



Harmonizing Development Vs Environment Conflict

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Abstract:

On the wake of the 21st century, it is neither feasible nor practicable to have a negative approach to the development process of the country or of the society. There should be no delay in the development process of a country as any sort of delay or hindrance will lead to loss and waste of both progress and money. This will have a negative impact on the moral of a country. The society shall have to prosper and also the environment shall have to be protected but not at the cost of the development of the society. It is an established concept that development is not anti-theses to environment. Environment and development are two sides of the same coin. Any one of these cannot be sacrificed for the other. On contrary, both are equally important for our better future.

Keywords: Harmonizing, Development, Environment. Conflict

Introduction:

It is indeed an eerie feeling when one realizes that earth, an infinitesimal speck in the Universe, alone has the required environment for life, in any form to exist. Earth's environment is finite and fragile. If the existing environment on earth is drastically altered, it can effectively snuff out the very survival of all life forms from the universe itself. With the contamination of all water ways; pollution of the air and space; degradation of land; deforestation; alarming disappearance of a number of species of flora and fauna every year and looming threats of global warming the earth's eco-system is under severe stress and grave threat. The Indian environment is as much affected as the rest of the world.

Man is an integral part of the environment and yet he is the arch enemy of it. For centuries, man has been thriving on its generosity. However, in his quest to make life even simpler and

more luxurious, he has turned a blind eye to the damage caused to the environment. A careful analysis of why there are imbalances in the environment will highlight numerous mistakes on our part. The first being industrialization. In order to progress, every nation has extensive set-up of industries. Industrial development has to be pursued in harmony with environmental protection. A safe and healthy environment has now become a criterion for measuring the progress of development.

Nature and mankind are inseparable parts of environment. As per **sec 2(a) of Environment protection act** environment means "Environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, microorganism and property.

Dark sides of industrialization: One of the main sources of air pollution is the emission from industrial and commercial



processes. Almost all the industrial units and power generating stations use combustion of coal, coke, petroleum for generation of heat and power. The industrial plants that appear to be major sources of pollution include iron and steel foundries, pulp and paper mills, dyeing units, mining industries etc. All the industrial effluents are drained into the various water bodies. Rivers have been reduced to channels of effluents.

Industries, which fail to follow the various prescribed norms to prevent pollution, create havoc to our society. Industries are beneficent to a locality for the purpose of employment, economic growth but on the other hand, it also degrades our environment. The state of India's environment is upset at the hands of uncontrolled human activities, and these ecological ailments are affecting social growth potential. Degradation of land, increasing air pollution, depletion of water resources, loss of indigenous species of flora and fauna detract the growth of Indian people and the country as a whole. Thus, India's rapid growth is driving equally rapid environmental destruction. The amount of carbon dioxide (CO₂) emitted by these has already reached dangerous levels. Carbon dioxide, which is a greenhouse gas, is the main cause of global warming. It has been reported that the average global surface temperature has risen by 0.56 C. One of the effects of this surge is that the Antarctic ice caps have started melting thereby increasing the sea level. Some low-lying areas are already facing the threat of being submerged by rising sea levels.

Pollution starts with the problem of waste disposal, emitting hazardous, toxic gas into the atmosphere. Manufacturing

industries, pulp, paper, oil refineries, iron, steel, plastic, construction material, power plants, food-processing industries, dyeing units produce different kinds of waste. These wastes being corrosive, toxic, ignitable, degradable, radioactive pollute the soil, air, water. This also includes the bio-medical wastes.

The Hon'ble Supreme Court of India in *Sachidananda Pandey vs. State of West Bengal & Ors.* 1987 air 1109, 1987 SCR (2) 223 held that;

"Today society's interaction with nature is so extensive that the environmental question has assumed proportions affecting all humanity. Industrialization, urbanization, explosion of population, over-exploitation of resources, depletion of traditional sources of energy and raw materials and the search for new sources of energy and raw materials, the disruption of natural ecological balances, the destruction of a multitude of animal and plant species for economic reasons and sometimes for no good reason at all are factors which have contributed to environmental deterioration."

The Stockholm declaration, 1972

The United Nations Conference on Human Environment held on in June, 1972 at Stockholm placed the issue of the protection of biosphere on the official agenda of international policy and law. The agenda of the conference consisted of the following :

- (a) Planning and management of human settlements for environmental quality.
- (b) Environmental aspects of natural resources management.



(c) Identifications and control of pollutants and nuisances of broad international significance.

(d) Educational, Information, Social and cultural aspects of environmental issues.

(e) Development and environment.

(f) International Organizational implications of action proposals.

The Stockholm Conference agendas, proclamations, principles and subsequent global, environment protection efforts shows the words realization of the need to preserve and protect the natural environment. The Conference acclaimed man's fundamental right to adequate conditions of life in an environment of a quality that permitted a life off dignity and well-being.

In United Nations Conference on Human Environment, at Stockholm the then Prime Minister of India Mrs. Gandhi while displaying the nation's commitment to the protection of environment said,

"The natural resources of the earth, including the air, water, land flora and fauna and especially representative sample of the nature ecosystem must be safeguard for the benefits of present and future generations through careful planning or management, as appropriate... Nature conservation including wildlife must therefore receive importance in planning for economic development".

Harmonizing development vs. Environment conflict: Development refers to wholesome development and

includes political, social, economic and spiritual development. It was thought that environmental related principles are barriers or obstacles to development. This was based on assumption that environmental pollution is an inescapable product of industrial development. Environmental concerns have therefore been viewed as a shift from economic development goals. Thus, the existence of a conflict between two well-recognized human rights namely right to environment and right to development becomes evident. The problems caused by lack of environmental safeguards in development projects are air and water pollution, hazardous waste disposal, pesticide pollution, fertilizer runoff into streams etc. If sufficient attention and investment is not made, these problems will increase and may attain dangerous proportions. This resulted in the depletion of the ozone layer. The first legislation with the objective of reducing of environmental pollution was enacted in the form of Water (prevention and control of pollution) Act, in the year 1974, followed by Air (prevention and control of pollution) Act in 1981. These enactments have the objective of preventing and controlling the pollution as the top priority. The goals of pollution control itself may be formulated in many different ways .One goal is to protect human health. Another goal is to ensure the viability of wildlife. Preservation of historic monument is another goal of pollution control.

Many became aware of air pollution when the Taj Mahal (M.C.Mehta V. Union of India also known as the Taj Trapezium case) was threatened by emissions from proposed new industrial plants. The Hon'ble Supreme Court held that emissions generated by coke\coal using



industries in Taj Trapezium were found to be the main polluters. The Court directed 292 industries located and operating in Agra to change over within fixed time schedule to natural gas as industrial fuel or stop functioning with coke\coal and be relocated. The court has directed through various judgments to shift the industries polluting the environment to non-residential area and some enterprises were directed to control the spreading of pollution by using other techniques.

The modern formulation of the right to development is that it is not absolute and it is relative always to the environmental concerns .This is compendiously referred to as the sustainable development .BY using this concept effectively the judiciary has successfully attempted to resolve the environment development conflict. The principle of sustainable development plays a major role in balancing the demands of development and environment protection.

Judicial remedies for environment pollution:

The remedies available in India for environmental pollution comprise of statutory as well as common law remedies. The term "common law" is derived from the latin word *lex communis*. The common law is force in India under Article 372 of the Constitution of India. The common law remedies available for environmental pollution are, nuisance, trespass, negligence and strict liability. The statutory remedies includes: Citizen's suit, e.g., an action brought under section 19 of the Environmental (Protection) Act, 1986, an action under section 133,

Criminal Procedure Code, 1973 for public nuisance covered with the framework of section 268, Indian Penal Code,1860:and an action brought by filling a writ petition under Article 32 in the Supreme Court of India or under Article 226 in the High Court.

Common law & statutory remedies:

Damage: Damages refer to pecuniary compensation for a tortuous act, but it is not found in India because the damages awarded for tortuous acts here are too low and have no deterrent effect on the polluter. Thus the award of nominal damages defeats the basis and the objective underlying the "damage theory" which is to deter the wrongdoer.

In contrast to the above mentioned position the approach of the Indian Judiciary has undergone a change recently. In Shriram Gas Leak case, involving a leakage of Oleum gas which resulted in substantial environmental harm to the citizens of Delhi, the Apex court held that the quantum of damages awarded must be proportionate to the magnitude and capacity of the polluter to pay. However, the Apex Court has deviated from this test in the Bhopal Gas Tragedy case wherein the court awarded U.S. \$470 million to the Bhopal gas victims which was far below the magnitude and the capacity of the polluter, Union Carbide.

Injunction: The grant of injunction may require a polluter to refrain from doing a particular thing or to do a particular thing. Injunction may be temporary or perpetual injunction. Section 94 § 95 along with Order 39 of the Civil Procedure Code,1908 deal with grant of



temporary injunction. Except this grounds temporary injunction can also be granted by the court for any other reason, on the existence of three conditions: prima facie case, likelihood of irreparable injury, the balance of convenience in favour of the grant of injunction. The grant of perpetual injunction is governed by Sec.37 to 42 on the Specific Relief Act, 1963. The purpose is restrain the polluter indefinitely from resorting to polluting activity.

Nuisance: Nuisance means anything which annoys, hurts or that which is offensive. Nuisance may be in the form of offensive smells, noise, air, or water pollution. The common law of nuisance is concerned with the unlawful interfering with the persons use or enjoyment of land or of some right over, or in connection with it. Nuisance is of two types:

Private Nuisance- It is a substantial and unreasonable interference with the use and enjoyment of one's land.

Public Nuisance- It is an unreasonable interference with a general right of the public.

Negligence: The law of negligence is a fault based system. In order to succeed in negligence there has to be some fault on behalf of the defendant. The three main principles of negligence are that the plaintiff must establish that (a) the duty of care is owed by the defendant to the plaintiff ; (b) that the defendant has breached that duty ; and (c) that there has been foreseeable damage resulting from the breach.

Strict Liability: The rule enunciated in Rylands v. Fletcher by Blackburn J. is

that the person who for his own purpose brings on his land and collects and keeps there anything likely to be a mischief, if it escapes, must keep it as its peril, and if he does not do so is prima facie answerable for all the damage which is the natural consequence of its escape. The doctrine of strict liability has considerable utility in environmental pollution cases especially cases dealing with the harm caused by the leakage of hazardous substances. The Supreme Court of India has, however, developed the principle of absolute liability for enterprises engaged in hazardous or inherently dangerous activities in well known Shriram Gas Leak case where the harm resulted from the hazardous activity of the Shriram unit. The Shriram enterprise was held absolutely liable to compensate the harm.

Environmental movements:

Friends of the Earth: The name Friends of earth is self-explanatory. This is a national environmental organization dedicated to preserving the health and diversity of the planet for future generations. It is the largest international environmental network in the world with affiliates in 63 countries. This also operates in India. Similar movement aiming environment protection is **Green Peace**. It is a Non-Governmental Organisation which is striving for the conservation of our environment.

Conclusion: It is true that in a developing country there shall have to be developments. Time has now come to check and control the degradation of the environment. Law Courts also have a duty towards the society for its proper



growth and further development and also by reason of definite legislations in regard thereto. There should be no delay in the development process of a country as any sort of delay or hindrance will lead to loss and waste of both progress and money. This will have a negative impact on the moral of a country. The society shall have to prosper and also the environment shall have to be protected but not at the cost of the development of the society. It is an established concept that development is not anti-theses to environment. Environment and development are two sides of the same coin. Any one of these cannot be sacrificed for the other. On contrary, both are equally important for our better future. Thus, the responsibility lies on the Supreme Court and the various High Courts to deal with these cases with caution of high degree. It is only then that we will achieve our goal, which is to secure a pollution-free developed country for our next generation.

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