

# Environment protection law in India with specific reference to industrial pollution

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## Abstract

Industrial pollution is one of the most evident environmental problems experienced by now in industrialized countries and majority of the newly industrializing economies are facing it today. India's industrial structure has gone through various changes especially since the economic reforms. However, in India no major environmental reforms were initiated to take into consideration the impact of changing industrial pattern on environment. Therefore, there is a need for analyzing the environmental impacts of industrial sector in India. Since different industries have different pollution intensity, this paper has first taken a look at the composition of industrial structure. Using the Industrial Pollution Projection model of World Bank for calculating pollution load in developing countries where continuous industrial pollution data is not available, we have calculated the changes in the pollution load of Indian industries. Finally, we conclude by suggesting policy reforms that are needed to encourage more efficient use of resources and substituting away from scarce resources and adoption of technologies and practices that minimize environment impact.

**Key words:** Environment, Industrial sector and Industrial pollution.

## INTRODUCTION

“ The recognition of the indissoluble bond between environment and development brought home the need to forge a new global partnership between developed and developing countries”.

...,Fernando Henrique Cardoso. Environment protection becomes one of the foremost concerns of the world community. Environmental deterioration through human activity is proceeding at an unprecedented rate. Unless this process is held in check, the damage caused will be grave and irreversible, damaging not only ourselves but future generations. The environmental damage will be caused not only in the nation where it occurs but at the global level in general. All public institutions, including the judiciary, need to make collective effort to fight against this universal peril. Human activities sometimes tend to submerge concepts such as respect for nature, trusteeship of earth resources and community interests in common amenities, present in the traditions of many developing countries. These traditions can be a rich source of inspiration for the environmental law of the future, where relevant attention is drawn to them. Man's environment consists of natural resources like land, water, air, plants and animals. With the progress of civilization man has to interact with his surroundings and disturbed the nature. It leads to environmental pollution, which cannot be eradicated by nature's self acting process i.e., carbon cycle, nitrogen cycle or water cycle. These unfavorable conditions created by man generated the problems of environmental disasters and disorders. Environmental devastations from both natural and man made causes such as earth quakes, cyclones and nuclear explosions, industrial accidents etc., have increased threat for the human life. Each factor contributing to environmental decline serves in varying degrees to heighten economic disruption, social tension and political antagonism<sup>1</sup>.

“ The growing possibility of our destroying ourselves and the world with our own neglect and excess is tragic and very real” ...,Billy Graham.

Over the past several decades, growing public awareness of threats to the environment, informed by warnings of scientists, has led to demands that law protect the natural surroundings on which human well-being depends. Under growing pressure from national and international public opinion, governments began to demonstrate concern over the general state of the environment during the 1960s and introduced legislation to combat pollution of inland waters, ocean, and air, and to safeguard certain cities or areas. Simultaneously, they established special administrative organs, ministries or environmental agencies, to preserve more effectively the quality of life of their citizens. Developments in international environmental law paralleled this evolution within states, reflecting a growing consensus to accord priority to resolving environmental problems. Today, national and international environmental law is complex and vast, comprising thousands of rules that aim to protect the earth's living and non-living elements and its ecological processes.

## MEANING

Industrialization is *sine qua non* for economic development. The developed as well as the developing countries have considered industrialisation to be a dynamic instrument for economic and social development. The present pattern of industrial activity compelled to use of hazardous substances and leading to the generation of toxic wastes. It accelerated the destruction of ecology of the planet. Scientific development and unprecedented exploration of natural resources disturbed the ecological balance. Deforestation is causing global warming, extinction of species and increasing the severity of the floods. Toxic chemicals from industries and automobiles emitted into atmosphere combine with water vapour, and get transformed into acid rain.<sup>1</sup> Industrial

<sup>1</sup> Norman Myers, *The Environmental basis of Political Stability*, 1993, p.69.

development and urbanisation deteriorated the healthy environment. Pollution is the direct outcome of man's ruthless exploitation of the natural resources.<sup>2</sup> The attitude of modern man towards ecology has been a thoughtless exploitation for selfish and personal gain. The history of man's constructive development is the history of ecological destruction and environmental degradation. Right from the bottom of the seas to the limitless outer space, the earth is getting highly polluted. The very existence of the life on the earth is at stake.<sup>3</sup> In a nutshell human activities are trespassing the global environment and causing danger to the earth.

### **REASONS FOR INDUSTRIAL POLLUTION**

Lack of effective policies and poor enforcement drive allowed many industries to bypass laws made by pollution control board which resulted in mass scale pollution that affected lives of many people. In most industrial townships, unplanned growth took place wherein those companies flouted rules and norms and polluted the environment with both air and water pollution. Most industries still rely on old technologies to produce products that generate large amount of waste. To avoid high cost and expenditure, many companies still make use of traditional technologies to produce high end products. Many small scale industries and factories that don't have enough capital and rely on government grants to run their day-to-day businesses often escape environment regulations and release large amount of toxic gases in the atmosphere. Industries do require large amount of raw material to make them into finished products. This requires extraction of minerals from beneath the earth. The extracted minerals can cause soil pollution when spilled on the earth. Leaks from vessels can cause oil spills that may prove harmful for marine life.

### **INDIAN CONSTITUTION AND ENVIRONMENT PROTECTION**

The Constitution [Forty-Second Amendment] Act, 1976 has laid foundation in Articles 48-A and 51-A for constitutional jurisprudence of environmental protection. Article 48-A directs the state to mould its policies to protect and improve the environment, which runs thus:

“The state shall endeavor to protect and improve environment and to safeguard the forests and wild life of the country”.

In accordance with the recommendations of Swaran Singh Committee report<sup>4</sup> the Constitution [Forty-Second Amendment] Act 1976 inserted part IV-A, which enumerated certain fundamental duties. This Amendment brings the Indian Constitution in line with the Universal Declaration of Human Rights<sup>5</sup> and the Constitutions of China and Japan. Article 51-A clause [g] provides that it is the obligation of every citizen:

“To protect and improve natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures”.

There was an extensive debate in Lok Sabha when draft Article 48-A came up for consideration.<sup>6</sup> While welcoming the provision, the members proposed several amendments to it. In the Rajya Sabha, two amendments were moved, which proposed that the article should cover 'mineral wealth'<sup>7</sup> and required the state to 'under take adequate and effective measures to check environmental pollution'. The government did not accept these amendments as it considered that the concern underlying these amendments could be covered within framework of the newly incorporated provisions.<sup>8</sup> In Lok Sabha also several amendments were moved to 'conserve water, soil and other natural resources',<sup>9</sup>

### **NATIONAL FRAMEWORK TO PROTECT FROM INDUSTRIAL POLLUTION**

<sup>2</sup> Prince Philip, *DOWN TO EARTH* [1988] at 6.

<sup>3</sup> Antony ,v. Commissioner, Cochin. [1994] 1 KLT 169

<sup>4</sup> Report of the Committee for Recommending Legislative Measures and Administrative Mechanism for Environmental Protection 1980. Department of Science and Technology, Government of India [1980].

<sup>5</sup> Article 29(1) of Universal Declaration of Human Rights.

<sup>6</sup> Lok Sabha Debates, eighteenth Session. Fifth Series. Vol. LXV, NO: 5, 29 th October 1976, Columns 94-1 IS.Rajya Sabha Debates on the Constitution [Forty Fourth Amendment] Bill. 1976. which finally become the Constitution [Forty' Second Amendment] Act. Part 11

<sup>7</sup> Rajya Sabha Debates, 32 at 387.

<sup>8</sup> See also the statement made by H.R.Gokhale, the Minister of Law and Justice and Company Affairs, Rajya Sabha Debates 32 at 393 - 94.

<sup>9</sup> It was further suggested that the state should 'undertake adequate and effective measures to check environmental pollution', that the obligation imposed on the state by the provision should be discharged 'in harmony with nature and natural surroundings particularly in sanctuaries and parks', and the endeavor of the state as set out in provision 'shall not go against the interest of or be detrimental to the tribal forest dwellers'. Lok Sabha Debates NO: 32 Columns 94 - 95.

Many legislations were enacted, which are incidentally dealing with the problem of protection of environment even before the Stockholm conference. Nevertheless Indian legislatures enacted the following special laws to deal with the problem of industrial pollution and protection of environment.

- 1=The Water [Prevention and Control of Pollution] Act 1974.
- 2-The Water [Prevention and Control of Pollution] Cess Act 1977.
- 3-The Air [Prevention and Control of Pollution] Act 1981.
- 4=The Environment [Protection] Act 1986.
- 5=The Public Liability Insurance Act 1991.
- 6=The National Environment Tribunal Act 1995.
- 7=The National Environment Appellate Authority Act 1997.

#### **ENVIRONMENT [PROTECTION] ACT 1986:**

The Stockholm Declaration impressed upon the nations the need for a legal framework to sustain a cleaner environmental system. In pursuance of the decisions taken at Stockholm, the Parliament of India, enacted the Environment [Protection] Act 1986.<sup>10</sup> According to the Environment Act 'environmental pollution' is the presence in the environment of any environmental pollutant, which is defined as 'any solid, liquid or gaseous substance present in such concentration as may be, or may tend to be injurious to the environment'.<sup>11</sup> The expression 'environmental pollutant' is of significance for two reasons. In the first place, it occurs in the equally important definition of 'environmental pollution' in section 2[c]. Secondly it also occurs in some of the important substantive provisions of the Environment Act.<sup>12</sup> This definition is inadequate as it includes solid, liquid or gaseous substances only.

#### **THE NATIONAL ENVIRONMENTAL TRIBUNAL ACT 1995:**

The Rio Conference gave a call to the international community to develop national laws regarding the liability and compensation for the victims of pollution and other environmental damage.<sup>13</sup> With a view to provide speedy relief and compensation for damages to persons, property and the environment, the National Environment Tribunal Act 1995 was enacted.<sup>14</sup> This Act made provisions to establish National Environment Tribunal<sup>15</sup>, for effective and expeditious disposal of cases for damages arising out of any accident occurring while handling any hazardous substance. The Act imposed strict civil liability on the owner of the industry, to pay compensation in case of death of or injury to any person or in case of damage to any property or environment is due to industrial accident.

#### **ROLE OF JUDICIARY IN SOLVING PROBLEM OF INDUSTRIAL POLLUTION:**

Environmental cases involve the judicial review of administrative agency's determination and policy decisions. It has been the traditional rule that the court cannot interfere with the administrative decisions, in the absence of *malafides*. This is equally true in the case of administrative actions connected with environmental problems. While dealing with the administrative action related to the problem of environment, the Supreme Court in **Sachidananda Pandey**<sup>16</sup> held:

"If the government is alive to the various considerations requiring thought and deliberations and has arrived at a conscious decision after taken them into account, *it may not be for the court to interfere in the absence of malafide*".

The court further stated that the government must exercise greater control and vigil to take necessary policy decision, to strike a balance between preservation of environment and utilisation of natural resources based on the advice of the expert body. In this process with the adoption of the Public Interest Litigation<sup>17</sup> the courts in India entered into the policy formulation regime. Judges actively participated in the environmental policy process in several ways, while dealing with environmental cases, to vindicate environmental justice. The courts came out of the traditional orthodox limitations and in **Sachidananda Pandey** held:

"When the court is called upon to give effect to the directive principle and the fundamental duty, the court is not shrug its shoulders and says that priorities are a matter of policy and so it is a matter for the policy-making authorities. The least that the court may do is to examine whether appropriate considerations are born in mind and irrelevancies excluded".

#### **CONCLUSION**

Industrialisation is the cornerstone of the socio-economic progress of a nation, especially in developing countries. Environmental pollution is one of the negative results of industrial development strategy, which has assumed a dangerous proportion throughout the world. India is a principal third world country in global environmental politics both by choice and by its geographic and demographic circumstances. Wide territory and large population have given India a major role in determining the fate of the

<sup>10</sup> Hereinafter mentioned as Environment Act

<sup>11</sup> See section 2 [b] and [c] of Environment(Protection)Act.

<sup>12</sup> See section 3[2] [iv] , 6 [2] [b] , 7, 9 [I] , 25 [2] [a] of the Environment protection Act and also Supra Note 164 at 14.

<sup>13</sup> Rio Declaration on the Environment and Development, UN Doc. A/conf. 15 1/5 (1992)

<sup>14</sup> Received the assent of the President of India on 17.6.1995. Herein after mentioned as NETA

<sup>15</sup> Section 8 of the National Environment Tribunal Act 1995. This Act under section 18 empowered the government to constitute Branches of the Tribunal.

<sup>16</sup> Shri Sachidananda Pandey .v. State of West Bengal, AIR 1987 SC 1109.

<sup>17</sup> Herein after mentioned as PIL.

global environment. India acknowledged the need to protect environment and formulated new environmental policies and the Indian Constitution imposed an ostensible duty on both the state and the citizens to protect and preserve environment.

On the global level the United Nations took an interest on the subject of environment and called for a global effort to defend the human environment. The role of United Nations as an international institution within a scheme of the management of the environment is recent and limited. It is important to note that the United Nations has been slow in coming to grip with environmental problems.

There are multiple controlling agencies under the general and environmental laws. They are at central, state, regional and municipal levels. Each one is controlling the pollution activities in its own way. Multiplicities of these authorities create problems for handling the sensitive matter under different hands. If the authorities treat themselves as sitting in a watertight compartment, then it will not allow any uniform and coordinated approach, which is most important in matters like protection and improvement of environment. Mr. Dilip Biswas, the Member-Secretary of the Central Board, admitted that there are occasions when the directions of two authorities are not mutually complementary and, at times, totally contradictory.

