

NATIONAL (FEDERAL) REGULATIONS

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Summary

Pollution control regulations of a given country depend on the legal system of that country, in particular on its decision-making structures and judicial system. A brief survey of the regulatory practices in different countries shows that although the contents of such regulations may differ from country to country, they all have certain characteristic structural features that are common. Such features of sector-based

regulations are discussed in the article, including sources of national regulations and evolution of some of the milestone regulations in selected countries. An overview of the different elements of the legal system of a nation state is also given.

1. Introduction

National (federal) regulations on environmental pollution can seldom be examined from an isolated, sectoral perspective even though such regulations, that have common features and framework, have now become an integral part of the law in almost all countries. As expected, different aspects of regulation are emphasized in different countries to address country-specific conditions and priorities.

The United Nations Conference on Environment and Development (UNCED) made recommendations to the effect that governments should provide an effective legal and regulatory framework to integrate environmental protection with different sectors of the economy. Also, it called for building such framework around the concept of “sustainable development”. Some of the States, like the Netherlands and Australia, have adapted this concept to their regulatory framework while others are making efforts to that end.

The following must be considered in examining the pollution control regulations of a given State:

1. What jurisdiction is being examined, and
2. What are the basic common elements in pollution control regulations.

Consideration of the above would facilitate an understanding of the legal system of the country in question and of its political system, governmental structure, environmental policy, developmental policy, industrial policy, etc. This should be supplemented with information on the country’s geographical setting, relevant biomes, watersheds, food chains, habitats, flora and fauna, etc. Furthermore, there must be an understanding of both the framework of its basic environmental acts and the fundamental aspects of its environmental law. In this article we will examine both pollution abatement and control regulations with reference to procedural environmental law and governmental organization for administering environmental law.

2. Overview of the legal system

An overview of the legal system of a modern State should refer to the following:

1. System of government.
2. Statutory, common and other laws.
3. Relationship between national (federal) government and local (provincial) government.
4. The judicial system.

2.1 System of government

The constitution of a federation like USA or Australia gives specific legislative powers to the federal parliament and stipulates the extent to which those powers are to be delegated. In the case of Australia, “environment” is not listed specifically among the matters on which the parliament is empowered to legislate. However, the parliament has indirect legislative powers on matters affecting the environment, for example ratification of relevant international treaties (such powers are in fact vested in the national parliaments of all countries). Therefore, principal legislation on the environment is enacted by the state legislatures of Australia, while day-to-day environmental control is exercised by local governments that are subordinate to the state government.

In Canada, which also has a federal structure, the Constitution Act of 1867 does not refer to the “environment” as such, but an interpretation of its provisions permit the transfer of some such matters, which do not specially or by implication come under provincial jurisdiction, to the federal jurisdiction. The federal government has explicit authority over international waters, fisheries and inter-provincial matters, and it exercises control over the environmental aspects of those matters. Accordingly, federal environmental assessment is required for certain projects in those areas. Otherwise environmental legislation has historically been enacted and exercised by the provincial legislatures. Municipalities in Canada have authority delegated to them by the provincial legislatures through the Municipal Act. In some cases local authorities have powers to develop and implement by-laws on matters that are within their competence.

In the Federal Republic of Germany, the Constitution divides legislative and other functions among the federal government, the state governments and the local governments. The State Legislature can enact concurrent legislation provided the federation does not exercise its right to legislate. There are federal legislation such as the Federal Emission Control Act, Recycling and Disposal Act, Act on the Assessment of Environmental Impact, and the Waste Avoidance Act. Federal laws are based on framework legislation (Federal Water Act, Construction Code, etc.). State legislatures may enact laws to implement the framework legislation, and the municipalities can issue ordinances for implementation.

India, which is a federation of states, revised its Constitution in 1976 to make it a fundamental duty to protect and improve the environment. The federal Parliament is empowered to enact legislation in certain areas. Some of the legislation is in the concurrent list while others are in the jurisdiction of the state legislatures. The federal Parliament has exclusive powers to enact legislation pertaining to residuary matters that are not included in the State list. It can also legislate on any matter on the state list with the ratification of state legislatures, if it deems necessary so to do in the national interest or for fulfilling international treaty obligations. State legislatures can make environmental legislation, but only in conformity with federal legislation. Local governments have powers to issue by-laws.

The above examples of four countries from different parts of the world show that the country's constitution as well as its political culture and degree of decentralization considerably influence the making of pollution control legislation, its enforcement and compliance.

It would be instructive to consider the legislative structure in some of the countries that have non-federal government. The governmental structure of France may be said to be typically non-federal. It has a national government and Parliament vested with much legislative power. The French constitution provides for the following: enactment of legislation by the Parliament subject to proposal by the Prime Minister or a member of Parliament; decrees issued by the President in conjunction with the Prime Minister; and Decrees issued by the Prime Minister in conjunction with the responsible minister; orders issued by ministries with jurisdiction over relevant matters; and ministerial instructions, directions, and circulars. Local governments in France (regional governments, departmental governments and Municipal governments) enforce laws at the local level and ensure compliance in a way that a centralized authority cannot. Thus, the local authorities play only a complimentary role and no important initiative is expected from them.

In Japan, the national parliament enacts national statutes that establish only a policy framework, while the implementation of the statutes is delegated to the national entities. In general, the statutes are implemented by issuing governmental orders and regulations. Local governments are centrally controlled (administrative and financial control), but the constitution bestows on them certain powers such as legislative authority to protect health and welfare of residents. The national government may also delegate certain powers to the local governments enabling them to promulgate local ordinances and regulations.

An examination of the different systems of government, and of the ways in which they allocate legislative powers, leads to the following observations:

1. Often the national constitution does not specifically include or mention "environment" in the list of areas in which the national parliament can legislate on pollution control.
2. In a federal system, or in system of strongly centralized government, the national parliament may or may not make all of the pollution control regulations. It may delegate some of the powers to the lower levels of government (state or provincial) or to government agencies and ministries that may make regulations and issue decrees and ordinances.
3. Local governments do not have much legislative power. But they usually have enforcement and compliance powers to implement particular provisions of pollution control regulations for which they are authorized by Local Government Acts or by other provincial, state or federal legislation.

2.2 Statutory, common and other laws

Most of the environment laws are primarily statutory laws. In some countries the judges are bound by the text of laws, decrees and orders, but not by decisions of other courts, while in others the ordinary principles of administrative law (including judicial review) apply. For example, if a license is refused, it is possible to challenge that decision in a court of law. In some countries, like the UK, USA, Canada and Australia where there is a great tradition of common law, the courts interpret the statutes and apply the common law. Environmental actions brought by the public authorities are based on statute, but private individuals may have to rely on common law.

Member States of the European Union are subject to European Community Law. Regulations adopted by the Community automatically become national regulations of the Member States. Once issued, the Community Directives must be reflected in national legislation within a stipulated time, and the decision of the European Court of Justice has the force of law for the national courts.

2.3 Relationship between different tiers of government

The federal structure in a participatory democracy seeks to decentralize and delegate legislative powers to the lowest rungs of government. In such democracies the national parliament usually enacts framework legislation on general pollution control policy. For example, in the National Environment Protection Act of the USA, details of pollution abatement and control are delegated to the state legislatures, whereas in a country like India with a great democratic tradition, most of the major environmental legislation is pushed through the national parliament.

In the Federal Republic of Germany, legislative power is shared by the national parliament, state or provincial parliaments, and local governments. The Westminster Parliament in the UK, which is the supreme legislature, delegates substantial authority to the ministers and agencies. The local authorities do not have much legislative power, but they can utilize the power vested in them to implement legislation.

In Canada, almost all pollution control legislation is enacted by the provincial legislatures, while the national government steps in to resolve inter-provincial matters relating to pollution control. In France, all legislative powers are concentrated in the central administrative and legislative organs. The lower tiers of government are required to implement and seek compliance of such regulations that the centralized body cannot manage.

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Biographical Sketch

After graduating from Calcutta University (India) in 1967, **Dr. Prabir Ganguly** worked for four years in Indian coal mines in various capacities, rising to the position of Manager of a large coal mine. In 1971 he went to what was then Czechoslovakia to do his PhD, which he completed in 1975. He worked in the coal industry in India until 1980 as a senior planning engineer. In 1980 he took up an assignment to work at the University of Liberia in West Africa. He completed this assignment in 1986, following which he joined the Faculty of the Technical University of Ostrava in the Czech Republic. During his tenure at that university he became head of the Institute of Environmental Engineering and "Phare Project Management Cell" of the university. Currently he is the Director of the Centre for European Studies of that university.

Dr. Ganguly has been responsible for organising and participating in several international postgraduate teaching and training programmes sponsored by the Commission of the European Communities, as well as a number of international conferences and seminars.

Dr. Ganguly has published widely, mainly on sustainable development, environmental protection and related issues. He is on the Editorial Board of the journal, *Environment, Development and Sustainability* published by the Kluwer Academic Publishers of Dordrecht, the Netherlands.