



Importance of Environmental Law for the health of current generation

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Abstract

Ecology is the basic thing of the nature as ecology is the balancing relationship of human being and the nature. This relation is unbreakable because both the environment as well as human beings is depends upon each other. Environment the combination of water, air and soil and resources i.e. food, minerals etc. and human beings are depend upon the environment. By the increase of population, the consumption of resources has also increased. Human beings are very negligent in their activities due to which problem of environment pollution in increasing. India is a developing country and trying to progress in industrial sector to make the country financially sound and to fulfill the needs of the people. But the dumping of wastes in the water sources and the toxic gases emitted by the industries in the air are creating the problem of environment pollution. Apart from the industries, human beings are also responsible for environment pollution because human beings are negligent towards the nature in their activities and increase the pollution. The government always remained aware about environment pollution and held various awareness programs for environment protection. To impose penalty upon those who are responsible, the government participated various international conventions and shown its concern by applying the decisions of such conventions in the form of specific enactment for protecting the environment. Positive climate change, reduction of remission of green house gases, clean and healthy environment and sustainable developments are the key points of laws implemented by the Indian Government for environment protection.

Key Words: International conventions, environment protection, ecosystem, sustainable development.

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Introduction

Environment is the combination of living and non-living things and their impact upon the human life. The term “Environment” has been defined by Lady Bird Johnson as “The environment is where we all meet; where we all have a mutual interest; it is the one thing all of us share.”. Environment is the reciprocal relation of living and non-living things. Life is not possible without environment. From the time immemorial there has always been a relation between the environment and human beings. Though the earth has seen many changes up to now like volcanoes, cooling down, development of organisms and animal and human beings, but environment has been remain there always in any form. In spite of so many changes, the ecological system remained the basic principle of the environment i.e. interdependency of the human beings and the nature. Human beings are depend upon nature for food, clothes, air, water etc. and nature depends upon human beings for the gases they require such as carbon dioxide. Carbon dioxide is the food of plants which is released by human beings while breathing. This reciprocal relation was well followed for a long time even for an era but the balanced relation has now been disturbed due to uncontrolled population growth. For the purpose of fulfilling the needs of people, resources were used without any plan for future generation. Uncontrolled use of resources has given rise to the problem of sustainable development. The term sustainable development means passing to the resources for future generation. It is our moral duty to pass on those resources but now nobody has the care for sustainable development which is the need of today. Moreover industrialization has damaged the environment up to a great extent. Ozone depletion, polluted air and polluted water are the evidence of such degradation.

Indian government remained involved in the social welfare activities always and after taking a serious note of the pollution problem, enacted various laws for the nation. As problem of pollution is a worldwide problem, therefore various international conventions were held by United Nations and India not only actively participated in the conventions but also implemented the decisions of such conferences by enacting the laws for protecting the environment. The national and international aspects about environment protection have been discussed below.

International Aspect of environment protection laws

With the advancement of science and technology, industrial growth has started which gave rise to the problem of pollution. Uncontrolled increasing population has added fuel to the fire as population was the main cause behind the industrial growth to fulfill the need of people. Mainly two things are responsible for environment pollution. These are industrial growth and human activities. The waste materials dumped in the river and left open in the field cause water and air pollution. On the other the smoke remitted from the vehicles used by people, dumping the waste of their homes etc impact the environment hazardously. To solve the problem of environment pollution, many conventions were held at international level. Many conventions were signed by India and many others were ratified by India later on. The international conventions on environment protection can be discussed as under.

United Framework Convention on Climate Change (UNFCCC), 1992

For the purpose of protecting the life and health from environment pollution, UNFCCC convention which is also known as Rio convention was held. The convention was aimed at protecting the environment from pollution by stabilizing the remission of green house gases and by sustainable development. India adopted the convention in 1993 and after Rio convention; Environment Action Programme (EAP) was started in India with the name of Agenda 21. It can be said that Agenda 21 was the outcome of Rio Declaration and Environment Action Programme. Agenda 21 was implemented at very large scale

Vienna Convention for protection of Ozone Layer, 1987

Another international convention which was adopted by India for the environment protection is Vienna Convention. The convention was held in the year 1987 and was ratified by India in the year 1992. The convention was aimed at reducing the production of ozone depleting substances. The convention also recognized the responsibility of the nation according to the pollution in that nation.

Basel Convention on Trans-boundary Movement of Hazardous wastes, 1989

This is also an important international convention which was held in the year 1989. This convention was also adopted by India in the year 1992. The convention was aimed at to protect human life and health from the adverse effects hazardous wastes. Apart from this reducing the hazardous waste and promotion of environmentally sound management of those wastes, restricting the trans-boundary movements of the waste except when it is according to the sound principles of environment management and to save the environment from pollution caused by human activities are important aims of this convention.

Convention on biological diversity, 1992

The convention was held in the year 1992, however it came in to force in the year 1993. The convention was held in U.S. The convention was aimed at conservation and sustainable use of components of biological diversity and fair and equitable sharing of the benefits made out by the use of resources. The convention was adopted by India approx one year later i.e. in the year 1994.

Cartagena Protocol on Bio-safety

The protocol is an international treaty and was adopted as a supplementary agreement to the convention on bio-diversity. The protocol was entered in to in the 2000 and was adopted in the year 2003.

National laws for the protection of environment

Apart from the international conventions adopted by India in the interest of people of the nation and for the environment protection has enacted various laws time and again. Environment protection act, wild life act, air act, water act are some of them. The laws enacted by the government can be discussed under two heads, namely constitutional law and legislative law. Constitutional laws are those provisions of the constitution which are provided or inserted in the constitution having regard to the environment and

legislative laws are those acts which are specifically enacted on the particular subject matter. Both types of laws are discussed as under:

Constitutional law on environment protection

The state as well as the citizens, both are responsible for the environment protection. The constitution imposes responsibility under specific provisions. The responsibility with regard to environment protection has been laid down under Article 48-A² of the Constitution and the responsibility of the citizen has been provided under Article 51-A (g)³ of the constitution. It is important to mention here that both the provisions were inserted via 42nd amendment⁴. Article 48-A regarding the responsibility of the State regarding environment protection provides that: “The state shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.”

The very important provision of the Constitution i.e. Article 21 provides that “No person shall be deprived of his life and personal liberty except according to the procedure established by law.” Though this provision does not provide the responsibility of the state to ensure pollution free environment but indirectly it imposes a duty upon the state. Every person has right to life for which pollution free environment is necessary. Right to life comes under the ambit of fundamental rights and Article 48-A comes under the ambit of directive principles of state policy. The state is bound to make such policies which are helpful for the people in enjoying their fundamental rights and the directive principles are the rules guiding the government for making welfare laws.

As far as the responsibility of citizen to protect the environment is concerned, the provision has been given under Article 51-A (g) of the constitution. The article provides that “It shall be the duty of every citizen of India to protect and improve the natural environment.”

Therefore the constitution imposes the duty to protect the environment upon both, the state as well as the citizens.

Legislative law on environment protection

The legislature has enacted various laws for protecting the environment. Different laws are discussed as under:

Water (Prevention and control of pollution) Act, 1974

The act was enacted in the year 1974 for specific purpose to control water pollution by preventing the dumping of waste material in water source. The act prohibits the discharge and dumping of pollutants and waste material by industries in to water source. The act also laid down the penalties for non-compliance with the provisions of this act. The act provides for setting up of a board at central level (central pollution control board) which lays down the standards of pollution free water. The act provides for setting up of the

² Directive Principles of State Policy (Part IV)

³ Fundamental Duties (part IV-A)

⁴ 42nd Amendment, 1976

same board at state level (state pollution control board) which discharges its functions under the direction of central board. However, after passing of Environment protection act in the year 1986, the act was amended in the year 1988 to doubly confirm the provisions of the act.

Air (Prevention and control of pollution) Act, 1981

The act was passed in the year 1981 for protecting the environment by prevention and control of air pollution. The act provides to ensure ambient air quality which means pollution free air with all the attempts to abate and control the air pollution. The act provides to control human activities so that use of fuel and pollutants can be reduced and air quality can be made better. Like the water act⁵, the air act also provides to set up central as well as state board. The boards have been empowered to take immediate actions to tackle the problem of air pollution and issue direction. The act also provides for imposition of fine or penalty in the case of non-fulfillment of directions given by the board.

Environment protection Act, 1986

Environment protection Act was enacted after both the above mentioned major acts with the purpose of improving the standard of environment. The act also provides for the coordination of central and state board authorities established under above mentioned acts i.e. Water (prevention and control of pollution) Act 1974 and Air (prevention and control of pollution) Act, 1981. The act empowers the authorities to take necessary actions to protect and improve the standard of environment by preventing the emission and discharge of gases and waste materials by the industries. The act also empowers the authorities to decide the location of industrial set up. If any person has any object regarding the zone or location for setting up the industries, he can appeal to the authority called as National Environment Appellate Authority. The provision for establishment of national appellate authority has been given under a separate act i.e. The National Environment Appellate Authority Act, 1997. However after the implementation of National Green Tribunal Act, the National Environment Appellate Authority Act has been repealed.

Apart from the acts which are specifically related to the environment issues such as air, water and environment, some other important acts were passed which are supplemental to the purpose of environment protection.

Wild life protection Act, 1972

This act was the first act in the way of protecting the environment as this act was passed even before the Water act. The act aimed at protecting the wild area and the flora and fauna which are included in a list issued by the central authority. The act empowers the central government to declare any area reserved for wild sanctuary, national park and reserved forests.

⁵ Water (prevention and control of pollution) Act, 1974

Biological diversity act 2002

The Biological Diversity Act was enacted in the year after the ratification of convention on biological diversity by India in the year 1993. The convention was aimed at conservation and sustainable use of components of biological diversity and fair and equitable sharing of the benefits made out by the use of resources. The act was enacted by the central government for the protection and preservation of biodiversity. Like other enactments relating to environment, the act also provides for setting up of biodiversity authorities at national and state level.

National Environment Tribunal Act, 1995

For the purpose of imposing strict liability for the damages caused due to any accident by hazardous substance in any industry and to provide compensation to the victim of such accident, the parliament has enacted the National Environment Tribunal Act in the year 1995. The act provides for the rules for the establishment of tribunal at national level for expeditious and speedy disposal of the cases related to such accident and to provide adequate relief and compensation to the victims of such accident. However with the implementation of National Green Tribunal Act, this act has been repealed.

National Green Tribunal Act, 2010

It is the most important act which was enacted by the parliament for expeditious disposal of the cases relating to environment protection. The preamble to the act itself provides that “whereas India has participated in international conference on environment held at Stockholm in 1972 and Rio De Janerio in 1992 and considered it necessary for the expedient implementing the decisions taken in the conferences to establish a National Green Tribunal for the effective and expeditious disposal of cases relating to environment protection and conservation of forests, the Nation Green Tribunal has been established.

Judicial Aspect of Environment protection

Judiciary has always played its vital role in the proper implementation of laws but so far as the environmental laws are concerned, a famous social activist and advocate Mr. M. C. Mehta shown his keen interest in the matters connected to pollution free environment. The apex court in many cases instituted by Mr. Mehta issued guidelines which are helpful for keeping the environment. Mr. Mehta started his campaign for pollution free environment and put serious matters before the apex court regarding environment pollution. Some important cases are discussed below.

*M. C. Mehta vs. Union of India*⁶ popularly known as Taz trapezium case is an important case in which the problem of serious effect of chemical and emission of toxic gases was raised. In this case, civil writ petition was filed for seeking the attention of judiciary against the threat and serious effect caused by the chemical and toxic gases emitted by chemical industries and Mathura refinery near the pride of India and one of the seven wonders “Taz Mahal.” The apex court delivered an historic judgment after about 12 years. The court issued various directions including the shifting of hazardous industries from Taz trapezium zone and directed the industries to shift over to use CNG i.e. compressed natural gas.

Ganga Pollution Case

*M. C. Mehta vs. Union of India*⁷ is very important case in which the serious problem of pollution of holy river “Ganga” was raised. In this case writ petition was filed by Mr. Mehta, a social activist and advocate focusing upon the problem of pollution of Ganga River. The apex court took serious note of the problem and passed order against about fifty thousand industries near Ganga basin to stop polluting the water. Many awareness programs were held by the government in compliance with the directions issued by the court. Sewage treatment plants were established to recycle use of the waste and to prevent dumping of wastes in the river.

Doctrine of Absolute liability

The apex court in the case of *M.C. Mehta and others vs. Union of India and others*⁸, applied the doctrine of absolute liability upon the people running hazardous industries. This case is popularly known as “Oleum Leak case” or “Shri Ram food and fertilizer case”. In this case the apex court held the owner of industries absolutely liable for any accident or mis-happening in the factory. The decision of this case was later on relied upon by the apex court in the case Bhopal Gas leak case. Bhopal Gas leak case was the historic incident when due to the leakage of poisonous gas from a chemical company named as Union Carbide Company, about 2000 people were died.

Principle of Sustainable Development

In the case *Rural litigation and entitlement Kendra, Dehradun vs. State of UP*⁹, the apex court introduced the principle of sustainable development. The court observed that it is our moral duty to pass on the natural resources which we have received from the past.

⁶ AIR 1984, SC

⁷ AIR 1985, SC

⁸ “AIR 1986 SCR (1), 312”

⁹ “AIR 1987, SC. 2187”

Pollution free environment as fundamental right

Though specific provisions have been given in the constitution to impose duty upon the state as well as the citizens but the apex court while discharging its duty of protecting the fundamental rights observed in the case of *Damodar Rao vs. S. O. Municipal Corporation*¹⁰, that pollution free environment is the fundamental right of the people as included under article 21 of the constitution. The court further observed that polluting the environment is the violation of fundamental right.

Conclusion and Suggestions

As discussed above, the government has enacted various laws for preventing the environment pollution but the problem is increasing day by day. Many cities in the nation are at the top according to air pollution index. It is very difficult to breath in those cities. Delhi is one of the cities where pollution is very high. Though the government is trying to tackle with the problem by implementing weekend lockdown, closing schools and offices etc but the problem is as it is. Here problem is not with the laws but the proper implementation of those laws and directions. Here the need is to educate and aware the people about the result of their neglected conduct towards the nature. Many human activities are deliberate such as burning the stubble near Diwali which is the main cause of pollution in winter season. Despite of various awareness programmes, such activities are not stopped and cause huge environmental pollution in the capital zone of the nation. The government should take steps to tackle the problem of burning the stubble. Moreover the laws should provide strong penalty for breach of provisions and directions issued by the court. So far as the problem of resources is concerned, alternative resources of energy such as solar energy system, wind energy system etc should be used which is helpful in not only resolving the problem of energy but also helpful in reducing the pollution. Environment protection is the collective responsibility of state and people. State has fulfilled its responsibility by providing efficient law for the same. But people are responsible for the increasing environment problem therefore people can solve the problem when they come together with the aim of making the environment pollution free.

¹⁰ "AIR 1987 AP 171"