

**Constitution of India and Environmental Governance: Administrative and Adjudicatory  
Process**

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**Lecture 15**

**Pollution Control Law: Enforcement and Compliance: The Setting; Scope and Application**

(Refer Slide Time: 00:15)



**3.B.C.D: POLLUTION CONTROL**

LAW, ENFORCEMENT AND COMPLIANCE

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For the general enquiry concerning environmental protection, we get into the specifics of the pollution control legal regime, which refers to the law, its enforcement and the obligation of compliance and the manner of compliance. As was mentioned in the previous lecture, the evolution of the law in India concerning environment has not been a very logical one that you start with in general the environment.

You start with the policy and then get into the law and then go to the specific aspects of pollution control like that. In fact, this has been the experience in the Western countries. United States, for example, they came up with an Environmental Policy Act, National Environment Policy Act, way back in 1969, and followed it up with a couple of legislations dealing with clean air and clean water, the laws in relation to that.

We have a bit of the latter preceding the former that we started with the pollution control regime and then moved into the broader theme of environmental protection. Be that as it may, in this enquiry, our discussion will be focussed on the law concerning pollution control in India.

(Refer Slide Time: 02:00)

## I. THE SETTING



- **LAW OF NUISANCE AND GENERAL ADMINISTRATION- OLD TOOLS AND NEW CHALLENGES**
- **FIRST INTERNATIONAL ENVIRONMENTAL SUMMIT AT STOCKHOLM- "HUMAN ENVIRONMENT", 1972**
- **"ENVIRONMENTAL CRISIS" AND INDIAN V YEAR PLANS – VI PLAN DOCUMENT**
- **WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 (WA), AND WATER CESS ACT, 1977- PRIMARILY DRAWN FROM THE BRITISH EXPERIENCE**
- **AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981 (AA)**  
- BOTH THE ENACTMENTS ENFORCED BY THE SAME ADMINISTRATIVE MACHINERY AND SINCE 1986, OWE THEIR SOURCE OF POWER, AUTHORITY AND FUNCTIONS TO EPA, 1986- OVER TIME, ADDITIONAL FUNCTIONS BEYOND THE LAWS THAT CREATED THEM ARE BEING ENTRUSTED TO THEM BY THE LATTER LAW



The background is very simply this. The year was 1974. The parliament was taking stock of the environmental regulations in India. And it had to take stock for the simple reason that 2 years before that, in the year 1972 they had already the experience of participation in an international summit, the Stockholm Conference on Human Environment in which, like India, all other countries went back to their respective Parliaments to come up with specific legislations to deal with the crisis problem of environmental degradation and the threat of the entire snuffing out of life from mother Earth.

The need of the hour was not a very general law, as we had adopted through the general administration of Common Law and Criminal Law of nuisance, negligence and liability, at what which we reflected on earlier. These were pretty old tools, old tools which are fairly blunt. Along with pollution, they were dealing with so many other issues. There was nothing like a very focused attention to pollution control.

And that was the need of the hour. Old tools and facing this new challenge of environmental

crisis and we had given an international commitment that we would come up with our own laws in this regard. And so, the need was to come up with a far more sharp, far more effective, far more focused piece of legislation and a dedicated specialized body of enforcement with all the skills and capabilities as required to deal with a wide variety of pollution issues.

As a matter of fact, even in the sixth 5 year plan, document of government of India, a small chapter referred to the environmental problems and what the government of India intends of doing. And this was later followed by a far more elaborate plan document in which quite a few legislative measures that were taken on behalf of the Government of India to deal with the problems of pollution which was the immediate and urgent need.

And in 1974, we came up with the Water (Prevention and Control of Pollution) Act. In the slides that we have here, I have used an acronym WA to indicate this for saving space and that will be followed uniformly all throughout these set of slides. And along with that 7 years hence, we came up with another law called as Air (Prevention and Control of Pollution) Act 1981. Air Act for short, acronym AA, in all the slides that you are going to have now.

In between these 2 legislations 7 years apart we have another small legislation, a very small one which actually wanted to help the institutional machinery to become a self-sustaining body to collect some kind of a cess for the consumption of water that is being used by each and every industry. And that was the law called as the Water Cess Act of 1977.

Together this constitutes the pollution control legal regime in India and for these legislations, although these were different legislations made at different points of time the administration is the same. And since 1986, after the Environment Protection Act was passed, the source of authority of these 2 legislations and the institutions created under them is the broader Environment Protection Act.

And over time, the Environmental Protection Act under various set of rules and regulations, additional functions, beyond whatever there will be prescribed in Water Act and Air Act have been entrusted to the institutional mechanism created under this body of law. A very unique

development. From a general law, we get into very specialized focused attention with specialized entities who are not the run of the mill governmental agencies, but specialists dealing with autonomous bodies, dealing with issues of pollution.

(Refer Slide Time: 07:34)

## **II. ROOTS, EXTENT AND SCOPE OF APPLICATION**



- **A. INSPIRATIONS AND BASIS:**
- **WA :WATER, A STATE SUBJECT(ENTRY 17, LIST 2, 7TH SCHEDULE), DESIRE OF STATES FOR AN ENABLING LAW TO BE MADE BY CENTRE FOR APPLICATION, UNIFORMLY ACROSS INDIA-12 STATES APPROACHING CENTRE TO MAKE THE LAW(ART.252(1)-CENTRAL LAW- OTHER STATES FOLLOWED SUIT.**
- **AA: ALSO INSPIRED FROM THE STOCKHOLM SUMMIT- Art. 253, INVOKED TO ENACT THIS SPECIAL LAW, TO FULFIL OUR INTERNATIONAL OBLIGATION OF AIR POLLUTION CONTROL, DOMESTICALLY**
- **WITH THE ENACTMENT OF ENVIRONMENT PROTECTION ACT, 1986, THE WORKING OF WA & AA ARE ALIGNED TO IT.**
- **B. OBJECTS & SCOPE:**
- **WA: -PREVENT & CONTROL WATER POLLUTION AND TO MAINTAIN & RESTORE WHOLESOMENESS OF WATER**



And here we look to the sources of these laws. How did the Water Act come into existence? As was discussed in the session on the Constitution, water is a state subject and only the states could make a law but a number of states came together. They felt that having their own separate laws concerning water pollution, some of them would have stringent provisions and some of them have very lacks provisions, with the result that the pollution in one area may affect other areas.

And since pollution, especially the atmosphere and the water bodies do not really know the barriers of the state district, taluka or anything like that, it is very necessary that we have some kind of a uniform law all over India. That has not been provided with the Constitution. As many as 12 states approved the Centre to make a law and subsequently, all other states followed this.

And now we have in 1974, the Government of India, coming up with a legislation entitled Water (Prevention and Control of Pollution) Act. The origin of Air (Prevention and Control a Pollution) Act of 1981 is quite different. It is also inspired from the Stockholm summit, where India made the commitment that we will come up with pollution control laws, but we had only enacted a law concerning water pollution.

We have not enacted a law on air pollution and the air does not come within any of the lists. And second, this resource which is common to everyone required national attention and very much

necessitated by the Government of India to invoke that particular provision of the Constitution, Article 253 which actually obligates the Government of India to fulfill its international obligation to come up with the necessary legal mechanisms to operationalize and internalize whatever that they are committed at the international level.

And so, the roots or the origins for the Air (Prevention and Control of Pollution) Act in the year 1981 is essentially article 253 of the Constitution using that the Government of India came up with a law applicable to every state in India. And now with the enactment of the Environment Protection Act in 1986, as was mentioned earlier, the working of the Water Act and Air Act are aligned to it.

Let us look into the objects and scope of each of these laws. The Water Act is essentially meant to do 2 things, prevent and control water pollution. That is the primary objective. The second primary objective is to maintain and restore wholesomeness of water. So, the authorities' function will not end with prevention and controlling of water pollution, but it is also a proactive function of maintaining water quality.

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- -- HAS OVERRIDING EFFECT OVER OTHER LAWS (S.60) - STATUS, CONFINED TO THE ACT ALONE, NOT FOR THE RULES, ALTHOUGH THE LATTER ALSO NEED HAVE TO OBTAIN PARLIAMENTARY APPROVAL(S.63(3))
- -QUITE AN ELABORATE SET OF PENAL PROVISIONS TO DEAL WITH ALMOST EVERY KIND OF VIOLATION (Ss.41,42,43,44,45,45A)
- -SCOPE & EXTENT OF APPLICATION: Water Pollution-contamination, - Alteration of its properties, DISCHARGES INTO WATER-NUISANCE, HARMFUL TO HUMAN HEALTH AND TO PLANTS & ANIMALS(S.2( c))
- -S.1: APPLICABLE TO ENTIRE INDIA, UPON ADOPTION BY STATES
- -S.19: EACH STATE EMPOWERED TO EXTEND/ RESTRICT ITS APPLICATION WITH IN ITS JDN.



And one of the major features of this law is that it has an overriding effect on all other laws. The status is confined to this act alone and not for the rules, unlike Environmental Protection Act, where the status of overriding effect is there for the rules also for other laws.

But here, the rules are subordinate legislations, they although they need the parliamentary approval, they are very much part of this statute which overrides other laws, on issues on water pollution. It has a quite an elaborate set of penal provisions to deal with almost every kind of violations.

The scope and extent of application is not just confined to pollution, it extends to contamination alteration of the properties of water discharges into water issues on nuisance, harmful to human health, to the plant varieties and animals ultimately to the entire environment. This is applicable to entire India and upon adoption by all the states it becomes operative uniformly all over India.

Now, adoption means what? Your state may adopt this law but having adopted this law, a state is supposed to do one more thing and what is that? Section 19 makes it very clear that each state after having adopted the central law as part of its law, it has the power to extend or restrict the application of this law to any part of that particular state, every unique law, you adopt the law in its entirety.

But in terms of application, you have to come up with a clear that gets a notification to the effect that this law is applicable to the entire state or is confined to a particular area or it does not operate in a particular area. So, the rules regulations, notifications that are there under this law will be operative only where it has been designated to be operative, as has been stated by the state government through a notification.

(Refer Slide Time: 13:57)

- **AA: --PREVENT, CONTROL AND ABATE AIR POLLUTION**
- **-S.52:EFFECT OF OTHER LAWS- RULES UNDER THIS LAW ALSO NEED HAVE TO GO THROUGH PARLIAMENTARY SCRUTINY APPROVAL, BUT THEY DO NOT HAVE OVERRIDING STATUS AND POWER OVER OTHER LAWS THAT ARE INCONSISTENT WITH THEM**
- **-PENAL PROVISIONS, FAIRLY ELABORATE (Ss.37-39)**
- **SCOPE & EXTENT OF APPLICATION: AIR POLLUTION: S.1: WHOLE OF INDIA- S.19: STATE'S POWER TO DECLARE " AIR POLLUTION CONTROL AREAS"- WITHIN THE AREA SO DECLARED, NEITHER THE POLLUTION CONTROL BOARD NOR THE GOVT. CAN EXEMPT A POLLUTER FROM THE PURVIEW OF THE ACT (- K.MUNISWAMY GOWDA v. STATE OF KARNATAKA(1998)**
- **- AIR POLLUTION- PRESENCE OF SOLID, LIQUID, GASEOUS SUBSTANCE( NOISE), IN ATMOSPHERE THAT IN ACTUAL TERMS OR HAS THE TENDENCY TO BE INJURIOUS TO HUMAN BEINGS OR OTHER LIVING ORGANISMS(S.2(a)& (b))**



Let us look to the Air Act. What is the objective? It is to prevent, control and abate air pollution. And this has an overriding effect over other laws just like the Water Act. Just like the Water Act, the rules made under this also needed to go through the parliamentary scrutiny of approval. But, like Water Act, the rules there, here also the rules do not have an overriding status and power over other laws.

So only the statute act has an overriding effect and not the roots. Similar to Water Act the Air Act also has very elaborate penal provisions. In terms of the scope and extent of application it follows the pattern of Water Act is applicable to the whole of India and every state which has adopted that will have to come up with a clear gazette notification to the effect that they declare what is referred to as an air pollution control area.

And it is in this area, this law is made applicable. They may declare the entire state and they air pollution control area then for the entire state this law is applicable. And if they say that there is only confined to a confinement area this only confined to the industrial area, then it is applicable only industrial area, the standards prescribed there, the permissions that are required to be obtained from authorities is confined only to that of that area and not beyond.

But one thing that I should note here is once the state government has declared a particular area as an air pollution control area, in the entire area uniformly without any exemption, this entire



Act has to be applied. All the terms and conditions, the specifications there, the obligations of compliances are operable in the entire area.

The government after having notified by this, it cannot give it to the administration to use its discretion to apply the law in one particular area and exclude other areas. This was actually laid down in a very important case decided in the Karnataka High Court in the year 1998. The case of K. Muniswamy Gowda versus State of Karnataka, that you either apply the law to the entire air pollution control area or do not declare the area as an air pollution control area. Thereby you can use your discretion.

But once the area is so declared, there is no discretion left with you to pick and choose which industry to whom the entire law is to be applied and which industry should not be applied. It should be uniformly brought into application. What is air pollution? As defined under the Act, it refers to the presence of solid, liquid or any gaseous substance, in atmosphere, that in actual terms or, has the potential or the tendency to be injurious to human beings or other living creatures. This is the definition of air pollution.

So, what you are looking into is something which is not the normal air that you breathe in, but something has been added to that, in these forms, in any of the state of nature. In the atmosphere, which affects human health, human wellbeing or other living creatures. So, that is what is referred to as air pollution. To this in year 1987 one more extended definition was given that air pollution also includes noise pollution. So, that is the object, the scope and extent of application of this law.

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- **CASE LAW:1. DAHYABHAI SOLANKI v. N.J. INDUSTRIES (1996, GUJ.)** —N.J. INDUSTRIES ACQUITTED IN AN AIR ACT PROSECUTION AS THE PCB FAILED TO PRODUCE BEFORE THE MAGISTRATE THE OFFICIAL GAZETTE DECLARING AHMEDABAD AS AN "AIR POLLUTION CONTROL AREA"
- **2. MAHABIR COKE INDUSTRY v. PCB (1998 GAU.)** - INDUSTRY OPERATED WITH CONSENT OF PCB, UNDER WA- ON ISSUE OF NOTICE BY PCB, IT APPLIED FOR CONSENT UNDER AA, IN 1993- DECLARATION OF ENTIRE STATE AS 'AIR POLLUTION CONTROL AREA' BY GOVT. IN 1993- REFUSAL OF CONSENT AS NO PREVENTIVE MEASURE TAKEN TO CONTROL EMISSION OF 'BLACK SMOKE'- INSTRUCTION FOR CLOSURE TILL CORRECTIVE MEASURES WERE TAKEN- CASE IN THE HC- JUDGE ALLOWED THE APPEAL OF THE INDUSTRY, PERMITTING IT TO CONTINUE TO OPERATE BY FINDING THAT THE PCB HAD NO BASIS FOR ORDER FOR CLOSURE AS IT HAD FAILED TO PRESCRIBE EMISSION STANDS. U/S 17(1) (g)- PCB 's SUBMISSION THAT IT RELIED ON CPCB STANDS. NOT ACCEPTED AS, THE ST. GOVT. NOTN. TO THAT EFFECT WAS ISSUED (11.7.96) AFTER ISSUANCE OF CLOSURE NOTICE (15.11.95)- A DEBATABLE JUDGMENT



- **AA: --PREVENT, CONTROL AND ABATE AIR POLLUTION**
- **-S.52: EFFECT OF OTHER LAWS- RULES UNDER THIS LAW ALSO NEED HAVE TO GO THROUGH PARLIAMENTARY SCRUTINY APPROVAL, BUT THEY DO NOT HAVE OVERRIDING STATUS AND POWER OVER OTHER LAWS THAT ARE INCONSISTENT WITH THEM**
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Let me refer to a couple of cases to interpret and explain how exactly these laws will operate. There was this wonderful case decided by the Gujarat High Court in year 1996, the case is Dahyabhai Solanki versus N.J. Industries. In this particular case, the state Pollution Control Board, the agency which has been entrusted with the task of enforcing this law issued a notice, notice to one particular industry.

What is the alleged offence? That you are releasing untreated effluents, in the form of, through the chimney of your industry into the atmosphere, you are releasing those which are blameworthy substances into the atmosphere which actually results in air pollution. And so we will proceed against you for having violated the law.

The question before the court of law was whether the industry is actually guilty of this? That is a normal thing that we understand. The industry did not challenge this at all, that it did not say that we are not releasing it. All that the industry argued it is a very interesting argument. All that the industry argued is under which law you are going to bind us? And this happened in Ahmedabad in the capital city of Gujarat, then.

The question the industry posed before the court of law was, under which law, you are going to bring in an action? Does this particular authority have the jurisdiction to take action against us? Show us in the rulebook. The pollution control board argued, look, what we are submitting before you is a polluting activity they have not challenged. They have polluted the air, and we are the authority to control, abate, limit the effect of and eliminate the adverse impact of air pollution and for which we are authorized and empowered to act.

The court asked them the question, we have this problem. Question. And not even the industry would challenge but they are only asking about your jurisdiction. Your jurisdiction comes only when this act is made applicable in this area shows the gazette notification, which declares Ahmedabad as an air pollution control area. In the previous slide, we have already seen in order to apply the law, you need to be very clear that there is a gazette notification to the effect that that area is declared as an air pollution control area.

And the fact of the matter was the pollution control board was unable to produce the required gazette notification which actually did not exist. And so, unfortunately, on this technical count, the industry was let free. It was a polluting act. But the jurisdiction of the authority under this law was not established here. So, look at that. You may come up with a specialized law, but unless you have taken care as to bring that into application as is required under this law, this law is as good as a paper tiger.

A little further elaboration, we move to the other extreme of India, the eastern part of India, that Mahabir Coke Industry versus the Pollution Control Board in the state of Assam. It is the decision and the Guwahati High Court. Here, the industry had applied for consent from the

pollution control board under the Water Act and it was carrying on its business.

But this industry should have got permission even under the Air Act because it was not only going to be brought into the purview of the Water Act because of the release of effluents in the liquid form into the public place and so, it may even affect the water quality or anything like that in the public space. It was also, since it is an industry, a coke industry it would release fumes into the atmosphere and these fumes, whatever there is released into the atmosphere needed to conform to the specifications under the Air Act.

So, it should have come under that law as well. But they had not been even an application to get the permission of the pollution control board and inspection was carried out by the pollution control board. Look, you had a permission for Water Act, but you do not have permission on Air Act. Why do not you apply? So, 2 years later, they make an application.

And the same year, that was the year 1993, the government of Assam announces the entire state through a gazette notification as an air pollution control area, very interesting development. Now when this order was passed by the government and this application by the industry was pending under the Air Act, on scrutiny of application, and on physical verification by the pollution control board authorities, they come to a conclusion that the requirements of the Air Act are not satisfied of putting up air filters in the chimney to filter all those toxic substances, to release only that harmless gas into the atmosphere is not followed with industry. And so, we do not give you the permission.

So, you do not have the permission because you are releasing black smoke into the atmosphere. And so, you have not taken preventive measures. We will not give the license to run this industry under the Air Act unless this preventive measure is taken by you. Not just that, since you have not comply with this requirement, we can say and give you an instruction to close the industry till you come up with corrective measures.

The court was asked this question, is Air Act applicable here? Water act is applicable for which permissions are obtained, and so there can be permitted under that. But what about Air Act? And

please remember that the pollution control board has made 2 demands from the industry. Number one, you have been polluting the air in the atmosphere for the last 2 years, and so you have to pay a penalty for 2 years lapses for cleaning up the pollutant principle number 1.

And number 2, that since you do not have the permission to run this industry under the Air Act and you have not taken any preventive measures before you made this application to us and that was the condition, we laid down to give you the permission, you had to insert, install the air filters. Since they have not done, we will ask you to close down the industry; 2 actions. The question before the court was, well, these 2 actions justify?

It is a very debatable judgment. But still on a technical count, the judgment given by the court is right. What is that? That the pollution control board cannot have the jurisdiction on both the counts of imposing penalty for 2 years of polluting the atmosphere through black smoke. The question was, how do you decide if the polluting activity on the atmosphere? It is a polluting activity under the Air Act. Was the Air Act operative there between 1991 to 1993?

Look, by your own admission, you have stated that we as a government through a gazette notification, we declared the entire state as the air pollution control area in 1993 only. So, till 1993, Air Act was not operating there. And so, how you can come up with this condition, even before the law has come into existence, and so the (penal) sanctions that are imposed is inapplicable.

And the second one as to asking this industry to close them till these conditions are satisfied, come on, where do you get this power? You get the power under this act, but the act is not in operation and it comes into operation only after 1993 after we have made the application. So, there must be some provision with regard to I have given some concessions or whatever. And so how can you ask us to close down?

So, accepting this, the court came up with this decision that the action taken by the Pollution Control Board was wrong. The reason why these 2 case laws have given is to drive home the point that it is not just that a law is made and the state has accepted that this is a law that is

applicable in my state but it has to come up with some more preparation before it makes the law work to come into effect.

It comes into effect from that day when all those preconditions are satisfied. Unfortunately, both these instances although the industry was a polluting industry, the courts hands were tied because the law has very specifically required that these conditions need to be satisfied before the authority swing into action.