

ENVIRONMENTAL JURISPRUDENCE IN INDIA: A JOURNEY TOWARDS ATTAINING ECO-CENTRIC IDEALS

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ABSTRACT: Environmental Law has had a long, arduous journey in India, but has been able to keep up with the many changes that have taken place, around the globe, and has helped shape India's environmental legal regime. By tracing the growth of environmental law, through different ages, and by highlighting some of those factors, which have contributed immensely to its growth, the idea is to identify certain false grounds and figure out ways to make environmental law more effective. By looking at it through a sociocultural lens, the aim is to examine as to whether culture, tradition and rituals can be imbibed into law or given a legal recognition, and thereby giving more power to law. The development of Earth Jurisprudence principles and the way in which it is sought to be imbibed in India and the challenges that it faces too are discussed.

RESUM: El Dret Ambiental ha tingut un viatge llarg i ardu a l'Índia, però ha pogut mantenir-se al dia amb els molts canvis que s'han produït arreu del món i ha contribuït a donar forma al règim jurídic ambiental de l'Índia. Seguint el creixement del dret ambiental, a través de diferents edats, i destacant alguns dels factors que han contribuït enormement al seu creixement, la idea és identificar certs motius falsos i trobar maneres de fer més eficaç el dret ambiental. Mirant-ho des d'una lent sociocultural, l'objectiu és examinar si la cultura, la tradició i els rituals es poden incorporar a la llei o se'ls pot donar un reconeixement legal i, per tant, donar més poder a la llei. Es discuteix el desenvolupament dels principis de la jurisprudència de la Terra i la manera en què es busca que s'imbriqui a l'Índia i els reptes als quals s'enfronta també.

RESUMEN: El derecho ambiental ha tenido un viaje largo y arduo en la India, pero ha podido mantenerse al día con los muchos cambios que han tenido lugar en todo el mundo y ha ayudado a dar forma al régimen legal ambiental de la India. Al rastrear el crecimiento del derecho ambiental, a través de diferentes épocas, y al resaltar algunos de los factores que han contribuido enormemente a su crecimiento, la idea es identificar ciertos fundamentos falsos y descubrir formas de hacer que el derecho ambiental sea más efectivo. Mirándolo a través de una lente sociocultural, el objetivo es examinar si la cultura, la tradición y los rituales se pueden absorber en la ley o recibir un reconocimiento legal y, por lo tanto, otorgar más poder a la ley. También se analizan el desarrollo de los principios de la Jurisprudencia de la Tierra y la forma en que se busca imbuirlos en la India y los desafíos que enfrenta.

KEYWORDS: Environment —Rights and Duties —Socio-Cultural aspects — Earth Jurisprudence

PARAULES CLAU: Medi ambient — Drets i deures — Aspectes socioculturals — Jurisprudència de la Terra

PALABRAS CLAVE: Medio Ambiente — Derechos y Deberes — Aspectos Socioculturales — Tierra Jurisprudencia

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I. PREFACE

India has been one of those countries, which has had many references being made as to its cultural and traditional ethos as far as environmental protection is concerned. Replenished with numerous such instances, India has had plentiful brushes with environment protection being more of a way of life —more evident in its ancient societies as compared to later ones, but definitely not something that has been lost into oblivion — as one does, even to this day, see many examples of cultural and traditional aspects finding a way into as well as being imbibed in policies and legal steps. The work aims to delve into the various instances wherein such examples can be figured out and chalk a way in which they could be better imbibed in the legal system, obviously by affording legality. Dearth of laws is a matter of no concern at all, for India has a long list of laws, which deal with the subject; but implementation is a huge challenge, which need be surmounted. Imbibing the very spirit of environmental protection as is present in various international developments in the field. Indian environmental jurisprudence has been able to carve a niche for itself.

One might always fall back on the rich cultural and traditional lineage that India does possess, as opposed to many other countries, which it is felt, has been able to catapult her towards better environment protection; well, at least in bits and pieces. Numerous day-to-day rituals have found a way to taking center stage environmental protection, but seldom have they been afforded legal validity. Identifying one as part of nature was something that was an integral part of ancient Indian philosophy and formed the very basis of Indian life and tradition. By tracing the development of the very ethos and philosophy of Indian environmental behavior, this work aims to stitch together the long journey and provide the reader

an overview of environmental jurisprudence in India – with the discussion ending with the recent developments wherein Rights of Nature too have been a focal point.

II. A CONTROVERSIAL START

When one starts thinking about independent India, the steps taken in India post Stockholm, 1972¹, is treated as a harbinger of change. But, seldom do people realize the rich history of India tradition, which has, actually, dealt with these aspects much before. If one were to scourge the numerous texts, written in Sanskrit, which details different aspects of governance, one would definitely stumble upon a reference being made to '*pariyavaranam*', which is the term that was used in ancient India to describe our surroundings². One does find umpteen references being made to environmental awareness³, with examples from Harappa and Mohenjodaro confirming that cities were even built by taking into consideration environmental concerns⁴.

The Vedic times were such that ample importance was afforded to protection and preservation of flora and fauna. The fact that nature and its elements were revered, too did play an important role. Scourging Vedic literature would bring to one's notice the very significance and the responsibilities, which were cast on humans to

¹ Declaration of the United Nations Conference on the Human Environment, available at <<http://www.un-documents.net/unchedec.htm>>, [Accessed on 26 October 2021].

² See, Rajani Rao U, *Environmental Awareness in Ancient India*, International Journal of Life Sciences Research (2014), p.1. Available at <<https://philpapers.org/rec/RAJEAL>>, [Accessed on 26 October 2021].

³ Renu Tanwar, *Environment Conservation in Ancient India*, 21 IOSR-JHSS 1, Sep. 2016. Also see, John Roach, *Mohenjo Daro*, available at <<https://www.nationalgeographic.com/history/article/mohenjo-daro>>, [Accessed on 23 March 2022].

⁴ References were aplenty wherein health and hygiene were way high on the list of concerns and this can definitely be connected with environmental awareness. For more see, Jonathan Mark Kenoyer, "The Indus Valley Tradition of Pakistan and Western India", 5 *Journal of World Prehistory* 42 (1991). Also see, <<https://www.downtoearth.org.in/coverage/did-ecological-impropriety-lead-to-the-end-31286>>, [Accessed on 23 March 2022]. Sandipan Talukdar, *Climate Change a Major Factor in the Decline of Indus Valley Civilisation 4000 Years Ago*, available at <<https://www.newsclick.in/climate-change-major-factor-decline-indus-valley-civilisation-4000-years-ago>>, [Accessed on 23 March 2022].

afford better environment protection. With a clear description of the roles and responsibilities that were thrust on both the individual as well as the state, the times were such that environmental protection was blossoming. One can see a number of instances of nature worship being a norm, Vanaspati — a tree with numerous branches was revered and it being revered was considered equal to the whole universe being revered⁵. The relevance that one attached to *dharma* too is notable with environment protection being treated as one's *dharma*⁶. Numerous instances of the harmonious relationship between nature, natural elements and humans were points of discussion in ancient Indian scriptures. Such references did throw light on the various practices that were present and the protection that was afforded to different elements of nature-sacred groves⁷, trees⁸, rivers⁹ — to quote a few. Cleansing the environment by conducting special *poojas* – *yagnas* were also very much in vogue¹⁰. Protection to be afforded to trees was specifically mentioned in the Atharva Veda¹¹, and one could come across a number of similar instances in the Vedas, which augured well for environmental protection. A balance was to be achieved and human actions were to play an important and integral part to foster this nature-human balance¹².

⁵ Shashi Tiwari, *Origin of Environmental Science from Vedas*, (2004), p.4, available at: <www.sanskrit.nic.in/svimarsha/v2/c17.pdf>, [Accessed on 03 May 2021]. Also see, Harilal Shankar et al, "Trees in Indian Mythology", *Discovery*, 2014, 12(29)16.

⁶ Jariwala, C. M., "Changing Dimensions of Indian Environmental Law", in P. Leelakrishnan (Ed), *Law and the Environment*, 1992, at p.2.

⁷ Vartak, V.D., "Sacred Groves – A Sanctuary for Lofty Trees and Lianas" in *Eco development of Western Ghats*, KFRI, 1986. Also, see, Sharma, S., Kumar, R. "Sacred groves of India: repositories of a rich heritage and tools for biodiversity conservation", *J. For. Res.* 32, 2021, p. 899–916.

⁸ Bhattacharya, H. D, "Minor Religious Sects", in Majumdar R C, *Advanced History of India, Volume 2*, 1968, at p. 473.

⁹ See, Agarwal, V.P. *Forests in India*, 1985.

¹⁰ See, <<http://www.vedicgrace.com/purification-of-environment-by-yagna/>>, [Accessed on 22 July 2021].

¹¹ Parijatham, banyan tree and the peepal tree were exhorted to be protected. For more see, Shashi Tiwari, *Origin of Environmental Science from Vedas*, 2004, p.4, available at: <www.sanskrit.nic.in/svimarsha/v2/c17.pdf>, [last accessed on 03 May 2021]. Also see, <<https://vedicheritage.gov.in/samhitas/atharvaveda-samhitas/>>, [last accessed on 20 March 2022].

¹² See, Rajib Sarmah, "Environmental Awareness in the Vedic Literature: An Assessment", 1 *International Journal of Sanskrit Research* 5 (2015).

Religion too did play an integral role – especially Buddhism and Jainism, which did have an element of eco-centrism writ large in its teachings. A blissful heart¹³ was said to be one that every living thing would possess as has been portrayed by Lord Buddha¹⁴ and one cannot help but notice that such instances did help in spreading the ideas of environment protection – especially by increased the levels of awareness that people did have at that point of time. Jainism too was no exception and was based on similarly placed principles and vouched for compassion towards all living creatures¹⁵. It could definitely be construed that such instances of human-nature interactions, even at grassroots levels, had played an important role in fostering and nurturing this symbiotic relationship. Even with the passage of time, this thread was intact as is evident from the administrative posts that were created during the Mauryan dynasty which were aimed at environment protection. One could also notice that various posts were created to deal with specific instances and problems — For e.g. *Suvarnadyaksha* (to oversee explorations relating to mining)¹⁶, *Kuppyadyaksha* (responsible to collect forest produce), *Seetadyaksha* (one who was to collect seeds and was responsible for promoting agriculture)¹⁷. References were also present in the *Arthashastra*¹⁸, a treatise on

¹³ See, Daniel H. Henning, “A Manual for Buddhism and Deep Ecology”, Buddha Dharma Education Association, <http://www.buddhanet.net/pdf_file/deep_ecology.pdf>, [Accessed on 03 May 2021]. Also see: <http://himalaya.socanth.cam.ac.uk/collections/journals/ancientnepal/pdf/ancient_nepal_139_02.pdf>, [Accessed on 20 March 2022].

¹⁴ Karaniya Metta Sutta, available at <<https://www.accesstosight.org/tipitaka/kn/snp/snp.1.08.amar.html>>, [Accessed on 03 May 2021].

¹⁵ For more see, Dale Jamieson, *Jainism and Buddhism in A Companion to Environmental Philosophy*, Blackwell Publishers, 2001, p. 58; <https://www.interfaithrainforest.org/s/Interfaith_Buddhism.pdf>, [Accessed on 03 May 2021].

¹⁶ Namita Sugandhi, *Between the Patterns of History: Rethinking Mauryan Imperial Interaction in the Southern Deccan*, available at <http://www.academia.edu/1956032/Between_the_Patterns_of_History_Rethinking_Mauryan_Imperial_Interaction_in_the_Southern_Deccan>, [Accessed on 20 October 2021].

¹⁷ Velayutham Saravanan, “Colonial commercial forest policy and tribal private forests in Madras Presidency 1792–1881”, *The Indian Economic Social History Review*, Sage Publications, 2009.

¹⁸ Available at <<https://ncjindalps.com/pdf/HUMANITIES/The%20Kautilya%20Arthashastra%20-%20Chanakya.pdf>>, [Accessed on 20 January 2022].

administration permissions were to be secured to cut down trees, fines could be imposed if animals were killed or harmed, etc¹⁹.

India being a cultural conglomerate, the impact of various influences from across the world too was very evident, and one can say, with conviction, that these influences did play an integral role in shaping her environmental concerns and legal mechanisms. Restriction on hunting was one such important step that was taken during the Mughal Emperor Akbar's rule. The entry of the British and the colonial effect that they had on India was a beginning point of many a change. A different take altogether on environmental protection was brought about by them and one cannot help but notice that these steps that were taken by them were taken with a hidden agenda — India's bountiful resources to be exploited — which in turn will help them exert control over India and also act as a revenue mechanism. Many steps —the Shore Nuisance (Bombay and Colaba) Act, 1853²⁰; the Oriental Gas Company Act, 1857²¹; the Indian Penal Code, 1860²², in which *nuisance* was treated as an offence; the Northern India Canal and Drainage Act, 1873²³; the

¹⁹ See generally, Sunil Sen Sarma, "Contemporaneity of the Perception on Environment in Kautilya's Arthashastra", 33 *Indian Journal of History of Science* 1, 1998, p. 41.

²⁰ This Act was enacted to regulate removal of nuisances and encroachments below high-water mark from industries. Act available at <<https://indiankanoon.org/doc/332258/>>, [Accessed on 20 October 2021].

²¹ This Act provided for the rights as well as duties that were cast on the company. It laid down penalties that could be imposed on the company in case of any environmental harm caused. Act available at <<https://indiankanoon.org/doc/333275/>>, [Accessed on 20 October 2021].

²² S. 268— Public nuisance—A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage. See generally the Indian Penal Code, 1860 —It is one of the foremost legislations that had specific provisions that deal with the problem of pollution. Such acts are classified as coming under offences affecting public health, safety, convenience, decency and morals. Section 277 deals with acts that cause pollution, fouling water of a public spring or reservoirs. Section 278 deals with making atmosphere noxious to health respectively. Both acts are punishable.

²³ This Act was enacted to ensure that State Government exercises proper control over the public purposes for which water is being put to use and to amend laws relating to irrigation, navigation and drainage. Act available at <http://www.theindianlawyer.in/statutesn_bareacts/acts/n40.html>, [Accessed on 20 October 2021].

Madras Elephant Preservation Act, 1879²⁴; the Indian Fisheries Act, 1897²⁵; the Wild Birds and Animals Protection Act, 1912²⁶; the Poisons Act, 1919²⁷; the Indian Ports Act, 1908; the Boilers Act, 1923²⁸ —were taken to foster better environment protection and to deal with matters relating to the environment. Exploitation of forest resources was another area wherein the British focused on and to that effect, they enacted various forest policies, which punished activities wherein forest produce was used without securing permissions. The Forest Policy of 1855 was one such initial step taken and by resorting to this, Lord Dalhousie was able to regulate trade in teak as it was considered as state property. Sir Dietrich Brandis, a German forester, was appointed as the Inspector General of Forests in 1864. This kind of an institutionalization was instrumental in helping the British exercise control over forest resources and exploit them at will.

Many forest related legislations followed suit and in 1865 when the first Indian Forest Act was enacted, the Supreme Legislative Council held that these were under state possession — thereby depriving tribals and a lot of others who relied on such resources, a livelihood as well as a place to live. While the British did enact this to help them build their railway network — which in turn would help them move goods to the ports from where they could easily transport it to Britain by sea, the long-lasting effects of such activities are seen even to this day. The Forest Act of 1878 and The Forest Policy of 1894 were probably the first legislations, which directly deal with forest management. It highlighted the need to regulate certain activities as well as restrict certain privileges — and once cannot but help notice

²⁴ This was one of the earliest attempts to protect wild elephants. Act available at <<https://indiankanoon.org/doc/518663/>>, [Accessed on 20 October 2021].

²⁵ Penal sanctions were imposed on people who used restricted methods to catch fish. Act available at <<https://indiankanoon.org/doc/286852/>>, [Accessed on 20 October 2021].

²⁶ This Act prohibited hunting of wild birds and animals without the permission of the forest department. Act available at <<https://indiankanoon.org/doc/1702370/>>, [Accessed on 20 October 2021].

²⁷ This Act dealt with the possession for sale and sale of specified poisons. Act available at <<http://www.theindianlawyer.in/statutesnbareacts/acts/p26.html>>, [Accessed on 20 October 2021].

²⁸ This Act aimed at consolidating the law as regards steam boilers. Act available at <<http://www.theindianlawyer.in/statutesnbareacts/acts/i11.html>>, [Accessed on 20 October 2021].

that it was an eye of the storm to controversies relating to providing the government an unrestricted access to forest resources²⁹.

The next major step – the Indian Forest Act of 1927 aimed to consolidate all laws relating to forests and deal with forest produce being transported from one place to another, coupled with duties that could be levied. Going through it, one does realize that the British was coming up with a more formalized way of exploitation of forest resources under the garb of protection. Maximum exploitation was what was sought to be achieved and such legislations were able to achieve these ends as well³⁰. Provincial governments were provided with powers to use resources and a classification of forests into four different categories³¹, did cater to such instances. Punishments were provided for³² and one can notice that these did help the British assert control. Activities that could be carried out legally were all of a sudden treated as offences and the real reason based on which the British enacted such legislations can be construed to be not protection but regulation of tree felling and earn revenue from sanctioning them. Age-old rights, which traditional forest dwellers and communities, which depended on the forest were lost³³ and would not be restored for several decades³⁴, thereby denying rights of ownership, occupancy and property.

1. Rise of a Nation: 1947 – 1972

Having gained independence from the British in 1947, India soon set sail to achieve those ideals, which she had held high. The enactment of the Constitution

²⁹ See AmodTilak, *Environmental Law*, Snow White Publications, New Delhi 2009, p.152.

³⁰ See Shyam Divan and Armin Rosencranz, *Environmental Law and Policy in India*, Oxford University Press, New Delhi, 2012.

³¹ Forests were classified into Reserved Forests (Ss. 3-27), Village Forests (S. 28); Protected Forests (Ss. 29-34) and Forests not under the State (Ss. 35-38).

³² See S. 26, The Indian Forest Act, 1927.

³³ For more see, Chatrapathi Singh, *Common Property and Common Poverty*, Oxford University press, New Delhi, 1986.

³⁴ It was only when the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was enacted that this historical injustice was sought to be corrected.

of India was a landmark in itself and one can note Art. 21, which spoke about the Right to life and personal liberty,³⁵ was soon treated as a repository of rights by the courts in India wherein they started reading into it many rights. Falling back on the judgment rendered by Field J. in *Munn v. Illinois*³⁶, courts in India³⁷ too started expanding the concept “*by the term ‘life’ as here used something more is meant than mere animal existence*”³⁸.

Taking into consideration the fact that India gained independence recently, the thrust was also more on development and one does notice a number of legislations to that effect —the Factories Act, 1948³⁹; the Prevention of Food Adulteration Act, 1954⁴⁰; the River Boards Act, 1956⁴¹; the Mines and Minerals (Regulation and Development) Act, 1956⁴²; the Ancient Monuments and Archeological Sites and Remains Act, 1958⁴³; the Atomic Energy Act, 1962⁴⁴; the Insecticides Act, 1968⁴⁵, to name a few.

³⁵ Constitution of India, Art.21- Protection of Life and Liberty- ‘No person shall be deprived of his life or personal liberty except according to procedure established by law’.

³⁶ 94 U.S. 113.

³⁷ See *Kharak Singh v. State of U.P.*, A.I.R. 1963 S.C. 1295; *Sunil Batra v. Delhi Administration*, (1978) 4 S.C.C. 494; *Olga Tellis v. Bombay Municipal Corporation*, A.I.R. 1986 S.C. 180

³⁸ *Ibid.*

³⁹ However, this Act deals with labour aspects, there are provisions, which talk about environmental pollution. See, <<https://labour.gov.in/sites/default/files/TheFactoriesAct 1948.pdf>>, [Accessed on 20 October 2021].

⁴⁰ Act Available at <<http://lawmin.nic.in/ld/P-ACT/1954/A1954-37.pdf>>, [Accessed on 20 October 2021].

⁴¹ This was enacted to establish River Boards to regulate and develop interstate rivers and river valleys. Act available at <<http://lawmin.nic.in/ld/P-ACT/1956/A1956-49.pdf>>, [Accessed on 20 October 2021].

⁴² This legislation aimed at development and regulation of mines and minerals. Act available at <<http://lawmin.nic.in/ld/P-ACT/1957/A1957-67.pdf>>, [last accessed on 20 October 2021].

⁴³ This Act aims at preserving ancient and historical monuments as well as archeological sites. It regulates excavations and protects sculptures, carvings and similar objects. Act available at <http://asi.nic.in/pdf_data/6.pdf>, [Accessed on 20 October 2021].

⁴⁴ This Act deals with the development, control and use of atomic energy for the welfare of the people of India and for other peaceful purposes. The Act is available at <<http://dae.nic.in/?q=node/153>>, [Accessed on 20 October 2021].

⁴⁵ This was enacted to regulate the import, manufacture, sale, transport, distribution and use of insecticides with a view to prevent risk to human beings or animals. Act available at <http://www.cibrc.nic.in/insecticides_act.htm>, [Accessed on 20 October 2021].

Over and above this many policies and legislations on matters pertaining to environment protection was also enacted. The National Forest policy, 1952, aimed to increase the area under forests in India to 100 million hectares, which would come up to 33% of the total land area, and to this effect numerous steps and initiatives were sought to be taken by the government. This period also saw the enactment of certain legislations which deal with specific aspects —the Prevention of Cruelty to Animals Act, 1960, for example, which aimed at preventing and alleviating unnecessary pain or suffering of animals. By establishing an Animal Welfare Board⁴⁶, the legislation details as to what could be treated as cruelty and seeks to do away with it. It also sets up a Committee to control and supervise experiments on animals⁴⁷.

Another notable change was the revamping of the Wild Birds and Animals Protection Act of 1912, which was completely outdated. The Wildlife (Protection) Act of 1972 was enacted and aimed to protecting wild animals, birds and plants. A specific request was made by the states by resorting to Art. 252⁴⁸ of the Constitution as 'wildlife' was a state subject, and the Centre could not pass a legislation as such. Under these legislation powers were distributed between the state and the Union governments to proclaim wildlife sanctuaries and national parks⁴⁹. It also restricted hunting and collection of animal artifacts as trophies⁵⁰. Since Stockholm, 1972, was around the corner, India too took steps to prepare a report highlighting the state of her environment and, to this effect, a National Committee on Environmental Planning and Coordination (NCEPC) was set up in April 1972. Based on the outcome of Stockholm, India soon juggled between development and environment protection, and this had a lot to do with Mrs. Indira Gandhi, the Prime Minister of India's address which attributed poverty as the

⁴⁶ S. 4, The Prevention of Cruelty to Animals Act, 1960.

⁴⁷ S.15, The Prevention of Cruelty to Animals Act, 1960.

⁴⁸ Art.252- Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.

⁴⁹See Ss. 18 – 34, The Wildlife (Protection) Act, 1972.

⁵⁰See Ss. 39, 50 and 52, The Wildlife (Protection) Act, 1972.

biggest polluter; thereby putting across a concern on behalf of the developing world which were struggling to strengthen their economies⁵¹.

2. International Commitments and its Aftermath

The steps taken at Stockholm was surely an impetus for countries across the world and India was no exception. Highlighting her commitment was the need of the hour and India did take numerous steps, especially by relying on her Constitution. The three lists in the Constitution⁵²- the Union List, the State List and the Concurrent List provides a division of powers and determines as to who can legislate on what; and as the names do suggests List I includes those, which are framed by the Parliament, List II by the state and List III both by the Parliament as well as the state — but the centre's stand prevailing over that of the state.

Delving into the Constitution of India, one does figure out that the power to legislate on a subject matter, which lies within the state's purview, is given to the Parliament in certain circumstances. Art. 252⁵³ speaks about this power and allows the Parliament to legislate on those areas, which fall within the state's ambit, if two or more states consented for the same. Similarly, international commitments too are sought to be read into national law, and Art. 253⁵⁴ places this power on the Parliament wherein it can come up with laws aimed to implement international treaties or conventions.

India did start her environmental sojourn by enacting the Water (Prevention and Control of Pollution) Act of 1974, which aimed at curbing water pollution. An institutional structure was laid down, for the very first time, to tackle issues related

⁵¹See <<https://thewire.in/144555/indira-gandhi-nature-pollution/>>, [Accessed on 20 October 2021].

⁵²See Art. 246 and Art. 248 Constitution of India.

⁵³ Art. 252. Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.

⁵⁴ Art. 253. Legislation for giving effect to international agreements: Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

to water pollution and soon, the law mandated certain standards, which are to be met — for both the quality of water as well as the effluents. Stringent measures were taken to weed out erring industries and the legislation was able to change the legal landscape as far as pollution related matters are concerned. Permissions were to be secured to discharge waste and the legislation came up with an administrative setup, which played an important role in controlling water pollution. A division of the regulatory bodies between the Centre as well as the state was one of the highlights of the particular legislation – a Central Pollution Control Board⁵⁵ as well as State Pollution Control Boards were established⁵⁶. The Act has as its objective the maintenance and restoration of the wholesomeness of water and to establish Boards to prevent and control water pollution⁵⁷. While trying to attain these principles, the legislation has been used in such a way that clean water, or rather, accessibility to clean water is treated as a basic human right, as was held in *APPCB v. M V Nayadu*. The shift was also definitely towards placing more responsibilities and duties on the state as it as to engage in positive duties on its part— courtesy it being treated as a welfare state as opposed to a police state that it was. Courts soon took this up and placed this responsibility on the state without an iota of doubt. In addition, once this was treated as a constitutional duty, there was no looking back. In *Suseta v. State of T.N*⁵⁸, protection of natural water bodies was said to be the duty of the state.

The Act did come up with a Central Board⁵⁹ and State Boards⁶⁰, which helped in its functioning⁶¹ and various powers⁶² were included too. Non-compliance would

⁵⁵ S.3 (1), The Water (Prevention and Control of Pollution) Act, 1974.

⁵⁶ S. 4, The Water (Prevention and Control of Pollution) Act, 1974.

⁵⁷ See Preamble, The Water (Prevention and Control of Pollution) Act, 1974.

⁵⁸ (2006) 6 SCC 543. Also, see, *People United for Better Living in Calcutta v. State Of West Bengal and Others*, AIR 1993 Cal 215 and *T N Godavarman Thirumalpad v. UOI* (2006) 5 SCC 47.

⁵⁹ S. 3. Constitution of Central Boards.

⁶⁰ S. 4 Constitution of State Boards.

⁶¹ S. 16 and S. 17 speak about the functions of the Central Board and the State Board respectively.

⁶² S. 20: Power to obtain Information; S. 21. Power to take samples of effluents; S. 23. Power of entry and inspection. Etc.

definitely attract penalties⁶³. Apart from this, a Water (Prevention and Control of Pollution) Cess Act of 1977 was also enacted which aimed at levy and collect cess or fees on water consuming industries and local authorities. The Water (Prevention and Control of Pollution) Cess Rules of 1978 added more information as regards the working of the Water Act and did apart from many other provisions, speak about standard definitions and also did indicate the kind of and location of meters that every consumer of water is required to affix.

The period was such that there was quite a lot of discussion on these rights and the amalgamation of the Doctrine of Public Trust in a new avatar, in the Constitution of India, did open up newer possibilities. While Art. 21 was used by courts to widen the scope so as to include a right to live in a healthy environment, one cannot but help notice that changes were being brought about in the Constitution so as to specifically mention these rights. The Constitution (Forty-second Amendment) Act of 1976 included two Articles — Art. 48A and Art. 51A, which have by far revolutionized the way in which we perceive environmental protection. The former⁶⁴, which forms a part of the Directive Principles of State Policy, speaks about the “*Protection and improvement of environment and safeguarding of forests and wildlife*” and places a duty and responsibility on the state to protect the environment.

One can definitely relate it to the Public Trust Doctrine and put across that the state is to act as the guardian of all resources that are present and does have a solemn duty to ensure its protection. This concept is an old one and finds a mention in both the Code of Justinian⁶⁵, as well as the Magna Carta. It is also worth knowing that once this right was spoken about, the concept of *Public Rights* was strengthened and actions like the ones by King John, wherein he abolished exclusive fishing and hunting rights, did go a long way in documenting and reinforcing this principle. The United States of America too had a brush with this concept and in *Arnold v.*

⁶³See Part VII. Ss. 41- 48.

⁶⁴Inserted by the Constitution (Forty-second Amendment) Act, 1976, S.10 (w.e.f. 03-01-1977)

⁶⁵ Corpus Juris Civilis.

*Mundy*⁶⁶, the Supreme Court of New Jersey made a mention of it. The right of water was soon read to be an integral right in *Illinois Central Railroad Co. v. People of the State of Illinois*⁶⁷ wherein water that was to be used by the public was diverted for the railroad, which was held by the court to be unacceptable. The *Mono Lake Case*⁶⁸ is yet another instance wherein the California Supreme Court held that the state has a duty to take care of natural resources was reiterated by treating it as a trustee.

The Fundamental Duties enshrined under Part IV-A⁶⁹ of the Constitution of India, also did play an important role in cementing the same. While a specific duty was being imposed on the citizen, to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures, one does notice that the law has taken a long stride forward. The debates, which happened during this period can be said to be an eye opener as far as environment rights in India are concerned, as they did, for the very first instance, open up the closed walls of the Constitution, and imposed duties on both the state as well as the citizen⁷⁰. Different approaches, but aimed towards achieving a common goal was the remark made by the court in *M.C. Mehta v. State of Orissa*⁷¹. Such steps do portray a journey that India had undertaken to interweave and intersperse Fundamental Duties and Directive principles of State policy, with the latter being treated as a complementary of the former⁷².

With this kind of a reiteration, one does notice that courts too started to take the matter seriously and tried to bring about the connection as is seen and evident in a slew of decisions that were taken during this period— *Virender Gaur v. State of*

⁶⁶ 1821 N.J. LEXIS 2.

⁶⁷ 146 U.S. 387.

⁶⁸ *National Audubon Society v. Superior Court*, 1983, 33 Cal.3d 419.

⁶⁹ Inserted by the Constitution (Forty-second Amendment) Act, 1976, S.11 (w.e.f. 03-01-1977)

⁷⁰ See, *Lok Sabha Debates*, Eighteenth Session, Fifth Series, Vol.LXV, No.5, Oct.29, 1976, columns 94-116. Also see, *Parliamentary Debate: Rajya Sabha: Official Report*, Vol.XCVIII, No. 5, Nov.9, 1976, columns 158-71.

⁷¹ AIR 1992 ORI 225.

⁷² See, *Som Prakash Rekhi v. Union of India*, AIR 1981 SC 212, at pp. 221, 222.

*Haryana*⁷³; *Indian Council for Enviro-Legal Action v. Union of India*⁷⁴; *RLEK v. State of Uttar Pradesh*⁷⁵, to name a few.

The Fundamental Duty and the Directive Principles of State Policy were to be held supreme was what the court opined in *Sachidananda Pandey v. State of West Bengal*⁷⁶, while trying to elaborate on matters relating to environmental considerations. Public good and its protection was yet another concern, which courts did have to follow, and what had to be aimed at by the states, as was reiterated by the judges in *J H Wadia v. Board of Trustees, Port of Mumbai*⁷⁷. Both in the *Span Motels Case*⁷⁸ as well as in *M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu*⁷⁹ this doctrine was used by the courts. The citizens were held to be the real owners of natural resources in *Reliance Natural Resources Ltd. v. Reliance Industries Ltd.*⁸⁰ Similarly in *CPIL and Ors. v. UOI and Ors*⁸¹ the state was said to be the legal owner of the natural resources, and they had to hold it in trust — i.e. as a trustee of the people⁸². Prof. Joseph Sax urged using the Public Trust Doctrine as a legal tool to fight resource exploitation⁸³.

The legal landscape in India did change vastly, and one such change was the power that was given to the Parliament to legislate on matters related to the environment⁸⁴. Administrative steps too were taken and the Tiwari Committee

⁷³ 1995 (2) SCC 571.

⁷⁴ AIR 1996 SC 1446.

⁷⁵ AIR 1988 SC 2187.

⁷⁶ AIR 1987 SC 1109, at p. 1114. See also, *T. D. Damodar Rao v. The Special Officer, Municipal Corporation of Hyderabad*, AIR 1987 AP 171, 181. Where in the AP HC laid down that an obligation is cast under the said articles to protect the environment.

⁷⁷ (2002) 3 SCC 214.

⁷⁸ *M C Mehta v. Kamal Nath* (2000) 6 SCC 213.

⁷⁹ AIR 1999 SC 2468.

⁸⁰ (2010) 7 SCC 1.

⁸¹ WP (Civil) No.423 of 2010. Also referred to as the 2G spectrum case.

⁸² *Ibid* at para72.

⁸³ Joseph L. Sax, "The Public Trust Doctrine in Natural Resource Law: Effective Judicial", *Intervention*, 68 *Mich.L.Rev* 471, 1969.

⁸⁴ The following were added in List III; 17 A- Forests, 17 B- Protection of wild animals and birds.

formed in 1980 submitted its report⁸⁵ in September 1980 and specifically mentioned five areas that needed more attention: land and water management, natural living resources, environmental pollution and EIA, human settlements, environmental education and awareness⁸⁶. Existing laws too were studied in depth and it was found out that they were clearly outdated and needs to be revamped. The Committee also found these laws to be outdated and inconsistent with each other, which did lead to a set of problems. They were also of the opinion that had there been direct, explicit provisions, it would have fared much better and helped in making the law more pointed. The Committee as a problem too also identified not having express provisions to review the law. Delving into these, the Committee did come forth with a set of recommendations, which included suggestions to completely overhaul the existing law and come up with a new set of legislations by including those heads under the Seventh Schedule of the Constitution of India⁸⁷.

After the 42nd Constitution Amendment Act of 1976, forests were moved from List II to List III, thereby giving the Central Government the power enact legislations to deal with forests and as a result, the Forest (Conservation) Act of 1980 was enacted. A short Act it was, but nevertheless the significance that it had and the role that it did play to combat deforestation and its after effects is worth noting. When one thinks of forest related cases, the first set of cases, which pops up, obviously is the T N Godavarman Tirumalpad series and it was in one such instance that the court tried to define *forests*, *T N Godavarman Thirumalpad v. UOI*⁸⁸, and afforded the dictionary meaning. The Forest (Conservation) Act aimed to restrict de-reservation of forests or use of forest or forest lands for non-forest purposes, and the latter is explained under the Act as including breaking up or clearing of any forest land for the cultivation of tea, coffee, spices, rubber, palms,

⁸⁵Report of the Committee Recommending Legislative Measures and Administrative Machineries for Ensuring Environment Protection, Dept of Science and Technology, Gol, p.19-24 (1981).

⁸⁶ See <http://shodhganga.inflibnet.ac.in/bitstream/10603/73994/14/14_chapter%207.pdf>, [Accessed on 20/01/2022].

⁸⁷Report of the Committee Recommending Legislative Measures and Administrative Machineries for Ensuring Environment Protection, Dept of Science and Technology, Gol, 19-24, 1981, at p.24.

⁸⁸(1997) 2 SCC 267, at p. 269.

oil bearing plants, horticulture crops or medicinal plants⁸⁹. However such actions which are done for re-afforestation is not considered as a non-forest purpose and is given a green signal. Other work relating or ancillary to conservation, development and management of forests and wildlife, for example, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes, are considered as actions for forest purpose and are allowed. A committee⁹⁰ can be set up by the centre and it can advise on matters related to grant of prior approval and forest preservation.

Later, in 1981, the Air (Prevention and Control of Pollution) Act was enacted with an aim to maintain the quality of air and control air pollution. By placing reliance on the power under Art.253⁹¹ of the Indian Constitution, this legislation aims to combat the menace. Wide definitions were provided for under this legislation and this definitely did help in containing air pollutants — which were defined under S. 2(a) to include “any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment”⁹². The definitions were wide enough to include heat⁹³, suspended particulate matter (SPM)⁹⁴, radioactive substances⁹⁵ and vibrations⁹⁶. Powers were entrusted to the Central Pollution Control Board (CPCB) to enforce the Act⁹⁷. State Pollution Control Boards were created under S.4, and the functions of the Boards are mentioned under Sections 16⁹⁸ and 17⁹⁹ respectively. Standards to be maintained

⁸⁹Explanation to S. 2.

⁹⁰S. 3, Forest (Conservation) Act, 1980.

⁹¹ Art. 253. Legislation for giving effect to international agreements.

⁹²S. 2 (b) "air pollution" means the presence in the atmosphere of any pollutant.

⁹³*Krishna Gopal v. State of MP*, 1986 Cri LJ 396 (MP).

⁹⁴*Ajeet Mehta v. State of Rajasthan*, 1990 Cri LJ 1596 (Raj).

⁹⁵*M K Sharma v. Bharat Electronics Ltd*, AIR 1987 SC 1792.

⁹⁶*Shobana v. Chennai Metropolitan Development Authority*, AIR 2002 Mad. 125.

⁹⁷S.3-Central Pollution Control Board.

⁹⁸Functions of the Central Board.

to adhere to quality of air was laid down and the authorities had powers to obtain information¹⁰⁰ and to take samples¹⁰¹. Penalties¹⁰² are prescribed and a clear-cut procedure too is mentioned. The Air (Prevention and Control of Pollution) Rules of 1982 defines the procedures of the meetings of the Boards and the powers entrusted to them.

Coming out with an umbrella legislation, which encompassed under it various aspects of environmental protection, rather than having separate legislations, was the need of the hour and the Environment (Protection) Act of 1986 was enacted. Implementing the conditions that were laid down by the Stockholm Conference and to improve the protection being afforded to human beings, other living creatures, plants and property¹⁰³ were the main objectives. For the very first time, the word *environment*¹⁰⁴ was defined, and by bringing within its ambit, animate as well as inanimate objects and their relationship, the environment was identified as a unitary entity. In *Virender Gaur v. State of Haryana*¹⁰⁵, the Supreme Court of India held that the term *environment* captures within it a broad spectrum. 'Environmental pollutant'¹⁰⁶ as well as 'environment pollution'¹⁰⁷ was also defined. The legislation specifically mentioned the powers of the Central Government wherein they could take measures to protect and improve the environment¹⁰⁸. Under S.5 the Central Government has the power to issue directions for the closure, prohibition or

⁹⁹Functions of the State Board.

¹⁰⁰S. 25- Power to obtain information.

¹⁰¹S. 26. Power to take samples of air or emission and procedure to be followed in connection therewith.

¹⁰²Chapter VI, Ss. 37 – 46.

¹⁰³Preamble, The Environment (Protection) Act, 1986, available at <<http://envfor.nic.in/legis/env/env1.html>>, [Accessed on 20 October 2021].

¹⁰⁴S. 2 (a) EPA- "environment" includes water, air and land and the inter- relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.

¹⁰⁵(1995) 2 SCC 571.

¹⁰⁶S. 2 (b) Environment Pollutant means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment.

¹⁰⁷S. 2 (c) "environmental pollution" means the presence in the environment of any environmental pollutant.

¹⁰⁸ Environment (Protection) Act, 1986, S. 3.

regulation of any industry, operation or process; or stoppage or regulation of the supply of electricity or water or any other service, and this can be seen as a power which is used to ensure that the laws are followed. Entry and search powers are also provided by the Act¹⁰⁹. S. 11 allows the authorities to take samples of air, water, soil or any other substance from any factory, premises or other place for the purpose of analysis, and the penal measures are laid down under S.15¹¹⁰. Offences by companies and Government Departments are mentioned under S.16. The Central Government can also make rules to regulate environmental pollution¹¹¹ and under this power¹¹² made the Environment Protection Rules of 1986, and laid down procedures for setting standards of emission or discharge of environmental pollutants.

Right after this, one does notice that there were a number of Rules, especially in waste management. This being an area that has a direct connection with the growth of industries, the legal regime has to definitely come up with ways to regulate it. Based on the number of international commitments that India had, the overarching power of the Environment Protection Act was used and several rules¹¹³ were formed. This helped the Central Government to engage in measures to protect and preserve the environment and take all necessary steps to prevent, control and abate environmental pollution¹¹⁴. One among the first to come out was the Hazardous Waste (Management and Handling) Rules of 1989, which aimed at

¹⁰⁹ Environment (Protection) Act, 1986, S. 10.

¹¹⁰ S. 15- Penalty for contravention of the provisions of the Act and the Rules, orders and directions — (1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the Rules made or orders or directions issued there under, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.

¹¹¹ Environment (Protection) Act, 1986, S. 6.

¹¹² Environment (Protection) Act, 1986, S. 25.

¹¹³*Ibid.* Environment (Protection) Act, 1986, S. 25.

¹¹⁴Environment (Protection) Act, 1986, S. 3 (1).

controlling the generation, collection, treatment, import, storage, and handling of hazardous waste. It laid down responsibilities on the occupier for handling the waste¹¹⁵. It also specified that authorization¹¹⁶ are to be secured. Safe measures to transport wastes were also laid down, with it being properly packaged and labelled¹¹⁷. Restriction of import of hazardous wastes was yet another aspect that was looked into¹¹⁸. Classification of hazardous wastes into different categories too were done¹¹⁹. Under the Manufacture, Storage, and Import of Hazardous Chemicals Rules, an authority¹²⁰ was set up to inspect, every year, any industrial activity related to hazardous chemicals and isolated storage facilities. The liability of the occupier in case of a major accident¹²¹ was discussed. An on-site¹²² and an off-site¹²³ emergency plan was to be prepared by the occupier and the authority in case of any untoward incident. Environment, nature and health, and gene technology and micro-organisms were the main focal points of the Manufacture, Use, Import, Export, and Storage of Hazardous Micro-organisms/ Genetically Engineered Organisms or Cells Rules of 1989¹²⁴, and a number of authorities¹²⁵ were created.

Public liability insurance was discussed under the Public Liability Insurance Act¹²⁶ and Rules of 1991 and the 1992 Amendment, and a mechanism was set up to provide urgent relief people who were victims of accidents while handling

¹¹⁵Rule 4, Hazardous Waste (Management and Handling) Rules, 1989.

¹¹⁶Rule 5, Hazardous Waste (Management and Handling) Rules, 1989.

¹¹⁷Rule 7, Hazardous Waste (Management and Handling) Rules, 1989.

¹¹⁸Rule 11, Hazardous Waste (Management and Handling) Rules, 1989.

¹¹⁹See <<http://envfor.nic.in/legis/hsm/hsm1.html>>, [Accessed on 20 October 2021].

¹²⁰Rule 2 (b), Manufacture, Storage and import of Hazardous Chemical Rules, 1989.

¹²¹Rule 5, Manufacture, Storage and import of Hazardous Chemical Rules, 1989.

¹²²Rule 13, Manufacture, Storage and import of Hazardous Chemical Rules, 1989.

¹²³Rule 14, Manufacture, Storage and import of Hazardous Chemical Rules, 1989.

¹²⁴Object, Rules for the Manufacture, Use, Import, Export and Storage of Hazardous micro-organisms Genetically engineered organisms or cells; available at <<http://envfor.nic.in/legis/hsm/hsm3.html>>, [Accessed on 20 October 2021].

¹²⁵Rule 4, Rules for the Manufacture, Use, Import, Export and Storage of Hazardous micro-organisms Genetically engineered organisms or cells.

¹²⁶ See <<http://envfor.nic.in/legis/public/public1.html>>, [Accessed on 20 January 2021].

hazardous substances. The Chemical Accidents (Emergency Planning, Preparedness and Response Rules, 1996¹²⁷, laid down the duties and responsibilities of authorities and the occupiers if there was an accident which involved hazardous chemicals. A Central Crisis Group¹²⁸, State Crisis Groups¹²⁹ as well as District and Local Crisis Groups¹³⁰ were envisaged under this to deal with accidents. The Biomedical Waste (Management and Handling) Rules of 1998¹³¹ were enacted to ensure that health care institutions come up with a proper system of handling and disposing hospital waste; and included points dealing with segregation, disposal, collection, and treatment. The duties of the occupier¹³² and methods to be followed in case of treatment and disposal¹³³ as well as segregation, packaging, transport and storage¹³⁴ were laid down in detail.

Another major step was the enactment of the Environment (Siting for Industrial Projects) Rules of 1999¹³⁵, which laid down criteria, which had to be followed to set up industries. Precautionary measures, which are to be followed in aspects relating to selection of sites was discussed in detail. The Recycled Plastic Manufacture, Sale and Usage Rules of 1999¹³⁶ was enacted to regulate the use of plastics and did prohibit the use of certain plastics. Authorities¹³⁷ were created and it prohibited vendors from using containers or carry bags, which are made of recycled plastics for storing, packaging, dispensing or carrying foodstuffs¹³⁸.

¹²⁷See <<http://envfor.nic.in/division/chemical-accidents-emergency-planning-preparedness-and-response-rules-1996>>, [Accessed on 20 October 2021].

¹²⁸Rule 3.

¹²⁹Rule 6.

¹³⁰Rule 8.

¹³¹ See <<http://www.moef.nic.in/legis/hsm/biomed.html>>, [Accessed on 20 January 2022].

¹³²Rule 4, Bio-Medical Waste (Management and Handling) Rules, 1998.

¹³³Rule 5, Bio-Medical Waste (Management and Handling) Rules, 1998.

¹³⁴Rule 6, Bio-Medical Waste (Management and Handling) Rules, 1998.

¹³⁵ See <<http://envfor.nic.in/legis/eia/sitnot99.html>>, [Accessed on 20 January 2022].

¹³⁶ See <<http://www.envfor.nic.in/legis/hsm/plastic.htm>>, [Accessed on 20 January 2022].

¹³⁷ Rule 3, Recycled Plastics Manufacture and Usage Rules. 1999.

¹³⁸ Rule 4, Recycled Plastics Manufacture and Usage Rules. 1999.

The Municipal Solid Wastes (Management and Handling) Rules of 2000¹³⁹ brought every municipal authority responsible for the collection, segregation, storage, transportation, processing, and disposal of municipal solid wastes within its scope.

The Ozone Depleting Substances (Regulation and Control) Rules of 2000¹⁴⁰ were enacted to regulate the production and consumption of ozone depleting substances. The Batteries (Management and Handling) Rules of 2001¹⁴¹ were made applicable to every manufacturer, importer, re-conditioner, assembler, dealer, auctioneer, consumer, and bulk consumer involved in the manufacture, processing, sale, purchase, and use of batteries or components and regulated their activities and ensured an environmentally safe disposal of used batteries, which was one of the many problems that people did face. The Noise Pollution (Regulation and Control) (Amendment) Rules of 2002¹⁴² were enacted to reduce noise pollution, and laid down specific conditions which were to be met while using loud speakers or public address systems during night hours (between 10:00 p.m. to 12:00 midnight) on or during any cultural or religious festive occasion. The Hazardous Waste (Management, Handling and Transboundary Movement) Rules of 2008¹⁴³ (HWM Rules) regulate transboundary pollution, and to achieve its ends mentions the powers, duties and functions of functionaries who handle and manage this waste, i.e., waste generators, disposers, recyclers, the PCBs and the government.

The Biological Diversity Act of 2002¹⁴⁴ was enacted on the lines of the UN Convention on Biological Diversity signed at Rio de Janeiro in 1992¹⁴⁵, which was

¹³⁹ See <<http://www.moef.nic.in/legis/hsm/mswmhr.html>>, [Accessed on 20 January 2022].

¹⁴⁰ See <<http://envfor.nic.in/legis/ods/odsrrc.html>>, [Accessed on 20 January 2022].

¹⁴¹ See <<http://envfor.nic.in/legis/hsm/leadbat.html>>, [Accessed on 20 January 2022].

¹⁴² See <<http://www.envfor.nic.in/legis/noise/so1088.pdf>>, [Accessed on 20 October 2021].

¹⁴³ See <[Http://www.envfor.nic.in/legis/hsm/HAZMAT_2265_eng.pdf](http://www.envfor.nic.in/legis/hsm/HAZMAT_2265_eng.pdf)>, [Accessed on 20 January 2022].

¹⁴⁴ See <<http://nbaindia.org/uploaded/Biodiversityindia/Legal/31.%20Biological%20Diversity%20%20Act,%202002.pdf>> [Accessed on 20 January 2022].

¹⁴⁵ See generally, Venkataraman, K., "India's Biodiversity Act 2002 and its Role in Conservation", 50 (1) *Tropical Ecology* 23, 2009.

referred to by the Supreme Court of India in *T N Godavarman Thirumalpad v. UOI*¹⁴⁶. Conservational techniques and ideas relating to sustainable development were the highlights and it tried to ensure a fair and equitable sharing of benefits¹⁴⁷. The Supreme Court of India in *Centre for Environmental Law, WWF India v. UOI*¹⁴⁸ stressed on these objectives, once again. Various authorities were created - the NBA¹⁴⁹, SBB¹⁵⁰ and BMC's¹⁵¹ to manage the resources. A National Biodiversity Fund¹⁵² and a Local Biodiversity Fund¹⁵³ too were set up. Appeals were to be filed before the National Green Tribunal¹⁵⁴. The Rules did lay down penalties¹⁵⁵ too. Offences by companies¹⁵⁶ too are considered and the rule making power was given to both the Central¹⁵⁷ as well as the State Government¹⁵⁸.

Correcting the historical injustice meted out to a specific set of people was brought to the fore by the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006, which recognized their rights. International steps¹⁵⁹ were galore and India too tried to correct this anomaly with a slew of actions¹⁶⁰. It was not only about protecting the forests but also more about

¹⁴⁶(2002) 10 SCC 606.

¹⁴⁷Preamble, Biological Diversity Act, 2002.

¹⁴⁸(2013) 8 SCC 234.

¹⁴⁹Chapters 3 and 4, Ss. 8 – 18 lay down the provisions related to the NBA and the powers and functions of the same.

¹⁵⁰Chapter 6, Ss. 22-25 deal with the State Biodiversity Board.

¹⁵¹Chapter 10, S. 41 deals with the constitution of BMC.

¹⁵²S. 27, Biological Diversity Act, 2002.

¹⁵³S. 43, Biological Diversity Act, 2002.

¹⁵⁴S. 52A, Biological Diversity Act, 2002.

¹⁵⁵Ss. 55 and 56, Biological Diversity Act, 2002.

¹⁵⁶S. 57, Biological Diversity Act, 2002.

¹⁵⁷S. 62, Biological Diversity Act, 2002.

¹⁵⁸S. 63, Biological Diversity Act, 2002.

¹⁵⁹1993 was declared the International Year for the World's Indigenous People. There were also other developments, which took place, like the Resolution No. 107 of the ILO, The UN Declaration on the Rights of Indigenous People, 2007, and the UNDP Policy Programme of 2001.

¹⁶⁰Steps included The National Forest Policy of 1988, Draft National Policy on R and R for project Affected Families, 2004 and Draft National Development Displacement, Rehabilitation Policy, 2005.

protecting the identity and the culture of the tribals, which had sadly been lost. It provided rights¹⁶¹ and they were to be protected by the Grama Sabha¹⁶². Cultural identity, customs and traditions too were protected and this did go a long way.

It was not long before it was understood that special courts need be constituted and ‘environmental courts’ were constituted by the Supreme Court of India. *M C Mehta v. UOI*¹⁶³ was where the court opined that an expert need be present to look into scientific data and analyze it properly, which was not something that a judge trained in law could do. Reiterating this in *Indian Council for Enviro-Legal Action v. UOI*¹⁶⁴, steps were taken and soon led to the enactment of the National Environment Tribunal Act of 1995 and the National Environment Appellate Authority Act. They however did not serve the purpose and soon the Supreme Court revisited the question in *A.P. Pollution Control Board v. M.V. Nayadu*¹⁶⁵, which reiterated the need to establish ‘environment courts’ comprised of field experts. In *A.P. Pollution Control Board v. M.V. Nayadu II*¹⁶⁶ the court held that the Law Commission could examine the disparities in the constitution of quasi-judicial bodies under the pollution control legislations and soon the Law Commission of India in its 186th Report, from 2003¹⁶⁷, proposed to establish “Environmental Courts” and the earlier two legislations were done away with.

Based on the long-drawn-out discussions, the National Green Tribunal Bill was introduced in 2009 and came into force on 18/10/2010. This legislation had as its aim to promote and arrive at a better future, especially in matters relating to environmental law by helping ease the process-lesser pendency time, better

¹⁶¹S. 3, FRA, 2006.

¹⁶²See, *Orissa Mining Corp Ltd. v. MOEF* (2013) 6 SCC 476 and *K Guruprasad Rao v. State of Karnataka* (2013) 8 SCC 418.

¹⁶³(1986) 2 SCC 176.

¹⁶⁴(1996) 3 SCC 212.

¹⁶⁵ (1999) 2 S.C.C. 718

¹⁶⁶(2001) 2 S.C.C. 62

¹⁶⁷ Law Commission of India, One Hundred Eighty Sixth Report on Proposal to Constitute Environment Courts, Available at <<http://lawcommissionofindia.nic.in/reports/186th%20report.pdf>>, [Accessed on 20 October 2021].

enforcement of rights, stricter punishments, timely compensation etc. All these have helped this legislation to open newer avenues and provide a robust mechanism, which was, until now, too far a dream. The previous legislations were repealed¹⁶⁸. A Tribunal¹⁶⁹ was established which comprised of both judicial as well as expert members¹⁷⁰, and helped in creating a new founded balance as it was easier to discuss and deliberate on technical issues too with experts on board¹⁷¹. Powers were conferred on the tribunal¹⁷² and appeals were directed to the Supreme Court¹⁷³. Failure to conform to the verdicts attracted penalty¹⁷⁴ and a number of such instances of penalties being levied are there.

A National Implementation Plan for Stockholm Convention on Persistent Organic Pollutants of 2011 was also chalked whereby India made the world know as to how such responsibilities would be realized¹⁷⁵. At a later stage, the TSR Subramanian Committee, set up to study and appraise the environmental legal regime submitted a report¹⁷⁶ which called for a complete overhaul of the existing laws, but was rejected by the Parliamentary Standing Committee¹⁷⁷ as it was found to be not workable and feasible.

There were many changes that were brought about in the waste management legal regime in 2016, wherein the Hazardous and Other Wastes (Management &

¹⁶⁸ The National Green Tribunal Act, 2010, S. 38

¹⁶⁹ S. 3. Establishment of Tribunal.—The Central Government shall by notification establish, with effect from such date as may be specified therein, a Tribunal to be known as the National Green Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

¹⁷⁰ S. 4. Composition of Tribunal.

¹⁷¹ See, Gitanjali Gill, "The National Green Tribunal of India: A Sustainable Future through the Principles of International Environmental Law", *16 Environmental Law Review*, 183, 2014.

¹⁷² S. 19, Procedure and Powers of the Tribunal.

¹⁷³ S. 22, Appeal to Supreme Court.

¹⁷⁴ S. 26, National Green Tribunal Act, 2010.

¹⁷⁵ Under Article 7 of the Convention, such a Plan is to be made.

¹⁷⁶ See <http://www.prindia.org/administrator/uploads/general/1418993231_Report%20Summary-HLC%20Env%20Laws.pdf>, [Accessed on 20 October 2021].

¹⁷⁷ See <<http://www.downtoearth.org.in/news/parliamentary-standing-committee-rejects-tsr-subramanian-report-on-environmental-laws-50577>>, [Accessed on 20 October 2021].

Transboundary Movement) Rules of 2016 was one of the first moves made. Shri. Prakash Javedkar, stressing that these rules are environment as well as industry friendly, mentioned that they will be able to protect resources better and also ensure recovery. An environmentally safe and sound manner¹⁷⁸ of disposal was also broached. A highlight of the rules was that it classified and made a difference between Hazardous Waste¹⁷⁹ and Other Wastes¹⁸⁰. The E-waste (Management) Rules of 2016¹⁸¹ updated the Management and Handling of electronic waste and brought under its scope, Manufacturers, dealers, refurbishers and Producer Responsibility Organizations (PRO). More duties and responsibilities were cast on the Producers, especially as regards collection wherein they were to set up collection centers or points. The inclusion of a buy-back mechanism¹⁸² was another welcome change. Pan India Extended producers Responsibility (EPR) authorization by the Central Pollution Control Board was brought about as well by substituting the state-wise EPR authorization. The Bio-Medical Waste Management Rules of 2016¹⁸³, was brought about which included vaccination camps, blood donation camps, surgical camps or any other healthcare activity¹⁸⁴. Aiming at phasing-out the use of chlorinated plastic bags, gloves and blood bags within two years¹⁸⁵, this set of rules mandated pre-treatment of the laboratory waste, microbiological waste, blood samples and blood bags through disinfection or sterilization on-site in the manner as laid down by the World Health Organization or National AIDS Control Organization¹⁸⁶. Bio-medical waste was now divided into

¹⁷⁸ See <<http://pib.nic.in/newsite/PrintRelease.aspx?relid=138521>>, [Accessed on 20 October 2021].1.

¹⁷⁹Rule 3(17).

¹⁸⁰Rule 3(23)

¹⁸¹See <<http://www.moef.gov.in/sites/default/files/EWM%20Rules%202016%20english%2023.03.2016.pdf>>, [Accessed on 20 October 2021].

¹⁸²Rule 5, The E-waste (Management) Rules, 2016.

¹⁸³ See <<http://envfor.nic.in/content/gsr-343e-28-03-2016-bio-medical-waste-management-rules2016>>, [Accessed on 20 October 2021].

¹⁸⁴See Rule 2(1).

¹⁸⁵Rule 4 (d).

¹⁸⁶Rule 4 (c).

4 categories instead of 10, and the explanation as that it will improve the segregation at source¹⁸⁷. The Plastic Waste Management Rules of 2016¹⁸⁸ was enacted as well and applied to every waste generator, local body, gram panchayat, manufacturer, importers and producers, and included guthka, tobacco and pan masala packing units while excluding the plastic manufactures operating in Special Economic Zones areas. Natural shade plastic bags without colour pigments¹⁸⁹, with thickness increased from 40 microns to 50 microns¹⁹⁰, were the new law. A valid registration¹⁹¹ should be secured from the concerned Pollution Control Board or Pollution Control Committee, by the plastic manufacturers if they were to sell or supply plastic as a raw material. Local bodies¹⁹², Grama panchayats¹⁹³, Waste generators¹⁹⁴ and producers, importers and brand owners¹⁹⁵ were all imposed with duties and responsibilities. Plastic waste to be used for road construction¹⁹⁶ under Indian Road Congress guidelines was yet another notable feature that was brought about. The Solid Waste Management Rules of 2016¹⁹⁷ brought areas beyond Municipal Areas within its scope and stressed on the need for segregation at source, which it did say could promote recovery, reuse and recycling. Waste pickers were integrated within a formal system and the Rules laid down the duties of the waste generator¹⁹⁸, Ministry of Environment, Forests and Climate Change¹⁹⁹,

¹⁸⁷Schedule 1, The Bio-Medical Waste Management Rules, 2016.

¹⁸⁸ See <<http://www.moef.gov.in/sites/default/files/PWM%20Rules%2C%202016.pdf>>, [Accessed on 20 October 2021].

¹⁸⁹Rule 4(a).

¹⁹⁰Rule 4 (c).

¹⁹¹Rule 4 (e).

¹⁹²Rule 6.

¹⁹³Rule 7.

¹⁹⁴Rule 8.

¹⁹⁵Rule 9.

¹⁹⁶Rule 5 (b).

¹⁹⁷ See <<http://www.moef.gov.in/sites/default/files/SWM%202016.pdf>>, [Accessed on 20 October 2021].

¹⁹⁸Rule 4.

¹⁹⁹Rule 5.

Ministry of Urban Development²⁰⁰ and other ministries along with other administrative bodies. A newly formed set of rules were the Construction and Demolition Waste Management Rules of 2016²⁰¹, which treated waste as a resource²⁰². These rules aimed at recovering, recycling and reusing the waste generated because of construction and demolition activities and laid down specific duties and responsibilities.

3. The Changing Scenario

Times were such that changes were being brought about in environmental governance and for the first instance, India did not have a separate Union Minister for Environment, Forests and Climate Change²⁰³. This coupled with the fact that a 25% budget cut for the Ministry was seen as a regressive step²⁰⁴. Environment Impact Assessments of 2014 and 2016 were sought to be amended, and by placing more powers on state governments to provide clearances, it gave rise to many controversies too. Real estate projects were exempted from securing prior environmental clearances and the National Green Tribunal was not too happy about this, with its then chairperson Justice Swantater Kumar terming it as a “legal blunder”²⁰⁵ while considering a case wherein under the garb of ease of conducting business, law was circumvented²⁰⁶. Falling back to state that sustainable development does not mean no development at all, law has to tread a careful path and easing conditions is not always the right thing to do.

²⁰⁰Rule 6.

²⁰¹ See <<http://www.moef.gov.in/sites/default/files/C%20&D%20rules%202016.pdf>>, [Accessed on 20 October 2021].

²⁰² See <<http://www.downtoearth.org.in/news/environment-ministry-notifies-construction-demolition-waste-management-rules-53389>>, [Accessed on 20 October 2021].

²⁰³ Environmental governance: India's changing scenario, available at <<https://www.downtoearth.org.in/blog/environment/environmental-governance-india-s-changing-scenario-59534>>, [Accessed on 22 March 2021].

²⁰⁴*Ibid.*

²⁰⁵ See <<https://www.bloomberquint.com/business/green-tribunal-questions-move-to-exempt-realty-projects-from-environmental-clearance>>, [Accessed on 22 March 2021].

²⁰⁶*Ibid.*

During this period, the draft EIA 2020 notification²⁰⁷ was rolled out and going by the voices that were raised against it, one could sense that a dilution of the existing law was underway— for e.g., public consultation was sought to be done away with for certain projects²⁰⁸, and all these had a negative impact on the minds of the people, who feared the worst — and to a certain extent has been validated as the public notice period has been reduced by 10 days now. Vernacular versions of these reports too were not readily available and acted as an impediment to proper implementation. As opposed to compliance reports being filed twice a year, this notification changed it to once a year; not to mention the post facto approvals that could be secured!

All these have led to thoughts being raised as to whether environmental law in India has been based on a correct footing, built on a firm, solid, correct ground. Law's mere presence cannot, in any way, translate into better protection and environmental law did suffer from this, and much was based on the fact that the grounds wherein it was built on were indeed shaky. A revamp of the existing environmental legal regime by changing the very basis of its foundation is what is to be done — and that is exactly what is going to be discussed.

III. ENVIRONMENTAL LAW THROUGH A SOCIOCULTURAL LENS

The very basis of Indian environmental ethos can be found embedded in the myriad customs, traditions and practices that are galore — unchanged over time; mystical to say the least — and has played an immense role in shaping the legal arena²⁰⁹. Interspersed with tradition and its religious connotations, such instances of fostering environmental protection have been opined by judges to be the very

²⁰⁷See <https://environmentclearance.nic.in/writereaddata/Draft_EIA_2020.pdf>, [Accessed on 22 March 2021].

²⁰⁸Projects under Category B2 were sought to be exempted.

²⁰⁹Bharti Chibber, "Indian Cultural Heritage and Environmental Conservation through Traditional Knowledge", *Mainstream*, Vol XLVI, 2008. Available at <<https://www.Mainstreamweekly.net/article746.html>>, [Accessed on 21 October 2013].

basis of a value-based survival mode²¹⁰. This divine power, which has been reiterated by religion as the creator of nature, has been recognized and has led to the masses accord a special status to nature and its constituents. If one were to delve into the tribal beliefs that exist in India, one can notice that they treated nature as a living spirit and that her constituents had to be shared²¹¹.

The prevalence of an intricate connection between the society and natural resource management has been long studied and the myriad ways in which nature is respected, and taken care of, does give one insight about the way forward. In olden times, when the stress was on migration, the absence of organized activities led to minimal destruction of the environment. However, with the passage of time, and the increase in the number of activities, which affected human-nature relationships, the dependency on nature and natural products increased²¹². Agriculture forced humans to settle down in one place and there soon arose a situation wherein more resources were used all of a sudden. Agriculture also led to the formation of organized communities which further led to industrialization, and soon the world was changing at a very fast pace. Even in such circumstances, we can note that certain ways of life did play an integral part and role in shaping our use of environmental offerings. This also led to the imposition of various restrictions where a particular caste could hunt or collect food²¹³. This led to communitarian regulatory norms on matters wherein nature could be put to use²¹⁴. Natural calamities and societal response to them also did help shape our views. All

²¹⁰ *Aruna Roy v. UOI*, (2002) 7 SCC 368.

²¹¹ Nirmal Kumar Bose, *Tribal Life in India*, National Book Trust of India, New Delhi, 2002, at p.61.

²¹² See Madhav Gadgil and Ramachandra Guha, *The Fissured Land*, Oxford University Press, New Delhi, 1992.

²¹³ Madhav Gadgil and Ramachandra Guha, *The Fissured Land*, Oxford University Press, New Delhi, 1992, at p.97.

²¹⁴ The Gavlis who were cow herders and the Kunbis who practised shifting cultivation came up with their own rules and regulations about using resources. Mahars were entrusted with the responsibility to check unauthorised felling of trees. For more see, Madhav Gadgil and Ramachandra Guha, *The Fissured Land*, Oxford University Press, New Delhi, 1992.

these put together certain rules and responsibilities on the people in power to protect their citizens²¹⁵.

Colonialism led to widespread environment damage and soon maximum utilization of available resources was the mantra, which ultimately led to unrest²¹⁶. The British exploited the natural resources available aplenty in India and very soon, this led to emerging concerns of human rights and environment protection. Many environmentalist like Sunderlal Bahuguna and Chandi Prasad Bhatt initiated various nature rights movements, and the Chipko and Appiko movements, which threw light on communitarian roles in nature conservation, was very well received in India.

Nature, natural entities as well as inanimate objects were revered and worshipped, mostly by tribals as well as agrarian folks²¹⁷. There are examples of plants afforded special status²¹⁸ as the popular belief was that they had a role to play in many aspects of life. The idea was to connect many of the day-to-day activities that we engage ourselves in, attach some sort of a customary connotation to it, and extend it to include environmental protection. Numerous examples of imbibing traditional knowledge and customs can be seen to be prevailing amongst the Demazong, the Buddhist eco-cultural landscape in Sikkim Himalayas, the Apatanis of Arunachal Pradesh²¹⁹, Mendha in Maharashtra²²⁰, the indigenous knowledge of fishermen of coastal Maharashtra²²¹, and the traditional dwellers in Karnataka, all of which are

²¹⁵ Kautilya in his work Arthashastra lays down principles that need to be followed by the ruler in such circumstances. Detailed steps including remedial measures that need to be taken during famine and steps that need to be taken to prevent such occurring also have been mentioned.

²¹⁶ Madhav Gadgil and Ramachandra Guha, *The Fissured Land*, Oxford University Press, New Delhi, 1992, at p.141.

²¹⁷ Majumdar R C *et al*, *An Advanced History of India*, MacMillan, Madras, 1973, p. 20.

²¹⁸ See Appendix.

²¹⁹ Rai S C., "Traditional Ecological Knowledge and Community-based Natural Resource Management in Northeast India", 4 *Journal of Mountain Science* 248, 2007.

²²⁰ Locals over here took active steps in protecting the biodiversity by forgoing commercial exploitation of forests. Only Non Timber Forest produce would be used. The villagers created regulations that they have to follow. It was also decided that forest areas would not be put on fire.

²²¹ Sustainable methods of fishing can be attributed to the knowledge that they shared. For more, see, Vivek H Nirmale *et al.*, "Assessment of Indigenous Knowledge of Coastal Fisherfolk of Greater

clear²²². Apart from this, one also does come across a number of folklores, which mention and praise the role of tribal people in protection biodiversity. These make clear the innate connection that such tribes do have with nature and speaks volumes about the efforts that such communities do put in.

All living things could speak and they would plead for mercy when humans sought to kill or cut them is what a popular Rengma Naga folklore portrays²²³. The Idu Mishmi folklore considers sparrows as those entities who taught man cultivation and accord this to be the reason for their protection²²⁴. Nagas did not destroy forests as they believe that it will cause loss and poverty²²⁵, and prohibited hunting as well — which is clear from the numerous folksongs that exist²²⁶. The Ramo tribe of Arunachal Pradesh do not kill tigers as they are considered to be brothers²²⁷.

A table highlighting conservation-oriented taboos in tribes and other ethnic groups of Northeastern India²²⁸ is reproduced:

Animal(s) Protected Through Taboo	Tribe/Ethnic Group	State in N.E. India
Deer, wild boar, and other animals in mating season; pregnant female and young animals; leader of a group of	Various tea garden communities, Hrankhawl, Hmar & Debbarman tribes	Assam, Tripura, Mizoram

Mumbai and Sindhudurg districts of Maharashtra”, 3 *Indian Journal of Traditional Knowledge* 37, 2004.

²²² Parinitha M *et al.*, “Ethno-botanical Wealth of Bhadra Wildlife Sanctuary in Karnataka”, 3 *Indian Journal of Traditional Knowledge* 51, 2004.

²²³ See, Dr. Verrier Elwin, *Myths of the North East Frontier of India*, North East Frontier Agency, Shillong, 1958.

²²⁴ *Ibid.*

²²⁵ Sapu Changkija, “An Ethnobotanical Folktale of the Ao Naga in India”, 53 *Asian Folklore Studies* 255, 1994.

²²⁶ Abhik Gupta and Kamalesh Guha, “Tradition and Conservation in Northeastern India: An Ethical Analysis”, 12 *Eubios Journal of Asian and International Bioethics* 15, 2002.

²²⁷ M M Dhasmana, *The Ramos of Arunachal*. Concept Publishing Company, New Delhi, 1979.

²²⁸ *Supra* n. 226.

deer/wild boar.		
Elephant, Tiger, Monkey, Owl, Vulture, House Crow, Raven	Various tea garden communities	Assam
Elephant, Song birds, certain snakes	Hrankhawl	Assam, Tripura
Monkey, Otter	Pnar	Assam, Meghalaya
Elephant, Eagle, Parrot, Hill Mayna	Dimasa	Assam
Hoolock Gibbon, Tiger, Python, Wild Goat, Bulbul (bird), Frog	Rongmai naga	Assam, Manipur
Tortoise, Snail, <i>Channa morulius</i> (fish), Small eel, Some catfishes, Snakes	Ningthouja clan of Meitei	Manipur, Assam
Egg and meat of all animals, some catfishes, small eel, <i>Channa morulius</i> , Snail	Khuman clan of Meitei	Manipur, Assam
Field rat	Khabanganba clan	Manipur, Assam
Sparrow	Moirang clan	Manipur, Assam
Parrot, Owl, Elephant, Monkey, Jackal	Muslim trapper	Assam
Sparrow, Jackal, Crow, Eagle, Vulture	Muslim nomad	Assam
Monkey, Elephant, Songbirds	Muslim nomad	Assam
All poisonous and non-poisonous snakes	Worshippers of Goddess 'AeManasa'	Assam
Herons, Egrets, and	Most communities in valley	Assam

Cormorants in heronries during mating/nesting season	areas	
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While much has been spoken about this kind of an extension of environmental protection, yet another feature which figures prominently is the concept of sacred groves — areas nurtured by community-based forest conservation and management, seen all around the globe²²⁹. Going by various terminologies, this is prevalent in many parts of India too — Kavu in Kerala, Devara Kadu in Karnataka, Pavithra Vana in Andhra Pradesh etc. — by promoting a religious identity to such areas and a resultant protection that is afforded. You do see a number of such sacred groves in Meghalaya where they have divided them into three categories — *Lao Lyngdoh* (forest of the priests), *Lao Niam* (ritual forests), and *Lao kyntang* (forests of the clan)²³⁰— all of which are afforded protection. Assam too has numerous instances of such protection being afforded²³¹. The very conceptualization of these areas makes it clear that people should not remove anything that it present — even dead twigs and leaves — though there are certain exceptions²³². Considered sacred, the usual Indian practice of removing one's footwear, while entering a holy place, is followed here as well, which makes one aware of the importance that has been attached to it²³³. The Meetei community, in Assam and Manipur, refer to these as Umang Lais and treat it as an integral part of nature worship. It is also worthy to note that they don't eat certain things, which

²²⁹Many countries do have the concept of sacred groves and afford protection. The ancient Romans did follow the concept. In Scandinavia as well as Germany, as well, areas were earmarked as sacred groves and protection was afforded to them.

²³⁰D Syngai, "Sacred Groves of Meghalaya" in B Kharbuli *et al*, Eds., *Biodiversity- North East India Perspectives*, North Eastern Biodiversity Research Cell, North-Eastern Hill University, Shillong, 1999, p. 70.

²³¹ Assamese Sufi Saints protect and maintain sacred groves. For a list of sacred groves in Assam, see, <http://www.cpreecenvs.nic.in/Database/Assam_2251.aspx>, [Accessed on 21 February 2021].

²³² The Tribal Chief permits such activities in certain tribes in Assam, Mizoram, Nagaland and Manipur. Such areas are treated as Community Reserve or Supply Forests. For more see, Ramachandra Guha *et al*, *Indigenous Conservation Initiatives* in B Kharbuli *et al*, Eds 'Biodiversity- North East India Perspectives', North-Eastern Hill University, Shillong, 1999, p 42.

²³³Oliver King *et al*, "Sacred Groves- Traditional Ecological heritage", 23 *International Journal of Ecology and Environmental Sciences* 463, 1997.

form part of their usual diet, in certain specific periods so as to help sustainable harvesting and conservation²³⁴.

The importance that one can attach to these sacred groves can be understood by identifying the various types of plants that are protected because of the fact that they grow a lot in such areas. The below table highlights some of the plants and their uses, which are documented to be growing in numerous sacred groves across the country²³⁵.

SL.NO.	NAME OF THE PLANT	USES
1	<i>Butea monosperma</i>	Medicinal, Dye
2.	<i>Cordia dichotoma</i>	Food, Medicinal
3.	<i>Ravuolfia serpentina</i>	Medicinal
4.	<i>Alstonia scholaris</i>	Medicinal
5.	<i>Helicteres isora</i>	Medicinal
6.	<i>Boswellia serrata</i>	Medicinal
7.	<i>Calotropis gigantean</i>	Medicinal
8.	<i>Carissa congesta</i>	Medicinal
9.	<i>Diopyros Montana</i>	Medicinal
10.	<i>Bambusa arundinacea</i> (wild bamboo)	Miscellaneous

²³⁴ L J Singh, et al., "Environmental Ethics in the Culture of Meeteis from North East India" in *Song Sang-yonget al.*(eds), *Bioethics in Asia in the 21st Century*, Eubios Ethics Institution, Christchurch, 1998.

²³⁵ Rajiv Rai and Vijendra Nath, *The Role of Ethnic and Indigenous People of India and their Culture in the Conservation of Biodiversity*, available at <<http://www.fao.org/docrep/article/wfc/xii/0186-a1.htm>>, [Accessed on 21 March 2021].

The Iringole Kavu in Kerala, in South India, can be said to be a perfect model, which depicts the *in situ* conservation model that has been put into practice, largely on a very successful note. By integrating the efforts of temple authorities, local communities and NGO's, this Kavu located in Perumbavoor, Ernakulam District, Kerala Stat²³⁶, is spread over 110 acres, and is one of the largest in the country. Steps to convert it to a tourist spot²³⁷ by the state government, was met with local opposition and the state withdrew its plan. Managed by the local community, this Kavu can be seen as a shining example of grassroots level governance, and its impact was crystal clear when the government later came up with a "*Kavu Samrakshana Padhathi*"²³⁸ to protect the sacred grove. Since nothing is removed, the dead trees, leaves and twigs act as fertilizer and ensure that there is never a shortage of nutrients. To protect the natural water channels within the groves activities, which lead to water pollution, like bathing and washing of clothes were not allowed. These channels helped recharge natural tanks in and around the area and the locals vouch that even during the harshest summer, their water supplies are intact.

There were definitely some concerns too, expressed by locals, as there was an unrestricted access to these sacred groves, which led to vandals and even stray animals entering the premises and destroying the premises. Land encroachments too were an issue. Given these concerns, the Kerala Forest Department started a Social Forestry Wing aimed at protecting nature by trying to ensure that a more participative approach be taken by including communitarian practices and local initiatives to protect, preserve and augment these areas.

This kind of an extension of sacredness to various entities, living as well as non-living, did pave way for courts in India, to take into consideration traditions and

²³⁶For more visit, <<http://english.mathrubhumi.com/travel/pilgrimage/iringole-kavu-where-trees-are-the-deities-kerala-temples--1.1894589>>, [Accessed on 21 October 2021].

²³⁷One on one conversation with the priests and the locals helped gain much needed insight as well as provided quite a lot of information. These conversations also helped the researcher understand the value that the kavu had in the hearts of the local community.

²³⁸ It translates into 'Sacred Grove Protection Scheme'.

customs, which fostered better environmental protection and afford it some legal backing. In ancient India, Emperor Ashoka laid down that flora and fauna should be protected and there was a law in place. In Rajasthan, the Bishinói, are seen as protectors and there have been instances of them hugging trees and preventing them from being felled – which also changes the ruler's mindset and made him promulgate laws to protect trees²³⁹. The Appiko movement in Karnataka also speaks volumes about community resistance towards environmental degradation.

The Himalayan regions in Northern India, a biodiversity hotspot, warranted adequate protection and there are numerous instances as well. In Arunachal Pradesh, a state in North East India, the Apatanis resort to cultivating rice along with pisciculture²⁴⁰, engage in rural forestry and also are experts in traditional medicine²⁴¹. Steps have also been taken under the National Environmental Policy of 2006, which mandates an action plan to 'encourage cultivation of traditional crops'²⁴²; and the Organic Farming Policy of 2005, which mandates that traditional and indigenous knowledge should be imbibed to better agricultural practices²⁴³. The National Mission for Sustaining the Himalayan Ecosystem²⁴⁴ under the National Action Plan on Climate Change is yet another step that is taken to protect the Himalayas, including the traditional knowledge system and the Himalayan agriculture system.

Water resource is another area which assumes a lot of significance as has been evident given the fact that ancient civilizations are known by the water bodies near

²³⁹Nair, S M *Cultural Traditions of Natural Conservation in India*, available at <<http://ccrtindia.gov.in/readingroom/nscd/ch/ch11.php>>, [Accessed on 21 May 2021].

²⁴⁰Rai S C, "Apatani Paddy-cum-Fish Cultivation: An Indigenous Hill Farming System of North East India", 4 *Indian Journal of Traditional Knowledge* 65, 2005.

²⁴¹ Kamini Kusum Barua and Jolanta Slowik, *Traditional Ecological Knowledge and Community Based Sustainable Natural Resources Management in the Eastern Himalayas- A Case Study of the Apatani Tribe*, available at <<https://www.uni-goettingen.de/de/document/download/828b258e7a788ebf9340c9076d9>>, [Accessed on 20 October 2021].

²⁴²Section 5.2.6, National Environment Policy, 2006.

²⁴³ Section 2.3 (h), Organic Farming Policy, 2005.

²⁴⁴ For more see, <<http://www.knowledgeportal-nmshe.in/NMSHE.aspx>>, [Accessed on 14 March 2022].

which they had flourished²⁴⁵. Truly, an “elixir of life”, water has had a certain element of divinity creep in which, it must be said, has been able to augment its protection²⁴⁶. From being treated as a resource that is held in common good, water rights have come a long way, and so have the duties that one attaches to it. These sets of duties are read into the law and are applicable for all the stakeholders, and in turn, it ultimately led to the emergence of a new set of laws, which dealt specifically with water and water governance²⁴⁷. When water was in abundant quantity, the “Principle of Discovery”²⁴⁸ was in force, as there was no need for any restrictions. However, with time, changes popped up and soon an urgent and imminent need to curtail and check the use of water was the need of the hour, which in turn led to the enactment of laws and rules on the subject.

Delving into the historical aspects of water governance, one does notice that religion did play an integral part²⁴⁹. At the initial stages, the ruler was all-powerful, but with the passage of time, community rights over the resource attained prominence²⁵⁰. There was a person called as the *Agronomoi* who has to oversee matters related to water governance, including irrigation, under Chandragupta Maurya. The state was also under a duty to ensure that it takes steps to provide water and ensure that it was being protected. They had to construct tanks, canals and water storage as well as supply mechanisms and one does see, across India, a number of instances where tanks were a common norm. The situation was a tad different in the southern part of the Indian sub-continent, wherein tank land or

²⁴⁵ Egyptian civilization or the Nile civilization; the Mesopotamian civilization or the Euphrates-Tigris civilization; the Harappan and Mohenjodaro civilization or the Indus Valley civilization; the Chinese civilization or the Huang-Ho civilization.

²⁴⁶ For more about the history of water laws, see, Manjeri Subin Sunder Raj, “The Legal Lore of Water Ecology and Scriptures”, in K V Raju, Manasi S (Eds.), *Water and Scriptures- Ancient Roots for Sustainable Development*, Springer International, Switzerland, 2017.

²⁴⁷ A number of factors did play an integral role in shaping this new area of jurisprudence- Location, geographical conditions, climate, availability and socio-economic conditions are a few examples. Philosophical moorings and religious tenets too did play a role in water resource governance.

²⁴⁸ By virtue of this, anyone who was the first to “discover”, was supposedly the owner and enjoyed dominion over the same.

²⁴⁹ For more see, Robert Lingat, *The Classical Law of India*, Thompson Publishers, 1973.

²⁵⁰ *Supra* n. 149, at p. 193. Manjeri Subin Sunder Raj.

eripati was handed over to the state as a gift by individual landowners²⁵¹. There were a number of laws, which did promote better ways and mechanisms of affording protection. Embankments too were safeguarded under law and strict punishments were in force if something untoward were to happen as has been noted by Manu who had laid down that miscreants, would either be beheaded or drowned. The Vishnu Sutras also vouched²⁵². If one were to use tanks without securing permissions heavy fines was imposed as well²⁵³.

Water conservation techniques did play a great role in the erstwhile *Vijayanagara* Empire, in the state of Karnataka in southern India. Hampi, a city in the erstwhile *Vijayanagara* kingdom, had a number of innovative steps in place, which included a long, intricate network of aqueducts and water channels, which was very well maintained. The Thungabhadra River, on whose banks the city was located, was harnessed and channeled in a way that was conducive and helped agriculture and water availability for domestic use in nearby areas. Water was collected in these aqueducts and flowed through channels, constructed out of granite, and led to a tank — the *pushkarni*. Gravity was used as a catalyst to ensure a steady, continuous flow, and the *Vijayanagara* kings took immense pride in the same. Even though one notices that many of the erstwhile structures are in a dilapidated state, the Archaeological Survey of India, has taken many steps to protect and preserve whatever is left — and more importantly ensure that these methods are used elsewhere to protect water.

The British arrival in India sounded the death knell of communitarian management, especially since their colonial mindset was more accustomed to exploiting the resources. The Land Acquisition Act of 1894 under the garb of land rights did place within its scheme water rights as well. Even then, one does notice, that there have been numerous instances of communitarian practices, like the *johads*²⁵⁴, for

²⁵¹Romila Thapar, *A History of India*, Penguin Publishers, New Delhi, 1977, at p. 184.

²⁵²Max Muller (Ed.), *Sacred Books of the East*, Vol. IX, Motilal Bansaridas, Delhi, 1965, at p. 279.

²⁵³*Ibid.*

²⁵⁴Water harvesting structures. They were earthen check dams that were built to collect and store rainwater.

example, which have helped preserve and protect water. Apart from this, community wells —*Baoris* or *Bers* were another set of methods that were prevalent in parched areas, especially, in Rajasthan²⁵⁵. *Jhalaras*²⁵⁶—or manmade tanks which could collect water, were prevalent in Rajasthan and Gujarat, and the water was used for community use and religious purposes. *Kunds*²⁵⁷ included covered tanks, which stored water and was used largely to supply drinking water in arid regions of Rajasthan and Gujarat. *Tanka*²⁵⁸ is an underground tank, more of a circular hole, made in the ground and covered with lime on the sides, where rainwater is stored. *Dongs* were prevalent in North Eastern parts of India and used the old riparian system of rights, guided water use²⁵⁹. Assam had *Garhs*²⁶⁰ and Maharashtra had *bhandaras*²⁶¹—channels which transported water to agricultural lands. Southern Bihar saw a restoration of *ahars*²⁶², which are manmade reservoirs, and *pynes*, which are diversion channels from rivers²⁶³. It is also noted that many temples, especially in the southern parts of the country, had a number of temple ponds, as well as huge tanks wherein water was stored. Architecture too was witness to an important role played by water and forts usually had a water catchment area. For example, the *Chitradurga* fort, in Karnataka, had an intricate way, which aided the collection of water. The temple pond of *Shravanabelagola*, too is a shining example of how water was stored. Ways to share and promote conservation was one of the simplest methods of protecting a resource and the

²⁵⁵ See, <http://www.rainwaterharvesting.org/Rural/thar-desert_tradi.htm>, [Accessed on 04 June 2021].

²⁵⁶ See <<http://www.rainwaterharvesting.org/rural/traditional1.htm>>, [Accessed on 04 June 2021].

²⁵⁷ See <http://www.rainwaterharvesting.org/Rural/thar-desert_tradi.htm>, [Accessed on 04 June 2021].

²⁵⁸ *Ibid.*

²⁵⁹ See <<http://hindi.indiawaterportal.org/node/53132>>, [Accessed on 04 June 2021].

²⁶⁰ See, Sudhakara Sharma and M.S. Shruthi, "Water in Hindu Scriptures: Thank You, Water!", in K V Raju, Manasi S (Eds.), *Water and Scriptures- Ancient Roots for Sustainable Development*, Springer International, Switzerland, 2017, at p. 151.

²⁶¹ See <<http://www.rainwaterharvesting.org/rural/traditional2.htm>>, [Accessed on 04 June 2021].

²⁶² Ahars were also built by Chandragupta Maurya.

²⁶³ See <<http://www.indiawaterportal.org/articles/ahar-pynes-traditional-flood-water-harvesting-systems-can-help-revive-agriculture-south>>, [Accessed on 04 June 2021].

same has been tried and tested, on numerous occasions in India — the southern parts of the Indian sub-continent were resplendent with community-managed water systems, the *kudimaramath*²⁶⁴. They were referred to as *Panchayats* in Karnataka and *Nattamai* in Tamil Nadu and were because of farmer associations, and played an integral role in the maintenance of water systems.

Water resources being scarce and subject to a lot of uses mandated that equitable sharing mechanisms were in place and the *Kuhls* — which were relied on by communities in the Himalayas — were managed by *Irrigation Managers* or *Kohlis*²⁶⁵, who was the master and supervised water allocation. He was also responsible to deal with disputes and settle them. A similar practice was in place in Karnataka, a state in southern India where you had a *Neeruganti*²⁶⁶, who was to ensure that water is shared equitably. He had to overlook the maintenance of the tanks, conduct repairs, decide as to which crop should be sown etc. Changes in the law which mandated a uniform water management system saw them being appointed as *Mettis*, only in the case of large tanks, under the government, and slowly they lost their positions as the government took over the management.

Pani Panchayats, which were prevalent in certain states of India, was yet another example of community participation in the management of water, which it must be said, was an eye-opener as to how resources are to be maintained. Begun by a group of farmers, to oversee the lift irrigation project under the guidance of the Gram Gaurav Pratishthan (GGP)²⁶⁷, this soon became a concretized way of dealing with the resource and soon elaborated five principles which were aimed at

²⁶⁴For more see, <http://www.walmi.org/new%20wiswam/wisw_page1.htm>, [Accessed on 04 June 2021].

²⁶⁵For more see, <<http://www.indiawaterportal.org/articles/kuhl-kohli-and-lost-tradition>>, [Accessed on 04 June 2021].

²⁶⁶For more see, S T Somashekhar Reddy, *Water Management- The Neeruganti Way*, available at <[http://www.indiawaterportal.org/sites/indiawaterportal.org/files/Water%20 Management.pdf](http://www.indiawaterportal.org/sites/indiawaterportal.org/files/Water%20Management.pdf)>, [Accessed on 04 June 2021].

²⁶⁷ For more, see <<http://panipanchayat.org/content/gram-gaurav-pratishthan>>, [Accessed on 04 June 2021].

settling differences of opinion²⁶⁸: (i) irrigation schemes are to be taken up not by individuals but by groups, so that water would be allocated as per the number of persons in the family and not as per the land holding; (ii) to prevent the abuse of water, it has been laid down that only seasonal crops with low water requirements are cultivated; (iii) water rights stay with the farmers even if the land is sold; (iv) everyone, even those who do not own land, have a right over water; (v) beneficiaries of the Panchayat have to bear 20 percent of the cost.

1. Securing a Legal Backing

Though we could notice many ways and mechanisms in which natural resource protection is afforded, nothing beats self-help²⁶⁹. By connecting people, on a very high line of thought, and imbibing in them certain notions of environmental protection, it is one sure shot way to achieve success. Community participation does go a long way in realizing these high ideal, even so far as to note that it might have a greater impact than even law. The advantage is that it would also be able to churn out better laws and policies, which imbibe in them such best practices. These ever-growing concerns have helped communities to voice their concerns and see to it that they receive ample recognition, and in turn play a role in the framing of laws, policies and rules²⁷⁰. There have been numerous examples of such community participation and the Van Panchayats or the Village Forest Councils, the *Pani Panchayats* or the Water Councils and the *Sukhomajri* Model village in Haryana are a few instances. It is also heartening to note that changes have also been brought about into mainstream law wherein such aspects are included. For example, the Environment Impact Assessment (EIA) Notification,

²⁶⁸ See <<http://www.goodnewsindia.com/Pages/content/inspirational/paniPanchayat.htm>>, [Accessed on 04 June 2021].

²⁶⁹ Ishwara Bhat P and Shubhangi Bajaj Bag, "Self-Help Initiatives, Community Participation and Sustainable Development: The Need, Space and Dynamics", in P. Ishwara Bhat (Ed.) *Natural Resources Law- Concepts and Approaches*, Eastern Book Company, Lucknow, 2016 at p. 253.

²⁷⁰ See, Arvind Khare, "Community Based Conservation in India", in Ashish Kotharai *et al*, (Eds.), *Communities and Conservation: Natural Resource Management in South and Central Asia*, Sage Publications, New Delhi, 1998.

makes public consultation mandatory²⁷¹, which ensures better decision making. The levels of awareness amongst the public on matters related to the environment protection-development fiasco too increases as a result.

Specifically in India, one does notice an increase of community participation in forest management, starting from the 1970s wherein the concept of Joint Forest Management was mooted — which in turn led to better participation and a mutual relation between the village communities and the forest department²⁷². It is also interesting to note that this was a step that went completely against the tide, as such, communities did not, prior, and have such a right. The National Forest Policy of 1988²⁷³ aimed to create an immense people initiative and to that effect brought together village communities and made them work towards protecting forestlands²⁷⁴. Another example is that of bio-diversity conservation wherein local and traditional knowledge is harnessed and sought to be used to afford better management. Laws had to be made to ensure a social transformation aimed towards better participation. The Biodiversity Act of 2002 laid down that Bio-Diversity Management Committees²⁷⁵ (BMC) are to be formed and that they should aim towards using resources in a sustainable way. Their importance can also be understood because of the bottoms-up method followed in the administrative setup, which mentioned that the National Biodiversity Authority as well as the State Biodiversity Boards should consult with the BMCs²⁷⁶. The BMCs should also keep and maintain information—a People's Biodiversity Register (PBR). This is formed after extensive consultation with the local people contains all-inclusive information

²⁷¹EIA Notification 2006.

²⁷² See <<http://www.fao.org/docrep/ARTICLE/WFC/XII/0196-C1.HTM>>, [Accessed on 21 october 2021].

²⁷³ Available at <<http://envfor.nic.in/legis/forest/forest1.html>> [Accessed on 21 October 2021].

²⁷⁴ For more see, Kulbhushan Balooni, *Participatory Forest Management in India: An Analysis of Policy Trends amid Management Change*, available at <https://pub.iges.or.jp/system/files/publication_documents/pub/policyreport/180/07_India.pdf>, [Accessed on 21 October 2021].

²⁷⁵S. 41, The Biological Diversity Act, 2002. The same is provided for by the R.22 of the Biodiversity Rules, 2004 as well.

²⁷⁶S. 41(2), The Biological Diversity Act, 2002.

the availability and knowledge of local biological resources²⁷⁷, their uses and other information, which would help protect them better. Such participation also increases awareness amongst the public on such matters and leads to better involvement, as well as better techniques. Pollution control laws that exist in India too mandate that NGO's which deal with environmental concerns should actively take part in information dissemination²⁷⁸. Corporate Social Responsibility (CSR) being added in the Companies Act of 2013²⁷⁹ is yet another step, and this mandatorily makes certain companies to allocate at least 2% of their average net profits, during the preceding three financial years, and do something good for the public. Corporate Environmental Responsibility surely does form an integral part of CSR.

IV. READING INTO MAINSTREAM LAW AN ECO-CENTRIC APPROACH

The Indian judiciary can be said to be a trail-blazer, at least on certain instances, as far as reading into the law, especially environmental law, newer concepts are concerned. The courts in India have had a chance, early on itself, to delve into matters that touched upon the very basis and jurisprudence of environmental law, raising questions as to why the environment needs to be protected and for whom, amongst other pertinent questions. By embarking on a journey through the lens of the courts, at various points of time, what is being sought to is to arrive at a framework which lays down a path: a path towards achieving environmental independence.

This kind of an engaging effort that has been seen on the part of various courts in India was first explored in *T.N. Godavarman Thirumulpad v. Union of India & Ors*²⁸⁰, wherein the court had to look into protection measures to be taken in re the

²⁷⁷R. 22(6), The Biological Diversity Rules, 2004.

²⁷⁸The Water Act, 1974 and the Air Act, 1981 provides that the Boards created under the Acts should involve environmental NGO's in promoting research, training and other related activities.

²⁷⁹S. 135, Companies Act, 2013.

²⁸⁰WP (C) No. 202 of 1995, available at <<https://indiankanoon.org/doc/187293069/>>, [Accessed on 21 May 2021].

Asiatic Wild Buffalo. Justice K S Radhakrishnan, a member of the bench opined, for the very first time, a nuanced approach, which marked the first step towards a new environment jurisprudence. While noting that “environmental justice could be achieved only if we drift away from the principle of anthropocentric to ecocentric”²⁸¹, he was able to encapsulate the very essence of an eco-friendly method. And this opened the floodgates of environment litigation by not limiting one to human entities only, but by including non-human entities as well, this line of approach garnered much interest and was able to bring about a paradigm shift in the views expressed by the courts. Mining activities which were taking place without any restrictions, in a reserve forest, which included a tiger conservation area under the Sariksa Tiger Project were questioned before the Supreme Court as it was sure to harm the ecology and have ramifications. Opining that these concerns are to be expressed by the government as well the court restrained such activities from taking place. Justice Shah had an opportunity to look into the role of religion in environmental protection and one does notice that the connection between religious principles and traditions, and environmental protection, has been a frequent discussion in environment related matters, with the courts delving into the very essence and looking into whether religion and its principles can be treated as a catalyst for environment protection. In *Aruna Roy v. UOI*²⁸², Justice Shah looked into this intricate connection and stressed on the need for co-existence between humans and all other living things including water and air.

This line of approach soon led the courts to delve more into the sociocultural aspects of environment protection and In *Sachidananda Pandey v. State of West Bengal*²⁸³, Justice Chinnappa Reddy was found quoting extensively the exchange between the Great White Chief of Washington and the Chief Seattle, wherein the latter expressed his inability to understand as to how we, humans, owned land and other entities. Natural entities were treated akin to Goddesses, with one example

²⁸¹ *Ibid*, at Para 14.

²⁸² (2002) 7 SCC 368.

²⁸³ (1987) 2 SCC 295.

being *T N Godavarman Thirumalpad v. UOP*²⁸⁴, wherein rivers were afforded divine status. Concepts like dharma, for example, were very much used and the judges relied heavily on such concepts for further environment protection. In *M C Mehta v. UOP*²⁸⁵, the same was reiterated and the sociocultural importance that one finds, writ large, in environmental law, was sought to be harnessed and, in return, protect the environment.

Religious importance was afforded to many a natural entity and one of the first and foremost instances was the *Orissa Mining Corporation v. MOEF*²⁸⁶ case, also known as the *Niyamgiri* case. The local communities revered a mountain as their god, the *Niyamraja*, and the court held that Art. 25 and Art.26 of the Constitution of India, over and above guaranteeing the right to practice and propagate faith or belief did also protect all rituals and other observations, which are treated as an integral part of religion. Special status was thus afforded to the mountain and mining activities were directed to be ceased.

1. Dawn of a New Era

With the passage of time, one does notice that on many an instance the courts in India have had a change to deal with such sociocultural aspects of environmental protection. The role and the responsibility that judges have read onto themselves highlight the importance attached. Questions soon arose as regards the legal status that needs to be attached to various entities other than humans. With developments in Earth Jurisprudence, in various parts of the globe, it was quite natural that steps and initiatives were taken in India too. Ecuador's inclusion of Rights of Nature in its Constitution, Bolivia following suit with a legislation which provided for Nature Rights, specific entities being conferred legal personhood status in New Zealand, Colombia, and the United States – all had and still has a lot of influence on Indian courts and judges.

²⁸⁴ (2002) 10 SCC 606.

²⁸⁵ (1992) 1 SCC 358.

²⁸⁶(2013) 6 SCC 476

One of the first instances of the courts in India taking due cognizance of this 'legal personhood' status was in *Mohammed Salim v. The State of Uttarkhand*²⁸⁷. Justices Rajiv Sharma and Alok Singh laid down that Ganga and Yamuna and all their tributaries, streams and every natural water flowing continuously or intermittently with them are legal persons²⁸⁸. Over and above this, the Director of the Namami Gange project, the Chief Secretary of the state and the Advocate General of the state were appointed as the legal guardians²⁸⁹ of the rivers, which cast them under a responsibility and a duty to protect and work towards the welfare of the rivers, and more importantly ensure that a legal standing is provided for. As was mentioned earlier, developments around the globe, especially the steps taken in New Zealand, which provided a legal status to River Whanganui largely influenced this decision²⁹⁰. This was followed by the decision in *Lalit Miglani v. State of Uttarakhand and Ors*²⁹¹ wherein the Gangotri and Yamunotri glaciers and the surrounding parts including meadows, waterfalls, lakes and forests²⁹², were afforded legal personhood.

*(...) we by invoking our parens patriae jurisdiction, declare glaciers including Gangotri & Yamunotri, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls, juristic person having the status of a legal person, with all corresponding rights, duties and liabilities of a living person, in order to preserve and conserve them*²⁹³.

²⁸⁷Writ Petition (PIL) No.126 of 2014, decided on 20/03/2017. See, <<http://www.tribuneindia.com/news/uttarakhand/courts/uttarakhand-hc-accords-human-status-to-ganga-yamuna/379739.html>>, [Accessed on 21 May 2021].

²⁸⁸ Para 19 of the judgment.

²⁸⁹ Paras 19 and 20 of the judgment.

²⁹⁰ The river was afforded legal status by the New Zealand parliament. The same was made possible by the Public Act No. 7 of 2017, available at <<http://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html>>, [Accessed on 01 October 2021].

²⁹¹WP (PIL) No. 140 of 2015.

²⁹² The judgment was delivered by a Division Bench comprising of Justice Rajiv Sharma and Justice Alok Singh.

²⁹³WP (PIL) No. 140 of 2015, at p.64.

Here too, the court cast the duty on the Chief Secretary, State of Uttarakhand, Director and the Legal Adviser of the Namami Gange Project, The Advocate General of the State, Director (Academics), Chandigarh Judicial Academy, and Mr. MC Mehta, an environmentalist lawyer and appointed them as legal guardians²⁹⁴.

Similar rights to that of humans were afforded to these entities and in the event of any harm caused, it was laid down that it would be treated as harm that was caused to humans²⁹⁵. Based on this legal entity status, a Public Interest Litigation was filed by Swaroop Singh Pundir, a Rishikesh resident, to protect the rivers and the court issued a notice— was issued by Justice V K Bisht and Justice Alok Singh— asking clarifications from the river itself as to whether land could be dug on its banks to create a trenching ground²⁹⁶.

However, this joy was short-lived as the State of Uttarakhand filed a Special Leave Petition before the Supreme Court of India and cited administrative problems, which interfered with the exercise of their duties to protect the rivers. Arguing that the river flowed through different states, and the invocation of the *parens patriae* principle caused a lot of hardship as these guardians had restrictive roles to play in other states, the decision was sought to be stayed and the same was allowed by the Supreme Court²⁹⁷.

2. Recent Legal Developments

Once the judgment was passed in the *Mohammed Salim case*, there was a lot of discussion as regards extending such rights to entities other than humans. Though reluctant, courts broached on this concept and Justice Rajeev Sharma was, yet again, at the helm of things, when he was to decide a plea seeking regulation of

²⁹⁴ *Ibid.*

²⁹⁵ *Ibid.*, at p.65.

²⁹⁶ See, <https://www.huffingtonpost.in/2017/04/28/after-receiving-human-status-river-ganga-gets-first-legal-notice_a_22060209/>, [Accessed on 01 December 2021].

²⁹⁷ *State of Uttarakhand and Ors. v. Mohammed Salim and Ors.*, Petition to Special Leave to Appeal No. 016879/2017. Order available at <<http://www.livelaw.in/sc-stays-uttarakhand-hcs-order-declaring-ganga-yamuna-rivers-living-legal-entities-read-order/>> [Accessed on 01 December 2021].

the movement of horse drawn carts between India and Nepal in *Narayan Dutt Bhatt v. UOI and Ors*²⁹⁸. Allegations that the animals were treated with cruelty and that there were no medical checks or regulation of charges levied on the service, and that animals were abandoned in India, were the issues in contention, but the court also proceeded to read into as to whether animals need be given *rights*. The petitioner had also alleged that the existing provisions of law under various legislations, namely, Prevention and Control of Infectious and Contagious Diseases in Animals Act of 2009 and the Transport of Animals Rules of 1978, have failed to stymie this problem. The court delved a lot into animal jurisprudence and by quoting the works of Tom Reagan and Peter Singer held *that the entire animal kingdom including avian and aquatic species is to be treated as legal entities*, and placed a responsibility on the citizens of the state to act as loco-parentis for their welfare/protection.

Following his transfer to the Punjab and Haryana High Court, Justice Rajiv Sharma, again in *Karnail Singh v. State of Haryana*²⁹⁹ had an opportunity to deal with the pitiable situation in which animals were being transported. Toeing a similar line and relying on the decision laid down in *Bharat Amratlal Kothari & another v. Dosukhan Samadkhan Sindhi & others*³⁰⁰, which had laid down that transportation of animals should be in accordance with the laws in force, this case too held that animals need be given rights. *AWBI v. A Nagaraj and others*³⁰¹ was yet another decision, which relied on the internationally recognized freedoms of animals³⁰² and laid down a number of directions, which had to be followed and regulated animal use.

The entire animal kingdom including avian and aquatic are declared as legal

²⁹⁸2018(3)RC R(Civil)544.

²⁹⁹ 2019 SCC OnLine P&H 704. <Available at https://www.livelaw.in/pdf_upload/pdf_upload-361239.pdf>, [last accessed on 06 May 2021].

³⁰⁰ 2010 (1) SCC 234.

³⁰¹ 2014 (7) SCC 547

³⁰²The freedoms are (i)freedom from hunger, thirst and malnutrition; (ii) freedom from fear and distress; (iii) freedom from physical and thermal discomfort; (iv) freedom from pain, injury and disease; and (v) freedom to express normal patterns of behaviour

*entities having a distinct persona with corresponding rights, duties and liabilities of a living person. All the citizens throughout the State of Haryana are hereby declared persons in loco parentis as the human face for the welfare/protection of animals. Live and let live.*³⁰³

The Punjab and Haryana High Court also had a chance to deal with a letter that was sent across by a concerned citizen wherein the pitiable condition of the Sukhna Lake was highlighted. Taking the matter up the court in *Suo motu v. Chandigarh Administration*³⁰⁴, had a chance to look into the role and responsibility of the state as well as the citizen in protecting and preserving the lake. It was noted that there was a lack of effort being taken by the district administration and illegal construction was being carried out in and around the lake. The court fell back on the decisions rendered in *Lal Bahadur v. State of Uttar Pradesh and Others*³⁰⁵—*it is the duty of Government and Court to protect environment. There is need of open spaces for recreation and fresh air in urban areas Kerala State Coastal Zone Management Authority v. State of Kerala, Maradu Municipality and Others*³⁰⁶— a flat that was built in violation of CRZ Rules were demolished; *Mormon Church v. United States*³⁰⁷— the *parens patriae* principle was invoked; *Kansas v. Colorado*³⁰⁸— when citizens right to water was affected, the state took suo motu cognizance, and held that³⁰⁹

(...)by invoking our parens patriae jurisdiction, declare Sukhna Lake as legal entity/legal person/juristic person/juridical person/moral person/artificial person for its survival, preservation and conservation having distinct persona with corresponding rights, duties and liabilities of

³⁰³ *Ibid* at para 95 point 29.

³⁰⁴ CWP 18253 of 2009 decided on 02/03/2020. See, <<http://files.harmonywithnatureun.org/uploads/upload994.pdf>>, [Accessed on 06 May 2021].

³⁰⁵ (2018) 15 SCC 407

³⁰⁶ (2019) 7 SCC 248

³⁰⁷ 136 U.S. 1 (1890)

³⁰⁸ 185 U.S. 125 (1902)

³⁰⁹ Page 143 of the judgment.

a living person. All the citizens of U.T, Chandigarh are hereby declared as loco parentis as the human face to save Sukhna Lake from extinction.

The Madurai Bench of the Madras High Court, in April 2022, in *A. Periyakaruppan v. The Principal Secretary*³¹⁰ also specifically mentioned the Rights of Nature should be recognized – and Nature should be afforded legal personhood as has been laid down in the cases earlier mentioned.

One does notice that such steps, though less in number, and without much takers, have been present in the Indian legal system and has been able to open newer avenues as far as extending *Rights of Nature* is concerned.

V. THE NOT SO ROSY ROAD AHEAD – IMPEDIMENTS TO ACHIEVING IDEALS

Courts in India have repeatedly followed a case specific approach as far as reading into environment rights are concerned. While having had many opportunities to fall back on developments that have taken place in various parts of the globe, courts in India cannot be seen as much of a taker of those aspects. Appointing an amicus curie has been one prevalent practise that we do see — especially while dealing with environment related cases, and time and again this has helped develop environmental justice delivery mechanisms in India. However, restricted, Indian courts have taken the plunge and discussed Rights of Nature as opposed to the “Right to live in a health environment”, and by relying on the guardianship principle and reading into law the importance of the fundamental duties that we do possess, made certain definite inroads. This coupled with reliance being placed on various international developments and principles have helped this line of jurisprudence slowly gain a foothold in India.

One also notices that in the decisions that had been rendered wherein the guardianship principle has been extended, one does have a chance to fall back on

³¹⁰WP. (MD) No. 18636 of 2013, decided on 19/04/2022.

the Fundamental Duty enshrined under Art. 51A(g) that is placed on the citizens to protect the environment and this surely does help inculcate a better value-based system following an ecocentric line of thought. All this has been strengthened by the numerous instances of environment rights being pursued by Public Interest Litigations — which in turn has had an increasing participation from voluntary groups, Non-Governmental Organizations and even public-spirited individuals.

While questions have been posed as to the probable ramifications that such an extension of rights will possess, it has become all the more pertinent because of an observation made by the Supreme Court of India. The People's Charioteer Organization, an Ahmedabad based NGO has approached the court and wants the entire animal kingdom to be declared as legal entities possessing rights as that of a living person. Though the Centre's response has been sought for by the court, an oral observation made by the judge³¹¹ —“Do you mean animals can sue or be sued? That is the meaning of legal entity. Is your dog equal to you?”³¹² —portrays the sheer difficulty attached with such a move. This takes us back to where it all began, Stone's observation about a new entity being provided rights: “*either met with ridicule or fear!*”³¹³.

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³¹¹ See <<https://www.tribuneindia.com/news/nation/sc-agrees-to-hear-plea-seeking-to-declare-animal-kingdom-as-legal-entity-138799>>, [last accessed on 05 May 2021].

³¹² See <<https://www.tribuneindia.com/news/nation/sc-agrees-to-hear-plea-seeking-to-declare-animal-kingdom-as-legal-entity-138799>>, [last accessed on 25 September 2021].

³¹³ Christopher D. Stone, “Should Trees Have Standing? – Toward Legal Rights for Natural Objects”, *Southern California Law Review* 450, 1972, at p. 455.

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