Changing Base of Indian Environmental Law

1 RMLNLUJ (2008) 48

by
Prof. C.M. Jariwala[**]

Introduction

No law can stand without any base. It may be a primary or secondary or supplementary base. In order to study the growth of any law in its correct perspective, it becomes necessary to find out its inputs and contents. A base may change with changing time, allowing place to other bases. The Indian environmental law is no exception in this regard. It received inputs from various sources and there were different tools and means for its development.

The *Dharma* of environment held the ground for a long time followed by the *Karma* of environment. The don'ts of ancient time were revived by criminal sanction and compensatory remedies. However, its systematic expansion started with the Stockholm Conference, 1972 when Parliament started taking cognizance at the initial stage of water pollution. The constituent power in 1976 brought back the lost ancient Indian environmental culture which accelerated the speed of law journey. In this race the judiciary also was not lagging behind and was making its own contributions. These are some of the important bases of the Indian environmental law. These inputs find a detailed study in the present paper. Which of the bases reigned long and which made important or least contribution in the protection and improvement of environment? Has the changing base(s) successfully or unsuccessfully allowed the expansion of Indian Environmental Law? What were the hurdles, if any, before the support system? How best the system may be reformed for the healthy growth of environmental law? Do we need any alternative in its place? What are the lessons to learn? These are some of the questions which have been examined in the following pages.

Religious Base:

In ancient India, people were tied together, in whatever number, with their religious belief. Some adopted on their own and others or

rather majority accepted under the fear of non-compliance, resulting in punishment to the extent of going to hell. This willingness or non-willingness gradually internalised in the behaviour of the people. They started considering religious precepts as the command of God, the *Dharma*. In course of time, the Dharma saw different shapes which included *Raj Dharma*— the command for the king; *Praja Dharma*—command for the people; *Swa Dharma*— the command for one self; *Desha Dharma*- the precept for the nation, etc. Same is the case with environment where the ancient texts provided more don'ts and little dos for the individuals, rulers and nation.

In the don'ts came, for example, the killing of animals was prohibited[1]. The simple reason was that they were either worshipped or were associated with God/Goddesses, for example, Lion-Durga, Elephant - Ganesa, Bull and Serpent-Shiva, Peacock-Saraswati, Owl-laksmi, Monkey-Rama. A similar position was with respect to trees. They were regarded as to have not only divine powers but associated with God/Goddesses and in many cases they were considered as the abode of God/Goddesses. To name a few: Pepai and Vata-Vishnu, Tulsi-Laksmi, Bela-Shiva, Asoka-Indra, Kadamba-Krishna[2]. The ancient texts like, *Varaha Purana* says, one who

plants one pipal, one nima, one bara, ten flowering plants or creepers, two pomegranates, two orange and five mango trees, does not go to hell[3]. On the other hand, it has been prescribed that he who plants even one tree, goes directly to heaven and obtains *moksha*[4]. Injuries inflicted on different trees were categorised differently for punishment. Any injury to the shade-giving trees, flower bearing trees and fruit bearing trees attracted the lowest, middle and highest immurements respectively[5]. Kautilya even gone beyond this and prescribed different punishments for causing injury to different parts of a tree[6]. The position of river was not different. They were worshipped as Goddesses, Mahabharata talks about rivers as nerves of the God[7]. Water was given prominent place in the ancient text. It was "He who created the

worlds of water *(ambhas)* and waters *(apa)*. His creations were subject to great reverence and worship and not defilation"[8].

It may be pointed out that the word "pollution" was not unknown in the ancient period. The *Padmapurana* takes notice of pollution of water of wells and provides that he who pollutes the water, certainly goes to hell[9]. The destruction of forests was considered most dangerous for the human beings and natural environment[10]. Pollution of public places, places of worship, roads, well or pond, city, etc., were subject to varied punishments from one eight panas to fifty panas[11]. The texts go ahead and provide how pollution can be controlled. The well water or water of pond, if gets polluted, it could be cured by burning of fire[12]. The protection of medicinal plants saves human being from terrible diseases and help in maintaining the nature of *Prithvi*[13]. In order to purify a place, cow-dung and darbha grass were used[14]. Water has been given a high place in purification from pollution. Water of rivers is considered as sacred which protects human being from all *vikrti*[15]. It is considered as a powerful media of purification and just sprinkling of water on impure object, resulted in achieving purity.

It may be noted that the above discussion is by way of an example and it should not be taken that the environmental concern did not exist in other religions rather it did exist[16]. All these prove that *Dharma* of environment had deep roots in the ancient India and also in the behaviour of the people.

Criminal Law Sanction:

The Indian Penal Code, 1860 provides criminal sanctions in the long list of offences which have a direct or indirect bearing on environment[17]. The two sections which deserve particular mention are: First, Section 277 which says that whoever corrupts or fouls water of any

public spring or reservoir so as to render less fit for which it is ordinarily used. The water pollution envisaged under this section has a limited campus to public spring and reservoir only. As such the river-intra-State or inter-State, private water bodies, etc. will not come within the purview of this section[18]. Further, any claim of caste politics was ruled out under this section[19]. The punishment prescribed under this section is to the extent of three months imprisonment or fine to the extent of rupees five hundred or both. This is the penalty under the Act of 1860. But the table is turned in the year 1974 when water pollution attracted penalties of different degrees[20]. It starts with

minimum three months to a maximum of seven years. The fine starts with ten thousand rupees and extends to five thousand rupees everyday on the continuance of offence. If one looks to the discussions in Parliament he will find that members demanded more and more punishment and the enhanced penalty under the existing law.

Second, Section 278 of the 1860 Code, taking care of air pollution, makes it an offence if any person voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling. In case of air pollution the Code prescribes minimal punishment of fine extending to five hundred rupees only. The Air Pollution Act, 1981[21] prescribes imprisonment from three months to seven years and fine of rupees five thousand. In case of continuance of the offences, the fine is not quantified it is left to the discretion of the court. In such cases the Environment (Protection) Act, 1986 is improvement in that sense that the fine is fixed to rupees five thousand for each day during continuance of the offence. However, the term of imprisonment is same as that of the Act of 1981. But the enhanced sanction is diluted by Section 24(2) of the Act of 1986 which refers to penalty of other equally applicable law. Once a reference to other legislation is made then the eco-criminal would ask for a liberal treatment under other laws[22].

The next stage in penal sanction is the National Environmental Tribunal Act, 1995 it, though, reduces the imprisonment duration to a maximum of three years, enhances the fine to ten lakhs rupees. But the unfortunate story is that more than a decade has passed the provisions of

the Act remains in a dormant stage and no tribunal has been constituted till date, making the high expectation of the members of Parliament to remain in deep slumber. The enhancement of fine is further witnessed in the Biological Diversity Act, 2002 which prescribes a fine of rupees two lakhs per day during which the default continues but the term of imprisonment is comparatively lesser.

The criminal sanction has travelled from a very low pitch and showed higher and highest trends. But the question remains: how successfully it has served the purpose of controlling and prevention of pollution? If one looks to the case law of atleast. Last two decades, he will find that the criminal sanction had been hardly activised[23]. The sad initial start in the *Bhopal Settlement* where the criminal responsibility in the Bhopal Mass Disaster was given a total goby, a gross judicial negativism[24], was fortunately set right later on by the Supreme Court[25]. The criminal sanction, it may be pointed out, was sacrificed in the bargain of more compensation for the victims. A "little wrong" committed within "few hours" left the historic case to build an Indian environment jurisprudence to face any future mass disaster. Even though fifteen years have passed, the criminal proceedings have got to move further in the Bhopal Mass Disaster. Does it not show an unconcerned approach of the Government and the administrator of criminal justice?

The story does not end here. There are four aspects which also need attention. One, the environmental legislations show a liberal approach against companies and Government departments. If they can prove that the offence was committed without their knowledge or that due diligence was adopted then no penal sanction would be attracted in a such case[26], thus providing sideways and by lanes for the big fishes to get away from the criminal sanction. Two, the legislations also provided for citizens' suit but it required a sixty days notice to be given to the

Page: 53

board before moving the court[27]. Environmental pollution moves fast and its consequences reach within no time, and, therefore, the question arises can environmental pollution wait for sixty days? Third, the Central Government and the respective pollution boards are authorised by the concerned legislations to make a complaint to the court against the person causing pollution[28]. If one opens their report he will find a large number of criminal cases are filed against eco-criminals but they have been waiting for a long time for their disposal. And the last but not the least, the question remains: can criminal sanction do full justice to the depleted environment? The answer cannot be in a positive term.

Compensatory Base:

Right to get compensation is the product of the law of torts. The compensation may be simple compensation or it may be exemplary. In the former case, the amount of compensation is generally a sum equivalent to the loss caused; whereas in the later case, it is not compensatory, but, is imposed by way of punishment to deter the awardee from further committing such wrong in future[29].

The law of torts had the initial base of the English common law and the Indian courts, before Indian independence, followed the same[30]. The position continued even after the Constitution of India came into force as Article 372 of the Constitution of India ensured the continuance of existing laws until they were altered or repealed or amended. The existing English common law, in this regard, has been adapted by the Indian Courts to suit the Indian condition[31], making it the law of land. The prominent areas of law of torts which attracted environmental litigations included for example, nuisance, negligence, breach of statutory duty and absolute liability.

Nuisance as a tort means an unlawful interference with person's use or enjoyment or some right over, or in connection with his property.

Page: 54

An action may lie for pollution of water[32]. Further, the violation of right to fresh air attracted liability[33]. However, the Supreme Court[34] has ruled that no relief is available in case the future nuisance is caused by a proposed bakery. Thus, one will have to wait till the bakery becomes functional and start polluting air then only the victim can knock the doors of the judiciary. The question of an act causing nuisance may also arise, if an act interferes with comfort, health and safety of human being. In this area, noise has attracted large number of litigations and courts have in some cases issued injunction orders[35].

Coming to compensation in case of act of negligence the Andhra Pradesh High Court did not care for the death of 285 fruit bearing trees but balanced the scale of justice in favour of irrigation and water scarcity area to be benefited by a water canal project[36]. The High Court looked to the long run benefit of dams without which "the land would be wilderness and the country would be desert". On the other hand, the Karnataka High Court ordered for the payment of compensation for the act of negligence caused not due to the direct action of the appellant but that of a third party[37]. In this case the court put emphasis on damage to the agriculture land and the standing crops.

In the law of torts the following two areas deserve special mention:

A. The Emergence of Absolute Liability:

The law of strict liability laid down in the *Rylands case*[38] that a person who keeps any thing on his land which is likely to cause mischief and it did, resulting in damages; he is answerable for the

damages so caused. This British rule of *Rylands* was the law in British India and continued even in Independent India for a long time[39].

It was in the year 1987 that the well settled law was given goby through an environmental litigation in the *M.C. Mehta case*[40]. This litigation was brought under Article 32 of the Constitution of India, guaranteeing a fundamental right to enforce the fundamental rights. It was a case blending the tort law with constitutional law. In this case there was a leakage of oleum gas from one of the plants of a food and fertiliser industry, resulting in harm to human health and it was alleged that a lawyer died in consequences thereof. Shriram pressed in the exceptions laid down in *Rylands case*[41] to get rid of the tortuous liability. But Bhagwati, C.J. declined to allow the alleged culprit to go-scot-free and propounded the doctrine of absolute liability. The Supreme Court has laid down that if an industry, involved in carrying on hazardous or inherently dangerous activities for its profit, must be presumed to include in its overheads the cost of any accident caused due to such activities for which it shall be strictly and absolutely liable to compensate the victims. The Court, while applying the absolute liability principle, ruled out any application of exceptions in the *Rylands case*. Chief Justice Bhagwati did not stop here he even took the stand that the larger and more prosperous enterprise must pay a larger amount of compensation.

This ruling was treated by Chief Justice Misra not a base but "only an obiter" in the *Bhopal Mass Disaster case*[42]. In the *Bichhri case*[43] the respondents, 'rogue industries', took the stand that the absolute liability principle had no applicability in their case in view of it being only obiter. The Supreme Court, rebutting the plea, applied the principle as a settled law and made the respondent liable for their hazardous and inherently dangerous activities. Thus, the *M.C. Mehta* principle has given strength to the liability jurisprudence in the environmental litigation.

B. Mass Tort Action:

The *Bhopal Mass Disaster case*[44] threw new challenges before the Indian Courts and Indian law of torts. In this case around forty tons of highly toxic gas, Methyl Isocyanate (MIC), stored in one of the tank of the Union Carbide India Limited, Bhopal, a subsidiary of the multinational the Union Carbide Corporation, leaked, resulting in, it was alleged, death of large number of human beings, estimated number more than 3000, and affected health of more than two lakh persons. The other significant development in this case was that the Government of India, under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, was given the status of *parens patriae* to represent all claims of the victims. This legislation was subjected to judicial scrutiny in the *Charan Lal Sahu case*[45] and the Supreme Court upheld the

constitutional validity of the Act.

Another dimension of the case had been that, the Government of India initially chose the US Court as the most appropriate forum for adjudication of the claims. But, the US District Court, Southern District of New York, through justice Keenam, held that the Indian Court was the most appropriate forum. Thus the expectation of the Government of India, to get a better deal in terms of dollar, could not be materialised. This way an opening of a new frontier of application of American law to tortuous liability for wrong committed in India was closed by Justice Keenam under his so called vision of Indian judiciary to stand tall before the world[46].

One of the sad developments of the Bhopal settlement was that it did not allow any Indian environmental jurisprudence to develop and the court itself confessed the problem of the very survival of victims, "overshadowed considerations of excellence and niceties of legal principles". However, in the US $470 million settlement, the court also looked to the aftermath of Bhopal mass disaster and also shortage of funds. In this regard the court imposed additional responsibility on the shoulder of the Government of India. As regards the future medical needs, the Union Carbide was imposed a further responsibility to construct a 500 bedded hospital and provide operational cost for a period of eight years. The mass disaster settlement though received mixed

reactions[47] yet it has left may questions unanswered. Thus the accounting processes sacrificed the emergence of new principles in the Indian environmental jurisprudence.

One more aspect needs consideration in the compensatory base. Is compensation a complete answer in environmental pollution cases? Trees are cut, greenery is destroyed, agricultural fields are made barren by the rogue industries, rivers are shedding tears for the devastating stage of their pollution, inroad in the free flow of flowing water, and many more are the sad stories of environmental pollution. Can the compensation amount regenerate the depleted environment? On the contrary, it will encourage the polluters to pay compensation and continue with their eco-unfriendly activities. Moreover, when the risk is internalised in the cost, the polluting industries will not have to face any difficulty at their profit cost, the polluting industries will not have to face any difficulty at their profit earning fronts as they will shift the burden on the consumers.

International Environmental Law Input:

India has been party to large number of Treaties, Conventions and Protocol. It has ratified, signed and acceded to these treaties within a very short period. This shows India's responsive approach and involvement in matter related to international environment issues. India did not stop there it went ahead and saw to it that the treaty obligations were given a legal base in India[48]. This is done in order to fulfill its fundamental obligation in the governance of the country. Article 51, a part of the Directive Principles of State Policy, enjoins upon the State to promote international peace and security and foster respect for international law and treaty obligations.

There are large number of treaties, where India was a party, which dealt with either the environment as whole or different

components of environment[49]. But for the present paper only three treaties may be mainly dealt with: the Declaration of the UN Conference on the Human Environment (Stockholm), 1972 the Declaration of the UN Conference on environment and Development, (Rio) 1992; and the UN Convention on Biological Diversity, 1992. The reason for the limited vision is that it is these treatises which activised the different phases of the existing Indian Environmental law. The Statement of Objects and Reasons of the Air Act, 1981 and the Environment Act, 1986 clearly states that these legislations were passed to implement the decisions of the Stockholm Conference, 1972. The National Environment Tribunal Act, 1995 was enacted to implement the resolutions at the Rio Conference, 1992. And finally in order to implement the resolutions at the UN Convention on Biological Diversity 1992, Parliament enacted the Biological Diversity Act, 2002. In this connection it may be mentioned that the Constitution of India no where gives any specific legislative power relating to environment to either Parliament or the State Legislature. But Article 253 which authorises Parliament to make any law for implementing any treaty was activised by Parliament in the aforesaid cases.

The Indian judiciary, while administering environmental justice has, from time to time, taken help of the developments in the international environmental law. The right to pollution free environment which finds a place in the international environment law[50] has also been recognised by the judiciary under Article 21 of the Constitution of India. The Principle of sustainable development, evolved at various international bodies[51], has also been taken help by the Indian courts to bring a balance between the right to environment and the right to development[51]. Further in the development of international environmental law, the conferences have also evolved certain principles to ascertain the responsibility of polluters which includes, the precautionary principle[52], the polluter pays principle[53] and intergeneration equity[54]. The two of the first principles, have been accepted as the law of

the land by the Supreme Court[55] and the third one has attracted the concern but awaits the final recognition by the Court[56].

Constitutional Support:

The Constitution of India, at one time, was criticised as environmentally blind but since 1976 the enviro-constitution vision became a part of the Constitution. The first and foremost important development was made by the constituent power, which through the Constitution (Forty-Second Amendment) Act, 1976 introduced new environmental visions in the Constitution of India[57]: One, the Fundamental Duty of the citizens to protect and improve the natural environment including forests, lakes, rivers and wildlife and also to have compassion for living creatures [Art. 51A(*g*)]. Two, the Directive Principles of State Policy, enjoins upon the State to make all endeavors to protect and improve the environment and to safeguard the forests and wildlife of the country (Art. 48-A). They bring a revival of the ancient Indian culture, *Praja Dharma and Raj Dharma*. But the unfortunate part was that in case of the fundamental duties there was no provision for their enforcement; whereas in case of the Directive Principles a constitution ban was imposed under Article 37 for their enforcement. In this *Praja Dharma and Raj Dharma*, a most important link was missing and that was a fundamental right to live in clean environment and thus the *Triveni sangam* was left incomplete.

The second aspect of constitutional amendment was the change in the enviro-

federalism. Forest and protection of wild animals and birds which were originally in the State List were transferred to the Concurrent List. Thus, the exclusive legislative power of the State Legislature was taken away and now these subjects were put under the dual control of Parliament as well as the State Legislatures. However, a new legislative subject of population control and family planning was introduced in the Concurrent List. Population explosion in India has made an adverse impact on the environment including the natural resources, and, therefore, a specific legislative subject would activise legislative control in this direction.

This scenario in the Centre-State relations points towards a centralised tendency. In this exercise the legislative subject with respect to "environment pollution", did not find any specific place in the Seventh Schedule to the Constitution. Is not it a half hearted exercise of the Constituent Power? Thus the constitutional support is incomplete, firstly to form the *Trimurti* (three dimensions) of Indian environment-Right, Duty and Obligation. And secondly, a specific legislative subject relating to environment in the Seventh Schedule to the Constitution.

Role of the Legislature

The British Raj saw number of legislations which had either direct or indirect bearing on environment. This included, for example, the Indian Penal Code, 1860; the Forests Act, 1878 and 1927; the Elephants Preservation Act. 1879; the Easement Act, 1882; the Indian Explosive Act, 1884; the Indian Fisheries Act, 1882; the Indian Factory Act, 1891; the Bombay Smoke Nuisance Act, 1912; the Poisons Act, 1919, etc. These legislations of the British Raj in many cases it is said, remained "a mere paper work"[58]. The reasons may be the lack of peoples' initiative, minor sanctions, Government's inaction or vested interests operation.

Coming to *swaraj* for more than two decades, the Legislature did not pay any serious attention to the environment pollution. The commitments and tall claims made by India in the Stockholm Conference activised Parliament to legislate on matters related to environment. The first attempt was the legal control of Wilde Life (1972) and Water Pollution (1974) followed by the Air Pollution (1981), Forest Conservation (1980), Environment Protection (1986), Public Liability Insurance (1991), Environmental Tribunal (1995), Biological Diversity (2002), etc. The long legislative *padyatra* (journey) provided, for example, the creation of authorities to handle the concerned environmental matters with certain accountabilities, the functions of Government and Government agencies included on the one hand to protect and improve the environment and/or three components of environment; and on the other, to control and prevent environmental pollution. Earmarking certain categories of offences and prescribing heavy penalties and some legislations even took into account, say for example, peoples participation, peoples environmental awareness, dispute resolutions, etc.

In the developing country like India, such a progress is remarkable, but, the question remains: Does this progress achieved the

dynamism which India showed at the Stockholm Conference?[59] The above medicines

may have provided temporary relief but the environmental diseases continue with higher graph. What is need is that the important players in the present field are taken into confidence and at the same time made accountable. Further, and the most important, the legislative exercise should not become defunct after the passage of the Bill but the Legislature concerned must see that these legislations bear the fruits-to protect and improve the environment, a fundamental constitutional obligation[60].

The legislative input does not come to an end at this juncture, the above legislations at time provided for the rule making powers and these powers were activised from time to time. Some of the important rules include, for example, the Water Rules (1975), the Air Rules (1982) the Forest Conservation Rules (1981) the Hazardous Wastes Rules (1989) the Hazardous Chemical Rules (1989), the Environment Protection Rules (1986), the Public Liability Insurance Rules (1991), the Chemical Accident Rules (1996), the Ozone Depletion Substances Rules (2002), etc. These Rules basically fill in the gaps left by the legislations say for example, the functions and procedure of the meetings of the authorities/bodies, prescription of standards and identifying anti-environment substances, regulation and control of anti-environmental activities, reports, information, etc. These are few drops in the ocean of Rules which give strength and vigor to the parent legislations.

Judicial Base:

Judiciary has been an important pillar which has made valuable contributions in the development of Indian environmental law. It will not be an exaggeration to say that it is one of its strongest bases and one of its most important input, is the emergence of the right to environment. Though Part III of the Constitution of India no where provides specifically this right, yet the judiciary has carved out such right with different facets, its supplementary and complimentary rights through reading such rights in Article 21 which guarantees fundamental right to life and personal liberty[61] and also Article 48-A dealing with the

fundamental obligation of the State to protect and improve the environment[62]. It has developed a principle of absolute liability[63] in place of the strict liability which held the ground for more than one century. It has internalised in the domestic environmental law - the precautionary and polluter pays' principles[64], in many cases left the traditional path of locus standi and marched towards the needs of present time-public interest litigation[65]. The judiciary, on the one hand, controlled erring Governments, its authorities and agencies[66]; and on the other, moved from compensatory remedies, exemplary damages, fine against eco-criminals, issuing guidelines and directions and even closing down the industries[67] to protect the environment. On this important judicial dynamic and innovative approach, the gloomy picture was that their judgments, in many cases, remained on judgment books and they could hardly reach to the output desired by the judiciary[68]. The techno-science issues in the environmental litigations have made the judiciary dependent on the experts, affecting the judicial input. Last but not the least, the fundamental right to enforce fundamental rights, guaranteed under article 32, has yet to reach the masses to protect their right to environment[69] in view of the cost, delay and often not easily accessibility of the fundamental remedy.

Conclusion:

The religious base was the strongest and people knowingly or unknowingly followed certain eco-friendly activities. The left out traces of the ancient civilisation support the

stand that the natural environment

was in a better state than in the age of unnatural environment. The religious base encouraged duty oriented behaviour and the concept of right and privatisation of the components of environment had no place rather they were considered as objects of reverence. This philosophy made important difference in the use and management of environment and environmental resources.

Coming to the second base, the police action, the people and their elected representative wanted higher and higher criminal sanction against the eco-criminals and the law readily responded to their wishes, providing an expanding graph of punishments. The sanctions were initially confined to limited campus of pollution which later on spread to a comprehensive treatment. Inspite of these bright sides, it was one of the weakest base of the environment law. Firstly, it had to be activised by the victims but it was hardly done because of its long drawn processes and formalities which consumed time, resulting in undue delay. Secondly, this base could hardly administer sustainable environmental justice. However, the only solace was that the eco-criminal was put behind the bar and thus, for a time being, he was kept out from continuing with the polluting activities. Thirdly, the pollution protecting agencies hardly taped the criminal sanction, the Government failed to enforce the legal sanction and the judiciary, even if got opportunity to impose criminal sanction, was caught in the nicety of procedural processes. Further, its settlement deal hardly allowed building a comprehensive environmental jurisprudence to deal with mass environmental disaster management.

The compensatory base, the most popular, and was initially used frequently under the law of torts but by 1987 it took recourse under the constitutional fundamental right remedy. In the latter case one can directly approach the Supreme Court and get the final verdict instead of struggling in the hierarchy of the court processes. And the present remedy was frequently used to get environmental justice. The nuisance and negligence were two areas largely attracted litigations. But in these areas the compensation awarded was negligible. It is since the *Mehta (Shriram) case* that the Supreme Court has looked to the size of enterprise and calculated compensation accordingly. The acceptance of absolute liability principle will go a long way in the distributive environmental justice. The *Bhopal Mass Disaster case*, though hardly developed excellence and niceties of legal principles' yet, allowed the judiciary at the grass root, High Court and the Supreme Court to be exposed with an unprecedented mass disaster. Further, inspite of its myopic vision, the court bargained for a large amount of compensation for the human victims on records i.e. Rs. 750 crore. So the positive point is that a base is made for the future mass disaster. But the compensatory base alone cannot hold successfully the problems of environmental pollution else

the polluter will pay and continue with eco-unfriendly activities. Secondly, compensation cannot be an answer to depletion of non-reversible natural resources. And thirdly, the remote consequences of pollution would not be accounted for in the balance sheet of looses on one hand and compensation on the other. However, one hope still survives of repairing and repaying for the environmental damage.

The international environmental law has given real boost to the growth of Indian environment law. India's sincere commitment towards its fundamental constitutional obligation to foster international relations is witnessed through the series of environmental legislations. In this journey the judiciary also did not lag behind and it tried to give international norms and principles recognition in due regard to Indian condition. Thus the Indian environmental law system was not only responsive but also receptive to the developments at the world at large.

The Constitution of India has, though removed the stricture of Constitution being environmentally blind, brought in enviro-visions in the Constitution but they have been put in non-enforceable zone, barring their creative role. Further, the Centre-State relations saw some move but the main legislative subject relating to environment remained an untouchable in the exercise of the constituent power. Thus the specific constitution base, as such, could hardly make any positive contribution.

The law input has been remarkable and the legislative exercises have provided legal control mechanism to control and prevent pollution of different components of environment. But there is hardly any audit of the legislative outputs and accountability for in-activism. This has allowed many provisions to remain in hibernation and the people have yet to activise them. Such course of action has thus frustrated the objects of environmental legislations.

The judicial base has made the largest contributions in the growth of Indian environmental law. It has crossed the "no entry zone" in the constitutional law region and activised inactive provisions and gave new dimensions to the expanding horizon of environmental protection and preservation. But in these valuable contributions the question remains, in how many cases the court's orders were effectively implemented. The answer cannot be in toto a positive one. Is not time to sharpen the sword of contempt of court and provide a judicial system to monitor the court's orders instead of they remain on the judgment book?

So what is the outcome? The Indian environmental law has not only a modern base, but, also a touch of the ancient Indian culture. Further, the base has been widened from time to time to make the Indian environmental law rich. However, the fact remains that it has yet to get the credit that it has successfully brought India in the list of nations

where environment is better protected. Here comes the role of the Fundamental Duty of every citizen of India and the Fundamental Principles in the governance of the country for the national, State and regional Governments. The committed and dedicated peoples' participation can build an environment friendly India, that is, "Bharat".

———

[*] This paper is based on a talk delivered to the Faculty Members, Dundee Law School, Dundee, Scotland. Thanks are due to Prof. Colin Reid, the Dean, Dundee Law School for the interaction.

[**] Professor & Dean (Academics), Dr. Ram Manohar Lohiya National Law University, Lucknow-226012 (India); Member, Environmental Law Commission, Germany; Former Professor of Law, National Law Institute University Bhopal, Head and Dean, Law School, Banaras Hindu University, Varanasi. Email Address: cmjariwala_kmc@yahoo.co.in

[1.] See, for example, *Rigved* (10.87.16), *Yajurved* (13.47) (13.49), *Srimad-Bhagavatam* (1.7.38), *Manusmriti* (5.45), *Vijnavalkyasmriti Acaradhyayah* (v. 180).

[2.] See, for example, *Rigved* (10.97), *Padma Purana* (56.40-41), *Charak Samhita, Vimansthan* (3.11).

[3.] 172.39.

[4.] *Matsya Purana* (59.17-18).

[5.] Govindraja, *On Manu*, 285.

[6.] *Kautilya Arthasastra*, (III, XIX, 197).

[7.] *Mahabharata Moksa*, (182, 14-19).

[8.] *Aitareyo Upanishad* (1.1, 1-3).

[9.] *Padmapurana Bhumikhanda*, (96.7.8).

[10.] *Charaka Samhita, Vimansthana*, (3.2).

[11.] *Kautilya Arthasastra, Nogarika Pranidhi* (2.145).

[12.] *Vishnusmriti*, (23. 38-46).

[13.] *Charaka Samhita, Vimanasthan* (3.2).

[14.] Abbe J.A. Dubois, *Hindu Manners, Customs and Ceremonies*, 1999, 155.

[15.] Charaka Samhita, *Sutrasthanam* (27.213-215).

[16.] B.V. Krishnamurti and Urs Schoettli, Environment in India's Religious and Cultural Heritage in *India's Environment: Crises and Responses*. See also, *Companion to Environmental Philosophy* Edi Dale Jamieson, 2000, Al Gore, *Earth in the Balance*, 1992.

[17.] Secs. 268 (Public Nuisance), 269, 284 (Negligence), 285 (Poisonous Substance), 286 (Explosive Substance), 425-440 (Mischief).

[18.] *Ramekwal Singh* v. *State*, AIR 1954 Pat 309.

[19.] *Queen Emprers* v. *Bhagi Kom Nathuba*, (1900) 2 Bom. L.R. 1078.

[20.] *See* Sections 41, 42, 43, 44, 45 and 45-A, the Water (Prevention and Control of Pollution) Act, 1974 (*Water Act*).

[21.] The Air (Prevention and Control of Pollution) Act, 1981 *(Air Act)*.

[22.] *See* for liberal sanction - the Indian Forests Act, 1927-Secs 52 & 63; the Forests (Conservation) Act, 1980-Sec. 3-A; the Wild Life (Protection) Act, 1972-Secs. 51 and 53, etc.

[23.] *See*, for example, C.M. Jariwala, Environment and Justice, 2004. *See* also, C.M. Jariwala, Environmental Justice: A journey from Ratlam Municipality to M.C. Mehta, in *Environmental Law Policy and Prospective*, edi, P. Nagabhooshanam, 1985, 32, 41; V.S. Mishra, *Environmental Disaster and the Law*, 1994, 64-65.

[24.] *Union Carbide Corpn.* v. *Union of India*, (1989) 3 SCC 38 : AIR 1990 SC 273.

[25.] *Union Carbide Corpn.* v. *Union of India*, (1989) 3 SCC 38 : AIR 1992 SC 273 wherein the Supreme Court, realising its earlier mistake, reinstated criminal charges against the top executives of the Union Carbide, including Warren Anderson, the CEO.

[26.] *See* the Environment Act, 1986, Secs. 16 & 17; the Air Act, 1981-Secs. 40 and 41; the Water Act, 1974 Secs. 47-48.

[27.] *See* the Environment Act, 1986- Sec. 19; the Air Act, 1981-Sec. 43; the Water Act, 1974-Sec. 49.

[28.] *See* the Environment Act, 1986- Sec. 19; the Air Act, 1981- Secs. 22-A and 43; the Water Act, 1974-Secs. 33 and 49.

[29.] *Rookes* v. *Barnard*, (1964) AC 1129 : (1964) 1 All ER 367 (HL). *See* Particularly Lord Devlin opinion in (1964) AC 1129 : (1964) 1 All ER 367 (HL) at 1226-27. *See* also *M.C. Mehta* v. *Kamal Nath*, (2002) 3 SCC 653 : AIR 2002 SC 1515 read with *M.C. Mehta* v. *Kamal Nath*, (2000) 6 SCC 213 : AIR 2002 SC 1987.

[30.] *J.C. Galstaun* v. *Dunia Lal Seal*, (1905) 9 CWN 612 (Cal).

[31] *Vellore Citizens' Welfare Forum* v. *Union of India*, (1996) 5 SCC 647 : AIR 1996 SC 2715, 2722.

[32] *Pakkle* v. *P. Aiyasami Ganapathi*, AIR 1969 Mad 351; *M.C. Mehta* v. *Union of India*, (1988) 1 SCC 471 : 1988 SCC (Cri) 141 : AIR 1988 SC 1115 — pollution of river Ganga by Kanpur Tanneries.

[33] *Shanmughavel Chettiar* v. *Ramkumar Gining Firm*, AIR 1987 Mad 28. One can see how hard the court had come down imposing damages to the extent of Rs 5000 in the year 1905 - J.C. *Galstaun* v. *Dunia Lal Seal*, (1905) 9 CWN 612 (Cal).

[34] *Kuldip Singh* v. *Subhash Chander Jain*, (2000) 4 SCC 50.

[35] *Radhey Shyam* v. *Gur Prasad*, AIR 1978 All. 86. *See* also, *Ram Baj Singh (Dr.)* v. *Babulal*, AIR 1982 All 285; *Church of God (Full Gospel in India)* v. *K.K.R. Mejestic Colony Welfare Assn.*, (2000) 7 SCC 282 : 2000 SCC (Cri) 1350 : AIR 2000 SC 2773; *Moulana Mufti Syed* v. *State of W.B.*, AIR 1999 Cal 15 wherein the court came down heavily on the noise pollution so caused. In this connection *see* also the liberal approach of the Calcutta High Court - *Burrabazar Fire Works Dealers Assn.* v. *Commr. of Police*, AIR 1998 Cal 121.

[36] *Kamatham Nagireddy* v. *Govt. of A.P.*, AIR 1982 AP 119.

[37] *Mukesh Textile Mills (P) Ltd.* v. *H.R. Subramanya Sastry*, AIR 1987 Kant 87.

[38] *Rylands* v. *Fletcher*, (1866) LR 1 Ex 265.

[39] *See* for details Ramaswamy Iyer's *The Law of Torts*, 9th Edn. 2003-701-720; R.K. Bangia, *Law of Torts*, 13th Edn. 1997, 334-345.

[40] *M.C. Mehta* v. *Union of India*, (1987) 1 SCC 395 : 1987 SCC (L&S) 37 : AIR 1987 SC 1086.

[41] Exceptions Include: Act of God; plaintiffs own fault; consent of the plaintiff; Act of third party; and statutory authority.

[42] *Union Carbide Corpn.* v. *Union of India*, (1991) 4 SCC 584 at 608. On the contrary, a plea of application of *Mehta's* principle was not set aside by Sabyasachi Mukherji, C.J., in *Charan Lal Sahu* v. *Union of India*, (1990) 1 SCC 613 : AIR 1990 SC 1480 : (1991) 4 SCC 584. *See* particularly *in at* 678-680.

[43] *Indian Council for Enviro-Legal Action* v. *Union of India*, (1996) 3 SCC 212 : A.I.R. 1996 SC 1446.

[44] *Union Carbide Corpn.* v. *Union of India*, (1989) 3 SCC 38 : AIR 1990 SC 273.

[45] *Charan Lal Sahu* v. *Union of India*, (1990) 1 SCC 613 : A.I.R. 1990 SC 1480.

[46] *Union of India* v. *Union Cardbide Corpn.*, (1982) 2 Comp LJ 169 *id.* at 195.

[47] *See* Upendra Baxi, Introduction' in *Inconvenient Forum and Convenient Catastrophe: The Bhopal case* (1986), 14-22 Shyam Divan and Armin Rosencranz, Bhopal Victims Twisting Slowly in Winds, in *Environmental Policy and Law*, 1988, 221.

[48] *See* for example, Protocol on Substances that Deplete the Ozone Layer, 1987 which was acceded to by India in 1992 and the Ozone Depleting Substances (Regulation and Control) Rules, 2000 were made; Convention on the Control of Trans-boundary Movement of Hazardous Wastes and their Disposal, 1989, the Rules for the Manufacture, Use, Import, Export and Storage of hazardous Engineered Organisms or Cells, 1989 were made.

[49] See for example, P. Birnie and A. Boyale, *Basic Documents on International Law and Environment*, 1995.

[50] *See* the UN World Commission on Environment and Development, 1986-Principle 1; *Our Common Future*, 1987, 43.

[51] *See* the *Rio Conference*, 1992-Principle 4, etc.

[52] *World Charter for Nature*, 1982. Principle 111.

[53] *Our Common Future*, 1987, 220-221; the *Stockholm Conf.* 1972 Principle 7, the *Rio Declaration*, 1992-Principle 4.

[54] The *Stockholm Conf.* 1972, Preamble; *Our Common Future*, 1987, 43; *the Rio Dec*. 1992-Principle 3.

[55] *See* for example, *Indian Council for Enviro-Legal Action* v. *Union of India*, (1996) 5 SCC 647 : A.I.R. 1996 SC 1446; *A.P. Pollution Control Board* v. *M.V. Nayudu*, (1999) 2 SCC 718 : AIR 1999 SC 812.

[56] *State of H.P.* v. *Ganesh Wood Products*, (1995) 6 SCC 363 : AIR 1996 SC 149; *Indian Council for Enviro-Legal Action* v. *Union of India*, (1996) 5 SCC 281.

[57] *See* for a detailed discussion, C.M. Jariwala, The Constitution 42nd Amendment Act and the Environment in *Legal Control of Environmental Pollution*, Edi. S.L. Agrawal, 1980, 1.

[58] C.M. Jariwala, Changing Dimension of Indian Environmental Law, in *Law and Environment*, Edi P. Leelakrishnan et al, 1992, 1.

[59] *See* the address of the then Prime Minister, Ms Indira Gandhi, one of the leaders of the Third World, at the Stockholm Conference, 14-6-1972 quoted in Rosencrancz, et al, *Environmental Law and Policy in India*, 2005, 31 -33.

[60] Art. 48-A.

[61] *See* for example, *Consumer Edu. and Res. Forum* v. *Union of India*, (2001) 3 SCC 756 : A.I.R. 2001 SC 1948; *M.C. Mehta* v. *Union of India*, (2001) 3 SCC 756 : A.I.R. 2001 SC 1948; *Hamid Khan Majid Khan* v. *State of M.P.*, AIR 1997 M.P. 191 - right to pure drinking water; *LIC* v. *Prof. Manubhai D. Shah*, (1992) 3 SCC 637 : A.I.R. 1993 SC 171 - right to environmental information *M.C. Mehta* v. *Union of India*, (1992) 1 SCC 358 : AIR 1992 SC 382 - right to environmental education and awareness, etc.

[62] *L.K. Koolwal* v. *State of Rajasthan*, AIR 1988 Raj 2.

[63] *M.C. Mehta* v. *Union of India*, (1987) 1 SCC 395 : (1987) SCC (L&S) 37 : AIR 1987 SC 1086.

[64] *A.P. Pollution Control Board* v. *Prof. M.V. Nayudu*, (1999) 2 SCC 718 : A.I.R. 1999 SC 812; *Indian Council for Enviro-Legal Action* v. *Union of India*, (1996) 3 SCC 212 : AIR 1996 SC 1446.

[65] *M.C. Mehta* v. *Union of India*, (1986) 2 SCC 176 : 1986 SCC (Cri) 122 : A.I.R. 1987 SC 965 : (1987) 1 SCC 395; *M.C. Mehta* v. *Union of India*, (1987) 1 SCC 395 : 1987 SCC (L&S) 37 : A.I.R. 1987 SC 1086; *M.C. Mehta* v. *Union of India*, (1997) 2 SCC 353 : AIR 1997 SC 734.

[66] *Bayer (India) Ltd.* v. *State of Maharashtra*, AIR 1995 Bom 290; *B.L. Wadehra (Dr.)* v. *Union of India*, (1996) 2 SCC 594 : AIR 1996 SC 2969; *Indian Council of Enviro-Legal Action* v. *Union of India*, (1996) 3 SCC 212 : A.I.R. 1996 SC 1446.

[67] *M.C. Mehta* v. *Union of India*, (1986) 2 SCC 176 : 1986 SCC (Cri) 122 : A.I.R. 1987 SC 965 : *M.C. Mehta* v. *Union of India*, (1987) 1 SCC 395 : AIR 1987 SC 1086; *A.P. Pollution Control Board* v. *Prof. M.V. Nayudu*, (1999) 2 SCC 718 : AIR 1999 SC 812.

[68] *Municipal Council, Ratlam* v. *Vardichan*, (1980) 4 SCC 162 : 1980 SCC (Cri) 933 : A.I.R. 1980 SC 1622; *B.L. Wadehra (Dr.)* v. *Union of India*, (1996) 2 SCC 594 : AIR 1996 SC 2969; *Almitra H. Patel* v. *Union of India*, (2000) 2 SCC 679 : AIR 2000 SC 1256.

[69] *See* for a detailed discussion, C.M. Jariwala. The Changing Dimension of the Right to Environment in India in *Liberty, Equality and Justice: Struggles for a New Social Order*, Edl. S.P. Sathe and Rao, 2003, 237-280.