

The Protection of Environment in India: An Analysis

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Abstract

The Constitution of India imposes a duty upon the Supreme Court to protect the Fundamental Rights of the people. Right to a clean environment is an important postulate of the right to life and personal liberty guaranteed under Article 21 of the constitution. The Judiciary in India has played a very important role in environmental protection and has applied the principles of sustainable development while deciding the case. In *M C Mehta v. Union of India*, the court has held that the right to life under Article 21 means a life with dignity to be lived in a proper environment free from dangers of diseases and infection. In the present scenario the protection of the environment is a global issue and it is not an isolated problem of any area or nation. The problem of environmental pollution is increasingly small, concerned to all countries irrespective of their size, level of development or ideology. In India, it has been witnessed that PIL has been used as an important instrument to bring environmental issues in the notice of the court. Thus any spirited citizen or social group or NGOs can take its advantage to bring a real environmental problem in the eyes of law.

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Introduction

The protection of the environment is a global issue and it is not an isolated problem of any area or nation. The problem of environmental pollution is increasingly small. Concern of all countries irrespective of their size, level of development or ideology¹. Earth is the only planet to be blessed with human life. It is having such an Environment which sustains every form of life present on it. Where on one hand Environment has been a life saving support for every human being, on the other hand unregulated human activity has been the main cause of environmental degradation. India since the Vedic period has expressed its gratitude to nature. According to the Indian philosophy of Vedic period, the human body is made of five natural elements: water, earth, sun, air and food grains². Massive population, explosion, tremendous urbanization, unrestricted exploitation of natural resources and constant industrial growth all round the globe has disturbed the ecological balance³. The problem of environment pollution is not new in its origin. Today, society's interaction with nature is so extensive that environmental questions have assumed proportions affecting all humanity⁴. Environment degradation harms our health, reduces economic productivity and leads to loss of amenities. Basically environmental pollution has numerous kinds out of which air pollution, water pollution, noise, land pollution and global warming etc are the prominent ones⁵. Due to global warming, the water level is rising and it is feared that in a few decades, the islands will submerge in water. The unstoppable deforestation has also posed a great threat to the environment.

Meaning of Environment

The term 'Environment' has been derived from the French word which means to encircle or surround. Etymologically environment means "surrounding, especially the material and spiritual influences which affect the growth, development and existence of a living being. It means the circumstances or conditions that surround an organism or group of organisms. In the context of human beings, the environment is the sum of all social, economic, biological, physical or chemical factors which constitute the surrounding of man, who is both creator and molder of his own environment⁶. There are four components of the environment: atmosphere, hydrosphere, lithosphere and biosphere.

Kinds of Environment	Environment can be divided into two categories
Natural Environment:	The environment that comes into existence without the interference of man is called a natural environment. It operates through a self-regulating mechanism called "homoeostatic environment mechanism" i.e. any change in the natural ecosystem brought about by natural processes is counterbalanced by changes in other components of the environment.
Man Made Environment:	The Environment which is modified by human activities is called an "anthropogenic" environment ⁷ . Man is modifying the environment through scientific technology which is the product of the human brain. He modifies it according to his needs
National initiatives for environmental protection	There are various legal provisions which are made for the protection of environment at national level as-
Constitutional Provisions	<p>The constitution of India puts an obligation on both the state and citizens of the country to protect and improve the environment. Article 51A, part IV-A of the constitution deals with the fundamental duties where in article.</p> <p>The constitution of India puts obligation on both the State and Citizens of the Country to protect and improve the environment. Article 51-A, part IV-A of the Constitution deals with "Fundamental Duties", wherein Article 51-A(g) states the fundamental duty with respect to the environment. It provides: 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 creatures⁸.</p> <p>Both 'Right and duty' co-exists. If human beings have the 'right to life' and claim that the State should safeguard their rights, provide them with healthy living conditions, they should also perform their duties towards the Society. So, it is the utmost important duty of a citizen to preserve a healthy environment. Unhealthy atmosphere will cause health hazards and the citizens will themselves pose danger to the right to life. The underlined emphasis of this fundamental duty is that every citizen has a duty to make an endeavor to preserve the environment in the same way as nature has gifted it to all of us.</p> <p><i>Article 48-A</i> provides for the protection and improvement of the environment. It provides 'the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the Country'.</p> <p>According to <i>Article 37</i>, Directive Principles of State Policy are non-enforceable but still their supremacy cannot be denied. They are fundamental in the governance of the country⁹. Fundamental Rights and Directive Principles are so interrelated that achievement of one results into the attainment of another. If fundamental rights are the 'claims/rights/liberties' given to the individual then directives are the duties/liabilities imposed on the State to grant and protect such guarantees given to the Society. In a democratic setup, only that government survives which works for public good. As the government is 'for the people, 'of the people' and 'by the people', so public opinion itself act as a deterrent and compels</p> <p>"In the context of our national dimensions of human rights, right to life, pollution free air and water is guaranteed by the constitution under Article-21 and Article 51-A(g) Article 48-A. It is the duty of the state to take effective steps to protect the guaranteed constitutional rights."</p> <p>Thus, the Supreme Court has made it clear that Article 21, 48-A and Article-51-A (g) have to be read together thereby putting an obligation on the State as well as on citizens to protect and improve the environment.</p>
Objective of the Study	Aim of study of this paper is to emphasise the necessity of the protection of Environment

Indian Penal Code and Protection of Environment

IPC makes various acts affecting the environment as offences which are punishable. Chapter XIV of the Indian penal code deals with offences which affect the public health safety, connivance and morals by making those acts punishable which pollute the environment or threaten the life of the people. These are the following.

Section 268. Deals with the Public nuisance: If a person is guilty of a public nuisance who does not act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the 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 occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

Section 269. Deals negligent act likely to spread infection of disease dangerous to life: Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six month, or with fine, or with both.

Section 270. Prevent malignant act likely to spread infection of disease dangerous to life: Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 271. Deals with that Whoever knowingly disobeys any rule made and promulgated by the Government for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a terms which may extend to six months, or with fine, or with both.

Section 272. Prevent a person to adulterate any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine

Section 273.Prevent the Sale of noxious food or drinking water: Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Apart from these provisions Sec. 274, 275, 276, 277, 278, 284, 286 deals with the prevention of environmental pollution. If a person commits any act prevented by these sections that person will be held liable for punishment. Section 430, 431 and 432 deals with the mischief, and prevent to commit mischief which likely to cause a diminution of the supply of the water for agricultural purposes, or for food or drink for human being

Criminal Procedure Code and Environment

The code of criminal procedure provides some preventive action for the protection of our environment from pollution. Section 133 to 143 and section 144 can be the most effective and speedy remedy for preventing and controlling public nuisance which cause air and water pollution.

Section 133 provides for a rough and ready procedure to be used in urgent cases for removal of public nuisances. According to this section whenever a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers¹²-

1. that 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 the public; or
2. that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or
3. that the construction of any building, or, the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or
4. that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons "living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or
5. that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or
6. that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order:
7. to remove such obstruction or nuisance; or
8. to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or
9. to regulate the keeping thereof in such manner as may be directed; or
10. to prevent or stop the construction of such building, or to alter the disposal of such substance; or
11. to remove, repair or support such building, tent or structure, or to remove or support such trees; or
12. to fence such tank, well or excavation; or
13. to destroy, confine or dispose of such dangerous animal in the manner provided in the said order;

or, if he objects, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause why the order should not be made absolute.

No order duly made by a Magistrate under this section shall be called in question in any civil court. This section is designed to afford a rough and ready procedure for removing public nuisances.- It is interesting to note the observations of the Punjab & Haryana High Court *on* the nature and consequences of orders made under Section 133¹³, The Court observed :-

"The proceedings are just to maintain peace and tranquility and the orders rendered under these sections are merely temporary orders. The orders of the courts are coterminous with the judgment or decree of the civil court. No sooner does the civil court declare the right of the parties than the temporary orders rendered by the courts under Section 133, 145 and 147 of the Code come to an end."

In fact the section has been formulated to deal with emergent situations

In order to invoke Section 133(l)(a), the nuisance has to be a public nuisance and then only it can be stated to affect the members of the public and hence can be removed from the public place.

Section 144 Power to issue order in urgent cases of nuisance or apprehended danger: In case where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134,

direct any person to abstain from a certain act or to take certain order with respect to certain property in this possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray.

An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.

An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.

No order under this section shall remain in force for more than two months from the making thereof:

Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office.

The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to subsection (4).

Where an application under sub-section (5), or sub-section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order, and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.

Civil Procedure Code and Environment:

The Code of Civil Procedure, 1908 provides the protection of environment in the context of the public nuisance and other wrongful acts affecting the public in its section 91¹⁴ thus Public nuisances and other wrongful acts affecting the public: in the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted.

By the advocate general or

With the leave of the court, by two or more persons, even though no special damage has been caused to such person by reason of such public nuisance or other wrongful act.

Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

Though the term public nuisance has not been defined in the code of civil procedure, acts which seriously affect the health, safety, comfort or convenience of the public generally or which tend to degrade public morals have always been considered public nuisance. Resources like land, air, water and vegetarianism are the property of the public or state. The state or member of the public in their representative capacity may approach civil court under this code to seek relief against polluters of their resources. The court may grant a temporary or permanent injunction against the polluters.

A part from these provides there are various other legislative enactments which provide the protection to the environment e.g. *The Water (Prevention and Control of Pollution) Act, 1974*; *Air prevention and control of pollution Act, 1981*; *Noise pollution Act and Environment Protection Act 1986*.

International Initiatives

The International Environmental regime compasses an increasingly sophisticated set of agreements to control global threats to our health and safety. Over the past 20 years or so, the world has developed a vast array of international agreements. Approximately 900 international environmental agreements worldwide have been negotiated and set into force, the main objects of these conventions and protocols to give protection to the environment at global level

Main Global Environmental Conventions

1. International Plant Protection Convention, Rome, 1951.
2. Convention on the Conservation of Migratory Species of Wild Animals, Bonn, 1979.
3. Convention Concerning the Protection of the World Cultural and Natural Heritage, Paris, 1972
4. Convention on Biological Diversity, 1992.
5. Convention and Wetlands of International Importance especially as waterfowl Habitat, 1971 (Ramsar Convention).
6. United Nations Framework Convention on Climate Change (UNFCCC), 1992.
7. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Washington, 1973.
8. United Nations Convention on the Law of the Sea, 1982.
9. Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention). 1989.
10. Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1995.
11. Convention of Fishing and Conservation of Living Resources of the High Seas, Geneva 1958.
12. Berne Convention on the Conservation of European Wildlife and National Habitats, 1979.
13. Vienna Convention for the protection of the Ozone Layer, 1985.
14. Convention on Long-Range Transboundary Air Pollution, Geneva, 1979.
15. Rio convention on Environment and Development, 1992.
16. Environmental Assessment Convention on the Transboundary Effects of Industrial Accidents, 1992.
17. Convention the Persistent Organic Pollutants (POPs), Stockholm,
18. Convention on Access to Information, Public Participation in Decision making and Access to Justice in Environmental Matters, Aarhus, 1998.
19. Convention on the Protection and Use of Transboundary Watercourse and International Lakes, Helsinki, 1992.
20. Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, 1976.
21. Convention for the Control and Management of Ship's Ballast Water and Sediments, 2004.

Major Environmental Protocols

1. Montreal Protocol on Substances That Deplete the Ozone Layer, 1987.
2. Kyoto Protocol, 1997¹⁶.
3. Cartagena Protocol on Biosafety, 2000.
4. Protocol to Abate Acidification, Eutrophication and Ground Level Ozone.
5. Protocol on Persistent Organic Pollutants, 1998.
6. Protocol on Heavy Metals.
7. Protocol on Further Reduction of Sulphur Emissions.
8. Protocol Concerning the Control of Emissions of Volatile Organic Compounds.
9. Protocol Concerning the Control of Emissions of Nitrogen Oxides.
10. Protocol on the Reduction of Sulphur Emissions.
11. EMEP Protocol.
12. Protocol on Strategic Environmental Assessment (Kiev, 2003).
13. Protocol on Pollutant Release and Transfer Registers.
14. Protocol on Water and Health.
15. Protocol on Civil Liability.

Major Environmental Declarations

1. Nairobi Declaration, 1982.
2. Noordwijk Declaration on Climate Change, 1989.
3. Rio Declaration, 1992.
4. United Nations Millennium Declaration.
5. Johannesburg Declaration, 2002.
6. Kimberly Declaration, 2002

Judicial Approach

The constitution imposes a duty upon the Supreme Court to protect the fundamental rights of the people. Rights to clean environment is an important postulate of right to life and personal liberty guaranteed under article 21 of the constitution. Therefore Indian judiciary being the guardian of the rights of the people has shown an enlightened judicial creativity and foresight whenever it had the opportunity to decide issues relating to the environment. The judiciary in India has played a very important role in environmental protection and has applied the principles of sustainable development while deciding the case 17. In *R.L & E. Kendra Dehradun v, State of U.P.*¹⁸. (popularly known as Doon Valley case), the supreme court observed that, this would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, home and agricultural land and undue affectation of air, water and environment. The court also observed that the land which is earmarked for residential purposes should not be used for setting up the industries. in *People United for Better Living in Calcutta v. State of West Bengal*²¹ the Calcutta high court held that it is the duty of the court to find balance between development programme and environment. It was further held that wetlands are important in maintenance of environment equilibrium and necessary to preserve the environment. In *Citizen, consumer and civic action Group v. Union of India*²², the Madras High Court observed that while the courts have social accountability in the matter of protection of environment, there should be a proper balance between the same and the developmental activities which are essential for progress. Both the environment and the development shall coexist and go hand in hand. In *Dr. B. L. Wadhera v. Union of India*²³ the Supreme Court highlighted that the residents have constitutional and as well as statutory rights to live in a clean city. At the same time the court held that the authorities concerned have a mandatory duty to collect and dispose of the garbage/water generated from various sources in the city. In *C. Uma Devi V. Govt. of Andhra Pradesh*²⁴, the municipal corporation had converted a park into a garbage dumping yard. The court deprecated the action of the corporation and directed the corporation not to dump the garbage in the park and restore lost glory of the park. The court also directed the state pollution control board to monitor maintenance of parts. In *M.C. Mehta V Union of India*²⁵ the supreme court pointed out that keeping in view the mandate of articles 47 and 48-A of the constitution of India, it had issued directions from time to time with a view to tackle the problem arising out of chaotic traffic conditions and vehicular pollution in Delhi. However the court was not satisfied with the performance of the authorities concerned in tackling the acute problem of Vehicular pollution and traffic regulation in Delhi. Infact, the court was distressed to find that the directions given by the Supreme Court from time to time did not evoke the response they were expected to evoke. While giving the directions the court had treated it as a legal issue and proceeded to examine the impact of the right flowing from article 21 of constitution of India *via-a-vis* decline in environment equality.

Conclusion

Law is the regulator of human conduct. Thus, it plays an important role in the protection of the environment by regulating human conduct. Showing its concern for the environment the Indian law has incorporated various provisions for the protection and improvement of the environment. No Law works out smoothly unless the interaction is voluntary. If we want the laws to be enforced and that the malaise of pollution be kept under control and environment be protected in an unpolluted state, then it is necessary that the people should be aware of the vice of the pollution and its evil consequences, the Indian judiciary has made a remarkable contribution in this regard consequent upon the directional of the supreme court in *M.C. Mehta v. Union of India*²⁶. The subject of the environment has been made a compulsory subject in schools, colleges and universities for general growth of awareness. The community as a whole should pledge not to spread garbage on the roads, sanitation.

No doubt the judiciary is playing a vital role in resolving environmental issues but the nature of the problem calls for better solutions. In this context legislative bodies should come with better framework and the most important thing is people's awareness towards environmental issues and their participation in the events of environmental conflicts in a systematic and non-violent manner.

In India, it has been witnessed that PIL has been used as an important instrument to bring environmental issues or problems to the notice of the court. These PIL has widened the scope of locus stands. Thus any spirited citizen or social group or NGO can take its advantage to bring a real environmental problem in the eyes of law. On the other hand the government should keep on taking ameliorative steps to preserve and improve the environment as care of the environment is a continuous process. The authorities like municipalities should not be their own they should take best possible measures to keep the city clean.

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