

LEGALFOXES LAW TIMES

Environmental and Wildlife offences

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ABSTRACT

I decided to choose “Environment and wildlife offences” as my topic because, environment protection is very important in today’s time. There are many cases related to environment and wildlife offences taking place now these days. Like recently the Vizag Leak case in Andhra Pradesh raises questions on what action will be taken place in order of damage done to surroundings.

In my Research paper, I have included various conferences held for protection of environment. Along with that, I also looked into India’s initiative in participating for protection of environment and wildlife. I found out some cases which led to causing environmental offences. I also studied what the judgements and steps taken for doing such offences.

In the end I concluded with how people are still involved in environmental offences, wildlife crimes and, how can this be avoided.

CHAPTER: ONE

Introduction¹

¹CPR Environmental Centre (5 March, 2020), Threatened Wildlife. Retrieved from: <https://vikaspedia.in/energy/environment/biodiversity-1/threatened-wildlife>

Environment and wildlife have always been priority to humans. It is one of the main concerns for protection right now. From last few years, many human activities led to environment degradation. Humans don't even realise but, every daily activity leads to some kind of environmental degradation. Mostly the industrial activities are the main reason which causes harm to environment as well as the wildlife.

Environment degradation is one of the major threats and it gets international political threats too. There are many factors leading to environment degradation. One of the main cause is deforestation. Due to cutting of trees, there has been 3.16 per cent reduction in global forest cover from 1990 to 2015. Activities like shifting cultivation, rotational felling developmental activities etc has led to deforestation. Other factors like soil erosion, volcano, tsunami also leads to destruction of the environment. It has been estimated that, after the independence, India has lost 4696 million hectars of forest land for nonforest activities. Along with environmental degradation, wildlife is also subject to facing risks. Many species are disappearing due to global warming.

Due to agriculture, natural ecosystem is cleared out to grow only selected crops. Due to this process, the animals are left with limited options for eating food. In some areas, animals die of starvation. Agriculture has made a way to neglect the depletion of forests.

Pollution caused by industries has given negative impact on environment. The thermal and nuclear plants have affected the marine life. The toxic effluents are killing of fishes, exploiting ornamental seashells and pearl oysters. Export of sea fans, seaweeds and meat is also harming the aquatic life.

Today, there are many species which are considered to be endangered in India. The pink headed duck and cheetah have become extinct in India. Species like sparrow, tiger, Indian elephant, Asiatic lion are already on verge of extinction. In such cases humans can be blamed for harming the ecosystem. Due to these activities, the flora and fauna are getting affected very related to environment and wildlife offences have been introduced not only in India, but all over the world.

Protection of environment has become very significant topic in internationally also. International environment law is developed between sovereign states for developing standards internationally. It provides obligation for states including their behaviour in international environmental matters.

Evolution of Environment Laws²

By the end of 1930-1940 many countries realised the importance the importance of natural resources. Many negotiations were made by the states in order to protect the flora and fauna. In 1933, The London Convention on Prevention of Fauna and Flora was established. Along with this, Washington Convention on Nature Protection and Wildlife Preservation was established in 1940. Both of these conventions aimed at looking after the environmental related problems as well as wildlife protection.

By the twentieth century, the marine life was being affected. The whales were on verge of extinction. This was due to the development of the steam engines and exploding harpoon guns. Therefore in 1946, the International Convention for the Regulation of Whaling industry was made for conservation the whales along with the marine life.

During 1950-1960, there was lot of destruction caused due to the nuclear weapons used in the second world war. During this time, there were many conventions whose main concern was prevention of birds and ocean fisheries. This was also the time when the term “Environment” emerged. People understood the meaning of environment. In this era the states understood the importance of environment and how important it is to protect the wildlife. After the world war all countries realised how the wars has resulted in destruction and affected not only the people but also the environment. During this period, the International community was also concerned about nuclear damage caused by the civilians. The countries made some negotiations for controlling the oil pollution in the sea. Between 1930-1960 there were many scientific publication found on natural resources and endangered species. During 1967, a book called “Salient Spring” written by Rachel Carson was released. This book helped in spreading awareness about environment protection. In 1970, the Radar technology was introduced. It helped in observing the earth surface.

From 1972 onwards, many international conferences were held on pollution, global pollution and control of emission. The European nations decided to stop using materials on ozone depleting chemicals. From the year of 1985-1992, growth of international environment law was

²Sunanda Swain (31 December, 2018), Evolution of International Environmental Law. Retrieved from: <https://www.cleantechloops.com/environmental-law/>

discovered. Various global agreements were made on environment and wildlife protection. There was as Veinna Convention on protection of ozone layer, the Montreal Protocol on Substances, the Protocol on Environmental Protection, Antarctic Treaty were formed.

In 1992 an aim was made in UNCED in Rio de janario. 176 countries attended the conference. The UNCED wanted equality between environmental protection and economic development.

These international agreements proves that all countries are equally interested in protecting the environment. These agreements are based on certain procedure which has to be followed by all member states.

However, there are differences in between the states while allocating the burden as well as benefits. So the process of international legal instrument become diverse and new approaches was to be adopted.

The international environment law is made by participation of nearly 200 countries around the world. These countries are not only governed by any particular international body or any institution. The work of the international environment law has been inspired by various treaties. These are legal agreements that binds the countries to tackle with the environment related problems together. It maintains unity among the nations.

The international agreements on environment problems made in last 20 years reflects the current global interests for maintainanceof planet earth. It sets up procedures through monitoring the wellbeing of the planet.

Environment Law in India⁴

The concept of environmentalism is not fixed and it keeps on changing. This can be applied in India as well. Environmentalism concept has evolved throughout past years. The concept of environmental protection is an idea that existed in Indian culture. In the early years before

³Joseph P. Hyder (13 April, 2020), International Environmental Law. Retrieved from: <https://www.encyclopedia.com/environment/energy-government-and-defense-magazines/international-environmental-law>

⁴Tanay Akash (7 Januaray,2019), Evolution of Environmental Laws and Policies in India. Retrieved from: <https://legaldesire.com/evolution-of-environmental-law-and-policies-in-india/>

independence, there were not any precise environment related law. In India the environment laws evolved from ancient rules including Bhuddhism and Jain practise to mughal era to modern British era. After British era, the modern legislature has taken part in introducing law related to environment. Various international agreements have been made, new acts related to environment and wildlife protection has also been made.

In ancient India we can see environmental awareness from prevedic stage, particularly in Harappa and Mohenjo Daro civilization. Hygiene was very important during this time, it is evident by construction of ventilated houses, streets, wells, bathrooms, underground drains etc. In the book Charak Samhita, instructions are given for proper usage of water to remain clean. In the Arthashastra, punishments are given for chopping trees, harming the forests, killing any species. It also talks about nature conversation and says that these rules are applied to common man as well as the rulers.

In the medieval period, the rulers used to go for hunting in forests. Forest was great source of livelihood for the kings. There were no environment related jurisprudence until Akbar. During this time, except for rulers everyone was prohibited from hunting. But there were no major initiatives taken for environment as rulers were only interested in war and power. However, there were some royal trees which were not allowed to be to be chopped except by giving fee. But there were never any restrictions for chopping of other trees, and harming the animals etc. The forest during this period began to be endangered.

Environment related laws was present since ancient time. But during medieval era the laws somehow faded. Soon during the 1800 AD, the Britishers came to India. They introduced new laws related to protection of nature. Various acts were introduced by the Britishers in India. Some of these acts are, Shore Nuisance (Bombay and Kolaba) Act. This act was introduced to impose restrictions on the spoiling of seawater. Then there was Merchant Shipping Act (1858). This act looked to prevent sea pollution caused by oil. Others acts include, The Fisheries Act (1897), The Begal Smoke Nuisance Act (1905), Bombay Smoke Nuisance Act (1912), Wild Birds and Animals Protection Act (1912).

After India's independence, new laws related to environment was introduced around 1947. However. It was Stockholm Declaration of 1972 which got the attention from India. Later, environmental laws were enacted by central government of India.

Protection of environment and keeping ecological balance is a task that is required to be followed not only by the government, but also people, It is social obligation and fundamental duty mentioned under Article 51A (g) of the Indian constitution⁵.

These are few steps that have been taken by Indian legislation in order to protect the environment and its wildlife in modern era. There are many more acts and international agreements that has been signed by India. The concept of environment protection was prevalent in India since ancient period. But due to medieval era, the concept of environment protection almost disappeared. However, the Britishers restored the concept and this environment protection became very important topic. Today, there are many environment related issues are given much importance. The government takes many steps for environment protection.

CHAPTER: TWO

Conferences and Treaties held for Environment and Wildlife Protection

Environmental protection has international dimension. The earliest conventions addressing problems particularly wildlife and marine issues, dates back to more than hundred years. The starting point of environment management was the United Nations Conference on Man and the Environment, which was held in Stockholm in 1972. Over past 20 years, many environment protection related conferences has been held in international level. Some of these conferences will be described here.

Stockholm Conference⁶

⁵The Constitution of India (Lok Sabha Secretariat, Jainco Art India),2016. Page:25

⁶Phillipe Boudes, United Nations Conference on Human Environment. Retrieved from:
<https://www.britannica.com/topic/United-Nations-Conference-on-the-Human-Environment>

For instance, the Stockholm conference is one of the main conference held in Stockholm, Sweden from June 5 to 16, 1972. It was United Nation's first major conference held for international environmental issues. It resulted in turning point for development of international environmental politics. There are 26 principles concerning environment and development, action plan with 109 recommendations held at the conferences. Some of these principles includes:

1. Human Rights to be asserted and colonialism condemned.
2. Natural resources should be preserved.
3. Earth's power to produce renewable resources shall be taken care of.
4. Wildlife protection
5. Sharing of nonrenewable resources.
6. Pollution to not be beyond earth's capacity to clean it.
7. To look after ocean pollution
8. Improve environment by development.
9. Providing assistance to developing countries

These were some of the principles that were discussed at the conference and, all member states were required to follow it.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)⁷

CITES⁸ is an international agreement made between different countries in order to ensure that international trade in specimens of wild animals, plants are not endangered. It was established in 1973, but came into force on 1 July, 1975. This convention also regulates the trading of wildlife products such as, live animals, plants for food, leather goods, trinkets etc. It ensures that the survival of wildlife is not threatened or goes to extinction. Today, the CITES is protecting 5800 animal species, 30000 plants species. The convention has categorised them according to threat of that plant and animal. CITES also ensured that due its presence, the guidelines of General Agreement on Tarrifs and Trade is not violated.

⁷<https://www.cites.org/eng/disc/what.php>

⁸Rachel Fobar (3 July,2019), What is the convention on CITES. Retrieved on:

<https://www.nationalgeographic.com/animals/reference/convention-on-international-trade-in-endangered-species/>

CITES holds a meeting in every 2-3 years. All the member countries gather together in the meeting which is known as Conference of the Parties, they discuss about how the conference is being enforced. In this meeting, they discuss about new proposals for listing and removing species, they keep debate about concerned issues, make new rules and regulations.

In the meeting, amendments are also made. These amendments require two thirds of majority of members who are present and voting during the meeting.

Brundtland Report (1987)⁹

Brundtland report is ¹⁰was published on 1987 by the World Commission on Environment and Development. WCED is known for introducing sustainable development and providing guidelines for achieving it. WCED was sponsored by the United Nations, chairman was Gro Harlem Brundtland. The WCED tried to understand the causes of environmental degradation and tried to understand connections between social equity, economic growth and environmental problems. It is also known as the Brundtland Commission.

Due to increasing problems like ozone depletion, global warming, raising standard of living and other environmental problems, the United Nations convened WCED. The WCED proposed long term solutions for achieving sustainable development. It also tries to find out a way in which all countries collectively fight with issues related to development and resources.

The Brundtland report also has chapters related to sustainable development, role of international economy, population, human resources, food security, species, ecosystems, energy, industry, proposed legal principles for environmental protection.

Brundtland report has given the meaning of sustainable development in its own words. It says, “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. This definition emphasises on needs and goal of providing essential requirements of world’s poor, idea of technology and social organization and how it imposes limits on ability of environment to provide for world’s present and future needs.

⁹Kuriyakose TD(5 August,2017), Brundtland Report. Retrieved from:
<https://www.slideshare.net/KuriakoseTD/brundtland-report-78584063>

¹⁰Michelle E. Jarvie, Brundtland Report. <https://www.britannica.com/topic/Brundtland-Report>

The Brundtland report has highlighted the global population growth that cannot be continued indefinitely. It predicted that by twenty first century, the world population will stabilize in between 7.7 billion to 14.2 billion. According to it, more people will live in cities as compared to rural areas. Most of the highest population growth rates is found in developing countries. The report also says that the environmental impact will be more for an individual, who is born in industrialised country than a person born in a developing country. The report also noted that declining birth rates of industrialised world will lead to burden on younger generations to look after the older generations. To develop the world, education and health facilities was given importance specially for women.

Agenda 21 (1992)¹¹

Agenda 21 was established at the United Nations Conference on Environment and Development, in Rio de Janeiro, Brazil in 1992. It is also known as Earth Summit. Agenda 21 aims at achieving sustainable development by various countries. Countries who are part of agenda 21 are under the supervision of International Commission on Sustainable Development. The countries are also required to spread the awareness about the Agenda 21 at local and regional levels. Agenda 21 focuses development of economy by looking after the conservation and preservation of environment and its resources. The provisions of Agenda 21 provides set of guidelines for problems like hunger, poverty, resource consumption, deals with poverty over health and education, promotes role for everyone etc.

Agenda 21 makes the government to integrate sustainable development into national strategies. It highlights the important role of NGO and common people in the process of sustainable development. To achieve sustainable development, issues related to local, national and international level must be handled properly. All nations should work towards international agreements which looks into interest of everyone. It should also protect the integrity of the global environmental and developmental system.

Kyoto Protocol (1997)¹²

¹¹Michelle E. Jarvie, Brundtland Report. <https://www.britannica.com/topic/Brundtland-Report>

¹²Carla Tardi (26 September,2019), The Kyoto Protocol. Retrieved from:
<https://www.investopedia.com/terms/k/kyoto.asp>

Kyoto protocol established on 11 December, 1997. However, it came into force on 16 February, 2005. There are around one hundred ninety twostates who are part of Kyoto Protocol. In the late eighty's, many countries realised how environment protection is important for survival. Due to international politics and interest of many countries, Kyoto Protocol came into action. Kyoto Protocol aimed at reducing the Green House emissions, based on the negative impact of global warming and carbon dioxide.

According to the Kyoto Protocol, rich countries are have to reduce Green House emissions. However, this rule does will not beapplicable to developing countries as they will not be able develop properly.Under Kyoto Protocol, have different countries had different targets to reduce Green House emissions to 5.2 per cent. On 21 December (2012), an amendment was presented by the Secretary General of the United Nations. During this time, 37 industrialised countries and the European community decided to reduce Green House emissions by eighteen per cent.Kyoto Protocol reduces Green House gasses like, carbon dioxide, methane, nitrous oxide,etc. These gasses affects the energy balance of the global atmosphere, which also leads to increase in average global atmosphere, known as global warming.

Kyoto Protocol introduced countries to decide and set their targets. These approaches included use of natural resources, known as sinks, that removes Green House emissions from the atmosphere. So the method used are plantation of trees, to take up carbon dioxide from the air. Other method used are, international programme called Clean Development Mechanism. This programme led the developed countries to invest in technology and infrastructure in less developed countries to reduce their Green House emissions. Another way was trading emissions. This let the countries buy and sell emissions rights and placed an economic value on Green House gas emissions. European countries took initiative in emission trading market as a mechanism to work for meeting their commitments under Kyoto Protocol. Those countries who failed to meet their commitments are required to make up the difference between their targeted and actual emissions, they are also required to provide penalty amount of 30 per cent.

These are few of international conferences that were held in order for protection of environment as well as wildlife related issues. These conferences were held internationally and helped the countries to deal with environment related issues collectively.

India's Initiative in Environment and Wildlife Protection

In India, environment and wildlife degradation is very serious issue. Many species are already on verge of extinction and many of them is extinct. The importance of environment was realised much later in India. Though there are instances of environment protection in ancient India, but during the medieval era protection of environment was neglected. However, it was Britishers who realised importance of environment and wildlife protection. They made proper policies and laws protect the flora and fauna. They also introduced bare acts related to environmental and wildlife policies. Some of these provisions are still followed in India.

According to the Constitution of India, the Directive Principles of State Policy, Article 48 says that, "the state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country". Article 51A says, "it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures."¹³

India is one of the active members of Convention on Biological Diversity treaty. India has different laws to govern the protection and management of environment. This act has been updated and amended regularly with time to time. In 1988, National Forest Policy was established in order to ensure conservation as its fundamental principle. Later, the government passed The Environment Protection Act and The Foreign Trade Development and Regulation Act to look after proper functioning biodiversity.

The government currently is coming up with new measures for environment protection. Like the introduction of Public Private Partnership. Earlier, only the government funded for environment conservation issues. But now due to PPP, the companies who are willing to participate, are responsible for reforestation and developing the forest procedure for commercial process.

With improvement in education, the technology is also getting better every day. The new technology and communication, helps in knowing about the industry pollution, status of natural

¹³The Constitution of India (Lok Sabha Secretariat, Jainco Art India, 2016), Page no: 23,24

resources and wildlife. There are satellites which keeps an eye on forest cover and water bodies. The camera traps are used for the purpose of wildlife census.

In India, the laws are also being updated with time. With the growing rate of environment concern, new rules and regulations are also being made. Separate rules and regulations for management of E waste, plastic waste, biomedical waste, construction and demolition waste was introduced.

Earlier, only government agencies were spreading awareness about environment conservation. But in last few years, due to various initiatives like Chintan Shivir, School nursery programmes and climate change special express, the government increased the participation of civil society, school children, educational institutions in environmental and wildlife conservation.

The government of India has passed the **Wildlife Protection Act** (1972). This act has created protected areas to protect the wildlife and guidelines for punishment for killing of specified flora and fauna. The **Wetland Conservation and Management Rules (2010)** protects the wetlands of all states. The National Plan for Conservation of Aquatic Eco system provides assistance to the states for management of wetlands including Ramsar sites of India. The Wildlife Crime Control Bureau was established to control illegal trade in wildlife and endangered species.

There are some research organisations in India, who are working on conservation of wildlife like, Wildlife Institute of India, Bombay Natural History society and Salim Ali Centre for Ornithology and Natural History.

The government has stopped\ banned the use of diclofenac drug which causes death of vultures throughout India. Conservation of these vultures initiatives has been taken by the government in areas of Haryana, West Bengal, Assam.

Various schemes such as “Integrated Development of Wildlife Habitats have been updated by adding “Recovery of Endangered Species”. There are sixteen species that have been declared as endangered species. These are snow leopard, bustard, dolphin, hangul, nilgiritahr , marine turtles, dugong, edible nest swiftlet, Asian wild buffalo, Nicobar megapode, Manipur brow antlered deer, vultures, Malabar civet, Indian rhinoceros, Asiatic lion, swamp deer and Jerdon’s courser.

The **National Green Tribunal Act** was made in 2010. This act was passed by Parliament to enable creation of special tribunals which can handle cases related to Environment. The NGT has power to hear all civil cases, related to cases which fall into, The Water Prevention and Control of Pollution Act, The Water Prevention and Cess Act, The Forest Conservation Act, The Air Prevention and Control of Pollution Act, The Environment Protection Act, The Public Liability Insurance Act, The Biological Diversity Act. If government violates any laws made by NGT, then it can be challenged by NGT. However, NGT cannot look matters of Wildlife Protection Act, The Indian Forest Act and any laws enacted by states relating to forests, tree preservation etc. NGT is not bound with procedure laid under CPC as well as The Indian Evidence Act. Every order passed by NGT is on basis of principles of sustainable development, precautionary principle, polluter pay principle. The NGT can impose costs, including lost benefits if anyone claims false claims. It helps to reduce burden on High courts and hold speedy trials. Each case is disposed within six months.

The Environment Protection Act, provides protection and improvement of environment related comprehensive legislation for protection of environment. This act punishes those who are responsible to endanger environment, safety and health. The act gives provision to central government to take measures for protection of environment. Section 15 imposes penalty on whoever fails to comply with provision of this act. The punishment is for imprisonment which may extend for five years or fine for Rs 1 lakh or both. Section 16 imposes penalty for offences committed by the companies.

The **Hazardous Wastes (Management Handling and Transboundary Movement) Rules**, was established in 2008. These rules provide proper management and handling of hazardous wastes. It regulates the collection, reception, treatment storage, disposal of hazardous wastes. However, it cannot be applied to waste water, exhaust gases, waste arising out of working of ships beyond 5km radioactive wastes, bio medical waste. The procedure of recycling wastes requires an application with a copy of document with a consent approved by the State Pollution Control Board under Water Prevention and control of Pollution Act and Air Prevention and Control of Pollution Act. A certificate of registration issued by District industries centre is also required.

The **Bio Medical Waste (Management and Handling) Rules** was established in 1998. Bio medical waste is any waste generating during the diagnosis, treatment, communication of

humans and animals. This can include in research activities pertaining to production or testing of biologicals. These rules were made by the Indian government under section 6,8, and 25 of the Environment Protection Act. So, the rules of this act are applied to all institutions generating bio medical waste. It includes hospitals, nursing homes, dispensary, animal houses, laboratory, blood bank etc. These rules are applied to all persons who are involved in generating, collecting, receiving, storing, transporting, treating and disposing the bio medical wastes.

The **Public Liability Insurance Act** has provisions for factory owners to ensure personal injury and property damage. This act came into force on 1991 due Bhopal gas tragedy. This act also imposed compensation on behalf of the person whose act has affected others. There are other acts which have some special provisions related to environment protection. Like **The Police Act** deals with noise pollution. Section 30 gives power to police officer to direct the assemblies, prescribing routes, license for processions and control extent of music. Section 32 is for penalty of violation of license to use music.

There are many environment conservation measures that has been taken recently. According to India State of Forest Report (2015), released in December 2015, total forest of the country has increased by 3775 square kms in 2 years.

Many National Parks, Sanctuaries, Conservation Reserves and community reserves have been created for protection of animals. Like the Jim Corbett national park, Ranthambore national park, Bhadra wildlife sanctuary, Gugamal national park, Nagarhole national park and tiger reserve, Pench national park, Balphakram national park.

As per estimation of World Wildlife Fund and Global Tiger Forum, the population of tigers has increased to 3890 from 2010 estimate of 3200. This means that tigers population is growing slowly and steadily.

CHAPTER: THREE

Environmental and Wildlife Offences

As we all know that protection of environment and wildlife is need of the hour. Offences like trafficking, poaching of live or dead endangered species, illegal fishing are complex activities which causes environmental and wildlife imbalances. The environmental and wildlife offences are different from countries, regions, local communities. It poses as a threat to presence of plants and animals, hinders sustainable social and economic development. But there are many activities that leads to environmental and wildlife offences. Most of the environmental and wildlife crimes are related to unlawful exploitation of flora and fauna, pollution, disposal o wastes in water bodies, smokes from factories and many more reasons. These activities includes illegal trading of endangered species. Such as illegal trading of animal furs and reptile skins, ivory trade, trading of tortoises illegally. Many crimes are also taking place, like disturbing bat roots, animal sacrifices in rituals. Animal cruelty takes place in the form of badger baiting, shooting of animals, using of animals in circus etc. Animal trafficking is a threat to biodiversity. Many endangered species are sold in black market like, parrots, macaws, monkey etc. These animals are in high demand by the customers. Particularly, the demand of ivory and rhino horn is always high. Due to this, rhino horn trafficking involves organized crime syndicates, rebel militia as well as terrorist groups.

Many cases of deforestation is also causing negative impact on the environment. The amazon forest which was recently damaged during forest fire, was also already harmed due to deforestation. Similarly, in Indonesian forests, deforest is taking place due to palm oil cultivation. Illegal, unreported and unregulated fishing is found in all types of fisheries. It happens nationally as well as internationally. It has been estimated that at least 20 per cent of global harvest comes from illegal, unreported, unregulated fishing. There are over 90 per cent of fishes stocks which are overfished.

Unfortunately, in many countries, looking after environmental and wildlife crime is not always considered to be important. Environmental and wildlife offences lets flourishing of the international criminal groups to enable corruption. Crimes like fraud, counterfeiting, money laundering, violence often occur due to environment and wildlife related crime. The amount of money lost in environmental and wildlife crime is 10000 times greater than the money spent by the agencies

In India, there are several cases which are related to environmental and wildlife offences. Some of these cases are reported and many of these cases are still been neglected. Some of the landmark cases have led to making of new laws. Some of these cases have been discussed below.

Environmental and Wildlife Offences related Cases

There are many cases which are related to environment and wildlife related issues. Few of the landmark cases are given below.

Rylands vs Fletcher¹⁴

Rylands and Fletcher were neighbours. Ryland decided to construct water reservoir on his land by private contractor. Due to negligence of the contractor, shafts were broken and this led to water into the mine. This caused heavy loss for Fletcher. So, Fletcher sued Rylands. The defendant claimed that it was negligence of the contractor. On 17 July, 1868 the court held that, it does not matter whether the contractor was at fault or the defendant took all precautions for safety. The defendant is responsible for damage that has been caused in the premises. So, the plaintiff was given compensation.

This case brought the principle of absolute liability. It is important to know about this case as it has been used in India in Oleum Gas Leak case.

Bhopal Gas Tragedy¹⁵

This case is about a gas leak incident that took place on 2-3 December, 1984 at Union Carbide India Ltd (UCIL). Over 500000 people and even the surroundings of plants, animals died of exposure to methyl isocyanate (MIC) gas. Many people also suffered from diseases. Many pregnant women faced miscarriage. It known as the world's worst industrial disaster.

In this case, rule of strict liability was used here. This rule is used when manufacturer of non defective product is held liable for damage that resulted due to use of that product. The Union Carbide company takeover UCC but did not take responsibility for the gas leak. However, UCC

¹⁴Rylands vs Fletcher (2020), Retrieved from: <https://law.jrank.org/pages/9976/Rylands-v-Fletcher.html>

¹⁵Debayan Roy (11 February, 2020), SC to begin hearing in Bhopal Gas tragedy: All you need to know about 36yr old case. Retrieved from: <https://theprint.in/india/sc-to-begin-hearing-in-bhopal-gas-tragedy-all-you-need-to-know-about-36-yr-old-case/362531/>

was ordered by Supreme Court to pay compensation of 470 million dollars after long battle between India and US.

Oleum Gas Leak Case¹⁶

This case occurred after the famous Bhopal gas tragedy. In this case, the rule of Ryland vs Fletcher was used. The Supreme Court used the rule of absolute liability. This event occurred when there was a gas leak in Sriram Foods and Fertilizers company from 4 December 1985. One person died in the accident and many people were hospitalised.

PIL was filed against the Sriram Foods and Fertilizers company under Article 21 and 32 of the Constitution. The issues related in this case was whether such hazardous industries shall be allowed to operate in such areas. Secondly, if these factories are allowed to work then, regulating mechanism shall be evolved or not. Lastly, how to determine liability and amount of compensation.

For the judgement, it was realised that the British law is not progressed enough to apply in this case. Also, Indian laws are not bound to follow English law. So it was held that enterprise who are engaged in dangerous substance has absolute responsibility to ensure safety of public. Before doing any activity, the company should be aware of the consequence of it and shall take all precautions for prevention. Even after taking precautions any kind of damage or accident takes place, the company will be held liable for it. The measure of compensation for damage depends on the magnitude and capacity of the enterprise. This is done so that there is a deterrent effect.

Yamuna Conservation Zone¹⁷

Yamuna river is great source of livelihood for people. The area of Yamuna river is densely populated and lots of industrial activities goes on there. The river is dependent on monsoon rains.

However, the river Yamuna is in danger zone due to disposing of industrial wastes. River Yamuna has been densely polluted from Delhi to Agra. Water extraction has affected the self

¹⁶MC Mehta Vs UOI (Shriram Industries), 26 May, 2018. Retrieved from: <https://www.latestlaws.com/articles/case-analysis-m-c-mehta-v-union-of-india-shriram-industries-case-by-roopali-lamba/>

¹⁷Shushmita Sengupta (4 July, 2015), Yamuna Pollution: Green Tribunal orders operation clean up in Delhi. Retrieved from: <https://www.downtoearth.org.in/news/yamuna-pollution-green-tribunal-orders-operation-cleanup-in-delhi-48274>

purification capacity of the river. Studies on river Yamuna shows loss of fisheries, water quality loss even its tributaries has been polluted.

Due to high rate of pollution, the National Green Tribunal Act recommended the government on 25 April, 2014 to declare 52 km stretch of Yamuna in Delhi and Uttar Pradesh as a conversation zone. NGT imposed fine of Rs 5000- 500,000 for those who dispose waste in river Yamuna. New programme “Maili se Nirmal Yamuna Project” was initiated to save Yamuna. NGT ordered the industries to contribute in Central Effluent Treatment Plant (CETP). The Delhi Jal Board (DJB) was ordered to increase the number of Sewage Treatment Plants (STP). If any mishaps takes place, then the DJB will be held responsible for not checking the flow of sewage system properly.

In fact the NGT has ordered the DJB to construct 23 Sewage Treatment Plants and they should start functioning by the year 2015. 32 major and minor drains to be constructed in areas that will be recommended by the NGT. The storm water drain to be kept free of pollution. The DJP has to submit a draft of Sewage Master Plan for Delhi by 2031 to the NGT. Apart from this, the flood plains were also demolished. Agriculture in flood plains have been banned. The floriculture and silviculture was also restricted in Yamuna Conesevation Zone area.

Rohtang Pass Glacier Case¹⁸

On 17 August, 2015, the Manali District Administration imposed ban on tourist vehicles on the Rohtang road. There are around 35 lakhs of tourists who visit the Rohtang pass every year. Also 4000 tourist taxies registered every year. The National Green Tribunal also imposed shut down on kiosks, eateries as well as the Manali Rohtang road. This was because, high rate of tourist activity in Rohtang affected the ecological balance of nature. The NGT also directed the government to provide CNG run buses.

The NGT ordered that vehicles which passes through route ahead of Vashisht village and Rohtang Pass will be liable to pay:

Heavy vehicles: Rs 100

¹⁸Shushmita Sengupta (4 July,2015), Yamuna Pollution: Green Tribunal orders operation clean up in Delhi. Retrieved from: <https://www.downtoearth.org.in/news/yamuna-pollution-green-tribunal-orders-operation-cleanup-in-delhi-48274>

Light vehicles: Rs 50

CNG or electric buses: Rs 20 per head

The funds which will be collected by State government will be kept under head of Green Tax Fund. This fund will be used for development of area from Vashisht to Rohtang Pass and 5 km beyond. Only few vehicles will be exempted from paying tax like, Broader Road Organisation (BRO), General Reserve Engineer Force (GREF), army. BRO and GREF have been directed to endure that the roads are in good condition throughout the year. The State government has been ordered to provide proper rope way from Vashisht to Rohtang Pass. The GB Plant Institute of Himalayan Environment and Development, Almora has been directed to conduct a study on glacier of Rohtang Pass and submit the report to the NGT within six months.

Usage of snow scooters has been restricted. Only those that are less than four years and battery operated have been permitted. Use of plastic and food packaging has been prohibited.

Delhi Ridge Case¹⁹

This case raised the issue that whether mining activity in 5 km area of Delhi and Haryana border, Ridge and Aravalli hills are causing any environmental problems. Secondly, issue was raised whether mining activity shall be banned or allowed by implying stringent conditions.

The Haryana Pollution Control Board (HPCB) reported that explosives used for rock mining was causing soil erosion which causes ecological disorder. The HPCB recommended that the Environmental Management Plan (EMP) shall be prepared by mine lease holders. The mines shall be approved by the HPCB, only then the mining activity shall be continued. The HPCB and NEERI suggested complete stoppage of mining activity within radius of 5 km from Badkal lake and Surajkund in Haryana. Therefore, the Haryana government stopped all mining activities.

However, the mine workers objected this rule. According to them, pollution from mining activity cannot cross the radius of 1 km. On basis of report submitted by NEERI and HPCB, the Supreme Court concluded that the mining activity was causing negative impact on ecology. According to

¹⁹Dhruval (26 October, 2018), MC Mehta Vs UOI. Retrieved from: <http://lawtimesjournal.in/m-c-mehta-v-union-of-india-delhi-ridge-case/>

Supreme Court, not only mining but the vehicles used for transporting, equipments used for mining is responsible ecological imbalance.

To preserve the area, it was necessary to stop mining within 2km of radius. The court directed the Environmental Pollution Central Authority (EPCA) to submit report after visiting the miners without any notice. During their visit, the EPCA saw many rules being violated. On basis of this report, the court gave its final order. The court ordered that mining activity can only take place if sustainable development takes place with following strict mining rules. Right now, protection of Aravalli range is very important. If there is any harm caused to Aravalli range even after following the stringent rules, the mining activity can be stopped to protect the Aravalli range. The mining activity has to take place by following strict rules and regulations. In case, if there is any violation of rules, the mining lease can get cancelled on the spot.

Narmada BachaoAndolan²⁰

The Narmada BachaoAndolan was a very popular movement in India. This movement was started when the Sardar Sarovar Dam was being built. There are many people who are dependent on river Yamuna for livelihood. Also, building of dam means that people have to leave their homes. This posed as a threat to some people. Many farmers, environmentalists, human rights activists came together and joined the movement. Due to this movement, the Supreme Court ordered to stop the dam work and concentrate on rehabilitation of people. After several years, construction of dam took place in 1999 with subject to conditions of resettlement, raising height of dam etc. The construction was finished in 2006. The inauguration was done on 2017 by prime minister Narendra Modi.

Vehicular Pollution Case²¹

In this case a writ petition was filed by MC Mehta for passing order for reduction of vehicular pollution in Delhi. This was due to the pollution caused by the vehicles which was affecting the environment.

²⁰India Today (18 November,2018), Narmada Andolan back on indefinite protest. Retrieved from: <https://www.indiatoday.in/india/story/narmada-bachao-andolan-medha-patkar-back-indefinite-protest-1620007-2019-11-18>

²¹Dhruval (12 October,2018), M.C Mehta vs UOI. Retrieved from: <http://lawtimesjournal.in/m-c-mehta-vs-union-of-india-1991-vehicular-pollution-case/>

By this petition, it was realised that Article 51A says that the state will look after the environment. In the court it was advised that the automobile users shall be aware of pollution. A special committee was set up with objectives of:

Making assessment of technologies available for vehicular pollution control in world, making assessment of the current status.

- Making assessment of the current status of technology available in India for controlling vehicular pollution
- Look into low cost alternatives for operating vehicles at reduced pollution.
- To reduce, eliminate of pollution from motor vehicle.
- To make recommendation on legal regulations.

The committee had to submit a report to the Supreme Court within two months, stating the steps taken in the particular manner. The Union government and Delhi Administration directed to cooperate with committee for smooth operation.

Coal Mining in Meghalaya Case²²

This case took place recently. There was an accident that happened on 13 December, 2018. Fifteen miners got trapped in Ksan in Meghalaya. Five of them managed to escape but, fifteen of them were trapped inside till 2 March, 2019. The miners were trapped in depth of 370 feet in Jaintia Hills District. The tunnel was flooded with water into adjacent mine. Soon the National Disaster Response Force (NDRF) and the State Disaster Response Force began their operations. Later, Coal India, Kirlaskar Brothers and Indian Air Force joined to help NDRF.

The State government admitted that there were large number of mines which were operating illegally. In the court it was held that the State government will deposit Rs 100 crore fine imposed by the National Green Tribunal for failing stoppage of illegal coal mining with Central Pollution Control Board (CPCB). The State administration was directed to handover illegal coal to Coal India ltd. These coals went for auction and deposit funds. The bench allowed mining operation privately and community owned land by taking permission from concerned authorities.

²² Economic Times (4 July, 2019), SC asks Meghalaya to deposit Rs 100 crore fine for illegal coal mining. Retrieved from: <https://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/sc-asks-meghalaya-to-deposit-rs-100-cr-fine-for-illegal-coal-mining/articleshow/70053543.cms?from=mdr>

Rathi Steel and Power ltd Plant Case²³

This case occurred when the NGT issued a notice in 2018 to Rathi Steel and Power ltd. This notice was issued because environment compensation was not imposed on Rathi Steel and Power ltd for causing air pollution as well as extracting water from borewells without permission. The company had already given an application to Central Ground Water Authority on 11 July, 2017 for extraction of water. However, the approval status was still spending.

The NGT directed Central Ground Water Authority to dispose the application of the company within three weeks. The State Pollution Control Board was also directed to dispose the application. The NGT also issued a notice to the Delhi and Utrakhnad government regarding the reason why they have not answered to the queries pointed by the NGT for management of bio medical hazardous wastes.

Vizag Gas Leak Case²⁴

On 7 May, 2020, similar case as Bhopal gas tragedy took place in India. A synthetic styrene leaked from the LG Polymers, a South Korean chemical plant in Vishakhapatnam in Andhra Pradesh at 3am. Due to lockdown caused by covid-19 pandemic, large unattended tanks caused the leak. There were many around 13 deaths, 1000people were hospitalised. ²⁵

Prime minister called for an emergency disaster meeting with NDMA at 11 am. The team of CSIR-NEERI tried to control the leakage. Finally the leakage stopped and Andhra Pradesh's chief minister, Goutam Reddy announced it. The CM has directed Arogyasri trust to cover all medical expenses of all patients affected by the gas leak. This situation was also reviewed by National Crisis Management Committee (NCMC), headed by Rajiv Gauba. There was a meeting held by NCMC. It was decided that whatever assistance required by the State for rescue, relief operations, will be provided.

²³Zee News (18 January,2018), NGT notice to Rathi Steel, Power ltd's plant at Ghaziabad for causing air pollution, Retrieved from: <https://zeenews.india.com/ghaziabad/ngt-notice-to-rathi-steel-power-ltds-plant-at-ghaziabad-for-causing-air-pollution-2074867.html>

²⁴Ashish Pandey, Red flags ignored over Vizag plant's operation, Mail Today, May 9, 2020

²⁵Neha Sinha, It is time to reset India's approach to environment, Hindustan Times, May 9, 2020

CHAPTER: FOUR

Conclusion

Environmental and wildlife protection is one of the main concerns for everyone today. Though there are many laws for protection of environment but still many crimes are taking place today. Illegal hunting and selling of animals are still found in black markets. For example, the Indian parrots has been banned for sale. But there are many sellers who still sell these parrots illegally. Moreover, this is fault of the customers who are still interested in buying these animals. They are encouraging these sellers to carry on such activities. In some countries, sharks are captured and sold for various reasons for shark fishing, consumptions illegally. In Indonesia, sharks are captured for fins soup. Ever year humans kill 73 million sharks. Sharks also have low rate of reproduction. This poses as great threat to ecosystem. We can take few steps to do our bit for conservation of environment and wildlife. Like saving water, walking instead to using cars for short distances, avoid using air conditioners, switching off electronic appliances when not required etc.

The National Green Tribunal has been made for the purpose of looking into cases of environmental and wildlife related crimes. It helps in speedy disposal of cases. The NGT played very important role in Coal mining case in Meghalaya. It is sad to know how mining was taking place illegally in this case. This, not only killed the miners but, it also affected the environment. Similarly, in the Delhi Ridge case, the miners were not following guidelines provided to them by NEERI and HPCB. They still continued mining illegally.

Hence, it is very important for government to take strict actions for people who are violating rules set for environment and wildlife related issues. Also, the environment related issues are always ignored or given less importance in India. It is time to realise the seriousness of this topic. Most importantly people shall also understand the importance of environment and should stop committing environment related offenses.