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Constitutional Mandate for Environmental Protection

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Abstract

'Earth' is the only planet to be blessed with human life. It is having such an environment which sustains every form of life present on it. Where on one hand, environment has been a life saving support for every human being. on the other hand unregulated human activity has been the main cause of environmental degradation. India since the Vedic period has expressed its gratitude to nature. According to the Indian philosophy of Vedic period, human body is made of five natural elements:- Water, Earth, Sun, Air and Food grains. Massive population explosion, tremendous urbanization, unrestricted exploitation of natural resources and constant industrial growth all around the globe has disturbed the ecological balance. The increase of carbon dioxide, nitrogen and other sulphides in the atmosphere has resulted in 'global warming' and a warning to all the inhabitants of this planet. Due to global warming, the water level is rising and it is feared that in few decades, the nations close to sea and many small islands will sub-merge in water. The unstoppable deforestation has also posed great threat to environment. Trees are the main source of oxygen, they help in preventing soil erosion, they maintain water

table and help in bringing rain. The emission of fuels, the pollution of air by the various factories, vehicles and the use of Chloro-Floro carbon (CFC) products have been depleting the 'Ozone layer', which protects us from the 'Ultra —Violet rays' of the sun. It is a matter of grave concern that such depletion would amount to causing of skin-burns, skin-cancers etc. It seems to be absurd on the part of human beings that on one side they are making efforts to have a comfortable future and on the other side, their activities are resulting in eating away their own future as 'Safe Environment can only save life.

Keywords : *Environment Degradation, Global Warming, Ozone Layer, Chloro-Floro Carbon, Ultra Violet Rays*

Introduction

Sustainable Development The term 'Sustainable development' means an integration of developmental and environmental imperatives, Thus, development must possess both economical and ecological sustainability. The term sustainable development occupies an important place in the International Environmental Law. In October 1982, the United Nations General Assembly adopted the World Charter for Nature and Principles of Sustainable Development. The agreement expressly recognized the principle of sustainable development, defined as using living resources in a manner that 'does not exceed their natural capacity for regeneration' and using 'natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of future generations.

Environmental impact assessment is another widely accepted norm of international environmental law. Typically, such an assessment balances economic benefits with environmental costs. The logic of such an assessment dictates that before a project is undertaken, its economic benefits must substantially exceed its environmental costs. India has adopted this norm for select projects which are covered under the Environmental Impact Assessment (EIA) regulations introduced in January, 1994.

Precautionary Principle Another new norm of international environment law is the precautionary principle. This is basically a duty to foresee and assess environmental risks, to warn potential victims of such risks and to behave in ways that prevent or mitigate such risks.

Polluter pays principle Most industrialized countries subscribe to the polluter pays principle. This means polluters should internalize the costs of their pollution, control it at its source, and pay for its effects, including remedial or cleanup costs, rather than forcing other states or future generations to bear such costs i.e the cost of pollution to be borne by the person responsible for causing pollution.

International Obligations of India to Protect Environment

India has played an important part in 1972. U.N. Conference on the human Environment at Stockholm, also in 1992 Conference on Environment and Development a Rio de Janerio and in Earth Summit Plus Five of 1997 at New York. India has also ratified many international treaties'. So, it obligates India to implement the decisions of the international conferences, treaties and agreements into the stream of national law.

(living effect to the United Nations conference on Human Rights held at Stockholm in 1972, the Union Government enacted the Air (Prevention & Control of Pollution) Act of 1981 and the Environment (Protection) Act of 1986.

Today, India has adopted a liberal approach. In order to give effect to the international treaties and agreements it either incorporates the International provisions in the domestic law which are not inconsistent or interprets the municipal law accordingly so as to avoid any conflict between international and national law.

In Vellore Citizen's Welfare Forum v. Union of India, the Supreme Court held that it is almost an accepted proposition of law that the rules of customary International law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the Courts of law.

In People's Union for Civil Liberties v. Union of India, the Supreme Court held that the provisions of International covenants, which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can certainly be relied up on by Courts as facts of those fundamental rights and hence enforceable as such. hence, Indian Judiciary has played an active role in bringing international law and Indian law to go hand in hand. So, the concern for environment protection has not only been raised to the Status of fundamental law of the land, but it is also wedded with human rights approach.

The Supreme Court as well as the Indian government has recognized the principle of sustainable development as a basis for balancing ecological imperatives with developmental goals. Giving impetus to the concept of 'sustainable development', the Supreme Court in a number of cases has struck down the developmental projects which

were not in consonance with it. It is observed that the concept of 'Sustainable development' promotes the constitutional mandate of India to "protect and improve" environment and is thus a part of the environmental law of the country. With regard to this, In **Vellore Citizen's Welfare forum v. Union of India**. In view of the various constitutional provisions related to environment protection, the Supreme Court has held that the essential feature of 'sustainable development' such as the 'Precautionary Principle' and the 'Polluter Pays Principle' are part of the environmental law of the country.

Today, the environment has become a sensitive issue. In India, the conflict between development & Environment is taken care of by Environmental impact Assessment (**EIA**) Environment Impact Assessment measures and analyses the socio-economic and ecosystem changes that may result from the proposed project. The judiciary also maintaining the importance of (**EIA**), made it clear in '**K. Chandra v State of Tamil Nadu**', that construction of any dam or other project without proper Environmental Impact Assessment (**EIA**) can be declared as unconstitutional being violative of Article 21 of the Constitution.

Constitutional Provisions to Protect Environment

The Constitution of India puts obligation on both the State and Citizens of the Country to protect and improve environment. Article 51 -A, part 1V-A of the Constitution deals with "Fundamental Duties", wherein Article 51-A (g) states the fundamental duty with respect to environment. It provides: It shall be the duty of every citizen of India to protect and

improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

Both 'Right and duty' co-exists. If the human beings have the 'right to life' and claim that the State should safeguard their rights, provide them healthy living conditions, they should also perform their duties towards the Society. So, it is the utmost important duty of a citizen to preserve healthy environment. Unhealthy atmosphere will cause health hazards and the citizens will themselves pose danger to the right to life. The underlined emphasis of this fundamental duty is that every citizen has a duty to make an endeavor to preserve the environment in the same way as nature has gifted it to all of us.

Article 48-A provides for the protection and improvement of environment. It provides 'the State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the Country'.

According to Article 37 of the Indian Constitution Directive Principles of State Policy are non-enforceable but still their supremacy cannot be denied. They are fundamental in the governance of the country. Fundamental Rights and Directive Principles are so inter-related that achievement of one results into the attainment of other. If fundamental Rights are the 'claims/rights/liberties' given to the individual then directives are the duties/liabilities imposed on the State to grant and protect such guarantees given to the Society. In a democratic setup, only that government survives which works for public good. As the government is 'for the people, 'of the people' and 'by the people', so public opinion itself act as a deterrent and compels government to bring directives into action. Moreover, the well-done job by judiciary in knitting fundamental rights with Directive Principles, has made the application of 'directives' by the State, a reality.

Even though the right to healthy environment is not expressly provided under the constitution but still the courts have recognized it to be included under article 21 i.e 'right to life'.

In **M.C. Mehia v. Union of India**, the Court held that the 'right to life under Article 21 means a life, of dignity to be lived in a proper environment free from the dangers of disease and infection.

The directive principles serve the courts as a code of interpretation. In **Mumbai Kamgar Sabha v. Abdulbhai**, Supreme Court held that Fundamental rights should interpreted in the light of directive principles and the later should, whenever and wherever possible, be read into the former. hence, both are complementary and supplementary to each - other. In a catena of cases the Court held Article 51(g) and Article 48-A is an integral part of right to life ensured under Article 21

Virendar Gaur v. State of Haryana, the Supreme Court has held that hygienic environment is an integral facet of tight to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Right to life thus, includes the right to good health.

R.L & E. Kendra, Dehradun v. State of Uttar Pradesh In this case, the petition was liled against the progressive mining which denuded the Mussorie Hills of trees and forest cover, resulting in land slides due to soil erosion. The Court held that disturbance of ecology by quarrying operations definitely affects the life of the persons and thus involves the violation of right to life under Article 21 of the Constitution.

Charan Ial Sahu v. Union of India The Supreme Court while upholding the validity of the Bhopal gas leak Disaster (Processing of Claims) Act, 1985 held:

“In the context of our national dimensions of human rights, right to life, liberty, pollution free air and water is guaranteed by the constitution under Articles 21, 48- A and Articles 51-A (g). It is the duty of the state to take effective steps to protect the guaranteed constitutional rights.”

Thus, the Supreme Court has made it clear that Article 21, 48-A and Article 51-A (g) have to be read together thereby putting obligation on the State as well as on citizens to protect and improve environment.

Development v. Environment

To certain extent national development and growth is a must. The Construction of dams, thermal power plants, hydel-projects is also a necessity. In all the development. exploitation of natural resources does take place.

Article 19(l)(g) guarantees all citizens the right “to practice any profession or to early on any occupation, trade or business” However, it is not any absolute right as it is subjected to reasonable restrictions imposed under Article 19(6), Article 19(6) provides that freedom guaranteed under Article 19(1)(g) can be restricted in the interest of general public. Thus, if a particular business is posing environmental or health hazards, it can be restricted or prohibited.

M.C. Mehta v. Union of India' The Supreme Court following the path of sustainable development directed that the industries operating in Taj Trapezium Zone (VIZ) using coke/coal must stop functioning and they could relocate to the alternate site provided under the Agra Master Plan.

M.C. Mehta v. Union of India In order to protect Delhi, from the environmental pollution caused by hazardous/noxious/heavy/large industries operating in Delhi, the Court

directed that such industries be shifted and relocated to other towns of National Capital Regions (NCR) as provide under the Master Plan for Delhi perspective 2001. Thus, 168 industries were identified as such to stop functioning and they could shift or relocate themselves to any other industrial estate in NCR.

Recognizing that 'right to livelihood' is a part of 'right to life' the Supreme Court

In Banwasi Sewa Ashram v. State of UP held that NTPC can acquire the forest land, only after providing certain facilities to the ousted forest dwellers.

Narmada Bachao Andolan v. Union of India The Supreme Court while issuing the directions in respect to the continuance of the construction of dam on Narmada River (Sardar Sarovar Project), directed the Government for taking relief and rehabilitation measures, for the displaced persons.

The fact, that development is also required for a better life, cannot be ignored. So what is required is regulated human conduct and 'sustainable development'. Law is a regulator of human conduct. Thus, it plays an important role in the protection of environment by regulating human conduct. Showing its concern for environment the Indian law has incorporated various provisions for the protection and improvement of the environment.

Conclusion

Thus, development is not antithetical to environment. Judicial approach has tried to reconcile the both. Indian Constitution has also safeguarded the environmental interests. International commitments are also kept with. So, the need of the hour is that every citizen should realize his duties in protecting and improving environment. From

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child to an elderly person, a house wife to a busy corporate, every person can contribute in keeping the environment safe. The community as a whole should pledge not to spread garbage on the roads, sanitation facilities should be maintained well and such arrangements be made so that smoke and other effluents does not pollute the air and water then only we can say that we are worth living on this beautiful planet.

On the other hand, the State/Government should keep on taking ameliorative steps to preserve and improve environment as care of the environment is a 'continuous process'. The authorities like municipalities should not wait for the complaint rather at their own they should take best possible measures to keep the city clean.

In India, it has been witnessed that Public Interest litigation has been used as an important instrument to bring 'environmental issues or problems' in the notice of the Court. These Public Interest litigations (PW) has widened the scope of 'Locus standi' Thus any spirited citizen or social group or Non-Government Organization (NCO) can take its advantage to bring a real environmental problem in the eyes of law. The PIL can be filed before the Supreme Court and the High Courts by invoking under Article 32 and Article 226 of Indian Constitution respectively.

The Environment (Protection) Act, 1986 also encourages the Public Interest Litigation. Under the said Act the powers are widely vested in all those who are ordinarily categorized as not aggrieved persons to take environmental matters- iO Courts. Thus, with the aid of PIT, every citizen can act as a savior of environment. Along with it. Section 19(13) of the Environment (Protection) Act. 1986 provides that any person may give notice of not less than 60 days, in the manner prescribed, of the alleged offence

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and of his intention to make a complaint to the Central Government or the authority or officer authorized in this regard.

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