

## **CHAPTER- 3**

### **CONCEPTUAL AND CONSTITUTIONAL FOUNDATION**

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## **CHAPTER - 3**

### ***CONCEPTUAL AND CONSTITUTIONAL FOUNDATION***

The conceptual and definitional aspect of the right to environment. Various national enactments, international covenants, and judicial pronouncements conceived the definition, nature and content of the right to environment. The true meaning of the right to environment depends upon the social, economic, and political status of the person concern. There is a hierarchy of needs as primary and secondary needs. Food cloth and shelter are the three basic needs, when fulfilled, other secondary needs such as biological, social and cultural will come out as primary needs and thus it is a never ending process. The meaning of right to environment differs for rich and poor, tribal people and plain people, villagers and city dwellers, developed and under developed countries. Thus, right to environment is necessarily a relative concept. The true meaning of the right to environment depends upon the social background, economic status, and political status of the person concern. Almost all the South-East Asian Countries still at their developing stage. Development comes through industrialization, which is the main cause behind degradation of the environment. The other relevant issue to be emphasized is to locate the particular law where right to environment may be properly accorded. It becomes necessary to look into other constitutions in order to find out the parameters of the right to environment in our country. In this context it is also equally desirable to attempt to understand right to environment through international instruments. Thus in the following pages the true meaning and concept of the right to environment has been discussed.

## 1. OTHER CONSTITUTIONS AND DOCUMENTS

The Constitutional right to environment and health exist in several countries either directly or indirectly. Many constitutions have provisions on "the right to a healthy environment," the right "to a healthy and ecologically balanced environment," or the right to a "good" or "livable environment." For example Bulgaria, Hungary, Slovenia, Yugoslavia, Russia, and Belarus. Some Western European countries, like Portugal, also have a similar constitutional guarantee. Some constitutions have even more specific provisions directly on the environment and health. For example, the constitution of Belarus contains a right to compensation for harm caused by the violation of the right to healthy environment (Article 46), and a right to health care which is assured by various measures, including provisions on environmental rehabilitation and protection under Article 45.<sup>1</sup> Similarly, the Russian constitution includes a right of access to health information in addition to the right to health protection under Article 41.<sup>2</sup> In Ukraine, in addition to an obligation on the state to ensure ecological safety and support of ecological balance under Article 16 and 43, every citizen has a right to a surrounding environment which is safe for life and health of the people and to compensation for any damage caused by the lack thereof under Article 50.<sup>3</sup> Many constitutions protect health as a fundamental right, either for individuals or for the community. For example The Portuguese constitution under Article 52, no.3 gives the right to citizens to an action in order to secure the prevention of infractions against public health, environment or quality of

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1. *Access to Information, Public Participation in Decision-making and Access to Justice in Environment and Health Matters.* Copenhagen, WHO Regional Office for Europe, 1999. (Substantiation document prepared for Third Ministerial Conference on Environment and Health.) Country Report on Belarus by Elena Krasney, p. 110

2. *Access to Information, Public Participation in Decision-making...."* Country Report on Russia by Olga Razbash, p. 277.

3. *Access to Information, Public Participation in Decision-making...."* Country Report on Ukraine by Zoriana Kozak, p. 306.

life.<sup>4</sup> Moreover, many constitutions contain general provisions on health protection, and preservation, equal access to health care services, hygienic and safe working conditions, which are indirectly linked with environment and health. New constitution of Poland<sup>5</sup> makes a direct link between health and environment by imposing obligation on public authorities with the following words: "Public authorities shall . . . prevent the negative health consequences of the degradation of the environment."<sup>5</sup>

In some other countries, provisions are there which could also be used to make link between life and health. The Irish common law contains the doctrine of "right to bodily integrity, which may be interpreted in the light of general environmental right.<sup>6</sup> In the constitution Germany, there is a basic right vested in anybody to life and freedom from physical harm, which might give a protection from encroachment by state action, though it does not entitle individuals to a healthy environment.<sup>7</sup>

The African Charter on Human and People's Rights 1981 proclaims in Art. 24 (1) a right to 'a general satisfactory environment favourable to their development. In fact, the Final Report of the Special Rapporteur on Prevention of Discrimination and Protection of Minorities listed over 15 rights relative to environmental quality. Some of these include The right to freedom from pollution, environmental degradation and activities which threaten life, health or livelihood protection and preservation of the air, soil, water, flora and fauna healthy food and water; a safe and healthy working environment.

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4. *Access to Information, Public Participation in Decision-making...."*  
*Country Report on Portugal by Jose Cunhal Sendim, p. 258.*

5. *Constitution of Republic of Poland of April 2, 1997 Art. 68, section 4.*  
*Access to Information, Public Participation in Decision-making...."*  
*Country Report on Italy by Sara Fioravanti, p. 200*

6. *Access to Information, Public Participation in Decision-making...."*  
*Country Report on Germany by Monika T. Neumann, p. 167.*

7. Y. K. Sabarwal "Human right and the environment" through internet

In Argentina, the National Constitution recognizes since 1994 the right to a healthy and suitable environment. However, even before the law provided for such explicit recognition, courts had acknowledged the existence of the right to live in a healthy environment.

In Columbia, the right to the environment was incorporated in 1991. In the case of *Antonio Mauricio Monroy Cespedes*, in 1993, the Court observed:

“side by side with fundamental rights such as liberty, equality and necessary conditions for people’s life, there is the right to the environment. The right to a healthy environment cannot be separated from the right to life and health of human beings. In fact, factors that are deleterious to the environment cause irreparable harm to human beings. If this is so we can state that the right to the environment is a right fundamental to the existence of humanity.”

The Inter-American Court of Human Rights has also recognized the environment and human rights relation. In The case of *Awas Tingni Mayagna (Sumo) Indigenous Community v. Nicaragua*, which involved the protection of Nicaraguan forests in lands traditionally owned by the Awas Tingni. Government-sponsored logging on this native land was found to be a violation of the human rights of these tribal.

Almost all global and regional human rights bodies accepted the right to environment as internationally guaranteed human rights. In every instance, the right to environment was based upon rights to life, property, health, information, family and home life.

Right to environment is a relative concept. The true meaning of the right to environment depends upon the social, economic, and political status of the person concerned. There is a hierarchy of needs as primary and secondary needs. Food cloth and shelter are the three basic needs, when fulfilled, other secondary needs such as biological, social and

cultural will come out as primary needs and thus it is a never ending process. The meaning of right to environment differs for rich and poor, tribal people and plain people, villagers and city dwellers, developed and under developed countries. Almost all the South-East Asian Countries still at their developing stage. Development comes through industrialization, which is the main cause behind degradation of the environment. The other relevant issue to be emphasized is to locate the particular law where right to environment may be properly accorded. It becomes necessary to look into other constitutions in order to find out the parameters of the right to environment in our country. In this context it is also equally desirable to attempt to understand right to environment through international instruments.

In the concept of 'Sustainable Development', which emerged in environmental protection, as early as in, 1972 in the Stockholm declaration, which stated that:

"Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being and he bears a solemn responsibility to protect and improve the environment for present and future generation"

Environmental protection is described as a possible means of fulfilling human rights standards. Here, environmental law is conceptualized as 'giving a protection that would help ensure the well-being of future generations as well as the survival of those who depend immediately upon natural resources for their livelihood.' Here, the end is fulfilling human rights, and the route is through environmental law.<sup>8</sup>

The definition of environment and health as given by the World Health Organization Regional Office for Europe is taken from the

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8. *Access to Information, Public Participation in Decision-making...* Country Report on Russia by Olga Razbash, p. 277.

European Charter on Environment and Health of 1989 that defined environment and health as encompassing "both the direct and pathological effects of chemicals, radiation, and some biological agents, and the effects on health and well-being of the broad physical, psychological, social, and aesthetic environment, which includes housing, urban development, land use and transport."

More concretely, the following biological, physical and chemical factors and activities directly affect health and well-being in a working and community environment:

1. Air pollution (by combustion by products, microorganisms, allergens, formaldehyde, asbestos fibers shredding, tobacco smoke, radon and its decay products, and mercury);
2. Accidents (e.g. traffic, at work, at home and during leisure, and chemical);
3. Noise;
4. Toxic chemical substances (pesticides);
5. High temperatures and excessive humidity in the workplace;
6. Repetitive or forceful motions, awkward postures, mechanical stresses and vibration;
7. Ionizing and non-ionizing radiation;
8. Water pollution and sewage;
9. Food contamination by nitrates and nitrites, sodium chloride and phosphate, metals and metalloids and organic contaminants;
10. Food additives such as antibiotics and growth hormones;
11. Solid waste;
12. Rodents and insects;
13. Electromagnetic radiation (ultraviolet radiation, visible light, infrared radiation, microwaves, electric and magnetic fields, ionizing radiation).

Environmentalists can deal with these problems by, first, defining the source and nature of the threat to environment and health; second, assessing its reasons and its effects on the population; and third, applying control measures if they are needed. They must also anticipate the future problems and take diversity of the environment into consideration. They can succeed only when they work together with legislators, public health officials and the whole of society.

Some constitutions include even more specific provisions, which can be linked directly to environment and health matters. For example, the constitution of Belarus contains a right to compensation for harm caused by the violation of the right to healthy environment (Article 46), and a right to health care which is assured by various measures, including provisions on environmental rehabilitation and protection (Article 45).<sup>2</sup> Similarly, the Russian constitution includes a right of access to health information in addition to the right to health protection (Article 41).<sup>9</sup>

In Ukraine, in addition to placing an obligation on the state to ensure ecological safety and the support of ecological balance (Article 16, Article 43), each person and citizen has a right to a surrounding environment, which is safe for life and health, and to compensation for any damages caused by the lack thereof (Article 50).<sup>10</sup> Many of the constitutions protect and guarantee health as a fundamental right, either for individuals and/or for the community. This is true in Italy, Portugal and Hungary, for example. The Portuguese constitution<sup>11</sup> even gives the right to citizens to use *actio popularis* in order to promote and secure the prevention and termination of infractions *inter alia* against public health, quality of environment or quality of life.<sup>12</sup> In addition, the constitutions

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9. *Access to Information, Public Participation in Decision-making...*  
*Country Report on Ukraine by Zoriana Kozak, p. 306.*

10. *Article 52, no. 3*

11. *Access to Information, Public Participation in Decision-making...*  
*Country Report on Portugal by Jose Cunhal Sendim, p. 258.*

12. *Constitution of Republic of Poland of April 2, 1997 (Dziennik Ustaw No. 78, item 483), Art. 68.*

often contain general provisions on health protection, preservation of health, equal access to health care services and good, hygienic and safe working conditions, which are indirectly linked to environment and health issues. Poland's new constitution makes a direct link between health and environment by placing an obligation on the public authorities with the following statement: "Public authorities shall . . . prevent the negative health consequences of the degradation of the environment."<sup>13</sup> Although there are not many reported cases in which these basic rights have been used in the courts, the link between environment and health is increasingly recognised in the countries surveyed. Most of the cases known to date were only indirectly linked with health damages caused by environmental activities and were aimed at preventing some kind of degradation in the environment or nature which might have negative short- or long-term impacts on health. For example, one case is related to the prevention of excessive cutting and devastation of small forests in Hungary by the new owners. This was not duly covered by the adopted Law on the Privatisation of Small Forests in 1995. The Constitutional Court declared the law unconstitutional and proposed amendments. In another case, citizens and NGOs were given legal standing - on the basis of their constitutional rights to healthy environment and in recognition of their interest in preventing actions potentially damaging the environment which might also damage health - to participate in a decision on a development plan of a small business and manufacturing zone in the hinterland of Lake Bled. Many such constitutional provisions could be used in the future for asserting similar basic rights for matters specific to environment and health.

In Italy, for example, the recent jurisprudence of courts, including the Constitutional Court, acknowledges the existence of a personal right to health as a subjective right, which is fully "justiciable" and has linked

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*section 4.*

13. See more in *Access to Justice* section, p. 37-43.

it with environment in a few cases. According to the Constitutional Court, "the right to health has to be included among the subjective rights directly protected by the Constitution" (Constitutional Court judgment No. 88/1979, Italian report). Building on this general legal basis, the High Court of Cassation affirmed the existence of a specific right to a healthy environment in judgment No. 5172/79.<sup>14</sup> The High Court declared that health protection "assumes a social and security content, and therefore the right to health, rather (and more) than a mere right to life and physical safety, becomes a right to a healthy environment." In addition, the High Court also had an influence on the development of the term "unbearable emission (to one's property)" (ex art. 844), which has been used in actions against damaging activities. Although, this article links actions with property, it has been newly interpreted as a basis for giving more attention to a healthy environment.<sup>15</sup>

In a few other countries, provisions exist that could also be used to make such a link. The Irish common law contains a notion of "right to bodily integrity," which might be interpreted in a "general environmental light."<sup>16</sup> In the German constitution, there is a basic right vested "in anybody to life and freedom from physical harm," which might give a protection from encroachment by state authority action, though this does not entitle individuals to a healthy environment.<sup>17</sup> The UK does not have a written constitution.

The UN ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters adopted in Aarhus in June 25, 1998 is the first international legal instrument which bases the access to information, public

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14. *Access to Information, Public Participation in Decision-making....*"

*Country Report on Ireland by David Meehan, p. 183*

15. *Access to Information, Public Participation in Decision-making....*"

*Country Report on Germany by Monika T. Neumann, p. 167.*

16. *Access to Information, Public Participation in Decision-making....*"

*Country Report on Germany by Monika T. Neumann, p. 167.*

17. *Rural Litigation & Entitlement Kendra, Dehradoon -Vs- State of U.P.*  
*AIR, 1991 SC 2216*

participation and access to justice rights provided by the convention on "the right of every person of present and future generations to live in an environment adequate to his or her health and well-being." The Aarhus Convention thus makes an obvious and strong link between individual rights and environmental well-being, which is also relevant from the environment and health point of view. It also includes a general obligation for the parties "to guarantee access to information, public participation in decision-making and access to justice in environmental matters" in order to contribute to the protection of this right.<sup>18</sup> In doing so, it sets a new precedent in international environmental legislation.

## **2. INDIAN FRAMEWORK**

### **CONSTITUTIONAL AND LEGAL PROVISIONS**

The obligation of the State to ensure the creation and the sustaining of conditions congenial to good health is cast by the Constitutional directives contained in Articles 39(e) (f), 42 and 47 in part IV of the Constitution of India. The has to direct its policy towards securing that health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength (Article 39(e)) and that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. (Article 39(f)). The State is required to make provision for just and humane conditions of work and for maternity benefit (Article 42). It is the primary duty of the State to endeavor the raising of the level of nutrition and standard of living of its people and improvement of public health and to bring about prohibition of the consumption, except for medicinal purposes of intoxicating drinks and of drugs, which are injurious to health. (Article 47). Protection and

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18. *Francis Coralie vs. Union Territory of Delhi*

improvement of environment is also made one of the cardinal duties of the State. Article 48 A). The State legislature is under entry 6 of the State List contained in the Seventh Schedule to the Constitution, empowered to make laws with respect to public health and sanitation, hospitals and dispensaries. Both the Centre and the States have power to legislate in the matters of social security and social insurance, medical professions, and, prevention of the extension from one State to another of infections or contagious diseases or pests affecting man, animals or plants, by entries 23, 26 and 29 respectively contained in the concurrent list of the Seventh Schedule.

The definition of 'environment' in India does not include only the concept of sustainable development but also air and water pollution, preservation of forests and wildlife, noise pollution and even the protection of our ancient monuments, which are undergoing severe stress due to urbanization and consequent environmental pollution. Community resources such as tanks, ponds, etc. have now been articulated by the Supreme Court for inclusion in the concept of environment, considering that they all affect the quality and enjoyment of our life.

The framers of the constitution were silent on the issue of environmental protection. In the original constitution no specific provision was made on the protection of the environment except Article 47 and 49. Article 47 states that the state shall regard the raising of the level of nutrition and the standard of living of its people and the environment of public health as among its primary duties and, in particular, the state shall endeavor to bring about prohibition of the consumption except for medical purposes for intoxicating drinks and of drugs which are injurious to health.

For raising the level of nutrition and improving public health it is obligatory that the State should provide pollution free environment. Article 49 envisages the protection of historical monuments. It provides

that it shall be the obligation of the State to protect every monument or place or object of artistic or historical interest, declared by or under law made by Parliament to be national importance from spoliation, disfigurement, destruction, removal, disposal or export as the case may be.

This Article makes it obligatory on the part of State to control the environmental pollution affecting the durability of these historical monuments. The Constitution (Forty Second Amendment) Act 1976 explicitly incorporated environmental protection and improvement as part of State policy through the insertion of Article 48A. Article 51A (g) imposed a similar responsibility on every citizen to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for all living creatures. In reality, the foundation of the jurisprudence of environment was laid down by the 42<sup>nd</sup> amendment and now the State and citizens are under a fundamental obligation to protect the environment.

Reference to the environment has been made in the Directive Principles of State Policy as well as the Fundamental Rights. But nowhere in the constitution the definition and concept of the term 'environment' has been given. The constitutional provisions are backed by a number of laws – Acts, Rules, and Notifications. The Environment Protection Act, 1986 came into force soon after the Bhopal Gas Tragedy and is considered 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 is well illustrated by the cases that have come before the Supreme Court, in particular in relation to the broad meaning given to the Right to Life under Article 21 of the Constitution. The right to life has been used in a diversified manner in India. It includes, *inter alia*, the right to survive as a species, quality of life, the right to live with dignity

and the right to livelihood. Article 21 of the Indian Constitution states that no person shall be deprived of his life or personal liberty except according to procedures established by law.

*Rural Litigation and Entitlement Kendra, Dehradun, v. State of U.P.*<sup>19</sup> was one of the earliest cases where the Supreme Court dealt with issues relating to environment and ecological balance. The expanded concept of the right to life under the Indian Constitution was further elaborated on in *Francis Coralie Mullin v. Union Territory of Delhi*<sup>20</sup> where the Supreme Court set out a list of positive obligations on the State, as part of its duty correlative to the right to life. The importance of this case lies in the willingness on the part of the Court to be assertive in adopting an expanded understanding of human rights. It is only through such an understanding that claims involving the environment can be accommodated within the broad rubric of human rights. The link between environmental quality and the right to life was further addressed by a constitution bench of the Supreme Court in the *Charan Lal Sahu*.<sup>21</sup> Similarly, in *Subash Kumar*,<sup>22</sup> the Court observed that 'right to life guaranteed by article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life.' Through this case, the Court recognised the right to a wholesome environment as part of the fundamental right to life. This case also indicated that the municipalities and a large number of other concerned governmental agencies could no longer rest content with unimplemented measures for the abatement and prevention of pollution. They may be compelled to take positive measures to improve the environment.

The Supreme Court has used the right to life as a basis for emphasizing the need to take drastic steps to combat air and water

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19 . *Charan Lal Sahu v. Union of India* AIR 1990 SC 1480.

20 . *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420

21 . *M.C. Mehta v. Union of India*, (1996) 4 SCC 351.

22 . *Rural Litigation and Entitlement Kendra v. State of U.P.*, AIR 1991 SC 2216.

pollution. It has directed the closure or relocation of industries and ordered that evacuated land be used for the needs of the community.<sup>23</sup> The courts have taken a serious view of unscientific and uncontrolled quarrying and mining,<sup>24</sup> issued orders for the maintenance of ecology around coastal areas,<sup>25</sup> shifting of hazardous and heavy industries<sup>26</sup> and in restraining tanneries from discharging effluents.<sup>27</sup>

Another expansion of the right to life is the right to livelihood (article 41), which is a directive principle of state policy. This extension can check government actions in relation to an environmental impact that has threatened to dislocate the poor and disrupt their lifestyles. A strong connection between the right to livelihood and the right to life in the context of environmental rights has thus been established over the years. Especially in the context of the rights of indigenous people being evicted by development projects, the Court has been guided by the positive obligations contained in article 48A and 51A(g), and has ordered adequate compensation and rehabilitation of the evictees.

The right to life approach to environment not only imply the absence of polluted environment, but also the quality of the environment by enumerating justifiable entitlements such as clean river and lakes, coastal resource zone, afforestation, preservation of wetland, healthy growth of wild life, and ornithology.<sup>28</sup> Matters involving the degradation of the environment have often come to the Court in the form of petitions filed in the public interest. This mode of litigation has gained momentum

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23. *M.C. Mehta v. Union of India*, (1996) 4 SCC 351.

24. *Rural Litigation and Entitlement Kendra v. State of U.P.*, AIR 1991 SC 2216.

25. *Indian Council for Enviro-Legal Action v. Union of India (Coastal Protection Case)*, (1996) 5 SCC 281

26. *M.C. Mehta v. Union of India*, (1996) 4 SCC 750.

27. *M.C. Mehta v. Union of India (Ganga Water Pollution Case)*, AIR 1988 SC 1037

28. *Nomani Z. M. "Enviro- Constitutional Ethos in Right-Duty Discourse: Towards the Creation of an Equitable and Sustainable Socio-legal Order" IJEL- 1 2000.*

due to the lenient view adopted by the Court towards concepts such as *locus standi* and the 'proof of injury' approach of common law. This has facilitated espousal of the claims of those who would have otherwise gone unrepresented. It is interesting to note that, unlike Indian courts, the Bangladeshi and Pakistani courts apply an 'aggrieved person' test, which means a right or recognised interest that is direct and personal to the complainant.

Thus in common parlance, environment means physical surroundings.<sup>29</sup> The definition given in the environment (Protection) Act 1986 an inclusive one and it places no limits as to its dimensions. The Rajasthan High Court in *Vijay Singh Punia vs. RSBPCWP*<sup>30</sup> illustrated that:

"The concept of inter-relationship and inter-dependency which exist between human beings nature and other life forms is the essence of wellbeing of the human race. To illustrate the point One may give the example of a lonely earthworm. It works for human beings. It enriches the soil and makes it fertile for them to reap the benefit."

Thus within the ambit of environment hygienic atmosphere and ecological balance should be brought. It is the duty of citizens and the State to maintain hygienic environment. The Supreme Court in *K.M. Chinnappa Vs Union of India*<sup>31</sup> laid down that enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can not be enjoyed. Ant contra act or action would cause environmental pollution.

An integral part of right to life is a hygienic environment. Without a

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29. P. Leelakrishna, 'ASIL. 221, 2003.

30. AIR 2003 Raj 26.

31. AIR 2003-SC 724.

humane and healthy environment it would not be possible to live a healthy life. The Supreme Court in *State of MP vs. Kedia Leather and Liquor Ltd.*<sup>32</sup> reiterated that specific laws of pollution do not impliedly repeal the laws of nuisance under section 133 of the Criminal Procedure Code.

## **II. ENVIRONMENTAL LEGISLATIONS IN INDIA**

### **1. General**

**1986 - The Environment (Protection) Act** authorizes the central government to protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and/or operation of any industrial facility on environmental grounds. It contained a stringent mechanism to control environmental pollution. But absence of effective political will to enforce the provisions of the Act is the cause of not achieving the objectives of the Act.

**1986 - The Environment (Protection) Rules** lay down procedures for setting standards of emission or discharge of environmental pollutants.

**1989 - The objective of Hazardous Waste (Management and Handling) Rules** is to control the generation, collection, treatment, import, storage, and handling of hazardous waste.

**1989 - The Manufacture, Storage, and Import of Hazardous Rules** define the terms used in this context, and sets up an authority to inspect, once a year, the industrial activity connected with hazardous chemicals and isolated storage facilities.

**1989 - The Manufacture, Use, Import, Export, and Storage of hazardous Micro-organisms/ Genetically Engineered Organisms or**

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32. 2003 7 SCC 389.

**Cells Rules** were introduced with a view to protect the environment, nature, and health, in connection with the application of gene technology and microorganisms.

**1991 - The Public Liability Insurance Act and Rules and Amendment, 1992** was drawn up to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident while handling any hazardous substance.

**1995 - The National Environmental Tribunal Act** has been created to award compensation for damages to persons, property, and the environment arising from any activity involving hazardous substances.

**1997 - The National Environment Appellate Authority Act** has been created to hear appeals with respect to restrictions of areas in which classes of industries etc. are carried out or prescribed subject to certain safeguards under the EPA.

**1998 - The Biomedical waste (Management and Handling) Rules** is a legal binding on the health care institutions to streamline the process of proper handling of hospital waste such as segregation, disposal, collection, and treatment.

**1999 - The Environment (Sitting for Industrial Projects) Rules, 1999** lay down detailed provisions relating to areas to be avoided for sitting of industries, precautionary measures to be taken for site selecting as also the aspects of environmental protection which should have been incorporated during the implementation of the industrial development projects.

**2000 - The Municipal Solid Wastes (Management and Handling) Rules, 2000** apply to every municipal authority responsible for the

collection, segregation, storage, transportation, processing, and disposal of municipal solid wastes.

**2000 - The Ozone Depleting Substances (Regulation and Control) Rules** have been laid down for the regulation of production and consumption of ozone depleting substances.

**2001 - The Batteries (Management and Handling) Rules, 2001** rules shall apply to every manufacturer, importer, re-conditioner, assembler, dealer, auctioneer, consumer, and bulk consumer involved in the manufacture, processing, sale, purchase, and use of batteries or components so as to regulate and ensure the environmentally safe disposal of used batteries.

**2002 - The Noise Pollution (Regulation and Control) (Amendment) Rules** lay down such terms and conditions as are necessary to reduce noise pollution, permit use of loud speakers or public address systems during night hours (between 10:00 p.m. to 12:00 midnight) on or during any cultural or religious festive occasion

**2002 - The Biological Diversity Act** is an act 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 and knowledge associated with it

## **2. Forest and wildlife**

**1927 - The Indian Forest Act and Amendment, 1984**, is one of the many surviving colonial statutes. It was enacted to 'consolidate the law related to forest, the transit of forest produce, and the duty leviable on timber and other forest produce'.

**1972 - The Wildlife Protection Act, Rules 1973 and Amendment 1991** provides for the protection of birds and animals and for all matters that are connected to it whether it be their habitat or the waterhole or the forests that sustain them. The Act was passed at the request of 11 states and intended to provide a comprehensive national legal framework for wildlife protection. There are two conservation strategies under the Act – first, specified endangered species are protected regardless of location. Secondly, all species are protected in specified areas.

**1980 - The Forest (Conservation) Act and Rules, 1981,** provides for the protection of and the conservation of the forests.

### **3. Water**

**1882 - The Easement Act** allows private rights to use a resource that is, groundwater, by viewing it as an attachment to the land. It also states that all surface water belongs to the state and is a state property.

**1897 - The Indian Fisheries Act** establishes two sets of penal offences whereby the government can sue any person who uses dynamite or other explosive substance in any way (whether coastal or inland) with intent to catch or destroy any fish or poisonous fish in order to kill.

**1956 - The River Boards Act** enables the states to enroll the central government in setting up an Advisory River Board to resolve issues in inter-state cooperation.

**1970 - The Merchant Shipping Act** aims to deal with waste arising from ships along the coastal areas within a specified radius.

**1974 - The Water (Prevention and Control of Pollution) Act** establishes an institutional structure for preventing and abating water pollution. It establishes standards for water quality and effluent.

Polluting industries must seek permission to discharge waste into effluent bodies.

The CPCB (Central Pollution Control Board) was constituted under this act.

**1977 - The Water (Prevention and Control of Pollution) Cess Act** provides for the levy and collection of cess or fees on water consuming industries and local authorities.

**1978 - The Water (Prevention and Control of Pollution) Cess Rules** contains the standard definitions and indicate the kind of and location of meters that every consumer of water is required to affix.

**1991 - The Coastal Regulation Zone Notification** puts regulations on various activities, including construction, are regulated. It gives some protection to the backwaters and estuaries.

#### **4. Air**

**1948 - The Factories Act and Amendment in 1987** was the first to express concern for the working environment of the workers. The amendment of 1987 has sharpened its environmental focus and expanded its application to hazardous processes.

**1981 - The Air (Prevention and Control of Pollution) Act** provides for the control and abatement of air pollution. It entrusts the power of enforcing this act to the CPCB.

**1982 - The Air (Prevention and Control of Pollution) Rules** defines the procedures of the meetings of the Boards and the powers entrusted to them.

**1982 - The Atomic Energy Act** deals with the radioactive waste.

**1987 - The Air (Prevention and Control of Pollution) Amendment Act** empowers the central and state pollution control boards to meet with grave emergencies of air pollution.

**1988 - The Motor Vehicles Act** states that all hazardous waste is to be properly packaged, labeled, and transported<sup>33</sup>

The United Nations has defined human rights to mean generally as “those rights, which are inherent in our nature and without which we can not live as human beings. Section 2(d) of the protection of Human Rights Act, 1993 has defined the human rights to mean the rights relating to life, liberty, equality and dignity of the individual guaranteed under the Constitution or embodied in the international covenants and enforceable by the courts in India. In 1948, the United Nations through its Declaration of Human Rights affirmed the basic principle that a mentally ill person should at all times be treated with humanity and respect for the inherent dignity of the person. Every person with a mental illness should have the right to exercise all civil, political, social and cultural rights. The Declaration of the Rights of the disabled, which includes person with mental illness, was adopted by the United Nations in 1975.

Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966 also provides “that the state parties to the present Covenant recognize the rights of everyone to the enjoyment of highest attainable standards of physical and mental health. As far as women mentally ill patients are concerned, Article 12 of the Convention on the Elimination of all forms of discrimination against women provides that state parties shall take all appropriate measures to eliminate discrimination against women in the field of health. In the area of

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33 . <http://www.envfor.ac.in>

'providing access to free medical services to mentally ill patients Article 19 of 1969 Declaration on Social progress and Development could be relied upon, which calls for the provision of free health services of the whole population and of adequate preventive and curative facilities and welfare medical services accessible to all.

In a wider sense environment embraces all forms of life in this planet. Environmental protection is confined to control of pollution by hazardous products, gases and effluents that are by-product of industrialization. Environmental law involves conservation and sustainable use of natural resources by the present and future generation. Environmental law also governs the inter-relationship between natural resources and all human and other living creatures including natural environment, namely physical conditions of land, air and water and human environment namely health, social environment and other man made environment. In a case<sup>34</sup> the Rajasthan High Court illustrated that 'the concept of inter-relationship which exist between human being, nature and other form of life is the essence of well being of human race. To illustrate the point, one may give the example of a lonely earthworm. It works for human beings. It enriches the soil and makes it fertile for them to reap the benefit.' Therefore, environmental law involves management of environment and the strategies for tackling the problems affecting the environment.

Right to a decent and healthful environment is guaranteed under domestic constitution by executive pronouncements and laws like Thailand, Indonesia, Singapore, and Philippines. In the United States some of the States already recognized the right to a healthful environment but not by the Federal Constitution.

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34 . AIR 2003 Raj 286.

Some established norms of International Environmental Law which are already accepted by the world community including India are as follows:-

1. Nations have the *sovereign right* to exploit their natural resources in pursuant to their own environmental policy and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limit of national jurisdiction.
2. *Notification and consultation* by the State which want to undertake an operation likely to harm neighboring country's environment. For example construction of power plant which may impair the quality of air or water of the States situated in the down stream.
3. Over and above the duty to notify and consult, a relative new norm has emerged whereby the States are expected to *monitor and assess* specific environmental condition domestically and disclose these conditions in a report to an international agency to collect and publicize such information.
4. Another emerging norm is the guarantee in the domestic constitutions, laws or executive pronouncements the *citizens right to a clean and healthful environment*. In the United State, this right has been guaranteed by few states but not by the Federal Government.
5. The *polluter pay principle* means the polluter should internalize the cost of their pollution, control it at its source, and pay for its effect, including the remedial and clean up cost rather than forcing other states or future generation to pay for it.
6. *Precautionary principle* is a new norm i.e. the duty to foresee and assess environmental risk, and to give warning to victims of such risk to behave in such a way that prevent or mitigate such risk.
7. *Environmental Impact Assessment* is another accepted norm, which maintains a balance between economic benefit and environmental

cost. Before a project is undertaken its economic benefit and environmental cost must be compared, if economic benefit exceeds environmental cost the project can be taken, other wise not.

8. *To invite the input of NGOs* is another recent norm, which ensures that the people who are likely to be affected by environmental accords will have a major role in monitoring and implementing the accord.
9. *Sustainable Development* is a widely accepted international principle which means using natural resources in a manner which does not exceed their natural capacity for regeneration and using them in a manner which ensures the preservation of the species and ecosystem for the benefit of future generation.
10. *Intergenerational Equality* is one of the newest international norm. It is similar to sustainable development. If present generation continues to consume and deplete resources at unreasonable rate, future generation will suffer environmental and economic consequences. Therefore we must undertake to pass on to future generation.
11. *Common heritage of mankind* is yet another which must be share by all nations. United Nations Conference on the Law of Sea 1982 articulated this norm. Deep seabed is part of this principle.
12. *Common but differentiated responsibility* with regard to global environmental concern such as global climate change or ozone layer depletion, all nations have a shared responsibility but richer nations are better able to take the financial and technological measures necessary to shoulder the responsibility.