

Environmental Policies–An approach for sustainable development

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Abstract: Natural wealth of any nation is not unlimited and indiscriminate exploitation of the same is liable to generate not only serious environment pollution problems but also a risk of depletion of the wealth itself. One generation has no moral, legal or equitable right to exploit all the physical and natural wealth of the nation to the detriment of the future generation and thus it is required that the exploitation of the natural resources is planned. The 42nd Constitutional Amendment four years after the Stockholm Conference added to the constitution of India significant provisions relating to environment. In the Directive Principles which guide the state in moulding its laws, a new provision Art. 48 A was added which stated that the State shall endeavor to protect and improve the environment and to safe guard the forest and wild life of the country. The courts in India have stepped in and protected the fundamental right of the citizen to live and let live in clean, healthy environment which has been enshrined in Article 21 (Right to Life) of the Constitution of India which means right to clean water, healthy environment and unpolluted air to breathe.

Key words: Constitution of India; environmental policies; indiscriminate exploitation; natural wealth.

1. Introduction

Natural wealth of any nation is not unlimited and indiscriminate exploitation of the same is liable to generate not only serious environment pollution problems but also a risk of depletion of the wealth itself. One generation has no moral, legal or equitable right to exploit all the physical and natural wealth of the nation to the detriment of the future generation and thus it is required that the exploitation of the natural resources is planned. Environmental sustainability involves making decisions and taking action that are in the interests of protecting the natural world, with particular emphasis on preserving the capability of the environment to support human life. An "unsustainable situation" occurs when natural capital (the sum total of nature's resources) is used up faster than it can be replenished.

Today the biggest challenge that we face is with regard to depletion of our natural resources and pollution of our environment which has resulted in serious health hazards and which has also brought the world to the precarious condition where all nations together have to sit and think of what next, as we are speedily approaching a world in which air is polluted , water is polluted and natural resources have been depleted and there is a severe ecological crisis looming large and the only legacy we leave for our future generations is to fight an everyday battle for air, water and natural resources i.e. to be able to survive in such hostile environment which has been inherited by them.

With the development of Science and technology and ever increasing world population came tremendous changes in the human environment. These changes shook the balance between human life and environment and brought along various problems affecting the ecological balance, it became necessary to regulate human behaviour and social transactions with new laws commensurate with the changing conditions and values. A new branch of law called environmental law grew at this stage in order to manage and face the myriad challenges of such a system. Thus environmental law is of recent origin.

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Environment law therefore relates to the management of the environment and strategies for tackling the problems affecting the environment which includes water, air and land and the inter relationship which exist between them on one hand and human beings and other living creatures, plants micro organism and property on the other. It also undertakes the preventive and remedial measures to check the hazards of pollution which are major concerns of environmental law. This law thus embraces a wide spectrum of environmental issues.

The very first attempt for sustainable development at the global level was made through the Stockholm Declaration in 1972. The United Nation conference in Stockholm on Human Environment in 1972 is a land mark at the international level for protection of the deteriorating environment. The conference emphasized the man's capability to transform his surroundings must be widely used. Wrong and head less use can do incalculable harm to the human beings and human Environment. The conference suggested that the developing countries direct their efforts towards balancing their priorities with the need to check the increasing population. The conference identified areas which nations should take up for enacting laws on protecting and improving environment. The document prepared during this conference highlighting this principle is called the Stockholm Declaration in 1972. The UNESCO wing of United Nation set up a social science program and environmental design of living and UNESCO launched in 1968 a long term program on man and biosphere.

Provisions in the Constitution of India

The 42nd Constitutional Amendment four years after the Stockholm Conference added to the constitution of India significant provisions relating to environment. In the Directive Principles which guide the state in moulding its laws, a new provision Art. 48 A was added which stated that the State shall endeavor to protect and improve the environment and to safe guard the forest and wild life of the country and among the fundamental duty of the citizen, it was provided that every citizen shall have a fundamental duty to protect and improve the natural environment including forest, lakes, river, wild life and have compassion for living creatures (Art. 51(g)). Parliament has enacted

the Water (Prevention and Control of Pollution Act 1974) which was passed to restore the wholesomeness of water and for establishing pollution control boards for the control of pollution of water. The Air Prevention and Control of Pollution Act 1981 was passed by the parliament with a view to implement the decisions of the Stockholm Conference which ask the member states to take the appropriate steps among other things for preservation of quality of Air and Control of Air pollution. The Environmental Protection Act 1986 was enacted for a wider purpose of protecting and for improving the human Environment, a goal laid down by the Stockholm conference. Further the Noise Pollution (Control and Regulation) Rules 2000 under the Environment Protection Act 1986 were notified by the Ministry of Environment and Forests (MoEF), Government of India in 2000.

In today's world there is a constant conflict between preserving environment and development of a nation. This is being felt more by the third world's nations where development is going on a rapid scale to reach to the people and in this haste of development norms to protect the environment are thrown out and rapid and large scale pollution and destruction of environment is the price to pay. It is necessary to bring a balance between nth two competing and conflicting claims, namely the protection of environment and development of the nation. This balance can only be brought about by way of a national policy to be laid by the government pursuant to the financial, technical and other advice available to it.

Judicial Activism & Sustainable Development

The courts in India have stepped in and protected the fundamental right of the citizen to live and let live in clean, healthy environment which has been enshrined in Article 21 (Right to Life) of the Constitution of India which means right to clean water, healthy environment and unpolluted air to breathe. Unless a clean and renewable energy is found as an alternative, our planet risks being turned into an inhabitable and hostile not fit for human survival. Sustainable development is the need of the hour to develop the resources of the country while not exploiting the environment and keeping it intact for the future generations to enjoy , is what is the goal today and the

world is making a diligent effort to achieve this. India is not far behind. Infact judiciary in India has taken a lead on the matter and courts have interfered wherever the environment protection was needed over the demands of development. The Honorable Supreme Court of India has in catena of cases held that Sustainable Development is an integral part of fundamental rights conferred by Article 21(Right to Life) of the Constitution of India and thus cannot be allowed to be hampered by environmental degradation.

In case titled R.L & E. Kendra Dehradun v/s State of U.P. (AIR 1985 SC 652) popularly known as the Doon valley case, was the first case of its kind in the country with regard to issue regarding environment and ecological balance bringing into focus the need of reconciling the larger interest of the country mining which denuded the Mussorie hills of tree and forest cover and accelerated soil erosion resulting in land slides, blockage of under ground water which fed many rivers and springs in the river valley. The Honorable court ordered closure of number of lime stone quarries and observed that even though it rendered workers unemployed after the closure of lime stone quarries but this was the price which had to be paid for protecting and safe guarding the rights of the people to live in healthy environment with minimal disturbances of ecological balance. Similarly in ARC Cement Ltd. v/s State of UP the SC did not permit the cement factory to run in Doon valley area. (1993 Supp (1) Sc 57).

In M.C. Mehta v/s Union of India (AIR 1987 SC 965) popularly known as Oleum gas leakage case, in which the Bhopal disaster took place due to oleum gas leak in Shri Ram Chemical Mill, the court developed the Principle of absolute liability that any person who undertakes dangerous activity for profit would do so only on the condition that he would give the cost of any accident arising out the activity.

Similarly in M.C. Mehta v/s U.O.I (2001 (9) SCC 235) popularly known as 'Taj Trapezium Case'. The Honorable Supreme court directed the Uttar Pradesh Pollution Control Board to make a detailed list of all the industries and foundries active in the region and to make sure that pollution control

measures are employed by the industries and foundries.

In Ajay Singh Rawat v/s U.O.I (1995 (3) SCC 266) , PIL was filed alleging water , air and noise pollution in Nanital due to unauthorized construction of buildings. The Supreme Court issued directions to take preventive and remedial measures on war footing so that Nanital may regain its unsoiled duty.

In *Ganga Pollution* case, M. C. Mehta v/s U.O.I and others (AIR 1988 SC 1115) *Justice Venkatramiah* the apex court emphasized the duty of municipal corporation to remove water nuisance.

In *Vellore Citizens Welfare Forum v/s U.O.I and others* case (AIR 1996 SC 2715), the Supreme Court conceded the fact that constitutional and statutory provisions protected a person's right to fresh air, clean water and pollution free environment but the source of the right was the inalienable common law right of clean environment.

Again in M.C. Mehta v/s U.O.I a PIL filed in Supreme Court against the pollution in Delhi caused by the increasing number of Petrol and Diesel vehicles in Delhi, the Supreme Court set up a high powered committee to look into the problems of vehicular pollution and for devising methods and solutions to the problem.

That our country is committed to the protection of environment and has time ad again taken various measures to protect the environment. The Eleventh Five-Year Plan (2007-12) has set several targets to further India's progress in achieving this goal of sustainable development. These include Increase forest and tree cover by 5 percentage points, Attain WHO standards of air quality in all major cities by 2011-12, Treat all urban waste water by 2011-12 to clean river waters, clean drinking water to be available for all by 2009.

Conclusion

The 44th Constitutional Amendment Act tried to capture the wave of Stockholm Declaration by incorporation of Article 49-A and Article 51-A in the Constitution of India. The aforesaid constitutional amendment and Stockholm

Declaration were followed by various Parliamentary enactments like “The Air (Prevention and control of Pollution) Act 1981, The Environment (Protection) Act 1986, Water (Prevention and Control of Pollution) Act 1974 etc. Ironically the various pieces of legislations do not effectively deal with concept of environmental injury. However the said defect is supplied by the Supreme Court by laying down the principles like “The Polluter Pays” and “The Precautionary Principle”. The environmental law in India has been revolutionized by the judiciaries who by judicial activism have addressed the issues of environmental pollution and to safe guard the rich bounties of nature be that in the shape of water, air or land from the everyday activities which has resulted in their pollution and depletion. The courts in India have stepped in and protected the fundamental right of the citizen to live and let live in clean, healthy environment which has been enshrined in Article 21 (Right to Life) of the Constitution of India which means right to clean water, healthy environment and unpolluted air to breathe. Unless a clean and renewable energy is found as an alternative, our planet risks being turned into an inhabitable and hostile not fit for human survival.

The protection and improvement of human environment is a major issue which affects the well being of people and economic development throughout the world. A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences, to defend and improve the human environment for the present and future generations has become an imperative goal for mankind, a goal to be perused together with and in harmony with the established and fundamental goals of peace and of world wide economic and social development to achieve this environmental goal, will demand the acceptance of responsibility of citizens and communities and an by enterprises and institution at every level all sharing equitably in common efforts.

There are grey areas in the current statutory and judicial set up which requires diligent brain storming and prompt action for

realisation of true meaning of environmental policies which have been enacted for attainment of goal of sustainable development.

1. The cases involving issues of environmental pollution, ecological destruction and conflict over natural resources are increasingly coming up for adjudication and these cases involve assessment evolution of scientific and technical data, the Supreme Court has suggested the setting up of environmental courts on the regional basis, but this has been implemented in only few states like Calcutta, Madhya Pradesh, Madras, Punjab and Haryana etc., where green benches have been set up in the High Courts.
2. Resources to judicial proceedings, is a costly affair for those who suffer substantial injuries from public nuisance. Even if a person takes recourse to judicial proceedings, Courts may only settle disputes between the complainant and the polluter, the rights of other aggrieved persons may remain unsettled.
3. In matters of environmental pollution, considerable difficulty is experienced by the courts in adjudicating upon the correctness of the scientific and the technological opinions presented to the courts or in regard to the efficacy of the technology proposed to be adopted by the industry as the courts lack in technological / scientific knowledge.
4. The penalty /fine provided by various legislations is inadequate and fails to have a deterrent effect on the polluters.
5. Though these legislations have been enacted for the protection and sustainability of the environment, but they have failed to reach the grass root level due to executive lethargy.

References

- Desai, A.A. 1998. *Environmental Jurisprudence*. Vikas Publishing.
- Leelakrishnan, P. 2002. *Environmental Law in India*. Lexis Nexis- Butterworths.
- Jaswal, P.S. and Jaswal, N. 2005. *Environmental Law*. Pioneer Publication.