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Environmental Jurisprudence – A Journey from Vedic Culture to Supreme Court

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Abstract: *Human civilized societies can flourish only when there are consistency and harmony among the various members of Earth community. Earth jurisprudence is the part of legal philosophy and of human governance and it is based on the idea that welfare of each member of the community is based on the welfare of the earth as a whole. It seeks the relevance of Earth community. One such area of its working is the environment. The basic sense of environment protection is intrinsic in our ancient texts. At the international level, it is a concept, not more than a century old, but in Hinduism, it was included in the ancient texts. As a result of international and national judicial interventions, many principles have evolved potentially applicable to all member nations of the international community in respect of protection of all aspects of the environment. International legal Instruments have played a vital role in fostering environmental law, environmental conservation, and sustainable development. A number of treaties have been signed in order to achieve it. Various and numerous provisions are enshrined in our Constitution in order to prevent and protect the environment. It is a Fundamental Right as well as a duty has also been cast upon the persons to preserve and conserve it. Our judiciary by passing various remarkable judgments and elucidating various principles has deeply and actively involved in achieving the targets of environmental Jurisprudence. The environmental jurisprudence is expanded enough through the setting of committees, laying down principles and by creative and innovative thinking of various courts and judges.*

Keyword: *Earth, Environmental Jurisprudence, Hinduism, International Legal Instruments, Supreme Court.*

1. INTRODUCTION

Earth jurisprudence is the part of legal philosophy and of human governance and it is based on the idea that welfare of each member of the community is based on the welfare of the earth as a whole. ^[1] Human civilized societies can flourish only when there are consistency and harmony among the various members of Earth community. It seeks the relevance of Earth community. One such area of its working is the environment.

Environment justice appeared as a legal concept firstly in the US in early 1908s. It may be established as a social movement focusing on fair distribution of environmental benefits and also as a branch of social sciences establishing links between environmental justice, environmental law, and governance, environmental policy and planning, development, sustainability, ecology etc. ^[2]

Since the early 1980s there has been an explosion of environmental rules, regulations, and principles at all levels of society whether it be international or national level, India also. It has now become a political discipline, everybody is near to solve the problems.

There have been genuine efforts also in order to prevent environment by international organizations as well as at national level. Various treaties have been signed in order to protect environment amongst nations and many principles have been evolved by the judiciary for the purpose making people more sensitive towards the issue.

1.1 International institutes in the area are

1. ICJ- International Court of Justice

Gulf of Marine Canada v. US ^[3]

ICJ applied sovereignty principle of equity to create boundaries and relied upon “tradition of friendly fruitful cooperation” between both states to take care of environmental ramifications.

Jen Mayer Denmark v. Norway ^[4]

Held the environmental factors were crucial and should be an integral part of the concern for equity between states.

Nuclear weapons Advisory opinion ^[5]

ICJ examined the humanitarian law, human rights law, the law of armed conflict and international environmental law and concluded that environmental considerations constitute one of the elements to be taken into account in the implementation of principles of law in armed conflict.

2. ITLOS- International Tribunal for Law of Sea

UNCLOS provides fora legal order for the sea and oceans which will promote.....the equitable and efficient utilization of their resources the conservation of their living resources and the

study”.^[6] It also provides for the maximum sustainable yield ^[7] and common heritage of mankind.^[8] *Southern*

Blue fin Tuna Australia, NZ v. Japan ^[9]

ITLO required parties to act with prudence and caution to ensure effective conservation.

3. WTO agreement

It suggests-

“The parties recognize that their relations in the field of trade and economic endeavor should be conducted with a view to raising the standards of living & expanding the production of and trade in goods and services while allowing for the optimal use of the world’s resources in allowing for the objective of sustainable development.”¹⁰ *Tuna Dolphin-I Mexico v. US* ^[11]

The US cited protection of the life of dolphins as an exhaustible resource. GATT Panel intended that Article XX was only intended to allow contracting parties to impose trade restrictive measures to the extent that such inconsistencies were unavoidable.

2. EMERGING PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW

As a result of international and national judicial interventions, many principles have evolved potentially applicable to all member nations of the international community in respect of protection of all aspects of the environment. Some of them are:

1. Sovereignty over natural resources- States has been allowed by the principle of sovereignty to conduct/ authorize such activities as they choose including activities which may have adverse effects on their own environment.^[12] This principle has been reaffirmed in *Stockholm*^[13] and Rio Declaration ^[14] provided it does not cause any harm to the environment of other states.
2. The principle of Sustainable Development –This concept developed in the 1980s only. The term was first coined 1987 Brundtland Report which defined it as- “development that meets the needs of the present without compromising the ability of future generations to meet their own needs. ^[15] This principle was first recognized by Earth Summit in 1992 held in Rio. Rio Summit was a milestone in setting a new agenda for sustainable development.
3. The principle of Preventive Action- This principle requires action to be taken possibly before damage has actually occurred. This has been endorsed in the various international and national laws in the form of setting environmental standards, access to environmental information and Environmental Impact Assessment.
4. Precautionary Principle- In case of scientific uncertainty i.e. where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation. ^[16] This principle has been adopted in various international legal instruments since 1989.
5. Polluter Pays Principle – The first international organization to refer this principle was OECD. ^[17] It is the requirement that cost of pollution should be borne by the person who is responsible for causing pollution and its consequential costs. The scene behind this is to force the polluters to internalize all the environmental costs of their activities so that these are reflected in the cost of goods and services they provide. Codification of this principle in Article 16 of Rio Declaration 1992 has given it a strong and effective position.^[18]
5. The principle of common but differentiated Responsibility- Principle 7 of Rio Declaration states for this.^[19] This principle concerns for the common responsibility of states for the protection of the environment and to take account of differing circumstances in relation to states contribution to an environmental problem and ability to prevent, reduce or control the threat.

2.1 International legal Instruments, treaties for Environment Conservation

International legal Instruments have played a vital role in fostering environmental law, environmental conservation, and sustainable development. A number of treaties have been signed in order to achieve it. Some important ones are-

1. Stockholm Declaration 1972
2. Rio declaration
3. Agenda 21
4. Earth Summit
5. Convention on Biological Diversity
6. Convention to combat desertification
7. Convention on persistent organic pollutants (POPs) 2002
8. Prior Informed Consent (PIC), Rotterdam Convention, 2005
9. Cartagena Protocol on Biosafety, 2003
10. Basel convention on control of Transboundary Movements of Hazardous Wastes
11. Kyoto Protocol on Climate change
12. Intergovernmental Panel on climate change (IPCC)
13. Convention on International Trade in endangered species of wild fauna and flora (CITES)
14. World Trade Agreement
15. Helsinki protocol
16. Sofia Protocol (NOX Protocol)
17. Geneva Protocol (VOC's Protocol)
18. UN Conference on Human Environment
19. UN Conference on Environment and Development (UNCED)
20. Framework convention on climate change (FCCC)
21. Convention Secretariats of the UNEP
22. Malmo Declaration,2000
23. Johannesburg Declaration,2002
24. UN Convention on Law of the Sea, 1982
25. Montreal Declaration on Depletion of Ozone layer,1992

3. ENVIRONMENTAL JURISPRUDENCE IN INDIA

The legislative and executive support has been marked able since three decades in India in the field of environmental Jurisprudence. Many leads have been initiated by the legislators in this field in the form of various Acts and laws, simultaneously; innovative judicial thinking has provided a qualitative as well as quantitative approach to deal with the issue. Apart from these all efforts, the basic sense of environment protection is intrinsic in our ancient texts. At the international level, it is a concept, not more than a century old, but in Hinduism, it was included in the ancient texts. Here we have five cardinal elements in nature- the Earth, Water, Air, Light and The Cosmos and they are worshiped too. Various beliefs are also prevalent according to family and customs. In Hindu homes, Peepal tree is worshipped. Women desirous of a son worship coconut tree and eat its fruit as a divine gift.

Our Vedas are ancient compilations. They all mention about environmental conservation and ecological; balance. Rigveda especially mentions about environment and its protection at several places-

A verse from RV states- *'the 'sky is like father... ..'.*^[20]

Another verse of RV states about the importance of planting trees. Vedas and ancient texts emphasize that plants and trees are jewels for generations.

"Environment provides bliss to people leading their life perfectly. Rivers bliss us with sacred water and provide health, night, morning, vegetation. Sun bliss us with peaceful life. Our cows provide us milk."^[21]

"Do not cut trees, because they remove pollution"^[22]

Atharvaveda also mentions about the importance of air, water and green plants. In those days pollution concept was not known yet poisoning was referred.

"Plants and herbs destroy poison."^[23]

"Purity of environment checks poisoning."^[24]

"It was prohibited to cut Vat Vrakshsha as Gods live in this tree and no disease where this tree is planted."^[25] *"Aushadhi Sukta of RV addresses plant and vegetation as a mother."*^[26]

Importance was given to mountains as they cause rain and give fresh air due to plenty of vegetation and it was considered better to live in mountains than villages.^[27] They also provide medicines.^[28]

Yajurveda also provides various texts and references about animals and plant conservation and cons of cutting trees.

It also discusses ecological balance and ecology.

"No person should kill animals helpful to all"^[29]

"O' King you should never kill animals like bullocks."^[30]

"Oceans are treasures of wealth protect them."^[31]

"Do not poison the water and do not cut or harm the tree."^[32] *"Do not disturb the sky and do not poison the atmosphere."*^[33]

"Vedic texts lay emphasis on prevention and protection of birds, animals that they should be safe, protected and healthy."^[34]

Our ancient rich texts provide a scientific study to the environment and tend to promote and make the environment a better place for the survival of all animals, humans as well as plants. *"The herbs and plants having union with Sun rays provide a congenial atmosphere for the life to survive."*^[35]

Destruction of forests is taken as the destruction of State and reforestation an act of rebuilding State and advancing its welfare. Protection of animals is considered as a sacred duty.^[36]

Apart from Vedas, Purans and Upanishads also have rich texts relating to the environment, its components and their protection.

Bhahdaranyaka Upanishad relates trees with humans. *"Just like a tree, prince of the forest, so the man is in truth."*^[37] *Taittiriya Upanishad*^[38] recites norms for clean and pure water that one should not pass urine and stool in water, not to spit in water and not take bath in water without clothes.

Divine is described as- *"Fire is the head, his eyes are the moon and the Sun, regions of space are ears, the voice is revealed, Veda. The Wind is his breath, his heart is entire Universe, Earth is his foot, and truly he is the inner soul of all."*^[39]

Varah Purana^[40] states that "one who plants a Peepal, one Neem, one Banyan, two pomegranates, five mango trees and ten flowering plants or creepers shall never go to hell." *Matasya Puran* mentions about *Vanmahotsav*. *"Cutting of trees is an offense punishable in hell."*^[41]

"A person who is engaged in killing creatures, polluting wells, ponds, tanks, destroying gardens, certainly goes to hell."^[42]

"O' Wicked man, if you kill a bird then you are bathing in a river, pilgrimage, worship, and yagnas all are useless."^[43]

In various texts importance was given to various trees as basil, peepal, neem etc.

"Inhabitants of a house having sacred Basil are fortunate."^[44]

"Yama do not enter a house where sacred basil is worshipped daily."^[45] *"Plantation of trees and gardens is a way to remove sin."*^[46] *"Cutting of green trees is an offense punishable in hell."*^[47]

This enriched ancient legacy of environmental protection, preservation and conservation have been carried further by judicial activism played by Hon'ble Supreme Court of India. Supreme Court has contributed to environmental jurisprudence through a wide approach, permitted by Constitution of India under its various articles.

4. ENVIRONMENTAL PROTECTION AND INDIAN CONSTITUTION

Various and numerous provisions are enshrined in our Constitution in order to prevent and protect the environment. It is a Fundamental Right as well as a duty has also been cast upon the persons to preserve and conserve it. Article 21,32 and 226 are available to us in the forms of fundamental Rights (Part III).

"No person shall be deprived of his life or personal liberty except according to procedure established by law."^[48] Hon'ble SC through its various decisions have laid down that right to pollution free environment is our fundamental right. Apart from this Art.32 and 226 are available as constitutional remedies to enforce our fundamental rights against State.

These have been invoked many times to achieve justice in the field of environmental jurisprudence.

Art. 47, 48A and 49 of Directive Principles of State Policy also provide a guideline to the State to prevent and preserve the environment.

“The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.”^[49]

“It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, [declared by or under law made by Parliament] to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.”^[50]

A duty has also been cast upon the persons to look after and take steps towards the well-being of the environment. *“To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.”^[51]*

Many Laws and Acts have been passed by our legislature in order to safeguard the environment casting duties upon individuals and corporate even for the sake of environment protection. Some Prominent examples are-

4.1 Central and state acts for the protection of the environment are:

Central Acts	State Acts
The Shore Nuisance (Bombay and Cobalt) Act, 1853 The Orient Gas Company Act, 1857 The Indian Penal Code, 1860 The Police Act, 1861 The Cattle Trespass Act, 1871 The Northern Indian Canal and Drainage Act, 1873 The Obstruction in Fairways Act, 1881 The Indian Easements Act, 1882 The Indian Forest Act, 1897 The Indian Fisheries Act, 1897 The Explosive Act, 1908 The Indian Port Act, 1908 The Indian Steam Vessels Act, 1917 The Poison Act 1919 The Indian Boilers Act, 1923 The Indian Forest Act, 1927 The Petroleum Act, 1934 The Inflammable Substances Act, 1942 The Mines and Minerals (Regulation and Development) Act, 1947 The Factories Act, 1948 The Atomic Energy Act, 1969 The Merchant Shipping (Amendment) Act The Radiation Protection Rules, 1971 The Wildlife (Protection) Act, 1972 The Code of Criminal Procedure, 1973 The Water (Prevention and Control of Pollution) Act, 1974 The Water (Prevention and Control of Pollution) Rules, 1975 The Territorial Waters and Maritime Zone Act, 1976 The Water (Prevention and Control of Pollution) Cess Act, 1977 The Water (Prevention and Control of Pollution Amendment) Act, 1978 The Indian Forest Act, 1978 The Water Supply and Swage Corporation Act, 1979 The Forest Conservation Act, 1980 The Air (Prevention and Control of Pollution) Act, 1981 The Water (Prevention and Control of Pollution) Amendment Act, 1983 The Merchant Shipping (Amendment) Act, 1983	Orissa River Pollution Prevention Act, 1953 Maharashtra Prevention of Water Pollution, 1969 The Bengal Smoke Nuisance Act, 1905 The Bombay Smoke Nuisance Act, 1912 The Gujarat Smoke Nuisance Act, 1963 The Mysore Destructive Insects and Pests Act, 1917 The Andhra Pradesh Agricultural Pests and Disease Act, 1919 The Assam Agricultural Pests and Disease Act, 1954 The U.P. Agricultural Disease and Pests Act, 1954 The Kerala Agricultural Pests and Disease Act, 1958 The Andhra Pradesh Improvement Scheme Act, 1949 The Acquisition of Land and Flood Control and Prevention of Erosion Act, 1955 The Delhi Restriction of Uses of Land Act, 1964 The Bihar Waste Lands (Reclamation, Cultivation and Improvement) Act, 1974

The Environment (Protection) Act, 1986		
The Environment (Protection) Rules, 1986		
The Air (Prevention and Control of Pollution) Amendment Act, 1987		
The Motor Vehicles Act, 1988		
The Public Liability Insurance Act, 1991		
The National Environment Tribunal Act, 1995		
The National Environment Appellate Authority Act, 1997		
The Wild Life (Protection) Amendment Act,		

2002

The Biodiversity Act 2002

The Water (Prevention and Control of Pollution)

Cess (Amendment) Act, 2003

5. JUDICIAL ACTIVISM IN THE FIELD OF ENVIRONMENT PROTECTION-

Our judiciary by passing various remarkable judgments and elucidating various principles has deeply and actively involved in achieving the targets of environmental Jurisprudence.

Involvement of judiciary in India with environment began with the relaxation of the rule of '*Locus Standi*.'^[52]

Apart from this many innovative and bold steps have been taken by the judiciary while working in the field of environmental jurisprudence like- taking suo mottu actions, expanding the meaning of existing legal and constitutional provisions, applying international principles to domestic environmental problems, appointing expert committees in various cases, making spot visits etc.

One such important case in this field is Dehradun Limestone Quarrying Case.^[53] It was followed by Ganga Water Pollution Case^[54], Delhi vehicular Pollution case^[55], Oleum Gas leak case^[56], Tehri Dam Case^[57], Narmada Dam Case^[58], Coastal Management Case^[59], Industrial Pollution in Patancheru^[60] and Tamil Nadu Godavaram Case^[61]. These cases were initiated by NGOs and environmental activists.

In *Ratlam Municipality Case*^[62] SC upheld the decision of Sub Divisional Magistrate and expressed in spite of wasting time and resources in rushing from lower to higher courts, they would solve the grievances of the public. Courts dependence on the expert committee has been a part of jurisprudence irrespective of the nature of cases. In a classic example of Doon Valley Case- Relying on committee report committee headed by D.N. Bhargava certain mining operations were closed immediately.

In *S. Jagganath v. UOI*^[63], intensive and semi intensive aquaculture was declared to be harmful to the environment on the basis of studies by Central Pollution Control Board and committee at national and international level.

In some cases, committee reports and finding have been overruled also. In *Dahanu Taluka Environment Protection group and ors. V. Bombay Surburn Electricity Supply Co. Ltd. & ors.*^[64] courts did not follow the report of appraisal committee which had an opinion that Dhanau is not a suitable location for construction of thermal power plants it violates environment guidelines.

In *Taj Trapezium Case*- Court relied upon NEERI^[65] report, ordered closure and relocation of many small scale industries and units.

SC in in numerous decisions has widely interpreted Art. 21 of Constitution of India and has strengthened environmental jurisprudence as well as human rights approach jurisprudence.^[66]

SC has through imparting judgment in various environmental cases has evolved and has acted upon the various principles laid down by the international community.

The Polluter Pay Principle has been recognized as a fundamental objective of government policy to prevent and control pollution.^[67] It has been held that awarding exemplary damages would not extend to the levy of a pollution fine.^[68]

In *Narmada Bachao Andolan v. UOI*^[69] sustainable development was defined and explained by SC as what type or extent of development can take place which can be sustained by nature or ecology with or without mitigation.

Even in *Taj Trapezium Case*^[70] and *State of H.P. v. Ganesh Wood Products*^[71] SC recognized the principle of inter-generational equity.

The doctrine of Absolute Liability without any exception replaced the rule in *Ryland v. Fletcher*^[72] in the famous case of *Union Carbide Corporation v. UOI*.^[73]

In *Vellore Citizens Forum Case*^[74] three rules of Precautionary principle were evolved-

1. Environmental measures must anticipate, prevent and attack the cause of environmental degradation.
2. Lack of scientific certainty should not be used as a reason for postponing measure, and,
3. The onus of proof is on the actor to show that his action is benign.

CONCLUSION

Therefore, right from the beginning, Hinduism has been an environmentally sensitive and friendly philosophy. Much emphasis is laid on the conservation of nature and protection of the environment, be it, the water bodies, nature, skies, flora or fauna. Presently various Acts d laws have been enacted for the sake of environment and its protection and various principles have evolved by the active judiciary casting an obligation upon the persons to save, protect and conserve environment, but about 3000 years ago sages recited the following verse-

ॐ द्यौः शान्ति रतिरक्षँशान्तिः

पथिवीं शान्ति रापः शान्तिरोषधयः शान्तिः।

वनस्पियः शान्ति विश्वेदेवाःशान्ति बृहिशान्तिः

सर्वशान्तिः शान्तिरेवशान्तिः सा मा शान्तिरेथध॥

ॐ शान्तिः शान्तिः शान्तिः॥^[75]

In the present and modern times in line with the international approach and moving forward SC's innovations for environmental jurisprudence reveals that by using the innovative methods, the courts have certainly deviated from the traditional boundaries and adjudicating functions of the courts. The environmental jurisprudence is expanded enough through the setting of committees, laying down principles and by creative and innovative thinking of judges. Yet, there is a long way to go for the masses as well as for the courts to expanding the horizons and keeping people's faith in courts attempts.

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