



ENVIRONMENTAL AUDITING: A NEW DAWN TOWARDS ENVIRONMENTAL JURISPRUDENCE

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Abstract:

Man's most precious possession of existence can be possible only with a healthy environment allowing human lives to nurture, bloom and prosper. Environment is the well spring of living and nonliving life that decides the nearness, advancement, and improvement of humankind on earth. The idea of environmental assurance in relation to antiquated human advancement incorporates the co-existence of nature with human life. Environmental jurisprudence has its highest achievement is its codification of change in ethics and a legal recognition that both individual and governmental agency responsibility extend to the natural world. Environmental Audit is a systematic agenda towards calculating the responsibility of every such organization that has impact on environmental sustainability. It is a sound precaution and a proactive measure in today's heavily regulated environment. The concrete issues surrounding societal attitudes, actions and ecological systems are always a growing concern of modern developed nations. It is a tool of management to evaluate its environmental performance. It is utilized to study bio-geophysical impact of any project and communicate necessary information corresponding standards of compliance. This weapon determines the proper working of environmental management system verifying the compliance with relevant national, local or other laws. A good environment management policy requires that there should be a constant effort to analyze and monitor various industrial working system and processes to generate and transmit this information for the inspecting authority. Considering earth's atmosphere as a common heritage having a Vedic vision proclaims man's duty to preserve the environment and this process of environment audit can serve its best in regard to protect man-nature sustainability.

Key word: Environmental Audit, Environmental Jurisprudence, Impact.

Introduction:

"...Nature provides a free lunch, but only if we control our appetites..."¹ Indian civilisation witnesses its existence with wellspring of living and non-living life on earth that offers the nearness, advancement, and improvement of humankind. The term environment literally means pari-aavaran, i.e., external covering or a

¹ William Ruckelshaus, Business Week, 18 June 1990

thing encircling or encompassing human existence². The Indian Vedic philosophy observed man and environment as a part of a divine connectivity bestowed with peace and prosperity.

The situations of relationship of man and environment within the ethical framework corresponds the responsibility and accountability of man to environment. The idea of environmental assurance and safeguarding is not new. It has been characteristic for some antiquated human advancements with the underlying feature that it is the dharma of every person in the general public to ensure nature and the term 'nature' incorporates land, water, trees, and creatures which are vital to us.

The Environment (Protection) Act, 1986, section 2(a) defines environment as it "incorporates water, air and land and the relationship which exists among and between water, air and land, and individuals, other living animals, plants, smaller scale creature and property." It is a system encompassing all biotic and abiotic elements affecting human life. The biotic or living components comprise all flora and fauna, and abiotic components include water, sunlight, air, climate, etc. The resources of an environment can be any matter, service or particulars that are useful to society and human beings. They can be anything that satisfies the needs of daily life, its nourishment, and its accomplishments.

The modern welfare state must take up the social realities and the needs of the society to coexist with the demand of time. The protection of environment requires administrative and legislative intelligence to strategies the harmonisation of environmental values with developmental agenda in the prevalent socio-economic condition of our country. The court system of our country has a deliberate role to justify the functioning of the administrative agencies in striking the balance between the environment and development. Environmental Jurisprudence is the highest achievement in this category with its codification announcing a change in ethics, and a legal recognition that both individual and governmental agency is responsible towards protection and preservation of natural world.

However, Environmental auditing is a systematic, documented, periodic and objective process in assessing an organization's activities and services in relation to:

- Assessing compliance with relevant statutory and internal requirements
- Facilitating management control of environmental practices
- Promoting good environmental management
- Maintaining credibility with the public
- Raising staff awareness and enforcing commitment to departmental environmental policy
- Exploring improvement opportunities
- Establishing the performance baseline for developing an Environmental Management System (EMS)

² Dr. Singh Rakesh Kumar, Environmental Law, university book house Pvt. Limited, Jaipur, 2nd edition, 2019, Jaipur.

Objectives:

1. Whether the mutual support between environment and industry could be achieved by the system of environmental auditing.
2. Does the compliance of environmental guidelines are followed by industries and companies?
3. Whether environmental auditing is successful in controlling the environmental pollution?

Research methodology:

Research is an enquiry for the verification of a fresh theory or for supplementing prevailing theories by new technology. According to Webster's International Dictionary 'Research' means a careful, critical enquiry, or explanation in seeking facts of principles, diligent investigation in order to ascertain something". It is an extensive study of the subject that is clothed in an enhanced presentation with co-operation to the chosen topic.

Methodology is a pre- requisite in any scientific inquiry. Different methods towards systematic investigation are applied by the researcher to gain new knowledge about the problem in question. In its wider sense, methodology includes the philosophy and practice of the whole research process by following the standards for intriguing data and to derive a conclusion.³

The present study of the Researcher, is based on both doctrinal methods where by applying doctrinal research the analysis of case law, arranging, ordering, and systematizing legal propositions and study of legal institutions is attempted by the researcher. Doctrinal study always required an in-depth study of various Text Books, study materials and reported cases detailing the situation signifying the subject and deliver a Judicious analysis of the available data with required clarity and precision.

With Doctrinal Research the researcher has gone in detail the various International and national documents that defines environment, provides guidelines and implementation of Judicial pronouncements. The Researcher has collected required secondary data from various books, journals, magazines, reports, and newspapers. Resort is taken from various internet sources to gain Data and material related to the topic.

Environment: The global issue

The outer physical and biological system where both man and other organisms live with many interacting components are all together termed as environment. This environment and its components are always concerned for those who survive on it. To cope with the emergence of industrial era the race has began for achieving speedy economic growth with many unprecedented activities disturbing the very existence of our environment. With increased population & strong tendency of urbanisation has raised the

³ Myneni S.R., (2009), Legal Research Methodology, Allahabad Law Agency, Haryana.

stress on planned socio-economic development concentrating on industrial planning. In this process of getting quick benefits the nature has been exploited and resources are used in uncontrollable way. Thus, it has got certain irreversible consequences, that has resulted in environmental pollution and degradation. Though needs are genuine in certain aspects yet it is very unkind to nature that unfortunately left us with no choice but to reap the consequences.

This problem of environment degradation has not occurred overnight rather the obsession for growth and rapid economic development has destroyed to the extent of ruining the life support eco-system. The reckless use without paying any heed to the damage caused to the environment has brought the life of the people under intensive pressure and gradually leading towards irreversible environmental damage which threatens the very survival of mankind. The land is eroded, water is contaminated, air is polluted, hampering the well being of human mankind. Man's relationship with various elements of its surroundings affects itself if it does not live with harmony with environment. The irrational behaviour coupled with other allied activities affects natural environment goes against the interest of mankind. Right to environment is not a mere state of living rather it is a fundamental right of living with benefits of healthy life enjoying with vigour and efficiency.

Environmental safety is a serious matter to which the international community has responded positively with proper policy perspectives directed in such a manner that natural environment is protected from further degradation. The Stockholm conference organised in 1972 was a positive step towards this new start taking the stock of the situation focusing on controlling and regulating the danger of pollution and conservation of nature. Systematic co-ordination of environmental activities and common responsibility of member states are few agendas of Stockholm conference initiated by United Nations towards preserving environment. Nairobi conference, earth summit, United Nations Conference on Environment and Development also discusses the matter relating to environment and its consequential fall-out. The entire world is awakened towards the problem of environment and ready to fight with prepared possible measures to protect, preserve and nourish planet earth.

Environmental Auditing: The concept

An environmental audit is a systematic examination to assess a company's environmental responsibility. It aims to identify environmental compliance, verify environmental responsibility implementation gaps whether they meet stated objectives, along with related corrective actions. The aim of environmental auditing is to establish mutual support between the environment and industry. It establishes a compliance with the environmental policy by the industry or company. The scope and limit of this tool differs from industry to industry. The purpose of environmental auditing is to prescribe necessary norms to minimise

industrial waste, earmark the areas of water usage and waste water management, identification of the sources, quantities and nature of air emissions, hazardous wastes and disaster management etc.⁴

The audit examines the potential hazards or risks posed by the company. Areas examined in this process may include company's environmental policies and procedures, energy use practices, recycling, waste, conservation, and pollution. The company can use those results to determine what changes need to be made for compliance and to secure and restrict environmental degradation.

Submission of environmental audit report by the person carrying an industry, operation or process has been made compulsory and this has been incorporated in the Environment (protection) Rules through an amendment in the year 1992.⁵ Environmental audit is a system of self-regulation on the part of the industries with a view to tailoring environmental safeguards into industrial activities.⁶

Some remarkable benefits of audit include greater industry compliance with environmental laws, disclosure of data on waste management, waste minimisation, recycling and utilisation, arrangements for off-site disposal and revealing of data on consumption of water and raw material.⁷ It is a management tool which ensures cost effective compliance with the policies of the industrial undertaking, reduces occurrence of industrial accidents and strengthens expertise at the operational level.⁸

Importance of an environmental audit:

The man influences the environment in many ways. Starting from breathing, extracting, using machinery, draining out ground water, exploiting forest wealth, excavating oil from ground, using chemicals, pesticides and insecticides in agricultural activities are few such instances of using environmental aspects. These activities are necessary at the same time unavoidable but tragedy lies on the fact that these resources or nature produces are not used rather misused creating adverse effect on environment.

According to the Rio Declaration on environment and Development, 1992 human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with the nature. The rights to development must be fulfilled so as to equitably meet developmental needs of present and future generation. This declaration raises the importance of indigenous communities to engage themselves in environmental management and development with their traditional practices and knowledge striving towards sustainable development.

⁴ Environmental Law, Dr. S.C. Tripathi, Central Law Publications, 7th edition, 2021, Prayagraj

⁵ Inserted by G.S.R. 329(E) dated 13th March, 1992

⁶ Leelakrishnan p., environmental Law in India, 2nd edition, 2005 at p. 178

⁷ Ibid., p. 179

⁸ Dr. Nanda Sukanta, Environmental Law, central law publications, Allahabad, 4th edition, 2015, p. 235

The era of economic liberalisation at global, national, state, and local levels the developmental activities are required to be accelerated rather it the need of the hour but balancing approach is necessary pursuing developmental projects, technological advancement, and industrial growth. In a broad sense, environmental auditing aims to protect the environment and minimize the risks of business activities to the environment and human safety and health. Whereas, in the company's perspective, it aims to check whether the company has complied with the environmental regulations and requirements and achieved the previously set environmental goals.

Environmental audits are important for several reasons:

- **To build a good company reputation.** Environmental audits can strengthen the company's image. For example, although it may not be fully compliant, the improvement efforts made will be seen as a positive step by the public. It can lead to positive publicity, encouraging the public not to hesitate to continue buying products from the company.
- **Audits help businesses become more sustainable.** It also creates new marketing opportunities with other consumers. Companies may use formal recognition or accreditation as a tool to create preferences for the company's products.
- **To avoid negative campaigns.** Increasing external demands for environmental responsibility by pressure groups and environmental activists are forcing companies to check their compliance with environmental requirements. The increasing concern for the environment has made these demands more and more popular. If the company is not compliant, there can be campaigning to boycott its products.
- **To adapt and comply with more stringent environmental regulations.** Governments adopt more stringent environmental regulations and standards, usually by international consensus. It forces companies to comply if they do not want to be penalized.
- **A comprehensive environmental audit can uncover problem areas.** It may help the company to provide recommendations for follow-ups and can fix it before its reputation is destroyed and regulatory problems arise.

Objectives of environmental audits are:

The essential objective of conducting Environmental Audits by companies is for assisting in providing protection against harm to the environment along with reducing health risk factors for humans. It is a type of Risk Management Tool with the key objectives being -

- Determining the performance analysis of available Environmental Management Systems.

- Reducing exposing humans to potential risk factors for any environmental, health or safety measures.
- Assess the company's compliance with laws and regulations and other relevant requirements.
- Establish a performance basis for planning and developing an environmental management system.
- Promote good environmental management.
- Maintain credibility with the public.
- Raise awareness and enforce the company's internal commitment to environmental policies.
- Minimize risk exposure from environmental issues to health and safety.

Benefits of Environmental Audit:

Environmental audits and their results provide useful input to:

- Provide management with information about the management and performance of the company's environment as input for making decisions,
- Identify risks related to environmental responsibility and take action to implement them,
- Ensure company operations comply with environmental laws and requirements and, if not, take necessary corrective actions,
- Identify environmental management system weaknesses before they cause problems,
- Develop organizational culture and increase environmental awareness among people within the company,
- Identify opportunities for improvement in environmental management and performance to drive increased efficiency and cost savings,
- Improve company transparency to stakeholders such as government, customers, and investors to support long term good relationships with them,
- Encourage positive publicity by publishing audit results, thereby enhancing the reputation and image of the company,
- Develop marketing strategies and strengthen brand equity, encourage consumers to remain loyal to the company.
- Preservation of the Environment.
- Verification of Consents in accordance with the State Laws and the National Laws
- Identifying the existing and potential upcoming circumstances of environmental damages that will be needed to be addressed.

- Providing Companies with possible opportunities for structuring a better environmental performance, highlighting the deficits, and providing scope for improvement.
- Classifying the potential cost-effective factors which can be achieved through waste minimisation and reducing the emission of carbon footprints.
- Showcasing the applicable company's commitment towards protecting the environment to the employees, the stakeholders, the public, and the appropriate authorities.
- **Environmental jurisprudence vis a vis environmental audit:**
- The Stockholm Declaration, 1972 i.e., The United Nations Conference on Human Environment⁹ has realized that 'pure clean environment' is not possible in the industrialized civil societies; perhaps, the attainment of sustainable development¹⁰ is the answer. As a step towards the achievement of sustainable development, different principles have evolved in national and international environmental jurisprudence. Some of the principles are self-explanatory and applied as a preventive mechanism, while others are evolved as a compensatory one. It is to be noted that none of these principles are comprehensive enough to account for every sort of environmental pollution and degradation. Nevertheless, it is worth to set off these principles to achieve the ends of environmental jurisprudence. India as a party to the mission has started applying the principles of environmental jurisprudence through judicial and legislative process. Environmental audit as measure of preservation and protection of environment while attaining socio-economic growth corresponds with many principles. They are:
- **The Preventive Principle:** The title itself signifies the objective of this principle. It rests on the basic understanding of the well-known maxim 'prevention is better than cure.' Complete prevention of environmental pollution is not possible; if any industry pollutes a river by waste or emission in air, possibility to restore the previous condition is impossible. Pollution should, therefore, be controlled at the primary level.¹¹ Before establishment of any industry, if it can be possible to assess the harm that it may inflict on the environment, in that case, restriction should be imposed upon the operation of that industry or insistence should be upon the use of more sophisticated and eco-friendly technology.
- **Sustainable Development:** It is a process in which development can be sustained for generations. It means improving the quality of human life while at the same time living in harmony with nature and maintaining the carrying capacity of the life supporting ecosystem. Development means increasing the society's ability to meet human needs. Economic growth is an important component but cannot be a goal. The real aim must be to improve the quality of human existence to ensure people to enjoy long, healthy and fulfilling lives.

⁹ The United Nations Conference on the Human Environment was held at Stockholm from 5 to 16 June 1972. It laid down twenty-six principles which should be guide line for all the Nation in implementation of Environmental law.

¹⁰ Sustainable Development means development keeping in pace with environmental protection, put forward by 'Our Common Future' 1981

¹¹ Rosalind Malcolm, A Guidebook to Environmental Law, (1994, Sweet & Maxwell London)

- Sustainable development focuses at integration of development and environmental imperatives. It modifies the previously unqualified development concept. To be sustainable, development must possess both economic and ecological sustainability. The concept of sustainable development indicates the way in which development planning should be approached.
- For being sustainable development must be both economic and environmentally viable. The necessary condition for achieving sustainable development is ecological security, economic efficiency, and social equity. Sustainable development is, in fact, a multi-dimensional concept involving three interacting aspects—ecology, economy and ethics. Ecological restoration, economic betterment and social justice mutually reinforce one another. In practice environment protection is the development because environment degradation leads to poverty and distorted development. Sustainable development is the only path for conserving and promoting the socio-economic well-being of people.
- **Precautionary Principle**
- ‘Precautionary principle’ plays a significant role in determining whether developmental process is sustainable or not. ‘Precautionary principle’ underlies sustainable development which requires that the developmental activity must be stopped and prevented if it causes serious and irreversible environmental damage. The emergence of precautionary principle marks a shift in the international environmental jurisprudence- a shift from assimilative capacity principle to precautionary principle.
- **Polluter Pays Principle:**
- Polluter Pays Principle has become a popular catchphrase in recent times. 'If you make a mess, it's your duty to clean it up'- this is the main basis of this slogan. It should be mentioned that in environmental law, the 'polluter pays principle' does not refer to "fault." Instead, it favors a curative approach which is concerned with repairing ecological damage. It's a principle in international environmental law where the polluting party pays for the damage done to the natural environment. It is regarded as a regional custom because of the strong support it has received in most Organization for Economic Co-operation and Development (OECD) and European Community (EC) countries. International environmental law itself mentions little about the principle.
- In recent days, the polluter pays principle is seen as a way of internalizing pollution-related costs within the context of the economic rationality of the enterprise. There is a close relationship between a country's environmental policy and its overall socioeconomic policy. Furthermore, under this principle it is not the responsibility of government to meet the costs involved in either prevention of environmental damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. But State practice does not support the view that all de-pollution costs should be borne by the polluter, particularly where transnational dispute is involved.
- **Public Trust Doctrine:**
- Another major principle accepted by the Supreme Court is the public trust doctrine for the protection of natural resource. This doctrine came up for consideration in the M.C. Mehta v. Kamal Nath. The

Supreme Court used the public trust doctrine in this case to restore the environment to its original condition. Briefly, this doctrine postulates that the public has a right to expect that certain lands and natural areas will retain their natural characteristics.

- Applying the public trust doctrine, the Supreme Court can direct the violator to pay compensation as it deems necessary (damages for restitution of the environment and ecology of the area).

Findings of the study:

In the world of environment two contradictory demands emerged. One is protection and preservation of the environment for present as well as future generation and the other is the continuing process of economic development. One cannot be attained at the cost of others. Commitment must be made for sustainable, prudent, rational, and wise use of resources. The researcher while going through the instances of environmental jurisprudence along with environmental audit has come to know that the ecological crisis of today is created by putting pressure on the nature and natural resources in the urge for development without bothering for environmental degradation.

. The major findings of the study are:

- The very process of environmental audit does not end with a result that covers protection and preservation of ecology. Companies may simply take advantage of positive publicity without intending to be environmentally responsible.
- The companies continuing with any developmental projects never submits true report as it may harm their reputation.
- The reports that are submitted by the experts may not based on real facts and there may be chances of bias in such report Internal audits can be biased and lead to a consistently good environmental record, but this is not the case.
- Despite of long-standing policy and a legal cum institutional framework for environmental protection, degradation is still in existence. Audits can be time-consuming and expensive to perform and are therefore may not be suitable for small businesses with limited financial resources.

Suggestions and concluding remarks:

Though there are many preventive principles, precautionary principles, laws regulations are in existence yet no stringent implications are included in order to restrict companies and industries from exploiting nature. While contributing to supporting environmental sustainability, there are some limitations to environmental audit which if utilised in right direction may become beneficial and advantageous to make corporations and companies responsible for ecological and environmental protection and preservation. Some suggestions in this regard are:

- It is a mere dream to set up a complete pollution free environment; but the pollution should be at such a level that could easily be assimilated by the environment and the laws must ensure to that effect. The companies must provide management with information about the performance of the company's environment as input for making decisions,
- Industrial advancement is inevitable for fulfilment of the basic needs of the society, on other hand, it is a potential threat to environment; so, the state must strike a balance between the two by identifying the risks related to environmental responsibility and take action to implement them,
- It must ensure that the company operations comply with environmental laws and requirements and, if not, take necessary corrective actions, identify environmental management system weaknesses before they cause problems,
- Develop organizational culture and increase environmental awareness among people within the company, the state should stop the spread of pollution from its source and restrictions should be imposed upon transportation of hazardous substances.
- Identify opportunities for improvement in environmental management and performance to drive increased efficiency and cost savings,
- Improve company transparency to stakeholders such as government, customers, and investors to support long term good relationships with them,
- Encourage positive publicity by publishing audit results, thereby enhancing the reputation and image of the company, and
- Develop marketing strategies and strengthen brand equity, encourage consumers to remain loyal to the company. Transboundary pollution has been a major threat to the neighbouring countries. Responsibility should be imposed on the political leaders to arrest these tendencies.
- If any mischief is done by industrial corporations, civil, as well as criminal liability should be imposed upon it by the laws of the land. To formulate a comprehensive environmental regulation, the incorporation of these principles is indispensable.

The right to development must be fulfilled equitably meet the environmental and developmental needs of present and future generation. Environmental standards must be reflected in economic and social development situation. With proper utilisation of technology, management, traditional knowledge mutually beneficial tools and strategic inventions must be introduced to preserve and protect environment. To conclude the author is of the opinion that India has to go long way in development of environmental jurisprudence corresponding environmental auditing system. But at the same time, it may be noted with appreciation that judicial contribution is the development of environmental jurisprudence has got its own prominence in the map of world environment.