

ENVIRONMENT AND ENVIRONMENTAL LAWS

“ Indian cities are now the most polluted in the world with bad health consequences, especially for poor people... They are more polluted than Chinese cities which have been criticized. Every Indian child who now grows up in a major city is effectively smoking like a pack of cigarettes or something a day. I think the government needs to get serious.”

-Nobel laureate Mr.Venkatraman Ramakrishnan

The observations cited above are alarming from the point of health of citizens of India and the visitors. These also point out as to what kind of relationship, we the Indians, have created with environment. Significance of relationship between human beings, environment and living creates etc. has been appreciated while defining “environment” under Environmental Laws. Laws provides that “environment” includes **water, air or land**; and the **inter-relationship** which exists among and between water, air and land, and **human beings, other living creatures, plants, micro-organism and property.**

What to say of creating any kind of relationship with living creatures and plants for a good environment, we, the human beings, have polluted the environment.

TYPES OF POLLUTION

There are two types of pollution. One is natural pollution and the other is man-made pollution.

Nature pollution

It includes natural calamities like earthquake, flood, drought, cyclone etc.

Man-made pollution

This category of pollution includes-

- Air Pollution
- Land pollution
- Water Pollution

AIR POLLUTION

So far as, Air Pollution is concerned, under Environmental Laws, its pollutants contain solid, liquid and gaseous substances. Legislature has not specifically included 'noise' as one of the pollutants of air, perhaps because of enactment of separate laws on noise pollution. But, still definition of air pollution needs amendment so as to include 'noise' as one of its pollutants.

WATER POLLUTION

This kind of pollution is in the form of 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, 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.

LAND POLLUTION

Land pollution as defined under the Law means to divest the earth from its natural landscape, deforestation, denudation, discharge of untreated toxic substances, throwing unhygienic and toxic hazardous waste and contaminating the natural contents of earth.

Radiation and Radioactive Pollution

This is another kind of pollution. Nuclear energy, a big source of energy, has also become a big health hazard.

Chernobyl Atomic Reactor incident and Three Mile Island incident are the examples on this type of pollution. Working in a nuclear plant is hazardous to human health. Disposal of nuclear wastes is also hazardous to soil.

Causes of Pollution and Environmental Degradation

(i) Natural causes include

-Drought, flood, cyclone, earthquake etc.

(ii) Man-made causes include

Population growth;Poverty;Urbanization; Industrialization; Rituals; and Polluted minds etc.

ENVIRONMENT LAWS

Initially **Law of Torts** was in force for action on account of suchlike wrongs.

At international Level, journey began with **Stockholm Conference** 1972.

In that conference, it was agreed that environment could assimilate impacts and science could provide information and technology to deal with environmental degradation .

Thereafter, in **Rio Declaration, 1982** -UN General Assembly Resolution on World Charter for Nature, 1982 precautionary Principles came to be accepted . The idea was that it is better to err on the side of caution and prevent activities that may cause serious or irreversible harm. It was agreed that an informed decision can be made subsequently on availability of additional data/resources on further research.

Decision in TVA Vs. Hill (57 L.Ed.2, 117) by United States Courts is one of the .important cases relating to .environmental laws

It so happened in that case that a dam was being constructed over a river. A species of fish was found only in this river. It was declared as endangered species. Due to construction of dam, it was in danger of extinction. Dam was almost complete.

Suit for injunction filed against construction of the dam was dismissed by the District Court but Court of Appeals set aside the order. Matter went to US Supreme Court.

Court upheld the order of Court of Appeals. Congress had to amend the law, so as to complete the construction. The fish were transplanted to another river.

Environment Laws at national level

Silent Valley's case

Silent valley is in Distt. Palghat (Kerala). One of the largest tropical evergreen

forests and the only vestige of virgin forests of Western ghats.

This valley has unique vegetable food resources which contain mammals and birds in the valley.

There are various endangered plants and animals.

Govt. of Kerala wanted to construct a hydro-electric project- which could damage rarest of rare flora and fauna of the area.

State Govt. pleaded that the points taken up by the petitioner affecting ecology of the area were taken into consideration; that it was essential to provide electricity to the people of the State and that Legislature had taken unanimous decision by adopting a resolution in this regard.

Court refused to interfere in the matter. That is how, during those days due priority could not be given to environmental issues. **Society for the Protection of Silent Valley v. UOI** decided by Kerala High Court. (1979)

The Constitution of India

Appreciating the danger to environment, Article 48A came to be inserted in the Constitution of India casting a duty on the State to secure the health of people, improve public health and protect and improve the environment.

Article 51A came to be inserted casting a duty on 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.

OTHER STATUTES

The Environment (Protection) Act, 1986

The Air (Prevention and Control of Pollution) Act, 1981

The Water (Prevention and Control of Pollution) Act, 1974

The National Environment Tribunal Act, 1995

The National Environment Appellate Authority Act, 1997

The Indian Forest Act, 1927

The Forest (Conservation) Act, 1980

The Wild Life (Protection) Act, 1980

The Public Liability Insurance Act, 1991

Factories Act and various other enactments and rules framed thereunder.

Code of Civil Procedure

Section 91 CPC provides remedy for institution of civil suit on the ground of public nuisance. Or.1, R 8 CPC provides for institution of representative suit. To seek legal remedies concerning maintenance of environment, at district court level, both these provisions under the Code are of much significance.

Code of Criminal Procedure

Sections 133-143 Cr.PC are the relevant provisions available in the Code to deal with environment degradation. Under these provisions, Sub Divisional Magistrates have been empowered to deal with suchlike matters.

The Indian Penal Code

Sections 268, 277, 278, 288, 290 and 291 are the penal provisions on the point of environment, stipulated under this Code.

WELL SETTLED PRINCIPLES

From time to time, while dealing with environment matters, Courts have laid down guiding principles. These include-

Principle of Sustainable Development

Precautionary Principles

Polluter Pays principle

Public Trust Doctrine

Doctrine of Proportionality

Sustainable Development

By Sustainable Development means such development that meets the need of the present without compromising the ability of the future generations to meet their own needs.”

Precautionary Principles

- (i) To anticipate, prevent and attack the causes of environmental degradation
- (ii) Lack of scientific inquiry not to be used to postpone measures for prevention of such degradation
- (iii) Industrialists to show that his action is environmentally benign

Polluter Pays Principle

This principle is to the effect that once the activity carried on is hazardous or inherently dangerous, the person carrying on the same is liable to make good the loss caused to any other person by such activity, irrespective of the fact whether he took reasonable care.

Financial costs of preventing or remedying damage caused by pollution shall lie with the undertaking which causes pollution or produces goods which causes pollution.

Govt. cannot be asked to meet the costs, as its effect would be to shift the financial burden to the taxpayer.

Polluter must pay cost of pollution abatement, cost of environment recovery and compensation cost for victims.

See decision in T.N. Godavarman Thirumulpad vs Union of India (UOI) and Ors. AIR 2014 SC 3614

Public Trust Doctrine

This Doctrine enjoins upon the Government to protect resources for the enjoyment of general public. It imposes obligations and limits upon Government agencies on behalf of all the people and especially future generations. This Doctrine was evolved in Illinois Central Rail Road Company Vs. People of the State of Illinois, 146 US 387 (1892).

Public Trust Doctrine – In India

Natural Resources

Environmental Laws enacted by the Parliament and State Legislatures deal with specific natural resources i.e. Forest, Air, Water, Coastal Zones etc. It is significant to note that so far no comprehensive legislation has been enacted to define “natural resources”.

Generally, natural resources are elements having intrinsic utility to mankind. They may be renewable or non-renewable. For example, Spectrum has been accepted as a scarce, finite and renewable natural resource. Value of natural resources rest in the amount of the material available and the demand for it.

Ownership of Natural Resources

Well settled legal position as to ownership of natural resources is that State legally owns all the natural resources, which actually belong to its people and accordingly, these are considered as natural assets.

Hon’ble Apex Court has held this doctrine to be a part of Indian Jurisprudence. See decisions in MC Mehta Vs. Kamal Nath, (1997)(1) SCC 388;

Jamshed Hormusji Wadia Vs. Board of Trustee, Port of Mumbai, (2004) 3 SCC 214.

Intellectuals Forum, Tirupathi Vs. State of A.P., (2006) 3 SCC 549.

Formento Resorts and Hotels Limited Vs. Minguel Martins, (2009) 3 SCC 571.

Center for Public Interest Litigation and Ors. Vs. Union of India and Ors. AIR 2012 Supreme Court 3725.

MORE CITATIONS

MC Mehta Vs. Union of India, AIR 1987 SC 1086 also known as Oleum Gas Leakage case.

Indian Council for Enviro-Legal Action Vs. Union of India (AIR 1996 SC 1447).

Vellore Citizen Welfare Forum Vs. Union of India (AIR 1996 SC 2715)

MC Mehta Vs. Kamal Nath (1997(1) SCC 388)

TN Godavarman Thirumulkad Vs. Union of India (1997(2) SCC 267)

MC Mehta Vs. Union of India (1998) 6 SCC 60 .Traffic conditions and vehicular population of Delhi was subject matter of judicial monitoring.

Doctrine of Proportionality

This doctrine is also applicable to matters concerning environment, as a part of process of judicial review.

Utilization of environment and its natural resources should be consistent with principles of sustainable development and inter-generational equity, but balancing of these equities may entail policy choices.

See decision in **Lafarge Umiam Mining Pvt. Ltd. vs Union of India & Ors.** AIR 2011 Supreme Court 2781 wherein, guidelines issued to Central Govt. and State Govt. and various authorities in respect of use of forest land for projects.

Ratlam Municipality Vs. Vardhichand, AIR 1980 SC 1622 – where residential locality was subjected to extreme filth and stench partly due to discharge of fluids from an alcohol plant in the public streets and partly due to insensitivity of Municipal Council in maintaining sanitation. Hon'ble Apex Court observed that decency and dignity are non-negotiable facets of human rights and first charge on local self governing bodies.

In **Rural Litigation and Entitlement Kendra Vs. State of UP** (1985) 2 SCC 431, in this case on the basis of a letter petition regarding illegal and unauthorized limestone quarrying and excavation of limestone deposits which apparently affected the ecology of the area, caused environmental disturbances which damages the perennial water springs in the Mussoorie Hills, disturbed the natural water system and the supply of water both for drinking as well as for irrigation .

Apex Court prohibited mining activity and stone quarrying from time to time and also issued directions for resettlement of the workers.

Bhopal Gas Disaster case, 1985

The worst industrial disaster ----(**Industrial Hiroshima**-as per Learned Prof. Upendra Baxi)-- took place when Methyl Isocyanate manufactured and stored in the Union Carbide Corporation leaked from the chemical plant killing more than 3000 persons and 2 lacs fell ill of various kinds of ailments.

Principle of Strict Liability

Oleum gas leak took place at Shriram Food and Fertilizer Corporation, New Delhi leaving large number of persons affected.

Hon'ble Apex Court issued directions, including for deposit of Rs.20 lacs as compensation to be paid to the victims. But at the same time observed that total ban on the industry of public utility would impede **industrial development**. Further observed that we could hope to reduce the element of hazard or risk to the community by taking necessary steps. Suggestion was also made for creation of Environmental Courts. See decision in **MC Mehta Vs. Union of India** (1987) 1 SCC 395 - Known as Oleum Gas Leakage case).

Other environmental matters considered by courts

Directions to check pollution in and around the Ganges river (**MC Mehta Vs. Union of India** (1988) 1 SCC 471)

Relocation of hazardous industries from the municipal limits of Delhi (**MC Mehta Vs. Union of India** (1996) 4 SCC 750)

Directions to State agencies to check pollution in the vicinity of the Taj Mahal. (**MC Mehta Vs. Union of India** (1996) 4 SCC 351)

Government run buses to shift to the use of Compressed Natural Gas. (**MC Mehta Vs. Union of India** (1998) 8 SCC 648)

Vehicular Air Polluting, Delhi

As per a report submitted to National Green Tribunal In July, 2015, out of 112 trucks entering Delhi, 97 were found to be overloaded, but only 8 were found to

be polluting.

Hon'ble Bench observed that it was incomplete report and questioned as to how it was possible when the vehicles were tested only on two parameters – opacity of smoke and carbon dioxide emissions.

Earlier it was submitted by Learned Additional Solicitor General that most other countries had adopted fitness tests including emission checks for vehicles as the criteria for curbing pollution and not the age of vehicles.

Govt. has expressed its inability to check the vehicles except when they discharge smoke.

This goes to show that we have not been able even to set standards to check pollution.

Religion and Environment

Relationship of human beings inter se is well recognized in society. Ever since creation of this universe , mother-earth, air, land, living creatures, plants and micro-organism have also been playing significant role in sustaining us. But human beings rarely appreciate that they have close relationship with environment.

We, the human beings are more concerned about our rights and less concerned about our duties. Human rights are based on a clean and civilized life of the people. Equally important are duties of human being not only towards each other, but also towards living creatures and plants.

We have named our inter se relationship amongst ourselves, like father, mother, husband, wife, brother and sister and so on. But we have not created

any relationship with environment. What to say of creating any kind of relationship with living creatures and plants for a good environment, we, the human beings, have polluted the environment.

In Srimad Bhagwad Gita, Lord Krishna says :

I am **Meru** amongst the Mountains

I am **Ocean** amongst the reservoirs of water

I am **Himalayas** amongst the immovables

I am **Asvattha** amongst the Trees

I am **Varuna** among the Lord of Aquatic creatures

I am the **Wind** amongst the purifiers

I am **Shark** among the fishes

I am **Ganges** among the streams

In Guru Granth Sahib:-

Wind is the Guru; (pawan guru)

Water is the Father;(paani pita)

Earth is the Mother;(Mata dharat mahat).

Have we really maintained much expected relationship with air, water, land, other living creatures and plants. The answer is “no”. See the extent, we have polluted our sacred rivers having preference to industrialization. Since long

crores have been spent on various projects to clean Yamuna, but in vein.

Dirt and filth can be seen scattered here and there. People do not throw waste at the places specified. They prefer to throw polythenes filled with daily-waste, wherever they find suitable. We have failed to create any relationship with the animals, except pet dogs etc. Slaughter houses are in abundance, where every day animals are butchered. Many cannot live without meat-diet. They are little concerned about the animals who are exterminated to fulfill their desire. At conferences on Environment, non-vegetarian food was found to have been served to the visitors.

With noise we have polluted the air in one way or the other. On Diwali festival, we use plenty of firecrackers, little worried about the birds, children, old and sick persons and their health and safety.

In India, in scriptures many rituals have been provided for welfare of human kind. Priests and astrologers advise their clients to perform one or the other ritual for their welfare or to save themselves from one or the other curse or evil-effect of past karmas-deeds.

For example, some suggest the needy that for good health of one's close, he or she should immerse in flowing water or some river such and such quantity of coal. Those persons would immediately comply. Such action would certainly lead to environment degradation.

Similarly, people immerse Idols or used flowers or garlands or other such material in rivers. All these lead to adverse impact on environment.

When such people are adamant and prefer to act upon the advice of priests or astrologers or other responsible persons of the society, without realizing its impact on environment, the question arises as to what steps should be taken so that the whole river or pond does not get polluted.

One suggestion comes to my mind. For example, people do visit the

Ganges and the Yamuna or other sacred rivers to immerse one or the other material, as per advice rendered by their guides. In such a situation, to save the river or the source of water from getting polluted, why not to create drains from these sacred rivers for immersion of such material by suchlike people, and then to punish anyone who immerses any such material in the main river. In this way, the main river can be kept environmentally clean whereas the drain so used can be cleaned by taking appropriate steps for removal of the material immersed in it.

Even though, many of the things people follow have been ordained by their religions as a part of rituals, no religion can be said to have allowed perversion and spreading unhygienic conditions. People nurture bad habits and have lack of thought of cleanliness and hygiene. Things must start from homes.

In order to bring about change, we need to spread awareness and do it by way of examples. It also requires hammering even if people do not like it - Change would certainly come when each one of us shall begin with ourselves We find at most of ATM booths paper slips dispensed by the machines are thrown on the floor, though same are required to be thrown in dustbins kept there.

Change is certainly result of a long drawn process if followed with dedication. Bad habits and thoughts shall take time to be discarded. Effective steps by the States and their citizens in discharge of their duties cast by the Constitution of India may lead us to healthy life and spare natural resources for future generations so that those generations may remember with pride the sacrifices made and the role played by their forefathers.

Narinder Kumar,
(Addl. District & Sessions Judge, Delhi)