

# Critical Studies of Environmental Laws in India

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DOI: 10.29322/IJSRP.12.09.2022.p12945  
<http://dx.doi.org/10.29322/IJSRP.12.09.2022.p12945>

Paper Received Date: 15th August 2022  
Paper Acceptance Date: 15th September 2022  
Paper Publication Date: 26th September 2022

**Abstract-** There are many laws in force in India to preserve the environment but it is still problem that environment pollution could not be stopped effectively. The metro cities in India are most polluted cities, like Delhi and Mumbai .The problem of pollution in big cities still at mass level.

Health is an integrated part of life. Life can't exist without health. Health is mainly affected by food, water and environment. Article 21 of constitution declares right to food, water and decent environment decent life. What is environment? Environment in modern context sustainable development includes the physical and serial factors of surrounding climate round and some biological factors such as animals, plants etc. under the provisions of Indians constitution every citizen has the right to enjoy free air and water. Therefore, whoever pollute the air and water in such a manner which is harmful and injurious to health shall be deemed to be the violation of the constitution<sup>1</sup>

Art 47 of the Indian constitution provides that the state shall regards the raising the level of nutrition and standard of living of its people and the improvement of public health as living as among its primary duties and in the consumption of liquor, intoxicant etc. except for the medicinal purpose, which are injurious to health.<sup>2</sup>

The above provision of the constitution was inserted into constitution with a view to protect the public health, unfortunately the said article in part IV, has no legal effect and cannot be given current by the court.

**Index Terms-** Environment, pollution, Air Pollution, Water Pollution, sustainable development

## I. AIR POLLUTION ACT 1981 AND ITS LACUNAS

In order to preserve environment the parliament has enacted. Air pollution (prevention and control) Act 1981, but the said Act could not fulfill the dreams because the Act has some of the lacunas, which are as under:

Section 3 of Air Pollution Act 1981, provides that-

Single board will discharge the function of water pollution board, therefore heavy Burdon lies on Single board.

Second lacuna of this Act is renomination of members.

Section 1(6) of Air (prevention Act control of pollution) Act

1981, provides that “members of state board constituted under this Act shall be eligible for renomination.

Third lacuna in this Act is that maximum members are politician, nominated in the board.

Section 43 of the Act provides that magistrate of 1<sup>st</sup> class or metropolitan magistrate shall take cognizance for offence committed under the Act. The above provisions of court to try offences should be altered and special court should be constituted.

The parliament has enacted a wrong done to use of water creates liability.

1. Civil
2. Criminal

The civil nature has divided in an ordinary and vicarious. In ordinary civil wrong a wrong does are held liable for compensation on account of damaged caused.

## Judicial Directions about Environment

If there is any violation or act affecting environment, than it is the duty of executive Magistrate under section 133 of Cr. P.C. to remove such nuisance<sup>3</sup>

<sup>1.</sup> AIR 1980 SC 1622

### **In charanlal sahu Vs. Union of India<sup>4</sup>**

The Apex court laid down the principal, that Bhopal gas tragedy claim proceeding Act 1985 was constitutional. It is established principal of law that whoever desires that court should punish the defaulter.

The Burdon of proof does not lie on the person who proceeds against the polluter<sup>5</sup>

### **In suchchidanand pandey vs. State of west Bengal<sup>6</sup>**

The Honorable Supreme Court of India observed that wherever the problem comes of ecology, courts are bound to see article 48A and 51A.

### **In Rural litigation and entitlement vs. state of UP<sup>7</sup>**

The Supreme Court has stopped the digging of lime stone because due to digging up the lime stone the environment has been polluting.

### **In virendra Gond vs. State of Harayana<sup>8</sup>**

The Supreme Court has held that under article 21 “Right to life includes”. “Right to protection environment” every person shall have a right to live in fresh and unpolluted environment.

### **In Hamid Khan vs. State of M.P.<sup>9</sup>**

It was held in this case that the person who suffering from knee. Teeth, infirmity due to consumption of polluted water shall be given free treatment (medicine) whether it be way of surgery if required than the same shall be undertaken at the expenses of state and each person whose surgery is done shall be paid 3000/-.

2. AIR 1990 SC 1480
3. AIR 1999 SC 812
4. AIR 1987 SC 2187
5. AIR 2000 SC 384
6. AIR 1995 SC 57
7. AIR 1993 191

17 Air Act meant for taking such steps as may further the object of the act in effective controlling the Air pollution caused by industries. No clause of the said section of act for sake of any provisions of the Air act has the state Board.

#### REFERENCES

- [1] Trade and Environment Law Edgar Elgar Publishing year 2017
- [2] Environmental Law in India 2019 P. Leelakrishna Lexis Nexis
- [3] Environmental law Dr. Parangpe 3<sup>rd</sup> Ed. 2021 CLA
- [4] Environmental Law –Dr. Param Jeet Singh Jaswal 4<sup>th</sup> edition p.82,83
- [5] Indian Environmental law Orient Black Swan 1<sup>st</sup> Ed. 2019 Shivani Ghose

#### II. CONCLUSION

I don't find any provision under which the parliament has vested any direction with the state Board to grant exemption to any particular industrial plant or class of plants. A reading of section

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