

INDIA

India is a federation of states. However, unlike the United States, it is more a unitary state than a federation and the federal government (known as the central government) has more powers than the states have. India is governed by a written Constitution which includes a Fundamental Rights Chapter, which confers enforceable fundamental rights on citizens as well as on all other persons. Article 21 guarantees the right to life and livelihood and has been used by the courts to interpret environmental rights in an expansive way. Additionally, the Fourth Chapter contains rights which are non-enforceable but fundamental to the governance of the country. Article 48-A of this Chapter enjoins the state to endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

Article 32 of the Constitution confers original jurisdiction on the Supreme Court of India to entertain petitions directly on complaints of violations of fundamental rights. It further confers jurisdiction on the Supreme Court to issue prerogative writs. The law laid down by the Supreme Court is applicable throughout the entire country. All the states have High Courts and under Article 226 of the Constitution the High Courts have original jurisdiction to enforce fundamental and all other rights. The law laid down by the High Court of a particular state is applicable to that state alone.

Fundamental rights are, however, enforceable only against what is defined as the "State" under Article 12 of the Constitution. This includes all governmental and local authorities and bodies as well as all enterprises under the control of the state. The powers under Articles 32 and 226 are essentially in the nature of powers of judicial review.

The power to legislate on different subjects is set out in Article 246 and the Seventh Schedule to the Constitution. The Union List enables the Indian Parliament to legislate exclusively on subjects enumerated in it. State legislatures are empowered to legislate exclusively on subjects set out in the State List. The Concurrent List allows both Parliament and the state legislatures to enact laws in respect of subjects enumerated in that list. Under Article 252 Parliament can also legislate in respect of matters specified in the State List if resolutions are passed to that effect by two or more states. In such a case the law is applicable only in those states which passed the resolution and those which may pass such a resolution in the future. If a law made by a state legislature in respect of a matter in the Concurrent List conflicts with any law made by Parliament then the law made by Parliament will prevail unless the state law has received the assent of the President. As the subject of "environment" covers diverse issues it would relate to matters enumerated in all three lists.

On the basis of a resolution passed by various states, Parliament enacted the Water (Prevention and Control of Pollution) Act 1974 (the Water Act) and the Air (Prevention and Control of Pollution) Act 1981 (the Air Act). In 1986 Parliament enacted the Environment Protection Act, to implement the decisions of the UN

Conference on Environment held in Stockholm in 1972. These three Acts together with the rules and regulations framed thereunder directly address the vast majority of environmental issues arising in the country and they are applicable to all the states.

Several other Acts are also relevant in addressing environmental issues. The Public Liability Insurance Act 1991 deals with insurance against accidents in the storage, handling, etc., of hazardous substances and provides for urgent relief to victims of such accidents. The Factories Act deals with factories and includes a chapter which was introduced after the Bhopal gas disaster. This chapter deals with hazardous processes and provides for site appraisal committees to advise on the location of factories which use such processes. It also provides for the compulsory disclosure of information to the authorities about the likely dangers of a factory before it is set up or expanded. The Atomic Energy Act 1962, deals with matters relating to atomic energy; the Criminal Procedure Code deals with public nuisances; and the Forest Conservation Act 1980 provides for the conservation of forests and related issues.

The Air Act and the Water Act

Both the Air Act and the Water Act set up central and state pollution-control boards. The boards are empowered to lay down policy and to advise the concerned government (state or central) on environmental matters. The Central Board is bound by the directions given to it by the central government and is empowered to coordinate the work of the various state boards. The state boards are bound by the directions of the respective state government as well as by those of the central government. The Central Board is empowered to lay down the standards of air and water quality. The state boards are empowered to inspect equipment, industrial plants and manufacturing processes and give directions in that regard to the persons concerned. All industries, operations and processes likely to discharge effluents are required to obtain the prior consent (consent certificates) of the relevant state board before setting up any industry, process etc. The Water Act and the Air Act also provide for the setting up of central and state air and water laboratories and analysts.

Environment Protection Act

Whereas the Air Act and the Water Act deal with the narrow concept of pollution, the Environment Protection Act 1986 (the EPA) allows a more holistic intervention to be made. The term "environment" is given a broad definition and the Act empowers the central government generally to "take all such measures as it deems necessary

or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution". In particular, by section 3 the central government is empowered to coordinate actions of the state governments; plan and execute nationwide programmes for the prevention, control and abatement of environmental pollution; lay down standards for the quality of environment in its various aspects; lay down standards of emission or discharge of environmental pollutants from whatsoever source; restrict the areas in which industries, operations or processes may be carried out; lay down procedures and safeguards for the prevention of accidents which may cause environmental pollution; lay down the procedures and safeguards for the handling of hazardous substances; examine manufacturing processes, materials and substances that are likely to cause environmental pollution; inspect any premises, plant, equipment, machinery, manufacturing or other processes, material or substances; and take measures in respect of such other matters as the central government may think fit. There is also a specific power conferred on the central government by sections 6 and 25 to frame rules in this regard. Under section 5 extensive powers are given to the central government to enforce the provisions of the Act by specifically authorising it to order the closure, prohibition or regulation of any industry, operation or process or by the stoppage or regulation of the supply of electricity or water or any services.

Environment Protection Rules

The Environment Protection Rules 1986 (the EPR) have been framed under the Environment Protection Act by the central government. Rule 3 of the EPR provides for the setting of the standards for emission or discharge of environmental pollutants as are specified in the Schedule to the Rules. This Schedule covers about 30 types of major industries and provides limits which have been set for various pollutants specific to the industry or process. Rule 5 provides for restrictions on the location of industries and for the carrying on of processes and operations in different areas. Under these Rules various Notifications have been issued including the Coastal Regulation Zone (CRZ) Notification in 1991 and 1994, the Hazardous Wastes (Management and Handling) Rules 1989 and the Manufacture, Storage and Import of Hazardous Chemicals Rules 1989. The total lack of commitment on the part of both the central government and those of the various states is evident from the breach of the Rules framed under the EPA, particularly in relation to the Notification concerning coastal zones and hazardous chemicals, both of which came to the fore in the judgments of the Supreme Court in 1996.

Coastal Regulation Zone (CRZ)

India has approximately 6,000 km of sandy beaches. In 1980 the late Indira Gandhi, then Prime Minister of India, wrote a letter to the Chief Ministers of all the coastal states about the building activities on the beaches which were adversely affecting their aesthetic and environmental values. She directed that “they have to be kept clear of all activities at least up to 500 metres for the water at the maximum high tide”. Though the letter had no legal sanction, her overwhelming personality and authority did not allow the powerful tourism industry to challenge the diktat. After her death the tourism industry exerted pressure on the Ministry of Environment to relax the 500-metre rule on the ground that such a relaxation would bring in much-needed foreign exchange. Initially the rule was relaxed in 1986 from 500 metres to 200 metres for four beach areas for the purposes of setting up beach resorts. Later this relaxation was extended to the whole country.

Coastal Regulation Zone (CRZ) Notification

CRZ Notification was issued in 1991 under the EPA, thus giving it a statutory basis. Under that Notification which is practically unique to India the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (on the landward side) up to 500 metres of the high-tide line and the areas between the high-tide line and the low-tide line constitute the Coastal Regulation Zone. Certain activities were prohibited in the CRZ. These prohibited activities included new or expanded industries; manufacturing, handling and storage of hazardous substances; the setting up or expansion of fish-processing units; the setting up or expansion of units for the disposal of waste effluents, except those authorised under the Water Act; the discharge of untreated wastes and effluents; the dumping of city or town wastes; the dumping of ash or any waste from thermal power stations; land reclamation, bunding or disturbing the natural course of sea water etc.; mining of lands, rocks etc.; harvesting or drawing of ground waters; construction of activities in ecologically-sensitive areas; construction activity between the low-tide line and the high-tide line except for carrying treated effluents etc. for permitted activities; and dressing or altering of sand dunes. All other activities were regulated, meaning that the activity could be carried on with the permission of the Ministry of Environment and Forests (MOEF). For the purpose of regulating the activity the CRZ classified beach areas into four zones, as follows:

- (1) CRZ I: ecologically-sensitive areas where no construction activity was to be permitted within 500 metres of the high-tide line;
- (2) CRZ II: areas in or close to the municipal limits which are developed close to the shoreline where no buildings were to be permitted on the seaward side of

- the existing or proposed roads nor on the seaward side of the existing structures;
- (3) CRZ III: the coastal zone in the rural areas or urban areas close to the shoreline which are not substantially developed where the area up to 200 metres from the high-tide line was marked as the “No Development Zone” and development between 200 and 500 metres of the high-tide line would be permitted with the prior approval of the MOEF; and
 - (4) CRZ IV: areas in specific islands off the mainland where the restrictions were similar to the ones imposed in CRZ III.

In effect the CRZ Notification declared the area within 500 metres of the high-tide line along 6,000 km as the Coastal Regulation Zone, in which no building activity was permitted within 200 metres and activity was regulated between the 200 and 500 metres zone from the high-tide line on the sea and 100 metres from a river or estuary.

That apart, the Notification required the coastal states to prepare within one year (i.e., by 1992) Coastal Management Plans (CMPs). Needless to say none of the coastal states had as of 1996 prepared such CMPs. Moreover, most of states ignored the 1991 Notification and it was observed more in the breach than in compliance.

In 1992 the central government, under pressure from the tourism lobby, appointed a committee (the Vohra Committee) to consider representations made on the issue of the prohibitions in the CRZ. On the submission of the committee’s report the central government issued a further Notification in 1994, watering down the 1991 Notification. In effect the amending Notification of 1994 gave the central government the power to permit constructions within 200 metres of the high-tide line from the sea and reduced the distance from 100 metres to 50 metres as far as rivers and estuaries were concerned.

CRZ Petitions

In 1993 the Indian Council for Enviro-Legal Action filed a petition in the Supreme Court highlighting the breaches and the non-implementation of the 1991 CRZ Notification. After the issuance of the 1994 Notification, other organisations, including the Goa Foundation which had been working on the CRZ issue for over a decade, filed intervention petitions to challenge the relaxation in the 1994 Notification.

Pending the petition the Supreme Court had directed that no permission be granted for buildings in the CRZ. Later, in 1994, the order was modified requiring the authorities to comply scrupulously with the 1991 CRZ Notification. On 19 April 1996 the Supreme Court gave its judgment on the CRZ petitions.¹ The court made

¹ See *Indian Council for Enviro-Legal Action v. Union of India* (1996) 3 SCALE 579.

deprecating observations regarding the non-compliance of the Notification and directed the coastal states to formulate CMPs by September 1996. The Supreme Court further struck down the relaxation in the 1994 Notification and restored the 200 metres "No Development Zone" from the high-tide line on the sea and 100 metres from the estuary or river in the original 1991 Notification.

Toxic Link Initiative

Investigations by environment groups, including Shrishti, into customs data during one year revealed that international waste traders are exporting huge quantities of hazardous wastes to India in contravention of international treaties, the Basle Convention and national law. The central government claimed that it was keeping a tight rein over the imports by allowing only five companies to import hazardous wastes from three countries, namely, Germany, Korea and the Netherlands. However, the data reveals that in the last two years 151 different companies have imported about 66,000 tonnes of toxic zinc and lead ashes, residues, skimmings and dross from 49 countries, clearly indicating that India is unable to monitor or control the import of hazardous wastes. Leading exporters to India of hazardous wastes are the United States with 11,857 tonnes, Australia with 9,034 tonnes and Canada with 7,270 tonnes. Significant exports are also being made from a number of other European countries such as France, the United Kingdom and Sweden.

Metallic hazardous dross and residues are contaminated with many toxic substances and are exported to India because the cost of recycling in the exporting countries in an environmentally-sound manner is prohibitive. Exporting such waste to India results in the degradation of the Indian environment while saving the environment in the exporting countries.

The exports from the US are in total violation of the Basle Convention as the US has not ratified the Convention and parties to the Convention such as India are not allowed to trade with non-parties. The exports from Canada, Australia and the European countries also appear to be illegal as they have been done without prior consent from the Indian authorities.

Shrishti and Greenpeace set up the initiative to bring to the notice of the public and the authorities the violations in respect of the import of hazardous wastes. Petitions are now pending in the Delhi High Court and the Supreme Court in this regard. The Delhi High Court has issued interim directions restraining the import of hazardous wastes.

Strict Liability Confirmed

The Supreme Court in a major judgment has also confirmed the principle of strict liability in environmental disasters.² The principle had earlier been set down by the Supreme Court in what is popularly known as the *Oleum Gas Leak* case³ in which a specific departure had been made from the exceptions set out in the rule in *Rylands v. Fletcher*.⁴ In the *Oleum Gas Leak* case, Bhagwati J had held that if an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity, resulting in, for example, 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 under the rule of *Rylands v. Fletcher*.

The principle set down in the *Oleum Gas Leak* case was sought to be distinguished in the *Bhopal Gas Disaster* case by Ranganath Mishra J who held that in the *Oleum Gas Leak* case “no compensation was awarded as this Court could not reach the conclusion that Shriram [the delinquent company] came within the meaning of the ‘State’ under Article 12 of the Constitution so as to be liable to the discipline of Article 21 and be subject to the proceeding under Article 32 of the Constitution. Thus what was said was *obiter*.” In the *Bichri* case the Supreme Court disagreed on the point that the finding of Bhagwati J was *obiter*. The case also endorsed the procedure being adopted of appointing expert bodies to study the situation complained of and filing reports, subject to objections by the parties, and after hearing such objections of making a finding on a question of technical fact. This case also set a precedent for recovering compensation by the state from private parties and paying the same to victims.

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² See *Indian Council of Enviro-Legal Action v. Union of India (the Bichri case)* AIR (1996) SC 1446.

³ *M. C. Mehta v. Union of India* AIR (1987) SC 1086.

⁴ (1868) LR (Law Reports) 3 HL (House of Lords) 330.