

BOOK REVIEW

Environmental Law in India (2nd ed.2005) by P Leelakrishnan, LexisNexis Butterworths Pvt.Ltd, Viaya Building, 17 Barakhama Road, New Delhi-110001, Pg 340, Price-295

Environmental problems in developing countries like India are of a qualitatively different, the extent of damage is not only limited to the current world population but would mar the chances of the future generations of all kinds of life forms. The indiscriminate use of earth's resources today has led to problems of pollution, climate change, water scarcity, biodiversity loss, loss of forest cover, etc. which are apparent and there may be many other latent problems waiting to emerge. The author made the study of environmental law in India an important and indispensable subject which deals with the above issues. The book examines the growing law and environmental jurisprudence relating to the field, the historical promise, the contributions of the court with relevant landmark judgements and the international experiences in this regard. The book under the review is divided into twelve chapters. The book opens with the chronological information of table of cases passed by the courts which is contained in various chapters.

In the first chapter, it takes a look at the law and practices in ancient law. It deals with the general concept regarding the origin of environmental law, its relation with other disciplines and laws. It has mentioned that human civilization has advanced to a level where everyday affairs of life are managed and guided by the products of technology and for large sections of human populations, it is simply unimaginable to think of survival without the support of modern scientific discoveries. But at the same time, scientific and technological advances have given the human beings more power to control the environment, instead of being under its control. These advancements in the field of science and technology have undoubtedly led to the human development but unfortunately relying on the exploitation of natural resources. Most of the modern comforts which are available to mankind in the present age are the outcome of this rendezvous idea of development. It has also explained the United Nations Conference on Human Environment, held in Stockholm in the year 1972, which was a landmark event towards the protection of deteriorating environment at international level. The

provisions of the Constitution of India along with the concepts of civil liability, *mens rea* and strict liability are highlighted with in this chapter.

The author in chapter two briefly states the importance of forests and the difficulty in forest management attributed to the conflicting claims between environment and development. Wherever the state has chosen to exploit forests, it has seriously undermined the tribes' way of life. In a society based on the rule of law conflict of values is to be reconciled and priorities set. This process should precede, and also form the basis of formulation of legal policies.

The author then begins with an explanation of the laws relating to forest protection, in effect in India. The Forest Act 1927, is vehemently criticized of having laid a revenue-oriented approach leading to grave repercussions. It was also brought to fore that the judicial attitude was pro State power initially. The concept of reserved and protected forest deprived the forest dwellers of their traditional rights and privileges. The author points out the lacunae in the Forest (Conservation) Act of 1980. He states that the 1980 Act is nowhere talking about conservation but is merely a tool of discretion in the hands of the government to decide the use of land. The authors have also evaluated the Forest Act 1980 in light of the 1988 Policy. They hold the opinion that the 1980 Act has put fetters on the free functioning of the 1988 policy by re-introducing the regulatory regime and defining a controlling role of the government.

Then, the author puts forth the concept of sustainable development. The *T.N Godavarman Tirmulkpad v. Union of India*¹ is a remarkable illustration of the concept of sustainable development. Its author points out that how the Courts have been successful in safeguarding the rights of the tribals as well as of the forest dwellers on forest produce and snubbing the colonial approach of the government. The judiciary is playing an active role in promoting and making the globally accepted principles of sustainable development, a part of Indian environmental conservation framework. So with growing population, needs and knowledge, the responsibility of forest sector is not now limited to meeting the environmental concerns only but encompasses livelihood issues, which in turn will affect the economic and social needs of the country. In addition to taking care of the global

¹AIR 1997 SC 1228.

environment conservation and forest dependent communities, forest policies need to be framed envisaging long-term goals of sustainability.

The author has have put forth the concept of eco-tourism as it is growing industry in India. Therefore, the question arises whether tourism will lead to disturbances in environmental equilibrium. Although tourism helps in mobilisation of funds for the development of the national economy, however, this does not mean that tourist activities should go beyond the boundaries of being environment friendly. The court should lay emphasis on sustainable development, which has to be accepted as a viable concept for eradicating poverty and improving the quality of human life, while maintaining the equilibrium of the ecosystem. In other words, society has to prosper, but not at the cost of the environment. This concept will have to be accepted in the field of eco-tourism.

The author in chapter three explains that the roots of environmental law can be found in the common law concept of nuisance. Nuisance can be divided into two categories that is the private and public nuisance. While private nuisance is interference with the use of land, public nuisance denotes an interference with a right common to the general public. Although both categories have substantial nexus with environment management, the law of public nuisance has a predominant connection with environmental law.

The author in chapter four, concept regarding the coastal zone management and has discussed that the protection of coastal zones is another challenge for environmental law in India. It enumerated the legal controls on coastal zone management with a comparative glance at a few other coastal states like the UK, USA and Sri Lanka.

The author in chapter five deals with the mechanisms necessary to protect land and water resources. The measures have been taken for the conservation on biological diversity along with the instances and case laws. India presents a puling paradox of poverty in the midst of abounding natural resources and has mentioned that saving the natural resources is a big challenge.

The author in chapter six has covered the statutory attempts in India to control pollution. The overview of this chapter reveals a picture of active judicial interference to enforce pollution control laws. It has also explained that the clear constitutional and statutory provisions have been further strengthened and supplemented by active judicial intervention in enforcing law relating to

protection of environment and prevention of pollution that has contributed significantly to the growth of jurisprudence on environmental law in India.

As far as the legal framework on environment is concerned the most significant Act which operates is the Environment Protection Act. The Environment (Protection) Act 1986 has added a new thrust to environmental protection in India which was enacted under the provisions of Article 253 of the Constitution of India with a view to implementing the decisions of the United Nations Conference on the Human Environment, which was held in Stockholm in the year 1972, has been covered in detail in chapter seven. The concept of Environment Audit, Environmental Impact Assessment an important legal tool for environmental protection has been dealt in this chapter.

A reading of Chapter eight provides a fair idea about the evolution of the principles of environmental jurisprudence in light of the Fundamental Rights especially right to life, encompassing right clean, humane and healthy environment, and also inclusive of right to be rehabilitated as well compensated fairly. The decisions of courts have widened the scope of the right to life, the right to a clean environment and laying down that protection and improvement of the environment is a mandate to every institution public or private, and individual to be followed in all spheres of their activities. The courts in India have, therefore, lived up to the need of the hour, and have made significant contributions in evolving new principles and remedies in the field of environmental protection. The author further explains the justifiability in the light of interwoven web of Part III, Part IV and Part IV-A of the Constitution.

Chapter nine explains the impact of mass disasters like that of Bhopal gas leak disaster. In *Union Carbide Corporation v. Union of India*² Chief Justice RN Misra said that, judges of are human beings and their hearts also bleed when such calamities like Bhopal gas leak incident occur. It is against this background that the author has pointed out that one has to examine recent trends in Indian Tort Law as an instrument of protection against environmental hazard. The environmentalist's social workers, the general public and government institutions start thinking about new ways and means of preventing similar tragedies in the future. This process leads to legislative and administrative activism. This chapter also deals regarding the concept of absolute liability, the doctrine of *parens*

²AIR 1992 SC 202.

patriae which relates to the rights of a person, real or artificial, to sue and to be sued on behalf of another who is incapacitated to take up the case before a judicial forum as effectively as the former can, along with the illustration and case laws.

Most decisions relating to the environment are the outcome of public interest litigation which is well entrenched in India. The parameters of public interest litigation are explored in chapter ten including the polluter pay principle, precautionary principle and public trust doctrine for the protection of environment. The illustration and case laws add to enrichment of the topic. The author in chapter eleven has discussed that a meaningful impact assessment is necessary for a viable environmental regime with balanced and sustainable growth of industries. It has also discussed that the modern technological state intensifies the conflict between environmental values and development needs.

The author in chapter twelve points out that, the public participation is the balancing wheel on which a democratic process moves. Public participation in environmental decision-making augments environmental protection measures, and reflects the aspirations of the present, as well as future generations. Law cannot be allowed to lag behind changing social situations. The recent law on right to information, makes administration process more transparent and public participation more meaningful. Public participation and scrutiny will force the decision-making machinery to act in a more just and fair manner in facilitating the realisation of the right to a healthy environment. At the end of the book, one finds bibliography and a topical index which provides information regarding the convention's statutes, rules, regulations, reports, and articles contained in various chapters.

The author has brought out a comprehensive work that provides a useful guide for readers to address the concerns for the protection of environment, its sustainability and use of resources.

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