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Cell : 9595 359 435, Ph No: 02172372010 Email: ayisrj@yahoo.in Website: www.isrj.net**



## “Law Related To Management Of Natural Resources And The Determination Of Its Environment”

**Vishawas Chouhan**

Govt. State Level PG Law College, Bhopal

### **Abstract:**

*With the help of my article I am discovering hypothesis about the law related to management of natural resources and present environment law & critical analysis of its environment effect.*

### **KEYWORDS:**

Law , Natural Resources , Environment , Statutes.

### **INTRODUCTION**

It is my belief that is root of origin of “Law” or origin of “Statutes” in world the main reason was the management of natural resources. On this basis it is necessary to add a new branch – Environment School of Jurisprudence in the branches of Jurisprudence.

I also believe that statutes related to management of natural resources would have been better than all the statutes at the world which control & regulate only human behavior & activities related to it. If the management of natural resources was made the basis of codification of statutes then it would have by it self removed all inequalities, disagreements like poverty, feudalism, crimes etc. of the world & the environment of the world would have been “Sujalam Sheetlam, Malayaz. Sheetlam Shasya Shasyamalam” (a Sanskrit shilokatha that mean pure, reproducing nice fruits & Cool the defaults of human behavior would have ended by itself & have strengthened the feeling of “Vasudev Kutumbakm” But even if today man improves his mistakes, the may save the distruction of the world.

“Law or Statute” in the wolrd have originated from natural resources, about this with following reason I am presenting the explanation. In beginning the earth was a ball of fire. Slowly it cooled, After this, water came on earth & as the result of environmental changes “men” came into existence. Nature from the beginning had made justice & even before origin of human being, as natural justice there were natural resources to fulfill basic human needs like fruits & mean to fulfill hunger & water to fulfill thirst & caves for shelter.

In beginning the human necessities were limited & unlimited natural resources were present to fulfill human needs. But slowly the human population increased & the natural resources became insufficient to fulfill human necessities.

Consequently huts replaced caves, tribes were formed & then village, towns, cities, metropolitan cities & nations were made which is now the world.

After the minute analysis of the above analysis of above resolution its gets clear that human civilization from the beginning was moving towards development. At that time, due to increase in population & due to lack of basis natural resources in a particular area, a competitive atmosphere araised.

This competition was for caves & food. For this competition this gets clear that even at that stage the concept of ownership & possession were developing & in this competition the stronger dispassed the weaker & weaker made organization & dispassed stronger from their food & shelter. Consequently for the

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first time injustice came into existence. Man who gave birth to injustice himself by came the victims of injustice & while moving towards legal society from pre-legal society, for end of injustice the concepts of justice into existence.

The needs of tribes adopted the policy of contract for distribution of natural resources. In this way “Law” came into origin. There it gets clear that due to disbalance & mismanagement of natural resources injustice was born & later for its management, justice & management came into existence.

Salamond has said – “From the process of life those element develop from which legal system is created. These sources can be given the name the elementary source of law”

On this basis the present jurisprudence can not be completely rejected by may of it is theories can be nullified. As in present jurisprudence completely wrong concepts are given about origin of jurisprudence & at the same time there is a very big mistake is definitions of law. And both these concepts ignore the rage of management of natural resources.

While developing theories about the origin of law, the present jurisprudence forgets the civilization of whole earth & the theories includes only Rome, Germany & Italy, etc. On basis of this theory the origin of law was considered to be diving. Till today this mistake is repeated.

After the minute analysis of many texts. I have included that it is not only that the present jurisprudence is full of mistakes but also gives birth many problems in whole world. Therefore in whole jurisprudence no jurist of only of the school explains that “New” the jurisprudence was born but explains what is law ? and this is also not correct. Therefore in it also the management of natural resources is ignored & Whole jurisprudence was divide into five parts viz. Natural school, analytical school, historical school, Sociological school & realist school. Add jurists of these school bases the basic concepts of law on the second stage of human conduct instead of natural resources and misguided the whole world & Confused & Wandered the world.

For example – The natural school of jurisprudence should have totally said about the management of natural resources but the followers of this school accepted origin of law to be divine & defined law as science of just & unjust & removed the attention of world from the truth & wandered towards “ideal”. The jurists of green period. Romap period, Darkage Medieval period & 20th century expressed the same view. Therefore Friedman in his book “Legal theory in 5th edition page 95 written that –

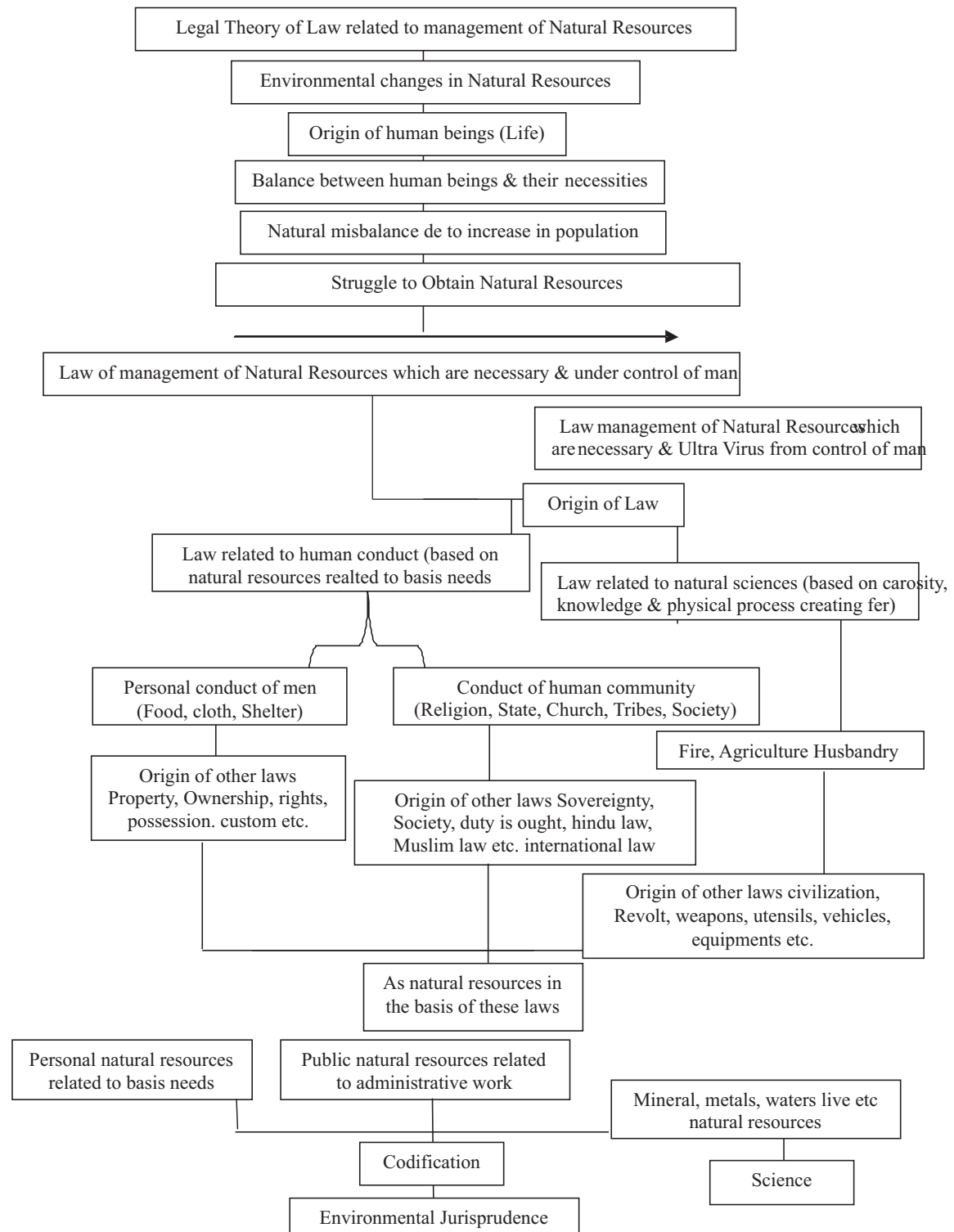
“The history of natural law is actually the tale of discovery of pure injustice & its failure.” And after his, as the response of this school, the analytical school came into existence & it is jurist developed the theories relate to human conduct like utilism, command of sovereign, pure theory of law, is ought etc. & misguided the world. They did not tell how the law was born. After it the jurists of sociological school has completely forgotten the main source of natural resources & developed misguiding theories like social solidatory social engineering. And realist told the law & judge made law & gave birth to a new dispute.

Though the jurist of historical school had not given a new theory but had tried to give a complete history about how law has reached to its present position form the beginning.

All the above schools have refused the physical laws based on the natural resources & other scientific laws like laws of gravitations, rules of speed of light, biology & botany etc. as regarded them in correct laws & neglected them and also failed to explain that what is the practical from of right or wrong in the context of law about what was the command of sovereign what was the sources of people's vokgeist & the interest in reference to which the social engineering was needed etc.

But actually what is the origin & what is law ? About this no answer of any of the branches can give satisfactory anwer. Thereofre it fee it is necessary to develop a new branch jurisprudence i.e. “Environmental jurisprudence” or the Environmental branch of jurisprudence & with the help of the article I have presented the law about management of natural resources or the legal theory of management of natural resources, which is a as following-

The last point of above hypothesis is codification & after coming to the point the men have made the biggest mistake & that mistake is the matter of all problems of the world. That mistake as that while coming to position of codification of law the men forget the importance of management of natural resource & codified the law keeping in mind only the laws regulating human conduct but forget the fact that what was the effect of disbalance of natural resources on human conduct. How much this conduct depend natural resources? or what will be the distribution system based on use of natural resources by men ? or



How is its growth, development & purification possible to remove disbalance of natural resources

?

Instead of gong through these question the conducts of social & personal life on men were regulated & codified.

Now it is necessary to go through point that why codification was need. For this we will have to again look at the development of all the systems of the world. Actually on the basis of historical school of presence jurisprudence & specially according to Sir Henry Maine whole the world condiere that law is divine in it is origin & converted it to command of sovereign. Later the vested of religious preachers of kings like saint, priests, mauivees etc. The religious leader challenged the power of kings. The important things is that the natural resources has created the status of power & later the struggle take place between states. Therefore at interference in state based on the possession of natural resource & two separate powers came in existence which did contract or agreement (contract or agreement based on management if management of public & natural resources ). But power of lost their path. One exploited citizens (the poor section – which did not have natural resources whose life was based on state) & other exploited atheists. Consequently revolt take place against both these powers. Revolution took place. This was the reasons for all the revolutions in Europe & all the wars in Asia i.e. the management of natural resources. And instead of Mismanagement of natural resources, the laws of that time were considered as reason for such laws & commotion. There the Jurists said to remove short comings of these laws (Which were related to human conduct) & to add good features in them & which was taken into account. But the main reason for the disease which was the management of natural resources was forgotten. Therefore till today neither the disease i.e. the mismanagement of disbalance is treated nor the symptoms i.e. the neutral conduct of human beings.

This is the reason why the world is facing the problems originated from rich, poor, caste, religion, language, crimes, populations etc. On the other side the mismanagement & disbalance of natural resources has originated the danger of pollution & distruction of the world.

If the law related to management of natural resources had been enacted are codified then in the world, not only human conduct but environment would have been regulated & balanced. But Jurists had forgotten this fact. It is other consequence was that Penal Code was written so that in whole world human being gets then a single injury. But one earthquake came & killed lakhs of people and law came to help. Natural calamities destroyed so much property to that laws related to property become a matter of lake. And when this period of epidemic diseases came the doctors were unable to cape with it. Another example I will give is that now in Madhya Pradesh drought is in its primary stage, but from now the rate of crime is increasing in drought affected area.

Above reasons not only confirm the close relationship between natural resources & human conduct but als tell that if for the development of civilization if the management natural resources & It is use was regulated instead of regulation of human conduct then today, the world have a different picture. No one world have been rich or poor no invest & diseases would have been eradicated.

Even though the jurisprudence of present laws has forgotten natural resources & though they have been ignored but the truth is that even at present all the main laws & hypothesis of the world are based on management of natural resources. And I have no hesitation in saying this from this platform of national level that existence of all justice legal hypothesis concerns like – international law, world's economy, human rights social justice & laws related to pollution control in based on management of natural resources. To make my this though strong I would like to give following reasons –

#### Effect of Management of Natural Resources on International Law of World's Order-

From the origin of concept of International Law to the International activities of all courtries till today, all are mainly connected to natural resources either apparently on non-apparently.

International Merchantile law has come into existence from the ancient trade system which was based upon way & production based on natural resources. And in the same sequence when powerful & rich countries saw natural resources of weaker & poor countries, then coloniel kingdoms were originated which took away natural resources & feeded their industrial resolution.

Later, the world got divided in two divisions – U.S.S.R. & U.S.A at the same times colonies also got freedom. But after division of U.S.S.R., whole international law is concentrated on “trade” i.e. o natural resources & production made by it & the market for production, Laws related to got, Dukle Proposal, Damping patent have come into existence. And for the distribution of natural resources the robbery based on globalization has been started. Therefore now the natural resources of Europe are unable to lead their industrial revolution. Therefore they looking at natural resources of other countries. Therefore I believe that if this industrial revolution does not get natural resources then it will die & if its production does not get market, then it will dies. Therefore whole the world is affected by management of natural resources.

#### **Social Justice – New Concepts of Human Rights are also affected by management of Natural Resource –**



As management of natural resources & its use, benefits & distribution with human rights of whole world, in India also the concept social justice has been strengthened & both matters social justice & human rights jointly came forward in India in following cases & the basis of these was the management of natural resources. Like –

- 1-Rural litigation Entitlement V/s State of Uttar Pradesh AIR 1987 Sec. 242 C
- 2-M.C. Mehta Vs Union of India AIR 1987 Sec 765
- 3-M.C. Mehta vs Union of India AIR 1987 Sec 463
- 4-Sacchidanand Pandey Vs State of West Bengal AIR 1987

In above main cases the environment was connected to social justice & the court pointed out towards short comes of laws related management of natural resources.

On the basis of above description it gets clear that though men ignored the role of management of natural resources in formations of law but it is still present in all the laws.

Modern Laws Related to Management of Natural Resources & their Effect –

In the Second part of my article I will expose present environment laws which say about management of natural resources & these so called laws on whose basis it is claimed that they do correct management of natural resources & will give reasons by which bare truth about environment effect of these law will come forward.

Main laws –

- Factory Act, 1948
- Pesticides Act, 1968
- Mines Act 1952
- Section 20, 218, 41, 68, 68 (1) 70, 90, 111 (a) of Motor Vehicle Act, 1939
- Water pollution prevention & Control Act 1981
- Forest Act 1923
- Wild Life Protection Act, 1986
- Section 290 of India Penal Code, 1860
- Section 133 of code of Criminal Procedure
- Laws of Torts
- Wildlife Protection Act, 1980
- Articles 39, 40 (a), 51 (a)
- Animal Trespass Act, 1871

The impartial valuation of all the above laws will be done by future only but there is no doubt that the present environmental laws have failed to achieve their objects.

**Because all the above laws are based on following: demerits:-**

**MAIN DEMERITS OF PRESENT ENVIRONMENT LAWS –**

- 1-Static nature of Environment law system
- 2-Non developing nature
- 3-Formality
- 4-Shortcomings related to Codification

**EXPLANATION**

**! Stagnant Nature –**

After studying of above laws it gets clear that there is rigidity in these laws & it is not possible to make rules for each complex environmental problems.

Many disputes & circumstances were found which can not be pre-imagined. In such circumstances these laws are insufficient. Fixed rules restrain judicial conscience & spread stagnancy in judicial system.

For example of though there are many laws to control environmental pollution but article 39, 48 (a), 51 (a) of constitution are unable to legally bind any citizen.

In the same way each factory owner is violating section 2 of Factory Act, 1968 in which directions related to

sanitation in factories are given. This is the reason by the legal control failed against pollution.

#### **NON DEVELOPING NATURE –**

The second fault in Environment law is its static character i.e. human society is developing & it is evident from new kind of pollution. With time the laws related to pollution should also change. But generally it is found that laws remains static & non-developing & therefore old rules are retained & there is delay in formation of new rules & unable legislative bodies are the reason or un developing laws.

This is the reason why public opinion is more backward to law of environment management & for more backward is legal system.

Like for offence under section 70 of Animal Trespass Act, 1871 there is still the punishment only 50 paise. There are many such examples, like in 1968 pesticides Act was passed in 1968 but many of its provisions were enforced in 1972 & 1972. But from the studies made on death of 200 peacocks it is clear that at present Environment Protection Act 1986 there is no rule related to pesticides & therefore old laws are useless.

Thus we may conclude that in present acts the methods for control of environmental pollution are old & the new types of pollution have originated in completion for development.

#### **FORMALITY**

One more fault of environmental legal system is the their judgement the judges have to adopt fixed rules only & consequently more legal formality is adopted & due to these complications, many time the offender escapes from the hands of law with this the judges who inquire cases related environment have lack of technical knowledge & experience. Like in sending polluted water for test in laboratories there is waste of time & with this there are other possibilities also.

#### **Shortcoming related to Codification –**

Environment Protection Act 1986 is incomplete in many ways. Therefore different provisions are made for the different kinds of pollution but reason for all kinds of pollutions is only some elements like chemical, dust, gases etc & therefore instead of controlling pollution the laws controlling these elements should be made. They should be certified by the process of summary trail instead of useless formalities therefore extra extensiveness of law wanders it from its main object.

#### **Effect: All Laws Remained Ineffective:**

All the laws enforced about pollution did not help much in management of natural resources & prevention of pollution. Its effect is that in whole world, each year 50,000 species of plants & animals are getting extinct. 1 crore, 70 lakhs hectare is cut each year which is equal to total area of Saudi Arabia. About 50 Lakhs tones of waste material is reaching seas each year. Each year 802 Million tones of Carbon-dioxide is released in air each year. And most dangerous situation is that worlds population is increasing by 10 crores each year. The developing countries like India are affected more by the pollution Environmental pollution is increasing. Therefore the law related to natural resources is ineffective & Water, air, sound & land pollution, radioactivity, deforestation & destruction of animals is increasing due to acts of human beings.

The construction of big dams adversely affects pollution & whose consequences comes forward as earthquake & social justice is also affected which is the main object of constitution.

Due to hole in ozone layer the problems of destruction of civilization at sea shore is near. Many diseases due to pollution like tention are adversely affected health of men. All the above facts are nothing but story of failure of environmental laws & management of natural resources.

But despite the demerits if these laws a honesty enforced then the dram of pollution free nation & world may come true.

#### **ROLE OF JUDICIARY IN PREVENTION OF POLLUTION;-**

There are various judgements given in different cases which area against pollution & have developed new concepts of social justice in management of natural resources & public interest at the time when laws related to pollution failed. These cases are following:-



- 1-Case of Ratlam Municipal Corporation. AIR 1980 SC 1622
- 2-Rural litigation & Entitlement Vs state of U.P. AIR 1985 SC 852
- 3-M.C. Mehta Vs Unions of India AIR 1988 SC 1037
- 4-Damodar Rao Vs Municipal corporation AIR 1988
- 5-M.C. Mehta vs Union of India (Ganga Pollution Case) AIR 1987
- 6-Union Carbide Vs Union of India AIR 1970 SC 248
- 7-Uttar Pradesh Pollution Control Board Vs Modi Distillery AIR 1988 SC 1128
- 8-Taran Bharat Sangh, Alwar Vs Union of India AIR 1992, SC 514
- 9-Case of Fertilizer Corporation, AIR 1981 SC 344

In all above cases what honorable judges of Supreme Court of India said in their judgment can be summarized as that citizenship have right to live in healthy environment, ecological, system should not be unbalanced & air, water & land should be protected because right of pollution free environmental protects like, health & ecology.

#### **SOLUTION**

From above description in gets clear that there close relationship between management of natural resources & human beings. Since beginning life of human beings has been attached to natural resources. Since beginning men used forest, mountains, rivers, oceans, sun, moon air, water etc. For wood, food, cloths & shelter men used natural resources. But due to this reason environmental problems increased in whole worlds & laws failed therefore the management of natural resources was not done as efficiently as needed Therefore it is necessary to take some strong measures which are follows:-

#### **The Doctrine of Check & Balance:-**

It is true that development can not be imagined without the use of natural resources but the misuse of natural resources is the reason for natural disbalance. Therefore the management of natural resources should be such which on one side control pollution & on other side establish balance with environment.

For example if dams has to be made, then instead on making one big dam many small water sources can be developed.

If wood be needed, then in same number of forestation should be done. The process of minning should be made scientific etc.

#### **ESTABLISHMENT OF ENVIRONMENT COURTS:-**

Courts have very important role in stoping the misconsequences of democracy because if a person commits offences with the arrest of the society get commenced about peace & an violation of personal rights a person gets satisfied after hearing in the court even if the legal process is delayed. But the problem of pollution is such that as much solution will be delayed the environment will face losses. Therefore this problems should be separated from long process of general corts & like consumer forum & human rights courts, separate environmental courts should be established in whole India in which the environmentalists should be appointed as judges.

Environmental laws should contain hard punishment for offences related to Environment

The convicts is environmental changes should get very hard punishment so that the elements of fear is development during committed environment offence.

Other Solutions:-

The cases of public interest related to environment should be promoted & the failure of executor & legislature should be exposed.

It is necessary to develop dams & lakes, aforestation & do effective control on increase of population in the context of environment.

The future management of environmental resources should be done to protect ecological systems. Illegal mining, use of polythene, over use or pesticides, deforestation etc should be stopped strictly.

Parliament should make law to give binding effect to articles 38, 43 (20 & 47 of constitution & the supreme court should it take out from the cover of it is basis structure so that their extensive uses can be made.

## CONCLUSION

At last only this can be said that the human concern for environment started from Stockhome conference 1972 has been increased by Earth's summit of 1992 & Cietel's conference of world Trade Organization of December 1977.

Therefore it is our duty to leave a clean & pollution free environment for our future generations read about our present in history & they should not read that “Our forefathers were selfish, cheaters, Lazy & careless when had left us dangerous pollution in legacy”

\*\*This article is dedicated as my respectable grandfather Lt. Justice Mahavir Singh (Former Justice of High Court of Allahabad) in whose guidance I was inspired towards study of Law\*\*

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