

LAWS AND INSTITUTIONS RELATING TO ENVIRONMENTAL PROTECTION IN INDIA WITH REFERENCE TO INDIAN CONSTITUTIONAL LAW

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Abstract

“Earth provides enough to satisfy every man's needs, but not every man's greed.”

-Mahatma Gandhi

The majority of the evolution of environmental legislation in India has taken place during the course of the last three decades, with a large amount of polarization occurring around the latter half of this time. As a result, a piece of writing that details "recent developments in India" would need to unavoidably include an in-depth explanation of the most important environmental challenges and the ramifications of those difficulties. The Indian judiciary, in particular the higher judiciary, which consists of the Supreme Court of India and the High Courts of the States, has taken a significant amount of the initiative necessary for the development of the law in this field, notably in the higher courts. This facet and the impact it has on the robustness of the legal system will be the primary focus of the article. Although there is some degree of duplication, legislative plans and initiatives have been enacted in almost all of the sectors that are associated with the environment. The function of the administration, although being an essential component in the accomplishment of any environmental management program, has been plagued by issues over the scope and definition of its responsibilities. Initiatives taken by both legislators and judges led to the development of the core principles underlying the environmental legislation that is now in effect. This research study relies only on secondary sources of information, such as books, magazines, newspapers, and other articles, in order to compile its findings.

Key words: - *Environment, Legislation, Sustainable Development, PIL, Hazards.*

I. Introduction

The term "environment" refers to the combined of all living and non-living entities that surround an organism or group of organisms. It is most frequently used to describe the "natural" environment; its meaning is the same as its definition. The term "environment" refers to all components, aspects, and circumstances of an area that have some bearing on the growth and maturation of a particular organism. Both biotic and abiotic aspects of an environment may exert some level of control on the organisms that are observed. Abiotic variables, which include things like light, temperature, water, and atmospheric gases, interact with biotic factors, which include all the living things in the environment. Many creatures have the capacity to adapt to changes in their environment since the environment tends to undergo change over a period of time. However, the tolerance range of one species may not be comparable to that of another, and environmental stress occurs when an organism is subjected to external circumstances that push it to the edge of its range of tolerability. The term "environment" refers to the area that immediately surrounds a person. A biotic and an abiotic component are both included in it. Therefore, environment does not only refer to our surroundings; rather, it encompasses a wide range of concerns relating to human activity and the influence that behavior has on natural resources. It has been noted that significant shifts have taken place during the course of the most recent past. In his never-ending quest to raise the general level of human well-being, man has been a significant contributor to the degradation of the natural world.¹ At this time, the preservation, defense, and enhancement of the human environment are key concerns in every region of the globe. The physical environment as well as the biological environment make up what is known as the human environment. The land, the water, and the air make up the physical environment. The term "biological environment" refers to the ecosystem that consists of plants, animals, and other species. The biological and physical environments are intertwined and mutually rely upon one another. The environmental degradation that we see today is due to a number of things, including urbanization, industrialization, population growth, overexploitation of natural resources, disturbance of usual ecological balances, and the indiscriminate killing of countless plant and animal species for commercial gain.² The term "environment" denotes to the natural setting in which an organism lives and thrives. There are three different types of environments: the physical environment, the chemical environment, and the biological environment. When it comes to meeting their need, organisms are wholly reliant on their surroundings; similarly, man is in continuous dialogue with his surroundings in order to satisfy his requirements. These requirements include both the physiological necessities, such as air, water, and shelter, and the psychological and physical need, such as entertainment, medication, and so on. The items that are necessary for man's continued existence and his level of comfort are referred to as the resources. The natural world has a wealth of useful materials. Conservation refers to the practice of maintaining the natural resources of the environment and making

¹ L.D SAINI, ENVIRONMENTAL EDUCATION, 2001-2002, (Kalyani Publisher, Ludhiana).

² Sachidanand Pandey v. State of West Bengal AIR 1987 SC 1109.

responsible use of such resources. The preservation of natural resources is an essential component of environmental preservation efforts.¹

II. Phases of the Progress of Environment Law

The development of law in India may be broken down into three distinct stages. The first phase may be traced back to the time before the Vedic period, which is when the Manusmriti was probably written down. The culture of the period revered and even prayed to the natural world, as the elements of the “environment”, such as “animals” and “trees”, were accorded a significant amount of value in our earliest written documents. The idea of “Panchvati” and the fact that the “Manusmriti” prescribes punishments for inflicting harm to “plants” are two illustrations of this principle. On the basis of the sacredness that was affixed to the tree, “Kautilya” defined the measures that should be taken against a person who does harm to a tree. It was not only the responsibility of the person to punish the offender but also to restore ecological harmony as part of their responsibility to safeguard the environment. According to the Brunt Land Commission's definition, the notion of sustainable development is the essence of the obligation placed upon a person to safeguard the environment by the ancient documents found in India. This duty may be found in India. As a result of the fact that these manuscripts had the weight of the law, we might consider them to be the first stage of environmental legislation in India. The British government was responsible for codifying the majority of the laws throughout the second half of the 19th century. Similar legislation aimed at protecting the environment was passed in the following years: 1853 for the Shore Nuisance Act, 1865 for the Indian Forests Act, 1912 for the Wild Birds and Animals Protection Act, 1908 for the Explosive Substances Act, and 1919 for the Poison Act. In addition to suppressing hunting, poaching, and the cutting down of trees, the purpose of these regulations was to safeguard the environment by preventing the discharge of polluting chemicals, by regulating or outright prohibiting the discharge of such pollutants, and by forbidding the hunting of endangered species. In the Indian Constitution, the administration of all natural resources, with the exception of forests, was delegated to the respective states, while the management of forests was placed on the concurrent list. The “Water (Prevention and Control of Pollution Act)” of 1974, “the Environment Protection Act of 1986”, and the “Air (Prevention and Control of Pollution Act) of 1981” are just a few of the laws that have been passed. The protection of the environment is called for in both Article 48 and Article 51 of the Constitution of India, which respectively outline the Directive Principles of State Policy and the Fundamental Duties of every person. These are some of the laws that were passed at the beginning of the legislative process regarding the environment.

The third chapter of environment legislations activated in India, when the Supreme Court ended the principle of Strict Liability (*Rylands v Fletcher*²) and framed the principle of Strict Liability in the case of *MC Mehta v Union of India*³, It states that if a dangerous object is brought onto land for a purpose other than its natural one and that object escapes, even if it is not the defendant's fault, the defendant is fully responsible for the escape and has few defenses available. During this time period, the idea of public interest litigation for environmental reasons emerged, wherein anybody might petition the courts to halt a practice that was detrimental to the environment. In addition, there are regulations that all businesses must adhere to, such as the EIA and EMP.⁴

III. Constitutional Framework for Protection of Environment

Perhaps the first comprehensive worldwide effort to preserve and safeguard the human environment was the 1972 Stockholm Declaration. This Declaration resulted in a mandate for States to pass laws meant to secure and enhance environmental quality. So, in 1976, the Indian Parliament added “Articles 48A and 51A” to the Indian Constitution. The State shall make every effort to maintain and develop the environment, and to preserve the woods and wildlife of the nation, as mandated by “Article 48A” of the Constitution. Like clause (f) of “Article 51A”, clause (g) of Article 51A puts a responsibility on every citizen of India to safeguard and develop the natural environment, including forests, lakes, rivers, and animals, and to have compassion for all living beings. In light of “Articles 48A and 51A (g)”, it would seem that both the “State” and “citizens” are now obligated under the constitution to preserve, perceive, defend, and develop the environment. When it comes to the nation's natural resources, each generation has an obligation to do what's best for future generations. Protecting and enhancing the environment, as well as safeguarding the forests and animals of the nation, are expressly enumerated as being among the state's constitutional responsibilities in India. It mandates that people “protect and improve the natural environment, including forests, lakes, rivers, and wildlife.” Also, both the Fundamental Rights and the Directive Principles of State Policy include mention of environmental protection. To guarantee that India has a clean and safe environment, the government formed the Department of Environment in 1980. In 1985, this agency was renamed the Ministry of Environment and Forests. Several laws, actions, regulations, and notices back up the constitutional requirements. Soon after the Bhopal Gas Tragedy, in 1986, Congress passed the Environmental Protection Act (EPA), which is sometimes called a “umbrella law” since it codifies and expands upon several other regulations. Following the emergence of such issues, a slew of legislation, such as the Hazardous Waste Handling and Management Act of 1989, were enacted to address them.

Articles 48-A and 51-A. Clause (g)

At first, environmental protection was not explicitly addressed in India's Constitution. In 1976, the Indian government passed the “42nd Amendment” to the Constitution in response to growing international concern for environmental preservation in the 1970s, the Stockholm Conference, and the environmental crisis. Direct measures for environmental protection have been added to the Constitution by a recent amendment. “Article 48-A” of the “Directive Principles of State” Policy was inserted by the “42nd Amendment”.

¹Eric Posner, *Our Environment Introduction*, (Jan. 29, 2023, 10:04 AM), <http://www.Tutorvista.co.m/content/science/science-ii/environment/introduction.php>.

²UKHL 1, (1868) LR 3 HL 330

³AIR 1987

⁴Raghav Joshi, *Evolution of Environment Law in India*, (June. 29, 2023, 10:04 AM), <http://lawpeedia.blogspot.in>.

Article 49-A

It is the policy of the state to preserve the country's woods and animals as stated in this article. The Fundamental Duty established by the aforementioned amendment is a duty shared by all citizens.¹

Article 51-A (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." Therefore, it is the responsibility of the State "(Article 48-A)" and each individual citizen (Article 51-A (g)) to preserve and enhance the natural environment.

Article 253

In order to carry out any treaty, agreement, or convention with any other nation, Parliament has the authority to enact any legislation for the whole country or any portion thereof as stated in Article 253. This Article, written in the aftermath of the Stockholm Conference of 1972, says that Parliament has the authority to act on all topics related to the protection of natural environment. This perspective is supported by the fact that Parliament has used "Article 253 to pass the Air Act and the Environment Act". The goals of the Stockholm Conference were realized via the passage of these laws.

IV. Major Constitutional Amendments Related to Environment

Specific measures for environmental preservation were included as "Directive Principles of State Policy and Fundamental Duties" in the 42nd Constitution Amendment Act of 1976. The State must make every effort to maintain and develop the environment and to safeguard the forests and wild life of the Country, as stated in Article 48A of the Directive Principles. "To protect and improve the natural environment, including forests, lakes, rivers, wildlife, and to have compassion for all living creatures," Article 51A (g) (Fundamental Duties). Forests (17A) and Mountains (17B) The Concurrent List now includes protections for wild animals and birds. Power was devolved to local authorities like panchayats in rural regions and municipalities in urban areas as part of a three-tier system of administration established by Amendments 73 and 74 to the Constitution in 1992. They may become fully autonomous governments if state legislatures approve laws giving them more authority and allowing them to raise their own taxes. Soil conservation, water management, social forestry, and alternative energy sources are just some of the environmental initiatives that panchayats may take on according to the eleventh schedule. Municipalities are allowed to provide water, improve public health and sanitation, manage solid waste, and safeguard the environment, among other things, as detailed in the twelfth schedule.

V. Role of Indian Judiciary in Environmental Protection

The Supreme Court and the High Courts have been instrumental in upholding constitutional guarantees and environmental protection laws. The right to breathe unpolluted air and drink uncontaminated water has been recognized as an element of the right to life and freedom. In *R.R. Delavoi v. The Indian Overseas Bank case*² "being conscious of the limits of legalism, the Supreme Court in the main and the High Courts to some degree during the previous decade and a half tried their utmost to put law into the service of the destitute and disadvantaged under the banner of Public Interest Litigation, as noted by the Madras High Court. Individuals have a constitutionally protected right to a pristine, pollution-free environment. The right to a safe and healthy environment is included in the Supreme Court's protection of people's right to life and freedom".³

Courts and Authorities are up to interpret and carry out the provisions of different environmental protection laws are referred to as "judicial" and "quasi-judicial" bodies, respectively. Article 21 establishes a basic right to life, which includes the right to clean air and water, and this new remedy makes it possible for people or communities with a strong sense of civic responsibility to petition the court to enforce this right. Any High Court or even the Supreme Court itself might be petitioned to hear a case known as a "Public Interest Litigation" (PIL). It is not required that the petitioner have experienced any harm of his own or have had personal grievance in order to pursue legal action. A member who is socially aware or a public-spirited non-governmental organization (NGO) has the right to file a public interest lawsuit (PIL) in order to advocate for a public cause by petitioning the courts for the remedy of a public damage. A breach of public duty or a violation of some provision of the Constitution both have the potential to result in such a harm. The public's involvement in the judicial review of administrative action may be ensured via the use of a mechanism known as "public interest litigation." It has the effect of somewhat increasing the level of democracy in the judicial process.

*M. C Mehta v State of Orissa*⁴ It was decided to submit a writ petition in order to preserve the health of the thousands of innocent people who live in Cuttack and the surrounding regions. These people were suffering from the effects of pollution created by sewage that was generated by the Municipal Committee of Cuttack and the SCB Medical College Hospital in Cuttack. The petitioner's primary argument was that the dumping of untreated waste water from the hospital and certain other sections of the city into the Taladanda canal was causing serious public health issues across the city. On the other side, the State argued that a central sewerage system had been established in the hospital and that there is no sewage flow into the Taladanda canal as was reported. This was in response to the allegations that there was a flow of sewage into the canal. In addition, it was said that the State had not been provided with any information on the canal's pollution or any epidemics of water-borne illnesses that were produced by the canal's contamination as a result of pollution. In addition, the health department refused to accept

¹ MOHANTY, S.K., ENVIRONMENT AND POLLUTION LAWS, 47-48 (Universals Legal Manual,2010)

² AIR 1991

³Rural Litigation and Entitlement Kendra, Dehradun V. State of U.P., AIR 1988 SC 1037.

⁴AIR 1992

responsibility for the provision of drinking water and instead shifted the blame on the municipality, which defended its actions by denying that they were thoughtless or uncaring. The authorities were admonished by the court, and the government was ordered to take prompt action over the situation. In addition, the court suggested the establishment of a committee whose primary responsibilities would be, among other things, the prevention and control of water contamination as well as the preservation of the purity of water that is intended for consumption by humans. The protection of the general public's health is the primary motivation for the formation of a responsible municipal council. It is not acceptable to use a lack of financial resources as an excuse to avoid installing a functional and appropriate drainage system.¹

M. C Mehta v Union of India ² The verdict in the Taj Trapezium case was handed out by J. Kuldip Singh on the eve of his retirement. This marked the successful conclusion of a protracted and challenging legal struggle that M. C. Mehta had been engaged in for more than a decade. In the original petition for this matter, which was submitted in 1984, the petitioner expressed concern that air pollution from the Mathura refinery may cause harm to the Taj Mahal. It was asserted by the petitioner that the sulfur dioxide that was released by the Mathura refinery and the industries formed sulfuric acid in the environment when it interacted with oxygen in the atmosphere with the assistance of moisture. This acid was said to have a corrosive impact on the brilliant white marble that was used to construct the Taj Mahal. The ambient air near Taj Trapezium is predominantly polluted as a result of pollutants from factories and refineries, brick-kilns, automobile traffic, and generator sets. According to the petition, the white marble exhibits spots of yellowing and even some spots of blackening. The deterioration of the Taj Mahal is most noticeable as one enters the building. The hue of yellow may be seen throughout the whole structure. Some areas have unsightly brown and black blotches that make the yellow color stand out more. The fungal degeneration is at its worst in the inner chamber, which is where Shah Jahan and Mumtazmahallie were first laid to rest. The Court made the observation that the Taj Mahal, in addition to being a cultural landmark, is also an independent enterprise. Every year, the Taj receives almost two million visitors from throughout the world. This helps the government of the nation bring in money.³ The court decided upon a number of different orders. For the purpose of regulating activities in regard to air pollution, the Court established a Taj Trapezium, which comprised of 10,400 square kilometers laid out in the form of a trapezium. In addition to requesting that the state enhance the city's power supply, it was requested that industrial facilities switch to environmentally friendly fuel and reduce their reliance on diesel generators. Tanneries that operated out of Agra were requested to relocate away from the Trapezium.

*Bangalore Medical Trust v B. S Muddappa*⁴ In this particular instance, it was ruled that the lack of open space and public parks in the current day, when urbanization is on the rise, rural emigration is on a huge scale, and fast developing crowded neighborhoods may give rise to a health danger. Therefore, to suggest that by converting a land that was earmarked for a low lying park into a private nursing home social welfare was being promoted is to be ignorant of the actual nature of the two and the value of each.

M. C. Mehta (Badkhal and Sujratkund Lakes Matter) v Union of India ⁵ The Indian Supreme Court ruled that the Constitution's Articles 21, 47, 48A, and 51A (g) require the government to safeguard natural resources such forests, lakes, rivers, and animals, as well as to treat them with kindness. The "precautionary principle" mandates that the State Government take action to foresee, prevent, and combat the causes of environmental deterioration.

VI. Challenges for Enforcement of Environment Legislation Effetely

There are more than 200 pieces of law at the federal and state levels that address environmental concerns. The more regulations there are, the more difficult it is to enforce them. In order to ensure that environmental protection laws are effectively enforced, it is necessary to have laws that are both broad and interconnected. Simply passing the legislations into law is not enough. For the purpose of ensuring that these laws are followed in a way that is both effective and efficient, it is necessary that everyone in society have a positive attitude. To adequately prevent pollution, the powers that are now invested in the Pollution Control Boards are insufficient. The Boards do not have the authority to penalize those who violate environmental laws, but they may bring criminal charges against those responsible in court. This, however, runs counter to the spirit and intention of environmental laws since it takes the courts a very long time to make their decisions. Therefore, it is very vital to provide the Boards with increased levels of authority. You must be aware of the fact that the environmental situation in India remains dismal despite all of the legislative action that has taken place recently. The rivers and lakes are still being more polluted with sewage and trash from industrial processes. Some of the world's most important cities now have the unpleasant distinction of having air quality that is even worse than that of major cities in the United States, such as New York and Chicago. The eradication of more and more forestland and the subsequent depletion of soil have both contributed to the widespread problem of more severe flooding. What steps can this nation take to halt the deterioration of the environment and bring it back into a condition of equilibrium? Even while the legislative actions that have been done and the administrative structure that has been put up are adequate indicators of the concern of the government, the execution does not represent a solid comprehension of the problem involved in eco-management and development. The environment is a resource, and it is perhaps the most valuable of all the resources that the earth has. It ought to be dealt with in the same manner. The actions that have been taken by the government up to this point do not demonstrate an equal attention on the issues of management and development that pertain to this essential resource. In many cases, their actions resemble a fire brigade that has been sent to the scene of an incident after it has already begun. The plan need to place equal attention on extinguishing the flames' underlying causes. In the field of environmental protection, it is literally true that an ounce of prevention is worth a gallon of treatment. Consider, for instance,

¹ P.S. JAISWAL, ENVIRONMENTAL LAW, 52(Pioneer Publications, Delhi).

² AIR 1997 SC 734.

³ Raghav Joshi, *Evolution of Environment Law in India*, (Jan. 29, 2023, 10:04 AM)<http://lawpeedia.blogspot.in>

⁴ AIR 1991 SC 1902.

⁵ W.P. (C) No.4677/ 1985 decided on Oct.11, 1996.

the contamination of the rivers in India. It is common knowledge that home sewage, which communities cavalierly dispose of in the rivers that are located closest to them, is the primary contributor to the contamination of rivers.¹ The roughly one hundred municipal garbage disposal sites along the Ganga's littoral are responsible for almost all of the river's pollution. If it is not followed by a significant effort to stop the towns from dumping their garbage in the river, the mammoth cleanup operation known as the Ganga Action Plan would be an exercise in futility. It is common knowledge that there is now available technology for processing municipal trash. However, most communities are unable to pay for it since it is an expensive endeavor. If the Environment (Protection) Act is taken seriously, then all of the municipalities that are next to the Ganga will have to face criminal charges. The Act does not differentiate between public and private pollutants, as is appropriate given its purpose. But doing so would entail adopting a very narrow interpretation of the statute. The more contemporary viewpoint is that individuals need to be guided and helped by the law, and that it also has to develop a pattern of acceptance. If environmental legislation is not backed by a comprehensive set of promotional measures, including everything from direct financial subsidies to cost sharing, for instance in the installation of treatment facilities, there is a very little likelihood that environmental law will be successful. The cost of going to court may quickly add up. Environmental litigation is more costly than other sorts of conflicts because it requires the testimony of experts, the production of technical proof, and other similar elements. The State Boards will need to have the financial means to afford the necessary expertise and administrative support. The majority of state boards are hampered in their efforts to achieve their goals because they lack the necessary competence and financial resources. As a consequence of this, there is a trend of trying to exert moderate pressure on polluting industries and pursuing settlements outside of the legal system.

There is nothing inherently wrong with resolving environmental conflicts in ways other than via the legal system. In point of fact, certain industrialized nations, such as the United States of America, give such a method a higher level of priority than others. However, in India, out-of-court settlements that are legally launched and sanctioned have the potential to make an already persistent issue of corruption worse. It would seem that a more effective technique would be to have the sector chip in on the price of anti-pollution measures rather than have the state fund lengthy and costly prosecutions.²

“The imperatives of development have occasionally come into sharp conflict with those of the environment; the administrative machinery set up to solve the problems of the environment has often failed in its task; and the laws enacted to meet the challenger have been generally inept. Admittedly, the state of the environment in the country is not rosy; the imperatives of development have sometimes come into sharp conflict with those of the environment; and the administrative machinery set up to solve the problems of the environment has often failed in its task”. On the other hand, these are the shortcomings of a country that is struggling with hundreds of crises on thousands of fronts. The precarious condition of the environment of the nation provides a challenge to the country that, in the first place and foremost, tests people's will to live. The water of survival. It has been abundantly shown, not just by the government but, more crucially, by the people. The remainder is dependent on our level of ability and experience, both of which we seem to be gaining gradually but consistently.³

VII. Conclusion

The environment is a significant component of human life, and maintaining a healthy environment is essential to the continued survival of humans. Therefore, it is very necessary for us to take care of our surroundings and assist nature in maintaining ecological balance so that we may pass on to future generations an environment that is at least in the same condition as we found it, if not in a better one. In recent years, there has been a great deal of destruction to the natural environment. The air, water, and soil have all been tainted with pollution, and there does not seem to be any way to reverse the trend. The quick pace of industrialisation and the growth of science have both had a negative impact. The conservation of the environment in the modern period is of the utmost significance since the world is entering a new era without giving any of the significant issues posed by pollution caused by fast industrialization any consideration. Conservation is the most effective strategy there is for protecting the environment. The idea and strategy of managing the environment in such a way as to ensure sufficient quantities of natural resources not only for the now but also for the future is known as conservation. The pace at which tropical forests are being cut down is only expected to accelerate. Estimates of the amount lost and the pace of loss differ, but it seems that almost half of the world's tropical forests have already been lost, and the rest will almost completely vanish within the next two to three decades if the current rate of loss continues. The damage cannot be measured in any way. These forests are responsible for providing a home to an estimated half of the world's plant and animal species, as well as a significant portion of the world's people with water and fuel, and they have an impact on both the local and the global climate. Clearing land for agricultural use, commercial logging,

¹ DIVAN, SHYAM AND ROSENCRANZ, ARMIN, ENVIRONMENTAL LAW AND POLICY IN INDIA - CASES, MATERIALS AND STATUTES, 107(Oxford University Press, New Delhi).

² ROSENCRANZ, ARMIN; DIVAN, SHYAM AND NOBLE, MARTHA L., (ED.) TRIPATHI, ENVIRONMENTAL LAW AND POLICY IN INDIA - CASES, MATERIALS AND STATUTES, 44(The Book Review Literary Trust, New Delhi)

³ J DURGA, *What are the Difficulties faced in Enforcement Environmental Legislation?* (March. 29, 2023, 10:04 AM), www.Preservearticles.com/