

STUDY ON LEGAL FRAMEWORK WITH REFERENCE TO ENVIRONMENTAL PROTECTION

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ABSTRACT

This research paper explores the concept of legal framework with reference to environmental protection. The paper helps us to know the meaning of environment and what are the objectives of environmental protection and as to why is it necessary to protect the environment. This paper is very much relevant to the present state in which our country is, as we all can see a huge rainfall amounting to death of various species, destruction of resources and so on. This paper also states the various Constitutional provisions as to the role of citizens in protecting the environment, Legislations framed, Conventions and specially the role of Judiciary in environmental protection and related case laws. It also explains as to when we are legally bound to protect the environment and if we fail to do so what are the consequences of the same.

Hence, the main object of the research paper is to briefly analyze the legal provisions relating to environmental protection.

Keywords: *Environment, Constitution, Legislations, Conventions, Judiciary, Doctrines.*

1. Introduction

In the present scenario India is facing huge problems and challenges such as growth of population, scarcity of drinking water, deceptive monsoon rains, decline in forests and wildlife, soil erosion, diseases, climate change and much more. It is necessary to curb these problems as environmental pollution and the resulting imbalance in ecosystem is the main cause behind these problems. The human behavior was the huge impact on environment as the result of which it became necessary to impose certain legal framework in order to protect the environment from time to time various legislation have been passed relating to environmental protection such as environmental

protection Act 1986. Along with the legislation, Constitution of India also imposes various duties on the citizen of India to protect the environment at the same time it gives certain fundamental rights to enjoy clean environment. The protection of environment is not restricted to one country but it is the global concern.

1.1 meaning

The word environment is derived from the French word “Environ” which means “Surrounding”. Our surrounding includes biotic factors like human beings, plants, animals, microbes etc. And the abiotic factors such as light, air, water, soil etc.

The word “Environment” first appeared in English in the early 17th century, it meant simply “the act or state of being encircled. “The more general sense of “the things or area surrounding something” dates to the 19th century”.

1.2 objectives

- The main objective of the environment protection Act of 1986 is to improve and protect the human environment most importantly to prevent hazards events and causing damage to the ecology.
- To co-ordinate activities of the various regulatory agencies under the existing laws.
- To provide for the creation of an authority or authorities for environmental protection.
- To provide a deterrent punishment to those who endanger human environment, safety and health.
- To maintain a pleasant relationship between human beings and environment. Government has certain responsibilities to lay down procedures and safeguard for the prevention of accidents that cause pollution and remedial measure if case of occurrence of such act.
- Framing of rules to protect the environment and conservation of natural resources. The aim of environmental laws is not only to protect the environment from harm, but they can also determine how the natural resources can be used in order to preserve them for future generation.
- To create awareness among the people different days are elevated as World Water Day, Forest Day, Earth Day, Environment Day etc.
- Protection of environment can only be done through collective work that is it is the responsibility of the whole world to protect environment.
- There is a saying as to what we give to the earth, it gives us back. Hence it is very important that the earth needs to be protected and strict provisions have to be laid down so as to save environment.

2. LITERATURE REVIEW

2.1 constitutional provisions

2.1.1 Article 21 and Right to pollution free environment:

This is the most important Article in the constitution of India according to which no person shall be deprived of his life and personal liberty except according to procedure established by law. Here, right to life includes right to live in a pollution free environment, right to have access to food and clean drinking water and right to health. The ambit of Article 21 of the constitution has been notably elaborated by the Indian Supreme Court which has elucidated the right to life to mean the right to live an enlightened life which includes the right to live in a clean environment as well.

2.1.2 Article 48 A:

This Article provides for protection and improvement of environment and safeguarding of forest and wildlife. Under this Article, the state may not only adopt the protection policy but it may also provide measures for the improvement of polluted environment. As in the present scenario the world is facing deforestation. As for an example, taking into consideration the recent happening at Amazon Forest, wherein there was occurrence of fire which destroyed almost 906 thousand hectares of forest, affecting flora and fauna, humans of the present generation and for many generations to come. Hence, it has become utmost important to take measures to educate people on the importance of afforestation. As this Article provides an important factor for the forest to maintain balance between oxygen and carbon-dioxide in the atmosphere, which constitute an important safeguard against environment degradation, which is important to maintain balance and hence sustainable development.

2.1.3 Article 51-A (g):

According to this provision, it shall be the duty of every citizen of India to protect and improve the natural environment, including forests, lakes, rivers and wildlife and to have compassion for living creatures as all of them depend upon each other to sustain life. Hence, to preserve the bio-diversity it is necessary to maintain the ecological balance among them.

2.2 agreements on environmental protection

2.1 Convention on Climatic Change 1992: A panel of experts was constituted in 1988 to prepare a draft convention on climate change. The convention in climate change (1992) was legally binding document which required the states

to initiate steps to reduce their greenhouse gas emissions which were believed to cause global warming at a huge level and also depleted the ozone layer which in turn affected the earth with the harmful Ultra Violet Rays of the sun and also caused acidic rain.

2.2 Earth Summit 1992: The United Nations Conference on Environment and Development (UNCED) popularly known as the “Earth Summit” was held at RIO-DE-JANERIO (BRAZIL) in June 1992. One of the core issues raised in the “Earth Summit” was that the countries that were economically and industrially developed were degrading the environment by consumption of natural resources. The outcome of this summit and its declarations were considered as substantial achievement in the prevention and in the improvement of environment all over the world.

2.3 Earth Summit 2002-Johannesburg Summit: The second world summit on sustainable development was held in Johannesburg from August 26th to September 4th 2002. This summit reaffirmed sustainable development as a central element of the international agenda and for a new impetus to global action to protect environment and fight poverty. Government was afraid to reaffirm the targets and commitments for action for better implementation of sustainable development. It was decided to pay special attention and support for development of Africa. The key role of civil society and Non-Governmental Organization's were in promoting partnership among business, governments and society. Many partnerships were announced during the summit.

2.4 World water conference Of 1977: The world water conference was held in Mar del Plata Argentina in 1977. It called upon the United Nation to establish a program with the goal of creating awareness and providing clean drinking water and sanitation to all.

2.5 The Montreal Protocol: This protocol on substances that deplete the ozone layer is an international treaty aimed to protect the ozone layer by eliminating out the production of numerous substances that are responsible for ozone layer depletion.

2.3 legislation on environmental protection:

Various legislations have been framed in order to protect the environment.

2.3.1 Water (Prevention and Control of Pollution) Act 1974:

The main object of the act was to prevent discharge of pollution into water bodies. Various central and state boards have been framed which lays down standards for prevention and control of water pollution. To understand it better we can take an example of river Ganga which is the largest river in India is possessing significant threats to human

health and large Environment due to pollution. The huge amount was released by the present government to clean river Ganga which is far from being a success.

2.3.2 Air(Prevention and control of Pollution) Act 1981:

To deal with problems associated with air pollution, ambient air quality standards were established under this act. The Atomic Energy Act of 1982 was introduced to deal with radioactive waste. In 1988-The Motor vehicle Act was enacted to regulate vehicular traffic.

2.3.3 The Forest (Conservation) Act, 1980:

This act was adopted to protect and conserve forests. In the present scenario cutting of trees is the biggest problem. Deforestation wherein the human beings are destroying forest in order to construct buildings for industrialization, it also affects the climatic as we can see there is heavy rainfall, floods etc.. So the act provides for conservation of forest.

2.3.4 Environmental (Protection) Act 1986:

This act was introduced in order to protect the forests and wildlife in the country and improving the quality of life. This act also provides for appointing Environment officer to check Environmental pollution and establishing Environmental laboratories.

2.3.5 Bio Diversity Act, 2002:

India is rich in biological diversity and associated traditional and contemporary knowledge system relating thereto. This act aims at conservation of biological diversity, to provide for sustainable use of resources. Sustainable development is necessary so as to conserve the resources for future generations.

2.4 principles and doctrines evolved by supreme court for protection of environment

There are certain doctrines which are considered as part of the law of this country for protection of environment through Indian judiciary;

2.4.1 Principles of Absolute Liability:

The supreme court of India formulated the doctrine of absolute liability for harm caused by hazardous and inherently dangerous industry by interpreting the scope of the power under Article 32 of the Constitution of India.

2.4.2 Polluter pay principle:

Plato quotes “If anyone intentionally spoils the water of another let him not only pay damages, but purify the stream which contains the water.” This principle not only punishes the wrongdoer but also provides remedial measures to be taken to repair the damage done.

In *Vellore Citizens Welfare v. Union of India*- In this case Supreme Court of India has declared that the polluter pays principle is an essential feature of sustainable development.

2.4.3 Precautionary principle:

Under this principle, it was held that environmental problems must be anticipated to prevent attack on the environment which causes environmental degradation. Lack of scientific certainty should not be used as a reason for postponing measures. Onus of proof is on the actor to show that the action has begun.

2.4.4 Public Trust Doctrine:

This doctrine is considered to be a part of Article 21 of the Indian Constitution which provides for pollution free environment. As Article 47 of the Indian Constitution states that the State shall act as a trustee to the material resources and it is the State’s responsibility to protect and improve these resources for the public at large.

2.4.5 Doctrine Of Sustainable Development:

It means development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. It provides for maintaining a balance between development and the environment. It promotes inter-generational equity.

2.5 judicial remedies for environmental pollution

The remedies available in India for environmental protection comprise of statutory as well as tortious law remedies.

2.5.1 Statutory Remedies such as;

(i) An activity brought under section 19 of the environmental protection 1986. (ii) An activity under section 133, Code of Criminal Procedure, 1973 and (iii) Under section 268 of IPC.

2.5.2 Tortious Liability;

(i) Injunction: The purpose of injunction is to prevent continuous wrong. The grant of perpetual injunction is governed under section 37 to 42 of specific relief Act 1963.

(ii) Nuisance: Nuisance means the act you create hindrances to the enjoyment of the person informed of Smell, Air, Noise etc. .

2.6. environmental protection and public interest litigation

2.6.1. Rural Litigation and entitlement Kendra Dehradun v. State of U.P. 1985 2 SCC 431:

A public interest litigation was filed for the closure of certain lime stone quarries on the ground that there were serious deficiencies regarding the safety and hazardous in them. The court appointed the commission for the purpose of inspection. The report of the commission stated that they should be closed as they were having huge impact on mining operations and was causing for large scale pollution by the lime stone quarries. The court ordered that the government should take necessary steps to control the effecting the safety and health of people living in the area or to close them.

2.6.2 M.C Mehta v. Union of India AIR 1992 SC 382:

In this PIL the Apex court directed the government to spread the knowledge and need of Protection of the environment through the governmental mass media agencies and through the audio visual media. The court also directed the government to introduce the subject of Environment as a compulsory subject in school and colleges.

2.6.3 M.C Mehta v. Union of India 1988 1 SCC 471:

A PIL was filed by petitioner for the prevention of Ganga water pollution. The apex court issued appropriate direction for the prevention of Ganga water pollution.

2.6.4 Trail Smelter Case [U.S v. CANADA 3 RAA 1911(1938)]:

It was a landmark decision regarding the dispute over Environmental degradation between the US Canada. The issue in this case was whether it is the responsibility of the state to protect other states against harmful acts by individuals from within its jurisdiction at all times. The court held that the state was responsible.

3. RESEARCH METHODOLOGY

This Research has been carried on Doctrinal method of research, which is the library based study and referred to various textbooks and journals.

4. CONCLUSION

The objective of the paper was to present the overview of the legal framework in respect of the environment protection. The Supreme court law of land, the Indian Constitution, the legislation framed, as well as the decisions given by the Supreme court of India we can see that they exhibit a keen interest in conservation of the environment. It can be said that the Environment law or the international environment law provides mechanism and procedures for negotiating the necessary rules and standards, setting disputes and supervising implementation and compliance with treaties and customary rules. As the laws framed are beneficial to public at large it is the duty of every human being to follow the laws and protect the environment and safeguard the resources for the future generations.

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