



## A Comparative Study of the Environment Laws of India and England with Special References to Their Enforcement

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### ABSTRACT

The study uses research methodology based on comparative law method, concepts of lesson drawing and policy transfer from political science, and socio-legal approaches. This study concludes that India should take measures to improve enforcement of various environmental laws, including adopting a revised policy on pollution prevention, developing an integrated approach to pollution abatement, developing a policy on prosecution and enforcement, restructuring various environmental laws to meet treaty obligations, introducing incentive based instruments for pollution abatement and adopting a cooperative approach to enforcement of the environmental laws. India may positively draw lessons from the UK in these areas. The UK may draw inspiration from the novel environmental jurisprudence developed by the Indian Supreme Court. This study also favours establishment of an environmental court in each jurisdiction.

### 1 INTRODUCTION

The natural environment or natural world encompasses of all living and non-living things occurring naturally, meaning in this case not artificial and not constituting of human involvement. The term is most often applied to the Earth or some parts of Earth. This environment encompasses the interaction of all living species, climate, weather and natural resources that affect human survival and economic activity. The concept of the natural environment can be distinguished in terms of components:

- Complete ecological units that function as natural systems without massive civilized human intervention, including all vegetation, microorganisms, soil, rocks, atmosphere, and natural phenomena that occur within their boundaries and their nature.
- Universal natural resources and physical phenomena that lack clear-cut boundaries, such as air, water, and climate, as well as energy, radiation, electric charge, and magnetism, not originating from civilized human actions.<sup>1</sup>

In contrast to the natural environment there is also a built environment. In such areas where humans have fundamentally transformed landscapes into: urban settings and agricultural land conversion, the natural environment is greatly changed into a simplified human environment. Even acts which seem less extreme, such as building a mud hut or a photovoltaic system in the desert, the modified environment becomes an artificial one. Though many animals build things to provide a better environment for themselves, they are not human, hence beaver dams, and the works of mound-building termites, are thought as natural.

People seldom find absolutely natural environments on Earth, and naturalness usually varies in a continuum, from 100% natural in one extreme to 0% natural in the other. More precisely, we can consider the different aspects or components of an environment, and see that their degree of naturalness is not uniform. If, for instance, in an agricultural field, the mineralogic composition and the structure of its soil are similar to those of an undisturbed forest soil, but the structure is quite different.

#### Elements of Environment

**Lithosphere:** The solid part of the earth consisting of the crust and outer mantle. it consist of mountainous hard layers such as rock in this layer. This layer is very near to living things. Rocks like granite, blast etc exist in this layer.

**Hydrosphere:** the watery layer of the earth's surface; includes water vapor etc. • It consist of ocean, sea river etc, it covers 71% of total earth in which 97% is saline water.

<sup>1</sup>A. Agarwal, , *Beyond pretty trees and tigers, The Vikram Sarabhai Memorial Lecture65* (Deep and Deep Publishers, New Delhi, 3<sup>rd</sup> edn.,1985).

**Atmosphere:** It covers the whole area surrounding the earth up to 800km. It consists of different gases such as nitrogen, oxygen, and CO<sub>2</sub>. Nitrogen covers 78%, oxygen 21%, and CO<sub>2</sub> is a heavy gas and settles in the lower layer of the atmosphere.

• Atmosphere consists of the following layers

1. Troposphere consists of clouds etc. not suitable for aircraft.

2. Stratosphere which is very stable and suitable for aircraft.

**Mesosphere:** Third layer, 85km high from earth surface, here mixing of air takes place.

**Troposphere part of atmosphere** • It is the lower, denser layer of the atmosphere. It consists of clouds etc. and environmental or seasonal changes take place in this sphere. Its height is 18km from earth surface.<sup>2</sup>

## 2 IMPORTANCE OF ENVIRONMENTAL LAWS

Human survival is heavily influenced by the environment. It is critical to have some legislation in place to preserve the environment. Environmental regulations lay the groundwork for us to properly care for the environment. A number of government and non-governmental organisations strive to safeguard the environment and enforce regulations.

Conservation and management are the two most important aspects of environmental law. This body of common law includes environmental agreements, treaties, regulations, and legislation. It was also critical to guarantee that environmental regulations were obeyed and that humans and nature lived in harmony. Violations of these statutes can have a variety of ramifications.<sup>3</sup>

### *Protect human health and the environment*

The primary objective of environmental legislation is to protect both human health and the environment. It all comes down to striking the perfect balance. Environmental protection ensures that environmental activities have no negative impact on the environment, human health, or animal health.

Air quality, water quality, waste management, pollution remediation, chemical safety, and resource sustainability are all covered by this legislation. As a result, environmental rules play an important role in ensuring the safety of humans, animals, ecosystems, and natural resources. Some actions put people's health and the environment at jeopardy, and it is the law's responsibility to safeguard them. Environmental law relates to the use of hazardous pesticides in agriculture, for example, because they have a significant negative impact on human and animal health. There would be no restrictions on pollution, contamination, hunting, or even disaster relief if these rules did not exist.

### **Waste management in a proper way**

One of the most pressing issues confronting the globe today is waste management. It's a major issue that necessitates the development of cost-effective and ecologically friendly waste management solutions. It will be simple to safeguard the environment with proper trash management. The goal of environmental law is to guarantee that waste management does not harm the environment or human health, and that garbage is disposed of according to set standards and procedures. Sweden, for example, has evolved to the point that it now imports rubbish from other countries after establishing superior waste management and recycling technology.

### **Govern industries and manufacturing**

Companies and industrial businesses must adhere to environmental regulations. Environmental legislation will guarantee that enterprises follow all legal obligations for environmental protection and preservation.<sup>4</sup> The duty of an environmental lawyer is to ensure that firms follow all regulations and are ecologically responsible.

### **Protect environment officers**

The importance of environmental stewardship cannot be overstated. Officials and enforcers who ensure that laws are followed and respected should be protected by the law and given the authority to carry out their duties as efficiently as possible without the need for outside assistance. As a result, in order to effectively carry out their jobs, environmental officers and enforcers must be protected by the law. Enforcers and police officers must be safeguarded in order to carry out and control their responsibilities without endangering themselves or others.

## 3 EVOLUTION OF ENVIRONMENTAL LAW IN INDIA

As the twenty-first century proceeded, environmental preservation became more linked to a country's entire growth, and as a result,

<sup>2</sup> Dr. Jai Ram Upadhyay, *Environmental Law* 43 (Central Law Agency, Allahabad, 6<sup>th</sup> edn., 2005).

<sup>3</sup> *Ibid.*

<sup>4</sup> D. Pavan Kumar *Public Interest Litigation and Polluter Pay Principle* 261 ALJ 282 (2001).

Environmental Law gained a boost, with major thrusts in areas including public health, resource conservation, and legal safeguards against pollution harm. There have been hundreds of environmental treaties and agreements made, and each country has its own set of environmental laws. We'll look at how international environmental law came to be the way it is now in this article, but first, let's look at why it's so essential.

Environmental law grew out of a set of ideas aimed at reconsidering humanity's connection with the natural world. Its main objective is to motivate people to make a good contribution to the environment in which they live as a kind of appreciation to Mother Nature. The fundamental goal of environmental law is to alter people's thinking and instill a desire for long-term improvement.

Environmental law seeks to establish a connection between humans and the natural world in which they live. Its objective is to modify a long-held belief about our natural resources that has led to significant deterioration and exploitation. Throughout human history, we have constantly plundered Mother Nature and her resources without ever contemplating how to stop it.

As a result, environmental law is a reaction to the degradation and exploitation of the environment. In a nutshell, environmental regulation is necessary because it is the only way to reverse a long history of unrestrained material progress that has harmed the environment.

### ***Evolution of Environmental Law***

The Traditional Period (1900-1972), the Modern Period (1972-1992), and the Post-Modern Period (1992-present) are the three key periods in the history of international environmental law (1992-2012). The fundamental framework of international environmental law grew and extended throughout this time, and the first glimmers of international environmental law appeared. Legal work was being done at the time to provide the groundwork for the establishment and implementation of global environmental legislation.

### **Policy and Laws in Ancient India (500 BC-1638 AD)**

Environmental awareness may be traced back to the pre-Vedic Indian valley Civilization, which flourished circa 10 BC in northern India. This is supported by archaeological data from Harappa and Mohenjo-Daro, two of the civilization's most important towns. The building of ventilated dwellings, clean streets, many wells, bath rooms, public baths, and covered subterranean drains demonstrates their concern for cleanliness and sanitation. In Vedic culture (1500–500 BC), environmental protection and sanitation were high objectives.

The Charka Samhita has several suggestions for keeping water pure (a medical science text published between 900 and 600 BC).. Under Kautilya's Arthashastra (an ancient book on statecraft, economic policy, and military strategy), various punishments were prescribed for cutting trees, damaging forests, and killing animals, and environmental ethics of nature conservation were applicable not only to common people, but also to rulers and kings.<sup>5</sup>

### **Policy and Laws in Medieval India (1638-1800 AD):**

For Mughal rulers, forests were nothing more than hunting grounds. Muslim monarchs dominated mediaeval India's history, with the exception of the reign of Mughal Emperor Akbar, and no major improvements in environmental legislation happened. During Akbar's rule except rulers, others were prohibited from hunting or shikar. But no major initiatives took place during the medieval period to prevent environmental protection and conservation of natural resources as the rulers were only interested in war, religion propagation and empire building. Barring "royal trees" which enjoyed patronage from being cut except upon a fee, there was no restriction on cutting of other trees, hunting animals, etc. Forests during this period shrank steadily in size.

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## **4 CONSTITUTIONAL MANDATE ON ENVIRONMENTAL PROTECTION**

Our Constitution has enormously grown and evolved over the years and is said to be one of the most amended constitution so far. In the Indian background, the status of environment protection has not only raised to the fundamental law of land but after a long time in recent past it is corresponded with human rights and is now accepted as well established fact that it is basic human right to every citizen of India.<sup>6</sup>

According to the fundamental duties specified in our constitution, individuals have a responsibility to conserve the environment in order to give a clean environment and a life of dignity and harmony to each and every human being.

According to our Constitution, the Directive Principles of State Policy are expressly directed at the development of a Welfare State, and a healthy environment is a fundamental component of that welfare state. One of the state's main responsibilities, according to Article 47, is to

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<sup>5</sup> *Ibid*

<sup>6</sup> S .Shanthakumar, Environmental Law An Introduction 122, 123 (Surya Publication, Chennai, 4<sup>th</sup> edn., 2001).

improve citizens' nutrition and living standards, as well as public health, which includes environmental protection and improvement.

Article 48-A of the constitution requires the government to protect and improve the environment, particularly the country's forests and animals. Part III protects fundamental rights that are necessary for a person's growth.

The Indian Penal Code of 1860 was the country's first piece of law. The term "public nuisance" is defined under Section 268. Sections 133 through 144 of the IPC deal with the removal of public nuisances. These are just limitations to your potential. Sections 269 through 278 of the Indian Penal Code are penal provisions, meaning that anyone who violates one of them would be prosecuted and punished.

In **M. C. Mehta vs. Union of India**, the Supreme Court of India introduced a novel concept of management liability - "absolute and non-delegable" - for disasters resulting from the storage or use of hazardous materials from their factories (the Oleum Gas Leak case). Regardless of whether the corporation was negligent, it must make certain that no one is harmed.

While industries are crucial for the country's development, the Supreme Court declared in *Vellore Citizens Welfare Forum vs. Union of India* that the concept of "Sustainable Development" must be used as a counterweight to the pollution that they produce. 'Precautionary Principle' and 'Polluter Pays Principle' has been accepted as a part of the law of the country.

In *Indian Council of Enviro-Legal Action vs. Union of India*,<sup>7</sup> (the Bichhri pollution case), following the decision in the Oleum Gas leak case and based on the polluter pays principle, the polluting industries were directed to compensate for the harm caused by them to the villagers in the affected areas, specially to the soil and to the underground water. Enunciate the doctrine of 'Public Trust' in **M. C. Mehta vs. Kamal Nath**<sup>8</sup>, the SC held that resources such as air, sea, waters and the forests have such a great importance to the people as a whole that by leasing ecologically fragile land to the Motel management, the State Government had committed a serious breach of public trust.

The changing trajectory of environmental rights in India, from a historical perspective Active judicial intervention by NGOs, community groups, and others, have also set a series of important precedences that go beyond what the bare laws provide. There are many initiatives in Public Interest Litigation (PIL). Some of these Include the cases against the construction of the Tehri Dam (**Tehri Bandh Virodhi Sangharsh Samiti vs. State of Uttar Pradesh**,<sup>9</sup> and Narmada Dams (**Narmada Bachao Andolan v. Union of India**<sup>10</sup> against deforestation (**T. N Godavarman Thirumulpad vs. Union of India**, SC 1636, a case that has since then spawned dozens orders pertaining to forests in India); against mining in the Aravallis (**Tarun Bharat Sangh, Alwar vs. Union of India**<sup>11</sup>; against mining in the Dehra Dun hills (Rural Litigation and Entitlement Kendra, Dehradun vs. State of Uttar Pradesh, against mining in adivasi lands of Andhra Pradesh (**Samatha v. State of Andhra Pradesh**, 1997, a judgment with important consequences for acquisition or use of adivasi lands elsewhere too); on implementation of the Wild Life (Protection) Act 1972<sup>12</sup>; on implementation of Coastal Regulation Zone measures (Indian Council for Enviro-Legal Action vs. Union of India,<sup>13</sup>; on protection of the coastal area against destructive practices (Prof. Sergio Carvalho vs. The State of Goa,<sup>14</sup>; on the right of citizens to inspect official records (this was before the Right to Information Act came into force) (Goa Foundation vs. North Goa Planning and Development Authority.<sup>15</sup> against forest logging and other environmental aspects of Andaman and Nicobar Islands. The judgments in other cases have set important precedents and directions for the further development of policy, law and practice.

## 5 ENVIRONMENTAL LEGISLATIVE ACTIVITIES

The significance of environmental preservation and conservation, as well as the sustainable use of natural resources, is emphasised in India's constitutional framework and international obligations, such as its Nationally Determined Contribution objectives. It is a citizen's responsibility to improve and protect the environment, as well as to exhibit compassion for all living species, according to Part IVA of the Constitution (Article 51A- Fundamental Duties). According to Part IV of the Constitution, the state must also strive to develop and maintain the environment, as well as the country's forests and animals (Article 48A-Directive Principles of State Policies). The Ministry of Environment and Forestry (MoEF) was founded in 1985 and is the country's primary administrative authority for environmental regulation and assurance, as well as the creation of legal and regulatory frameworks. Several pieces of environmental legislation have been passed since the 1970s. The Ministry of Environment and Forests (MoEF) and the pollution control boards form the industry's regulatory and administrative backbone (CPCB, Central Pollution Control Board, and SPCBs, State Pollution Control Boards).<sup>16</sup>

<sup>7</sup> 1996 3 SCC 212

<sup>8</sup> (1997) 1 SCC 388

<sup>9</sup> 1992 SUP (1) SCC 44)

<sup>10</sup> AIR 1999 SC 3345);

<sup>11</sup> 1992 SC 514, 516

<sup>12</sup> WWF vs. Union of India, WP No 337/95

<sup>13</sup> 1996(3) 579

<sup>14</sup> 1989 (1) GL1985 SC 652); T 276

<sup>15</sup> 1995(1) GLT 181);

<sup>16</sup> Kaushik Raval, *Centre for Social Justice* 670 (Kamal Publishers, New Delhi, 2<sup>nd</sup> edn., 2012).

Some of the important legislations for environment protection are as follows:

- The National Green Tribunal Act, 2010
- The National Green Tribunal Act, 2010 (No. 19 of 2010) (NGT Act) created the National Green Tribunal to handle disputes involving environmental preservation, forest conservation, and other natural resources, as well as the enforcement of any legal rights related to these issues. Congress passed the Air Pollution Prevention and Control Act in 1981.
- The Air (Prevention and Regulation of Pollution) Act of 1981 (the "Air Act") creates national and state-level authorities to prevent, control, and abate air pollution while also accomplishing the aforementioned objectives.
- In 1974, Congress passed the Water Pollution Prevention and Control Act.
- The Water Pollution Prevention and Control Act of 1974 (the "Water Act") was enacted in order to prevent and control water pollution in the United States while also preserving or restoring water quality. It also creates Water Pollution Prevention and Management Boards to carry out the aforementioned responsibilities.

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## 6 CONCLUSION

Environmental Justice in the crux means the rational sharing of the burdens and costs incurred in the process of the protection of the environment, discharged through the procedural and substantive adjustments of rights and duties of the people and the states. This is not restricted to the distribution and division of resources among the present populations, but also pertains to intergenerational equity, i.e. the emerging notion that believes that we humans have a special obligation as custodians or trustees of the planet towards the future generations that are to come to preserve our planet and maintain the planet's integrity and ensure the survival of the human race.

Nature is not anyone's property, it is one area of human life where everyone is equal and has equal rights, land, air, water belongs to the whole community as it is not for an individual to own or sell and earn a profit, it for the whole society to share. Environmental justice will not be a success without appropriate law and governance behind it to provide it with the strong foundation and support it needs to stand its ground and help in creating a sustainable future. Development and environment are intertwined with one another and are not mutually exclusive as one can't be achieved without the progress of others.

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