ENVIRONMENTAL PROTECTION & PUBLIC HEALTH

VIJAY CHAUHAN & Dr. KHALEEQ AHMAD
5th year, BA.LLB (Hons.) LAW COLLEGE DEHRADUN, UTTARANCHAL UNIVERSITY.

Received: February 15, 2019 Accepted: March 22, 2019

ABSTRACT: *Environment is not only the interrelationship between physical and biological aspect existing in our surroundings but it is also combined with social, cultural, religious and other facets that surrounds an organism. Environmental protection is the responsibility taken up by the individuals, organizations and governments to take care of the environment by reducing the environmental issues like global warming, acid rain, air pollution, water pollution, land pollution etc.*

Firstly, the present article deals with historical background of policies and legislations introduced in india in respect of protection of environment. Under this head, policies and laws enacted during pre-indepedence and post independence of India has been discussed. Secondly, the paeper review the constitutional provisions that invoke the protection of environment alongwith discussion on relevant case laws. Thirdly, the protection of environment and te aspect of right to know has been enumerated in the paper for generating awareness in exercising of this crucial right in respect of invoking environmental protection. Further, the implication of constitutional remedies in the form of writs in order to promote environmental protection and consequently public health has been analysed, especially in respect to municipal authorities if they failed to do their duties regarding maintenance of environmental health. Lastly, environmental epedimology in environmental health decision making has been broached.

The protection of the environment is in need to be get national attention as there is urgency to preserve and prevent the degrading environment.The planet earth is our legacy that we have to hand over to the coming generations. Environment is ti be served with humanity rather than ignorance. It is our moral obligtion as homo sapiens owes its existence to the mother earth which is being shared by us with the other organism. We are in need to do our share for environmental care. A better environment will ensure a better tomorrow.

Key Words:

INTRODUCTION

FLASHBACK OF INDIAN ENVIRONMENTAL POLICY AND LEGISLATION The expression "environment" comprises of air, water and land and the interrelationships that exist among and between these fundamentalcomponents and human beings and other living organisms on the earth. Apart from the physical and biological feature, the "environment" embraces or includes the social, economic, cultural, religious, and several other facets also. Thus, environment is an combination of various factors which surrounds an organism that interact not only with the organism but also among themselves. It implies the accretion of all the external conditions and influences that affects life and development of human beings, animals and plants.

Since ancient period t the present age, India has always been concerned in the field of environmental protection and improvement. It has been observed from the history of India that though, the legislation that deals with environment were quitesimple, but they were quite efficacious, and the people were acquaintedwith the necessity of the protection of environment. For understanding this, the policies and laws introduced over the years in India with object to protect and improve environment has been elaborated further in the article.

Policy and Laws in Ancient India[1]

During ancient period in India, conservation, prevention and maintaining cleanliness of environment was the core of the Vedic culture. The goal ofprotection of the environment created a passionate faith amongst the people who advocated the idea of Veda, which was reflected in the daily lives of the people and enshrined in myth folklore, art, culture and religion. According to religious belief of Hindus the protection of forests, trees and wildlife bear a place of special reference.

[1]Gupta, Kautilyan Jurisprudence, 155 (1987)

LAW CONCERNING FORESTS

State to maintain forests: A duty was imposed on the rulers to maintain and protect the forests. The ruler shall not only protect produce- forests, elephant-forest but also take sincere steps to set up new ones. Forests shall be grown, and foresters' who are working in the produced-forests shall be settled down there.

Forest reserves for the wild animals: On the borders of the country or any other suitable locality, forest shall be established where all animals can live freely and with full protection.

Protection of wild life: The superintendent of the slaughter house shall punish, with the highest amercement, a person for entrapping, killing or injuring deer, bison, birds or fish which are declare to be under state protection. For entrapping, killing or injuring fishes and birds whose killing is forbidden, he shall be impose a fine of twenty-six panas and three quarters, for entrapping deer and beasts, double that. One- sixth of live animals and birds shall be let off in forests under the state's permission.

Fee for hunting: Of those killing is permitted and who are not protected in enclosures. The superintendent of the slaughter house shall receive one sixth shares of fishes and birds, one-tenth share of deer and beasts, in addition to duty.

5th PILLAR EDICT2

This speaks the Beloved of the Gods, the king Piyadassi: When I have been consecrated for twenty-six years I forbade the killing of the following species of animals, namely; parrots, mainas, red-headed, domesticated animals, and all the quadrupled which are of non-utility are not to be eaten. Capons must not be made. Chaff which contains living animal should not to be set on fire. Forests must not be burned in order to kill living things or without any good reason. An animal must not be fed with another animal.

Policy and Laws in Medieval India

During the medieval period, i.e. the period when Mughal dynasty was dominating India, less attention was paid to the protection and conservation of environment. The period did not contribute in any notable development in environmental jurisprudence.Mughal rulers considered forest only as a woodland where they could hunt. For thegovernors of the rulers, the forests were considered assource of revenue. The 'royal trees' were barred from being cut as restriction was imposed on their cutting. However, the restriction can be removed by payment of specified fees. Apart from the royal trees no restriction was imposed on any other tree. Consequently, forests shrank steadily in size during this period.

However, the forests were handled with the assistance of a complex rules and regulations arising out of the socio-cultural structure as well as the economic activities carried out by the local communities. Further, the religious policy commenced by Akbar which was based on the principle of complete tolerance,contemplates with the idea of the protection of birds and beasts also. Subsequently, several efforts were taken during his reign to check and prevent the unnecessary killings of the wildlife. Medieval era was guided by the principle of war and empire building, and hence no major steps were taken for the protection of environment.

Policy and Laws in British India

B.READING ON FOREST POLICY AND LEGISLATION3

By around 1860, Britain had emerged as the world leader in deforestation, devastation its own woods and the forest of Ireland, South Africa and north eastern United States to draw timber for shipbuilding, iron-smelting and farming. In the early nineteenth century, the Raj carried out a fierce onslaught on the subcontinent's forests. The revenue orientation of the colonial land policy also worked towards the denunciation of forests. This process greatly intensified in the early years of building of the railway network after about 1853. the sub-Himalayan forest of Garhwal and Kumaon, for example, were all `felled in even to desolation', and 'thousand of trees were felled which were never removed, nor was their remove was possible'.

Policy and Laws in Independent India

Originally, the Constitution of India as enacted in 1950, did not explicitly talked about the subject matter relating to protection of environment or control of pollution (until Amendment of 1976).The original provision of the constitution enumerated under Article 372(1) has provided for the incorporationof prior existing laws into the present legal system and provides that notwithstanding the repeal by this constitution of enactment referred to in article 397, but subjected to the other provisions of the constitution, all laws in force immediately before the commencement of the constitution shall remained in force until altered,repealed or amended by a competent legislature or other competent authority.

[2] THAPAR; ASOKA AND DECLINE OF THE MAURYA, 264(2nd ED.1973)

[3]AN ECOLOGICAL HISTORY OF INDIA, 118 (1993).

Consequently, even after five decades of independence, such laws are still operating in abundance and that too without any noteworthyamendments in them.

The two early post- independence laws touched on water pollution .The Factories Act of 1948 required all factories to make effective arrangements for waste disposal and empowered state governments to frame rules implementing this directive. Under the River Boards Acts of 1956, rivers boards established are empowered to prevent water pollution of inter-state rivers. To prevent cruelty to animals, the Preventions of Cruelty to Animal Act was framed in 1960.

1. Review of constitutional provisions

Article 48A and 51 (A)(g)

Global consciousness for the protection of the environment in the 1972 after the Stockholm Convention on Human Environment, the Indian Government introduced the 42nd Amendment tothe Constitution in 1976. The said amendment added Art. 48A and Art. 51A (g) to the Directive Principles of State Policy. Art. 48A which declaresthat: -

"the State shall endeavor to protect and improve the environment and to safeguardthe forests and wildlife of the country".

A similar duty was imposed upon every citizen of India in the form of Fundamental Duty under***Art. 51(A)(g): -***

"to protect and improve the natural environment including forest, lakes, rivers and wildlife, and to have compassion for living creatures".

The amendments also brought certain changes in the Seventh Schedule of the Constitution of India. 'Forest' and 'Wildlife' were transferred from the State list to the Concurrent List. This was done in wake of the concern of Indian parliamentarian to prioritize environment protection by shifting'forest' and 'wildlife'in the national agenda. Although enforceable by a court, the increased citing of Directive Principles by the judges was proved to besupplementary to the fundamental rights and fundamental duties conferred on the citizens. In several cases relating to environment, the courts have been guided by the provision of Art. 48A. and they interpreted it with the purpose of imposing "**an obligation**" not only on the government, but also on the courts, to protect the environment.

In the case of**L.K Kollwal V State of Rajasthan**[4], a simple writ petition was filed by the citizens of Jaipur to impel the municipal authorities to provide adequate sanitation. The court observed that where every citizen owes a constitutional duty to protect the environment (Art.51), the citizen must be alsopermitted to obtain the aid provided by the courts in enforcing that duty against defiant agencies of the state. The Court ordered the administration to clean up the entire city within six months and dismissed the plea of lack of funds and staff.

In **D.V Vyas v Ghaziabad Development Authority**[5], the court held that failure inexpanding the public parks undertaken in development plan by the concerned authorities, certainly amounts to failure in discharging its (GDAs) responsibility under Art.51A of the Constitution. In a congestedcity the residents do not get anything but a polluted atmosphere due to excessive fumes and smokes. Therefore, the verdant cover provided by the public parks and green belts in towns and cities renders a considerable amount of relief to the public.

It is quite noticeable that the scope of fundamental duty is limited as it mentions to only forests, lakes, rivers, and wildlife within its ambit and uses the expression "natural environment"; it excludesseveral others in the fields of pollutions such as 'noise', 'light', 'radioactive and hazardous', etc. Further, no obligation has been conferred on the "non-citizens" under Art.51-A (g).

Article 246

Art.246 of the Constitution splits up the subject areas of legislation between the Union and the States. The Union List (List I) includes defense, foreign affairs, atomic energy, intestate transportation, shipping, air trafficking, oilfields, mines and inter-state rivers. The State List (List II) includes public health and sanitation, agriculture, water supplies, irrigation and drainage, fisheries.

The Concurrent list (List III) (under which both State and the Union can legislate) includes forests, protection of wildlife, mines and minerals and development not covered in the Union List, population control and factories.

[4]In L.K Kollwal V State of Rajasthan AIR 1988 Raj. 2

16.In D.V Vyas v Ghaziabad Development Authority AIR1993 All. 57

From an environmental viewpoint, the allocation of subjects between legislative authority is a significant one – some environmental problem such as sanitation and waste disposal, can be tackled best at the local level; while the problem like water pollution and wildlife protection, are better regulated by uniform national laws.

Article 253

Art.253 of the Constitution empowers Parliament to make laws implementing India's international obligations as well as any decision made at an international conference, association or other body. Art.253 states: Notwithstanding anything in the foregoing provision provisions of this chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

The Tiwari Committee in 1980 recommended that a new entry on "environmental Protection" be introduced in the concurrent list to enable the centre to legislate on environmental subjects, as there was no direst entry in the 7th seventh enables Parliament to enact comprehensive environment laws. The recommendation, however, did to consider parliament's power under Art.253.

Article 14 and Article 19 (1) (g)

ART. 14 states: "The states shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.''

The right to equality may also be infringed by government decisions that have an impact on the environment. An arbitrary action must necessary involve a negation of equality, thus urban environmental groups often resort to Art.14 to quash arbitrary municipal permission for construction that are contrary to development regulations.

Besides, Art 14 may also be invoke to challenge Government sanctions for mining and others activities with high environmental impact, where the permission had been granted arbitrarily without an adequate consideration of environmental impacts.[6]

Article 21 (Right to Wholesome Environment)

"No person shall be deprived of his life or personal liberty except according procedure established by law."

In **Maneka Gandhi v Union of India**[7], the Supreme Court while elucidating on the importance of the'right to life' under Art. 21 held that the right to life is not confined to mere animal existence, but extends to the right to live with the basic human dignity (Bhagwati J.).

In **Dehredun Quarrying Case**[8] the Supreme Court evolved a new right to environment without specifically mentioning it. The case was filed under Art. 32 of the Constitution and orders were given with emphasis on the need to protect the environment. According to a committee of experts appointed by the court, mining of limestone in certain was found dangerous and damaging ecological balance.

Similarly while interpreting Art.21 in **Ganga Pollution Case**[9], Justice Singh justified the closure of polluting tanneries observed: "we are conscious that closure of tanneries may bring unemployment, loss of revenue, but life. Health and ecology have greater importance to the people".

While the Apex Courts was reluctant for a shorter period of time to confer specifically a right to a clean and humane environment under Art. 21 of the Constitution,, various High Courts in the country went ahead and enthusiastically declare that that the right to environment was included in the right to life concept in Art.21. In comprehending the right to environment, the High courts were more specific and direct.

In the T.Damodar Rao, "*the enjoyment of life and its attainment and fulfilmentguaranteed by Art. 21 of the Constitution embraces the protection and reservation of nature's gift without (which life cannot be enjoyed*".

It may be noted that as there is no clear-cut provision of the 'right to environment', one has to depend upon the continued 'right to clean environment'; one has to depend upon the continued judicial cooperation. In this context, Professor *C.M Jariwal* has proposed to amend the Constitution of India and India and include the following provision:

Art. 21A *Protection of Environment* – All persons shall have the right to clean and liveable environment throughout the territory of India subject to any law imposing reasonable restriction in the interest of general public.

17.Kinkri Devi v State of H.P., AIR 1988 HP 4

18..Menaka Gandhi v Union of India (AIR 1978 SC 597)

19.Dehradun Quarrying Case AIR 1987 SC 359

20.Ganga Pollution (Tanneries) Case (AIR 1987 SC 1086)

RIGHT TO KNOW:

Non-disclosure id the norm of the India; openness is the exception; there is no specific enactment in India imposing the duty on the government to supply information to an individual seeking it. Instead, government actions are thickly veiled by the archaic Official Secret Act of Act of 2003. The Delhi Government recently enacted Right to Information Act, 2001.

In State of U.P v Raj Narain[10], the court held that the people have a right to know every public act, everything that is done in a public way, by their public functionaries. In S.P Gupta v Union of India* the court recognised the right to know to be implicit in the right to free speech and expression i.e. Art. 19(1)(a) of Constitution.

In **Bombay Environmental Action Group v Pune Cantonment Board**[11], the High Court of Bombay held that a recognised environmental group has a right to examine municipal permission granted to private builders. The judgement is of examine municipal permission granted to private builders. The judgement is of seminar importance because it transforms the right to know from judicial rhetoric into a substantive, enforceable right. More significantly , it recognise s the right to know to be a distinct, self-contained right, independent from the government's claim to privilege under Indian Evidence Act. Further, the court upholds the petitioner's right to know without any proof of Government irregularity: Indeed, the only requirements for a recognised environment group asserting this right are that group must act bona fined and for a genuine purpose. The Supreme Court (when the case came before it by a special leave petition), extended this right to all persons residing within the area as well to any social action group, interest or pressure group. Further, the Supreme Court carved a very limited "interests of security" exception to this right (in comparison to High Court's requirements of "genuine purpose").

CONSTITUTIONAL REMEDIES: THE WRITS:A writ petition can be filed to the Supreme Court under Art.32 and the High Court under Art.226, in the case of a violation of a fundamental right. Since the right to a wholesme environment has beemn recognise as an implied fundamental rights, the writ patitions are often restorted to in environment cases.

Generally, the writs of Mandamus, Certiorari and Prohibition are used in environmental matters. For instance, a Mandamus (a writ to command action by a public authority when an authority id vested with power and wrongfully refuses to exercise it) would lie against a municipality that fails to construct sewers and drains, clean street and clear garbage (**Rampal v State of Rajasthan**12), likewise, a state pollution control board may be compelled to take action against an industry discharging pollutants beyond the permissible level.

The writs of certiorari and prohibition are issued when an authority acts in excess of jurisdiction, acts in violation of the rules of natural justice, acts under a law which id unconstitutional, commits an error apparent on the face of the record, etc. For instance , a writ of certiorari will lie against a municipal authority that consider a builder's applications and permits construction contrary to development riles e.g. wrongfully sanctions an office building in an area reserve for a garden. Similarly, against water pollution control board that wrongly permits an industry to discharge effluents beyond prescribe levels.

THE ROLE OF ENVIRONMENTAL EPIDEMIOLOGY IN ENVIRONMENTAL HEALTH DECISION MAKING

Epidemiology: September 2005 - Volume 16 - Issue 5 - p S147-S148

Environmental health managers and policy makers are increasingly called upon by the public, environmental activists and legislative bodies to control and prevent specific environmental hazards.. Enormous pressure is put on them to act and make decisions to protect the public and the environment from the identified hazards. Environmental epidemiology is one of the most important tools used in environmental management decision making owing to its capacity to assess and monitor environmental hazards in different settings and quantify their health impact on the population at risk. It is becoming recognized that environmental epidemiology will continue to be driven by new analytical tools, newly emerging hazards and the public's perception of the risks posed by environmental hazards, thus giving rise to the development of new government regulations, standards, guidelines, policies and actions.

Methods: Literature review and epidemiological information.

[10]**In State of U.P v Raj Narain** (AIR 1975 SC 865)

22.Writ petition no. 2733 of 1986 BOMBAY ENV ACTON GROUP

23.Rampal v state of Rajasthan AIR 1981 raj 121

Conclusion:

The opening reading consists of readings from the ancient Indian law. The most profound and perceptive of these are the provisions found in Kautilya'sArthashatra written between 321 B.C. and 300 B.C. It is a collection of scattered shlokas that are presented in organised form. The core materials are on forest policy and legislation under one despot rule. Kautilya's jurisprudence provides for law concerning forests, wild life, forest reserves, poaching and punishment in default. Next is the epitome of Buddhist philosophy "*to live and let live*"

Governed by policy spoken by Gods or in this case the KING himself, the origin of state theory governs the behaviour of people towards natural resources like river, wildlife, forest etc. as they consider the words of the King as the words of God.

The above two just reflect the intentions of our ancestors towards the nature and environment. It can say that attention is given to the environment and it considered being an important part of Aryan philosophy. But it does not provide any proof of strict adherence of such laws and legislation. The ruler who have extended kingdom all over India cannot provide a guarantee that this rule is being acknowledge by all his 'praja' . In other case, India is the country which is rule by numbers rulers and it consist of small tribal kingdoms which generally have there own set of rules, and principle they are sovereign tribes they do not like to be compelled by the other law. Plus, the demographic feature of India does not allow following the law in the same manner as it indented. Things taken to be true in south may not be consistent with Northern provinces.

Scientific development in medical understanding since the beginning of the 20th century, has made it easier to identify specific causes of several environmental health related diseases. Since the Stockholm Conference in 1972, the links between environmental protection and human health have grown considerably. The United Nations Conference on Environment and Development held in Rio de Janerio in 1992 produced a blue print for the future action - Agenda 21- on environment and development issues. This Earth Summit identified a number of planetary environmental concerns that will, in time, be the subject of additional epidemiological investigation. These concerns include air pollution, depletion of the ozone layer, contamination of drinking water supplies, damping of hazardous wastes, electromagnetic radiation, and agricultural practices that have adverse environmental effects. Consequently, environmental epidemiology has evolved over the years with a broader understanding of the health effects of traditional hazards related to water and air pollution, contaminated foodstuff as well as hazardous wastes and a few toxic chemicals, making substantial contribution to environmental health management and policy. Environmental managers and regulators are taking appropriate actions to control and prevent most of the water, sanitation, food and airborne diseases which account for an estimated 80% of disease burden in developing countries. On the other hand epidemiological research and data on the magnitude, trend of exposure and related adverse health effects of emerging environmental hazards related to certain chemicals, global warming, ozone depletion, loss of biodiversity and consumption of genetically modified food and crops are limited for international consensus on global and local action. The full potential of environmental epidemiology in these areas has to be realized in order to make substantial contributions to environmental health policy and management.

BIBLIOGRAPHY

PRIMARY SOURCES

LEGISLATIONS

- The Water (Prevention and Control of Pollution) Act, 1974.
- The Water (Prevention and Control of Pollution) Act, 1977.
- The Air (Prevention and Control of Pollution) Act, 1981.
- The Environment Protection Act, 1986.
- The Public Liability Insurance Act, 1991.
- The National Environment Tribunal Act, 1995.
- The National Environment Appellate Authority Act, 1997.
- The Biological Diversity Act, 2002.
- The Indian Forest Act, 1927.
- The Wild Life (Protection) Act, 1972.
- The Forest Conservation Act, 1980.
- Code of Criminal Procedure, 1973.
- Code of Civil Procedure, 1908
- National Environment Tribunal Act, 1995.
- National Environment Appellate Authority Act, 1997.

- The Factories Act, 1948.
- The Bureau of Indian Standards Act, 1986.
- Mines and Minerals (Development and Regulation) Act, 1957.
- The Atomic Energy Act, 1962.
- The Energy Conservation Act, 2001.

SECONDRY SOURCES

BOOKS

- Mohanty, S.K., Environment and Pollution Laws, Universals Legal Manual, (2010).
- Tiwari, H.N., Environmental Law, Allahabad Law Agency, (2007).
- Pandey, J.N., Constitutional Law of India, Central Law Agency, 44th edition,(2007).
- Rai, Kailash., Public Lawyering,Legal Aid and Para Legal Services, 5th edition, (2008).
- Mulla& Pollock : Indian Contract Act and Specific Relief Act, 10th edition.

ARTICLES

1. Rosencranz Armin, National Green Tribunal Bill, 2009: Proposals for improvement; Economic & Political Weekly, Vol. XLIV, p 48.
2. Law and Other Things; Environment Tribunals in India: From the NEAA to the National Green Tribunal, Wednesday, 13th January 2010.
3. Green Tribunal Bill has Many Flaws,One World South Asia; February 17, 2010.
4. Krishna Gopal, Not Enough Teeth in Green Tribunal, Rediff News, August 11th 2009.
5. Law Society in collaboration with The Access Initiative, National Green Tribunal Bill-2009: How Green Is It? , 13th March 2010.

OTHER SOURCES INTERNET

1. http://www.mp.gov.in/bgtrrdmp/relief.htm
2. http://www.legalserviceindia.com/articles/jjj.htm
3. http://www.zeenews.com/news610986.html
4. http://timesofindia.indiatimes.com/news/india/Jairam-unveils-blueprint-for-new-body-to-regulate-environment-norms/articleshow/5023639.cms
5. http://www.lead-journal.org/abstracts/08050.htm
6. http://timesofindia.indiatimes.com/articleshow/4845007.cms
7. http://labour.delhigovt.nic.in/act/factories.html
8. http://www.maharashtradirectory.com/bureau_of_indian_standards.htm
9. http://www.powermin.nic.in/acts_notification/energy_conservation_act/introduction.htm
10. http://www.prsindia.org/index.php?name=Sections&action=bill_details&id=6&bill_id=740&category=42&parent_category=
11. http://southasia.oneworld.net/opinioncomment/green-tribunal-bill-has-many-flaws
12. http://www.ercindia.org/node/209
13. http://www.livemint.com/2009/07/24222534/Bill-to-set-up-national-green.html
14. http://www.lead-journal.org/abstracts/08050.htm
15. http://labour.delhigovt.nic.in/act/factories.html
16. http://southasia.oneworld.net/opinioncomment/green-tribunal-bill-has-many-flaws
17. http://news.rediff.com/column/2009/aug/11/guest-not-enough-teeth-in-green-tribunal-bill.htm