TORTIOUS LIABILITY OF STATE IN ENVIRONMENTAL PROTECTION

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ABSTRACT

The Introductions gives a wide explanation of the environment pollution and various other aspects of the environment protection and degradation. It consists of the ancient period of environmental pollution and degradation. The way in which our ancestors use to save and protect the environment. How they use to worship the elements of the natural environment, which was a very effective method to protect the environment the ancient period.

The time goes on and after the ancient period the generations developed and in the race of the world everyone started depleting and destroying the environment.

It states the literature reviewed by the Author's and the gap which came after the literature review. The research questions and hypothesis is also mentioned in the chapter. It also consists of the legal framework for the tortious liability and the laws related to the environment protection in India.

This also explain the tortious liability in various aspects relating it to the state liability in protecting the environment.

The fourth chapter of the research talk about the judicial approach towards the environment protection with special reference to state. The chapter explains the Polluter Pay Principle in the India context. The major role of the judiciary is discussed in the Article.

KEY WORDS: Tort, Agent, Environment, judiciary, contamination, pollution, state, liability.

INTRODUCTION

Contamination is the presentation of contaminants into the common habitat that causes antagonistic change. Pollution is the corruption of regular habitat by outer substances presented legitimately or in a roundabout way. Human wellbeing, biological community quality and oceanic and earthly biodiversity might be influenced and modified for all time by contamination. Natural contamination is any release of material or

vitality into water, land, or air that causes or may cause intense (present moment) or unending (long haul) disadvantage to the World's environmental equalization or that brings down the personal satisfaction. Contaminations may cause essential harm, with direct recognizable effect on nature, or auxiliary harm as minor annoyances in the fragile parity of the organic sustenance web that are distinguishable just over prolonged stretch of time periods.

"Man is both creature and moulders of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and man-made, are essential to his wellbeing and to the enjoyment of basic human rights-even the right to life itself." [2]

LITERATURE REVIEW

Following research work has been conducted by the Author,

Books

i. Environmental Law and Policy in India by Shyam Divan & Armin Rosencranz (ISBN: 0195652266, 9780195652260, published by- Oxford University Press, 2001) – the author in the book says that the Environment law & policy in India affect all sections of the society. Those most affected are the poor. Many poor people are forced to get rehabilitate due to deforestation, dam building and depletion of the natural resources to be used by them for their livelihood. The author focuses on the environmental law, policy, problems and need with the comprehensiveness of an American law book. The author has also discussed the various policies framed in India by the government for the environment upgradation

ii. Environmental law in India by P. Leelakrishnan (ISBN: 8180381145, 9788180381140. Published by- LexisNexis Butterworth, 2005) - The author in the books explains the wide concept of the environment pollution in India and the various measures to protect the environment degradation. Author also focuses on the accidents happened depleting the environment of India.

iii. Industrial Pollution: Problem & Solution By Arvind Kapoor (ISBN:9788170353751. Published by- Daya Publishing House, 2006)-Most of the developing countries have legislative foundations and governmental infrastructure which can't cope with the existing environmental problems. Most of the general public are prepared to manage and deal with the ecological issues such as air pollution, water pollution but not environmental issues. To establish eco socialism and to maintain a sustainable development on this planet, the below mentioned courses must be incorporated in the education system

[2]Available at https://www.jus.uio.no/english/services/library/treaties/06/6-01/stockholm_decl.xml (Visited on April 22, 2019)

of schools, colleges, and universities. To achieve the sustainable development in all the developing countries, it is essential to guarantee environmental consciousness of all dimensions of education both formal and informal.

iv. Textbook on Enviornment Chemistry By Balram Pani (ISBN: 8189866362. Published by- I.K. International Publishing House, 2007)-The writer discusses the administrative system of ecological contamination in India. The doctrinal foundation of the modern environmental laws could be founded on the law of nuisance: annoying activities could challenge major industrial and municipal movement which is today a subject for comprehensive environment legislations. The law of nuisance can be divided into public nuisance and private nuisance, which could encompass most of the environmental issues, falling essentially in the domain the criminal law. The new legal approach towards the environment protection is likewise found in the 1976 amendment to the code of civil procedure 1902 encouraging simpler access to courts in the lawsuits for public nuisance. A suit based on public nuisance as a civil wrong is contemplated in section 91 of the code, which after the 1976 amendment encourages a simpler method for contamination cases.

RESEARCH GAP

What has influenced the researcher to select the topic is that no author in the literature reviewed has discussed about the liability of the Indian Government on the depletion of the Environment in the nation. Author's talks about the various incidents and accidents occurred in the country which has played the major role in the depletion of Environment, and the policy framed and the framework of the Government and the implementation of those policies. The criticism very often heard that the protection of the environment and the reason behind the degradation of the environment is we the people who are using the environment and causing a major role in degradation of the environment, but on the other hand the state should look into this serious matter of degradation of environment and take major steps implementing the effective schemes regarding this.

RESEARCH METHODOLOGY

The methodology adopted for the purpose of this research is doctrinal method. The research shall rely on both primary and secondary sources. Secondary information accessed from various sources, e.g. Articles, books, journals and Websites.

HYPOTHESIS

The law relating to the Environmental protection In India have effective implementation and the state and courts does strict interpretation of the statues regarding the laws of Environmental protection in order to safeguard the natural environment of the state.

RESEARCH QUESTION

1. Whether the legal framework with respect to environment protection is sufficient for the protection of its Environment in its current scenario?
2. Are the statutes being implemented in the proper and effective manner?
3. What is the role of judiciary in protection of the environment?

LEGAL FRAMEWORK FOR TORTIOUS LIABLITY

The Constitution of India, 1950

Article 300

Initially in India, the distinction between sovereign and non-sovereign functions was maintained in relation to the principle immunity of the Government for the tortuous acts of its servants. In India, there is no legislation which governs the liability of the State. It is Article 300 of the Constitution of India, 1950, which specifies the liability of the Union or the State with respect to an act of the Government.

The Article 300 of the Constitution originated from Section 176 of the Government of India Act, 1935. Under Section 176 of the Government of India Act, 1935, the liability was coextensive with that of Secretary of State for India under the Government of India Act, 1915, which in turn made it coextensive with that of the East India Company prior to the Government of India Act, 1858**.** Section 65 of the Government of India Act, 1858, provided that all persons shall and may take such remedies and proceedings against Secretary of State for India as they would have taken against the East India Company. It will thus be seen that by the chain of enactment beginning with the Act of 1858, the Government of India and Government of each State are in line of succession of the East India Company. In other words, the liability of the Government is the same as that of the East India Company before, 1858.

An overview of Article 300 provides that the first part of the Article relates to the way in which suits and proceedings by or against the Government may be instituted. It enacts that a State may sue and be sued by the name of the Union of India and a State may sue and be sued by the name of the State.

The Second part provides, inter alia, that the Union of India or a State may sue or be sued if relation to its affairs in cases on the same line as that of Dominion of India or a corresponding Indian State as the case may be, might have sued or been sued of the Constitution had not been enacted.

The Third part provides that the Parliament or the legislatures of State are competent to make appropriate provisions in regard to the topic covered by Article 300(1).

As indicated by the Constitution, Parliament and the state governing bodies in India have the ability to make laws inside their individual locales. This power isn't supreme in nature. The Constitution vests in the legal executive, the ability to settle upon the sacred legitimacy everything being equal. On the off chance that a law made by Parliament or the state assemblies disregards any arrangement of the Constitution, the Supreme Court has the ability to proclaim such a law invalid or ultra-infection. This check in any case, the establishing fathers needed the Constitution to be a versatile archive as opposed to an inflexible structure for administration.

Tortious Liablity

General concept of tortious liability.

The human direct is of two sorts: the Privilege and the wrong lead. Initially there was no qualification between different wrongs and no division like wrongdoing, tort or break of agreement. The idea of tortious risk is gotten from Latin term 'tortum' signifies to wind, abnormal or unlawful act which is identical to English term off-base. This is the part of law overseeing the activity for harm for making wounds the privilege of individual, his security, property and notoriety.

As hundreds of years passed the standards gradually created and experienced more prominent change in its procedure with most extreme development to address the issues of urban and quick mechanical human progress, exchange, trade development of vast swarmed urban communities, innovation of air-make which expanded the odds of damage to privileges of people. Consequently it is currently "ubi jus ibi remedium"- which implies where there is a lawful in that spot is legitimate cure.

- Definition of tort:[3]

The word tort implies a wrong or damage which has certain trademark highlight. The most critical one is that it is repressible in an activity for harms at the occurrence of individual wronged or harmed eg. Trespass, defamation, disturbance, attack and so forth. It is a French word and in its etymological sense, it implies a winding out and disliked sense, a screwy demonstration, a transgression from straight or right direct to that of wrong lead. It has peculiar incident that the Sanskrit word 'Jimha', which implies slanted, was utilized in an antiquated Hindu Law Content in the feeling of 'tortious' or deceitful lead. Amid the end time of thirteenth century well known legitimate essayist Sir Briton, named the title of a section on a portion of the littler offenses

[3]Available at http://www.duhaime.org/LegalDictionary/T/Tort.aspx (Visited on May 01, 2019).

" De Plusours Tortz" . Another well known judge and essayist of center time of thirteenth century Ruler Bracton utilized the word as injuria and transgression for the words like obligation, contract, beneficiary, trespass, pay, cash, court, judge and so forth following from the French words. Since Latin was the language of the court and the official records wherein Latin till English had its spot by a rule of 1731. gradually the law of torts was viewed as a different division of law.

Tortious Liability and Environment Protection

India has seen a plethora of legislations covering various aspects of the environment to ensure its conservation. However, due to loopholes in the laws or perhaps, the slack of the authorities imposing the laws, these legislations have merely remained a compendium of powerless phrases that have lost their power during the course of time[4] . The SC has interpreted the right to life and personal liberty as under *Article 21* to mean a right to have pollution free environment. However, Indian Environmental Law has seen considerable development in the last two decades, with the constitutional courts laying down the basic principles on which the environmental justice system stands. The law of torts in India, which remained uncodified, followed the English law in almost all aspects in its field. It is notable that common law, originally introduced into India by the British, continues to apply here by virtue of *Art. 372 (1)6* of the Indian Constitution unless it has been modified or changed by legislation in India. The law was modified and departed from the English law only when the peculiar conditions that prevailed in India required this.[5]

- NUISANCE: It means anything which annoys, hurts or that which is offensive. Nuisance may be public or private in nature. Hence acts interfering with the comfort, health or safety are covered under nuisance. The interference may be due to smell, noise, fumes, gas, heat, smoke, germs, vibrations etc. In the private nuisance the basis of an action under nuisance is unreasonable and unnecessary inconvenience caused by the use of defendant's land. The tort law of nuisance as a remedy with reference to environmental damage suffers from several limitations.
- NEGLIGENCE: Negligence is another specific tort on which a common law action to prevent environmental pollution can be instituted. When there is a duty to take care and the same is not taken, which results in some harm to another person, it is amounted to negligence. In the action of negligence the result is some kind of a loss, inconvenience or annoyance to another.
- TRESPASS: It means an intentional invasion of the interests of the plaintiff over property in his exclusive possession. Invasion may be direct or through some tangible object.
- STRICT LIABILITY: The rule of strict liability as enunciated in Rylands case is another form of private law action in respect of environmental hazards. The rule provides that: "the person who, for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it

[4] Anshuman Mozumdar, Kartikey Mahajan and Krithika Ashok, "Environmental Torts: A Step Towards the Legal Revamping Policy Related To Environmental Protection", *JERD* 1(2007).
[5] Dr. Madhuri Parikh, "Tortious Libility For Envirionmental Harm: A Tale Of Judicial Craftmanship", *NULJ* 77 (2013).

escapes, must keep it in at his peril and if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape".[6]

In India the rule of strict liability has been applied in limited situations relating to the escape of water causing damage to landed property and chattels, fire etc. In the modern industrial society with highly developed scientific and technological knowledge, where hazardous and inherently dangerous industrial activities are necessary due to their social utility, the Supreme Court found it necessary to lay down the old rule of strict liability and evolved a new principle of Absolute Liability. Greater part of condition contamination instances of tort in India fall under four noteworthy classifications – Nuisance, Negligence, Strict risk and trespass.

Tort law manages solution for intrusion of private rights. It discusses remunerating an individual for infringement of his private right. An inquiry emerges about capability of tort law in controlling contamination as it centers around solution for infringement of private right.

Potential of Tort in Controlling Environmental Pollution

The Bhopal Catastrophe has been proved eye-opening for the environmentalist, social workers and government institutions as well as general public. It brought new awareness in India. The government and the judiciary started thinking about new ways and means of preventing similar tragedies in future. Compensation to the victims of Bhopal disaster raised an enigma in Indian torts law. There was paucity of litigation in the field of torts. The proverbial delay, exorbitant court fee, complicated procedure and recording evidence, lack of public awareness, the technical approach of the bench and the bar and absence of specialization among lawyers are stated to[7] be reasons for such a condition. It is also argued that the alleged paucity is myth and not reality, as thousands of cases are settled out of court through negotiations and compromises and unreported decisions of subordinate courts.[8] It is not disputed that Indian courts do not award punitive damages[9] in civil cases to deter the wrongful conduct. But it does not mean that tort law has not played any effective role in the environment protection. The judicial pronouncements clearly show the recent trends in the Indian torts law as an instrument of protection against environmental hazards.

The judicial vigil is seen in the interpretation of principles of tort law in the age of science and technology. Absolute liability for harm caused by industry engaged in hazardous and inherently dangerous activities is a newly formulated doctrine free from exceptions to the strict liability in England.[10]

The judicial activism and craftsmanship is clearly seen in its new-fangled approach in providing tort remedies in public interest litigation. In *M.C.Mehta v. Union of India*[11] the court entertained the public interest litigation where the damage was caused by an industry dealing with hazardous substance like oleum gas. The Supreme

[6] Rylands vs. Fletcher, [1868] UKHL 1.
[7] B. M. Gandhi, *Law Of Torts* 63-69 (Eastern Book Company, India, 1987).
[8] J. B. Dadachandji, "J.B.'s affidavit before US District Court in the Bhopal litigation: Inconvenient Forum and Convenient Catastrophe: the Bhopal Case", *ILI* (1986).
[9] Stephan L. Cummings, International Mass Tort Litigation: Forum Non Conveniens and the Adequate Affirmative Forum in Light of the Bhopal Disaster, *GA. J. OF INT'L & COMP. L.*, 136-142.(2016).
[10] P.Leelakrishnan, *Environmental Law in India* 126 (Butterworths 1999).
[11] AIR 1987 SC 1086.

Court could have avoided a decision on the affected parties' application by asking parties to approach the subordinate court by filing suits for compensation. Instead, the Court proceeded to formulate the general principle of liability of industries engaged in hazardous and inherently dangerous activity. Not only this, Chief Justice Bhagawati declared that the court has to evolve a new principle and lay down new norms, which would adequately deal with the new problems which arise in a highly industrialized economy. The Court evolved the principle of absolute liability and did not accept the exceptions of the doctrine of strict liability for hazardous industries. The Court did not stop here; it preceded a step further and held that the measure of compensation must be co-related to the magnitude and capacity of the enterprise.

The Chief, Justice Bhagawati said: "The large and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on the hazardous or inherently dangerous activity by enterprise." This is found necessary because of its deterrent effect on the behaviour of the industry.

The Indian Supreme Court was developing indigenous jurisprudence free from the influence of English law. Here the scope of the owner conferred on the Court under *Article 32* was so widely interpreted as to include formulation of new remedies and new strategies for enforcing the right to life and awarding compensation in an appropriate case. The court gives clear message in the case that one who pollutes ought to pay just and legitimate damages for the harm one causes the society. It opened a new path for later growth of the law and accepted the polluter pays principle as part of environmental regime. The principle requires an industry to internalize environmental cost within the project cost and annual budget and warrants fixing absolute liability on harming industry. The judiciary woke up with a new awareness and laid down legal norms in clear terms. This was accompanied by invoking the technique of issuing directions under *Art.32* of the constitution of India.

In *Consumer Education and Research Center (CERC) v. Union of India*[12] the court designed the remedies following the Mehta dictum. The Court's attitude shows certainty of the court that direction can be issued under *Article 32* not only to the State but also to a company or a person acting in purported exercise of powers under a stature of license issued under a statute for compensation to be given for violation of fundamental rights.

In this case, the doctrine of absolute liability has not been referred but a different species of liability was formulated in respect of hazardous industries, like those producing asbestos. The compensation payable for occupational diseases during employment extends not only to those workers who had visible symptoms of the diseases while in employment, but also to those who developed the symptoms after retirement.

In Indian Council for *Enviro-Legal Action v. Union of India*[13] the Supreme Court supported Mehta case and pointed out the rationale for fixing the absolute liability on the hazardous industry. In this case the polluter pays principle was applied. The Court directed the government to take all steps and to levy the costs on the respondents if they fail to carry out remedial actions.

[12] AIR 1995 SC 922.
[13] AIR 1996 SC 1466.

JUDICIAL APPROACH

Landmark Judgements

- ***Rural Litigation and Entitlement Kendra & Ors. vs. State of Uttar Pradesh &Ors[14]***

This case is also famously known as the 'Dehradun Valley litigation'. In Mussoorie hill range of Himalayas, the activity of quarrying was being carried out. Limestone was extracted by blasting out the hills with dynamite. This also resulted in cave-ins and slumping because the mines dug deep into the hillsides, which is an illegal practice per se.

Due to lack of vegetation, many landslides occurred which killed villagers and destroyed their homes, cattle and agricultural lands. In 1961, mining was prohibited in the state by the state minister of mines. However, quarry operations reopened the mining operations by successfully lobbying with the chief Minister of the state under which they got mining leases for 20 years. This led to corrupt and illegal practices and still there was no enforcement of safety rules.

In 1982, eighteen leases came up for renewal, which were rejected by the State on account of the ecological destruction. However, an injunction was granted by the Allahabad High Court which allowed the applicants to continue mining, giving the reason that economic benefits outweighed ecological factors.

In 1983, the Rural Litigation and Entitlement Kendra sent a letter of complaint to the Supreme Court which was against environmental degradation. The Court treated the letter as a writ petition under article 32. More than 100 mines joined this and the litigation became complex. The Supreme Court conducted a review of the need for mining operations and provided for funding and administrative oversight of reforestation of the region.

Contentions Raised

It was contended by the mining operators that the case should be dismissed by the court and the issue should be left to the administrative authorities under the Environment Protection. The counsel for the miners relied on the following statement of a 1986 opinion issued in the case: It is for the Government and the Nation and not for the court to decide whether the deposits should be exploited at the cost of ecology and environmental consideration or the industrial requirement should be otherwise satisfied. The Court rejected the miners' arguments the ground that the litigation had already commenced and significant orders had been issued by the

[14] AIR 1985 SC 652

court before the adoption of the Environment Protection Act. There was no conflict in the opinions of the court and the Central Government in the instant case.[15]

In 1983, the Court prohibited blasting operations, while it was reviewing to determine whether the mines were being operated in compliance with the safety standards as laid down in the Mines Act of 1952 and other relevant mining regulations. The Court appointed an expert committee (the Bhargava Committee) to assess the mines. In March 1985, the court denied leases to the most dangerous mines falling within Mussoorie city and ceased their operations. This was done upon the recommendation of the Bhargava Committee. The second committee (the Bandyopadhyay Committee) was empowered to consider plans submitted by the miners to safeguard the environment and to hear the claims of people adversely affected by the mining. The Uttar Pradesh government was directed to provide the necessary funds for the Bandyopadhyay Committee as well as 'transport and other facilities for the purpose of enabling them to discharge their functions.' The Court determined that a third group of mines, including a major operation owned by the state of Uttar Pradesh, could remain open because the environmental damage was less clear.

In 1987, the court reviewed the Bandyopadhyay committee's report. This report was based on ecological considerations. The court concluded that mining in the Valley should cease. The Court restated the conclusion that mining activity should only be permitted to the extent it is necessary in the interests of the defence of the country and safeguarding of the foreign exchange position.

The Court rejected the first affidavit from the Central Government, submitted by the Director of Environment, Forests and Wildlife in the Ministry of Environment and Forests. The affidavit provided detailed uses of limestone for industrial operations within Uttar Pradesh but did not provide a satisfactory evaluation of other sources of the limestone within India and the extent to which national defence industries relied on the limestone. A second affidavit contained all the required evaluation and concluded that the continuing of mining operations of any mine in the Dehradun-Mussoorie Region was not justified on the ground that it is a requirement of the defence industries.

In 1988, the Court concluded that all the mines in Dehradun Valley should remain closed, except three operations. Although the Dehradun Valley mining operations occupied 800 hectares of reserved forests and the Forest Conservation Act of 1980 was in effect in 1982, when the lessees applied to the State Government approval for the mining operations.

This failure reflected confusion as to whether the requirement of the Act applied to renewal of leases or not, which had originally been granted before the Act came into force. This question was resolved by the Supreme Court in the case of *Ambika Quarry Works v. State of Gujarat*[16]. The Court held that the state government may

[15] Available at https://lawtimesjournal.in/rural-litigation-and-entitlement-kendra-ors-v-state-of-uttar-pradesh-ors-case-summary/ visited on May 20, 2019
[16] AIR 1987 SC 1073

renew pre-existing mining leases only with the review and approval of the centre, as required under the Forest Conservation Act.[17]

In 1988, in the Dehradun Valley litigation, the court concluded that continued mining in the valley violated the Forest Conservation Act. The court even went beyond the requirements of the Act to conserve forest and issued orders to ensure that the valley be reforested. It also noted that although the state of Uttar Pradesh had a reforestation programme, the record of reforestation was not encouraging.

Later a Monitoring committee was established by the court. It comprised of the Central, State, and Local officials and two 'public-spirited' citizens to oversee reforestation, mining activities and 'all other aspects necessary to bring about normalcy in the Doon Valley'. The court also provided the Monitoring Committee with funding by ordering that 25 per cent of the gross profit of the remaining mines be deposited in a fund controlled by the committee. Vijay Shree Mines, one of the lessee permitted by the court to operate until the expiry of its lease in 1990, misused the permission.

The lessee continued to quarry limestone in an unscientific manner and in disregard of the directions issued by the Monitoring committee. In an application filed by the committee, the court held that the mining activity secretly carried on by Vijay Shree Mines had caused immense damage to the area and directed the firm to pay Rs. 3 lakhs to the fund of the Monitoring committee.

An outcome of the Dehradun Valley litigation was the ARC Cement Case. ARC Cement operated a cement factory in the valley since November, 1982 until restrained by an order of the court. The company employed about 400 persons. In 1987, the Supreme Court declined permission to ARC to open its polluting cement factory and encouraged the company to shift it elsewhere.

When the matter came up four years later, the Supreme Court was unsatisfied by the progress, primarily because the company had failed to propose an alternative site. The Court held that it cannot go back upon its earlier order and the cement factory shall not be permitted to run at the site and therefore shifting of place has to be done. The petitioner was permitted to indicate some alternative site so that there would be an option available to the State Government and the Pollution Board to consider which of the sites offered may be acceptable to them for shifting the cement factory from the present location.

In November 1991, the Supreme Court recorded some of the terms of a general understanding between the company and the UP State Mineral Development Corporation for the supply of limestone and other related issues. No consensus was reached on a new site and while disposing the case the court acknowledged that certain aspects of the arrangement remained to be negotiated between the parties. The efforts to relocate the

[17] *Supra* note 87

cement factory failed and in February 1995, ARC Cement was ordered to wound up by the Board for Industrial and Financial Reconstruction.

Judgment

In the Dehradun Valley Litigation case, the Central Government had become concerned about the destructive mining operations in the Valley at the same time when the Supreme Court took up the issue. In 1983, the Government of India appointed a Working Group to inspect the limestone quarries in the Dehradun-Mussoorie area. The same individual, D.N. Bhargava, headed both the government's Working Group and the court's committee came to similar conclusions as to the harmful effect of the mines on the environment. The Working Group also prepared reports for the court on the few mining operations, which were allowed to remain open. During the course of the litigation, in 1986, Parliament enacted the Environment Protection Act.

After this, the Valley was designated as an ecologically fragile area under the Environment Protection Act. In addition, the centre appointed a Doon Valley Board, under the chairmanship of the Minister for Environment and Forests, which was charged with conserving and restoring degraded areas of the Valley. The Supreme Court concluded that mining in reserved forests in the Dehradun valley violated the Forest Conservation Act. However, the Forest Conservation Act only prohibits non-forest activities on forest lands that do not have the approval of the Central Government. In addition to ecological integrity and national interests, the Supreme Court was also concerned with the welfare of mine operators and laborers left unemployed by closure of the Dehradun Valley operations. The Court issued the following directions:

a. Orders that mine lessees whose operations were terminated by the court would be given priority for leases in new areas open to limestone mining.
b. Orders that the Eco-Task Force of the central department of Environment reclaim and reforest the area damaged by mining and that workers displaced by mine closure be given priority for jobs with the Eco-Task Force operations in the region.

In the long evolution of the human race on this planet, a stage has been reached when, through the rapid acceleration of science and technology, we have acquired the power to transform our environment in countless ways and on an unprecedented scale. Humanity's capacity to transform its surroundings, if used wisely and with respect to the ways of nature, can bring to all communities the opportunity to enhance the quality of life. Wrongly or heedlessly applied, or applied in iniquitous ways, the same power can do incalculable harm to human beings and their environment. We see around us growing evidence of human-caused harm in many regions of the earth the dangerous levels of pollution in water, air, earth and living beings; destruction and depletion of irreplaceable life forms and natural resources; major and undesirable disturbances in the earth's climate and protective layers; gross deficiencies, harmful to physical, mental and social health, in the living and working environments of humans, especially in cities and industrial complexes.

It is essential to perceive our reliance on the world's common assets. Normal assets, for example, air, water, and land are central to all living things: they are, substantially more than cash and monetary framework, the base of our survival. To expansive quantities of mankind, particularly networks that have been named. Ecosystem (individuals relying upon the regular habitats of their own area to meet the vast majority of their material needs), normal assets are the base of survival and occupations. Their material and monetary sustenance to a great extent relies upon these. In India alone, around 70% of the populace straightforwardly relies upon land-based occupations, woodlands, wetlands and marine natural surroundings, for fundamental subsistence necessities as to water, nourishment, fuel, lodging, feed and prescription as additionally for biological employments.

Given this nearby relationship of people and their condition, it isn't amazing that the way of life of social orders is so incredibly impacted by their condition. They look for motivation, information, otherworldliness and style inside their normal environment. Yet, it isn't just 'biological system individuals' who are reliant on the indigenous habitat. It is all people, even the rich urban occupant in Paris or Washington who might be under the hallucination that they are cushioned by the props of present day innovation.

In the growing cities of the industrializing world, millions of residents of all classes are now prone to lung and skin diseases, water-borne illnesses, and congenital abnormalities from toxics in their food and water, some of which may have originated hundreds of kilometers away.[18]

Pre-Constitution Judicial Decisions :

➢ ***Peninsular & Oriental Steam Navigation Company v Secretary* :**

A consideration of the pre-Constitution cases of the Government's liability in tort begins with the judgment of the Supreme Court of Calcutta in the case. *P. & O. Steam Navigation Co. v. Secretary of State*.[19]

The principle of this case holds that if any act was done in the exercise of sovereign functions, the East India Company or the State would not be liable. It drew quite a clear distinction between the sovereign and non-sovereign functions of the state.

As the facts of the case go, a servant of the plaintiff-company was proceeding on a highway in Calcutta, driving a carriage which was drawn by a pair of horses belonging to the plaintiff. He met with an accident, caused by negligence of the servants of the Government. For the loss caused by the accident, the plaintiff claimed damages against the Secretary of State for India.[20]

The Supreme Court observed that the doctrine that the 'King can done wrong', was applicable to the East India Company. The company would have been liable in such cases and the Secretary of State was thereafter also liable. This arose out of the section 65, Government of India Act, 1858, which equated the liability of the

[18] Ashish Kothari, Anuprita Patel, "Environment and Human Rights An Introductory Essay and Essential Readings" *National Human Rights Commission* Faridkot House, Copernicus Marg, New Delhi 110 001, India 90-110(2006).
[19] (1861) 5 Bom. H.C.R. App. I
[20] *Supra* note 87.

Secretary of State for India with that of the East India Company. Distinguishing between sovereign and non-sovereign functions it was held that if a tort were committed by a public servant in the discharge of sovereign functions, no action would lie against the Government – e.g. if the tort was committed while carrying on hostilities or seizing enemy property as prize.

This doctrine of immunity, for acts done in the exercise of sovereign functions, was applied by the Calcutta High Court in *Nobin Chander Dey v. Secretary of State*[21]. The plaintiff in this case contended that the Government had made a contract with him for the issue of a licence for the sale of ganja and had committed breach of the contract. The High Court held that upon the evidence, no breach of contract had been proved. Secondly even if there was a contract, the act had been done in exercise of sovereign power and was thus not actionable.

- ***Secretary of State v. Hari Bhanji*** [22]**:**

In this case, the Madras High Court held that State immunity was confined to acts of State. In the P & O Case, the ruling did not go beyond acts of State, while giving illustrations of situations where the immunity was available.

It was defined that Acts of State, are acts done in the exercise of sovereign power, where the act complained of is professedly done under the sanction of municipal law, and in exercise of powers conferred by law. The mere fact that it is done by the sovereign powers and is not an act which could possibly be done by a private individual does not oust the jurisdiction of the civil court.

The Madras judgment in Hari Bhanji holds that the Government may not be liable for acts connected with public safety, even though they are not acts of State. This view was re-iterated in Ross v. Secretary of State. The Allahabad High Court took a similar view in *Kishanchand v. Secretary of State*[23].

However, *Secretary of State v. Cockraft*[24], making or repairing a military road was held to be a sovereign function and the Government was held not liable, for the negligence of its servants in the stacking of gravel on a road resulting in a carriage accident that injured the plaintiff.

Other such cases :

In the Bombay case of *Rao v. Advani*[25], it was held that the Madras view in the Hari Bhanji case was correct. The Bombay case was not one of a claim to damages for tort, but related to a petition for certiorari to quash a Government order for the requisitioning of property, as proper notice had not been given. On appeal, the

[21] (1876) ILR 1 Cal 12
[22] (1882) ILR 5 Mad 273
[23] AIR 1982 SC 1511
[24] (1916) ILR 39 Mad 351
[25] (1949) 51 BOMLR 342

Supreme Court, in the case of *State of Bombay v. Khushaldas Advani*[26], reversed the High Court, holding that natural justice was not required to be observed, before requisitioning any property.

Post Constitution Judicial Decisions

- ***State of Haryana v. Santra***[27]

The ratio of this case was on the principles of state liability for negligence. Here it was clearly established that the doctor while performing the operation was acting as a government servant and acting in the course of employment of the government. Hence when there was negligence, it amounted to acting in bad faith, and so the defence of sovereign immunity could not be used by the state. Moreover it was also held that such negligence which could have been perceived by a professional who had a duty to do so should take into consideration these matters and cannot escape liability by claiming defence of consent by the petitioner.

The respondent in the above case was a poor lady who went under a sterilization operation at the General Hospital, Gurgaon, as she already had seven children and wanted to take advantage of the family planning scheme launched by the State Government of Haryana. Smt. Santra was informed that she would not conceive in future. Smt. Santra approached the Chief Medical Officer, Gurgaon, for her sterilization in 1988. But she gave birth to a female child. This led her to file a suit claiming Rs. 2 lakhs as damages for medical negligence due to "failed sterilization" which was decreed for a sum of Rs. 54,000/- with interest at the rate of 12 per cent per annum from the date of institution of the suit till the payment of the decretal amount. Two appeals were filed against this decree in the court of District Judge, Gurgaon, which were disposed of by Addl. District Judge, Gurgaon, by a common judgment dated 10.5.1999. Both the appeals - one filed by the State of Haryana and the other by Smt. Santra were dismissed. The second appeal filed by the State of Haryana was summarily dismissed by the Punjab & Haryana High Court on 3.8.1999.

There are two major issues involved in the case. One is that there was negligence on the part of the doctor who operated on her as the operation was a failure. Moreover as the operation took place in a Government Hospital, the state should be vicariously liable for the negligent act of its servant in the course of employment. This law also deals with the Hindu Adoptions and Maintenance act, 1956, Ss.20 and 23.the principle involved for the above claim is the vicarious liability of the state for the negligence of its doctors.

In reply to the claim of compensation of Rs. 2 lakhs by the respondent, the officers defending the state argued that during the time of the operation only the right Fallopian tube was operated on and the left tube was left untouched. The appellants also argued that the negligence on the part of the doctors would not make the state vicariously liable and that the damages paid to her for the maintenance of the child could not be decreed as there was no element of tort involved. It was further pleaded that Smt. Santra had herself put her thumb impression on a paper containing a recital that in case the operation was not successful, she would not claim any damages. It was pleaded that she was estopped from raising the plea of negligence or from claiming damages for an unsuccessful sterilization operation from the State.

[26] AIR1950 SC 222
[27] C.R.No.3466 OF 2005

After the District Court dismissed the matter giving a compensation of Rs 54,000 and an interest rate of 12% per annum, the State filed a suit in the Supreme Court challenging the decision. Due to the failure of the operation and the conceivement of the child, the respondent had filed a suit claiming for damages worth Rs. 2 lakhs for the maintenance of the child and herself as she already as seven children. The respondent claimed that if she had offered herself for complete sterilization operation, both the Fallopian tubes should have been operated upon. The doctor who performed the operation acted in the most negligent manner.

Moreover she also stated that as the operation was carried out in a government hospital and the doctor being a government servant, the state was vicariously liable for the act of the doctor as a servant of the State.

Judgment:

The explanation given by the appellants for absence of state liability was rejected by the trial court which the suit for a sum of Rs. 54,000 with pendate lite and future interest at 12% per annum. The decision was confirmed by the Appellant Court and State High Court. The trial court as also the lower appellate court both recorded concurrent findings of fact that the sterilisation operation performed upon Smt. Santra was not 'complete' as in that operation only the right Fallopian Tube was operated upon while the left Tube was left untouched. The courts were of the opinion that this exhibited negligence on the part of the Medical Officer who performed the operation. Smt. Santra, in spite of the unsuccessful operation, was informed that sterilisation operation was successful and that she would not conceive any child in future. The plea of estoppel raised by the defendants was also rejected. The amount of Rs. 54,000/- which has been decreed by the courts below represents the amount of expenses which Smt. Santra would have to incur at the rate of Rs. 2,000/- per annum in bringing up the child up to the age of puberty.

Having regard to the above facts the court said that Smt. Santra was entitled to full compensation from the State Government and appeal was dismissed but without any order as to cost.

Polluter Pays Principle in The Indian Context:

In Indian ecological law, the 'polluter pays' standard incorporates natural expenses just as immediate expenses to individuals or property. The Supreme Court of India has fleshed out the proportion by expressing that the 'remediation of the harmed condition is a piece of the procedure of the practical improvement and all things considered the polluter is subject to pay the expense to the individual sufferers just as expense of turning around the harmed biology.'

The Supreme Court of India inexplicitly connected the rule on account of *M.C. Mehta v. union of India*[28] in the year 1986. It was announced by the court that 'we need to advance new standards and set down new standards, which would enough arrangement with the new issues which emerge in an exceedingly industrialized economy'. The noteworthiness of this judgment lies in the court's detailing of the standard of

[28] AIR 1988 SC 1115.

the proportion of obligation of industry occupied with 'perilous or characteristically hazardous exercises'. Such measure must be corresponded to the greatness and limit of the undertaking.

Besides, the court coordinated the business either to move from the present area or develop a green belt around it as a condition point of reference to restart the business. Further, the industry was solicited to store an aggregate from Rs. 35,00,000/ - in a bank and a certification of Rs. 15,00,000/ - with the court for pay to be paid to one who can demonstrate under the steady gaze of the courtroom that he endured due to the Oleum gas spillage from the Sri Ram Food and Fertilizer Corporation. Subsequently an imaginative cure was developed by the Supreme Court of India for this situation which was backhanded acknowledgment and utilization of the 'polluter pays rule'.

It was without precedent for Indian Council for *Enviro-Legal Action v. Union of India*[29], that the court unequivocally connected this standard. It was pronounced by the court that reclamation of the harmed condition is a piece of the procedure of practical advancement and thusly polluter is at risk to pay the expense of the individual sufferers just as the expense of turning around the harmed biology.

In this manner, the 'polluter pays rule' signifies the outright risk for damage to the earth stretches out not exclusively to repay the casualties of contamination yet in addition to the expense of reestablishing the natural corruption. Remediation of the harmed condition is a piece of the procedure of practical advancement.

For this situation, five compound businesses were delivering H-corrosive (1-napthol-8-amino, 6-disciphonic corrosive). An azo color and untreated dangerous ooze were released away from any detectable hindrance compound which, at the appropriate time of time, moved through a channel over the whole territory and the water washed the slime profound into the entrails of the earth. It caused contamination of waterway water and underground water upto 70 feet beneath the ground inside a span of seven miles of the town Bicchari. It further left the fields close-by fruitless, because of which inhabitants needed to relocate out of the town.

The Court while making a milestone judgment on this PIL, likewise remembered that no rule embraced by it must be straightforward, commonsense and fit to the conditions winning in the nation. Taking a gander at the far reaching implication of the unsafe or characteristically hazardous exercises, people or the establishments would be held 'subject completely', however they have taken all sensible consideration while doing such movement.

The risk to remunerate is two overlap; one, to repay the casualties of contamination for burden and wellbeing misfortune; and the other, to reestablish the ecological debasement viz., of the dirt, underground water and the vegetation front of that region. Such remediation is a piece of the procedure of 'economic improvement'. It is likewise to be noticed that this does not exculpate an individual from criminal risk.

It was likewise requested by the court that the Central Government must decide the sum required for completing medicinal measures and the status report presented by the National Environmental and

[29] (1987) 1 SCC 395.

Engineering Research Institute (NEERI) in the year 1994 be made a premise to process it. NEERI in its report had expressed that rupees 4,00,00,000/ - would be expected to hold the intensity of soil and water sullying.

The earnestness of the Supreme Court went to the fore when it was articulated that the Ministry of Environment and Forest must recoup the cash from the units and the recuperated cash be utilized to fix the harm caused to the land and water in the territory. Because of which plant and industrial facilities have been sold by the State Government.

The Supreme court in one more instance of *Vellore Citizens Welfare Forum v. Union of India*[30] repeated and proclaimed in unequivocal terms that the prudent rule and the polluter pays rule are a piece of the natural law of this nation. These standards have been acknowledged as a piece of the rule that everyone must follow as *Article 21* of the Constitution of India ensured the assurance of life and individual freedom. There is likewise a sacred command to secure and improve nature under *Articles 48-A* and *51-A (g).*

The Court additionally seen that this standard has likewise been acknowledged as a major aspect of the standard International Law, in this way, it naturally turns into a piece of the essential statute of the land. In a similar case, the court additionally requested for the making of 'Condition Protection Fund'. This store could be used for remunerating the influenced people distinguished by the 'expert' and furthermore for 'reestablishing the harmed condition.

CONCLUSION AND SUGGESTION

CONCLUSION

At different levels different Indian Government agencies are entrusted with the task of controlling pollution. National legislations prescribed different controlling agencies are quite sufficient for the protection of the environment on India in its current scenario,

Research Questions Answered

1. Whether the National legislation of India is sufficient for the protection of its Environment in its current scenario?

   Yes, the present legislation is sufficient for the protection of environment but it should actively enforce throughout the country. But there should be reconsideration of legislations so that with change of time and nature of Environment, legislations would also been able to cope up with them.

2. Are the statues being implemented in the proper and effective manner?

   Yes, the statutes have been implemented in the proper and effective manner as there is active participation of the various boards constituted under the various legislations and their performance toward the environment protection says it all.

[30] (1996) 3 SCC 212.

The statutes lays down the duties of various bodies towards the environmental protection and controlling the degradation of environment on the same time.

3. What is the role of judiciary in protection of the environment?

Judiciary is playing very active and vital role towards the protection of Environment. It laid down various principles and directions towards the protection of the Environment from various activities of the person or the Industries at large.

Where the polluters of the environment had a deterrent effect on them as they realized that if they don't follow the norms of laid down by the legislation then the results wouldn't be goo

TESTING OF HYPOTHESIS

The hypothesis of the research is proved to be correct that the law relating to the Environmental protection in India have effective implementation and the state and courts does strict interpretation of the statues regarding the laws of Environmental protection in order to safeguard the natural environment of the state. Here in the research we can see that judiciary has laid down the principles by strictly interpretating the statutes.

The government has taken very strict actions on the agents of the degradation of the natural environment by imposing heavy fines, imprisonment, and also banning those who pollutes the environment.

SUGGESTIONS

- **Need to make Pollutant Release Inventory as a Statutory mandate:**

For the successful requirement of natural laws, data about the condition of condition must be given to general society. Government, non-legislative associations and the open must approach the data, with respect to the sort of and measure of poisons that the business discharges into the earth. Each industry that makes, procedures, transports or generally utilizes any recorded or planned dangerous substances must keep up a stock.

This inventory shall show how much of pollutants and what kind of pollutants are released into the environment in a fixed period. This inventory will provide an annual estimate of the release of toxic chemicals from the industrial plant. Based on this inventory all the local governments, state governments and the union governments have to maintain pollutant release inventory at their level.

This Pollutant Release Inventory [PRI] is an integral asset for lessening mechanical contamination. Condition Act might be corrected to force extreme disciplines on those industrialists who make wrong sections in this stock. PRI is having the accompanying preferences.

a. This permits keeping track of various modern contamination emanations.

b. It empowers distinguishing proof of ventures producing conceivably destructive dirtying discharges, and the amount of poisons radiated over some stretch of time in a given area by the business.

c. It gives data to the nearby governments and to the neighborhood individuals about destructive ventures and harmful contaminations.

- **Need to Constitute National Commission on Environment and Development:**

On the lines of World Commission on Environment and Development, a different specialist like National Commission on Environment and Development [NCED] ought to be established with the ecological specialists, resigned judges and academicians.

This commission is:

a. to publish a white paper on the state of environment and various steps taken at national level and in each state every year;

b. to prepare an agenda for the country's environmental policy;

c. to monitor issues related to the protection of natural resources, health and other eco-related problems.

- **Need to Establish an Ecological Science Research Group:**

On the lines of World Commission on Environment and Development, a separate authority like National Commission on Environment and Development [NCED] should be constituted with the environmental experts, retired judges and academicians

- **Need to create All India Environmental Services:**

State Boards are little modest organizations against enormous modern campaign, which thusly is having capacity to impact the legislature. Government is having capacity to supersede the choices of the State Boards. So there is a need to build up Indian Environmental Services to confront the issues affectively and freely.

- **Need for Special Courts:**
-

It is important to build up uncommon courts with criminal ward at lower level and green seat in High Court of Andhra Pradesh to settle the mechanical contamination cases. In perspective on the over-burden court cases, lower courts may not be in a situation to manage the cases including natural issues. The procedures are taking years together to achieve an end. The vast majority of the between time orders gone by the courts incapacitate the experts from guaranteeing usage of their requests.

Green benches are already functioning in West Bengal, Madhya Pradesh and in some other High Courts.

- **Need to Reconstitute Appellate Authority:**

In territory of Kerala an Appellate Authority was established with a legal officer, a manager and specialized staff. It is presented that the structure of the Appellate Authority in Andhra Pradesh must be reconstituted on the lines of Kerala so as to maintain a strategic distance from self-assertive choices.

For the non-implementation of the orders, the State Board must be made answerable and to that effect, the existing law must be amended. The structure of the tribunal constituted under National Environmental Tribunal Act 1997 shall be amended in the lines of the National Appellate Authority with the representatives of the Judiciary, executive and the environmental scientists.

- **Need to Amend the National Environment Tribunal Act:**

Scientific information, technical data, administrative skills and judicial thinking are main contributing factors in environmental justice making process. The object of the National Environment Tribunal Act is to compensate the victims of accidents caused due to the handling of hazardous substances.

So as to destroy the data important to determine natural issues it is important to alter the NET Act in regard to the structure of the council. It will be altered to incorporate delegates of the master logical staff spent significant time in natural issues alongside the legal officer and the agent of official branch of the state.

- **Need for the Establishment of Environmental Security Force:**

Separate condition guard dog hardware might be built up with forces to assess the modern units and to gather emanating tests. This eco-security power is to screen execution of requests gone by the State Boards. This eco-security power is to keep up consistent cautiousness over blundering enterprises.

- **Need to Initiate Prosecution Against Erring Industries:**

Water Act, Air Act and Environment Protection Act declared certain actions and inactions to be offences and prescribed deterrent punishments. The State Board is hardly launching prosecution against the authorities of the industries responsible for causing pollution.

The State Board is thinking about the conclusion of businesses as an elective cure. In the territory of Andhra Pradesh not a solitary polluter being rebuffed in a couple of cases organized by the State Board against blundering enterprises. It is presented that the State Board should start indictment against dirtying businesses in a successful way to make prevention in the brains of the general population in charge of causing contamination and see that the polluter is punished.

- **Statutory Compulsion for Environmental Impact Assessment:**

Ecological Impact study ought to be made as a statutory impulse for all businesses and improvement ventures, independent of spending plan of the task. To that influence the Environment Protection Act ought to be revised. Ecological Audit reports of each industry ought to be distributed alongside organization yearly reports and such reports must be made open to general society.