

SAGE LAW

NATURAL RESOURCES  
CONSERVATION LAW

SAIRAM BHAT



# Natural Resources Conservation Law

**Sairam Bhat**

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## List of Abbreviations

ADR	Alternative Dispute Resolution
AIR	All India Reporter
ARWSP	Accelerated Rural Water Supply Programme
CBD	Convention on Biological Diversity
CC	Climate Change
CDA	Chilika Development Authority
CDM	Clean Development Mechanisms
CEC	Central Empowered Committee [T.N. Godavarman series of Judgements]
CFC	Chlorofluorocarbon
CIC	Central Information Commission
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CPCB	Central Pollution Control Board
CPR	Common Property Resources
Cr. PC	Criminal Procedure Code 1973
CRZ	Coastal Regulation Zone
EIA	Environmental Impact Assessment
ENVIS	Environmental Information Centers
EPA	Environmental [Protection] Act, 1986
ETS	Environmental Tobacco Smoke
FAO	Food and Agriculture Organization
FCA	Forest [Conservation] Act, 1980
FPC	Forest Protection Committee
FSI	Forest Survey of India
GEF	Global Environment Facility
GHG	Green House Gase
GOI	Government of India
HCFC	Hydro Chlorofluorocarbons
HTL	High Tide Lines
HYV	High Yield Variety
IA	Interlocutory Application
IBM	Indian Bureau of Mines

IEAS	International Environmental Agreements
ILA	International Law Association
ILC	International Law Commission
IPC	Indian Penal Code 1860
ITLOS	International Tribunal for the Law of the Sea
JFM	Joint Forest Management
KSRTC	Kerala State Road Transport Corporation
LAA	Land Acquisition Act
LEA	Loss of Ecology Authority, Tamil Nadu
LRTAP	Long-Range Transboundary Air Pollution
MF	Multilateral Fund
MFP	Minor Forest Produce
MMRD	Mining and Minerals [Regulation and Development] Act, 1957
MoEF	Ministry of Environment and Forest
NAEB	National Afforestation and Eco-Development Board
NBSAP	National Biodiversity Strategy and Action Plan
NEERI	National Environmental Engineering Research Institute
NFAP	National Forestry Action Programme
NGO	Non-governmental Organization
NLCB	National Land Use and Conservation Board
NLPO	National Land-use Policy Outline
NLWDC	National Land Use and Waterland Development Council
NTFP	Non-timber Forest Produce
NTPC	National Thermal Power Corporation
NVDA	Narmada Valley Development Authority
NWDB	National Wasteland Development Board
NWFP	Non-Wood Forest Produce
NWRC	National Water Resources Council
ODS	Ozone Depleting Substances
PA	Protected Areas
PESA	Panchayat [Extension to the Scheduled Areas] Act, 1996
SBS	Sick Building Syndrome
SC	Supreme Court of India
SCC	Supreme Court Cases
SFP	State of Forest Report
SLUBs	State Land Use Boards
TERI	Tata Energy Research Institute
TRIPS	Trade Related Aspects of Intellectual Property Rights Agreement
TTZ	Taj Mahal Trapezium Zone

UCC	Union Carbide Corporation
UCIL	Union Carbide India Limited
UNCED	United Nations Conference on Environment and Development
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environmental Programme
UNFCCC	United Nations Framework Convention on Climate Change
UPOV	International Union for the Protection of New Varieties of Plants
VOC	Volatile Organic Compound
WCED	World Commission on Environment and Development
WLPA	Wild Life [Protection] Act, 1972
WRI	World Resources Institute
WSSD	World Summit on Sustainable Development

## Preface

Increasing industrialization all over the world has dehumanized humanity and with a single mindset of profit, the developed world has exploited the natural resources to the maximum extent. The rich generally have been ecologically insensitive, invading nature without enlightenment of resource conservation and management. Will India commit the same mistakes that the developed countries have? Do we understand the real meaning of sustainable development? Have our regulatory agencies been made accountable for resource depletion? Probably, the answers to the above questions are not easy, neither are they found in one essay. My attempt is to analyse environmental law with a conservation perspective. I always believe that the role of environmental law should not be restricted to 'prevention and control' of pollution but must be to conserve, preserve, regenerate natural resources. This book is also an attempt to contribute research material to the field of environmental laws, especially into conservation of natural resources in India. Along with the regulatory aspects, the book looks at the management perspectives of resource conservation. A critical analysis is offered to the reader about the various objectives of law that boost conservation strategies. A reader will observe that the aim and purpose of environmental legislation in the country has been to prevent and control pollution and not to conserve and preserve the resources. This also means that administrative agencies in the government are assigned the task of regulating pollution of water, air and land, while regeneration, conservation and preservation are never mandated.

This book is divided into 10 chapters.

After the Introduction, the second chapter is dedicated to the evolution of the right to a clean and healthy environment, under the premise of the Constitution of India; the struggle for a clean environment, the ongoing battle for conservation and preservation and the scope and ambit of this third generation of right; 'the Right to Clean Environment'. Most environmental lawyers only accept a procedural concept of the right to environment; this means that it has a triple content represented by the right to information, the right to participation and the right to administrative and judicial review. This limitation is based on the deep difficulties to reach an agreement on a concept of environment, which can be legally determined and is amenable



to judicial control. However, procedural law cannot be applied if there is no substantive right to be protected. It is thus viewed that the right to an adequate environment is a substantive right and we must keep on reflecting on achieving a proper construction of its doctrinal basis. The features that characterize a subjective right exist here because there is a subject, an object and a legal relationship. The right to live in a healthy environment is one more golden feather. This right connotes that the enjoyment of life and its attainment and fulfilment guaranteed by the Article (Art. 21) embraces the protection and preservation of nature's gift without which life cannot be enjoyed. Like access to food and health, access to good environment is also a prerequisite for a dignified life. In fact, deterioration of environment arises from abuses of economic and other kinds of freedom.

Is environmental law a civil law or a criminal law? What should be the nature of punishment for environmental wrong? Has the law failed in prosecuting the polluter or is it that India is not polluted at all? How can the polluter pays principle find an appropriate place in the criminal legal system? How far can the common law remedies come to the rescue of environmental wrongs? Is compensation or a fine enough deterrent to polluter and resource exploiters? These are also some of the issues addressed in this chapter.

The chapter on *water* has been divided into two sections—surface and groundwater. Groundwater exploitation is a serious matter of concern today and legislations and policy measures taken till date by the state governments have not had the desired effect on the situation. This has been brought out in this section in the context of policy and institutional mechanisms. In the context of surface water, pollution of the same has been covered extensively, with special emphasis on river water, the attempted conservation strategies adopted and its success and failures. 'Right to water' (as proposed by the Constitutional Review Committee) means right to access to clean drinking water. Water that is potable and reachable, equitable to one and all, despite class and status, industrial or agricultural.

But is privatization the solution? Can 'resources' be in the private domain? What then is the essence of 'public trust doctrine'? Can water be managed in a decentralized manner, empowering the Panchayats, or should issues like groundwater be regulated centrally? How successful has been the implementation and prosecution under the pollution control laws? These are some of the issues addressed in this chapter.

The chapter on *forest* is by far the most important, considering the value of forests over all other resources, as the forest is the *resource* that binds both water and land together. Without forests, water conservation is next to impossible and land may look simply like a desert. While this chapter looks

at pre-colonial and post-colonial legislations, it critically analyses the failure of the legal system to check and balance conservation and exploitative policies. While most of our forest policies have resulted in declaration of vast areas of land as national parks, we have shortsightedly thrown out tribal people from their livelihood base, without rethinking about relocation or rehabilitation. What is the actual impact of these laws on the forests? To what extent have they served the interests of the forest dwellers, who are traditionally entitled to the use of forest resources? Where does the responsibility in the protection of these forests lie? Who has the right over the resources in forests? Do forest dwellers have any right over the forest and its produce? How far has the JFM (Joint Forest Management) programme been successful in improving the forest cover in the country? After millions displaced because of dams, how has the government embarked on the new problem of eviction of tribal people? These are some of the areas that have been examined in this chapter. One has to note that as of now, the Centrally Empowered Committee, constituted under the *T.N. Godavarman case* by the Supreme Court, is managing, regulating and controlling 98 per cent of the forests in the country.

The chapter on *land* gives an overview of the land use pattern, which has evolved over a period of time in India. Next, agriculture, forestry and mining being the three most important activities affecting land use and degradation, a sectoral impact of each of these on land has been discussed separately. In each of these sectors, the *state-pressure-response* framework has been followed. Land degradation through waste dumping, unplanned management of wasteland and the issues in forestry encroachment has been legally analysed. It is true that the law on forest conservation aims at checking deforestation and regulating the use of forest for non-forest purposes. Nevertheless, there is no specific legislation against abuse of other land than forestland and against infringement of the fertility and conservation of such lands. The mechanism of conversion under the Land Revenue Laws (agricultural land into non-agricultural activity) is found to be ineffective, as indiscriminate conversion of paddy fields into garden lands or living units, *dabbas*, educational institutions, goes unhampered in certain regions of the country.

The chapter on *air* discusses the salient features of the Air Act, 1981, with emphasis on noise pollution, which is also an element of air pollution. The effective powers and functions of the Pollution Control Boards and judicial intervention for improving air quality are discussed in detail.

The chapter on *international initiatives for sustainable development* analyses the development of international law for better and effective resource conservation. The issue is whether international environmental law works

and, if so, how it works is of critical importance in developing new legal mechanisms for addressing environmental problems and in reforming existing structures. It is not sufficient simply to develop a new law. The law must be translated into action and it must lead to real improvements in environmental quality—it must be effective.

However, when one considers how the weather transports pollution, how species migrate, how trade of a food product like coffee can carry pesticide residues, how tourists, business staff or visitors move daily around the world, it is evident that each country needs to undertake roughly equivalent environmental protection measures. Law is the mechanism for defining and applying those services. Thus the issues which determine the success or failure of international environmental law are:

1. Compliance
2. Enforcement
3. Implementation
4. Institutional process and establishment

The chapter on *resource conservation and management* looks into three important areas which are crucial to any debate on protection and conservation of our rich resources. First is the *need for information*. A policy would never work unless people knew the intention behind its enactment. In India, it is well known that transparency cannot be sought in any democratic set-up. Unless there is public participation and environmental education, the best of conservation plans would look best on paper and not on ground. Resources are held by the state in 'public trust'; hence, it is imperative of the government to carry, disclose and account for all the decisions, right or wrong, affecting the community, with the exploitation or management of any natural resource.

Second, resources and their importance differ from place to place. A centralized structure in such a vast country like ours may not work, has not worked in either the case of water conservation (ground water or inter-state river water) or forest (with the forest cover reducing than increasing) and land. If the state provides adequate education, the locals are better equipped not only to manage, but also to be held accountable for its conservation or depletion. Hence, the importance of *decentralized environmental management* in India need not be over-emphasized.

Third, resources like wetlands, grazing lands, waste lands, those which are not in the private domain and which act as catalyst to the major resources are the ones neglected, not cared for. This sub-chapter on Common Property

Resources (CPRs) traces the origin and the policy imitative to save the commons.

The last Chapter is on use of Alternative Dispute Resolution (ADR) mechanisms for resolving environmental disputes. One perceives large-scale litigation between the developmental needs of the community with the need to balance the interest of ecology. Disputes over resource sharing between state agencies and the people or between people of different regions would require different approaches for dispute resolution. The courts may not be the appropriate forum for resolution of disputes over natural resources. Conciliation, mediation and finally arbitration may have to be the main platform on which environmental disputes needs to be resolved. This chapter, thus, explores ADR approaches and its use in environmental conflict resolution.

The object of this study has been to probe into the multidimensional problems of environmental pollution and conservation of natural resources with regard to its legal control and judicial attitudes, with special reference to the conditions in India. I wish to thank the people who made me the person I am today. I owe sincere and deepest respects to all my teachers—Dr P. Ishwara Bhat, Professor, University of Mysore; Dr A. Jayagovinda, former Vice Chancellor, NLSIU; Dr M.K. Ramesh, Professor, NLSIU; Professor V.S. Mallar, former Registrar, NLSIU and Professor Armin Rosencranz, Adjunct Professor, Stanford University. I also thank Professor R. Venkata Rao, Vice Chancellor, NLSIU for his support and encouragement in writing this book.

# Contents

<i>List of Abbreviations</i>	xi
<i>Preface</i>	xv
<b>1. Introduction</b>	<b>1</b>
1.1. Background	1
1.2. Resource Conservation: Historical Concerns in India	4
1.3. Resource Management: Problems in India	8
1.4. Economics and the Natural Resources Market	14
1.5. Environmental Justice	19
1.6. The Modern Age of Environmental Law: Overview	21
1.7. Perspective in Resource Conservation	32
<b>2. Constitution and Common Law Principles</b>	<b>37</b>
<b>Part-I</b> Constitutional Law Provisions	
2.1. Introduction	37
2.2. Right to Environment	40
2.3. Freedom of Trade and Environment	56
2.4. Recommendation of the National Commission to Review the Working of the Constitution (NCRWC)	59
2.5. International Comparative Constitutional Analysis	61
2.6. Proposals for Environmental Courts in India	63
2.7. Looking Beyond Human Rights: Deep Ecology and Duty to Preserve the Environment	65
2.8. A Scope for Improvement: Some Suggestions	67
2.9. Conclusion	69
<b>Part-II</b> Common Law Principles	
2.10. Introduction	70
2.11. Law in Relation to Nuisance	71
2.12. Criminal Law Principles	73

2.13.	Civil Law Principles	74
2.14.	The Rule in <i>Rylands v. Fletcher</i>	76
2.15.	Non-natural User	76
2.16.	Imposing Criminal Liability in Environmental Law	81
2.17.	Conclusion	90
<b>3.</b>	<b>Water Conservation: Legal Issues and Challenges</b>	<b>92</b>
3.1.	Introduction	92
3.2.	Historical Recollection	94
3.3.	Water Scarcity: Ground Realities	96
3.4.	Strategies, Policies and Plans So Far	99
3.5.	Water Right	105
3.6.	Water Pollution: Dimensions of Judicial Intervention	134
3.7.	Interlinking of Rivers: Evaluating the Possible Solution	144
3.8.	International Law	150
3.9.	Ground Water: Over-exploited Resource	153
3.10.	Will Privatization Work?	163
3.11.	Conclusion	171
<b>4.</b>	<b>Forest: Legal Issues and Conservation Strategies</b>	<b>174</b>
4.1.	Background	174
4.2.	Introduction	176
4.3.	National Forest Policy, 1952	178
4.4.	Forest Law and Policy	183
4.5.	The Indian Forest Act, 1927	186
4.6.	Forest Conservation Act, 1980	192
4.7.	Forests and the Wildlife Protection Act, 1972	194
4.8.	Mining in Protected Areas	200
4.9.	Specific Rights of the Forest Dwellers as to Forestland and Resources	203
4.10.	Joint Management of Forest: State-People's Management	206
4.11.	Non-timber Forest Produce	213
4.12.	Changes in the Forest Sector	217
4.13.	The Biological Diversity Act, 2002	237
4.14.	Biodiversity and Resource Conservation	241
4.15.	International Law	243
4.16.	Conclusion	261

<b>5.</b>	<b>Legal Regime Relating to Conservation of Land</b>	<b>265</b>
5.1.	Land	265
5.2.	Land Use Scenario in India	266
5.3.	Land as a Resource: Absence of Vision	267
5.4.	Land Acquisition	269
5.5.	Agrarian Reforms	272
5.6.	Decision-making: Coordinating Authorities	273
5.7.	Green Revolution	278
5.8.	Conversion of Land: Law and Policy	280
5.9.	Open Lung Areas	283
5.10.	Tree Preservation in Urban Areas	288
5.11.	Wasteland	290
5.12.	Degradation of Land through Waste Dumping	292
5.13.	United Nations Convention to Combat Desertification	296
5.14.	Mining: Legal Issues for Land Conservation	297
5.15.	Conclusion	309
<b>6.</b>	<b>Air</b>	<b>311</b>
6.1.	Introduction	311
6.2.	Prevention and Control of Air Pollution	314
6.3.	Powers and Functions of the Pollution Control Board under Air/Water Act	315
6.4.	Judicial Intervention for Improving Air Quality	321
6.5.	Kyoto Climate Accord	327
6.6.	Ozone Depletion and India	332
6.7.	Indoor Air Pollution	335
6.8.	Environmental Tobacco Smoke: Anti Smoking Law in India	336
6.9.	Regulation of Noise	341
6.10.	Conclusion	353
<b>7.</b>	<b>International Law: Principles of Sustainable Development for Resource Conservation</b>	<b>355</b>
7.1.	Introduction	355
7.2.	The Environment and International Law: Defining Terms	358
7.3.	International Environmental Law: Evolution	362
7.4.	From Stockholm to Rio	363

7.5.	Compliance of International Environmental Law	371
7.6.	International Principles for Conservation of Natural Resources	375
7.7.	Obligations of States under International Environmental Law	404
7.8.	The New Environmental Philosophy: Globalization	409
7.9.	India's Challenges in Emerging International Environmental Law	411
7.10.	Conclusion	414
<b>8.</b>	<b>Resource Conservation and Management: Perspectives</b>	<b>416</b>
	<b>Part-I</b> Need for Information and Public Participation	
8.1.	Access to Environmental Information	416
8.2.	The Need for Public Participation	418
8.3.	Right to Information: Ecological Perspective	420
8.4.	National Perspective on Right to Know	424
8.5.	Right to Information Act	428
8.6.	Participation Means Cooperation	431
8.7.	Environmental Education	433
8.8.	Environmental Impact Assessment: Source for Information	435
	<b>Part-II</b> Decentralized Management	
8.9.	Introduction	438
8.10.	Constitutional Provisions for Local Self Governance—Panchayats and Nagarpalikas	444
8.11.	The Karnataka Panchayat Raj Act, 1993	446
8.12.	Panchayats and their New Role under the Biodiversity Act, 2002	447
8.13.	Empowerment and Shared Governance	448
8.14.	Participatory Natural Resource Management	450
8.15.	Panchayats [Extension to the Scheduled Areas] Act, 1996 (PESA)	454
8.16.	Conclusion	456
	<b>Part-III</b> Customary Rights and Common Property Resources	
8.17.	Introduction	457
8.18.	Depletion of Common Property Resource: 'Not in My Backyard' Syndrome	461



8.19.	Parks, Playgrounds: Need for More Open Lung Areas	469
8.20.	Conservation Initiative for Protection of Wetlands	471
8.21.	Conclusion	477
<b>Part-IV</b> Role of Social Movements in Environmental Protection		
8.22.	Voluntarism	481
8.23.	Environmental Movements	483
8.24.	The Gandhian Model	491
8.25.	Environmental Movements in India: An Evaluation	493
8.26.	Conclusion	495
<b>9.</b>	<b>International Environmental Law Arbitration: New Approaches to Dispute Resolution</b>	<b>499</b>
9.1.	Introduction	499
9.2.	ADR for Protection of Natural Resources: An Insight to International Law on Arbitration in Environmental Matters	502
9.3.	Permanent Court of Arbitration (PCA): Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment	509
9.4.	Conclusion	514
<b>10.</b>	<b>Conclusion</b>	<b>517</b>
10.1.	The Jurisprudence of Environmental Legislation: A Few Concluding Observations	520
10.2.	The Need: Integrated Natural Resource Management Policy	526
	<i>List of Cases</i>	528
	<i>Index</i>	534
	<i>About the Author</i>	555