

PROTECTION OF ENVIRONMENT: A STUDY ON LAWS RELATING TO IT IN INDIA

Written by Sudipta Patra & Dr. Rajalaxmi Jati***

**Assistant Professor of Law, Midnapore Law College, Midnapore, India*

*** Principal in Charge, Balasore Law College, Balasore, India*

ABSTRACT

For sound development of a human being, a human being needs unpolluted and fresh air to breath, uncontaminated and clear water to drink, nutritious and healthy food to eat and hygienic and proper condition to live in. Right from mother's womb these elements are *sine qua non* for proper development of a human being. In the absence of these elements generally a human being cannot survive properly. Man in order to satisfy his needs, uses the resources of environment but he rarely pays due attention for its protection and improvement. Man is doing this either because of his indifference towards it or because of his ignorance regarding it or because of his lack of ability to improve it or because of his lack of good mentality to protect it. In the present days, environment is being affected adversely day by day in the name of development and progress through industrial and agricultural revolutions. In India, the environmental problems are increasing rapidly. Rapid industrialisation, deforestation, soil erosion, land degradation and urbanization are all worsening the problems of environmental pollution. Today, all over the world, the conservation, protection and improvement of human environment are found as major issues. The problem of environmental pollution in the present scenario has acquired international dimension and our country is no exception to it. In the present days environmental pollution is considered as one of the most important problems of our planet which is suffered by human beings and which is also suffered by other life forms of our globe. So, we have to take proper steps for the protection of our environment throughout the world. We cannot live without the resources of environment so we have to give proper emphasis on the importance of the protection of environment. In India our Government and our Judiciary both have taken so many steps for the protection of our environment. In our country in the present scenario so many laws are made by our Government for the protection of environment and ecology.

Keywords: Environment, Pollution, Industrialisation, Protection, Natural Resources, Ecology.

INTRODUCTION

At the time of discussing the environment we must keep it in our mind that it consists of both physical environment and biological environment. Land, water and air, these are coming under physical environment. Plants, animals and other organisms are included within biological environment. We find that both physical environment and biological environment are inter-dependent. Industrialisation, urbanization, explosion of population, over-exploitation of resources, disruption of natural ecological balances, destruction of a multitude of animal and plant species for economic reasons are the factors which have contributed to environmental deterioration.ⁱ Sometimes it is found that the degradation of environment of one country degrades the global environment and it is affecting all the countries of the world.

The increasing industrial pollution, soil erosion, deforestation, urbanization, land degradation and a rapidly growing population which has taken our country from 300 million people in 1947 to more than one billion people today are constantly creating a strain on the environment, ecology and the natural resources of our country. Overexploitations of the natural resources of our country which are taken either from land or from water and the hazardous process of industrialisation have caused degradation of natural resources. Environmental pollutions are considered as very serious problems which are faced by this present human generation and which are also faced by the other life forms of our earth.

HISTORICAL BACKGROUND OF CREATING ENVIRONMENTAL LAWS IN INDIA

- ❑ While displaying the nation's commitment to the protection of environment, the then Prime Minister of India, Mrs. Gandhi, in United Nations Conference on Human Environment, at Stockholm, said that the natural resources of the earth, including the air, water, land, flora and fauna and especially representative sample of the nature ecosystem must be safeguard for the benefits of the present generation and also for the benefits of the future generations through proper careful planning or through proper management, as it will be found appropriate. Nature conservation including the

protection of wildlife must receive proper importance in planning for economic development.

- ❑ The Government of India, to comply with the principles of the Stockholm Declarations adopted by the International Conference on Human Environment, has made so many provisions and laws for the protection of environment and ecology of our country.

OBJECTS AND IMPORTANCE OF CREATING ENVIRONMENTAL LAWS IN INDIA

- ❖ To protect and improve the environment and to safeguard the forests, lakes, rivers and wildlife of our country.
- ❖ To make a balance between economy and ecology.
- ❖ The long-term goal of an economic society is to grow in such a way so that no permanent damage is done to its environment.
- ❖ To make people understand that the life on this planet will not survive without proper environment.
- ❖ To give importance on both the industrialisation and economic development on one hand and on the protection of environment on the other hand.

SOME IMPORTANT PROVISIONS AND LAWS FOR THE PROTECTION OF ENVIRONMENT OF OUR COUNTRY

Under DPSP

Article 48-A: By the Constitution (Forty-second Amendment) Act, 1976, sec. 10 (w.e.f. 3-1-1977). Protection and improvement of environment and safeguarding of forests and wild life.

The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.ⁱⁱ

Under Fundamental Duty

Article 51-A (g): By the Constitution (42nd Amendment) Act, 1976, 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.ⁱⁱⁱ

So, we can say that the two-fold provisions of Indian Constitution make-

- ❑ On the one hand, it gives directive to the State for the protection and improvement of environment and ecology of our country.
- ❑ On the other hand, the citizens of our country owe a constitutional duty to protect and improve natural environment and wild life.

The Government of India further amended the constitutional provisions by making the following important changes: -

Eleventh Schedule of the Constitution: -

This new schedule is added by the Constitution 73rd Amendment Act, 1992.

This new schedule contains the following entries which are providing for environmental protection and conservation –

2. Land improvement, implementation of land reforms, land consolidation and soil conservation
3. Animal Husbandry, Dairying and poultry
6. Social forestry and farm forestry
7. Small scale industries in which food processing industry is involved
11. Rural housing
12. Fuel and fodder, etc.^{iv}

List I (Union List) Entries

- 52. Industries.
- 53. Regulation and development of oil fields and mineral oil resources.
- 54. Regulation of mines and mineral development.
- 56. Regulation and development of inter-State rivers and river valleys.
- 57. Fishing and fisheries beyond territorial waters.^v

List II (State List) Entries

- 6. Public health and sanitation.
- 14. Agriculture, protection against pest and prevention of plant diseases.
- 18. Land, colonisation, etc.
- 21. Fisheries.
- 23. Regulation of Mines and Mineral development subject to the provisions of List-1.
- 24. Industries subject to the provisions of 7 and 52 of List-1.^{vi}
- 25. Gas and Gas work^{vii}

List III (Common or Concurrent List) Entries

- 17-A Forests.
- 17-B Protection of wild animals and birds.
- 20. Economic and social planning.
- 20-A Population control and family planning.^{viii}
- 36 Factories
- 37 Boilers
- 38 Electricity^{ix}

Following is a list of the environmental legislations of India that have come into effect:

General

- ❖ **1986 - The Environment (Protection) Act** authorizes the central government to protect and improve environmental quality, control and reduce pollution from all sources.
- ❖ **1989 - The objective of Hazardous Waste (Management and Handling) Rules** is to control the generation, collection, storage, and handling of hazardous waste.
- ❖ **1989 - The Manufacture, Storage, and Import of Hazardous Rules** define the terms used in this context, and sets up an authority to inspect, once in a year, the industrial activity connected with hazardous chemicals.
- ❖ **1989 - The Manufacture, Use, Import, Export, and Storage of hazardous Micro-organisms/ Genetically Engineered Organisms or Cells Rules** were introduced to protect the environment, in connection with the application of microorganisms and gene technology.
- ❖ **1991 - The Public Liability Insurance Act and Rules and Amendment, 1992** was passed to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident while handling any hazardous substance.

- ❖ **1995 - The National Environmental Tribunal Act** was passed to provide for awarding compensation for damages to persons, property, and the environment arising from any activity which are involving hazardous substances.
- ❖ **1997 - The National Environment Appellate Authority Act** has been created to hear appeals of the cases which are related to environment.
- ❖ **1998 - The Biomedical waste (Management and Handling) Rules** is a legal binding on the health care institutions for proper handling of hospital wastes.
- ❖ **1999 - The Environment (Siting for Industrial Projects) Rules, 1999** lay down detailed provisions relating to areas to be avoided for siting of industries and precautionary measures to be taken for site selecting.
- ❖ **2000 - The Municipal Solid Wastes (Management and Handling) Rules, 2000** apply to every municipal authority who are responsible for the collection, segregation, storage of municipal solid wastes.
- ❖ **2000 - The Ozone Depleting Substances (Regulation and Control) Rules** were passed for the regulation of production and consumption of ozone depleting substances.
- ❖ **2001 - The Batteries (Management and Handling) Rules, 2001** shall apply to every manufacturer, importer, re-conditioner, assembler, dealer of batteries.
- ❖ **2002 - The Noise Pollution (Regulation and Control) (Amendment) Rules** lay down such terms and conditions as are necessary to reduce noise pollution.
- ❖ **2002 - The Biological Diversity Act** is an act to provide for the conservation of biological diversity and sustainable use of its components.
- ❖ **2010 - The National Green Tribunal Act**
- ❖ **2016 - The Bio-medical Waste Management Rules**

Forest and wildlife

- ❖ **1927 - The Indian Forest Act and Amendment, 1984**, is one of the many surviving colonial statutes. It was enacted to 'consolidate the law related to forest.
- ❖ **1972 - The Wildlife Protection Act, Rules 1973 and Amendment 1991** provides for the protection of birds and animals.
- ❖ **1980 - The Forest (Conservation) Act and Rules, 1981**, provides for the protection and the conservation of the forests.

Water

- ❖ **1882 - The Easement Act** allows private rights to use a resource that is, groundwater, by viewing it as an attachment to the land.
- ❖ **1897 - The Indian Fisheries Act** establishes two sets of penal offences whereby the Government can sue any person who uses dynamite or other explosive substance in any way with intent to catch or destroy any fish.
- ❖ **1956 - The River Boards Act** enables the states to enroll the central government in setting up an Advisory River Board to resolve issues relating to river in inter-state cooperation.
- ❖ **1970 - The Merchant Shipping Act** aims to deal with waste arising from ships.
- ❖ **1974 - The Water (Prevention and Control of Pollution) Act** establishes an institutional structure for preventing and abating water pollution.
- ❖ **1977 - The Water (Prevention and Control of Pollution) Cess Act** provides for the levy and collection of cess or fees on water.
- ❖ **1978 - The Water (Prevention and Control of Pollution) Cess Rules** contains the standard definitions and provisions relating to prevention of water pollution.
- ❖ **1991 - The Coastal Regulation Zone Notification** puts regulations relating to coastal matters and it also gives some protection to the backwaters and estuaries.

Air

- ❖ **1948 – The Factories Act and Amendment in 1987** expressed its concern for the working environment of the workers and the amendment of 1987 has made more provisions for the proper protection of environment.
- ❖ **1981 - The Air (Prevention and Control of Pollution) Act** provides for the control and prevention of air pollution.
- ❖ **1982 - The Air (Prevention and Control of Pollution) Rules** defines the procedures of the meetings of the Boards and describes the powers entrusted to them.
- ❖ **1982 - The Atomic Energy Act** deals with the radioactive waste.
- ❖ **1987 - The Air (Prevention and Control of Pollution) Amendment Act** empowers the central and state pollution control boards to meet with emergencies relating to air pollution.
- ❖ **1988 - The Motor Vehicles Act** tells that all hazardous waste is to be properly packaged, properly labelled, and transported.

Following is a list of the environmental legislations of India which are coming under Indian Penal Code:

- ⇒ Section 268: Public nuisance
- ⇒ Section 269: Negligent act likely to spread the infection of any disease which is dangerous to life
- ⇒ Section 272: Whoever adulterates any article of food or drink^x
- ⇒ Section 277: Fouling the water of any public spring or reservoir
- ⇒ Section 278: Whoever voluntarily vitiates the atmosphere
- ⇒ Section 284: Negligent conduct with respect to any poisonous substance^{xi}
- ⇒ Section 435: mischief by fire or any explosive substance intending to cause damage
- ⇒ Section 436: Mischief by fire or explosive substance with intent to destroy house, etc.^{xii}

SUSTAINABLE DEVELOPMENT

Sustainable development refers to the goal for living in such a way as to ensure long run stability of environment and ecology and conservation of natural resources. It seeks to meet today's needs without reducing the ability of the future generation to meet their needs.

The contents of sustainable development are –

- 1) Precautionary principle
- 2) Polluter pays principle
- 3) Intergenerational equity
- 4) Eradication of poverty
- 5) Financial assistance to the developing countries

JUDICIAL RESPONSES

Vellore Citizens' Welfare Forum v. Union of India, Air 1996 Sc 2715

The Supreme Court allowed standing to a public-spirited social organization for protecting the health of residents of Vellore in this landmark case. In this case it was found that in Vellore (T.N.) the tanneries situated around river Palar were found discharging toxic chemicals in the river. The health of the residents of that area is jeopardising in this way. The Court ordered the tanneries to close their business to stop pollution.

M. C. Mehta v. Kamal Nath, (1997) 1 SCC 388

In this case, at the bank of river Beas, the State Government has granted lease of Himalayan Forest land for commercial purpose to a private company to establish a motel. On the Public Interest Litigation, the court held that the motel management has polluted the environment by blocking natural flow of the river. The Supreme Court also applied the polluter pays principle in this case.

Rural Litigation & Entitlement Kendra v. State Of U.P., Air 1985 SC 652

In this case the Supreme Court prohibited continuance of mining operations terming it to be adversely affecting the environment of that area.

M. C. Mehta v. Union Of India, Air 2001 SC 1948

The Supreme Court in this case held that the air pollution in Delhi caused by vehicular emissions violates right to life under Art. 21 & directed all commercial vehicles operating in Delhi to use the CNG fuel mode for the protection of the health of the people of Delhi.

Sachidanand Pandey v. State Of West Bengal, Air 1987 SC 1109

In this case **the court has tried to make a balance between environment and ecology on one hand and financial development on the other hand.**

M.C. Mehta v. Union of India, Air 1997 SC 735

In this case the court held that the 292 polluting industries locally operating in the area are the main source of pollution and directed them to change over within fixed time schedule to natural gas as industrial fuel and if they could not do so they must stop functioning beyond 31st Dec., 1997 and be reallocated alternatives plots in the industrial estate outside Taj Trapezium (TTZ).^{xiii}

Subhas Kumar v. State of Bihar, Air 1991 SC 420

In this case it has been held that public interest litigation is maintainable for ensuring enjoyment of pollution free water and air which is included in the “right to live” under Art. 21 of the Constitution.^{xiv}

CONCLUSION AND SUGGESTIONS

‘Love of nature’ is not a modern phenomenon, we have to protect environment and environment in turn protects us. Man loves nature and nature in turn nourishes him. The Brundtland Commission report – Our Common Future (1987) has suggested various strategies to protect environment and make ‘sustainable development’. These strategies include so many administrative and legal measures. The N.D. Tiwari (1980) report also suggested various legal and administrative measures for protection of environment. Therefore, so many attempts have been made, to protect and improve the environment. Today pollution free environment has been recognised as a fundamental right under Art. 21 of the Indian Constitution. The Supreme Court of India occupies a unique position in Indian Environmental governance. Indian Judiciary and our Government have tried to make a balance between the competing demands for industrialisation on the one hand and protection of environment on other side. Though laws relating to the protection of environment are enacted by our legislatures to protect the environment, but it is found that these laws are not always enough to protect the environment. So, more laws regarding the protection of environment are necessary in the present days in India. At last, it can be said that we have to give importance for the protection of environment of our country and for the protection of environment of this planet also, because we have only one earth to live.

ENDNOTES

-
- ⁱ SACHIDANAND PANDEY V. STATE OF WEST BENGAL, AIR 1987 SC 1109.
- ⁱⁱ <https://www.latestlaws.com/bare-acts/central-acts-rules/coi-article-48a-protection-and-improvement-of-environment-and-safeguarding-of-forests-and-wild-life->
- ⁱⁱⁱ <https://legislative.gov.in/constitution-forty-second-amendment-act-1976>
- ^{iv} <https://www.jagranjosh.com/general-knowledge/list-of-subjects-covered-in-the-11th-schedule-of-the-indian-constitution-1510219894-1>
- ^v https://en.wikipedia.org/wiki/Union_List
- ^{vi} https://en.wikipedia.org/wiki/State_List#:~:text=The%20State%20List%20or%20List-II%20is%20a%20list,List%2C%20the%20State%20List%20and%20the%20Concurrent%20List.
- ^{vii} DR. H. N. TIWARI, ENVIRONMENTAL LAW 111-112 (Allahabad Law Agency 2006).
- ^{viii} https://en.wikipedia.org/wiki/Concurrent_List
- ^{ix} DR. H. N. TIWARI, ENVIRONMENTAL LAW 112 (Allahabad Law Agency 2006).
- ^x <https://indiankanoon.org/doc/471092/#:~:text=%E2%80%94Whoever%20adulterates%20any%20article%20of,which%20may%20extend%20to%20six>
- ^{xi} <https://indiankanoon.org/doc/1074140/#:~:text=%E2%80%94Whoever%20does%2C%20with%20any%20poisonous,to%20guard%20against%20any%20probable>
- ^{xii} DR. H. N. TIWARI, ENVIRONMENTAL LAW 114-116 (Allahabad Law Agency 2006).
- ^{xiii} DR. J. N. PANDEY, CONSTITUTIONAL LAW OF INDIA 350 (Central Law Agency, 42nd Edition 2005).
- ^{xiv} DR. J. N. PANDEY, CONSTITUTIONAL LAW OF INDIA 236 (Central Law Agency, 42nd Edition 2005).