



Environmental Justice; Ensuring Healthy Environment through anti-pollution laws.

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ABSTRACT :

The evolution of environmental law mirrors humanity's growing awareness of the intricate relationship between human activities and the health of the planet. This paper delves into the historical progression of environmental law post-independence, starting from its rudimentary forms to the sophisticated legal frameworks of today. It traces the roots of environmental consciousness to ancient civilizations, where early societies recognized the importance of maintaining a harmonious balance with nature. However, it was not until the modern era, with the rise of industrialization and rapid urbanization, that environmental degradation reached alarming levels, necessitating robust legal interventions.

Central to the discussion is the concept of the right to a healthy environment, enshrined in various legislations and national policies of India. The right to environment acknowledges every individual's fundamental entitlement to a clean, safe, and sustainable environment conducive to their well-being. This right has gained prominence as a cornerstone of environmental jurisprudence, guiding legislative efforts and judicial activism worldwide.

The paper delves into key environmental legislation aimed at protecting and preserving the environment. It analyses landmark legislation i.e., Environment Protection Act, highlighting how it impacts on environmental conservation. These legislative measures embody the principles of pollution prevention, resource conservation, biodiversity preservation, and sustainable development.

Furthermore, the paper explores the challenges and complexities to the environment. It discusses the role of enforcement mechanisms, and the need for public participation and awareness. It also examines the Right to Environment in addressing global environmental issues, emphasizing the interconnectedness of environmental challenges and the necessity of collaborative efforts.

In conclusion, the paper underscores the critical importance of robust environmental legislation, informed by the right to environment, in safeguarding the planet for current and future generations. It advocates for continued advancements in legal frameworks, strengthened enforcement mechanisms, and heightened public engagement to achieve sustainable environmental stewardship.

Keywords: Environment, Protection of ecosystem, Right to Environment, Pollution, Sustainability.

Introduction :

The environment plays a pivotal role in human life as well as in the development of society. With growing technological advancement and industrialization, the purity of the eco- system has been threatened to an appalling extent. The need to protect and improve the environment is so compelling for the peaceful survival of mankind and other life forms on planet earth that the right to environment has emerged as a human right.

Our environment consists of 'Panchtatva'¹ i.e., earth or land, water, light or luster, weather, and air, which together responsible for our survival. If the equilibrium of Panchtatva disturbs the existence of human beings, it will be dangerous. We obtained our survival element from all these Panchtatva, one need Pollution free air to breathe, uncontaminated water to drink, nutritious food to eat, hygienic condition to live and healthy environment to move. These elements are 'Sine qua non' for the sound and healthy development of human personality. In the absence of Panchtatva human beings cannot fully develop themselves. Pollution free environment is a basic need of every human being, but everyone has contributed to its pollution and in the present day it has become a universal phenomenon. A healthy environment is essential for our existence even though we are polluting and destroying our own environment and creating danger for us. The basic reason behind it is that we are taking advantage of development at the cost of health. In present economic development becomes more essential for us than the existence of quality life.

¹ The word 'panchatatva' originates from Sanskrit, where "panch" stands for five and "tatva" indicates elements. Following the universal law of life, everything on this planet is composed of five basic elements or the "panchamahabhutas". These are: Akash (Sky or Space), Vayu (Air), Jal (Water), Agni (Fire) and Prithvi (Earth).

If one opens the Ancient Indian Literature, he will find that there is evidence to prove that the society in the ancient time paid more attention to the protection of environment than what we think today. It was the dharma² of everyone in the society to protect the nature. The people worshipped the objects of nature. In Vedic era the environment was considered very pious position and matter of religions importance. "One tree is equal to ten sons", this quotation of Padmapurana³ shows the importance of environment. The mentality and need are a kinetic term, and it changes according to time. The trees, water, land, and animals gained an important position in ancient times. For example, for causing injury to plants different punishments were prescribed. Govindraja makes a distinction between injury to shade-giving plants, flower-bearing plants, and fruit-bearing plants and he prescribes the lowest, the middle and the highest punishments respectively. Kautilya went a step further and fixed the punishment based on importance of the part of the tree. Some of the important trees were even elevated to the position of God. Manu imposes duty on mankind to protect the forests.

The environmental issues are a fundamental change in human perceptions of life on earth, caused or influenced by human activity, creating ill-effects, such problems commonly regarded as local, regional, or national and may have international or global issues which need political action. The concepts of Globalization have brought the world in proximity and transformed the whole world into a global village. Though earth is geographically demarcated, man with his scientific and technical might could not demarcate natural environment and is common to entire universe. The principles of international law are intended to regulate the conduct of state towards safeguarding the environment, peace, and freedom of international communities. The function of international law is to promote creative peaceful and harmonious world order. The environment and its protection are common to world communities. The sufferance is not confined to pollution originating from the country but spreads to neighboring countries. The biosphere is the same to everyone. Similarly, the existence of man in the biosphere is global one.

Development of Environmental laws in India

With the dawn of independence, nation has started to focus on economic advancement to attain self-sufficiency. It has been realised that industrialization plays a pivotal role in this pursuit of economic progress. However, the rapid expansion of industrialization has led to the emergence of urbanization as a new challenge, consequently impacting the natural environment in this progression.

Until 1970, the government's focus on environmental protection was not particularly focused and impressive. Post-independence, through the enactment of the Factories Act, 1948³ a much awaited and crucial step towards regulating the environment concern was taken. The act aimed to ensure worker safety, regulate pollutant discharge, and safeguard occupational health. Similarly, the Industries (Development and Regulation) Act, 1951⁴ placed significant importance on proper industrial siting, especially considering today's rapid industrial expansion and its environmental implications. The Mines Act, 1952⁵ addressed the safety of mining operations and the well-being of miners. Alongside industrial pollution, agricultural pollution has become a pressing concern and required a policy measure. Consequently, the Insecticides Act, 1968⁶ was introduced to oversee the production, sale, transportation, and usage of insecticides in agriculture, recognizing their substantial threat to the environment.

The landmark development towards environmental policies took after the Stockholm Declaration⁷ and the Rio Declaration⁸. In response to these conferences and to comply with them, the government implemented several key environmental legislations. Notable among these are the Water Act (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, and the Forest (Conservation) Act, 1980. These acts categorize activities that degrade the environment as offenses and stipulate penalties for them.

To sum up, during the British colonial era, initiatives were undertaken primarily for territorial control and financial benefit rather than environmental preservation. It was only post-independence, particularly after the "Stockholm Declaration," that a significant movement toward environmental protection began. Through adherence to international conventions and heightened national environmental awareness, numerous legislative measures and policies have been enacted to safeguard the environment.

Environmental Challenges, its causes and Impact

The key environmental challenges that the country faces relate to the nexus of environmental degradation with poverty in its many dimensions, and economic growth. These challenges are intrinsically connected with the state of environmental resources, such as land, water, air, and their flora and fauna. The proximate drivers of environmental degradation are population growth, inappropriate technology and consumption choices, and poverty, leading to changes in relations between people and ecosystems, and development activities such as intensive agriculture, polluting industry, and unplanned urbanisation.⁹

Moreover, urban environmental decline, stemming from inadequate waste management and sanitation, pollution from industries and transportation, negatively affects the quality of air, water, and soil. It particularly impacts the health of the urban underprivileged, limiting their ability to find and keep jobs, attend school, and exacerbating gender disparities, all of which contribute to ongoing poverty.¹⁰

² the Indian term 'Dharma' implies the meaning of Justice.

³ Factories Act, 1948

⁴ Industries (development and regulation) Act, 1951.

⁵ The Mines Act, 1952 (Act no. 35 of 1952).

⁶ The insecticides Act, 1968

⁷ United Nations Conference on the Human Environment (Stockholm Conference), From June 5-16, 1972.

⁸ United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992.

⁹ Ramana, D.V. and Bhardwaj, R.: —Introduction in V.Vadakar, Ramana, D.V. and Bhardwaj, R (Eds) readings in Environmental Management (Bangkok, UNADI) iii-xii, 1980

¹⁰ Ganesamurthy, Vs Environmental Economics in India, New Century Publications, New Delhi, India 2009.

Poverty itself can exacerbate environmental deterioration, especially when institutional shortcomings persist. For impoverished individuals, certain environmental resources are crucial for both production and consumption of other goods—for instance, water in agricultural activities or fuelwood for cooking. Additionally, many environmental resources serve as sources of income or sustenance, such as fisheries and non-timber forest products. This creates a cycle where poverty, gender disparities, and environmental degradation feed into each other. Moreover, poverty and environmental decline are interconnected and influenced by population growth, which is influenced by a complex interplay of various causal factors and stages of development. Traditionally, local communities have safeguarded village common resources like water sources, grazing lands, forests, and fisheries from overexploitation through established norms, sometimes enforced with penalties for violations. However, these norms can deteriorate due to developmental processes like urbanization, population growth driven by reduced mortality rates, and state actions that prioritize individual rights over communal ones. This shift can empower market forces to push for changes with negative environmental consequences. If such weakened norms persist, community resources will degrade, affecting the livelihoods of those communities. Policy failures can arise from fiscal strategies, like subsidies that encourage excessive natural resource use. Inappropriate policies can also alter collectively managed systems, leading to adverse environmental outcomes. Global challenges like climate change, ozone depletion, and biodiversity loss pose additional hurdles. It's crucial to implement the principle of common but differentiated responsibility, ensuring that multilateral efforts to address these issues don't hinder the development prospects of developing nations. Moreover, the distribution of global natural resources should be based on equal per-capita sharing among all countries.

Right To Environment

The concepts of the right to life, personal liberty, and due process as outlined in Article 21 of the Constitution were relatively inactive during the period of the national emergency in 1976. However, a pivotal shift occurred with the landmark Supreme Court ruling in *Maneka Gandhi v. Union of India*¹¹, which established that the right to life and personal liberty under Article 21 can only be limited through a fair, just, and reasonable process. The Court emphasized that the right to life encompasses more than mere survival; it includes the right to live with fundamental human dignity.

When the Supreme Court examines environmental decisions within the framework of the right to a healthy environment, it faces numerous complex questions. One of the significant challenges is how to strike a balance between environmental preservation and developmental activities. The case of *Rural Litigation and Entitlement Kendra v. State of UP*¹² marked the Supreme Court's initial attempt to address this issue. In this case, a voluntary organization, the petitioners, raised concerns about ecological disturbances caused by mining activities conducted by lessees who had legal rights granted by the government under specific conditions. An expert committee appointed by the Court found that mining limestone in certain areas posed a significant risk, damaging the ecological balance. As a result, the Supreme Court ordered the closure of mining operations in these areas while permitting mining in locations deemed safe by the committee.

The first time when the Supreme Court came close to almost declaring the right to environment in Art 21 was in 1990, through case *Chhetriya Pardushan Mukti Sangarsh Samiti v. State of UP*¹³ and *Subhash Kuniar v. State of Bihar*¹⁴. In *Chhetriya Pardushan's* case, Chief Justice Sabyasachi Mukerji noted that every citizen has a fundamental right to a quality life and living conditions as envisioned in Article 21 of the Indian Constitution. Similarly, in *Subhash Kumar's* case, Justice KN Singh articulated more explicitly that the right to life includes the right to access pollution-free water and air for the full enjoyment of life.

However, in both cases, the Court did not have the opportunity to apply these principles to the case's facts. The Court determined that the petitioners had made false allegations stemming from personal animosity toward the companies accused of environmental pollution. The Supreme Court encountered a significant opportunity in 1991 in *Bangalore Medical Trust v. B.S. Mudappa*¹⁵ to address an intriguing question: whether an open space designated as such in a development plan could be leased for a private nursing home. The Court ruled that land designated as open space, for construction purposes, or other development as part of a scheme established by a local authority like the Bangalore Development Authority (BDA) should not be repurposed unless the scheme itself undergoes legal alteration by the competent authority. The Court's language strongly emphasizes the constitutional duty to safeguard individual freedom and dignity and achieve a quality of life ensured by a healthy and clean environment. It stressed that protecting the environment, open spaces for recreation, fresh air, playgrounds for children, resident promenades, and other amenities are vital public concerns that must be prioritized in development schemes.

The importance of preserving open spaces for parks and playgrounds in the public interest cannot be compromised by leasing or selling these areas for conversion to other uses. Any such action would directly contradict the constitutional requirement to ensure that all state actions uphold the fundamental values of individual freedom and dignity and contribute to achieving a high quality of life that makes guaranteed rights a practical reality for every citizen.

Right to life was expanded further by the Supreme Court in *Consumer Education and Research Centre v. Union of India*¹⁶. The issue in this Public Interest Litigation (PIL) brought by the Petitioner, a Research Centre, was regarding possible reformative and remedial actions concerning occupational diseases of workers in the asbestos industry. The Court emphasized that providing social security, just and humane working conditions, and leisure for workers are integral aspects of their meaningful right to life. It ruled that the fundamental right to health and medical assistance extends even after retirement. Notably, the Court stated that in suitable cases, it could issue appropriate directives to state or private employers to protect the environment,

¹¹ AIR 1978 SC 597

¹² AIR 1985 SC 652 at pp. 654-657

¹³ AIR 1990 SC 2060

¹⁴ AIR 1991 SC 420

¹⁵ AIR 1991 SC 1902

¹⁶ AIR 1995 SC 922 at p. 938

prevent workplace pollution, and safeguard people's health. Directives were issued to the asbestos industry, and the union and state authorities were tasked with addressing significant gaps in law enforcement.

How Environment Protection Act deal with Environmental Pollution 1986

Chapter III of the Environment Act outlines a framework for preventing, controlling, and reducing environmental pollution. Initially, sections 6, 8, and 9 of the chapter outline preventive measures for individuals engaged in industries, operations, or handling hazardous substances. Sections 10 and 11 detail the responsibilities of the Central Government or its officers in pollution control. The functions of laboratories and analysts, along with the evidential significance of their reports, are discussed in sections 12, 13, and 14. Sections 15, 16, and 17 focus on prosecution and penalties under the Act.

Every individual involved in any industry, operation, or process has a responsibility not to exceed the prescribed standards¹⁷ for discharging or emitting environmental pollutants. Any discharge or emission exceeding these limits is considered a violation of the Act and is subject to punishment. This provision focuses on establishing general safeguards to prevent environmental pollution discharge or emission.

Section 8 of the Act addresses a particular category of pollutants, namely hazardous substances. It stipulates that no individual should handle or allow the handling of any hazardous substance except in adherence to prescribed procedures and safety measures. The Central Government has notified several rules governing the procedures and safeguards for handling hazardous substances.

Despite taking all necessary precautions, the possibility of pollutants being discharged cannot be eliminated. Therefore, section 9(1) states that if environmental pollution occurs or is expected due to an accident or unforeseen event, the responsible person, and the person in charge of the location where the pollution occurs or is expected to occur must take immediate action to prevent or reduce the pollution, he shall-

- a) intimate the fact of such occurrence or apprehension of such occurrence, and
- b) be bound, if called upon, to render all assistance, to the prescribed authorities or agencies.

After receiving information about the pollution, the authorities or agencies shall take necessary remedial measures to prevent or mitigate the environmental pollution.¹⁸ The expenses incurred with respect to such remedial measures may also be recovered from the person concerned.¹⁹

Every individual involved in an industry, operation, process, or handling hazardous substances is obligated to provide full cooperation to the person authorized by the Central Government to carry out functions under section 10(1) of the Act. Failing to fulfil this duty without reasonable cause or excuse is punishable under the Act²⁰. Additionally, intentionally delaying or obstructing any person authorized by the Central Government constitutes an offense under the Act²¹.

The Environment Act grants authority to the Central Government to set up one or multiple environmental laboratories or acknowledge existing laboratories or institutes as environmental laboratories. These laboratories are tasked with conducting functions outlined in the Act. The specific responsibilities of environmental laboratories, procedures for submitting samples for analysis or testing, and other relevant details are determined by rules established by the Central Government.²²

The Central Government has the authority to appoint or acknowledge qualified individuals as Government Analysts for analysing samples of air, water, soil, or other substances submitted to any environmental laboratory²³. A report signed by a government analyst can be utilized as evidence of the stated facts in any proceeding under the Environment Act.

The act also contain provision regarding contravention of the provisions of this act and the sole section within the Environment Act that outlines penalties and punishments is section 15. This section specifies that any individual who fails to comply with or violates any provision of the Environment Act, its associated rules, or orders and directives issued under it can be subject to punishment.

Such person in respect of each such failure or contravention may be punishable as follows: -

- i. Imprisonment for a term which may extend to five years, or
- ii. Fine which may extend to one lakh rupees, or
- iii. Imprisonment and Fine both.
- iv. Additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the first such failure or contravention.
- v. Imprisonment for a term which may extend to seven years, in case the failure or contravention continues beyond a period of one year after the date of conviction.

Conclusion

Over time, the Indian government has enacted numerous laws aimed at aiding environmental protection efforts. However, despite these regulations and acts, they have not been entirely effective in safeguarding the environment. Many within the governing bodies have succumbed to greed, misusing the laws and ruthlessly exploiting land resources, resulting in ecological devastation and social injustices. The majority of industry leaders seem to lack a

¹⁷ Section 7

¹⁸ Section 9(2).

¹⁹ Section 9(3).

²⁰ Section 10(2).

²¹ Section 10(3).

²² Section 12

²³ Section 13

sense of social responsibility, exploiting the country's resources and polluting the environment, including the air, water, and land. Additionally, public apathy has contributed to the challenges faced in environmental conservation.

It's crucial for the people of India to awaken to the significant damage inflicted on the environment in the name of progress. Decision-makers often prioritize industrial and technological development over environmental protection and welfare, leading to a severe violation of human rights. Industrialists, with the state's tacit approval, often neglect environmental concerns under the guise of progress. It's time to reject fatalism and the acceptance of industrial and technological development at the cost of human lives. The belief that investing in environmental protection is a waste and harms the common people must be eradicated from the Indian mindset.

The discussion highlights that safeguarding and conserving the environment are intrinsically linked to sustainable development, a concept protected under Article 21 of the Indian Constitution. India's commitment as a signatory to numerous international agreements, which are incorporated into national law, underscores this connection. Consequently, the judiciary's role in upholding this constitutional mandate through judicial activism and public interest litigation is effectively fulfilled.

A powerful movement has grown up all over the world for protecting environment. Especially International Environmental conferences adopted principles to guide the governments in their handling of global environmental crisis. States also adopted policies and guidelines in protecting environment. Judiciary has given helping hand in promoting environmental protection.

Suggestions

For the protection of environment and ecological development in India, the following suggestions are given:

1. Existing legal frameworks require a broad and liberal interpretation, and the judiciary should play a more active and constructive role in interpretation of environmental laws.
2. Effective implementation of Environmental laws should be on priority of the executive and tools like environment impact Assessment and environment audit should be used more.
3. Government must take the initiative to create a system of public awareness programme inclusive of the key stakeholders.
4. The decision of the Supreme Court in the case of Ratlam Municipal Council should be treated as containing the basic guidelines in determining the primary responsibility of the local bodies as also of the industries
5. Coordinating efforts is needed between the government, local authorities, and stakeholders to facilitate exchange of information, sharing of expertise knowledge, developing arrangements for technical cooperation.
6. The present judicial policy of encouraging public interest litigations for protection of the natural environment should be continued in view of the wider social interests affected by environmental pollution.
7. Sincere commitment to good environmental practices must be supported by the government for sustenance of life and adopting green technologies, that are highly innovative, cost-effective, eco-friendly technologies.

REFERENCES:

1. **Chetan Singh Mehta**, —Environment Protection and the Lawl, Ashish Publishing House, New Delhi (1991).
2. **Durga Das Basu**, —Commentary on the Constitution of India, (6th edn.), Sarkar, Calcutta.
3. **Kapoor, V. K.** —Environment Pollution and the Lawl, (1993).
4. **T.S. Doabia**, -'Environmental & Pollution Laws in India' (2017).
5. DELHI LAW TIMES Journal.
6. SUPREME COURT REPORTER Journal.
7. National Action Plan on Climate Change-2018
8. The 2030 Agenda for Sustainable Development.
9. Environment Protection Act (1986)
10. wikipedia.org