



INTERNATIONAL  
ENVIRONMENTAL LEGAL  
RESEARCH JOURNAL

VOLUME 1 AND ISSUE 1 OF 2023

INSTITUTE OF LEGAL EDUCATION



## International Environmental Legal Research Journal (Open Access Journal)

Journal's Home Page – <https://ielrj.iledu.in/>

Journal's Editorial Page – <https://ielrj.iledu.in/editorial-board/>

Volume 1 and Issue 1 (Access Full Issue on – <https://ielrj.iledu.in/category/p-volume-1-and-issue-1-of-2023/>)

### Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – [info@iledu.in](mailto:info@iledu.in) / [Chairman@iledu.in](mailto:Chairman@iledu.in)



© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ielrj.iledu.in/terms-and-condition/>

**ENVIRONMENTAL ISSUES AND LAW**

AUTHOR - SUSHMITHA.J, PRIST UNIVERSITY - SCHOOL OF  
LAW

**Best Citation** - SUSHMITHA.J, ENVIRONMENTAL  
ISSUES AND LAW, *INTERNATIONAL ENVIRONMENTAL  
LEGAL RESEARCH JOURNAL*, 1 (1) of 2023, Pg. 11,  
ISBN (P) - 978-81-960702-1-2.

**Abstract:**

Environment is not limited to one but it's common to all. Environment is considered as surrounding which consists of living, non-living and natural processes. Environment is of essential value as it fulfils a number of necessities of life and can also be termed as the life support system. The Indian heritage and culture have an intimate relation with conservation and safeguarding environment. In recent times, there are lots of problems related to Environment.

Environmental issues are increasing gradually and causing a serious impact on living organisms including humans. Progress and pollution go together, no end to progress and consequently no escape from pollution. Pollution is not of one kind, it is of many types like- noise pollution, soil pollution, air pollution etc. Environmental pollution is not a new phenomenon, yet it remains the world's greatest problem. The interaction between human health and the environment is very complicated and onerous to assess, basic indicators of health hazard are pollution, climatic change, bad sanitation and loss of biodiversity. Thus an objective and preventive principles should be adopted.

Environment is in trouble of uncontrolled human Activities, and ecological ailments are affecting social Growth potential. The humanitarian rights as concerned with the alarming need for a reform in the society so that this increasing

degradation of the environment to a single digit can possibly be achieved. India, there are a plethora of legal provisions which seek to protect the environment and sustainable use of natural resources Along with the various Constitutional provisions, there are several legislative enactments passed by the Parliament of India in order to achieve the constitutional objective of ensuring a wholesome environment to the citizens of India. The protection of environment is a global issue and it is not to be considered an isolated problem of any area or nation.

**Keywords:** Environment, law, pollution, legislation, legal view.

**METHODOLOGY:**

All data and information present in this research paper are collected from various reports which are been prepared by national and international legislations for environmental issues, information's are collected from several authentic websites and journals relating to environmental issues and law.

**INTRODUCTION:**

*"Environment is no one's property to destroy; it's everyone's responsibility to protect"*

The word 'environment' is derived from the French word 'environner', which Means 'to encircle' or to surround. Present India is facing many important environmental Challenges which currently threaten both the development of India and the outlook for its future. The environment encompasses all living and non-living things occurring naturally on earth. The Honourable Supreme Court has defined "Environment" is a difficult word to define. Its normal meaning relates to the surroundings, but obviously, that is a concept which is relatable to whatever object it is, which is surrounded. Environment is a Polycentric and multifaceted problem. Today protection of 'environment' is a global issue as it concerns all

countries irrespective of their size, stage or development or ideology. Today, the interaction between society and nature is so extensive that the question of Environment has assumed large proportions, affecting humanity at large.

#### **HISTORICAL BACKGROUND:**

“Environmental pollution is an incurable disease. It can only be prevented”-Barry Commoner.

The UN conference on Human Environment in Stockholm, in 1972 dealt with the framework for environmental protection. It led to the formation of the National Council for Environmental Policy and Planning in 1972 within the science and technology department. This was set up to establish a regulatory body for the overview of the environmental-related issues and concerns. This council was later converted to the Ministry of Environment and Forests. The government of India has made numerous acts to protect the environment and biodiversity. Presently, there are many Acts and legislations implemented for safeguarding our environment.

#### **CAUSES OF ENVIRONMENTAL ISSUES:**

- Depletion of ozone layer
- Increasing Pollution which can be caused vehicular, smoke, stubble burning, disposal of waste, improper manner of celebrations plastic disposal.
- Depletion of water resources
- Urbanization
- Loss of indigenous Species of flora and fauna
- Overwhelming Poverty
- Overcrowding like sanitary problems, traffic and industrial issues.
- Decrease of land quantity
- Deforestation by infrastructural development and dry seasons.

Diminish from the positive development of citizens and the Nation as a whole. Thus, India's rapid growth is driving equally rapid environmental Destruction. Cause of this

ecological crisis is reducing the values and belief in Shaping human's relation with the surrounding and the lifestyle.

#### **IMPORTANCE:**

“Without environmental sustainability, economic stability and social cohesion cannot be achieved”- Phil Harding.

- One billion people in the world have no clean water.
- Two billion people have inadequate facilities of sanitation
- One and a half billion people (mostly in large cities of newly industrialized Countries) breathe air that is dangerously unhealthy and so on.

Network of regulations and customary laws that address the effects of human activity on the natural environment is Environmental law, also referred to as natural resource laws which focus on the idea of environmental pollution. Environmental laws play a large part in protecting humans, animals, resources, and habitats. Without these laws, there would be no proper regulations concerning pollution, contamination, hunting, or even response to disasters. Environmental law works to protect land, air, water, and soil. Negligence of these would results in various punishments like fines, community service, and in some extreme cases, imprisonment. Without these environmental laws, it's not possible to take corrective measures on who treat the environment badly.

The human beings as well as animals need clean food and water. To have clean environment it is necessary to protect the ecosystem that make survival possible. In addition it works to manage specific natural resources and environmental impact assessment. Sustainable development is the pathway to the future we want for all. It offers a framework to generate economic growth, achieve social justice, exercise environmental stewardship and strengthen governance. If we

do not stop pollution, it is sure that the world will be terminated. "At its core, the issue of a clean environment is a matter of public health"-Gina McCarthy.

#### **UNDER THE INDIAN CONSTITUTION:**

Preamble- concerns on State as whole wherein aims to provide decent standard of living to all citizens who is possible only in pollution free environment. Pollution is a social problem, so under the Supreme law; State is required to pay more attention to this global issue.

#### **Fundamental Rights:**

- Article 14-Right to equality it ensures the guarantees to every person the right to equality before law & equal protection of the laws. This equality also extends to the equality to have best environment.
- Article 19(6) of the Constitution lays down the reasonable restriction to this fundamental right to avoid the environmental hazards. Main purpose is to avoid the ecological imbalance and degradation of the atmosphere in the name of carrying on a trade, business, occupation or carrying on any profession.
- Article 21 -It guarantees all the persons a fundamental right to life and personal liberty. Right to life means a life of dignity, to be lived in a proper environment, free of danger. Right to live in pollution free environment is a part of fundamental right to life under Article 21 of the Constitution.

#### **Fundamental duties:**

- By 42<sup>nd</sup> Amendment to the Constitution, the Parliament, with an object of sensitizing the citizens of their duty, incorporated Article 51A in the Constitution, inter alia, requiring a citizen to protect and improve the natural environment including the forests, lakes,

rivers and wild life and to have a compassion for living creatures.

- Art 51(g) - the fundamental duty of every citizen to protect and improve natural environment. So it is not only duty to protect natural environment but also to improve it so that our future generations also have it in the way we have today.

#### **Directive Principles of State Policy:**

- Article 47-It provides that the state shall raise the level of nutrition and the standard of the living of its people and the improvement of public health. The improvement of the public health is also including the protection and improvement of environment without which public health cannot be assured.
- Article 48A-It was added up by 42<sup>nd</sup> amendment of 1976 dealing especially with the protection and improvement of environment. It provides that the state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

In addition to the constitutional mandate, India has a number of national policies governing Environmental management,

- National Policy on Pollution Abatement (NPPA, 1992)
- National Conservation Strategy and Policy Statement on Environment and Development (NCS/PSED, 1992).

While these national Policies are not judicially enforceable, they serve as guiding Principles for the central and state governments to follow.

Environment (Protection) Act, 1986 (EPA): An Act to provide for the protection and improvement of environment and for matters connected therewith. It provides a framework for the co-ordination of central and state authorities. The central government is empowered to take measures necessary to protect and improve

the quality of the environment by setting standards for emissions and Discharges; regulating the location of industries; management of hazardous wastes, and protection of public health and welfare. Sustainable development is one of its goals to achieve.

#### UNDER TORTS:

Pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution, has to pay damages for restoration of the environment and ecology. In addition to damages, the person guilty of causing pollution can also be held liable to pay exemplary damages, so that it may act as the deterrent for others not to cause pollution in any manner- Justice Saghir Ahmed.

Torts relating to environmental protection are:

1. Nuisance: It may be private or public in nature. Acts interfering with comfort, health or safety are covered under nuisance. The interference may be due to smell, noise, fumes, gas, heat, smoke, germs, and vibrations. The activities include carrying of trades causing offensive smells, intolerable noises, dust, vibrations, and collection of filth that affects the health or habitability in a locality.

River Ganga pollution case 1862, the Supreme Court declared that the nuisance caused by the pollution of the river Ganga is a public nuisance, which is widespread in range and indiscriminate in its effect. Since this affects the community at large, one can move the court through Public Interest Litigation. In this case, tanneries were discharging their untreated effluents into the river and many nallahs were also releasing the city waste into the river, thereby causing water pollution. The court issued various detailed directions to the Municipal Corporation of Kanpur city to maintain the wholesomeness of water of the

river by taking necessary steps to stop the release of industrial effluents and municipal waste into the river Ganga.

2. Trespass: Trespass is very closely related to nuisance and it occasionally invoked in environmental cases. The only requirement to establish a trespass is that there must be an intentional unprivileged physical entry by a person or object on land possessed by another.
3. Strict Liability: The doctrine of strict liability is also known as the rule of no-fault liability as it considers liability without fault on the part of the defendant and particularly this aspect of the doctrine has significant relevance in the matters related to environmental pollution. It is related to variety of things like fire, gas, explosions, electricity, oil, noxious fumes, colliery spoil, poisonous vegetation etc. This rule is equally applies to the injuries caused to person and property. M.C. Mehta v. Union of India(1997) 2 SCC 353 (oleum gas leakage case) – is observed by Justice Bhagavati that such industry must be held strictly and absolutely liable for causing harm as a part of social cost for carrying on hazardous activity.
4. Negligence: another specific tort on which a common law action is to protect environment and prevent pollution. It is duty to take care and the same is not taken results in some harm to another person is negligence. In the action of negligence the consequences is some kind of loss, inconvenience or annoyance to another.

Naresh Dutt Tyagi vs State of UP-In these case, chemical pesticides were stored in go down in a residential area. Fumes emanating from the pesticides leaked to the contiguous property through ventilators which resulted in the death of 3 children and an infant in the womb of the mother. It was held that it was a clear case of negligence. Mukesh Textile Mills (p) Ltd v. H.R.Subramanya astir-common law action for negligence was applied to prevent any activity

causing environmental pollution. Criminal Procedure code- Chapter 10 of the criminal procedure code, 1973, part B has provided a provision for public nuisance which relates to environmental pollution.

#### UNDER INDIAN PENAL CODE:

The IPC has a chapter 16 on "Offences affecting the public health, safety, convenience."

- Section 268 deals with Public Nuisance. Thus an act which tends to or causes interference with the health safety, comfort, convenience of the public at large will be considered as Public Nuisance.
- Section 290 provides punishment for public nuisance with a fine which may extend to Rs. 200.
- Section 269: negligent act likely to spread infection of disease dangerous to life.
- Section 270: Malignant act likely to spread infection of disease dangerous to life.
- Section 277: Fouling water of public spring or reservoir.
- Section 278: Making the atmosphere noxious to health.
- Section 284: Negligent conduct with respect to poisonous substance.
- Section 285: Negligent conduct with respect to fire or combustible matter.
- Section 286: Negligent conduct with respect to explosive substance.
- Section 425 to 440: Includes various types of mischief including mischief by killing of maiming animals and cattle.

In **K Ramkrishnan v. State of Kerala**, the court held that smoking in public place comes under the category of public nuisance and is punishable under section 290 of Indian Penal Code. **Ramlal v. Mustafabad Oil and Oil Ginning Factory** 1968- the Punjab and Haryana Court observed that once a noise is found to be above the necessary threshold to attract the liability of public nuisance, it is no valid defence to contend that such noise arose out of any legal activity. In **Murli S. Deora v. Union of**

**India**, the Supreme Court held that under Article 21, smoking in public place is a violation of fundamental right guaranteed under Article 21, of those who don't smoke.

#### OTHER ACTS AND LEGISLATIONS:

Water (Prevention and Control of Pollution) Act, 1974: Prohibits the discharge of pollutants into water bodies beyond a given standard, and lays down penalties for non-compliance. The act was amended in 1988 to conform closely to the provisions of the EPA, 1986. It set up the CPCB (Central Pollution Control Board) which lays down standards for the Prevention and control of water pollution. At the state level. The SPCBs (State Pollution Control Board) function under the direction of the CPCB and the state government. Water (Prevention and Control of Pollution) Cess Act, 1977: provides for a levy and collection of a cess on water consumed by industries and local authorities. It aims at augmenting the Resources of the central and state boards for prevention and Control of water pollution. The water (prevention and control of Pollution) cess rules were formulated in 1978 for defining Standards and indications for the kind of and location of meters that every consumer of water is required to install.

Air (Prevention and Control of Pollution) Act, 1981: Ambient air quality standards, means for the control and Abatement of air pollution, prohibits the use of polluting fuels and substances and regulates appliances that give rise to air Pollution. To empower the central and state pollution boards to meet grave emergencies, the air (prevention and control of pollution) amendment act, 1987, was enacted. The boards were authorized to take immediate measures to tackle such emergencies and recover the expenses incurred from the offenders. The power to cancel consent for non-fulfilment of the conditions prescribed has also been emphasized in the air act Amendment.

The Air (Prevention and Control of Pollution) Rules, 1982: The powers of the presiding officers,

decision-making, the Quorum; manner in which the records of the meeting were to be set etc. The Wildlife (Protection) Act, 1972: The WPA (Wildlife Protection Act), 1972: provides for protection to listed species of flora and fauna and establishes a network of ecologically important protected areas. The WPA empowers the central and State governments to declare any area a wildlife sanctuary, National park or closed area. The Forest (Conservation) Act, 1980: restricts the powers of the state in respect of de-reservation of forests and use of Forestland for non-forest purposes.

Factories Act, 1948 and its Amendment in 1987: The Act -Contains a comprehensive list of 29 categories of industries involving hazardous processes, which are defined as a process or activity where unless special care is taken, raw materials used or the intermediate or the finished products, by-products, Wastes or effluents would. Cause material impairment to health of the persons engaged. ii. Result in the pollution of the General environment. Public Liability Insurance Act (PLIA), 1991: The PLIA was amended in 1992, and the central government was authorized to establish the environmental relief fund, for making relief Payments. National Environment Tribunal Act, 1995: The act provided Strict liability for damages arising out of any accident occurring While handling any hazardous substance and for the establishment of a national environment tribunal for effective and expeditious disposal of cases arising from such accident, with a view to give relief and compensation for damages to persons, property and the environment and for the matters connected therewith.

The National Environment Appellate Authority Act, 1997: establishment of a national environment appellate authority to hear appeals with respect to restriction of areas in which any industry operation or process or class of industries, operations or processes could not carry out or would be allowed to carry

out subject to certain safeguards under the environment (Protection) Act, 1986.

#### Rules and Notifications:

- E-Waste (Management) Rules 2016, as amended in 2018 (E-Waste Rules);
- Batteries(Management & Handling) Rules 2001 (and The Proposed Draft Battery Waste Management Rules 2020);
- Bio- Medical Waste 2016; Management Rules
- Plastic Waste Management Rules 2016 (and a proposed draft 2021 amendment);
- Solid Waste Management Rules 2016;
- Construction and Demolition Waste Management Rules 2016;
- Hazardous and Other Waste (Management and Transboundary Movement) Rules 2016, as amended in 2019 (HW Rules);
- Manufacture, Storage and Import of Hazardous Chemicals Rules 1989 (MSIHC Rules);
- Coastal Regulation Zone Notification 2019 (and related 2021 procedure for violation of the CRZ Notification);
- Environment Impact Assessment Notification 2006.

#### CASE LAWS:

M.C.Mehta vs. UOI- right to live in pollution free environment is a part of fundamental right to life under Art-21. Kendra Dehradun vs. State of Uttar Pradesh AIR 1987 SC 2187 introduced the concept of sustainable development, an NGO named reek filed a case against limestone quarrying in the valley in 1987. The natural resources should be used with requisite attention and care so that ecology and environment may not be affected in any serious way. Sitaram Chhaparia v State of Bihar A.I.P 2002- It was held by the Patna High Court that protecting the environment is a fundamental duty under Article 51A(g) of the Constitution of India. P.A. Jacob v. Superintendent of Police, Kottayam A.I.R 1993- the court held that subjecting an unwilling person to disastrous



levels of noise pollution would amount to infringement of fundamental right of an individual under Article 21 of the Constitution of India. *Enviro-legal action vs. Union of India* AIR 1999 SC 1502 held that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution by adopting the polluter pays principle. *M.c. Mehra and Anr.Etc. Vs. Union of India and Ors. Etc.* 1986 SCR (1)321-The court held that the permission for carrying out any hazardous industry very close to human habitation could not be given and the industry very close to the human habitation could not be given and the industry was relocated.

*Tarun bharat sanghi vs. UOI* 1993. SCC 4 at 5-6-Supreme Court directed by the police administration to provide police protection to environment against any physical threats and hindrance to their work should be avoided. *M.C.Mehta vs. Union India (Taj trapezium case)* Air 1987 delivered its historic judgment in 1996 giving various directions including banning the use of coal and cake and directing the industries to compressed natural gas. *Damodar Rao vs. S.O.Municipal Corporation Hyderabad* A.I.R 1987 A.P.171- Protection of environment is not only duty of citizens but also obligations of State and other organs including courts under Art-48A. *Subhash Kumar vs. State of Bihar and Ors.* (1991).-The right to pollution free environment was declared to be a part of right to life under article 21 of the constitution of India.

#### CONCLUSION:

“Environmental protection and economic development are not in conflict. Environmental protection is not a burden but a source for innovation. It can increase competition, create jobs, and lifts the economy”-Chai Jing.

India is the land of spirituality and philosophy; it is also the land of Rivers as it harbours 14 large, 44 medium, and 55 minor rivers. From the Ganges in the north to the Cauvery in the south, regardless of how India's rivers are increasingly

polluted due to domestic, industrial, and agricultural wastes. Polluted environment expose to danger the human race by threatening its Survival on planet earth. Boundaries of any nation are incapable to limit these environmental problems to a particular nation but its impact is global wide. This large scale Environmental degradation has caused a global concern about the conservation and protection of the earth's environment so led to formation of above mentioned laws and legislations. However, since the environments a complex, variable and extensive system, protecting the environment is a hard and enduring task. Awareness is essential for the action. Awareness of environmental laws in society plays a vital role in prevention and control of pollution in industrial as well as at community Levels. A marvellous and standard quality environment can be achieved by continuous planning, governmental policies, efforts of the enterprises and public participation. It is the responsibility of us, everyone to protect our environment.

#### Reference:

- Dr. R.L. Rathi: Environment Law.
- Dr. Anirudh Prashad: Environment Law.
- Environmental law by S.C. Shastri.
- <https://lawbhoomi.com/environmental-issues-as-legal-issues/>
- <https://www.mondaq.com/india/clean-air-pollution/762298/remedies-available-under-indian-legal-framework-vis-%C3%A0-vis-environmental-protection-an-overview>
- [https://in.docworkspace.com/d/sIP2R\\_5tS-7zongY?sa=00&st=0t](https://in.docworkspace.com/d/sIP2R_5tS-7zongY?sa=00&st=0t)
- <https://www.legalserviceindia.com/legal/article-4836-environmental-pollution-and-related-case-laws.html>
- <https://www.lawcolumn.in/provisions-under-indian-penal-code-for-environmental-protection/>