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AIR POLLUTION LAWS IN INDIA

~Tripti Sharma

In India, the laws that state the rules and provisions regarding Air Pollution are The Air (Prevention and Control of Pollution) Act of 1986 and The Environment (Protection) Act of 1986. The Environment (Protection) Act of 1986 is related to Article 21, i.e., the Right to life and Prosperity of an individual. Now let's discuss how the laws to protect air evolved in brief.

To trace back a law, it is best to trace the Internal and External factors that eventually led to the formation of a particular act related to the environment. The Internal and External factors mean within the boundary of a nation and outside the boundary of a nation.

The Constitution of India initially doesn't have any specific provisions on Environment, pollution generally or Air pollution specifically. However, The Judiciary interpreted the Fundamental right, the Right to Life, guaranteed under Article 21 of the Indian Constitution. The right to Life is a fundamental right under Article 21 and it includes the right to the enjoyment of a pollution-free environment along with enjoyment of Life. If anything endangers or impairs the quality of life, in derogation of law, a citizen has the right to have resources to Article 32 (The Right to Constitutional Remedies) for leading a good quality life.

HISTORICAL ASPECT OF ENVIRONMENTAL LAW

International Aspect

Environmental pollution and hazardous industrial activities have become major concerns with extensive industrialisation, urbanisation and over-exploitation of natural resources. The deep concern is being felt at both the national and international levels to halt the irreversible devastation of the environment. The United Nations Conference on Human Environment at Stockhoms in 1972 was the first major global effort to express environmental deterioration.

Another key event was the evolution of Sustainable Development and Agenda 21 at the Earth Summit in Rio de Janeiro Brazil in the year 1992. The Prime Minister, Mrs. Indira Gandhi attended the conference. She emphasised that population, pollution and poverty are interrelated problems and there must be an integrated approach to deal with these problems. Therefore, to fulfil her promise, the Indian Parliament passed the 42nd Amendment Act in the constitution of India in 1976 and incorporated two articles related to the protection and improvement of the environment: article 48A (Directive Principle of State Policy, DPSP) and Article 51A(g).

Indian Aspect

PRE- INDEPENDENCE

Hindu mythology and other ancient scriptures of the Hindu religion have described the importance of the ecosystem. Yajnavalkya smriti prohibits the cutting of trees by prescribing the punishment for such acts, Kautilya's Artha shastras, written in the Mauryan period comprehended the need for forest administration. In the Holy Quran, a reference states that do not make mischief on the Earth. The Christians are baptised in water as a sign of purification. Jainism prohibits the destruction of the environment. Guru Granth Sahib too emphasised that human beings are composed of five Elements i.e. Earth, Air, Water, Sky and Fire.

All human beings are dependent on nature for their survival. Ancient Indian literature serves as a vast reservoir of knowledge about the environment. The Vedic, Puranic, Jain and Buddhist traditions established the principles of ecological harmony centuries ago. The Vedas lay a great emphasis on the concept of pollution and purity. The Rigveda mentions Gods associated with heterogeneous aspects of nature. The Rigvedic Gods like Indra, Agni, Varuna, Vayu, and Surya and Goddesses like Usha, Aditi, and Saraswati are being mentioned. The Vedic age people worshipped nature. The Vedas, Brahmanas, and Upanishads are full of citations to a diversified span of wildlife. Lord Buddha and Vardhman Mahavir have laid principles and teachings about the environment and its protection. History tells the people of the Indus Valley Civilization were very strict about sanitation and environmental protection.

POST- INDEPENDENCE

The first anti-pollution law was framed by the British in Bengal in 1905. The Bengal Smoke Nuisance Act - against smoke arising from furnaces or fireplaces in towns- was the first law to protect the environment. In 1905, Air pollution was recognised in the Bengal Smoke Nuisance Act.

AFTER INDEPENDENCE

The Parliament of India passed The Factories Act in 1948. The Act aimed at deriving maximum profit for the industrial sector in India. The Factories Act is also known as the Factories (Amendment) Act, of 1951, and it has been amended four times since its inception to meet the needs of India's industrial scenario and business practices. The Factories Act, of 1948, falls under the category of Labour Laws in India.

Protection of the surroundings became ordinary in our historic society. It was present in India from time immorally. Supreme Court of India held that Article 32 is designed for the enforcement of fundamental rights under Article 21, and it includes the right to the enjoyment of a pollution-free environment, fresh water and air for full enjoyment of the right. If anything endangers or affects that quality of life, then a citizen has the right to have resources to Article 32 for removing the pollution of water or air

THE ENVIRONMENT (PROTECTION) ACT OF 1986

It was passed with the help of international law and to fulfil constitutional provision as provided under Article 48(A) of The International Conference of Human Environment held at Stockholm, also known as Megnakata on the human environment. India participated in this conference and strongly voiced it. that the environmental concern. Although there are existing laws dealing directly or indirectly with several environmental protections like the Water and, Air Act, it is necessary to have general legislation for environmental protection. They're also a exist covered gap in areas of major environmental hazards. There are insufficient linkages in dealing with topics of commercial and environmental safety. Therefore, there is an urgent need for enactment of legislation on environmental protection which inertially should Coordinate the activities of various regulatory agencies, regulations of discharge of environmental pollutants and handling of hazardous, substances, speedy response in the event of an accident and deterrent punishment to those who endanger the environment, safety and health- The Environment Protection Act is a special law and extent to whole of India including JSK. It was enforced on 19th November 1986. The Environment (Protection) Act of 1986 has listed the specific definitions of Environment, environmental pollutants, and hazardous substances.

Let's get an insight into the first transboundary Air Pollution case, which is a necessary and important case to trace the history of Air Pollution laws in India.

USA V. CANADA CASE OR TRAIL SMELTER DISPUTE

It was the First International ruling on the issue of transboundary Air Pollution. The first case in which two core principles of International environmental law were laid down, they were,

First, the State must prevent transboundary environmental harm.

Second, the state should pay compensation for causing transboundary Air pollution of the other State's Earliest Enumeration of polluter pay.

FACTS OF THE CASE

The trail was the largest lead and zinc smelting Hing Company in Canada. In 1925 and 1927, the smelter increased its output resulting in the emission of more sulphur dioxide fuels. This noxious fume has caused damage to the crops & forests in the state of Washington. In 1935, both countries came together and constituted arbitration under the constituted convention of Ottawa. The US on behalf of farmers sought damages from Canadian cooperation and prayed for an injunction for Air pollution in the state of Washington.

ISSUE

Is it the responsibility of the state to protect other states against harmful ads within its jurisdiction at all times?

DECISION

It was determined by the Tribunal that the Canadian government had to pay us \$78 thousand as compensation for the damages that the trail smelter had done to the crops and forest of Washington. The Tribunal also held that under the principle of Internation law, no state has a right to use or permit the use of its territory in such a manner as to cause injury by fumes or to the territory of another, where the case is of serious consequences and the injury established by clear and convincing evidence.

THE AIR ACT OF 1986

The main objective of The Air (Prevention and Control of Pollution) Act of 1986 is to provide for the prevention, control and abatement of air pollution, for the establishment, to carry out the purposes above, of Boards, for conferring on and assigning to Such Boards powers and functions regarding it and for topics associated in addition to that. In the act, the definitions of

air pollution, pollutant, and board have been enlisted. There are two boards with different functions, these boards are termed Central Board and State Board, which are taken from the Water (Prevention and Control of Pollution) Act, 1974.

THE MEMBERS OF THE BOARD ARE AS FOLLOWS:

- A Chairman.
- A Member- Secretary.
- A Maximum of Five-person Government representatives.
- A Maximum of Five people from local authorities.
- A Maximum of Three persons from interest groups.
- A Maximum of Two persons from the Government Company.
- The state should ensure that
 - Minimum Two members should have Special knowledge and practical experience.
 - Improvement of air quality and prevention, control and abatement of air pollution.

CONCLUSION

After the enactment and enforcement of the laws related to the control and prevention of air pollution, there have been instances that tell the success of the act. Many a time, the citizens have used their rights entrusted under Article 21 and Article 32 of the Air Act to live in a healthy environment and enjoy life. There have been many cases against the factories, and industries that have polluted the environment and sought the help of the Judiciary to establish the law and do the needful. M.C. Mehta, a professional lawyer and a keen environmentalist by choice has fought for the protection of the environment. He stood against the polluting industrialists and achieved success. A few of the cases are the Taj Trapezium case, the Oleum Gas leak case, etc.