



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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History and Development of Environmental Law in India

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Received 09 December 2022; *Accepted* 15 December 2022; *Published* 22 December 2022

India has the seventh largest geographical area of 328.7 million hectares with about 1000 million of population. With this rapid growth in population, the demand and supply for natural resources are under severe pressure, especially in Indian forests since there is exploding demand for fuel, timber, fodder, grazing, and other non-wood forest product. This research article deep dives into all the efforts made by the government institution in general and some specific actions by the judiciary. Judiciary played an essential role by making some applaudable judgments with unconventional methods but it seems those are not enough since considerable damage has been done. There is an urgent need for more socially, environmentally, and local people-friendly management and micro-planning of the forest. The National Green Tribunal and Joint forest management are the rays of sustainable forestry, also the forest department has the challenge to reform their outlook from being the manager of the forest to a community facilitator.

Keywords: *environment, law, development.*

INTRODUCTION

With the alarming rate of global warming and catastrophic climate change, the government needs to pay attention to environmental issues, and it is equally important for people to make efforts for the same. As Ian C Esslemont said, “when you do not recognize the wrongs of the

past, the future takes its revenge.” So to make better environment-friendly decisions it is important to study the previous environmental laws and policies.

LEGAL HISTORY OF ENVIRONMENTAL LAWS IN INDIA

At present historians and writers, in general, have the view that deforestation started only during British rule in India, it would not be wrong to say these opinions are a little biased, at the same time the fact that major deforestation took place during the British and post-British era, mostly during 1930-1975 (215,792 km of forest cover was destroyed in 30 years)¹, must be remembered, it neither began nor ended with the British. It may be recalled that the shift from the Indus valley civilization to the Gangetic plains in ancient India was due to deforestation in the northern part of India.

- *Background of deforestation before and during British Rule*

Before British rule, Adivasis and villagers settled near the forest and obtained the things they needed for their daily survival besides hunting, gathering fruits, collecting tubers, collecting fruits and herbs at some places trees were cut down so that agriculture can be carried out those places, woods were used to build homes at the same time shifting cultivation was carried out which is popularly known as jhum cultivation. Then comes the British era, in this period railways were introduced in India, and the government was laying down railway tracks to improve connectivity, around the same time mines were dug, and due to all these developmental reasons, large amounts of wood were required. By the year 1879, 8000 km of railway tracks were built and the number increased to 50,000 km by 1910, for this purpose wood was cut down, mainly timber from the Himalayan and Terai region. Wood was traded in large amounts for the construction of buildings, mines, and ships, bids were made by the contractors to win the contract for cutting trees, and the British government earned a lump sum amount.

¹ C. Sudhakar Reddy et al., 'Quantification and monitoring of deforestation in India over eight decades (1930-2013)' (2016) 25(1) Biodiversity and Conservation <<https://link.springer.com/article/10.1007/s10531-015-1033-2>> accessed 08 December 2022

- *Pre-independence laws and policies*

Concerned with the declining forest cover the government set up a forest department in **1864**. The objective behind the formation of this department was not altruistic, the reason might have been to keep the geese alive while they were laying golden eggs for them. **Dietrich Brandis** was appointed as the first inspector general of the forest department, and new rules and regulations were formed to cut trees with careful precautionary measures and role of the forest department also included demarcation of reserves, exploration of resources, estimation of stock, steps to avoid forest fire these rules help the government to take control over the forest, the officials also felt the necessity to protect the forest from the Adivasis and indigenous people living nearby. The government come up with new forest law to prohibit those Adivasis and indigenous people to retrieve benefits from the forest, for that purpose demarcation of the forest into reserve forest and protected forest was done, and entry into the reserve forest was strictly prohibited, and in case of protected forest small amount of woods, cutting was allowed, use of forest produce and animal grazing was allowed with certain restriction.

On **19th October 1894**, the English government announced its **first forest policy** to maintain adequate forest cover for the unhindered growth of the nation and meet people's needs and obtain maximum revenue. During the Second World War, large amounts of timber were harvested which resulted in large forest degradation. This policy roughly divided forest into four categories namely, forest with utmost importance for maintaining balance in climate change, piece of land considered as forest only for name sake, a forest that produces large amounts of superior quality timber, and forest that produces an inferior quality of timber.

The Indian forest Act of 1927² was formed to implement the policy of 1894. The objective of the act was the consolidation of the forest law's transit of forest produce and the duty leviable on timber and forest produce. Here the main purpose was not exactly forest conservation but to secure exclusive governmental rights over forests to fulfill their demand for timber. The act included 13 chapters and 86 sections defining ownership of the state, regulated the use, and

² Indian Forest Act 1927

granted the power to extinguish or substitute customary rights. Under this act, the forest was distinguished into three different categories known as reserve forest, village forest, and protected forest. No rights were granted in the reserve forest except under a grant by the government or when the government is a party to the contract, any kind or activity in the reserve forest without government permission was punishable with imprisonment or a fine.

- *Post-independence laws and policies*

Indian Forest Policy, 1952³ is the first act formed after the independence of India, it provided a detailed plan for the protection and management of forest cover and wildlife, this act also made recommendations that at least at any given time 33% of the land area of the country must be covered with forest (as per the Indian state of forest report-2021, the total forest cover is 21.71% of the geographical area of the country). Under this policy, forests were classified into four different categories namely national forest, village forest, protection forest, and tree land. Communities should not be allowed to use forests under any circumstance against “national interest”

The Forest Policy of 1980⁴, the objective of this act is to check further deforestation and conserve forests. The important provisions of this act include a restriction on the cutting of trees, and regulation of forest land by keeping an eye on the lease issued to the private industries and individuals, restricting the use of the forest for non-forest purposes, and formation of an advisory committee to grant approval for any of the activities aforementioned and to advise the central government on the matters about forest conservation. This act covers all the issues which were not addressed in the previous acts. This act can be considered the most progressive one out of all the previous acts, the major objectives of the act include the protection of forest biodiversity, protecting the area under forest so that it cannot be used for agricultural purposes, grazing, or for construction either for commercial or personal purposes, to prevent degradation of land and prevent deforestation, to protect the flora, fauna of the forest. It also had a provision for the penalty for the infringement of the act, according to this act the central government had

³ Indian Foreign Policy 1952

⁴ Forest Policy 1980

the authority to carry out the law of this act and it also restricted the state government to make decisions in a few of the matters without the prior permission of the central government.

The Indian Forest Policy of 1988⁵ This forest act was a major advancement from all the previous acts and policies, the act was shaped more appropriately with the introduction of joint forest management (JFM) in 1990. The policy primarily emphasizes the rights of the people living in and around the forest area and it also suggested that the people living nearby the forest must be encouraged to protect and develop the forest area from which they can reap the benefits⁶. The NFP further adds that any change in the forest land for construction or any other commercial purpose must be made only after careful inspection by specialists to study the social and environmental aspects of the project. A circular by the ministry of environment and forest was issued for the state department of forest for the inclusion of local village communities and voluntary agencies for the regeneration of forest land and this circular officially launched JFM in India. JFM should be implemented under an “arrangement” between the village community (i.e. the beneficiaries), NGO, and the State Forest Departments. The selected area should be managed by a working scheme “prepared in consultation with the beneficiaries.” The working scheme is to cover such matters as steps for inducements of natural regeneration, seeding, soil conservation methods, fire protection, maintenance of boundaries, weeding, tending, thinning, etc.⁷ beside the aforementioned provision some other features of this act are encouraging effective utilization of the forest to fulfill national demands, most effective use of timber and conscious utilization of forest, increasing forest cover via afforestation or through social forestry, take all the necessary steps to fulfill the requirement of wood, soil, fodder, fuel, and minor forest produce, focus on maintaining environmental stability through the restoration of ecological balance and to keep a check on soil erosion and last but not the least checking extension on dunes.

⁵ Forest Policy 1988

⁶ Videh Upadhyay, ‘Legal and Policy Frameworks related to Forest Conservation’

<http://awsassets.wvfindia.org/downloads/lecture_notes_session_9_1.pdf> accessed 08 December 2022

⁷ Forest Policy 1988, s 4.3.5

ROLE OF THE JUDICIARY IN ENVIRONMENT PROTECTION

The supreme court of India has been very active for the past two decades in the protection of the environment, traditionally these roles are played by the executive and legislature. Environment law did not receive any importance in the initial year of independence, in 1984 there was a chemical leak in the city of Bhopal which is famously known as the Bhopal gas tragedy, it was also referred to as the worst industrial accident in history only after this accident stringent environmental regulations were made and there was an increase in judicial activities. The government passed *The Environment Protection Act (E.P.A) of 1986*⁸ under article 253⁹ of the Indian constitution, the purpose of this act was to implement guidelines of the UNC (United Nations Conference) conference on the Human Environment of 1972. This act strengthened the regulation of pollution control and environment protection by hazardous industries, the act also empowered the central government to take necessary action to protect the environment. The parliament of the country made changes in the area of environmental protection to implement the decision taken at the Stockholm Conference in 1974 also popularly known as the Magna Carta of the human environment. In the same year, constitutional status was granted under articles 48-A¹⁰ and 51A(g)¹¹ to EP (Environment Protection) and also included in DPSP (Directive Principles of State Policy) by the 42nd constitutional amendment act of 1976, apart from the aforementioned rules and regulation many other environmental laws were made namely, Wildlife (Protection) Act, 1972¹², Water (Prevention and Control) Act, 1974¹³, The Forest (Conservation) Act, 1989¹⁴, The Air (Prevention and Control of Pollution) Act, 1981¹⁵, The Environment (Protection) Act, 1986 & The National Green Tribunal Act, 2010¹⁶.

⁸ Environment Protection Act 1986

⁹ Constitution of India 1950, art. 253

¹⁰ Constitution of India 1950, art. 48A

¹¹ Constitution of India 1950, art. 51A(g)

¹² Wildlife (Protection) Act 1972

¹³ Water (Prevention and Control) Act 1974

¹⁴ The Forest (Conservation) Act 1989

¹⁵ The Air (Prevention and Control of Pollution) Act 1981

¹⁶ National Green Tribunal Act 2010

Over the years the supreme court has come up with many innovative steps to expand control over the misuse of natural resources and human rights, these innovative methods, for instance, include entertaining petitions on behalf of the affected party, taking suo moto action against the polluter, expanding the sphere of litigation, expanding the meaning of existing Constitutional provisions, applying international environmental principles to domestic environmental problems, appointing an expert committee to give inputs and monitoring implementation of judicial decisions, appointing amicus curiae to speak on behalf of the environment, and encouraging petitioners and lawyers to draw the attention of Court about environmental problems through cash award. Some critics have described the Supreme Court as a 'Garbage Survivor' or 'Lord of green bench.'

Some of the innovations of the Supreme Court and their implications on environmental jurisprudence include the concept of PIL, the expansion of the fundamental right to life, spot visit, expert committees, and the application of environmental principles and doctrine.

The concept of PIL was introduced in the 1980s with the efforts of justice P.N Bhagwati and Justice V.R Krishna Iyer in an attempt to bring wider issues affecting the public at large, earlier there was no such arrangement for a third party to seek help without any sufficient interest, the earlier focus was on the identity of petitioner rather than the subject of the petition. The major question arose: who will bring to court notice the cases where there was no personal injury, in particular? Now it has been ruled that any person who has a fair amount of interest can file a petition, from 1980-2000 out of 104 environmental cases in the Supreme Court, 54 of them were filed by people who don't have a direct interest but had fair interest and 28 were filed by NGOs on behalf of affected parties. Many times the court has gone above and beyond to protect the environment, for example in *M.C Mehta v Union of India*, the case concerning the pollution of the Ganga river, the court published a notice in the newspaper drawing the litigation to the attention of all the concerned industries and municipal authorities inviting them to enter an appearance.

Expansion of fundamental right to live in the case of *Maneka Gandhi v Union of India*, the supreme court enlarged the scope of personal liberty significantly and preserved the fundamental & constitutional right to life, through this judgment supreme court brought into the ambit of article

21¹⁷ other critical rights such as Right to Clean Water, Right to Clean Environment, Right to Clean Air, Right to freedom from Noise Pollution, Standard Education, Speedy Trial, Fair trial, Right to livelihood, etc. court made an active effort to expand the scope of the fundamental right to life, for instance, *Dehradun limestone quarrying case*, the court said economic growth cannot be achieved at the cost of environmental degradation and people's right to a healthy environment. As per the court's right to live in a healthy environment with minimum ecological disturbance and to live without avoidable hazards to people and their cattle or their agricultural land and undue affection of air, water, and environment. In the Ganga water pollution case, Justice Venkataramiah extended the right to life to the right to defend the environment for present and future generations. Such interpretations have expanded the scope of not only environmental jurisprudence but also human rights in India.

Spot visits are very innovative and ambitious steps taken by judges to make sure justice is served. In the *Doon valley case* justice P.N Bhagwati visited the area to have first-hand information about complex issues such as the rights of the workers, and traders and the fragile ecology of the area, based on his visit and the recommendation of the committee, the court directed the government of Uttar Pradesh to closed down the illegal mining projects in the valley, few other mining protects were allowed on a condition that proper care must be taken to ensure environmental safety. Due to spot visits, judges were able to give judgments that have a considerable impact on the environmental jurisprudence but on the other hand, most judges think that spot visits are neither feasible nor possible, therefore spot visits are part of individual interest and not a standard practice.

The expert committee has always been a part of the jurisprudence process irrespective of the nature of litigation. In *S. Jagannath v Union of India*, a shrimp farming case where intensive and semi-intensive farming were declared to be environmentally harmful, based on studies by the Central Pollution Control Board and the expert committees at the national and international levels.

¹⁷ Constitution of India 1950, art. 2

The application of environmental principles and doctrine by the Supreme Court has helped in resolving many domestic cases. Essential steps that need to be taken to implement decisions taken under international conventions and conferences are included in article 253. These doctrines are inter-generational equity, polluter pay principle, public trust doctrine, precautionary principle, and sustainable principle.

INTER-GENERATIONAL EQUITY

The concept of intergenerational equity states that “every generation holds the Earth in common with members of the present generation and with other generations, past, and future. The principle articulates a concept of fairness among generations in the use and conservation of the environment and its natural resources”. Under international environmental law or governance, intergenerational equity has been a cardinal principle. From the *Stockholm declaration in 1972 to the Minamata declaration in 2017* the said principle has been a fundamental object. In the Indian judiciary system, the supreme courts have used this principle now and then. One such case is the Goa mining case or *Goa Foundation v Union of India and others*. In this case, the Supreme Court held that the principle of intergenerational equity, sustainable development, the precautionary principle, and the polluter pays principle is part of the right to live according to the constitution.

POLLUTER PAYS PRINCIPLE

The polluter pay principle was introduced under principle 16 of the *Rio summit of 1992* simply means the one who is causing the pollution must be held liable for the damages caused to the environment and according to this principle, the polluter has to compensate the victims of pollution and needs to reimburse for the rehabilitation of the environmental degradation under OECD. This principle was applied for the very first time in India in the case of the *India council for enviro-legal v Union of India*, where the industrial complex was set up which involved the manufacturing of chemicals. The emission of sulphuric acid and aluminum sulfate caused terrible effects on the crops and aquatic ecosystem of the area. The court ruled that the industry will have to deposit the fine along with compound interest.

PUBLIC TRUST DOCTRINE

According to this principle, all the natural resources such as Air, Water, and Forest belong to every individual irrespective of social status so basically, it restricts the idea of private ownership by the virtue of being a human you naturally have rights over resources. It also held the state responsible for the effective management of the resources and mandated them to take affirmative action. The state must protect and preserve the resources for the public. This principle was put on an application for the first time in *M.C Mehta v Kamal Nath & Ors* or famously known as Span Motel Case. In this case, a PIL was filed against environment minister Mr. Kamal Nath, because he allowed the company to change the course of the river and divert its flow which disrupted the natural balance of the River Beas. while passing the judgment of this case, the court applied the public trust doctrine and observed that the Himachal government breached the public trust doctrine as they cannot lease ecologically sensitive land for the profit-making purpose of the private owner and under the polluter pay principle penalties were applied according to that Span Motels had to bear the cost of compensation.

PRECAUTIONARY PRINCIPLE

This principle states that even in the case where there is no potential danger to the environment or the people in the surrounding area, appropriate measures must be taken to avoid any possible danger in the worst-case scenario. In the case of *Vellore Citizen Welfare Forum v Union of India*, the court declared that the principle includes three major conditions “state government and statutory authorities must anticipate, prevent and attack the cause of environmental degradation”¹⁸ The national green tribunal announced that the precautionary principle is an integral part of the national environment law. In this case, the supreme court pointed out that it is very important to maintain the balance between industrial development and environmental protection and hence promote the concept of sustainable development the said concept was

¹⁸ Anurag Singh, ‘Precautionary Principle’ (*Legal Services India*)
<<https://www.legalserviceindia.com/legal/article-3931-precautionary-principle.html#:~:text=Thus%2C%20the%20precautionary%20principle%20in,affect%20public%20health%20and%20environment>> accessed 08 December 2022

applied through the precautionary principle and polluter pay principle, the court also pointed out that it is not right to do industrial development at the cost of health and living of the people.

SUSTAINABLE DEVELOPMENT PRINCIPLE

It simply means that the state must make efforts to maintain a balance between the environment and development. The concept of sustainable development makes us aware of the fact that any use or misuse of the gift of nature will affect the future generation, it reminds us that the needs of the present must be met without compromising the ability of future generations.

SUGGESTIONS AND CONCLUSION

India after independence has made great efforts towards environmental jurisprudence with the help of different forest acts and policies, judicial activism, international law, and treaties and course the vital role that National Green Tribunal has played, but in my opinion, burdening court of law with environmental conservation duties is not right, as if only it is courts' responsibility. A sustainable future is not possible to attain if only courts are making efforts, it is equally important for the other two branches of government i.e. the executives and legislature to make constant efforts. Also, there is hardly any active public participation, there are NGOs that are constantly working in this field but the general public must make efforts, to make any grass root level changes in the long term. There are so many countries that have made remarkable changes through their effective governance and public participation, for example, Norway recycles 97% of the plastic bottles, countries like Bhutan Panama, Suriname, and Tasmania have become carbon negative, Finland made carbon negative legally binding and if the government does not meet the said target the Finnish citizen can bring legal action against their government, Caribbean islands have banned single-use plastic, and japan's unique agrivotaics¹⁹ With joint efforts from these countries India can learn a lot and at the same time can strengthen its soft power as well.

¹⁹ Jeanne Yacoubou, 'What we can learn from the world's most eco-friendly countries' (*Reader's Digest*, 12 December 2022) <<https://www.rd.com/article/most-sustainable-countries/>> accessed 08 December 2022

Even within India, Mawlynnong village in Meghalaya was announced as the cleanest village in Asia, but to be able to achieve this on a large scale, support from the central government would be required. Generally, there is this narrative that human population and forests must be kept as far as possible only then conservation projects can be carried out but on the contrary, tribal must be included and encouraged to protect forests in the most efficient way.