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# Constitutional Provisions and Statues for Protection of the Environment

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SUVEER DUBEY<sup>1</sup>

## ABSTRACT

*India was a rich country of flora and fauna at one point of time. Through the advent of modernization in the late 21st Century the resources in our country started depleting at a rapid pace. Today, our country is one of the most populous countries in the world but our resources are quite limited. To protect the Environment and the limited number of resources, the concept of protection of environment through Environmental Laws came into existence in the late 20 th Century. Environment Laws were introduced to protect the land, water and air which are the basic essentials for a human being to survive. However, being such a densely inhabited country in the world, these Environment Laws lacked proper implementation, though they were numerous attempts made by all organs of the government. The government came up with several laws and regulations like the concept of Police Power, Regulatory Takings and many more, but the implementation of these laws couldn't take place effectively Through my paper, I will try and identify the main Environmental concerns and, following that, the solution for protection of the Environment by way of application of the relevant Environmental laws.*

## I. INTRODUCTION

The term Environment has many meanings and interpretations to it. The most basic and popularly accepted definition, is that which states, the Environment to be the surrounding area of a person, in which he lives and functions.

The Dictionary definition of Environment, as discussed in *Merriam Webster*, is 'The aggregate of social and cultural conditions that influence the life of an individual or community'.<sup>2</sup>

According to *Douglas and Holland*, the term 'environment' can be used to describe, all the external forces or the conditions, which can affect the human life, or the nature, or the behaviour and the growth of any specific kind of living organism.

In the late 20<sup>th</sup> Century and early 21<sup>st</sup> Century there was a rapid Industrialization all over the

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<sup>2</sup> Meaning of Environment as provided in Merriam Webster, at <https://www.merriamwebster.com/dictionary/environment>

world. Many policies came into existence to foster modernization.

India was also one such country which adopted some of these guidelines for rapid industrialization. During that time, no one could anticipate that such intensive practices, would impact the environment to such an extent. The consequence of these policies was such, that it contaminated the land, air and water on a great scale and left a long-lasting unfavorable impact on the environment. In view of adopting rapid industrialization, the government couldn't take many serious steps to protect the environment at large. For a long time, due to unhealthy water and air, the life expectancy of our country was quite very low, when compared to other countries. Some rules and regulations have also now become ineffective.

Environmental Pollution has today become a global phenomenon all around the world. The very basic types of pollution that is faced by everyone today is the air pollution, water pollution and the land pollution.

Pollution is a consequence of contamination of the environmental elements. The basic meaning of the term 'Contamination' is when the biological and physical components of the earth is affected in such a manner that the normal healthy condition of the environment is changed.<sup>3</sup>

As India, is one of the most populated countries in the world, the biggest challenge lies in the implementation of various environmental laws on such a large scale. The variety of Environmental problems are increasing day by day, both qualitatively and quantitatively. Today, the predicament of Environmental pollution has increased both in Rural and Urban areas, throughout the country.

In our country everyone has a right to live a healthy, robust and flourishing life. To lead a healthy and a thriving life clean air, water and soil are the main essentials. Even if one of these essentials is contaminated or polluted, then, a human being can't lead a healthy life. At any point of time a healthy environment will facilitate workers, entrepreneurs etc. to flourish and be prosperous. This is the most important difference between a developed and an under-developed country.

Today, the biggest threat to human health is environmental pollution<sup>4</sup>. To uplift the environmental quality, several rules and regulations have been and are being continuously amended, to keep up with the current scenario.

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<sup>3</sup> Meaning of Environmental Contamination as provided, at <https://www.longdom.org/scholarly/environmental-effects-journals-articles-ppts-list-3397.html>

<sup>4</sup> Mackenbach J. P. (2007). Global environmental change and human health: a public health research agenda. *Journal of epidemiology and community health*, 61(2), 92-94, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2465640/>

There are many provisions which are embedded in our constitution that help us in safeguarding and the protection of our environment from environment pollution. The preamble helps our Constitution so that socialist pattern is followed in the society and dignity of every individual is maintained. Decent standard of living and pollution free environment is what is desired by every citizen in a country.

The Environment (Protection) Act, of 1986 defines “environment” as a place that includes water, air and land and is inter related with air, water and land and human beings, other living creatures, plants, micro-organism and property<sup>5</sup>.

### **(A) Review Of Literature**

This Research Paper highlights one of the most important aspects of global change impacted by the interaction of land use and the climate system. In separate chapters this research paper tells the various environmental problems like air, water, etc and how the government has initiated steps to save the environment. The current collection of chapters provides a unique, integrated treatment of land pollution, water pollution etc in the context of global change.

Before the 42<sup>nd</sup> Amendment of the Constitution, our Constitution did not have any kind of direct and specific provision relating to the protection of the environment.

When the Constitution of India was framed, there were only some basic Directive Principles of State Policy related to public health, agriculture and animal husbandry and it wasn't very elaborative. Some of our Directive principles till date are not even enforceable by the judiciary. India had participated in the 1972 Stockholm Conference which took place in United Nations. The main purpose and objective of this conference was to increase the growing awareness of the environmental problems in different countries world-wide. Subsequently, the Constitution of our country got amended in the year 1976 and a new scope of Environmental Laws along with the preservation of environment were brought into existence.<sup>6</sup>

According to the amendment Article 48A which was a directive principle, was added into Part IV of the Constitution. There was an obligation which was imposed on the state. It was read as follows:

- “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country<sup>7</sup>.”

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<sup>5</sup> The term “Environment” is defined under section 2 definitions clause (a) of The Environment (Protection), 1986

<sup>6</sup> Constitutional Mandate on Environmental Protection, as discussed in an editorial, available at, <https://www.lawordo.com/constitutional-provisions-to-safeguard-environment-project/>

<sup>7</sup> As provided under Article 48 A. Protection and Improvement of Environment and Safeguarding of Forest and

It is the sole responsibility of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life<sup>8</sup>.

### **1. Air Pollution<sup>9</sup>**

Air Pollution is one of the biggest causes of Environmental Pollution in today's era. Air pollution can be solid or liquid droplets. Air pollution can have serious health impacts on people and the ecosystem. The impact of air pollution is seen more on people in urban areas as compared to rural areas. This is the reason that people in urban areas have more respiratory problems. Usually Air Pollutants are of two types one known as Primary Pollutant and other known as Secondary Pollutant.

Hence the government came up with various rules and regulations in this regard like **Air (prevention and control of pollution) act 1981, Clean Air Act** of 1970 and many more.

### **2. Water Pollution**

Water Pollution is the second leading cause of environment exploitation. Water Pollution occurs when industries or people contaminate the water by throwing untreated garbage directly into the water bodies. This not only pollute the water bodies but also kills the marine life which is solely dependent on these water bodies. As a result of Water Pollution, the plants and animals living in these waters do not get all the nutrients to sustain a healthy life and eventually perish. Hence, on one hand our marine life is depleting so quickly, while on the other hand people face serious health issues by drinking this polluted water.

In order to address the above issues and concerns, the government came up with the enactment of The Water (Prevention and Control of Pollution) Act, 1974.

### **3. Land Pollution**

Land Pollution is also a cause of environment degradation. Land Pollution occurs when people dump the non – biodegradable garbage in the land. At times land pollution also occurs because of untreated sewage. Both are very common cases in urban areas. In rural areas land pollution occurs when people over exploit the land by mixed farming on the land. By this all the nutrients from the soil are extracted and quality of soil starts deteriorating.

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Wild life, under Part IV of The Constitution of India

<sup>8</sup> As provided under clause (g) Article 51 A. Fundamental duties under Part IV of The Constitution of India

<sup>9</sup> Air (prevention and control of pollution) act 1981, is available online at [http://nbaindia.org/uploaded/Biodiversityindia/Legal/23.%20Air%20\(Prevention%20and%20control%20of%20Pollution\)%20Act%201981.pdf](http://nbaindia.org/uploaded/Biodiversityindia/Legal/23.%20Air%20(Prevention%20and%20control%20of%20Pollution)%20Act%201981.pdf)

Hence the government came up with various rules and regulations in this regard like The Forest Conservation Act (1980), **Environment Protection Act**, 1986 etc.<sup>10</sup>

#### **4. Deforestation**

Deforestation is a biggest reason of Global Warming on our planet. The basic meaning of Deforestation is cutting down of trees on a large scale. In our country deforestation is a practice which is going on since ages. Due to the rapid growth in the industrial sector, the constant demand for land is increasing day by day. This has resulted in a very fast depletion of our forest cover.

Hence, the government came up with various rules and regulations in this regard like The Forest Conservation Act of 1980 (FCA) etc.

#### **(B) Methodology**

My Research Paper will primarily rely on the Doctrinal kind of research which is a theoretical research. Doctrinal research is a kind of research in which the information is collected through well-established statutes, landmark cases and other authentic legal sources. It is one of the fundamental methodologies of legal research.

#### **(C) Objectives Of Study**

This Research Paper will have the following main objectives:

- To understand the meaning and concept of Environment and Environmentalism.
- To critically analyse whether the rules and regulations are sufficient in today's current scenario for conservation of Environment.
- To understand the various Environmental Laws given by the constitution and established in the statutes.
- To suggest methods for spreading awareness amongst people regarding increasing environmental concerns.
- To spread basic knowledge about environment laws amongst all sections of the society.

This Research Paper will also try and answer some of the following questions:

- Are the rules and laws made by the different organs of the government being implemented strictly?
- Are the citizens of the country educated and aware about Environment conservation?

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<sup>10</sup> As discussed in article by Vinay Vaish, titled '*Environmental Laws in India*' dated 31<sup>st</sup> August, 2017, available at, <https://www.mondaq.com/india/waste-management/624836/environment-laws-in-india>

- What are the latest threats to the Environment with regard to land, air and water pollution?
- Are the current laws and statues adequate to Conserve the Environment?

## **II. ANALYSIS OF LEGAL PROVISIONS**

### **1. Environment Protection Act**

India had actively participated in conference which took place in Stockholm on Human Environment in 1972. As a follow-up of this conference, various acts like the Air Prevention Act, Water Prevention Act and many more were introduced in 1972. Later on, through an amendment in our constitution in 1976, more provisions were added to further implement the decisions in order to conserve the environment and protect the people from hazardous substances.

Another reason for establishing this act was the Bhopal Gas Tragedy, which was considered as the worst industrial tragedy in India, and had resulted in thousands of deaths and millions were affected.

Environment Protection Act was established by Parliament of India in March 1986 and was enacted on 19 November 1986. It consists of 4 chapters and 26 sections. The main objective of Environment Protection Act act was to preserve and protect the environment in the best possible manner.

This Act can also be called an “umbrella” legislation because it is designed to guide the central and state governments and also gives them a framework on how to implement various rules and regulations for environment conservation.

- Chapter one consists of information like Short Title, Extend, Date of Commencement, etc. The important definitions are given in the second section of the Act.
- Chapter two describes the general powers of Central Government in totality.
- Chapter 3 gives the authority to Central Government to take necessary actions to protect and safeguard the environment.
- Chapter 4 of the act helps the government to appoint officers to achieve environmental objectives. It also directs the different organs of government on how can pollution be controlled.

## 2. Air (Prevention and Control of Pollution) Act 1981<sup>11</sup>

India was one of the countries in which air pollution was increasing tremendously along with serious health concerns to the people.

**History-** India along with various other developed nations gathered in Stockholm in June of the year 1972, for the United Nations Conference regarding Human Environment<sup>12</sup>. The main aim of this conference was to take necessary and crucial steps to preserve the natural resources on earth which were depleting on a very large scale. This also included air quality. Hence the Air Act was formulated by the Government of India in 1981.

The Air Act was established on 29<sup>th</sup> March, 1981 and was made to be applicable to the whole of India. It was amended in 1987. The sole purpose of this act was to prevent and control the air pollution through the guidelines that were issued in the conference. There were certain strict restrictions that were imposed through this act.

This Act is an all-inclusive legislation containing almost fifty sections. Several boards also got established through this act in order to give responsibilities and powers to various authorities to control the increasing air pollution. Some of the examples of the provisions made by the Central and State boards under this act are to declare pollution areas, restrictions on industrial units, collect samples etc<sup>13</sup>.

## 3. Water (Prevention and Control of Pollution) Act, 1974<sup>14</sup>

**Article 51-A (g)** of part – IV A, the Constitution of India mentions that it is the Fundamental duty of our citizens to protect the environment. It states:

“It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures<sup>15</sup>.”

In the year, 1974 the Constitution of India incorporated the Water (Prevention and Control of Pollution) Act. The act was enacted under Article 252 clause (1) under the Constitution of

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<sup>11</sup> Air (prevention and control of pollution) act 1981, is available online at <http://www.indiaenvironmentportal.org.in/files/file/air%20act%201981.pdf>

<sup>12</sup> As discussed in article by Arijit Samajdar, titled ‘Air (prevention and control of pollution) act 1981’ dated July 29, 2018, available at, <https://envibrary.com/the-air-act-1981/>

<sup>13</sup> As discussed in article by Puja Mondal, titled ‘Summary on Air (prevention and control of pollution) Act (1981) of India’, available at, <http://www.yourarticlelibrary.com/law/acts/summary-on-air-prevention-and-control-of-pollution-act-1981-of-india/30191>

<sup>14</sup> Water (Prevention and Control of Pollution) Act, 1974, is available online at, [https://www.indiawaterportal.org/sites/indiawaterportal.org/files/e7402\\_1.pdf](https://www.indiawaterportal.org/sites/indiawaterportal.org/files/e7402_1.pdf)

<sup>15</sup> Supra note 7

India. The resolutions have been passed by all the Houses of the Legislatures of the States. This act was also an outcome of the Stockholm Conference<sup>16</sup>.

The main purpose of this act was the same like other acts i.e. prevention and conservation of nature. This act also issues various necessary guidelines in order to conserve water, treat polluted water and many more. Through this act some serious steps of responsibilities, powers and functions are given to various boards like the Central Pollution Control Board and the State Pollution Control Boards to prevent and control water pollution<sup>17</sup>.

In the beginning, this act applied only to 13 states and all union territories. The States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura, West Bengal and union territories had to strictly follow guidelines issued under this act.

#### **4. Forest Conservation Act (1980)<sup>18</sup>**

The Forest (Conservation) Act was embedded in the constitution on 25<sup>th</sup> October, 1980 by the Indian Parliament for the conservation of forests. Through the forty-second Amendment of 1976, a new directive principle i.e. Article 48-A and a new fundamental duty i.e. Article 51-A (g) were introduced. The main purpose of adding these provisions was for the protection of forests and improvement of the environment. This Act was later amended in 1980.

This Act is extended to whole of India. The basic purpose of this act was to prevent deforestation. This Act contains 5 sections.

#### **5. Wildlife Protection Act (1972)**

Wildlife Protection Act, 1972 was incorporated in the Constitution on 9<sup>th</sup> September 1972 by the Parliament of India. This act extends to whole of India. The main purpose of this act was to protect the animal and species which were getting endangered and some which were on the verge of extinction.

Before the existence of this Act India only had five designated National Parks. Through the establishment of this act different schedules came up for protecting plant and species. This act

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<sup>16</sup> As discussed in an article, by CommonFloor Editorial Team titled “Water Act 1974 to prevent and control water pollution”, available online at <https://www.commonfloor.com/guide/water-act-1974-to-prevent-and-control-water-pollution-43718.html>

<sup>17</sup> As discussed in a note titled “Laws for Prevention and Control Of Pollution”, available online at [https://shodhganga.inflibnet.ac.in/bitstream/10603/137065/8/08\\_chapter\\_03.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/137065/8/08_chapter_03.pdf)

<sup>18</sup> The Forest (Conservation) Act, 1980, is available at, [legislative.gov.in/actsofparliamentfromtheyear/forest-conservation-act-1980](http://legislative.gov.in/actsofparliamentfromtheyear/forest-conservation-act-1980)

also prevented poaching of wild animals and provided protection for plants and animals of all kinds.

This Act has six schedules which give varying degrees of protection to animals and plants.

- Under Schedule I and part II of Schedule II **Wildlife Protection Act** absolute protection of plants and animals were provided. Offences under these schedules attract the highest penalties.
- Under **Wildlife Protection Act** there are different kinds of Species of plants and animals which were mentioned in Schedule III and IV . The penalties are much lower under these provisions.
- Schedule V of this act talks about the animals and endemic plants which can be hunted by the people.
- Under Schedule VI of this act some specific kinds of plants are strictly prohibited from cultivation and planting.
- Until April 2010 there have been 16 conventions under this act to protect the Tiger population which is depleting at a very large scale.

After the establishment of these **Environmental Acts** many new principles of environment also came into existence. Some of the principles were Polluter Pay Principle, Precautionary Principle and many more. The concept of sustainable development was also considered important to conserve and preserve the environment.

### **III. JUDICIAL APPROACH**

In our democratic system, one of the most important pillars is Judiciary. The role played by judiciary in order to conserve and protect the environment is more than that of a legislature and executive combined together. Whenever the executive is unable to perform its function properly, judiciary plays a very significant and a decisive role in implementation of laws.

A United Nations summit on Environment and Development held in June 1992 to provide judicial and administrative remedies to the victims of the pollutants was attended by India.

The judiciary has played a vital role in protecting and conserving the environment by directing the government to establish the Central Pollution Control Board, State Pollution Control Boards and the National Green Tribunal under the Environment Laws of India.

National Green Tribunal draws a great inspiration from India's constitutional provisions. According to Part III of the Constitution of India **Article 21** clearly states that:

**“Protection of life and personal liberty, which assures the citizens of India the right to a healthy environment”**

National Green Tribunal Act's bill was published on 31<sup>st</sup> July 2009 and the report was presented by 24<sup>th</sup> November 2009. On 5<sup>th</sup> May, 2010 the act was enacted by the parliament of India and the National Green Tribunal got established on 18.10.2010 under this Act. The main purpose of this act was to handle speedy and effective disposal of cases related to environment issues. It also aims at conservation of natural resources and their protection. Through this act, various kinds of relief and compensation is also provided to people<sup>19</sup>.

There were many reasons for passing this Act and setting up the Tribunal. After India's move with carbon credits, the establishment of the Tribunal was considered important to control emissions.

The National Green Tribunal is a specific judicial body which is capable of providing essential expertise and appropriate man power to handle complex disputes regarding the environment on various kinds of issues. The Tribunal is not to be bound by any procedure which is provided under the Civil Procedure Code, 1908, but is to be shown direction and supervised by the principles of Natural Justice.

National Green Tribunal Court can also be called a special court because India was the third country after Australia and New Zealand to establish such well-advanced courts for only Environment Protection

The principal seat of the National Green Tribunal is situated at New Delhi. Bhopal, Pune, Kolkata and Chennai are some of the other places where the Tribunal is situated.

## **LANDMARK STATUES GIVEN UNDER NATIONAL GREEN TRIBUNAL**

### **1. Almitra H. Patel & Ors. Vs Union of India<sup>20</sup>**

In this case, the petitioner Mrs Almitra Patel had filed a series of PILs under Article 32 of the Indian Constitution. The petitioner had seen a great improvement in the way the garbage is treated in India.

The tribunal noticed that lakhs of tonnes of raw garbage was dumped outside the city along highways, etc and wasn't being treated properly.

The tribunal noticed that lakhs of tonnes of garbage was produced daily and this led to the

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<sup>19</sup> As provided in the National Green Tribunal official website, available at, <https://greentribunal.in/>

<sup>20</sup> (1998) 2 SCC 416

decision of converting this garbage into a source of power and fuel.

The tribunal gave 25 directions in order to treat solid waste management. It also forced UT and States to follow Solid Waste Management Rules of 2016. It also instructed Central Government, State and Local Government to follow the respective obligations.

Hence the most important judgment given under this statute was to completely **prohibit the burning of waste openly on lands**. Hence, this case has been one of the landmark cases with regard to solid waste management in India.

## **2. Samit Mehta Vs Union of India and Ors.<sup>21</sup>**

In this case an environmentalist filed an application in relation to the damage caused to the people and the marine life by sinking of a ship that was carrying huge amounts of coal, fuel and oil. A thick film of oil was formed due to which the complete marine life and mangroves were affected.

The court held that there was negligence on the respondent's side on various occasions. The court also held to uphold the principle of Polluter Pay Principle the respondent has to pay 100 crores to ministry of shipping.

Hence through this statute the concept of **Polluter Pays principle** came into existence.

## **3. Ms Betty C Alvares Vs The State of Goa<sup>22</sup>**

In this case the petitioner Ms Betty had filed a complaint on illegal construction that was taking place on the coastline. There were two objections in this case. Firstly, that Ms Betty had no locus standi as she wasn't an Indian and secondly this case should be barred by the law of limitation.

The court held that though she isn't a citizen of India but she has filed several petitions even earlier also and the definition of "**person**" is quite broad in the National Green Tribunal Act. The Court took a broad view under Article 21 and granted the right to Ms Betty to file a proceeding on any environmental dispute. Thus, the application was maintainable.

### **Some other Landmark Judgements:**

## **4. Bhopal Gas Tragedy<sup>23</sup>**

Bhopal Gas Tragedy is considered as one of the worst industrial disaster till date. It occurred on 2<sup>nd</sup> and 3<sup>rd</sup> December, 1984 because of the leak of the methyl isocyanate. Many people died

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<sup>21</sup> (2014) SCC On-line NGT 927

<sup>22</sup> Misc. Application No. 32 and 33 of 2014 before NGT (Western Zone) Bench Pune

<sup>23</sup> M.C Mehta vs U.O.I (1987) SCR (1) 819

and were affected. The court ordered to provide compensation to the people and had sued Union Carbide. Through this Tragedy, the government ought to bring **Environment Protection Act** for conserving and protecting the nature and its citizens.

#### **5. MC Mehta vs Kamal Nath & Ors.<sup>24</sup>**

In 1996 the Supreme Court passed a judgement that state shall be held responsible in order to maintain the natural resources. Himachal Pradesh Government had leased out a protected forest for commercial purpose. On that protected area a motel was to set up. The court held that there was a **violation of doctrine of public trust**. It also stated that:

“State is the trustee of all-natural resources with a legal duty to protect it”.

The court also said that resources that are for public use can't be converted for personal use.

#### **6. Vellore Citizens Welfare Forum Vs Union of India<sup>25</sup>**

In this case the citizens of Vellore had approached the court because 900 tanneries in Tamil Nadu was discharging effluents without properly treating it. People were facing serious health concerns.

The court held that both **Precautionary Principle** and **Polluter Pay Principle** shall be the law of the land. The court strictly ordered the effluent discharging industries to give compensation to the citizens who were affected by this pollution.

### **IV. CONCLUSION & SUGGESTIONS**

Environmental Laws play an important role in our country. As a responsible country, India has played an active role in the conservation of environment by enacting Laws to address this grave situation. These laws are very necessary in order to protect and safeguard the environment and providing healthy living conditions to its citizens. The active involvement of the judiciary has ensured that the government has been addressing the environmental concerns by passing various kinds of environmental legislations and enacting Laws to tackle these complex environmental problems. The setting up of the Pollution Control Boards and The Green Tribunal has played a significant role in addressing these concerns.

Though India is a developing country and would need to harness all its resources to achieve better living standards for its citizens, a balanced approach is the need of the hour. Conservation

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<sup>24</sup> (1997) 1 SCC 388

<sup>25</sup> (1996) 5 SCC 647

and restoration of environment will ensure a healthy and an energetic human capital, which is immensely critical for growth and development.

Our actions of today will decide the outcome of the future generations. If our forefathers had also exploited the environment the way we are doing at present, we would have been in a very precarious situation right now. If we over exploit our environment, then not much will be left for the coming generations to thrive and sustain themselves.

Different Pollution Control Boards should implement the rules strictly and impose strict penalties on those who violate these rules and regulations.

The responsible citizens of our country, along with the government, should spread awareness by educating people regarding increasing environmental concerns.

Sustainable development, which would not only help our country to achieve its full potential but also help us in contributing towards environment protection, should be the guiding principle in all our future policies and procedures.

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