
1 RMLNLUJ (2008) 146

Book Review: Environmental Law in India

BOOK REVIEW

by

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ENVIRONMENTAL LAW IN INDIA (2007) By Prof. Satish C. Shastri, Eastern Book Company, Lucknow, pp. XXIX + 365. Price Rs. 225/-

The Teaching of Environmental Law started in India in the year 1977¹. Nearly thirty years have passed since then but this subject has yet to get a firm ground and its serious expansion in the Indian Law Schools. Fortunately some of the Law Schools have revised their curriculum and have included different phases of Environmental Law. The University Grant Commission, to fulfil its mandate of "coordinating and maintaining standard of higher education" came out with the *UGC Model Curriculum Law*, 2001 aiming at combining the goals and parameters of global knowledge with pride in Indian heritage and Indian contributions in that regard. Its Chairman, Dr. Hari Gautam requested the Academic administration of the universities to see that the Model is adopted latest by July, 2002. The *UGC Model Curriculum Law*, 2001 has provided different, though limited, facets of environmental law². In spite of the UGC directives, the question remains as to how many Law Schools have adopted them. The answer, it seems, cannot find an overwhelming support. The reality is that the optionals in environmental law course have yet to seriously get a start in majority of the Law Schools in India.

It is true that the teaching in environmental law has yet to gear up in the speed which was expected but there are two major difficulties before the Law Schools: *One*, there are not many law teachers who have expertise in different branches of the subject. *Two*, the libraries are not in a position to cater to the demands in this regard. As imparting education in environment has become mandatory for all the educational institutions in India in view of the judgment of the Supreme Court of India³, it is time that at least the Law Schools must rise to the occasion and start teaching and researching in the multi-facet dimensions of the environmental law. Let us hope that the new generation of the environmental law teachers will take this challenge and introduce teaching and research in environmental law in its multi-facet forms in their Law Schools.



Page: 147

It will not be out of place to mention that in the present time Environment Law, with its different offshoots, is finding a place in the curriculum of the schools of varied disciplines; for example, Commerce, Management, Engineering, Social Sciences, Sciences, etc. This means that the numbers of its consumers are increasing everyday.

In the above scenario of complexities and expansion, the *Environmental Law in India* by Prof. Satish Shastri is a welcome move in that direction. While reviewing the present work, the present reviewer has taken three parameters in mind: what has been "done", "misdone" and what remains to be "undone".

I.

The Forward to the *book* by Justice V.S. Dave, the Former Judge, Rajasthan High Court, gives a decision in favour of the present work when he says, "none of the past publications match the present book". In this part an humble attempt is made to find out how for the aforesaid decision holds the ground.

The book has been divided in Thirteen Chapters, a number considered inauspicious by the Britishers but the introduction, a part of the book would make it a Fourteen Chapters' work. *Shastri* has brought in the discussion on ancient Indian tradition, culture and the rich heritage which other publications have not paid serious attention. However, there difficulties in understanding the original sources and not many scholars, Judges and the role players in environment have seriously made attempt in this direction *Shastri* has, in nine pages of Chapter I, dealt with the 'Ancient Indian Environmental Ethics.' In these pages he has given a birds eye view on the protection of the animals and birds, two components of environment. The Chapters Two and Three are general which deal with the causes, kinds of pollution and the need of environmental law. Then comes the discussion on the constitutional vision of environment. The most important contribution is in the *Triveni Sangam*, which deals with the environmental rights, duties and obligations in detailed taking help of the leading High Courts and Supreme Court cases including the cases decided in the year 2003.

The treatment of remaining Chapters, except Chapter XIII, may be broadly divided into two: the general legal control; and two, the specific legal control. Chapter V deals with the general control, starting the journey from 1860 down to the year 1995. A beginner in environmental law will find a summary treatment of the legislations and judicial contributions during the above period.



Coming to Chapters VI to XII, they deal with the legal control of specific pollutions. It starts with the environmental pollution as a whole then comes down to noise pollution, water pollution, air pollution and the forest and wildlife protection. In dealing with the above matters *Shastri* has either dealt with all sections of the legislations or a select sections of the legislations. Apart from the different environmental legislations, the present study also includes discussions on different environmental rules passed during the period 1989 to 2000. The two legislations, the environment protection law, and the wildlife protection laws along with the noise pollution rules, have received a detailed treatment.

A sectionwise treatment is given to the Environment (Protection) Act, 1986 with a brief commentary supportive of case law. At the end, *Shastri* gives suggestions to improve the law. The noise pollution is the second subject which has been dealt in a greater detail. This includes the sources, effects and measurement of noise pollution followed by non-legal and legal mechanisms to control noise pollution including different States laws. The judiciary was also confronted with the noise pollution litigations, a bare information on the case law one can find in the present work.

The subsequent Chapters IX, X, XI and XII give the readers a broad counters of the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 followed by the forest legislation and forest conservation law and also the animal protection law. One can get a basic understanding of the concerned laws and how the judiciary has interpreted those laws.

The book closes with the last Chapter XIII which brings out the international

scenario of environment. *Shastri* takes the readers from the Stockholm (1972) to Kyoto (1997). In this Chapter, one can find very brief information on different treatises.

At the end of the book, an Appendix is added which give seven important pronouncements of the Supreme Court of India starting from the year 1987 down to 2001. Fortunately, the Appendix does not quote the judgments in *Verbitum* but the main points are separately highlighted.

So what comes out? One may find that hardly any law is left out which has direct or indirect relation with environment or its components. It is a brief treatment of the Indian environmental laws, an encyclopedia on Indian Environment Law.

The language is student friendly, written in a lucid manner. The seven pages subject index in the last pages of the book shows that *Shastri* has covered a large areas of Indian Environmental Law, making



Page: 149

it useful to not only the students of law to multidisciples, corporates to bureaucraties, representatives of people to people in general.

Further at the end of some of the chapters, *Shastri* has come out with certain suggestions, for example in the ancient Indian environmental ethics⁴, the Environment (Protection) Act, 1986⁵ and the Hazardous Wastes Management⁶. These suggestions open new vista for the research scholars and other role players.

II

Shastri needs a systematic treatment to take the readers step by step to the different facets of the Indian Environmental Law. In the Second Chapter, dealing with pollution: causes and kinds, the discussions of the Tiwari Committee and also the enactments relating to environmental pollutions seems out of place. Similarly, in Chapter III, titled as 'Need for Environmental Law' the discussions on Stockholm, Brundtland and Judicial Vigil cannot be the Indian need. Coming to the enviro-constitutional vision, it seems that the entire treatment could have been on the basis of the expanding fundamental rights, emergence of fundamental duties and fundamental obligation followed by the role of federal structure. This scheme, it seems, could have given a better perspective of the enviro-constitutional vision. The inclusion of the environmental principle at this place restrict the flow of the reader on the contributions of the Constitution of India.

Chapter V deals with the "other laws", the Public Liability Insurance Act, 1991 and the National Environmental Tribunal Act, 1995 these are not other related laws. Moreover, these legislations also find a place in other Chapters, providing to the readers repetition of the information. Coming to the treatment on various pollutions, it is suggested that legislation protecting the environment is, as has been rightly pointed, an umbrella and, therefore under the head of environment protection all the three legislations, 1986, 1981, 1974, could have been discussed under one head with different subtitles. Further in the 1974 and 1981 legislations, the language, authorities, offences, punishments are of almost same nature. Is it, then, justified to deal separately? One can understand that one can have separate treatment of water, air and noise pollutions including the laws concerned, which can give a clear picture of the pollution regimes in the area. The Chapter VII of Hazardous Wastes where in it also includes discussion on the non-hazardous



Page: 150

waste; for example, bio-medical waste, plastic waste, municipal solid waste. Moreover, this Chapter also includes discussions on the Public Liability Insurance Act, 1991, National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997 which do not fit in the deliberations on the Hazardous Waste.

Finally coming to the last part, Chapter XIII, this material could have found a place in the beginning. Moreover, the discussions on the "Indian Constitution and International Environmental Law" and "Indian Constitution and International Agreements and Declaration", could have been shifted to the enviro-constitution vision. And lastly, no textbook on the Environmental Law can afford to bring out a reprint of the Second Edition of 2005 in the year 2007. The old literature in the present fast changing demands needs up-to-date knowledge, otherwise it will loose its consumers in the competitive market.

III

An author of a book has to look to the demands in the knowledge information market. The textbook writers on environmental law will find that in the globalisation of knowledge, the readers also want to know what are the good and ill experiences of the other countries in handling and controlling through law so that he may make a comparison and try to correlative the Indian law with the comparative environmental law. The role players and students of environmental law need to be exposed in this regard. There are a large number of foreign laws and judicial decisions which require some mention in the text books on Indian Environmental Law. This preliminary treatment will grow into a full-fledged separate Comparative Environmental Law work which in turn will fill the presently existing gap in the law literature in India, a basic need to start with such course at the LLM level. *Shastri* may make a *Sri Ganesh* (auspicious start)⁷ in this regard.

In the present time with the development of critical legal studies and the fundamental duty "to strive towards excellence in all spheres", it becomes the duty of the authors to expose the readers with a critical approach. The students of the National Law Universities in this country are more demanding for the dissemination of information with a critical outlook. The olden days have gone when the teachers used to expose the students with what the law was, a mechanical teaching. Today, the students apply the law to a given situation in a best possible manner. *Shastri*, for example, has briefly dealt with the principle of absolute



Liability as laid down in the *M.C. Mehta case*⁸. A student of law needs to know: why the law already settled in *Rylands v. Fletcher*² was unsettled by the Supreme Court? How far the new law has done environmental justice? The *Mehta* litigation originated under Article 32 a constitutional litigation, how can it take the colour of a litigation in the law of torts? Can a similar doctrine be developed under different laws¹⁰ where a company or government department is exempted from the criminal liability on certain grounds?

There are reports on environment, for example, the Tiwari Committee Report, the Annual Reports of the Central and State Pollution Boards. The Government of India from to time frames Environment Policy Documents which show the government's vision plans in this regard. Further, one of the important role players in the protection and improvement of environment is the executive body. How functional, semi-

functional or non or missfunctional are they? These are some of the points and questions which need the attention of the authors in the present field.

Shastri has mainly dealt with mainly the urban environmental issues. The Constitution Seventy-third and Seventy-fourth Amendment Acts, 1992 added new dimension to the Indian Federalism, a three tier system. In this innovation, how can the problems confronted by the rural areas and population be neglected, a wish of the Father of Nation, Mahatma Gandhi? Let there be some start in this direction as well.

The above detailed treatment is not to question in any manner the competence and capability of Prof. Satish Shastri who is an emerging authority in the present field. They are merely humble suggestions for the next Edition of *Shastri* so that it becomes one of the leading text books on the Indian Environmental Law.

The reviewer, in the end, would like to record thanks to Prof. Satish Shastri for his kind words for me in his preface to the Second Edition. It is the pious duty of any *Guru* (teacher) to help all those who are in need of any help. All these years my humble effort is to develop dedicated, committed and honest role players to save the future generation from the ills of fast expanding dimension of pollution which



Page: 152

otherwise will extinguish the human race. Let us all join together in this task.

So finally what comes out? The decision of Justice V.S. Dave in the forward in favour of *Shastri* does not seem to be wrong. Thus Prof. Satish Shastri deserves praise for a comprehensive treatment to the Indian Environmental Law. Further, the Eastern Book Company, Lucknow also deserves praise for the beautiful getup, nice printing and, more particularly, the studentfriendly price.

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1. See, the *Bulletin of the Commonwealth Legal Education Association*, 1993 wherein the present author and the Law School, Banaras Hindu University were recognised as the "(F)irst in India to begin a Course on Environmental Law".

2. *Bulletin of the Commonwealth Legal Education Association*, 1993 wherein the present author and the Law School, Banaras Hindu University were recognised as the "(F)irst in India to begin a Course on Environmental Law" at 287-302.

3. *M.C. Mehta v. Union of India*, (1987) 1 SCC 395 : 1987 SCC (L&S) 37.

4. *Bulletin of the Commonwealth Legal Education Association*, 1993 wherein the present author and the Law School, Banaras Hindu University were recognised as the "(F)irst in India to begin a Course on Environmental Law" at 8.

5. *Bulletin of the Commonwealth Legal Education Association*, 1993 wherein the present author and the Law School, Banaras Hindu University were recognised as the "(F)irst in India to begin a Course on Environmental Law" at 135-136

6. *Bulletin of the Commonwealth Legal Education Association*, 1993 wherein the present author and the Law School, Banaras Hindu University were recognised as the "(F)irst in India to begin a Course on Environmental Law" at 157-158.

7. None of the Text Books on Indian Environmental Law have made a move in this direction.

8. *M.C. Mehta v. Union of India*, (1987) 1 SCC 395 : 1987 SCC (L&S) 37 : A.I.R. 1987 SC 1086. See Shastri, 68-

69.

⁹. (1968) LR 3 HL 330.

¹⁰. See, Sections 16 and 17 of the Environment (Protection) Act, 1986; Sections 40 and 41 of the Air (Prevention and Control of Pollution) Act, 1981; and Sections 47 and 48 of the Water (Prevention and Control of Pollution) Act, 1974.

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