

ENVIRONMENTAL LAW AND POLICY: PERSPECTIVES, REALITIES AND FUTURISTIC TENDENCIES

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Abstract:

Despite of a properly chalked out environmental policy in the light of various Constitutional Provisions and protections, Environment Protection Act, 1986, Specific legislations for the protection and prevention of pollution of various natural resources like water, air, soil and above all Judicial Interpretations at various times, our country is still struggling to confront some basic and major environmental problems. The lack of public enthusiasm and overall systematic failure to maintain and keep a healthy, clean and safe environment is evident from recent increase of pollution levels in Delhi and various other cities among all. Government has at times taken initiatives towards the protection of the environment in the form of Legislative amendments and enacting new legislations to appropriately deal with emerging forms of pollution and pollutants. The prevailing environmental challenges and threats which we, as individuals are facing in the society are somewhere directly or indirectly mismanaged and mishandled by us only. The environmental challenges in the form of various forms of pollution and consequent changes and atmospheric variations has also put serious threats to the survival of 'flaura' and 'fauna' as well, leading to extinction of various species and ultimately resulting into atmospheric imbalance. Public Interest Litigation has been recent development in the sphere of law to bring forth the notice of respective courts various forms of violations of Environment Law and Environment Policy. But, unless and until, the society changes its perspective towards protecting environment and a stricter implementation and uniformity of Environment Policy is brought to practice, it is difficult to imagine a clean and safe Environment.

Keywords: Environmental Policy, Natural Resources, Public Enthusiasm, Clean and Safe Environment, Environment Challenges, Public Interest Litigation.

I INTRODUCTION

Human beings are very tiny creatures of nature and have a very minimal say in the whole working of the natural environment and atmospheric cycle. It is evident from the fact when natural calamities like earthquakes, volcanoes, heavy rainfall, landslides and mass destruction takes place that nature carries with itself enormous and endless energy, which can change the present surroundings in a flick of a second. Human beings just like other biotic creatures on this planet Earth used to be a small part of the whole working system few centuries and millenniums ago. But, it won't be wrong to state that with the passage of time and evolution of the species, human beings came out as the most developed and most productive species amongst all the biotic and living creatures on the planet. With the development of science and technology and evolution of significant intelligentsia amongst humans, our species has tried to bring almost every single thing present on the planet from tiny creatures to atmospheric systems and solar sciences to its control, in which humans have partially succeeded as well. But, one significant development which has taken place out of all manly activities and the attempts to bring every atmospheric element into its own control is the damage to the natural environment and harm to existing balance between living and non- living creatures or elements. The activities of human beings in the recent past to make life more convenient, satisfactory, productive or pleasurable has come up at the cost of destruction of natural environment, extinction of certain living species due to atmospheric imbalance, unclean and impure air, water, soil and other natural resources, loss in overall quality rate of living and many more related negative aspects. It is surprising to note that human race, despite of proven and known facts of damage to natural environment due to the continuous activities like mining, cutting trees, dumping waste into water, causing noise and air pollution etc. is not taking enough measures which can control or restrict the exercise of such activities. As far as Indian context is concerned, post independence, significant steps have been taken in the form of legal policy measures, but it has not been able to place a check on the environmental damage and destruction fully.

II ENVIRONMENTAL PROTECTION AND PRESERVATION: LEGAL REGIME

Legal Policy of a State or Country in regard to a particular issue or aspect is reflection of the requirements and principles upon which the general public is required to walk. Incidentally, there have been certain environmental guidelines and legislative measures before Independence like Indian Forests Act, 1927. But, a major mandate and core guiding provision came after the insertion of

Article 48A and Article 51A to the Constitution of India by 42nd Constitutional Amendment in 1976. Article 48A of the Indian Constitution state that, “The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.” Article 48A would have been an isolation provision casting a duty only upon the State to safeguard forests and wild life of the country. To balance the situation, a duty was also cast upon the citizens of the country to “protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures” through Article 51A (g) of the Indian Constitution, inserted in 1976 by 42nd Constitutional Amendment. Thus, it is crystal clear mandate in the supreme law of the land that environment requires to be and has to protected and preserved at the utmost, allowing no space for doubts or dilemmas regarding the existence of environmental protective legal or legislative policy.

In addition to the Constitutional principles, various major and minor Statutes have been passed and enacted time to time in order to reflect protective measures towards the environment. The Wildlife Protection Act, 1972, The Water (Prevention and Control of Pollution) Act, 1974, The Forest Conservation Act, 1980, The Air (Prevention and Control of Pollution) Act, 1981, The Environment Protection Act, 1986, The Public Liability Insurance Act, 1991, The Biological Diversity Act, 2002, The Noise Pollution (Regulation and Control) (Amendment) Rules, 2002, The Waste Management Rules (1998, 2000, 2008), National Green Tribunal Act, 2010, E-Waste (Management and Handling) Rules, 2011 etc. are some of the prominent and major statutory regulations governing environmental legal policy and legal framework¹. It is worth noting here that with the advancement and requirement of the society, timely amendments have been incorporated in order to deal with the modern forms of pollution and pollutants e.g. E-waste handling and management. Another major contribution of the legal statutory regime is the judicial pronouncements and interpretations in the light of the above mentioned statutes and Constitutional provisions, which has enlarged the meaning and scope of environmental protection.

III JUDICIAL MANDATE ON ENVIRONMENTAL PROTECTION

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¹Adv. Rudra, Environmental Laws and Constitutional Provisions in India, (Mar. 5, 2020, 12:25 PM), <http://www.legalservicesindia.com/article/article/environmental-laws-and-constitutional-provisions-in-india-1926-1.html>

The policies or statutes which are passed and enacted by the Legislature or law makers actually get tested when these laws are confronted with questions of law and brought to the court of law. Since the framing and formations of comprehensive laws for environment protection, there has been continuous litigation concerning various environmental issues and concerns. By the end of 1990s and towards the 21st century, there has been frequent use of 'Public Interest Litigations', involving significant questions of environmental importance and respective courts have been frontiers and forerunners of safeguarding environmental interests in the light of socio-welfare concern in various judicial pronouncements and judicial interpretations at various times².

One of the most landmark judgment concerning environmental protection and public liability is M.C. Mehta and Anr. etc vs. Union of India and ors. etc³, popularly known as the Bhopal Gas Tragedy Case. Hon. Supreme Court of India formulated the principle of Absolute Liability in this case, making a deviation from the English Principle of Strict Liability, which leaves a little room for escaping liability through its exceptions. Moreover, the judgment paved path for the The Public Liability Insurance Act, 1991. In the case of Rural Litigation and Entitlement Kendra, Dehradun vs. State of Uttar Pradesh⁴, Honorable Supreme Court has taken stand against the limestone quarrying and strengthened firm belief in Sustainable Development without any threat, damage or destruction to the environment. In M.C. Mehta vs. Union of India, 1997 (commonly known as Taj Trapezium Case)⁵ and M.C. Mehta vs. Union of India, 1988 (commonly known as Ganga River Pollution case)⁶, Hon. Supreme Court has taken firm stand for the protection of Taj Mahal from air pollution, caused by nearby industries and the protection of Ganga River from getting polluted due to dumping of waste material respectively. In Subhash Kumar vs. State of Bihar and ors.⁷, Supreme Court has held that Right to Life is a Fundamental Right under Article 21 of the Constitution, which includes the Right of enjoyment of pollution free water and air for full enjoyment of life of an individual. One of the most hyped up judgment was given in Animal Welfare Board of India vs. A. Nagaraj and ors.⁸, prohibited the Jalikattu and other forms of animal races and fights, considering such animal fights incited by humans as illegal and cruel manifestation. In Indian Council for Enviro-Legal Action vs.

² C.P.R. Environmental Education Centre, Environmental Laws of India, (Mar. 6, 2020, 5:42 PM), http://www.environmentallawsofindia.com/some_important_cases.html

³ 1986 SCR (1) 312

⁴ AIR 1987 SC 2187

⁵ (1997) 2 SCC 353

⁶ AIR 1988 SCR (2) 538

⁷ 1991 AIR 420, 1991 SCR (1) 5

⁸ (2014) 7 SCC 547(2014) 7 SCC 547

Union of India⁹, Supreme Court has once again shown firm belief and faith in 'Polluter pay Principle' in the interest of safe and clean environment and protection from damage and destruction. In *Narmada Bachao Andolan vs. Union of India*¹⁰, Supreme Court has once again laid stress on Sustainable Development. In *Ambica Quarry Works v State of Gujarat and ors.*¹¹, Supreme Court has come forward in the support of forest conservation. In *Municipal Council, Ratlam vs. Vardhichand*^{12 13}, Supreme Court has taken strong action against public nuisance. Thus, Indian Judiciary has given widest possible interpretation to environmental protection in the light of various judgments and pronouncements.

IV ENVIRONMENTAL IMBALANCE AND ITS IMPACT ON ATMOSPHERE

Environmental pollution and improper use and utilization of natural resources, improper treatment of waste material and other such factors of environmental degradation, damage and destruction does not only bring direct consequences in the form of decrease in the quality of life on the planet or faster exploitation of natural resources. On the contrary, environmental pollution, degradation, destruction and damage have direct and consequent nexus with the environmental and atmospheric imbalance. Atmospheric balance can be understood in the light of food chains and respective flow and transfer of energy from one component to another, which leads to the survival of various biotic and living organisms on the planet. Thus, when trees are cut recklessly, the basic or primary element of food chain goes missing, leading to imbalance in the food chain and flow of energy from one level to another. The evident fact of the story is the continuous extinction of thousands of rare species of animals and plants or flora and fauna. According to the Red List, maintained by International Union for Conservation of Nature (IUCN), as many as 20,000 species of plants and animals across the globe are on the verge of getting extinct¹⁴. This reflects very clearly the inter linked and inter woven cause and effect relationship of environmental degradation, depletion, destruction and damage and the survival of mankind and other species of plants, animals and other

⁹ AIR 1999 SC 1502

¹⁰ 2000 (10) SCC 664.

¹¹ 1987 AIR 1073

¹² AIR 1980 SC 1622.

¹³ Anubhav Pandey, Ten Most Important Environmental Law Judgments in India, (Mar. 6, 2020, 5:45 PM), <https://blog.ipleaders.in/environment-law-judgment/>

¹⁴ Richard Pearson, Protecting Many Species to Help Our Own, (Mar. 6, 2020, 7:54 PM), http://www.nytimes.com/2012/06/03/opinion/sunday/are-we-in-the-midst-of-a-sixth-mass-extinction.html?_r=0

biotic creatures present on the planet. The common folk is living lavishly without giving any thought about the future generations and the present flora and fauna. It won't be an exaggeration to state that for the sake of personal pleasures, convenience and satisfaction levels, human beings have crossed all the limits of giving thrust to rapid industrialization and urbanization at the cost of reckless deforestation and overall damage and destruction to environment at a gigantic level.

V LACK OF PUBLIC ENTHUSIASM AND SYSTEMATIC FAILURE

Despite of a crystal clear Constitutional mandate for the protection and preservation of the environment and safeguarding the natural resources and natural habitat, it won't be wrong to state that lack of public enthusiasm and overall systematic failure are two big reasons for the present environmental conditions and general environmental situations. Environment Protection and safeguarding the natural resources has always been an issue which has been overlooked by general masses and common people. It is the bitter truth which cannot be ignored that a normal citizen of the country does not bother much about the environment and surrounding around him or her. A normal citizen is only concerned about earning his bread and butter for the day. Recently, the Capital of India, Delhi has been confronting some serious air pollution problems. This is not restricted to the capital city alone, but extends to various other metropolitan cities like Mumbai, Kolkata, Chennai, Ludhiana, Jalandhar, Patiala, Hyderabad, Bangalore, Pune, Lucknow, Patna, Jaipur etc. Some of the major reasons of the disastrous air pollution levels in these cities are vehicular pollution, burning of solid waste, industrial waste, domestic cooking, burning and heating. Lately, some of the cities of hilly regions and states including Himachal Pradesh's capital Shimla, Dehradun and other prominent hill stations are facing traffic problems in abundance, directly forming nexus with increased vehicular pollution and causing serious threats to the overall environmental setup.

The way how the idea of environment protection and safeguarding our natural resources has to be presented is still lacking in our country. Despite of crores of amount being spent on generating awareness amongst people concerning environmental protection, it won't be wrong to state that the general public still lacks enthusiasm and general will to regard and treat the environment as their own and start performing actions reflecting their keenness to protect and preserve the environment and safeguard the natural resources present. In addition to this, it is again surprising to note that importance of environment is not taught to children by their children in general scenario. Where

parents try to inculcate good morals, actions and deeds amongst their children, environment protection and safeguarding the natural resources remains an untouched topic. It is because of this reason that our governments, administrative agencies and other institutions are required to take steps for the sake of protecting the environment. Governments are not required to teach general public their moral values. Therefore, the habit and general will to safeguard the natural resources and protecting environment has to be generated from one's own conscience.

VI EMERGING TRENDS AND FUTURE PERSPECTIVES

In the recent past, there has been enormous increase and acceptance of Public Interest Litigations being filed in light of public interest concerning various environmental issues and concerns. In various cases, Honorable Supreme Court and respective High Courts have also taken 'suo moto' cognizance to safeguard environmental concerns. Certain states like Himachal Pradesh, Uttarakhand have taken certain coercive measures to upkeep the purity of the environment and eliminate such elements which are likely to cause degradation and damage to the environment, natural resources and the natural atmospheric habitat. Some of the steps taken includes ban on use of polythene bags across the state, which is a welcome move. The need of the hour is not to restrict such steps or measures at State or local level, but rather take to the national and central level and regard such steps as the pre-requisite and necessary mandate for the socio-welfare of the citizenry and protection of the environmental concerns and interests. One major change which is required at the utmost is the development of public enthusiasm towards protection of the environment and safeguarding the natural habitat and natural resources by using and utilizing them in a vigilant manner. Unless and until public vigor, zeal, enthusiasm and efforts are developed in general masses and public, the legal policy, framework and judicial interpretations won't have much significance from the practical and realistic point of view. Additionally, in the near future, environmental studies and education is required to be appreciated from the very basic and root schooling level till the level of higher studies. The concern must not be taught out of compulsion or to suffice the requirement of compulsory teaching to pass a particular class, grade or standard, but out of public concern, public domain, public interest and on the top of everything else for the sake of sustainable development in order to make this planet worth living for our present generations and generations to come in the near future.

VII CONCLUSION

By now, it is absolutely clear and almost established point that environment and environmental protection are one of the most important and crucial aspects of the society in the present scenario. Despite of Constitutional Principles enshrined in Article 48A and Article 51A (g) of the Indian Constitution and certain statutory provisions concerning various aspects of environmental protection and safeguarding the natural resources and natural atmospheric habitat, there has been persisting and existing lack of public enthusiasm and general will and commitment towards protection of environment and safeguarding the environmental interests. Certain developments have taken place in the recent past in the form of Public Interest Litigations and such other related measures and steps in order to protect the environment and judicial organ of the state has given widest possible interpretation of the environmental legislations in general interest. The dire need of the hour is to imbibe environmental protection and safeguarding the natural resources as one of the fundamental aspiration and objective of the society by all possible social, economic, political, moral, religious and scientific ways so that our environment should stay as worth living for the generations to come and on the same hand we could take our next steps towards the process of sustainable development of the country.