

**INDIAN JUDICIARY AND ENVIRONMENTAL LAW**

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**Abstract**

The term environment is however largely unknown and is common neither as a set phrase nor as a concept. However, I am also giving some indication of the direction considerations surrounding environmental law, environmental policy, Ethics, Role of Indian Judiciary, Environmental Tort from Indian Perspective, Right to clean and protect Environment .

In developing countries like India, there has been environmental degradation due to over exploitation of resources, depletion of traditional resources, industrialization, urbanization and population explosion. Since, man is the creator and molder of his environment, his conduct can be regulated through the instrument of law. In fact, India has always been in the fore-front of taking all possible steps for the protection and improvement of the environment and aiming at sustainable development.

The changing pace of the environment is so fast that in order to keep the law on the same wave-length either laws have to be amended quite frequently to meet the new challenges or it has to be given new direction by the judicial interpretation. India has enacted various laws at almost regular intervals to deal with the problems of environmental degradation. There exist a clear constitutional mandate for protection of environment including prevention of air and water pollution.

Keywords: Introduction, Environmental Law, Environmental Policy, Ethics, Environmental issues and Law in Action, Doctrines and Principles Evolved by Courts, Role of Indian Judiciary,  
Environmental Tort from Indian Perspective, Right to clean and Protect Environment,  
Conclusion

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### **Introduction : Environmental Law**

The evolution of environment Law in India can be dated back to pre Vedic age, when the Manusmriti is supposed to be created. The society at that time respected and even prayed the environment, as the components of environment, like animals, trees had considerable importance in our ancient texts. Examples of this are, the concept of Panchvati and the fact that Manusmriti punishes for causing injury to plants. Kautilya, described penal actions against a person hurting a tree on the basis of the sanctity adorned to the tree.

Most of the laws were codified by the British in the second half of the 19<sup>th</sup> century. Similarly many environment protection oriented legislation like- The Shore Nuisance Act, 1853, Indian Forests Act, 1865, Wild Birds and Animals protection Act, 1912 -Explosive Substance Act, 1908 , The Poison Act, 1919. The objective of these laws was to protect the environment by preventing discharge of polluting substances, by limiting or banning their discharge, and the objective was to prevent hunting, poaching and tree felling.

In the Constitution of India, all natural resources except forests were given to states for management and forests were kept in the concurrent list. Many legislations like Water (Prevention and Control of Pollution Act), 1974, Environment Protection Act, 1986, Air (Prevention and Control of Pollution Act), 1981. The Article 48 and 51, Directive Principles of State Policy and Fundamental Duties of every citizen of India, envisage to protect the environment. These are some laws by which the Parliament began its legislations on Environment.

The third phase of environment legislations began in India, when the Supreme Court overruled the principle of Strict Liability (**Rylands v Fletcher**) and formulated the principle of Strict Liability in the case of **MC Mehta v Union of India** in 1987, which says that for every non natural use of land, by bringing a hazardous thing on that land, and if that escapes even without fault of defendant, the defendant is absolutely liable for its escape and defenses are very less. During this phase, the concept of filing public interest litigation for environment related causes, where anyone could approach the courts to stop an activity causing environmental degradation. There are parameters like Environment Impact Assessment, Environment Management Plan which every industry have to make and follow.

The above was a summary was of the evolution of environment law in India.

Meaning of Environmental Law in India ?

Environmental law - or "environmental and natural resources law" - is a collective term describing the network of treaties, statutes, regulations, and common and customary laws addressing the effects of human activity on the natural environment.

How is 'Environment' defined under Indian Law?

According to Section 2(a) of the Environmental Protection Act, 1986, 'Environment' includes

a)Water, air and land

b)The inter-relationship which exists among and between,

i)water, air, land, and

ii)human beings, other living creatures, plants, microorganisms and property.

What are the key policies relating to the environment in India?

There are three key policies relating to environmental protection in India. They are:

- The National Forest Policy, 1988.
- Policy statement for Abatement of Pollution, 1992.
- National Conservation Strategy and Policy Statement on Environment and Development, 1992.

What are the provisions in the Indian Penal Code for environmental protection?

The Indian Penal Code has a chapter on offences affecting Public Health, Safety, Convenience (Chapter XIV). Sec. 268 provides that "a person is guilty of a public nuisance

who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.” The section further explains that a common nuisance is not excusable on the ground that it causes some convenience or advantage. Other concerned provisions are: a “negligent act likely to spread infection or disease dangerous to life” (Sec. 269 IPC.), a “malignant act likely to spread infection or disease dangerous to life” (Sec. 270 IPC.), “making atmosphere noxious to health” (Sec. 278 IPC.).

What are the different statutes / legislations enacted in India exclusively for environmental protection?

The different statutes / legislations enacted in India exclusively for environment protection are :

- The Air (Prevention and Control of Pollution) Rules, 1982
- The Environment (Protection) Act, 1986
- The Environment (Protection) Rules, 1986
- Hazardous Wastes (Management and Handling) Rules, 1989
- Manufacture, Storage and Import of Hazardous Chemical Rules, 1989
- The Forest (Conservation) Act, 1980
- The Forest (Conservation) Rules, 1981
- The Wildlife Protection Act, 1972
- The Wildlife (Transactions and Taxidermy) Rules, 1973
- The Wildlife (Stock Declaration) Central Rules, 1973
- The Wildlife (Protection) Licensing (Additional Matters for Consideration) Rules, 1983
- The Wildlife (Protection) Rules, 1995
- The Wildlife (Specified Plants - Conditions for Possession by Licensee) Rules, 1995
- The Public Liability Insurance Act, 1991

**Environment Ethics and Old Traditions :-**

Our age old traditions teach us to live in peace and harmony with nature and to conserve it, as we all are creatures of one creator , and we don't have any right to harm, any of the living being in any manner as they are also one of the creations made by the almighty, this is taught to us since the very beginning of our civilization but as the civilization progressed we forgot everything and started thinking that we are the master of nature and everything in this world is made for us and we can utilize it, at any cost , as and when require, this is against our ethics and moral values.

Since Vedic times the main motto of social life was “to live in harmony with nature” .Sages, saints and great teachers of India lived in forests, mediated and expressed themselves in the form of Vedas, Upanishads, Smritis and Dharma .Thus we can imply that all the divine thoughts and literature which served as ideal for living life and taught guidelines how to live life came up when these saints and great thinkers were in touch with the nature. This literature of Olden times preached in one form or the other a worshipful attitude towards plants, trees, mother earth, sky (akash),air (vayu), water(jal) and animals and to keep benevolent attitude towards them. It was regarded a sacred of every person to protect them. The Hindu religion enshrines a respect for nature, environmental harmony and conservation. It instructed man to show reverence of divinity in nature. Therefore trees, animals, hills, mountains, rivers are worshiped as symbol of reverence to these representative sample of nature. A perusal of Hindu religious scriptures reveal that the principles.

1. to respect nature and protect it,
2. Non violence is the dharma of highest order (Ahinsa parmo dharma) one should be non violent towards animals, trees and other organisms.
3. Hinsa was considered as sin therefore not eating of meet in Hinduism is considered both as conduct and a duty.

Therefore different names given to different factors constituting environment:

- Lord Surya- Sun ,
- Vayu Devta -Lord of Winds,
- Agni devta - Lord of fire,

- Prithvi mata-Mother Earth,
- Vanya Devi-Goddess of Forests,

Etc.

Therefore cutting of trees was considered as sin as elements of nature were to be respected and regarded as gods and goddesses. “Rig Veda , Manusmriti , Charak Samhitaha emphasize on purity of water and healing and medicinal values of water. Because of those injunctions of system of maryada developed in Indian Society to keep clean and wholesome”.

### **Environmental Ethics and Constitution of India:**

“India has age old tradition of tolerance, non-violence, equity and compassion for animate objects. In olden times they were part of daily life and synthesized with religion .Religious teachings social and political norms and economic policies treated as a part of nature not as molder or superior .All the living beings are creatures of one superior power –GOD”.

### **Environmental issues and Law in Action :-**

In India we have a number of legislations for conservation of environmental. But the laws are just for ornamental purposes, there is no proper implementation of these laws, we have the Water Act, the Air Act, the Noise Pollution Act, the Forest Preservation Act and the Environment Act... and list goes on and on. India employs a range of regulatory instruments to preserve and protect its natural resources. “As a system of doing so laws works badly if it works at all .The legislature was quick enough to enact laws regulating most aspects of industrial and developmental activities, but was very cautious to sanction enforcement budgets or require effective implementation across the country, government agencies wield vast power to discipline violators”. The judiciary, a spectator to environmental despoliation for more than two decades has assumed proactive role in 1990s of:-

1. Public Educator: “Court directed to broadcasts and telecast ecology programs on electronic media and includes environmental studies in school and college curriculum”

2. Policy Maker: “Court gave directions prohibiting non traditional aquaculture along the coast”  
Court’s directions for introduction of unleaded petrol vehicles”
3. Administrator: “Judicial Supervision over implementation of nation’s forest laws.”

### **Doctrines and Principles Evolved by Courts**

The doctrines evolved by courts are a significant contribution to the environmental jurisprudence in India. Article 253 of the Constitution of India indicates the procedure on how decisions made at international conventions and conferences are incorporated into the legal system. The formulation and application of the doctrines in the judicial process for environmental protection are remarkable milestones in the path of environmental law in India. It is interesting to note that all such cases arose out of public interest litigation. The important doctrines evolved are,

- Public Trust Doctrine
- Doctrine of Sustainable Development
- Polluter Pays Principle
- Precautionary Principle

#### **Public Trust Doctrine:**

Indian legal system is essentially based on common law, and includes the public trust doctrine as part of its jurisprudence. The state is the trustee of all natural resources, which are by nature meant for public use and enjoyment. Public at large is the beneficiary of seashore, running waters, airs, forests, and ecologically fragile lands. The state as trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

#### **Doctrine of Sustainable Development:**

Environmental pollution and degradation is a serious problem now a days. Judiciary to being a social institution, has a significant role to play in the redressal of this problem. The progress of a society lies in industrialization and financial stability. But, industrialization is contrary to the concept of preservation of environment. These are two conflicting interests and their harmonization is a major challenge before the judicial system of a country. The judiciary, in

different pronouncements, has pointed out that there will be adverse effects on the country's economic and social condition, if industries are ordered to stop production. Unemployment and poverty may sweep the country and lead it towards degeneration and destruction. At the same time, polluting industries impend the stability of the environment.

### **Polluter Pays Principle:**

The countries moving towards the industrial development had to face the serious problems of giving adequate compensation to the victims of pollution and environmental hazards. That the polluter must pay for the damage caused by him is a salutary principle evolved very early in Europe when that continent was haunted by a new specter, that of unprecedented pollution. In the post Bhopal Gas Leak case, this principle was received great attention by and it has almost pushed the government and its institutions, including the judiciary.

### **Precautionary Principle:**

The precautionary principle or precautionary approach states that if an action or policy has a suspected risk of causing harm to the public or to the environment, in the absence of scientific consensus that the action or policy is harmful, the burden of proof that it is not harmful falls on those taking the action. This principle allows policy makers to make discretionary decisions in situations where there is the possibility of harm from taking a particular course or making a certain decision when extensive scientific knowledge on the matter is lacking. The principle implies that there is a social responsibility to protect the public from exposure to harm, when scientific investigation has found a plausible risk. These protections can be relaxed only if further scientific findings emerge that provide sound evidence that no harm will result.

### **Contribution of Doctrines to Environmental Jurisprudence:**

The application of the doctrines in the judicial process for environmental protection are remarkable milestones in the path of environmental law in India. It is interesting to note that all such cases arose out of public interest litigation. Undue influence of political bigwigs who make environmentally malign decisions is blocked. Skeletons in the governmental and administrative cupboards were revealed. Illegal contracts with adverse impact on ecology will be invalidated. The court directed to apply this jurisprudence when an entire village in Rajasthan was under an ecological catastrophe from non-disposal of hazardous wastes.



## **Role of Indian Judiciary :-**

Judicial and Quasi Judicial Bodies for Environmental Protection are the Courts or Authorities established under various environmental Protection Legislations for interpretation and effective implementation of these statutes.

- Supreme Court of India
- High Courts
- District Courts and Subordinate Courts
- National Green Tribunal
- National Environmental Appellate Authority
- Central Pollution Control Board
- State Pollution Control Boards
- State Biodiversity Board
- Chief Forest Conservators
- Factory Inspectors
- District Collectors
- Executive Magistrates

## **Supreme Court of India :-**

- Public Interest Litigation (PIL) under Article 32 of the Constitution,
- Special Leave Petition under Article 136.

## **National Green Tribunal :-**

- The National Environmental Tribunal Act, 1995.
- To grant compensation in case of death or any other injury caused due to the Act of environmental Pollution of anyone.
- The National Green Tribunal (NGT) was officially notified on 19.10,10 with its Chairperson, Mr. Justice Lokeshwar Singh Panta taking charge of his office here.

- First Green Tribunal commences on 19/10/2010 i.e. just a day before, by passing another statute the Green Tribunal Act 2010.

### **National Environmental Appellate Authority :-**

- to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out.

### **Central Pollution Control Board (Ministry of Environment and Forest, Govt. of India)**

Parent Authority under many environmental Legislation like:

- The Water (Prevention and Control of Pollution) Act, 1974.
- The Air (Prevention and Control of Pollution) Act, 1981.
- The Environment (Protection) Act, 1986.
- Hazardous Wastes (Management and Handling) Rules, 1989.
- The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989.
- Manufacture, Storage and Import of Hazardous Chemical (Amendment) Rules, 2000 - Draft Notification.
- Bio-Medical Waste (Management and Handling) Rules, 1998.
- Municipal Solid Wastes (Management & Handling) Rules, 2000.
- Battery (Management and Handling) Rules, 2000.
- The Noise Pollution (Regulation and Control) Rules, 2000.
- Re-cycled Plastics Manufacture and Usage Rules, 1999.
- Ozone Depleting Substances (Regulation) Rules, 2000.

Factory Inspectors are appointed under Factories Act 1948 are also responsible for taking action against any factory, if occupier is found not having in operation any instrument installed for protection of environment by reducing pollutant from effluents or emission from factory.

## **Environmental Tort from Indian Perspective :-**

Post 90's there is a tremendous and rapid growth witnessed by our country. In order to stimulate and sustain the growth wagon of the country, the government has in many ways overlooked the general mass at large. India employs a range of regulatory instruments to preserve and protect its natural resources. Across the country, government agencies wield vast power to regulate industry, mines and other polluter but are reluctant to use their power to discipline violators. There are over 200 central and State statutes which have at least some concern with environmental protection, either directly or indirectly. The plethora of such enactments has, unfortunately, not resulted in preventing environmental degradation which, on the contrary, has increased over the years.

The focus of the research is much on Orissa. It is blessed with huge deposit of mineral resources and has got Asia's largest deposit of iron ores. Big players like Posco, Arcelor Mittal, TATA, Jindal, Sterlite are pouring billions of dollars to start steel factories. The idea of the state is very holistic indeed. It will generate thousands of employment to poor. But the approach seems to be inappropriate. The pollution in mining belts is alarming due government apathy. The condition in which people working is beyond imagination. Lack of sanitation, housing, social life has made those places prone to health risks.

## **Right to clean and Protect Environment :-**

Environment as a basic right

The concept of human rights in general emerged after the Second World War, but the right to a healthy environment, as one of those human rights, was never a priority. Today, this right is an emerging concept that is being hotly debated in the human rights arena. A healthy environment is an essential aspect of the right to life, not only for human beings but also for other animals on the planet. Violation, therefore, of the right to healthy environment is potentially a violation of the basic right to life.

**The Penal Code too at that time contained provisions making pollution a crime.**

- Section 277 relates to water pollution
- Section 278 relates to water pollution
- Section 426, 430, 431 and 432 relates to pollution in general
- Section 368 talks about public nuisance where under noise pollution can inter alia be controlled

The National Committee on Environmental Planning and Coordination (NCEPC) was established in February, 1972 and within its purview were covered several environmental projects like human settlements, planning, survey of natural eco- systems, like wetlands and spreading of environmental awareness.

Another Committee, designated as the Tiwari Committee came to be set up in 1980 (also referred to as the committee for environmental protection). It not only considered the laws which protect the environment but also the 200 odd laws which in their functioning didn't virtually protect the environment. In its review it noted the following major short comings:-

- Most of such laws had become outdated.
- The laws lacked the statements of explicit policy objectives.
- The laws lacked adequate provisions for helping the machinery for their implementation.
- The laws were mutually inconsistent.
- There was no procedure for reviewing the efficiency of those laws.

### **Conclude :-**

If mere enactment of law relating to the protection of environment was to ensure a clean and pollution free environment then India would, perhaps, be the least polluted country in the world.

According to a lawyer, environmental laws in India had come into being as a result of certain key triggers – disasters, political compulsions, international obligations and economic imperatives.