International Journal of Research in Economics and Social Sciences (IJRESS)
Available online at: http://euroasiapub.org
Vol. 7 Issue 3, March- 2017, pp. 110~115
ISSN(o): 2249-7382 | Impact Factor: 6.939 | Thomson Reuters Researcher ID: L-5236-2015

ENVIRONMENTAL PROTECTION: A CONSTITUTIONAL COMMITMENT IN INDIA

Dinesh Kaushik

(B.Pharma, PGDPRA)

INTRODUCTION

The whole web of rights and duties created by the legal environmental system becomes knotty when the matter comes to the actual level of enforcement. It may pertain to the question of aesthetics versus means of livelihood, environment versus development, ecology versus economics, rich versus poor, industry versus worker, third world versus developed world, biodiversity versus the world trade, genetic resources versus intellectual property, indigenous versus modern technologies or people versus the establishment. It is being observed that rights of one group of people become a matter of folly for a group of another people, duties of one set of individuals become liability for the society on the whole, and the obligations of the nation become disability for its people.

The issue of environment became controversial in the United Nations Conference **on Human** Environment **1972** when almost all the third world countries rejected the state of affairs as a bogey raised by the developed countries only to display their newly discovered diversion—called environment. "Poverty and need"[1] they argued was the main theme in any of the crisis being confronted by the human civilization. They alleged that the rich, the powerful and the developed countries had to blame themselves for such a sorry pass, and it was their own obsession for development which was responsible for such a situation. The developed countries in turn blamed the third world for the galloping growth rate of population, and identified it as the basic cause of the environmental crisis. The third world countries in reply blamed the very high consumption rate of the developed countries against their own very low consumption rate. This process of claims and counter claims ultimately broadened the very dimension of the debate about the environment.

That is why the second conference, **United Nations conference on Environment and Development 1992** at ***Rio-de-Jeneiro*** came to be called as the Earth-Summit.

The term environment was free from the mechanical clutches of pollution-water, air and land to a very broader explanation which includes human progress at the physical, biological, social, anthropological and psychological levels. In this process when a mention of *Rio-de Jeneiro* is made one cannot miss the perspectives being carried through in the decade of 90's at the International Population Conference, Cairo. '94; International Social Conference, Copenhegen **'95** and Bijing International Women's Conference '95.

At the threshold of the twenty-first century and the gateway to the next millennium, the human civilization is unable to carry the whole lot of historical garbage which has contaminated

1. Speech of 'Need and Poverty' delivered by Smt. Indira Gandhi, Prime Minister of India at Stockholm in 1972.

the very material as well as spiritual levels. Agenda 21[2] opted and adopted at the *Rio-de-Jenerio* in 1992 does not carry any message or memorandum for the resolution of human sufferings caused out of ecological, environmental as well as natural resource crisis. At the same time all the four treaties[3] signed in the summit create a bulk of mechanical law which is bereft of remedial aspects. In the sheer tone of distress the summit projected gloom when il made reference to the planet as the 'Mother Earth' in a bad shape:

> Bowed by the weight of centuries she leans
> upon her hoe and gazes on the ground.
> The emptiness of the ages on her face.
> And on her back the burden of the world. - ***(Anon)***

The Fundamental issues that emerge out of the debate on environmental situation are basically connected to the issues of development. Under development in the third world countries is presumably the major cause of population explosion. Negative effects of development in the developed countries rather is the root cause of environmental degradation. Therefore, the question of remedial aspects in the environmental law conveys different meanings, connotations, as well as solutions and resolutions.

Environmental **Protection in India**

The distortions may be because the third world countries are opting the very environmental legal models which are relevant to the developed countries. While laying down their legal policies, the third world countries not only adhere to the theoretical or conceptual framework that is prevalent in the developed world but all the same even copy their legislations. The Environment Protection Act, 1986, in India, is truly carbon copy legislation in its element as well as character. It is not only based on the U.S. National Environment Protection Act, 1970 but at the same time is carries its letter as well as ten spirit. So how can a legislation, which has its roots in a different social, economic and political situation, provide remedy to the malady that has occurred in a separate social, economic and political setting?

The Environment Protection Act, **1986** had to be rushed through the Parliament in view of **the** exigencies of the 'Bhopal Gas Tragedy'. Article **253** of the Indian Constitution empowers the Parliament to **make** laws so as to implement **the** commitments made before the comity of Nations. To abide by the commitments and the decision made by the nation at the Stockholm in **1972,** the Indian Parliament had passed **the Water (Prevention and Control of Pollution) Act, 1974;** the **Wildlife (Protection)** Act, **1972;** the **Forest (Conservation)** Act, **1980 and** the **Air (Prevention and Control of Pollution)** Act, **1981. India had made** a similar commitment at Stockholm for the passage of Environment Protection Act. But when the Bhopal Tragedy occurred no such legislation had come into existence. It was but natural, that the Indian State had to face the prickly question-where is the legislation?

---

2 Programme adopted by the *United Nations Conference on Environment and Development*, 1972 at *Rio-de-Jeneiro* to meet the challenges of the twenty first century.

3 *The Treaty for the reduction of Green House Gas Emission;* The *Treaty for conservation of Forest and Biodiversity; The Fund for "cleaning up" of the polluted Environment and Repair of the Damaged Earth; The treaty for Environment Technology Transfer*.

At the same time the legislations already passed by the Indian Parliament were insufficient to tackle any such exigency or to provide a remedy for any other malady. Legislations such as the **Water Act, 1974,** the **Wild Life Act, 1972** the **Forest Conservation Act, 1980** and the **Air Act, 1**981 too were the carbon copy process scratched out of the developed world's love for the aesthetics. The polluters turned protagonists and hunters turned conservationists, definitely have their own idea of nature protection but that does not coincide with the ground level reality that prevails in a third world situation such as in India.

The issues connected with subsistence, means of livelihood, need, poverty and dearth, a stance projected by India at Stockholm, do not find their due in the entire legal process in the area of environment, ecology and natural resources. Tewari Committee[4] appointed in **1980,** to make recommendations for legislative and administrative reforms, had to analyse the entire gamut of some two hundred odd legislations pertaining to various issues of environment development interface. Committee's proposal of bringing about harmony between the short and long term goals of development by promoting the protection and improvement of ecological and environmental assets,"[5] does not find any place in the rest of the findings and suggestions which generate a mechanical legislative and structural administrative process ignoring the needs and aspirations of people.

Role of Judiciary in Environmental Protection

It is significant to note that the Supreme Court had turned down the principle of unlimited civil damages and had reduced the quantum of compensatory relief, though in its earlier decision the Court had treated this principle as the true basis of the 'deep pocket theory'[6]. However, later on the Court[7] had treated its earlier findings as essentially an 'obitor'. The essential outcome that generates out of the rejection of the deep pocket theory is not due to the fluctuations in the approach of the Indian Judiciary but questions the very litigating strategy of the government. The deterrent value of the deep pocket theory so advocated in *M.C. Mehta* V *Union of India* could not matter much to the government, since the matter pertained to the Indian Industry but when the matter came to render the Carbide co. liable, it was the very question of foreign investment that deterred the government. The deep pocket theory could not be upheld as the civilized principle of the global corporate jurisprudence. It could recoil and block the process of investment coming into this country. In the light of this development foreign investment emerges to be the major focal point.

It is a matter of fact that foreign investment technology transfer and matter of foreign collaborations is getting into the foundations of developing economies. In the integration of global economies and partnerships of various trading entities, certain principled jurisprudential norms are bound to emerge. It is not a matter of accepting or rejecting a particular theory concept or norm of corporate liability, but it is the issue of its acceptability as a universal remedial principle.

---

[4] *Report of the committee for Recommending Legislative Measures and Administrative Machinery for ensuring Environmental Protection.(Department of Science Technology). Government of India, 1980*

5 6th Five Year Plan, 1980-85

6 *M.C. Mehta* v. *Union of India*, A.I.R., 1987, SC, 1086

7 *Charan Lai* v. *Union of India*, A.I.R., 1990, SC, 1480.

Perhaps it may be in the same context that a country like China has to adhere to the policy 'one Country two systems".

In the renewed atmosphere of economic resurgence balanced management of ecology, environment and natural resources need special attention. Globalization of economy needs to be based on holistic approach which ought to be the true* basis for the development of environmental jurisprudence. Remedial aspect of such jurisprudence could induce productive rather than deterrent elements, within the legal process. The character of creativity should ultimately overwhelm the legal process and overtake the culture of surplus NGO [8] overzealousness. Resorting to constitutional gimmickry tends to defeat the very purpose of the social action and the remedy thereof.

The Supreme Court through a string of judgment[9] while trying to settle some crucial constitutional issues had to base its findings on some fundamental concepts enshrined in the constitution. I his doesn't depict that the constitution has an inbuilt remedial mechanism to satisfy ordinary legal wants but brings into focus some basic weaknesses ingrained in the foundation of the legal system. That is why the courts could not categorically specify the nature of the right upon which the court was deliberating under the procedure established under Article 32 of the Constitution It is a matter of paradox that article 32 can only be invoked to give effect to the rest of the five fundamental right—in addition to the right of remedies enshrined in the constitution.

The dearth of substantial remedies led the Supreme Court in its earlier judgements[10] to take resort to article 48 A and 51 A(g) of the Indian Constitution and expedited the procedure under article 32 for such a purpose. As per these provisions of 'directive principles' and 'fundamental duties' the Indian Constitution does not create any Constitutional rights but calls upon the state to direct its legal policy towards the achievement of such Constitutional goals. The scheme of priorities and targets in the Indian constitution seek to eliminate need and poverty and promote justice social, economic and political. The agenda of priority of the "clean and balanced ecology over employment [11] may be a graceful extension of the jurisprudence, but it has simultaneously an element for destabilizing and debasing the poor. Also the Supreme Court by

---

[8] Non-governmental organization

[9] *M.C. Mehta* v. *Union of India, A.I.R., 1987, SC, 965; M.C Mehta* v. *Union of India, A.I.R., 1988, SC 1115; M.C. Mehta* v. *Union of India. A.I.R. 1987.SC 965; M.C. Mehta* v. *Union of India, A.I.R. 1987, SC, 982; M.C. Mehta* v. *Union of India, A.I.R., 19o7, SC 1086; M.C. Mehta* v. *Union of India, A.I.R., 1991, SC. 813; M.C. Mehta* v. *Union of India, A.I.R., 1992, SC 382; SachidanandPandey* v. *State ofW.B. A.I.R., 1987, SC 1109; Rural Litigation and Entitlement Dehradun* v. *Union of India A.I.R., 1985, SC, 652; Charan Lai* v. *Union of India A.I.R., 1990, SC, 1480; Subash Kumar* v. *Slate of Bihar A.I.R., 1991, SC., 420; Virender Gaur* v. *State of Haryana, 1995, SCC 577*

[10] *M.C. Mehta* v. *Union of India,* A.I.R. 1987, SC., 1086

[11] *Rural Litigation and Entitlement Dehradun* v. *Union of India* A.I.R., 1985, SC, 652 *Sachitanand Pandey* v. *State ofW.B.* A.I.R., 1987, SC 1109

virtue of writ jurisdiction may close down the polluting units[12] but has still to work out an intense legal philosophy to free the Indian system from the evolving process of degeneration.

The constitutional targets and their priorities need to be executed through a just and humane legal-judicial strategy. A web of rights and duties created through the Legal-Constitutional process need to be rearranged and reconciled in a manner so that everyone gets due redressal. The Supreme Court has yet to deliberate and decide in a matter the following landmark judgments. These emerging new era of Supreme Court to tackle the environment Protection in today's modern times.[13] Pertaining to the matter of governmental policies versus the traditional rights.

Role of Parliament in Environmental Protection

A bulk of civil and criminal law already operating in the country needs to be given a fresh look and proper attention. A simple complaint for prosecution under section 188 of the **Code of** Criminal Procedure, 1973 for the violation of the order under S. 133 of the Code can culminate into one of the finest norms of redressal, as was righty observed that

> "Public nuisance because of pollutants being discharged by big factories to the determinant of the poor sections is a challenge to the social justice component of the rule of law.[14]

The remedies provided under sections 133 to 144 of the Code of Criminal Procedure, 1973 can yield and deliver independent, speedy and summary[15] results against 'public nuisance'. A slight amendment to include specifically the 'environmental mischief within the provisions of section 268 of the Indian Penal Code, 1860 (matters pertaining to public nuisance) could become more useful. Similarly the magistrates must be categorically empowered under the Cr. P.C. to entertain any litigation that may occur within the purview and frame-work of the amended section 268 of the Indian Penal Code, as well as sections 133 to 144 of the Code of Criminal Procedure, 1973.

In the same process civil actions can provide basic remedies to the ordinary people in case of environmental harms. Environmental degradation basically irritates the common man, and it is the common man who can direct the course of legal enforcement to the just and equitable end. The enforcement of various torts like nuisance, negligence and the rule of strict liability can resolve various issues pertaining to the compensatory aspect of the environmental legal remedy puzzle. These specific areas of the law of torts need to **be** codified because these torts are based almost on the settled principles of jurisprudence. At the same time sections 7 and 15 of the **Indian Easement Act,** 1882 pertaining to the riparian rights of the river catchment dwellers and the

---

[12] *Virender Gaur* v. *State oj Haryana*, 1995, SCC, 577

[13] Church of God v. State of Tamilnadu, (1999) 9 SCC 121,M.C. Mehta v. Union of India, AIR 2001 SC 1948, N.D.Jayal &ors. v. Union of India, AIR 2004 SC 867, In re Nouse Pollution case AIR 2005 SC 3136, Intellcutual Forum Tripuathi v. Stte of Andhra Pradesh AIR 2006 Sc 1350, Farid K. Wadia v. Union of India, 2009(1) RCR Civil 502 SC, M.C. Mehta v. Union of India, 2009(2) RCR Civil 856, Tripure Dying Factory owner Association v. Noyyal River Ayacutapars Protection Association, 2009 (4) RCR Civil 720.

[14] *Ratlam Municipality* v. *Vardichand,* A.I.R., 1980, SC, 1622

[15] Rosencraz p. 94

prescriptive rights of the smoke nuisance sufferers respectively can be regenerated through more legislative prescriptions. Similarly laws relating to injunctions and the Specific **Relief Act**[16]**,** 1963 as well as the **Civil Procedure Code**[17] 1908 could be made more operational for quick remedies. The procedural aspect could be simplified by expanding the scope and dimension of section 9 of the Civil Procedure Code 1908. All this legal regeneration could be sought by the legislative fine tuning and amending process.

Power of the Civil Courts to entertain matters pertaining to the 'environmental mischief ' need to be specific as well as expressed. In the same tune civil courts could be empowered to entertain matters pertaining to Class Actions under Order 1 Rule 8 of the Civil Procedure Code, 1908. All the same the Citizen' Suits under S. 19 of the Environment Protection Act, 1986; Section 49 of the Water Act[18], 1972; and section 43 of the Air Act [19] 1981 could under a legal policy be brought within the exclusive purview of the lower judiciary. All the same, under the same policy matters social action could be brought within the jurisdiction of the lower courts. Higher Courts however, may perform more creative role in the appellate capacity.

Conclusion

Environmental concerns are not only a matter of local, regional or national anxiety but are issues of global concern. The depleting face of the planet definitely needs compassion, care and healing process so that all the elements of nature mass, material, life and people remain repaired and regenerated. The social, economic, political cultural and psychological processes need to be reconciled to the level of the question pertaining to the survival of the human civilization. In the light of all this a broader consensus is desired to get a common agenda down to the execution level to save the planet called. "Earth".

Within the same fold a broader national policy is required in India to seek the reconciliation of various wants, aspirations, rights and claims. Such a policy needs an intensive legal process. There is a need to opt and adopt a legal model which provides substantial, just and basic remedies.

No country can afford to have its legal model without a distinct ideology and philosophy. The recent ideological shift in the national policy in India indicates the pressure of economic slowdown and recession. The new economic policy has initiated the process of economic resurgence. Its ultimate aim should be to *seek* the development of mass, material, people and the life. A just environment-development interface ought to be the foundation of the legal policy.

[16] Section 37 to 42

[17] Section 94 and 95 as well as order 39

[18] As amended in 1987

[19] *Ibid*