

Effect of Pollution on Common Man in India: A Legal Perspective

Arshdeep Singh* Jaypreet Singh Kohli

BBA.LLB 2009-14, College Of Legal Studies, University Of Petroleum And Energy Studies,
Dehradun – 248006, India

* E-mail of the corresponding author: arsh9191@gmail.com

Abstract

The present generation and the coming generations have to solve three grave problems, namely, population, poverty and pollution if they have to survive. We will focus ourselves on pollution for now. The environmental problems in India are growing rapidly. The increasing economic development and a rapidly growing population that has taken the country from 300 million people in 1947 to more than one billion people today is putting a strain on the environment, infrastructure, and the country's natural resources. Industrial pollution, soil erosion, deforestation, rapid industrialization, urbanization, and land degradation are all worsening problems for our country. Overexploitation of the country's resources, be it land or water and the industrialization process has resulted environmental degradation of resources. Environmental pollution is one of the most serious problems that is facing humanity and other life forms on our planet today. It is no longer a new or surprising fact that mankind has actually brought the Earth to the brink of disaster. Man's suicidal actions will soon turn this wonderful planet into a lifeless and hostile planet. The ill-effects of ever-growing population and urbanization have already been seen, felt and realized to some extent in different circles. Today, the air we breathe, the water we drink and the land on which we grow our food, have been poisoned. Numerous problems like ozone layer depletion, greenhouse effect, global climatic changes, depletion of ground water levels, drinking water crises, etc. are all plaguing the Earth today in the twenty-first century and posing serious threats to the survival as well as the very existence of the human race on this Earth. Industrialization and urbanisation have resulted in a profound deterioration of India's living quality. Out of the 3 million premature deaths that occur in the world each year due to pollution, the highest number are assessed to occur in India. According to the World Health Organization, the country of India is one of the top ten polluted countries in the world. According to another study, while India's Gross Domestic Product has increased 2.5 times over the past two decades, while the pollution has quadrupled in the same period. Through the paper we will be throwing light on various forms of pollution prevalent in India and their effect on the common man of the country. And the measures that can be used to curb the pollution and minimize the effect of pollution on the people.

Mahatma Gandhi had said that nature has enough to satisfy everyone's need but has not enough to satisfy man's greed. Sadly our ever-expanding greed has put us in such precarious situation that we face today.

Keywords: Pollution, Law, Environment, People, Legal Perspective

1. Introduction

The environmental problems in India are growing rapidly. The increasing economic development and a rapidly growing population that has taken the country from 300 million people in 1947 to more than one billion people today is putting a strain on the environment, infrastructure, and the country's natural resources. Industrial pollution, soil erosion, deforestation, rapid industrialization, urbanization, and land degradation are all worsening problems. Over exploitation of the country's resources be it land or water and the industrialization process has resulted environmental degradation of resources. Environmental pollution

is one of the most serious problems facing humanity and other life forms on planet today.

With India's population at 1.2 billion people and counting, plus internal economic migration to urban areas from the countryside, the country's cities are bursting at the seams. Housing shortages, electricity and water cuts, traffic congestion, pollution and a lack of basic services are the reality for millions. The demographers are predicting that India will add three to four hundred million new people to its population over the next 40 years

India has been ranked among the top ten worst climate polluters of the world. While India holds the 7th position, US and China hold the 2nd and 3rd positions respectively. The study has been conducted by Professor Corey Bradshaw of the University of Adelaide's environment institute in April 2010. The study yielded the worst ten polluters as Brazil, the US, China, Indonesia, Japan, Mexico, India, Russia, Australia and Peru, in the order.

A new study confirmed on April 11, 2010, with its greenhouse gas emissions growing by more than 3 per cent annually between 1994-2007. India also is suffering from the effects of global warming such as rising temperatures and sea levels along its coasts. The study represents the first update to an assessment of India's air emissions that was done 16 years ago. More than 80 scientists from 17 institutions across India were involved in the study, said Jairam Ramesh, India's environment minister.

On 11 March, 2010 Mr Jairam Ramesh Minister of State for Environment and Forests informed the Rajya Sabha that the Central Pollution Control Board has done a nationwide environmental assessment of Industrial Clusters based on CEPI and 43 such industrial clusters having CEPI greater than 70, on a scale of 0 to 100, has been identified as critically polluted.

A Comprehensive environmental assessment of industrial clusters, undertaken by IIT Delhi and the CPCB, found that the environmental pollution levels in 10 major industrial hubs had reached a "very alarmingly high" level. This list includes Ankleshwar and Vapi in Gujarat, Ghaziabad and Singrauli in UP, Korba (Chhattisgarh), Chandrapur (Maharashtra), Ludhiana (Punjab), Vellore (Tamil Nadu), Bhiwadi (Rajasthan) and Angul Talcher (Orissa).

India's environmental problems are exacerbated by its heavy reliance on coal for power generation. Coal supplies more than half of the country's energy needs and is used for nearly three-quarters of electricity generation. While India is fortunate to have abundant reserves of coal to power economic development, the burning of this resource, especially given the high ash content of India's coal, has come at a cost in terms of heightened public risk and environmental degradation. Reliance on coal as the major energy source has led to a nine-fold jump in carbon emissions over the past forty years.

2. Types of Pollution Prevalent In India

a) Air Pollution

Industrialization and urbanization have resulted in a profound deterioration of India's air quality. Of the 3 million premature deaths in the world that occur each year due to outdoor and indoor air pollution, the highest number are assessed to occur in India. According to the World Health Organization, the capital city of New Delhi is one of the top ten most polluted cities in the world. Surveys indicate that in New Delhi the incidence of respiratory diseases due to air pollution is about 12 times the national average.

According to another study, while India's gross domestic product has increased 2.5 times over the past two decades, vehicular pollution has increased eight times, while pollution from industries has quadrupled. Sources of air pollution, India's most severe environmental problem, come in several forms, including vehicular emissions and untreated industrial smoke. Apart from rapid industrialization, urbanization has

resulted in the emergence of industrial centres without a corresponding growth in civic amenities and pollution control mechanisms.

Regulatory reforms aimed at improving the air pollution problem in cities such as New Delhi have been quite difficult to implement, however. For example, India's Supreme Court recently lifted a ruling that it imposed two years ago which required all public transport vehicles in New Delhi to switch to compressed natural gas (CNG) engines by April 1, 2001. This ruling, however, led to the disappearance of some 15,000 taxis and 10,000 buses from the city, creating public protests, riots, and widespread "commuter chaos." The court was similarly unsuccessful in 2000, when it attempted to ban all public vehicles that were more than 15 years old and ordered the introduction of unleaded gasoline and CNG. India's high concentration of pollution is not due to a lack of effort in building a sound environmental legal regime, but rather to a lack of enforcement at the local level. Efforts are currently underway to change this as new specifications are being adopted for auto emissions, which currently account for approximately 70% of air pollution. In the absence of coordinated government efforts, including stricter enforcement, this figure is likely to rise in the coming years due to the sheer increase in vehicle ownership.

b) Waste and Water Pollution

Water pollution has many sources. The most polluting of them are the city sewage and industrial waste discharged into the rivers. The facilities to treat waste water are not adequate in any city in India. Presently, only about 10% of the waste water generated is treated; the rest is discharged as it is into our water bodies. Due to this, pollutants enter groundwater, rivers, and other water bodies. Such water, which ultimately ends up in our households, is often highly contaminated and carries disease-causing microbes. Agricultural run-off, or the water from the fields that drains into rivers, is another major water pollutant as it contains fertilizers and pesticides.

c) Noise Pollution

Broadly speaking, the noise pollution has two sources, i.e. industrial and non- industrial. The industrial source includes the noise from various industries and big machines working at a very high speed and high noise intensity. Non- industrial source of noise includes the noise created by transport/vehicular traffic and the neighbourhood noise generated by various noise pollution can also be divided in the categories , namely, natural and manmade. Most leading noise sources will fall into the following categories: roads traffic, aircraft, railroads, construction, industry, noise in buildings, and consumer productise Pollution.

3. Constitutional Provisions For Environmental Protection

Strictly, speaking no constitution deals with a matter such as environmental protection. Because basically any constitution contains only the rules of laws in relation to the power structure, allocation, and manner of exercise. Besides Indian Constitution is already a bulky document and brevity is the character of an ideal Constitution. Hence from the point of view .of the principles of the constitutional law as well as, the length of the Constitution it was impossible to have any such provision safeguarding the healthy environment. Therefore till the subsequent amendments the constitutional text of India, was without any specific provision for the protection and promotion of the environment. However the seeds of such provision could be seen in Article 47 of the constitution which command the State to improve the standard of living and public health. To fulfil this constitutional goal, its necessary that the State should provide pollution free environment.

To comply with the principles of the Stockholm Declarations adopted by the International Conference on Human Environment in 1972, the Government of India, by the Constitution 42nd Amendment Act, 1976 made the express provision for the protection and promotion of the environment, by the introduction of Article 48-A and 51-A(g) which form the part Directive Principles of State Policy and the Fundamental Duties respectively. The amendment provided for the following:

(1) Article 48 A: By the Constitution (42nd Amendment) Act, Section 10 (w.e.f. 3.1.1977). Protection and improvement of environment and safeguarding of forests and wild life:- "The State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country".

(2) Fundamental Duty

(I) Article 51-A(g) : By Constitution (42nd Amendment) Act, 1976. Section 11 (w.e.f. 3.1.1977)

Thus the Indian Constitution makes two fold provisions.

(a) On the one hand, it gives directive to the State for the protection and improvement of environment.

(b) On the other hand the citizens owe a constitutional duty to protect and improve natural environment.

In protecting the natural environment Article 48-A is of immense importance today. Because with the activist approach of judiciary in India the legal value of Directive Principles jurisprudence has constantly grown up in the Indian Constitutional set-up. Hence the .above provisions are of pivotal significance.

The constitutional changes effected in the 7th Schedule by the 42nd Amendment Act, 1976 is a milestone steps, in the direction of the protection of environment. Because the subject of forests originally was in the State list as entry 19, this resulted into no uniform policy by the State so as to protect the forests. By placing the item 'forest' now in the concurrent list by the entry 17-A, along with the State, Parliament has acquired a law making power.

4. Environment and the Law

At one time the environment was thought to be all about aesthetically pleasing scenes and beautiful surroundings; the law had little to do with it then. Then it became a question of the quality of our lives - the air we breathe, the water we drink, the state of our forests, hills and seas; the law then moved in as the need was felt for controls and regulation. I dare to say that now the environment has become an issue of survival - cities have become gas chambers, rivers are carriers of untreated sewage and industrial effluent, the earth a dumping ground for hazardous waste. Mankind's capacity to be oblivious to the consequences of its acts seems limitless.

It has been said, and not without justification, that the law is twenty years behind society. In its response to the environmental threat, however, the law, in part measure, has responded creditably. International Declarations such as Stockholm and Rio have galvanized national legislatures, and we have produced a good body of statutes to deal with air and water pollution and disposal of hazardous wastes.

Sadly, the growth of law and improvement on the ground seem not to have a direct co-relation; cynics would say its an inverse ratio. We need to reflect on this fundamental problem - that our age, supposedly more civilized than before, has little voluntary compliance; and even when laws are passed to guide society into appropriate modes of interactive behaviour, these are not observed; and its only when punitive action is imminent and the threat of personal loss and hardship is at the door do many people act in consonance with what has been formulated for the general good.

So it comes down to this, whether in the field of environment or any other social aspect that the law deals

with - the important aspect, the determining one, the litmus test is the efficacy of enforcement and securing compliance with the law. Much more attention needs to be paid to this than has been the case; otherwise, it will be the area where good intention and concerned legislation flounder and peter out. We need to closely and critically look at the realm of enforcement; that may well result in quite some change from current methods, and the adoption of some unusual ones. It is an exercise which we should be keenly engaged in; at stake is the well-being of our lives and that of the law; indeed, the very survival of both.

5. Need For Better Management Policies

Protecting the environment is a duty we hold in perpetuity. Each generation adds to the foundation, but finality is an illusion, almost like parallel lines meeting at the horizon: it doesn't happen. But still we need to look to the horizon and beyond. because that is where the solutions to our new challenges lie. As our reach should exceed our grasp, so must our vision extend beyond plain view.

Environment is integral to the overall process of development. It includes the relationship and interdependencies that exist between people and natural resources. Environmental change is thus the product not only of natural events, but also of the application of development models, practices and life-styles. In turn any modification of the physical environment has important socioeconomic consequences that affect the quality of life.

The impact of changes in the physical environment on human well-being became an important public issue in the mid-1950s, mainly after pollution episodes led to health problems and the disruption of ecological balances. After the first major international meeting to review the environment the United Nations Conference on the Human Environment in Stockholm, June 1972 an "environmental movement" emerged in both industrial and developing countries. It included the active participation of the public and private sectors alike.

There have been some remarkable environmental successes over the past few years. However, while there used to be a long-time horizon for undertaking major environmental policy initiatives, time for a rational, well-planned transition to a sustainable system is running out fast. Full-scale emergencies now exist on a number of issues. The world water cycle seems unlikely to be able to cope with the demands that will be made of it in the coming decades. Land degradation has reduced fertility and agricultural potential. These losses have negated many of the advances made through expanding agricultural areas and increasing productivity-Tropical forest destruction has gone too far to prevent irreversible damage. It would take many generations to replace the lost forests, and the cultures that have been lost with them can never be replaced. Many of the planet's species have already been lost or condemned to extinction because of the slow response times of both the environment and policy-makers; it is too late to preserve all the biodiversity our planet once had. Many marine fisheries have been grossly over-exploited, and their recovery will be slow. More than half of the world's coral reefs are threatened by human activities. While some may yet be saved, it is too late for many others. Urban air pollution problems are reaching crisis dimensions in many of the megacities of the developing world, and the health of many urban dwellers has been impaired. It is probably too late to prevent global warming as a result of increased greenhouse gas emissions; in addition, many of the targets agreed on in the Kyoto Protocol may not be met.

6. Conclusion

We have made the law relating to pollution but there is need for creating general awareness towards the hazardous effects of pollution. Particularly, in our country the people generally lack consciousness of the ill

effects which pollution creates and how the society including they themselves benefit by preventing generation and emission of pollution. The target area should be educational institutions and more particularly school. The young children of impressionable age should be motivated to desist from playing with firecrackers, use of high sound producing equipment's and instruments on festivals, religious and social functions, family get-togethers and celebrations etc. which cause pollution. Suitable chapters can be added into textbooks, which teach civic sense to the children and teach them how to be good and responsible citizen which would include learning by heart of various fundamental duties and that would obviously include learning not to create pollution and to prevent if generated by others. Holding of special talks and lectures can be organized in the schools to highlight the menace of pollution and the role of the children in preventing it. For these purpose the state must pay its role by the support and cooperation of non-government organisations can be enlisted.

In India environmental statutes, though impressive in range, and coverage are more often observed in breach than in practice. The deterrent theory of punishment employed under strict and absolute liability principle had achieved some degree of success. Never the less, the search for better and alternative principles of liability hardly needs as elaboration. Hence mere fixing the standards through legislation will not solve the problem. There shall proper enforcement as observed by Justice Krishna I year V.R. "it is not how many laws we are having it is how effectively we are implementing them". Hence it is time to harmonies the developmental activities with the environment because development is also a very important aspect of life. For which the environmental regime has to be to counted and strengthen with more expert mechanism to deal with the longer spectrum of problems hitted or unattended by the law. Primarily meant as guiding principle for the administrative process to prevent adverse effects on the environment, the precautionary approach warrants formulation of expert environmental agencies at the initial decision making as well as at appellate and reviewing levels. Such a step will be undoubtedly a leap forwards towards sustainable development and augmentation of strong environmental regime.

References

1. http://www.thegoodairlady.com/california_air_quality_000216.html
2. "constitutional provisions for environmental protection", by dr suresh mane, (viewed on <http://www.nlsenlaw.org/environmental-protection/articles/constitutional-provisions-for-environmental-protection/>)
3. "empowering - the rights of pollution affected people", by jugal kishore, (viewed on <http://www.nlsenlaw.org/air-noise/articles/empowering-the-rights-of-pollution-affected-people/>)
4. "environment: need for better management policy" by bhai sairam, (viewed on <http://www.nlsenlaw.org/environmental-protection/articles/environment-need-for-better-management-policy/>)
5. "environment and the law", by sreeram panchu, (viewed on <http://www.nlsenlaw.org/environmental-protection/articles/environment-and-the-law/>)
6. <http://www.paryavaranmitra.com/pollutiontypes.htm>
7. "health effects of air pollution", by vinod mishra (viewed on http://www.mnforsustain.org/climate_health_effects_of_air_pollution_mishra_pern.htm)
8. "going green(er): planning the next era of environmental regulation in india", on <http://knowledge.wharton.upenn.edu/india/article.cfm?articleid=4535>)
9. h. c. maduka : water pollution and man's health . *the internet journal of gastroenterology*. 2006

10. “legal enforcement of environmental standards”, by parnam prabhakar, (viewed on <http://www.nlsenlaw.org/air-noise/articles/legal-enforcement-of-environmental-standards/>)
11. “need of a comprehensive law for control of noise pollution : an appraisal”, by jaspal singh, (viewed on <http://www.nlsenlaw.org/air-noise/articles/need-of-a-comprehensive-law-for-control-of-noise-pollution-an-appraisal/>)
12. “noise pollution: sources, effects and control”, by deepak miglani, on www.legalserviceindia.com
13. “overexploitation of the country's resources”, viewed on <http://www.allfreeessays.com/essays/overexploitation-of-the-country-s-resources/86385.html>
14. “pollution control boards and prevention of pollution”, by k.v.r.murthy, (viewed on <http://www.nlsenlaw.org/air-noise/articles/pollution-control-board5-and-prevention-of-pollution/>)
15. “the doctrine of public trust and environmental protection in india”, by s.a.karthik, (viewed on <http://www.nlsenlaw.org/environmental-protection/articles/the-doctrine-of-public-trust-and-environmental-protection-in-india/>)
16. “types of pollution ,pollution control & how to protect”, by lalit khungar, (viewed on <http://hubpages.com/hub/pollutedcity#>)
17. <http://youthandenvironment.blogspot.com/search?q=climate+summit>
18. “environmental legislation in india”, by finpro
19. state of environment report, by ministry of environment and forests, government of india.
20. the health effects of air pollution in delhi by maureen l. cropper,nathalie b. simon, anna alberini, and p.k. sharma, world bank development research group.
21. “the united states and international environmental law : living with an elephant”, by jutta brunnee, european journal of international law, 2004.

Arshdeep Singh was born in Amritsar, India on 30th March, 1992. Arshdeep Singh is currently pursuing his 5 year law degree at University Of Petroleum And Energy Studies. He previously completed his schooling from the prestigious Army Public School, Bhopal, India. He will be completing his graduation in the year 2014. His basic interests lie in the field of Environmental Laws, Cyber Laws and Banking and Institutional Laws. He has earlier published a few papers relating to a various fields of Sports Law, Energy Law And Corporate Governance. One of his paper was also published by the esteemed International Sports Law Association, Hague, The Netherlands.

Jaypreet Singh Kohli was born in Kanpur, Uttar Pradesh, India on 13th January, 1990. Jaypreet Singh Kohli is currently pursuing his 5 year law degree at University Of Petroleum And Energy Studies. He previously completed his schooling from the Swaraj India Public School, Kanpur, India. He will be completing his graduation in the year 2014. His basic interests lie in the field of Environmental Laws, Energy Laws and Company Laws. He has earlier published a paper relating to the field of Corporate Social Responsibility.

This academic article was published by The International Institute for Science, Technology and Education (IISTE). The IISTE is a pioneer in the Open Access Publishing service based in the U.S. and Europe. The aim of the institute is Accelerating Global Knowledge Sharing.

More information about the publisher can be found in the IISTE's homepage:

<http://www.iiste.org>

The IISTE is currently hosting more than 30 peer-reviewed academic journals and collaborating with academic institutions around the world. **Prospective authors of IISTE journals can find the submission instruction on the following page:**

<http://www.iiste.org/Journals/>

The IISTE editorial team promises to review and publish all the qualified submissions in a fast manner. All the journals articles are available online to the readers all over the world without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. Printed version of the journals is also available upon request of readers and authors.

IISTE Knowledge Sharing Partners

EBSCO, Index Copernicus, Ulrich's Periodicals Directory, JournalTOCS, PKP Open Archives Harvester, Bielefeld Academic Search Engine, Elektronische Zeitschriftenbibliothek EZB, Open J-Gate, OCLC WorldCat, Universe Digital Library, NewJour, Google Scholar

