



International Journal of Home Science

ISSN: 2395-7476

IJHS 2017; 3(3): 477-478

© 2017 IJHS

www.homesciencejournal.com

Received: 23-07-2017

Accepted: 28-08-2017

Dr. Mridula Bharti

Assistant Professor, Department
of Home Science, V.B.U.,
Hazaribagh, Jharkhand, India

Environment and Law

Dr. Mridula Bharti

Abstract

Indian efforts to protect and preserve environment in the country have been prompted by its international obligations undertaken at various international conferences on development and environment. India not only amended its constitution, the fundamental and supreme law of the country to reflect its commitment to its international obligations with regard to global environment but also enacted plethora of laws to protect the environment.

It may be appreciated that the Indian Constitution casts a fundamental duty on the state as well as every Indian citizen to preserve and protect environment in the country. While it is disappointing to note that the failure on the part of the executive to implement and enforce the country's environmental laws effectively has been the bane of Indian environmental jurisprudence, it is heartening, at the same time that the Indian higher judiciary has played a pivotal role in the protection of the Indian environment. The apex court of the country has used the paradigm of PIL (Public Interest Litigation) innovatively to compel the executive to implement and enforce the various environmental laws. In its crusade against environmental degradation, the court has used the international environmental principles such as sustainable development, polluter pays principle, precautionary principle, public trust principle and intergenerational equity, etc; as effective judicial tools to protect and preserve environment and to prevent environment degradation.

The national and international community should reorient its strategies to prevent global warming and the consequential climate change with all its dangerous consequence. It is absolutely necessary for the international community to find ways and means to impress upon its members the need for reducing the greenhouse gas emissions which are the main cause for global warming. This is possible only when the member countries take their international obligations and commitment undertaken at various international conferences on climate change more seriously.

Keywords: Environment, protection, constitution, law

Introduction

The term 'Environment' owes its genesis to a French word 'environ', which means 'encircle'. It encompasses within its ambit land, water, flora, fauna, living creatures, forests and everything above the earth.

'Environment' can be understood to refer to all components surrounding man, which consists of two important major parts, i.e. physical and natural. Physical environment constitutes lithosphere i.e. land (the surface layer of the ground) hydrosphere, i.e. water and atmosphere i.e. air. The natural environment constitutes living organisms including human beings, flora and fauna, etc. While the physical environment on the earth is essential for the existence of life in various forms, the natural environment provides food and other material for the sustenance of man on the earth. Man cannot survive on the earth without plant and animal life. Thus, environment is the natural system on which we depend i.e. the air we breathe, the earth which feeds us, the rivers and seas which give us water, the atmosphere around our planet which makes life possible and all the living things which share with us.

The Environmental (Protection) Act, 1986, which states:

Environment includes water, air and land, and the inter- relationships which exist among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.

Environmental Protection: Constitutional Perspectives

The Indian efforts for the protection of environment began only after the Stockholm Conference in 1972.

Correspondence

Dr. Mridula Bharti

Assistant Professor, Department
of Home Science, V.B.U.,
Hazaribagh, Jharkhand, India

In a way one can say that this conference was the real milestone in awakening the concern of the Indian Government towards environmental pollution. Before this conference, neither the Indian constitution nor any of the Indian laws dealt with the problem of environment- expressly. It was only after this conference that both constitutional and legislative reforms have been effected in India to meet and combat the environmental problems in the country.

The constitution of India, as adopted by the constitution makers in 1950, did not deal with protection of environment” as a specific legislative subject. Nor did it contain any specific provision to embody India’s commitment to the protection and preservation of environment. However, Indian Constitution was not totally silent in this regard as it contained (and still contains) several related subjects in its constitutional scheme of distribution of legislative powers. Thus, several legislative subjects such as forest, wildlife, population control, public health sanitation, agriculture, land, water, atomic energy, oilfields, mines and interstate rivers, and fisheries, etc’ were already provided for in the Constitution. It was only in 1976 that the Indian Government thought it necessary to get the Indian Constitution amended to expressly provide for the protection of environment by incorporating a few specific provisions in the Constitution. The result was the enactment of the Constitution (Forty-second Amendment) Act, 1976, providing for an express constitutional commitment to safeguard the environment in the country.

Man was both creature and the moulder of his environment, rapid advances in science and technology had invested man with the potent power to transform his environment in countless ways and on an unprecedented scale. The protection and improvement of human environment was a major issue, which affected the well- being of peoples and economic development throughout the world. If man used his power wisely, he could bring to all peoples the benefits of development and the opportunity to enhance the quality of life and if wrongly and heedlessly used, he could do incalculable harm to human beings and to the human environment. Man had used his power in a reckless manner, resulting in “harm in many regions of the earth; dangerous levels of pollution in water, air, earth and living being; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources; and gross deficiencies harmful to the physical, mental and social working environment. The developing countries must direct their effort to development, bearing in mind their priorities and the need to safeguard and improve the environment, so that their people could have adequate food, clothing, shelter and facilities of education, health and sanitation. Man could defend and improve human environment only in harmony with the established and fundamental goals of peace and a worldwide economic and social development. Since the individual in all walks of life as well as organizations in many field will shape the world environment of the future, the peoples to exert common efforts for the preservation and improvement of environment for the benefit of the world people and for their prosperity.

Man has the fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that permits a life of dignity and well-being, he also bears a solemn responsibility to protect and improve the environment for the present and future generation.

The environmental management covered all the functions designed to facilitate comprehensive planning that took into

account the side effects of man’s activities and to protect and enhance the human environment for present and future generations.

The terms ‘environment’ therefore, should be understood in its comprehensive sense along with the interaction between its various component parts. It is most unfortunate that man by his failure to live in harmony with nature has brought humanity to the brink of this global environmental catastrophe. It is, in a way, ironical that while the life of man, which is claimed and recognized as fundamental human right by all concerned, is created, sustained, nurtured, and nourished by natural environment, the same is contaminated, polluted and degraded by man on an unprecedented scale all in the name of the so called development.

Developmental Impact on Environment

Development, in the context of any nation, generally implies and means transformation and distribution of its economic resources into productive goods and services for the benefits and improvement of quality of life of its people. The process of economic transformation entails exploitation of the nation’s renewable as well as non-renewable natural resources. But unfortunately, what has happened is that, on account of unscrupulous over-exploitation of the natural sources of the earth, man has not only endangered the existence of other species, but also put in jeopardy the very existence of his own. Man, therefore, should understand the delicate balance in the biosphere and should plan the development, management and consumption of the available limited resources judiciously, so that their inherent power of regeneration is not permanently damaged and the environmental balance remains intact. This form or model of development is known as “sustainable development” which is considered to be compatible with the goal of environmental protection. This brings us to the concept of “Sustainable Development”.

The concept of sustainable Development

The Report of the World Commission on Environment and Development entitled “Our Common Future” defined “Sustainable Development” as development that “meets the needs of the present without compromising the ability of future generations to meet their own needs.” The adoption of the concept of sustainable development “is a politically expedient compromise between forces of economic growth and those of environmental protection,” and it is “based on the belief that human progress must conform to basic ecological precepts and human needs in order to endure.”

A more comprehensive import of the concept of sustainable development has been given by the New Delhi International Law Association (ILA) Declaration on Principles of International Law Relating to Sustainable Development. According to the Preambulary statement of the Declaration “Sustainable Development” involves a comprehensive and integrated approach to economic, social and political processes, which aim at the sustainable use of natural resources of the Earth and the protection of the environment on which nature and human life as well as social and economic developments depend and which seek to realize the right of all human beings to an adequate living standard on the basis of their active, free and meaningful participation in the development and in the fair distribution of benefits, resulting therefore, with due regard to the needs and interest of future generations.

The concern of environmental protection should be made an

integral part of the development process. While the states are under mandatory obligation to cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem, they, in view of their different contributions to environmental degradation, have common but differentiated responsibilities towards global environmental protection.

Since, the environmental issues are best handled with the participation of all concerned at the relevant level, the individuals at the national level should have appropriate access to information concerning the environment, including hazardous materials and activities in their communities along with an opportunity to participate in the decision making process. In this context, states should facilitate and encourage public awareness and participation by making information widely available. The state should also provide effective access to judicial and administrative proceedings to have appropriate remedy. The states should not only develop national laws regarding liability and compensation for the victims of pollution and other environmental damage, but also cooperate to develop further international laws regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

The states are also obligated to discourage or prevent the relocation and transfer to other states of any activities and substances that cause severe environmental degradation or found to be harmful to human health.

Lastly, the states and their peoples are required to cooperate in good faith and in a spirit of partnership in the fulfillment of the principles of development.

The various environmental legislative strategies for the sake of convenience, can be divided into

1. Pre- Constitution environmental legislative strategies and
2. Post- Constitution legislative strategies.

1) Pre- Constitution Environmental legislative strategies

The Pre- Constitution environmental legislative strategies can be further subdivided into general and special legislative strategies.

General Legislative Strategies

- a. The Indian Penal Code, 1860
- b. The Indian Easements Act, 1882
- c. The Criminal Procedure Code (Cr Pc), 1898
- d. The Factories Act, 1948

Special Legislative Strategies:

- e. The Indian Forests Act, 1927

2) Post- Constitution Environmental Legislative Strategies

Special Legislative Strategies

- a. The Wildlife (Protection) Act, 1972
- b. The Water (Prevention and Central of Pollution) Act, 1974
- c. The Water (Prevention and Control of Pollution) lessAct, 1977
- d. The Forest (Conservation) Act, 1980
- e. Penalties
- f. The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
- g. The Air (Prevention and Control of Pollution) Act, 1981

General Legislative Strategies

- a. The Environment (Protection) Act, (1986)
- b. The National Green Tribunal Act, 2010
- c. The Public Liability Insurance Act (PLIA), 1991
- d. The Energy Conservation Act, 2001

Constitutional Commitment to Environmental Concerns

- a. The Right to Hygienic Environment: Constitutional Conspectus
- b. The Right To Hygienic Environment: A Derivative Right of the Right to life
- c. Judicial Transformation of unenforceable Positive obligation into Enforceable Affirmative duties
- d. The Right to Clean Environment: Its Relation to other Fundamental Rights
- e. The Right to Clean Environment: Its impact on the Rights to Trade, Occupation or Business
- f. The Right to Hygienic Environment and the Right to livelihood.

Environmental Legislative Strategies

The legislative strategies adopted by India should commence with an account of the Constitutional Scheme of division of the legislative powers in India.

The Indian Constitution envisages a federal polity and structure within the overall framework of a parliamentary form of Government. While states have some degree of autonomy, ultimate authority is vested in the Central Government. This is more so in respect of legislative subjects relating to environmental aspects.

The higher judiciary, in general, and the Supreme Court of India, in particular, has played a pivotal role in expounding innovatively the import and significance of the provisions of various environmental laws in the light of the constitutional prescriptions relating to environmental issues. The role and purpose of this active and innovative judicial effort has been to protect, preserve and promote the physical environment by combating and controlling environmental pollution. For achieving this object, the Indian higher judiciary, led and guided by the Indian Supreme Court, has adopted a new purposive paradigm of judicial process to meet the challenges of all pervasive environmental degradation in the country. The court also played the role of the promoter of environmental awareness in the country.

In the cases dealing with the issue of Protection and Preservation of Public Park, Sanctuaries and National Parks indicate the judicial concern for the maintenance of ecology. In these cases, the courts have intervened to set things right.

The Constitutional harmony and balance, which the Indian Constitution envisages and maintains between parts III and IV of the constitution, embodies the concept of "Sustainable Development" which, in a way, has been given a Constitutional status in India. It is this constitutionally sanctified concept of "Sustainable Development" which the judiciary, in exercise of its judicial power, has utilized to invent and shape its strategies not only to protect and preserve the environment but also to effectively combat and control environmental pollution.

One clear conclusion that emerges from the discussion of the case law in the field of environment is that it is the remiss and "bureaucratic slumber" on the part of the administrative agencies which are entrusted with the job of implementation of various environmental law, that has prompted the higher judiciary to play the role of "sentinel on the qui vive" of the Indian physical environment. In this context, it may be

appreciated that this role has been assumed by the judiciary in order to protect the right to healthy environment, which is an integral part of the right to life guaranteed in Article 21 of the Constitution.

Conclusions

In matters of environmental protection and preservation, since the idea of protection of the environment is based upon the constitutional foundation, the ultimate authority to harmonize the competing claims of environment and development much lie with the higher judiciary, of course, with the assistance and help of the relevant expert bodies. In this context, the Supreme Court's view that it is for the government to decide as to how much developmental exploitation of natural resources should be permitted is surprising.

Environmental problem is a social problem, which can be tackled only by people's awareness and participation, it is necessary to have public awareness programmes organized to educate people about this social evil. As directed by the Supreme Court, the state should be responsible to hold seminars, distribute handbills and hold public meetings to educate the masses. In addition, as directed by the Supreme Court, the following steps may be taken which are:

- All cinema halls, touring cinema and video parlours should be asked to show free of cost/ duty free at least two slides/messages on environment in each show.
- All cinema halls should be asked to show information films of short duration daily on environment and pollution.
- The Doordarshan and All India Radio should be asked to telecast and broadcast interesting programmes of 5 to 7 minutes duration every day and of longer duration once a week on matters of environment and population.
- "Environment" should be made a compulsory subject in schools, colleges, and universities, so that the children and the youth of the country become environmental conscious.

In conclusion, it may be mentioned that the main contribution of the Action plan consisted in its emphasis upon national and international action and cooperation for the identification and appraisal of environment dangers and problems of global significance.

References

1. Baron Robert A. Psychology- Fifth Edition; Pearson, Prentice Hall.
2. Peterson Christopher. Psychology- Biopsychococial Approach, II Edition, Longman- An imprint of Addison Wesley Longman, Inc.