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TORT LAW AND ENVIROMENTAL PROTECTION IN INDIA

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ABSTRACT:

The environment is the natural surroundings which help life to grow, nourish and destroy on this planet called earth. Natural environment plays a great role in the existence of life on earth and it helps human beings, animals and other living things to grow and develop naturally. But due to some bad and selfish activities of human beings, our environment is getting affected. It is the most important topic that everyone must know how to protect our environment to keep it safe forever as well as ensure the nature's balance on this planet to continue the existence of life. A clean environment is very necessary to live a peaceful and healthy life. But our environment is getting dirty day by day because of some negligence of human beings. It is an issue which everyone must know about. In order of that negligence of human beings, there is a law to punish the said human beings.372 (1) of the Indian Constitution. The basic feature of tort is that it is a civil wrong and the Law of Torts deals with the remedy for infractions of private rights. Due to this characteristic of the law of torts, its role in the protection of the environment has always been in question. Tort law comes onto the scene when something has gone wrong. So in cases of environment, the tort law will play a role when there is environmental damage. It is much more concerned with cure rather than prevention. It is concerned primarily with reparation and not punishment. **Environment Protection Act (EPA)**-India's original Constitution did not contain any provision for the protection of the natural environment. However, the [Fundamental Duties](#), which were added by the 42nd Amendment to the Constitution, prescribed the protection of the environment including forests, lakes, rivers and wildlife as a duty of the citizens of the country. Tort law comes onto the scene when something has gone wrong. So in cases of environment, the tort law will play a role when there is environmental damage. It is much more concerned with cure rather than prevention. It is concerned primarily with reparation and not punishment.

Key Words: Natural environment, Indian Constitution, law of torts, Environment Protection Act (EPA), Fundamental Duties.

INTRODUCTION

Post 90's there is a tremendous and rapid growth witnessed by our country. In order to stimulate and sustain the growth wagon of the country, the government has in many ways overlooked the general mass at large. India employs a range of regulatory instruments to preserve and protect its natural resources. Across the country, government agencies wield vast power to regulate industry, mines and other polluter but are reluctant to use their power to discipline violators. There are over 200 central and State statutes which have at least some concern with environmental protection, either directly or indirectly. The plethora of such enactments has, unfortunately, not resulted in preventing environmental degradation which, on the contrary, has increased over the years. Tort law focuses on bad outcomes affecting persons (both human beings and corporations) and property^[1]. The term 'property' does not refer to the things, but to things that are subject to a legal regime. The earth's atmosphere, for instance, is not subject to any legal property regime and so is not within the scope of tort law. Tort law comes onto the scene when something has gone wrong. So in cases of environment, the tort law will play a role when there is environmental damage. It is much more concerned with cure rather than prevention. It is concerned primarily with reparation and not punishment. It is one of the remedy for environmental. The **Aims and Objectives of the Environment Protection Act.1986:**

1. Implementing the decisions made at the United Nations Conference on Human Environment held in Stockholm.
2. Creation of a government authority to regulate industry that can issue direct orders including closure orders.
3. Coordinating activities of different agencies that are operating under the existing laws.
4. Enacting regular laws for the protection of the environment.
5. Imposing punishments and penalties on those who endanger the environment, safety and health. For each failure or contravention, the punishment includes a prison term of up to five years or a fine of up to Rs. 1 lakh, or both. This can also be extended for up to seven years in cases.^[2]
6. Engaging in the sustainable development of the environment.
7. Attaining protection of the [right to life under Article 21](#) of the Constitution.

Environmental Law : Environmental law is also known as environmental and natural resources law. It is a collective term describing the group of treaties, statutes, regulations, common and customary laws addressing the effects of human activity on the natural environment. The core environmental law regimes address environmental pollution.

In the wake of the Bhopal gas tragedy, the Government of India enacted the Environment (Protection) Act, 1986. The laws that existed prior to the enactment of EPA essentially focused on specific pollution (such as air and water). The need for a single authority which could assume the lead role for environmental protection was answered through the enactment of EPA. It is in the form of umbrella legislation designed to provide a framework for the Central Government to coordinate the activities of various central and state authorities established under previous laws. It is also in the form of an enabling law, which delegates wide powers to the executive to enable bureaucrats to frame necessary rules and regulations.

According to Section 2(a) of the Environmental Protection Act, 1986, **Environment** includes

- a) Water, air, and land
- b) The inter-relationship which exists among and between
- c) water, air, land, and
- d) human beings, other living creatures, plants, microorganisms, and property^[3].

OBJECTIVES:

- To aware the surrounding people of the rapidly depleting natural resources and make them contribute to the conservation of the same.
- To make moral obligation to protect the environment and elevate the sustainable development of our planet for future generations.
- To aware Preservation, protection, restoration and improvement of the quality of the environment.
- To ensure the Protection of human life and health
- To ensure the Protection of biological diversity
- To make ensure Rational and sustainable utilization of natural resources

SIGNIFICANCE OF THE PAPER:

Not only there is scope for energy efficiency of “TORT LAW AND ENVIROMENTAL PROTECTION IN INDIA” itself but it can also help other sectors in becoming smart i.e., efficient social protection. The “TORT LAW AND ENVIROMENTAL PROTECTION IN INDIA” is equally aware of the potential benefits of social life in making the future systems greener and sustainable^[4]. The “TORT LAW AND ENVIROMENTAL PROTECTION IN INDIA” is used today in a number of ways for social, environmental protection purposes:

- Development of standardized methods to measure and analyse performance and effectiveness of “TORT LAW AND ENVIROMENTAL PROTECTION IN INDIA”.
- “TORT LAW AND ENVIROMENTAL PROTECTION IN INDIA” Communication helps for Speed / time, money can be saved because it's much quicker to move information around.
- Identification and development of new technologies to enable the interaction between citizens and local peoples.
- Personal factors of the respondents and extent of standardization and labeling of Utilization of “TORT LAW AND ENVIROMENTAL PROTECTION IN INDIA” in all aspects of life.
- Creation of informative platforms, easily accessible and usable by the common public to incentivize the behavior shift towards “TORT LAW AND ENVIROMENTAL PROTECTION IN INDIA”
- Monitoring of implementation and regular evaluation of policies and their impacts on utilization of “TORT LAW AND ENVIROMENTAL PROTECTION IN INDIA” for efficient management.

ROLE OF USE “TORT LAW AND ENVIROMENTAL PROTECTION IN INDIA”

Tort law aims to hold a tort accountable and consequently tort actions are brought directly by the aggrieved party in order to seek damages, whereas criminal law aims to punish and deter conduct deemed to be against the interests of society and criminal actions are thus brought by the state and penalties. Socio-legal research is an interdisciplinary field is being required and that combines the study of law with the social sciences, such as sociology, anthropology, and political science. There are two types of scales in socio-legal studies: (1) those concerned with social behaviour and personality, and (2) those used to measure certain other aspects of the cultural and social environment. Casteism, women's rights, communalism, economic disparity, religious intolerance, and poverty and hunger in particular continue to be social and legal problems in our wonderful nation^[5].

The act was passed with the following objectives:

1. To Improve the Quality of Environment:

Under this Act, the Central Government has the power to take all such measures as it deems necessary for the purpose of protecting and improving the quality of environment

2. Safe Limits:

The Act lays down standards for emission or discharge of environmental pollutants from various sources. Moreover, it restricts the areas in which any industry operations or processes or class of industries shall be carried out subject to certain safeguards only.

3. Handling of Hazardous Substances:

The Act was passed for the protection, regulation of the discharge of environmental pollutants and handling of hazardous substances^[6].

4. Prevention of Accidents:

The Act lays down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents and deterrent punishment to those who endanger the human environment, safety and health.

DIFFERENCE BETWEEN ENVIRONMENTAL LAW AND ENVIRONMENTAL TORTS:

- A) the key difference between environmental law and environmental torts is that regulation is perpetuated to protect general public health, while torts are brought in order to rectify damages caused to individual human beings.
- B) The difference between environmental law and environmental torts is in environmental law with respect to hazardous waste is that the burden of proof as to whether something caused something else is shifted. In torts, the plaintiff has the burden of showing that the action caused damages^[7].

REMEDIES UNDER TORT LA:

Tort law is based upon the principles “sic utere tuo ut alienum non laedas” means so use your property as not harm others. Although tort law does not deal directly with pollution control still one can spell out rules of pollution control and successfully apply them from the principles evolved out of certain aspects of the law. Majority of environment pollution cases of tort in India fall under four major categories:

- Nuisance,
- Trespass,
- Negligence
- Strict Liability.

❖ Nuisance:

It means anything which annoys, hurts or that which is offensive. Under the common law principle, the nuisance is concerned with unlawful interference with the person's right over whole of land or of some right over or in connection with it. But for an interference to be an 'actionable nuisance' the conduct of the defendant must be unreasonable.

Nuisance may be public or private in nature. Hence acts interfering with the comfort, health or safety are covered under nuisance. The interference may be due to smell, noise, fumes, gas, heat, smoke, germs, vibrations, etc. In the private nuisance, the basis of an action under nuisance is unreasonable and unnecessary inconvenience caused by the use of the defendant's land^[8].

❖ Trespass:

A public nuisance is an unreasonable interference with a right common to the general public, otherwise an act or omission which materially affects the reasonable comfort, convenience, health, safety and quality of life of a class of persons. The activities include carrying of trades causing offensive smells, intolerable noises, dust, vibrations, collection of filth that affects the health or habitability in a locality.

❖ Negligence

Negligence is another specific tort on which a common law action to prevent environmental pollution can be instituted. When there is a duty to take care and the same is not taken, which results in some harm to another person, it is amounted to negligence. In the action of negligence, the result is some kind of a loss, inconvenience or annoyance to another. The plaintiff must show

- a. The defendant was under a duty to take reasonable care to avoid the damage complained
- b. Breach of the duty
- c. Consequential damage which must have been factually caused by the breach of duty and must be reasonably foreseeable as a consequence of the breach.

The problem with cases of negligence is the difficulty in establishing casual the connection between the negligent act of one and injury to others. It is also very difficult and problematic to prove if the effect of the injury remains hidden for a long period.

MAIN PROVISIONS OF ENVIRONMENT PROTECTION ACT

The EPA empowers the Centre to “take all such measures as it deems necessary” in the domain of environmental protection.

- Under the law, it can coordinate and execute nationwide programmes and plans to further environmental protection.
- It can mandate environmental quality standards, particularly those concerning the emission or discharge of environmental pollutants.
- This law can impose restrictions on the location of industries.
- The law gives the government the power of entry for examination, testing of equipment and other purposes and power to analyse the sample of air, water, soil or any other substance from any place^[9].
- The EPA explicitly bars the discharge of environmental pollutants in excess of prescribed regulatory standards.
- There is also in place a specific provision for handling hazardous substances, which is prohibited unless in compliance with regulatory requirements.
- The Act empowers any person, apart from authorized government officers, to file a complaint in a court regarding any contravention of the provisions of the Act.

HEALTH IMPACTS:

Many residents have no choice but to drink contaminated well water as other clean water sources are more than a mile away. The Indian Medical Association reported that most of the drinking water supplies are contaminated, because of the absence of a proper system for disposing industrial effluents. This has resulted in very high incidences of respiratory diseases, chemical dermatitis, carcinoma, skin, lung and throat cancers. Women in the area report exceedingly high incidences of spontaneous abortions, bleeding during pregnancy, abnormal fetuses, and infertility. Children’s ailments include respiratory and skin diseases and retarded growth^[10].

ENVIRONMENTAL IMPACT OF INDUSTRIALIZATION:

Huge deposits of coal, proximity to Hirakud, one of the largest reservoir of the country has made in different regions of India and one of the most attractive and globally most competitive destination for mineral based industrialization. The region makes an ideal site for production of Iron & Steel, Thermal Power and Aluminium sector. Growth in this region has been phenomenal in recent items and likely to continue in a more accelerated manner for coming decade. The present iron and steel making capacity is likely to increase by 3.6 times (from 2.4 MTPA to 8.74 MTPA), Thermal Power by 24 times (from 849.5 MW to 20272.5 MW) and Aluminium by 9 times (from 3.5 LPTA to 31.6LPTA). It is unlikely that such fast paced growth would be sustained environmentally. In order to assess the risk and environmental damage in this region a brief desk study was made by State Pollution Control Board. Key features of the impact assessment study are presented below.

IMPACT ON AIR QUALITY

1. With the nature of industrial activity, suspended particulate matter (SPM), Sulphur Di-oxide (SO₂) and fluoride are the three critical parameters in air quality management needs a close watch. With the proposed industrialization plan SPM is likely to increase by 18 times, SO₂ by 13 times and fluoride by 9 times. High level of SPM and SO₂ will pose significant health risk by raising the incidents of pulmonary disease.^[11]

2. Of these gases fluoride which is emitted from the smelting process is the most potent to cause extensive damage to agriculture and forest. For example at the present capacity of 3.45 MTPA of NALCO emits about 40 kg/hr of fluoride, which causes at least one incident of crop damage in 2/3 years. In Jharsuguda region if all the proposed aluminium smelter capacities would be made operational the emission of fluoride will remain in the range of 250-360 kg/hr, and it would severely affect the agriculture more frequently and the forest around the smelters may even get wiped out permanently. Moreover fluoride bearing dust will get deposited on grass and likely to enter the human food chain through milk and drinking water.

LAW, JUDICIARY AND ENVIRONMENTAL GOVERNANCE NEED OF SEPARATE ENVIRONMENT COURTS IN INDIA

In *Subhash Kumar v. State of Bihar*[9], the Court observed that :“ *The right to live is a fundamental right under Article 21 of the Constitution, and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution...*”

The Supreme Court, in its interpretation of Article 21, has facilitated the emergence of an environmental jurisprudence in India, while also strengthening human rights jurisprudence. There are numerous decisions wherein the right to a clean environment, drinking water, a pollution-free atmosphere, etc. have been given the status of inalienable human rights and, therefore, fundamental rights of Indian citizens. In *M.K. Sharma v. Bharat Electric Employees Union*, the Court directed the Bharat Electric Company to comply with safety rules strictly to prevent hardship to the employees ensuing from harmful X-ray radiation. The Court did so under the ambit of Article 21, justifying the specific order on the reason that the radiation affected the life and liberty of the employees. In *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*, the Supreme Court based its five comprehensive interim orders on the judicial understanding that environmental rights were to be implied into the scope of Article 21. Thus, expanding the scope and ambit of Article 21 to cover in it the rights which are not expressly enumerated, the Supreme Court has interpreted the word “life” to cover in it “all aspects of life which go to make a man’s life meaningful, complete and worth living”. It will also cover his tradition, culture, heritage and health.

In *Vellore Citizens’ Welfare Forum v. Union of India*: the Supreme Court interpreted the Polluter Pays Principle as the absolute liability for harm to the environment extends not only to compensate the victims of the pollution but also the cost of restoring the environmental degradation. This principle of compensating the victim as well as the environment is laid down in sec. 3 of the National Environment Tribunal Act, 1995^[12].

Principle of New Burden of Proof:

The UN General Assembly Resolution of 1982 on World Charter for Nature established this principle. EC Law also demonstrates the shift in the burden in the case of use of drugs, pesticides, food products, additives, food stuffs etc. EC's new hazardous wastes lists 200 categories of listed wastes. In US, though the Supreme Court in Industrial Union Department AFL – CIU v. American Petroleum Institute, put the initial burden on the regulator, several American statutes have shifted the burden of proof. The WTO Appellate body has also applied this principle. Environmental Impact Assessment is intended to reduce the uncertainties attached to potential impacts of a project. In the Vellore Case, Kuldip Singh J observed as follows:

“The ‘onus of proof’ is on the actor or the developer/industrialist to show that his action is environmentally benign.”

RESEARCH METHODOLOGY

Research methodology refers to the way in which the research is to be conducted and how the data collection is to be progressed.

It typically involves a full breakdown of all the options that have been chosen, in order analyze consumers' awareness and market potentials. Also includes the procedures and techniques used to perform the research effectively to evaluate market for the emerging renewable energies among the domestic consumer.

CONCLUSION

The objective of EPA is to protect and improve the environment and environmental conditions. It also implements the decisions made at the UN Conference on Human Environment that was held in Stockholm in the year 1972. To take strict actions against all those who harm the environment. The powers vested to the Pollution Control Boards are not enough to prevent pollution. The Boards do not have power to punish the violators but can launch prosecution against them in the Courts which ultimately defeat the purpose and object of the Environmental Laws due to long delays in deciding the cases. Thus, it is imperatively necessary to give more powers to the Boards. If mere enactment of the law relating to the protection of the environment was to ensure a clean and pollution-free environment then India would, perhaps, be the least polluted country in the world. Along with environmental law, there are remedies for environment problems under the law of torts.

Despite existence of environmental policy, the constitutional mandate of environment protection, a flurry of legislation and administrative infrastructure of implementation, the problem of environmental pollution still remains a great cause of concern in our country. The future must be seen as a great challenge to be overcome by society as a whole, by evolving new means and mechanisms in tackling complex problems arising out of rapid Industrial advancement. The new means and mechanisms will introduce the greatest possible transparency and accountability in the functioning of the Government and modes and measures of enforcing laws effectively in dealing with offences against the environment which is the greatest wealth shared by all citizens.

If mere enactment of law relating to the protection of environment was to ensure a clean and pollution free environment then India would, perhaps, be the least polluted country in the world. The effectiveness of a law to protect environment and achieve sustainable development remains an unmet challenge. Taking cue from pattern of development in India and the UK, a workshop recently organized in the Indian capital dwelt on some of the pressing issues concerning the complex field of environmental governance^[13]. It is important to note here that the National Environmental Appellate Authority constituted under the National Environmental Appellate Authority Act, 1997, for the limited purpose of providing a forum to review the administrative decisions on Environment Impact Assessment, had very little work. It has to be noted that since the year 2000, no Judicial Member has been appointed.

So far as the National Environmental Tribunal Act, 1995 is concerned, the legislation has yet to be notified despite the expiry of eight years. Since it was enacted by Parliament, the Tribunal under the Act is yet to be constituted.

According to lawyer Sanjay Upadhyay environmental laws in India had come into being as a result of certain key triggers – disasters, political compulsions, international obligations and economic imperatives. For instance, the Indian government woke up to the need for a comprehensive legislation on environment protection only after the Bhopal Gas Tragedy in 1984. In 1986, it enacted The Environment (Protection) Act and several other subsidiary legislations with an objective of setting up a legislative, regulatory, and administrative mechanism in the country to fix culpability for violations and to ensure that such industrial accidents did not occur again. Yet, the failure to cleanup the toxic waste from the Union Carbide premises demonstrates a wide gap between the law(s) and the actual implementation on the ground. The problems are major, but this does not mean that they are hopeless. There are decades of experience in industrial nations in cleaning up the most toxic sites and as well as a handful of successful projects that are being implemented in the developing world. Blacksmith's website lists a number of such "Success Stories".

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