



Environmental Protection in Ancient India

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Abstract:

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 environment 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 right to environment has emerged as a human right. This paper commences with the diverse ingredients of Indian environmental jurisprudence. A highlight of international efforts in combating environment related problems is also made. Ultimately, the author throws light on the Indian experience of environmental law and its resultant tool of the human right to live in a clean and healthy environment. Over the last two decades, the Indian judiciary has fostered an extensive and innovative approach to environmental rights in the country. Complex matters of environmental management have been resolved and consequently a series of innovative procedural remedies have evolved to accompany this new substantive right. The new environmental right is therefore championed as a legal gateway to speedy and inexpensive legal remedy.

The notional expansion of right to life was recognized even in the absence of a specific reference to direct violations of the fundamental right. Placed in a nutshell, the human right culture has percolated down to Indian human right regime within a short period of time. An interdisciplinary approach to environmental protection may be another reason for the operation of the right to healthy environment. This has been undertaken through international environmental treaties & conventions, national legislative measures and in judicial responses.

On undertaking a comprehensive study of environmental law, it can be found that the Indian scenario is replete with examples of preserving the environment from degradation.

1. History of Environmental Protection in Ancient India

An appraisal of the historical background to environmental protection in India would indicate that forests & wildlife were considered as vital ingredients of the global system. Here, the entire scheme of environmental preservation was essentially duty-based. In this sense, the ancient Indian society accepted the protection of the environment as its duty to do so.

1.1 Hindu Era

Opening up the Hindu mythology, the Vedas, Puranas, Upanishads and other ancient scriptures of the Hindu religion have given a detailed description of trees, plants, wildlife and their importance to people. Yajnavalkya Smriti prohibited the cutting of trees by prescribing punishment for such acts. Kautilya's Arthashastra, written in the Mauryan period, realised the necessity of forest administration and Ashoka's 5th Pillar Edict expressed his view about the welfare of creatures in the State. Evidence from civilizations of Mohenjadaro and Harappa has further proved that the small population lived in consonance with the ecosystem and their needs maintained harmony with the environment. Thus, the Hindu society was conscious of the adverse environmental effects caused by deforestation and extinction of animal species.

1.2 Mughal Era

In Islam, there is close harmony between man and nature. However, during the Medieval period, the only contribution of Mughal emperors has been the establishment of magnificent gardens, fruit orchards and green parks, which were used as holiday resorts, palaces of retreat or temporary headquarters during the summer season. The common opinion of environmentalists has been that the Mughal emperors, though were great lovers of nature and took delight in spending their spare time in the lap of natural environment, made no attempts on forest conservation.

1.3 British Era

The British conquest in India brought about a plunder of natural resources coupled with a complete indifference towards environmental protection. A general survey of early environmental legislation reveals that apart from the forest laws, nineteenth century legislation also partially regulated two other aspects of Indian environment.

Some of the early efforts include the enactment of the Shore Nuisance (Bombay and Kolaba) Act of 1853 and the Oriental Gas Company Act of 1857. The Indian Penal Code, enacted in 1860, imposed a fine on a person who voluntarily fouls the water of any public spring or reservoir. In addition, the Code penalised negligent acts with poisonous substances that endangered life or caused injury and proscribed public nuisances. Laws aimed at controlling air pollution were the Bengal Smoke Nuisance Act of 1905 and the Bombay Smoke Nuisance Act of 1912. In the field of wildlife protection, early legislation was limited to specific areas and particular species, thereby aiming at the conservation of biodiversity.

It is clear that legislative measures were taken by the British Government for prevention of pollution and for conservation of natural resources. Although critics point out that the British enacted these legislations, not with the object of protecting the environment but with the aim of earning revenue for themselves, it should be regarded as the first step towards the scientific conservation of natural resources. Despite the fact that these measures were made with ulterior motives, British-enacted legislations have contributed significantly to the growth of environmental jurisprudence in India.

2. International Efforts

Economists see a world economy that has grown by leaps and bounds over the last half-century, but ecologists see growth based on the burning of vast quantities of cheap fossil fuels, which is destabilising the climate.- Lester R. Brown Rapid economic, scientific and technological advancements have shown massive repercussions in the form of degradation of ecological balances. Due to large scale occurrence of environmental crises, the global community has expressed major concern over environmental protection and environmental development. Amidst some serious endeavors, significant developments took place in the international scenario.

3. United Nations Conference on Human Environment

In the backdrop of some sincere efforts of tackling pollution control, for the first time, the attention of the world was drawn towards environment in the United Nations Conference on Human Environment was held at Stockholm in June 1972. The Declaration on Human Environment was passed containing twenty-six principles, with the main object of overcoming environmental problems related to the development of States and to provide clean & healthy living conditions. An important aspect of the Stockholm Declaration was a strategy to draft an action plan for the development of human environment. Moreover, the declaration stated that economic and social development was necessary for ensuring a healthy environment for man. This, in turn, has been called the Magna Carta on environment from which two important conclusions can be reached: v Man has the fundamental right to freedom, equality and adequate conditions of life in an environment of quality that permits a life of dignity and well-being; and v Man bears a solemn

responsibility to protect and improve the environment for present and future generation.

United Nations Conference on Environment and Development In the last decade, the most revolutionary step towards the preservation of the environment was the Earth Summit convened by the UN General Assembly at Rio de Janeiro from 3rd to 14th June, 1992. The Conference saw the largest gathering of world leaders ever in the history - deliberating and chalking out a blue print for the survival of the planet. It added a new dimension on the issues of environment and development in international negotiations. The main objective of the Summit was to find an equitable balance between the economic, social and environmental needs of present and future generations and to lay down a foundation for global partnership between developed & developing countries, on one hand, as well as governmental agencies & private organisations. Amongst the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change.

4. World Summit on Sustainable Development

The World Summit on Sustainable Development was held at Johannesburg, where after 10 years of the Rio Conference, the Summit reaffirmed sustainable development as a central element of the international agenda and gave new impetus to global action to fight poverty and protect environment. The Summit's plan of implementation is a seventy-one page document that is intended to set the world's environmental agenda for the next ten years and is expected to be a model for future international agreements. The plan of implementation aims at building further on the achievements made at UNCED and make commitment to undertake actions and measures at all levels to implement Rio principles and Agenda 21. Impact in India In the early years of Indian independence, there was no precise environmental policy. Government tried to make attempts only from time to time as per the growing needs of the society. The period of 1970s witnessed a lot of changes in policies and attitudes of the Indian Government when its attitude changed from environmental indifference to greater and subsequently, manifold steps were taken to improve environmental conditions.

National Committee on Environmental Planning and Coordination The year 1972 marks a watershed in the history of environmental management in India. This is because prior to 1972, environmental concerns such as sewage disposal, sanitation and public health were dealt with by different federal ministries and each pursued these objectives in the absence of a proper coordination system at the federal or the intergovernmental level. When the twenty-fourth UN General Assembly decided to convene a conference on the human environment in 1972, and requested a report from each member country on the state of environment, a Committee on human environment under the chairmanship of Pitambar Pant, member of the Planning Commission, was set up to prepare India's report. With the help of the reports, the impact of the population explosion on the natural environment and the existing state of environmental problems were examined. By early 1972, it had been realised that unless a national body was established to bring about greater coherence and coordination in environmental policies & programmes and to integrate environmental concerns, an important lacuna would remain in India's planning process. Consequently, as a result of the major issues highlighted by the reports, a National Committee on Environmental Planning and Coordination (NCEPC) was established in the Department of Science and Technology. The NCEPC is an apex advisory body in all matters relating to environmental protection and improvement. At its inception, the Committee consisted of fourteen members drawn from various disciplines concerning environmental management. Most of the non-official members were specialists. The Committee was to plan and coordinate, but the responsibility for execution remained with various ministries and government agencies.

5. Environmental Legislations

As part of its campaign on green environment, Indian Parliament has enacted nation wide comprehensive laws. One of the major environmental enactments came just two years after the

Stockholm Conference in 1974. The Water (Prevention and Control of Pollution) Act was passed for the purpose of prevention and control of water pollution and for maintaining and restoring the wholesomeness of water. The Water Act represented India's first attempt to deal with an environmental issue from a legal perspective. From this period onwards, the Central Government has been considered as highly environmentally active. In 1976, the Constitution of India was amended to insert a separate fundamental duties chapter. The 1980s witnessed the creation of many eco-specific organizations. In the year 1980, the Forest (Conservation) Act was passed for the conservation of forests and to check on further deforestation. The Air (Prevention and Control of Pollution) Act of 1981 was enacted by invoking the Central Government's power under Art 253. The Air Act contained several distinguishing features. The preamble of the Air Act explicitly reveals that the Act represents an implementation of the decisions made at the Stockholm Conference. Also, a notification relating to Noise Pollution (Regulation & Control) Rules was made in the year 2000 with the objective of maintaining Ambient Air Quality Standards in respect of noise. In the wake of the Bhopal gas tragedy, the Government of India enacted the Environment (Protection) Act, 1986. The laws that existed prior to the enactment of EPA essentially focused on specific pollution (such as air and water). The need for a single authority which could assume the lead role for environmental protection was answered through the enactment of EPA. It is in the form of an umbrella legislation designed to provide a framework for Central Government to coordinate the activities of various central and state authorities established under previous laws. It is also in the form of an enabling law, which delegates wide powers to the executive to enable bureaucrats to frame necessary rules and regulations.

Apart from this, several notifications and rules have also been made, some of which include the Hazardous Wastes (Management and Handling) Rules in 1989, the Biomedical Wastes (Management and Handling) Rules in 1998, Recycled Plastics (Manufacture and Usage) Rules 1999, Environment (Siltation for Industrial Projects) Rules 1999 and the Municipal Solid Wastes (Management and Handling) Rules in 2000. In addition to these eco-specific legislations, realising that there is no comprehensive legislation dealing with biodiversity in India, and to fulfil its international obligation under the Convention on Bio-Diversity, the Government of India has enacted the Biological Diversity Act, 2002. It is a paradox that despite the presence of such diverse laws, the pollution rate has crossed the dead line. This is probably because of the reason that the law is so complicated and vague that even the expert may not know the intricacies of it.

6. Constitutional Mandate on Environmental Protection

The Constitution of India originally adopted, did not contain any direct and specific provision regarding the protection of natural environment. Perhaps, the framers of the Indian Constitution, at that time, considered it as a negligible problem. That is probably why it did not even contain the expression environment. However, in fact it contained only a few Directives to the State on some aspects relating to public health, agriculture and animal husbandry. These Directives were and are still not judicially enforceable. Nevertheless, on a careful analysis of various provisions prior to the 42nd Constitutional Amendment, reveals that some of the Directive Principles of State Policy showed a slight inclination towards environmental protection. It can be inferred from Art 39(b), Art 47, Art 48 and Art 49 . These directive principles individually and collectively impose a duty on the State to create conditions to improve the general health level in the country and to protect and improve the natural environment. Regarding the expression material resources of the community present in Art 39(b) it was held in Assam Sillimanite Ltd. v. Union of India that material resources embraces all things, which are capable of producing wealth for the community. It has been held to include such resources in the hands of the private persons and not only those, which have already vested in the State.

The Supreme Court in Municipal Council, Ratlam v. Vardhichand observed that the State will realise that Art 47 makes it a paramount principle of governance that are steps taken for the improvement of public health as amongst its primary duties From these Articles, one can understand that the

Constitution of India was not as environmentally blind as suggested by some eminent jurists. Though the word environment was not expressly used in the Constitution, the object of the above Articles was to conserve the natural resources, thereby protecting the environment. However, it must be accepted that only with the strengthening of public interest litigations and an enhanced commitment from the Central Government during the late 1970s, did an expansion of constitutional provisions to include aspects relating to the environment take place.

7. Forty-Second Constitutional Amendment

Taking note of the Stockholm Conference and the growing awareness of the environmental crises, the Indian Constitution was amended in the year 1976. This gave it an environmental dimension and added to it direct provisions for the preservation of ecological and biological diversity. Art 48A, a directive principle, was inserted into Part IV of the Constitution, reading as follows:

The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Correspondingly, an obligation was imposed on the State through Art 51 A(g) in Part IVA, casts a duty on every citizen of India stating: 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. In *M.K. Janardhanam v. District Collector, Tiruvallur*, the Madras High Court has observed that the phrase used (in Art 48A and Art 51A) is protect and improve which implies that the phrase appears to contemplate affirmative governmental action to improve the quality of the environment and not just to preserve the environment in its degraded form. Therefore, the constitution makes two fold provisions - On one hand, it gives directive to the State for the protection and improvement of environment and on the other, it casts a duty on every citizen to help in the preservation of natural environment.

8. Role of Judiciary

The judiciary, to fulfill its constitutional obligations was and is always prepared to issue appropriate orders, directions and writs against those persons who cause environmental pollution and ecological imbalance. This is evident from a plethora of cases decided by starting from the *Ratlam Municipality Case*. This case provoked the consciousness of the judiciary to a problem which had not attracted much attention earlier. The Supreme Court responded with equal anxiety and raised the issue to come within the mandate of the Constitution.

The Supreme Court, in *Rural Litigation and Entitlement Kendra v. State of U.P.* ordered the closure of certain limestone quarries causing large scale pollution and adversely affecting the safety and health of the people living in the area. Likewise, in *M.C. Mehta v. Union of India*, the court directed an industry manufacturing hazardous and lethal chemicals and gases posing danger to health and life of workmen and people living in its neighbourhood, to take all necessary safety measures before reopening the plant. In an attempt to maintain the purity and holiness of the River Ganga, tanneries polluting the sacred river were ordered to be closed down.

Holding that the Government has no power to sanction lease of the land vested in the Municipality for being used as open space for public use, the Supreme Court in *Virender Gaur v. State of Haryana*, the Court explicitly held that: The word environment is of broad spectrum which brings within its ambit hygienic atmosphere and ecological balance. It is therefore, not only the duty of the State but also duty of every citizen to maintain hygienic environment. The State, in particular has duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment Moreover in *S. Jagannath v. Union of India*, the Supreme Court has held that setting up of shrimp culture farms within the prohibited areas and in ecologically fragile coastal areas has an adverse effect on the environment, coastal ecology and economics and hence, they cannot be permitted to operate. In *Vijay Singh Puniya v. State of Rajasthan*, the High Court of

Rajasthan it was observed that any person who disturbs the ecological balance or degrades, pollutes and tinkers with the gifts of nature such as air, water, river, sea and other elements of the nature, he not only violates the fundamental right guaranteed under Art 21 of the Constitution, but also breaches the fundamental duty to protect the environment under Art 51A (g).

Judicial activism in India provides an impetus to the campaign against pollution. The path for people's involvement in the judicial process has been shown. If this had not been done so, the system would have collapsed and crumbled under the burden of its insensitivity.

9. Fundamental Right to Live in a Healthy Environment

Man's paradise is on earth; This living world is the beloved place of all; It has the blessings of Nature's bounties: Live in a lovely spirit. - Atharva Veda (5.30.6) The right to live in a clean and healthy environment is not a recent invention of the higher judiciary in India. The right has been recognised by the legal system and the judiciary in particular for over a century or so. The only difference in the enjoyment of the right to live in a clean and healthy environment today is that it has attained the status of a fundamental right the violation of which, the Constitution of India will not permit.

It was only from the late eighties and thereafter, various High Courts and the Supreme Court of India have designated this right as a fundamental right. Prior to this period, as pointed out earlier, people had enjoyed this right not as a constitutionally guaranteed fundamental right but as a right recognised and enforced by the courts under different laws like Law of Torts, Indian Penal Code, Civil Procedure Code, Criminal Procedure Code etc. In today's emerging jurisprudence, environmental rights which encompass a group of collective rights are described as third generation rights.

Right to Environment - C Derived from the Right to Life Right to life, implies the right to live without the deleterious invasion of pollution, environmental pollution, environmental degradation and ecological imbalances. Everyone has the right to life and a right standard of living adequate for health and well being of himself and of his family. States should recognise everybody's right to an adequate standard and to continuous improvement of living conditions. Thus, inherent right to life shall be protected by law. Principle 1 of the declaration of UN Conference on Human Environment, 1972 proclaimed that man has the fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that permits a life of dignity and well being. After this Stockholm Declaration, references to a right to decent, healthy and viable environment was incorporated in several Global and Regional Human Rights Treaties and in resolutions of International Organisations.

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