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Environmental Laws in India – An Introduction

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I. INTRODUCTION

India had an ancient tradition of paying constant attention to protection of the environment. There are writings galore, to show that in ancient India every individual had to practice the dharmato protect and worship nature. In India the devices and rules for protecting the environment are discernible from ancient times.

Environmentalism is not a fixed concept, but is always evolving influenced by its context. This also applies to Indian environmentalism, which has developed and changed throughout the years. There is a rapid evolution in the Indian legislations after independence as the need and concern regarding environment arose. From ancient environmental rules including Buddhism and Jainism to medieval and then from British era to afterwards and the coming of modern legislations on environmental laws in India, a great sense of concern has been shown by the legislature and even the Indian judiciary showed a great concern regarding the environment with its landmark judgments.

II. ENVIRONMENT

The environment has been defined as that outer physical and biological system in which man and other organisms live as a whole. Human environment consists of both physical environment and biological environment. Physical environment covers land, water and air. Biological environment includes plants, animals and other organisms.

'Environment' defined under the Environmental Protection Act, 1986, 'Environment' includes Water, air and land and the inter-relationship which exists among and between, water, air, land, and human beings, other living creatures, plants, microorganisms and property. The term environment has been derived from the term 'environ', which means 'to surround' Thus, etymologically environment means 'surrounding conditions, circumstances affecting people's life.21

'Environment' includes water, air and land and the inter-relationship which exist among and between water, air, land and human beings, other living creatures, plants, micro-organisms and property.

It includes the complex physical, chemical and biological factors surrounding an organism or an ecological community. Such factors act and interact with various species and organisms to affect their form, growth and survival. Any unfavourable alteration of this environment is called environmental pollution. Air, water, land, radiation and thermal are the common type of pollution.

Obviously, the "Environment" comprises all entities, living and non-living, natural or man-made, external to oneself, and their interrelationships, which provide value, now or perhaps in the future, to humankind. Environmental concerns relate to their degradation through actions of humans.

The goals of the Environmental policy may be formulated in several ways to protect human health, ensure viability of wild life, preservation of historic monuments, stopping further degradation of the environment etc.

A. Provision of Environmental Law in India

Apart from international laws, every country has enacted laws regarding environment protection, pollution control etc. In India, there are several acts for environment protection that says protection. of environment is the duty of government.

B. Policy and Laws in Medieval India (1638-1800 AD)

To Mughal rulers, forest meant no more than woodlands where they could hunt. The history of medieval India is dominated by Muslim Rulers where no note worthy development of environmental > jurisprudence took place except during the rule of Mughal Emperor Akbar. During Akbar's rule except rulers others are prohibited from hunting or shikar. But no major initiatives took place during 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. Laws in British India (1800-1947 AD)

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Shore Nuisance (Bombay and Kolaba) Act, 1853 imposed restrictions on the fouling of seawater.
Merchant Shipping Act of 1858 dealt with prevention of sea pollution by oil.
The Fisheries Act, 1897
The Bengal Smoke Nuisance Act of 1905
Bombay Smoke Nuisance Act of 1912
Wild Birds and Animals Protection Act, 1912

C. Laws after Independence (1947)

The Indian Constitution, as adopted in 1950, did not deal with that the subject of environment or prevention and control of pollution as such (until 1976 Amendment). The post independent Indian approach was centered on economic development and poverty alleviation and not on resource conservation.

The year 1972 was a landmark in the field of environment, when United Nations Conference on the Human Environment was held at Stockholm (Sweden) from 5th to 16th June, in which "Declaration on the Human Environment" was adopted. This may be considered as the beginning of environment movement in the world.

The Stockholm Declaration of 1972 was perhaps the first major attempt to conserve and protect the human environment at the international level. The preamble of it states, 'the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment. 141 As a consequence of this Declaration, the States were required to adopt legislative measures to protect and improve the environment. Accordingly, Indian Parliament inserted two Articles, i.e., 48A and 51A in the Constitution of India in 1976.151 In India a separate ministry namely The Department of Environment was established in 1980 to environment for the country. ensure a healthy The Main Acts For Environment Protection In India Are As Follows:

1) The Forest Conservation Act, 1980
2) The Prevention of Air and Water Pollution, 1974, 1981 (The Central Pollution Control Board) (CPCB) was constituted under this act.
3) The Air Prevention and Control of Pollution, 1981.
4) The Atomic Energy Act. 1982.
5) The Environmental Protection Act, 1986. (It came into force soon after the Bhopal Gas Tragedy)
6) The Environmental Conservation Act. 1989.
7) The National Environmental Tribunal, 1995.
8) National Environmental Appellate Authority Act, 1997.
9) National Environment Management Act (NEMA), 1998
10) Handling and Management of Hazardous Waste Rule in 1989.
11) The Public Liability Insurance Act (Rules and Amendment), 1992.
12) The Biomedical Waste Management and Handling Rules, 1998.
13) The Environment (Siting for Industrial Projects) Rules, 1999.
14) The Municipal Solid Waste (Management and Handling) Rules, 2000.
15) The Ozone Depleting Substance (Regulation and Control) Rules, 2000.
16) The Biological Diversity Act 2002.

Environment And The Indian Constitution The Indian Constitution is among the few in the world that contains specific provisions on environmental protection.

Laws made by national, provincial and local government add to the rights and responsibilities that are part of the constitution and the common law. These laws also called legislations must comply with the constitution but they can amend change the common hand.

Protection of Life and Personal Liberty is embodied in Article 21. It states, "No person shall be deprived of his life or personal liberty except according to procedure established by law."

The Indian Constitution guarantees the right to equality" to all persons without any discrimination. This indicates that any action. of the State' relating to environment must not infringe upon the right to equality as mentioned in the Article 14 of the Constitution. The Stockholm Declaration, 1972, also recognized this principle of equality in environmental management and it called up all the worlds' nations to abide by this principle.

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In the Constitution of India it is clearly stated that it is the duty of the state to 'protect and improve the environment and to safeguard the forests and wildlife of the country'. It imposes a duty on every citizen 'to protect and improve the natural environment including forests, lakes, rivers, and wildlife.

Let us further examine the provisions in the Indian Constitution for the protection of environment. The 42nd amendment to the constitution was brought about in the year 1974 makes it the responsibility of the state government to protect and improve the environment and to safeguard the forests and wildlife of the country. The latter, under fundamental duties, makes it the fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

The Art 47 provides that "It is the duty of the state, to raise the level of nutrition and the standard of living and to improve public health, the state shall endeavour to bring about prohibition of the consumption except for medicinal purposes intoxicating drinks and of drugs which are injurious to health. Art. 48A provides that the state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country."[Art. 51A, included in the Constitution by the 42nd amendment Act, 1976 has the provisions as fundamental duties, says that "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures and to develop the scientific temper, humanism and the other spirit of inquiry and reform, and to safeguard public property and to abjure violence."[10]

One of the most innovative parts of the Constitution is that the Writ Jurisdiction is conferred on the Supreme Court under Article 32 and on all the High Courts under Article 226. Under these provisions, the courts have the power to issue any direction. or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo- warranto and certiorari, whichever is appropriate. This has paved way for one of the most effective and dynamic mechanisms for the protection of environment, that is, Public Interest Litigations. Role of Panchayat and Municipalities

The Constitution (Seventy-third Amendment) Act 1992 and the Constitution (Seventy-fourth Amendment) Act 1992 have given a Constitutional status to the panchayats and the Municipalities respectively. Article 243-B provides or the establishment of intermediate and district levels. Article 243-G authorises the legislature of State to endow the Panchayats with such powers and authority as may be necessary to enable them to function as institution of self-government.

The Eleventh Schedule along with other matters contains following maters which are directly or indirectly related to environment like, agriculture, soil conservation, water management and watershed. development; fisheries; social forestry and farm forestry; minor forest produce; drinking water; health and sanitation; and maintenance of community assets.

The matters which are related to environment in the twelfth Schedule may be enumerated as follows:

Urban planning including town planning regulation of land use. water supply; public health, sanitation, conservancy and solid waste management, urban forestry, protection of the environment and promotion of ecological aspects; provision of urban amenities such as park grounds; cremation grounds and electric crematoriums; prevention of cruelty to animals regulation slaughter houses and tanneries.

D. Judicial Contribution

The right of a person to pollution free environment is a part of basic jurisprudence of the land. Article 21 of the Constitution of India guarantees a fundamental right to life and personal liberty. The Supreme Court has interpreted the right to life and personal liberty to include the right to wholesome environment. The Court through its various judgementshas held that the mandate of right to life includes right to clean environment, drinking-water and pollution free atmosphere.

It was Mr. M.C Mehta [1]who revived the concept of environmental jurisprudence in India through PIL. Others too had their silent but noteworthy roles to play. Some of the landmark judgements having fair share in development of the environmental jurisprudence in India are:

Narmada Bachao v/s Union of Indial14) Way back in 1946, the then government of the Central Provinces and Berar and the then government of Bombay requested the Central Waterways, Irrigation and Navigation Commission to take up investigation on the Narmada river system for basin wise development of the river with flood control, irrigation, power and extension of Navigation as the objectives in view. The matter was referred to a tribunal in 1968 constituted under the Inter-State Water Disputes Act, 1956. Based on the agreement between the Chief Ministers of 4 States [M.P, Maharashtra, Rajasthan and Gujarat] the tribunal declared is award on 16thAugust 1978. In order to meet the financial obligation, consultations started in 1978 with the World Bank for obtaining a loan. In May 1985 the loan was sanctioned, and in 1987 the Ministry of Environment and Forest accorded Environmental Clearance subject to certain conditions.

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The Supreme Court observed that the Sardar Sarovar Project would make a positive impact on the preservation of environment. The project has been long awaited by the people of Gujarat to whom water will be available to the drought prone and arid parts, this would help in effectively arresting ecological degradation which was returning the make these areas inhabitable due to salinity ingress, advancement of desert, ground water depletion, fluoride and nitrite affected water and vanishing green cover. The ecology of water scarcity areas is under stress and transfer of Narmada water to these areas will lead to sustainable agriculture and spread of green cover.

There will also be improvement of fodder which will reduce pressure on bio-diversity and vegetation. The SSP by generating clean eco-friendly hydropower will save the air pollution which would otherwise take place by thermal general power of similar capacity. Following the above analysis the Court thought it unfit to interfere with the construction of the dam, as its advantages over took its disadvantages. The construction of the dam was allowed subject to certain conditions. Such interpretations. of Article 21 by the Supreme Court have over the years become the basis of environmental jurisprudence, and have been instrumental in helping in the name of protection of India's environment. Also in addition to this there now exists a number of laws relating to environment, enacted over the last few decades.

E. Taj Mahal Case

In Taj Mahal's case, the Supreme Court issued directions that coal and coke based industries in Taj Trapezium (TTZ) which were damaging Taj should either change over to natural gas or to be relocated outside TTZ. The court was conscious that environmental changes are the inevitable consequences of industrial development in our country, but at the same time the quality of environment cannot be permitted to be damaged by polluting the air, water and land to such an extent that it becomes a health hazard for the residents of the area. Showing deep concern to the environment, the Court observed that every citizen has a right to fresh air and to live in pollution- free environment.

Again the Supreme Court directed to protect the plants planted around Taj by the Forest Department as underlined:

"The Divisional Forest Officer, Agra is directed to take immediate. steps for seeing that water is supplied to the plants... The Union Government is directed to release the funds immediately without waiting for receipt of the proposal from the U.P. Government on the basis of the copy of the report. Funding may be subsequently settled with the U.P. Government, but in any set of circumstances for want of funds the officer is directed to see that plants do not wither away."

The apex Court gave various directions including banning the use of coal and coke and directing the industries to switch over to Compressed Natural Gas (CNG).

F. Ganges Pollution Case

The Supreme Court of India reacting to the public interest litigations has passed several judgments and a number of Orders against polluting industries numbering more than fifty thousand in the Ganga basin. As a result of these directions millions of people have been saved from the effects of air and water pollution in Ganga basin covering 8 states in India.

G. Kamal Nath's Case

The irony of this case is that a Public Interest Litigation was filed against the family members of Kamal Nath, the Minister of Environment and Forests, Govt. of India. The family members of the Minister own the Span motel in the State of Himachal Pradesh. They diverted the Course of River Beas to beautify the motel. The Supreme Court of India had directed the owners of the Motel to hand over the forest land to the Govt. of Himachal Pradesh and further order the removal of all sorts of encroachment spending the money f rom their own pocket.[18]

In M.C. Mehta vs. Union of India, AIR 1987 SC 1086 (Popularly known as "Oleum Gas Leak Case") - The Supreme Court treated the right to live in pollution free environment as a part of fundamental right to life under Art.21 of the Constitution. The Supreme Court held that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to any one on account of an accident in the operation of such hazardous and inherently dangerous activity resulting in the escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such a liability is not subject to any exception. The enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without negligence on its part. Absolute liability is one tort where fault need not be established. It is no-fault liability.[19]

Further, the A.P. High Court in T. Damodar Rao vs. S.O., Municipal Corporation, Hyderabad, (AIR 1987 A.P. 171)laid down that right to live in healthy environment was specially declared to be part of Art.21 to the Constitution.

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III. CONCLUSION

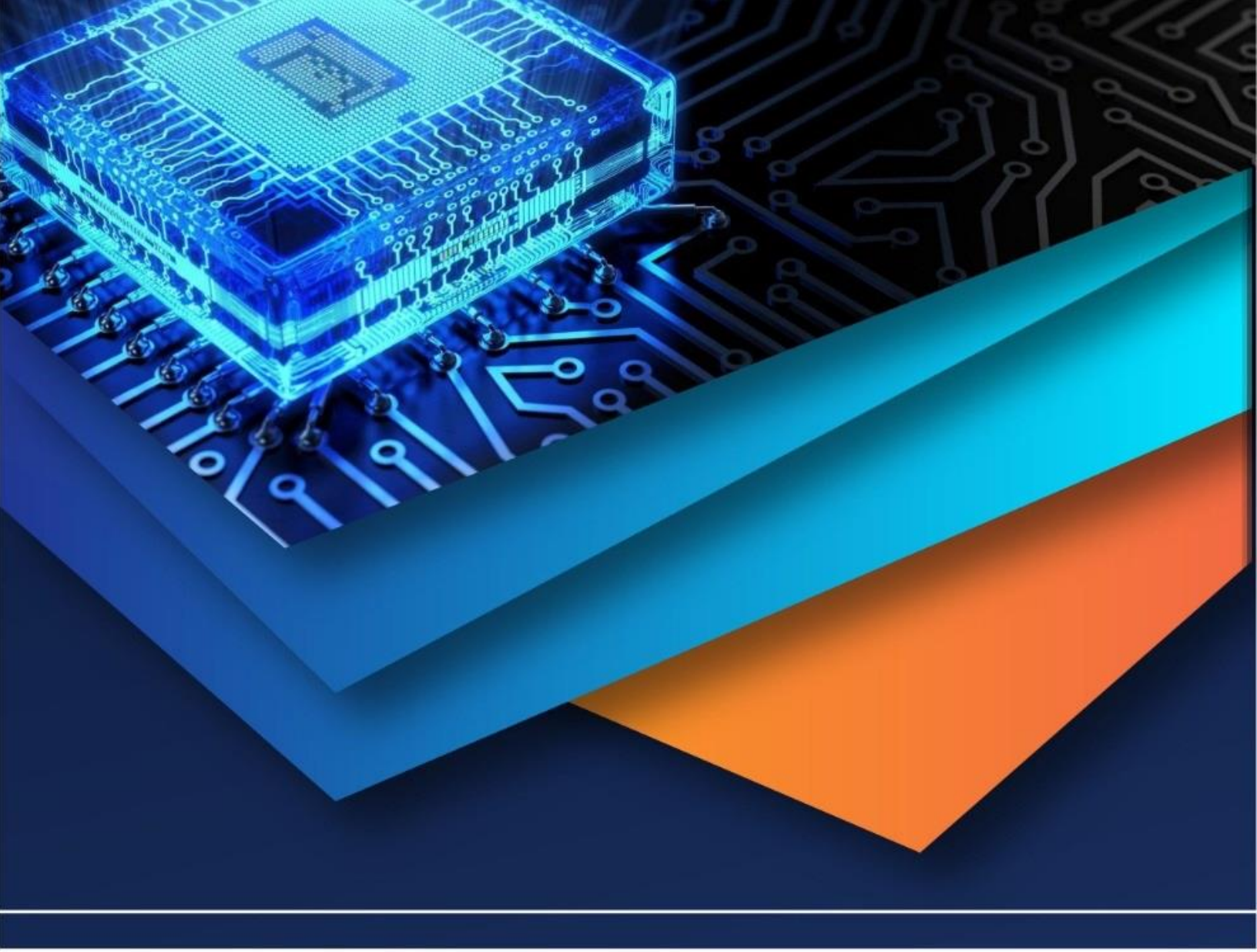
In India, the concern for environmental protection has not only been raised to the status of fundamental law of the land, but it is also wedded with human rights approach and it is now well established that, it is the basic human right of every individual to live in pollution free environment with full human dignity.

It is high time that the general public, public entities, state and central government realize the damage, which our developmental process has made to the living environment.

For the success of the local government laws relating to the environment it is essential to create a sense of civic consciousness and public hygiene in the use of municipal services like roads, public places, drainage etc. Strict enforcement of the provisions of law also is needed. Law is a strong medium to compel the citizens to observe cleanliness and thereby to combat pollution. Environmental protection laws in India need a new orientation in the modern context.

As Paul Bigelow Sears said, "How far must suffering and misery go before we see that even in the day of vast cities and powerful machines, the good earth is our mother and that if we destroy her, we destroy ourselves."

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