

Review Article

## Environmental Policies and Law

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### ABSTRACT

The title of the research paper is ‘Environmental Policies and Law.’ The reason of the study that what environmental policies are formulated in our country and what are the laws framed to that effect by the parliament and even by the state legislature. After the Stockholm conference in 1972 the following findings were observed by the author (1) The environmental policies were framed and formulated by the Union Govt. The Govt. enacted the main or principle environmental laws with purpose to protect, preserve and to prevent environmental degradation. (2) The laws are basically in the form of protection and preservation of the environment and providing the prevention of pollution and degradation of the environment.

Principle Conclusion:

- (1) The Govt. enacted prominent environmental laws along with the remedies for its violation.
- (2) The machinery set-up for the implementation of the law was inadequate.
- (3) The environmental violation is very common and no strict measures were there.
- (4) The violations of the environmental laws were challenged in the court by affected party.
- (5) It is observed that the courts actively interpreted the environmental issues.
- (6) Many leading cases were decided by the SC and HC providing the environmental principles which are of immense use to Govt. and people.

### KEYWORDS

Ecosystem | Conservation | Environment Education | Sustainable Management | Sustainable

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## Introduction

In our country prime importance has been given to environment. The health of the people and the health of the country totally depend upon surroundings i.e. environment. In order to provide protection to environment several policies and laws are formulated. More importance is given to environmental protection since ancient period. It develops slowly and gradually through different stages i.e. ancient, medieval and modern period. The said development is reflected through various pre constitutional and post constitutional legislation.

After independence formulation and implementation of various five years plans played dynamic role for preserving, protecting and conserving the environment. Various articles incorporated in constitution are also helpful to that effect. Later on various landmark enactments were enacted for protection of environment and laid down some landmark doctrines. On the analysis of various statutes and decisions of various courts it is observed that whole emphasis is given on protection, preservation and conservation of environment. It needs to state that strict penalty must be imposed on all those who shall violate the environmental laws. A good attempt is made on the part of legislature to provide various comprehensive enactments for protection, preservation and conservation of environment.

## Environmental Policies and Law

Environment has been given the prime importance in every country because the health of the country and the health of the people are very much dependent on the environment. If the environment is degraded

than the expected standard, then it results into severe consequences on the health of the people and also on the health of the nation. Environment is also related to development of the country and development of the world. Environment preservation is the need of the hour and for that every country has to strive hard to protect its environment. For the purpose of protection of environment every country has to plan properly and to formulate the policies of its protection. Once the policy of protection of environment is formulated then it acts as the guidelines for the Govt. to implement those policies and accordingly, the environment of the country can be preserved and protected. If we analyse the laws which are enacted in the pre-constitutional period then we find a few of them where environment has been protected but the environmental protection has picked up the required momentum only in the post constitutional period and in particular after 'stockholm conference' of 1972. In the words of Late Shri Justice Krishna Ayer *'Planned development is a creative invitation to the legal system and jurists, strangely enough, law and development have remained distant neighbors and both have paid their price. They have slowly started recognizing each other's presence and mutuality of interests. A functional rule of law forfeits its social raison de-etre if it losses nexus with developmental demands of the people'*. In the above quote importance of development and environment has been depicted by Justice Krishna Ayer as then he was which speaks for itself.

The environmental law was very much in existence in ancient time it has been specifically mentioned in Vedas, Purans,

Smirits, Sanhitas and Sutras. It was there in Ramayana, Mahabharata and Shrimat bhagawatgeeta. It was also there in Kautilaya's Arthashastra. It was also there during the regime of King Asoka and in other religious scriptures. The prevailing position of the environmental law in medieval period was basically dominated by the Mughals. The Mughal emperor were very much in fond of the different types of gardens and thereby they have protected the environment but that was only limited to gardens otherwise there was not a single policy for protection of environment. The British ruled India for a petty long period of 150 years.

During their regime no specific policy was provided by them for preservation and protection of the environment. The British tried to protect the forest and the forest wealth only with the purpose to export the forest material and as a result there was no environmental protection. The British formulated forest policies and forest laws during 19<sup>th</sup> century. In addition to formulation of forest policies and forest

laws the British tried to control pollution in 19<sup>th</sup> century by enacting the laws but these law were inadequate to cater the requirement.

### **Environmental Law in Post –constitutional Period:**

In the pre-constitutional period the environmental law was not given justification as required but in the post -constitutional period the environmental law was given weightage from the point of view of its conservation and protection. In the beginning the National Forest Policy was formulated in 1952. The Govt. Formulated and implemented the 5 years plan and in that due

weightage was given in first five year plan. The specific emphasis was laid down on improvement of human environment pertaining to sanitation, public health, nutrition, water supply and housing was given the priority.

During the second five year plan lot of consideration was given for construction of forest roads and economic plantation was given priority. In this plan there was a provision for the conservation of wildlife and for that many wild life sanctuaries were established. In the second five year plan, the conservation of the forest was guarded and emphasis to that effect was given. In the third five year plan, this theme of conservation and growth of forest was continued with the purpose of protecting the environment. In the fourth five year plan the environment was related to development with respect to increase the productivity of forest, to provide scope to various forest based industries. To develop forest as a support to rural economy. During the fifth five year plan the relationship was established between the development panning and environmental management. In this plan, insistence was given for sustainable development, i.e. environment and the growth of the industries has to be there without degradation of the environment. In the Stockholm Conference of 1972, the environment was considered as the principle theme of United Nation. The then Indian Prime Minister Mrs. Indira Gandhi addressed the conference and drawn the attention of the countries of the world towards environmental problems. This conference was a sufficient booster dose to many countries to formulate their policies on the basis of the theme given in conference. In India, the Indian

constitution was amended for 42<sup>nd</sup> times. In this amendment the protection and preservation of environment was specially provided Art.48 (A) of the constitution was added by this amendment. This article includes that, ***‘the state shall endeavor to protect and improve the environment and to safeguard forests and wildlife of the country.’*** By this 42<sup>nd</sup> amendment a new chapter was introduced on fundamental duties wherein U/A 51 A (g) of this chapter the duty was imposed on the citizens of the country ***‘to protect and improve the natural environment including forest, lakes, rivers, wildlife and to have compensation for living creature.’***

On the basis and theme of Stockholm conference the new enactments were enacted by the Parliament of India. They were wildlife (Protection) Act 1972; a scheme was launched in 1973 for tiger project which was to be sponsored by the central Govt. for exercising the control on water pollution, water (Prevention and Control of Pollution) Act 1974 was passed and in 1977 Water (Control of Pollution) Cess Act was enacted for the purpose of controlling the water pollution.

In the sixth five year plan (1985) a topic on environment and development was included which covered environment and ecological principles in land use agriculture, forestry, wildlife, water, air, marine environment, minerals, fisheries, renewable resources, energy and human settlements. This provision further included the provision for guidance to administrators and resource managers in formulating and implementing programs and projects and lays down an institutional structure for environmental

management in the Central and State Govt. This plan also dealt with ecological assets.

It also provided for substantial development. In the seven five year plan the theme of sixth plan was further strengthened and the theme of sustainable development in harmony with the environment was tried to be implemented as much as they could. In this plan they have also provided the theme that forest for survival. They have also provided the National Forest Policy of 1988. In the eighth five year plan the emphasis was given on environment and forest. In this plan for the protection of environment certain measures were provided for e.g. Preventive and regulatory strategies such as raising public awareness, straight enforcement of laws, statutory assessment of environmental impact of projects and efforts to regenerate the productivity of eco-system. In this plan we get the idea pertaining to formulation of comprehensive National Policy on nature and national resources. In the ninth five year plan the entire emphasis was given to control environmental pollution in India. This plan included all aspects of environment such as air pollution, water pollution, forest cover and wildlife and other important aspects of environment. In the tenth five year plan the entire emphasis was given to forest and environment. This plan encourage agro forestry, forest plantation, conservation of wild life and endangered species and there habitat control of poaching and illegal trade in wild animal and plant species and development of national park and sanctuaries. This plan also included the measures provided for the problem of Industrial and hazardous waste and bio-diversity, climate change, air pollution and water pollution.

In the post-constitutional period the following environmental legislations were enacted in the

Country (i) Air Pollution:-The Air (Prevention and Control of Pollution) Act 1981. (ii) The Environmental Protection Act 1986 (iii) Noise Pollution (iv) Smoke Pollution (v) The Water (Prevention and control of Pollution) Act 1974 (vi) Marine Pollution (vii) Hazardous Pollution (viii) Radiation (ix) Pesticides (x) Wildlife (xi) The Wildlife Protection Act 1972 (xiii) Forests and Parks (xiv) Forest Conservation Act 1980 (xv) Land laws (xvi) Human settlement (xvii) Mineral resources (xviii) Ecology (xix) Archaeological monuments and (xx) Liability.

The aforesaid legislations are the major heads and under them there are many others enactments pertaining to the environment. These other enactments are many more in numbers hence they are not provided here. All the aforesaid enactments speak of the protection and preservation of environment and in case environmental provisions are violated then there is a provision for remedy, liability, punishment, fine. Through these provisions environment is controlled from the enactments of the environmental laws as per the requirements in pre-constitution and post-constitutional period speak about the policy of the environment and this policy is being catered by the Govt. systematically and in a channelized way.

Whenever there were violations of these environmental laws, those violators were prosecuted in the court of law and the court had shaped the environmental law from time to time by taking into consideration the

existing situation. The following are the cases which throws the light on the role of Supreme Court in shaping the environmental law. ***Rural Litigation Entitlement Kendra Dehradun V/s State of U.P.***, in this case, the petitioner had attacked the illegal limestone mining in Mussorie Dehradun region. This mining resulted into degraded of ecosystem in area. The SC held that U/A 21 the wholesome environment is part of fundamental right to life. ***M. C. Mehta V/s Union of India and Others (Shriram Food and Fertilizers Industry and Others V/s Union of India 1987)***, in this case, the petitioner has filed Public Interest Litigation against the manufacturer and sell of hazardous product. The Shriram Foods and Fertilizers Industry started leakage of oleum gas from one of the units of Shriram Foods. This resulted into sufferance of many persons and a person was died. The petitioner wanted to close down the industry because it was dangerous to the people living in that area. The court observed that the caustic chlorine plant should be shifted to some other place. The court also permitted to restart the plant by the management but certain strict rules which were laid down by the court must be followed. The approach of the court was in maintaining the balance between environment and development.

In ***M. C. Mehta V/s Union of India***. The petitioner has filed a petition in the court for control of pollution which is caused under Motor Vehicle Act. It was the contention of the petitioner that the heavy vehicles ply on the roads of the city and thereby caused the air pollution. The petitioner had specifically mentioned about pollution in Delhi. The petitioner has proposed a device for

controlling pollution. The court had accepted that by getting the experts opinion. The approach of the court in this was towards the control and prevention of vehicle pollution in Delhi. In *Indian Council for Enviro-legal Action V/s Union of India*, this public interest litigation was filed by the representative of the villagers for violation of their right to life due to pollution caused to them. One of the contentions of the petitioner was to get compensation resulted due to pollution. It was observed by the SC that though it is not possible to provide compensation U/A32, the court can definitely direct the central Govt. to fix and recover the cost of remedial measures from the private companies. The court further observed that under environmental protection Act the central Govt. has been given the power for the purpose of protecting the quality of environment. The central government has the power to cater to these requirements. In this case, SC interpreted the environmental protection Act with perspective of catering the interest of the people. The court also further observed that the chemical industries are causing the environmental pollution hence, they need to be controlled properly. The court specifically laid down two solutions to control pollution, (1). The creation of the environment courts (2) to consider the desirability of strengthening the environmental protection machinery both at the state and central levels and to provide them more power. In this case, the SC has definitely made an attempt to preserve and protect the environment by providing the solution to that effect. In *Maharaja Feteshilnrao Zoo Trust V/s State of Gujarat*, the petitioner contented that the agriculture

land which was in his possession but was a surplus land. On this surplus land the forest were there. These were called as private forest. This private forest could not be utilized for agricultural purpose without the permission of central government. Hence, the petitioner approached the court for getting relief that the private forest land be allowed to be use for agricultural purpose.

It was held by the court that the private forest land shall be governed by forest conservation Act 1980 and that land cannot be used for non-forest purpose without the prior permission of the central Govt. The court further observed that this prior permission of the central govt. cannot be utilized by the petitioner for protecting its holding in excess of ceiling area. In this case, court has categorically stated that forest land is not to be use for non-forest purpose only with the reason that conservation of forest is the conservation of forest is the conservation of the environment. In *Vellor's Citizens Welfare Forum V/s Union of India*, the petitioner had filed the petition in public interest. It was his contention that enormous pollution is being caused by discharge of untreated effluent is finally discharge in the river palas which is main source of water supply to the residents of the area. He further contented that due to this pollution there is no availability of potable water to the resident. He has specifically plead in his petition that tanneries used many different types of chemicals in chrome tanning process. These chemicals results in toxic effluent being let-out in open by the tanning industries. The court had ordered the central Govt. that it should constitute an authority U/s3(3) of the Environmental Protection Act 1986. This

authority would be given the powers to deal with the situations created by the tanneries and other polluting industries in the State of Tamil Nadu. The court further observed that the authorities constituted by the central govt. shall apply the 'precautionary principle' and 'polluter's pay principal. The court ordered to pay compensation to the individuals/families that have suffered due to pollution and shall access the compensation paid to the said individuals/families. The court also further observed that the compensation has to be recovered from polluters as the cost of reversing the damage to the environment. The authority has given the power to direct the closure of industry in case the industry refuses to pay compensation awarded against it. The court imposed pollution fine Rs.10,000/-on each and every tannery in the district. The fine shall be deposited as environmental protection fund and shall be utilized for compensating the affected persons.

In this case the contribution of SC by way of inculcating the principals of the polluter's pay principle and the precautionary principle has achieved considerable significance from the point of view of protection of environment. In *Calcutta Youth Front V/s State of W.B.* in this case, a public park called 'Satyanarayan Park' in Calcutta. A scheme for development of this park into two storied air conditioned underground basement market and parking place was proposed by M/S. Happy Home And Hotels Pvt. Ltd. They got license and permission from Calcutta Municipal Corporation. The petitioner Calcutta Youth front challenged it on the ground that such a development would affect ecological balance and hence, the court should prohibit them from proceeding further. The SC while

deciding the matter specifically observed that there must be a balance between ecology and development. Development is necessary for human being .This development is not going to disturb ecological balance and hence the petition was allowed. In *A. P. Pollution Control Board V/s Prof. N. V. Naidu*, in this case, a public limited Co. was to set up a Plant near Hyderabad and applied for no objection certificate for starting it to State Pollution Control Board. The Co. was to manufacture BSS Caster Oil derivatives such as hydrogenated castor oil etc. The Co. did not get an objection certificate from A. P. Pollution Control Board.

The Co. filed an appeal against this order U/s 28 of the water Act. The Authorities allowed the appeal of the Co. This matter ultimately went to SC and the SC has given the following decision. According to court it is highly technical matter which is to be decided by the experts team of the govt. This team shall decide whether NOC should be given to industry or not. In this case, the SC for first time instead of deciding the matter left it to the expert's committee and to act accordingly.

In *M. C. Mehta V/s Union of India*, in this case, the petitioner has filed the petition for preventing the hot mixing plant to operate as hazardous industry. The Indira Gandhi International Airport has applied for application for permission to install hot mixed plant for a period of 1 year for resurfacing of runways for safe landing and takeoff of domestic and International aircraft and for smooth handling of air traffic. The SC allowed the application of the hot mixing plant and observed that application of hot mixing plant shall not be operational

hazardous at time of landing and taking off. The environmental problems have to be balance with necessity of running an International Airport in the capital of India. The decision of the SC is very dynamic from the point of view of interpreting the protection of the environment as per the existing situation and there cannot be any fixed rules and regulations pertaining to environmental growth or preservation. In *Goa Foundation and others V/s Kokan Railways Corporation and Others*. The central government decided to construct a broad gauge railway line from Bombay to Mangalore which was later on extended to State of Kerala. The object was to improve the economic conditions and to make accessible the hinterlands in the State of Maharashtra, State of Goa and State of Karnataka. The central government set up a Kokan Railways Corporation for that. It was one of the big railway projects undertaken in the Indian sub-continent in the present century. The Petitioner registered society approached Bombay High Court. The said society contended that the respondent corporation should be compelled to procure environment clearance for alignment passing through the State of Goa. The Bombay High Court dismissed the petition. The court held that the expression industry, operations or processes etc. cannot bring within its sweep the activities of providing a rail line. There is no requirement of obtaining consent before laying the railway line. The court further observed that the rail line or a public road is provided for access to the public, to the seas, bays, estuaries, creeks and backwater and either public road or a rail line is not construction which demand clearance. The

court refused to exercise writ jurisdiction. Thus, the court has given importance for development which can be possible through transport development. In *Bombay Dyeing and Manufacturing Co. Ltd. V/s Environmental Action Groups and Others* Court treated the principle of sustainable development as a fundamental concept of Indian Law. Indian Judiciary passed various verdicts on sustainable development and permitted wood based industries to operate only where forest resources were available on a sustainable basis. In *State of Himachal Pradesh V/s Ganesh Wood Product*. The issue before court was the obligation of sustainable development requires that a proper assessment should be made of forest wealth and the entitlement of industries based on forest should not only be restricted accordingly, but there working should also monitor closely to ensure that the required balance is not distributed. The court emphasized on sustainable development and further stated that it is the essential requirement for the conservation of forest as well as mankind. The SC in *Indian Council for Enviro-legal Action V/s Union of India* stated that six hundred Km, long coast line of India need to be protect strictly. It would be duty and responsibility of coastal states and Union Territories in which stretches exist to see that the notification issued should be properly implemented in the coastal stretches. In *Narmada Bachao Andolan V/s Union of India*, the question of protection of environment arose with respect to Narmada Sagar and Sardar Sarowar project. There was lot of differences of opinion in granting environmental clearance and as a result the matter was referred to Prime Minister Office.



The Prime Minister Office gave environmental clearance on 13<sup>th</sup> April, 1987 and letter to that effect was issued by office of Prime Minister. In *Banvasi Ashram V/s State of U.P.* The PIL was filed U/A 32 of the constitution whereby the forest land in 433 villages was reserved and the local people were prevented from utilizing the forest produce ,fruits, vegetable, fodder, floor, timber, animals, fuel wood for their daily needs. It was the contention of the petitioner that they are utilizing this facilities since the generations but the government is bend down upon their eviction from these areas. It was there further contention that this Act of Government resulted into violation of their fundamental right of life of local people guaranteed U/A21 of the constitution. The SC in 1983 prohibited eviction of forest dweller pending investigation of their claims over forest. The court appointed a high power Committee to investigate the claims of people over the forest. In this case the government intimated the court that it wanted a site for the propose Rihand a super thermal plant of National Thermal Power Corporation in the disputed forest land. The National Thermal Power Corporation intervene in the matter and requested the court to release the land and to lift its order prohibiting eviction of the local people and allow the National Thermal Power Corporation to take possession of land for the said project. The court accepted the request of National Thermal Power Corporation and lifted the prohibition of eviction all 1800 acres of forest land for National Thermal Power Corporation project. The court granted the said land to National Thermal Power Corporation and provided a proposal of rehabilitation of those people who

could displaced by said National Thermal Power Corporation project. Thereby, the court tried to strike the balance between the interest of the displaced people by providing rehabilitation to them. In *Nabipur Gram Panchayat V/s State of Gujrat* the question of protecting the grazing land was arose. The Gujrat High Court specifically observed that the forms of huts or otherwise should be raised on them. Grazing land is important for cattle and they are the part of entire ecology. To protect the environment and ecology is essential hence, there protection is also important. In *Omprakash Bhatt V/s State of U.P.* An interesting question pertaining to conservation and protection of ecology was decided by the court. The place called as Bugiyal in Garhwal was situated at the high altitude in the mountain. This act of the Govt. and other organization was challenged as violation of ecological balance of the region. The court upheld the stand of the petitioner and ordered the shifting of huts and resorts to other places and their by preserve the ecological balance of the region. In *Rajiv Ratan Singh Alias Lallan Singh V/s State of Bihar*, a PIL was filed before Patna High Court that M/S. Shankar Chemical Industries Pvt. Ltd. Bhagalpur was engaged in the manufacture and production of Ethyl Alcohol has been discharging beyond its premises. This untreated effluents, chemicals, waste, sewage and odour emanating from the distilleries was polluting the water and the environment and thereby affecting the crops, cattle's the health of the people in total violation of Water Act, Air Act and the Environmental Protection Act. This discharge of effluents resulted into violation of local people's right guaranteed U/A14,21 along

with Article 47,47A of the constitution of India. The Patna High Court applied the principle of Polluter's Pays and ordered the M/S. Shankar Chemical Industry to pay the compensation to the victims who were affected by that. This decision of the court has provided great solace to the people and also protected the environment and ecology.

The aforesaid discussed cases throw the light on the interpretation of the SC in the matter of environment. Indeed it is fact that the SC of India has performed an active role in a dynamic manner by preserving and protecting the environmental law in the country. If we analyses the aforesaid cases, then we can draw the inference that the environmental law has been truly protected in the country not by the executive not by the legislature but in its true spirit by the judiciary of India.

This author is of firm opinion that the SC has acted as sentinel of environmental law and environmental rights of the people of the country. Had the SC not taken the positive, constructive approach towards the protection and preservation of the environment then the scenario in the country would have been altogether different. By observing the approach of the SC the author could visualize that in India the protection and preservation of environmental law is definitely bright and certain. Presently, the Indian Govt. at union level has started *Clean India Movement* speaks of the fact that the Govt. is approaching towards the protection and preservation of the environment in the country. During COVID whatever the restrictions were placed on the people from saving them from this epidemic in the form of lockdown, ultimately resulted into reduction of pollution in the cities. In certain cities the

environment has become improved substantially. According to author, the way protection of environment is possible during COVID, similarly the protection of environment is equally possible even during normalcy if the proper care and precaution has been taken by the people in general.

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