

**LEGAL PROVISIONS FOR ENVIRONMENT PROTECTION****Mr. Samir N. Chavan,<sup>1</sup>**Assistant Professor, Navjeevan Law College,  
Nashik and Ph.D. Research Scholar in Savitribai Phule Pune University,  
Pune.**I) Introduction:**

The concept of Environment Protection is not new to Indian Society. Indian History reveals that the campaign of Environment Protection has been prevalent from the time immemorial. Protection of Environment had prominent place in all religious and philosophical writings in Ancient India. During the ancient period, human beings and environment considered inseparable. Even Kings were under obligation to protect the Environment. The Great King Ashoka recognized the system of Plantation and Environment Protection<sup>2</sup>.

Environment degradation started rapidly after the advent of Industrial Revolution in seventeenth century. Human Beings started facing various health issues arising out of environment degradation around nineteenth century. To meet the challenges, it was sine qua non to protect and preserve the wholesomeness of environment and hence world community started taking initiatives regarding Environment Protection.

Indian Constitution has specific provisions regarding Environment Protection. Indian has become signatory of almost all major United Nations Convention on Environment and accordingly has injected these provisions into domestic laws.

**II) Meaning & Definition of Environment:**

Environment etymologically relates to “surroundings”, but obviously the concept that is relative to the object which is surrounded in the sense environment include anything. Environment in its generic sense comprises of air, water, land, the things imbibed and also embedded in the land. The more specific meaning is taken as covering the common physical surroundings such as air, space, waters, land, plants and wildlife. Even this meaning is still a vague and general one.<sup>3</sup>

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<sup>2</sup> Dr.S.C.Tripathi, *Environmental Law*, 4<sup>th</sup> Edi. Pg.no.16

<sup>3</sup> Simon Ball & Stuart Bell, “Environmental Law”, 1991, pg no.4.

The entire range of external influence acting on an organism, both the physical and biological, and other organisms, i.e. forces of nature surrounding an individual.<sup>4</sup>

Total environmental system including not only the biosphere, but also his interactions with his natural and manmade surroundings.<sup>5</sup>

Section 2 (a) of the Environment (Protection) Act 1986 defines Environment as follows: “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”

### III) Concept of Environmental Protection:

The term ‘Environment’ is having wide connotation and it includes living as well as non living things. As like Environment, Protection of Environment also has wide meaning. Environmental protection is a practice of protecting the natural environment on individual, organizational or governmental levels, for the benefit of both the natural environment and humans. Due to the pressures of population and technology, the biophysical environment is being degraded, sometimes permanently. This has been recognized, and governments have begun placing restraints on activities that cause environmental degradation. Since the 1960s, activity of environmental movements has created awareness of the various environmental issues.<sup>6</sup> Environment Protection has been realized that the protection and improvement of Human Environment is not only affecting creatures’ i.e. living men and animals but also non living things. Hence it becomes very essential to take serious efforts for Environmental Protection.

The need of the Environment Protection has been strongly mulled by the world community which resulted into many conventions and treaties. United Nations sponsored the Stockholm Conference of 1972<sup>7</sup> which gave declaration and action plan for Environment Protection at International level. India being a developing nation has obligations under numerous international treaties and agreements that relate to environmental issues. India supported faithfully all international decisions on safeguarding environment. India has carved out its national legislations on the problem to a large extent from international environmental policy guidelines framed by UNO

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<sup>4</sup> Available at: Encyclopedia Britannica

<sup>5</sup> US Council on Environmental quality, First Annual Report 6 ,1970.

<sup>6</sup> Available at: [https://en.wikipedia.org/wiki/Environmental\\_protection](https://en.wikipedia.org/wiki/Environmental_protection) visited on September 16, 2015.

<sup>7</sup> Infra Note 9

and UNEP. India is a signatory to a number of multilateral agreements, treaties and conventions related to environment.

#### **IV) International Perspectives of Environment Protection:<sup>8</sup>**

International environmental policies are in the form of treaties, multilateral agreements, conventions and conferences. The treaty shall have force in international law, if it is ratified by requisite number of countries. India is a signatory to a number of multilateral agreements, treaties and conventions related to environment.

An overview of some of the major multilateral agreements, treaties and conventions on environment and India's obligations are as follows:

##### **a) Stockholm Declaration 1972<sup>9</sup>**

The United Nations Conference on the human environment held at Stockholm from 5<sup>th</sup> to 6<sup>th</sup> June 1972, which is generally called as the —Stockholm Conference. It was the first declaration of international protection of the environment. In the conference 113 States were participated, including India and accepted such declaration. The Stockholm Declaration contains 26 principles. These principles provide the basis of an International Policy for the Protection and improvement of the environment. The United Nations Environment Programme has been established by the United Nations General Assembly in pursuance of the Stockholm Conference. The Environmental Programme was set up in Geneva in June 1972. The object of the Stockholm Declaration was to pass the Mother Earth to the coming generations in clean and healthy conditions.

##### **b) Nairobi Declaration 1982**

The Nairobi Declaration was adopted at Nairobi for celebrating the 10th Anniversary of the Stockholm conference on human Environment in 1972. This Conference was conducted from 10th to 18th May 1982. The Declaration envisaged the creation of a special commission to frame long term environment strategies for achieving sustainable developments upto the year 2000 and beyond. The Declaration was endorsed by the governing Council of United Nations Environment Programme (UNEP) in 1987 and also by the General Assembly of the United Nations Organisation.

##### **c) Vienna convention for the protection of ozone layer (1985)**

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<sup>8</sup> Available at: [http://shodhganga.inflibnet.ac.in/bitstream/10603/6868/7/08\\_chapter%203.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/6868/7/08_chapter%203.pdf) visited on 28<sup>th</sup> September 2015.

<sup>9</sup> Available at: [http://shodhganga.inflibnet.ac.in/bitstream/10603/6868/7/08\\_chapter%203.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/6868/7/08_chapter%203.pdf) visited on 28<sup>th</sup> September 2015.

The convention was adopted on 22nd March, 1985 by the conference of Plenipotentiaries which was organized by the UNEP. The convention came into force on sep 22, 1988. The main object of the convention was to provide to States the international legal framework for working together to protect the stratospheric ozone layer. The Vienna convention of 1985 was the starting point of the global cooperation for protection of ozone layer.

**d) Basel convention on transboundary movement of hazardous wastes, 1989**

The Convention came into force in 1992. The objectives of the convention are to reduce transboundary movements of hazardous wastes, to minimize the creation of such wastes and to prohibit their shipment to countries lacking the capacity to dispose hazardous wastes in an environmentally sound manner. India ratified the convention and enacted Hazardous Wastes Management Rules Act 1989, encompasses some of the Basal provisions related to the notification of import and export of hazardous wastes, illegal traffic and liability.

**e) Earth Summit 1992**

In continuation of Stockholm Declaration, 1972 and the Nairobi Declaration, 1982 the third major Declaration was held in Rio-de-Janeiro in Brazil in the year 1992. Hence it is termed as Rio-Declaration and attended by over 150 countries. Hence, it is also well known as —Earth Summit. It discussed global and environmental problems vary widely. It was the biggest International Conference in the history of International relations. The Rio-Declaration, a statement consisting of 27 principles on the environment and development.

**f) Johannesburg Declaration 2002**

Another Earth Summit was held at Johannesburg, South Africa, from 26th August to 4th September 2002. It was the consequential follow up action of the decision of the Earth Summit 1992. Johannesburg conference confirmed that significant progress has been made towards achieving a global consensus and partnership amongst all the people of our planet. Over 4000 delegates from about 100 countries participated in it.

**g) Motreal UN Summit 2005:**

World leaders decided to speed up the implementation of Kyoto Declaration.

**V) Constitutional Provisions for Environment Protection :**

The Indian Constitution is amongst the few in the world that contains specific provisions on environment protection.

The chapters directive principles of state policy<sup>10</sup> and the fundamental duties are explicitly enunciated the nation commitment to protect and improve the environment. It was the first time when responsibility of protection of the environment imposed upon the states through Constitution (Forty Second Amendment) Act, 1976.

**Article 21**<sup>11</sup> It is to be noted that the Judicial Activism relating to Protection of Environment is laudable. Several pronouncements reiterated by the Supreme Court for this purpose. Supreme Court in various cases held that right to get free air, water, etc have been included in the Article 21 of Constitution of India.

**Article 48-A** the provision reads as follows: “The State shall endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country.”The Amendment also inserted Part VI-A (Fundamental duty) in the Constitution, which reads as follows:

**Article 51-A (g)** “It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes,, and wildlife and to have compassion for living creature.”

In *Sachidanand Pandey v. State of West Bengal*<sup>12</sup>, the Supreme Court observed “whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48-A and Article 51-A(g).

#### VI) Legal Provisions for Environment Protection in India<sup>13</sup>:

The constitutional provisions are backed by a number of laws – Acts, Rules, and Notifications. The EPA (Environment Protection Act), 1986 came into force soon after the Bhopal Gas Tragedy and is considered an umbrella legislation as it fills many gaps in the existing laws. Thereafter a large number of laws came into existence as the problems began arising.<sup>14</sup> Some of the important environmental laws are as follows:

##### General

**1986 - The Environment (Protection) Act** authorizes the central government to protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and /or operation of any industrial facility on environmental grounds.

<sup>10</sup> Part IV of Indian Constitution provides for the chapter ‘Directive Principles of State Policy’

<sup>11</sup> Article 21 provides “ No person shall be deprived of his life or personal liberty except according to procedure established by law”

<sup>12</sup> AIR 1987 SC 1109

<sup>13</sup> Available at: <http://edugreen.teri.res.in/explore/laws.html> visited on September 16,2015.

<sup>14</sup> Ibid.

**1995 - The National Environmental Tribunal Act** has been created to award compensation for damages to persons, property, and the environment arising from any activity involving hazardous substances.

**1997 - The National Environment Appellate Authority Act** has been created to hear appeals with respect to restrictions of areas in which classes of industries etc. are carried out or prescribed subject to certain safeguards under the EPA.

**2002 - The Biological Diversity Act** is an act to provide for the conservation of biological diversity, sustainable use of its components, and fair and equitable sharing of the benefits arising out of the use of biological resources and knowledge associated with it

#### **Forest and wildlife**

**1927 - The Indian Forest Act and Amendment, 1984**, is one of the many surviving colonial statutes. It was enacted to 'consolidate the law related to forest, the transit of forest produce, and the duty leviable on timber and other forest produce'.

**1972 - The Wildlife Protection Act, Rules 1973 and Amendment 1991** provides for the protection of birds and animals and for all matters that are connected to it whether it be their habitat or the waterhole or the forests that sustain them.

#### **Water**

**1882 - The Easement Act** allows private rights to use a resource that is, groundwater, by viewing it as an attachment to the land. It also states that all surface water belongs to the state and is a state property.

**1897 - The Indian Fisheries Act** establishes two sets of penal offences whereby the government can sue any person who uses dynamite or other explosive substance in any way (whether coastal or inland) with intent to catch or destroy any fish or poisonous fish in order to kill.

**1956 - The River Boards Act** enables the states to enroll the central government in setting up an Advisory River Board to resolve issues in inter-state cooperation.

**1970 - The Merchant Shipping Act** aims to deal with waste arising from ships along the coastal areas within a specified radius.

**1974 - The Water (Prevention and Control of Pollution) Act** establishes an institutional structure for preventing and abating water pollution. It establishes standards for water quality and effluent. Polluting industries must seek permission to discharge waste into effluent bodies. The CPCB (Central Pollution Control Board) was constituted under this act.

**Air:**

**1981 - The Air (Prevention and Control of Pollution) Act** provides for the control and abatement of air pollution. It entrusts the power of enforcing this act to the CPCB .

**1982 - The Air (Prevention and Control of Pollution) Rules** defines the procedures of the meetings of the Boards and the powers entrusted to them.

**1982 - The Atomic Energy Act** deals with the radioactive waste.

**1987 - The Air (Prevention and Control of Pollution) Amendment Act** empowers the central and state pollution control boards to meet with grave emergencies of air pollution.

**1988 - The Motor Vehicles Act** states that all hazardous waste is to be properly packaged, labeled, and transported.

**VII) Judicial Activism for Environment Protection<sup>15</sup>:**

Indian Judiciary as being the guardian of Fundamental Rights of an Individual has taken active role in Environment Protection. Hon. Supreme Court through several of its decisions laid down various principles for Environment protection as follows:

**1. Doctrine of Absolute Liability**

The Bhopal Case: *Union Carbide Corporation v. Union of India*<sup>16</sup>

In this case, the court held that, where an enterprise is occupied with an inherently dangerous or a hazardous activity and harm results to anybody by virtue of a mishap in the operation of such dangerous or naturally unsafe movement coming about, for instance, in getaway of poisonous gas, the enterprise is strictly and completely obligated to repay every one of the individuals who are influenced by the accident and such risk is not subject to any exemptions. Accordingly, Supreme Court created another trend of Absolute Liability without any exemption.

**2. Polluter Pays Principles**

Polluter Pays Principle has become a very popular concept lately. ‘If you make a mess, it’s your duty to clean it up ‘- this is the fundamental basis of this slogan. It should be mentioned that in environment law, the ‘polluter pays principle’ does not allude to “fault.” Instead, it supports a remedial methodology which is concerned with repairing natural harm. It’s a rule in international

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<sup>15</sup>Available at: <http://www.lawctopus.com/academike/role-indian-judiciary-protection-environment-india/> visited on September 28, 2015.

<sup>16</sup> 1989 AIR 273,1989 SCC(2) 540

environmental law where the polluting party pays for the harm or damage done to the natural environment.

*Vellore Citizen's Welfare Forum v. Union of India*<sup>17</sup> The Supreme Court has declared that the polluter pays principle is an essential feature of the sustainable development.

### 3. Precautionary Principle

The Supreme Court of India, in *Vellore Citizens Forum Case*<sup>18</sup>, developed the following three concepts for the precautionary principle: Environmental measures must anticipate, prevent and attack the causes of environmental degradation Lack of scientific certainty should not be used as a reason for postponing measures Onus of proof is on the actor to show that his action is benign

### 4. Public Trust Doctrine

The Public Trust Doctrine primarily rests on the principle that certain resources like air, water, sea and the forests have such a great importance to people as a whole that it would be wholly unjustified to make them a subject of private ownership.

*M.C.Mehta v. Kamal Nath and Others*<sup>19</sup>, The public trust doctrine, as discussed by court in this judgment is a part of the law of the land.

### 5. Doctrine of Sustainable Development

The World Commission on Environment and Development (WCED) in its report prominently known as the 'Brundtland Report' named after the Chairman of the Commission Ms. GH Brundtland highlights the concept of sustainable development. As per Brundtland Report, Sustainable development signifies" development that meets the needs of the present without compromising the ability of the future generations to meet their own needs".<sup>20</sup> There is a need for the courts to strike a balance between development and environment.

*Rural Litigation and Entitlement Kendra v. State of UP*<sup>21</sup>

The court for the first time dealt with the issue relating to the environment and development; and held that, it is always to be remembered that these are the permanent assets of mankind and or not intended to be exhausted in one generation.

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<sup>17</sup> AIR 1996 SC 2715

<sup>18</sup> Ibid.

<sup>19</sup> AIR 1997(1) SCC 388

<sup>20</sup> S .Shanthakumar, *Environmental Law: an introduction*, pp. 122, 123, Chennai: Surya Publication, (2001).

<sup>21</sup> AIR 1985 SC 652



*Vellore Citizen's Welfare Forum*<sup>22</sup>

In this case, the Supreme Court observed that sustainable development has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco- system.

#### VIII) Conclusion:

Indian Society was from the time immemorial was very much alert regarding Environment Protection. In recent times, India became signatory of so many conventions, treaties and declarations at International level on Environment Protection. Indian Legislature also enacted several laws for protection of all the aspects of Environment. Indian Judiciary, as being guardian of Fundamental Rights took tough stand on so many environment related issues through several of decisions and evolved so many principles for Environment Protection. Despite of all these cumulative efforts, a lot many things are required to be done on sustainable development for the benefit of future generations.



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<sup>22</sup> Supra note no. 13