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# Global Environmental Law and India\*

SHIRAZ RUSTOMJEE\*\*

## Global Environmental Law and India

- I. International Environmental Law
- II. Indian Environmental Statute-law and policy
- III. Indian Environmental Jurisprudence – the role of the Supreme Court
- IV. Global Warming and Climate Change
- V. Problems and Future Challenges

### I. International Environmental Law

- The nature of, and need for, International Environmental Law
- Milestones in International Environmental Law
- India's obligations under these and other treaties and conventions

### **Milestones**

- |      |  |
|------|--|
| 1972 | The Stockholm Declaration  |
| 1985 | The Vienna Convention for the Protection of the Ozone Layer  |
| 1987 | The Montreal Protocol on Substances that deplete the Ozone Layer<br>The Report of the World Commission on Environment and<br>Development ("The Brundtland Commission") |
| 1992 | The Rio Declaration on Environment & Development<br>The U.N Convention on Biological Diversity<br>Agenda 21<br>The U.N Framework Convention on Climate Change          |

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\* The author is an Advocate practicing mainly in the Bombay High Court. As one of India's leading practitioners of environmental law he has appeared in a large number of cases relating to the environment in the Bombay High Court and the Indian Supreme Court.

\*\*Editor's Note: The following is a reproduction of presentation slides that accompanied the author's talk. A narrative or prose style text of the presentation was not available. The information contained in the present format is naturally somewhat limited, but it still provides a great deal of valuable information and useful context for the subject.

1998 The Kyoto Protocol

**The Stockholm Declaration, 1972**

- The foundation of modern global environmental law.
- Recognizes that different approaches are required to tackle problems of developed and developing countries.
- Recognizes a healthy environment as an extension to the right of life.
- Introduces the concept of inter-generational equity.
- Calls for balancing the needs of the environment with those of development
- Nations have the sovereign right to exploit their own resources, subject to the responsibility not to cause damage to the environment of other states.

The Montreal Protocol on Substances that Deplete the Ozone Layer, 1987

**The Vienna Convention for the Protection of the Ozone Layer, 1985**

- Convention a framework treaty within which member states share research and information, develop technologies, etc., for the protection of the Ozone layer

**The Montreal Protocol on Substances that Deplete the Ozone Layer, 1987**

- Protocol requires parties to reduce the consumption of ozone-depleting substances to certain stipulated levels.
- Developing countries given a grace period of 10 years to comply.

**The Report of the World Commission on Environment and Development ("The Brundtland Commission"), 1987**

- Milestone in the development of international environmental jurisprudence and policy
- Established doctrine of "sustainable development"

**The Rio Declaration on Environment & Development, 1992**

- Builds on the principles of sustainable development, inter-generational equity, and sovereign rights in the Stockholm Declaration.
- Expands the concept of sustainable development.
- Reaffirms, amongst others, the importance and centrality of:
  - The Precautionary Principle,
  - The Polluter Pays Principle, and
  - Environmental Impact Assessment

**The U.N. Convention on Biological Diversity (1992)**

Three main goals:

1. The conservation of biological diversity;
2. The sustainable use of its components; and
3. The fair and equitable sharing of the benefits from the use of genetic resources.

In 2000, a supplementary agreement – the Cartagena Protocol on Biosafety – sought to protect biological diversity of states against risks from living, modified organisms created by biotechnology.

In April 2002, the parties to the Convention committed themselves to achieving the target of "a significant reduction in the current rate of biodiversity loss at the global, regional and national level," by 2010.

**Agenda 21, 1992**

Comprehensive road-map of action to be taken at the global, national, and local levels, framed at the Rio Summit.

Agenda 21 covers:

1. The social and economic dimensions
2. Conservation and management of resources for development
3. Strengthening the role of major groups
4. Means of implementation

**The U.N Framework Convention on Climate Change, 1992**

Objective: Stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

**The Kyoto Protocol, 1998**

- Framed in pursuance of the UNFCCC
- Focussed initiative on the issue of climate change.
- Specific mechanisms and modalities in the form of:
  - Clean Development Mechanism
  - Joint Development and
  - Carbon trading

**II. Indian Environmental Statute-law & Policy**

- The Indian Constitution: A healthy environment as part of the right to life – Articles 21, 48A, and 51A(g).

- The Water (Prevention & Control of Pollution) Act 1974, and the Air (Prevention & Control of Pollution) Act, 1981.
- 1. The Environment (Protection) Act, 1986 and the Regulations framed thereunder.
  1. Discharge of Pollutants
  2. Coastal Protection
  3. Environmental Impact Assessment
  4. Hazardous Wastes
  5. Ozone Depleting Substances
- The National Environment Tribunal Act, 1995 and the National Environment Authority Act, 1997.
- The Indian Forest Act, 1927 and the Forest (Conservation) Act, 1980.
- The Wildlife Protection Act, 1972.
- The Biological Diversity Act, 2002.

#### **Indian Constitutional Provisions**

*No man shall be deprived of his life or personal liberty except according to procedure established by law.*

Article 21 (Fundamental Right)

*The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.*

Article 48A (Directive Principle of State Policy)

*It shall be the duty of every citizen of India-  
...to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.*

Article 51A(g) (Fundamental Duties)

#### **The Water (Prevention & Control of Pollution) Act, 1981**

An Act "to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water."

Constitutes Pollution Control Boards (PCBs) in every state, and a Central Pollution Control Board at the Center

PCBs issue consents for establishment of industries and discharge of effluents

#### **The Air (Prevention & Control of Pollution) Act, 1981**

Provides a regulatory framework for the "prevention, control and abatement of air pollution"

General scheme is similar to the Water Act

**The Environment (Protection) Act, 1986**

- Framed in implementation of the Stockholm Declaration in the aftermath of the Bhopal Gas Leak tragedy.
- Enables framing of Rules and Regulations for:
  - Discharge of Pollutants
  - Coastal Protection
  - Environmental Impact Assessment
  - Hazardous Substances and Waste
  - Ozone Depleting Substances

**The National Environment Tribunal Act, 1995**

The Tribunal hears claims for compensation arising out of accidents arising out of handling hazardous substances.

Imposes strict or no-fault liability in such cases

**The National Environment Authority Act, 1997**

The Authority hears appeals from orders granting environmental clearances for projects and industrial activity.

**The Indian Forest Act, 1927**

Grants State Governments the power to designate forests as reserved or protected.

Provides for claims against the State Government for the loss of private rights and prohibits activities that damage or destroy reserved or protected forests

**The Forest (Conservation) Act, 1980**

Prohibits the "de-reservation" of reserved forests, the use of forest land for a "non-forest" purpose, and the clearing of trees from forest land, except with the prior approval of the Central Government.

**The Wildlife Protection Act, 1972**

- Prohibits the hunting of wildlife, with rare exceptions.
- Declares protected areas as Sanctuaries and National Parks.
- Constitutes wildlife authorities.
- Prohibits or regulates trade in wild animals, trophies and animal articles.

The Biological Diversity Act, 2002

- Gives effect to India's obligations under the U. N Convention on Biological Diversity.
- Establishes national and state biodiversity authorities.
- Restricts access of non-resident Indians, foreign nationals and companies to a biological resource for research, commercial use, survey or collection etc. without the permission of the National Authority.
- Provides for the constitution of national, state, and local biodiversity funds.

### **III. The Development of Indian Environmental Jurisprudence: The Role of the Supreme Court and the High Courts**

The jurisdiction and hierarchy of Courts in India.

The primary role of the Supreme Court – the assimilation of key concepts in international Environmental Law into Indian jurisprudence.

1. Sustainable Development
2. The Precautionary Principle and the onus of proof
3. The Polluter-pays Principle.
4. The Doctrine of Public Trust.

All four principles have been affirmed by the Supreme Court.

#### **Jurisdiction and Hierarchy of Courts**

Supreme Court

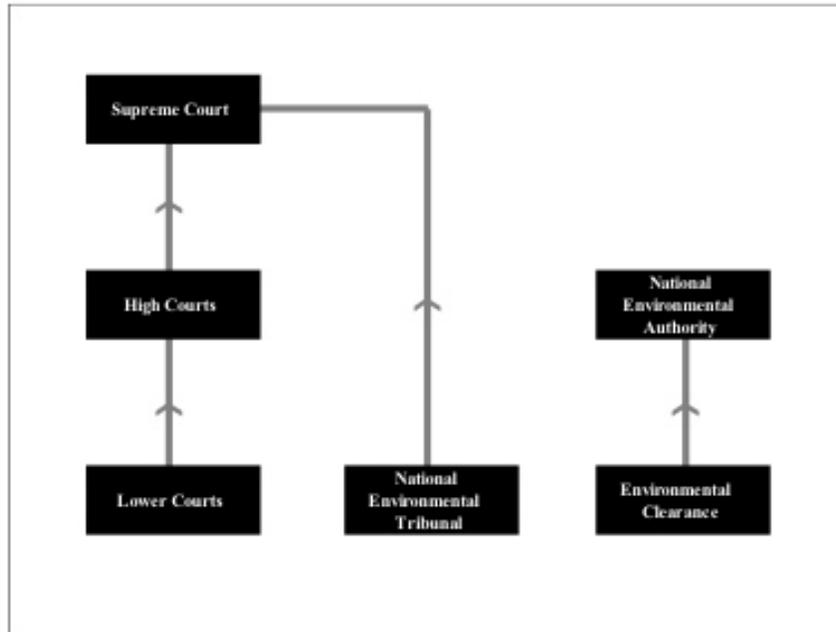
- Apex court with country-wide jurisdiction
- Hears appeals from lower courts, including high courts
- Hears petitions involving fundamental rights under the constitution

High Courts

- Courts of record in each state, bound by the supreme court
- Hear petitions involving fundamental rights under the constitution

Regulatory Bodies and Authorities

- Cover various fields including water and air pollution, coastal protection,
- Bio-diversity, environmental impact assessment, etc.



### **Sustainable Development**

*Development that meets the needs of the present without compromising the ability of future generations to meet their own needs.*

Brundtland Report

*The traditional concept that development and ecology are opposed to each other, is no longer acceptable. 'Sustainable Development' is the answer.*

Supreme Court in Vellore Citizens Welfare Forum  
AIR 1996 Supreme Court 2715

*Coordinated efforts of all concerned would be required to solve the problem of ecological crisis and pollution. Unless we adopt an approach of sustainable use, the problem of environmental degradation cannot be solved*

Supreme Court in Karnataka Industrial Development Board  
(2006) 6 SCC 321

### **The Precautionary Principle**

*In order to protect the environment, the precautionary approach shall be widely applied by the states... Where there are threats of serious or*

*irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures. . . .*

Rio Declaration on Environment

**The precautionary principle means:**

- *Environmental measures must anticipate, prevent and attack the causes of environmental degradation*
- *Lack of scientific certainty should not be used as a reason for postponing measures*
- *Onus of proof is on the actor to show that his action is benign*

Supreme Court in Vellore Citizens Welfare Forum

**The “Polluter Pays” Principle**

*National Authorities should endeavor to promote the internalization of environmental costs...taking into account the approach that the polluter should, in principle, bear the cost of pollution...*

Rio Declaration on Environment

*The polluter-pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause pollution or produce the goods which cause pollution.*

Supreme Court in The Bichhri Case

**The Doctrine of Public Trust**

*The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to people as a whole that it would be wholly unjustified to make them a subject of private ownership*

*Our legal system – based on the English common law – includes the public trust doctrine as a part of its jurisprudence. The state is the trustee of all natural resources which are by nature meant for public use and enjoyment*

Supreme Court in M. C. Mehta v Kamal Nath

**IV. Global Warming and Climate Change**

- The U.N. Framework Convention on Climate Change and the Kyoto Protocol.
- The Intergovernmental Panel on Climate Change.
- The Asia Pacific Partnership on Clean Development & Climate.
- The tools of the Kyoto Protocol – the Clean Development Mechanism, Joint Development, carbon trading.

- India's role in climate change – The National CDM Authority, projects for emission reduction.

#### **V. Problems & Challenges**

- Failure by authorities to perform their statutory roles
  - Lack of provision of funds and infrastructure to authorities by the state
  - Limitation of Courts in dealing with matters requiring expert knowledge
  - Runaway urbanization
- Global warming and limiting greenhouse gas emissions