

## Environmental law: A war against environmental crime

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### Abstract

This Research is undertaken to reflect the absolute nature of the Environmental Law, combating against the Environmental Crime. The word “Environment” connotes Surroundings. The term Environment is comprised of Air, Water, Food, and Sunlight etc hence it affects all the living creatures i.e., Plants & trees. However, a number of necessities of life are fulfilled from the environment. Thus, it can be said that the Environment is a life support system. Therefore, it calls for a tremendous need to preserve the environment to serve the basis of all aspects of life i.e., Environment Protection, to Control, restrict, the use & exploitation of natural resources, Achieve sustainable development, balance ecosystem, protect environment quality, & overall to punish the environment polluter. From the ancient times we constitute the environment as a gift of nature as well as a blessing to living creatures, but this blessing is on the way of extinction due to day-by-day increasing Environment Pollution, which has been termed as a serious threat to our nature/environment. Without a good quality environment life is next to impossible for all the living creatures. Therefore the concern towards the environment must be raised by all the individuals and its enforcement action must be guaranteed by the government authority. There is a need for improvement in human well being that allows us to meet the needs of the present without compromising the ability of future generation to meet their own needs, which is also termed as “Sustainable Development”. Environment related laws are provided by the authorities to conserve environment from being exploited not only for present but also to serve the future needs of upcoming generation. Environment protection laws are made applicable to whole of India to protect & preserve the environment and also to punish the polluter’s causing environment degradation. The existence & purpose of the environmental law is to protect the environment and to create a set of rules for people to use natural resources & violation of such rules constitutes a punishable offence, therefore, such laws must be strictly observed & enforced by the authorities to preserve the Environment.

**Keywords:** environmental law, environmental crime, plants & trees

### Introduction

#### What is environment?

The word Environment is derived from a *French* word ‘*Environner*’ & *Latin* word ‘*in-viron*’ which means to encircle or surround. In other words, Environment is what surrounds us. The term environment refers to the sum total of air, water & land and determines the inter-relationships that exist among them & with the human beings, materials & other living creatures.

According to Sec-2(a) of the Environment Protection Act, 1986 defines ‘Environment’ as- Environment includes water, air, and land and the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property <sup>[1]</sup>.

#### In T.N. Godavarman Thirumalpad v. Union of India

Observed – the term ‘Environment’ is a difficult word to define. Its normal meaning relates to the surroundings, but obviously that is a concept which is relatable to whatever object it is which is surrounded <sup>[2]</sup>.

### Components of Environment

**1. Non-living component or Abiotic component-** It includes non-living things. E.g.; - soil, air, & water and is further divided into 3 categories i.e.

- a) Lithosphere – rocks, soil & solid air
- b) Hydrosphere – water components

c) Atmosphere- gaseous, which is further divided into 4 zones i.e., Troposphere, Stratosphere, Ionosphere, Exosphere.

- 2. Living Component or Biotic Component-** It consist of Flora & Fauna including Man
- 3. Energy component –** It includes solar energy, Geo-chemical energy, Thermo-electrical energy, Hydro-electrical energy, nuclear atomic energy, which helps in maintaining the real life of organisms.

### What is Environmental Pollution?

The term ‘Pollution’ is derived from a *Latin* word “*pollutionem*” which means Defilement. Thus, defilement of environment is termed as Environment Pollution.

Pollution means discharge by man of substances into environment which is hazardous to Human health, life, as well as to other living creatures & aquatic ecosystem. In other words, it is an interference with the legitimate use of environment or natural resources.

### Factors responsible for environment pollution

- 1) Population growth
- 2) Discharge of pollutants
- 3) Indiscriminate use of technology
- 4) Inadequate management
- 5) Industrial development
- 6) Unmindful exploitation
- 7) Deforestation

## 8) Urbanization

### Types of Pollution

1. **Air pollution**- air pollution refers to the undesirable change in the quality of air that affects the entire world, causing serious health problems
2. **Water pollution**- water pollution refers to the discharge of contaminated substance into water that radically affects its quality and make it unfit for use.
3. **Land or soil pollution**-Deforestation, release of toxic substance on the land, throwing of unhygienic substance on earth, dumping of waste, biomedical waste etc causes land pollution.
4. **Noise pollution**- noise pollution can be defined as unwanted sound that can affect the hearing capacity of an individual.
5. **Thermal pollution**-any undesirable, harmful change in natural temperature in particular locality, disturbing the natural heat balance of the surroundings is termed as thermal pollution.
6. **Nuclear or Radioactive pollution**-radioactive pollution is related to all major life-supporting systems such as, air, water & soil. It is a phenomenon of emission of alpha, beta & gamma rays as a result of disintegration of atomic nuclei.

### What is Environmental Law?

Environmental law refers to the collection of laws, regulations, agreements & common law that governs how humans interact with their environment. The purpose of the environmental law is to regulate human actions towards natural resources to preserve & protect them further along with it environmental law also determine who can use these natural resources & to what extent & on what terms. These laws regulate pollution, use of natural resources, forest protection, mineral harvesting, & animal and fish populations etc.

### International Agreements

#### United Nation's Conference on Human Environment, 1972 Or Stockholm Conference, 1972 (5<sup>TH</sup> JUNE TO 16<sup>TH</sup> JUNE, 1972)

The above mentioned conference based on human environment was opened & addressed by the Swedish Prime Minister OLOF PALME & then Secretary General of United Nations KURT WALDHEIM to discuss regarding the state of Global Environment. It was the first major attempt to solve the environment related problems & conserve it by international agreement on universal level. This conference is regarded as the foundation of modern international environment law <sup>[3]</sup>.

### How environmental law is combating environmental crime?

Several Laws, Acts, & Rules are made by the appropriate authorities to regulate the environment along with these certain provisions are also made in Tort, Indian penal code (IPC), Constitution of India, Code of Criminal Procedure.

#### i) The Environment (Protection) Act, 1986

The Act has been passed not only for the protection of the Environment but also to regulate the discharge of pollutants, handling of hazardous substance, speedy response in the event of accidents threatening the environment & punishing

the ones who endanger the human environment, safety & health. The Act enables the Central Government to take all the measures necessary for the purpose of protecting & improving the quality of environment & preventing, controlling & abetting Environment pollution.

The Act provides the maximum penalties for contravention of the act upto Imprisonment for 5 years or fine upto 1 lakh or both. If the failure or contravention continues beyond a period of 1 year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to 7 years.

The Act empowers the Government to collect samples of air, water, soil or other substances as evidence at the offences under the Act <sup>[4]</sup>.

#### In Vellore Citizen's welfare forum v. Union of India

The apex court observed that "the main purpose of the act is to establish an authority or authorities under section -3 of the act with the adequate power to control pollution and protect environment" <sup>[5]</sup>.

#### ii) AIR (Prevention and control of pollution) Act, 1981 <sup>[6]</sup>

The Act was enacted by the Parliament under Article-253 of the Constitution to implement the decisions taken at the UN Conference on the Human Environment held at Stockholm in June, 1972 in which India participated.

Its objectives are-

- a. To prevent, control the Air pollution in the Environment.
- b. To establish the central & state Boards in order to implement the objectives of the act.
- c. To assign such boards with powers & functions to implement the aforesaid objectives.
- d. To lay down the standards to follow & maintain the pure quality of Air.

Section-2(b) of the Air (Prevention & Control of Pollution) Act, 1981 defines "AIR POLLUTION" as – The presence in the atmosphere of any Air Pollutant.

#### Mahabir Coke Industry v. Pollution Control Board

In this case, the appellant industry was operating in an area declared as 'air pollution control area' by the State Board under section 19 of the Act.

The Board exercising its powers under section 26 of the Act conducted an inspection of the pollution control devices being used by the industry and the Board refused the consent to the industry on the ground that the factory was emitting black smoke and no preventive measures were being taken to control the emissions. It was also alleged by the board that the firm has failed to control emissions for the past two years and directed the unit to shut down until anti-pollution measures were adopted. Then the firm made some clarifications that they had the necessary anti pollution devices for two units and orders were placed for the equipment for the third unit. Thereafter, the Board monitored the air quality in the locality in the locality and found the devices to be ineffective and thus invoking its powers under section 31A, the Board directed <sup>[7]</sup>.

#### iii) The Water (Prevention & Control of Pollution) Act, 1974

The Parliament enacted the Water (prevention & Control of Pollution) Act, 1974. The water act represents India's first step taken to deal with an environmental issue.

The main objectives of the act are-

- a. To prevent & control water pollution.
- b. To maintain the quality & purity of water.
- c. To establish and confer the power on Central and State Boards for the prevention & control of water pollution.
- d. To provide penalties for contravention of provisions of the water act.
- e. To establish Central & State water-testing laboratories to check samples <sup>[8]</sup>.

### **M.C. mehta V. union of India [Ganga Pollution (Kanpur tanneries Case)]**

Facts: M.C. MEHTA filed a writ petition under Article 32 of the Constitution and brought to the notice of the court that a group of tanneries doing business on the bank of river Ganga in Kanpur were polluting the river by discharging effluents into the river without proper primary and secondary treatment of water and Kanpur Municipality is not taking any action to prevent the tanneries from discharging effluents into river Ganga, due to which water is getting polluted. The petitioner therefore filed this petition inter alia for the issue of a writ/order/direction in the nature of mandamus to the respondent restraining them from letting out the trade effluents into river Ganga until the time they put up unnecessary treatment plants for treating plants for treating the trade effluents in order to arrest the pollution of water <sup>[9]</sup>.

### **Provisions under Indian penal code, 1860 related to environment protection**

#### **Chapter-XIV of the Indian Penal Code, 1860 consist of Sections-268 to 294-A dealing with the Environment protection.**

#### **Section-268 deals with Public Nuisance**

“A person is guilty of a public nuisance, who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasions to use any public right.”

The above mentioned definition of Public Nuisance makes it clear that all the acts or omissions which tend to cause any kind of pollution such as, Air, Water, land & noise pollution, shall be punishable under Indian Penal Code.

#### **Section- 290 Punishment for public nuisance in cases not otherwise provided for**

Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

#### **Section 269-270 Negligent act likely to spread infectious diseases which are dangerous to human life.**

Section-289 provides that –

“If a person does not take sufficient care of any animal or cattle in his possession, which is likely to endanger Environment or Human life, he shall be liable to be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to six months or fine which may extend to Rs.1, 000/- or both.

### **Section-278 Making atmosphere noxious to human health**

“Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighborhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees”.

Section-291 of IPC makes disobedience of an injunction order to remove the cause of any Public nuisance specified in Sections 268 to 289 as stated above, an offence. The Section provides that “whoever repeats or continues a public offence having been enjoined by a public servant who has Lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to 6 months, or with fine, or with both <sup>[10]</sup>.

### **Constitution of India**

Article-48A lays down that “The state shall Endeavour to protect & improve the Environment & to safeguard forest & wild life of the country.

Article-51A (g) lays down that it is the Fundamental duty of every citizen of India to protect & improve natural environment including forests, lakes, rivers & wildlife & to have compassion for living creatures of the country.

Article-14 provides the, Right to Equality before law & protects a person against Arbitrary or Unreasonable State actions.

It prohibits Arbitrariness because very arbitrary action violates the principle of equality.

Article-19(1) (g) Guarantees all citizens the right ‘to practice any profession, or to carry on any occupation, trade or business.”

However this right is not absolute, it comes with “Reasonable Restrictions” in the interest of general PUBLIC.

Thus, Environmental interest from the hazardous of any trade or business can be protected.

Article-21 – “No person shall be deprived of his life or Personal Liberty except according to procedures established by Law”.

Further the article also includes,-

1. Right to Wholesome Environment
2. Right to Livelihood of People <sup>[11]</sup>

### **Provisions under Criminal Procedure Code, 1973**

Chapter X of code of criminal procedure, 1973 which deals with maintenance of public order and tranquillity has some relevance to the procedural aspects of the offences governed by IPC which in turn may have relevance to the subject of environmental pollution. Section 133 to 144 deal with abatement of Public Nuisance, section 133 confers a power on the Magistrate or any other Executive to regulate with public nuisances. The provisions of this section are attracted only in cases of emergency and imminent danger to the health or the physical comfort of the community.

#### **According to Section 133**

(1) Whenever a -

- District Magistrate or
- Sub-divisional Magistrate or

- Any other Executive Magistrate specifically empowered

On receiving

- The report of a police officer or
- Other information and

On taking evidence (if any) as he thinks fit considers that-

- (a) Any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by thru public; or
- (b) The conduct of any trade or occupation or the keeping of any goods or merchandise is injuries to the health or physical comfort of the community; or
- (c) The construction of any building of the disposal of any substance as is likely to occasion conflagration or explosion; or
- (d) Any building, tent or structure being in such condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood of passing by; or
- (e) Any tank, well or excavation adjacent to any public way or public place remaining unfenced which may cause danger to public; or
- (f) Any dangerous animal should be destroyed, confined or otherwise disposed of;

Such magistrate may make

- A conditional order, requiring the person causing the above
  - 1) To remove such obstruction or nuisance; or
  - 2) To desist from carrying on such trade or occupation etc.; or
  - 3) To prevent or stop the construction of such building; or
  - 4) To remove, repair or support such building, tent or structure, trees; or
  - 5) To fence such tank, well or excavation; or
  - 6) To destroy, confine or dispose of such dangerous animal;

In the manner provided in the order and within a time fixed in the order; or if the person objects so to do,

- To appear before himself or some other Executive Magistrate
- At a time and place to be fixed; and
- Show cause, why the order should not be made absolute

(2) No order made by a magistrate under the section shall be called in question in any civil court <sup>[12]</sup>.

### **Rural Ligation and Entitlement Kendra, Dehradun v. State of U.P.**

(Also known as Dehradun Mussoorie Hills Quarrying Case)

Facts: in this case, the Rural Litigation and Entitlement Kendra, Dehradun a NGO and a group of citizens wrote to the Supreme Court against the progressive mining which denuded the Mussoorie Hills of trees and forest cover and accelerated soil erosion resulting in landslides and blockage of underground water channels which fed many rivers and springs in the valley.

The Court ordered the registry to treat the letter as writ

petition under article 32 of the constitution (epistolary jurisdiction).

Initially the court appointed an expert committee to advice the bench on technical issues. On the basis of the report of the committee, the court ordered the closure of number of lime-stone quarries. The court observed:

This is the first case of its kind in the country involving issues relating to environment and ecological balance and the questions arising for consideration are of grave moment and significance not only to the people residing in the Mussoorie Hill range but also in their implications o the welfare of the generality of people living in the country.

It is interesting to note that in its order the Supreme Court did not make nor did the Supreme Court articulate any fundamental right specifically infringed. Whereas, exercise of jurisdiction under Article 32 pre-supposes the infringement of fundamental rights. It is submitted that the disturbance of ecology and pollution of water, air ad environment by reason of quarrying operation definitely affects the life of person and thus involves the violation to right of life and personal liberty under Article 21 of the Constitution. It is for the infringement of this right to life that Supreme Court entertained the petition under Article 32 of the Constitution.

**Decision:** the court directed that all the mines in Dehradun valley remain closed, except three operations. The court concluded that continued mining in the valley violated the Forest (conservation) Act. The court issued orders to reforest the valley.

The court was also concerned with the welfare of mine operators and workers left unemployed by closure of mines, as it ordered that such lessees be given priority for leases in new areas open to limestone mining. The workmen to be provided employment in the afforestation programmes in the region <sup>[13]</sup>.

### **Conclusion**

The Research paper concludes that –

The initiative taken by the Authorities in framing Laws, Rules, and Acts & Provisions mentioned in the Constitution serves the most prominent step to conserve the ENVIRONMENT & to regulate human actions towards Natural resources.

The provisions mentioned under the

- i) Environment Protection Act, 1986.
- ii) The Water ( Prevention & Control of Pollution) Act, 1974
- iii) The Air (Prevention & Control of Pollution) Act, 1981.

Helps to provide better quality Environment not only to present generation but also to the Future generation and thereby, giving a boost to Sustainable Development.

The ODD-EVEN formula raised by Hon'ble Chief Minister, Arwind Kejriwal presumed to be the most prominent step towards controlling Air Pollution.

But still there is a loophole in the system that is prevailing & the Government is still in a pressure to protect Environment from degrading, Therefore. What can be done is that the Government should take strict measures to enforce the laid down policies & police authorities must vigilantly keep an eye on controlling the pollution & strict actions must be taken against the Polluters.

### **Suggestions**

Environment serves the basis of the human life & calls for an emergent need to preserve & protect it by the following ways:

1. Reduce use of paper plates & plastic stuff.
2. Adopt reusable material.
3. Go for Rainwater Harvesting.
4. Switch towards eco-friendly.
5. Save water
6. Save Electricity
7. Use chimney in factories
8. Avoid dumping garbage stuff into Rivers or other water bodies.
9. Authorities must raise their concern towards protecting & preserving the environment.
10. Awareness must be raised towards SWACH BHARAT ABHIYAN, inaugurated by Hon'ble Prime Minister, Narendra Modi.

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