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Shifting Paradigm of Environmental Jurisprudence: A Review

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Introduction:

Environment protection now a days has become global concern, especially in the era of Liberalization, Privatization, and Globalization. This doesn't mean that we were not concerned with it earlier. We have many historically references for protection of environment. Actually, protection of environment had started with the creation of world itself. Nature itself takes care of its environment. But, after human civilization, when man understood the importance of nature and environment he started protecting it. We have references in religious books, traditional stories, even some superstitions are in existence about it, and legislative enactments on protection of environment. But as man is a social animal and become selfish day by day he ignore the sign of nature and become professional to exploit nature for his greediness. It resulted into loss of flora and fauna. We must thank to judiciary which has come forward to protect the basic rights of man by evolving environmental jurisprudence time and again.

Environment Protection in Religions:

Major religions on earth and different ideologies also speaks about environment protection. Basic teachings prescribe that humans are part of ecological balance and hence it is the primary duty of man to protect and preserve the natural environment.

Buddhist believes that, since many environmental problems have stemmed from human activity, it follows that religion might hold some solutions to mitigating destructive patterns. [Buddhism](#) idealizes and emphasizes interconnection,¹ thereby creating a mindset that creates a productive and cooperative relationship between humans and nature. That all actions are based on the premise of interconnection makes the Buddhist mindset effective in cultivating modesty, compassion, and balance among followers, which may ultimately mitigate the harm done to the environment.

One benefit of the Buddhist interconnected mindset is the inevitable humility that ensues. Because humans are entwined with natural systems, damage done upon the [Earth](#) is also harm done to humans.² This realization is quite modifying to a human race that historically pillages the Earth for individual benefit. When rational humans minimize the split between humanity and nature and bridge the gaps,³ only then will a mutual respect emerge in which all entities coexist rather than fight. Buddhism maintains that the reason for all suffering comes from attachment.⁴

In [Hinduism](#), practitioners and scholars find traditional approaches to the natural environment in such concepts as dharmic ethics or [prakrti](#) (material creation), the development of [Ayurveda](#), and readings of [Vedic literature](#).⁵

[Christianity](#) has a historic concern for nature and the natural world. At the same time, ecological concerns operate in tension with [anthropocentric](#) values, such as the [Biblical](#) notion of human dominion over the Earth. ([Gen](#) 1:28) A broad range of Christian institutions are engaged in the [environmental movement](#) and contemporary environmental concerns.⁶

Through the tradition from the [Quran](#) and the prophets, the environment was made sacred. It is believed that God did not create the environment for a random reason, but rather a reflection of truth. One can gain profound knowledge from nature thus, human beings are to preserve it and look after it. Many chapters in the Quran, refer to the beauties of nature as well as the headings of many chapters indicating the importance of it, such as: "The Sun", "Dawn", and "Morning Hours". Thus man is God's representative on this planet, if he is not charged with sustaining it, then at least he must not destroy it.⁷

International concern for Environment protection:

UN Conference on the Human Environment, Stockholm (1972) was important initiative for the protection of environment. It has laid down important principles for the protection of human environment. Principle 1 of the Stockholm Declaration provides that "Man has fundamental right to freedom, equality and adequate conditions of life in an environment of quality that permits a life of dignity and wellbeing and he bears a solemn responsibility to protect and improve the environment for present and future generations."

UN Conference on Environment and Development was held at Rio de Janeiro in the year 1992. The Earth Summit in Rio de Janeiro was unprecedented for a UN conference, in terms of both its size and the scope of its concerns. Twenty years after the first global environment conference, the UN sought to help Governments rethink economic development and find ways to halt the destruction of irreplaceable natural resources and pollution of the planet. Hundreds of thousands of people from all walks of life were drawn into the Rio process. They persuaded their leaders to go to Rio and join other nations in making the difficult decisions needed to ensure a healthy planet for generations to come. The outcome of this conference resulted into, Agenda 21, the Rio Declaration on Environment and Development, the Statement of Forest Principles, the United Nations Framework Convention on Climate Change and the United Nations Convention on Biological Diversity.

Johannesburg Conference 2002: The Johannesburg Declaration on Sustainable Development was adopted at the World Summit on Sustainable Development (WSSD) in 2002. It is built on earlier declarations made at the United Nations Conference on the Human Environment at Stockholm in 1972 and the Earth Summit in RiodeJaneiroin1992. The Declaration commits the nations of the world to build a humane, equitable and carry global society, cognizant of the need for human dignity for all. In terms of the political commitment of parties, the Declaration is a more general statement than the Rio Declaration. It is an agreement to focus particularly on "the worldwide conditions that pose severe threats to the sustainable development of our people, which include: chronic hunger; malnutrition; foreign occupation; armed conflict; illicit drug problems; organized crime; corruption; natural disasters; illicit arms trafficking; trafficking in persons; terrorism; intolerance and incitement to racial, ethnic, religious and other hatreds; xenophobia; and endemic, communicable and chronic diseases, in particular HIV/AIDS, malaria and tuberculosis."⁸

Environmental Protection under Constitution of India:

Constitution of India contains various provisions for the protection of environment. It can be summarize as under:

Article 51(c) and Article 253 imposes obligation on Indian Government to implement the International Conventions.

Art 51 (c) provides that – "The state shall endeavour to foster respect for international law and treaty obligation in the dealings of organized people with one another."

Art 253 empowers parliament – “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.”

Entries 13 & 14 of union list are also important. The impact of all above provisions is that parliament can pass any law for protection of environment as it is decided at international level. Accordingly, parliament has exercised this power and passed many laws to implement the international conventions to protect environment, for ex – Air (prevention and control of pollution) Act, 1981, Environment protection Act, 1986, Biodiversity Act, 2002 etc.

Article 48 A and Article 51 A (g) imposes duty on State as well as on citizens to protect and improve the environment.

Art. 48-A- Provides that – “The state shall endeavor to protect and improve the environment and to safeguard the forest and wild life of the country.”

Art. 51A (g) – provides that – “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.”

Under Art. 48-A, it has become duty of all the three organs of the state to protect and improve the environment. It has been held that the non-enforceable nature of the directive principles do not preclude the judiciary from declaring any law un-constitutional which is in violation of it. Judicial process is also state action under Art 37, so in-discharging its obligation to protect environment, the judiciary in several cases have been guided by the language of Art 48-A and 51 A (g).

Article 21 of the Constitution though not speaks specifically about environment but, Hon’ble judiciary has widened the scope of ‘Life’ in such a broad manner that now most of the environmental or pollution related matters could be easily read from that perspective.

Judicial Approach:

In spite of the religious texts and laws on different environmental issues, we are not protecting the environment .Hence, judiciary has come forward to protect the environment by creating and developing the environmental jurisprudence.

Municipal Council, Ratlam v. Shri Vardhichand & Ors.⁹ The Court, while rejecting the local council’s plea of financial inability for providing basic amenities to the people. The Supreme Court tried to find in the law of public nuisance a social justice component of the rule of law and consider it as viable instrument of environmental protection in the third world countries. According to the Court, the law operates against statutory bodies and others and regardless of the cash in their coffers because human rights are to be respected by the State regardless of budgetary provisions.

In 1987, the Rural Litigation and Entitlement Kendra, on the behalf of residents of the Doon valley, filed a case in the Supreme Court against limestone quarrying. This case was the first requiring the Supreme Court to balance environmental and ecological integrity against industrial demands on forest resources. The courts directed the authorities to stop quarrying in the Mussoorie hills.

In the historic case of the oleum gas leak from the Shriram Food and Fertiliser factory in Delhi, in 1986, the Supreme Court ordered the management to pay compensation to the victims of the gas leak. The "absolute liability" of a hazardous chemical manufacturer to give compensation to all those affected by an accident was introduced in this case and it was the first time compensation was paid to victims.’ This judgment shows that, the old doctrine of strict liability with exception evolved in *Reylands V.Fletcher* is now not applicable in India.

In 1985, activist-advocate M C Mehta filed a writ petition in the Supreme Court to highlight the pollution of the Ganga by industries and municipalities located on its banks. In a historic judgment

in 1987, the court ordered the closure of a number of polluting tanneries near Kanpur. Justice E S Venkataramiah, in his judgment, observed: "Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence."

In Vellore Citizen Welfare Forum V. Union of India,¹⁰ The Supreme Court held that industries though are of vital importance to the Country's development but they cannot be allowed to destroy the ecology, degrade the environment and pose a health hazard and cannot be permitted to continue their operation unless they set up pollution control devices. Kuldip Singh J., held that while such industries are of vital importance for the country's progress as they generate foreign exchange and provides employment avenues, but having regard to pollution caused by it, principle of "sustainable development" has to be adopted as a balancing concept between ecology and development. His lordship held that the "precautionary principle" and the "polluter pays" principle, are essential feature of sustainable development and has to be adopted. Remediation of the damaged environment is part of the process of sustainable development and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology. "The Precautionary Principle" and the "Polluter Pays" principle the court held, have been accepted as part of the law of the Land. Article 21 of the Constitution guarantee protection of life and personal liberty. Art 47, 48 A, and Art. 51 A (g) from the Constitutional mandate to protect and improve the environment. Apart from the Constitutional mandate there are number of legislations on the subject which impose duty on the governments to precept ecology and environmental pollution. The Court directed the closure of these industries unless they install pollution control devices. All the tanneries are required to obtain the consent of the concerned Board for further operation with effect from dec.15, 1996. The court imposed pollution fine of Rs. 10,000 on each industries. The money shall be deposited in the "Environmental protection fund". And shall be utilized for compensating the affected persons and also for restoring the damaged environment. The Court suggested for constituting a Special Bench "Green bench" of the Madras High Court to deal with these and other environmental cases as they are in better position to monitor these matters.

Public Interest Litigations have played an important role in protection of environment. In Ratlam Municipal Council case, Justice Krishna Iyer observed that social justice is due to the people and therefore people must be able to trigger off jurisdiction vested for their benefit to any functioning. He recognize Public Interest Litigation as a constitutional obligation of the courts.

Justice Krishna Iyer while commenting on the role of Judge stated that, what are we to do, suppose if there is no Air Act, no water Act, no Noise Pollution Act at all, assuming there is nothing, blank in the statute book but there is a Constitution gives to me, and as I have taken oath of office saying that I shall uphold the constitution and constitution tells me that I must protect and improve the stream, I am a judge, my obligation is to see that it is enforced and therefore, when a man comes to me and stated that the stream is highly polluted that fish perish, men will fall ill, that children die then what I have to do is that, so long I am sitting on this chair of judge, I shall uphold the constitution and protect the water, available for the people. Now under Article 32 and 226 it is much more easy because fundamental right have been interpreted by Supreme Court under Article 141. Under Article 141 Supreme Court interpreted the law and declares the law that is binding on all judges.¹¹

Conclusion:

The Rio Declaration mentioned that, people are at the center of sustainable development and in this regard we strive for a world that is just, equitable and inclusive and we commit to work together to promote sustained and inclusive economic growth, social development and environment

protection and thereby to benefit all. This spirit is accepted and followed by the judiciary in many environmental cases can be seen from the cases discussed above.

Judiciary has time and again invented and developed the environmental jurisprudence in India. Justice Krishna Iyer went on further and stated that it is primary duty of a Judge to interpret the law as he is duty bound to uphold the Constitution. He also stated that wherever necessary judges can use their judicial activism for the protection of rights of people. It seems that because of alertness and protector of Constitution the judiciary has evolved the no. of doctrines and developed the environmental jurisprudence in India. Justice Krishna Iyers wordings are noteworthy to conclude, "Activism is life. If judicially judges are not active, they are dead because life means activism. Death means inertness. We are all dead, if there is no movement in us. The locomotion of any organism is the evidence of its life. There must be Executive activism because the Executive has life. There must be Legislative activism, otherwise Legislature is dead. There must be judicial activism. It is like legislative activism, executive activism and human activism"

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