

BOOK REVIEWS

ENVIRONMENTAL LAW IN INDIA. By Prof. Gurdip Singh. New Delhi: Macmillan India Ltd., 2005, Pp. xx + 421, Rs. 255/-, ISBN 1403 92490 2.

Environment today forms an important part of law in the backdrop of pressing need of striking a balance between economic development and preservation of eco-systems and environment, at national and international levels. Today, many plants, amphibians, birds and butterflies face extinction, under pressure from human expansion and climate change. Having regard to the grave consequences of the pollution of water and air, The Supreme Court of India declared that it was the duty of the Central Government to direct all educational institutions throughout India to include in the curriculum lessons relating to the protection and the improvement of the natural environment including forests, lakes, rivers and wild life.¹ The book under review deals with different facets of environmental law in India and contains rich material on this emerging branch of law, hence is a welcome addition to the literature on the subject. Rome was not built in a day. The book under review is a culmination of vast experience of the author in teaching, research and writings in the field of environmental law. The very fact that a publishing house of repute has published the book speaks of the high quality of the work.

This book analyzes and evaluates environmental law in India. It is written primarily to cater the needs of graduate and postgraduate students of law and researchers. The book is likely to benefit those who are interested in acquisition of knowledge of the subject, including officials from the Ministry of Environment and Forest and NGO's working in the area of environmental protection.

The work is divided into three parts and thirteen chapters. Part I contains three chapters devoted to discussion on ancient philosophy, key environmental variables, sustainable development and constitutional perspective of the environment in general.

Chapter 1 is introductory and briefly traces environmental scenario and related regulations, as existed in ancient times, and finds a common

¹ *M.C. Mehta v. Union of India (Ganga Pollution case)*, AIR 1988 SC 1115.

thread in many religions for protecting the environment. Sustainable development is to meet the twin objectives of environmental stability and restoration of ecological balance, together with improved livelihood support system for the people. It goes further to reflect the current environmental variables: poverty, population explosion combined with dramatically higher per capita consumption of material goods resulting in staggering jumps in energy consumption, emission of greenhouse gases causing climate change, ozone depletion, scarcity of fresh water resources, contamination of agricultural and sea-food resources with insecticides, pesticides and heavy metals in food chain, land degradation, soil erosion, deforestation, loss of bio-diversity, extinction/endangerment of micro-organisms and other living species.

Chapter 2 lays special emphasis on sustainable development. It conceptualizes sustainable development and spells out difficulties in translating sustainable development into legislation. Sustainable development is structured on two forms of equity, namely intergenerational equity and intra-generational equity. Even the UN Charter affirms the universal concern for the welfare of future generations: “we the peoples of the United Nations determined to save succeeding generations from the scourge of war...”² It projects international and national legal measures to operationalize sustainable development. The book unfolds judicial activism in treating sustainable development alongwith its legal pillars, namely precautionary principle and polluter pays principle as part of international custom which have percolated into the body of environmental law in India.

Chapter 3 ‘Environment and Constitution of India’ examines and highlights in detail the constitutional status of the right to healthy environment under Article 21. Although Article 14 has not been frequently invoked by the Supreme Court in environmental protection cases, its contents have witnessed effectuation especially in cases involving mining³ and stone crushing⁴. The Court has balanced environmental imperative with the fundamental right to carry on any occupation, trade or business guaranteed

² UN Charter, 26 June 1945, Preamble.

³ *Rural Litigation and Entitlement Kendra v. State of U.P.*, AIR 1985 SC 652.

⁴ *Obaya Pujari v. Member Secretary KSPCB, Banglore*, AIR 1999 Karnataka 157.

under Article 19(1) (g) of the Constitution.⁵ The book lays equal emphasis on fundamental duty of the State as well as citizens⁶ to protect and improve the environment.

Part II 'Public interest Litigation and Liability' is divided into two chapters. Chapter 4 deals with the role and constitutional status of public interest litigation (PIL) in environmental matters and the other chapter deals with hazardous substances. In *People's Union for Democratic Rights v. Union of India*,⁷ the Supreme Court has elaborated the nature and scope of the public interest litigation, which is also referred to as 'Post Card' litigation.⁸ The underlying condition for the initiation of public interest litigation is that it should be initiated *pro bono publico*, i.e. in good faith and for the benefit of the people.

Chapter 5 discusses in detail Bhopal Gas Disaster adjudication in United States and India, doctrine of *forum non conveniens*⁹, and legal validity of the settlement. The provisions of Bhopal Gas Disaster (Processing of Claims) Act, 1985 and the plight of victims in getting compensation despite the settlement have been examined. The author raises the question as to why DOW (the new owners of Union Carbide) could not simply clean up the toxins lying around and within its premises instead of slowly snuffing out life in Bhopal.

Part III of the book consists of eight chapters and elaborates, analyzes and evaluates the specialized environmental legislations adopted in India not only to prevent various forms of environmental pollution but also to protect and improve the environment. The book spells out various statutory provisions relating to different kinds of pollution : Environment Protection Act 1986 and Coastal Zone Regulations¹⁰ are discussed in Chapter 6.

⁵ *A.P. Gunnies Merchants Association, Hyderabad v. Govt. of A.P.*, AIR 2001 AP 453.

⁶ Articles 48 A and 51 A (g).

⁷ AIR 1982 SC 1473.

⁸ *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.*, AIR 1990 SC 2060.

⁹ The doctrine was developed in *Gulf Oil Corporation v. Gilbert* (1947) 300 US 501; and *Piper Aircraft Co. v. Reyno* (1981) 454 US 235.

¹⁰ Notification dated 19 February 1991, Ministry of Environment and Forest, GOI was examined in *Shrimp Culture case : S. Jagannath v. U.O.I.*, AIR 1997 SC 811.

Legal Regulation of Hazardous Substances of 1889, Public Liability Insurance Act 1991 and National Environmental Tribunal Act 1995 are dealt with in Chapter 7. Water (Prevention and Control of Pollution) Act 1974 is the subject matter of discussion in Chapter 8. Air (Prevention and Control of Pollution) Act 1981 is discussed in Chapter 9. Noise Pollution (Regulation and Control) Rules 2000, effects of noise on human health and legal measures to control it have been discussed in Chapter 10. National Environment Appellate Authority Act 1997, its establishment, constitution, jurisdiction, powers and other related aspects find their place in Chapter 11.

Legal protection of Forests with special reference to Forest Act 1927, Forest (Conservation) Act 1980, mining operations, mega power projects, eco-tourism and construction activities on forest lands and Forest (Conservation) Rules 2003 form part of Chapter 12. Wild Life (Protection) Act 1972, protection of specified plants, protected areas, conservation reserve, community lands, sanctuaries or national parks, maintenance and recognition of zoos, prohibition of trade and commerce in wild animals, trophies, animal articles, provisions for forfeiture of property derived from illegal hunting/trade and reward have been elaborated in Chapter 13. The network of national parks, wildlife sanctuaries, community reserves, biosphere reserves, world heritage sites, other forest areas and wetlands can be strengthened and extended adequately with the involvement and meaningful participation of communities. The shortcomings and loopholes of the environmental legislations have been clearly spelt out in the book.

The book combines textbook method with case study method that provides clothing to the legal skeleton. This combination enables students to enjoy otherwise harsh text of the statutes. Case law is essential for textual cementing which inculcates in the students strong foundation to understand legal concepts. The author has carefully selected 128 cases, while avoiding plethora of material on the subject. It is a right step for developing legal skills in the students.

Law students are taught to read and analyze the legislations which are the primary source of law. It provides them opportunity to comprehend the law in toto and acts as a cushion for further analysis and research. The

case law exposes them to matter of fact, situations and helps them to understand the intricacies of law. The author has incorporated these features in the book and tried to intricately weave the two. Detailed annotations of amendments of the Acts are given in the footnotes, methodology which is close to the heart of an advocate. This makes the book useful for advocates as well as for judiciary, besides law students and researchers.

The book contains list of cases, Indian statutes and rules. It enlists foreign conferences, documents, plans, summits and conventions. A comprehensive index is provided at the end of the book. It would have been better, had the author included select bibliography of books, journals and articles for the benefit of research scholars.

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