

*Review Article***Environmental Laws and Public Interest Litigation in India:
Its Implementation and Scope****Mudassir Nazir¹, Tauseef Ahmad²****How to cite this article:**

Mudassir Nazir, Tauseef Ahmad. Environmental Laws and Public Interest Litigation in India: Its Implementation and Scope. Indian J Law Hum Behav 2020;6(1):31-40.

Author Affiliation^{1,2}Research scholar, Faculty of Law, Jamia Milia Islamia New Delhi, Delhi 110025, India.**Corresponding Author****Tauseef Ahmad**, Research scholar, Faculty of Law, Jamia Milia Islamia New Delhi, Delhi 110025, India.**E-mail:** Mudassirnazir62@gmail.com**Abstract**

Protection of environment is our legal, religious and moral duty. Protection of environment remains a concern from ages. India was most environmental from the Sidhu-valley culture. The Buddhist philosophy teaches preservation and promotion of natural resources specially trees. Similarly, in the Jainism killing of animals and tree were not allowed. They believed that cutting tree is against the nature and also against the principle of the Jainism even they believed protection of every creature who is on the earth. Therefore, killing of animal and plants were strictly prohibited. Even in the Hinduism, Sikhism, Christianity and Islam it is expected and believed that men must preserve maintain the balance between nature and the natural resources and should not be destroy at any cost. The paper will analyze the judicial approach towards environmental jurisprudence starting from 1950 to the present time. The author also provides an insight of NGT towards environmental protection. The paper will also highlight the principles evolved by the judiciary at the end of paper certain suggestions are also provided.

Keywords: Environmental offence; Sustainable development; Clean-Enviroment; Environmental jurisprudence; Balanced Enviroment.

Introduction

The term the environment comes from the French word environ and means everything that surrounds us. the Enviromental Protection Act, 1986 Defines enviroment as, "environment" which includes "water, air and land and the inter-relationship which exists between them on the case hand and human beings, living cratures, plants micro-organaism and property, on the other".¹ According to the Encyclopaedia Britannica, the mlti faceted problem affecting the human existence and one can under stand it better in relation to eco-sysmte, ecology and biosphere, A number of necessities of ife are derived from envrroment ean, therefore, it can be said to be alife support system.² India was most environmental from the Sidhu-valley culture. People used to warship the nature such as tree,

water and air etc. in the ancient India. Buddha was also environmentalist and enlightened under tree of papal, later Great King Ashoka, who was greate follower of the Buddha, also followed the environmental policy in India. King Ashoka was a great promoter of many ideas that would not seem out of place in modern day environmental circles. He also prescribed punishment for hunting animal and felling tress. The Bhuddist philosophy teaches preservation and promotion of natural resources specially trees.³

Similarly, in the Jainism killing of animals and tree were not allowed. They believed that cutting tree is against he nature and also against he principle of the jainisam even they belived protection of evey creature who is on the earth. Therefore, killing of animal and plants were strictly prohibited.⁴ Even in the Hinduism, Sikhism, Christianity and Islam it



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is expected and believed that men must preserve the maintain the balance between nature and the natural resources and should not be destroyed at any cost.⁵

According to Marxism green crime or environmental crime is as an act of power of ruling class shape and define the law to benefit their own exploitative interests in the environment. Such laws benefit transnational corporations. White-collar crime is difficult to detect especially if it is carried out in a developing nation. Green crime is usually focused on a smaller scale to make it more difficult to detect. Transnational corporations adopted an anthropocentric view of environmental harm. This means that humans have the right to dominate nature for their own ends. Economic growth comes before the environment. Transnational organisations sell toxic waste to developing nations to dispose of, contributing to eco-poverty.⁶

We are facing several environmental issues such as Air pollution, water pollution, and garbage pollution in India, global warming. Air, water and land are the basic amenities of life; some of the now is also covered under the criminal law. Over population and rapid utilisation of these have given rise to pollution leading to health hazards. Common pollutants are deposited matter like smoke, steam, dust, gases like SO₂, CO, NO_x etc. In the case *Shree Ram Food and Fertilizer Corporation v. Union of India*⁷ case Hon'ble Supreme Court held that leakage of Oleum gas was dangerous and closure of the unit was ordered. In another case *Union Carbide Corporation v. Union of India*⁸, it was held that the leakage of MIC gas (Methane Isocyanide) in the Union Carbide plant was dangerous and hazardous activity and in this case the law relating to the development of law, quantum of compensation, 'no fault liability', 'absolute liability' were evolved and propounded.

Apart from this Environmental degradation today is a serious challenge to the life forms on the planet Earth. It is adversely affecting not only individuals and human societies in various ways and in different degrees, but it is also influencing the changes that are detrimental to the healthy growth of all forms of life. Environmental offenses may also cause disruptions in social and economic activities. Most dramatically, for instance, the release of hazardous chemicals into the environment may result in the evacuation of an entire community.⁹

Therefore, the protection of environment has become now a global issue and it is affecting life, health and interest of the society. However the strict compliance can only be initiated through strict legal provisions and by making environmentalism a

mass movement. However in India the compliance of environmental laws is a serious issue in India.

Penal Laws for Violation of Environmental Laws: An Overview

The Indian Penal Code, 1860 (hereinafter referred to as the Code) was introduced in India by the Lord Macaulay to define the criminal act in India and protect the society from the criminals and punish them under various provisions of law and three South Asian countries still have the same Penal Code and Code of Criminal Procedure including same.¹⁰ The purpose of the Code was not only to protect the public health and safety of people but also the environment. In simple words any act which is against the public health and safety would be punishable under the Code. A person, who causes danger or pollution against the healthy environment, shall be prosecuted under the penal laws of the land. These types of dangers to the environment can be identified as follows:

1. Air Pollution:
2. Water Pollution
3. General Pollution

If any person does any act or omits to do any act which causes any common injury or danger to the public at large shall be covered under the penal law of India. Therefore under the Indian Penal Code and Cr. PC both have the penal provision against the accused of environmental crime.¹¹

Sec. 268. Public nuisance: A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage.¹²

Nuisance means anything which annoys, hurts or that which is offensive. Nuisance includes any act, omission, smell, hearing or which is or may be dangerous to life or injurious to health or property. The term "nuisance" as used in law is not capable of exact definitions but it can be defined as: An unreasonable interference with the rights of the public, enjoyment of property. Anything that hurts or annoys any person it is a case of nuisance. For example noise created by a factory located in residential area. Nuisance can be both tort and crime. Generally Nuisance is two kinds, firstly Private Nuisance Secondly Public Nuisance.

- *Private Nuisance*: Private Nuisance is always concerned with the enjoyment of the property. Section 9 of CPC, 1908, provide the remedy for the private nuisance. Under the provision of section 9 of CPC, 1908, victim can institute a suit against the defendant and under tort also can claim damages.
- *Public Nuisance*: Public Nuisance is an unreasonable interference with a right of common to general public and in such case criminal action can be initiated against the accused. A person can be prosecuted under section 268 of Indian Penal Code, 1860, for causing public nuisance, whereas section 290 of Indian penal Code, 1860 provides punishment in the form of fine of Rs.200.¹³

Sec. 277¹⁴ and Sec 278¹⁵ of ipc further prohibits Fouling water of public spring or reservoir and Making atmosphere noxious to health.

The above mentioned two provisions are directly concerned with the environmental protection as they seek to prevent water and air pollution through penal laws. Although it is difficult to say that whether these provision are effective to achieve the objectives of the penal laws. Because due to the technicalities of the criminal law it very difficult to prove the all ingredient of the penal provision. For instance offence relating to the fouling of water and water must be public spring and act should be voluntarily. Such wording not only creates the unnecessary burden to prosecution to prove, but also provide the escaping way to the accused.

There are some kind of activity which has been regarded as offence of public nuisance under chapter xiv of IPC are as follow:

1. Section 269-270, Negligent act likely to spread infected disease, which is dangerous to public at large.
2. Section 274 Adulteration of durgs.
3. Section 277 Fouling water of public spring.
4. Section 278 Making atmosphere noxious to human life.
5. Section 284 Negligence conduct with respect to poisonous substance.
6. Section 284 Negligence conduct with respect to poisonous substance.
7. Section 286 Negligence conduct with respect to explosive substance.
8. Section 425 to 440 Various kind of mischief by killing animal.

9. Section 291 injunction order to remove any public nuisance mentioned under section 268 to 289.

The abovementioned provisions of the Indian Penal Code can also be effectively used to prevent the environment crime and danger.¹⁶

In *kirori Mal Bishambar Dayal v. The State*¹⁷ case accused was convicted and sentenced under section 290 of Indian Penal Code, 1860 and was also fined Rs.50 for causing noise and emitting smoke and vibrating by operating heavy machinery in the residential area. In the present case the orders of the trial court was upheld by the District Magistrate in appeal. The High Court of Punjab and Haryana also upheld the decision of the court below.

Similarly, in *Bhuban Ram v. Bibhuti Bhushan Biswas*¹⁸ it was held that working of a paddy husking machine at night cause nuisance by noise and the occupier was held liable to be punished under section 290-IPC. In *Rabhin Mukherjee v. State of West Bengal*¹⁹ case the use of air horns was prohibited by the court to prevent noise pollution. In the present case *Church of God (Full Gospel) India v. KK.R. Majestic Colony welfare Assn*²⁰ held that court may issue directions in respect of controlling noise pollution even if such noise was a direct result of and was connected with resinous activities.

In *K. Ramkrishan v. State*²¹ Kerala High Court held that the smoking in public place also constitute public nuisance under section 290 of IPC, 1860. Apart from this it is also against the Article 21 of the Constitution of India, which expected the pollution free environment.

Environmental Safeguards under Code of Criminal Procedure Code, 1973

The provisions expressed in Chapter X Part B of the Code of Criminal Procedure, 1973 deals with Public Nuisance under section 133 to 143 of Cr. PC relate to protection of environment. It is procedure law therefore it does not deal with the definition of the Public Nuisance which is defined in section 268 IPC, 1860. Under section 133 Sub Divisional Magistrate is empowered to take action to prevent the Public Nuisance and pass conditional order. In the *Tejmal Puranchand Burad v. State of Maharashtra*²² Bombay High Court held that Magistrate is empowered to take cognizance under section 133 of Cr.PC, 1973 if he receives information from any source. The proceeding under section 133 is ex-parte therefore it is required to record the reason with speaking order to immediate removal of the Public

Nuisance.

An Individual or group can approach to the magistrate to prevent the public Nuisance under section 133 Cr.P.C, 1973. But it most important to know that public nuisance has to be prove by the petitioner. The power under section 133 Cr.P.C, 1973 is discretionary but court interpreted it as mandatory. In the *Krishna Gopal vs State of Madhya Pradesh*²³ case court held that a manufacturing company of glucose saline was prosecuted under section 133 Cr.P.C, 1973, as business was running in residential area which had created pollution as well as noise also. The magistrate ordered to remove the factory from the residential larea and same view was confirmed by the High Court. Noise is also injurious to public health, however under section 290 Cr.P.C, 1973, absence of the any provision on sentence of imprisonment discourages penal prosecution for nuisance by noise.

In the case of *Tarsem Singh v. Mukun Singh Mistry*²⁴ proceeding under section 133 of the Cr.PC 1973 were initiated against the defendant's wheat threshing maching which was causing suffocating air pollution. Defend net challenged the order of Sub-Divisional Magistrate on the ground that section 133 of Cr.PC is for the new kind of offence and not the old one as stated in the case. There are various laws for old kind of nuisance so SDM cannot initiate the proceeding under Cr.PC. The High Court set aside the order of the SDM but dirction issued to the State Pollution Control Board to take cognizance of the alleged offence under Air (Prevention and Control of Pollution) ACT, 1981.

In the case of *Smt. Ajeet Mehta v. State of Rajasthan*²⁵ complainant state that the loading-unloading business and stocking of fodder had become a serious health hazard for the residents of the locality as it polluted the entire atmosphere. The magistrate acting under section 133 of Cr.PC, 1973 pass an order to remove the business within 15 days and same order was also confiremed by the High Court of Rajesthan, stating that public heath cannot be compromise.

Culpability/Penalties Provided under Specific Enviromental Law

The protection of envormental is serious and important issue in all over world. Evey country has its own environmental policy to protect the environment. Some special law has been made the the legislature to punish the offencer on the violation of the Enviromental Laws. Similary we

also have enough environment laws to protect the environment such as:

The Water (Prevention and Control of Pollution) Act, 1974

The Water is protected by the provisions of the Water Act. The penalty provided under section 42 of the act provides that if any person destroys, obstruct and damages continue contravention of this Act, shall be subject to punhiment of three month along with fine. Apart from this section 43, 44, 45, 46 and also 47 punishable as per this Act.²⁶

The Air (Arevention and Control of Pollution) Act, 1981

The Air Act also makes the provisons of the penalty and procedure (under chapeter VI) as per the section 37 which deals with different kind of punishment alson with fine on the contrationvention of the Act. Section 38 which says if any person destroys, obstruct and damages continue contravention of this Act, shall be subject to punhiment of three month along with fine. Apart from this section 39, 40, 41 and also 42 punishable as per this Act. As per the Air Act, a person must obtain previous consent from the SPCB to establish or operate any industrial plant in an 'air pollution control area'. The Air Act empowers the SPCBs to notify standards for emission of air pollutants into the atmosphere from industrial plants and automobiles, or any other source (not being a ship or an aircraft).²⁷

The Forest (Conravation) Act, 1980

The Forest Act, 1980 provides states with jurisdiction over both public and private forests, and regulates the extraction of timber for profit. The forests are divided into three categories: Reserve forests, village forests and protected forests, hence contravention of section 2 is punishable under section 3A of this Act.²⁸ Once an area is notified as a reserve forest, all previous individual and community rights over the forest will be extinguished, and access to the forest and forest products becomes a matter of state privilege. It must be added that the Supreme Court has set up a Central Empowered Committee to closely supervise timber availability in India and regulate all wood-based industries, including saw-mills, veneer and plywood plants, as well as, to a certain extent, secondary users of timber which all require prior permission to operate.²⁹

The Enviroment (Protection) Act, 1986

Section 15 of the this Act makes the provision of

penalty on the contravention the provision's of this Act. Which says any rules made or order or direction issued under this Act, shall be punishable in case of the contravention of the same. In case of failure to comply the provisions of this Act, shall be punishable with the term of imprisonment of five year or both which may extend to one lakh rupees or both. If contravention is continued then fine shall be five thousand rupees per day in addition. In other words it can be said that there is strict liability to abide by the such because here even orders and directions are also subject to punishment.³⁰ It is nothing but a over legislation where mere order or direction is also punishable.

Environment (Protection) Act, 1986 (Hereinafter EP Act), an umbrella law enabling the central government to take all such measures as it deems necessary to protect and improve the quality of the environment and to prevent, control and abate environmental pollution. A wide range of Rules and Notifications have been adopted under this umbrella Act with the objective of providing for the protection and improvement of the environment. It empowers the Central Government to establish authorities under section 3(3) charged with the mandate of preventing environmental pollution in all its forms and to tackle specific environmental problems that are peculiar to different parts of the country. The Act was last amended in 1991.³¹

The Wildlife (Protection) Act, 1972

This Act protect the animals, birds and plants also prohibit hunting of animals as per the section 9 of this Act.³²

The National Environment Appellate Authority Act, 1997

This Act impose the restriction on the some specified area where any industries, operation or processes or class of industries shall not be allowed. Hence, section 19 makes that contravention of the order of the authority shall be punishable with the terms of which may extend to seven year, or with both which may extended to one lakh rupees or both.³³

Apart from the abovesaid Acts, some rules also have been framed under the The Environment (Protection) Act, 1986 to protect the environment. The rules framed under the The Environment (Protection) Act, 1986 as follows:

1. Noise Pollution (Regulation and Control) Rules 2002.
2. The Hazardous Wastes (Management and Handling) Rules 2008.

3. Bio-Medical Waste (Management and Handling) Rules 1998.
4. Hazardous Micro-Organism Rules 1989.
5. The Chemical Accidents (Emergency Planning Preparedness and Response) Rules 1986.
6. Ozone Depleting Substances (Regulation and Control) Rules 2000.
7. Municipal Solid Waste (Management and Handling) Rules 2000.
8. Batteries (Management and Handling) Rules 2001.
9. Recycled Plastic Manufacture and Users Rules 1999.³⁴

Environmental has been recognized now as felony. There are other statutory laws relating to prevention and control of environment. They are:

1. The Indian Penal Code, 1860, (Chapter -XIV- Nuisance-Section 268-278 and Section 290 provides punishment).
2. The Code of Criminal Procedure, 1973 (Chapter X, Part B- Section 133 to 143 and Part C- Section 144).
3. Indian Easement Act, 1882 (Section 7- illustration).
4. Civil Procedure Code, 1908 (Section 91, Injunction to prevent public nuisance).
5. Atomic Energy Act 1962.
6. Insecticides Act 1948.
7. Ancient Monuments and Archaeological Sites and Remains Act 1958.
8. Motor Vehicle Act 188.
9. Motor Vehicles Act 1988.
10. The Prevention of Food Adulteration Act 1954.
11. Public Liability Insurance Act 1991.

In addition to the above mentioned Central Acts and Rules, some States have framed State legislations for the prevention and Control of environmental pollution keeping in view their local requirements as follow:

1. Delhi Land (Restriction on Transfer) Act 1972.
2. Kerala Agriculture Insecticide and Disease Act 1958.
3. Andhra Pradesh Land Reforms Act 1949.
4. UP Agriculture Disease and Insecticide Act 1954.
5. Orissa River (Pollution Control) Act 1969.

6. Maharashtra Water (pollution Control) Act 1969.
7. Gujarat-smoking (Nuisance Control) Act 1963; etc.

National Green Tribunal

NGT comes into existence way back in 2010 and was established under article 21 of Indian constitution which guarantees right to healthy environment. After Australia and New Zealand India became third country in the world to have such system. The need for such specialised system comprised of legal experts and environmental experts arises due to involvement of technical issues and overburden of judiciary. The apex court also felt the dire need of special environmental courts and accordingly in *M. C. Mehta v. Union of India* observed that "Environment Court" must be established for expeditious disposal of environmental cases and reiterated it time and again. As a sequel to it the National Environment Tribunal Act, 1995 and National Environment Appellate Authority Act, 1997 were passed by the Indian Parliament. But both the Act proves non-starter. They could not cut much ice and there was a growing demand that some legislation must be passed to deal with environmental cases more efficiently and efficaciously. Ultimately the Indian Parliament passed The National Green Tribunal Act, 2010 to handle all the cases relating to environmental issues. In *Indian Council for Enviro-Legal Action v. Union of India*, The Supreme Court observed that environmental court having Civil and Criminal jurisdiction must be established to deal with the environmental issues in a speedy manner.

In *Charanlal Sahu v. Union of India* the court felt the dire need of tribunals specifically for environmental victims, as the long delay and long procedure in ordinary civil laws are not harming the victim. The court observed that the law should provide for constitution of tribunal regulated by special procedure for determining compensation to victims of industrial disaster or accident, appeal against which may lie to this Court on the limited ground of questions of law only after depositing the amount determined by the tribunal."

Law commission was guided by the model of environmental court established in New Zealand and the Land and Environmental Court of New South Wales and also the observations of the Supreme Court in four judgments, namely, *M.C. Mehta v. Union of India*, *Indian Council for Environmental-Legal Action v. Union of India*, *A.P. Pollution Control Board v. Nayudu*.

Following the enactment of the said law, the Principal Bench of the National Green Tribunal has been established in the National Capital-New Delhi, with regional benches in Pune (Western Zone Bench), Bhopal (Central Zone Bench), Chennai (South Bench) and Kolkata (Eastern Bench). Each bench has a specified geographical jurisdiction covering several States in a region.

Constitutional Provisions and Environmental Crime

The Constitution of India is one of the Constitutions of the world which obligates all citizens as well as state to protect and improve the environment. It is a commitment for a country wedded to the idea of a welfare state. The provision of protection of environment is also implicit in the preamble of the Constitution of India. In the preamble of the Constitution the words Socialist, Democratic, Justice and Equality are provided which deal with the environmental issues. Article 21 are the major source of environmental litigation besides it, Article 38(5) deals with principle of welfare of people, which can be provided by clean environment. Besides it the

- (a). Entry 17-A of concurrent list providing for forest.
- (b). Entry 17-B for the protection of wild animals and birds.
- (c). Entry 20-A providing for the population control and family planning.

11th Schedule of the Constitution, this Schedule has 8 entries which provide for environmental protection and conservation. 12th Schedule of the Constitution Entry 8 of this Schedule provides for the urban local bodies with the function of environment protection and promotion of ecological aspects to them.

Article 248 It confers residuary powers on the Parliament to make laws with respect to any matter not enumerated in Concurrent List or state list.

Article 253 enables Parliament to make laws for implementation of international treaties, conventions or decisions taken at the international conferences Parliament has enacted the following laws using this power such as:

- (i). The Water (prevention and Control of Pollution) Act of 1974.
- (ii). The Air (prevention and Control of Pollution) Act of 1981.
- (iii). The Environment (prevention and Control of Pollution) Act of 1986.

Article 47(3) also improves environment and

Article 48A³⁷ also protects environment. Article 51 A imposes duty on citizens but its however, very doubtful how the modern citizens of India lacking civic sense can develop a positive attitude towards the necessity of effective sanitation by mere incorporation of a non-enforceable fundamental duty to this effect in the Constitutions. Article 51 A (g), mandates to protect and improve the natural environment including forest, lakes, rivers and wild life, and to have compassion for living creatures.

Judicial Response to Environmental Issues Specifically Through PIL

The Supreme Court played a very pivotal role on the issue of the environmental protection. There should not be any development at the cost of protection of environment. The constitutional forum provided by the High Courts and the Supreme Court is frequently resorted to by invoking the new technique of Public Interest Litigation. For resolving this highest issue concerning human life, the judiciary is the proper forum which gets assistance both from the executive and the legislature as well as from the people coming before it with complaints. Ultimately all environmental conflicts revolve around competing concepts of what constitutes a "good and worthwhile" life, and for that the judiciary is the last resort which has to take decisions on the basis of the constitutional philosophy and laws governing the subject.

In The case *M.C. Mehta v. Union of India*³⁸, was concerned with to protect the health of the people of Delhi. The Court issued the direction to the government authorities to take step to prevent air pollution in Delhi. Apart from this, during the preceding Bhure Lal Committee was established under section 3 The Environment (prevention and Control of Pollution) Act of 1986. The Environment (prevention and Control of Pollution) Authority is a statutory constituted under section 3 of the Environment (prevention and Control of Pollution) Act of 1986, its direction are final and binding on all persons and organization concerned. This position has been reiterated by this court in *Sector 14 Residents' Welfare Association v. State of Delhi*³⁹ It was Bhure Lal Committee which had been also recommended the conversion to CNG mode and issued directions that non- CNG buses should be phase out.

But it has also been observed that most of time the court's interference in environmental issues is severely criticised, saying that the court lacks expertise to decide such highly scientific and technical issues. Actually there are conflicts and

competition between private interest and public interest, between the interests of one section of the population and others, between present and future generations, between private cost and social gain. No doubt, the task of the judiciary is delicate and difficult when faced with such conflicting claims involving policy matters and technical expertise.

The Court has, therefore, always taken the help of expert committees, human-rights activists and ecologists for resolving disputes. In the course of the litigation of several cases, it had set up committees for study and commissions for enquiry. It is true that the judiciary cannot step into the shoes of either the legislature or the executive. These conflicts of rights, however, do need an independent forum like the judiciary.

It cannot, therefore, be stated that the judiciary is not well suited to decide conflicts on the environment. The role of the judiciary in a democratic society, thus, cannot be viewed narrowly because the judiciary is also one of the organs in the political process. The judiciary no doubt lacks attributes of the legislature and the executive and can claim no technical or managerial capacity to resolve complicated issues of the environment. But when conflicts come to court between authorities committed to development and groups resisting it on the grounds of threat to their life, the controversy eventually resolves into rival conceptions of a good and worthwhile life. This subject is definitely within the province of the judiciary.

There are other plethora of cases where environmental activism reflects. The supreme court of india has shown the great courage in environmental cases which has a long and cgilling effect on environment which may be in the form of banning of smoking at public palces, conversion of buses from diesel mode to CNG mode, Array Trees, afforestation, granting living person status on rivers, and many more.

Need of Sentencing Policy in India Against Environmental Crime

The emphasis in cases of environmental pollution should be on abatement of pollution rather than imposing penalties of the traditional type. Imposing fine for breaches of anti-pollution laws may not serve the purpose.⁴⁰ The defaulting industries or the local bodies should be required to take immediate necessary type to control or abate the pollution within a specified time limit under order of the court. As is pointed out by justice Krishna Iyer, "sentencing is a subtle art of healing and the legal and political people, uninstructed in

the humanist strategy of reformation fail even on the first principles. Thus in India, because of the slow awareness, in the masses of the pollution problems, the apathy of the industries and the local bodies in adopting measure of control of pollution and a lack of town planning and apply the law in a way conducive to the modern principles of social justice and popular well being".⁴¹ In the United State of America, Congress created the United States Sentencing Commission through the **Sentencing Reform Act**,⁴² mandating that the Commission develop binding new guidelines for judges to follow in sentencing federal criminal defendants.

The importance and significance has been visioned by the the Law Commission of India⁴³ The purpose of the law should be considered the offence according to "seriousness of the offence".⁴⁴ Likewise, western countries, sentencing policy also has been needed in India. The Sentencing Policy has not been analysed in the Indian Jurisprudence till now. It is too late for formulating the Sentencing Policy in India whereas in United Kingdom, the Criminal Justice Act 1991 has come into force in the nineteenth century.

Critical Analysis of Environmental Laws

It can be concluded that despite having several legislation we failed to protect our environment. Neither government nor the government agencies are curious on the issue of the environmental protection. Therefore, question of the Sentencing policy for the environmental offenders' is not only a dream but also so far in India. More or less it can be said that we do not have any effective environmental policy in India. Most of time enforcing agencies also become blind on the issue of environmental protection due to the corruption. Now, hope remained only with Judiciary and also played tremendous role on the environmental issue. Whereas legislature and executive are highly ignorant towards the environmental laws. With regards to environmental issues in India, it seems that India appears to be digging its own grave deeper and quicker than the rest of us, nearly 30% of India's gross agricultural output is lost every year due to soil degradation, poor land management and counter productive irrigation. Industrialization and development has specially attacked and sabotage the environmental laws and concept of protection.

The Air, Water and Environment Acts are not comprehensive enough to cover in great detail the environmental impact of large projects like dams and marine life. Particularly in India, most of the environmental conflicts do not much

concern pollution but rather relate to resource degradation including systematic problems of soil erosion, deforestation, declining water tables and the loss of flora and fauna and the consequent subsistence economies. The citizens' groups have no that much awareness about the protection of the Environmental Laws. Even the Media the fourth pillar of the Democracy are not keen to raise the issued against the violation of environmental laws. Therefore, on the name of development and tourism several illegal construction and mining are continue in bank of the river, which recently resulted in the Cloud bursting and landsliding in the Uttarakhand, where number of people have been lost their life. It was the worst disaster in the Uttarakhand's living memory.⁴⁵

Conclusions and Suggestions

Lack of transparency is of particular concern in the environmental context, where so many critics have noted an important perception problem: that the regulated community believes itself subject to unjustifiably harsh. These various environmental laws are under criticism because their implementation is inconsistent and haphazard. Many major industries like coal, petroleum, electricity, iron and steel, agro-chemicals, and heavy machines are in the public sector. Pollution Control Boards have seldom prosecuted government nominees on the management boards of such public undertakings.

The government machinery are involve in violating the environmental laws as recently high profile case 2G scam is suggest that how public money has been virtually looted include the 2G spectrum scam, the coal gate scam, irregularities in the exploitation of natural gas in the KG basin, and allocation of iron ore mines in Karnataka. The exploitation of natural resources is benefited to selected industrial houses in pretext of catering to the socio-economic requirements of the people has become question to protect the environment.⁴⁶ On the issue of the Narmada River, the campaign led by the NBA activists has held up the project's completion, and the NBA supporters have attacked on local people who accepted compensation for moving. Others have argued that the Narmada Dam protesters are little more than environmental extremists. There had also been instances when the NBA activists turned violent and attacked rehabilitation officer from Narmada Valley Development Authority (NVDA) and caused damage to the contractor's machinery. The NBA has been accused of lying under oath in

court about land ownership in areas affected by the dam. The Supreme Court has mulled perjury charges against the group.⁴⁷

In the well known Ratlam case⁴⁸ court held that Municipality Council is duty bound to provide proper sanitation facilities to the public. The Court while acting under section 133, Cr.PC, 1973 also commented that “public nuisance, because of pollutant being discharged by big factories to the detriment of the poorer sections, is a challenge to the social justice component of the rule of law. Court further held that Municipality Council cannot pretend the insufficiency of fund and same view has been taken by the Supreme Court and confirmed the order. But after news of Ms. Durga Nagpal an IAS officer of the Uttar Pradesh, who was suspended due to her action against the sand mafia, clearly indicate that it is not easy to protect the environment when the Government itself punishing its own officer who is protecting the environmental and defending the offenders.

Therefore, now time has come to adopt a new mechanism to protect the environment and also need to be framed the Environmental Sentencing Policy as well as National Environment and Sentencing Commission. Apart from this, some effective majors should be taken to see the applicability of the laws and required amendment in the Environmental Laws as per the need to the time. There are also some suggestion which should be taken care such as:

1. Whether existing laws are adequate to protect to the environmental?
2. New jurisprudential should have been evolved on the Environmental Laws in India. Justice Nalaya Chudhary's idea of developing a new Environmental Jurisprudence is worth exploring.
3. The sentencing policy should place emphasis on abatement of pollution rather than imposition of fine or traditional penalties.
4. Public interest litigation for protection of the natural environmental should be permitted in view of the wider social interests affected by environmental pollution. The court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human right.
5. The Government should Promote the environment educational and awareness programme.

References

1. Section 2 (a), The Environmental (Protection) Act

1986.

2. Dr. Vinay N. Paranjape, Environmental Law 1 (Central Law Agency, Allahbad, 2013).
3. Id at 24.
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11. Ibid at 199, 200.
12. Indian Penal Code, 1860.
13. Section 268, Indian Penal Code, 1860.
14. Sec 277 of IPC. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.
15. Sec 278 of IPC. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.
16. Indian Penal Code, 1860.
17. AIR 1958 P H 11, 1958 CriLJ 91.
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28. Section 2 & 3 A, The Forest (Contravention) Act, 1980.
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30. Section 15, The Environment (Protection) Act, 1986.
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 33. Section 19, The National Environment Appellate Authority Act, 1997.
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