

IN INDIA since 1980¹ the literature on environmental law shows an increasing trend. It is only in the last five years² that publications on the subject have geared up speed and law libraries have started a separate section on environmental law. The present book^{2a} is one more addition to the above expanding wavelength. In this area, two aspects have attracted the attention of law academics most, and they are air and water pollution. Both of them are first class enemies of our environment and naturally the legislature, executive and judiciary have to show concern for air and water pollution. Their exercises have given rise to discussions and debates and the result is that in India there is now a slow but steady increase in the literature in this area. The other important factor for increase in reading materials is that gradually law schools are incorporating 'law and environment' course in their prospectus.³

Coming to water pollution, it is one of the essential elements on which life of this part of the Universe depends. Any act polluting water affects adversely not only human beings but also animals, plants, aquatic organisms and even non-living things as well. The world water map shows that seventy-one per cent of the earth surface is covered with water of which ninety-seven per cent is stored in oceans and the rest is fresh water. Out of the available fresh water only 0.4 per cent is available for human use.⁴ Today the water resources are under great danger because of population explosion and pollution implosion. In such conditions, the protection of fresh water requires immediate attention so as to save this earth from disaster. The author's concern to protect this precious element from pollution deserves appreciation.

The book under review is, according to its author, "an enlarged and revised version of my Ph.D. thesis which was submitted to Jawaharlal Nehru University, New Delhi." In recent years one finds that some of the publishers are busy in publishing Ph.D. thesis. This is a good sign because now the thesis, instead of being locked in the almirah of the University Senate, could see the light of the day

1. See, for example, *Index to Indian Legal Periodicals* (I.L.I. 1980). It is worth mentioning here that the *Banaras Law Journal* devoted its 1977 issue to 'Law and Environment'.

2. The Indian Law Institute, New Delhi, the pioneer law research institution of India, alone published in 1986 and 1987 four books, viz., Upendra Baxi, *Inconvenient Forum and Convenient Catastrophe: The Bhopal Case* (1986), Upendra Baxi, *Mass Disasters and Multinational Liability: The Bhopal Case* (1986), Upendra Baxi, *Environment Protection Act: An Agenda for Implementation* (1986), and David Dembo, Clarence J. Dias, Ayesha Kadwani, and Ward Morehouse (ed.), *Nothing to Lose but Our Lives* (1987).

2a. Bharat Desai, *Water Pollution in India: Law and Enforcement* (1990).

3. See, for the starting point for the introduction of teaching of Law and Environment in India, C.M. Jariwala, 13 *Banaras L.J.* 92 (1977), also C.M. Jariwala in S L. Agarwal (ed.), *Legal Control of Environmental Pollution* 165 (1980).

4. U.N. Environmental Programme, *Asia-Pacific Annual Report* (Bangkok) [3 May 1984].

and expose readers to the research work done by the scholar, a great service to the research world. But today one finds a different story. The publishers are busy minting money out of publishing thesis and scholars are in a great hurry to anyhow publish it for reasons best known to them. And the result is no secret. This way the very purpose of such publications is defeated and it brings a bad name not only to the research scholar but also to his educational institution and the publishers as well. The time has come when the law of education must provide some sanction against such publications.

The book opens with an "Introduction" which highlights the problems of water pollution and a resume of its solutions. In this part one comes across a slavish mentality when the author opines "After the Stockholm Declaration (United Nations Conference on Human Environment, Stockholm, 1972) the concept of 'ecodevelopment' has come to vogue."⁵ The reviewer has criticised such an approach elsewhere when he says:

This is nothing but our slavish mentality of British Raj and our ignorance about the efforts made in ancient India relating to control of water pollution.⁶

In ancient times, India made great contributions in maintaining the purity of water. There are many "Evidences to show that the society in ancient time paid more attention to the protection of *Jal* (water) than in the modern times."⁷ Thus any treatise on the Indian water pollution law, without any reference to the *dharma* of water, remains incomplete.

The work is divided into five chapters. The first chapter deals with "an overview of the problem of the international environmental pollution." In this part, the author has made "an attempt to show how international law deals with water pollution with the help of international treaties and convention, state practice, judicial practice as well as scholarly writings."⁸ The municipal environmental law scholars will get here a quick glimpse of the conceptual part of what the author calls the international water pollution law though it mainly concentrates on environmental pollution in general.

The title of the book denotes "water pollution in India" and one wonders whether it is necessary to deal with the international law position in such great detail. Moreover, the author's bibliography shows 73 per cent references on international environmental law. The learned scholar claims to be an expert in "the field of International Environmental Law",⁹ but the present ground is not a place for such a detailed exercise. And therefore, the discussion of international environmental law as a whole is nothing but padding of materials. Instead, the author could have undertaken a study of comparative water pollution law. In this

5. *Supra* note 2a at xi. (Emphasis added).

6. C.M. Jariwala, "Indian Water Pollution Law : The History and Prospects", *Banaras L.J.* 21 (1989).

7. *Ibid.*

8. *Supra* note 2a at xii.

9. See. *id.*, "Acknowledgements".

discussion an examination of this law in under-developed, developing and developed countries could have been more rewarding. The author discusses certain principles, which emerging at the international level regarding ecostandard are worth taking into consideration while examining the problem of water pollution in a wider perspective.

The second chapter deals with the 'Indian Legal Setting'. It opens with a discussion on "Constitutional Provisions." The author narrates the provisions under three different heads : directive principles, fundamental duties and legislative powers. The Forty-Second Constitution Amendment Act 1976, incorporated a specific provision relating to protection of environment in the directive principles and fundamental duties. This has made the Constitution of India, the first constitution in the world, to provide in detail provisions for protection and regulation of environment.¹⁰ The author has not examined the socio-economic and political viabilities of these provisions. Further examination of the debates, in and outside Parliament on those constitutional changes, would have given an insight into public opinion on the problem of pollution in India. The book gives two conclusions with respect to the fundamental duties.

First, the fundamental duty to protect and improve the natural environment is "not comprehensive" and therefore, it is "quite limited".¹¹ It is submitted that each word used in the Constitution of India has some meaning. Article 51(A) (g) covers all forms of environmental pollution as it uses the words "environment including".

Second, "At present, the Fundamental Duties are regarded as moral precepts."¹² Parliament has passed pollution laws from 1974 to 1986 and these legislations have provided teeth to those duties, and thus the fundamental duties would not remain what the author calls "mere pious homilies".¹³ In the area of legislative powers, he confines the discussion to List II, entry 17, articles 252 and 253 and concludes, "It is necessary to put "water" in the Concurrent List".¹⁴ It may be pointed out that entry 17, List II covers only some of the aspects of water, leaving water pollution as such and the question arises whether that entry will cover it as well. There are many means which cause water pollution, some of which find a separate place in the three lists of the Seventh Schedule. Further the most important water resources which come under entry 56, List I are interstate rivers and they are under the exclusive power of Parliament. In view of these difficulties it would have been better had the learned author suggested the inclusion of 'environmental pollution' as a whole in the Concurrent List.

The present book, which is published in 1990, unfortunately omits the

10. C.M. Jariwala, "The Constitution 42nd Amendment Act and the Environment" in S.L. Agarwal (ed.), *supra* note 3 at 1.

11. *Supra* note 2a at 42.

12. *Id.* at 43. (Emphasis added).

13. *Ibid.* One can see the scholar's casual approach in handling the research work when he says, "the Central Government can enact a Law". *Ibid.* This has been repeatedly used elsewhere in the work.

14. *Id.* at 44.

important development of emergence of the fundamental right to live in a clean environment.¹⁵ This imposes a corresponding but positive duty on the state to provide a natural environment to all the people of India. Now the state cannot remain a silent spectator or take the excuse of its poverty to shield its responsibilities.

The second part of the second chapter deals with water pollution control law. This should have been the main aspect of research in view of the title of the book; whereas, the author devotes just fifteen pages to this topic. This part is concluded with two important suggestions. *First*, there are “many lacunae”¹⁶ but the author does not spell out those shortcomings. *Second*, the penalties require still “further onward revision.”^{16a} In 1869 the maximum punishment for polluting the water was, “imprisonment of either description for a term which may extend to five hundred rupees or with both.”¹⁷ And today the maximum penalty is “seven years” imprisonment or with fine which may extend to one *lakh* rupees or with both.¹⁸ Thus the present law envisages severe penalties. But the question remains unanswered : is the enhanced penalty the only solution for sufferings of environmental degradation, a crime against the society of today and tomorrow? In the discussion on water pollution law, efforts at the state level are completely left out. The Orissa Act 1953, Maharashtra Act 1969 and Gujarat Act 1977 are starting points of the legislative *padayatra* of water pollution law in India.¹⁹ These developments unfortunately are missing in the present treatise. Further, the reports of various committees, debates in the *Lok Sabha* and *Rajya Sabha* on legal control of water pollution could have given the readers more information. The definitions of pollution and pollutant, the basic information, do not find any place in this work.

In India since the last two decades one will observe an increasing trend in the case law on environment. This development now requires a separate handling of the case law. Fortunately, the author gives a specific place to cases decided by foreign courts, Indian High Courts and the Supreme Court of India. In the third chapter, “(T) he cases have been analysed and categorised according to the issues at stakes.” The categorisation includes : consent, discretionary powers, liability, sanction and public interest litigation. The *Doon Valley*,^{19a} *Delhi Gas Leakage*²⁰ and *Ganga Pollution*²¹ cases find a specific mention. The author’s analysis of the case law brings out one main conclusion of establishing “environment court”,²²

15. *Chhetriya Prasashan Mukti Sangharsh Samiti v. State of U.P.*, A.I.R. 1990 S.C. 2060; see, for example, *M.C. Mehta v. Union of India*, A.I.R. 1987 S.C. 1086; *T. Damodhar Rao v. Municipal Corpn., Hyderabad*, A.I.R. 1987 A.P. 171; *Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P.*, A.I.R. 1985 S.C. 652.

16. *Supra* note 2a at 63.

16a. *Ibid.*

17. S. 277, Indian Penal Code 1860.

18. S. 15, Environment Protection Act 1986.

19. See, *supra* note 6.

19a. *R.L. Kendra*, *supra* note 15.

20. *M.C. Mehta v. Union of India*, A.I.R. 1987 S.C. 965.

21. *M.C. Mehta v. Union of India*, A.I.R. 1987 S.C. 1086.

22. *Supra* note 2a at 799.

a finding which according to the present reviewer, must see the light of the day. The author's handling of case law attracts two improvements. *First*, a research scholar in the field of law has to follow certain basic norms which include uniform citations, and citations of those journals which are in common use. There are judgments of 1979, 1981, 1982, 1987, 1988 referred to in the present work, which do not find any citation. *Second*, in all, fifty-seven cases are cited, out of which eighty-four per cent do not deal with water pollution. The *S.P. Gupta*,²³ *Kraipak*,²⁴ *Mohinder Singh*,²⁵ *Mumbai Kamgar Sabha*²⁶ cases are some of the examples. Even the recent cases have neither been dealt with in detail nor a critical analysis finds a place. Thus handling of the case law is disappointing.

Mere passing of legislations is not enough. They should also be effectively implemented. The duty of the legislature does not end when a Bill is passed within the four corners of Parliament's building. It continues till such time as it percolates down to the grass root level in the manner desired by representatives of the people. In this way responsibility of the concerned legislature is a continuing process. And therefore, the time has come when it must not only require the mechanical formality of tabling the progress report but also should examine the report seriously so that the whole exercise in passing the Bill and its aims and objects are not frustrated by the inactive bureaucrats.

The author deserves appreciation for devoting a separate chapter to the "Problems of Enforcement". The book highlights the working of the Central and state water boards and points out the difficulties faced by them in fulfilling their targets. The information and data based on the annual reports and also visit of the author to these boards will be of great interest to the environmental law scholar. This information is not easily available, and therefore, the learned author could have given a more detailed picture on this count. It may be pointed out that a conclusion to each chapter has been given but this treatment is missing in chapter four and to that extent the present part remains incomplete. However, if one goes through the discussion on the problems of enforcement, he will find three important directions. *First*, the lenient and persuasive approach of the water pollution control machineries have yet to inject energy in the existing legal control. *Second*, delay in the court of law is making the whole exercise frustrating. *Third*, the economics of pollution control has no match with the sky high water pollution problems. The author misses an in-depth study of these directions. The administration and economics of water pollution control have yet to attract the serious attention of law researchers in India.²⁷ The research scholar must not end up with

23. *S.P. Gupta v. Union of India*, A.I.R. 1982 S.C. 149 (a case of transfer of judges).

24. *A.K. Kraipak v. Union of India*, A.I.R. 1970 S.C. 150 (a case of Civil servant).

25. *Mohinder Singh v. Union of India*, A.I.R. 1978 S.C. 851 (a case involving Election Commission's order).

26. *Mumbai Kamgar Sabha v. Abdulbhat*, A.I.R. 1976 S.C. 1465 (a case of payment of bonus).

27. See, for example, the following law research publications : 13 *Banaras L.J.* (Law and Environment 1977); S.L. Agarwal (ed.), *supra* note 3; Paras Diwan (ed.), *Environmental Protection : Problems, Policy, Administration Law* (1987); Nathawal, Shastri and Vyas (ed.), *Man, Nature and Environmental Law* (1988). In this connection the Indian Law Institute publication entitled : *Environment Protection Act : An Agenda for Implementation*, *supra* note 2, deserves special attention as it deals with the way in which the Act of 1986 "may be effectively implemented".

information only but he, as a researcher, is under a duty to pave new paths for future researchers. And in this effort the author hardly succeeds.

Now coming to the "conclusion" chapter, out of eleven pages of this part, six deal with those conclusions which relate to international environmental law, thus leaving five pages for conclusions on water pollution law in India. And further, these conclusions, except the fourth chapter, are already dealt with at the end of each chapter. And thus, the "conclusion" part loses much of its importance.

Out of the total two hundred and eighty two pages work, one hundred and seven pages are devoted to appendices and bibliography. In the appendices, text of Stockholm Declaration, Tokyo Declaration, Water Pollution Act 1974, Amendment Act 1988, Water Cess Act 1977 and Environment Protection Act 1986 have been included. Any person interested in studying these legislations can easily find them in any law library. The author, could have avoided padding of nearly ninety three pages on this aspect and in turn reduced the cost of publication. Then comes the "select bibliography" which includes, *inter alia*, legislations, rules, cases. It is submitted that these cannot form part of a "select bibliography."²⁸ As mentioned in the early pages, there are seventy three per cent references on international law and international environmental law, out of which only ten per cent deal with international water law. As regards references to the Indian water pollution law, the "select bibliography" in the secondary sources section includes only two books²⁹ and two articles³⁰ in all.

Thus, the book under review reflects one more casual, an unplanned, hurried and expansive effort in the Indian thesis publication market of today where the authors and publishers forget their constitutional fundamental duties "to strive towards excellence" and attain "higher levels of endeavour and achievement" and also corresponding fundamental rights to "information" and "education" of their consumers. And in this wavelength, the author it is submitted, hardly attains that level. The present reviewer, however, appreciates his efforts for sailing in an unexploited Indian ocean with limited means. Lancers Books, except the cost consideration, also deserve appreciation for the good get-up, excellent printing and keen interest in the field of environment.

C.M. Jariwala*

28. See, the definition of 'Select Bibliography' in A.K. Mukherjee, *Reference Work and its Tools* 125, 267 (1971). M.L. Chakraborti, *Bibliography in Theory and Practice* 1-3 (1971).

29. *Supra* note 2a at 276.

30. *Id.* at 279 and two articles of Desai himself.

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