

THE NEW CHALLENGES AND RESPONSIBILITIES TO PROTECT THE ENVIRONMENT IN INDIA

Introduction

Environmental protection is an integral part of the development process of the world. This involves a holistic approach and understanding of issues which are best handled with the participation of all concerned people. It also involves changing of attitudes and lifestyles, such that we minimize and reduce the impacts on nature. Most of the cities and towns in India are situated near water bodies like rivers, lakes and streams. These are slowly drying up or getting contaminated.

Almost half of the watershed area of the world's fresh water system is estimated to have been lost in the last century as land has been converted to urban use or agriculture. As regards sewage and contamination, it has been established that billion liters of sewage is discharged into the water bodies every day. This holds good for other towns and cities. In order to solve these problems a concerted effort and effective strategy has to be formulated. This would involve creation of satellite townships and shifting of small scale industries from the city limits, conservation and harvesting of water, treatment of effluents, cleaning up of water bodies, adoption of cleaner technologies to eliminate toxic effluents, regular, continuous monitoring and enforcement. It is essential to understand the economics of water harvesting.

Besides vehicles, thermal power plants, industries and domestic emissions are contributing the air pollution. Deforestation has led to loss of green cover, open desiccation, moisture loss and soil textural adversities. These are the new challenges in India to protect the environment.

Development of Human Environment

The prodigious advancement of industrialization resulting into the economic development has continuously degraded the human development. Discharge effluent into the atmosphere, oil spills and the dumping of refuse are the major sources of the pollution of the human environment. Further, industrialization, urbanization, over population and poverty also affect the human environment. This problems arising from the pollution of human environment was not realized earlier and therefore attention was not paid to make rules and

regulations in this regard¹. After several decades the United Nations has taken to steps dealing the topic of environment.

International Perspective for Protect the Environment Pollution.

In the year of 1972, Stockholm Conference was adopted by governments of the United Nation at throughout world to protect the environment. That is called as Stockholm declaration on the Human Environment. This document set the stage for the further development of principles of International environmental law². "As a result of the Stockholm Conference, countries established the first International Inter governmental organization focused on environmental protection the United Nations Environment Program (UNEP) in Nairobi, Kenya. The issue of institutional governance is one of the key issues in preparations for the Rio Conference in June 2012. The United Nations accredited 250 Non-Governmental organizations for the Stockholm Conference, which at that time was note worthy." India became a party to the CITES in 1976. Convention on Biological Diversity, 1992 is a legally binding treaty. It is described the conservation of biodiversity, sustainable use of biological resources and equitable sharing of benefits arising from their sustainable use and also protect the Flora and Fauna.

National Perspective for Protect the Environment Pollution.

India has enacted various laws at almost regular intervals to deal with the problems of environmental degradation. Apart from the provisions under the Water Act³ and the Air Act,⁴ there exists a clear constitutional mandate for protection of environment including prevention of air and water pollution. By an activist interpretation of these provisions, the High Courts have substantially enriched environmental jurisprudence in India. Extricating itself from the principles of Locus Standi⁵ and using the instrument of public interest litigation to the maximum effect, the apex court has laid down that sustainable development is a legal obligation of every government. In the first environment case before the Supreme Court itself, it was held that no municipality could put forth lack of money as a ground for not discharging its primary duty of looking after the health and safety of its residents⁶. The High Courts were the first to come up with direct and specific

¹ Dr. H.O. Agarwal, International Law & Human Rights, Central Law Publication 16th Edition (2009) p.633

² Stockholm Declaration of the United Nations Conference on the Human Environment, *Report of the United Nations Conference on the Human Environment*, U.N. Doc. A/CONF.48/14/ Rev.1(1973), p. 3; U.N. Doc. A/CONF.48/14 (1972), pp. 2-65 and Corr. 1.

³ Water(Prevention and Control of Pollution) Act, 1974.

⁴ Air (Prevention and Control of Pollution) Act,1981.

⁵ *Locus Standi*, means, 'A place of standing in court. A has right of appearance in a court of Justice. or before a legislative body, on a given question, Black's Law Dictionary, 6th Edn, West Publishing Company.

⁶ *Municipal Council Ratlam v. Vardhichand*, AIR 1980 SC 1622.

pronouncements on citizens 'Fundamental Right to Pollution Free Environment'. Thus, the Andhra Pradesh High Court ruled in 1987 that nature's gifts without which the life cannot be enjoyed. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be regarded as amounting to violation of Art.21 of the Indian Constitution⁷ On the same lines, the Karnataka High Court pointed out that Entitlement to clear environment is one of the recognized human rights and further held that Right to life inherent in Art.21 of the Constitution of India does not fall short the requirement of quality of life which is possible only in an environment of quality. Therefore, in order to protect and preserve environment, the following sector-specific policies have been evolved by the Govt. of India.

Protection of Water pollution

In *Narmada Bachao Andolan v. Union of India*⁸, the Supreme Court said that water is the basic need for the survival of human beings and is part of right to life. The Supreme Court in *Subhash Kumar v. State of Bihar*⁹ the Court held that, the right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life". In *MC Mehta v. Kamal Nath*,¹⁰ it was made clear that any disturbance of the basic environmental elements, namely, air, water, and soil, which are necessary for life, would be hazardous to life within the meaning of art 21 of the Constitution. In *MC Mehta v. Union of India*¹¹ the tanneries were discharging effluent in river Ganga. So the holy Ganga water was polluted. This situation the Supreme Court directed to the tanneries set up primary treatment plant in the premises of the tanneries. In the case of *Indian Council for Enviro-Legal Action v. Union of India*¹² the Supreme Court formulated the polluter pays principle and polluted companies are responsible to making remedial costs.

Protection of Air pollution

The Act seeks to combat air pollution by prohibiting the use of polluting fuels and substances, as well as by regulating appliances that give rise to air pollution. The boards are also expected to test the air in air pollution control areas, inspect pollution control equipment, and manufacturing processes. *Bihar State Pollution Control Board v. Hiranand Stone Works*,¹³ The National Ambient Air Quality Standards prescribe specific

⁷ *Damodhar Rao v. SO Municipal Corporation*, Hyderabad, AIR 1987 AP 170.

⁸ AIR 2000 SC 3751, pp3825, 3830.

⁹ *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420.

¹⁰ AIR 2000 SC 1997, PP 2000, 2003.

¹¹ AIR 1998 SC 1997, PP 1037

¹² (2011) 12 SCC 762.

¹³ AIR 2005 Patna 62 .

standards for industrial, residential, rural and other sensitive areas. Industry-specific emission standards have also been developed for iron and steel plants, cement plants, fertilizer plants, oil refineries and the aluminum industry. In *Pollution Control Board v. Mahabir Coke Industry*¹⁴ the board directed to the company to conform the required standard of quality of air. That direction was upheld by the Supreme Court. The Calcutta High Court clarified in *Alloy Steel Rolling Mills v. West Bengal Pollution Control Board*¹⁵ the board was passed order under Rule 3(2) of the Environment (Protection) Rule, 1989, for the compliance with National Ambient Air Quality Standards. The court found that, the decision of the board was welfare of the public and also prevent further degradation of air quality in the Kolkata Metropolitan Area.

Hazardous and Solid waste

In modern industrial society, chemical and hazardous substances are dumping in the nearest water bodies. Thus the ground water system was entirely polluted. Every day increasing the toxic chemicals in the land, air and water have a big problem to protect the Environment. Every person who is engaged in generation, processing, treatment, package, storage, transportation, use etc. of the hazardous waste shall be required to obtain an authorization from the concerned State Pollution Control Board.¹⁶

Role of Judiciary for Protecting Environment

The right to live in a clean and healthy environment is not a recent invention of the higher judiciary in India and also the development concept of the Supreme Court. It has been laid down that the "Precautionary Principle", "Public Trust Principle" and the "Polluter Pays Principle" is being essential features of "Sustainable Development". Now, These concepts are part and parcel of the Environmental Law of the country. The "Precautionary Principle" establishes that a lack of information does not justify the absence of management measures. On the contrary, management measures should be established in order to maintain the conservation of the resources.

In *M.C.Mehta v. Kamal Nath*¹⁷ the Supreme Court applied this doctrine for the first time in India to an environmental problem. It took notice of a news item in the Indian Express newspaper dated

¹⁴ (2000) 9 SCC 344.

¹⁵ AIR 2006 Cal 74.

¹⁶ The Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008, Rule 5

¹⁷ *M.C.Mehta v. Kamal Nath* (1997) 1 SCC 388, p 413. For details see, P. Leelakrishnan, Environmental Law in India, Third Edition, First Reprint, (2009), Lexis Nexis Butterworths Wadhwa, Nagpur.

2 February 1996. According to the Supreme Court, the public trust doctrine primarily rests on the principle that certain resources like air, sea waters and forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The court continued that the said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. It went a step further, and emphasized that violators of the environment should be asked to restore it to the original position. In certain cases, these two steps may perhaps be part of the one and the same measure, but there are violations beyond redemption.

In *Vellore Citizens Welfare Forum v. Union of India*¹⁸, the Supreme Court opined, 'the traditional concept that development and ecology are opposed to each other, is no longer acceptable sustainable development' is the answer'. The genesis of the concept of sustainable development was in the Stockholm Declaration in 1972. Subsequently, the World Commission on Environment and Development 1987 (known as the Brundtland Report) in its report, called "Our Common Future", gave a definite shape to this concept. In 1992, at the Rio Conference it was reaffirmed and contended that the implementation of this concept of sustainable development is the true mode of achievement of development. The court accepted the definition of sustainable development given by this commission. It reads as, "Sustainable Development that meets the needs of the present without compromising the ability of the future generation to meet their own needs"

In *Indian Council for Enviro-Legal Action v. Union of India*¹⁹ it was held that the Central Government is empowered under the Environment Protection Act²⁰ to take all measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment. In the present case, the said powers will include giving directions for the removal of sludge, for undertaking the remedial measures on the offending industry, and to utilize the amount so recovered for carrying out remedial measures.

The directions of the 'Green Bench' would be constituted to deal with this case and other environmental matters. In *Andhra Pradesh Pollution Control Board case*²¹ the court relied on the *Vellore case*²² before pondering over the various dimensions of the precautionary principle. The court pointed out that earlier,

¹⁸ AIR 1996 SC 2715.

¹⁹ AIR 1996 SC 1446.

²⁰ Section 3, of the Environment Protection Act, 1986.

²¹ *Andhra Pradesh Pollution Control Board v. MV Nayudu*, AIR 1999 SC 812.

²² *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715.

the concept was based on the assimilative capacity which assumed that science could provide the information and means necessary to avoid encroaching upon the capacity of the environment to assimilate impacts, and that relevant technical expertise would be available when environmental harm was predicted. The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it, or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property, and economic interest, but also protect the environment for its own sake; precautionary duties must not only be triggered by the suspicion of concrete danger, but also by justified concern or risk potential²³

Conclusion

Development is a noble aspiration which drives and inspire mankind to do something better than today. Our present era of human advancement or high standard of living due to economic development is a testimony to mankind's perennial endeavor to progress in all spheres of life. Every step of progress is possible because we are exploiting environments scarce resources bestowed upon us by mother earth for our benefit. After industrialization globalization era, we have accelerated the pace of resource utilization by unimaginable amount and our greed for more economic growth has resulted into mankind's attempts to tame Mother Nature and tap all her resources unscrupulously, leading to grave damage to the environment. The problem of environmental justice cannot be solved only by giving the opportunity to access the court for seeking justice unless and until the judicial pronouncements are enforced effectively to provide environmental justice and put justice in place of injustice done to the public. Therefore, there is a need for fair, honest, competent and responsive enforcement machinery and also we want more effective legislations to protect environment. The present century, particularly, a lot of growth in the field of economic development, Industrialization, Urbanization and erosion of biodiversity have affected the natural environment. I conclude that, we have a collective responsibility to protect the environment at throughout globally. So we avoided the use of plastic and other hazardous substances to protect the environment.

²³ *Andhra Pradesh Pollution Control Board v. MV Nayudu*, AIR 1999 SC 812, pp 820,21