted substances resulting in gradual accumulation of these toxics in their body. In addition to the natural and national generated pollution; at present the MNCs are invading the third world countries like India, with their technology and the hazardous industrial units. The new trends of trans-boundary pollution are worsening environmental condition of the country and posing serious threat to the life and health of the people. In these situations there is a great need to combat such pollution activities in the country? Law is an effective means to halt the pollution activities. With the inspiration of the Stockholm Declaration. The Water Act- 1974; The Air Act- 1982; and The Environment Protection Act- 1986 were enacted in the country, with high aspirations. Rules were also adopted to strengthen these environmental safeguards. The paper critically examines the sufficiency and efficiency of these environmental legislations, to meet the new trends of the pollution.

Keywords: trans-boundary pollution, hazardous waste, new trends, absolute liability, polluter pays principle

Introduction

Irrational consumption of natural resources and unregulated practices of waste disposal are resulting in degradation of environmental quality in India. All water bodies in the country are contaminated with sewers and effluents. The atmosphere is filled with noxious gases. The noises around us have gone beyond tolerable limits. The soil which gives sustenance to living has already lost its fertility. The environmental condition of the country has totally gone beyond reparable limits. Now, people of the country has no option except to drink, breath, eat and even to listen noxious substances. The country at present is worrying not for international wars but for the new trends of environmental threats. Three decades ago we have already experienced the disastrous consequences of the industrial pollution. The Bhopal gas leak incident is not less serious than the Hiroshima mishap. It has taken the toll of more than 25,000 deaths overnight, and also one lakh fifty thousand people are badly effected in their health because of MIC gas. Not less than 5 lakh people involuntarily inhaled the lethal gas. Now, DNAs of these gas victims carry not the family characters, but pathogenic characters of incurable diseases, for the next generations. The Bhopal incident is an example for the indifferent attitude of the Multi-National Companies towards the third world countries. The exploitative tendency of the west is not ended with the recession of colonialism, but it is metamorphosing into new dimensions. The new strategy is intervening with the economy and environment. They are dumping their hazardous waste and e-waste, and ill-equipped hazardous industries into third world countries like India ^[1]. They are compelling us to install nuclear power plants, what they have prohibited in their land for the environmental reasons. The new trends of trans-

boundary pollution ^[2] are worsening environmental condition of the country. Abundant accumulation of national generated e-waste and hazardous waste ^[3], and the probabilities of leakage at atomic energy plants are also posing serious threat to the environmental safety of the country. Municipal solid waste management is still an unsolved problem for urban societies. Another threat to environment is absence of appropriate strategies for natural resource management. Indiscriminate extraction of ground water, particularly by multinational bottling companies, illegal allotment of mines to private players, privatization of rivers and illegal sand mining are some of the critical environmental issues of the day. In this scenario there is a great need to preserve and protect environmental quality in the country from such activities. Law is an effective instrument to prevent and regulate pollution activities. Hence, the paper critically examines -sufficiency and efficiency of Indian Environmental Legislations to meet the current environmental challenges in the country. The scope of the paper is confined to the prominent provisions of major environmental legislations of the country.

The Water Act, 1974- A Diluted Attempt

The Water (Prevention and control of pollution) Act 1974, is the first Indian legislation on environment, which was enacted with twin objectives of prevention and control of water pollution, and maintain and restore wholesomeness of water resources in the country. The Act prescribes two types of monitoring bodies at national and state levels - Central Pollution Control Board and State Pollution Control Board. Each Board is constituted by 17 members including a chairperson and a secretary. Except secretary, all shall be 'nominated' by the concerned government. Because of this

facility governments are nominating the members basing on the political considerations rather than environmental conservation. The selection of members is also mainly basing on 'representing the interest' of various agencies like industry, trade, companies^[4], who are major culprits of pollution. These representatives naturally protect the interest of parental agencies concerned rather than acting as the member of Board. Sections 16 and 17 of the Act prescribe functions of these Boards^[5], which mostly required of special technical knowledge on environmental matters. But, members are wanting of such skill and knowledge, as the Act does not prescribe requirement of even basic knowledge on environmental matters. These Boards are suffering mostly with constitutive and functional defects. All these are making functioning of boards ineffective and create a doubt about the impartial and efficient functioning of Boards. Therefore, it is suggested that impartial individuals or bodies like NGOs working for environmental cause must also be given a place in constitution of Boards.

The Act mainly concerns to control effluents and sewages^[6]. Section 24 of the Water Act prohibits disposal of pollutants in to streams or wells or on land. The liability under this section arises only for 'known' acts but not for accidental or negligent discharges. So there is a possibility of escaping from liability by showing their ignorance of the disposal. The Act also fixes personal liability of in-charge of a company and head of the government departments for the fault of a company and government departments respectively. However, their liability under the Act is confined only to discharges 'known' to them. These provisions dilute the preventing effect of the penal sanction.

Section 20 of the Air (Prevention and Control of Pollution) Act, 1981^[7] gives delegated authority to the motor vehicles registration authorities to regulate motor vehicle pollution. But the motor vehicle department is over burdened with their regular work of vehicular registration, licensing drivers and with other incidental work. Therefore, they can not effectively deal with motor vehicle pollution, which is a major source of air pollution. The Act mainly focuses on industrial and automobile emissions.

Both water and Air Acts are just confined to mitigative and precautionary measures of pollution without going to progressive aspects. The inherent defects in water Act and Air Act are making enforcement of these Acts weak and the desired objectives futile.

Environment (Protection) Act, 1986- Rhetoric Rather Reality

To meet new trends of pollution and rectify deficiencies in the Air and Water Acts, The Environment (Protection) Act, 1986 was passed. The objective of the Act is not just to prevent and control the pollution, but to protect and improve the quality of environment. Perhaps, the Act was inspired by the 42nd Constitutional Amendment in 1976. Speedy remedy and deterrent punishment are the other objectives of the Act. Power to implement the Act is in the hands of the Central Government. It is a comprehensive legislation governing all types of pollutions.

It is the first law in the world to provide technical definitions to the scientific terms used in the Act, like environment,

pollutant, environmental pollution, occupier^[8]. Section 2(f) defines the term 'occupier' in relation to factory, premises and substance. It seems that it is defined in the context of industrial pollution. But it ignores occupiers of motor vehicles which are also major culprits of air and noise pollutions. However, now after 25 years it is governed under the National Green Tribunal Act, 2010 in Section 2 (a).

The term 'hazardous substance' is conceptualized on the lines of dictionary meaning and the concept 'handling' is defined with reference to substance only. While defining the term 'Environmental Pollutant', Section 2(b) recognizes only solid, liquid and gaseous forms of pollutants but it ignored other forms of pollutants like heat, noise, radiation. To constitute 'Environmental Pollution' Section 2(c) gives emphasis on mere presence of pollutant, but absence or decrease in concentration of non pollutants is also a potential threat to the environment. Therefore, It apprehends that these definitions are suffering with conceptual defects^[9].

Punishment for violation of the Environment Protection Act^[10] is imprisonment for a term which may extend to 5 years or fine up to the extent of 1 lakh rupees or both. But under Water Act the punishment prescribed for the similar offence^[11] is imprisonment from one and half years to six years and an unlimited fine. Comparatively the Water Act is providing heavy punishments than the Environment Protection Act. However, Punishment provided under these two legislations are comparatively very trivial. For killing of a single person, even out of sudden provocation, the punishment provided in section 302 of IPC is imprisonment for not less than 7 years. But, the slow poisoning, by discharge of pollutions^[12] leading to death of several persons^[13] is no way less serious than the offence of murder. Therefore, for such industrial pollution an exemplary form of punishment should be provided. It is obvious that the very objective of providing deterrent punishment under the Environment Protection Act is defeated. In case of accidental discharge of pollutants, the in-charge of industry must give information to the authorities to take controlling measures^[14]. This provision gives a chance to escape from liability by delegating the burden of mitigating pollution. An other drawback in the Act is, it does not contain any enforcing mechanism. Therefore, the authority to enforce the Act is again delegated to Boards which are known for defective in formation and functioning.

The close scrutiny of the Act apprehends that the Act takes into account control on harmful substances and effluents only. The Act does not exhibit any conceptual improvement over the Air Act and Water Act^[15]. The Act has come with high aspirations but with low reality. Therefore, the legislative promises enshrined in the preamble and text of the Act are belied^[16].

All these three major environmental legislations are inadequate and in adhesive to deal with the new challenges of the environment safety. However, supplementing the objectives of these Acts, separate Rules are made and laws are adopted^[17].

Hazardous Wastes (Management and Handling) Rules, 1989 laid down duties and responsibilities of the occupier and operator while dealing with the hazardous wastes. Import and export of hazardous waste for dumping and disposal has been completely prohibited, except for recycling or reuse.

However, this exception gives lot of scope to dump half used electronic goods and allow dead ships for dismantle under the pretext of reuse. The Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008 have replaced the Hazardous Waste Management Rules, as they did not cover the Basel Convention of 1989. The rules identified various kinds of hazardous wastes and laid down control mechanism. Import of hazardous wastes in India has been totally prohibited, except with the 'prior informed consent' of the country. Absolute liability is imposed on the occupier, transporter and operator. For trans-boundary movements insurance is made compulsory.

Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 directs the occupier of chemical industries to prepare- safety report, onsite and off site emergency plans and safety data sheet. The occupier also must give information about the nature of the major accident hazard; and the safety measures and the do's and don'ts which should be adopted in the event of a major accident. But the information is absent in many occasions. The Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996 provides for the constitution of central crises group for the management of chemical accidents and to set up a quick response mechanism, the crises alert system.

Batteries (Management and Handling) Rules, 2001 fixed the responsibility of a manufacture, importer and assembler to collect back the used lead acid batteries and send them for recycling. There is also responsibility on the dealers, recycler, consumer for proper collection, use, transport, return of used batteries to the designated persons only. The rules prohibited throwing away or disposing them in any manner except proper returning. However, in India practically it is not possible. E-Waste (Management and Handling Rules, 2011) aims to authorize the recovery or re-use of useful material from e-waste. The rules fixed the responsibility of the producer, collections centers, consumer, recyclers, dismantlers of the e-wastes. Punishment for violation of any of these Rules is the same as provided in the Environmental Protection Act. But it is proved to be weak.

The Atomic Energy Act, 1962 regulates and controls all activities relating to nuclear energy and radioactive substance. The Factories Act was amended shortly after the Bhopal tragedy, to incorporate (chapter-IV-A) a provision of liability of occupier of industry to disclose all particulars regarding health hazards at the factory and the preventive measures taken, and also characteristics of waste and the manner of disposal. However, on many occasions, all these regulations are intentionally violated by industries.

The above discussion reveals that, all these are exclusive in scope and application and also piece meal attempts. They are also proved to be insufficient and ineffective^[18]. Therefore, instead of all these futile attempts and making the Environmental Jurisprudence just a voluminous, the Environment Protection Act should be strengthened and made it a comprehensive in real sense.

Conclusion

All these environmental legislations are inadequate to deal with new trends of pollution. Therefore, there is a need of amending the Environment Protection Act to make law more

effective so as to meet new challenges. The rule of 'absolute liability' must be incorporated in the Environment Protection Act. And also the liability provision to reverse the polluted environment basing on 'Polluter Pays Principle' should be incorporated in the Environment Protection Act. The punishment provision in the Environment Protection Act should be strengthened to have deterrent effect. The Act should also provide for compensation to victims. 'Personal liability' of industrialists and officers must be made 'no fault' liability. More stringent laws should be adopted to regulate trans-boundary pollutions. The Environment Protection Act should also govern domestic sewage and garbage, as it is also an un-ignorable potential threat to the environment. Constitution of effective enforcement mechanism with the involvement of the public is also a need for the better enforcement of the laws. A clear and unconditional provision for public participation in Environmental management should be incorporated in the Act. The law should be amended with more scientific wisdom in the context of changing trends of pollution.

References

1. Every year 50,000 tones of e-waste is imported in the country from developing countries. The import of hazardous waste between and increased by 48 percent and of incinerated ash residue, which is highly toxic, increased by 130 percent. The machinery at UCIL Plant, Bhopal is a second hand one, which was shifted from Germany Plant, 2006-2009.
2. Certain goods may not be in the nature of harmful at the time of entry into the country. But after entry within a short span of time they are turning to hazardous, posing serious threat to environment, viz. in the name of charity, USA is dumping their old and used electronic goods in India, which are ultimately turning to e-waste within a short span of time. In this way America is disposing their e-waste. Likewise China has been supplying huge quantity of goods at low price. But within a short span of time they are becoming disposable waste leading to accumulation of unmanageable quantity of hazardous waste in the country. And also USA and some other western countries are sending their dead ships to India for dismantling purpose, which causes serious threat to environment of the country.
3. According to MAIT Report, India in 2007 generated 3, 80,000 tons of e-waste. This is projected to 8, 00,000 tons by 2012 with the growth rate of 15%. According to CPCB, 7.8 million metric tons of hazardous waste is generated annually in the country.
4. According to section 3 of the Water Act, central government shall nominate members for the Central Board on the following basis.
 - 5 members to represent the central government.
 - 5 members amongst the members of the State Boards.
 - 3 members to represent the interest of agriculture, fishery, industry or trade or any other interest.
 - 2 members to represent the companies or corporations of central government.

Section 4 of the Water Act authorizes State Government to constitute State Pollution Control Board with the same criteria

5. Giving advice to government on technical aspects of environment protection, publishing technical data, fixing pollution standards, involving in research activities, giving training in environment protection matters etc.
6. See sections 25 and 26 of the Water Act.
7. Provisions of the Act are same and similar to Water Act hence not discussed in detail.
8. S.C. Shastri, Environmental Law, EBC, 2008, 90.
9. See Kurup PG. Environment Act- A Scientist View' in P. Leelakrishnan (Ed.) Law and Environment, EBC, Lucknow, 1992, 252.
10. Section 7 discharging of pollutants in excess of prescribed standards.
11. Section 24 of the Water Act.
12. See Damodhar Rao v. Municipal Corporation of Hyderabad, AIR A.P, 1987, 170.
13. Bhopal Gas leak incident is a standing example.
14. Section 9 of the Environment Protection Act.
15. See Supra note 9.
16. See K. Jayakumar, Environment Act- A Critical Overview' in P. Leelakrishnan (Ed.) Law and Environment, EBC, Lucknow, 1992, 234.
17. The Environment (Protection), Rules, 1986; Hazardous Wastes (Management and Handling) Rules, 1989; Hazardous Micro-Organism Rules, 1989; Manufacture, Storage and Import of Hazardous Chemical Rules, 1989; Chemical Accidents (Emergency, Planning, Preparedness and Response), Rules, 1996; Municipal Solid Waste (Management and Handling) Rules, 1999; Recycled Plastics Manufactures and Usages Rules, 1999; Noise Pollution (Regulation and Control) Rules, 2000; Batteries (Manufactures and Handling) Rules, 2001; Rules to Regulate Manufacture, Use, Import, Export and Storage of Hazardous Micro-Organisms and Genetically Engineered Cells, 1989; Hazardous Waste Rules, 2002; Hazardous Waste (Management, Handling and Trans-boundary Movement) Rules, 2008; e-Wastes (Management and Handling) Rules, 2011; Gujrat Maritime Board Act, 1981; Gujarat Maritime Board Rules on Ship Breaking 2006; The Civil Liability for Nuclear Damages Act, 2010; Rules for Implementing Nuclear Damages Act were notified on 11th November, 2011 etc.
18. See Brahma Chevancy, Ignoring Lessons of Bhopal and Chernobyl, The Hindu 16th Feb., 2010 P.10, Moyan, Ban TOXIC Imports : Court, Down to Earth, July 16-31, 2012. Also see Down to Earth July 1-15, 2012, P.17. And also SC Shastri, Environmental Law, P.204.