

ENVIRONMENTAL PROTECTION VIS-À-VIS AN ECOLOGICALLY BALANCED AND HEALTHY ENVIRONMENT FOR FUTURE GENERATIONS: AN INDIAN EXEMPLAR OF GREEN INDIA

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ABSTRACT

The excessive passion for industrialization, urbanization, modernization and technological advancements has become manifest at the peril of the environment which has led to the over-exploitation of the environment with its attending consequences on disturbing the ecological balance and natural resources, the problems of deforestation, soil degradation, generation of large number of chemicals and potential toxic wastes, pollution of air, water pollution, acid rain, mining and quarrying, ozone layer depletion, problems of ground water management and city sewerage system, pollution of marine ecosystems, the continuing loss and degradation of biodiversity and climate change seriously aggravating the problem.

Keywords: Environment, Agreement, Constitution, Right to life, Supreme Court.

INTRODUCTION

Environment is derived from the French word Environner, which means to encircle or surround. India is a part of several bilateral and plurilateral arrangements on climate research, energy and technology including the European Union (EU), the United States (USA) and the United Kingdom (UK). India also participates in various forums of the G20 and the Major Economies Forum that seeks to resolve political differences to stimulate the climate negotiations.

INTERNATIONAL RECOGNITION

Internationally speaking, thence the *Stockholm Declaration*, the right to a healthy environment was recognised by almost all the UN member nations in their constitutions, environmental legislations, court decisions, or ratification of the international agreements. Environmental rights also form the part and parcel of the fundamental right to life under Article 21 of the constitution of India. The excessive passion for industrialization, urbanization, modernization and technological advancements with rapid growth of population has become manifest at the peril of the environment which has led to the over-exploitation of the environment with its attending consequences on disturbing the ecological balance and natural resources, the problems of deforestation, soil degradation, generation of large number of

chemicals and potential toxic wastes, pollution of air, water pollution, acid rain, mining and quarrying, ozone layer depletion, problems of ground water management and city sewerage system, pollution of marine ecosystems, the continuing loss and degradation of biodiversity and climate change seriously aggravating the problem. The major regional International agreements and safeguards on Environmental Protection which recognize the basic environmental rights of citizens and the relationship between the fundamental rights of citizens and the corresponding environmental protection include mainly the Convention on Environmental Impact Assessment in Trans boundary Context, 1991, the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment 1993, the Convention on Access to Information, Public Participation in Decision-making and Access to Justice on Environmental Matters (Aarhus Convention), 1998, etc.

CONSTITUTIONAL OBLIGATIONS OF INDIA

The Constitutional recognition of environmental protection was also followed by a number of important legislations and the first specific environment related statute was the Wildlife (Protection) Act, 1972. Water (Prevention and Control of Pollution) Act, 1974 was also among the first environment specific enactments in the country to protect and control the quality of water along with the Forest (Conservation) Act, 1980 to prevent diversion of forest land, the Air (Prevention and Control and Pollution) Act, 1984 to restrict and control air pollution and the Environment (Protection) Act, 1986. The laws which provide the guidelines for effective management and protection of the environment include the directives in Part IV of the Constitution and fundamental duties in Part IV A of the Constitution under Articles 48A, Article 51-A. Articles 246, 252 and 253 of the Constitution read with List III, Entries 17A and 17 B also recognise the legal regime of the environmental protection broadly. The handling of toxic insecticides and pesticides is regulated by laws like the Insecticide Act, 1968; the Drugs and Cosmetics Act, 1940. The Indian courts have left pro-active impact on the courts in South Asian countries like Bangladesh, Nepal, Sri Lanka and Pakistan. Public interest litigations are also becoming popular because of judicial activism in African countries like Kenya and Uganda for protecting environmental rights of the present generation, but equally of future generations, thus, enforcing the principles of inter-generational equity and sustainable development.

PUBLIC INTEREST LITIGATIONS AND JUDICIAL ACTIVISM IN INDIA

The important leading cases related to public interest litigation for environmental protection in India happen to be;

In **CHHETRIYA PARDUSHAN MUKTI SANGHARSH SAMITI V. STATE OF UP**, the Supreme Court declared 'We must protect society from so called protectors'. Here the petitioner had misled the court in the guise of protecting the public interest by way of alleging Jhunjunwala Oil Mills Ltd. for causing environmental degradation by the operation of some industrial units.

In RURAL LITIGATION AND ENTITLEMENT KENDRA V. STATE OF U.P. (DOON VALLEY CASE), the court observed, *“We are oblivious of the fact that natural resources have got to be tapped for the purposes of the social development but one cannot forget at the same time that tapping of resources have to be done with the requisite attention and care so that ecology and environment may not be affected in any serious way, the court observed”*.

In **MC MEHTA v. UNION OF INDIA**, (Kanpur Tanneries Case) it was held that the polluting tanneries located at the banks of the river Ganga were alleged to be polluting the river. The court issued directions to the tanneries to set up effluent treatment plants (ETP'S) within six months from the date of the order or otherwise close the businesses.

In **M. C. MEHTA V. UNION OF INDIA (THE SHRIRAM GAS LEAK CASE)**, culminated in the establishing of one of the most important principles known as, *“The Principle of Absolute Liability”* propounded by Justice P.N Bhagwati to compensate victims of pollution caused by inherently dangerous industries and the wrongdoer was required to compensate the victims whether he was at fault or not.

In **VELLORE CITIZENS WELFARE FORUM V. UOI**, it was held that the precautionary principle and the polluter pays principle are an integral part of the environmental law of the country, linking them with the fundamental right to life in Indian constitutional law.

In **M.C.MEHTA V. KAMAL NATH**, the Supreme Court enunciated the *“Doctrine of Public Trust”* to further justify and perhaps extract the State initiative to protect and conserve the natural resources and held that the state, *“as a trustee of all natural resources, was under a legal duty to protect them, and that the resources were meant for public use and could not be transferred to private ownership”*. Those natural resources such as air, sea, waters and the forests have such a great importance to the people as a whole that by leasing ecologically fragile land to the Span Motel management, the State Government had committed a serious breach of public trust.

In **STATE OF HIMACHAL PRADESH V. GANESH WOOD PRODUCTS**, the Supreme Court recognized the principle of inter-generational equity and sustainable development once again and also imposed a total ban on forest-based industries and sawing operations within the prohibited areas of reserved forests.

In **CHARAN LAL SAHU V. UNION OF INDIA**, the link between environmental quality and the right to life was addressed by the Supreme Court observing that it is the duty of the State to protect the rights of its citizens and where the citizens are not in a position to secure their rights the State must protect and fight for the rights of its citizens. That, in the

context of our national dimensions of human rights, right to life, liberty, pollution free air and water is guaranteed by the Constitution under provisions like 21, 48-A, and 51-A (g).

In **SUBHASH KUMAR V. STATE OF BIHAR**, the Court observed that ‘right to life guaranteed by Article 21 corresponds to the right of enjoyment of pollution-free water and air for full enjoyment of life’. The court recognised the right to a wholesome environment as a part of the fundamental right to life and observed that an affected person or a person genuinely interested in the protection of the society can have recourse to Article 32 to file the petition and the governmental agencies could no longer rest content with unimplemented measures for the abatement and prevention of pollution. The Court held that, to deprive a person of his right to livelihood and you shall deprive him of his life and any person, who is deprived of his right to livelihood, can challenge the deprivation as offending the right to life enshrined under Article 21. The Kerala High court held that smoking in public places causes positive nuisance. “There is no reason to compel non-smokers to be helpless victims of the air pollution and its adverse effects”.

CONCLUSION

The existing environment related laws in India do have provisions which can be invoked for prevention of damage to the environment but unfortunately resort is not being made to provisions like sections 133 and 144 of Cr.P.C as it should be. Environmental pollution has become a major issue over the years and one of the biggest problems the world faces. Environmental pollution is a menace. These, environmental laws provide the tenable legal measures for effective preservation and protection of the environment. India launched its National Climate Change Action Plan in 2008 and brought its existing framework on environmental protection and proposed efforts at decarbonisation under eight national missions including the solar energy, the enhanced energy efficiency, the sustainable habitats, water, the Himalayan ecosystem, green India, sustainable agriculture; and the inevitable strategic knowledge for climate change aimed at adapting to climate change, as well as in launching its economy on a path that would progressively result in reduction of harmful gases through avoidable emissions. The linkage of human rights approaches to environment for the conservation and protection of the environment and a various number of environmental institutions have come in the existence in the SAARC bloc, which perform the task of formulating environmental policies evidenced by the monitoring of the negative environmental changes.

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