

The Protection of the Environment in the Purview of Law

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ABSTRACT

The concept of Environment is not new, it has been derived from ancient Vedas and Upanishads, and classical Greek works. Emperor Ashoka had planted trees to provide oxygen to the pedestrians. That means the Govt. of the third century BC had tried to protect Environment to provide oxygen to the living creatures on the earth. Delhi Sultan Firoz Tughluk had grown orchards and gardens to reduce the impact of carbon dioxide in the atmosphere. The Mughals tried to provide protected drinking water to their citizen with amalgamation of different species of grass with the water. The early East India Company tried to protect Environment by growing large trees. After the independence, the Govt. of India made plan to protect Environment but all the efforts are in vain. After the Stockholm Convention serious efforts have been made by Governments across the world to protect Environment. MC Mehatha an Environmentalist filed several PILS to protect animals in the Zoo and river water from pollution. For the first time, Rajeev Gandhi Govt. had initiated the Ganga Action plan to protect the river Ganga from pollution. The efforts of MC Mehatha are successful with the passing of Acts such as the Water Act, Air Act, and Environment Protection Act. This explanation tried to highlight different laws pertaining to the national and international arena to protect the environment by which human beings can safeguard the Earth Globe. The original intention of this paper is to understand environmental pollution, its impact, and the role of the laws and Governments in the protection of the environment in India.

Keywords: Environment, Judiciary, Protection, Law, Conventions

I. INTRODUCTION

Every individual, from the movement of birth, inherits certain rights. One such right, which is as old as man himself, is the right to live in a clean environment. All human beings have a right to a healthy, pollution free environment in order to enjoy their very existence on this earth. Ancient texts have recognized and vindicated this natural right of the individuals.

The Stockholm Declaration of 1972 is known a Magna Carta on Human Environment. India was one of the signatories. To implement the decisions of the Stockholm Conference, the Parliament incorporated the provisions relating to protection and preservation of environment and passed many laws relating to it such as - the Water Prevention and Control of Pollution Act, 1974, The Water (Prevention and Control of Cess Act. 1977 and The Air (Prevention and Control of Pollution) Act 1981, The Environment (Protection) Act of 1986, etc. Prior to these laws there existed provisions relating to protection of environment. These provisions would be his erased here.

Meaning of Environmental Pollution

The environment includes the harmonious co-existence of physical and biological components of the nature. It seems that nature follows its own rules to arrange and rearrange the components, but, if, there are any external Interventions which disturb this process, the same is referred to as environmental pollution. This disturbance in environment

may arise due to numerous reasons; because of human interventions like industrial processes, domestic reasons or nuclear industries, weapons etc, or because of natural calamities. The anti-pollution legislations in India have attempted to define pollution in different biological and atmospheric spheres like water, air, noise, soil, etc. In first instance, the act defines the environmental pollutants as 'the environmental pollutant means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to the environment.' Furthermore, environmental pollution means 'the presence in the environment any environmental pollutant.' It seems that the definition which is provided by the Environmental Protection Act 1986, is very wide and can include any type of pollution. The Indian judiciary has also attempted to explain the meaning of the term 'environmental pollution' taking references from different sources. It has opined thus: "Pollution" is noun derived from the transitive verb "pollute," which according to the Random House Dictionary of the English Language (College Edition, 1977) means:
“(1) to make foul or unclean, dirty; to pollute the air with smoke.
(2) to make impure or morally unclean, defile, desecrate to soil, defile.”

Effects of Environmental Pollution

Development activities carry with it the seeds of environmental damage, assisted and abetted by both, the needs and greed of man. Activities such as manufacturing, processing, transportation and consumption, not only deplete the stock of natural resources, but also add stress to the environmental system by accumulating the stock of wastes. The productivity of the economic system, however, depends on the supply and quality of natural and environmental resources. While water, soil, air, forest land fisheries resources are productive assets, the pollution of water, air, atmosphere and noise are the byproducts of

economic development, particularly industrialization and urbanization. 'Green house effect', 'global warming' and 'acid precipitation' are cases in point. Pollution is an 'external cost' (sometimes called a 'spill-over cost' or a 'neighborhood cost'). Untreated or improperly treated waste becomes pollution, increasing not only private costs but also social cost. Environmental degradation, often tending to become irreversible, impose damage costs on the economy resulting in output and human losses, loss of labor productivity from ill-health and loss of crop output. Pollution degrades the environment which in turn leads to the depletion of the earth's ozone layer and makes a hole in the ozone. Industrial effluents and emission of carbon monoxide endanger the environment. Over-fishing damages the delicate marine ecosystem. Global warming, acid precipitation, green house effects and noise pollution are different forms of pollution which are the debit sides of Industrial development. Nature's recuperative powers are finite. The earth does not belong to man, but man belongs to the earth. The level of environmental problems of a state varies with the stages of development, current production technologies and the environmental policies implemented. Lack of economic development also contributes to environmental pollution in the form of inadequate sanitation and lack of availability of clean drinking water. Economic development without environmental considerations can cause serious environmental damage affecting the quality of life of the population, both present and future. There is, therefore, an urgent need for ensuring sustainable development, which strikes a balance between the demands of development and the levels of environmental protection. It should at least ensure non-declining human welfare over time, if not aiming at maximization of the net benefits of economic development. A number of studies have shown that air and water pollution are taking a heavy toll of human

life, particularly in developing countries, through ill-health land premature mortality. Pollution control, thus, assumes greater significance in the context of ensuring sustainable development.

II. METHODOLOGY

Objectives of Study

The present article has been prepared on the basis of the following objectives:

1. To focus on the role of ancient govt. to protect the environment.
2. To lay emphasis on the efforts made by the pre-independent government to protect the environment.
3. To focus on the Laws passed by Union Parliament to protect land, water, and the atmosphere from pollution.
4. To focus on international efforts such as Stockholm Convention, Rio Convention, and Montreal Convention to protect the globe from the pollution caused by dangerous gases that emission into the Atmosphere.

On the basis of these objectives present article has been prepared.

Hypothesis

Protection of the environment is a herculean task of the Government. Which is to provide clean water, and fresh air for the people to maintain their health. For this purpose, several Acts have been enacted on the basis of the judgment of the Apex court on the cases filed by MC Mehatha and other environmentalists.

As India is one of the signatories of International Conventions convened to protect the environment, it is abided by the decision taken by the International Conventions such as Stockholm, Rio, Rio+20, etc. on the basis of these tentative conclusions, the present article has been completed.

Method of data collection

Both primary and secondary sources have been collected to publish the present article.

Various Acts, such as Water Act, Air Act, and Environment Protection Act are consulted to prepare the present article.

The resolution of the UN General Assembly on the environment have been consulted. Various conferences, works, and symposia are attended to have firsthand knowledge of the protection environment. The journals related to the protection of the environment under the Constitution of India have been studied. Literature available in the field of environment was consulted. A doctrinaire approach has been made to complete the Article.

III. INDIAN CONSTITUTION, STATUTORY PROVISIONS FOR THE PROTECTION OF ENVIRONMENT

(A) The Constitution of Mandate

In the Constitution of India, the Forty-Second Constitution Amendment Act 1976 added two explicit provisions. In Article 48-A and 51-l(g) for the protection of environment from pollution prior to it and even today the court have been applying some of the provisions of fundamental Right and Directive principles state policy for protection of environment.

Fundamental Right are-

- i) Right to Equality: The Indian Constitution guarantees 'right to equality'¹ to all persons without any discrimination. The indicates that the any action of the 'State' relating to environment must not infringe upon the right to equality as enshrined in Article 14 of the Constitution.

The Stockholm Declaration, 1972 also recognized this principle of equality in environment management¹ and it called up all the world's nations to abide by the principle.

The Courts in India, on various occasions, have struck down the arbitrary official sanction in environmental matters on the basis that it was vocative of Article 14 (Right to equality).² Because sometimes

arbitrary grant of lease and indiscriminate operation of mines may jeopardise the wildlife and natural wealth of the nation. It has also been made very clear that where arbitrariness and prevention are writ large, the Court has no option but to issue writ as to advance of the public interest and avoid the public mischief which are the paramount considerations.

It has aptly been observed that 'concept of social justice and equality are complementary to each other and practical contents of right to life.'

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

In *M.C. Mehta v. Kamal Nath*, the Supreme Court made it abundantly clear that if a hotel is discharging untreated effluent into the river Beas, thereby disturbing the aquatic life and causing water pollution it cannot be permitted to work. 'Any disturbance of the basic environment element, namely air, water and soil, which are necessary for 'life' 'would be hazardous to life'. Thus, the Court in the exercise of jurisdiction under Article 32 can not only award damages but can also levy 'find'-exemplary damages on the erring

industry/hotel which will act as a deterrent for others not to cause pollution.

The Gujarat High Court in *Abhilash Textiles v. Rajkot Municipal Corpn?* made it clear that 'the petitioners cannot be allowed to reap profit at the cost of public health. This is the mandate of law.

"Article 19(1 Xg) of the Constitution confers right upon every citizen to practice any profession or to carry on any occupation, trade or business. But this fundamental right is subject to reasonable restrictions which may be placed in the interest of the general public as provided for in sub-clause (6)of Article 19 itself.

No one has a right to carry on business so as to cause nuisance to society. One cannot carry on the business in the manner by which the business activity becomes a health hazard to the entire society".

iii) Right to Life : Article 21 of the Indian Constitution, though it guarantees right to life and personal liberty, does not directly confer right to clean, unpolluted and healthy environment. But the various judicial pronouncements on various occasions have expanded the right to life and personal liberty to include this right by recognizing various 'unarticulated liberties as recognized implicitly by Article 21.

The Supreme Court has given a wider interpretation to the fundamental rights or constitutional and such guarantees cannot be 'emasculated in their application by a narrow and constricted interpretation'. Thus, giving wider interpretation, it can safely be said that-

The expression 'life* assured in Article 21 of the Constitution does not connote mere animal existence of continued drudgery through life. It has much wider meaning which includes right to livelihood, better standards of life, hygienic conditions in workplace and leisure.

All this means that the right to life means (a) right to live with human dignity, and (b) the quality of life as understood in its richness and fullness by the ambit of the Constitution. It also 'encompasses within its

fold, some of the finer facets of human civilization with make life worth living'.

Thus, this includes the right to have a 'living environment' congenial to human existence. Any activity which pollutes the environment and makes it unhealthy, hazardous to human health or health of flora and fauna, is violative or right to have 'living environment', implicitly guaranteed by Article 21. Similarly, 'the slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be regarded as amounting to violation by Article 21 of the Constitution'. And the fulfillment guaranteed by Article 21 also embraces and protection and preservation of Nature's gift without which life cannot be fully enjoyed.

Directive Principles of State Policy

Chapter IV (Article 36 to Article 51) deals with the Directive Principles of State Policy. Some of them specifically deal with the various facets of human health and environment. These Directive Principles sometimes become complimentary to the fundamental rights and are enforced by Courts of law. Following are some of the Directive Principles related to environment- Article 47: "The State shall be regarding the rising of the level of nutrition and standard of living of its people and the improvement of public health as among its primary duties..."

Article 48-A: "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country".

It has been declared time and again by Courts that Article 48-A is a constitutional pointer, mandate to the State and the State has to carry out its obligation provided under it.

This constitutional mandate to preserve the environment and maintain ecological balance is a task of the 'State under Article 48-A and the State should give priority to such issues as they have wide and serious ramifications.

In *Consumer Education & Research Centre v. Union of India*, the Supreme Court declared that right to health, medical aid to protect health and vigour of women is a fundamental right, if Article 21 is read with Arts. 39(e), 41, 43 and 48-A. Thus, the life of workman becomes meaningful and purposeful with dignity of person.

Fundamental Duties of Citizens

Article 51-A(g) of the Constitution of India one of the fundamental duties to protect and improve the natural environment. It provides as follows:

Article 51-A: "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 comparison for living creatures".

In *Rural Litigation & Entitlement Kendra, Dehradun v. State of U.P.* the Supreme Court clarified that '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 and let us remind every citizen that it is his fundamental as enshrined in Article 51-A(g) of the Constitution'.

The Supreme Court in *S. Sachidanand Pandey v. State o/W.B.*, made it clear that the Court must enforce this fundamental duty, and should not depend only on the policy makers.

It is clear that preservation of ecology, environment and forests is a function not only of the State but of every individual as if aims to achieve social and economic justice. These duties have been particularly invoked and made basis of decisions.

(B) Under Others Laws

There are various other laws which deal with environmental pollution. Some of the important laws which have effectively been used to contain and control the various forms of environmental pollution are as follows—

- ❖ Law of Tort
- ❖ Indian Penal Code, 1860

- ❖ Criminal Procedure Code, 1973
- ❖ Factories Act, 1948
- ❖ Public Liability Insurance Act, 1991
- ❖ National Environment Tribunal Act, 1995.
- ❖ The above laws are discussed below one by one—

Tort

Justice Saghir Ahmed of the Supreme Court has aptly observed in unequivocal terms, that:

"Pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution has to pay damages (compensation) for restoration of the environment and ecology. In addition to damages, the person guilty of causing pollution can also be held liable to pay exemplary damages, so that it may act as a deterrent for others not to cause pollution in any manner."

In this case, a motel was discharging its untreated effluents in river Beas, thereby causing water/river pollution. The construction of the motel also interfered with the natural flow of the river. The motel was directed to pay compensation and it was also declared that 'pollution fine' can also be imposed on such polluters by following the statutory procedure.

Law of tort, basically a part of common law, is based on judicial pronouncements. There are various torts which provide relief for environmental pollution under various heading. Torts relating to environmental pollution are—

(a) Tort of Nuisance; (b) Tort of Negligence; (c) Strict Liability

(i) Tort of Nuisance : It has rightly been observed that deepest doctrinal roots of modern environmental law are found in the common law principles of nuisance.

The Indian Penal Code

The Indian Penal Code has a chapter on Offences affecting the public health, safety, convenience' (Chapter XIV). Section 268 defines 'Public nuisance' as, 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 excused on the ground that it causes some convenience or advantage.

The Criminal Procedure Code, 1973

Chapter X of the Criminal Procedure Code, 1973 (CrPC) Part B, has provided a provision for public nuisance which relates to environmental pollution. Section 133 of Cr.P.C empowers a District Magistrate, Sub-Divisional Magistrate, to stop the nuisance on receiving information, 'Nuisance' is defined in very liberal terms and includes construction of structures, disposal of substances, conduct of trade or occupation; under the section, the court issues conditional order for the removal of nuisance.¹ But in case of disobedience of the orders, the court can impose penalties provided under Section 188 of Indian Penal Code which includes imprisonment for a maximum period of six months and a fine which may extend to one thousand rupees.

The imperative tone Section 133 of Cr.P.C read with punitive temper of Section 188 of IPC make the prohibitory act a mandatory duty. The decision of the Supreme Court in Ratlam Municipality case has made it clear that a citizen can always bank Section 133 of Cr.P.C for the removal of the nuisance of pollution. It is of greater significance in view of the fact that the Water Act and the Air Act not provide for the affected parties a right to prosecute violators of the provisions. Another significant point is that corporate bodies like companies and corporations can also be held responsible for pollution nuisance under these provisions. The court observed that 'whenever there is a public nuisance, the presence of Section

133, Cr.P.C must be felt and any contrary opinion is contrary to the law'.

But it is not clear that municipalities and other local bodies (other than the affected parties) can initiate prosecution proceedings against industries and factories for causing environmental pollution. Therefore, it is suggested that the prosecution power may also be vested in the municipalities and other local body authorities of the Pollution Control Board, Factories Act, 1948.

One of the basic laws dealing with environmental pollution from industries is the Factories Act of 1948. The term 'occupation', used in the Environment (Protection) Act, 1986 has been adopted from the Factory Act. In various cases relating to industrial pollution- The Taj Trapezium case, Kanpur Tanneries case, Oleum Gas Leakage case, Modi Distillery case, Asbestos Industries case- the Factory Act has been referred to by the Supreme Court. This Act is the first Code which deal with industrial safety, discharge of effluents/pollutants, hazardous substances and occupational health and welfare of workers employed in factories.

Section 12 of the Act provides that the occupier is duty-bound to follow effective arrangements in the factory for treatment of wastes of and effluents due to manufacturing process carried on in the factory as to render them innocuous. It also empowers States to frame rules for the safety, health and for discharge and disposal of effluents of a factory. Section 14 deals with dust and fumes.

Public Liability Insurance Act, 1991

This Act was passed with an object 'to provide immediate relief to the persons affected by accidents occurring while handling any hazardous, substances and for matters connected therewith or incidental thereto'. It consists of 23 sections and one Schedule.

Section 3 of the Act propounded the doctrine of 'no-fault liability' by imposing liability on the owner for death or other injury to any person (other than the

workmen) or for damage to property. The claimant shall not be required to establish any wrong of any person (including that of the owner) or neglect or default of any person.

The owner is required to take out insurance before he starts handling any hazardous substance which will be renewed from time to time (Section 4).

National Environment Tribunal Act, 1995

Exercising its power under Section 3(3) of the Environment (Protection) Act, 1986 to constitute an authority/authorities for the purpose of exercising and performing such powers and functions as are necessary to protect and improve the environment, the Indian Parliament passed this Act and the President assented on June 17, 1995.

The early days of British rule in India were days of plunder of natural resources. There was a total indifference to the needs of forest conservancy. They caused a "fierce onslaught" on India's forests. The onslaught on forest was primarily due to the increasing demands for military purposes, for British navy, for local construction (such as roads and railways), supply of teak and sandalwood for export trade and extension of agriculture in order to augment revenue.

The second half of the 19th century marked the beginning of an organised forest management in India with some administrative steps taken to conserve forest;

The British Government declared its first Forest Policy by a resolution on the 19th October 1884.

Till 1935, the Government of India enacted the Forest Acts. In 1935 the British Parliament, through the Government of India Act 1935 created provincial legislatures and the subject of the forest was included in the provincial legislative list. Thereafter, several provinces made their own laws to regulate forests. Most of these laws were within the framework laid down in the 1927 Act.

From the above it is clear that legislative measures were taken by the British Government for prevention of pollution and for conservation of natural resources. Though the critics point out that the British enacted these legislations not with the object of protecting the environment but with the aim of earning revenue for themselves, it should be regarded as the first step towards conservation of natural resources. Though made with ulterior motives these legislations have contributed significantly to the growth of environmental jurisprudence in India.

Pollution degrades the environment which in turn leads to the depletion of the earth's ozone layer and makes a hole in the ozone, Industrial effluents and emission of carbon monoxide endanger the environment. Over-fishing damages the delicate marine ecosystem. Global warming, acid precipitation, green house effects and sound pollution are different forms of pollution which are the debit sides of industrial development. Nature's recuperative powers are finite. The earth /does not belong to man, but man belongs to the earth.

IV. CONCLUSION

The major problem attached to modern society is pollution. The pollution prevails in every nook and corner. Contamination of milk rice other food grains, cereals, air, water, and sound are being polluted by the people who are imbued with a selfish motive. Earth globe is being polluted by modern scientific devices, which are responsible for the establishment of diversified industries. The emission of gases into the atmosphere affects the greenhouse existing on the Earth. The melting of the Ozone layer force mankind to face a disease like cancer. Skin diseases are common among labourer who works in hazardous industries. The polluted water in the river, lake, and ponds create health problems by which the liver, kidneys, and heart are being damaged. The people would lose their Fundamental Right to breathe fresh air. People have no fresh food to consume to

earn their livelihood which is guaranteed by Article 21 of the Constitution of India and Articles from 1 to 10 of UDHR of UN, Africa Convention, European Convention, and American Convention of human right guarantee the right to life of people across the globe. The developed nations like G8 have called the countries to reduce the emission of gases into the atmosphere through conventions such as Montreal. India tried its best to protect the environment and provide protected Drinking water and to provide, fresh air breathes. Several Acts mentioned in this Article are passed with the intention to protect the environment. The Environment Protection Act, the Water Act, and the Air Act are doing there to protect mankind living in India.

While numerous legislative steps have been taken to give effect to the significant right of man to live in a sound environment and the corresponding duty of the state and individuals to ensure environmental preservation and conservation, our present endeavor is to analyze the steps taken by the judiciary to forward this goal. To achieve this end, the judiciary has evolved certain principles to provide an effective remedy in case of violation of constitutional and legislative mandates. In the subsequent subdivisions, several concepts which the judiciary has evolved in order to give force to the right of man to a healthy environment would be briefly dealt with.

Major findings are

1. Responsibility of ancient Governments to protect the environment by which the people can lead a happy life.
2. Pre Indian Govt. has recognized the importance of the environment by which the Govt. shall protect the lives of the people under Art 21 i.e right to life enshrined by the Constitution
3. Reaction of the Court by pronouncing judgment on the cases filed by environmentalists.

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