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“GUARDIAN OF GREEN: THE APEX COURT'S ROLE IN ENVIRONMENTAL PROTECTION IN INDIA”

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ABSTRACTS

Man today is increasingly getting cornered on all sides by different forms of environmental pollutions. Through unrestrained and unabated continuance of this menace he has not only jeopardized his own existence and the existence of future generations. Continuance of which will only leave the sustainable development theory forever doomed. When we try to explore what is happening around us we find that we have nearly destroyed the relationships between living organisms and their living and non-living surroundings in a sound ecological system. To protect this relationship legislature is quick to enact numerous laws in order to regulate various aspects associated with ecology and environment such as forest, mining and other developmental activities.



KEY WORDS : *environmental pollutions , organisms, sound ecological system .*

INTRODUCTION

The Government agencies endowed with vast power to regulate industry, mines, and other polluters but are reluctant use their power to discipline violators. It is evident that the law enforcing agency is still not being able to control and discipline violators and perpetrators of this crime. However, there is some improvement in the enforcement of these laws in some of the states and union territories. Despite these initiatives by some of the governmental agencies, the overall quality of the environment continues to decline. The main cause of this problem is the slack performance of the enforcement agencies. An attempt is made in this article to understand the concern shown by the makers of the constitution regarding environmental protection. Further, attempt has been made to find out the role of the higher judiciary in ensuring the pollution free and healthy environment to the citizens of India by appraising the various judicial pronouncements.

Environment Protection and Constitutional Perspective:

Article 48-A in to the Directive Principles of State Policy (42nd Amendment Act 1976) and further strengthening the provision by including Article 51-A(g) in the fundamental duties indicated our sensitivity and motivation to ensure healthy and congenial environment to the citizens at large. If Environmental Pollution has continued in spite of massive legislations associated with environmental protection and alert judiciary, then it only leaves us with the only option to think that our laws are still

inadequate and some research and reformation in them is essential to control the menace of environmental pollution. In nutshell we have to admit that we have failed to confer the assurance and rights granted to the common citizens by the Constitution. We need to act upon the efforts of Judiciary to warn us through several judgements given by it. The following survey of cases reveals that the Apex Court steps into the shoes of the administrator, marshalling resources, issuing directions to close down factories, requiring the implementation of environmental norms and laid down new principles.

In the case of Sachidanand Pandey v State of west Bengal¹ the Apex Court said: Whenever a problem of ecology is brought before the Court, the court is bound to bear in mind Article 48-A of the Constitution... & Article 51-A(g).. When the Court is called upon to give effect to the Directive Principles and the fundamental duty, the Court is not to shrug its shoulder and say that priorities are a matter of policy and so it is the matter of policy making authority. The least that the court may do is to examine whether appropriate consideration are borne in mind and irrelevancies excluded. The court may give necessary directions. Similarly, the Andhra Pradesh High Court has interpreted Article 48-A as imposing 'an obligation' on the government, including courts, to protect the environment.² The same concern is also seen in the judgment of the Apex Court in Subhash Kumar v State of Bihar³, while interpreting Article 21 of the Constitution the Court stated that every person enjoys the right to wholesome environment, which is a facet of the right to life guaranteed under Article 21 of the Constitution of India. Further, expanding the ambit of right to life under Article 21, the Court observed that enjoyment of life... including (the right to live) with human dignity encompasses within the ambit, the protection and preservation of environment and ecological balance free from pollution of air and water, sanitation, without which life cannot be enjoyed. Environment pollution should be regarded as amounting to violation of Article 21. Hence, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a human and healthy environment. Further observed that it is constitutional duty of the State Government and other authorities to take adequate measure to promote, protect, and improve both manmade and natural environment.⁴

Environment Protection and Role of Apex Court:

The leniency and indifference on the part of law enforcing agencies invited judicial strictures from the Apex Court, in Indian Council for Enviro-Legal Action v Union of India,⁵ said that if the enactment of laws relating to the protection of environment was to ensure a clean and pollution free environment, then India would, perhaps, be the least polluted country in the world. But, this is not so. There are stated to be over 200 Central and State statues which have at least some concern with environment protection, either directly or indirectly. The plethora of such enactment has, unfortunately, not resulted in preventing environmental degradation which, on the contrary, has increased over the years. The dismal performance of government agencies has compelled the Courts to secure compliance through public interest litigations, although the Courts are ill-equipped to take over enforcement functions, due to lack of resources at their disposal. As a result of the drive by the Courts, the number of industries has installed effluent treatment plants and there is a heightened environmental awareness among various law enforcing agencies.

The Apex Court intervened to protect the forest wealth and wild life from the devastation of mining and other related developmental activities and stated that the issue of environment must and shall receive the highest attention from this Court.⁶ This approach has led to the Apex Court to derive, adopt and apply a range of principles to guide development of environmental jurisprudence. While passing the strictures against the law enforcing agencies the Apex Court stated that all the law

¹ (1987) AIR 1109

² T. Damodar Rao v The Special Officer, Municipal Crop. Hyderabad, AIR 1987 AP 171, 181

³ AIR 1991 SC 420

⁴ Virendra Gour v State of Haryana (1995) (2) SCC 577

⁵ 1996 (5) SCC 281, 303

⁶ Tarun Bharat Sangh v Union of India, AIR 1992 SC 514

enforcement agencies are under obligation to strictly enforce environmental laws.⁷ The government agencies may not plead non availability of funds, inadequacy of staff, or other insufficiencies to justify the non-performance of their duty under environment laws.⁸ The court while enunciating the "polluter pays" principle stated that the basic environment law of the India requires that a polluter bear the remedial or clean up costs as well as the amounts payable to compensate the victims of pollution.⁹ In *Vellore Citizens Welfare Forum v Union of India*¹⁰, the Court evolved the "Precautionary Principle" and stated that the Government authorities to anticipate prevent and attack the causes of environment pollution and imposes responsibility on the industrialist and developer to demonstrate that his or her action is environment benign. In another case,¹¹ the Court ruled that the State is a trustee of all natural resources which are by nature meant for public use and enjoyment. The public at large is the beneficiary of the sea-shore, running water and air, forest and ecologically fragile lands. These resources cannot be converted into private ownership. The above brief survey of cases reveals that judiciary has shown remarkable concern about protection of the environment and develop the new principles and laid down guidelines to be followed by the developer and law enforcing agencies.

The various legal provisions in the statute relating to environment protection, which was incorporated by the law makers with an objective to protect environment and maintain a balance between the developmental activity and protection of environment which will ensure sustainable development of the country. Recently, the Ministry of Environment, to strengthen the enforcing agencies and ensure the compliances of statutory norms relating to environment protection has proposed the amendments to the Environment Protection Act, 1986 and National Green Tribunal Act, 2010. The proposed amendments are being introduced with the objective to introduce penal provisions in the form of heavy monetary penalties for any violations or non-compliance of the provisions of the Environment Protection Act and National Green Tribunal Act. It also envisages creation of two members' adjudicatory authority to adjudicate and impose penalty on any matter relating to environment violation. It means an additional bureaucratic layer has been created by constitution of the authority to ensure the effective implementation of laws.¹² I hope the proposed amendments will help in curbing the menace of environmental pollution in near future.

⁷ *Indian Council for Enviro-Legal Action v Union of India*, AIR 1995 SC 2252

⁸ *Dr. B. L. Wadehra v Union of India* AIR 1996 SC 2969, 2976

⁹ *Indian Council for Enviro-Legal Action v Union of India*, AIR 1996 SC 1446,1466

¹⁰ AIR 1996 SC 2969, 2976

¹¹ *M.C. Mehta v Union of India*, 1997 (1) SCC 388

¹² Sharma Akashara, *Environment Laws (Amendment) Bill, 2015, An Analysis*, LawZ, Vol. 17 No. 9, issue 193, September 2017, New Delhi at pages 12 & 13.

It can be safely said that the Court ensures environmental justice by providing a platform for marginalized communities and individuals affected by environmental degradation to seek relief and compensation. Overall, the Apex Court of India plays a vital role in environmental protection by interpreting laws, issuing directives, monitoring compliance, and setting precedents to promote sustainable development and ensure the conservation of natural resources for future generations. However, unfortunately, maintaining balance between the sustainable development and the environment protection remains a distant dream because of the poor implementation of environmental statutes by enforcing agencies. Considering this the author is of the opinion that a time has come that the governmental enforcing agencies must take a concrete step for addressing environmental issues associated with various developmental activities to prevent further depletion of environment. The grim scenario on the environmental front and the continuous downfall can be changed for better with effective implementation of the existing provisions in letter and spirit.

REFERENCES:

1. Diwan Shyam & Rosencranz Arman, Environmental Law and Policy in India, Oxford University Press, New Delhi, 2nd Edition, (2002) pages 1 to 80
2. Jain M.P. Constitution of India,
3. Basu D.D. Introduction to Constitution of India
4. Law Journal LawZ, New Delhi, September 2017