The Framework of Environmental Laws in India

Environmental laws are an instrument for the control or regulation of the acquisition, use, and distribution of the natural resources of a country. In an economy of abundance -- where there are vast amounts of resources but little use for them -- socially legitimised means or legal control are not necessary, but as the resources become scarce, the law can become a potent instrument in the hands of the State to regulate the use of resources. Economic abundance of resources usually permits common access usually in a non-cash economy; this is often governed by customary rules which facilitate not only a sustained-yield use of resources but also equitable need-based distribution and management by the people. State intervention in these customary rules through laws are, hence, invariably attempts to alter the following:

- o access to the resources, by either privatising common property or deprivatising group property,
- o yield of resources by production based-exploitation and not a generation-based use, and
- o by redefining the 'need' criterion for use of resources, 'need' begins to be legally defined not in terms of what the local community needs but in terms of 'public purpose' or 'national needs'[2].

Environment-related legislations in India clearly reveal these facts of State interventions. Precolonial intervention limited itself to proclaiming the power of eminent domain over the region and to special hunting rights for the kings in the forests. It respected the traditional customary rights of the local people. The post-colonial regime, which overlaps with the Industrial Revolution, brought about a totally new phase in environmental legislation. The period from 1867 to 1927 marks a major phase in the colonial struggle for legal control over resources. The abolition of the traditional rights and customary rules governing forests began in the very first draft of the Forest Act of 1865, it culminated with the total control of the State over the forest resources as outlined in the Indian Forest Act, 1927, despite numerous local protests and counter struggles. These protests brought compromises at the State level, but basically there is a uniformity in the application of the forest laws in India[3]. Together with the forest laws came the Indian Land Acquisition Act, 1894, and other laws concerning mines, ores, and water resources. The change in political governance at the time of Independence, and the new Indian Constitution, did not bring about any radical changes in these natural resources' laws. India has continued with these colonial legislations. The laws that served the purposes of the colonial government have continued to serve the same or similar purposes for the independent government. The main features of these laws are the proclamation of the power of eminent domain of the State over the resources, privatisation as State monopoly, and evaluation or implementation in terms of revenue generation. The application of these principles through the laws is uniform for the plains as well as for the mountains, especially where central acts which apply to the whole of India, such as the Land Acquisition Act, 1894,[4] are concerned.

Classical or neo-classical economists may argue that privatisation of common resources is an inevitable consequence of the industrial development process. Such economic theorists usually

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2 For a more detailed statement of the legal crisis in relation to environmental issues see, Chhatrapati Singh, "Environment and the Law" (Monograph). Indira Gandhi Centre for Human Ecology, University of Rajasthan, Jaipur, Feb. 1988.

3 A general historical account and the struggles in the Kumaon areas are documented in Ramchandra Guha's: "Forestry in Pre-British India", *Economic and Political Weekly* Vol. XVIII, No. 44, 45 and 46 (1983).

4 For a more detailed discussion see: Chhatrapati Singh: Emerging Principles of Environmental Laws for Development", in J. Bandyopadhyay, N.D. Jayal, U. Schoettli, and Chhatrapati Singh (Eds). *India's Environment: Crises and Response*. Natraj Publications, Dehradun. 1985.

measure development in terms of production and consumption. They leave out completely the issue of benefit sharing in privatisation, as well as who, from the point of view of equity, ought to be benefitting from the exploitation of the resources. Moreover, such economic theories fail to truly represent reality because they do not grasp the relation between equity and production - how inequities, for example, can lead to the retardation of management systems, the implementation of unintended policies, and, consequently, the retardation of economic growth. Whereas more than 80 per cent of resources were common at the beginning of this century, barely 20 per cent remain so now because of laws passed as a consequence of the application of such economic policies. Some estimates would put this down to even 10 per cent. Even this greatly reduced amount of common property is not as freely available now as it used to be. There are numerous administrative rules and ordinances regulating their use. The benefits from common natural resources, whether in the hills or plains, have been almost wholly usurped by industrial, mercantile, and urban-rich base. The resources, as natural wealth, assets, or capital, which were until a century ago more widely distributed and freely available to people for their basic needs, such as housing, fuel, fodder, and food, have become monetised by a cash economy, and the gains from this cash economy go mostly to the property-owning class. The non-property owning class in India, it must be remembered, includes not only the vast majority of landless agricultural labourers, nomads, and artisans, but also tribals who constitute about 7 per cent of India's population (about 40 million); more than the total population of many countries. As a result of the environmental legislations in this century and the last, this vast section of the Indian population has been deprived of the resources that nature freely and bountifully provided for them. It is the same people whose labour is now being further exploited in the official environmental regeneration programmes such as the social forestry scheme.[5]

The first major consequence of environmental legislation, therefore, is that the source of livelihood upon of the non-property owning class, or of those having access to it marginally, is totally cut off. The second major consequence is that these classes are then forced to migrate and depend for their livelihood upon, those who have usurped the common resources. They migrate to the industrial, urban, or richer agricultural centres to sustain themselves in the cash economy. This is true for both the plains and the mountain regions.

It will be important to briefly review the significance of some environment-related legislations and the development of laws concerning the environment through the courts in independent India, besides those carried over from the colonial period. Environmental protection, in so far as land, trees, and water are concerned, is a more recent legislative concern; barely a decade old. The Forest Conservation Act, which applies to the whole of India, and which now restricts the use of any forest land for non-forestry purposes, was passed in 1980. The central protection of wildlife, through the Wildlife (Protection) Act, 1972, however, pre-dates the protection of forests. All other central environmental legislations, such as the Water (Prevention and Control of Pollution) Act, 1974, and the Environment Protection Act, 1986, concern control of water and air pollution. These protection laws, it must be noted, do not concern the former acquisition and utilisation laws such as the Indian Forest Act, 1927, and the Land Acquisition Act, 1894, which are still operative. Other Central and State legislations which are pertinent in the context of environment, especially land and water laws, did not arise from a sense of ecological concern. They arose in a totally different historical and ideological context -- the context of socialism and nationalism -- for purposes such as the redistribution of land, especially to the landless and marginal farmers, abolition of *zamindari*, consolidation of fragmented landholdings, and reclaimation of wastelands or uncultivated agricultural land for public use. To achieve these ends, numerous urban and rural land ceiling, land development, land reforms, and *zamindari* abolition laws were enacted throughout the 1950s and the 1960s. Since these laws do not have environmental concerns built into them, their provisions are now in conflict with the objectives of environmental regeneration or protection schemes.

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[5] For a detailed critique see, Chhatrapati Singh: *Common Property and Common Poverty*. Delhi: Oxford University Press, 1986.

Along with these resources' protection, acquisition, and utilisation laws, there are also laws pertaining to the agencies or organisations that protect, acquire, or utilise these resources. Such laws too are of immediate environmental interest, since the management of the resources cannot occur without the agencies. Among such laws are the *Panchayat* Acts of all States and the Municipal Acts of the urban areas.

For a comprehensive account of environmental legislation, especially with reference to the laws generated by the courts, one must also take into account the relevant provisions of the Indian Penal Code and the Criminal Procedure Code, especially those concerning nuisance and negligence. Most of the pre-independence environmental cases came under these provisions of the codes. These provisions are still applicable all over India. In the post-independence era, they have seldom been used, either by the courts or by the people. What has been used, in the courts, instead, is the constitutional law. Herein lies a very important aspect of understanding both environmental legislation and State- formation in India. During the last decade, the courts, particularly the Supreme Court, have engineered a dramatically different type of environmental law in India; one that is different both in principle and in application from the government-made environmental laws. The statutes appeal to principles of criminal liability and administrative enforcement of standards whereas the courts, by interpretation of the Constitution, especially Article 21 -- the right to life, have created people's rights against the State and have developed principles of tortuous liability instead of criminal liability.[6] They have have not made use of any of the protective environmental legislations enacted by the State. It is important to note that many of the environmentally significant social actions in the mountains, such as stopping ecologically destructive mining or the construction of dams, have found their expression in litigations at the Supreme Court; stopping production by 50 odd mines in the Mussoorie and Dehradun hills in U.P., through Supreme Court orders, and checking the construction of the Tehri Dam on the Bhagirathi River are cases in point. The public interest litigations sustained by the courts throughout the last decade have opened up a new modality for people's action, often against the State, but sometimes to make new demands on the State's resources. The *Umed Ram* case from Himachal[7], in which the people demanded the construction of roads to their village and the Supreme Court granted it against the H.P. Government's will, is a case that illustrates the point. Whether this is ecologically the best alternative is a matter for analysis; the important point to note here is that, with the evolution of a different kind of environmental jurisprudence by the courts, the likelihood of court-aided environmental protection is as significant in India now as the statutory efforts by the Government. The possibility of court action has serious implications for social action; and this includes in the mountain regions. Already, many non-government organisations and voluntary agencies have either filed petitions in the courts or are in the process of doing so. These include efforts to stop mining, reclaim resources for the local people, protect natural forests, and demand alternative technologies, especially in hydroelectricity and irrigation projects[8].

The development of two different types of enviromental laws in India, one by the Government and the other by the courts, raises serious questions for the understanding of the nature of the Indian State and the ecological crisis. For the purposes of this paper, it is sufficient to take into account the basic motivational factors which have brought about this difference. For the Government, the ecological issue is one of conflicting industrial and land use policy and for the courts it is essentially one of benefit-sharing and the protection of people's rights. Through environmental legislations, the

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6 Some important aspects of this type of litigation are documented in S.K. Agarwala. *Public Interest Litigation, A Critique*. New Delhi: Indian Law Institute Publication, 1985.

7 *State of Himachal Pradesh*. v. *Umed Ram Sharma*. (1986 [1] Scale 182).

8 The *Rural Entitlement Litigation Kendra*. v. *State of U.P.*, Case (A.I.R. 1985. S.C. 652.), at the Supreme Court succeeded in stopping 50 odd mines in the Doon Valley; the case against the Tehri Dam in already pending in the same court; the petition against the Narmada dam has been filed in the Gujarat High Court. There are numerous other such cases pending. For a detailed study of the legal issues of dam construction see: Chhatrapati Singh and P.K. Chaudhary: *Dams and the Law*. New Delhi: Indian Law Institute Publication. 1988.

Government has opted for the status quo of the development process and protection of its industrial policies, whereas the courts have opted for equity, without giving much thought to alternative development processes or needs.

Let us turn now to see what bearing this larger context of environmental law has for the mountain regions and what specific issues require more serious attention in different ecological and political situations.