THE NECESSITY OF INTERNATIONAL AND NATIONAL LAW FOR ENVIRONMENTAL AND ECOLOGICAL PROTECTION

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Abstract

Human beings are the most significant organ of the living species on the planet, as they are responsible for the maintenance and exploitation of the environment according to their requirements. The development activities of human beings have an impact on the ecology and climate of the earth in a number of different ways. An increasing number of countries have incorporated the right to environmental quality into their national constitutional texts. A separate environmental court is located in the state of New South Wales in Australia, and the law commission of India took inspiration from New Zealand in creating a separate environmental court and establishing the National Green Tribunal in the country of India. Environmental regulations play a significant role in India since it is difficult to maintain control over the populace if these rules are not in place. If fines are enforced, it is much easier to keep people from causing environmental damage, which would otherwise be impossible to accomplish. Taking a firm posture on so many environmental concerns through a number of court rulings, the Indian judiciary, in its capacity as the defender of fundamental rights, has established a number of principles for environmental protection.

Keywords: international, national, law, environment, protection, etc.

1. INTRODUCTION

The earth is the only planet in the cosmos that has its own environment and life expectations, and it is the only one that has such expectations. The other major six planets have a life expectancy of only a few hundred years due to a lack of suitable environments and an inconvenient distance from the sun. Accordingly, the earth is one of a kind and the only one of its kind in the cosmos in this regard. The planet has several environmental layers that are separated from its surface by distances ranging from 0 to 16 kilometers, which allows life to exist on it. Human beings are the most significant organ of the living species on the planet, as they are responsible for the maintenance and exploitation of the environment according to their requirements. The development activities of human beings have an impact on the ecology and climate of the earth in a number of different ways [19]. From its inception, the problem of environmental contamination has not been a new one. A realization of this kind has existed since the beginning of Homo sapiens on the planet earth 2500 years ago, and it was first realized during the time of Plato. The history of environmental protection in India can be traced back to the Vedic period. In addition, the people of ancient Vedic India were aware of the difficulties and concerns related to environmental protection. In both England and India, the majority of laws were codified during the second part of the nineteenth century by the Britishers. In this period, a large
number of legal measures were passed for the prevention of pollution and the protection of natural resources [16]; yet, their primary goal was not just to safeguard the environment, but also to generate cash for the governments that passed the legislation. However, it was the Constitution of India, promulgated in 1950, that marked a watershed in the development of environmental law in our country. In order to address the needs of environmental protection, the Indian legislature did not pass any rigorous legislation until after the country gained its independence in 1947. Before the Indian parliament and judiciary took up the matter of environmental protection in their respective chambers, social movements in India [15], such as the Chipko movement and the Appiko movement, played a critical part in saving the environment in the country, among other things.

2. RELATIONSHIP BETWEEN INTERNATIONALS AND INDIAN ENVIRONMENTAL LAW

Following the Stockholm Conference, India implemented a slew of critical environmental legislation to ratify or fulfill its national commitments under international environmental treaties, conventions, and protocols, among other things.

2.1 A Comparative Analysis of National Legislations

It is the jurisdiction of environmental law to control human treatment of the non-human world in accordance with the principles, polices, directives, and regulations that are adopted and implemented by local or national authorities. During the second half of the twentieth century, environmental law evolved from its humble beginnings as a group of clauses inside the laws regulating public health to become a widely recognised autonomous field that protects both human health and the nonhuman environment. In diverse legal contexts, such as the Indian Air (Prevention and Control of Pollution) Act, 1981, German regulatory standards for emissions from coal-fired power plants, and Chinese initiatives to build a “Green Great Wall,” [21] a shelter belt of trees, to protect Beijing from sandstorms; it addresses a wide range of issues. As early as the 1960s, the Japanese government began to develop a comprehensive pollution-control policy, and in 1967, the country passed the Basic Law for Environmental Pollution Control, which was the world’s first comprehensive pollution-control law. An increasing number of countries have incorporated the right to environmental quality into their national constitutional texts. As an example, since 1994, environmental protection has been incorporated into the German Grundgesetz (Basic Law), which now stipulates that the government is responsible for protecting the “future generation and the natural foundations of life.” [15] The Chinese constitution gives to each individual the “right to life and health” and requires the government to ensure “the rational use of natural resources, as well as the protection of rare animals and plants” that are protected by the law. The South African constitution recognises the right to “an environment that is not damaging to one’s health or well-being, and to have the environment protected for the benefit of present and future generations.” A right to a healthy and favourable environment in accordance with defined standards and regulations exists in the Bulgarian constitution, while a ”right to live in an environment free of contamination” exists in the Chilian constitution. A separate environmental court is located in the state of New South Wales in Australia, and the law commission of India took inspiration from New Zealand in creating a separate environmental court and establishing the National Green Tribunal in the country of India.

3. WHY IS ENVIRONMENTAL LAW SO IMPORTANT?

A person’s environment is made up of two parts: the physical environment and the biological environment. In the physical environment, there are elements such as land, water, and air, while the
biological environment includes elements such as plants, animals, and other species [17, 20]. Environments, both physical and biological, are interdependent on one another. Among the elements that have contributed to environmental degradation include industrialization, urbanization, population boom, overexploitation of resources, disruption of natural ecological balances, and the extinction of a plethora of animal and plant species for economic reasons. The destruction of the environment in one country has an impact on the global environment [19]. The problem of environmental pollution has taken on an international dimension [13, 16], and India has taken steps to address this growing threat of environmental pollution as well [18]. Environmental regulations play a significant role in India since it is difficult to maintain control over the populace if these rules are not in place. If fines are enforced, it is much easier to keep people from causing environmental damage, which would otherwise be impossible to accomplish. The following are the objectives of environmental law:

- **Protection**- Environmental laws safeguard the environment from any harmful practices carried out by humans that endanger or degrade the ecosystem's natural resources. As a result, these regulations are important to ensure that the environment is safeguarded.

- **Preserving the Environment**- Environmental laws aid in the preservation of the environment by placing reasonable limitations and penalties on any practices that may harm the environment or result in pollution.

- **Control**- Environmental regulations aid in the preservation of the environment, which is extremely important. Environment protection laws aid in the regulation or minimization of actions that can result in the depletion of our environment or the harming of the environment.

4. **PROTECTION OF ENVIRONMENT ROLE OF UNITED NATIONS ORGANISATION**

Planet Earth had and continues to be habitable because of international environmental concern. The United Nations Organization (UNO) has taken the initiative and is pushing for universalization. It synchronised the natural law with human actions, which are governed by national laws. To ensure a good quality of life for everyone in the globe, the United Nations has been working on environmental issues at the international level [13]. For a global policy to be effective, it must be considered by all. Numerous conventions and conferences were adopted as a result of this collaboration. Indirectly or directly, these conventions have affected all states. The states have been influenced by the resolutions to implement them in their policies and plans. With its credo to save mankind and its first international instrument that touched the entire world, The Stockholm Conference has traced the origins of the human-nature interaction, and it has brought a worldwide evolution. The United Nations General Assembly in 1982 all of humanity, including humans, is a part of nature, and all of existence depends on Nature. The United Nations charter declares that nature must be respected and preserved.

The Rio Summit made it clear that without we protect the environment, we cannot continue to develop. To summarise not only do international environmental conferences such as the Stockholm conference and Habitat conference provide a solid foundation for international environmental law, but they also mark an important step towards creating a world in which we can all live happily in an environment that is conducive to our well-being. Successfully implementing international environmental agreements and achieving development goals. Their implementation might be rigorously monitored if all relevant states become party to them. As a result of international conferences and conventions, India has been tremendously influenced. India has signed various international environmental treaties. As a leader in international conferences from Stockholm to Johannesburg, India has an obligation to contribute to the achievement of this aim and has called on
other nations to adopt constitutional and legislative measures to adequately address environmental concerns. A provision of the Indian Constitution can be amended by adding to, modifying, or repealing it under Article 368 of the Indian Constitution (C).

5. COMMON LAW REMEDIES AND ENVIRONMENT PROTECTION

Because of our close ties with Great Britain, we were governed by common law principles prior to achieving independence from Great Britain. The common law of England is a collection of customary laws that are founded on judicial decisions and are incorporated in the reports of the cases that have been determined. The many common law remedies against environmental contamination, as well as the various legislation that directly or indirectly provide environmental protection under the Indian legal system, are being investigated. For example, in the field of torts, under the common law of England, no action can be brought by the dependents or heirs of someone whose death was caused by the tortuously negligent act of another, based on the maxim "action personalis moritur cum persona," although a person who has been injured by a similar act may seek damages for the wrong that has been done to him. Actions undertaken under tort law are among the most ancient of the legal remedies available for pollution abatement today [16]. Pollution cases are often classified into four categories under common law. There are four types of liability: nuisance, trespass, negligence, and strict liability. The main water law doctrines, as well as the public trust concept, had an impact on how people used the world's most important natural resources, such as water and land [17]. Environmental pollution is a civil wrong, and by its nature, it is a tort committed against the entire community, as was correctly observed in M.C. Mehta v. Union of India.

5.1. Nuisance

In environmental litigation, the most often claimed common law action is that of annoyance or nuisance. The idea of nuisance, which has its origins in common law, is the source of the most profound doctrinal roots of "contemporary environmental law." The right of a landowner to use and enjoy his or her property has always been safeguarded by nuisance law. In some cases, an annoyance is referred to as "the right thing in the wrong location," such as a pig in a parlor rather than the barnyard. Nuisance activities can be classified into two categories: public and private. A public nuisance is one that interferes with a right or interest that the general public shares, such as the public's interest in safe drinking water. A private nuisance is one that interferes with a private individual's right or interest, such as a homeowner's right to enjoy the quiet enjoyment of her land. The usual approach to evaluating nuisance claims has been to look at them from an objective standpoint. In the relevant community, if a "average" or "regular" individual would be upset or bothered by a certain trespass, then the intrusion is regarded real and noticeable. A hypersensitive plaintiff's quirks and peculiarities are often overlooked. Under this objective test, individuals with high personal preferences and aesthetic sensibility [14] are frequently denied relief from their circumstances. Individuals with abnormal physical vulnerabilities, such as those suffering from heart issues, breathing difficulties, or sensitive eardrums, are frequently denied relief.

5.2. Trespass

Trespass is a principle that is closely related to nuisance and that is occasionally raised in "environmental cases," as the term suggests. Trespass is defined as an unwarranted trespass onto another's land or any direct and immediate interference with the custody of land by another act. Trespass is defined as an injury to another's real property or an interference with possession, whether above or below ground, independent of the condition of the land or the presence or absence of
negligence. Generally speaking, trespass to land is the form of trespass action that is employed in pollution control situations. In the case of Martin v. Reynolds Metal Co., it was determined that the deposit of tiny fluoride compounds on Martin's property, which were discharged in vapor form from the Reynolds' plant, constituted an invasion of Martin's property and thus a trespass on his land. It might be difficult to distinguish between trespass and nuisance in some circumstances.

5.3 Negligence

Another special fort on which a common law action for the prevention of "environmental pollution" can be based is the concept of negligence. As defined by the Oxford English Dictionary, "negligence" is "the failure to do something that a reasonable man, led by the common factors that ordinarily rule human affairs, would do, or the commission of an act that a reasonable and prudent man would not do." Acts that are not meant to cause injury fall under the category of negligence in the law of torts. Generally speaking, the standard of care required by law is the degree to which a reasonable person of average prudence would exhibit reasonable care in the identical circumstances. In addition, if an act of negligence interferes unlawfully and for a long period of time with the enjoyment of another's right in land, or if it causes a dangerous condition of affairs on the public highway, it may be considered a nuisance as opposed to a single isolated act.

5.4 Strict Liability

When it comes to cases resulting from or related with "environmental pollution," the doctrine of strict liability-liability without fault is one that should be taken into consideration. The case of Rylands v. Fletcher is considered to be the most significant on the subject. It was determined in this case that, despite the fact that the defendant was not negligent, he would nonetheless be accountable.

6. CONCLUSION

Since ancient times, Indian society has been mindful of the importance of protecting the environment and the environment's ecosystem. Additionally, the Indian Legislature has passed a number of legislation to safeguard the environment in all of its forms. By taking a firm posture on so many environmental concerns through a number of court rulings, the Indian judiciary, in its capacity as the defender of fundamental rights, has established a number of principles for environmental protection. Despite all of these combined efforts, there is still much more work to be done in the area of sustainable development for the benefit of future generations. Although environmental resource preservation and protection are relatively new concepts, many nations have longstanding traditions in these areas that date back hundreds of years. The first environmental legislation in modern India was enacted in the mid-nineteenth century. Some of these regulations deal with natural resources, such as forests, while others deal with water and air pollution, among other things. In its initial form, India's constitution contained no direct or specific provisions for the protection of the natural environment, and this is the case today.

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