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## ENVIRONMENT AND LAW: EVOLUTION OF THE LEGAL FRAME- WORK FOR ENVIRONMENTAL PROTECTION IN INDIA

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### Abstract

The Environment literally means the surrounding. The conservation, protection and improvement of environment are major issues all over the world. However, in India the legislation for the protection of environment was emerged out a way back in nineteenth century. The global concern for environment, wild life and natural resources caused the development of legal frame-work in India as well as at international levels. Rules were established by authority, mutual consensus or traditions to regulate the behavior of individuals, members of a community or country for the protection of environment and natural resources. In India the concern for disappearing wild life, deteriorating conditions of environment and over-exploitation of resources led to the establishment of a body of laws with objectives to protect species or a group of species and their habitat. In addition to these laws rules were made to restrict the practices which adversely affect the physical factors of the environment such as air, water, land etc. Laws provide frame-work for regulating use of the environment.

**Keywords:** *Environment, Natural resources, Wild-Life, Air, Water, Laws and Acts.*

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### 1. Introduction

Word "environment" means the sum of all living and non-living things that surround an organism, or group of organisms. Environment includes all elements, factors, and conditions that have some impact on growth and development of certain organism. Environment includes both biotic and a-biotic factors that have influence on observed organism. A-biotic factors such as light, temperature, water, atmospheric gases combine with biotic factors (all surrounding living species).

Environment often changes after some time and therefore many organisms have ability to adapt to these changes. Industrialization, urbanization, explosion of population, over-exploitation of resources, disruption of natural ecological balances, destruction of a multitude of animal and plant species for economic reasons are the factors which have contributed to environmental deterioration. Environmental pollution is one of the most serious problems facing the earth today. Mahatma Gandhi has said that nature has given everything for man's need but not for his greed. The unstained use of natural



resources has created a chaos like situation before human survival on this earth. Global warming, acid rain, climate change, ozone layer depletion, floods, cyclones, drought, radiation, contamination of groundwater, air pollution, coastal water pollution etc. are a long list of natural disasters which all life on the earth is facing. Due to all these factors the importance of Environment Preservation and Pollution Control had also started getting cognizance in government, intellectuals and voluntary agencies. Pity and compassion for animals can be seen in the common law of many countries which prohibit cruelty against animals. The law also contained provisions for restricting practices causing public nuisance, which could be used to check discharge of waste in the local streams or rivers or putting air pollutants in the atmosphere.

In the Constitution of India it is clearly stated that it is the duty of the state to 'protect and improve the environment and to safeguard the forests and wildlife of the country'. It imposes a duty on every citizen 'to protect and improve the natural environment including forests, lakes, rivers, and wildlife'. Reference to the environment has also been made in the Directive Principles of State Policy as well as the Fundamental Rights. The Department of Environment was established in India in 1980 to ensure a healthy environment for the country. This later became the Ministry of Environment and Forests in 1985. The constitutional provisions are backed by a number of laws – acts, rules, and notifications. The EPA (Environment Protection Act), 1986 came into force soon after the Bhopal Gas Tragedy and is considered an umbrella legislation as it fills many gaps in the existing laws. Thereafter a large number of laws came into existence as the problems

began arising, for example, Handling and Management of Hazardous Waste Rules in 1989. This paper summarizes the chronology of the laws which came in to existence for the protection of the environment in India.

## **2. Laws before independence**

### **2.1. The Shore Nuisance (Bombay and Kolaba) Act, 1853**

It is the earliest Act to control water pollution in India. An Act to facilitate the removal of nuisances and encroachments below high- water mark in the Islands of Bombay and Kolaba.

### **2.2. The North India Canal and Drainage Act, 1873**

It is an Act to regulate Irrigation, navigation and Drainage in Northern India. It extends to Uttar Pradesh and territories which, immediately before the 1st November, 1956, were comprised in the States of Punjab and Delhi and applies to all lands whether permanently settled, temporarily settled or free from revenue.

### **2.3. The Tamil Nadu Wild Elephants Preservation Act, 1873**

This is the act to prevent indiscriminate destruction of wild elephant in Tamil Nadu. It came in to force from first day of October 1873

### **2.4. The Elephants Preservation Act, 1879**

In British period the certain major steps were taken for conservation of



animal and wildlife, the important in it is The Elephants Preservation Act, 1879 (Act No. 6 of 1879) enacted by the Madras Government. The Act was enacted with an aim and object of preservation of Wild Elephants. The Act extents to the territories now respectively administered by the State government of Uttar Pradesh; the Madhya Pradesh and the Chief Commissioners of Coorg; and the State Governments may extend it to any other local area which immediately before the 1st of November, 1956, was not comprised in a Part B State by notification in the official Gazette.

#### **2.5. Obstruction in Fairways Act, 1881**

Section 8 of the Act empowered the Central Government to make Rules for regulation or prohibition of throwing rubbish in any fairway leading to a port causing or likely to give rise to a bank or shoal.

#### **2.6. Indian Easements Act, 1882**

Illustrations (f), (h) & (j) of section 7 of this act deals with water pollution.

#### **2.7. The Indian Fisheries Act, 1897**

Section 5 of this act describes that any person who puts poison, lime or noxious material in any water shall be punishable.

#### **2.8. Bengal Smoke Nuisance Act, 1905**

This act describes prevention of air pollution by furnace or fireplace, any reaction tower, digester, distillation plant, or any other plant emitting fumes, carbonaceous, organic, inorganic vapors, soot, dust, obnoxious gases. If the smoke emitted from any furnace in greater

density or at lower altitude or for longer time than is permitted by the rules made under this act, the owner of the furnace shall be punished.

#### **2.9. Indian Ports Act, 1908**

Chapter II of this act describe the power of the government to regulate the pollution of water due to oil in clause (ee).

#### **2.10. Wild Birds and Animal Protection Act, 1912**

This act describe the protection of Wild Birds and Animals. Under section 3 of this act it is given that any person capturing, killing and selling of any Wild Birds and Animals is punishable.

#### **2.11. The Indian Forest Act, 1927**

Any person poisoning water and hunting, shooting fishes is punishable according to section 26 (i) of this act. Section 32(f) gives power to the state government to make rules relating to poisoning of water in forests. This act provide the rules to protect and preserve the forest resources in India.

### **3. Laws after Independence**

#### **3.1. The Factories Act, 1948**

Factories Act, 1948 is social welfare legislation intend to secure health, safety and welfare of the workers employed in factories. However, some of the provisions of this Act are concerned with prevention of water pollution.

#### **3.2. The Mines Act, 1952**

Provisions regarding health and safety of the employee are given in chapter V of this Act. Section 19 of the Act describes the



effective management of providing drinking water to the employees.

### **3.3. Wild Life Protection Act, 1972**

According to the Wildlife Protection Act, 1972 "wildlife" includes any animal, bees, butterflies, crustacea, fish and moths; and aquatic or land vegetation which forms part of any habitat. In accordance with Wildlife (Protection) Amendment Act, 2002 "no alternation of boundaries / National Park / Sanctuary shall be made by the State Govt. except on recommendation of the National Board for Wildlife (NBWL)". Further, in terms of Supreme Court Order dated 13.11.2000 the State Govts have to seek prior permission of Supreme Court before submitting the proposal for diversion of forest land in National Park sanctuaries. Whenever, any part of Wildlife Sanctuary / National Park is getting affected by a hydro project the forest proposal in respect of such project is entertained by MoEF, GOI only after permission of de-reservation / de-notification of Wildlife Sanctuary /National Park has been accorded. After recommendation of Standing Committee of NBWL proposal for de-reservation/ de-notification is ratified by Hon'ble Supreme Court.

### **3.4. Water (Prevention & Control ) Act, 1974**

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The objectives of the Water (Prevention and Control of Pollution) Act are to provide for the Prevention and Control of Water Pollution and the maintenance or restoration of the wholesomeness of water for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution, for conferring on and

assigning to such Boards powers and functions relating thereto and for matters connected therewith.

### **3.5. Forest (conservation) Act, 1980**

This Act provides the conservation of forests and for matters connected therewith or ancillary or incidental thereto.

### **3.6. Air (Prevention And Control of Pollution) Act, 1981**

The objective of this Act is the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith. Decisions were taken at the United Nations Conference on the Human Environment held in Stockholm in June 1972, in which India participated, to take appropriate steps for the preservation of the natural resources of the earth which, among other things, includes the preservation of the quality of air and control of air pollution. Therefore it is considered necessary to implement the decisions foresaid in so far as they relate to the preservation of the quality of air and control of air pollution.

### **3.7. Environmental (Protection) Act, 1986**

The Environment (Protection) Act, 1986 was introduced as an umbrella legislation that provides a holistic framework for the protection and improvement to the environment. In terms of responsibilities, the Act and the associated Rules requires for obtaining environmental clearances for specific types of new / expansion projects



(addressed under Environmental Impact Assessment Notification, 1994) and for submission of an environmental statement to the State Pollution Control Board annually. Environmental clearance is not applicable to hydro projects also. SJVNL undertakes Environmental Impact Assessment for all projects as a standard management procedure as laid down in The Environment (Protection) Act, 1986 and also functions within permissible standards of ambient air quality and noise levels as prescribed by national laws and international regulations. The Environmental Clearance procedure is at **Appendix- III**. Other rules and regulations under the Environmental (Protection) Act, 1986 applicable to the operation of SJVNL are described in the Act.

### **3.8. The Biological Diversity Act, 2002**

The Ministry of Environment and Forests has enacted the Biological Diversity Act, 2002 under the United Nations Convention on Biological Diversity signed at Rio de Janeiro on the 5th day of June, 1992 of which India is also a party. This Act is to “provide for the conservation of biological diversity, sustainable use of its components, and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith or incidental thereto.” As per the provision of act certain areas, which are rich in biodiversity and encompasses unique and representative ecosystems are identified and designated as biosphere reserve to facilitate its conservation. All restrictions applicable to protected areas like National Park & Sanctuaries are also applicable to these reserves. SJVNL abides by the provision of act wherever applicable and try avoiding these biosphere reserves while

finalizing the project infrastructure locations.

### **3.9. Hazardous Waste (Management and Handling) Amendments Rules, 2003**

These Rules classify used mineral oil as hazardous waste under the Hazardous Waste (Management & Handling) Rules, 2003 that requires proper handling and disposal. Organization will seek authorization for disposal of hazardous waste from concerned State Pollution Control Boards (SPCB) as and when required.

### **3.10. Ozone Depleting Substances (Regulations and control) rules, 2000**

MoEF vide its notification dt. 17th July, 2000 under the section of 6, 8 and 25 of the Environment (Protection) Act, 1986 has notified rules for regulation/ control of Ozone Depleting Substances ( ODS) under Montreal Protocol. As per the notification certain control and regulation has been imposed on manufacturing, import, export, and use of these compounds.

Organisations as per provisions of notification shall is phase out all equipment, which uses these substances, and is aiming at CFC free organisation in near future.

## **4. Conclusion**

The development of Environmental legislation is relatively continuous phenomenon. Till date the India possesses the stringent legislations which could be effectively used to protect Wild-Life, natural resources or the environment. Enforcement of environmental laws is the main theme of concern today. In India the environmental protection for sustainable



development had started a long ago in nineteenth century, still we are facing the problems of climate change, pollution, irregular precipitation, global warming, destruction of forests, habitat and other natural resources. This is because; in India the laws and regulation are not followed sincerely. Many industries release their wastes in rivers, streams and other natural water bodies, but no legal action is taken against most of them. Similarly, industries, automobiles add tremendous amount of air pollutants to the atmosphere without strictly following the rules and regulations provided in Air act. India is said to be rich in the biodiversity, but because of illegal hunting and poaching of wild animals, deforestation, destruction of habitat and

over exploitation of natural resources India is losing its biodiversity.

India is said to be a spiritual country, Ganga is considered as a holly river. However, Indian rivers are increasingly becoming the dumpsites for domestic, industrial and agricultural wastes. Polluted environment is adversely affecting the human being by degrading the planet Earth.

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