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ENVIRONMENTAL LAW AND CLIMATE CHANGE IN INDIA

~ *Procheto Das Gupta*

Environmental Law and Climate Change are one of the most pressing issues in India and the world given the rapidly growing population, industrialization, urbanization and developmental challenges. India is home to some of the most polluted cities in India like Delhi, Kolkata, Ghaziabad, etc. New Delhi which is India's Capital was declared the most polluted city in the world by a Swiss Based Air Quality Group. Issues like pollution, deforestation, loss of biodiversity and degradation of natural resources are among the primary causes of Environmental Degradation and Climate Change in India.

The Stockholm Declaration on 1972 was the first United Nations declaration of the global environment which aimed to protect the human health and the environment from the effects of persistent organic pollutants. Indira Gandhi who was the Prime Minister of India at that point of time attended the Stockholm Conference and introduced the 42nd Amendment to the Indian Constitution in 1976 which introduced the following provisions to the Indian Constitution:

Article 47: The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

Article 48-A: It imposes a duty on the State to protect the environment from pollution by adopting various measures.

Article 51-A(G): This imposes a duty on the citizens to protect and improve the natural environment that includes rivers, lakes, forests and wildlife.

Some of the important statutes and acts enacted in regards to protection of Environment in India are as follows:

Wildlife Protection Act, 1972: This Act came into force on 9th September, 1972 and provides the provisions for the protection of wild animals, birds and plants. The Wildlife Protection Act, 1972; divides the group of animals into various schedules based on their endangered level and prescribes penalties for hunting and poaching of wild animals and birds based on their listing in Schedules. Ex: Schedule 1 of the Wildlife Protection Act, 1972; includes wild animals who are on the verge of extinction and need urgent protection like tigers, lions, leopards, etc, and provide severe punishment and poaching of these animals.

Water (Prevention and Control of Pollution) Act, 1974: The Act contains the provisions for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water. It also provides for the establishment of Boards for the prevention and control of water pollution and their powers and duties.

Environment Protection Act, 1986: This Act contains provisions for the protection and improvement of environment.

The Biological Diversity Act, 2002: Focuses on preserving biodiversity and the fair use of biological resources.

National Green Tribunal Act, 2010: This Act came into force in 2010. It establishes the National Green Tribunal (NGT) for effective and expeditious disposal of cases relating to the environmental protection and conservation of forests and wildlife which relates to seeking injunctions and claiming relief for damages to person and property. The National Green Tribunal has exclusive jurisdiction and the orders and decisions of the National Green Tribunal can only be challenged to the Supreme Court.

Judicial Activism in India

In modern times, the Indian Judiciary has played a crucial role by establishing important judicial precedents for the protection of the environment. The Hon'ble Supreme Court of India has decided various important cases which later on turned out to be crucial for the protection of the environment. Some of the important cases decided by the Hon'ble Supreme Court are as follows:

- Municipal Council, Ratlam vs Shri Vardichand and Ors (AIR 1980): This case is also known as the Ratlam Case where the residents of the city of Ratlam complained about the

nuisance caused by the nearby slum dwellers in excretion due to lack of proper sanitary facilities and also the street contamination caused by the discharge of alcohol from the nearby alcohol plant. The suit was filed u/s 133 of the CrPC, 1973, for Public Nuisance. The Magistrate ordered the municipality to provide the proper facilities and construct drainpipes to abate the contamination. The order was appealed to the High Court which upheld the order of the Municipality. The Municipality then challenged it to the Supreme Court. The Supreme Court upheld the order of the High Court and mentioned that it is the duty of the Municipality to comply with the directions of the Magistrate u/s 123 of the Municipalities Act, 1961. The Supreme Court issued the following directions:

- Section 133 of the Code of Criminal Procedure, 1973, can be used against public authorities to remove public nuisance within a specified timeframe.
- The Supreme Court also mentioned that the Municipality cannot use lack of funds as an excuse when it is exclusively responsible for preserving public health, safety and hygiene. The Municipality was told to deal with this issue with a timeframe of six months and in case of lack of funds, the Municipality was told to ask for loans from the State Government. The Municipality was advised to build separate laterals for men and women. The Supreme Court also told the Municipality that if it failed to comply with the order of the Supreme Court then it will be held liable for criminal contempt of court.
 - M.C. Mehta vs Union of India (Ganga Pollution Case): This is considered to be one of the most important environmental law cases which set an important precedent for the development of Environmental Jurisprudence in India and also emphasized the importance of Judicial Activism. M.C. Mehta who was a renowned environmental activist filed a PIL under Article 32 of the Indian Constitution to the Supreme Court to address the severe damage done to the Ganga River to the discharge of industrial effluents by the nearby industrial plants and municipal sewage. The Supreme Court took cognizance of this matter and issued interim orders for the closure of sewage treatment plants in Kanpur that were responsible for discharging industrial effluents into the Ganga River.
 - Vellore Citizens Welfare Forum vs Union of India (1996): This is a landmark case in Indian Environmental Jurisprudence. The decision of the Hon'ble Supreme Court of India in this case had a profound impact of environmental law in India, especially concerning

sustainable development and industrial pollution. The main issue in this case concerned the discharge of untreated effluents by tanneries into the Palar River. The Vellore Citizens Welfare Forum filed a Public Interest Litigation under Article 32 of the Indian Constitution to the Supreme Court of India mentioning that it posed a threat to sustainable development and had a bad impact on water resources and public health. The Supreme Court reaffirmed the following principles and issued the following directions:

- **Polluted Pays Principle:** The Supreme Court emphasized that the financial burden for the damage done to the environment should lie on the industries under the Polluter Pays Principle. The industries were directed to pay compensation to the affected population for the damage caused to the environment.
- **Precautionary Principle:** The Hon'ble Supreme Court mandated that the industries should take adequate precautions and adopt safety measures for the protection of the environment.
- **Public Trust Doctrine:** The Hon'ble Supreme Court gave due emphasis to the Public Trust Doctrine which mentions that the Government is responsible for protecting the natural resources it holds and must protect the natural resources against the exploitation done by private entities.
- **Sustainable Development:** The Hon'ble Supreme Court also gave due emphasis to the principle of sustainable development which mentions that the resources should meet the needs of the present generation but should not compromise the needs of the future generations.

International Commitments made by India for Climate Change.

- 1) **Paris Agreement:** The Paris Climate Treaty is an international treaty on climate change which was adopted in 2015. The Paris Agreement had a long term temperature goal which aims to keep the global surface temperature below 2°C above pre-industrial levels. The treaty also states that preferably the limit of the increase should only be 1.5 °C. India under the leadership of Prime Minister Narendra Modi became a signatory to the Paris Agreement in the year 2015. India aims to achieve the following through the Paris Climate Agreement.
 - A) Achieving 40% of its cumulative electric power from non-fossil fuels based resources by 2030 with the help of technology transfer and low cost finance.
 - B) Reducing emissions of intensity of its GDP by 33-35% by 2030.

- 2) International Solar Alliance: India, in collaboration with France, launched the ISA to promote solar energy in countries located between the Tropic of Cancer and the Tropic of Capricorn. The alliance aims to mobilize over \$1 trillion in investment by 2030 for massive deployment of solar energy.
- 3) Renewable Energy Targets: India has set ambitious renewable energy targets, including achieving 175 GW of renewable energy capacity by 2022 and 450 GW by 2030.