

publicity. There is no need of expanding unnecessarily the Constitutionalism which is established by the founding fathers and predecessors of learned Judges of the Court. Therefore, there is need to keep this legacy established by predecessor by the functionary of the Court, by not yielding to worldly things. In this regard “where the Judges must not accept any type of money in any form, in the matter of dealing any related cases regardless of caste/creed poor or rich, normal or influential people must be accountable as per law and order (bribes)”<sup>18</sup>.

Judicial review is an armour to check lawlessness - legislative as well as executive. In India, right from the date of commencement of the Constitution of India, the judicial review has effectively been exercised and any endeavour to undermine or crumble its sanctity has been counter-productive, *i.e.*, struck down because it violates the Basic Structure of the Constitution. In fact, the concept is more akin to the concept of “reasonableness” and “non-arbitrariness” which pervades the entire Constitutional scheme; it is a “golden thread which runs through the whole fabric of the Constitution.

## ENVIRONMENTAL DEGREDDATION IN INDIA: HUMAN FAILURE – A PERSPECTIVE

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### *Introduction*

Life of dignity and well – being for every one is the goal set for the international community and the national Governments to achieve. It is the task before the mankind for the mankind. Needless to say that the quality of life comprehends everything indispensable for its sustenance. Its net is quite wide to take within its sweep the right to life and liberty, higher standard of living, education, social security, quality of environment *etc.*, threat to anyone or more indispensables may leave the quality of life impaired and less precious. Hence the obvious is the widespread alert for protection of human rights and fundamental freedoms and imposition of obligations on the national Governments in this regard. Presently the nations face many problems and the more

prominent among them is environmental degradation. That threat to environment is racing ahead of others is no exaggeration at least in case of countries like India where knee-jerk reactions are the responses.

Concern and awareness of the need to preserve and protect the environment, both nationally and internationally, has been increasing day by day. What is shot into focus is the need for rational use of environment and elimination of causes of damage, both existing and additional, to the environment.<sup>1</sup> A legal framework has become operational through treaties and declarations at the international level and statutes at the national level. The fledgling legal control primarily targets pollution and lays emphasis on the control of hazardous

18. The modern law review Vol. 68, No.6, November 2005, p. 902

1. Martin Dixon and Robert Mecorquodale, Cases and Materials on International Law, Blackstone Press Ltd., 1995, p.521.

substances and processes, the minimization and management of waste, and the conservation of natural resources and protection of eco-systems. In short, current concerns tend to reflect the need to control the almost inevitable byproducts of the modern, technological and industrial age. The standards set forth impose liability on the mankind generally and the national Government in particular as the latter exercises control over the subjects within its territories. Exploitation of natural resources to the extent necessary for the survival and preservation of the rest with all its potentials in the best possible way shall be the guiding principle. Any aberration from, or compromise on, the said principle may lead to consequences beyond our comprehension or may even push the mankind to the vanishing point. For, it is often reiterated that as members of the present generation, we hold the earth in trust for future generations and at the same time, we are beneficiaries entitled to use and benefit from it.<sup>2</sup>

### *Indian Scenario*

Environment related laws have gained momentum in India following the emergence of strong concern for its protection. The laws passed are more or less similar but the EPA was enacted with a wider purpose of protecting and improving human environment. Laws originating from the will of the Legislature may initially serve as a public posture adopted by the State in response to the demand for action and later emerge as a tool of change by bringing the intended situation under its control. For keeping pace with the objective and proving its worth, the law must be adequate. Besides, strictly adhering to the responsibilities by the State in constituting the authorities, framing rules for carrying out the object and enforcing the standards are the sure indicators of a successful

law. Spirit of the law will be totally lost if any one of the above is found wanting and the State will owe an explanation for its failure to uphold its own law. Such an experience is quite common in our country and environmental laws are not strange to them. Met with the same fate, the environmental law would have kept low profile but for the intervention of the Courts very often. The fact that the Judiciary has been in the command of the situation right from the beginning goes to its credit while the same is a severe indictment, which the Legislature and the civil Executive have to face.

The Judiciary has played a major role in the evolution of environmental jurisprudence through the instrument of PIL. Seeking recourse to PIL in majority of environmental matters is a clear indication of failure of the official machinery. The seminal decisions of the Supreme Court and various High Courts laying down principles and broad parameters for enforcement of norms provide simple answers to the critiques of judicial activism and PIL. It is considered necessary and important to make special mention about the State Governments involved in the legal battle in order to indicate how they have dragged themselves into litigations one after another on similar issues of enforcing norms against hazardous industries, wasting public time and money. A survey of cases would highlight a sort of affair created by the State. The survey admittedly not exhaustive relates to enforcement of pollution control norms against hazardous industries in the National Capital Territory of Delhi and other States like U.P., W.B., *etc.* It is submitted that on initiation of proceedings before the Court in regard to one State or another, other States could have gathered courage and fallen in line without waiting for someone to knock the doors of justice. Even though the law declared by the apex Court is the law of the land, State Governments or the Central Government do not consider them as binding

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2. E. Brown – Weiss, “Our Rights and Obligations to Future Generations for the Environment”, 84, AJIL 198 (1990), Quoted in Martin Dixon and Robert Mecomquodale, *Ibid*, p. 525.

obligations and pursue the same unless each one of them is individually made as a party to the proceedings. As the situation is the creation of its own, the State should be made to bear the brunt without forcing the citizens to share the same in any way. Another feature of the proceedings adopted by the Supreme Court is noteworthy in this context. Even though the petitions relating to environmental protection are admitted under Article 32, the Court does not get into the issue of maintainability. This change is remarkable indeed and this may be attributable to the irresponsible attitude of the State Governments and the Central Government in raising objection in regard to maintainability. The strategy of employing this technique is to ensure the dismissal of the petition at the initial stage itself as it may not have points to argue on merits. Finally, the technique of monitoring adopted in environmental matters also deserves to be mentioned. Such a technique is an innovative one and normally employed by the Supreme Court and High Courts when the conduct of the State and its instrumentalities falls short of the expected one and needs to be pushed ahead every now and then<sup>3</sup>.

The interest shown by the apex Court in evolving the principles of law on environmental protection is equally encouraging. The decision of the Supreme Court in *Oleum Gas Leakage* case,<sup>4</sup> is of considerable significance for two reasons. In the first instance, the remedial powers of the Supreme Court under Article 32 stood expanded and secondly, the rule in *Rylands v. Fletcher* was modified to suit the exigency<sup>5</sup>. In another case, the Supreme Court ruled that the financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment

plant<sup>6</sup>. The rules of international law like precautionary principle and pollution pays principle were made part of our domestic law by virtue of the ruling in *Vellore Citizens Forum v. Union of India*<sup>7</sup>. Besides affirming the aforesaid principles, the Supreme Court in *A.P. Pollution Control Board v. Prof. M.V. Nayudu*,<sup>8</sup> pointed out the deficiencies in the judicial and technical inputs in the appellate authorities functioning under certain environmental laws and recommended for immediate amendment of the statutes and rules in question. The principles so evolved, given their far-reaching implications in the management of the environment, exposed the inadequacy of the legal system.

### Conclusion

It is beyond doubt that the State has failed to discharge its responsibilities. This is evident from the failure on both the counts. The State should not contend with constituting authorities under the statutes and keeping them alive alone. The same should be pursued to its logical end and ensure that the authority is "Alive and Active". Such course of action alone will satisfy the letter and spirit of the law. Secondly, integrity of the executive is to be ensured. There is corruption at all levels and it goes hand in hand with inaction. In a society like India where corruption is rampant and inaction is the order of the day, violation of law by the vested interest would continue till the Court intervenes at the behest of some public spirited individual. But this may not be helpful always. To help this overcome, it is desirable to constitute accountability Bench in the Supreme Court and High Courts for exclusive adjudication of cases involving inaction for the purpose of fixing responsibility. If any cost is imposed, it shall be recovered from the guilt alone and to this rule there shall be no exception. This is justified on the ground that the persons aiding the polluter also

3. Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act, 1981.

4. *M.C. Mehta v. Union of India*, (1987) 1 SCC 395.

5. The Court excluded the application of exception to the rule of strict liability as laid down in *Rylands v. Fletcher*.

6. *M.C. Mehta v. Union of India and others*, AIR 1998 SC 1037.

7. (1996) 5 SCC 647.

8. (1999) 2 SCC 718.

should be made to suffer. Finally, things stated above may need time to take shape. Till such time, Courts should continue to encourage public-spirited individuals to confront the State and its instrumentalities on

the issue of environmental protection. To make his job easy, the State should share necessary information within him. In this direction, pursuit of policy of transparency will do the needful.

## HUMAN RIGHTS OF WORKING WOMEN UNDER VARIOUS LEGISLATIONS IN INDIA - A PERSPECTIVE

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### Introduction

The term *Human Rights* denotes all those rights which are inherent in our nature and without which we cannot live as human beings. According to Section 2 of the Protection of Human Rights Act, 1993 Human Rights means the rights relating to life, liberty, equality and dignity of an individual guaranteed by the Constitution,<sup>1</sup> or bodied in the International Covenants and enforceable by the courts in India. The majority of people in India are not aware of their Human Rights. These rights are the rights of all human beings, be it men or women, old or young, working or non – working. But, there is a gap between the theory and the practice, particularly when it comes to the equality of sexes.

It is felt that increased participation of women in income-earning activities would reduce gender inequalities. Women are absorbing themselves at present in various occupations and enjoying equal status more or less at par with men. Women are working in almost all types of jobs, such as technical, professional and non-professional in both private as well as in public sectors, residing in rural and urban areas with or without their kith and kin. In addition to these almost all the females, particularly from the lower strata, are getting engaged in agricultural operations

for daily wages and also for domestic work in the houses of their landlords. These are some of the important occupations of the working women, educated or uneducated, in our country. But unfortunately, their participation in economic activities outside home is very limited.

It is not easy for women to stand head above in male dominated work places. In this background, it is positive development that the world community at large is now more aware of the *Human Rights* of working women. Advancement in the right of women has been the concern of world community since the end of Second World War about half a century ago (*i.e.*, October 24, 1945) the Preamble to the Charter of the United Nations mentions the determination of the peoples of the United Nations:

*“To reaffirm the faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women” and “to employ international machinery for the promotion of the economic and social advancement of the people.”*

The Constitution of India as well as other laws enacted from time to time reaffirms faith in the “Equality of Status and Opportunity without discrimination against any citizen on grounds of religion, rare caste or sex. It is however distressing to note that majority of working women in India are either not aware of such Constitutional and legal safeguards or consciously choose not to raise voice against violation their *Human Rights*.

1. J.N. Pandey – Constitutional Law of India – 2008.