

CONTRIBUTION OF GREEN TRIANGLE AND GREEN TRIBUNAL TO THE INDIAN ENVIRONMENTAL LAW: AN OVERVIEW

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INTRODUCTION

The words 'Green Triangle' and 'Green Tribunal' may have capsule form but they are loaded with so much meaning that their depth cannot be measured so is there spread. To understand their full implication scraping of their surface will not do. It has to be peeled out. They reveal less and conceal more. Both carry the hope of the victims of pollution and are intimately connected with environment. The word 'environment' possesses a broad spectrum which takes within its fold not only its basic and essential elements namely air, water and soil, but also inter relationship among and between them and human beings, living creatures and plant etc.. It also includes hygienic atmosphere and ecological balance free from pollution of air, water, etc.. It also takes within its sweep both man-made and natural environment. This pair has gained significant importance in environmental circles.

The architects of our Constitution were visionaries and had foreseen the inevitable modernization and problems of polluted environment ensuing therefrom. Through a constitutional amendment in the year 1976 two gems [Art.48-A & Art.51-A (g)] were set in our Constitution to give effect to the trans-boundary Stockholm Declaration of 1972 to which India was a party. They imposed two-fold responsibilities under Art.48A on the State on one hand and under Art. 51-A (g) on the citizens on the other to protect and improve the natural environment and natural resources.

Ever since the human beings came into being they started more misusing than using natural resources. It is painful to know that the children of Mother Nature themselves started looting the natural resources. The people of both upper and lower reaches of the society took unethical advantage of natural wealth. The poor belonging to the bottom of the socio economic structure of the society may have treated the natural wealth unfairly out of need, but the rich belonging to the top of the socio economic structure of the society misused it out of greed. The rich and affluent over exploited the natural resources in the name of development and modernization without regard to the incalculable harm that was being perpetuated to the posterity. The rich may have become richer but Mother Nature has become poorer. Water resources are drying up, mineral wealth is exhausting, plant and animal species are dying. This is resulting in the resource crunch which is reaching its flash point.

THE 'GREEN TRIANGLE'

The aforesaid two Constitutional provisions along with Art.21 account for making the following Green Triangle. The angles of which are being recounted below.

THE FIRST ANGLE (ART.48-A: DIRECTIVE PRINCIPLE OF STATE POLICY)

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Art.48-A inserted by the Constitution (42nd Amendment) Act, 1976 provides: The State shall endeavor to protect and improve the environment and to safeguard the forest and wildlife.

The word 'endeavor' refers to something which the State should try hard to do it. Thus Art.48-A is directed to the State and imposes a national duty upon it to make serious effort not only to protect, preserve, care, guard and ensure proper, clean and healthy environment against damage, it also expects the State to go beyond and make exertion for improving the environment. The word 'improve' provides dynamic connotation to the aforesaid provision to enable the State to take positive steps of imposing restrictions on the misuse of natural wealth of mankind which adversely affect the environment e.g. encroachment upon parks and green areas, soil erosion, deforestation and desertification. Depending upon this article the Supreme Court has done great service by issuing adequate directions in a number of cases to the State towards reducing pollution and eco-imbalance.

THE SECOND ANGLE (ART.51-A(G): FUNDAMENTAL DUTY OF CITIZENS)

Art.51-A(g) added by the Constitution(42nd Amendment) Act, 1976 states: It shall be the duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures.

While Art.48-A referred to above is addressed to the State, Art.51-A(g) is addressed to the citizens as everything relating to environmental matters cannot be left to be taken care of only by the State. While the word 'endeavour' mentioned in Art.48-A is something which one should try hard and make serious efforts by exerting power to do it, the word 'duty' mentioned in Art.51-A(g) is something which one is bound to do as a constitutional obligation. The architects of these two provisions wanted that protection and improvement of the environment should go side by side. Art.51-A(g) imposes a constitutional duty and imperative on every citizen to protect as also to promote and improve natural environment including natural resources which are gifts of mother nature namely forest, wildlife, lakes and rivers expressly mentioned therein. As in Art.48-A, the word 'improve' imparts positive content to Art.51-A(g) also. It is a constitutional mandate to the citizens to deliberately take positive and constructive steps for the betterment of the environment in pursuance to its positive perception. It infuses sense of positive constitutional commitment in them and gives impetus to take urgent correctional measures for keeping the environment healthy and hygienic and also for preventing damage to flora, fauna and environment. Art.51-A(g) does not stop here but goes much further than Art.48-A and casts a duty on every citizen to have compassion for living creatures. The framers of this provision with their prophetic sense could foresee the problem of ecological and environmental degradation and deliberately used the expression 'compassion for living creatures' which is in line with our culture and has a ring of the philosophy of Lord Buddha, Ashoka the Great and Lord Mahavir and also vegetarianism which is part of our cultural heritage. It expects citizens to be kind and give ethical treatment to animal kingdom and other life forms.

THE THIRD ANGLE (ART.21: FUNDAMENTAL RIGHT FOR THE PROTECTION OF LIFE ETC. OF PERSONS)

Art.21 guarantees a fundamental right to life etc. to all persons whether citizens or non-citizens. Its scope is more sweeping as compared to Art.51-A(g) which is limited to citizens only. In the starting phase the judiciary only scratched the surface of Art.21. As the time rolled by the active judges peeled out its surface and found the 'protection of environment' hidden in 'protection of life' mentioned therein. The Apex Court has time and again ruled in unbroken chain of cases handed down by it that right to 'life' means right to 'quality of life', right to live with 'human dignity' or right to 'enjoy life fully'. Environmental pollution is detrimental to the 'quality of life' and compromises 'human dignity'. Right to 'enjoy life fully' is possible only with the pollution free natural atmosphere. Thus the right to decent, healthy, wholesome and unpolluted environment has been read by enterprising judiciary in Art.21. Any interference in the elementary environmental elements namely air, water and soil impairs 'quality of life' within the meaning of Art.21. Due to judicial craftsmanship 'protection of environment' has found its way into 'right to life' guaranteed under Art.21 .

Earlier Art.21 which on plain reading was found colourless, hollow and like a dry bone has been clothed with flesh provided with the case law involving environmental issues. Lots of things for conservation and promotion of environment have been read in Art.21 by the activist judges and loaded it with great meaning. Therefore it has turned out to be having tremendous potential and has made more contribution to the improvement of environment and ecology as compared to the two preceding Articles 48-A and 51-A(g). Thus Art.21 marks the high point of the green triangle which has spread like drop of ink on the blotting paper due to high degree of judicial creativity. Its spread includes many rights relating to environment to give effect to which Green Tribunal has been established.

THE NATIONAL GREEN TRIBUNAL

The following description unfolds in abridged form the structure and functioning of the National Green Tribunal. It owes its origin to National Green Tribunal Act ,2010 passed by the Parliament. It is composed of full time (a) Chairperson and at least (b) ten Judicial Members and (c) ten Expert Members. The Chairperson may invite any person having specialised knowledge and experience in a particular environmental dispute pending before the Tribunal.

The qualifications for being a Chairperson and Member are laid down in the Act. The Chairperson or Judicial Members are required to be serving or retired Chief Justice of a High Court or a judge of the Supreme Court of India. However, a serving or retired judge of even the High Court is qualified to become Judicial Member. An Expert Member should have besides other qualifications, experience of five years in the field of environment or dealing with environmental matters. The term of office of Chairperson and other Members is five years and they are not eligible for reappointment. However they may resign by notice in writing to the Central Government. Their salaries and other conditions of service cannot be varied to their disadvantage after their appointment.

The original jurisdiction of the Tribunal can be invoked on matters of 'substantial question relating to environment' in civil cases. Tribunal has the appellate jurisdiction against certain

orders etc. passed under various environment related Acts. However time limit of thirty days is prescribed within which the appeals may be filed before the Tribunal. The significant takeaway from the Act is that Tribunal is required to apply 'sustainable development', 'polluter pays' and 'no fault' principles while passing an order etc.. Any person aggrieved by an order of the Tribunal may file an appeal to the Supreme Court within ninety days but the Supreme Court can entertain appeal even after ninety days if the appellant satisfies the court by giving sufficient reasons.

The Tribunal is not bound by the Civil Procedure Code, 1908 and Evidence Act, 1872 but shall dispose of cases in line with the rule of natural justice. However the Tribunal shall enjoy the same powers as are vested in a civil court under C.P.C., 1908 while discharging the functions under this Act. The jurisdiction of the Tribunal has been insulated from the interference of civil courts. To say the other way, the civil courts are barred from entertaining any question which may be adjudicated upon by the Tribunals.

The normal and traditional judicial system (regular courts) has many unhappy aspects. It is incapable of giving that quantity and quality of justice which is the demand of the present time. The procedure of the court is surrounded with technicalities which make it move at snail's pace and make the cost of litigation prohibitive. Once a person is locked in a legal battle he runs out of patience and is nearly ruined. The court also lacks expert knowledge. Leaving complex environmental matters to the court is like entrusting the work of surgeon to the barber. These factors have undercut the credibility of the court.

Unlike courts which decide all types of disputes, the new adjudicatory system of the Tribunal with its simple procedural technology is fully focussed on the environmental cases. It is on advantageous position over the courts in protecting the environmental rights of the litigants as it cuts short their time. The Tribunal administers cheap, quick, specialised and effective justice. It consists of persons of high status having experience and expertise in the field of environment. The Tribunal which is independent of pulls and pressures of the government of the day commands respect and credibility in view of these values it stands for. The people feel pretty comfortable with the Tribunal rather than court which is feared one.

Though the Tribunal has handled plenty of environmental matters, the cases relating to 'Creation of Yamuna Conservation Zone', 'Cancellation of Clearance of Coal Blocks in Chhattisgarh Forests', 'Ban on decade old diesel vehicles at Delhi NCR to minimise Air Pollution' and 'Slapping of exemplary fines to polluters' are landmarks. During the short span of five years the Tribunal has established a good track record and has become a trusted destination of the litigants.

CONCLUSION

The aforesaid pair of Green Triangle and Green Tribunal has great purpose to serve and holds out promise for remarkable results in environmental panorama of our country. Environmental law is experiencing upswing in its all aspects and giving rise to new and dynamic Green Environmental Jurisprudence. Nothing else could have done what this pair is doing for the cause of environment. This pair provides answer to those crying for justice against wrongs

done by polluters. It is doing the legendary work of changing the entire theatre of Environmental Law by bringing many victories to to the common men who are suffering and are silent victims of pollution.