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ENVIRONMENTAL LAWS IN INDIA: A LEGISLATIVE AND JUDICIAL APPROACH

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I. ABSTRACT

The Government of India has taken systematic and continuous efforts to tackle environmental issues through legislative action. India is a signatory of the “United Nations Conference on Human and Environment” held in 1972 in Stockholm. The “Rio de Janeiro Conference” held in 1992 re-affirms the commitment to administrative and executive action for the redressal of the environmental disputes arising out and incidental to it. The protection of the right to life and environmental degradation has been a continuously important issue for the growth of human life and activities. The judiciary has affirmed the right to fresh water and air as a basic right to life under Article 21.¹ The Constitutional and Legislative framework for the protection of life is required for the welfare of society. The judicial discourse for a clean and healthy environment has been an important action of judicial nature. The Constitution under part IV has declared that it shall be the fundamental duty of a citizen of India ‘to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creature’. It means that Article 48A, 51(A)(g) enumerates the fundamental duties upon the State and people to save the environment and preserve the ecology at large.² The Supreme Court in the case of MC Mehta v. Union of India³ directed that an Industry manufacturing hazardous and

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¹Subhash Kumar v. State of Bihar AIR 1991SC 420-424;

² The Constitution of India, 1950.

³MC Mehta v. Union of India (1986) 2SCC 176.

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lethal chemicals and gases posing danger to the health and life of the workmen and people living in its neighbourhood take all necessary safety measures before reopening the plant.

Keywords: *Environment, Degradation, Pollution, Legislative Framework, Protection, hazardous and rights.*

II. INTRODUCTION

The term “environment” has a wide connotation under the Environment Protection Act, of 1986. Section 2(a) defines the term environment includes the relationship of activities of air, water, soil, living and non-living organisms including the property. The mandate of the right to development should be based upon the surroundings and the manifestation of quality of life for the survival of human life. The legislative enactments have been a very important development for the preservation and protection of the natural environment. The National Green Tribunal Act, of 2010 is a landmark in deciding the issues arising between the people and the environment. It is considered expedient to implement the decision taken in the *Rio de Janeiro* declaration, 1992 to have a National Tribunal for the issues of a multi-disciplinary approach to the environment. The increased expansion of industrial and corporate activities has deteriorated the surrounding human residence. Judicial activism has founded the scope for the care and protection of the environment. The sustainable approach and policy framework has been the key indicator for comprehensive action for the preservation, care and protection of the natural environment.

The Indian Constitution is one of the rare Constitutions of the world containing a specific provision for the protection of the environment. It imposes an obligation on the State and the Central duties upon the citizen to protect and improve the environment. *Article 48 A* states that "the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country". There are several policy statements relating to the conservation of water, air, forest and marine resources and controlling or abatement of pollution at different levels relating to land, housing, industries and corporations. Judicial interpretation has made the right to live in a healthy environment as *sanctum sanctorum* of human rights. It considers an

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integral part of the right to life under *Article 21* of the Constitution.⁴The right to a healthy environment has been construed as part of the right to life under the Constitution. Currently, the existence of humans on earth is the most dangerous threat to nature due to the inadvertent exercise carried out by agencies and institutions.

The existence of human life on the planet is deemed and supposed to be in the equilibrium of the use of natural resources as it exists. The right to quality under the law is sacrosanct for the protection of human life and individual liberty. The government has formulated the policy statement and documents for controlling environmental pollution as follows:⁵

1. The Industrial Policy Statement, 1980;
2. Technology Policy Statement, 1983;
3. National Education Policy, 1986;
4. National land Use Policy outlines, 1986;
5. National Water Policy, 1987;
6. National Land Use Policy, 1988;
7. National Housing Policy, 1988;
8. National Forest Policy, 1988;
9. Policy Statement for Abatement of Pollution, 1992;
10. The national Conservation Strategy and the Policy Statement on Environment and Development, 1992;
11. Ocean Policy Statement
12. The National Agriculture Policy, 2000;
13. The Wildlife Conservation Strategy, 2002.
14. The National Water Policy, 1987.

⁴ The Constitution of India, 1950.

⁵ S. ShanthaKumar; Introduction to Environmental Law 2nd Ed. Reprint (Lexis Nexis, Gurugram) 2015.

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15. The National Environment Policy, 2004.

16. The Environment Impact Assessment Policy, 1991 Amended in 2021.

These policy frameworks have fulfilled the long-standing demand of society and give clear and precise notes on the developmental aspect of laws and rules. Justice K.N Singh of the Supreme Court in a matter of *Subhash Kumar v. the State of Bihar* states that “ the right to life is a fundamental right under article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything impairs that quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution to remove the pollution of water and air which may be detrimental to the quality of life.

III. The National Environment Policy, 2004

The Ministry of Environment and Forest, Government of India has published a draft national Policy emphasizing the need for a comprehensive policy statement to infuse a common approach in the various sector and cross-sectoral, including the fiscal approach to environmental management. The National Environmental Policy, 2004 briefly described the key environmental challenges prospectively faced by the country. The main focus of the NEP is as follows:⁶

- A. The Objective of the Environmental Policy;
- B. Normative Principles underlying Policy Action;
- C. Strategic theme for Intervention;
- D. Broad indication of the Legislative and Institutional Development
- e. Mechanism for Implement and Review.

IV. Environmental Policies Strategic themes and Mechanisms

The key objectives of NEP 2004 are:

⁶The National Environmental Policy, 2004.

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*To protect and conserve critical ecological systems and resources, and invaluable natural and man-made heritage that are essential to life support, livelihoods, economic development and the broader concept of human welfare:

- All sections of society to ensure equitable access to environmental resources and quality for the goes;
- Ensuring judicious use of environmental resources to meet the needs and aspirations of present and future generations;
- Integrating environmental concerns into policies, plans, programs and projects for economic and social development;
- Ensuring efficient use of environmental resources in the sense of reducing their use per unit of economic output, to reduce adverse environmental impacts;
- To apply the principles of good governance (transparency, rationality, accountability, time and cost reduction, and participation) to the management and regulation of the use of environmental resources;

*To ensure high resource flow, which includes finance, technology, Management skills, traditional knowledge and social capital for environmental protection through mutually beneficial multi-stakeholder partnerships between local communities, public agencies and investors?

The Supreme Court in *Delhi Industries Pollution case*⁷ ordered the shifting of 168 hazardous Industries operating in Delhi as they were causing danger to Ecology. The National Environment Policy emphasizes that what is good for the environment is also good for the economy and environmental protection cannot be considered in isolation from the development process. At the time this book goes to print, the NEP remains a draft for comments. The actual policy statement and discussion on the strengths and weaknesses of the NEP will be very necessary to observe the achievement of laws and policies.

⁷ (1997)SSC 811

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V. The Judicial Trends and Approach

The important growth in science and technology has been far-reaching effects on the existence of natural flora and fauna worldwide and the development of society at large. It has diminished the surrounding natural resources. The growth with sustainability and use of natural resources under climatic conditions is the *sine qua non* of the need of human society. Rapid industrialization and infrastructure have been the main concern for the deterioration of natural resources. Transportation and household activities have been a great concern for the loss of vegetation and flora. The risk to human health and nature has been posing threat to the sustenance of human life in the coming days. In matter of *MC Mehta*⁸ (popularly known as Tanneries case) ordered the closure of all tanneries, which were found to be polluting the river Ganga. Further in case⁹ the Hon'ble Court ordered the shifting of dairies outside the city and arrange for the removal of waste accumulated at the dairies so that it may not reach the river Ganga and directed the following guidelines:

- A. to lay sewerage line where it was not constructed
- B. to construct public latrines and urinals for the use of poor people free of charge
- C. to ensure that dead bodies or half-burnt dead bodies are not thrown into Ganga and
- D. to take action against the industries responsible for pollution.

The International obligation under the United Nations Declaration on Human and Environment has been continuously demanding effective access to judicial and administrative action.¹⁰ The human action and growth of society under the roof of economic need have been witnessed. The quality of life and economic need are the basic challenges to environmental degradation. The Directive Principle of State Policy is the Charter for the economic and social change in India, the Constitution has mentioned the blueprint of development. The philosophy of the Constitution is the welfare of society. The facilities and the infrastructure for the well-being of human life and

⁸(1987) 4SCC 463

⁹ MC Mehta v. Union of India (1988) 1 SCC 477

¹⁰ HN Tiwari, Environmental Law, 5thEd. Reprint 2016 (Allahabad Law Agency),

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the destruction of the wetland, and habitat have witnessed the conflict between nature and human acts. The Supreme Court in *Andhra Pradesh Pollution Control Board II v. M Y Nayudu*¹¹ referred to the Resolution of the United Nations Organization¹² (UNO) passed during the water Conference, 1977 to which India is a party and observed that the "right to access the drinking water is fundamental to life and there is a duty on the State under Article 21 to provide clean drinking water to the citizen".

The Human Global Index (HGI) and Millennium Development Goals (MDGs)¹³ are the key indicator of the development and growth of human races. The environmental pollution problem has been continuously developing against the hazardous and poisonous result of ecological imbalances. To take care and proceed according to the nature and its limitation, the safeguards under the national and international frameworks have been enacted.

The judicial overemphasis and intervention have obstructed the plan of development to some extent but the procedure and policies framework under the National planning has improved the condition of growth. The commercial and industrial activities can be reviewed and checked under the scheme and the projected plan can be scrutinized through administrative and legislative competence. The future growth and need are to harmonize the balance between the conflicting issues of environment and human rights values.

VI. Environmental Development and Human Rights Concerns

Environmental preservation and protection are the need of worldly concerned. *Article 51(A)(g)* mentioned that "to protect and improve the natural environment including forest, lake, rivers and wildlife and to have compassion for the living creature". The right to fresh air and water is the benchmark for the life. Growth and development have been key issues for environmentalists. The arising issues and the concern of water, plant, animal, microorganism and non-organism have been key factors for natural life. The Supreme Court requested the Law Commission of

¹¹ (2000) SOL case no 673.

¹² United Nations Resolution on water 1977' All people whatever their stage of development and their social and economic condition, have the right to have access to drinking water in quantum and of quality to their basic needs"

¹³ United Nations Agenda for Millennium Development Goals, 2000.

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India to consider the issue of the environment and frame specialized agencies or courts for the redressal of disputes. On the recommendation, the National Green Tribunal was proposed and enacted by the Parliament for the expeditious and effective disposal of cases relating to the environment and the conservation of forests and other Natural resources.

VII. Legislative Dictums

The Environment Protection Act, of 1986 was passed by the Parliament for matters relating to the wholesomeness of the environment and maintaining the quality of air, water and another microorganism under the umbrella. The objective of the Act is to preserve and protect the natural environment against any encroachment and degradation. This is an important piece of legislation intended to implement the Declaration of, 1972 in which India was a participant. This is comprehensive legislation dealing with the quality of air, water and other element required for the subsistence of life on earth. The Ministry has been empowered by the law to preserve and protect the natural environment and implement the provision for the welfare of the people.¹⁴

Despite the Ministry of Forest and Environment, the Forty-two members of the Parliament Standing Committee on the environment have been supporting the specialized agencies and scrutinising their work. The Committee chaired by *V Narayan Swami* had made the contrary opinion on the functioning of the ministry as slow and non-transparent in its functioning. The Ministry and Central Pollution Board are not actively carrying out their assigned work and had no clear strategy. The panel observed that the central government should bypass the States in implementing the Schemes pertaining to the environment.¹⁵

The section 3¹⁶ of the Environment Protection Act, 1986 empowers the central government to take measures to protect and improve the Environment as it deems necessary or expedient for the quality of the environment. The obligation has been imposed upon the central government to take necessary action for abating environmental pollution and improve the quality of the

¹⁴ HN Tiwari, Environmental Law; 5th ed. Reprint (Allahabad Law Agency, Faridabad) 2016.

¹⁵ Times of India, May 7, 1997.

¹⁶ Environment (Protection) Act, 1986

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environment. The section empowers the Government to make measures with respect to the following matters:

The environmental jurisprudence and rights had taken place in the economic and social parameters of the Human Global Index under the various programs of the United Nation. Professor *Paras Diwan* in his work "Environment Administration, law and Judicial Attitude" has observed that the people of India love Pollution to such an extent that they cannot live without it because "traditionally, we are pollution loving country". We are lovers of cleanliness and, therefore, broom out all of our household and other waste on the public street. We are equally fond of noise pollution, Godmen's voices must be heard by all, day and night and our Ratjagas, Akhanpaths and Azan must use loudspeakers and amplifiers; no one should be deprived of hearing God and Godmen's voice and God to are far away beyond the hell and heaven.¹⁷

(a) Co-ordination of action by the State Government and other authorities in relation to rules and other laws;

(b) Planning and execution of the nationwide plan for awareness relating to the environment;

ILay down the standards for the emission or discharge of pollutants;

(d) Notifying the area and application of the Act will be applied and restrict the operation of industries, operation and processes harmful to the environment;

ILay down the procedure and standards for the safety of the environment and safeguards for the prevention of accidents;

(f) Laying down the standards for the handling of hazardous substances;

(g) Examination of the manufacturing processes, material and substances as are likely to cause environmental pollution;

(g) Carrying out and sponsoring investigations and research relating to the problem of environmental pollution.

¹⁷Nani A Palkhiwala, We the Nation – the Lost decades UBSPD (1994) p.27-29

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- (h) Inspection of any premises and giving an order, or direction in relation to such action to the authorities;
- (i) Establishment and recognition of environmental laboratories and institutes to carry out the function entrusted under the Act;
- (j) Collection and dissemination of information in relation to environmental pollution;
- (k) Preparation of manual, code or guides relating to prevention and control, abate the pollution;
- (l) Carrying such function as the Central Government may specify and deem necessary or expedient for such purpose under the Act.

The National Environment Tribunal Act, 1995 has been enacted to provide strict liability for damages arising out of any accidents while handling any hazardous substances and provide effective relief in such matters. This Act has very limited liability in such cases. After that, the National Environment Appellate Authority Act, of 1997 was enacted to establish the national Appellate Authority to hear the Appeal arising out from the matter of industry, operation, or process or class of industries operation or processes shall not be carried out subject to restriction of Environment Protection Act, 1986. The National Environment Appellate Authority has a limited scope and workload and narrow scope of its jurisdiction.

The National Green Tribunal Act, of 2010 was passed with the *motto* to ensure environmental justice for the people and it came into force on 18th October 2010.¹⁸ The objectives of the national green Tribunal is to care for and protection of forest and other natural resources including any rights arising in relation to the environment and provide relief and compensation for any damages and loss. The Tribunal have jurisdiction over all civil cases relating to the environment involved and any legal right arising out of the environment arises. After passing this Act, the Environmental Tribunal, 1995 and the Environmental Appellate Tribunal Act, 1997 deemed to be repealed from the date notified under the gazette.

VIII. Composition and Constitution of the Green Tribunal

¹⁸ Vide Notification No. so 2569(E) dated 18th October 2010.

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Section, 3 provides the provision for the enactment of the Tribunal by the Central Government by official notification and mentioned the jurisdiction, power and authority conferred to such Tribunal.¹⁹ Section 4 (1) discussed the provision for the composition of the tribunal under the Chairperson and not less than ten judicial members and not less than ten expert members.²⁰

Section, 5 discussed the qualification of the Chairperson and judicial members, expert members, a person shall not be qualified for appointment as the Chairperson or Judicial member of the Tribunal unless he is or has been, a judge of the Supreme court or the Chief Justice of a High Court.²¹ Section 6 discussed the provision for the appointment of the Chairperson and the judicial manner in such ways as the Expert Members by the Central Government.

Section, 7 provides the provision for the term of duration in office and other conditions of services and section 8 provide the procedure for resignation by them.

IX. People Approach and Trends

The concern for the environment has been subsisting over time of passage from ancient times. In modern India, it gives some anxiety to the legislature and the agencies to look at the grave loss of vegetation, flora and fauna. The spirited-minded people have made a quest for the plant and forest through their effort and sensitize the people that they are “Our life”. This leads a movement in modern India; the “*Chipko Andolan*” was launched in Uttar Pradesh by the Bahuguna the save trees against cutting. The people-centric approach towards the environment has not been paid attention to despite the judicial dicta for broadcasting environmental awareness. The Supreme Court gives the direction to the Government to broadcast the slides containing the information and messages on the environment free of cost and spread valuable information relating to the environment in national and regional languages through television and All India Radio in a regular and short-term programme.²² The majority of the people are unaware of the Judicial and legislative action but it has been a very important point to redress the issues

¹⁹ The Environment(Protection) Act,1986

²⁰ Ibid.

²¹ Supra Not 17.

²² MC Mehta v. Union of India AIR 1991 SC 382

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and overcome the point in disputes. Mostly slum dwellers and poor are not even aware of the problem of the environment but leave the seriousness of the problem in whelming. In the case *M.K Janardhaanam v. District Collector Trivulur*²³ Madras High court appreciated the petitioner for the effort taken by him under *Article 51A(g)* that " it is a fundamental duty of the citizen of India to protect and improve the natural environment and have compassion for the living creature".

X. Conclusions and Future Remarks

The developing trend in environmental issues has attracted the judicial and legislative systems to develop a mechanism for the preservation and protection of natural resources in such a manner that it can restore natural inhibition. The controlled activities provide a better chance for the future generation through legislative and executive action. Taking into the large number of cases pending in High Courts consisting of multi-disciplinary issues involved in these cases. It has been mandated to enact a law for the better administration of environmental issues.

The Court reiterated the ratio of *M.C.Mehta v. Kamal Nath & Ors.*²⁴ that it is the duty of the State to preserve the natural resources in their pristine purity. The Doctrine of Public Trust was reinforced. It was emphasized that the Doctrine of Public Trust is founded on the idea that certain common properties such as rivers, seashores, forests and the air were held by the Government trusteeship for the free and unimpeded use of the general public. It was reiterated that our legal system is based on English Common Law which includes the Doctrine of Public Trust as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment.

There is a need for a people-centric approach to the preservation of the natural environment and protecting human life against the deterioration of the environment. The expert bodies dealing with environmental issues must consider the use of technology for better and sustainable development. The new horizons of economic activities have threatened natural resources and led

²³ 2003 IN W 262.

²⁴(1997)1SCC388

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to the exploitation and degradation of the surrounding. There is a collective approach for the sustenance of life along with the plant, forest, living and non-living creatures.



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