

BOOK REVIEW

WATER POLLUTION LAWS AND THEIR ENFORCEMENT IN INDIA (2007) by Ali Mehdi, R. Cambray & Co. Pvt. Ltd. “Kent House” P-33 Mission Row Extension, Kolkata 700013. Pp. 18+261. Price Rs. 390/-.

THIS WELL researched study by Ali Mehdi¹ is based upon the need for effective regulation over control of water pollution, since water plays a pivotal role in survival of not only human beings but also animals, plants and other living creatures. The book is a very comprehensive work on water pollution laws and their enforcement, both of which came into being for the first time since specific legislative journey started in the arena of environmental law after Stockholm Declaration. There are several books on this subject but most of them are collection of vague data and no comprehensive analysis of laws or their enforcement is found in them.

The book by Ali Mehdi comprises of seven chapters including introduction and an epilogue. In the introduction, the author introduces the problem of pollution in general and water pollution in particular and the remedies prescribed in law. The second chapter titled “Law in Retrospect” exhaustively and analytically deals with the history of environmental laws particularly laws relating to water pollution, the constitutional parameters, legislative measures and judicial approach. The author has also taken pains to provide detailed insight into the enforcement of laws, which at present is in a miserable condition, and not conducive to the protection of environment. The bane of Indian legislation has always been its implementation, and this is more true when one applies it to environmental laws. The last chapter focuses on the enforcement aspect with an appendix covering the list of hazardous industries, Indian standards for disposal of industrial effluents, standard for inland surface water, standard for sewage and trade effluents discharged into stream, standard for drinking water, etc. The book contains an appendix which includes the National Water Policy 2002, which is very relevant as it is important to understand the policy behind the efficacy of any law.

1. Ali Mehdi, *Water Pollution Laws and Their Enforcement in India* 10-11 (Kolkata, 2007).

The book does not start in a traditional manner, namely by starting environmental concerns, either from the Stockholm Declaration or from British Raj which often depicts academic bankruptcy in environmental protection. Rather, the author traces the concern of environment particularly water pollution from ancient India and profusely quotes from original sources.² Not only from Hinduism, but the author has presented a viewpoint on the subject traced out from Islam, Christianity, Buddhism and Jainism in relation to their position on preservation of surface as well as groundwater. The author then, in a chronological order in the second chapter, discusses the law of torts under which negligence, nuisance (both private and public), riparian rights, strict liability, *etc.* have been covered with the help of leading cases. The book then moves on to the general legislations relating to water and related issues, which have bearing on water pollution and its control, *e.g.* the Shore Nuisance (Bombay & Kolaba) Act, 1853. It follows the Oriental Gas Company Act, 1857 and the IPC, 1860. The latter Act is still very relevant as far as water pollution is concerned, even after passing the special legislation on water, *i.e.* the Water (Prevention and Control of Pollution) Act, 1974 as decided by the apex court in *State of M.P. v Kedia Leather and Liquor Ltd.*³ All the related legislations have been described with important case law including the Cr PC, 1973 and Water Supply and Sewerage Legislation of UP passed in 1975. Here, the author has not only enumerated the bare provisions of the Act section-wise but has given the gist in the form of an analysis with case law.

After giving a brief historical account of general legislations on water law, the author covers the constitutional mandate and starts with legislative competence, *i.e.* how India being a quasi-federal state, legislative power between central and state is divided in order to enact environmental laws, particularly how are they related to the enactment of water legislation and related issues. This legislative scheme is also described with the help of case law. The noteworthy aspect of this part is that it covers not merely the legislations passed by Parliament and state legislatures but it touches upon the local self-governments which includes *panchayats* as well as municipalities. Fundamental rights and the controversial issues relating to environmental protection under them have also been discussed. The definition of “state” is also included in this chapter in an analytical manner supported with case law. The chapter also covers the Directive Principles

2. *Id.* at 10-11.

3. AIR 2003 SC 3236.

of State Policy and, specifically, the directives added after 42nd Constitution (Amendment) Act, 1976 in order to protect the environment including fundamental duties towards environmental protection. Both newly added Article 48A and 51A(g) have been explained in the light of judicial decisions. These are related to the state and citizens' duties towards protection of environment and related matters.

After the historical and constitutional background, the book explains in the next chapter titled "Legislative Measures", which is the main focus of the book, laws relating to water pollution. In this journey, the legislative measures have also been described with coherence. The main Act of 1974 and its various components have been exhaustively dealt with in such a manner that the Act and authorities constituted thereunder and their powers and responsibilities can easily be understood by the readers. Next comes the Water Cess Act⁴ and its scope, mode of levy, incentive, *etc.* which have been discussed in detail. The provision of appeal is also described in detail. The so-called umbrella legislation, *i.e.* the Environment (Protection) Act 1986 is also discussed with its overriding effects which is very interesting.⁵ The Public Liability Insurance Act, 1991, the National Environment Tribunal Act 1995, and the National Environment Appellate Authority Act, 1997 also find place in the chapter.

The author did not confine himself to the discussion of the legislations and their details only, but also shows his anxiety towards the judicial approach regarding preservation of water and abatement of pollution. In this regard in his next chapter "Judicial Approach" he discusses Article 32 of the Constitution of India, through which a writ can be filed, to abate the pollution and with the help of case law it is discussed that how this remedy is available by the Supreme Court. Some important decisions on this arena are part of this chapter. The author also discusses Article 226 of the Constitution of India through which a writ can be filed before the High Courts in order to abate the pollution and preserve the environment. The third mode of adjudicatory mechanism *i.e.* public interest litigation (PIL) is also discussed with the help of leading cases. How judicial mechanism, in order to protect the environment came to the fore in the form of principle of "Absolute Liability" is also discussed with the help of *Shri Ram Case*,⁶ *Bichhari Case*⁷ *etc.* After fixing the liability how it should

4. The Water (Prevention and Control of Pollution) Cess Act, 1977.

5. *Supra* note 1 at 151.

6. *M.C. Mehta v Union of India*, AIR 1987 SC 965, 1086, 1089.

7. *Indian Council for Enviro - Legal Action v Union of India*, AIR 1996 SC 1446.

be translated into action the computation of compensation is a very significant aspect and thus the author discusses it with the help of measures of compensation by illustrating of *Union Carbide case*.⁸ For this purpose “Polluter Pays Principle” and “Precautionary Principle” have also been discussed with the help of leading cases⁹ where they were introduced for the first time in India.

The author did not restrict his discussion merely to a description of various laws and judicial approaches towards the problem of water pollution, but critically examined the vital question of enforcement of laws by devoting a full chapter titled “Enforcement”. This chapter covers river pollution at some important places like Kanpur, Varanasi, *etc.* He has also evaluated the functioning of various enforcement agencies involved in the task of abatement of water pollution like UP State Pollution Control Board, local bodies, *etc.* and has examined the quality of concerned laboratories. This chapter also monitors the aspects of water quality as it relates to right to life. Ganga Action Plan is also discussed at length along with its various issues and concerns.

When all efforts to contain water pollution have failed, the role of non-governmental organizations (NGO's) has come into picture and at times they prove to be the true protectors of environment. The author did not leave untouched the role of NGO's for preservation of water and abatement of water pollution. The prosecution under the Water Act have been briefly described without presenting the figures provided by central pollution control board (CPCB) after obtaining information from state boards in this regard in a tabular form. However, this brief analysis is sufficient to convey the message. In his epilogue, the author summarises his description along with certain suggestions. The author has rightly concluded that the role of NGO's is significant in the prevention of water pollution and stresses on their involvement from macro to micro level. He states that:¹⁰

The role of NGOs in the prevention of water pollution may be highly significant. The NGOs work at local level so they have the resources to get information in detail and in correct form and thereby they can help to remedy the problem in an effective

8. *Union Carbide Corporation v Union of India*, AIR 1992 SC 248.

9. See for example *Vellore Citizens Welfare Forum v Union of India*, AIR 1996 SC 2715.

10. See *supra* note 1, chapter 7 at 236.



manner. Recognizing their role, a NGOs cell has been set up in the central pollution control board. However, they are consulted neither at the planning and policy level nor at the implementation stage. Their role can be underlined only in organising mass awareness programmes. It is required that NGOs should be given proper place in the water pollution prevention programmes. They may prove as useful instruments at the stage of enforcement of laws.

Although in complete agreement with the author, it is respectfully submitted that some NGOs have now-a-days become parasites, and are counterproductive to the very cause for which they exist in the first place and, therefore, a precaution is necessary before assessing the role of a particular NGO.

The book is a unique contribution to the subject and a complete digest of water pollution control law and its enforcement. It is a discourse, which would be useful to law students, researchers, teachers, lawyers, professionals and administrative and enforcement agencies. The book has been printed very beautifully and its get up looks nice. The author deserves great appreciation for producing a good research work on legal control of water pollution. However, a bibliography of books and articles would have helped a reader to study the subject in more detail.

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