

SAFEGUARDING ENVIRONMENT: A MAJOR CHALLENGE FOR THE STATE

Dr. Shruti V. Kamat Dalal

Assistant Professor, V. M. Salgaocar College of Law, Miramar – Goa

Abstract

Over the period of time environmental jurisprudence has reached the pedestal of right to life which can neither be overlooked nor given a solitary approach. Indian Constitution from its inception has expressed the bounden duty of the State to preserve, protect and improve the environment. Added to this, the State has also endeavoured to implement laws that would safeguard environment but its enforcement has been tardy. Judiciary has been proactive to step in and express the critical need to save environment. The State is at cross road to balance between conservation and development. The approach of the State to sight conservation and development as bipartite has to be revamped. The domain of development must be weaved with conversation that would resolve the dilemma of the State.

Keywords: environment, constitution, pollution, climate change

Introduction:

Human race over the period of time has assumed uncontrolled power with the aid of their intellectual and physical faculty and have been largely responsible to transform the environment on a unique scale. The passionate lust towards advancement has taken environment on toll. An individual finds it arduous to strike a balance between natural and man-made. This has resulted in creating a major disturbance to the ecology. Hence, environment protection has always appealed for a global concern.

The balance between economic elevation, pollution and the people around has always been a primary topic of discussion between the developing and the developed Nations. For this reason, the United Nations Conference at Stockholm had to be convened and the international agenda made safeguarding of the environment as the focal point of worry.

This led to the germination of UN Environment Programme as an aftermath of the 1972 UN Conference on the Environment.

Laws and the Regulations at the National Level

The citizens of India are bound by the core duties that are fundamental in nature and they are spelt under the Constitution of India. One of such duty that appeals the attention of the citizens is to develop concern and sympathetic approach towards all living creatures and thereby preserve and ameliorate the environment in its natural form. The State is also obliged to safeguard the environment that is inclusive of wildlife and forests and endeavour to develop it further. Also, Part III of the Indian Constitution under Article 21 acknowledges right to clean and healthy environment within the ambit of right to live, which is recognised as a fundamental right.

In fact, India's participation at the UN Conference on Environment at Stockholm led to enactment of central laws that was structured to protect and preserve the environment and also lessen the intensification of pollution. Considering the primary objective of controlling the air pollution, and thereby preserving the quality of air, the statute on The Air (Prevention and Control of Pollution) Act, 1981 was

enacted. Prior to this, The Water (Prevention and Control of Pollution) Act, was implemented in the year 1974 for restoration of healthy water devoid of pollution. Added to this, both the legislations further speak of constitution of Boards with powers, to attain the objective of the statutes.

Further, in order to prevent exposure to risk, especially when it comes to human race and the other living beings, plants and also property it was thought appropriate to implement The Environment (Protection) Act too. Added to this, a notification on Environment Impact Assessment was issued by the Central Government, where, Environmental Clearance by the Central Government as per the procedure indicated in the notification was made mandatory, for the expansion or modification of a new project or activity in India as mentioned in Schedule I of the notification.

Further, a subsequent notification was issued by the Central Government, that superseded the earlier notification which made environmental clearance for novel projects mandatory. This procedure for clearance constituted the following stages of screening, scoping, public consultation and finally appraisal, and the said clearance was to be taken either from the Central Government or the State Level Environment Assessment Authority. However, the application of all the four stages differed project wise.

Added to this, the Central Government had already issued another notification, where the Government had divested its powers and delegated them to the State Pollution Control Boards or the Committees. By virtue of the said notification the concerned authority is empowered to prevent infraction of the rules and regulations.

Another key issue of distress is climate change where one of the reason for the same is vanishing tree cover. In the year 2015 India has pledged at the Paris Agreement that, the country will contribute by amplifying the forest cover by the year 2030 with an objective to minimize the dreadful effects of climate change. The Nation has formulated a plan on climate change where India has vouched to upgrade the tree cover by additional ten percent. Further, regulatory provisions have also been made by the Indian Government on usage of plastic and import of plastic products.

Added to this the principles of sustainable development recognised by the court balances the equation of present and future, thereby taking into consideration the current development and also equally protecting the surrounding nature for the benefit of the future living. Interest in the well-being of the future generations calls for protecting the environment that speak of the doctrine of public trust. It is the State's responsibility to protect the natural resources being its trustee, was held by the Apex Court while explaining the said doctrine.

Supreme Court's stand on the concept of development and conservation

Considering the dire need of sustenance of future generations and to certify the principle of sustainable development, it is mandatory that laws that would prevent pollution and protect the environment need to be strictly adhered, followed and observed. Restoration of environment cannot be diluted neither can it go unnoticed, hence the cost of environment degradation is borne by that industry that operates in defiance of environment laws, rules and orders and this is enforced through application of polluter pays principle.

A question that arose before the Apex court was about the closure of a unit that was established after obtaining the necessary approvals from the authorities constituted under the statutes pertaining to the environment. The State Pollution Control Board noticed a technical irregularity in the functioning of the unit for being devoid of prior environmental clearance. The unit thereafter applied for an ex post facto environmental clearance, and the same was in pendency. In such circumstances the unit cannot be closed was the decision of the court. The court stated that the statute of 1986 does not ban on grant of ex post facto environmental clearance. It was also added that, if projects are in compliance with the environment standards and also its laws, rules and orders in force, then grant of the environmental clearance, even if the same is ex post facto is permissible.

In lieu of the decision, it was observed by the court that, the economical contribution of the unit to the country and dependency of the masses on the unit for the provision of livelihood cannot be discarded and this calls for introspection before taking a decision on closure of the unit. Even in *Alembic Pharmaceuticals Ltd. Case*, 2020 SCC Online SC 347,

the court held that the industry should not be closed down, after considering its functioning and expansion. However, the Supreme Court expressed its disapproval in granting the ex post facto clearances being violative of the basic principles of environmental jurisprudence. The court observed that the procedure laid down for environmental clearance acts as a safeguard that protects the environment from causing irreversible harm. Further, the Court also added that legislations on environment approving the ex post facto clearances would be in disagreement with the precautionary principle and that of sustainable development.

The Supreme Court has categorically stated that, continued willingness to accept and live in an unpleasant atmosphere where there is sustenance of violators and violation of laws, is severe than not having a law. Prohibitions couched by law need to be recognised in an equivalent way as that of permissions. When private gain is addressed, consequence is disobedience of law and implied acceptance of the same by the State crucify the objective of the statute. A system of tolerance of infraction is dreadful for growth of civilized society as this fortifies lawlessness, thereby lowering the worth of statutes in force.

In a case the Bombay High Court observed that, despite there being a legislation that speaks of preservation of trees, the State has been actively tolerant to watch its Authorities violate the law for a long period. In fact the key duties as per the Act focusses on conserving the trees; keeping a record of the census of the trees in their jurisdiction; laying down the standards that shall indicate the trees along with its minimum number that different land premises should have; nurseries to achieve the objective of the legislation to be maintained and enhanced; in cases of man-made development, to plant more trees and if required to transplant trees; to take measures as per the Government directives for achieving the object of the Act; to conduct thorough study of projects that relate to development and to simultaneously balance the preservation of the trees.

The Court further stated that, the statutory body despite being constituted under the Trees Act was absolutely defunct since the year 2012. The Court expressed that the aggressive development by human race should not be the means to destroy the greenery and this kind of destruction would affect

the sustainable development. It was further observed by the Court, that the law on Trees Act has been enacted to guarantee sustainable development. The Bombay High Court therefore voiced its alarm on the gross failure of duties on part of the Tree Authorities as far as preservation of trees in the State of Goa is concerned, and directed the authorities to expedite in carrying out its legal obligations before the deadline.

Considering the fact that it is exigent to preserve the trees, the Apex Court in *Association for Protection of Democratic Rights and Another v. The State of West Bengal and Others*, SLP (Civil) No. 25047 of 2018, order dated March 25, 2021, through its observations did step forward to compute the price of a tree that has been legally allowed to be felled by the statutory authorities. The Court added that the total compensation payable in such cases has to be utilized to intensify afforestation. Further, the worth of a tree would largely be based on the role of a tree in integrating the ecosystem in terms of increasing the oxygen level; in conserving the soil; maintaining the ecological balance and the required habitat for sustenance of flora and fauna. Apart from timber derived from the trees, its relevance is distinct ecologically even from the angle of climate change.

In an instance, ban on Single Use Plastic in Tamil Nadu, the Tamil Nadu Government despite prohibiting single usage of plastic products, the restriction was only on the paper, which made the Madras High Court to interfere and direct the State Government to implement the same by imposition of heavy fines not only on the suppliers but also the stockiest. It was observed by the Court that, people have accepted usage of plastic in their lives which has affected ecology to the core.

In reference to the notable observations of the Apex Court of India in, *Association for Protection of Democratic Rights and Another v. The State of West Bengal and Others*, SLP (Civil) No. 25047 of 2018, it was expressed that:

“It is essential to strike the right balance between environmental conservation and protection on one hand, and the right to development on the other while articulating the doctrine of sustainable development. We may add that in our opinion conservation and development need not be viewed as binaries, but as complementary strategies that weave into another. In other words, conservation of nature must be viewed as part of the development and not as a factor stultifying development”.

Suggestions

1. The executive must design a multi-disciplinary approach that would germinate a shared understanding between the scientific principles, laws and the policy programmes in the sector of environment, its preservation and protection.
2. The environmental law should not be tagged only as the treasure of courts. It should also include within its parameters the stakeholders who are accountable to frame the strategies and implementing them. The stakeholders should owe the responsibility to handle the upcoming challenges of climate change, disintegration of habitats and environmental destruction.
3. It is imperative to comprehend the procedural, institutional and the conceptual strings of environmental law. Unified analysis of these aspects is required to construct a discourse on environmental jurisprudence.
4. The issue of environmental degradation being alarming, the awareness on essence of environment and call for preservation should reach the stratified society of differing age groups inclusive of pauper and the rich.
5. A wakeful alert is expected from the State and society by organizing discussions, debates, talks on the environmental problems, laws and policy regulation. It is the shared commitment of executive and public to formulate measures and implement plan of action in the interest of present and future generation.

Conclusion

The quality of life can be enhanced if wise decision is made by Mankind with respect to curbing the incalculable destruction done to the environment and electing the sustainable alternatives that would consider both equally, the wellbeing of people and also nurturing the nature. The socio-economic progress of human race is impracticable if the environment is at stake. Human race shall be at peril if man is perceived to be in disjunction with environment. Environment consequences can be fatal and it is imperative to understand that higher the degree of indifference between the human race and the nature, there is proportional irreversible harm.

Article 21 of the Indian Constitution encompasses right to environment under the umbrella of right to life. Though this right has been judicially pronounced, it cannot be enforced with absolute entirety. In such situations, call for right to development supersedes right to life has to be proved by the executive. Necessity to proportionally equate right that speak of life or development is a challenge.

The elevating imbalance in the ecology is an eye sore and the future generation may not be set to combat the dire effects of environment on living beings, nor may be ably guided to preserve the environment. We need to understand that, it is always the need that compel the legislature to frame and enact the law. We are at the peak to understand and accept that, laws are meant to obeyed not only by the obedient but by the people at large, in whose interest they are made. Blatant transgression of antipollution laws would result in creating ecological imbalance, and this in turn will denigrate the quality of life. This adversity is foreseen at the cost of future generations. Hence, we are at the crossroad, as we need to rethink and take timely action with prudent care to rejuvenate environment that would harmonise the facets of right to life of living beings.

References

Alembic Pharmaceuticals Ltd. v. Rohit Prajapati and Others, 2020 SCC Online SC 347.

Art. 48A. *The Constitution of India*.

Art. 51A(g). *The Constitution of India*

Association for Protection of Democratic Rights and Another v. The State of West Bengal and Others, SLP (Civil) No. 25047 of 2018, order dated March 25, 2021

Association for Protection of Democratic Rights and Another v. The State of West Bengal and Others, SLP (Civil) No. 25047 of 2018, order dated March 25, 2021.

Ban On Single Use Plastic in Tamil Nadu. (n.d.). <https://www.livelaw.in/news-updates/madras-hc-upholds-ban-on-single-use-plastic-146349>. (last visited on September 19, 2022).

Bengaluru Development Authority v. Sudhakar Hegde and Others (2020) 15 SCC 63

Electrosteel Steels Limited v. Union of India, 2021 SCC online SC 1247.

Environment and sustainable development. (n.d.). In *United Nations Peace, Dignity and Equality on a Healthy Planet*. United Nations Conference on the Human Environment, Stockholm, Sweden. <https://www.un.org/en/conferences/environment/stockholm1972>

Environment Impact Assessment Notification, S.O. 60 (E). (1994, January 27). Ministry of Environment and Forest.

India's Updated First Nationally Determined Contribution Under Paris Agreement (2021 – 2030). (2022, August). Government of India. <https://unfccc.int/gcse?q=India>.

Indian Council for Enviro-Legal Action v. Union of India and Others, (1996) 5 SCC 281.

Living Heritage Foundation v. State of Goa and Others, Writ Petition No. 8 of 2021.

M.C. Mehta v. Kamal Nath and Others, (1997) 1 SCC 388.

M/s Pahwa Plastics Pvt. Ltd. and Another v. Dastak NGO and Others, Civil Appeal No. 4795 of 2021.

M/s Pahwa Plastics Pvt. Ltd. and Another v. Dastak NGO and Others, Civil Appeal No. 4795 of 2021.

Ministry of Environment. (2022, February 16). *Forest and Climate Change*, Notification, New Delhi.

National Action Plan on Climate Change. (n.d.). Government of India. <https://moef.gov.in/en/division/environment-divisions/climate-changecc-2/national-action-plan-on-climate-change/>

Notification, S.O. 1533. (2006, September 14). Ministry of Environment and Forest.

SLP (Civil) No. 25047 of 2018, order dated March 25, 2021.

T.N. Godavarman Thirumalpad v. Union of India (2002) 10 SCC 606.

The Air (Prevention and Control of Pollution) Act, 1981 (Act 14 of 1981).

The Environment (Protection) Act, 1986 (Act 29 of 1986).

The Goa, Daman and Diu Preservation of Trees Act, 1984 (Act 6 of 1984).

The Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974).