



COURSE OUTLINE

**COURSE NAME:
ENVIRONMENTAL LAW**

**SEMESTER – VIII
COURSE: B.A. LL.B./ B.B.A. LL.B.
January 20xx to April 20xx**

Course Instructor:

**Ms. Nikita Pattajoshi
Assistant Professor (Law)
National Law University,
Odisha**

INTRODUCTION

Environment is an inseparable surrounding in which life (human, animal, plant, etc) flourish. Environmental law as a distinct area of study comprises of statutes, treaties, conventions, regulations and policies, which seeks to protect natural environment that are often impacted by human activities. However, it becomes imperative to understand environmental law as a discipline distinct from law of natural resources (like water law, law on mines and minerals, energy laws etc.), while appreciating the overlap between the two disciplines.

The scope of study under environmental law is to assess whether law been able to protect the environment from immeasurable damage, overuse and exploitation, in the face of economic demands and development. This brings one to the idea of environmental governance at a municipal level, since much of issues pertaining to environmental laws in India are those of environmental governance.

Environmental law, however, cannot be read in isolation and needs to be understood in light of development of a body of International Environmental Law (IEL). IEL is interdisciplinary, intersecting and overlapping with numerous other areas of research, including economics, political science, ecology, human rights and navigation/admiralty. Therefore, the study of environmental law needs to take into account a holistic picture of various factors affecting environmental laws, their implementation and adjudication of disputes arising therefrom.

COURSE OBJECTIVES

The objective of the course is to provide a basic level understanding of the legislative framework of environmental regulation, its implementation and adjudication. The objectives can be further put forth as follows:

- 1) To enable students to identify core environmental issues and legal and institutional responses to them.
- 2) To analyze the role of judiciary in environmental protection.
- 3) To introduce the basic concepts and principles of environmental law and to analyze these principles as tools of environmental protection, where the laws and policies fall short.
- 4) To understand development of environmental law in an international perspective, specifically developed and developing countries perspective.

TEACHING METHODOLOGY

Classroom session will be based on active learning. Lectures and case method would be used. Students are expected to be familiar with use of electronic journals and other research databases.

LEARNING OUTCOMES:

The course gives students the opportunity to grapple with contemporary legal debates in environment law. Therefore, the learning outcomes of this course can be encapsulated as follows:

- 1) The primary learning outcome is to sensitize the students towards human activities that adversely affect the environment and the need for regulation of such activities.
- 2) Students will develop a thorough understanding of practice and procedure followed by various environmental law enforcing agencies/bodies.
- 3) Students will be able to pursue environmental litigation before the National Green Tribunal and assist the Tribunal as a researcher or in any other capacity.
- 4) Students will be able to assist industries and projects in obtaining environmental clearance and compliances with other environmental laws.

LECTURE PLAN

MODULE I – Development of Environmental Laws and Policies in India

This module primarily focuses on the evolution of environmental laws in India from the pre-colonial period till the current times and the way it has been influenced by similar developments in the international level. Also, the module will cover certain rudimentary principles of environmental law developed at an international level, but that have made its way into domestic environmental jurisprudence.

- Concept of 'environment' and understanding scope of environmental law.
- Two approaches towards environmental protection- 'Eco-centric approach' and 'Anthropocentric' approach.
- International Environmental Law ("IEL") making and role of International institutions and Non-State Actors.

- General principles developed by international legal system - Precautionary principle; Polluter pays principle; Sustainable development; Public trust doctrine; Inter and Intra Generational Equity.
- Impact of IEL on environmental law in India.
- Significance of Environmental Protection in Five Year Plans.
- Relevant Constitutional provisions: 42nd Amendment to the Constitution; Article 48A and 51A(g); Distribution of Legislative Powers.
- Development of the 'Right to Environment' as a Fundamental Right and challenges.
- Recognition of 'Right of Environment' in the Indian context.

[Allotted hours: 10 hours]

List of cases (Indicative): Manoj Mishra v. Union of India (NGT, 2013); Md. Salim v. State of Uttarakhand [2017 SCCOnline Utt 367]; Lalit Miglani v. State of Uttarakhand (2017); T.N. Godavarman v. Union of India [(2012) 3 SCC 277]; T. Damodar Rao v. Special Officer, Municipal Corporation of Hyderabad [AIR 1987 AP 171]; Subhash Kumar v. State of Bihar [(1991) 1 SCC 598]; Rural Litigation and Entitlement Kendra v. State of U.P [(1985) 2 SCC 431]

MODULE II - Judicial remedies and the role of National Green Tribunal

This module will deal with the various types of judicial remedies available in the Indian legal system against activities adversely impacting the environment. The module will also cover the role of the National Green Tribunal in strengthening the implementation of various environmental laws in the country.

- Civil Remedies i.e. Tortious remedy and Class Action
- Criminal Law Remedies under relevant provisions of Indian Penal Code, 1860 and Criminal Procedure Code, 1973
- Constitutional Law Remedies i.e. Writ Jurisdiction & Public Interest Litigation
- Statutory Remedies i.e. Remedies under Public Liability Insurance Act 1991, National Environment Tribunal Act, 1995, National Green Tribunal Act, 2010
- Law and practice of the National Green Tribunal

- Climate Change Litigation

[Allotted hours: 14 hours]

List of cases (Indicative): *State of Madhya Pradesh v. Centre for Environment Protection Research and Development* [2020 SCC OnLine SC 687]; *Riddhima Pandey v. Union of India* [NGT, Jan. 15, 2019]; *Wilfred J v. Ministry of Environment and Forest* [NGT, Sept. 2, 2016]; *Vellore Citizen's Welfare Forum v. Union of India* [AIR 1996 SC 2715]; *Union Carbide Corporation v. Union of India* [(1989) 1 SCC 674]; *Charan Lal Sahu v. Union of India* [AIR 1990 SC 1480]; *M.C. Mehta v. Union of India, (Oleum Gas leakage Case)* [1987 SCR (1) 819]; *Ratlam Municipality v. Vardhichand* [AIR 1980 SC 1622].

MODULE III – Statutory framework for Prevention of Environmental, Air and Water Pollution

This module will deal with the statutory framework on protection of environment and prevention of pollution, thereof in India. However this module will be limited to air and water pollution. Further, the module will also cover the impact of these legislations on industries and developmental activities and compliances available for these projects. Lastly, the module will briefly deal with the management and handling of various types of wastes; both hazardous and non-hazardous.

- Water (Prevention and Control of Pollution) Act 1974 [Framework of the Act, Criminal Liability and Judicial relief under the Act, Constitutional Challenges of Restraining Orders under Section 33]
- The Air (Prevention and Control of Pollution) Act 1981 [Framework of the Act, Criminal Liability and Judicial relief under the Act, Noise Pollution]
- Environment (Protection) Act, 1986 [Framework of the Act, Enforcement mechanisms and Role of Pollution Control Boards, Environment Impact Assessment, Coastal zone regulations Notifications]
- Law on Waste Management and Handling
- Procedural environmental rights under various environmental laws
 - Right to Information
 - Right to public consultation

- Right of access to justice

List of cases (Indicative): *Arjun Gopal v. Union of India* [(2017) 1 SCC 412]; *Arjun Gopal v. Union of India* [AIR 2018 SC 5731]; *Sreeranganathan v. Union of India* [CDJ 2014 NGT 70]; *Sterlite Industries (I) Ltd. v. Tamil Nadu Pollution Control Board* (2020); *Sterlite Industries (I) Ltd. v. Union of India and Ors.* [(2013) 4 SCC 575]; *Andhra Pradesh Pollution Control Board v. MV Nayudu* [AIR 1999 SC 812]; *Almitra Patel v. Union of India* [(1998) 2 SCC 416]; *M.C Mehta v. Union of India (Kanpur Tanneries Case)* [AIR 1988 SC 1037]; *M.C Mehta v. Union of India (Ganga Pollution Case)*[AIR 1988 SC 1115]; *Indian Council for Enviro-Legal Action v. Union of India (Bichhri Case- I)*[(1996) 3 SCC 212]; *Indian Council for Enviro-Legal Action v. Union of India (Bichhri Case- II)*[(2011) 8 SCC 161]; *M.C. Mehta v. Kamal Nath* [AIR 2000 SC 1997]; *Goa Foundation v. Konkan Railway Corporation* [AIR 1992 Bom 471]; *Narmada Bachao Andolan* [AIR 2000 SC 3751]; *S. Jagannath v. Union of India* [(1997) 2 SCC 87]

[Allotted hours: 14 hours]

Module IV - Statutory framework governing Forest, Wildlife and Biodiversity

This module will deal with the statutory framework governing forests, wildlife and biodiversity in India. The module will specifically deal with the rights and duties of the indigenous and tribal people in conservation of forest and the way they are safeguarded by means of environmental legislations.

- Statutory Framework on Forest Preservation [The Indian Forest Act, 1927; Forest (Conservation) Act, 1980; National Forest Policy, 1988; The Scheduled Tribe and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006]
- Compensatory Afforestation Fund Management and Planning Authority Act (CAMPA),
- Statutory Framework on Wildlife & Biodiversity Protection [The Wildlife (Protection) Act, 1972; Implementation and gaps and Judicial Perspective; Biological Diversity Act, 2002]

List of cases (Indicative): *Wildlife First & Ors. v. Ministry of Forest and Environments & Ors.* [2019 SCC Online SC 238]; *Animal Welfare Board of India v A.Nagaraja & Ors* [(2014) 7 SCC 547]; *G. R. Simon v. Union of India* [AIR 1997 Del 301]; *Pradeep Krishen v. Union of India* [(1996) 8 SCC 599]; *T.N. Godavaran Thirumalkpad v. Union of India* [(1997) 2 SCC

267]; *Tarun Bharat Sangh, Alwar v. Union of India* [AIR 1992 SC514]; *Animal and Environment Legal Defence Fund v. Union of India* [1997 (2) SCALE 493]; *Samatha v. State of Andhra Pradesh*

[Allotted hours: 10 hours]

Module V – International Law response to protection of Global Commons and Dispute Resolution mechanism

This module will introduce the concept of ‘global commons’ and ‘tragedy of commons’ and deal with the international law response to protection of atmosphere as a global commons. It will then cover the host of international instruments on major environmental issues at global level i.e. ozone depletion and climate change. The module will then deal with enforcement and dispute settlement under international environmental law, with special focus on the human rights approach to environment. Lastly, the module will cover the point of intersection between international trade and environment and how it is dealt with under the WTO regime.

- Leading international legal instruments on Sustainable Environment [Stockholm Declaration, Earth Summit: Rio Declaration, Agenda 21, Johannesburg Declaration]
- The international response to climate change; Background of the UNFCCC; international climate change negotiations; Importance of Nationally Determined Contributions (NDCs); Loss and Damage mechanism; Climate change law and policy at municipal level – comparative perspective.
- Operative provisions of important international law instruments – Common but Differentiated Responsibility (CDR), Technology transfer, Clean Development Mechanism (CDM) and Joint Emission Trading (JET).
- Enforcement and Dispute Settlement under International Law [Role of International Court of Justice, International Arbitral Tribunals, Development of Human Rights approach to environment, enforcement of climate justice before international Courts]
- International Trade and Environment [WTO Jurisprudence on trade and Environment, The Convention on International Trade in Endangered Species of Wild Fauna and Flora]

List of cases (Indicative): *Trail Smelter Arbitration* [Arbitral Tribunal, 3 U.N. Rep. Int'l Arb. Awards 1905 (1941)]; *Lake Lanoux Arbitration* (Arbitral Tribunal, 12 Arbitral Tribunal, 3 U.N. Rep. Int'l Arb. Awards 281 (1957)]; *Case Concerning Pulp Mill on River Uruguay* [2006 ICJ Rep. 113]; *Case Concerning Gabcikovo- Nagymaros Project* [1997 ICJ Rep. 7]; *US Shrimp Turtle Case I* [WT/DS58/AB/R (1998)]; *US Shrimp Turtle Case II* [WT/DS58/RW (2001)]; *Metalclad v. Mexico* [ICSID Arbitral Tribunal, 2000]; *Jugheli and Ors. v. Georgia* [2017 ECHR 660].

[Allotted hours: 12 hours]

LIST OF REFERENCES

- Shyam Divan & Armin Rosencranz, *Environmental Law & Policy in India* (2nded, Oxford University Press, 2014)
- P. Leelakrishnan, *Environmental law in India* (4th ed, LexisNexis, 2016)
- Lavanya Rajamani and Shibani Ghosh, *Indian Environmental Law: Key Concepts and Principles* (Orient Blackswan, 2019)
- Gitanjali Nain Gill, *Environmental Justice in India: The National Green Tribunal* (Routledge, 2017)
- Patricia Birnie, Alan Boyle and Catherine Redgwell, *International Law and the Environment* (3rd ed., Oxford University Press, 2009)
- Philippe Sands, *Principles of International Environmental Law* (2nd ed, Cambridge University Press, 2003)

Besides, students are expected to go through the articles provided in the reading material and the statutes, treaties/conventions and Protocols mentioned in the course outline.
