

“Environmental Protection – Legal Aspects”

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ABSTRACT

Right to healthy environment is a universal acceptance. The right to healthy environment got entrenched in Art.21 of the Constitution of India, courts in large measure relied on this right in addressing a variety of aspects relating to protection and improvement of environment. In Ivory Traders & Manufacturing Association Vs. Union of India, the Delhi High Court held that right of an ivory dealer are subject to the paramount right of other people to have healthy and balance ecology. It also held that killing of elephants for procuring ivory should be stopped for a balanced environment.

KEYWORDS: Ecology, Balanced Environment, Preservation of Environment, Recommendations.

I. INTRODUCTION

Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water sanitation without which life cannot be enjoyed. Right to environment is a fundamental right. Other hand, right to development is also one. Here the right to sustainable development cannot be singled out. Therefore, the concept of sustainable development is to be treated as an integral part of life under Article 21.

Case Law: India is a member of the United Nations organization since its inception. To some extent environmental problems can be dealt on regional basis but all problems cannot be said to be a local. All the nation on rich or poor, developed or developing north or south facing the problem of pollution. Thus the problem of pollution is to a large extent a transboundary problem and some time its effects are widely rampant and recognize no boundaries. It is true that we have one planet to live on and we have common future. In Indian Council for Enviro Legal Action Vs. Union of India, it was observed that: Even though, it is not the function of the court to see the day-to-day enforcement of laws, that being the function of the executive, but because of the non-functioning by the enforcement agency, the courts as of necessity have had to pass orders or direction to the enforcement agencies to implement the law for the protection of the fundamental rights of the people.

Pollution Control Board: The Pollution Control Boards have powers to initiate action against the polluters. However, these Boards had till the recent past been functioning as record-keepers maintaining statistics regarding pollution and only during the last few years these Boards have taken some initiatives to protect and improve the environment after being directed by the courts.

Environmental Laws: The environmental laws provide for a certain procedure for taking cognizance of offences such as Section 49 of the Water (Prevention and Control of Pollution) Act, 1974 provided that no court shall take cognizance of any offence under the Act except on a complaint made by a Board or any officer authorized in its behalf by it or any person who has given notice of not less than sixty days, of his intention to make a complaint, to the Board or officer authorized as aforesaid. Similar are the provisions relating to cognizance under Section 43 and 19 of the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 respectively.

In Lakshmi Cement V State, it was held that Section 133 CrPC does not automatically or impliedly get repealed after the commencement of the Air (Prevention and Control of Pollution) Act, 1981. So proceedings under Section 133 Cr PC are not barred. But while passing an order under Section 133 the Magistrate should be very keen about the complaint and also should see the fulfillment of the required conditions as stipulated.

II. CONCLUSION AND RECOMMENDATIONS

The primary effort of the Courts while dealing with environmental issues had been to not only punish the offender but also to seek proper enforcement of such laws. With regard to control of noise, the State Government can classify the area on the basis of criteria in the Schedule. All development authorities, local bodies and other authorities concerned shall adopt measure in order to avoid noise menace, and to achieve the objective of maintain the ambient air quality standards in respect of noise an area of 100 meters around hospital, education institutions and courts may be declared as silence zone. The rule relating to control of ozone depletion provide for prohibition on new investment with ozone depleting substances, regulation of sale, purchase, use of ozone depleting substances and control of production and consumption or ozone depleting substances. There is regulation of import export and sale of products made with or containing ozone depleting substance.

REFERENCES:-

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2. (1976) 2 SCC 521.
3. (1987) 1 SCC 395.
4. Subhash Kumar Vs State of Bihar, (1991) 1 SCC 598
5. M.C Mehta Vs Union of India (1998) 6 SCC 60
6. Indian Council for Enviro Legal Action Vs Union of India, (1996) 5 SCC 281
7. Narmada Bachao Andolan Case
8. Article 51A(g) read as : Fundamental Duties – It shall be the duty of every citizen of India-(g) to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.
9. K.M. Chinnappa & T.N.Godavarman Thirumulpad Vs Union of India, AIR 2003 SC 724