

INTERNATIONAL ENVIRONMENTAL LAW AND ITS APPLICATION IN INDIA

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Introduction

Environment has been defined in The Environmental (Protection) Act, 1986 as one which includes “water, air and land and the inter- relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property”.²

Environmental law is a body of collective terms which describe the network of regulations, statutes, treaties, common law, conventions, customary law which aim to protect the natural environment which is affected or impacted from the harmful activities carried out by the human beings.

International Environmental Law attempts to protect the environment from pollution and control the depletion of natural resources within the framework of sustainable development. It is a division of public international law which is a body of law created by states for the states for dealing with problems arising within the states.

The principles laid down in the international declarations form the elements of international customary law like The Stockholm Declaration 1972, The Vienna Convention for the Protection of the Ozone Layer 1985, The Montreal Protocol on Substances that Deplete the Ozone Layer 1987, The Rio Declaration on Environment & Development 1992.

The Principles on Environment

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² The Environment (Protection) Act, 1986, Section 2(a).

United Nations Conference on the Human Environment, commonly known by the name of The Stockholm Declaration 1972, was the first United Nations conference whose focus was on international environmental issues and therefore laid down the foundation for global environmental governance.

The conference agreed upon a declaration which contained 26 principles, a framework for action plan containing 109 recommendations relating to human settlement, natural resource management, educational and social aspects of environment and pollution control measures.

The Environment (Protection) Act, 1986 and Air (Prevention and Control of Pollution) Act, 1981 were passed to implement the decisions which were taken at The Stockholm Declaration 1972. Similarly The Public Liability Insurance Act, 1991 and The National Environment Tribunal Act, 1995 were passed to fulfil the commitment made by India in The Rio Declaration on Environment & Development 1992 to develop laws regarding liability and the compensation for the victims of pollution and environmental damages.

International Environmental Law in India

International Environmental Law has helped in the shaping and development of Indian Environment Law. The Indian courts have explicitly recognised environmental protection as a human right. Article 48A³ explains that it is the duty of the State to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51A (g)⁴ explains that it shall be the duty of every citizen of the country to protect and improve the natural environment including the forests, lakes, rivers and wildlife, and to have compassion for living creatures. Articles 14, 19(1) (g) and 21 of The Indian Constitution also play an important role in the protection of environment. The Indian courts have also incorporated the polluter pays principle and the precautionary principle in the domestic law.

Precautionary Principle- The precautionary Principle establishes that a lack/scarcity of scientific data i.e. data which determines the effect of activities on the quality of environment, shall not be

³ The Constitution of India, 1949

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the reason to postpone cost effective measures to prevent the environment from degradation. On the contrary, cost effective measures need to be established so as to keep up with the conservation of the natural resources.

Polluter Pays Principle- The polluter pays principle establishes that the financial costs for rectifying the damage caused to the environment by pollution should lie with the undertakings which cause the pollution. The purpose of this principle is to force the polluters to bear the real costs of their pollution. It is noted that the polluter pays principle evolved out of the rule of 'absolute liability'.⁵ The Supreme Court has moved to a situation where it estimates the environmental losses not on the assertion put forward by either party, but by an assessment of the situation by the court keeping in mind the factors such as deterrent nature of the award.⁶

Participation of Public in Environmental Decision Making

One of the important principle that takes birth from the international environmental law is the participation of public in environmental decision making. For making the environment healthy the participation of public in making decisions holds great importance. Through public participation the needs of the present and the future generations can be secured and thus it helps in the saving of the environment. Public participation helps the state in accomplishing its duties towards the environment as whenever any matter related to environment arises, the views from all the sides along with the pros and cons are represented and discussed thus creating a balance between development and environmental ethics which leads to quality decision making by the government.

On many occasions the Supreme Courts and the High Courts of India have insisted on the mandatory implementation of Environmental Impact Assessment (EIA) and promoted the participation of public in environmental decision making.

Conclusion

⁵ *Vellore Citizens' Welfare Forum v Union of India* 1996(5) SCC 647

⁶ *M.C. Mehta v Union of India*, A.I.R 1987 S.C. 965 (India)

In India the concern for environmental protection has been raised to the status of fundamental law of the land as it is the basic human right of all the individuals to live in a pollution free environment. Though India has a strong world economy, it faces difficulty in checking its local, state and nationwide pollution levels. In spite of various legislations, the real state of environment is still gloomy. Also powers vested with the Pollution Control Boards are not enough to prevent and control pollution. It is high time now that the government and the public realise the damage caused to the environment.

India has signed numerous international treaties and therefore it led to the encouragement of the judiciary by international environmental law. The integration of international environmental law with the domestic law has occurred to some level. Though the integration is still going on, it has led to positive incorporation of international environmental law into India's environmental law. Although India has signed many multilateral treaties, much is yet to be achieved in its implementation.

With the rising population in India, we have to protect the flora and fauna i.e. the environment and also have to meet the power requirements of the population following the principle of sustainable development so that the coming generations receive all the benefits which the current and past generations have abused.