

# BOOK REVIEW

INTERNATIONAL ENVIRONMENTAL ISSUES AND THE INDIA'S STAND *1<sup>st</sup> Edition, Editor: Dr. Arup Kumar Poddar. ePub Bud, Santa Monica, California, USA, 2013. Pages 132. Price: USD 9 and INR 600.*

*Dr. Sreenivasulu N.S\**

I take the pleasure of writing a review of a book titled “International environmental issues and the India’s stand. The book published by an international publisher ePub Bud, based in Santa Monica, California, USA. The book has total 132 pages.<sup>1</sup> There are 13 chapters in the book written by the select Students of NUJS working in the field of environmental law and compiled and put together in a systematic manner by Dr. Arup Kumar Poddar who teaches and researches in environmental law at the WB National University of Juridical Sciences (NUJS), Kolkata. To take you through the contents of the book in the process of review I find following insights and inferences. I believe that these inferences would present a blue print of the book and the overall cause of review of the book, its contents and the coverage. Let me go one by one for chapter wise review in the following way.

The First Chapter is on Corporate Environment Responsibility (CER) in India and is written by Aishwarya Ayushmaan. The chapter presents the concept of CER with its implications and opportunities. The author states that the idea of Corporate Environmental Responsibility (‘CER’) is fairly recent and stems from the concept of Corporate Social Responsibility.<sup>2</sup> Corporate Social Responsibility (‘CSR’) refers to the idea that not only public policy but companies and corporations should also take responsibility for social issues.<sup>3</sup> It is argued that; more recently, CSR is seen as a concept in which companies voluntarily integrate social and environmental concerns into their business operations and into the interaction with their stakeholders.<sup>4</sup> It is believed that; a socially responsible company exhibits not just mere compliance with the law when investing in

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\* Associate Professor (Law), National University of Juridical Sciences, Salt Lake City, Kolkata.

<sup>1</sup> It has ISBN 978-1-62840-113-4 (Paperback) & 978-1-62840-208-7 (E-Book).

<sup>2</sup> PayalGwalani, Corporates swear by eco responsibility, The Times of India (Nagpur), Mar 29, 2012 available at [http://articles.timesofindia.indiatimes.com/2012-03-29/nagpur/3254175\\_1\\_corporate\\_environmental\\_responsibility\\_environmental\\_laws\\_water\\_harvesting](http://articles.timesofindia.indiatimes.com/2012-03-29/nagpur/3254175_1_corporate_environmental_responsibility_environmental_laws_water_harvesting) (Last visited on March 30, 2013).

<sup>3</sup> Chahoud, Emmerling, Kolb, Kubina, Repinski & Schläger, Corporate Social and Environmental Responsibility in India – Assessing the UN Global Compact’s Role (2007).

<sup>4</sup> *Id.*

human resources and the environment but a continuous and actively attempts to ensure sustainable development.<sup>5</sup> Thus, corporate social responsibility motivates companies to assume responsibility for problems and challenges that are traditionally addressed by the State. It is discussed that; the importance of sustainable development has been recognized on the national and international level. The Constitution of India lays adequate focus on the environment by the virtue of Article 48A and 51(A) (g). However, it is clear now that this can be achieved, not in isolation, but through joint efforts by the industries. It is viewed that; the importance of Corporate Environmental Responsibility emerges in this context. Being a voluntary concept, this idea rests mainly on the shoulders of the companies. A growing environmental consciousness is visible amongst various companies.<sup>6</sup> It is recommended that; the State can encourage this trend further by incentivizing it in the form of tax exemptions, environmental permits etc. It has to be acknowledged, that environmental protection involves multiple stakeholders and if sustainable development has to be achieved, corporate bodies have to play a proactive role.

The Second Chapter is on Wetland Conservation: Examining the Initiatives written by Asha Rachel Joy. Perhaps, wetlands are fragile ecosystems that represent the interface between land and water.<sup>7</sup> They are defined as 'lands transitional between terrestrial and aquatic eco-systems where the water table is usually at or near the surface or the land is covered by shallow water.'<sup>8</sup> It is submitted that; today, in an era of imminent water scarcity where wetlands are increasingly relevant, they are also fast depleting. In light of this, the chapter seeks to analyze global and national initiatives undertaken to protect and conserve wetlands. A brief discussion on the need to conserve wetlands in the light of the various functions they perform and the threats to their existence has been made. The primary global initiative undertaken to protect wetlands, namely, the Ramsar Convention is examined and in this context, there discussed the obligations of member nations, implementation technique etc. Further, wetland conservation measures which have been adopted in India are examined.

The Third Chapter is on Construction of Dam and Protection to Environment and Wildlife - A Study of the fact from *Mullaperiyar Environmental Protection Forum's* case written by Dr. Arup

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<sup>5</sup>*Id.*

<sup>6</sup>*See Supra* note 22.

<sup>7</sup> Jyoti Parikh, INTRODUCTION IN SUSTAINABLE MANAGEMENT OF WETLANDS: BIODIVERSITY AND BEYOND 21 (Jyoti Parikh, Hemant Datye eds., 2002).

<sup>8</sup> W.I. Mitsch & I.G. Gosselink, WETLANDS (1986).

Kumar Poddar. It is mentioned that; the construction of Mullaperiyar dam dates back to 29<sup>th</sup> October, 1886 because of entering into an agreement between Secretary of State for India and Maharaja of Travancore. Nearly 8000 acres (approx.) of land property was subjected to an irrigation work project called “Mullaperiyar Project”. In order to fulfill the requirement of the agreement a reservoir was to be constructed and after the construction of the dam became famous as Mullaperiyar Dam located at the vicinity of the Periyar River. It was agreed that the maximum level of the reservoir would be 152 ft. However, this agreement was modified in 1970. As per this agreement, the fishing right was given to Kerala and Electricity generation to Tamil Nadu. Moreover, it was agreed that the State of Tamil Nadu would pay a certain sum of money annually to State of Kerala. The Kerala was given additional right to fish over land, water, tank and ponds whereas without affecting the main ideology of the agreement. However, this additional grant did not affect the rights of Tamil Nadu over irrigation and power generation.

The write up comes out in the background of dispute between the state of Tamilnadu and Kerala regarding on the dam, its water levels, height and its strengthening. The Central Water Commission suggested for strengthening of the dam which was constructed decades back and as there is a minor fracture noticed during its examination by the commission. The author argues that the state of Kerala has got some objections with the intentions of state of Tamilnadu to further strengthen the dam and increase the water levels. He submits that the Tamilnadu government is trying to implement the suggestions made by Central Water Commission regarding the strengthening of the old dam and for possible improving its capacity. After the completion of strengthening and capacity increasing work again Central Water Commission can examine and inspect the dam and its conditions after taking into consideration views of both the states before taking any decision with regard to actually allowing for more storage of water in the dam. The author in a very detailed manner presents the factual situation of water and dam dispute between both the states and offers his point of views on the current state of affairs regarding the stands of both the governments and the Central Water Commission

The Fourth Chapter is on Greater Cost for Greater Emission: A Brief Overview on the Idea of Carbon Trading written by Mani Aishwarya K.V.S. It is observed that; during the Kyoto Protocol many developed nations including members of the European Union agreed to legally bind themselves with regards to reducing the emissions of green house gases especially that of Carbon-dioxide. The Kyoto Protocol came up with many propositions however the most significant of

them was that of Carbon Credit and 'Carbon Trading'.<sup>9</sup> It is submitted that; the alarming rise in temperatures along with the increase in carbon-dioxide and other green house gases, and the thinning of the Ozone layer resulted in the United Nations holding a convention called as the United Nations Framework Convention on Climate Change and was held in the beautiful Japanese city of Kyoto in 1997. The author presents how the Kyoto Protocol came into being with what objectives. The success and failure of the protocol have been mentioned by the author. The author opines that; yet despite its numerous defects, the Kyoto Protocol played no insignificant role in generating awareness and appealing to the global consciousness. Creating awareness in its essence means winning half the battle. The Kyoto Protocol has a wonderful vision and if it focused on better implementation, there is nothing preventing it from saving our planet.

The Fifth Chapter is on Right to Life in a Healthy Environment: Article 21 of The Indian Constitution written by Deskit Angmo. The author states that; with the advent of technology and industries as a part of a developing nation, there is an upsurge of radical change in the relationship between man and his environment. According to the author, this is where a very crucial question comes in to picture, that is whether all of this development with a strong confidence of aiding man, is actually doing so. It has been argued widely that the consequence of development is an evil which is depriving man of his prime right to be in a healthy environment. Therefore, this leads to the need for statutes which will ensure that such is not done. The chapter is primarily an attempt to look at the fundamental rights that our constitution provides with regards to the environment that we live in. The Indian constitution has various statutory provisions which ensure protection and improvement of the environment.<sup>10</sup> With the recognition of this right, various case laws in India have passed on judgments observing various international principles of sustainable development like 'polluters pay' and other 'precautionary principles'.<sup>11</sup>

The author argues that; with the passing time and advent of modern technology and the country going through the process of development all at the cost of the environment we live in. It has been considered important that the need to protect the environment becomes important in order to give to a person his basic right to live a healthy life. It is opined that; the legislature apart from going beyond its jurisdiction to include international principles adopt the need to protect the

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<sup>9</sup> Raina Wagner, 'Adapting Environmental Justice: In The Age Of Climate Change, Environmental Justice Demands A Combined Adaptation-Mitigation Response', 2 Ariz. J. Env'tl. L. & Pol'y 153 (2012).

<sup>10</sup> Article 21, Article 41, Article 48A Constitution of India.

<sup>11</sup> *Vellore Citezens' Welfare Forum v. Union of India*, (1996) 5 SCC 647

environment in the important articles of the constitution and also bring about amendments wherever it has been seen necessary, now addresses pleas and matters related to the degradation of the environment in the form of petitions filed in public interest.<sup>12</sup> The Supreme Court for such issues entertains writ petitions under Article 32, it has under this article ordered for closure of certain quarries on the ground that it has been affecting the ecological balance.

The Sixth Chapter is on Sustainable Development in India written by Dhvani Shah, according to whom 'Environment' and 'Economic Progress' have always been seen as an antithetic to each other. It has become very evident in the last few decades that economic development can no longer be viewed in isolation from environmental protection and social progress. The nature of issues along with an increasing interdependence among nations has necessitated that countries act collectively, in the spirit of multilateralism to chart a sustainable course of development.<sup>13</sup> In this chapter, the author discusses the concept of sustainable development while, elucidating on the interplay between sustainable development and the Indian legal system. Additionally, the role of citizens in sustainable development been discussed and practical solutions offered to ensure sustainable development. It is argued that; sustainable development should not be a modification of the existing policies but rather an alternative to them.<sup>14</sup>

The Seventh Chapter is on Genetic Engineering Laws: A Comparative Analysis written by D Divyanshu who discusses genetic modification of organisms and crops and give an account of the history of the GMOs and the development of the regulatory measures for these products. The chapter will look into the debate concerning the benefits and adverse impacts associated with these Genetically Modified Products. A comparative analysis of genetic engineering laws of different jurisdictions, highlighting the environmental concerns addressed in these laws has been given. It is submitted that; Indian jurisdiction has always been careful with regards to the preservation of biodiversity, and the Indian cultivators have been skeptical about the use of modern biotechnology, but with globalization it is an inevitable consequence that GMOs have become a part of our daily life. It is opined that; the only way to avoid the harmful impacts of such

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<sup>12</sup>Article 32 (1) provides: "The Supreme Court by appropriate proceedings for the enforcement of right conferred by this Part (Part III) is guaranteed."

<sup>13</sup> Ministry of Environment and Forests, Government of India, Sustainable Development in India: Stocktaking in the run up to Rio + 20, 2 (2011).

<sup>14</sup> Ramon Lopen and Michael Toman, Economic Development And Environmental Sustainability: New Policy Options 28 (2006).

substances would be a stricter implementation of genetic engineering laws and adherence to the internationally recognized principles.

The Eighth Chapter is on The Clean Development Mechanism under the Kyoto Protocol written by Varsha Shivanagowda who dwells on the origins of the protocol. The commitment goals set by the Protocol according to the author could not be feasibly achieved only by conventional means of emission reduction and the Protocol in recognition of this also provided for special 'flexibility mechanisms' to supplement the process. The focus of this chapter is on the Clean Development Mechanism under the Protocol and its implementation so far, particularly from a developing country perspective. The chapter also looks at the role played by it in achieving the objectives of emission control and sustainable development in context of the history of the Kyoto framework. The author mentions that; we have seen how the original notion of the Clean Development Mechanism was based on an idea of mutual benefits accruing to all parties involved. This would be possible in an ideal situation and would rely greatly on the existence of a transparent regulatory mechanism. However, it is opined that; this original idea has been sullied by the ground-realities of corruption and profit-seeking which have overshadowed the original objectives of the Kyoto Protocol. It is submitted that; it is easy to forget the potential far-reaching impacts of climate change and that a little timely action can go a long way in mitigating the damage that has already been done. One can only hope for better planning in the post-2012 commitment periods. This could possibly be ensured by introduction of a less subjective mode of determining benefits with more targeted and specific goals focusing on sustainable development.

The Ninth Chapter is on The Environment Impact Assessment-The Process and Fallback written by Yashaswi Kant. This chapter is an attempt to introduce to the reader the concept of Environmental Impact Assessment (hereinafter EIA), its process and the fall-backs witnessed in the Jaitapur Nuclear Power Plant EIA Report. As an essential precursor to the appreciation of the same, the chapter shall initially meander through the concept of environmental impact assessment, its origin and requirement. The essence of the discussion is the process of EIA in India and a critical analysis of the EIA report on the Jaitapur Nuclear Power Plant. It is viewed that; as can be seen from the abovementioned scenario, the Jaitapur EIA lacks credibility on various grounds, starting from the very institute conducting the impact assessment to the flagrant overlooking of

provisions mandated by law. Author argues that; it is nothing but a lacuna in the environmental law jurisprudence within India. The Ministry of Environment should come out with stricter checks to plug such loopholes as shown by the Jaitapur EIA. The other aspect which should be paid attention to is the enforcement of the law in their true spirit. Having an environment friendly law on paper won't save the environment. It should be seen by the government that such laws are diligently followed in their letter and spirit.

The Tenth Chapter is on Wildlife Conservation and Protection in India written by Arnav Mohanty. The author discusses wildlife conservation, significance of the same in India, while highlighting statistics with regard to various wild lives in India. This chapter seeks to discuss the history of various wildlife conservation practices in India, the existing mechanism in the form of laws and rules etc. as well as the existing measures that are in place for the protection and conservation of wildlife and lastly the manifold factors which threaten the existence of wildlife. It is presented that; albeit there are adequate mechanisms in the form of laws, rules, regulations etc. in place for the conservation and protection of wildlife in India, the effective implementation and enforcement of the same is wanting. It is viewed that; the mere presence of laws, rules etc. to preserve wildlife and combat extinction of wildlife is not enough. There should be strict observance and adequate implementation of the said laws, rules etc. in order to successfully conserve and preserve our rich and diverse wildlife. It should be noted that government alone will not sufficiently be able to conserve wildlife. The author opines that; there should be participation of the society and other organizations like NGOs in the conservation process and masses should be educated about the importance and value of wildlife and the pivotal role that it plays in maintaining the balance in the ecosystem will go a long way in facilitating the ongoing conservation process.

The Eleventh Chapter is on Environmental Justice through Constitutional Writ Jurisprudence written by Samkit Sethia. The author discusses how public interest litigations in India have come out with outstanding outcomes providing environmental justice though public interest litigations. Information has been provided how public interest litigations gained importance in the development of Indian legal jurisprudence. How law courts responded to such litigation, how the same have been streamlined to ensure that justice is delivered with proper motives and means. For the prevention of abuse of public interest litigation also courts have formulated mechanism to

check and balance while discussing case of *State Of Uttaranchal v. Balwant Singh Chauhal & Ors.*

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The Twelfth Chapter is on the Importance of Role of Indian Judiciary in Encouraging Sustainable Development written by Akshat Gupta. It is viewed that; in the trade-off between development and environment, it is generally the latter that has suffered, especially in the context of developing nations. The implications of this choice have finally caught up with the human race. Recognizing this, the international fraternity began to convene to address the present environmental problems. Consequentially, the notion of sustainable development was devised. It was first defined in the Stockholm Declaration of 1972 and was further developed by the World Commission on Environment and Development in its report called “*Our Common Future*”. The chapter begins with a brief understanding of the definition and principles of sustainable development by studying the following documents: Stockholm Declaration (1972), Rio Declaration and Agenda 21 (1992), and Rio+20 (2012). The author will then proceed to trace the evolution of sustainable development in India with the help of relevant case law, the foremost instance being *Vellore Citizens Welfare Forum v. Union of India*<sup>15</sup>. In the conclusion, the chapter ascertains whether the Indian judiciary has truly acknowledged and embraced the importance of sustainable development.

It is perceived that; the role played by the Indian Judiciary in encouraging the principle of sustainable development cannot be overstated. However, due to want of a proper monitoring mechanism and financial constraints, profound judgments are not always implemented. The researcher would also like to point out that the courts can only respond to the cases that are presented before them. Consequently, the other branches of the government also have an important role to play in enhancing the goal of sustainable development. Therefore, it is opined that; the other two wings of the Government, namely the executive and the Legislature along with the civil society must contribute by carrying out their duties effectively to help the judiciary in making sustainable development a reality.

The Thirteenth Chapter is on Doctrine of Public Trust in India written by Akshay Sewilkar. The doctrine of public trust is an ancient doctrine that developed during Roman times. It is mentioned

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<sup>15</sup> Civil Appeal Nos.1134-1135 of 2002

<sup>16</sup> (1996) 5 SCC 647.

that; this doctrine then migrated to the English law from where it was adopted by other civil and common law jurisdictions. The doctrine was introduced in India by the *M.C. Mehta v. Kamal Nath*<sup>17</sup> case and has been applied in a number of subsequent cases. This chapter aims to deal with doctrine of public trust in India. To achieve this purpose, the Chapter shall first discuss the historical development of the doctrine and then move on to discuss its development in India. The author then discusses the subsequent application of the doctrine by various courts in the country. Further, the scope and extent of the application of the doctrine as determined by the decisions of various courts in India has been presented. The chapter concludes with an overview of the doctrine of public trust in India. According to the author, the doctrine of public trust is a recent introduction to Indian jurisprudence on environmental law. Applied for the first time in 1996, the scope of the doctrine has greatly widened since then. The judiciary has applied this doctrine in a large number of cases and has also developed it to suit Indian requirements. The application of this doctrine gives power to the court to strike down actions that are against the interest of the public and therefore allow a strict check over the actions of the executive. Furthermore, the application of the doctrine has been broadened to include man-made resources in addition to natural resources. Even the allocation and distribution of resources has to be governed by the public trust doctrine. To ensure that the interests of the public and environmental concerns are protected at all instances, the doctrine also provides that the government would have a duty to protect and promote the environment. The government would not be merely enjoined from taking actions that are detrimental to the interest of the public at large. Thus, the doctrine as evolved and applied by Indian courts has widespread application. Its application would allow courts to prevent and overturn actions of the government that could have negative ramifications for the environment and its resources. Thus, the introduction of the doctrine of public trust to Indian jurisprudence was according to the opinion of the author is a positive development that has and will benefit the cause of environmental protection in India.

After having reviewed the book through its thirteen chapters let me put in place my feedback and opinion on the entire content, coverage and structurization of the book. Dr. Poddar has done immense and in-depth study for realizing scope for the current book. He rightly identified the issues at stake on number of international environment related issues for projecting India's stand

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<sup>17</sup> (1997)1 SCC 388

in its logical and legal senses. Number of issues that the book covers are having significant relevance for international environmental studies and. The author promptly puts efforts in this regard to give us a blue print of contemporary international environment issues while highlighting India's stand in this regard. Under his supervision different authors have contributed their research on standing environmental issues which have been purposefully edited and put together by Dr. Poddar. I shall appreciate the efforts of the writer and the co-writers in this regard and strongly believe that this book shall be very useful as reference copy to students and shall provide useful information to officers, judges, academicians, professional, etc.