ENVIRONMENTAL LAW ENFORCEMENT AND NEED FOR REFORMING THE LIABILITY REGIME IN INDIA: AN AGENDA TO REVISIT

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Abstract

Environmental law is a regulatory regime providing for the protection of environment and addressing the effects of human activity on the natural environment. It also focuses on the concept of sustainable development and provides environmental justice through fair treatment and involvement of people in the development, implementation and enforcement of environmental laws, regulations and policies. Various socio-political-economic factors that has contributed towards environmental deterioration needs to be regulated to stop further deterioration. There is no dearth of legislations on environmental protection in India but their enforcement has been far from satisfactory. There is need for effective and efficient enforcement of the Constitutional mandate and other environmental legislations. Judiciary has played a creative role in propounding environmental jurisprudence in India which is significant and laudable. Caring for regulating and protecting the environment is essentially required for sustainable development. The present paper focuses on environmental law regime in India in a globalised era with sole concentration on sustainable development. The paper also focuses on origin of environmental issues, environmental criminology and the concept of environmental harm/crime. How and in what manner we have responded to environmental harm/crime? What are the issues and challenges in actual enforcement? There is a concern to re-visit the liability clause in the present scenario.

Key words

Environmental harm, Green Criminology, Environmental law enforcement, Sustainable Development and Environmental Policies.

I. INTRODUCTION

The law of environment protection envisages growing interdependence of economic management of environmental resources and its impact on human life. Essentially, growing debate in recent times about the need for environmental protection has slowly but surely increased the focus on the nature and extent of development which is of inescapable wider perspective has to be sustainable, which embraces ecological dimensions, apart from social, economic and distributive justice components.[1] India is

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[1]G.S. Tiwari, "Sustainable Development as a Socio Economic growth Strategy expanding horizons of environmental law in India" in Manoj Sinha, *et al.* (eds.), *Environmental Law and Enforcement: The Contemporary Challenges* (2016).

facing problem of resource degradation and pollution of the environment despite employing a range of regulatory instruments. "But the law works badly, when it works at all. The judiciary, a spectator to environmental despoliation for more than two decades, has recently assumed a pro-active role of public educator,[2] policy maker,[3] super-administrator,[4] and more generally, amicus environment."[5] The flurries of legislation, lax enforcement and assertive judicial oversight have combined to create a unique implementation dichotomy: one limb represented by the hamstrung formal regulatory 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.[6]

The Indian Supreme Court has said as-

"If the mere enactment of laws relating to the protection of environment was to ensure a clean and pollution free environment, then India would, perhaps, be the least polluted country in the world. But, this is not so. There are stated to be over 200 Central and State statutes which have at least some concern with environmental protection, either directly or indirectly. The plethora of such enactments has, unfortunately, not resulted in preventing environmental degradation which, on the contrary, has increased over the years."[7]

Likewise, the "Approach paper to the Tenth Indian Five Year Plan" (2002-17) says that 'pollution of air, water and soil is emerging as a serious threat to human health, biodiversity, climate change, ecology and economy of the area.' The approach has recommended review of existing policy, laws, rules, regulations and executive orders and better enforcement. After 2015, all focus of each programme and policy is on sustainable development.

Einstein once remarked, 'the environment is everything that isn't me'. In this sense, the environment may mean virtually everything in the surrounding. Section 2 of the Environment (Protection) Act, 1986 defines environment as to include water, air and land and the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, microorganisms and property.

Despite the development of environmental law as a branch of law, it does not comprise a single, distinct set of rules. Rather it is made up of law drawn from variety of sources including environmental legislation, the tort of nuisance, negligence, trespass, the rule in Ryland v. Fletcher, town and country planning legislation, land law, consumer protection, public health legislation etc.

Environmental Jurisprudence, in its essence consists of such basic fundamental postulates and values concerning restoration of balance and harmony in environment by regulating, ordering, preventing and controlling such human conduct that tend to

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[2] *M.C. Mehta v. Union of India,* A.I.R. 1992 S.C. 382.

[3] *S.Jagannath v. Union of India,* A.I.R. 1997 S.C. 811.

[4] *T.N. Godavarman Thirumulkpad v. Union of India,* A.I.R. 1997 S.C. 1228.

[5] Shyam Divan & Armin Rosencranz, *Environmental Law and Policy in India: Cases, Materials and Statutes* 1 (Oxford University Press 2001).

[6] *Id.* at 1.

[7] *Indian Council for Enviro-Legal Action v. Union of India* (1996) 5 S.C.C. 281.

disrupt, disturb, damage and destroy the ecology of the Earth. For upholding Rule of Law- there must be a balance between moral values, justice, human right, rights, and liability.

It is argued that the destruction of the world's life support systems is proceeding at such a pace and indeed, has already gone so far, has cut so deep into the delicate fabric of the natural world that no conventional response is adequate to deal with it. By the conventional response is meant a framework of environmental law to punish polluters, protect finite resources and steers society into a new way of living. It is said that such a response is totally inadequate to the scale of the problems we face and that the law has no meaningful role to play in tackling or finding solutions to the multiple environmental crises we face.[8] It essence this argument urges that environmental law is largely useless as a tool for achieving environmental protection because of its nature. The nature of environmental law as known to the public at large is 'soft' because of its implementation and enforcement strategy.

II. CONCEPT OF ENVIRONMENTAL HARM/CRIME

Environmental issues gained in importance when two different trends intersected each other. One was the capacity of humans to transform in a relatively short span of time their natural surroundings, with consequences that could be adverse for them. These adverse outcomes were not equally distributed across all societies or peoples, but they required and evoked responses from them. Here, there was a critical change: it was precisely their concern about the environment that made such responses possible at all. The ideas of people, or rather of people who chose to or tried to act to overcome the adverse situations remain as crucial to environmental dilemmas as the material conditions themselves.[9]

The environment has never been static, unchanging and in equilibrium. Today, the conservation, protection and improvement of human environment are major issues all over the world. Human environment consists of both physical environment and biological environment. Industrialisation, urbanisation, explosion of population, over-exploitation of resources, disruption of natural ecological balances, destruction of a multitude of animal and plant species for economic reasons are the factors which have contributed to environmental deterioration.[10] One country's degradation of environment degrades the global environment for all the countries. The problem of environmental pollution has acquired international dimension and India is no exception to it.

Environmental issues dominate media headlines today and are forcing many people to re-evaluate their day-to-day practices as citizens, as workers, as parents and as members of communities. So, too, concern about the environment is now starting to have greater resonance within the criminal justice field, albeit in a still fairly modest fashion. Within this context of social and professional concern about environmental matters, a new branch of criminology has emerged as 'green criminology'.[11]

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[8]Owen Lomes, *Frontiers of Environmental Law* 68 (Chancery Law Publishing,1992).

[9]Mahesh Rangarajan, *Environmental Issues In India,* XIII (Ed., Pearson India Education Services ,2017).

[10]*Sachidanand Pandey v. State of West Bengal,* A.I.R. 1987 S.C. 1109.

[11]Rob White, *Crime Against Nature* 3 (Routledge, 2008).

Green or environmental criminology basically refers to the study of environmental harms, environmental laws and environmental regulations by criminologists. The interest of green criminology incorporates specific incidents and events, often within defined geo-political areas, through to issues of global magnitude. Humans are implicated in interactions with different components of ecology as the relationship between human and environment is crucial to understand how environment changes over the time, for better or for worse.[12] Analysis of environmental issues proceeds on the basis that someone or something is indeed being harmed. Environmental Justice refers to the distribution of environments among peoples in terms of access to and use of specific natural resources in defined geographical areas, and impacts of particular social practices and environmental hazards on specific populations.[13] The various conceptualisations of harm within a green criminology framework involve reference to different kinds of justice pertaining to humans, nonhuman animals and the environment itself can be put into an abstract analytical model that can be used to weigh up harm in relation to human centric, animal centric and eco centric considerations.[14]

Environmental harm which is an act against environment directly or indirectly and at the same time have relatively low risks of detection. It does not conform to the traditional form of crime and violence due to its nature. The various factors that must be considered in an environmental offence like what harm caused - whether having direct or indirect effect - who is the actual offender and victim. The nature of environmental harm is that it occurs everywhere and anywhere. It has no boundaries and it cannot be confined to a definite territory. The perpetrator of environmental harm includes individuals and groups from a wide range of backgrounds and socio-economic situations.

III. ENVIRONMENTAL LAW ENFORCEMENT APPROACH

The success of any environmental policy depends on changes in the behaviour of producers and consumers. Environmental policy can try to bring about these changes by means of various instruments. The emphasis of environmental policy should be to mitigate environmental hazards without compromising development. A centralized environmental policy requires that some central administrative agency will determine what is to be done and in what manner. The specific criteria for evaluating environmental policies are efficiency, fairness, incentives for improvement and enforceability.[15]

For a policy to be efficient, it must be cost effective. A policy is cost effective if it produces the maximum environmental improvement possible for the resources being expended. To be socially efficient, it must also balance costs with benefits. The impact of each policy will be different on society in terms of the income groups, ethnic and racial groups. Equity is thus a matter of morality and regard that relatively well-off people have for the underprivileged. A critically important criterion to evaluate any environmental policy is whether the policy provided a strong incentive for individuals and groups to find

[12] *Ibid.*

[13] *Id.* at 15-16.

[14] *Id.* at 24.

[15] Barry C. Field, *Environmental Economics: An Introduction* 184-189 (Mc Graw Hill London 1994).

new and innovative ways of reducing their impacts on the environment. The greater the incentive, the better would be policy in its application.[16]

The objective of enforcement is to get people to comply with an applicable law. There are two main components of enforcement, which are monitoring and sanctioning. Polluters, who stand to lose money, may try to frustrate monitoring of the applicable laws. More the process sophisticated and complicated of applicable law, it becomes easier for polluters to evade. Enforcement through sanctioning seems simple but polluters may use their vast resources to see that the court cases become long drawn affairs so that no penalty is imposed immediately.[17] It is essential to respond to environmental harms, whatever their specific nature, origins and dynamics.

Environmental law enforcement will become increasingly important as the incidence and consciousness of environmental harm grows. There are three main approaches to the analysis and study of environmental criminalisation and regulation.[18]

Socio-Legal Approach

The main emphasis is how to best utilise existing legal and enforcement mechanisms to protect environments and creatures. It attempts to improve quality of investigation, law enforcement, prosecution and conviction on illegal environmentally related activity.

Regulatory Approach

The main emphasis is on social regulation, using many different means, as the key mechanism to prevent and curtail environmental harm. It attempts to reform existing systems of production and consumption through adoption of constellation of measures, including enforced self-regulation and bringing non-government groups directly into the regulatory process.

Social Action Approach

The main emphasis is on need for fundamental social change and to challenge the hegemony of transnational capital and dominant nation-states in setting the environmental agenda. It attempts to engage in social transformation through emphasis on deliberative democracy and citizen participation, and support for the radical as well as other wings of the social movements.

In many jurisdictions the primary regulatory authority for the control of environmental harm is the Environmental Protection Authority (EPA) like Environmental Agency in UK. Their mandate generally includes such thing as:[19] regulating environmental crime through administration of environmental protection legislation; educating the community about environmental issues; monitoring and researching environmental quality; and reporting on the state of the environment to state or national legislature and other relevant bodies.

Implementation of this mandate includes protecting and conserving the natural environment, promoting the sustainable use of natural capital, ensuring a clean

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[16] *Ibid.*

[17] Barry C. Field, *Supra* note 15.

[18] Rob White, *Supra* note 11 at 182.

[19] *Id.* at 184.

environment and reducing risks to human health. Environment Australia, as the lead agency in regards to contraventions of federal environmental and heritage legislation, states that to achieve its compliance and enforcement objectives, it uses a range of flexible and targeted measures to promote self-regulation. 'Compliance' means the state of conformity with the law. Agencies can usually try to secure compliance through two types of activity:[20] promotion (Communication (e.g. environmental registry); Publication of information (e.g. technical information);Consultation with parties affected by the Act; Creation of environmental codes of practice and guidelines; and Promotion of environmental audits); and enforcement (Inspection to verify compliance; Investigation of violations; Measures to compel compliance without resorting to formal court action, such as directions by authorised enforcement officers, warnings, ticketing, and environmental protection compliance orders by enforcement officers; Measures to compel compliance through court action, such as injunctions, prosecution, court orders upon conviction, and civil suit for recovery of costs.)

The role of state in dealing with environmental harm is much more circumscribed than the policing and regulation of street crime. The tendency has been to emphasise efficiency and facilitation, rather than control. At a practical level the costs of monitoring, enforcement and compliance, in relation to traditional regulatory standards setting and role of government, are seen as problematic. So, too, the complexity of procedures and issues has been accompanied by efforts to streamline processes and by increased reliance upon expert-based advice, rather than full community discussion.[21]

According to Ayres and Braithwaite reconstitute the usual regulatory pyramid such that the bottom layer consists of self-regulation, the next layer enforced self-regulation, the next layer is command regulation with discretionary punishment and at the top, command regulation with nondiscretionary punishment.[22]

Command and Control regulation which includes setting of environmental standards; licenses and permits; environmental covenants; land and water use controls; environmental impact assessments; site specific management plans.

Self-regulation which includes organised group regulates the behaviour of its members; setting out 'codes of practice' via rules and standards; standard-setting and identification of breaches in hands of practitioners; serves industry not public interest; assessing and identifying non-complaint behaviour and punishing.

Voluntarism which includes individual firm undertaking to do the right thing unilaterally, without any basis of in coercion; non-mandatory contracts between equal partners; encouragement and invoking sense of responsibility.

Education and information includes education and training; corporate environmental reporting; community right to know; product certification; award scheme.

Economic instrument includes property rights; market creation; fiscal instruments and charge systems in the form of tax; financial instruments for environmental activities; liability instruments; creation of performance bonds.

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[20] *Id.* at 185-186.

[21] *Id.* at 211.

[22] *Id.* at 212-13.

Free market environmentalism includes allocating property-rights for natural resources to private interests; no government intervention, except to monitor and enforce the trading of individual property-rights; the market to determine the value people place on environmental goods.

The Indian institutional set up for enforcement of environmental laws is the Ministry of Environment, Forest and Climate Change (MoFECC) whose main work is to plan, promote, and coordinate programmes in addition to policy formulation for environment, forestry, wildlife and climate change. The MoFECC is supported by Central Pollution Control Board and State Pollution Control Board. The main environmental regime in India for environmental protection and pollution abatement is based on Command and Control Strategy. Under various legislations, rules and regulations is issued for implementation by prescribing standards and issuance of consents by the CPCB and the SPCB. In India, standards have generally been criticised for being too lax, too stringent or simply irrelevant.

IV. APPRAISAL OF ENVIRONMENTAL POLICIES OF INDIA

Environmental degradation affects national welfare by damaging human health, economic activities and ecosystems. Because environmental problems represent a classic externality,[23] some government regulation is generally warranted. From an economist's perspective, desirable regulation should weigh two factors: the benefits associated with reduced environmental damage, and the opportunity cost of mitigation. In reality, the extent and focus of government intervention will also reflect national political and institutional considerations.[24] It is therefore in this context that evolving a sound environmental policy is a condition precedent to having a sustainable environmental management. The worldwide concern for environmental degradation found its expression in 1972 at UN Conference on Human Environment. In 1979, a UN Symposium identified unsustainable consumption patterns and lifestyles as basic issues of environmental degradation. It was the Brundtland Commission's report titled as "Our Common Future" (1987), a landmark development thinking which brought environmental issues to the fore. The Commission came to the conclusion that the relationship between economic growth and environmental conservation should be one of the complementarily and interdependence. The idea of growth at all costs was replaced by the idea of sustainable development.[25]

The Constitution of India provides for certain directives for the states for governance in Part IV as 'Directive Principles of State Policy'. Stockholm Declaration of 1972 was perhaps the first major attempt to conserve and protect the human environment at the international level. As a consequence of this Declaration, the States were required to adopt legislative measures to protect and improve the environment. Accordingly, Indian

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[23]Some production processes and uses of certain materials can results in discharges of effluents and emissions. These effluents and emissions are called negative externalities. Activities like tree plantations would lead to production of oxygen and trees also act as sink for greenhouse gases. This is a case of positive externality.

[24]Dasgupta *et. al., Environmental Regulation and Development: Cross Country Empirical Analysis* 176(Oxford Development Studies 2001).

[25]Debajit N. Sarkar, *Environmental Policy in India,* 3 ARSS 17-20(2014), available at:
http://www.trp.org.in/wp-content/uploads/2016/11/ARSS-Vol.3-No.2-July-Dec-2014pp.17-20.pdf

Parliament inserted two Articles namely 48A and 51A in the Constitution of India in 1976.[26] Article 48A states that "State shall endeavour to protect and improve the environment and safeguard forests and wildlife of the country."[27] Article 51A(g) imposes a duty on every citizen of India, to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. Besides these two directives, Article 21 which provides for fundamental right of 'Right to Life and Personal Liberty' has been interpreted by the courts to include right to clean environment, right to clean air, water as an integral part of it.

Apart from Constitutional obligations, the liability clause for environmental pollution has been discussed under much legislation in pre-independence and mostly in post-independence era in India. Part XIV of Indian Penal Code, 1860 makes various actions affecting environment namely the spreading of infection of any disease to life;[28] fouling of water of public spring's or reservoirs rendering it less fit for the purpose for which it is ordinarily used;[29] making atmosphere noxious to health;[30] public nuisance[31] and mischief[32] have all been made offences. The punishment for these offences is ranging from three month imprisonment to five year and fine also. The Code proved to be not very effective because of its conservative approach to enforcement of these provisions. The other legislations making liability clause in India includes Wildlife Protection Act, 1972; the Water (Prevention and Control of Pollution) Act, 1974; the Air (Prevention and Control of Pollution) Act, 1981; the Environment (Protection) Act, 1986; the Public Liability Insurance Act,1991; the Forest (Conservation) Act,1980; the National Green Tribunal Act,2010; the Nuclear Civil Liability Act,2010.

The liability under these legislations includes civil as well as criminal liability. The National Green Tribunal has original jurisdiction over all civil cases raising a substantial question relating to environment, including enforcement of any legal right related to the environment. The substantial question relating to environment includes instances where there is a direct violation of a statutory provision that impacts or is likely to impact the community at large; that the gravity of damage to the environment is substantial or that the damage to public health is broadly measurable; or the applicant could show that the environmental consequences are being caused by a specific activity or a point source of pollution.[33] The Tribunal can order relief and compensation to victims of pollution, and order restitution of property damaged and environment of the area.[34] Still even having a comprehensive legislations relating to environment in India but the status of environment is deteriorating day by day because of non-compliance and other issues.

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[26] Inserted by the Constitution (Forty-second Amendment) Act, 1976.

[27] Part IV- Directive Principle of State Policy, The Constitution of India,1950.

[28] The Indian Penal Code, 1860, Sec. 269.

[29] *Id.* Sec.277.

[30] *Id.* Sec.278.

[31] *Id.* Sec.290.

[32] *Id.* Sec.425,426,430,431,432.

[33] The National Green Tribunal Act, 2010, Sec.2 (1) (m).

[34] *Id.* Sec.15.

The right of a person to pollution free environment is a part of basic jurisprudence of the land. Article 21 of the Constitution of India guarantees a fundamental right to life and personal liberty. The Supreme Court has interpreted the right to life and personal liberty to include the right to wholesome environment;[35] and right to life also includes right to clean environment, drinking water and pollution free atmosphere.[36]

In a famous case, Taj Trapezium,[37] the Supreme Court issued directions that coal and coke based industries in adjoining areas of Taj Trapezium damaging Taj should either change over to natural gas or to be relocated outside TTZ. In the Dehradun Valley Case,[38] directed the closing of limestone quarrying in the hills of Mussorie and said- "This would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the rights of the people to live in healthy environment with minimal disturbance of ecological balance…" The Supreme Court asserted that court would not remain a passive spectator with eyes closed whenever there is an assault on environment as an environment protection is a constitutional mandate.[39] In Tarun Bhagat,[40] the court condemned the State Government 'while professing to protect the environment by means of various notifications and declarations should at the same time permit the degradation of environment by authorising mining operation in a prohibited area' which is a protected area in wild life sanctuary. Both development and environment must co-exist and run parallel in the interest of social good. The Apex Court called upon the State to create environmental awareness[41] in a citizenry through slides in cinema halls containing information and messages on environment through radio, television, and of making environment as a subject in academic institutions at all level.

In the case of *M.C. Mehta v. Union of India,*[42] popularly known as (Oleum Gas Leak Case), the Supreme Court evolved a new principle of liability called as Absolute Liability. The Court held that where an enterprise is engaged in a hazardous or inherently dangerous activity resulting in the escape of toxic gas, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability…[43] The Court further pointed out that the measure of compensation must be co-related to the magnitude and capacity of the enterprise because such compensation must have deterrent effect.[44]

In the post 1990, the judicial trend in India, on account of nexus between politician, polluters and bureaucrats and lack of transparency and accountability in environmental

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[35] *Rural Litigation & Entitlement Kendra Dehradun v. State of U.P.* AIR 1988 SC 1037.

[36] *Subhash Kumar v. State of Bihar* AIR 1991 SC 420; *M.C. Mehta v. Union of India* AIR 2000 SC 3192.

[37] *M.C.Mehta v. Union of India* AIR 1997 SC 734.

[38] *Rural Litigation & Entitlement Kendra Dehradun v. State of U.P.* AIR 1985 SC 653.

[39] *Charan Lal Sahu v. Union of India,* AIR 1990 SC 1480.

[40] *Tarun Bhagat Singh v. Union of India* AIR 1992 SC 514.

[41] *M.C.Mehta v. Union of India* AIR 1992 SC 382.

[42] AIR 1987 SC 1086.

[43] *Supra* note 38 at 1099.

[44] *Ibid.*.

management the poor suffer both from poverty and pollution while polluters make hay of resources for personal profit or greed under the cover of development. The Supreme Court in such situation has come to rescue the poor and suffering victims of pollution.[45] For the ensuing generation the opinions of Justice Jeevan Reddy in Bichhari[46] pollution case and Justice Kuldip Singh in Tamil Nadu Tanneries Case[47] would from the essential juristic compendium for an unpolluted environment and safe earth not only for Indian but for all men of all lands.[48]

The Supreme Court of India in *Vellore Citizen Welfare Forum v. Union of India,*[49] elaborately discussed the concept of 'sustainable development' which has been accepted as part of the law of the land. The 'precautionary principle' and the 'polluter pays principle' are essential features of 'sustainable development'. The 'precautionary principle' makes it mandatory for the State Government to anticipate prevent and attack the causes of environment degradation.[50] The 'polluter pays principle' demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertaking which cause pollution. It has been held to be a sound principle and as interpreted by Supreme Court of India,[51] it means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environment degradation. The above case clearly reveals that the Supreme Court of India has played a vital role for the protection and improvement of environment. The jurisdiction of the court has been expanded by the way of Public Interest Litigation which makes the creative role significant and laudable.

V. ISSUES AND CHALLENGES

The state of environment in India indicates that the present liability regime is not designed or implemented to suitably punish those responsible for environmental degradation or deter future violations. The major reasons:

- There has to be credible threat of non-enforcement and sanctions to be proportionate.
- Data collection, strong monitoring capacity of the regulatory agency.
- Transparency and accountability among the authority to stop corrupt and other malpractices.
- The legal, institutional, political, financial, bureaucratic and cultural in India has always dealt the environmental issues on lighter node.
- The main critical issues that have emerged in the current liability regime affecting the effectiveness of the existing enforcement mechanism in India.

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[45] *M.C. Mehta v. Union of India* AIR 1996 SC 1977; *M.C. Mehta v. Union of India* AIR 1996 SC 2231.

[46] *Indian Council for Enviro-Legal Action v. Union of India* AIR 1996 SC 1446.

[47] *Vellore Citizens Welfare Forum v. Union of India* AIR 1996 SC 2715.

[48] In the meantime Justice Kuldip Singh has given two things: (1) to Delhi government for shifting polluting units outside Delhi; (2) suspend vehicle licences spawning fuel pollution to save Delhi from slow death.

[49] AIR 1996 SC 2715.

[50] *M.C. Mehta v. Union of India* (1997) 1 Camp L.J. 199 (SC).

[51] *Indian Council for Enviro-Legal Action v. Union of India* AIR 1996 SC 1446.

i. Absence of policy on enforcement and prosecution in environmental cases. There is no independent authority to dealing with environmental cases. The Pollution control Boards cannot levy penalties and fine, the power is with courts only. These are only regulatory agencies for compliance purpose.

ii. Punitive provision also not an effective solution. Just levying heavy fine and imprisonment will not work without deterrence factor among public at large.

iii. Even delay in justice by courts also hampers litigation in environmental causes.

iv. The National Green Tribunal Act, 2010 does not provide a complete relief. It only deals with civil remedies not with criminal liability. Limited jurisdiction apart, judicial recourse is not a viable mechanism for protecting the quality environmental conditions.

v. Non-compliance of environmental regulations by the individuals, groups and society at large.

VI. CONCLUSION AND SUGGESTIONS

In the era of sustainable development, environmental justice to all components of environment is necessary on equitable basis. We need to have strict regulations for actions against environment whether direct or indirect by human beings or other organisms. Human beings are the destroyer of the environment in the name of development. We need to strike a balance between development and environment. The current liability regime is not capable of tackling the scale of environmental damage that India is witnessing and is likely to experience in the near future. Few suggestions for betterment of environment in India are given as follows-

i. We need to have a comprehensive and integrated Environmental Code in India.

ii. A positive attitude on the part of everyone in society is essential for effective and efficient enforcement.

iii. Transferring more power or establishing a complete independent authority to deal with environmental cases.

iv. Environmental Education among the people from grass root level and make them aware about their environmental rights and duties.

v. Adoption of incentive based regime for effective implementation of environmental policies.