

either presented directly to him or sent through Court. Under Section 35 of the Stamp Act, the document is leivable with the deficit stamp duty and penalty thereon equal to 10 times that deficit. It is also well-known that if penalty is to be levied by the Court on the document, Courts are invariably levying the penalty of "a sum equal to 10 times of such duty or portion". On the other hand, if it is placed before the Sub-Collector/R.D.O., he has been usually levying a penalty ranging from Rs.5/- onwards upto a maximum of 3 times. Both the Court and the Sub-Collector/R.D.O act under the same provision and yet we find the said disparity. It is high time that a suitable amendment may be made to Proviso (a) to Section 35 empowering the Court itself to levy a reasonable penalty depending on the circumstances of the document concerned, *viz.*, nature of the document, date of the document and the purpose for which it is sought to be exhibited.

That is one thing. The more important point and purpose of this Article is the practice of the Sub-Collector/R.D.O., routinely sending it to the M.R.O./Tahsildar to inform the market value of the proerty covered the

document concerned. It is often seen that the stamp duty and penalty are levied on the basis of the said market value. I say that the said practice is most unwarranted and should be done away with immediately. The stamp duty that has to be levied depends upon the factors (i) value shown in the document, (ii) date of the document and (iii) the nature of the document. So, getting the present market value of the property has nothing to do with levy of stamp duty. Nothing else is required. The document as it is the basis for the said exercise. As such, calling for such market value report from the M.R.O./Tahsildar is totally unwarranted. May be the value of the property may have appreciated considerably at this point of time, which will work to the prejudice of the applicant if it were taken as the basis. The law does not say that the present market value has to be seen.

It is therefore suggested that the Inspector-General of Stamps and Registration should look into the matter and issue necessary instructions to the Sub-Collectors/R.D.Os., throughout Andhra Pradesh to desist from such unwarranted practice forthwith.

LAWS ON CONSERVATION OF NATURAL RESOURCES

By

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I. Introduction :

In respect of utilization of natural resources *Mahatma Gandhi* had said, "There is enough in this World for everybody needs but not for every body's greed". Mrs. *Indira Gandhi*, reiterated the same during Stockholm Conference on Human Environment, 1972

and said "The natural resources of the earth, including the air, water, land, floor and farm must be safeguarded for the benefit of the present and future generations through careful planning or management".

Nature is not being destroyed; Nature is also being steadily transformed. The two

major pressures on the Country's natural resources are the first being the pressure generated by population growth and the increased demand for biomass resources, and the second being the pressure generated by modernization, industrialization and encashing the resource for short term commercial gain.

The conservation of natural resources for the future generations is being thought of in recent times and this paper attempts to present the laws made on conservation of natural resources and their adequacy and refers to the efforts made by Andhra Pradesh in promulgating "The Andhra Pradesh Water, Land, Trees Act, 2002" in this regard.

II. Existing Laws:

The following enactments provide for conservation of natural resources:

- i. Constitutions of India.
- ii. The Indian Forest Act, 1927.
- iii. The Wildlife (Protection) Act, 1972.
- iv. The Water (Prevention and Control of Pollution) Act, 1974.
- v. The Forest (Conservation) Act, 1980.
- vi. The Air (Prevention of Control of Pollution) Act, 1981.
- vii. The Environment (Protection) Act, 1986.
- viii. The Natural Environment Tribunal Act, 1995.

Apart from the above the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1974 also contain provision relevant to natural resources management.

1. Constitution of India

Writ jurisdiction under Articles 32 and 226 empowering the Supreme Court and High

Courts to issue directions or writs of *mandamus*, *certiorari* and prohibition in environmental matters.

- (i) Article 48A in Directive Principles of State Policy declares that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife in the Country.
- (ii) Articles 51A(8), imposes a responsibility on every citizen to protect and improve the Natural environment including forests, lakes, rivers and wildlife.
- (iii) Article 253 empowers the Parliament to make laws implementing any decision made at international conventions.

2. The Indian Forest Act, 1927

The Act enables the Government to declare any land as reserved forest, or protected forest and thus provide for protection of "forest produce" found therein. The forest produce includes trees, timber, wild animals and their parts, rocks, surface soil *etc.*

3. The Wildlife (Protection) Act, 1972

The Act enables the Government to demarcate certain forest areas as National Parks/Sanctuaries providing for protection area for wild animals formed therein. It also provides for prohibition of hunting, picking up certain specified plants, trade in trophies of wild animals *etc.*

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

The Act provides for the prevention and control of water pollution and the maintaining restoring of wholesomeness of water, and for the establishment of Boards for the prevention and control of water pollution.

The water pollution is defined as contamination of water which will render it harmful or injurious to public health, or safety or to domestic, commercial, industrial, agricultural uses or to the life and health of animals or plants or to aquatic organisms.

5. *The Forest (Conservation) Act, 1980*

The Act provides for conservation of forests and restrict the dis-reservation or diversion of forest land. It restricts the clearance of naturally grown trees and regulates the entry of private persons/agencies from taking up activities in forest area.

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

The Act provides for the prevention, control and abatement of air pollution, and provides for establishment of Boards for carrying out the purposes of the enactment. The air pollution has been defined as presence of any solid, liquid or gaseous substance including noise in the atmosphere in such concentration as may tend to be injurious to human beings or other living creatures or plant or environment.

7. *The Environment (Protection) Act, 1986*

The Act was made in implementation of the decisions taken at the United Nations Conference on the Human Environment, held at Stockholm during 1972. The Act defines "environment" to include water, air and land and their interrelationships among and between water, air, land and human beings, other living creatures, plants, micro organisms and property.

8. *The National Environment Tribunal Act, 1995*

The Act provides for strict liability for damages arising out of any accident occurring while handling any hazardous substance and provides for the establishment

of National Environment Tribunal for effective and expeditious disposal of cases arising from such accident with a view to giving relief and compensation for damages to persons, property and the environment and for matters connected therewith or incidental thereto.

9. *The Indian Penal Code, 1860*

- a. Section 268 defines 'public nuisance' as any act or omission which causes any common injury, danger or annoyance to the public.
- b. Sections 269, 270 deal with spread of infection disease dangerous to life.
- c. Section 278 deals with making atmosphere noxious to health.
- d. Section 284 deals with handling poisonous substance, endangering human life.
- e. Section 285 deals with negligent conduct in handling fire or combustible matter endangering human life or likely to cause hurt or injury to any person.

10. *The Code of Criminal Procedure, 1974*

Sections 133 to 144 of the Code provide for remedial measures in dealing with "public nuisance" and empowers Magistrate to pass 'conditional orders' for removal of a public nuisance within a fixed period of time.

III. International Conventions/Conferences

There is need to protect natural resources spans beyond borders of a Country, as the pollution of air, water, land may also affect the neighboring Countries.

The most comprehensive international law on environment in the United Nations Declaration on the Human Environment,

Stockholm, June, 1972. The Declaration recognized the need for a common outlook and for common principles to inspire and guide the people of the World in the preservation and enhancement of the human environment. It declared that the natural resources of the earth, including air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning and management.

The World Commission on Environment and Development was setup by the United Nations in 1983 to formulate global agenda for change ensuring that human progress would be sustained without depleting the natural resources for future generations.

The Rio Declaration, 1992 provides for a State's sovereign right to exploit its own resources in accordance with its own policies without harming the environment elsewhere, and the polluter should pay for the pollution caused.

IV. Environment Impact Assessment

The Environmental Impact Assessment Notification, 1994 issued by the Ministry of Environment and Forests under Environment (Protection) Rules, 1986 prohibits the grounding of any new projects unless environmental clearance has been accorded by the Government. The notification mentions the list of projects which require environmental clearance. The details submitted will be evaluated and assessed by the Impact Assessment Agency, and the Agency shall prepare a set of recommendations. After completion of public hearing the clearance may be given.

V. Adequacy or otherwise of the existing Laws

- i. There are number of enactments on the conservation of environment, but

there is no sufficient mechanism to implement the same. It may be considered to empower the additional organizations or empower the Officers existing in the field such as Forest Officers to assist in implementations of the various environmental Laws.

- ii. The environmental impact assessment is being made in many of the cases to satisfy the formality for obtaining the clearance. In the absence of specifications of standards to compare with the impact assessment cannot be made.
- iii. Instead of the plethora of legislation on individual elements, like water, air environment, a comprehensive prevention of pollution is desirable.
- iv. Public participation in implementing the environmental legislation should be encouraged.

VI. A. P. Water, Land, Trees Act, 2002

- a. A comprehensive legislation on conservation of water, land and trees has been enacted by the Government of Andhra Pradesh. The Bill was introduced in the Legislative Assembly of Andhra Pradesh during March 2001, and due to its wide ramifications, it was referred to a Select Committee. After incorporating the changes suggested by the Select Committee, the Bill was passed by the Legislative Assembly during March 2002 and published as Act No.10 of 2002.

- b. Salient features of the Act

1. The Act contains 6 chapters and 47 sections.
2. It provides for constitution of State Water, Land and Trees Authority, an autonomous body, which will generate its own resources. The

Ministry for Panchayat Raj is Ex-Officio Chairperson of the Authority with 21 other Officials and non-official members.

3. The State Level Authority consists of Chief Secretary to Government, and Secretaries of Agriculture, Irrigation and Command Area Development, Rural Development, Municipal Administration, Rural Water Supply, Panchayat Raj, Environment, Forests, Science and Technology, Vice-Chancellor, Agricultural University, Professors dealing with Life Sciences, Earth Sciences and Engineering and Technology.
4. The State Authority may constitute district and Mandal level Authorities to perform specified functions.
5. The Authority may designate any Officer as 'Designated Officer' to carry out the functions under the Act.
6. The functions of the Authority are
 1. Promotion of Water Conservation and enhancement of trees cover in the State.
 2. Regulate the exploitation of ground and surface water in the State.
 3. Advise Government on the Legislative and Administrative measures to be taken for the conservation of natural resources.
 4. Advise on economic measures to be taken by the Government as incentives or disincentives relating to taxes, levies, fees or other charges to promote conservation of natural resources.
 5. Advise on strengthening of public participation in conservation of

natural resources in such a way that equity in access to water in different basins, sub-basins and regions in the State is maintained.

Ground Water Resources:

7. All ground water resources shall be regulated by the Authority. All the existing wells have to be registered with the Authority, and for digging of a new well, prior permission of the Authority should be obtained.
8. All the rig owners shall register their machinery with the Authority and follow the instructions of the Authority in digging bore wells.
9. The Authority orders closure of any well used for irrigation or industrial use, suitable compensation shall be paid.
10. The Authority may issue guidelines for constructing appropriate rain water harvesting structure in all residential, commercial and other open places having an area of more than 200 sq. mts.
11. The Authority may formulate guidelines, including suitable incentives for recycling and re-use of waste water by industrial, commercial users and local bodies.
12. No ground water resource shall be contaminated by anybody including industrial, local bodies and aquaculture waste disposal.

Surface Water Protection Measures

13. The Authority may direct occupiers of any land to modify the land use pattern, if the quality of the water coming out of the land is not of acceptable quality.

14. The Watershed Committees, the Water Users Associations shall ensure optimum use of surface and ground water.
15. The Authority may notify water bodies like lakes, village ponds, minor irrigation tanks as heritage bodies and conservation areas and prevent conversion of their intended use.
16. The Authority may prescribe ceiling on use of water per unit of production by industrial units.
17. The Authority may frame guidelines for sand mining from water bodies.

Trees

18. The Local Authority shall insist on compulsory plantation of trees while according approval of building plans.
19. No felling of trees or branches shall be permitted without the prior permission of designated Officer. When a tree is to be felled, two seedling should be planted and when such planting is not possible, cost of raising seedling shall be recovered from the concerned for raising plantations in public places.

20. All Government Departments shall ensure plantation in open areas in their Institutions. The cost of plantation may be included in the cost of formation of roads.

21. All agricultural landowners except wet lands shall plant trees upto 5% of their total land holding.

The other provisions in the Act deal with budget, penalties, compounding of offences *etc.*

VII. Conclusion

The awareness created by the various public interest litigations before the Apex Court in the environmental matters should be sustained. The very survival of mankind depends on the conservation of the natural resources. The natural resources are the "Common Heritage" and they must be passed on to future generations, in a sustainable manner. The Executive and Judiciary may have to combine their efforts towards this end. The observations of the Courts should be implemented by the Executive scrupulously. Apart from the above a unified law, a single statute may be thought of to encompass all the natural resources, as it will enable the common man and legal expert to deal with violations more effectively.

SPEECH DELIVERED AT ANNUAL DAY FUNCTION OF NELLORE DISTRICT BAR ASSOCIATION, NELLORE ON 17TH AUGUST, 2007

By

—Justice P.S. NARAYANA

1. I am happy to be in the midst of you this fine evening at this illustrious place Simhapuri on the banks of the Holy Penna at the pious feet of Lord Ranganatha, a neighbouring district of mine, on the eve of

this Annual Day Function of District Bar Association, Nellore.

2. The Annual Day Function predominantly would be a merry-making one. Subject oriented lengthy speeches may not be