Environmental Rights and Principles

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The origin of Environmental Rights in Indian Jurisprudence

- Article 21: Right to Life
- Article 48 A: Duty of the State to Protect the Environment
- Article 51 A (g): Duty of the Citizen
- Article 142: ‘Complete Justice’
- Article 226 and Article 32: Writ of High Court and Supreme Court
‘Complete Justice’

"This [Supreme Court] Court's power under Article 142(1) to do 'complete justice' is entirely of different level and of a different quality. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court."

Applicability of Procedural Law

• “Though it cannot be said that for public interest litigation procedural laws do not apply but every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the court”

*Rural Entitlement and Litigation Kendra V. State of U.P 1989 Supp (1) SCC 504*
Bellary Mining Case

The Supreme Court should not lie entrapped within the confines of any of the relevant statutes. ......The mechanism provided by any of the statutes in question would be ineffective in dealing with the extraordinary situation that has arisen on account of large scale illegalities in the operation of mines....

Samaj Parivartan Samudaya Vs State of Karnataka (2013) 8 SCC 154
‘The Situation being extraordinary, the remedy, indeed, must be extraordinary’

Samaj Parivartan Samudaya Vs State of Karnataka (2013) 8 SCC 154
The arrest of Janardhan Reddy

The Petitioner: S.R Hiremath
Limitation of Judicial Review in Environmental Case

It is true that the High Court and Supreme Court have been taking up these and other complex environmental issues and deciding them. But, though they are judicial bodies, they do not have an independent statutory panel of environmental scientists to help and advise them on a permanent basis. They are prone to apply principles like the Wednesbury Principle and refuse to go into the merits.

186th Report of the Law Commissionn
Environmental Rights

Right to LIFE

Article 21

‘Life’ expanded: Clean Air, balanced ecosystem, water

Incorporation of International Environmental Principles as law of the land
Recent Example of expansion of ‘Right to Life’

....the concept of sound sleep has been associated with sound health which is inseparable facet of Article 21 of the Constitution”

Re; Ramlila Maidan; SUO MOTU WRIT PETITION (CRL.) NO. 122 OF 2011
It is believed that a person who is sleeping, is half dead. His mental faculties are in an inactive state. Sleep is an unconscious state or condition regularly and naturally assumed by man and other living beings during which the activity of the nervous system is almost or entirely suspended. It is the state of slumber and repose. It is a necessity and not a luxury. It is essential for optimal health and happiness as it directly affects the quality of the life of an individual when awake inducing his mental sharpness, emotional balance, creativity and vitality. Sleep is, therefore, a biological and essential ingredient of the basic necessities of life. If this sleep is disturbed, the mind gets disoriented and it disrupts the health cycle. If this disruption is brought about in odd hours preventing an individual from getting normal sleep, it also causes energy disbalance, indigestion and also affects cardiovascular health.
“An individual is entitled to sleep as comfortably and as freely as he breathes. Sleep is essential for a human being to maintain the delicate balance of health necessary for its very existence and survival. Sleep is, therefore, a fundamental and basic requirement without which the existence of life itself would be in peril. To disturb sleep, therefore, would amount to torture which is now accepted as a violation of human right. It would be similar to a third degree method which at times is sought to be justified as a necessary police action to extract the truth out of an accused involved in heinous and cold-blooded crimes. It is also a device adopted during warfare where prisoners of war and those involved in espionage are subjected to treatments depriving them of normal sleep.
Evolution of Environmental Principles

- Stockholm Phase [1972-1992]
- Climate Change Phase [2002 to present]
Initial Phase

- Stockholm Conference, 1972
- Sustainable Development, 1987
Our Common Future, prepared by the World Commission on Environment and Development, led by Gro Brundtland. The Brundtland Report defined sustainable development as meeting ‘the needs of the present without compromising the ability of future generations to meet their own needs’
Sustainable Development or Freedom?

The world has good reason to be grateful for the new prominence of this idea, yet it must be asked whether the conception of human beings implicit in it is sufficiently capacious. Certainly, people have ‘needs’, but they also have values, and, in particular, they cherish their ability to reason, appraise, act and participate. Seeing people in terms only of their needs may give us a rather meagre view of humanity.

http://www.lrb.co.uk/v26/n03/amartya-sen/why-we-should-preserve-the-spotted-owl
To use a medieval distinction, we are not only *patients*, whose needs demand attention, but also *agents*, whose freedom to decide what to value and how to pursue it can extend far beyond the fulfilment of our needs.

[http://www.lrb.co.uk/v26/n03/amartya-sen/why-we-should-preserve-the-spotted-owl](http://www.lrb.co.uk/v26/n03/amartya-sen/why-we-should-preserve-the-spotted-owl)
The Second Phase

• The introduction of International Environmental Law Principles
• Use of Article 32
• Continuing Mandamus
The Public Trust Doctrine

The Journey from Kamal Nath to Present

“Our legal system – based on English Common Law-includes the Public Trust Doctrine as part of its jurisprudence. The State is the Trustee of all natural resources which are by nature meant for public use and enjoyment. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. Thus the Public Trust doctrine is part of the law of the land”

[M.C Mehta Versus Kamal Nath (1997) 1 SCC 388]
The further evolution of the doctrine

The state as a custodian of natural resources, has a duty to maintain them not merely for the benefit of the public, but for the best interest of flora and fauna, wildlife and so on. The doctrine of ‘public trust’ has to be addressed in that perspective.

Centre for Environmental Law v Union of India (2013) 8 SCC 234
‘Public Trust doctrine does not prohibit alienation of natural resources held on public trust by the State for commercial exploitation by private persons – public trust doctrine provides for a high degree of judicial scrutiny of any action of state in allocating/ dispensing/ alienating natural resources held on public trust’

In re, Special Reference No. 1 of 2012 (2012) 10 SCC 1
• The State is the legal owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution must be guided by constitutional principle including the doctrine of equality and the larger public good.

[Centre for Public Interest Litigation v. Union of India (2012) 3 SCC 1]
The Public Trust doctrine is a tool for exerting long established public right over short term public rights and private gain

The Polluter Pay Principle

The Polluter Pays Principle as interpreted by the Supreme Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.

Vellore Citizens Welfare Forum Versus Union of India (1996) 5 SCC 647
Is it Pay and Pollute?

The polluter pay principle basically means that the producer of goods and other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. The principle also does not mean that the polluter can pollute and pay for it.

Research Foundation for Science (18) v Union of India (2005) 13 SCC 186
‘Art of living’ case
Precautionary Principle

The "Precautionary Principle" - in the context of the municipal law - means.

(i) Environment measures - by the State Government and the statutory Authorities must anticipate, prevent' and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage lack of scientific certainly should not be used as the reason for postponing, measures to prevent environmental depredation.

(iii) The "Onus of proof" is on the actor or the developer/industrial to show that his action is environmentally beni

Vellore Citizens Welfare Forum Versus Union of India (1996) 5 SCC 647
Precautionary Principle & Acquisition of land

‘Before acquisition of land for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development such that ecology and environment is not gravely impaired’

Special Burden of Proof or Reversal of the burden of Proof

While the inadequacies of science have led to the ‘precautionary principle’, which in its turn, has led to special principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions proposed in placed on those who want to change the status quo.

A.P Pollution Control Board v. Prof M.V Nayudu (1999) 2 SCC 718
NGT on Precautionary Principle

“158. The Precautionary Principle may lose its material relevancy where the projects have been completed and even irreversible damage to the environment and ecology has been caused. The situation may be different when invoking this principle in cases of partially completed projects, it would become necessary to take remedial steps for protection of environment without any further delay.

S.P Muthuraman Versus Union of India O.A No 37 of 2015
‘Species Best Interest Standard’

Every species has an inherent right to live and shall be protected by law, subject to the exceptions provided out of necessity. Animal has also honour and dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attack.

Animal Welfare Board v. A Nagaraja (2014) 7 SCC 547
Doctrine of *parens patriae*

‘The Court has also a duty under the doctrine of *parens patriae* to take care of animals, since they are unable to take care of themselves as against human beings

Animal Welfare Board v. A Nagaraja (2014) 7 SCC 547
Jallikattu Ban by Supreme Court
Eco Centric Principle

Environmental Justice could be achieved if we drift away from the principle of anthropocentric to ecocentric. Many of our principles like sustainable development, polluter pay principle, intergenerational equity have their roots in anthropocentric principles.

T.N Godavarman Thirumulpad Versus Union of India (2012) 3 SCC 277
Ecocentrism is nature centered where humans are part of nature and non humans has intrinsic value. In other words, human interest does not take automatic precedence and humans have obligations to non human independently of human interest.

T.N Godavarman Thirumulpad Versus Union of India (2012) 3 SCC 277
National Green Tribunal Act, 2010

Section 20: The National Green Tribunal shall while passing any order, decision or award apply the Precautionary Principle, the Polluter Pay Principle and Polluter Pay Principle
Key challenges

• Judicial Review versus Merit Review
• Rule of law or Supremacy of Policy?
• Increasing role of Administrative law principle
• The limitation of Wednesbury Principle
• Contradictory Principle. Merit Review and Doctrine of Balancing [M.P Patil vs Union of India, Appeal No. 12 of 2010]
• Constitutional Court and Specialized Tribunal
• Not in my Backyard (NIMBY). (eg Delhi Air Pollution)
• Limitation of Continuing Mandamus