

DE JURE NEXUS LAW JOURNAL

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ENVIRONMENT AND THE LAW – THE WAY OF CONVERGENCE**Abstract**

This paper focuses on the significance of the environment in this contemporary situation. The researcher has analysed some of the essential which are very crucial in which the fulcrum of the whole study rests. Moreover some of the important pronouncements with exemplary interpretation of the Indian judiciary were also compiled in this study. Further the author tries to bring out the importance of some of the basic statutory enactments which focuses on the protection and safeguarding of the natural environment. Some of the International aspects which focus on environmental protections had also been touched in this study. Finally the work concludes with the requirements, necessities, precaution, as well as the personal opinions of the narrator which are needed to combat environment degradation.

Introduction

There is a general phenomenon in the International jurisprudence that the environment is not just an abstraction but it also includes the quality of life in such degrees, the living space and the very health of all the human beings including very many generations who are yet to take their birth.¹This area of study had gained its momentum as a result of the major confrontations with the growing of inevitable problems concerned with the environment² in our planet, which could only be addressed by mutual co-operation among the world

¹Case Concerning Legality of the Threat or Use of Nuclear Weapon, Advisory Opinion, International Court of Justice, 8 July 1996, Pg.no. 241, Para no. 29.

² Dr. J.J.R. Upadhyaya, *Environmental Law 1* (Central Law Agency, Allahabad, 5th edn., 2018).

nations³by abiding to the ‘no harm principle’⁴which has given the status of customary International law and at the same time the afore mentioned principle is also one of the international mandate under the Multilateral International Environmental Agreements⁵ (MIEAs), of which all the states should adhere to, for the benefits of the human community at large, even though those environmental agreements are in the form of soft law instruments. Therefore the role played by the international law making is not a fundamental one or less effective compared to regional environmental regulations, nor it is less sophisticated but rather indeed it is vice versa when looking on to many countries.⁶ Adopting these strategies would definitely avoid the occurrence of environmental injustice, where there exists uneven extreme burden and adverse human health or ecological turmoil situation on low income as well as minority population.⁷

The scenario of the Indian context with reference to the environment⁸ and its related issues took its proper binding shape only after participating in the 1972 Conference conducted by the UN. The new era has heralded with some exemplary parliamentary enactments. Even otherwise, India has a long tradition of recognising the Mother Nature and natural resources as sacred and the people have always shown high regard for the natural resources and believed in their conservation and protection.⁹



De Jure Nexus

Constitutional and other Statutory Enactments Perspective Of Environmental Protection

LAW JOURNAL

The Preamble to our Constitution runs as “people of we the people of India solemnly resolve to constitute India into a Sovereign, Socialist, Secular, Democratic country”.¹⁰ This way our

³ Philippe Sands, *Principles of International Environmental Law* 3 (Cambridge University Press, New York, 2nd Edn., 2003).

⁴States has the permanent sovereignty to exploit their own natural resources provided that they should act in conformity with United Nations Charter and the Principles of International Law and moreover they have the ultimate responsibility of ensuring that their activities should not in any way affect the environment of other states.

⁵ for further understanding, refer *Principle 21* of Stockholm declaration 1972(UN Convention on Human Environment) and *Principle 2* of Rio Declaration 1992 (UN Conventions on Environment And Development).

⁶ Patricia Birnie, Alan Boyle, Catherine Redgwell, *International Law and the Environment* 9 (Oxford University Press, New York, 3rd Edn., 2009).

⁷Charles Prior, “Permitting Problems: Environmental Justice and the Micosukee Indian Tribe” 3 *Environment and Earth Law Journal* 163-193 (2013).

⁸Environmental Protection Act, 1986 (Act 29 of 1986) defines the same as which includes air, water and land and the inter-relationship which exists among and between themselves and humans other living creatures, micro-organisms and the property.

⁹ Dr. Vinay N. Paranjape, *Environmental Law* 103 (Central Law Agency, Allahabad, 2019).

¹⁰ First Preambular Paragraph to the Constitution of India, 1950.

preamble resembles the socialist pattern of the society, thus it has the responsibility of concentrating more on social issues rather than individual one. In India the main focus on environmental issues was first addressed after the birth of Stockholm Declaration¹¹ which was held in the year 1972 which paved the way for several Indian legislations with special reference to environment. India as a signatory party to the Stockholm Convention, has amended the Indian Constitution once again in the year 1976¹² which paved the way for very many statutory enactments for the protection of environment, fauna flora etc. This initiative by our parliament is mainly giving effect to some of the mandates by virtue of some of the provisions of the Indian Constitution with special reference to enact proper legislations to implement international obligations and to respond to international concerns as well.¹³ Even though the word 'environment' has not been explicitly mentioned in the Indian Constitution, there are many provisions in the Indian Constitution which directs the states to pass necessary legislative enactments on the concerned subjects¹⁴ like sanitation, general hygiene and health of the public;¹⁵ animal husbandry and agriculture,¹⁶ etc. In addition to that there are also some items to the schedule,¹⁷ where both centre and the state can pass required statutes.¹⁸

Some of the Judicial Pronouncements

Article 21 of the Constitution played a pivotal role over the years. The corner stone of this particular Article interpretation can be traced back to the verdict given in the case *Maneka Gandhi v. Union of India*,¹⁹ where the Court held that the procedure established by law enshrined in our Constitution should be in a just and fair manner. The right to live in a healthy and clean environment is not a new concept in India. It has got its traces over decades, when the Hon'ble Judges of the Court of law have adopted such an exemplary interpretation of the afore mentioned provision. It started in the case *Rural Litigation and*

¹¹ United Nations Convention on Human Environment (UNCHE) 1972.

¹² 42nd Amendment to the Constitution of India, 1950.

¹³ Refer *Arts. 51(c) and 253* of the Constitution of India, 1950.

¹⁴ P.Leelakrishnan, *Environmental Law in India* 201 (LexisNexis, Gurgaon Haryana, 5th Edn., reprint 2019).

¹⁵ For more information refer *Articles 47* of the Constitution of the India, 1950.

¹⁶ For further understanding read *Article 48* of the Constitution of India, 1950.

¹⁷ For Example, State list covers matters like supply of clean water; public health; drainages; regulations of oil fields; atomic energy; air traffic; etc., at the same time concurrent list covers matters such as forest protection; matters concerned with wildlife; conserving mines; population control; etc.

¹⁸ Refer *Schedule VII* to the Constitution of India, 1950.

¹⁹ AIR 1978 SC 597.

Entitlement Kendra & Ors. v. State of Uttar Pradesh & Ors.,²⁰ where the Court have held that right to life guaranteed under Article 21 includes right to live in a clean and healthy environment without any ecological disturbances resulting in destruction of natural fauna and flora, soil erosion, blockage of underground water channels which will eventually leads to infringing of lives of the human beings to a great extent. This concept has further broadened in the case *Subhash Kumar v. State of Bihar*,²¹ in this case the Court recognised that the right to wholesome environment is the offshoot of fundamental right guaranteed under the constitution, which includes in itself the significance of one of the integral components of urbanisation (i.e.) open spaces, parks, playgrounds, etc., which serves as the lung space as well as the recreation hub for the entire city, thus these places should not be converted for any other purposes which ultimately destroys the real purport of such allocated places.²² The Judges have also gave importance to the poor people, who had been shifted from one place another place in the name of developmental projects, by ordering that they can enforce their right guaranteed under the Constitution if in case they have been denied of proper rehabilitation programme or if their livelihood have been severely affected in any way.²³ The Court in another case appreciated the initiative of the citizen who enforces his fundamental by approaching the Court for passing directions to the municipal authorities to keep the city of Rajasthan clean from further acute sanitation problems.²⁴ Further the Court had went on to say that financial inadequacies should not be pleaded by municipal corporations as a ground for not doing their primary duty of cleaning the city.²⁵ Our Judiciaries has also gave preferences to right to clean drinking water;²⁶ pollution free air;²⁷ free of noise pollution²⁸.

²⁰AIR 1985 SC 652. Also refer Cases such as: *K.M.Chinnappa, T.N.Godavarman Thirumalpad v. Union of India*; *Kinkri Devi v. State of Himachal Pradesh*; *S.k.Garg v. Union of India*; *Hinch Lal Tiwari v. State of Himachal Pradesh*; etc.

²¹AIR 1991 SC 420.

²²*T.Damodar Rao v. Special Officer Municipal Corporation, Hyderabad*, AIR 1987 AP 171. Also refer Cases: *Bangalore Medical Trust v. BS Mudappa*; *V. Lakshmipathi v. State of Karnataka*; *M.I. Builders Pvt Ltd v. Radhey Shyam Sahu*.

²³*Narmada Bachao Andolan v. Union of India*. Also refer cases: *N.D.Jayal v. Union of India*; *Kamal Nagar Welfare Association v. State of Andhra Pradesh*; *Olga tellis v. Municipal Corporation Bombay*.

²⁴*L.K.Koolwal v. State of Rajasthan*, AIR 1988 Raj 2.

²⁵*Municipal Council Ratlam v. Vardichand*, AIR 1980 SC 1622.

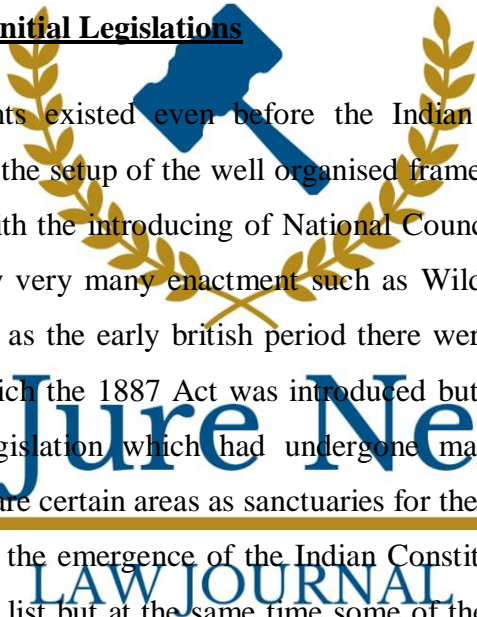
²⁶*M.C. Mehta v. Union of India (Ganga Pollution Case)*; *Tehri Dam Case*; *Narmada Bachao Andolan Case*; *A.P.Pollution Control Board v. M.V. Naidu*; *Centre for DNA Finger-Printing and Diagnostic v. A.P.Pollution Control Board*; *F.K.Hussain v. Union of India*; *Hamid Khan v. State of Madhya Pradesh*; etc.

²⁷*M.C. Mehta v. Union of India (CNG gas case)*; *Murali S Deora v. Union of india (Passive Smoking Case)*; *M.C. Mehta v. Union of India (Stone Crushing Case)*; *Re court on its own motion v. State of Himachal Pradesh*; etc.

²⁸*P.A. Jacob v. Superintendent Of Police, Kottayam (Captive Listeners Case)*; *Om Birangana Religious Society v. The State & Ors*; *Maulana Mufti Syed Md Noorur Rehman Barkati v. State of West Benga* (Otherwise called

However in case of grudge, bias or any personal enmity found in any petition, the court will not entertain such petitions even if it is in the form of Public Interest Litigation.²⁹ At the same time our courts have also entertained some of the genuine and bona-fide PILs,³⁰ even these PILs were entertained to protect one of the world's heritage site as well as beautiful monument located in India which is utmost importance, where the court held that industries located in and around Taj Trapezium zone, which uses coal and coke as in their manufacturing process should be relocated and be given another place under Agra master plan, further it has held that those industries whoever come forward voluntarily for their industries to be relocated will be given incentives under the above mentioned plan.³¹

A Glimpse of some of the initial Legislations



Several Colonial enactments existed even before the Indian Independence movements. However the real thrust for the setup of the well organised framework was emerged after the Stockholm era. it started with the introducing of National Council for Environmental Policy and Planning³² followed by very many enactment such as Wild Life Protection Act, 1972: During the Moghul as well as the early british period there were huge destruction of forest and wildlife because of which the 1887 Act was introduced but due to its ineffectiveness it was replaced by 1912 legislation which had undergone many changes and made the provincial government declare certain areas as sanctuaries for the protection of wild birds and the animals. However after the emergence of the Indian Constitution, protection of wildlife were placed under the state list but at the same time some of the subjects closely concerned with wildlife were placed under the concurrent list, at last with the 1976 Constitutional amendment, the subject wildlife has been transferred to the third list of the seventh schedule, as a result the 1972 Wildlife Protection Act came into existence;³³The Water(Prevention and

as 'Azan Case' which speaks about the right to sleep in a calm environment without any sound because Right to Life under Article 21 guarantees right to have unsound sleep without any anthropogenic Disturbances); *Church of God(Full Gospel) in India v. KKR Majestic Welfare Colony Association*.

²⁹*Chhetriya Pardushan Mukti Sangharsh samiti v. State of Uttar Pradesh & Ors.*, also refer the case *Subhash Kumar v. State of Bihar*.

³⁰The following cases were considered as Public Interest Litigations in our country: *Doon Valley Case; Delhi Vehicular Pollution Case; Bichhari Village Case; Tamil Nadu Leather tanneries Case; Jaipur Municipality Case; Ratlam Municipality Case; Silent Valley Case*, to list many.

³¹*M.C. Mehta v. Union of India*, (1997) 2 SCC 353.

³²which was formed to look the matters concerned with environmental related issues, as a regulatory body. Which was later changed as Ministry of Environment and forest (MoEF). Later it was renamed as Ministry of Environment and Forest and Climate Change (MoEFCC). Which is considered as the top most administrative body engaged in preparation and scrutinizing of legal and regulatory framework for environmental protection.

³³*Supra* note 9 at 240-241.

Control of Pollution) Act, 1974: As a result of increase of industrial activities and as well as the rapid expansion of urbanization resulting in discharge of trade effluents and domestic onto the water ways without treating them, there was a urgent need to enact legislation to protect the water bodies from further degradation, a Committee considering many aspects introduced a draft bill after the year 1962 based on which the government came with an idea of initiatives for a comprehensive legislation which focalize on abatement, control and prevention of pollutions on rivers and streams resulting in restoration of the wholesomeness of the waters to its original form, finally the current Act came into force;³⁴The Forest (Conservation) Act, 1980: The 1865 Act which went into many amendments was eventually by the 1927 Act which had made many changes to the law relating to the forest, however there are some lacunas in the existing one in terms of causing damages to the forests and many other chaos, thus in wake of 1980s due to extensive decline in the forest related issues and to fulfill the Constitutional obligations our parliament has enacted the present enactment;³⁵ The Air (Prevention and Control of Pollution) Act, 1981: It was enacted as a result of decisions taken at the 1972 International Conference³⁶ and to maintain the quality of air in good state and to abet the control of air pollution, it has been brought into picture; Environmental Protection Act, 1986: This enactment was brought in the wake of leakage of a poisonous gas occurred at Bhopal in the year 1985³⁷ at the same time it is considered as the umbrella framework of the Indian environmental regime in spite of many laws were in force before this, moreover the Central Government under this Act has been empowered to take suitable measures which are needed for protecting and improving the environment.³⁸

Conclusion

It has been clearly observed from the research paper that in reality there are ample number of legislations which deals with the environmental menace. At the same we also have bundles of landmark judgments which solely concentrates on environmental matters, here I would say that our Indian Judges have played a very significant role in this regard. They have in many case balanced the importance of economic imperatives and the need for environmental

³⁴ Dr. S.R.Myneni, *Environmental Law* 382-383 (Asia Law House, Hyderabad, 4th Edn., 2021).

³⁵Dr. Paramjit S. Jaswal, Dr. Nishtha Jaswal, *et.al.*, *Environmental Law* 341-343 (Allahabad Law Agency, Haryana, Reprint 2020).

³⁶*Id* at 252.

³⁷*Union Carbide Corporation v. Union of India*, AIR 1990 SC 273.

³⁸Environmental Protection Act, 1986 (Act 29 of 1986), section 3.

concerns in many cases, for example: in the famous case *Vellore Citizens Welfare Forum v. Union of India* they have brought the importance of the Principle of Sustainable Development and held that the customary international law which are not contrary to our domestic law can be easily adopted and practised in Indian courts of law. They have also introduced other principles such as Precautionary Principle and Polluter Pays Principle which are considered as the offshoot of the Principle of SD. These Principles have paved the way for the new era of Environmental Jurisprudence in Indian history.

So the only factor we must consider for the well-being of the country is nothing but 'Social awareness', because provisions of the law does not merely work on enacting them, it needs some interactions among the general public, followed by affirmatives actions from all the citizens of our country. I'm not blaming all the persons, there are some people who does not follow even the basics as a minimum standard for keeping our vicinity clean. It should properly start with segregation of domestic wastes or household wastes by maintaining two separate waste bins for both bio-degradables as well as non bio-degradables. This practise makes not only the waste gets easily distinguishable but also helps the sanitary workers to live in somewhat good condition, because of lethargic activity of people not maintaining separate garbage tins, it will be very difficult for sanitary workers to segregate when it is in mixed form because of the litter and its bad odour which makes all the human beings disgusting but we are not concerned about the sanitary workers and imposing such inhuman jobs on them, very plight situation they are facing all over their life (inevitable trauma for them). We should not forget their service during the COVID19 pandemic times, they were the one who sacrificed their today for our tomorrow. So we must at least inculcate these necessities to coming generation children by making this subject the core right from their kinder garden education (not like the old EVS subject).The concerned government should give utmost importance by including this area of study as a compulsory branch.