

ENVIRONMENTAL TREASURE "EACH ONE'S OBLIGATION TO PROTECT"

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One of the most crucial challenges before mankind today is development of an environmentally sound planet, which is none-else but "Our earth". Unfortunately except for the heightened thinking the masses have not moved even one step forward in their approach to nature as well as at the level of actions.

Article 51(A)(1) of the Constitution of India casts upon every citizen of the country a duty to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. It is most common characteristic in all of us that we pay much attention to our rights but seldom realise our duties.

At this juncture I am reminded of an excerpt from the speech of the Prime Minister of India on 5.6.1972 at Stockholm in a conference on human environment that "Man is both creature and moulder of his environment which gives him physical sustenance and affords him the opportunity for intellectual, moral and spiritual growth". Therefore, protection and improvement of human environment is a major issue. We see growing evidence around us of man made harm, for example dangerous levels of pollutions in Water, Air, Earth and undesirable disturbance to ecological balance of the biosphere, destruction and depletion of irreplaceable resources. Thus a point has been reached in our times when we must shape our action throughout the world with more prudent care for environmental consequences because our ignorance and indifference will cause irreparable harm and loss, but all is not lost because if we act with fuller and wiser knowledge we can achieve for ourselves and our posterity a better life.

There is an old proverb that the "Wish is father to the thought and thought applied is action." Consequently the underlying idea is that each one of us must have a philosophy about environment because it is only then that we can effectively contribute to a healthy and sound earth. Environmental concerns cannot be self-contained independent issues. Environment as a total human habitat cannot be treated in an isolated manner. We all must know about environment; know the result of its protection; know how laws deal with environment and thereafter give ourselves an action plan backed by honest and sincere intention.

Article 48-A of the Constitution of India provides that the State shall

endeavour to protect and improve the environment and to safeguard the forest and wild life of the country. Thereafter one of the major steps taken under Article 48-A was the making of the Environment Protection Act, 1986, which in its aims and objectives acknowledged the decline in the environmental quality evidenced by increasing pollution; loss of vegetal cover; biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threat to life support-systems. It further acknowledges, that because of a multiplicity of regulating agencies, there is need for an Authority which can assume the lead role for studying, planning and implementing long term requirements of environmental safety and to give direction to and coordinate a system of speedy and adequate response to emergency situations threatening the environment. Thus as a sequel to the aforesaid problems identified in the aims and objectives, Section 3 of the Environment Protection Act of 1986 bestows upon the Central Government wide powers to take measures to protect and improve environment; under Section 5, the Central Government may issue direction in writing to any person, officer or authority and in turn they would be bound to comply with those directions. Section 6 confers rule making powers and Section 15 provides for imposition of heavy penalty upon any person or authority whosoever fails to comply with the provisions of the Act with an imprisonment extending up to five years and fine up to one lac rupees.

Apart from provisions of the Special Act such as the Environment Protection Act, 1986, The Air Prevention and Control Act, 1985, The Water (Prevention and Control Pollution) Act, 1974 there are some more provisions which take care of our environmental health, such as the U.P. Municipalities Act, 1916 contains provisions empowering the Municipality concerned by notice to require an owner or occupier to remove on whose land a drain, privy, latrine, urinal, cesspool or other receptacle for filth exists near a public water resources vide (S. 227). Power and duty of inspection of drains, privies etc. and maintain them clean (S. 270). Duty of cleansing of filthy buildings of land (S. 271); Regulate for disposal of rubbish, night soil etc. (S. 227). Impose penalty for improper disposal of rubbish or night-soil up to rupees two hundred and fifty (S. 274).

NOTE:- (I strongly recommend that this amount should be enhanced substantially because callous throwing of garbage on public streets is a common habit and great environmental disaster in our country). Power to impose penalty for discharging sewage on public street etc. (S. 276); Power to enter and disinfect building (S. 277); Prohibition of cultivation, use of manure or irrigation injurious to health (S.282); and so on. Further, the U.P. Nagar Mahapalika Adhiniyam, 1959

under Section 114 imposes obligatory duties on the Mahapalika quite similar to those provisions as contained in the U.P. Municipalities Act, 1916. And above all among the major pieces of legislation on environmental protection I would be making an incomplete treatise if I do not refer to the relevant provisions as contained in Lord Macaulay's classic work i.e. The Indian Penal Code, 1860, Chapter XIV of the Code deals with offences affecting public health safety, convenience, decency and morals. The notable features are : Six months imprisonment or fine or both for negligent act likely to spread infection of disease dangerous to life (S. 269) sale of noxious food or drink (S. 273); Adulteration of drugs (S. 274) Three months imprisonment and five hundred rupees fine or both for fouling water of public spring or reservoir (S. 277). Five hundred rupees fine for making atmosphere noxious to health (S. 278) and above all the residuary provisions as contained in Section 290 takes care of punishment for public nuisance in cases not otherwise provided.

Thus we see that broadly there are constitutional provisions, special laws and general laws dealing with environmental hazards and pollution. But let us for a moment go back to the kernel of this article that "Action should be on part of each one of us" to prevent further degradation also of our environment and to help alleviate poverty, let me add "poverty" is not only the problem of hunger but it includes mental deprivation, which results from malnutrition, overcrowding, lack of essential physical amenities and of stimulating environment. I submit that the need to begin the process is so urgent and compelling that all common men should necessarily look upon the guardians of justice, liberty and basic human rights, namely, the courts of law in our country which under the Constitution of India are duty bound to preserve and protect the life and liberty of the people of the nation. A healthy and a clean environment is no doubt an integral part of our right to life so well protected under Article 21 of the Constitution of India. It can also not be doubted that it is the courts which can translate laws and implement them into "Rules of Action".

The efforts in this article would be incomplete if it does not render a broad account as to how the Courts in India have treated Environmental jurisprudence. During the last two decades the Courts, all over the country in various situations, have been interfering effectively with any or every environmental mishaps. In a very recent decision rendered by the Hon'ble Supreme Court in the case of Indian Council for Environment *Action v. U.O.I.*, 1996 (3) SCC 212, the Supreme Court directed:- (A) for establishment of Environment Courts. (B) strengthening Environment protection machinery both at centre and states and providing them more teeth. (C) Personal accountability of industrial units for their lapses (D)

Environmental audit system.

This was a case where light was thrown on the woes of people living in the vicinity of chemical industrial plants in Bichhva small village in Udaipur district of Rajasthan. Highly toxic effluents in particular iron based and gypsum based sludge was being disbursed in the village. It was held that the respondent was purely guilty for the damage and thus was held liable to defray the costs of remedial measures. Next as we all remember in the famous case of Ratlam Municipality reported in AIR 1980 Supreme Court 1622, where the residents were tormented by stench and stink caused by open drains and public excretion by sium dwellers, the issue of public nuisance and pollution was severely deprecated by the Supreme Court in the following words in paragraph 15:-

"Public nuisance because of pollutants being disbursed by big factories to the detriment of poorer sections is a challenge to the social justice component of the rule of Law. A responsible Municipal Council constituted for the precise purpose of preserving public health and providing amenities cannot run away from its principal duty due to financial inability. Decency and dignity are not negotiable facets of human rights and are a first charge on Local-self Governing body."

Similarly in the case of *T. Damodar Rao v. S.O. Municipal Corporation, Hyderabad*, AIR 1987 AP 171, The Andhra Pradesh High Court held in a case where land reserved for development of park was being used for housing construction, that such a misuse by the Government was violative of the right to enjoyment of life guaranteed under Article 21 of the Constitution of India and was pleased to observe in para 21 as follows:-

"Land reserved for development of park cannot be used for housing construction.... enjoyment of life guaranteed under Article 21 must be safeguarded as it embraces the protection and preservation of nature's gift without which life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violative of Article 21 of the Constitution. The slow poisoning on the pollution and spoilation should also be regarded as amounting to violation of Article 21 of the Constitution."

Recently in the case of *Ishawer Singh v. State of Harayana*, AIR 1996 P&H 30, the Punjab High Court directed closure and shifting of stone crushers and held that the citizens of the area were entitled to claim compensation from owners of stone crushers. Afforestation was directed in the famous case of *Rural Litigation*, AIR 1988 Supreme Court 2187, the issue of effluents discharge from tanneries in river Ganga was severely dealt with by the Supreme Court on a petition

filed by social activist M.C.Mehta.

Thus we see that there are laws to protect environment, the citizens of the country have an obligation under the Constitution to protect environment. The Courts in the country have been ensuring effective protection of environment. All that now we need is an iron will and catalyse the movement of environmental protection because conservation and preservation of environmental quality is the cry of the hour, as during the last few centuries with the growth of population the environment has been subject to harsh treatment by various activities based on development of scientific knowledge. The result is that man-kind has altered the characteristic features of this earth and its surroundings. In the end let me with all humility sound a word of caution that if the present course of environment degradation continues, then it will destroy the capability of our environment to support a reasonably civilised human society.