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ENVIRONMENT PROTECTION LAWS IN INDIA

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Environment Protection Laws in India

Radhika Prasad & Rani Maria Jospeh

In the beginning the earth was a mass of land, evolution and changes that took millions of years converted it into the one and only planet which has life and which can support life. The mass got divided into land and water and the first living organisms were formed which turned to be the pivotal step towards the formation of ecosystem or the environment where we live in. Then, earth was a magical place. Later when man started his life, he converted almost everything to satisfy his needs. The land which provided us life and shelter has been devastated by men in no time. India, which had a green cover of almost 65 percent decreased to less than 33 percent¹.

In 1972, after the Stockholm Conference², the Government of India incorporated Article 48A and Article 51A(g) in our Constitution³. The National Green Tribunal Act, 2010⁴ (hereinafter referred to as NGT Act), The Environment Protection Act, 1986⁵, The Water (Prevention and Control of Pollution) Act, 1974⁶, The Air (Prevention and Control of Pollution) Act, 1981⁷ are some of the statutes governing the environment protection in India. All the citizens have the fundamental duty to protect our environment just as the State has. Article 48A says that “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country” and according to Article 51A(g) “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.

It was on *M.C. Mehta v. Union of India*⁸, popularly known as the ‘Oleum Gas Leak Case’ the Supreme Court held that the right to pollution free environment is also a part of the fundamental right to life under Article 21 of the Indian Constitution. In the case of *Rural Litigation and Entitlement Kendra v. State of U.P.*⁹, the Supreme Court with regard to mining opined that the protection of the

¹ Minimum forest area recommended by the United Nations Organization according to NCERT textbook.

² The United Nations Conference on the Human Environment from 5 to 16 June 1972 leading to The Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 1972.

³ Added by Constitutional 42nd Amendment Act of 1976

⁴ The National Green Tribunal Act, 2010, Act No.19 of 2010

⁵ Ibid

⁶ The Water (Prevention and Control of Pollution) Act, 1974, Act No.6 of 1974

⁷ The Air (Prevention and Control of Pollution) Act, 1981 Act No.14 of 1981

⁸ 1987 AIR SC 1086

⁹ 1987 AIR SC 359

environment is not only the obligation of State but also that of every citizen under Article 51A(g) of our Constitution. So, as per the Constitution, we the citizens and State are under the obligation to protect our shelter to sustain our lives.

India, a land of diversity, not only among the people but also in the vibrant varieties of flora and fauna, which constitutes 7-8 percent of all species in the world, has undergone a phase of destruction in the 90s. Thus, the Indian Parliament enacted an act to save its ever-vanishing wealth, Wildlife Protection Act, 1970¹⁰. The act was enabled to protect plants, birds and animal species which together make our ecosystem. It was under this Act our wildlife sanctuaries and national parks were set up for protecting endangered species and to conserve the region. The Act has 66 sections and 6 schedules applicable to the whole nation.

National Green Tribunal, is a forum constituted to protect the environment, it provides speedy disposal of environment related cases, provides damages for violation of environment laws and aims to conserve our forests. The Water (Prevention and Control of Pollution) Act, 1974¹¹, The Air (Prevention and Control of Pollution) Act, 1981¹², The Environment Protection Act, 1986¹³, The Biological Diversity Act, 2002¹⁴ are some of the laws listed in the Schedule 1 of NGT Act. Thus, the NGT Act has the power to try cases relating to the laws listed in the above Schedule¹⁵. The Environment Protection Act, which came into force on 19th November 1986 was implemented in the wake of Bhopal gas tragedy case, Union Carbide Corporation v. Union of India¹⁶. The Supreme Court formulated the Doctrine of Absolute Liability in this context.

The Air (Prevention and Control of Pollution) Act¹⁷, passed in the year 1981 aims to protect the air from pollution and deterioration and to reverse the situation of ambient Air Quality Index, in the capital city. The Act has more than 50 sections and empowers both the Central and the State Government to provide restrictions and punishments for acts in violation of the Act. Industries of cement, fertilizers cannot operate without the consent of the State under this Act. A Pollution Control Board, is set up by the Government to have a data on the pollution levels

¹⁰ Ibid

¹¹ Ibid

¹² Ibid

¹³ Ibid

¹⁴ The Biological Diversity Act, 2002, Act No.18 of 2003

¹⁵ Conservation India, Enabling Conservation Action; 2nd May 2011

¹⁶ 1990 AIR 273, 1989 SCC (2) 540

¹⁷ Ibid

and measured in ppm¹⁸. The main objectives are to provide for the prevention, control and abatement of air pollution.

The Water (Prevention and Control of Pollution) Act¹⁹, was introduced and incorporated into the Constitution of India in 1974, to control and prevent water pollution and to maintain and restore the purity of resources through various guidelines and restrictions. The act is applied to almost all the states leaving some exceptions.

The need to understand the basic principles of environment protection is vital. The precautionary principle, the polluter pays principle and sustainable development are some of the principles that must be considered while dealing with environmental issues. The precautionary principle is applied where there are “threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”²⁰. Polluter pays principle states that the polluter has to bear the costs of their pollution and the sustainable development according to Brundtland Report which can be seen in the lists of many economic goals and five-year plans is “development that meets the need of the present without compromising the ability of future generations to meet their own needs”.

The citizens must be bound by their duty to protect our environment. They also have to conserve our environment for the unborn or future generation. Thus, there is the importance of the principle of intergenerational equity. The principle of intergenerational equity defined as “the rights and obligations of present and future generations with respect to the use and enjoyment of natural and cultural resources, inherited by the present generation and to be passed on to the future generations in no worse conditions than received”²¹.

In Karnataka Industrial Areas Development Board v. C. Kenchappa²², the Supreme Court observed that “the priority of developing nations is urgent industrialization and development. We have reached a point where it is necessary to strike a golden balance between development and ecology”. But the current development in our country is against sustainable development and raises a question mark before our ecosystem. so, the observation of Justice P. D. Desai in the case of Kinkri Devi and Anr v. State of Himachal Pradesh and Ors²³ is remarkable. It was observed that “There is both a constitutional pointer to the

¹⁸ Summary on Air prevention and Control of Pollution Act, 1981

¹⁹ Ibid

²⁰ Declaration on Environment and Development; International Agreement; Rio Declaration

²¹ The Oxford Handbook of International Climate Change Law, 24th March, 2016

²² 2006(6) SCC 371

²³ 1987 (4) SCC 463

State and a constitutional duty of the citizens not only to protect but also to improve the environment and to preserve and safeguard the forest, the flora and fauna, the rivers and the lakes and all other water resources of the country. The neglect or failure to abide by the pointer or to perform the duty is nothing short of a betrayal of the fundamental law which the State and, indeed, every Indian, high or low, is bound to uphold and maintain". In *M. C. Mehta v. Union of India*²⁴, it was observed by the Supreme Court that the public health, life, and ecology has priority over the loss of revenue and unemployment and the sustainable development still holds good. So, maintaining a good environment is the fundamental duty of State as well as Citizens and the observation in *Virendra Gaur and Ors v. the State of Haryana*²⁵, that the term 'environment' means hygienic atmosphere and ecological balance and the duty to maintain it is conferred on both State and citizens, the court further added that State has a sovereign power to forge in its policy to maintain ecological balance and hygienic environment. So, to live in a country wherein healthy lives are important, it is a necessity to protect our environment.

The EIA Notification of 2020²⁶ which was introduced to replace the 2006 Notification was highly criticized recently on various grounds such as it affects the balance between sustainable development and environment protection while favoring the industries and it irreversibly affects the environment and may cause hazards to human lives etc. The said draft is also contrary to the decision taken in the case of *Alembic Pharmaceuticals Ltd v. Rohit Prajapati & Ors*²⁷ that post-facto clearance is against the sustainable development and the precautionary principles. The L.G Polymers Plant, Visakapattanam where the recent gas leak occurred was operating for more than 20 years without environment clearance. These incidents raise a question mark before us about the upcoming days.

Even though the topic of environment protection is discussed and debated overtime, it is still a relevant and unresolved issue. So, it is our obligation to conserve our environment and to hand it over to the next generation in the same manner as we received it.

²⁴ 1994 SUPPL (6) SCR 78

²⁵ 2020 SCC Online SC 347

²⁶ Ibid

²⁷ 2020 (4) MLJ 277



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