

## ENDING ENVIRONMENT EXPLOITATION: ARE ENVIRONMENTAL LAWS THE ANSWER YET?

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### ABSTRACT

Across various parts of the world, the environment has been degrading and heading towards a major downfall at an alarming rate. It is pertinent to understand the complexity of this situation instead of focusing essentially on politics, industrialization, socio-economic issues, and vested interests. The environment indefinitely plays a significant role for not just humans and animals but also microbial organisms by subsequently providing them a suitable atmosphere to grow in. Moreover, it provides us with an inexhaustible list of resources ranging from basic necessities such as fresh air, drinkable water to raw materials such as rubber, aluminium for household purposes, or even industrial use. Evidently, its preservation is rather non-negotiable and humans ought to play an instrumental role in the further development towards conservation of the environment, in the form of institutional policies and the involvement of several organizations that cater towards the protection of the environment. Despite its evident paramountcy to human existence, the development of a nation is only measured through the Gross Domestic Product that focuses merely on economic development, neglecting the environment altogether. The woeful state of affairs is such that claims of development supersede the claims for environment conservation. Even though sustainable development has been accorded as a major global priority, the legislations and the policies have so far had no considerable implication. Is it because environmental degradation has not been manifested as a real concern yet? Does environment conservation only restrict itself to academic debates? Have the policies attenuated the vigour with which Environmental concerns must be tended?

**Keywords-** Environmental law, Constitutionalisation of law, Sustainable development, Environment, United Nations Environment Programme, GEO-6

## INTRODUCTION

*“One of the first conditions of happiness is that the link between man and nature shall never be broken.” – Leo Tolstoy*

Such romanticized renditions of environment have constituted the subject matter of numerous literary and philosophical accounts that never seem to elaborate enough on the mystifying beauties of the environment. Science however, consolidates the concept of environment by defining it as the complex of biotic, physical and chemical factors (such as climate, soil, and living things) by which one is surrounded. The interdisciplinary interrelation between science, literature, society, politics, economics and law however have considerably shifted their focus on the discussion of the degrading environment, its causes and its implications. Such trends gained momentum post the Industrial revolution wherein economic development came at the cost of wrecking the natural environment. The human fixation with economic development which just about redefined all other societal structures became a paramount marker of growth of any nation. In such a scenario the negative implications of this endeavor appeared to be eclipsed, until the degrading environmental concerns manifested in the form of larger concerns like resource scarcity, global warming and climate shift. The negative implications then were acknowledged in economic terms as externalities. “Externalities are those costs and benefits, generated by individual decision makers in our society, that primarily affect third persons. Environmental pollution is the classic example of a negative externality or external cost. Whenever waste products of production processes are discharged into the public environment, their treatment (or lack thereof) is transformed from a cost to the producer to a cost to society.”<sup>i</sup> A need was then felt to shift national as well as global priorities to fit environmental concerns in the larger picture of development. “Even though the law has important limitations, it can be used as a tool to identify national goals and to promote their achievement by means of incentives or sanctions.”<sup>ii</sup> Policies thus translated into legislations most of which were “directed toward redistributing these costs back to producers, so that they, rather than society, take responsibility for the consequences of their actions”<sup>iii</sup>. This essay discusses various legislations and policies first in the Indian context and then in the global context. It further critically analyses the problems with the approach adopted towards policy formulation and constitutionalisation of laws. The aim of this essay is to accentuate the importance of the environment while simultaneously highlighting the ineffectiveness of laws. Through this we

wish to propose changes in the global approach towards environmental laws and ensure that it is not trivialised as a secondary concern.

## **LEGAL PROVISIONS IN INDIA**

“Due to the population pressure, India pushes ahead with aggressive industrial development. Consequently, thousands of industrial clusters nationwide produce enormous amounts of untreated toxic waste that often end up in rivers, lakes, forests, and landfills.”<sup>iv</sup> The accelerated industrial development is also catalysing environmental destruction. To address this concern, The Department of Environment was founded in 1980, followed by the Ministry of Environment and Forest that was established in 1985. In response to the unfortunate Gas Tragedy incident at Bhopal, Environmental Protection Act came into being in 1986. Several constitutional provisions acknowledge the need for protecting the environment. “The forty-second amendment to the Indian constitution in 1976 introduced principles of environmental protection in an explicit manner into the constitution through Articles 48A and 51A(g).”<sup>v</sup> These obligated the state and the citizens to undertake the duty to protect and improve the environment.

Article 51-A (g) reads, "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."<sup>vi</sup>

Article 48 A states, “State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”<sup>vii</sup>

A plethora of other acts that are directed towards the preservation of water, air, forest and wildlife have been formulated. International treaties and conventions too command their influence over policy making decisions. However, the enforcement of the policies and obligations of the state as well as citizens is pivoted to a much greater extent on the legal institutions of the country that hold the power to take action if the constitution and its directives are pried with.

## CONSTITUTIONALISING THE PROBLEM

The courts have been moderately successful in developing certain initiatives, which have culminated in bringing environmental concerns to the main public fora. In this pursuit, they have attempted to reconcile the right to wholesome environment with that of fundamental rights guaranteed to every citizen under Article 21 so as to bring accountability under the state's jurisdiction. This proactive judicial stance of the courts was first observed in the case of *Ratlam v. Vardhichand*<sup>viii</sup> wherein Iyer J introduced the concept of "procedural Justice" that gives paramountcy to "finding procedures which are conducive to the pursuit and protection of rights of ordinary men."<sup>ix</sup> He further went on to state that the "courts are under a duty to 'relentlessly' enforce the law. The judicial power can command obedience from reluctant bureaucracies."<sup>x</sup> The implication of this stance was that the courts could demand action or omission from the state agencies to suit the environmental concerns. Further, a broad interpretation of Article 21 was made in the *Maneka Gandhi judgement*<sup>xi</sup> where Bhagwati J pronounced that "The attempt of the Court should be to expand the reach and ambit of fundamental rights rather than attenuate their meaning and content by a process of judicial construction."<sup>xii</sup> This implied that the right to the environment could be shielded by constitutional protection and action could be brought against the non-abiding state under Article 32. However, no rationalisation of such kind was ever provided explicitly in any of the judgements. It was subjected to ambiguity that could prompt discretion of either kind.

While references to Article 48 A and 51A(g) were made in various judgements, none of them unequivocally stated that the right to wholesome environment was a fundamental right. While in the judgement of *M.C. Mehta v. Kamal Nath*<sup>xiii</sup> it was stated that "In order to protect "life", in order to protect "environment" and in order to protect "air, water and soil" from pollution, this Court, through its various judgments has given effect to the rights available, to the citizens and persons alike, under Article 21 of the Constitution"<sup>xiv</sup> it never clearly stated whether the right to a wholesome environment could be integrated with guarantee of life and personal property in order for it to be called a fundamental right. The Rajasthan High Court in the case of *L.K. Koolwal v. State of Rajasthan*<sup>xv</sup> attempted to provide a legal reasoning for the same by drawing an interrelationship between fundamental duty as provided in Article 51 A (g) and fundamental rights. Justice Mehta stated, "right and duty co-exist. There cannot be any right without any duty and there cannot be any duty without right."<sup>xvi</sup> However, if we draw conclusions through this premise, it would be a fallacious deductive reasoning since all

fundamental duties cannot be translated into fundamental rights. Similarly, in *Keshavananda Bharti v. State of Kerala*<sup>xvii</sup> Justice Mathew observed that “The Fundamental Rights themselves have no fixed content; most of them are merely empty vessels into which each generation must pour its content in the light of its experience. Restrictions, abridgment, curtailment, and even abrogation of these rights in circumstances not visualised by the Constitution-makers might become necessary...moral rights embodied in Part IV of the Constitution are equally an essential feature of it, the only difference being that the moral rights embodied in Part IV are not specifically enforceable as against the State”<sup>xviii</sup>

However, all these legal arguments only embody the responsibility of the state. “The logic adopted by the court may be useful if the state is the polluter for it can be argued that what the state cannot do directly it cannot do indirectly. But to extend the same logic to read a positive duty on the part of the state to bring pollution by private parties to an end is to extend the logic beyond its confines...”<sup>xix</sup> Even so, In *M.C. Mehta v. Union of India*<sup>xx</sup> Article 21 was indeed applied against private actors. The rationale behind this included the application of an expansive definition of the state under article 12 which took in its fold the private enterprises too. The concept of absolute liability was introduced such that the cost of the externalities was directed back to the producers of the same even when they pleaded negligence. “The principle of absolute liability states that when an enterprise is engaged in hazardous or inherently dangerous industry and if any harm results in account of such activity then the enterprise is absolutely liable to compensate for such harm and that it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part”<sup>xxi</sup>

When the co-existence of ‘development’ and ‘environment’ were pitted against each other such that one’s presence came at the exclusion of the other, a new concept was introduced namely ‘Sustainable development’. “The concept of sustainable development itself is comparatively young. It first appeared in the International Union for Conservation of Nature and Natural Resources (IUCN) Report of 19, picked up by Brundtland report in 1987. According to Mrs. G.H. Brundtland in her 1987 sustainable development is the development that “meets the needs of the present without compromising the ability of future generations to meet their own”<sup>xxii</sup> the judgement in *Rural Litigation and Entitlement Kendra, Dehradun v. State*<sup>xxiii</sup> Justice Bhagwati had emphasised on the “need for reconciling the conflict between conservation and development in the larger interest of the country.”<sup>xxiv</sup> References to various international



conferences such as the Rio Conference and UN's general assembly were made in the case of *A.P. Pollution Control Board II v. Prof. M.V. Nayadu*<sup>xxv</sup> wherein the supreme court indicated their intention of adopting the principles of Sustainable development. However, these concepts have only been applied to cases as long as development came at the deterioration of resources of human need. This was apparent in the case of *Diksha Holding*<sup>xxvi</sup> where "there was no material to show the value of sand dunes to the environment save in terms of aesthetics which the court was willing to sacrifice to ensure development."<sup>xxvii</sup>

It is evident that the courts in India have undertaken a pro-active role in establishing environmental concerns and advocating conservation, the legal provisions in India still leave a lot of room for ambiguity and must still evolve considerably to have notable positive implications for the environment.

## GLOBAL STATISTICS AND DATA

With the extensive data collection and the creation of reports in different parts of the world, including the help offered by the United Nations Environmental Programme, NASA and several other organizations we now have approximate figures on climate change, gas emissions, its effect and numerous indicators responsible for the degradation of the environment are proposed. With the current scenario, according to the Emission Gap Report 2019 by the United Nations, "the temperature is likely to increase by 3.2 degrees this century. Had accurate measures been taken to curb the augmenting rate of global warming 10 years ago, there could have been a reduction of 3.3% in the emissions released each year".<sup>xxviii</sup> Regardless of this case, the organization prompts for quick action to be taken by Governments, factories and urges the people to step up as a collective community and reduce emissions vastly by 7.6% till 2030 to prevent further degradation and devastation of many families who tend to suffer enormously because of health issues and other factors<sup>xxix</sup> Moreover, this report highlights the gravity of this situation and its dire consequences if the current state of affairs is not looked into, with utmost sincerity and dedication. The involvement of modern countries is essential to introduce policies that limit the excessive harmful impacts of several activities carried out by industries on a much greater scale, leading to excessive and ruthless exploitation of the

environment, who continue to work endlessly for their end products, blatantly ignorant of the consequences of their actions.

The International Energy Agency, an autonomous intergovernmental organization that was created as a response to the 1973 oil crisis (which created a substantial shortage in fossil fuels and raw materials across the western countries) released data on the carbon dioxide Emissions from multiple processes such as the generation of industrial waste, unwarranted burning of fossils and relentless emission of gasses into the air.<sup>xxx</sup> It was noted that China, the United States of America, India, and also, the Russian Federation are among the top countries responsible for the environmental damage, thereafter followed by Japan and Germany.<sup>xxxi</sup>. Despite the fact the economic growth of China has been exceedingly high, it has come at the cost of major environmental degradation. Furthermore, what has supplemented this downfall more is the insufficient intervention of the Government which continues to prioritize its policies encouraging economic development over environmental concerns. Taking this into consideration, pollution from these primary manufacturing industries pose the most severe threat to the environment. “This could be illustrated by taking the example of Huang river, where eighty percent of the industrial waste is deposited into the river unchecked. Such heavy wastage primarily comes from the oil companies, chemical plants, industries, and textile factories. In addition to this, China’s dependence on power has resulted in the construction of thermal and hydroelectric generating plants leading to the displacement of locals, infertile land, and increase in deforestation. Ningxia and Gansu provinces discharge tremendous amounts of waste into this river.”<sup>xxxii</sup> Apart from the production of wastewater, other factors such as soil erosion and salinization of farmland have contributed vastly to the poor environmental quality. Water has also been another critical issue. “More than 90% of that water supply is contaminated and over 400 cities in China have been suffering from acute water shortage because of the heavy presence of pollutants and toxins in the water”.<sup>xxxiii</sup> The tension between economic growth and the environment has been increasing profusely. This case is not only restricted to China but also countries like the United States of America or even India which have been working in an unrelenting and inexplicable manner to achieve globalization and are aiming towards the proliferation of economic growth to be a self-sustaining country. “The chief problem attached to the approach of the United States in policy-making to protect the environment is the intersection of science and politics. The former raises awareness about the calamitous damage about environmental degradation while the former is about contesting

elections, vote bank politics and catering towards a specific section of the society, by appealing to their vulnerabilities.<sup>xxxiv</sup> Moreover, the USA plays a great role in funding various international programs in organizations such as the International Energy Agency and makes substantial financial contributions to the United Nations Environment Programme as well<sup>xxxv</sup>. Many significant politicians have addressed the environmental concern such as Bill Clinton who has spoken endlessly on the pressing need to raise awareness and take action regarding calamities like acid rain or forest fire. However, it is a known fact that the current government led by President Donald Trump has been rather ignorant towards the preservation of the environment and has taken drastic measures that have led to dire consequences<sup>xxxvi</sup> and has also increased the number of environmental concerns that need to be addressed immediately. In 2017, the Trump administration withdrew its stance from the Paris Climate Agreement, and even though it was a promise made by Bill Clinton, the US never ratified the Kyoto agreement. Moreover, the rule ‘once in, always in’ has been dissolved. Instead of penalizing industries for exceeding the prescribed legal limit, Trump’s government urges companies to decrease emissions till the target is met, giving discretionary and unrestricted power to private companies and industries. Rules and regulations on the gas flaring which were essentially controlled by the States are now more relaxed. The most critical change made in the field of environment and wildlife is the elimination of ‘climatic’ change from the extensive list of national security threats in 2017.<sup>xxxvii</sup> These clearly show disinterest and indifference towards the protection of the surroundings and the conservation of the beautiful flora and also, the fauna which continues to be on the verge of danger and immediate threat of extinction, followed by the poor living conditions as a result of lack of legislative interference and introduction of strategies to help defend the same.

## **THE CRITICAL ANALYSIS OF THE GEO-6**

Even though there is a clear distinction between the kind of environmental problems, every country faces depending on their industries, use of fossil fuels, lack of policy making, unawareness about the environmental protection, a common subject that binds all the countries together is environmental degradation at an accelerated rate consequently resulting in global warming all across the world. In Global Environmental Outlook (GEO-6) under the ambit of



the United Nation Environment Program, regional assessments of six regions of the world were made, detailing the particular environmental issue affecting these regions in an elaborate and comprehensive manner.<sup>xxxviii</sup> In Asia, increasing sustainable consumption without any compensation has consequently led to worsening of the situation as it has generated tremendous amounts of waste, emissions of several gasses resulting in air pollution. Secondly, wildfire and deforestation have also resulted in the loss of biodiversity. As per the report, contamination of water has chiefly been caused by human faeces and industrial waste released particularly by pharmaceutical companies, especially in East Asia. Diseases caused because of the adulteration of water has led to 1.8 million deaths and 24.8 million facing lifelong chronic diseases. The uncontrollable waste generated as a result of a lack of processing of the waste produced has led to degradation of land and the release of harmful gases.<sup>xxxix</sup> “In Mumbai, 12 percent of the total waste generation has been lying, unprocessed and unaccounted for, resulting in poor living conditions, high levels of pollution and an intensification in health diseases, seen in people of all kinds of age who face permanent damage because of the sheer lack of ignorance by the State to intervene.”<sup>xl</sup> The uncontrolled growing population has further led to more environmental damage because there is now an unmediated competition between the people to fight for the limited resources for their survival. Many people, including kids and women, have to work and expose themselves for prolonged periods in factories that comprise hazardous toxins, endangering their health and possible offspring too. In India, water is scarce, considering that Ganga and Yamuna have been infiltrated with dirt, ashes, wastes for decades now. and fertile land to grow crops in. It indeed comes down to survival of the fittest.

The report further goes on to talk about Africa where developed cities like Cairo or Luanda have to also face challenges daily arising from mediocre and unsatisfactory sanitation facilities due to the impecunious or lack of investment in building solid infrastructure. Half of the population in Sub Saharan Africa continues to live in poverty and still don't have complete access to fresh drinking water or functioning sanitation facilities.<sup>xli</sup> Regardless of the economic growth or GDP rate, every country seems to be troubled and majorly affected by the environmental damage that has been caused. This should ideally raise the alarm that there is a pressing need to address environmental issues and derive possible solutions to encourage sustainable development and preserve our surroundings. This situation clearly calls for an immediate intervention from the Governmental organizations to improve the living conditions of their citizens.

There are a countless number of laws being introduced by various countries across the world, especially after the Paris agreement where many nations pledged to introduce national policies that have an environmental goal of bringing down the global temperature increase to two degrees Celsius and limit the increase to 1.5 degrees Celsius. A majority of nations have introduced guidelines and institutional policies to work towards this goal for the past few centuries. These rules and regulations typically cater to the conservation of the environment by focusing on preserving the flora-fauna, taking the appropriate measures to use resources, and imposing particular limits on the waste generated by factories.

### **WHAT'S THE FUSS ABOUT?**

The fundamental problem of all these policies is the lack of implementation or its execution with seriousness. There is undoubtedly a dearth of loyal commitment towards preserving the environment, primarily because of the lack of awareness of the dire consequences of global warming and environmental damage which could make it problematic for humans to live in. A surrounding with hazardous toxins such as Sulphur, Carbon Dioxide and Methane to breathe in, with impure water that could result in water-borne diseases is rather traumatizing to imagine, let alone live in. The paucity of infrastructure could lead to unhealthy surroundings because of the scarcity of adequate sanitation facilities. It is likely to affect public health at large and will result in the gradual increase in the mortality rate too with considerably reduced birth rates. Moreover, with the land degrading at such an augmented rate, most of the soil will be infertile, devoid of the minerals making it burdensome to grow resources. On a larger scale, it is bound to affect international trade, export-import rates and also cause a deficiency in fulfilling the hunger of thousands who have to face the brunt of the environmental damage, the most. This category mainly includes the poor, underprivileged casual labourers who have to work in precarious conditions, without acquiring any kind of benefits for the same.

### **SOLUTIONS TO TACKLE ENVIRONMENTAL DAMAGE**

It can be easily inferred that the mere introduction of legal policies shall not be sufficient, if we wish to reach our goals that aim towards the protection of the environment. It is rather

imperative that apart from the existence of legal strategies, we adopt non-legal strategies for the same.

Moreover, it is of paramount importance to take the appropriate measures towards the upliftment of the environment before it is too late. There are several ways of doing so without affecting economic growth or hampering with the functions of industries, oil plants, or textile factories. A lot of suggestions and policy recommendations have been suggested by advisory committees like the United Nations, which essentially work towards the protection of the environment. Many of these guidelines such as the Kyoto Protocol, an international treaty committed to reducing the emissions of greenhouse gases has also been adopted by a lot of nations. However, the implementation is lagging and reeks of inefficiency and disorganization. This can also be linked with the lack of awareness and mindfulness about the environment, among the community and the leaders of the world. The environment is seen as a secondary non-harmful issue and often taken for granted, considering the 'surplus' amount of resources we currently think we have. We fail to realize that global warming has reached an acute level and there is already an undersupply of raw materials and fossils because of the overconsumption and immoderation of the use of these supplies gifted to us, by nature. A journal article on 'Environmental Issues and the Law' by Ragna Henrichs<sup>xlii</sup> has beautifully stated that we ought to formulate laws and introduce legal rules and restrictions to encourage 'industrial ecology'. There is an emphasis on the introduction of several incentives to achieve the goals to meet the target for the conservation of the environment. This shall also lead to the least amount of intrusion into power plants or other diverse numbers of industries across the world.

For countries with provisions for the environment in the legal system (like India), another possible solution is to ensure the strict executions of these existing legal strategies and plans. Legal provisions based on the environment, followed by stringent penalties and tougher punishments, in case of any deviation from the environmental guidelines, established by the necessary government could help in creating discipline and maintaining order. Since awareness seems to be one of the major reasons why we are unconsciously causing environmental damage, it could be solved by making humans more alert and responsive about the repercussions of the same. This can be done by signifying the importance of the environment and its preservation in the education system. Essentially, we should also work towards making education accessible to all. It should include the poor and the underprivileged who live in

dreadful circumstances and are more prone to diseases because of the pollution. The more awareness we spread about our current scenario, the greater number of aware beings, we shall create, who will work towards conserving the environment. Moreover, the GEO-6 by the UNEP also gives several recommendations about the same. By emphasizing on the importance of harnessing natural capital, in a way that it does not damage ecosystems is one of the great ways of going about it. This could be done by the Government which ought to find more extensive and creative solutions to let economic growth and resource consumption run parallel to each other.<sup>xliii</sup> Since the excessive use of fossil fuels is resulting in the emission of toxic gases, carefully limiting the use of these raw materials and introducing alternative measures for renewable energy is another possible solution. The advancement of technology can also help accelerate the process where the environment has seen some form of improvement, especially in countries like China. “As far as, environmental risks such as chronic health issues among individuals, especially the poor should be minimized by the intervention of the Government and the strengthening of the intergovernmental coordination at every possible level, local or international. The most critical recommendation of the report is the efficient use of low-carbon in infrastructure, production of energy with ‘effective’ and sustainable resources is the MAJOR key to protecting the assets”.<sup>xliv</sup>

## **SMALL SCALE EFFORTS THAT SHALL MAKE ALL THE DIFFERENCE**

A lot of people are going to argue against this proposition by stating that these solutions only cater to the Government or International organizations. On a personal level, we can take several measures to curb the environmental damage, we have already caused and contribute towards its upliftment and growth. Daily, we tend to throw out garbage and litter, without thinking of its drastic consequences that the trash could mix with the soil and cause a lot of problems. Minimizing the use of personal vehicles and exploring public transport in the city can be another measure to help the environment. First and foremost, we ought to ban the use of plastic, no matter how useful they are. Plastic is undeniably toxic and takes thousands of years to degrade. Since animals are not able to distinguish between these things, they tend to consume such plastic that blocks their respiratory system, leading to their death. Despite just being another person in society, we can contribute on a small scale and see its beautiful results on a

large scale. We have to believe the fact that these resources are not just restricted to our generation but also our upcoming future generations. Do we really want to leave them an inheritance of infertile degraded land, with no drinkable water and fresh air to breathe in?

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