

“Cholamandal IP Environmental Law Research Paper”...

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Environmental Protection in India

“What is the use of a house if you haven't got a tolerable planet to put it on?”

-Henry David Thoreau

Abstract:-

As we are growing from developing to developed nation, the path which we are following is unfortunately drastic and harmful, as far as the doctrine of sustainable development is concerned. Though there are numerous statutes enacted to protect the environmental degradation, we are failing to enforce those enactments. The main aim behind this research is to analyze and discuss various issues and hurdles for environment protection in India.

Keywords:

environmental degradation, Pollution Database report, World Health Organization, Environment, conventions, Government analysts, Hazardous substances, pollution control board, air pollution, water pollution, noise pollution, bio-medical wastes, sanction, forest, World Heritage Convention, Conservation of Migratory Species of Wild Animals, Global Perspective, environmental audit, etc.

Introduction:-

Recently The Supreme Court of India gave verdict on fire crackers in Delhi. The reason behind this ban was air pollution which has been reached the maximum level of pollution. Not only in Delhi, the whole country is disastrously suffering from pollution.

Analyzation of past few decades' study on the environmental pollution states that, all environmental substances are under threat of pollution, if we fail to lessoned from that.

¹According to Ambient Air Pollution Database

report of the World Health Organization (hereinafter referred as “WHO”), conducted on May 2016 clearly alerts India by stating the name in the Highest polluted countries' list. India has 13 cities in world's top 20 most polluted cities with Delhi, along with Patna, Gwalior, and Raipur respectively. The research conducted by the WHO in 1215 cities across the globe and out of the said number of cities, 133 cities were Indian with top 31 in top of 100 most polluted cities in the world.

¹ Ambient Air Pollution Database, WHO, May2016,
http://www.who.int/phe/health_topics/outdoorair/databases/WHO_AAP_database_May2016_v3web.xlsx?ua=1



Environment:-

The term ²“Environment” has a concise meaning in the oxford dictionary as “The surroundings or conditions in which a person, animal, or plant lives or operates. No person is supposed to use or take advantage of Natural resources in excess of the demand but unfortunately we are using those resources inhumanly and without the concern of Nature’s reaction on such use.

³Section 2(a) of the Environment Protection Act, 1986 defines “environment” as “environment includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property. Though the term “Environment” has precisely defined in various ways, there is more to understand what ‘Environment’ exactly stands for, people are still to understand it practically, it is only known by the words and words only just like parrot knows to speak, he doesn’t understand the true meaning of words but just speaks without knowing actual emotions behind the words.

As the country is growing with all developmental factors, pollution is also multiplying in double form and where growth should make life easier, hardened it is making. The time has come to understand and analyze the risk behind such growth.

Before the year 1986, there was no substantial Law which could deal with the matters related to the environment, but when “Bhopal Gas tragedy” occurred, government of India passed an enactment named as “The Environment Protection Act, 1986 and decided to enforce International guidelines declared by the United Nations’ conventions. It took so many years to open the eyes of the government.

⁴ The research carried by the “Airlpocalypse Greenpeace” it was reported that Delhi is the most polluted city in the country. According to this report the total cities surveyed, 90 percent cities are exceeded its pollution level over the prescribed limit it was concluded that Delhi ranks highest in Air Pollution.

According to an analysis of 2015 data of 168 cities by “Greenpeace India”, 154 cities were found having an average particulate matter (PM) level which is higher than the national standard.

As far as the Environment Protection Act is concerned, it gives various vital authorities which deals and handles environmental issues. The Act has provided for authorities like Pollution control Board at central and state level, Government analysts, Environmental Laboratories so on and so forth.

Though it contains so many authorities, they have failed to manage and control environmental matters. Consequently, the pollution level has been increased in the Nation.

⁵In the year 2002, The Supreme Court gave verdict to protect Health of the present and future generation and improve the environment. Therefore, Non-CNG busses were phased out and ordered for the use of CNG busses.

⁶ Section 8 of the Act mandates persons handling Hazardous substances to comply with the provisions of the Act and has empowered the central government to inspect any factory premises and extended powers for adjudication of matters to the pollution control boards, apart from the powers given to such Boards no satisfactory work has been done by such Boards or authorities.

In the present scenario the whole nation is suffering from all kinds of pollutions such as air pollution, water pollution, noise pollution, bio-medical wastes, etc. though we are having plenty of laws and norms to protect environment, the result is in negative terms.

² <https://en.oxforddictionaries.com/definition/environment>

³ The Environment Protection Act, 1986 {Section 2(a)}

⁴ <http://www.thehindu.com/news/cities/Delhi/Air-pollution-a-national-problem/article17026779.ece>

⁵ [M.C.Mehta v. Union of India, AIR 2002 SC 1696.](#)

⁶ The Environment Protection Act, 1986



Protection and Conservation of Environment:-

History and Background:-

In the year of 1984 massive explosion of Oleum gas from the caustic chlorine plant⁷ took place. Before such incidence there was no other law which could deal with the environmental matters. So many Individuals died which were consisted of women, aged persons, children, animals, birds, and other creatures. It gave rise to the revolution in the field of environmental laws. Even though it took two years after the said tragedy, in 1986 the Government of India took the action and converted the decision of the Supreme Court and international convention⁸ and enacted an Act named as The Environment Protection, Act 1986. Accordingly various authorities like central pollution control board, state pollution control board, environmental laboratory, government analysts etc. were established to manage & control environmental affairs.

⁹Article 51A (g) expressly provides for to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures". But when it comes to the enforcement, being a fundamental duty and no sanction on this, no person in practical sense takes it seriously.

Fundamental duty enshrined under the Constitution¹⁰ is without sanction. Thus, since no punishment has been provided, it's like "a lion without teeth and nails". Therefore, there is an intense demand of sanction on fundamental duties. There is a trend where persons are shielding there wrongful acts with immoral intentions under the doctrine of fundamental rights though supreme court in their plenty of judgments has clarified that, fundamental rights given under the constitution are not absolute and subject to restriction by the procedure established by law.

Population explosion:-

The population of India¹¹ has increased in multiplicity counts, according to the United Nation India's population is soon to surpass China's Population in the year 2024. Thus the country is in need to implement proper policies in such cases.

Increasing population causes inappropriate and excessive use of natural resources. Since there are limited natural resources available such as land, natural oils, coal, gases, etc. which we cannot produce by human efforts. Therefore, the control of increasing population is needed.

According to The Indian forest Act, 1927¹² the Concerned State government by notification in the official gazette, reserve any land for forest or land which is already developed as forest. The state government is empowered to make provisions in respect to the land for forest purpose and it authorizes to develop any land into the forest. Provided that the state government is under obligation to issue notification under the official gazette and notify the persons residing on such land or nearby area, upon giving appropriate and justified compensation, state government may acquire the land for forest use.

The concerned authorities under the Act¹³ may at any time sale the natural commodities produced in the forest and may transfer such revenue out of such sale to the concerned state.

Few decades ago, the wild life animals were on their diminishing and annihilation way and animals who are prestige for the nation were decreasing day by day but The Wild life protection Act¹⁴ has imposed, the restriction on killing of such prestigious animals and selling of their bio-physical articles are considered as

⁷ M.C. Mehta v. Union of India, AIR 1987 SC 965.

⁸ "United Nations Conference on the Human Environment"

⁹ The Constitution of India, 1950 Art. 51A(g)

¹⁰ The Constitution of India, 1950 Art. 51A(g)

¹¹ <https://economictimes.indiatimes.com/news/politics-and-nation/indias-population-to-surpass-that-of-chinas-around-2024-un/articleshow/59257232.cms>

¹³ The Indian forest Act, 1927

¹⁴ Wild life protection Act, 1972



serious offence and heavy punishments has been laid down in the said Act. The Natural resources within the state (India) represents the assets available within the country naturally and it considers as pride of the nation. Thus when point of conservation and protection of environment comes it should be considered as personal duty of an individual to conserve & protect the environment. Unless and until it reaches at personal level, the preservation of environment is a difficult task. If such situation remains, then upcoming generation would have no visuals of nature to see and enjoy. Therefore there is a need to conserve it.

International Conventions:-¹⁵

Convention on International Trade in Endangered Species of Fauna and Flora (CITES): ¹⁶ This was aimed to regulate international trade in endangered species of wild life, the Convention on International Trade in Endangered Species of wild fauna and flora was signed in March 1973. The enforcement of the provisions of CITES is to be carried out by the Regional Deputy Directors, Wild Life Crime Control Bureau, who have also been designated as the Assistant CITES Management Authority for India. Apart from the Regional Deputy Directors, the Customs Authorities, State Forest Departments are also involved in the enforcement of the Convention. An amendment to the Wild Life (Protection) Act 1972 had been proposed for integrating the provisions of CITES in the national law for effective implementation of the Convention.

World Heritage Convention:- India is a member of “World Heritage Convention” and responsible for listing of World Heritage Sites, which include both Cultural and natural sites. The World Heritage Convention is a Convention under the treaty of the United Nations Educational, Scientific and Cultural Organization (UNESCO). Wild Life wing of the Ministry of Environment and Forests is

associated with the protection of the Natural World Heritage sites.

Presently, six natural World Heritage Sites have been recognized by UNESCO in India, viz., Nanda Devi National Park, Kaziranga National Park, Manas National Park, Keoladeo National Park, Sundarbans National Park. Apart from these, the Valley of Flowers National Park has also been included in the list of World Heritage Sites as an extension of Nanda Devi National Park.

International Whaling Commission: The International Whaling Commission (IWC) was set up under the International Commission for the Regulation of Whaling which was signed in Washington on 2nd December 1946. The purpose of the Convention is to provide for conservation of whale stocks. The main duty of the International Whaling Commission is to keep under review and revise as necessary the measures laid down in the schedule to the Convention which governs the conservation of whaling throughout the world. These measures, among other things, provide complete protection of certain species, designate specified areas as whale sanctuaries, limit the number of whales which may be taken, prescribe open and closed seasons and designate areas for whaling; prohibit the capture of suckling calves and female whales accompanied by calves. India has been a member of the International Whaling Commission since 1981 and has played a pro-active and prominent role in bringing about a moratorium on commercial whaling and supporting the Commission in its efforts towards whale conservation. All the Cetacean species (whales, dolphins, etc.) have been included in Schedule I of the Wild Life (Protection) Act, 1972 thereby giving them the highest degree of protection. Apart from this, India has always been supporting the conservation of whales through the establishment of the South Pacific Sanctuary.

¹⁵ <http://www.moef.nic.in/division/international-conventions>

¹⁶ the Convention on International Trade in Endangered Species



Current Scenario:-

In the month of Oct 2017 The Tamil Nadu pollution control Board had directed to cut off the electricity of 25 textile industries which were having a business of printing and washing units for discharging untreated chemical effluents. Hundreds of small units involved in printing, button dyeing and fabric washing are functioning in the city. Complaints were raised against many of the units for discharging effluents into drainage channels and open ground. Recently, chemical effluents were found in sewage water in a drainage opening into Noyyal River.

Since the industrial revolution in the country Rivers, Lakes, dams, are suffering from the water pollution. Due to the toxic gas substance produced by the factories, chemical effluents are getting mixed with water. Consequently people are suffering from serious injuries like throat infection, lung problems, breathing problems etc. If the situation remains as it is there are chances of deprivation of human lives.

When matters comes to the river, NGT (National Green Tribunal) on Oct 2017 gave orders to form an expert panel to review Subansiri dam on Lower Subansiri, Hydroelectric Project ¹⁷, work on which has been installed since 2011 in connection with the safety and environmental concerns.

As per the provisions of sub-sections(1) and (3) of section 3 of the Environment Protection Act, 1986, central government may constitute an authority named as “Water Quality Assessment Authority”¹⁸. This has been constituted by the central government on July 2001 including the members which have substantial knowledge of pollution control and expert in the field of water pollution control.

In the leading case of M.C. Mehta v. Union of India ¹⁹, Supreme Court directed and strictly prohibited the Discharge or emittance or permission to discharge or emit of any environmental pollutants. The Supreme Court has issued directions to the concerned

authorities to control and prevent the pollution of Ganga water at Kanpur, inter alia,

Such as

(a) Prevention from waste gathered at the dairies.

(b) Enlargement of sewers and construction of sewers wherever necessary.

(c) Provision for public latrine urinals to avoid use of open land.

(d) High Courts should not ordinarily stay the criminal proceedings in such matters.

(e) Corpses or Half cremated bodies are not thrown in the river.

(f) New industries to get licenses only after making provision for treatment of effluents and immediate action against existing polluting industries.

(g) Central Government to include environment as a subject in educational institutions.

(h) People should be made aware of the environmental problems.

In the case of Ajay Constructions v. Kakateeya Nagar Cooperative Housing Society Ltd.²⁰ It has been held that there is an absolute liability on the part of those who are engaged in construction work, particularly of multi storeyed structures, not to commit nuisance by letting out effluent from their drainage system.

Recently, the Supreme Court has banned the firecrackers causing air and noise pollution in Delhi and according to the Survey²¹ majority Delhities have welcomed the decision of the Supreme Court.

¹⁷ <https://timesofindia.indiatimes.com/city/guwahati/ngt-orders-formation-of-expert-panel-to-review-subansiri-dam/articleshow/61110673.cms>

¹⁸ sub-sections (1) and (3) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986)

¹⁹ M.C. Mehta v. Union of India, AIR 1988 SC 1115.

²⁰ Ajay Constructions v. Kakateeya Nagar Cooperative Housing Society Ltd., AIR 1991 AP 294.

²¹ http://www.business-standard.com/article/news-cm/majority-of-delhiites-welcomeban-on-firecrackers-suggest-effective-implementation-survey-117101700267_1.html



Stubble Burning in Punjab, U.P and Haryana:-

The National Green Tribunal in the month of Oct 2017 gave an opportunity to the Punjab and Haryana Government to take appropriate action on stubble burning in Punjab, Haryana and U.P. It's a very serious issue where due to stubble burning, maximum air pollution level has been recorded by the pollution control authorities. The NGT also pinched to the Corporates who are under corporate social responsibility scheme residing nearby area and conveyed them to help in curbing the stubble burning under "general cause of environment". The NGT had in October 11 directed Punjab government to encourage the farmers not to burn crop residue. The tribunal had taken exception to the fact that even after more than two years, nothing substantial has been done with regard to stubble burning. The Punjab government had earlier said, it had taken Kalar Majri village in Nabha Tehsil of Patiala district as a model project for implementing the directions of the NGT and to sensitize the farmers. Earlier, the NGT had also asked Punjab to look into the problems faced by the farmers and directed its counsel to seek instructions on whether compensation could be provided to them for disposing their agricultural residue while giving them liberty to engage any agency of their choice. It had warned the governments of Punjab, Haryana, Uttar Pradesh and Rajasthan that it would stop the payment of salaries of government officials if they failed to come up with an action plan to prevent stubble burning, which triggers heavy pollution in Delhi-NCR.

Judicial Activism:- Since long period, The Supreme Court of India actively participating in reforming environmental degradation in the country. In 1984 the Apex Court gave verdict and issued guidelines and awarded compensation to the Bhopal Gas leak victims. Thereafter the Environment Protection Act, 1986 came into existence. In *M.C.Mehta v. Union of India*²³ a public interest petition was filed seeking directions from the apex court to the Government for exhibition of slides in cinema halls containing information and messages on environment free of cost, spread of valuable information relating to environment in national and regional languages through

television and Radio in regular and short-term programmes and for making environment as compulsory subject in schools and colleges. The Supreme Court accepted the prayers in principle and issued directions to that effect holding that keeping the citizens informed is an obligation of the Government.

In another case of, *N.D.Jayal V. Union of India*²⁴ The Supreme Court took a stand to ensure sustainable development, it is one of the goals of Environmental Protection Act, 1986, and this is quiet necessary to guarantee 'right to life' under Article 21. If the Act is not armed with the powers to ensure sustainable development, it will become a barren shell. In other words, sustainable development is one of the means to achieve the object and purpose of the Act as well as the protection of 'life' under Article 21.

In the case between *A.P. Pollution Control Board v. Prof. M.V. Nayudu*²⁵ Supreme Court prohibited the central Government and Central Pollution Control Board from issuing No objection Certificates to the Industries which are already restrained from dealing with hazardous substance.

In the case of *Rural Litigation and Entitlement Kendra Dehradun v. State of U.P.* The Supreme Court has ordered the closure of limestone quarries which were causing imbalance to ecology and hazard to public health and environment. However, in order to mitigate the hardship caused by such closure to the lessee, Government of India and State of U.P. were directed to give priority and send intimation whenever any other area was allotted for grant of limestone or dolomite quarrying to the displaced lessees.

The gist of all the cases decided by the Supreme Court are expressly prohibits the industries from emitting pollutants, and made polluter liable according to the "polluter pays principle" which was also propounded by the Supreme Court. Since past few decades the scope of Public Interest litigation has widened by the Judiciary and actively participated in making clean and green environment.

²² <http://www.financialexpress.com/india-news/ngt-to-take-up-stubble-burning-case-onoctober-30/897929/>

²³ *M.C. Mehta v. Union of India*, AIR 1992 SC 382.

²⁴ *N.D. Jayal v. Union of India*, AIR 2004 SC 867.

²⁵ *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (2001) 2 SCC 62.



Global Perspective:- Environmental awareness programmes have been getting the Global identity and the environmental issues are being discussed at international conventions. India is a part of various treaties signed to conserve and protect environmental aspects. Since 1984 India has crossed a long path of Sustainable development and still it's walking on the path. It is hoping that the aim of sustainable development would soon be achieved. There are hurdles in implementing the environmental laws, but the country is efficient and competent enough to tackle those hurdles.

Indian Tendency:- Plenty of Laws and enactments on environment will not be sufficient. Thus, there is a potential need of good approach towards environment. The study says that Indian perspective towards environment is very bad and poor. People are less sensitive about nature and uneducated in the field of consequences of environmental degradation.

The ²⁶Study conducted by Yale and Columbia reveals that out of 132 Countries assessed, India stands last, indicating that world's most polluted air. The worst forms of air pollutions are often found in Indian cities. Particulate matter (PM), one of the most widely monitored pollutants in India, is the main cause of the increasing air pollution in the South Asian subcontinent. The particulate matter build up can reach as high as five times above the safety limits for some cities in India. This creates a major health concern for the people living and breathing in the polluted air every day.

The National Air Quality Monitoring Program claims that nearly half of the Indian cities monitored have reached critical levels of particulate matter. In 2007, only three out of 121 cities in India that had been analyzed were considered at low pollution level. These cities were Dewas, Tirupati, and Kozhikode. Northern India has been known to have increasing air pollution while southern India has shown the opposite trend. Indoor pollution also plays a big role in the overall status of India's polluted air. The average Indian household particulate matter pollution is 350 micrograms per meter cubed, which is ten times greater than the limit set by United States Environment Protection Agency. In conclusion, some air in rural homes are even worse than the outdoors air of India.

While enforcing the environmental laws, public awareness towards nature matters a lot. In recent verdict on national anthem by the Supreme Court clearly shows the Indian tendency. Few people argue that according to the fundamental duty (art.51A) enshrined under the Constitution of India is not bound on any citizen to respect national anthem. According to the Constitution itself excess democracy is dangerous for the society. That's the reason all fundamental rights are not absolute and subject to the restriction by due process of law. Since article 51A has no sanction on violation, the recent verdict of Supreme Court mentions that it is a discretion of the central government and calls for central's action on the issue.

Environmental Laws in India:- There are various laws in India. Some are general laws which deal with the whole matters relating to the environment like "The Environment Protection Act, 1986" "The Indian Penal Code, 1860 (45 of 1860) etc. Some are specific laws or special laws which cover specific matters or special matters such as "The wild life protection Act" "The Wild Life Act" "The Water (Prevention and Control of Pollution) Act, 1974" etc.

The Environment Protection Act, 1986 is enacted basically to cover and deal with the environmental disputes and constituted various authorities like Central Pollution Control Board, State Pollution Control Board, Government Analysts, Environmental Laboratories, etc.

The Water (Prevention and Control of Pollution) Act, 1974, is enacted to prevent Water Pollution in the Country and authority of governance was given to the Pollution Control Boards.

The Air (Prevention and Control of Pollution) Act, is enacted to prevent Air pollution in the society. Recently the Supreme Court gave verdict and has banned the firecrackers which are causing danger to the society by polluting air.

The Wild Life (Protection) Act, 1972 is enacted to protect wild life animals, species which are rare, and it was prohibited the sale of wild animals' articles by killing them and offence made punishable by imposing fine and penalty.

The Indian forest Act, 1927 is constituted to preserve and conserve the Indian forests. The Act imposes restrictions on cutting and selling of trees, forests produce, respectively. Government is the sole owner of such produce.

²⁶ [HTTPS://AIRPOLLUTIONINDIA.WEEBLY.COM/CURRENT-STATUS.HTML](https://airpollutionindia.weebly.com/current-status.html)



According to the preamble of the National Green Tribunal Act, 2010, it is constituted to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests wild life and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

Conclusion:-

- A.** Environmental laws in India are strengthened but when it comes to the enforcement, sanctions are so weak that unable to fulfill the motive behind such punishments. Most offences under environmental laws are civil in nature and most offences are compoundable on payment of fine. There is a potential need of conversion of civil offences into Criminal liability at certain extent.
- B.** Most offences covered under the Said laws are Bailable, although all punishments for environmental offences should be consisted with criminal liability and it should be non-Bailable. A good example of strengthened and rigid law is NDPS Act²⁷ in which provisions are so strict and the law has made the offences covered under the Act non-Bailable till certain period. Therefore environmental offences should be Non-Bailable and should be consist of criminal liability.
- C.** There are provisions for environmental audit in some legislation. All environmental laws should cover the concept of Environmental Audit and it should be mandatory for all organizations dealing with harmful substance and affecting adversely to the environment.
- D.** The National Green Tribunal is setting an example by imposing heavy penalties on defaulters. Same mechanism should be followed by all governing bodies to implement laws. Merely by paying fine there should not be any acquittal. The Punishment should be inclusive of Heavy Penalty and Imprisonment. The present situation is either penalty or imprisonment. In rarest of rare case Court passes the Punishments with fine and imprisonment collectively.

- E.** As per the provisions of The Environment Protection Act, 1986 powers are given for inspection by pollution control boards but no implementation is being done. Consequently maximum industries are dealing with hazardous substance without using any air purifier or chemical water treatment mechanism.

²⁷ THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

