



ENVIRONMENTAL DEGRADATION-A CRUELTY ON NATURE

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“There is sufficiency in the world for man’s need but not for man’s greed.”

-Mahatma Gandhi

INTRODUCTION

The damage caused to environment by poisonous gases and emissions, industrial effluents, urban sewage, garbage, plastic waste, chemicals, exploitation of natural resources like soil, forests, water supplemented by other equally important factors like poverty, growing population, health hazards, degeneration in quality of life have acquired alarming proportions which cry for a new environmental ethic, order and justice in Indian society. The healthy approach of man to nature later suffered an eclipse with the growth of population, increasing pressure on natural resources. The holy rivers, *Ganga* and *Yamuna*, the most precious and indispensable source of life have now become unholy. The greenery and public parks are converted into the commercial establishments and residential abodes. History is witness to the fact that humanity has been cruel to nature and centuries of exploitation of natural resources have left us with irremediable losses.

The smog in London which engulfed 4000 lives caused the genesis of the Clean Air Act, 1956, succeeded by various other statutes in the global village. It is we, who took first step in the world to protect the environment and passed some substantive legislative steps. Within four years of U.N. Conference on Human Environment in Stockholm, our country passed Wildlife (Protection) Act in 1972, Water (Prevention and Control of Pollution) Act in 1974, The Forest (Conservation) Act in 1980, Air (Prevention and Control of Pollution) Act in 1981 and subsequently the Environment (Protection) Act, 1986. The Indian Constitution in its fundamental norms is amongst the few in the world that contains specific provisions on environmental protection. The Judiciary has also played a myriad role in the implementation and evolution of the new doctrines and various other procedures.

THE PROBLEM

It is a deep matter of concern for all nations because atmosphere understands no boundaries and environmental pollution produced at one place travel to another. A great damage has been already done and still continuing to human and aquatic life by the polluted water and air. We are a part of global network which is weaved in such a manner that every component is linked with each other in one or another way. It is we, who affects the environment by our own acts. We all are responsible for degrading our environment, infact harming ourselves. There might be some environmental problems that can be faced at local level such as mining and hydro-electric projects, solid waste management etc. but there are some major environmental problems affecting mankind at large such as global warming, depletion of ozone layer, dwindling forests and energy resources, an undesirable change in physical, chemical or biological character of air, water, soil which can cause dangerous effects on various forms of life and property.



Any law at its own level cannot achieve the goals until the public has a participatory role in it. Various environmental laws enacted for environmental protection and management found themselves helpless due to loopholes in them. Sometimes we are unable to adjudicate the gravity of offence until a threshold is crossed. It is all important for us to use, protect and conserve our natural resources in a judicious manner so that we don't exhaust them. There are major causes of deforestation such as fuel requirements, cultivation shifting, exploitation of wood for industrial use, development projects, to meet the demand of growing food needs, overgrazing by the cattle which removes the vegetal cover over the soil, so the roots cannot go much deep into the soil and adequate soil moisture is not available etc.

Water is considered as the most precious natural resource. Although it is very abundant on the planet earth, yet very precious. About ninety seven percent is salty and only three percent is fresh water out of the total water reserves of the world. Even such small fraction is not available to the world as most of it is locked up polar ice caps and just 0.003 percent is readily available to consume. The extraction and processing of minerals during mining and smelting are the major source for causing severe problems by exposing localities to radioactive hazards, forced displacement, causing river pollution and posing serious health hazards by seeping of chemicals into it, land encroachment and contamination of groundwater by mixing very high sulphur quantity.

Overuse of natural resources like forests, water, soil, food, mineral and energy resources in our modern society is resulting in fast depletion of these resources and several related problems. While conservation efforts are underway at National as well as International level, the individual efforts for conservation of natural resources can go a long way. Environment belongs to each one of us and all of us have a responsibility to contribute towards its conservation and protection. "Small droplets of water together form a big ocean." Similarly, with our small individual efforts we can together help in conserving our natural resources at a large extent.

INTERNATIONAL CONCERN ON ENVIRONMENT

World Environment Day is celebrated all over the world on 5th June. The world came together at the United Nation's Conference on Human Environment held at Stockholm on that day in the year 1972 to deal with problems of environmental protection, problems of industrialization and over exploitation of natural resources. Sustainable development, as defined in the Brundtland Report also known as *Our Common Future* of 1987 means development and meeting the needs of the present without compromising the ability of the future generation to meet their own needs. The sustainable development, therefore, includes reviving growth, changing quality of growth, meeting essential needs for job, food, energy, water and sanitation, ensuring sustainable level of population, conserving and enhancing the resource base, reorienting technology and managing risk, and merging environment and economics in decision making. The concept of intergenerational equity and obligation was incorporated in principle I & II of the U.N. Conference on Human Environment in 1972 which reads as under:

Principle No. 1:- *"Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being,*



and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.”

Principle No. 2:- *“The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.”*

LEGISLATION IN INDIA CONCERNING ENVIRONMENT

CONSTITUTIONAL CONCERN

Since the United Nation’s Conference on Human Environment held at Stockholm in the year 1972, within its four years, India has witnessed a series of legislative measures, administrative policy decisions, amendments of the constitution and also a new interpretation of Article 21 to protect environment. Articles 48-A and 51A (g) was introduced in Constitution of India through the 42nd amendment which reads as follows:

Article 48-A provides that *“The State shall endeavor to protect and improve the environment and to safeguard forests and wildlife of the country.”*

Article 51A (g) impose duty on us by providing that *“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.”*

Article 21 of the Indian Constitution guarantees to all persons a fundamental right to life. Right to water is a fundamental right under the said provision. Still millions of people in India are clamoring for drinking water due to either acute shortage of water or pollution of water or any other reason. Drinking water problem has become a seasonal phenomenon in some areas of the country and in some areas it is a continuous one. As Supreme Court observed that right to life is not confined to mere animal existence but extend to the right to live with basic human dignity. Once the Apex Court observed that, “protection of environment is not only the duty of the citizens but is also the obligation of the State and all other State organs including the courts.” Thus our constitution protects us against environmental pollution by providing us some guarantees as well as imposes duty on us to protect and conserve the environment.

WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974

In this Act, the word “Pollution” has been defined thoroughly. It means that such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms. This Act provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid, of Boards (at Central and State level) for the prevention and control of water pollution, for conferring on and assigning

to such Boards powers and functions relating thereto and for matters connected therewith.

FUNCTION OF CENTRAL POLLUTION CONTROL BOARD (CPCB)

In particular and without prejudice to the generality of the foregoing function, the Central Board may perform all or any of the following functions, namely:

- (a) advise the Central Government on any matter concerning the prevention and control of water pollution;
- (b) co-ordinate the activities of the State Boards and resolve dispute among them;
- (c) provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;
- (d) plan and organise the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of water pollution on such terms and conditions as the Central Board may specify;
- (e) organise through mass media a comprehensive programme regarding the prevention and control of water pollution;
- (ee) perform such of the functions of any State Boards as may be specified in an order made under sub-section (2) of section 18;
- (f) collect, compile and publish technical and statistical data relating to water pollution and the measures devised for its effective prevention and control and prepare manuals, codes or guides relating to treatment and disposal of sewage and trade effluents and disseminate information connected therewith;
- (g) lay down, modify or annual, in consultation with the State Government concerned, the standards for a stream or well :
Provided that different standards may be laid down for the same stream or well or for different streams or wells, having regard to the quality of water, flow characteristics of the stream or well and the nature of the use of the water in such stream or well or streams or wells;
- (h) plan and cause to be executed a nation-wide programme for the prevention, control or abatement of water pollution;
- (i) perform such other functions as may be prescribed.

The State Pollution Control Board also works on the similar pattern and has same powers and functions as that of CPCB. It advises the respective State Government for which it is established. However, Act contains some weaknesses; it has detailed provisions and clear guidelines for preventing and controlling the problem of water pollution in the country.

THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT 1981

This Act was enacted to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith. It was considered necessary to implement the decisions taken in Stockholm Conference 1972 in so far as they relate to the preservation of the quality of air and control of air pollution.

Under Section 3 of the Act, the Central Board for the Prevention and Control of Water Pollution exercise the powers and perform the functions of the Central Board for the



Prevention and Control of Air Pollution. Under Section 4 of the Act, State Government has constituted for that State a State Board for the Prevention and Control of Water Pollution who exercise the powers and perform the functions of the State Board for the Prevention and Control of Air Pollution. With a view to ensuring that the standards for emission of air pollutants from automobiles laid down by the State Board under clause (g) of sub-section (1) of section 17 are complied with, the State Government shall, in consultation with the State Board, give such instructions as may be deemed necessary to the concerned authority in charge of registration of motor vehicles under the Motor Vehicles Act, 1939 (Act 4 of 1939).

THE FOREST (CONSERVATION) ACT, 1980

This Act deals with the conservation of forests and related aspects. It extends to whole of India except Jammu and Kashmir. The Act covers under it all types of forests including reserved forests, protected forests or any forested land irrespective of its ownership. The State Government has been empowered under this Act to use the forests only for forestry purposes. If at all it wants to use it in any other way, it has to take prior approval of central government, after which it can pass orders for declaring some part of reserve forest for non-forest purposes (e.g.) mining or for clearing some naturally growing trees and replacing them by economically important trees (reforestation). Any illegal non-forest activity within a forest area can be immediately stopped under this Act. However, some construction work in the forest for wildlife or forest management is exempted from non-forest activities. Forest Amendment Act 1992 has made some provisions in the Act for allowing some non-forest activities in forest, without cutting trees or limited cutting with prior approval of Central Government. Wildlife sanctuaries, National Parks etc. are totally prohibited for any exploration or survey under this Act without prior approval of Central Government. Mining is a non-forestry activity and prior approval of Central Government is mandatory. The Supreme Court in *T.N. Godavarman Thirumulkpad v. Union of India* directed all on-going mining activity to be ceased immediately in any forest area of India if it had not got prior approval of Central Government.

THE WILDLIFE (PROTECTION) ACT, 1972

In the year 1972, Government of India enacted a comprehensive legislation with the objective of effectively controlling poaching and illegal trade in wildlife and its derivatives. This has been amended recently (January, 2003) and punishment and penalty for offences under the Act have been made more stringent. "Wildlife" has been transferred from State List to Concurrent List in 1976 giving power to Government of India to enact the legislation. To protect endangered species such as lion, tiger, crocodile, several conservative projects were launched under this Act. For offences relating to wild animals (or their parts and products) included in schedule-I or part II of Schedule- II and those relating to hunting or altering the boundaries of a sanctuary or national park the punishment and penalty have been enhanced. Also a new section (51 - A) has been inserted in the Act, making certain conditions applicable while granting bail. Some drawbacks which disappoint the wildlife lovers include fewer penalties to offenders, illegal wild life trade, and personal ownership certificate for animal articles, no protection for foreign endangered wildlife, pitiable condition of wildlife in mobile zoos and little protection of plant genetic resources.

THE ENVIRONMENT (PROTECTION) ACT 1986

This Act extends to the whole of India. It came into force on November 19, 1986. Under Chapter-I, some definitions in relation to environment has been given. Chapter-II describes the general powers of the Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution, appointment of officers and their powers and functions, frame rules to regulate environmental pollution. Chapter-III deals with the preventive methods, control and abatement of environmental pollution such as person authorized by Government has power of entry and inspection, Power to take sample and procedure to be followed in connection therewith, establishment of one or more environmental laboratories, appoint Government analysts etc. It also provides provision in relation to penalizing the offenders (Section 15, 16, 17). Section 17 specifies that Head of the department/ in-charge of small unit may be liable for punishment if the owner /occupier produce enough evidence of innocence. The Environment (Protection) Act 1986 regarded as an Umbrella Act seems superfluous over the Air Act and Water Act due to overlapping areas of jurisdiction. For instance, Section 24(2) of the new Act has made a provision that if the offender is punishable under the other Acts like Water Act or Air Act also, then he may be considered under their provisions. Interestingly, the penalty under the older two Acts is much lesser than the new Act. Also no suit, prosecution or other legal proceedings shall lie against govt. officer who has exercise power in good faith in pursuance of this Act (Sec 18). The Act has not included the “right to information” for the citizens restricting the participation of general public. The power and authority has been given to Central Government with little delegation of power to State Government. Under Section 19, a person cannot directly file a petition in the court on a question of environment and has to give a notice of minimum 60 days to the Central Government which certainly delays the remedial action.

OTHER IMPORTANT LAWS CONCERNING ENVIRONMENT

- (i) Section 268 to 290 of Indian Penal Code deals with public nuisances. Public nuisance means pollution of air, water, blasting, excessive smoke, filth and other polluting activities.
- (ii) Section 133 and 143 of Code of Criminal Procedure Code and Section 91 of Code of Civil Procedure envisages that a person may approach a Magistrate and District Judge respectively by filing a complaint or petition about the public nuisance.
- (iii) Under Law of Torts, special damage can be claimed from nuisance maker/violator of environment.
- (iv) Air (Prevention And Control Of Pollution) Rules, 1982
- (v) The Bhopal Gas Leak Disaster (Processing Of Claims) Act, 1985
- (vi) The National Environment Appellate Authority Act, 1997
- (vii) The National Environment Tribunal Act 1995
- (viii) The Water (Prevention And Control Of Pollution) Cess Act, 1977
- (ix) The Wild Birds And Animals Protection Act, 1912
- (x) The Wild Life (Protection) Amendment Act, 2002
- (xi) The Wild Life (Protection) Amendment Act, 2006
- (xii) Water (Prevention And Control Of Pollution) Rules, 1975
- (xiii) Wild Life (Protection) Act



There are a number of important environmental laws in the form of Acts for safeguarding or environment. Awareness about environment needs to be created through formal and informal education and each one of us and all of us have a bounden duty to protect our environment for the peaceful survival of the man kind as well as flora and fauna.

JUDICIAL CONCERN

Concern of the judiciary for protecting environment has ensured a new kind of environmental justice and morality in the provisions of the constitution and the declaration of the judiciary declaring the environment as a basic fundamental right or human right. Fortunately, in the last more than one decade, the trend has changed and the judicial policing are matched by new activists' stance and positive role specially after the Bhopal Gas leak tragedy. The judiciary has played a commendable role in ecology and environmental preservation and is also taking care of the need to have development under Articles 21, 48-A and 51A (g) of the Constitution. The initiative taken by the judiciary has introduced transparency on the issue of clearance of projects and environmental impact assessment. It is in this context that the courts have very rightly emphasized the principle of harmony and balance between the environment and its development. The Supreme Court decisions in clear terms indicated that the Central Governments and State Governments usually intend to violate the environmental standards while granting clearance of power projects and Industries etc. Some of the laudable decisions taken by the Indian judiciary are:

In *M.C.Mehta v. Union of India*¹ Industries situated near the Tajmahal Trapizium Zone (TTZ) are directed to use natural gas instead of coak or coal as the use of the same causes serious impact on the Tajmahal and people living in the area. Otherwise industries were directed to stop functioning and relocate to other area. This is very famous case relating to preservation of Tajmahal at Agra.

In *M.C.Mehta v. Union of India*² Supreme Court held that mining activity in the vicinity of tourist resorts of BadKal Lake and Surajkund (Haryana) are bound to cause several impacts on the ecology and directed that mining activity should be stopped within 3 km of the tourist resort.

In *M.C.Mehta v. Union of India*³ Supreme Court issued directions for unconditional closure of tanneries, relocation, and payment of compensation by them for reversing the damage. This case was based on Polluters Pay Principle. In this case, Calcutta tanneries discharging untreated poisonous effluents into the river of Ganges.

In *Narmada Bacho Andolan v. Union of India*⁴ the Supreme Court held that right to water is a fundamental right under Article 21 of the constitution. The court further observed that water is the basic need for the survival of human beings and is part of the right to life and human rights as ensured in Article 21 of the constitutions, and can be served only by providing sources of water where there is none.

In *P.R. Subhas Chandran v. Government of A.P.*⁵ the A.P. High court held that “under the constitution, the role of the State to provide every citizen with adequate clean drinking water and to protect water from getting polluted is not only a fundamental directive principle in the governance of the state but is also a penumbral right under Article 21 of the constitution of India.”

In *Subhash Kumar v. State of Bihar*⁶ the apex court held that “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.



The Vellore Citizen's Welfare Forum case⁷ refers to the sustainable development as "development, which meets the needs of the present without compromising the ability of the future generation to meet their own needs." In this case, the principle of intergenerational equity principle was also referred.

The Court in Goa Foundation v. Diksha Holding Pvt. Ltd⁸ ruled that "No activity which would ultimately lead to unscientific and unsustainable development and ecological destruction should at all be allowed and the courts must scrupulously try to protect the ecology and environment."

The Supreme Court, in Indian council for Enviro-legal action v. Union of India⁹ held that both development and environment must go hand in hand. In other words, there should not be development at the cost of environment and vice-versa but there should be development while ensuring the protection of environment.

The Courts admit that there can be no development without adverse effect of environment have also stated that a balance has to be struck between two competing interests, proper utility projects could not be abandoned nor the environment can be allowed to be destroyed. In nutshell, the judicial policing in India in relation to pollution matters and unsustainable development has been of much significant value as the principles initiated are a right step not only protecting the environment of the people, but also from all the people.

THE SOLUTION

Neither law nor judiciary can do anything unless a well mobilized public opinion is created against environmental pollution. Steps must be taken for strict observation of safety standards and procedures so that the risk is reduced to a minimum level if not zero level. In the interest of speedy and effective remedial justice, separate Environmental Court or tribunal at National, State and district level may be established. Towards that direction Central Government has already formulated a Bill. Effective legal control of Environment pollution can be meaningful only if common people are educated about environment and the laws. Every State and district headquarter should have Environmental Awareness and Environmental Education Centre. Like Civil Procedure Code and Criminal Procedure Code, an Environmental Procedure Code with simplified procedures may be legislated immediately for the effective and smooth functioning of various pollution Boards and the other machinery for implementing environmental law effectively. Environmental education must be introduced as a compulsory subject to be taught in all educational institutions for all classes. Media can also play an important role by creating awareness on environmental issues through broadcasting and publishing news, views, stories and messages amongst the viewers, readers and audience of all age groups. Non-Governmental organizations (NGOs) can also play an active, effective and viable link between the government and the citizens. They can act both as 'action group' as well as 'pressure group'. Specially modulated seminar, workshops, orientation and conferences should be organised at short interval in which the people should be made aware of harm to the society and mankind through the pollution of environment.

CONCLUSION

In our country the politicians and the bureaucracy are in consonance with each other and acts for the interests of each other when it comes to development plans, schemes and projects. The industry may sometimes threaten and operate indirect transfers through political masters who have control over the Board authorities, through monetary contribution to political campaigns



and may get set the standards according to their convenience. It may not influence the Judicial Officers directly but some unscrupulous parties may buy the witnesses and submit them in courts to prove the wrong things to be the right things in such a situation, Judicial Officer has no option but to deliver the order based upon the wrong witness. Environment is deteriorating at a fast pace despite the best efforts and initiatives of Government. In the end, I would like request that if we want to save our beautiful planet earth, we have to educate our people particularly in the field of Environmental Studies and aware them of ecological and environmental issues. It has been rightly said by the famous Roman poet, Virgil that “*Your descendants shall gather your fruits.*”

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