

Environmental Protection: Constitutional and Legal Provisions

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Abstract: The environment protection needs immediate attention worldwide. A good environment helps all-round development of one's personality and a bad environment inhibits its development. It has been realised that the protection and improvement of the human environment is a major issue affecting not only the living men and animals but also non-living. It is the duty of all Governments and urgent need for the people of the whole world that protection and improvement of environment problem should be given proper attention. The gravity of seriousness relating to the problem of environment is evident from the fact that in all the advanced countries scientists, economist, policy makers and administrators have given serious thought to environmental problems. The United Nations Conference on Environment and Development having met at Rio de Janeiro from 3 to 14th June, 1992 reaffirmed the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16th June, 1972 and sought to build upon it, with the object of establishing a new and equitable global partnership through the creation of new level of co-operation among nation states, key sectors of societies and people, working towards international agreements which respect the interest of all and protect the integrity of the global environmental and developmental system, recognizing the interdependent nature of the Earth, our home. The Government of India participated in the Stockholm Conference and strongly voiced the environmental concerns.

Keywords: Environment, pollution, environmental degradation, global warming, climate change, constitution, treaties, convention, protocols, public interest litigation (PIL) and surroundings.

INTRODUCTION

Literally, the expression 'environment' connotes surroundings. The natural environment includes complete ecological units that function as natural systems without massive intervention, including all vegetation, animals, microorganisms, soil, rocks, atmosphere and natural phenomena that occur within their boundaries. The environment contains air, water, food and sunlight etc. Environment affects all the living creatures including the plants and trees [1]. A number of necessities of life are fulfilled rather derived from the environment. Right from mother's womb, one needs unpolluted air to breath, uncontaminated water to drink, nutritious food to eat and hygienic condition to live in. These elements are Sine Qua non for sound development of human personality. Man in order to survive, adapts itself to its environment but he rarely pays due attention for its improvement, either because of his indifference towards it or because of his lack of ability to improve or change it or because of his ignorance of it. The governmental organisations too, had paid very little regard for it. On the contrary, in the name of development and progress through industrial and agricultural revolutions environment is being affected adversely day by day.

According to section 2(a) of the Indian Environment (Protection) Act, 1986 [2], the term "Environment" includes water, air, and land and human

beings, other living creatures, plants, micro-organism and property. However, under Section 1(2) of the Environment Protection Act, 1990 of the United Kingdom [3], the word 'environment' consists of all, or any of the following medium, namely, air, water, and land and the medium of air includes the air within the buildings and the air within other natural or manmade structures above or below ground. According to the Encyclopaedia Britannica, the term 'Environment' means the entire range of external influence acting in an organism, both the physical and biological and other organism, i.e., forces of nature surrounding an individual.

As early as 1896, the Swedish scientist Svante Arrhenius had predicted that human activities would interfere with the way the sun interacts with the earth, resulting in global warning and climate change His prediction has become true and climate change is now disrupting global environmental stability [4]. One of the most important characteristics of this environmental degradation is that it affects all mankind on a global scale without regard to any particular country, region, or race. The whole world is a stakeholder and this raises issues on who should do what to fight environmental degradation. Before the Industrial Revolution, human activities released very few gases in to the atmosphere and all climate changes happened naturally. After the Industrial Revolution, through fossil fuel combustion,

changing agricultural practices and deforestation, the natural composition of gases in the atmosphere is getting affected and climate and environment began to alter significantly.

FACTORS RESPONSIBLE FOR ENVIRONMENTAL POLLUTION [5-12]

Pollution can be understood as the contamination of the environment in such a way that it creates hazards or potential hazards to health and well being of living and non living beings. Every substance existing in the environment has definite composition and when a foreign body is introduced in it, or the proportion of its constituents is modified then that substance loses its original character and qualities. This modified version is termed as polluted or adulterated substance and the process of polluting a substance is termed as pollution

According to the United States President's Science Advisory Committee, "Pollution is the unfavourable alteration of our surroundings, through direct or indirect effects of changes in energy patterns, radiation levels, chemical and physical constitution and abundances of organisms."

There are many factors responsible for causing environmental pollution. The important factors among them are; (i) population growth; (ii) indiscriminate use of technology; (iii) uncontrolled use of pollutants; (iv) unmindful exploitation of natural resources; (v) industrial development; (vi) discharge of pollutants in to air and water; (vii) improper disposal excreted and waste water; (viii) inadequate management of solid waste; (ix) failure to control noise pollution; (x) failure to check emission of ionizing radiation; (xi) inadequate management of electro-magnetic energy; and (xii) inappropriate management of sound and heat etc. Environment pollution can be made in two ways; (i) natural pollution; and (ii) manmade pollution. Under the category of natural pollution, flood, earthquake, cyclone and draught are placed. These natural calamities are capable to cause havoc that may be disastrous. Manmade pollution is caused mainly due to unmindful human activities. Today, modern industries produce industrial wastes and toxic gasses, which are hazardous to the environment. Also reckless use of forest wealth is causing deforestation. It has immediate adverse effects on soil and land which increases the frequency of flood and drought.

The common effect of pollution is that it ruins natural composition of substances; it interferes with food chain, carbon cycle, nitrogen cycle, oxygen cycle, hydrogen cycle, and thus causes damage to the plant and animal life. It makes the survival of the living being difficult and troublesome. Pollution affects not only the living beings but also the property and buildings.

The last few decades have seen many treaties, conventions, and protocols for the cause of global environmental protection. The most important among them are [5-12].

The Stockholm Conference on Environment and Development 1972

In the decade of seventy, for the first time the attention of the world was drawn towards environment. In the year 1972, from June 5 to 16 under the leadership of United Nations Organisation, a conference was held at Stockholm (Sweden) known as the Stockholm Conference on Environment and Development 1972. The Declaration of the Conference was divided in to two parts besides the preamble. The first part had proclaimed seven truths about man in relation to the environment and the second part had laid down twenty six 'principles'. Out of twenty six principles, the important and significant principles are; (i) man has the fundamental right to adequate conditions of life, in an environment of quality that permits a life of dignity and well being, and bear a responsibility to protect and improve the environment for present and future generations (principle 1); (ii) natural resources of the earth including the air, water, land, flora and fauna and especially representative sample of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning and management as appropriate (principle 2); (iii) states shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the seas (principle 7); states have the sovereign right to exploit their own environmental policies and the responsibility to ensure that activities within their jurisdiction or control does not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction (principle 21).

India did participate in this Conference and Mrs. Indira Gandhi, the then Prime Minister of India, declared a remarkable environmental policy for India, but a real and new awakening came only after the Bhopal Gas Tragedy on December 4, 1984. People, voluntary organisations and Governmental agencies came to realise that for the survival of human race the protection of environment is of utmost significance. In pursuance of Stockholm Convention, 1972 (incorporation of new Article 48-A and 51-A (g) in the Constitution of India, 1976) and on the recommendation of the High Power Committee headed by Mr. N.D. Tiwari the Government of India had set up a separate Department of Environment in November, 1980 to carry out study and apprise the Central Government about the causes and effects of environmental degradation and environmental pollution in various sectors. The department is also assigned with the monitoring responsibility in the regulation of pollution and conservation of total eco-system.

The Rio Declaration on environment and Development, 1992

The United Nations Conference on environment and development having met on environment and development having met at Rio de Janeiro from 3-4 June, 1992, re-affirmed the declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16th June 1972 and seeking to build upon it. With the goal of establishing a new and equitable global partnership through the creation of new levels of cooperation among States, key sectors of societies and people, working towards international agreement which respect the interest of all and protect the integrity of the global environment and developmental system.

The Johannesburg Declaration on Sustainable Development, 2002

The representatives of the peoples of the world, assembled at the world Summit on Sustainable development at Johannesburg, South Africa from 2nd to 4th September, 2002 with the view to reaffirm commitment to sustainable development. At the Johannesburg meet the world community achieved much in bringing together a rich tapestry of peoples and views in a constructive search for a common path towards a world that respects and implements the vision of sustainable development.

Kyoto Protocol, 2005

The Kyoto Protocol, the world's most far reaching environmental treaty took effect on 16th February, 2005 with 34 industrialised countries legally bound to slash pollution causing global warming. The treaty took effect at midnight at U. N. Headquarters in New York. The treaty requires industrial countries as a whole to cut carbon-di-oxide gas emissions by 5.2% before 2012 compared with their 1990 levels, with targets set individually for each nation. Australia is the only major industrial country which has rejected Kyoto declaration. United States of America and Australia together account for 30% of global green-house gas pollution. After the U.S. withdrawal, Kyoto declaration could not come in to effect until the ratification 2004. Meanwhile, U.N Environment Programme warned that the effect of climate change may lead to Earth 'Spinning out of control and urged immediate steps to halt global warming. Now the Kyoto treaty wants to cut in gas emission that cause global warming.

Environment under the Constitution of India, 1950

The constitution of India came into force on 26th January 1950. At that time it did not contain any specific provision dealing directly with environment. Only provision which was of some significance was Article 47, of the Directive Principles of State Policy which states that, "The State shall regard the raising of the level of nutrition and standard of living of its people

and improvement of public health as among its primary duties."

Article 21 of the Constitution which deals with the right to life and personal liberty was not of much help in the beginning as it was given a very restricted and narrow meaning. This Article runs as follows: "No person shall be deprived of his life or personal liberty except according to procedure established by law".

But in due course of time the problem of pollution and environment started drawing attention of environmentalists. The Stockholm declaration is an important document so far as the international and national environmental movement is concerned. The General Assembly of the U.N. also passed a resolution on 15th December, 1972 emphasising co-operation between the States in the field of conservation of human environment. June 5th is designated as the World Environment Day by the U.N. and it has urged the member states to undertake on that day every year worldwide activities reaffirming their concern for the preservation and enhancement of the environment.

In 1976 under the leadership of Late Mrs. Indira Gandhi the Constitution 42nd Amendment was passed and provisions regarding the protection of environment were incorporated in to it. In the Chapter of Directive principles of state policy, a new provision in the form of Article 48A was incorporated which states, 'The state shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Apart from this, a new provision in the form of 'Fundamental Duties' as Article 51A was also incorporated by the 42nd Constitution amendment. Sub-clause (g) of Article 51A provides: "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures." These two amended constitutional provisions impose two-fold responsibilities. On the one hand, it gives directive to the state for the protection and improvement of environment and on the other it casts a duty on every citizen to help in the preservation of natural environment.

It is to be noted that duties incorporated under article 51A (g) of the Constitution are statutory duties and shall be enforceable by law. The relevant law will provide penalties to be imposed for failure to fulfil those duties and obligations. The Supreme Court of India, in *M.C. Mehta (2) v Union of India*, (1983) 1 SCC 471, has held that under Article 51A (g), it is the duty of the Central Government to introduce compulsory teaching of lessons at least for one hour in a week on protection and improvement of natural environment in all the educational institutions of the country. The Apex Court directed the Central Government to get text books

written on that subject and distribute them to the educational institutions free of cost.

The subjects related to environment in the seventh schedule of the Constitution under Union list are industries, regulation and development of oil fields and mineral oil resources, regulation of interstate rivers and river valleys and fishing and fisheries beyond territorial waters. Again under the state list, public health and sanitation, agriculture, protection against pest and prevention of plant diseases etc. also take care of environmental protection. Under the Concurrent list both the state and Central Government can make law on the subject like forest, protection of wild animals and birds and also population control and family planning. As conferred by Article 246(1), while the Union is supreme to make any law over the subjects enumerated in the Union list, under Article 246 (3), The States enjoy competence to legislate on the entries under the State list, and both the Union and the States under article 246 (2) have concurrent jurisdiction on entries contained under the Concurrent list. In the event of difference, the union enjoys a primacy over states. Also, the Parliament has residuary powers to legislate on any matter not covered in the three lists (Article 248)

Judicial Dynamism and Environment Protection

In view of Article 32 of the Constitution whenever there is a violation of a fundamental right, any person can approach the Court for an appropriate remedy. It is a settled rule that the right to move the Supreme Court is only available to those whose fundamental rights are infringed. Public interest litigation is exception to the general rule and the Supreme Court permits public interest litigation at the instance of public spirited citizen acting bonafide for the enforcement of fundamental right of a person in custody or of a class or group of persons who by reason of disability or poverty or socially or economically disadvantaged position find it difficult to approach the Court for redress. Public Interest Litigation can also be maintained before High Courts under Article 226 of the Constitution.

Judicial activities in matters of environmental pollution have begun in our country with the decision of the Supreme Court in *Ratlam Municipality v Virdhi Chand*, AIR 1980 SC 1622. In this case on the Sothern side of new road of Ratlam Municipality, some houses were situated and behind these houses and attached to the college boundary the municipality constructed a road and this new road touched the Government College and its boundary. In between the said area a Nala (stream of waste water) was flowing which was in the middle of the new road, in the heart of the city. In this Nala waste materials of alcohol plant having chemical and obnoxious smell was released very often. This filth also helped bulk of mosquitoes breeding. The half constructed drain allowed dirty water to overflow. Moreover, the slum dwellers used the bank of drain as

an open latrine. The dirty water flowing from the lavatories and urinals of the residential houses had no outlets and the pits were full of this dirty water. This situation was having very harmful effect on the residents. Many applications were submitted to remove the nuisance to the Municipal Council and the Town Improvement Trust but all of them fell on deaf ears.

People moved to the Sub-divisional Magistrate, Ratlam to take action under section 133 of the Criminal Procedure Code to abate the nuisance, by ordering the municipality to construct drains, remove the filth and stop the pollution. The Magistrate held in favour of the applicants by declaring that both the authorities had taken no steps whatsoever, to remove all these public nuisances and issued order to both that all these nuisances must be removed and certain repair and construction works must be undertaken within a period of 15 days. But the Sessions Court declared this order unjustified. However, the High Court, upholding the order of the Magistrate declared the both these authorities must prepare a permanent plan for the free flow of dirty water of the Nallah and must give a concrete plan within six months, that the places having pits should be covered with mud so that the water may not accumulate there and it breeds mosquitoes. This work should be completed within two years.

The Ratlam Municipality, however, was not satisfied with this order. It went in appeal to the Supreme Court. But the Supreme Court, upheld the order of the Sub-divisional Magistrate, issued supplementary directions, specifically enjoining upon the Municipal Authority and the State Government to carry out certain directions which included that the Municipality shall take steps to stop the pollution caused by the alcohol plant and the Sub-divisional Magistrate will use power under Section 133 of the Criminal Procedure Code 1973 to abate the nuisance so caused.

In *Rural Litigation and Entitlement Kendra Dehradun V State of Uttar Pradesh*, AIR 1985 SC 652, the representatives of the Rural Litigation and Entitlement Kendra, Dehradun alleged that illegal limestone mining in the Mussoorie-Dehradun region was devastating the fragile ecosystems in the area. The complaint was lodged to the Supreme Court directly; it directed that the complaint letter be treated as writ petition under Article 32 of the Constitution. In another case the Supreme Court also entertained the *M.C. Mehta v Union of India* Air, 1988 SC 1037, popularly known as Ganga pollution case. In these cases the Apex Court expressed its concern in the following words, “we are conscious that closure of tanneries may bring unemployment loss of revenue but life, health and ecology have greater importance to the people”.

In *Consumer Education and Research Centre v Union of India*, (1995) 3 SCC 42, the Supreme Court

held that Article 21 which deals with right to life also includes protection of health and strength of workers. Industry whether public or private as well as the State is enjoined by the Court to take all such measures which will promote health, strength and vigour of the workmen during the period of employment and leisure and health even after retirement as essential of life with health and happiness.

Environmental Legislations [5-12]

A Committee was constituted by the Government of India, Department of Science and Technology to make recommendations regarding Legislative Measures and Administrative Machinery for ensuring Environmental protection, the Report was submitted in September 1980 and observed that there are two hundred Central and State statutes that have some bearing on environmental bearing on environmental protection. But the provisions contained therein cannot be described more than the piecemeal legislations pertaining to environment. The principal statutes dealing with environment at present are, (i) The factories Act, 1948; (ii) The Atomic Energy Act, 1962; (iii) The Insecticides Act, 1968; (iv) The Indian Forests Act, 1972; (v) The Wild Life (Protection) Act, 1972; (vi) The water (prevention and Control of Pollution) act, 1974; (vii) The Water (Prevention and control of pollution) Cess Act, 1977; (viii) The Forest (Conservation) Act, 1980; (ix) The Air (Prevention and Control of Pollution) Act, 1986; (x) The Environmental (Protection) Act, 1986; (xi) The Motor Vehicles Act, 1988; (xii) The National Environmental Tribunal Act, 1995; (Xiii) The National Appellate Authority Act, 1997; (xiv) The Biological Diversity Act, 2002; The Disaster Management Act, 2005; (xv) The National Green Tribunal Act, 2010.

Taking in to account the large number of environmental cases pending in higher courts and involvement of multidisciplinary issues, the Supreme Court of India and the Law Commission of India recommended the setting up of the environmental Courts having both original and appellate jurisdiction relating environment issues. The National Green Tribunal has been established on 18th October 2010 under the National Green Tribunal Act, 2010, to dispose of the civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal rights relating to environment.

The Code of Criminal Procedure, 1973 (Section 133 to section 143) deals with the subject concerning environment protection. Section 133 of the Criminal Procedure Code deals with the cases of public nuisance, wherein the Magistrate is empowered to pass conditional order for removal of public nuisance.

The Indian Penal Code 1860, in Chapter XIV, from Section 268 to Section 294-A deals with the

environmental protection. The matter like public nuisance, negligence/malignant act likely to spread infection of disease, dangerous to life, adulteration of drugs/food, fouling of water of public spring or reservoir, making atmosphere noxious to health and punishment for public nuisance are embodied in this chapter and punishments are also prescribed accordingly.

CONCLUSION

It is beyond doubt that after the Independence of India, number of laws enacted by legislature but the State has failed to discharge its responsibility. Lack of implementation of environmental protection laws is the main reason for non-implementation of the principle of Sustainable Development. Number of Environmental protection laws have been passed by legislature according to the Constitutional demand but in reality the principles are just on papers. Lack of incorporation of Sustainable Development in India is one of the reasons for deterioration of the environmental status in India. However, in view of the Supreme Court decision in Vellore Citizen Welfare Forum v Union of India and others, AIR, 1996 S.C. 2715, the Government of India adopted Judicial Principle that the 'Polluter pays to the victims of the environmental pollution'. The Central Government in order to attain substantial development in the field of environment has introduced various programmes and activities relating to pollution and its control. It is regretful to note that in spite of the enforcement of various laws pertaining to the protection of environment and thus, we are yet to go a long way in this field. On number of occasions the Supreme Court of India has emphasised that the environmental education should be imparted from primary school to college/university level.

No goods can be achieved without effective participation of public and law enforcing agencies. In India, we lack in environmental awareness. Now, the regions of dense forests are made bald land due to human encroachment. Though, special laws have been framed to check the ecological disturbances and the Government agencies have been directed to check environmental pollution. There are a number of gaps in existing laws dealing with the matter of environment. Primarily Courts are reluctant to enter into the domain of administration of environment, but when the serious problem concerning environment was raised through Public Interest Litigation and Government agencies, the Courts became active and the role is laudable filling the statutory void and inviting environmental assessment. Judicial craftsmanship is especially noticeable when the Court ordered State to take appropriate measures and to prevent the environmental pollution. Even the Supreme Court played balancing role between environment protection and development. The Court expressed the view that State's endeavour is paramount consideration and we can always minimise the pollution level by

adopting scientific measures and without hurdles on developmental activities.

Environment and development are the two sides of the same coin. Any one of these cannot be sacrificed for the other. On contrary, both are equally important for our better future. Thus the responsibility lies on the Supreme Court, the various High Courts and now the National Green Tribunal have to deal with these cases with caution of high degree. The father of the Nation Mahatma Gandhi supported the idea of development but he was not in favour of heavy industries and automation. He was in favour of cottage industries which give employment to greater number of persons, cause less environmental pollution. All that has to be kept in mind while installing heavy industries is that precaution should be taken that least damage is caused to our environment. Forests are very valuable gift of nature to man, rather to living beings. Elimination of forests produces climate variation of greater amplitude; from hot to cold and wet to dry, thereby make an area less habitable for future vegetation. If we go for more afforestation than deforestation then only, we will achieve our goal to secure a pollution free developed country for our future generation.

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