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TOURISM: A CONTRIBUTOR TO THE ENVIRONMENT'S MISERY

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Abstract

Man bears a moral duty to respect and safeguard the natural life on earth. Every human being should realize this pious obligation and should make every possible endeavour to protect the environment. This duty is not limited only to the territorial extent of one's country, but also to the countries where one arrives as a tourist. In recent times, degradation of the environment has become a worrisome international issue. One of the chief causes for the contamination of the environment is the growth in tourist activities. Tourism has an intrinsic connection with the growth and development of a country. This sector has significantly contributed in assortment of large amount of foreign exchange, besides providing a boost to the country's overall economic and social development. But like every two-faced coin, tourism too has its adverse effects. Land degradation, pollution, deforestation, climate changes, solid wastes, etc., has been viewed as important environmental effects due to the development of tourism. Therefore, there lies a dire need for tourist activity around the globe to be developed in such a manner that it accommodates and entertains visitors in a technique which is minimally invasive or disparaging to the environment and protracts the native cultures in the locations it exists in. Eco-tourism needs to be endorsed so that the natural environment around the globe can be conserved and sustained. This research work is an overview on the environmental issues of the development of tourism. It seeks to highlight the adverse impact on the environment due to increased tourism at international and national contexts. It ushers concern on the present need of regulating tourism by enacting appropriate environment-friendly laws. It further elaborates sustainable measures that could be adopted in exterminating the present quandary. Lastly, plausible suggestions are forwarded by the authors that may result in reaching an equilibrium state of tourism development without depraving the environment.

Keywords: Environment, Tourism, Deforestation, Pollution, Climate change, Eco- tourism, Sustainable development.

Introduction

*Pancha Mahabhutas*¹ creates a web of life that is shown forth in the structure and interconnectedness of the cosmos and the human body. The five great elements include space, air, fire, water and earth. These constitute the environment and are all derived from *prakriti*, the primal energy. Each of these elements has their own life and form; together the elements are interconnected and interdependent.² It is therefore, worth mentioning that, to protect the environment is an important expression of *Dharma*³. Association of this sublime spiritual ontology to the present era renders us the nexus between the *Dharma* and the Doctrine of Rule of Law⁴, which ultimately binds us with a legal obligation to conserve our environment.

In recent times, the environment has become one of the most active subjects of debate and discussion. The desire to put feet into an environment that could trace its sculpture links with devotion in an unbroken skein reaching back to antiquity is vanishing. One of the major causes of the deterioration of the environment is unplanned and unchecked developmental activities in the tourist destinations. And the lamenting part is that, we, as the whole globe, lack appropriate and significant laws in this regard.

There is indeed no denying the fact that tourism is enormously beneficial for any country's economy. According to World Travel and Tourism Council Report 2015, tourism represents around six per cent of world trade, and almost 13 per cent of the total global consumer spending.⁵ But it is pathos and bathos that the environment will probably be damaged if overused, and if the limits of its carrying capacity are surpassed, the ecosystem will lose its sustainability and be damaged or destroyed for a long time, if not forever. Since, as compared to developed nations, most developing countries at their first stages of tourism development

¹ *Pancha* and *Mahabhutas* are the *Sanskrit* words, the former means 'five' and the latter means 'great elements'

²The *Upanishads*: The *Upanishads* explains the interdependence of these elements in relation to *Brahma*, the supreme reality, from which they arise: "From *Brahma* arises space, from space arises air, from air arises fire, from fire arises water, and from water arises earth."

³*Dharma* is one of the most important Hindu concepts, has been translated into English as duty, virtue, cosmic order and religion.

⁴ Justice Dr. Ram Joise, *Rajdharm and Lessons on Rajneeti*

⁵ *The 2010 Travel and Tourism Economic Research*, Economic Data Research Tool, World Travel and Tourism Council (www.wttc.org)

had no control or proper planning for tourism, the carrying capacities of their environment were not taken into account and thereby are abused the most.

Tourism: A Catalyst to Economic Boost

In India too, tourism has become one of the chief sectors of the economy, contributing to a hefty proportion of the national income and generating huge employment opportunities with great potentials for its further expansion and diversification. The first conscious and organized efforts to promote tourism in India were made in 1945 when a committee was set up by the Government under the Chairmanship of Sir John Sargent, the then Educational Adviser to the Government of India. But it was only after the 80's that tourism activity gained momentum.⁶

Tourism in India is the largest service industry, with a contribution of 6.23 per cent to the national GDP and 8.78% of the total employment in India. The Ministry of Tourism is the nodal agency to formulate national policies and programmes for the development and promotion of tourism. Concerted efforts are being made to promote new forms of tourism such as rural, cruise, medical and eco-tourism. The Ministry of Tourism also maintains the *Incredible India* campaign.⁷

During the year 2011, the growth rate of 8.9 per cent in tourist arrivals in India was almost double the growth of 4.4 per cent in tourist arrivals worldwide. The tourism sector in India, therefore, has fared quite well vis-à-vis the world. Foreign Exchange Earnings (FEE) from tourism in India during 2011 were \$16.56 billion as compared to \$ 14.19 billion in 2010, showing a growth of 16.7%⁸. According to *World Travel and Tourism Council*, India will be a tourism hotspot from 2009-2018, having the highest 10-year growth potential. As per the *Travel and Tourism Competitiveness Report of 2009*, by the *World Economic Forum*, India is ranked 11th in the Asia Pacific region and 62nd overall, moving up three places on the list of the world's attractive destinations.⁹

Moreover, India has been ranked the “best country brand for value-for-money” and “second best country brand for history” in the Country Brand Index (CBI) survey conducted by *Future*

⁶ Access at, www.incredibleindia.com

⁷ Dr. P. Sekhar, *Secured Techno- Economic Growth of India: Unleashing Hidden Growth Potential*, Micro Media Marketing Pvt. Ltd., pp. 187

⁸https://www.academia.edu/7836294/EMERGING_ENVIRONMENTAL_ISSUES_WITH_THE_DEVELOPMENT_OF_TOURISM_INDIUSTRY_IN_INDIA_A_STUDY (Government of India, Ministry of Tourism, 2012)

⁹ www.ibef.org/industry/tourismhospitality.aspx

Brand, a leading global brand consultancy.¹⁰ However, like every coin has its two sides, one a boon and the other a curse, tourism too has its pros and cons.

International Regime on Tourism *vis-à-vis* the Environment

Environmentally responsible tourism's formal enunciation emanates from the *1989 Hague Declaration on Tourism*, which advocates rational management of tourism so that it may contribute to the protection and preservation of the natural and cultural environment. Even at the *Earth Summit in Brazil June 1992*, the issue of 'sustainable tourism' was discussed within the context of overall sustainable development.¹¹ The *Commission On Sustainable Development* as a UN body responsible for the follow up of *Agenda 21*, addressed sustainable nature based tourism, first in the framework of sustainable development of Small Islands Developing States and then in the context of the working programme of its Seventh Session in 1999. A couple of years back, UNEP took initiatives of regarding sustainable tourism in the *UNEP Draft Principle on Sustainable Tourism*, which was initiated in 1995 and final draft was published in early 2000. The time of launching the UNEP initiative coincided with Commission on Sustainable Development and the adoption of *decision 7/3*. It may be regarded as an environmental approach to tackle nature-based tourism.

The Ghastly Aftermath of Global Tourism

The negative impacts of tourism on the environment can be analyzed in different ways. One of them looks at the specific elements of the ecosystem of the tourist locale. For instance, tourism can have detrimental effect on vegetation¹² and can create pressure on local resources,¹³ it can also have an effect on air and water quality,¹⁴ wildlife can also be adversely affected by tourism,¹⁵ resort development can cause harm to the environment on which it is

¹⁰ www.ibef.org/industry/tourismhospitality.aspx

¹¹ <http://www.yourarticlelibrary.com/essay/short-essay-on-tourism-538-words/8573/>

¹²E.g., the collection of plants or careless use of fire can destroy plant life; littering causes changes in soil nutrients; human and vehicular traffic affects both the soil and the vulnerability of plants.

¹³Tourism can create great pressure on local resources like energy, food, and other raw materials that may already be in short supply. Greater extraction and transport of these resources exacerbates the physical impacts associated with their exploitation. Because of the seasonal character of the industry, many destinations have ten times more inhabitants in the high season as in the low season. A high demand is placed upon these resources to meet the high expectations tourists.

¹⁴Air pollution can be attributed to the tourist vehicles in resort areas. There can also be pollution of lakes, rivers and oceans caused by large quantities of waste material and inadequately treated sewage from tourist facilities and from oil spills from recreational vehicles.

¹⁵By intruding on the animals' natural lives, tourism can disrupt feeding and breeding patterns, and sometimes can even force the relocation of wildlife.

located as well,¹⁶ it also plays a crucial role in water depletion,¹⁷ it may lead to land degradation,¹⁸ etc.

Another way, and probably a better way, to analyze the impacts of tourism on the environment, is to look at how tourism affects certain ecosystems.¹⁹ For instance, clearing plant life for the sake of tourism “disturbs” wildlife and reduces habitats. And since these components and ecosystems are interconnected not just locally, but globally, affecting one of these may disrupt another in a different part of the region or even the world.

Out of all, marine ecosystems suffer the most due to high popularity of ‘beach tourism’. There are 109 countries with coral reefs. In 90 of them the reefs are being damaged by cruise ship anchors and sewage, by tourists breaking off chunks of coral, and by commercial harvesting for sale to tourists. One study of a cruise ship anchor dropped in a coral reef for one day found an area about half the size of a football field completely destroyed, and half again as much covered by rubble that died later. It was estimated that coral recovery would take fifty years.²⁰

The European marine ecosystem has probably been the worst affected because it is an inland sea, thus it has a longer self-cleaning process due to the limited tide.²¹ Out of all the components affected in this ecosystem, coral reefs are the most vulnerable. Reefs can be harmed by trampling from scuba divers and snorkelers, untreated sewage dumped from hotels or the resort cities themselves, and many developing countries use coral for construction of hotels and roads. The construction of hotels²² and roads destroys dunes and beaches, causing severe environmental consequences, such as erosion, which in turn induces more environmental problems.²³

¹⁶Architectural pollution is a condition where resort facilities clash with the native surroundings and architecture.

¹⁷Source: *Tourism Concern*- Golf course maintenance can also deplete fresh water resources. In recent years golf tourism has increased in popularity and the number of golf courses has grown rapidly. An average golf course in a tropical country such as Thailand needs 1500kg of chemical fertilizers, pesticides and herbicides per year and uses as much water as 60,000 rural villagers. In dryer regions like the Mediterranean, the issue of water scarcity is of particular concern. Because of the hot climate and the tendency of tourists to consume more water when on holiday than they do at home, the amount used can run up to 440 liters a day. This is almost double what the inhabitants of an average Spanish city use.

¹⁸For e.g., one trekking tourist in Nepal - and area already suffering the effects of deforestation - can use four to five kilograms of wood a day.

¹⁹Stephanie Thullen, ‘Tourism and Trade’, available at, www.american.edu/ted/project/tedcross/xtour8.htm

²⁰Source: *Ocean Planet*

²¹See: *The Mediterranean case*

²²See: *The Greek Island case*

²³See: *The Bali and Jamaica cases*

Discussing the other aspects, construction of hotels, recreation and other facilities also leads to increased sewage pollution. Wastewater has polluted seas and lakes surrounding tourist attractions, damaging the flora and fauna. Sewage runoff causes serious damage to coral reefs because it stimulates the growth of algae, which cover the filter-feeding corals, hindering their ability to survive. Changes in salinity and siltation can have wide-ranging impacts on coastal environments. And sewage pollution can threaten the health of humans and animals.

Often tourism also fails to integrate its structures with the natural features and indigenous architectural of the destination.²⁴ Large, dominating resorts of disparate design can look out of place in any natural environment and may clash with the indigenous structural design.

The case of Trinidad and Tobago can be discussed here, where after the decline of oil revenues in the 1980's, both states turned to tourism in order to resolve its serious economic problems. However, the country proceeded without any assessment on the environmental impacts of tourism on the islands. As a result, several environmental problems have arisen in Trinidad and Tobago. There are shortages of water due to the overpopulation of tourists on the island; sand has been depleted for construction, which has damaged beaches and destroyed the habitat of turtles, where they come to lay their eggs. The most damaging effect of tourism has been the destruction of coral reefs, as they are harvested for sale to tourists and destroyed by tourists stepping on them as they enter the water.²⁵

Navigating the land ecosystem, in industrial countries, mass tourism and recreation are now fast overtaking the extractive industries as the largest threat to mountain communities and environments. Since 1945, visits to the 10 most popular mountainous national parks in the United States have increased twelve-fold. In the European Alps, tourism now exceeds 100 million visitor-days. Every year in the Indian Himalaya, more than 250,000 Hindu pilgrims, 25,000 trekkers, and 75 mountaineering expeditions climb to the sacred source of the *Ganges* River, the *Gangotri* Glacier. They deplete local forests for firewood, trample riparian vegetation, and strew litter. Even worse, this tourism frequently induces poorly planned, land-intensive development.²⁶

Not only has tourism impacted the internal ecosystem of a state, but it is also the fastest growing contributor to global warming. Wanting to travel by air by sheer numbers us has led the

²⁴See: *The Cancun, Mexico case*

²⁵ Stephanie Thullen, 'Tourism and Trade', *access at*, www.american.edu/ted/project/tedcross/xtour8.htm

²⁶Source: *People and the Planet*

Aviation to be targeted for a fair amount of criticism. There is no denying the fact that the farther you go the more Green House gases you produce and *KLM* estimates that trips over 1,500 km are responsible for around 80% of the CO₂ produced by air travel. Transport by air is continuously increasing and it was reported that the number of international air passengers worldwide rose from 88 million in 1972 to 344 million in 1994. According to *Tourism Concern*, scientists predict that by 2015 half of the annual destruction of the ozone layer will be caused by air travel.²⁷

One consequence of the increase in air transport is that tourism now accounts for more than 60% of air travel and is therefore responsible for an important share of air emissions. One study estimated that a single transatlantic return flight emits almost half the CO₂ emissions produced by all other sources (lighting, heating, car use, etc.) consumed by an average person yearly.²⁸ Not only does aviation affects the air but on the ground as well, it is performing its part, no less. The issues of noise, congestion and the loss of green belt due to the new runways has also been an important part of discussions; also the average airport's annual carbon debt is beginning to look pretty daunting.²⁹

Climate scientists now generally agree that the Earth's surface temperatures have risen steadily in recent years because of an increase in the so-called greenhouse gases in the atmosphere, which trap heat from the sun. Global tourism is closely linked to climate change. The *Second International Conference on Climate Change and Tourism, 2007*, was a milestone event that brought together a wide variety of stakeholders and delivered a clear commitment for action to respond to the climate change challenge. Tourism involves the movement of people from their homes to other destinations and accounts for about 50% of traffic movements; rapidly expanding air traffic contributes about 2.5% of the production of CO₂. Tourism is thus a significant contributor to the increasing concentrations of greenhouse gases in the atmosphere.³⁰

In areas with high concentrations of tourist activities and appealing natural attractions, waste disposal is another major and grave issue and improper disposal can be a major despoiler of the natural environment - rivers, scenic areas, and roadsides. For example, the Wider Caribbean

²⁷ Dr Gareth Evans, *Aviation and Global Warming*, Updated: 16 Oct 2012, ecoholidaying.co.uk

²⁸ Mayer Hillman, *Town & Country Planning magazine*, September 1996. Source: MFOE

²⁹ Dr Gareth Evans, *Aviation and Global Warming*- Updated: 16 Oct 2012, ecoholidaying.co.uk

³⁰ Source: *Mountain Forum*

Region, stretching from Florida to French Guiana, receives 63,000 port calls from ships each year, and they generate 82,000 tons of garbage. About 77% of all ship waste comes from cruise vessels. The average cruise ship carries 600 crew members and 1,400 passengers. On average, passengers on a cruise ship each account for 3.5 kilograms of garbage daily compared with the 0.8 kilograms each generated by the less well-endowed folk on shore.³¹ Solid waste and littering can degrade the physical appearance of the water and shoreline and cause the death of marine animals.

In mountain areas, trekking tourists generate a great deal of waste. Tourists on expedition leave behind their garbage, oxygen cylinders and even camping equipment. Such practices degrade the environment with all the detritus typical of the developed world, in remote areas that have few garbage collection or disposal facilities. Some trails in the Peruvian Andes and in Nepal frequently visited by tourists have been nicknamed “Coca-Cola trail” and “Toilet paper trail”.

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Physical impacts are caused not only by tourism-related land clearing and construction, but by continuing tourist activities and long-term changes in local economies and ecologies. In Yosemite National Park (US), for instance, the number of roads and facilities have been increased to keep pace with the growing visitor numbers and to supply amenities, infrastructure and parking lots for all the tourists. These actions have caused habitat loss in the park and are accompanied by various forms of pollution, including air pollution from automobile emissions; the *Sierra Club* has reported “smog so thick that Yosemite Valley could not be seen from airplanes”. This occasional smog is harmful to all species and vegetation inside the Park.³³

Tourists using the same trail over and over again can be another example of continuing tourist activities which results in trampling the vegetation and soil, eventually causing damage that can lead to loss of biodiversity and other impacts. Such damage can be even more extensive when visitors frequently stray off established trails.³⁴ Tourists and suppliers - often unwittingly - can bring in species (insects, wild and cultivated plants and diseases) that are not native to the local environment and that can cause enormous disruption and even destruction of ecosystems.

Indian Scenario

³¹ Our Planet, *UNEP Magazine For Environmentally Sustainable Development*, volume 10, no. 3, 1999

³² Access at, www.unep.org

³³Source: *Trade and Environment Database*

³⁴Source: *University of Idaho*

Shifting the focus on India which is known for its generous conduct to all visitors and the notion of *Atithi Devo Bhava*,³⁵ in recent times, has also suffered due to the increase in tourism which has led to environmental issues, which call for a great need for sustainable tourism policy³⁶; the most relatable and visible example of it is the melting of *Amarnath Linga*, resulting from the increase in temperature caused due to overcrowding in its premises.

In coastal zone of Goa also known as the Tourist hub of India, problems of loss of mangrove, reducing fish catch and species, erosion, sanitation, water resources, etc., has affected the marine life, land of coastal zone and the environment.³⁷ The water level there has fallen far below the reach of the village wells since the deep wells of the hotels keep pumping up water for their pools and lush green lawns. Along with that, the hotels are ensured 24 hours water supply and water in tanks.

Adverse impact of tourism development is witnessed in the state of Maharashtra as well. Findings on a study revealed that 89 per cent of the surveyed respondent experienced that there would be maximum negative impact on the environment as a result of developing tourism; they experience that more forests degradation might take place in and around the area because of tremendous demands for area and encroachment of hotels and restaurants.³⁸

In *Mussorie, Garhwal* and the Himalayas also, due to huge influx in the tourists the demand for the lodges/hotels and other infra-structure and super-structure facilities and amenities in the area were enormous, and it imposed a great stress on the natural environment of the place.³⁹ In fact, some areas, such as the *Aravallis*, have been declared as being eco-sensitive and commercial development in and around national parks and wildlife sanctuaries is being strictly regulated.

Coastal tourism in *Kolavam* in India, has led to increased conflicts between the demands of existing environmental and tourism development policies. One may see the seeds of demise of

³⁵ It is a Sanskrit verse, which means that, the guest is equivalent to God

³⁶ *Access at*, shodhganga.inflibnet.ac.in/bitstream/10603/9790/10/10_chapter%203.pdf

³⁷ Kalidas Sawkar, Ligia Noronha, Antonio Mascarenhas, O.S. Chauhan, and Simad Saeed (1998): "Tourism and the Environment-Case Studies on Goa, India, and the Maldives", *The Economic Development Institute of the World Bank*, The International Bank for Reconstruction and Development/The World Bank, Washington, USA.

³⁸ Dr. D. Y. Patil and Ms. Lata S. Patil 2008, Environmental Carrying Capacity and Tourism Development in Maharashtra; in *Conference on Tourism in India – Challenges Ahead*, IIMKPart II – Tourism Society and Environmental Issues; 15-17 May 2008

³⁹ SAPANA MADAN and LAXMI RAWAT 2000, The impacts of tourism on the environment of Mussoorie, Garhwal Himalaya, India, *The environmentalist*, 20, 249-255. *Kluwer Academic publishers, Manufactured in the Netherland*

a prospective industry by the deterioration of that very ecological milieu on which it thrives. Environmental conservation and community development have never been taken as the prerequisites for the betterment of tourism industry in this place.⁴⁰ The *Krushedei* Island near *Rameswaram* which was once called paradise for marine biologists has been abandoned due to massive destruction of coral and other marine life. The impact of tourism on the environment of Sikkim and the Himalayas is also threatening on the protected areas in the region. Sustainable planning for tourism in the state is advocated.⁴¹

People who come to enjoy the scenic beauty often litter the places with polythene and left over food without thinking about its adverse impact on the environment. The *Dal* Lake which was once pristine has lost its nature due to tourist pressure and is now covered with animal carcasses, sewage and weeds. The lake has shrunk as it was unable to handle the pollution caused by constant tourist influx.

Moreover, habitat has also been degraded by tourism leisure activities. For example, wildlife viewing brings about stress for the animals and alters their natural behaviour when tourists come too close. Safaris and wildlife watching activities have a degrading effect on habitat as they often are accompanied by the noise and commotion created by tourists.

Panaceas and Suggestions

It brings blues as far as the present scenario and ignorance on the part of humans is concerned. The plight is that, though there are countless environment protection schemes and organisations, none of them are capable of restraining the tourist activities, more specifically, from extinguishing our ambient natural habitat.

The Davos Declaration⁴² is worth mentioning here which is a huge step forward and presents concrete recommendations to the key interest groups involved in tourism, it required certain

⁴⁰ Proshanta Kumar Ghosh and Debajit Datta 2012, Coastal tourism and beach sustainability – An assessment of community perceptions in Kovalam, India *GEOGRAFIA Online Malaysia Journal of Society and Space*, 8 issue 7, pp.75 – 87

⁴¹ Joshi, R. and Dhyani, P. P. 2009, Environmental sustainability and tourism- implications of trend synergies of tourism in Sikkim Himalayas. *Current Science*, 97 (1), 33-41

⁴² II International Conference on Climate Change 2007

actions, such as, to mitigate greenhouse gas emissions from the tourism sector, derived especially from transport and accommodation activities; adapt tourism businesses and destinations to changing climate conditions; apply existing and new technologies to improve energy efficiency; and secure financial resources to assist regions and countries in need.

India, specially, lacks laws regarding tourist control. Except for Article 48(a)⁴³, Article 51A (g)⁴⁴ and a few generic legislations⁴⁵, India is destitute in the field of protection of the environment *vis-à-vis* tourism. And the legislations which mention tourism, like the Wildlife Act, fail to achieve the goal due to their ineffective nature.⁴⁶ The perplexity is that it is in fact challenging to control the tourism and tourists from damaging the nature. One of the complexities is regarding holding the tourists liable for their acts, which is very tough due to their temporary stay and the doctrine of *de minimus non curat lex* which postulates that law does not take account on trifles. And most of the acts like littering and intruding in wild animals' routine come under the latter category. But indeed, certain regulations, laws, norms and constructive techniques can be enacted like barring the carrying of junk like polythene to natural tourist spots or limiting the amount of water used by hotels by removing bath tubs and encouraging water conservation or limiting water activities away from coral habitats etc.

*M.C. Mehta v Union of India*⁴⁷ enlightened the concept of CNG transportation which can be considered as the landmark to regulate the transport system which is the most crucial mode of transmission as well as a major contributor to tourism menace. The decision created a role model for the tourist destination to regulate the transport sector and use environmental friendly and cleaner means of transport. Not only in Delhi, but at all Tourist places, CNG taxis and

⁴³ Article 48 in the Constitution of India 1949 provides that, the State shall endeavor to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

⁴⁴ Article 51A (g) in The Constitution of India 1949 provides, to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creature.

⁴⁵ Air (Prevention and Control of Pollution) Act, 1981, Biological Diversity Act, 2002, Environment (Protection) Act, 1986, Forest Conservation Act, 1980, Indian Forest Act, 1927, National Green Tribunal Act, 2010, Protection of Plant Varieties and Farmers' Rights Act of 2001, Public Liability Insurance Act, 1991, The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Water (Prevention and Control of Pollution), 1974, Wild Life (Protection) Amendment Act, 2002, Wildlife Protection Act of 1972, Noise Pollution Act, Hazardous waste Handling and management act, 1989

⁴⁶ The Act restricts the tourist from degrading the environment or other related activities which directly or indirectly affects the environment. As the wildlife parks, sanctuaries, and reserves are in abundance and serves as major tourist attraction, this Act helps in regulation and protection of these important destinations, which also serves the most number of tourist count.

⁴⁷ 2001 (2) SCR 698

tourist buses should be made compulsory. Although these are small measures but they can definitely contribute to conserve the environment.

Eco-tourism can be one of the objectives for many biological park projects. In *Niyamavedi v State of Kerala*, the Kerala High Court found that a project for such a park was designed after consulting many experts who gave full support for watching wildlife at close quarters, without interfering with the sanctity of flora and fauna. In the court's eyes the government's decision to establish a park after consultation was a policy decision, which could not be interfered with.

On the brighter side, tourism can significantly also contribute to environmental protection, conservation and restoration of biological diversity and sustainable use of natural resources and there are numerous significant examples where nations have developed techniques, modus and laws to protect nature. For example, in Hawaii, new laws and regulations have been enacted to preserve the Hawaiian rainforest and to protect native species. The coral reefs around the islands and the marine life that depend on them for survival are also protected. Hawaii now has become an international centre for research on ecological systems - and the promotion and preservation of the islands' tourism industry was the main motivation for these actions.⁴⁸

Grupo Punta Cana, a resort in the Dominican Republic, offers an example of how luxury tourism development and conservation can be combined. The developers have set aside 10,000 hectares of land as a natural reserve and native fruit tree garden which includes 11 fresh water springs surrounded by a subtropical forest where many species of unusual Caribbean flora and fauna live in their natural state. The *Punta Cana Ecological Foundation* has begun reforesting some parts of the reserve that had been stripped of their native mahogany and other trees in the past. Other environmentally protective policies have been put into effect at the resort, such as programs to protect the offshore barrier reefs and the recycling of wastewater for use in irrigating the grounds. The fairways of the resort's new golf course were planted with a hybrid grass that can be irrigated with sea water and also requires less than half the usual amounts of fertilizer and pesticides.

Tourism has had a positive effect on wildlife preservation and protection efforts, notably in Africa but also in South America, Asia, Australia, and the South Pacific. However, numerous animal and plant species have already become extinct or may become extinct soon. Many countries have therefore established wildlife reserves and enacted strict laws protecting the

⁴⁸Source: *Mundus*

animals that draw nature-loving tourists. As a result of these measures, several endangered species have begun to thrive again.

In the Great Lakes region of Africa, mountain gorillas, one of the world's most endangered great apes, play a critical ecological, economic and political role. Establishment of a gorilla tracking permit, which costs US\$ 250 plus park fees, means that just three habituated gorilla groups of about 38 individuals in total can generate over US\$ 3 million in revenue per year. The presence of such a valuable tourism revenue source in the fragile Afromontane forests ensures that these critical habitats are protected, thus fulfilling their valuable ecological function including local climate regulation, water catchment, and natural resources for local communities.⁴⁹

Observing wild and semi-wild orang-utans in their natural habitat is a significant environmental education opportunity for large numbers of domestic visitors. To enhance this education experience, the existing station at Bohorok, North Sumatra is to be transformed from a rehabilitation centre into an orang-utan viewing centre, thus offering another, crucial contribution to the sustainable conservation of the rainforest ecosystem. This will increase their awareness of the importance of rainforest conservation.⁵⁰

Conclusion

Like other few nations, India should adopt strict and innovative laws, compulsory execution of such norms and avant-garde techniques in order to preserve what has been gifted to us by the omnipotent. Regulatory measures may help offset negative impacts; for instance, controls on the number of tourist activities and movement of visitors within protected areas can limit

⁴⁹Source: *UNEP Great Apes Survival Project and Discovery Initiatives*

⁵⁰Source: *Sumatran orangutan conservation programme*

impacts on the ecosystem and help maintain the integrity and vitality of the site. Such limits can also reduce the negative impacts on resources.

Tourism industry in India is growing and it has vast potential for generating employment and earning large amount of foreign exchange besides giving a fillip to the country's overall economic and social development. Yet much more remains to be done. 'Eco-tourism' needs to be promoted so that tourism in India helps in preserving and sustaining the diversity of the India's natural and cultural environments. Tourism in India should be developed in such a way that it accommodates and entertains visitors in a way that is minimally intrusive or destructive to the environment and sustains and supports the native cultures in the locations it is operating in. Moreover, since tourism is a multi-dimensional activity, and is also basically a service industry, it would be necessary that all wings of the Central and State governments, private sector and voluntary organisations become active partners in the endeavour to attain sustainable growth in tourism, if India is to become a world player in the tourism industry.⁵¹

The findings of the study leaves more question on the development of Eco-tourism in India. Environmental issues of tourism in India are different per region or state as per the types of tourism. It has been viewed that the issues like carrying capacity, land degradation, pollution, deforestation, climate changes, solid wastes, etc., are the main problem to look upon. From the various studies it is clear that the environmental effect of tourism development in India differs from region to region. One cannot study and plan the same for all the regions. Like, the more development of tourism in the Coastal area like Goa, Kerala, Pondicherry and other coastal region have impact on the marine life and water resources. In case of the Himalayan states of India, the impact is on the forest, climate, land degradation, temperature, and threat to the protected areas. Further, in the metropolitan cities and states having maximum population, further development of tourism has impact on environmental pollution, deforestation, crowd and carrying capacity. The study also awakes us and provokes us to take the issue in a more serious point to discuss. Though many environments are endowed with great tourist potential, they are delicately balanced and large scale unplanned expansion of tourism in such areas often manifests itself in problems of serious environmental concern. It is necessary that tourism should be developed in a planned way taking care of environment and infrastructural development.

⁵¹ Access at, <http://www.trcollege.net/articles/74-development-and-impact-of-tourism-industry-in-india>

Therefore, state-wise/region-wise in-depth study on environment assessment of tourism industry in India is very necessary for the sustainable management of tourism and environment. Further, the tourism planning should be made on the basis of regional characteristic of the tourist destinations. Further, a sufficient fund for Research and Development is required to execute these studies effective for sustainable tourism policy in India.

ROLE OF PUBLIC INTEREST LITIGATION IN ENVIRONMENTAL PROTECTION: A KALEIDOSCOPIC VIEW

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“The wealth of the nation is its air, water, soil, forests, minerals, rivers, lakes, oceans, scenic beauty, wildlife habitats and biodiversity... that’s all there is. That’s the whole economy. That’s where all the economic activity and jobs come from. These biological systems are the sustaining wealth of the world.”

– **Gaylord Nelson**

The above words emphasise the importance of protecting our environment. “Environment” comprises of our surrounding (physical as well as biological) and includes everything like air, water, land, space, plants, animals, human beings, etc. It is our duty to protect the environment. The responsibility to protect the environment lies on the people and Government. In India, the latter is very much concerned about the former. The Constitutional Law and other statutory provisions provide various measures to protect the environment from hazardous elements of pollution. The Indian Judiciary also plays a crucial role to strike a balance between the development of industry and safe guard of the environment. The Public Interest Litigation (PIL) is regarded as one of the most significant tool that has been used to protect the environment.

Environment and Public Interest Litigation: An Overview

Environment means the sum total of all surroundings of a living organism, including natural forces and other living things, which provide conditions for development and growth as well as of danger and damage.¹ In short, Environment refers to the natural surroundings which help life to grow, nourish and deacease on the planet earth.

According to P. Gisbert “Environment is anything immediately surrounding an object and exerting a direct influence on it.”².

According to Section 2(a) of The Environment (Protection) Act, 1986 the term environment “includes water, air and land and the inter- relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.”³

Public Interest Litigation (PIL) is one of the most important tool of the administrative law and justice. The term “Public Interest Litigation” is not defined in any statute or act. It has been interpreted by the judges to consider the intent of public at large. In simple words, it means

litigation for the protection of public interest, such as pollution, terrorism, road safety, constructional hazards, etc. Public Interest Litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected. Therefore, PIL is a proceeding in which an individual or group seeks relief in the interest of general public and not for its own purposes.⁴

In Strouds Judicial Dictionary, Public Interest is defined thus: "Public Interest - A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."⁵

The Supreme Court observed PIL as, "a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."⁶

Historically, the development of Public Interest Litigation is often attributed to the case of *Brown v. Board of Education*⁷, in which the US Supreme Court found that a state's segregation of public school students by race was unconstitutional.

The Indian Judiciary has been particularly creative in entertaining PILs and developing them into a legal tool for the poor and the public at large.

Public Interest Litigation in India: A Rear View

The seeds of the concept of PIL were initially sown in India by Justice V.R. Krishna Iyer, in 1976 (without assigning the terminology) in *Mumbai Kamgar Sabha v. Abdul Bhai* (1976)⁸. In *Fertilizer Corporation Kamgar Union V. Union of India*,⁹ the terminology "Public interest litigation" was used. In that decision Justice Krishna Iyer, delivering his opinion for Justice Bhagwati, and himself used the expression 'epistolary' jurisdiction. However, this rule on gaining momentum day by day, burgeoned more and more expanding its branches in the cosmos of PIL and took its root firmly in the Indian Judiciary and fully blossomed with fragrant smell in *S.P.Gupta V. Union of India*¹⁰. In this case it was held that "any member of the public or social action group acting

bonafide” can invoke the Writ Jurisdiction of the High Courts or the Supreme Court seeking redressal against violation of a legal or constitutional right of persons who due to social or economic or any other disability cannot approach the Court. By this judgment PIL became a potent weapon for the enforcement of “public duties” where executed in action or misdeed resulted in public injury.

PIL and Environmental Protection: An Analysis

Public Interest Litigation has remarkably contributed to environmental protection. The Supreme Court has held that the right to live under Article 21 includes the right of enjoyment of pollution free water and air for full enjoyment of life. M.C. Mehta was a pioneer in bringing a larger number of issues to the Court concerning environmental and eco-logical degradation. These included the issues arising out of the leak of oleum gas from a factory in Delhi, pollution in Delhi in case of M.C. Mehta v Union of India¹¹, the danger of the Taj Mahal from the Mathura refinery in Taj Trapezium Case¹², regulation of traffic in Delhi in case of M.C. Mehta v Union of India¹³ and the degradation of the Ridge area in Delhi in M.C. Mehta v Union of India¹⁴.

PIL had also played a great role in the protection of the fragile Coastal Regulation Zone in S. Jagannath v Union of India¹⁵ and regulating the growth of shrimp farms dotting the coastline.

In Vellore Citizens' Welfare Forum vs. Union of India¹⁶ the Supreme Court allowed standing to a public spirited social organization for protecting the health of residents of Vellore. In Vellore, tanneries situated around a river were found discharging untreated effluents into the river, jeopardizing the health of the residents. Court pointed out that the leather industry had no right to destroy the ecology, degrade the environment and pose a health hazard. The Court asked the tanneries to close their business

Ratlam Municipality V. Vardichand¹⁷ is a monumental judgment where the Supreme Court followed the activist approach and provided flesh to the dry bones of statutory provisions. In this case the residents of a locality within the limits of Ratlam Municipality tormented by stretch and stink caused by open drains and public excretion by nearby slum-dwellers moved the magistrate under section 133 of Criminal Procedure Code to require the municipality to do its duty towards the members of the public. The magistrate gave directions to the municipality

to draft a plan within six months for removing nuisance. In an appeal by the municipality, the session court reversed the order. The High Court approved the order of the magistrate. In further appeal, the Supreme Court also affirmed the order of the magistrate. The Supreme Court also rejected the plea of the municipality of insufficiency of funds. The court pointed out that the financial inability cannot validly exonerate the municipality from statutory liability and it has no juridical base. The court further observed: "Human rights under Part 111 of the Constitution have to be respected by the State regardless of budgetary provisions."

Rural Litigation and Entitlement Kendra V. State of U.P¹⁸, is a landmark case, which demonstrates the activist role of the Supreme Court with regard to environmental issues. In this case the Supreme Court entertained environmental complaints alleging that the operation of lime stone quarries in the Himalayan Range of Mussoorie resulted in degradation of the environment affecting ecological balance. The Supreme Court entertained the writ petition under Article 32 regarding the environmental issues and ordered the closure of some of these quarries on the ground that their operation was upsetting the ecological balance. At first instance, the court set up an expert committee to inspect the lime stone quarries and report to the court. It submitted three reports and divided the quarries into three groups. The quarries in the A group, which were most harmful to the environment, were ordered to be closed down permanently. The State Government shall not have any liability for the termination of the leases. The court set up another committee to study the impact of the B category quarries and those operating within the city limits of Mussoorie. Category C quarries, which did comparatively less harm and were outside the city limits, were allowed to operate subject to the Mines Act rules and regulations. The Supreme Court discussed the consequences of the closure of the quarries. The closure would "undoubtedly cause hardship to the owners but it is a price that has to be paid for protecting the right of the people to live in a healthy environment. In other words, the Supreme Court read, and rightly so, Art.48-A into Article 21 of the Constitution and regarded the right to live in a healthy environment as a part of life and personal liberty of the people. In order to mitigate the hardships, the court directed the Uttar Pradesh Government that if any other area was thrown open to lime stone quarrying, those who lost their sites in Mussoorie shall be given priority in allotment. The closure of the quarries also affected workers. However, the quarries, which had been closed down, will have to be reclaimed and afforested. Therefore the court directed the government to take immediate steps to reclaim the area and employ those who had lost their work due to the closure of the quarries.

In *M.C. Mehta v. Union of India*¹⁹, a PIL succeeded in getting a favourable opinion from the Supreme Court for educating the people about the hazards of environmental pollution. The judges agreed that law alone could not be an effective instrument for protecting environment unless there was an element of social pressure or social acceptance and the interaction was voluntary.

The court directed the central and state governments to exhibit slides in cinema theatres containing information and messages on environment and spread of related information through radio and television and making environment a compulsory subject in schools and colleges. These messages were to be designed to educate the people about their social obligation in the matter of upkeep of the environment in proper shape and not to act as polluting agencies or factors. The court also directed the authorities to invariably enforce as a condition of license to all cinema halls, tourist cinemas and video parlours to exhibit free of cost at least two slides/messages on environment at each show. The Ministry of Environment was directed to prepare slides carrying the message home on various aspects of environment and pollution. License had to be cancelled if a cinema hall failed to exhibit these slides. The Ministry of Information and Broadcasting was also directed to start the production of information films of short duration. The programme controlling authorities of the Doordarshan (television) and All India Radio were directed to take proper steps to make interesting programmes and broadcast the same on radio and television. All directions issued by the court had to be complied with from 1.2.1992. The court also advised the University Grants Commission to consider the feasibility of making environment a compulsory subject at every level of college education.

Conclusion

A thorough analysis of above paragraphs provides conclusive evidence and reflects the fact that Public Interest Litigation (PIL) has been instrumental as a significant tool to solve environmental issues. In India, there are several specific statutes dealing with various kinds of pollution viz. Air Act 1981, Water Act 1974, Environment Protection Act 1986. However, the contribution of PIL in bringing environmental justice is much more remarkable. The innovation of this legitimate instrument has proved beneficial for implementation of protective measures and ensuring proper implementation of environmental regulations. The people are now aware that the court has constitutional power of intervention, which can be used to mitigate their misery arising from repression, government lawlessness, administrative negligence and indifference. PIL has awakened the consciousness of the public regarding the dignity of human life, the importance of liberty and the right to

equal justice. Therefore, it may be concluded that the role of PIL in protecting the environment is really crucial.

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ROLE OF INDIAN JUDICIARY IN COMBATTING HAZARDOUS WASTES

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It is axiomatic that ‘mankind is the part of nature and life depends on the continuous functioning of natural eco-system which ensures the supply of energy and nutrients’ which is essential for every life support system. Man must live in harmony with nature which nourishes him and furnish all basics of human life. Thus, basic precepts also envisage the protection of nature means preservation of humanity. **Mankind is a part of nature – not essential for nature.** “For the greatest environmentalists, humans are of lesser importance than the abundant and diverse flora and fauna of the planet. Humans are defined as a recent addition to the livestock and are considered to have been a wholly disruptive influence on a world which was a paradise before their arrival.” The development of science and technology and the ever –increasing world population brought about tremendous changes in the earth’s environment. Scientific and technological advancements and mismanagement of natural resources have given rise to numerous environmental problems such as pollution of water, soil, air radiation and noise, with consequent adverse effects on flora and fauna, human and well-being. These problems are actually caused by rapid, unprecedented and unplanned development programs in the guise of industrialization. Industries though contribute to the development and progress of a nation, their wastes and toxic effluents discharged freely in the air, water and on land are doing irreversible and irreparable damages to mankind. This short note is about the role of the judiciary and the legal prospective about the hazardous waste management ,responsibility of human being towards the waste management and it will focus on explaining the nuances ,discussion ,critical analysis, and conclusion on the various roles played by judiciary in the field of hazardous waste management .

Humans are defined as a recent addition to the livestock and are considered to have been a wholly disruptive influence on a world which was a paradise before their arrival.”¹ The development of

¹ Rosalind Malcom: A Guidebook to Environmental Law, at p.1.

science and technology and the ever –increasing world population brought about tremendous changes in the earth’s environment. Scientific and technological advancements and mismanagement of natural resources have given rise to numerous environmental problems such as pollution of water, soil, air radiation and noise, with consequent adverse effects on flora and fauna, human and well-being. These problems are actually caused by rapid, unprecedented and unplanned development programs in the guise of industrialization. Industries though contribute to the development and progress of a nation, their wastes and toxic effluents discharged freely in the air, water and on land are doing irreversible and irreparable damages to mankind. Similarly, unbridled exploitation of renewable and non-renewable natural resources without caring for the waste debris has caused ecological imbalances and environmental pollution problems. This, in turn, has only affected the quality of life but threatened the very existence of mankind. Due to this we have lost thousands of species of animals, birds and plants and some more are under constant threat of extinction. These changes upset the ecological laws, thereby shaking the balance of human life.

The big question for introspection therefore is whether we have proved ourselves to be worthy of the gifts of nature or not? Time and again we are playing with nature and exploiting it to our advantages and the result is that we are destroying the ecology and polluting the environment.

‘Man is both creator and moulders of his environment, which gives him physical sustenance and affords him the opportunity of intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet ,a stage has been reached when through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale.’ Thus ,the natural environment, i.e. air, water, land trees, plants, animals, micro-organisms, rivers, lakes, mountains, etc., is adversely affected by man-made environment-by scientific and technological advancements through various inventions and discoveries. Industries-particularly development of chemical industries in the field of atomic energy, concrete jungles, excessive use of fossil fuel and rise in quality and standard of life resulting in exponential growth of population has badly affected the natural environment. Now, ‘a point has been reached in history when we must shape our actions throughout the world with more prudent care for their environmental consequences’. Through ignorance and indifference we can do massive and irreversible harm to the earthly environment on which our life and well-being depend....To defend and improve the human environment for present and future generations an

imperative goal for mankind has to be set up- a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of world-wide economic and social development. After a long awaited research, it has been found that there is a need of a sustainable hazardous waste management committee or commission. For this different countries have formed different organization to look after the different waste management problem as gradually the wastage problems were increasing day by day. It was cautioned by the Brundtland Commission that 'Earth is one but the world is not. We all depend on one biosphere for sustaining our lives. Yet each community, each country, strives for survival and prosperity with little regard for its impact on others. Some consume the Earth's resources at a rate that would leave little for future generations. Others, many more in number, consume far too little and live with the prospect of hunger, squalor, disease and earthly death'.² Thus, the concept of 'Sustainable Development' was mooted by the U.N. World Commission on Development and Environment (1987), which means 'development that means meets the needs of the present without compromising the ability of future generations to meet their own needs'. Therefore, the goal of economic and social development must be in terms of sustainability of a country.

On the other hand, the unbridled use of scientific and technological advancements has given mankind a free hand in exploiting the natural resources without having regard to ecological considerations. This overexploitation, in turn has resulted in eco-imbalances and environmental degradation. Further, advanced industrialization has given rise to myriad forms of environmental pollution and health hazard activities. Industrialization with urbanization has given birth to uncontrolled deforestation, problem of insanitation, waste disposal, housing potable water, air pollution, acid rain. It has also resulted in the 'greenhouse' effect and ozone depletion. This all cumulatively affected nature, the animal kingdom and human beings equally.³

There are numerous cases of negligence by human being which leads to ravage of biodiversity in that specific area. **Bhopal gas tragedy happened in 1984, India** is one of them. At that time, it was called one of the worst industrial accidents in history of world. It was caused by the escape of dangerous gas methyl isocyanate from an insecticide plant by negligence of the workers of the company (plant) that was owned by the Indian subsidiary of the American firm Union Carbide

² Our Common Future, (1987) 27.

³ See T.N. Godavaraman Thirumalpad (through K.M. Chinnappa) v. Union of India, (2002) 10 SCC 606 at p. 613.

Corporation.⁴ This disaster caused a heavy loss to mankind as thousand and thousand people were there who lost their lives which were estimated to be between 15,000 and 20,000. Some half a million survivors suffered respiratory problems, eye irritation or blindness, and other maladies resulting from exposure to the toxic gas. Soil and water contamination in the area was blamed for chronic health problems and high instances of birth defects in the area's inhabitants. Investigations later established that substandard operating and safety procedures at the understaffed plant had led to the catastrophe. However, many were awarded compensation of a few hundred dollars only. Another case of failure of waste management is **Love Canal Incident of USA (1978)**, where residents of that locality were evacuated. The problem arose due to disposal of 22,000 barrels of toxic waste. The US government spent more than \$ 30 million in its clean-up operation.⁵ In addition to these another case is of **The Seveso Incident in North Italy (1976)** where contaminated debris (dioxin), contained in steel drums, were disposed of innocuously with barrels of vinegar in a pickle factory and it played havoc later on. Coming to few famous cases of hazardous nuclear waste, the very first one is the **Chernobyl accident 1986**. It was the result of flawed soviet reactor design that was operated with inadequately trained personnel. The accident destroyed the Chernobyl 4 reactor, many workmen and firemen were killed within three months due to injuries. Acute radiation syndrome (ARS) was also diagnosed in 237 people on-site and involved with the clean-up and it was later confirmed in 134 cases. Out of this, 28 died as a result of ARS and 19 more subsequently between 1987 and 2004. Furthermore, large areas of countries like Belarus, Russia, Ukraine and some other neighboring countries were contaminated in varying degrees. However it led to major changes in safety culture and in industry cooperation. In addition to it, another one is the recent case of the **Fukushima Daiichi nuclear disaster, Japan (2011)** which is the largest nuclear disaster since 1986 Chernobyl disaster. Though there have been no fatalities recorded in it but several hydrogen-air chemical explosions occurred which causes the release of radioactive material. This case revives the debate of global liability towards the

⁴ <http://www.britannica.com/event/Bhopal-disaster>. (visited on 22july,2016: 04:00 pm).

⁵ Verhovek, Sam How (August 5, 1988). "After 10 Years, the Trauma of Love Canal Continues". New York Times. Retrieved 27july 2016.

hazardous Wastes Management. Many countries in response to it delayed their nuclear power plant programs.

Lawsuits not only against Governments but against companies have increasingly been seen as a way to press for action against climate change over the last decade. There are multiple cases filed in the court against different companies such as Exxon Valdez oil spill in 1989 in Alaska and Deepwater Horizon oil spill of 2010. From the judgment of these cases, we can see that with time Court is taking really hard stance and is intolerable on these kinds of acts of negligence. **The Exxon Valdez oil spill** occurred in Alaska, on March 24, 1989, when Exxon Valdez, an oil tanker bound struck Prince William Sound's Blight Reef and spilled 11 to 38 million US gallons (260,000 to 900,000 bbl; 42,000 to 144,000 m³) of crude oil over the next few days.⁶ This disaster resulted in International Maritime Organization introducing comprehensive marine pollution prevention rules called as MARPOL. In the case of Baker v. Exxon⁷, an Anchorage jury awarded \$287 million for actual damages and \$5 billion for punitive damages. However the punitive damages were further reduced to an amount of \$507.5 million. It is always not about compensation or punishment. The thing is, after all these efforts man keeps on troubling the ecology like we see in the recent case of **Deep horizon oil spill(2010)**. The oil spill area hosts 8,332 species, including more than 1,270 fish, 604 polychaetes, 218 birds, 1,456 mollusks, 1,503 crustaceans, 4 sea turtles and 29 marine mammals.⁸ In this case also US judges approve \$20 billion settlement for BP oil spill. It is the largest environmental settlement in history and the payment will have to be made out over 16 years. The settlement, first announced in July, includes \$5.5 billion in civil Clean Water Act penalties and billions more to cover environmental damage and other claims by the five Gulf States and local governments. The Deepwater Horizon incident generated considerable interest in offshore drilling safety and related issues. In 2011, the Secretary of the Department of the Interior (DOI) redefined the responsibilities previously performed by the Minerals Management Service (MMS) and reassigned the functions of the offshore energy program among three separate

⁶ Elizabeth Bluemink (Thursday, June 10, 2010). "Size of Exxon spill remains disputed". *Anchorage Daily News*. <http://www.adn.com/2010/06/05/1309722/size-of-exxon-spill-remains-disputed.html>. visited on 27 July 2016.

⁷ 554 U.S. 471 (List of United States Supreme Court cases, volume 554) 128 S.Ct. 2605, 171 L.Ed.2d 570

⁸ Biello, David (9 June 2010). "The BP Spill's Growing Toll on the Sea Life of the Gulf". *Yale Environment 360*. Yale School of Forestry & Environmental Studies. Visited on 27 July 2016.

organizations: the Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE), and the Office of Natural Resources Revenue (ONRR).⁹

Looking to the multitudinous and menacing adverse effects of toxic wastes, a number of measures have been adopted at regional, national and international levels from time to time. The Stockhome Declaration (1972) on Human Environment also raised its voice concerning the rapid acceleration of Science and Technology. The World Commission on Environment and Development, in its report entitled *Our Future* (1987), has mentioned industrial wastes and toxic substances as one of the major ‘major challenges’ the world is facing today.¹⁰ It has proposed various institutional and legal changes to be adopted at national and international levels.

Accordingly, many world governments have adopted various measures to contain the menacing threat of industrial wastes and toxic substances including administrative regulatory and legal measures. The United States passed the Solid Waste Disposal Act in 1960, the Resource Conservation and Recovery Act in 1976 and the Super Fund Act in 1980 to deal with Solid Waste problems. To control and regulate the menace of toxic substances the federal government passed the Toxic Substances Control Act in 1977, the Pesticides Control Act in 1972, the Nuclear Waste Policy Act in 1982 and the Ocean Dumping Act in 1972 and many other laws.

Similarly, the United Kingdom passed a comprehensive code called the Control of Pollution Act of 1974 which provides various regulatory and control measures relating to wastes disposal. It also provides regulatory and control measures relating to wastes disposal. It also provides various regulatory and prohibitive measures to control the hazardous effects of pesticides, the Radioactive Substance Act of 1960, the Nuclear Installations Act of 1965 and the Radiological Protection Act of 1970 provide measures for the safe disposal of nuclear waste.

The liberalization and globalization of the economy makes it imperative that we increase our vigil to ensure that industrial growth is not at the cost of the environment. Natural resources need to be protected and nurtured. Ancient civilizations self-destruct themselves when they over-exploited their resource base. So, we must ensure that we follow path of sustainable development. If anyone harms the environment then it’s our duty to go to court to address these situations. “There are

⁹ <https://www.fas.org/sgp/crs/misc/R42942.pdf> (visited on 28th july,2016,06:00 pm).

¹⁰ Chapter 8 of “Our Common Future” (1987).

moments in history when only courts can address overwhelming problems. In the past it has been issues like discrimination with the nature. Compensation is being increased day by day but the need is to punish the culprits. Climate change is our overwhelming problem and courts are doing their part in addressing these issues. Global challenge is to move beyond the mantras and to re-establish relations with the imperceptible disasters. We together need to train our eyes on the practices, ethics, and politics that promise protection of our green earth.

INVASIVE SPECIES AND ITS LEGAL DIMENSION

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Introduction

An invasive species is a plant, fungus, or animal native species that is not found in a specific place. It tends to spread to a degree which is suspected of causing damage to the environment, the economy of human or human health. The introduction of invasive species naturally created complex challenges that threaten both biological riches of the earth and the wellbeing of its citizens.

Preventing the international movement of invasive alien species and coordinating the rapid and effective response to invasions will require cooperation and collaboration among governments, economic sectors, non-governmental organizations, international organizations and treaties. Continuing globalization, increasing from increased trade, travel and transport of goods across borders brought huge benefits for many people. It has, however, facilitated the spread of invasive species at present which has increasingly negative species.

To prevent the introduction of many such species, agreements and international guidelines have been formulated. These steps by the government or non-governmental organization focus on minimizing the continued growth of invasive species, introduction of new species and prevent past invasive species affect ecology, economy, and human life. This led to a large investment by the State for the protection of exotic species.

In India, the wild growth of invasive alien plants: such as *Senna spectabilis* (calceolaria shower), *Lantana*, *Eupatorium* and *Parthenium* pose a threat to native fauna and flora in the forest areas of the Nilgiri Biosphere Reserve, including the Wayanad Wildlife Sanctuary in the important habitat of Asiatic elephants in the country.

Invasive alien species (IAS) are species that are initially transported through human actions outside their natural range across ecological barriers, and then survive, reproduce and spread and have negative impacts on the ecology of their new location as well as serious economic and social consequences.

Invasive Species and its Effects

Invasive species are a major threat to our environment because they (1) can alter habitats and alter the function of ecosystems and ecosystem services, (2) oust or replace native species, and (3) damage human activities, costing millions of dollars economy. Invasive species are able to cause extinctions of native plants and animals, biodiversity, reduction of indigenous organizations to compete with limited resources, and habitat modification. This can cause huge economic impact and significant disruption of coastal ecosystems and the surrounding water bodies.

Invasive species can include plants, animals and other organisms, such as microbes. They are found in every type of habitat on Earth, including human trafficking houses. The number of invasive species in the past decades has increased due to the rapid growth of transportation in the world. New technologies have made it easier for humans to travel the world; they have also made it easier for invasive species to move in the world. Some invasive species are transplanted into a new environment by accident; such as species get into the boat and travel across the ocean unnoticed. Other invasive species are transplanted by humans who travel to different places and want to bring something home from their travels, or plant, flowers or shrubs because they like the way they look. No matter how an invasive species gets to its new environment, it is likely a direct result of human action.

In Brazil, for example, South African love-grass pasture has destroyed the value of 10 percent of southern grazing lands and severely damaged the beef industry in the region. Annual losses are \$ 30 million calculated annually. The Ministry of Agriculture of the United States believes that the spurge plague costs ranchers in North Dakota, South Dakota, Montana and Wyoming over \$ 144 million annually in losses. The arrival of the cactus moth in Mexico could threaten an annual industry \$ 80 million based on a cactus, which is an important source of food for humans and livestock. Invasive species threaten the biodiversity by causing diseases, acting as predators or parasites, acting as competitors, habitat modification, or hybridize with local species.

Case study on Invasive Species

Kudzu

Also known as the "mile-a-minute vine" and "The Vine that ate the South," the kudzu vine is native to Japan, but was brought to the United States in 1876 when it was presented at the

Philadelphia Centennial exposure as a rustic vine to rapid growth that could help prevent soil erosion. Since its introduction, Kudzu has been spreading across the United States at such a rapid pace that 150,000 acres each year, mostly due to the fact that its single vine can grow up to a foot a day in good conditions.

The Black Rat

The black rat is most likely one of the first invasive species to ever be distributed inadvertently by humans. Species native to tropical Asia, but is believed to have reached Europe by the first century AD, before spreading around the world hitchhiking mass on European ships. Since then, the black rat has flourished in almost all regions of the world, and exceptionally well suited to rural environments, urban and suburban similar. Unfortunately, his success as a species, in combination with the success of many other species of rats, is believed to have been at the expense of dramatic population declines and even extinction of countless birds, reptiles and other species small vertebrates worldwide.

The Asian Tiger Mosquito

This animal tiger mosquito is characterized by its distinctive black and white striped pattern, and if it is native to tropical and subtropical regions of Southeast Asia, scientists believe it has quickly become one of the species most widely distributed across the world, spread in at least 28 countries outside its natural range in the last two decades. There is a distinct threat to populations in the world, not only because it carries viruses such as dengue and West Nile, but it tends to associate because closely with humans, and is known to feed 24 hours a day.

The Burmese Python

The Burmese Python provides the perfect example of what can happen when a large predatory species is introduced into an environment where native wildlife has little to no competition for resources. The huge snake, which can grow over 20 feet long, are native to tropical and subtropical regions of Southeast Asia, where they are just as at home hanging out in and around the water as they slither around are the treetops. Their accidental introduction in the wild in Florida, however, have shown that species do particularly well in the semi-aquatic environment of the Everglades National Park, where an estimated 30,000 Burmese pythons have made a habit of feasting on a variety of birds and alligators in the process of disappearance.

Legal Instrument on Invasive Species

1. Convention on Biological Diversity (CBD)

The Convention on Biological Diversity (CBD) which is ratified by more than 170 States currently is the only legally binding instrument that deals with the introduction of exotic species and in general, the control and eradication in all biological taxa and ecosystems. Parties are required, as part of a series of in situ conservation and to the extent possible and where appropriate, "To prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species."

CBD and its members recognize that there is an urgent need to address the impact of invasive alien species. CBD states that "Each Contracting Party shall, wherever possible and appropriate, prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species." The Convention sets out detailed provision regarding the priorities, guidelines, collection of information and helps coordinate international action on invasive alien species. The CBD has adopted guidelines on the prevention, introduction and mitigation of impacts of alien species that threaten ecosystems, habitats or species.

2. The International Union for Conservation of Nature (IUCN) 2000

The World Conservation Union was founded in 1948 and brings together 77 States, 112 government agencies, 735 NGOs, 35 affiliates, and some 10,000 scientists and experts from 181 countries of clubs in a unique worldwide partnership.

The mission of IUCN is to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable. Within the framework of global conventions, IUCN has, in more than 75 countries, helped prepare and implement conservation strategies and national biodiversity. IUCN has approximately 1,000 employees, most of those who are located in its 42 regional and country offices while 100 work at its headquarters in Gland, Switzerland.

3. Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 1979)

Under the Bonn Convention, Parties are required to prevent, reduce and control the factors that endanger migratory species, including "strictly controlling the introduction, or controlling or eliminating already introduced exotic species."

The agreements under the Convention for Appendix II species should also include strict controls on the introduction and control of alien species already introduced harmful to

migratory species. This provision has been developed in the Agreement on the Conservation of African-Eurasian Migratory Water birds (The Hague, 1995). The deliberate introduction of water species of non-native birds in the environment is prohibited, and all must take appropriate measures to prevent the unintentional release of such species if this would be detrimental to the conservation status of animals and flora. When species of non-native water birds have already been implemented, appropriate measures must be taken to prevent these species from becoming a potential threat to native species.

The binding action plan annexed to the Agreement obliges Parties to prohibit harmful exotic plant and animal introductions for listed species of birds, take precautions to prevent the accidental escape of non-native birds in captivity, and take measures to that already introduced species do not pose a potential hazard to listed species.

4. Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar, 1971)

The Ramsar Convention was the first of MEAs related to biodiversity and is the only one that deals with wetlands. Over three decades, Ramsar has evolved from an agreement quite closely focused on waterfowl habitat to an organization that actively contributes to the sustainable development planning related to wetlands in general, and established working relationships with other major international organizations working in the field of wetland conservation. Ramsar remains, however, a Convention that emphasizes instead on action based policies.

According to the preamble to the Ramsar Convention, the sustainable use of wetlands, their "wise use" in the context of the Ramsar Convention including the management of threats to biodiversity and ecological integrity of wetlands. Invasive species are an increase of the growing threat to the existence of wetlands that we know, and what follows is a review of how to deal with this threat under the policy of the Convention on Wetlands.

5. European Commission

Invasive alien species are animals and plants that are accidentally or deliberately introduced into a natural environment where they are not normally found with serious negative consequences for their new environment. They represent a major threat to native plants and animals in Europe, causing damage of several billion Euros to the European economy each year.

The 1143/2014 Regulation on invasive alien species by the European Commission entered into force on 1 January 2015. This Regulation aims to solve the problem of invasive alien species globally to protect biodiversity and native ecosystems and to minimize and mitigate human health or economic impacts that these species may have. The Regulation provides three types of interventions; prevention, early detection and rapid eradication and management.

In addition, advice on scientific issues related to the implementation of the Regulation is provided by a Scientific Forum with representatives from the scientific community appointed by the Member States.

REGIONAL

Association of Southeast Asian Nations (ASEAN)

6. Agreement on the Conservation of Nature and Natural Resources, 1985

Although the Agreement has been in existence for almost 20 years, this ASEAN Agreement is not yet in force. This is unfortunate because the Agreement contains obligations relating to alien species generally with many other cross-border cooperation obligations that could be applied to movements of alien species. The ASEAN Agreement has a general duty to regulate or prohibit the introduction of alien species in the context of the conservation of marine species and freshwater genetic diversity. The introduction of alien species is specifically prohibited in protected areas. There is a general requirement for prior assessment of the consequences of any activities that could significantly affect the natural environment nationally and in other clubs in the country. The Parties have a general obligation to take no action that could significantly affect the environment or the natural resources of other clubs in the country, the habitat of wildlife in particular. Prior notification of actions is likely to have a significant impact beyond national borders and notification of emergency situations is necessary and there is also a general duty to cooperate in monitoring activities.

In other regions, more than a dozen conservation General provisions relating to agreements with alien species are in place in Africa, Central America, Europe, the Middle East, and South.

Conclusion

Exotic species are animals, invasive plants or other organisms introduced by man in places outside the natural distribution range, where they become established and disperse, generating a negative impact on the local ecosystem and the species.

They represent the second most important cause of species extinction around the world after the destruction of habitat, and the islands. The impacts of invasive species are usually immense, insidious and irreversible. They cause significant damage to the ecology, economy and health. In fact, they might compete with native species, act as pests or pathogens for cultivated or domesticated species or even disseminate allergic or infectious agents.

The spread of invasive species is facilitated by increased trade, travel and transport of goods, these organizations can "hitchhike" on ships, containers, cars, land, etc. This is, therefore, a global problem which requires international cooperation and action.

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Case Commentary

Kedar Nath Yadav v. State of West Bengal

Precedent for New Land Acquisition Law.

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In India, land acquisition process, governed under Land Acquisition Act, 1894, has always been projected as an expiatory process for the purpose of development of the nation. But in most of the cases, it actually exploits the land losers in the name of public purpose with its grim proceedings. What else can be expected from a British Era law, not decades but centuries old, prevalent till now? Though, after replacing this act with The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013¹ the situation has changed but its effectiveness is yet to be measured. Here still exist a small class of aggrieved individuals/groups whose land had been taken under the 1894 land acquisition law and one such case was the Tata Nano plant in Singur, whose much-awaited verdict has been given recently by the prestigious Supreme Court². In this case, the appellant stands against the 2008 decision of Calcutta High Court, regarding the validity of Singur Land acquisition. In order to understand the case, a brief summary of facts is stated.

On May 2006, Tata Motors announced Nano car plant at Singur, Hooghly District in West Bengal and after the acquisition of whooping land (997 acres) on January 21, 2007, Tata Motors started construction of Nano car plant, despite widespread opposition. Questions were raised before the court regarding the validity of the acquisition. On January 18, 2008, Calcutta High Court upheld Singur land acquisition, subsequent to which affected locals and NGO moved the Supreme Court challenging the HC order. The protests by affected locals were supported by Trinamool Congress,

¹ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, No. 30 of 2013, available at <http://indiacode.nic.in/acts-in-pdf/302013.pdf>, last seen on 07/08/2016.

² Kedar Nath Yadav v. State of West Bengal, available at http://supremecourtindia.nic.in/FileServer/2016-08-31_1472646846.pdf, last seen on 07/09/2016.

headed by Mamta Banerjee, who even sat on indefinite dharna, outside the plant. On September 2, 2008, Tata Motors suspended work on Nano Plant at Singur and decided to move out of Singur to Sanand in Gujrat, stating that ‘We cannot run a plant with police protection’³. Later, in May 2011, when Mamata Banerjee was sworn in as Chief Minister of West Bengal, announced in the First Cabinet meeting to give back 400 acres of land to unwilling Singur farmers. And for the purpose of taking the land back from the company, passed the Singur Land Rehabilitation and Development Bill, 2011. On June 22, 2011, Tata Motors moved to Calcutta High Court challenging the validity of Bill. On September 28, 2011, Calcutta High Court single bench upheld the validity of the Bill but on an appeal by Tata Motors, it was struck down by a division bench of the same court. All the complexities were finally solved by the Supreme Court, when on 31st August 2016, SC gave the final verdict in favor of the appellants; scraping land acquisition and slamming the procedure adopted for such.

A Bench of Justices V. Gopala Gowda and Arun Mishra, calling the project ‘illegal and proceeded ahead with violation of law’ and its proceedings as ‘farce’, agreed in their separate judgments, to quash the acquisition process of the land and re-distribute it among the landowners within 12 weeks.

This is indeed a remarkable pronouncement. One reason being that under 2013 Act, land could be returned only if the process of acquisition was incomplete in some form (vis-à-vis the non-payment of compensation or the victims’ physical dispossession from the land). But here, seeing the inhumane proceeding at that time under sec 5A of 1894 Act, the right to have objections heard, the court has directed the company to give back the land to the farmers and it has been assured by the Chief Minister Mamata Banerjee that the process of giving back the land will be completed in stipulated time period⁴.

³M. Dam, *We cannot run a plant with police protection: Tata*, The Hindu, (04/10/2008), available at <http://www.thehindu.com/todays-paper/article1351291.ece>, last seen on 07/09/2016.

⁴ I. A. Dutt, *Singur land will be given within stipulated time: Mamata Banerjee*, Business Standard,(02/09/2016), available at http://www.business-standard.com/article/economy-policy/singur-land-will-be-given-within-stipulated-time-mamata-banerjee-116090100815_1.html, last seen on 08/09/2016.

Other reason, they also asked the farmers, who got compensation from the government, to not return it because they were deprived of their livelihood for the past 10 years. This puts forth the importance of livelihood over compensation, which got blurred over the past years. Justice Gowda has held that “the inquiry, as contemplated under Section 11 of the Land Acquisition (1894) Act, is a quasi-judicial exercise of power on the part of the Collector in awarding just and reasonable compensation to the landowners/cultivators. That has not been done in the instant case”.

Also, seeing the gravity of past unfair proceedings, Supreme Court has even told that the senior lawyers who had appeared for the company cannot argue that since the farmers have accepted the compensation, they cannot challenge the acquisition. The judges referred this case under different footing as there were several important issues seeking answers.

Unfortunately, the bench could not decide in unison the purpose of acquiring the act as Justice Gowda held that acquisition of land cannot be said for public purpose but Justice Mishra held that the acquisition was ultimately for the public purpose. Though the judges couldn't agree on this but they still arrived at the same point that the acquisition was 'legally mala Fide'.

The Supreme Court verdict brings clarity for the purpose of land acquisition. It was debated earlier whether large employment can be treated as a public purpose or not when the government is acquiring land for an entity and for a project which would have a profit motive. The apex court order endorses that large scale employment cannot be a public purpose even though the judges differed with each other on the point.⁵

Not only with the issues specific to this case, the highest court has tried to remove the veil over many common existing problems, widening the scope of 2013 Act and acting as a deterrent effect, making it clear for the companies as well as governments that if proper procedure is not followed, according to law, and general public is made to suffer, the court will intervene for the sake of justice and equity.

⁵ B. Chatterjee, *Good Time for Land Acquisition Reforms*, The Hans India, (05/09/2016), available at <http://www.thehansindia.com/posts/index/News-Analysis/2016-09-05/Good-time-for-land-acquisition-reforms/252324>, last seen on 08/09/2016.

The value of this judgement as precedent rises as the language of the judgement emphasized the fairness of proceedings along with the adequate compensation and it is a landmark judgement with the far-reaching effects, that none has reached yet, after the 2013 Act.