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# The Globalized Journey of Environmental Laws Summoning the Constitutional Perspective

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## ABSTRACT

*"The Earth is what we all have in common."- Wendell Berry*

*The above-mentioned statements truly intimate the importance of the Environment and presage the entire humanity that the earth is a Common Heritage and not a specific nation's blessing. Environmental law is not a brand-new idea in India. Living in harmony with nature is the tenet of Indian civilization's long-standing environmental law. A type of conservation ethics that is passed down to us through our history, culture, religion, and Vedic philosophy can be seen in our worship of nature as a deity and our recognition of the earth as mother. We are aware of the fact that, every action has an equal and opposite reaction and accordingly, 'Development' plays a negative role in the ecosystem and has always had a deteriorated effect by making the environment polluted, drastically changing of climate and invitation to innumerable diseases in the name of human development. Many countries have awakened from the call to protect the environment by enacting several legislations and criminalizing certain acts which hamper the environment. The judiciary has also played an essential role in prefixing the situation, which directly and indirectly tried to destroy the essence of the ecosystem. Nevertheless, despite numerous declarations, treaties and legislations, the deterioration is unstoppable. We must not forget that 70% of India's Economy is based on agriculture; hence the development of the ecosystem is also sine qua non. The author of the said article has tried to bring out all the prominent problems which are continuously affecting the environment; at the same time, made some critical analysis with respect to poor implementation of laws and certified certain suggestions which, if implemented, will shield the ecosystem.*

**Keywords:** *Climate Change, Constitutional Rights, Legal Implementation, Sustainable Development, Public Health.*

## I. INTRODUCTION

Life depends on man since he is an element of nature. However, there is a worldwide need to conserve the environment. No country should be exempt from this obligation, regardless of how

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developed, impoverished, or otherwise. All nations must now prioritize environmental conservation as a top priority in order to take the necessary action to maintain the ecosystem and ensure its continued existence as a living being on the earth. The Stockholm conference kicked off an ongoing series of international conferences at which countries have recognized the global interdependence of the environment and the necessity of taking immediate action to safeguard it. Some of the results of the world community's concern about the State of the planet are the Stockholm Declaration of 1972, the Nairobi Declaration of 1982, the World Charter for Nature of 1980, the Earth Summit of 1992, the Johannesburg Conference on Sustainable Development of 2002, and the United Nations Conference on Sustainable Development of 2012. The overarching message of these gatherings is that the environment cannot be ignored for the sake of the short term. The international community has successfully developed and enforced various international environmental regulations during this interim period, imposing obligatory and optional duties on its members to take efficient preventive, curative, and promotional measures for the protection of the environment on a global scale. The number of international and regional agreements and treaties is believed to be in the neighbourhood of "five hundred" and "cover everything from the protection of the ozone layer to the conservation of oceans and seas." These worldwide initiatives have provided the essential momentum for national environmental legislation to be passed worldwide.

## **II. CLIMATE CHANGE AFFECTING ENVIRONMENT**

Some relation exists between the potential effects of climate change on various societal classes. Even within one location, though, not every part of the country or world is evenly encapsulated by weather change. Community, various neighbourhoods or individuals may suffer distinct consequences. Over the next 30 years, climate change in Uttarakhand will progressively compel people to leave high-altitude farming and relocate to the lowlands. By 2050, Uttarakhand, which has a surface area larger than Costa Rica, could see temperature increases of between 1.6 and 1.9 degrees Celsius. According to the state government's action plan on climate change, its residents are already feeling the effects of climate change, which include shifting temperatures, rising snowlines, retreating glaciers, erratic rainfall, less snowfall in the winter, altered cropping seasons, shifting cultivation zones for some crops, and drying up of perennial streams.

Due to the combination of a western disturbance, monsoon winds, and a cyclonic circulation over northwest India on July 8–9, Delhi had its largest single-day rainfall (153 mm) in a month since 1982. In the next 24 hours, the city got an additional 107 mm of rain.

A record-breaking 260 mm of rain fell in Delhi in 36 hours starting at 8:30 am on July 8; as a

result, the authorities issued a flood alert and briefly closed schools.

### **III. NATIONAL FRAMEWORK**

#### **(A) Constitutional Perspective and Judicial Pronouncements**

India's Constitution is one of the rare in the world to possess particular clauses for environmental preservation. The right to "life" is included in Article 21 of the Indian Constitution, which is located in Part III of the Fundamental Rights. The term "life" used to understand Article 21 also acts as a key for people to keep the environment safe. The nation is responsible for safeguarding and developing the environment, as stated expressly in the Fundamental Duties Chapter and the Indicate Policy's Directive Principles. Since the Stockholm Declaration on human beings' surroundings was issued in 1972, understanding has expanded nationally and globally. Currently, various official and unofficial international organizations are working to develop global policies for ensuring that The biological community interacts with its physical surroundings and inside it in a healthy manner. On a national level, the States are similar. India has passed several worrying laws about air pollution, water pollution, wildlife protection, forest conservation, the preservation of antiquities and monuments, the regulation of urban land, the use of insecticides and radiation to safeguard the ecology and maintain the availability of natural resources. Even the Constitution was changed to include a consideration of the environment. Regarding preserving the environment in India, the Constitution's provisions and other important ones of various environmental laws approved by the Parliament or State Legislatures may be invoked. The right to life is initially and foremost safeguarded by Article 21 of the Indian Constitution. Supreme Court and High Courts have understood the concept of "Right to Life" to apply, in many circumstances, to life in a healthy environment. The other basic right related to environmental preservation is the Constitution's Article 14. Environmental safeguards are included in the "Directive Principles of the State Policy" section of Part IV of the Constitution. The Directive Principles of the State Policy impose obligations on the State. The State is responsible for organizing agricultural and animal husbandry beneath Article 48 of the Constitution. The State is required under Article 48-A of the Constitution to safeguard the nation's forests and animals. Articles 47, 48, and 48-A allow the State to advance public health. The Constitution's new Article 51A (g) outlines the obligation of citizens to protect the environment.

Additionally, Articles 32 or 226 of the Indian Constitution provide a lawful cure for environment-damaging behavior. Article 142 deals with the carrying out of Supreme Court Judgments or rulings. The Indian Constitution's Article 162 states that policy plays a role in

protecting the environment.

Governmental authority in India is split between the Union and State Governments under the country's federal system. The State Legislatures are in charge of enacting laws for their individual States, whilst Parliament has the authority to establish laws for the entire nation. The Union and the States each have their own legislative priorities, as Article 24 of the Constitution specified. For each State, legislatures have the authority to enact laws., while Parliament has the power to Subjects included on the Union List (List-I) including defense, atomic energy, shipping key ports, regulating and developing oil fields, interstate transit, mine and mineral development, and interstate rivers. Laws Only the State Legislatures may approve legislation pertaining to the State List's (list-II) fisheries, agriculture, water supply, irrigation, drainage, and public health and sanitation. The Concurrent List (List-III) gives the State Legislatures and the Parliament joint and concurrent authority over issues like forests, wildlife preservation, the exploitation of minerals not listed in List-I, minor ports, industries, and family planning and population control.

**a. Wasim Ahmed Saeed v. Union of India<sup>2</sup>**

In order to preserve monuments and holy sites, the Supreme Court mandated that stores be moved 750 yards from a place of worship (Dargah of Salim Chisti in Agra).

Therefore, it is evident from a study of the Judgements as mentioned earlier that the Court has seen the necessity for the conservation as well as safeguard of the environment and wildlife under Article 19(1) (g) of the Constitution as a justified restraint on the fundamental freedom.

**b. A.P. Gunnies Merchants Association, Hyderabad v. Government of AP<sup>3</sup>**

The Andhra Pradesh High Court ruled that it is not always legal to do business while using worn and outdated gunny bags. The industry that involves cleaning and dusting gunny sacks pollutes the air and the environment. As a result, the State Government's directive to relocate the firm from a densely populated location to an area that is safer for the environment is legitimate and does not contravene Article 19(1) (g) of the Constitution.

**c. Sushila saw mills v. State of Orissa<sup>4</sup>**

It was determined that prohibiting all saw mill operations or activity inside the restricted area of a reserved or protected forest did not violate the Constitution's Articles 19(1)(g) and 301. It is well-established that, under some circumstances, absolute prohibition may be a limitation

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<sup>2</sup> Wasim Ahmed Saeed v. Union of India, 2002 (9) SCC 475.

<sup>3</sup> A.P. Gunnies Merchants Association, Hyderabad v. Government of AP, AIR 2001 AP 453.

<sup>4</sup> Sushila saw mills v. State of Orissa, 1995 AIR 2484, 1995 SCC (5) 615.

under Article 19(1) (g) for the public good. For the preservation of ecology and the safeguarding of the forest's richness, public interest lawsuit was brought in the current case.

**d. Charan Lal Sahu v. Union of India<sup>5</sup>**

According to Justice K.N. Singh in his concurring opinion, the Constitution's Articles 21, 48A, and 51(g) guarantee the rights to life, liberty, and access to clean air and water.

**e. In M.C. Mehta v. Union of India, (popularly known as Oleum Gas Leakage case)<sup>6</sup>**

The Supreme Court implicitly referenced the fundamental right to life guaranteed by Article 21 of the Constitution, which also includes the right to live in a clean environment.

According to Justice K.N. Singh, the freedom to enjoy life to the fullest extent possible is a part of the right to life, which is a fundamental freedom guaranteed by Article 21 of the Constitution.

**f. Twin Tower Demolition Case**

The 2014 verdict of the Allahabad High Court ordering the destruction of Tower 16 and Tower 17 of Emerald Court, built by Supertech Ltd. in Sector 93-A, Noida, Uttar Pradesh, was affirmed by a division bench consisting of Dr. D.Y. Chandrachud and M.R. Shah, JJ. The Supreme Court ruled that the building was unlawful. The New Okhla Industrial Development Authority ("NOIDA") approved updated building designs that broke the law by authorizing the construction of Tower 16 and Tower 17, two more towers. The Court ordered Supertech to repay the money that flat allocators put in these two towers together with interest. Supertech was also directed to pay the Resident Welfare Association of Emerald Court Group Housing Society, which had brought the case by filing a writ petition in the High Court, expenses in the amount of Rs 2 crore. The Court also determined that other occasions in the case demonstrated collaboration between Supertech's management and the officials of NOIDA. As a result, the High Court's order to sanction the prosecution of Supertech and NOIDA executives was also affirmed. The Court stated: "*When regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards.*"

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<sup>5</sup> Charan Lal Sahu v. Union of India, 1988 AIR 107 1988 SCR (1) 441.

<sup>6</sup> M.C. Mehta v. Union of India, 1987 SC 965.

**(B) Legislative Perspective****a. Forest (Conservation) Act, 1980**

The maximization of financial gain was the primary purpose of the Indian Forest Act of 1927. The concept of state exclusivity over land in reality opened the door for the industrialization of forest produce, which in turn led to the extensive impairment of the natural environment of forests as hundreds of thousands of trees were cut off during this time period. As a consequence of this, the Forest (Conservation) Act of 1980 was passed into law in order to put a stop to the depletion of forests. The goal was to restrict the utilization of woodlands for uses other than forestry and to exercise authority over the process of de-reserving forests that had previously been protected by the Indian Forest Act of 1927. In addition, new regulations were included with the goal of preventing the subletting of forest property to commercial firms and maintaining the natural process of tree cutting.

**b. Wild Life Protection Act, 1972**

This Act first went into effect in 1972, and since then, it has been subject to a number of different revisions. These changes were introduced to make the punishment more severe for those who break the law. These regular revisions caused both hunters and poachers to reconsider their actions before taking any action that could be harmful to the wildlife species. In addition to this, the Illegal Trade and Wildlife Poaching Control Bureau has been established so that illegal trade and poaching can be controlled. After the Wildlife Protection Act was put into effect, there was a significant reduction in the amount of hunting and poaching that occurred in India. In addition to this, a number of national parks and sanctuaries for diverse types of animals have been established. These preserves, sanctuaries, and parks provide a protected natural habitat for a wide variety of animal species.

**c. Water (Prevention & Control of Pollution) Act, 1974**

In 1974, the Water (Prevention and Control of Pollution) Act was passed into law in order to make provisions for the avoidance and management of water pollution, as well as for the maintenance or restoration of the purity of water across the country. Several changes were made to the Act in 1988. The Water (Prevention and Control of Pollution) Cess Act was adopted in 1977 to allow for the levy and the gathering of taxes on water consumed by individuals conducting and engaging in particular kinds of industrial activities. The Water (Prevention and Control of Pollution) Act of 1974 requires the collection of this cess with the intention of increasing the financial resources available to the Central Board and the State Boards for the Prevention and Control of Water Pollution. These boards were established in order to combat

water pollution. The Act was most recently revised in the year 2003.

**d. Air (Prevention and Control of Pollution) Act, 1981**

The purpose of the Air (Prevention and Control of Pollution) Act, 1981, or simply the Air Act, 1981, is to give legal backing to efforts to reduce air pollution. Among other things, the Environmental (Protection) Act of 1986 addresses the Act's stated goal of preventing, controlling, and reducing air pollution. The Air Act in India was primarily inspired by the United Nations Conference on the Human Environment, which took place in Stockholm in June 1972. The Air (Prevention and Control of Pollution) Act of 1981 was subsequently passed by Parliament as a countrywide Air Act. The law was revised once again in 1987. The primary goals of this Act are to increase national air quality and reduce, oversee, and eliminate pollutants from the air.

**e. The Environment Protection Act, 1986**

The Environment Protection Act, 1986 is a piece of legislation that was passed by the Indian Parliament in 1986. Under the authority granted to it by Article 253 of the Constitution, the Government of India passed the Environment Protection Act of 1986 in the aftermath of the Bhopal Disaster. The bill was introduced in March 1986 and finally became law on November 19, 1986. It is divided into 26 sections. The United Nations Conference on the Human Environment came to a series of conclusions relating to the protection and improvement of the human environment and the prevention of risks to human beings, other living creatures, plants, and property. The objective of the Act is to put those decisions into action so that they can be put into effect. The Act is a piece of "umbrella" legislation intended to provide a framework for the central government's coordination of the activities of numerous federal and State authorities established under prior laws, such as the Water Act and the Air Act, etc.

**(C) Role Of the National Green Tribunal in Conservation**

Unknown anomalies in nature and how it regulates global nourishment are currently being experienced by human culture. Since 2010, the globe has seen the worst-hit natural disasters, which have killed and disabled millions of people and destroyed billions of dollars' worth of property. Even the rate of global warming is on the rise. The scarcity of resources, including land, electricity, and water, has caused an agricultural crisis in India. Our land has been destroyed by the extensive use of harmful pesticides and artificial fertilizers, which has also poisoned our water supply and food chain.

The Municipal Board, Pokaran was fined Rs. 65,75,000 by the National Green Tribunal (NGT) for releasing untreated sewage into the Jaisalmer area of Rajasthan, which caused damage to



farmers' agricultural land. "The law is well settled that no discharge of untreated sewage is permissible in any stream unless the necessary treatment is made and the water quality improved as per the prescribed standards under the provision of the Water Act, 1974," wrote the Justice Sudhir Agarwal and Dr. Afroz Ahmed bench. "And if any person commits, breach, in addition to acting under the Water Act, 1974, it is also liable to pay environmental compensation on the principle of Polluter Pays."

The National Green Tribunal (NGT) has established a four-member committee in a suo moto cognizance case to develop policies and protective measures for islands submerging due to rising sea levels and climate change.

A committee consisting of the directors of the National Institute of Oceanography, Goa (NIO, Goa), and the National Centre for Sustainable Coastal Management was formed by the bench of Justice Sheo Kumar Singh (Acting Chairperson), Justice Arun Kumar Tyagi, and Dr. A. Senthil Vel in light of the risks. The news article headlined "India's Sinking Island" that appeared in *The Hindu* in March served as the source for the suo moto cognizance. It was emphasized that one island had vanished entirely from the map, and that numerous islands are under siege from unusual cyclonic storms, marine erosion, and new development projects.

#### **IV. COMPARATIVE ANALYSIS OF UK USA AND AUSTRALIA**

##### **(A) United States**

The emergence of tribunals that offer an external, quasi-judicial review on the merits of administrative decisions made by the Commonwealth and some states may be the most intriguing development from the standpoint of US environmental law. The heart of the federally enforced pollution-control regulations in the United States has increasingly been feasibility-based restrictions. For many different reasons, feasibility-based restrictions are first appealing. They are extremely simple to adopt from an environmental perspective, and they often provide effects quite quickly by requiring outdated facilities to modernize. At the same time, the community under regulation is protected against closure threats and the possibility that plants in less polluting locations may gain a competitive edge. Politically, established regions, which are typically highly inhabited and politically powerful, are safeguarded in the struggle for new industries, whereas pristine places are protected from unchecked deterioration—regardless of whether the residents desire protection or not.

##### **(B) Australia**

All of the laws passed in Australia have been impacted by the National Historic Preservation

Act. Fundamentally, environmental legislation in both Australia and the US seems to be moving in the same way. Since the 1970s, the demands of centralization have dominated environmental legislation in the United States. As a result, federal law now dominates the field of environmental law, particularly in terms of preventing pollution and handling hazardous material releases. Although states continue to be the key players in Australia's environmental arena, significant developments emerged in the 1980s and the first half of the 1990s. Throughout this time, the Commonwealth's efforts to safeguard significant natural resources were regularly upheld by the Australian High Court. Furthermore, a federal Environmental Protection Authority was established by a recent Memorandum of Agreement between the states and the Commonwealth. Despite the fact that the size and importance of those criteria have not yet been determined, the memorandum expects their development.

### **(C) United Kingdom**

Controlling air pollution was British environmental policy's single most significant goal in the 1950s. Coal burning in residential and commercial buildings mainly contributed to air pollution. The dark smoke seriously endangered people's health and hindered vision. In Sheffield and Manchester, there were demonstrations against the smoke. It is conceivable to trace the creation of an environmental policy area in the United Kingdom back to the early 19th century, resulting in the initial industrial nation with such a domain. The United Kingdom experienced extraordinary political-economic, demographic, and physical transformation as the world's first industrialized nation. This phenomenon stood out in England and Wales, where industrialization produced massive levels of population expansion and population transfer. Several environmental reforms were implemented as a result of the accompanying urban filthy conditions. However, they were more often than not part of a broader policy focused on the general welfare, tangible, and occasionally moral well-being than one specifically founded on the concept of sustainability in the environment.

Initial efforts were either (i) centred around relatively small policy problems or (ii) contained in regulation that concentrated mainly on other, albeit related, policy concerns, as environmental concerns were dependent on the wider range of concerns outlined above. The Alkali Act of 1863 was one of the earliest examples of the former, and it was followed by a number of related pieces of legislation in the second half of the nineteenth century that all dealt with reducing hydrogen chloride emissions from alkali operations. In contrast, public health policy as a whole and private charitable endeavours inspires to take a broader approach to solving environmental problems. The 1848 Public Health Act, the 1851 Shaftesbury Act, the 1868 Torrens Act, and the 1875 Cross Act are all examples of government initiatives of this type that were inspired by

the 1840 Select Committee on the Health of Towns and the 1845 Royal Commission on the State of Large Towns. Bournville, a suburb of Birmingham developed by the local Cadbury family, Port Sunlight, a suburb of Liverpool, and Saltaire, a suburb of Bradford were all examples of private initiatives predicated on the idea that better living conditions would lead to higher worker output.

Since Labour's 1997 General Election victory, the devolution process and constitutional amendments have added a new layer of fragmentation to the steady consolidation of powers over time. This is why Scotland has its own Environment Protection Agency in addition to the Scottish Executive, which oversees environmental policies. However, because the devolved government has been put on hold in Northern Ireland, environmental policy is still being managed in London.

## **V. IMPORTANCE OF PRINCIPLES AND DOCTRINES**

### **(A) The Precautionary Principle**

Article 7 of the Bergen Ministerial Declaration on Sustainable Development in the ECE Region, which was inserted by Professor Ben Boer, expressed the precautionary principle. "*Environmental measures must foresee, prevent, and combat the causes of environment degradation,*" it states. Lack of scientific clarity should not be an excuse for delaying environmental protection actions if severe or permanent harm dangers exist. The Australian Conservation Foundation makes the following observations that can be used to deduce the precautionary principle: "*The implementation of this duty is that developers must assume that because of development activity, environmental harm may occur and that they should take the necessary action to prevent that harm; the burden of proof is thus placed on developers to demonstrate that their actions are environmentally benign.*"

### **(B) Polluter Pays Principle**

In the Indian Council for Enviro Legal Action v. Union of India, the Court determined that the "Polluter Pays" Principle is sound. The Court noted: According to the polluter pays principle, the company that causes the pollution or makes the products that cause the pollution must bear the financial burden of preventing or repairing any damage that results from it. According to the concept, it is not the responsibility of the government to pay for the costs associated with preventing such harm or implementing corrective action because doing so would shift the cost of the pollution incident to the general public. The Organization for Economic Co-operation and Development (OECD) established the "Polluter Pays" Principle in the 1970s, a time of intense public interest in environmental concerns. At this time, there were calls for the

government and other institutions to establish laws and other safeguards to protect the people and the environment from the dangers presented by pollution in a contemporary industrialized society. Since then, the Polluter Pays Principle has been the subject of intense debate, but its exact parameters and the effects it has on people who have engaged in or may engage in future polluting actions have never been properly resolved.

### **(C) The Public Trust Doctrine**

A fundamental tenet for safeguarding land and marine natural resources is the idea of public trusteeship. The Public Trust Doctrine, which originated in the ancient Roman Empire, is based primarily on the idea that some resources, such as the air, sea, and water, and forests, are of such great importance to the population at large that it would be wholly unreasonable to subject them to private ownership. The aforementioned resources, which are a gift from nature, need to be freely accessible to everyone, regardless of their circumstances. The theory requires the government and its agencies to safeguard the resources for everyone's pleasure.

## **VI. CONCLUSION**

The need to protect the environment is now widely acknowledged. Indiscriminate industrial development is to blame for this condition. Deforestation, the combustion of fossil fuels, carbon dioxide emissions, and industrialization are the main contributors to environmental deterioration. Environmental deterioration also leads to the solid and liquid hazardous and toxic wastes being dumped by industrial operations. The main contributor to global warming is the atmosphere's buildup of carbon dioxide. One of the few international constitutions with definite provisions for environmental protection is perhaps the one in India. It lays the burden of protecting and strengthening the environment on both the "State" and the "Citizens." The ability to live in a safe environment has been elevated to the status of a fundamental human right by the judicial language of interpretation.

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