

The public liability insurance act law general essay

Law



The Environment (Protection) Act was the response to a widely felt need for a general legislation for environment protection. Under the Act, the Central Government is empowered to take all measures to protect and improve the environment[1]. It is a comprehensive legislation, which covers not only industrial pollution, but also all aspects of environmental degradation. It does not create any permanent authority like Central or State Pollution Control Boards as established by the Water Act or Air Act. The Central Government is empowered to take all measures, as it deems necessary for protecting and improving the quality of environment, and preventing, controlling, and abating environmental pollution[2]. Such powers include coordination of State actions, planning and execution of a nationwide programme for the prevention, control, and abatement of environment pollution; laying down standards for quality of environment and emission discharge; restriction of areas in which industrial operations shall not be carried out; standards for hazardous wastes; etc. The Act gives powers to the Central Government to make Rules or Notifications or creation of any authority to deal with specific environmental problems in the country[3]. Some of the notifications and rules made under the Act are the Hazardous Waste (Management and Handling) Rules 1989; the Manufacture, Storage and Import of Hazardous Chemicals Rules 1989; the Coastal Regulation Zone Notification 1991; the Scheme of Labeling of Environment Friendly Products (Ecomarks) 1992; the Notification on Environmental Statement 1992; the Notification on Environmental Impact Assessment 1994; the Notification on Public Hearing 1997; the Bio-medical Waste (Management and Handling) Rules 1998; the Recycled Plastics Manufacture and Usage Rules 1999; the Notification on Dumping and Disposal of Fly ash 1999; the Noise Pollution (Regulation and

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Control) Rules 2000, the Municipal Solid Waste (Management and Handling) Rules, etc.

The Public Liability Insurance Act, 1991

This Act was enacted to provide for public liability insurance for the purpose of providing immediate relief to the public affected by accidents occurring while handling hazardous substances. The owner of the industry is obligated to compensate the victims irrespective of any negligence or default on their part. Where any death or injury has occurred to any person, other than a workman, or any damage to any property has resulted from an accident, the owner of the industry will be liable to give relief as specified in the Schedule. The maximum compensation for injury or death is Rs. 25, 000 and the compensation in respect of any damage to private property is restricted to Rs. 6, 000. Every industry must carry liability insurance against claims arising from potential accidents. This Act does not apply to workmen of the industry covered by the Workmen's Compensation Act.

The National Environmental Appellate Authority Act, 1997

This Act established a National Appellate Authority to hear appeals against orders granting environmental clearance in areas where restrictions are imposed on setting up of any industry, operation or process, subject to certain safeguards as provided under Environment (Protection) Act, 1986.

The National Environmental Tribunal Act, 1995

This Act has been enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance. A national environmental tribunal was to be set up under the Act for effective

and expeditious disposal of cases arising from industrial accidents with a view to giving relief and compensation for damages to persons, property, and environment. This Act is not brought into force yet.

II. Nature Conservation Laws

The enactments relating to conservation of nature such as forests and wildlife include the Wildlife (Protection) Act 1972, the Forest (Conservation) Act 1980, the Protection of Plant Varieties and Farmers' Rights Act 2001 and the Biological Diversity Act 2002.

The Wildlife (Protection) Act, 1972

This Act provides for the protection of wild animals, birds and plants and constitutes authorities such as Director of Wildlife Preservation, Wildlife Wardens, and Wildlife Advisory Boards for that purpose. According to the Act, wildlife means and includes any animal, bees, butterflies, crustacean, fish and moths and aqua or land vegetation, which form part of any habitat. An amendment made to the Act in 1986 and 1991 prohibited all kinds of trade of wild animals and animal articles.

The Forest (Conservation) Act, 1980

This Act is a significant piece of legislation that seeks to conserve forests from any sort of developmental activity. The underlying spirit of this legislation is that it prohibits the use of forestland for any non-forest purpose, except with the prior approval of Central Government. According to the Act, ' non-forest purpose' means breaking up or clearing of any forest land for cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants and any purpose other than

reforestation. The Protection of Plant Varieties and Farmers' Rights Act, 2001 and the Biological Diversity Act, 2002, though enacted to achieve many other objectives, contain provisions to protect and conserve the plant genetic resources and biological diversity as their cardinal principles.

Environmental policies

In India, policies do not coincide with the laws. The usual practice is that whenever the government is convinced that a problem persists and has to be solved, a policy will be formulated describing the strategies to solve the problem. The next step eventually leads to enactment of a law to implement such a policy. But in India, it is the other way round. First, a law will be enacted either to fulfill the commitments made in international fora or to satiate the public outcry relating to certain problems within the country. Later realizing the fact that the law does not have a policy back up, a policy is hurriedly brought out to fill the vacuum. Furthermore, these policies are primarily the brainchild of bureaucrats leaving negligible scope for equitable participation of the public in the whole process. Of late, however, the trend is changing, and a more participatory approach is being emphasized in evolving policies[4]. However, in India, the policies pertaining to environment are the National Ocean Policy, 1983; the National Water Policy, 1987; the National Forest Policy, 1988; the Policy Statement for Abatement of Pollution, 1992; the National Conservation Strategy and Policy Statement on Environment and Development, 1992; the Wildlife Conservation Strategy, 2002 are in force while the National Biodiversity Strategy and Action Plan is on the anvil. Role of Judiciary in environmental protectionAny discussion on environmental law without taking into account the role of judiciary in India

will be incomplete. If there is any aspect of environment, which is protected or any provision of environmental law that has been implemented in the country, it is largely due to the lead role, played by the judiciary. The Indian judiciary has always been responsive towards environmental protection and conservation. In fact, the higher judiciary has created a new environmental jurisprudence in the country over the years by delivering many landmark judgments, which changed the state of environment in a significant way. Before the enactment of special environmental laws such as the Water Act, the Air Act, and the Environment (Protection) Act, the common law principles enshrined in the Law of Torts, and the Indian Penal Code 1860, the Code of Criminal Procedure, and the Code of Civil Procedure 1908, were the major legal instruments which dealt with environmental cases as the judiciary viewed the environmental problems as public nuisance cases. Lately, the judiciary, though continue using the common law principles, take cognizance of the newer laws and policies in dealing with environmental cases. The Ratlam Municipality Case^[5] for the first time gave a human rights dimension to Section 133 CrPC. When the municipality failed to discharge the statutory duties such as cleaning the roads and drains, and thereby affecting a large community in the guise of insufficiency of funds, the Supreme Court held that when an order is given under Section 133 CrPC by the Executive Magistrate, the municipality can not wish away its duties by pleading financial inabilities. The code of criminal procedure operates against the statutory duties and agencies regardless of the cash in their coffers because human rights have to be respected by the State regardless of budgetary provisions. The statutory agencies should not defy their duties by urging in self-defense, a self-created bankruptcy of perverted expenditure budget^[6].

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The Ratlam judgement illustrates how an activist court can transform a seemingly dull legislation into a powerful mandate to protect environment[7]. The level of education and awareness among the people towards environmental issues enhanced the quantity and quality of cases filed before the courts. The environmental justice delivery in the country witnessed a sea change, thanks to the interest evinced by the visionary Supreme Court judges like Justice V. R. Krishna Iyer, Justice P. N. Bagawathi, Justice Kuldeep Singh, etc. Around 1980, the Indian legal system, particularly in the field of environmental law, underwent a sea change in terms of discarding its moribund approach and, instead, charting out new horizons of social justice[8].

Era of public interest litigation and judicial activism

The concept of public interest litigation, propounded by the US Supreme Court and effectively imported into India in the 1980s, has been utilized by many social workers to fight against various maladies faced by the society. Individuals, non-governmental organizations and advocates extended the concept to environmental cases also. Very often the courts have encouraged public interest litigation for the purpose of protecting environment. Public interest litigation is primarily judiciary-led and even to some extent judiciary-induced and a product of juristic and judicial activism in the Supreme Court[9]. The concept of 'right to life' enshrined in Article 21 of the Constitution assumed a new meaning after Maneka Gandhi's case[10], wherein the Supreme Court held that the right to life and personal liberty, guaranteed under Article 21 can be affected only by a just, fair and reasonable' procedure. The scope of Article 21 was widened, and the

Supreme Court ruled that the right to life is not confirmed to mere animal existence, but extends to the right to live with basic human dignity[11]. The late 80s and 90s is considered to be the golden era of environmental litigation in India. The Courts came forward to encourage public interest litigations to redress environmental injustices. Many procedural formalities have been waived. The doctrine of locus standi has been considerably relaxed. In a public interest litigation (PIL), anybody who is having genuine concern for the public may file public interest litigations before the High Courts and the Supreme Court under Article 226 and 32 of the Constitution of India respectively. Right to live being the most important of all human rights implies the right to live without the deleterious invasion of pollution, environmental degradation and ecological imbalances[12]. The higher judiciary in India has extended the scope of Article 21 to include the right to live in a healthy environment. In Rural Litigation and Entitlement Kendra Vs. State of Uttar Pradesh[13]the right of people to live in a healthy environment with minimal disturbance to ecological balance was upheld. In the following M. C. Mehta cases[14], the Supreme Court, though did not clearly spell out the right to healthy environment, it has indirectly approved the human rights of the people to live in a clean environment. In M. C. Mehta vs. Union of India[15], otherwise called the Ganga Pollution Case, the environmental crusader, Shri. M. C. Mehta, filed a public interest litigation before the Supreme Court about the water pollution in the river Ganges caused by the tanneries in the Kanpur area. The Supreme Court ordered the tanneries functioning in Uttar Pradesh to set up effluent treatment plants or otherwise close them. In Chhetriya Padushan Mukti Sangarsh Samiti Vs. State of Uttar Pradesh[16], the Supreme Court for the first time hinted that the right to

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environment is contemplated in Article 21 of the Constitution. In *Subash Kumar Vs. State of Bihar*[17], Justice K. N. Singh categorically declared that, "the right to life enshrined in Article 21 includes the right to enjoyment of pollution free water and air for full enjoyment of life". In *Vellore Citizens Welfare Forum case*[18], the Supreme Court was approached by the petitioner to issue directions against the tannery pollution caused by the discharge of untreated effluents in Vellore area in Tamilnadu. The untreated effluents affected the agricultural lands, groundwater and health of the local people. The Court delivered a landmark judgment in this case and directed the tanneries to set up effluent treatment plants. About 200 tanneries, which failed to establish effluent treatment plants, were closed in the interest of the public. The court directed the Central government to constitute an authority under Environmental (Protection) Act, 1986 to deal with polluting industries. The result, the Loss of Ecology Commission was set up to assess the quantum of compensation to be awarded to the affected people in the area. The court has for the first time invented 'pollution fine' against the tanneries. In this case, the Supreme Court adopted the international principles such as, precautionary principle; polluter pays principle; and the concept of sustainable development as part of law of the land. The Supreme Court also directed the Madras High Court to set up a Green Bench to deal with environmental cases exclusively. In the *Taj Mahal case*[19], the Supreme Court dealt with many foundries, chemical industries and the Mathura refinery that damaged the splendor of the Taj through air pollution. In this case, the Court ordered the local authority to establish the Taj Trapezium Zone (TTZ) by creating a green belt around the Taj. It ordered about 292 hazardous industries to either switch over to natural gas as an

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alternative fuel or relocate themselves as per the directions of the court. Justice Kuldip Singh observed that the old concept of " development and ecology cannot go together" is no longer acceptable and opined that " sustainable development" is the answer. In *M. C. Mehta vs. Union of India*[20], the Supreme Court ordered the Delhi Transport Corporation to withdraw buses over 15 years old and directed them to switch over to compressed natural gas (CNG) instead of diesel in order to prevent air pollution. The Court also prescribed a quota regime for registration of private non-commercial vehicles in the National Capital Territory. *Godavarman's case*[21] was a significant case as far as forest protection is concerned. This was the first judicial intervention in forest administration in India. The Supreme Court gave wider interpretation to the term ' forest' to mean even the private forest areas. In relation to seven northeastern states, the Court banned felling and transportation of trees and timber from the forest. Directions have been issued to the State governments to the effect that no patta should be issued with regard forestland to anyone on any grounds. In *Banwasi Ashram case*[22], the question was whether the adivasis living within the forest area have any claim over the land and related rights. The Supreme Court held that with regard to the land that forms part of the reserve forest, the tribals could claim rights. In *Ambica Quarry's case*[23], the issue was whether exploitation of mining resources in the forest area could continue in the light of Forest Conservation Act, 1980. The Supreme Court ruled that the renewal of license for mining in the forest area could be claimed as a matter of right. Besides the Supreme Court, the High Courts have also elicited interests in solving environment-development paradox in critical situations. In *Damodar Rao vs. S. O. Municipal Corporation*,
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Hyderabad[24], the High Court of Andhra Pradesh held that the State government's decision to alter the public park into a residential block could not be sustained and observed that protection of the environment is not only the duty of the citizens but also the obligation of the state. Similarly, in *V. Lakshmi pati vs. State*[25] and *Attakoya Thangal vs. Union of India*[26], the Karnataka and Kerala High Courts upheld the environmental rights of people over the developmental plans of respective states. In *L. K. Koolwal vs. State of Rajasthan*[27], the Rajasthan High Court ordered the municipal authorities of Jaipur to clean the city and observed that maintenance of health, sanitation, and environment falls within Article 21 of the Constitution, which renders the citizens the fundamental right to ask for affirmative action. In the process of judicial activism, many new doctrines and principles such as polluter pays principle, precautionary principle and sustainable development principle[28]; public trust doctrine[29] and the principle of absolute liability[30], principles of inter-generational and intra-generational equity, etc., have been imported by our courts into the Indian legal system. Though the public interest litigation movement provided new vistas of environmental litigations, it also gave room for frivolous cases in the courts, which prompted the Supreme Court to formulate guidelines to entertain public interest cases.

State of implementation

Notwithstanding the heights achieved in environmental litigations, thanks to the extraordinary gesture exhibited by the higher judiciary, there have been many shortcomings in the system due to the lack of enforcement and implementation of environmental laws. Access to information and justice are

still a distant dream for millions of people. The legislature is quick to enact laws regulating most aspects of industrial and developmental activity, but chary to sanction enforcement budgets or require effective implementation. Across the country, government agencies wield vast power to regulate industry, mines, and other polluters but are reluctant to use their power to discipline violators. The judiciary, a spectator to environmental despoliation for more than two decades, has recently assumed a pro-active role of public educator[31], policy maker[32], super administrator[33], and more generally, amicus environment. The flurry of legislation, lax enforcement, and assertive judicial oversight have combined to create a unique implementation dichotomy; one limb represented by hamstrung formal machinery comprised of the pollution control boards, forest bureaucracies, and state agencies; the other consisting of a non-formal, ad hoc citizen, and court driven implementation mechanism.[34]Whatever may be the quality of the law and the trend of judicial activism, if the level of implementation shows no improvement, nothing can be achieved towards environmental protection. We cannot run a country with only courts and judgments. India has achieved legislative and judicial activism. What lacks is administrative activism. Laws are observed not in compliance but in breach. In India, the peculiar phenomenon is that one has to file a case for solving an environmental problem. After obtaining judgment, in order to enforce or implement the directions made in the judgment, another case has to be filed in the Court. Lack of clear-cut implementation protocols have led to the erosion of the system. Administrative agencies created under environmental statutes are required to implement legislative mandates. Frequently, for lack of staff, money, or will, these agencies fail to implement the laws under <https://assignbuster.com/the-public-liability-insurance-act-law-general-essay/>

which they operate and ecological degradation continues to be unabated[35]. As the executive failed to discharge its statutory duties, the public-spirited individuals and voluntary organizations were compelled to move the courts. When the legitimacy of judicial activism was called into question, the Supreme Court minced no words and observed, " Even though, it is not the function of the court to see the day-to-day enforcement of the law, that being the function of the executive, but because of the non-functioning of the enforcement agencies, the courts as of necessity have had to pass orders directing the enforcement agencies to implement the law for the protection of the fundamental rights of the people passing of appropriate orders requiring implementation of the law, cannot be regarded as the court have been usurped the functions of the legislature or the executive"[36].

The Need for Capacity Building

Though the higher judiciary has pioneered in environmental justice delivery, the lower judiciary fell short by not responding adequately despite the fact that most of the environmental laws give jurisdiction to the lower courts at the first instance[37]. The reason for this can be traced to the legal educational system that was prevalent during the times of our present judges and advocates, as the same did not advocate topics relating to environmental law within the curriculum compulsory. Unlike the case then, the present situation has improved tremendously and environmental law was included as a compulsory subject in most law colleges and universities in the country. Furthermore, environmental law appreciates the scientific evidence. In order to adjudicate environmental cases, it is essential for judges to be well aware of scientific nuances[38]. In India, in several cases[39], the

Supreme Court indicated that the judges are finding it difficult to decide environmental cases, as they are complicated. In USA, the competency of generalist judges to decide upon the scientific matters were called into question, which resulted in establishment of the Carnege Commission in 1993 to probe into the matter. This warrants that adequate capacity building should be provided to the judicial officers on the legal and scientific aspects of environmental protection and degradation. The Australian model of incorporating scientific members into the judicial bench while deciding environmental cases may also be taken into consideration. The need for establishment of Environmental Courts or constitution of an Ecological Sciences Research Group to help the court and the government as an information bank as suggested by Justice P. N. Bhagawati[40] may be taken into consideration. In context, capacity building for the bench and bar becomes imperative to achieve better environmental justice delivery system. Capacity building is a continuous process in any activity and more so in environmental law because of the nature of the subject and diversity of actors involved. Capacity building, after all, is not just about education only. It includes motivation, information management, skill development, monitoring, and coordination and ability to accommodate varying perceptions keeping the goals of environmental law[41]. Capacity building in environmental law must include dissemination of information on strengthening environmental policy, policy planning process, environmental administration, environmental justice delivery system, encouraging participatory process, equipping enforcers of environmental law, and promoting environmental education. In a diverse country like India, the contribution of people's participation in effective environmental

management can be phenomenal if they are made aware of their responsibilities as laid down in the legal and policy framework. The need for better environmental capacity building strategies grows with the increasing magnitude of environmental problems and the progressive nature of threats to environmental resources. While growth is a very compelling priority, the moot question is how to speed economic growth without affecting the environment on which the growth itself sustains. Bringing together the industry, government and non-government organizations will help a lot in creating an environmentally sound and sustainable industrial development. Capacity building will also enhance compliance with environmental laws and standards. It should be viewed as complimentary to the efforts aimed at environmental enforcement and not as a substitute for that. It will also provide fora for consensus building and help develop institutions within government and industry to improve voluntary compliance with environmental statutes and standards. A healthy environment is indicative of a healthy nation. Capacity building is the key to solve many environmental problems and issues. In India, the judiciary, industrial managers, policy makers, enforcement agencies and voluntary organizations are the key players involved in the process of environmental governance, management and implementation. Effective and strategic capacity building programmes for these target groups will go a long way in creating a deeper understanding on their respective roles, besides substantially opening avenues for environmental information and easy access to environmental justice. This will eventually result in expanding the length, breadth, and depth of comprehension and appropriate implementation of environmental laws in the country.