



EVOLUTION OF ENVIRONMENT LAWS IN INDIA

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ABSTRACT

This article analyses the constitutional perspectives of Environment protection laws, during the time of the ancient period and during the time of the British period. It mainly focuses with certain constitutional provisions in The Indian Constitution that mainly includes a preamble, fundamental rights, Right to Equality and Directive principle of state policy. Also, this article includes the role of the judiciary for Environment Protection in India which is mainly regarding Wildlife Protection, freedom of trade and commerce and the environment, right to clean and healthy environment. This article also includes the concept of sustainable development which is the sum of three important principles which are Polluter pays principle, Precautionary principle, and Public Trust Doctrine, and sustainable development. At last this article has conclusion and suggestions which includes the observational part of the author and the co-author.

Keywords: Environment Protection, Legislations, Provisions, Utilization, Pollution, Sustainable Development, Principles, Natural Resources, Government.

1. INTRODUCTION:

Dalai Lama in his book “*An open heart*”¹ speaks about the environment in the following words:

“We must also care for our environment. This is our home, only home. It is true that we hear scientist talk about the possibility of settling on Mars or the moon. If we are able to do so in a feasible, comfortable way, good; but somehow, I think it might be difficult. We would need a lot of equipment simply to breathe there. I think our blue planet is very difficult and dear to us. If we destroy it or if some terrible damage occurs because of our negligence, where would we go? So, taking care of our environment is in our own interest.”

Environment belongs to all, influences all and is important to all. Therefore, it is rightly defined by T.S. Doabia, J. “The mother Earth on which we spend our life span and ultimately mingle with dust, the water, which cleans everything including internally and externally, the air without which no life we can survive are all elements, which fall within the term “Environment”.

Whatever we do, the environment will be definitely affected by our deeds but it depends, whether the act done by us is affecting the environment and casting good implication upon it or bad. As Lester Brown has congruously said, “We have not inherited this earth from our forefathers but have borrowed it from our children”. The need of the hour is to prevent the misuse of resources and instead use them efficiently as Mother Earth cannot sustain such fast

¹ Published by Hodder and Stoughton, in 2002 on page 12.



utilization of resources. Thus, we have to make prudent use of this motherland and towards all those things that we owe to her. Every living creature including human being recon on the environment. For the last few decades, it has been difficult for every living organism to live in this polluted environment and it has affected their life skeptically. Every creature needs a particular type of environment such as air, water, soil, vegetation, and minerals. Thus, the creation of disruption in the environment has made Arijit Pasayat, J. say that:

“By destroying nature, environment, man is committing matricide, having in a way kill mother earth. Technological excellence, growth of industries, economic gains have led to the depletion of natural resources irreversibly. Indifference to the grave consequences, lack of concern and foresight have contributed in large measures to the alarming position.²”

"The basic insight of ecology is that all the living beings exist in the interrelated system: nothing exists in isolation. the world system is web-like; to pluck one strand is to cause all to vibrate; whatever happens to one part has ramifications for all the rest. Our actions are not individual but social; they reverberate throughout the whole ecosystem"³ And the actions of the mankind is having a clear picture, they are those actions that lead to the issues such as global warming, depletion of ozone layer, dwindling forests, and energy resources, loss of global biodiversity etc.

² T.N. Godavarman Thirumalpad vs. Union of India, AIR 2003 SC 724

³ S.Shantkarkumar. Introduction to Environment law Lexis Nexis, Butterworth, Nagpur (2nd edn.2009)

2. LEGISLATIONS BEFORE AND AFTER INDEPENDENCE:

2.1. Ancient period:

Since Vedic time the motto of social life was “to live in harmony with nature”.⁴The origin of human civilization and the history of primitive society reveal that there was a close connection between living beings particularly humans and non-living beings i.e. environment. In India, the perception of environment protection is of ancient origin. The genesis of environment protection lies in the Indian ideas and practices that have been followed from time immemorial and have been an integral part of our customs, tradition and laws. Some ancient texts tell us that our society paid more attention to protect the environment than we imagine today. These texts tell us that it was dharma of each individual in society to protect nature,⁵ so much so that people worship the objects of nature. Trees, water, land, and animals had considerable importance in our ancient text.

2.2. Laws in British India:

The early days of British Rule in India were days of plunder of natural resources. There was a total indifference to the needs of forests conservancy.⁶ During the British era, steps were taken for preserving the natural resource, i.e. air, sea, shore, and water.

2.2.1. Legislations dealing with Environmental Matters before 1947

⁴ S.C. Shastri, Environmental Law, p2 (5th edn.,2015)

⁵ CM Jariwalla, “Changing Dimensions of Indian Environmental Law”, in P LeelaKrishnan, Law and Environment, p1, at p2,(1992).

⁶ J.B. Lal, India's forests: Myth and Reality (Natraj, Dehradun 1989)pp 15-17.



The government before independence was conscious of the fact that natural resources are to be kept free from pollution. The second half of the 19th century marked the beginning of organized forest management in India with some administrative steps taken to conserve forest; the formulation of forests policy and the legislation to implement the policy decision. The first step of the British government to assess state monopoly right over the forest was the enactment of the Forest Act, 1865 which was revised in 1878 and extended to most of the territories under the British rule. To implement the Forest Policy of 1884, the Forest Act 1927 was enacted.

The Shore Nuisance (Bombay and Kolaba) Act of 1853, was one of the earliest laws concerning water pollution. In 1857, an attempt was made to regulate the pollution produced by the Oriental Gas Company by imposing fines on the Company and giving a right of compensation to anyone whose water was 'fouled' by the company's discharges.⁷ Apart from the shore Nuisance Act of 1853, the British Government also concentrated on certain other areas like air pollution, wildlife, and land use by enacting numerous legislation some of the acts were as given under:

- a) Indian Penal Code of 1860
- b) Indian Fisheries Act of 1897.
- c) Indian Ports Act, 1908

Thus, it is clear that legislative measures were taken by the British Government for the prevention of pollution and for the conservation of natural resources.

⁷ Indian Institute of Ecology and Environment, <http://www.ecology.edu/environmental-legislation.html> (Last visited on 25/11/2018)

2.3. Constitutional Provision in the Indian Constitution

Indian constitution is perhaps the first constitution in the world which contains specific provisions for the protection and improvement of the environment.⁸ One of the most important achievements of modern law in India is constitutionalization of the environmental problems by the Supreme court.

2.3.1. Preamble:

The preamble of a statute is a 'key' to the understanding of it. It may legitimately be consulted to solve any ambiguity, or to fix the meaning of words which may have more than one meaning or to keep the effect of the statute within its real scope, whenever the enacting part is in any of these respects open to doubt⁹. In 1977, the 42nd amendment proclaimed India as a socialist republic. The word Socialist was introduced into the preamble of the Constitution. Implications of the introduction of the word socialist, which "has become the centre of the hopes and aspirations of the people a beacon to guide and inspire all that is enshrined in the article of the constitution" is clearly to set up a "vibrant throbbing socialist welfare society" in the place of a "feudal exploited society".¹⁰ This 42nd Amendment comprises of two significant Articles 48-A and 51-A(g) to protect and improve the environmental conditions.

Article 48-A. *Protection and improvement of environment and safeguarding of forests and wildlife-* The state shall endeavor to

⁸ Supra 2 at p.78

⁹ Kochuni v. State of Madras and Kerala, AIR 1960 SC 1080

¹⁰ T.S. Doabia, J, Environmental and Pollution Laws in India, p.65, (3rd edn. 2017)



protect and improve the environment and to safeguard the forests and wildlife of the country.

Article 51-A. Fundamental Duties- It shall be the duty of every citizen of India-

(g) to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.

Further, it brought some changes in the seventh schedule as well as seventh schedule: List III, Concurrent List:¹¹

17-A. Forests

17-B. Protection of wild animals and birds

20-A. Population control and family planning

2.3.2. Fundamental Rights and Environment Laws (Article 13)

“Law” includes “any ordinance, order, bye-law, rule, Regulation, notification, custom or usage having in the territory of India the force of law”. In *Bennett Coleman and Co. v. Union of India*,¹² a ‘Newsprint policy’ notified by the Central Government for imposing conditions on the import of newsprint came to be challenged on the ground of violation of Fundamentals rights. *Beg, J.*, in a concurring judgment, observed: “what is termed “policy” can become justiciable when it exhibits itself in the shape of even purported “law”. According to Article 13(3)(a) of the Constitution, “law” includes “any Ordinance, order, bye-law, rule, Regulation, notification, custom or usage having in the territory of India the force of law”.

¹¹ Dr. H.N. Tiwari, *Environmental Law*, Allahabad Law Agency, 2005 p. 80.

¹² *Bennett Coleman, and Co. v. Union of India*, (1972) 2 SCC 788-5J

So long as the policy remains in the realm of even rules framed for the guidance of executive and administrative authorities it may bind those authorities as declarations of what they are expected to do under it. But it cannot bind citizens unless the impugned policy is shown to have acquired the force of law.¹³

2.3.3. Right to Equality (Article 14)

Article 14 is direct with the Preamble of the Constitution. This article is first of series which embodies the ideal of equality expressed in the Preamble to the Constitution.¹⁴ Article 14 of the Constitution of India guarantees equality of opportunity. As a concept, it has no parallel. But when it is in practice exceptions are carved out.

Unequal cannot be clubbed.¹⁵ The doctrine of equality before the law is a necessary corollary to the high concept of the rule of law accepted by the constitution. One of the aspects of the rule of law is that every executive action, if it is to operate to the prejudice of any, must ‘normally’ be supported by some legislative authority.¹⁶

M.C. Mehta v. Union of India (oleum gas leak case)¹⁷

The court held that any enterprise that is engaged in an inherently dangerous activity is ‘absolutely’ liable to compensate all those affected by an accident. The key feature of the judgment was the principle of ‘absolute

¹³ *Gulf Goans Hotels Company Ltd. v. Union of India*, (2014)10 SCC 673

¹⁴ *Bheshwar Nath v. Commissioner of Income-tax*, AIR 1959 SC 149:1959 Supp. (1) SCR 528.

¹⁵ *Omkar Lal Bajaj v. Union of India* (2003) 2 SCC673: AIR 2003 SC 2562.

¹⁶ *Satwant Singh v. Apo New Delhi*, AIR 1967 SC 1836 (1967) 3SCR 525.

¹⁷ *M.C. Mehta v. Union of India* AIR 1986 SC 1468



liability', in which no exceptions (such as an 'act of God') are brooked.

is his fundamental duty as enshrined in Article 51A(g) of the Constitution.”

2.3.4. Directive principles of state policy

The directive principles are policy prescription that guides the government. Some of them are in the nature of economic rights that India could not guarantee when the Constitution was enacted, but that was expected to realize in succeeding year. Although unenforceable by a court, the directive principles are increasingly cited by judges as complementary to the fundamental rights. In several fundamental cases, the courts have been guided by the language.¹⁸ Part IV of the Constitution, containing Articles 36 to 51, deals with Directive principles of state policy. The directive principles form the fundamental feature and are designed to achieve socio-economic goals.

Article 48A¹⁹ Directive principles of state policy obligate state to protect and improve environment and 51A(g)²⁰ obligated citizens to undertake the same responsibility. In *Rural Litigation & Entitlement Kendra v. State of U.P.*²¹, the Supreme Court clarified: “Preservation of the environment and keeping the ecological balance unaffected is a task which not only governments but also every citizen must undertake. It is a social obligation let us remind every citizen that it

¹⁸ Dr.H.N. Tiwari, Environmental law, (Allahabad Law Agency, Faridabad, 3rd Edn., 2005)

¹⁹ Art. 48A "the state shall endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country"

²⁰ Art.51A(g) "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for living creatures"

²¹(1985)3 SCC 614

3. JUDICIAL RESPONSE OF ENVIRONMENT PROTECTION LAWS IN INDIA

3.1. Wildlife protection

Life in the dictionary means, 'state of functional activity' and continual change peculiar to organized matter, and especially to the portion of it constituting an animal or plant before death, animate existence of being alive. Life is the most cherished possession of a man. This right one inherits from birth. It is the state which stands restrained from interfering with freedom of life and liberty except in accordance with the procedure established by law.²² The Fundamental right of Right to life is also available to species of animals. The court declared that “we are committed to safeguard this endangered species because this species has a right to live on this earth, just like human being and that Article 21 of the Indian constitution “protects not only human rights but also casts an obligation on human beings to protect and preserve a species from becoming extinct, conservation and protection of environment is an inseparable part of right to life”²³. Thus, we as human beings have pious duty to prevent the species who are on the verge of extinction and must implement effectively “species protection regime”. Thus, the state, as a custodian, is also duty-bound to maintain and safeguard the benefit of the

²² T.S. Doabia, J., Environmental and Pollution Laws in India, p.319, (3rd edn. 2017)

²³ Centre for environmental law, Worldwide Fund-India vs Union of India, SCC 2013, 234



public but for the "best interest of flora and fauna, wildlife."

3.2. Freedom of Trade and Commerce and the Environment

Most of the pollution is mainly from trade and business-particularly from industries. it has been found that tanneries, acid factories, tie and dye factories, distilleries and nowadays the hotel industries are contributing to the environmental pollution. Thus, it all relates to the fundamental right to freedom of trade and commerce/business guaranteed under Article 19(1)(g) of the Indian Constitution. Some of these industries or businesses are carried on in a manner which endangers vegetation cover, animals' aquatic life, and human health. But time and again, it has been made clear that this freedom of trade and commerce is not absolute and subject to some reasonable restrictions. Therefore, any trade or business which is offensive to flora and fauna or human beings cannot be permitted to be carried on in the name of the fundamental right.

In the case of *Abilash Textile v. Rajkot Municipal Corporation*²⁴, the Gujarat High Court was required to balance the right to carry on business against the danger to public health from the discharge of "dirty water' onto public roads and drains.

3.3. Right to clean and healthy environment

Article 21 of Constitution of India protects not only the human rights but also casts an obligation on human beings to protect and preserve those species becoming extinct; conservation and protection of the

environment is an inseparable part of the right to life. In *M.C. Mehta v. Kamal Nath*,²⁵ the Supreme Court of India enunciated the doctrine of "public trust".

Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of loss a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.

The resources like air, sea, waters and the forests have such great importance to the people as a whole, that it would be totally unjustified to make them a subject of private ownership. The state, as a custodian of the natural resources, has a duty to maintain them not merely for the benefit of the public, but for the best interest of flora and fauna wildlife and so on. The doctrine of 'public trust' has to be addressed in this perspective.²⁶

4. SUSTAINABLE DEVELOPMENT AND ITS PRINCIPLES:

As Lester Brown has congruously said, "We have not inherited this earth from our forefathers but have borrowed it from our children". The need of the hour is to prevent the misuse of resources and instead use them efficiently as Mother Earth cannot sustain such fast utilization of resources. This is only possible through 'sustainable development'.

²⁵ *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388

²⁶ *Centre for Environment Law, WWF-I v. Union of India*, (2013) 8 SCC

²⁴ AIR 1998 GUJ 57



The World Commission on Environment and Development (WCED) in its report prominently known as the 'Brundtland Report' named after the Chairman of the Commission Ms. GH Brundtland highlights the concept of sustainable development. As per Brundtland Report, Sustainable development signifies "development that meets the needs of the present without compromising the ability of the future generations to meet their own needs"²⁷. There is a need for the courts to strike a balance between development and the environment. Sustainable Development then is a concept of rising real income and educational standards and an improvement in the general quality of life. The least advantaged section in society must have their needs provided for and development must take note of inequalities within the society at the moment along with taking care of the generations to come.

"Sustainable Development has come to be accepted as a viable concern to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco-systems"²⁸

Rural Litigation and Entitlement
Kendra v. State of UP²⁹

²⁷W.M. Adams, Green Development: Environment and sustainability in the third world, https://books.google.co.in/books/about/Green_Development.html (last visited on 25/11/18).

²⁸ Justice Satyabrata Sinha, Chief Justice of High Court of A.P. "Environmental Protection Role of Constitutional Court" in the Souvenir released on the occasion of the 50 years celebration of the A.P. High Court.

²⁹Supra 21

The court for the first time dealt with the issue relating to the environment and development; and held that it is always to be remembered that these are the permanent assets of mankind and or not intended to be exhausted in one generation.

Vellore Citizen's Welfare Forum³⁰

In this case, the Supreme Court observed that sustainable development has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystem.

4.1 The Polluter Pays Principle:

Whosoever is responsible for causing pollution should meet the cost of mitigating the damage caused. This, in a nutshell, is the sum and substance of this principle. This concept is not new. The earliest adoption of this principle can be found in the council of the Organisation for Economic Cooperation and Development(OECD)³¹ in 1972 as an economic Principle for allocating the costs of pollution control.

The municipal Laws did contain provisions for the imposition of fines if the damage was caused to the environment. These statutes contained the power to impose fine, realize penalty and also to charge fees. The Polluter Pays Principle has been held to be a sound principle by the Supreme Court of India in Indian Council for Enviro-Legal Action v. Union of India ³², where the Court Observed. -

³⁰(1996) 5 SCC 647: AIR 1996 SC 2715

³¹OECD organization, www.oecd.org.official (last visited on 25/11/2018)

³² M.C. Mehta v. Kamal Nath, AIR 2000 SC 1997: (2000) 6 SCC 213.



“...we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country.”

“...once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on.”

The "Polluter Pays Principle" as interpreted by the Supreme Court of India means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of “Sustainable Development” and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

4.2. Precautionary Principle

The origin of the precautionary principle can be found in German Environmental policy known as Vorsorgeprinzip.³³ The precautionary principle for the first time made its work in the year 1925 in ‘Vienna Convention for the Protection of the Ozone Layer’ where the parties adopted the ‘precautionary measures’ for the protection of the ozone layer from depleting.

The precautionary principle is basically linked with irreversible damage with scientific uncertainty. Principle 15 of Rio

³³ Brian J. Preston, CJ, "The role of the judiciary in promoting sustainable development: the experience of Asia Pacific"

Declaration, 1992, provides that "in order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities, where there are threats of serious irreversible damage, lack of full scientific certainty shall be used as a reason for postponing cost-effective measures to prevent environmental degradation." In *M.C. Mehta v. UOI (CNG Vehicles case)*³⁴, the supreme court watched that "The Precautionary Principle can be viewed as human-centric in its pith, and unchallenging of the proprietor protest worldview. Rather, it basically perceives points of confinement to the degree to which we can abuse environmental without undermining our own living environments."

4.3. Public Trust Doctrine

The Public Trust Doctrine primarily rests on the principle that certain resources like air, water, sea and the forests have such great importance to people as a whole that it would be wholly unjustified to make them a subject of private ownership.

In the case of *M.C. Mehta v. Kamalnath and others*³⁵ it was articulated that “our lawful framework which depends on English common Law incorporates people, in general, confide in principle as a component of its law the state is the trustee of every single characteristic asset which is by environmental implied for open utilization and satisfaction. The state as a trustee is under a lawful obligation to secure the regular resources. These resources implied for open utilize can't be changed over into private ownership."

³⁴ AIR 2002 SC 1696

³⁵ Earth times, <http://www.earthtimes.org> (Last visited on 25/11/2018)



The Supreme Court of India, in Vellore Citizens Forum Case, developed the following three concepts for the precautionary principle:

- Environmental measures must anticipate, prevent and attack the causes of environmental degradation.
- Lack of scientific certainty should not be used as a reason for postponing measures.
- The onus of proof is on the actor to show that his action is benign.

5. Talking about the Indian Context:

India has still a long route to go for the implementation of the ideology of sustainable development. We have to lay emphasis on making a properly structured strategy for the development purpose of our economy as well as ecology. Along with abundant natural resource, we also have a huge population which makes the planning of sustainable development highly complex in nature. The National Council of Environmental Planning and coordination (NCEPC) set up in 1972 was the main agency in this regard.

Industries generating high pollution should be moved out of the perimeters of cities. Regular Monitoring of high Pollutants needs to be devised by establishing a National Network of Sampling Situations. Also, Legislation and Policy pronouncements will be ineffective as long as Enforcement Machinery remains weak. Therefore, a fresh look is desired for strengthening the Enforcement Mechanism. The man has acquired the ability to change the environment more than any other organism present on the planet. But a man should also never forget that he is not a master, instead just a part of this huge and massive global

environment. There has to be public awareness in each individual regarding the protection of the environment and making it a better place to live.

As Mahatma Gandhi rightly said, "Be the change you wish to see in the world."

6. CONCLUSION AND SUGGESTIONS

The right to environment is not merely of moral concern. It is comprehensive right like any other basic right at both national and international levels. The Indian judiciary has interpreted the various Constitutional and legal provisions relating to the environment in an appropriate direction by promoting ecological balance and sustainable development. The great scientist Albert Einstein said "you cannot solve a problem with the same mindset which created it in the first place" That is why taken responses to like purchasing the recycled paper, using a CFC- free refrigerator, or driving an electric car or CNG auto is never going to save the environment. Instead of protecting the earth or our ecology from the destroyers and polluters, we must rather protect it first from ourselves, it is our lifestyle, greed, lack of awareness that is creating all the problems in the environment. There is a need for environmental rights to be seen as social rights and sustainable development to be envisaged as development, not at the cost of people but development for the people. The principles of democracy, participation and the strengthening of social institutions play a major play in the understanding of sustainable development.

There are certain steps which we can adopt in our daily life



- Step out of the process of consumerism and preserve our individual Liberty.
- To decide our actual, want and need for living a reasonable and healthy life by not being deviated by artificial needs imposed by society.
- To develop a sense of universal responsibility, caring for others and for the coming generation.
- To believe that the collective interest of all organisms in the world is above the interest of any particular caste, race, entity.
- It is recognized that environmental education plays an important role in molding the culture and value system of society towards the environment but given its long term gains limited focus is given to this during the planning process.

