

**HOLISTIC ANALYSIS OF 'ENVIRONMENTAL ISSUES'  
FROM CRIMINAL LAW, LAW OF TORT AND  
CONSTITUTIONAL LAW PERSPECTIVE**

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**ABSTRACT**

*The concerns of 'Environmental Issues' has been in existence since the evolution of mankind. The 'Anthropocentric' approach has evolved with the passage of time into that of a 'citizen-centric' and 'eco-centric' approach, where a harmonious construction of balancing the divergent views of 'economic development' and 'environmental conservation' has to be seen in a holistic manner. Looking from the prism of Legal Environmental Jurisprudence involves quintessential checks and balances as the extant provisions are tested on the touchstone of Constitution of India and providing primacy to the 'public interest' and 'public welfare', which are construed to be paramount importance. The instant paper is to analyse the varied facets of environmental law from the perspective of inter alia Criminal Law, Law of Torts and Constitutional Law. The analysis is based on catena of cases surfacing before the Hon'ble Courts of Law in the country, basing the reliance on the ratio decidendi in the form of Judicial Precedents, which has helped to understand the interpretation of law with the passage of time. Pertinently, the instant paper tries to address the judicial remedies available to common man to seek remedy, basing on the extant provisions in Code of Criminal Procedure 1973, Law of Tort in civil cases, Statutory provisions in Acts or via 'Writ Petitions' as per Constitutional Law as may be warranted based on facts and circumstances in the cases involved.*

**KEYWORDS:** *Environmental Laws; Law of Tort, Criminal Law, Constitution of India, Environmental Resources.*

**1. INTRODUCTION**

The concept of environment is intrinsically linked to the very existence of mankind and has been linked to the cultural, social, political, technological, historical and economical background of the country since time immemorial. The dichotomy of 'environmental development' has to be seen harmoniously with 'economic development', whereby the development is seen to be in harmony and in synergy with environmental considerations. The concept of 'Anthropocentric' to 'eco-centric' approach is a constant endeavour in the realm of environment.

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The concerns of environment are multi-faceted and yet at the same time has dimensions related to *inter alia* ‘concerns of investment’, ‘institutional eco-centric responsibility’, ‘technological development’, ‘ecological restoration’, ‘rehabilitation of indigenous populace’. It is pertinent to note that the concept of ‘sustainable development’ in this context is not restricted to sustainability of the environment and utilisation of the resources in the environ, but rather beyond and includes in its ambit ‘sustainability of economic and social systems’. The economic concerns of ‘poverty’, ‘mismanagement of resources’, ‘contradictions between policies and its implementation’, ‘huge distortions in development’, has to be seen in context of resolving the issues of development with an eye for ‘sustainable’ environmental growth and progress.

## **2. MISMANAGEMENT OF ‘ENVIRONMENTAL RESOURCES’**

Mismanagement of resources leads to poor yield in productivity, threatening agricultural growth in a region and eventually having its effect on creating scenarios of famines, which affects the population of region. This mismanagement may be a result of poor planning, coordination, inadequate utilisation of scientific and technological advancement, calling into question the effective and efficacious utilisation of resources. Poor land management is another facet which may be disrupting the supply chain networks. High cost of energy and electricity charges, lack of storage and warehousing facilities, improper utilisation of scientific know-how, erratic climatic conditions leading to excessive rainfall, poor utilisation of traditional knowledge with disruptive water cycles in a region are some of the concerns which have to be addressed in an emergent fashion, which could result in desert and drought like condition. Improper forecasting and prediction of climatic conditions has to be addressed in a scientific manner with proper technology backed methods. Judicious decision of management of resources is an inclusive and holistic concerted efforts towards better resource management with an eye for inter-generational and intra-generational concerns.

## **3. CONSTITUTIONAL DIMENSION**

Article 48A<sup>1</sup> and 51(A)(g)<sup>2</sup> of the Constitution of India<sup>3</sup> in the form of Directive Principles of State Policy and Fundamental Duties enunciated, imposes a responsibility on State as well on individual for environmental protection. The 42<sup>nd</sup> Amendment in the Constitution enabled ‘Forests’ and ‘Wildlife’ to be

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<sup>1</sup> The Constitution of India, 1950, art. 48A.

<sup>2</sup> Ibid., art. 51(A)(g)

<sup>3</sup> The Constitution of India, 1950

transferred from State List to Concurrent List. The changes in the 7<sup>th</sup> Schedule of Constitution, helped the law makers to consider Environmental Issues and to bring to lime light the concerns pertaining to environmental protection into the national agenda. A comprehensive and a holistic interpretation of environment, seeing from the prism of Parliamentary Debates in 1976, it becomes imperative to understand that the wordings of the aforementioned Articles are 'wide' enough. This helped in bringing in its ambit the wider responsibility of the state and an individual to 'protect and improve' the quality of environment as an 'affirmative' governmental action. In catena of judgments surfacing before the Hon'ble Courts of Law, the Directive Principles<sup>4</sup> was increasingly being cited as complementary and a harmonious synergetic approach to the fundamental rights. In *D.V. Vyas v. Ghaziabad Development Authority*<sup>5</sup>, the Hon'ble Allahabad High Court held that, "failure to develop public parks which are earmarked in development plan amounts to failure in discharging its responsibility in the ambit of Article 51A of Constitution of India". The Hon'ble Court further pronounced that, "parks are the lungs of human beings and it is the verdant cover provided by the public parks and green belts in towns which renders considerable relief to the public..."<sup>6</sup> It is pertinent to note that aforesaid Article<sup>7</sup> does not impose any obligation on 'non-citizens' and the expression 'natural environment' has a restrictive interpretation to only forests, lakes, wildlife and rivers and excludes many other areas of pollution such as 'noise', 'light', 'radioactive and hazardous wastes' among others. In another instance of *L.K. Koolwal v. State of Rajasthan*<sup>8</sup>, a writ petition filed in Hon'ble Rajasthan High Court, held that, "Municipal authorities should provide adequate sanitation as it gave the administration six months' time for cleaning the entire city..." In the same case<sup>9</sup>, citing the extant provision in the touchstone of Constitution of India, the Hon'ble Court observed that, "every citizen has a constitutional duty to protect the environment as per the fundamental duties enumerated in Article 51A..." Right to Environment has the dimension of fundamental right enunciated in Article 21<sup>10</sup> as 'right to wholesome environment'. The highest Constitutional Apex Court, the Hon'ble Supreme Court of India has held in catena of cases that, "the right to life and personal liberty does encompass the right to a wholesome environment". Interpreting Article 21 in *Ganga Pollution (Tanneries) Case*<sup>11</sup> Hon'ble Justice K.N. Singh did

<sup>4</sup> *Supra* Note 1, art. 36-51

<sup>5</sup> *D.V. Vyas v. Ghaziabad Development Authority* AIR 1993 All. 57

<sup>6</sup> *Ibid.*

<sup>7</sup> *Supra* Note 2

<sup>8</sup> *L.K. Koolwal v. State of Rajasthan* AIR 1988 Raj. 2

<sup>9</sup> *Ibid.*

<sup>10</sup> *Supra* Note 1, art.21

<sup>11</sup> *M.C. Mehta v Union of India*, AIR 1988 SC 1037

make vital points in the judgment as it was observed that, “Though closure of tanneries may bring unemployment, loss of revenue; however, life, health and ecology have greater importance to the people...” In *Attakoya Thangal v. Union of India*<sup>12</sup>, the Hon’ble Kerala High Court observed that, “the right to sweet water and the right to free air, are attributes of the right to life, for, these are the basic elements which sustain life itself...” In *V. Lakshmi pathy v State*<sup>13</sup>, the Hon’ble Karnataka High Court held that, “entitlement to a clean environment is one of the recognised basic human rights...” In *Sachidananda Pandey v State of West Bengal*<sup>14</sup>, the issue which surfaced before the Hon’ble Supreme Court of India was, “whether the Court should interfere on construction of Hotel, in the hubbubs of main arterial road of Belvedere Road, near to a Zoological Garden and at the expense of zoo...” It was held by the Apex Court in the instant case<sup>15</sup> that, “Whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Article 48A of the Constitution and Article 51-A(g) ... When the Court is called upon to give effect to the Directive Principles and the Fundamental Duty, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority. The least that the court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the court may go further, but how much further must depend on the circumstances of the case...”

#### 4. CRIMINAL LAW AND ENVIRONMENT

It is pertinent to note that Section 133 of procedural law<sup>16</sup> provides for “speedy and summary remedy” to address the offences pertaining to ‘public nuisance’. In this context, the extant statutory provisions provide for “District Magistrate or Sub-Divisional Magistrate or an Executive Magistrate, who is empowered in this behalf, could pass an order on receiving report of a police officer or on information including complaint made before it by a citizen and on taking evidence as it may deem fit...” The ‘*Mens Rea*’ component in criminal offences is a difficult element to ascribe to a polluter. Sometimes, it is not easy task to attribute the responsibility on a ‘specific person’ or an ‘entity’.

In *Gobind Singh v. Shanti Sarup*<sup>17</sup>, the facts involved in the case included, “application filed under Section 133 of Cr. P.C<sup>18</sup> with the complaint that a baker

<sup>12</sup> *Attakoya Thangal v. Union of India* AIR 1990 KLT 580

<sup>13</sup> *V. Lakshmi pathy v State* AIR 1992 Kant. 57

<sup>14</sup> *Sachidananda Pandey v State of West Bengal* AIR 1987 SC 1109

<sup>15</sup> *Ibid*

<sup>16</sup> The Code of Criminal Procedure, 1973

<sup>17</sup> *Gobind Singh v. Shanti Sarup* AIR 1979 SC 143

<sup>18</sup> *Supra* Note 17

had constructed an oven and a chimney which created 'public nuisance', it was held that the evidence disclosed averred to the fact that the smokes emitted by the chimney was injurious to the health and physical comfort of the people living in close proximity of the bakery..." The Hon'ble Court went on to observe that, "the matter of this nature is not merely the right of a private individual but the health, safety and convenience of the public at large..." and though the Apex Court allowed the appellant to practice trade but directed him to demolish the oven and the chimney. In another case of *Ratlam Municipality v. Vardhichand*<sup>19</sup>, it was seminal as the Hon'ble Apex Court, the Supreme Court of India for the first time looked at environmental problem from a contrasting prism. It held while interpreting Section 133<sup>20</sup> that, "it is a mandatory duty on a magistrate to remove a public nuisance whenever one exists..." It is pertinent to note that the judgment in the instant case also related the provisions of basic public health facilities to not only human rights issues but also to directive principles as enunciated in the Constitution. The decision of the Apex Court had a ramification on various facets of constitutional dimensions, including on social justice, environmental protection and public health, among others. In *Smt. Ajeet Mehta v. State of Rajasthan*<sup>21</sup>, the Hon'ble Rajasthan High Court held that, "Public health cannot be allowed to suffer on account of personal business of any individual..." In *Madhavi v. Thilakan*<sup>22</sup>, as the petitioner complained about the nuisance caused by an adjacent automobile workshop near to his house, the Hon'ble Court held that removal of the workshop is warranted as it said, "it is recognised that every man considers his home as a castle which cannot be invade by toxic fumes or tormenting sounds..." Further, the importance of public health has been prominently highlighted by Hon'ble Supreme Court of India in *Vincent Panikurlangara v Union of India*<sup>23</sup>.

## 5. LAW OF TORT AND ENVIRONMENT

In India, as per Section 268 of IPC<sup>24</sup>, Public Nuisance is considered a crime, whereas Private Nuisance is a tort or civil wrong. A Public nuisance can be defined as unreasonable interference with a right common to general public, for example, obstructing a public way by digging a trench or carrying on trade which causes offensive smells or intolerable noises.

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<sup>19</sup> *Ratlam Municipality v. Vardhichand* AIR 1980 SC 1623

<sup>20</sup> *Supra* Note 17, s.133

<sup>21</sup> *Smt. Ajeet Mehta v. State of Rajasthan* 1990 CrLJ 1956

<sup>22</sup> *Madhavi v Thilakan* (1989) CrLJ 499

<sup>23</sup> *Vincent Panikurlangara v Union of India* AIR 1987 SC 990

<sup>24</sup> The Indian Penal Code, 1860

In the sphere of Public Nuisance, reliance is placed on the case, *Dr Ram Raj Singh v Babulal*<sup>25</sup> in which, “the defendant erected a brick grinding machine beside the premises of the plaintiff, who was a doctor. The dust generated by the machine entered the plaintiff’s chamber and caused physical inconvenience to him and his patients. It was held by the Court that it was fit case to consider compensating the damages caused to the plaintiff...” In order that an individual may have a private right of action in respect of public nuisance, it is vital to note that, “*firstly*, it has to be shown by the individual that he/she has suffered a particular injury beyond that which is suffered by the rest of the public; *secondly*, such injury has to be direct and not mere consequential injury and *thirdly*, Injury has to be of substantive character”.

Two effectual defences to Nuisance include that of ‘Statutory Authority’ and ‘Prescription’. The ‘Statutory Authority’ includes acts done under the authority of a statute is complete defence, as seen in the case, *Manchester Corporation v. Farnworth*<sup>26</sup>, where a nuisance is the inevitable result of carrying out the functions authorised by Parliament. In this context with regards to ‘Prescription’, the ‘Nuisance’ is legalised ab-initio by elapse of 20 years, if the right in context, including that of the right to support, is enjoyed openly and peacefully, without being opposed. The disturbance of easements like those of way or light, the right to support are seen in this context. In such instances and cases, for future no cause of action could exist. In *Dhannalal And Anr. vs Thakur Chittarsingh Mehtapsingh*<sup>27</sup>, there was case of “perpetual injunction restraining the defendants from running a flour-mill close to the house of the plaintiff-respondent. The Plaintiff’s house was at a distance of 8 or 9 feet from the flour-mill and smoke, vibrations and the noise of the mill interfered with plaintiff’s physical comforts, the Hon’ble Court held owner or the occupier is entitled to be protected from it by means of an injunction...” The Court also delved on the distinction between private and criminal offence, held that, “as such public nuisance is of a nature of a criminal offence; the same cannot be said of a private nuisance...”

## 6. CONCLUSION

Environmental issues pertinently require a comprehensive and a holistic awareness to all the stakeholders in the ecosystem, where the grassroot participatory approach would play a quintessential role. Looking at the environmental issues from the prism of Public and Private Nuisance is one of the facets of this entire exercise, the need of the hour is to have an inclusive approach

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<sup>25</sup> *Dr Ram Raj Singh v Babulal* (AIR 1982 All. 285)

<sup>26</sup> *Manchester Corporation v. Farnworth*, (1930) A.C. 171 (183)

<sup>27</sup> *Dhannalal And Anr. vs Thakur Chittarsingh Mehtapsingh* AIR 1959 MP 240

where the legal framework has to be harmoniously and synergistically dovetailed to the solutions which are potent and at the same time, involves 'change of mindset' particularly among youth. Awareness should be self-driven and adherence to the tenets of the legal environmental principles have to be a conscious decision imbibed within the fabric of social and cultural ethos of the younger generation for its long term sustainability. To conclude, from the principles and tenets which has evolved via the application and the interpretation of Constitutional Law, it is pertinent to aver to the fact that 'Writ petitions' are preferred over conventional suits as it is speedier and offer accessibility to highest courts of the law of the land, however it is seen in catena of cases that the Constitutional Courts of the country have declined to exercise the jurisdiction in cases where no fundamental rights violation is inferred *prima facie*, if an equally effective remedy was available and it has not been used, as such the rule of 'exhaustion of the remedies' could be waived only when it violates the principles of natural justice or if the authority has exceeded its jurisdiction. A wider interpretation of '*locus standi*' where the Hon'ble Supreme Court has enabled the poor and the oppressed to be represented by volunteers, which is commonly known as '*representative standing*' has to be seen as a 'Win-Win' scenario for the stakeholder in the ecosystem for meeting the ends of justice based on doctrine of *justice, equity and good conscience*.