



Law relating to environmental protection and conservation of natural resources in India

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Abstract

The concept of Environmental Protection is an age old idea imbibed in the Indian Cultural ethos since time immemorial. 'Paryavaranam' is a Sanskrit word for Environment that was prevalent in ancient India. Indian Ethos since Vedic period till the modern era depicts Indian's awareness about importance of Environmental Protection and Conservation of Natural Resources. To understand the present day Legal System for Environment protection and conservation of natural resources, it is important to look into the past Indian traditions and practices of protecting the environment. Therefore, it's better to look into the norms and policies of environmental protection prevalent in ancient, medieval and modern India and it is believed that this will help us in understanding the present Law and Policy. Environmental awareness can be said to have existed even in the prevedic Indus Valley Civilization which flourished in Northern India about 5,000 years ago. This is evident from the archaeological evidence gathered from Harappa and Mohenjo-Daro which were the prominent cities of the Civilization. Their awareness about hygiene and sanitation as evident from their constructions of ventilated houses, orderly streets, numerous wells, bath rooms, public baths and covered underground drains.

Keywords: Environmental, protection, relating, Cultural

Introduction

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Vedic Approach to Environment

The idea of Environmental Protection and Conservation of Natural Resources can be traced to Vedic Civilization where worship of nature appears to have originated and the Vedic views revolve around the concept of nature and Life. The ancient Vedic literature encompasses a holistic attitude of the cosmic vision in a poetic way. Veda appears to impose obligations on the society and individuals to worship nature through worshipping trees. The worshipping of Vanaspathi,

tree having thousand branches is akin to worshipping the entire creation [2].

Atharva Veda examines the importance of forest conservation and preservation and protecting of three particular trees namely, "Parijath, Banyan and Peal". Ancient Indian seers and scholars advocated wise use of water even though India is blessed with perennial rivers and heavy rainfall. It was found in western part of Rajasthan during ancient period houses were constructed in such a way that each had a roof top rainwater harvesting system.

Several Vedic hymns are prayers maintaining balance in the functioning of all aspects of nature and it is argued that some of those ideas expressed in them resemble modern principles relating to conservation of resources. For instance the Twenty Fifth Rio principle talks about how "Peace, Development and Environmental Protection are interdependent and indivisible." Ancient Indians believed that Ecological balance is dependent on actions, good or bad, of Individuals and Society [3]. Accordingly Rigveda says: "Environment provides bliss to people loading their life perfectly. River bliss us with the sacred water, and medicines provides us health, might, morning, vegetation, sun bliss us with peaceful life. Our cows provide us sweet milk and other milk products" [4].

Environmental Protection in Medieval India

The history of Medieval India is dominated by Muslim Rulers where no noteworthy development of environmental jurisprudence took place except during the rule of Mughal Emperor Akbar. During Akbar's rule except Rulers others are prohibited from hunting or shikar. But no major initiatives took place during medieval period to prevent Environmental Protection and Conservation of Natural Resources as the Rulers were only interested in War, Religion Propagation and Empire Building [5].

Evolution of Environmental Law and Policies during British rule

The first interest towards the Conservation of Forest resource found the Reservation of Teak Forests in Malabar in 1806, and it was dictated by strategic imperial needs. This was the result of depletion of the Oak Forest in England and other Western Countries and the increasing demand for Timber for ship building Industry and increasing demand from Railways. Devoid of good Forests in Britain, Britishers realized the commercial value of Indian Forests and tried to establish a rigid system of control over them. One can trace the beginning of the systematic Forest Policy to 1855, where the Governor General, Lord Dalhousie, issued a memorandum on forest conservation called the 'Charter of Indian Forests'. He suggested that Teak, Timber should be retained as State property and its Trade strictly regulated ^[6].

The first step towards the organized Forest Management was taken in 1864 with the appointment of First Inspector General of Forests. The Forest Policy statement of 1894 classified Forests into four categories. They are (i) Forests, preservation of which was essential on Climate and Physical grounds, (ii) Forests, which supplied valuable Timber for Commercial purposes, (iii) Minor forest which produced only inferior sorts of Timber and (iv) Pastures which were Forest only for namesake. The Policy was opposed by many on the ground of lack of recognition of Rights of Forest Dwellers; it allowed unchecked exploitation by the Government and diversion of Forest land to Agriculture and Plantation and no provision for Wild Life Protection and Private Forests.

During British rule Forest Management Laws and several other Legislations were enacted for the purpose of Environmental Protection and Conservation of Natural Resources. However, the Forest Act, 1927 was enacted to give wide powers to the Government to exploit resources, to acquire forest lands including private and village forests and other common property through simple procedure even without making provision for compensation or equity. The Act also prohibited cutting of Teak, Sandalwood grown in Private Land without the permission of Forest Department. The Act established the Forest Department for the purpose of implementing the provision and to Conserve Forest ^[7].

The Forest Act, 1927 divided Forests into four categories. They are Reserved Forest, Village Forest, Protected Forests, and Non-Governmental Private Forests. The Provincial or State Governments are empowered to designate protected Forests and may prohibit the felling of Trees, Quarrying and the removal of Forest produce, under section 26 of the Act it is an offence to fell trees and acquire Forest without prior permission of the Forest Department. It is also an offence to Fish in Ponds and Rivers in the Forests.

Post 1972 Developments

It is 1972 Stockholm Conference where in India introduced the concept of Economic Development and Protection of Environment through Mrs. Indira Gandhi's address and one can see a shift in our understanding of Environmental Protection. She declared that the Poverty is the greatest polluter and said: "The Environmental Problems of developing Countries are not the side effects of Industrialization but reflect the inadequacy of Development. The rich Countries may look upon Development as the cause of Environmental Destruction, but to us it is one of

the primary means of improving the Environment for living, of providing Food, Water, Sanitation and Shelter, of making the Desert Green and the Mountains Habitable."

By May 1971 three reports had been prepared: 'Some Aspects of Environmental Degradation and its Control in India', 'Some Aspects of Problems of Human Settlement in India', and 'Some Aspects of Rational Management of Natural Resources'. With the help of these reports, the impact of the population explosion on the natural environment and the existing state of environmental problems were examined. By early 1972 it had been realized that unless a national body was established to bring about greater coherence and coordination in environmental policies and programmes and to integrate environmental concerns in the plans for economic development, an important lacuna would remain in India's planning process. Consequently on 12 April 1972 a National Committee on Environmental Planning and Coordination (NCEPC) was established. The impact of 1972 World Conference was the introduction of several provisions in the constitution relating to environmental protection ^[8].

The Forty Second Amendment

Environmental Protection and improvement were explicitly incorporated into the Constitution by the Constitution (Forty Second Amendment) Act of 1976. Article 48A was added to the directive principles of state policy. It declares: 'The State shall endeavor to protect and improve the Environment and to safeguard the Forests and Wild life of the Country.' Article 51A (g) in 'Fundamental Duties' imposes a similar responsibility on every Citizen on every Citizen 'to Protect and improve the Natural Environment including Forests, Lakes, Rivers and Wildlife, and to have compassion for living creatures...' Although the language in the two articles differs, the difference appears to relate to form rather than to substance. Together, the provisions highlight the National consensus on the importance of Environmental Protection and improvement and lay the foundation for jurisprudence of Environmental Protection.

There was considerable debate in Parliament over the wording of draft Article 48A. In the Lok Sabha several amendments were moved. One of them required the State to 'Conserve and develop the Water, Soil and other Natural resources', while another proposed to ensure that the State's efforts to protect and improve the Environment would not harm Tribal Forest dwellers. None of these amendments were accepted by the Government, which took the position that the broad terms of a Directive Principle need not contain details. The members of Rajya Sabha also proposed that the Article should also mention 'Mineral Wealth' and require the Government to 'undertake adequate and effective measures to check Environmental Pollution.' Both amendments were rejected by the Government as the existing wording was considered wide enough to cover the amendments' underlying concerns ^[9].

The Directive Principles of State Policy

The Directive Principles are Policy prescription that guides the Government. Some of them are in the nature of Economic Rights that India could not guarantee when the Constitution was enacted, but that were expected to be realized in succeeding years. Although unenforceable by a Court, the Directive Principles are increasingly being cited by judges as complementary to the Fundamental Rights. In

several Environmental cases the Courts have been guided by the language of Article 48A. Indeed the Supreme Court has held:

Whenever a problem of Ecology is brought before the Court, the Court is bound to bear in mind Art. 48 A of the Constitution and Art. 51A (g) and when the Court is called upon to give effect to the Directive Principle and the Fundamental Duty, the Court is not to shrug its shoulders and say that priorities are the matter of policy and so it is a matter for the policy making authority. The least that the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further will depend upon the circumstances of the case. The Court may always give necessary directions. However the Court will not attempt to nicely balance relevant considerations. When the question involves the nice balancing of relevant considerations the Court may feel justified in resigning itself to the acceptance of the decision of the concerned authority.

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8. Rio Declaration on Environment and Development, The United Nations Conference on Environment and Development, (UNCED) widely known as the Rio Earth Summit, was held from 3rd to 14th June 1992 at Rio De Janeiro, Brazil. The Rio Summit focused on developing a global framework for addressing environmental degradation through sustainable development. Through the participation of both state and non-state actors, the main themes and agendas of the Rio Summit were condensed into several documents and institutional mechanisms. The documents provided guidance for communities worldwide who desired to integrate sustainable development goals into their governance structure. The main documents produced at the Summit include: Agenda 21, the Rio Declaration on Environment and Development, the Statement of Forest Principles, the United Nations Framework Convention on Climate Change, and the United Nations Convention on Biological Diversity. One of the main outcomes of the Stockholm Conference was the Declaration of the United Nations Conference on the Human Environment, which outlines a series of principles and proclamations that aims to both “inspire and guide the peoples of the world in the preservation and enhancement of the human environment”
9. The Subjects under Union list, State list and Concurrent list under Article 246 containing as, firstly, under Union list, (6) Atomic energy and mineral resources necessary for its production, (14) Entering agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries, (24) Shipping and navigation on inland waterways, (25) Maritime shipping and navigation, including shipping and navigation on tidal waters, (29) Airways regulation and organizations of air traffic and of aerodromes, (52) Industries, the control of which by the Union is declared by parliament by law to be expedient in the public interest, (53) Regulation and development of oil fields and mineral oil resources (54) Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest, (56) Regulation and development of inter-state rivers valleys, and (57) Fishing and fisheries beyond territorial waters. Secondly, under the State list, (6) Public health and sanitation, hospitals and dispensaries, (10) Burials and burial grounds, cremations and cremation grounds, (14) Agriculture, (15) Prevention, protection and improvement of stock and prevention of animal diseases, (17) Water, that is to say, water supplies, irrigation and canals, drainage and embankment, water storage and water power subject to the provisions of Entry 56 of Union List, (18) Land, and (21) Fisheries. Lastly, under the Concurrent list, (17) Prevention of cruelty to animals, (18) Adulteration of food stuffs and other goods, (19) Drugs and poisons, (20) Economic and social planning, (20A) Population control and family planning, (29) Prevention of the extension from one state to another of infecting or contagious diseases or pests affecting, men, animals or plants, (32) Shipping and navigation on inland waterways as regards mechanically propelled vessels, (36) Factories, (37) Boilers, and (38) Archaeological sites and remains other than those declared by or under law made by Parliament to be national importance.