

WILD LAW: A NEW CHALLENGE

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Abstract :

Cormac Cullinan the great exponent of Wild Law developed the concept of earth justice for maintaining integrity of world community. Nevertheless, no effective legal instruments in this regard can be proved fruitful so far to cope with the situation. Right to life and liberty ought not to be the sole prerogative of man. For the sake of eco-justice wild community must be protected against their dislocation or extinction. Keeping the view in mind the world community is in favour of adopting conservation strategy for wild. In India we find by modifying wild life laws, conservation processes are incorporated. Its ultimate outcome is wild life reserve. It causes a serious threat to the indigenous group especially the traditional forest dwellers. They are depriving of their traditional livelihoods and finally may be converted into eco-refugees. To face this challenge this paper aims to evolve a new approach of law, 'the community personality' .

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Introduction:

Wild the very heart of earth is now in a critical condition. That is due to unbridled tendency of economic growth and development by the nation states. Though prosperity and development is the eternal demand of human being nevertheless plundering of natural resources especially the undomesticated flora and fauna has a catastrophic effect. Due to lack of adequate policies by the world at large in general and the nation states in particular to save wild population the common masses of 21st century is experiencing a tremendous pressure on its survival. For instance no effective land utilization policies are there throughout the world. It is causing global warming, loss of biosphere including wild flora and fauna etc. which has detrimental effect in the life support system. It is not desirable in a civilized society. That is why the world community raised a voice in Stockholm of Sweden to live in an environment of quality that permits life with dignity and well being. To give honour to such peoples voice international community proclaimed that both aspects of environment, 'natural and man made are essential to the wellbeing and enjoyment of basic human rights – even the right to life itself'.

Under such proclamation improving of human environment for present and future generation has become an imperative goal for humankind. To achieve the objective it needs to protect common heritage of mankind. Responsibilities in this context are accepted by the world community to maintain environmental discipline. Stockholm has clearly pointed out that safeguarding and managing wisely the heritage of wildlife and its habitat, now gravely imperiled for adverse factors, are the special responsibility of man. Due importance must be given for nature conservation including wildlife in planning for economic development. (*Principle-2 & 4 of the United Nations Declaration on the Human Environment*). The Rio conference reiterated the same view and declared that the protection of environment and natural resources are fundamental in respect of social and economic development. Sustainable development is the ultimate objective of nation. To reach this end the conference declared, 'Indigenous people and their communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development'. (*Principle-22*). Johannesburg Declaration on Sustainable Development, 2002 while reaffirming the commitment of sustainable development has correctly observed that, 'The Global environment continues to suffer. Loss of biodiversity continues.....' (*Principle-13*).

Aforesaid findings of Rio+10 is a signpost for protecting natural heritage in 21st Century. Traditional protective approach may cause a serious hardship to traditional forest dwellers and the indigenous people. Even they may be displaced from their traditional home. The process is contrary to the findings of Rio. This results a conflict between conservation of wild and people residing in wild land. At this juncture the ultimate aim is to build a new theory of earth jurisprudence to face the challenge. This paper, in fact, reflects such idea.

Need to protect wild:

Wild plays a pivotal role for existence of life. Forest is a main source of supply of fresh water. Natural vegetal cover is involved in regulating and controlling floods, soil erosion, drought etc. Stability of climate condition at micro and macro level is being maintained by wild. ‘ Forests help to maintain rainfall in its immediate vicinity by recycling water vapor at a steady rate back into atmosphere and through Canopy’ s effect in promoting atmospheric turbulence’ .[Benny Joseph, *Environmental studies*, Tata McGrew Hill Publishing Company Ltd. New Delhi, 2005].

Forest has a colossal importance in maintaining fragile ecosystem and making a balance between supply of oxygen and carbon dioxide. A sizable number of world populations are mainly dependent on forest produce. Pollination services by wild are another important factor to raise social and economic values of nations. 'In Malaysia a million dollar durian fruit industry was paralyzed because the pollination Bats migrated to some other areas due to habitat destruction'. [Dr Rajib K Sinha, *Forest and Wild Life Diversity: An Ecological Link Between Man And Nature*, Man Environment And Wildlife (Edited), Anmol Publications Pvt. Ltd. New Delhi]. Eco friendly biomass fuel is a considerable contribution to the economy of the country. Agricultural food crops are protected by genetically modified genes procured from wild. Under WHO's findings more than 20000 of world species have medicinal value. Traditional knowledge based medical practices are exclusively dependent on wild medicinal plants.

Wild animals are equally important for its social and economic value. People of different countries like Japan, China are consuming food directly from wild. In Nigeria giant rats are dearer than that of mutton. Cost of monkey meat is not less than the cost of beef in Liberia. Not only that Musk of Musk Deer, Horns of Rhinos Tail Feather of Peacock, body parts of Big Cats, Ivory, Snake Venom etc. have high prices in market.

Despite its immense importance for 'healthy and productive life' loss of wild is continuing through out the world. Under the report of Food and Agricultural Organization (Forest Assessment Report 2011), 'Deforestation mainly the conversion of tropical forests to agricultural land- shows signs of decreasing in several countries but continues at high rate. Around 30 million hectares of forests were converted to other use in the last decade. Both Brazil and Indonesia witch has the highest net loss of forest in 1990' s have significantly reduced their rate of loss, while in Australia severe drought and forest fires exacerbated the loss of forest since 2000' . Forest Report further shows,' South America suffered the largest net loss of forests between 2000-2010 4 million hectares per year followed by Africa, which lost 3.4 million hectares annually. Asia which has a net loss of forest 600,000 thousands hectares annually in the 1990' s reported a net gain of forest of more than 2.2 million hectares per year in the period 2000-20010 primarily due to the large scale of afforestation reported by the China and despite continued high rates of net loss of many countries in South and South East Asia

Twelve percent of the world forests are designated for the conservation of biological diversity. Most of them are located inside the protected areas. Legally established protected areas cover an estimated 30% of world forest. National Park Game Reserves, Wilderness areas and other legally established protected areas cover more than 10% of the total forest area in most countries and regions. The primary functions of these forests may be the conservation of biological diversity, the protection of soil and water resources or the non conservation of cultural heritage. The area of forest within a protected area system has increased by 94 million hectares since 1990. Two thirds of the increase has been since 2000. Brazil has designated more than one fifth of its forest area for the protection of culture and way of life of forest dependent people' .

Prevailing laws to protect wild:

Modern world has accepted protective principles for wild. Instruments of protection are National Park, Protected Areas, and Closed Areas etc. Conservation policies within the Protected Areas have also been introduced by most of the nations. United Nations Convention on Biological Diversity while explaining *in-situ* conservation pointed out that every contracting party shall 'subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant and sustainable use of biological diversity and promote the wider application with the approval and involvement of holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising utilization of such knowledge, innovations and practices'[Art.8(j)].

In order to protect the wild Indian constitution is amended by 42nd Amendment Act and introduced two new articles, 48A and 51A (g). Under 48A 'The State shall endeavour to protect and improve the environment and safeguard the forest and wild life of the country'. While 51A (g) states 'It shall be the duty of every citizen to protect and improve their environment including forest, lakes, wild life of the country and shall have a compassion with the living creature'.

Wild Life (Protection) Act, 1972 in this regard plays a significant role. This legislation laid an emphasis on protection and conservation of wild. Without prior permission from appropriate authority destruction of specified plant is prohibited. Permission in writing can only be granted for educational, scientific research, collection, displaying in herbarium etc. To protect wild animal law imposes restriction on hunting of animals specified in schedule which are generally endangered or nearing extinction. Besides, to protect local habitat of wild this law is in favour of declaring the areas as National Park, Sanctuaries etc. land will be acquisitioned during the time of declaring such area. Recently the law adopted the process of conservation and the concept of tiger reserve is introduced. Reserve is classified into two ways, critical tiger habitat area and peripheral area. Conservation process in both areas shall be continued without affecting the life of indigenous people, scheduled tribe and traditional forest dwellers. Moreover, for co existence of forest dwellers and wild Gram Sabha and committees will play a significant role.

A reserve forest can not be unreserved by the State Government under the Forest Conservation Act, 1980 Amended on 1988. So forest land can not be used for non forest purposes. Reserve Forest, Protected Forest, Village forest etc. can be declared by the State Government and can impose a restriction regarding entry to such land.

Recently the Biological Diversity Act, 2002 has come into force. Three tier systems are introduced to regulate access to biodiversity in India. Non Resident Indian or a Body Corporate registered outside India or a Body Corporate registered in India but has non Indian participation in share capital can not obtain biological resources or knowledge associated thereto without previous permission from National Biodiversity Authority. Without prior approval of National Biodiversity Authority no person can transfer the results of research relating to biological resources obtained from India for monetary consideration or otherwise to any person who is a non citizen or citizen of India but non resident or a body corporate registered outside India or body corporate registered in India but has participation in its share capital by non Indians. But transfer does not include participation in seminar or workshop or conference to present paper or dissemination of knowledge. That should be made by following the guidelines framed by the Central Government. No application shall be made for intellectual property rights for any new invention based on any research on biological resource obtained from India without prior approval of National Biodiversity Authority. Such Authority shall be constituted by the Central Government.

State Government shall constitute State Biodiversity Board. Without intimation to such Board no Indian Citizen or Resident or a Body Corporate registered in India shall obtain any biological resource.

Every Local Body shall constitute Biological Management Committee. Its main purpose is to promote conservation, sustainable use and documentation of biological diversity. Under such provision conservation strategies are extended to grass root level by the process of law.

The Apex Judiciary of India by interpreting the principles of prevailing wild laws has observed that depletion of forests can cause ecological imbalance and it has a catastrophic effect but, ‘at the same time we can not loose sight of the fact that for industrial growth and also provision for improved living facilities there is a great demand in this country for energy such as electricity. In fact, for quite some time the country in general and the specific parts in particular have suffered a tremendous set back in industrial activity A scheme to generate electricity is therefore, of national importance and can not be differed’ . [Bansari *Seva Ashram vs. State of U.P.* (AIR 1987 SC 374 at P.376)]. Superior Judiciary was in favour of economic growth than that of conservation of wild. Subsequently Judiciary changed its earlier views and observed, ‘In the present case it would have been more desirable, had the tribals been provided with other suitable fishing areas outside the National Park or had been provided land for cultivation’ . [*Pradip Krishen* (AIR 1997 SC 1071 at P 1073)].

Emerging conflict regarding enforceability of law :

Above case reflects conflict between State Functionaries and locals residing with wild. Conflict raises an issue regarding enforceability of wild law for protection and conservation of wild. For its enforcement displacement of people (eco-refugees) residing in wild areas are inevitable. But, it is quite impossible to make an alternative arrangement of livelihood for the displaced similar to their traditional livelihoods. Therefore, though the state has a sovereign right to formulate policies for protection and conservation of wild but it's very difficult to implement such policies. How is to combat the situation? That's an emerging challenge.

The new challenge and legal approach :

The Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, though has come into force in India nevertheless it can't secure livelihood for forest dwellers. At this juncture a new challenge is to ensure coexistence of wild and man exclusively dependent on wild. Consequently the concept of wild need to be widened and it may be defined as a community consisting of undomesticated plants, animals and their dependants inclusive of human being. Wild Community should be considered as a person in the eye of law. All kinds of rights shall be vested to the Wild Community for its benefit and protection. Recognition of traditional knowledge can be an essence for better management of Wild Community and saving the life of all its members. Wild Community as a person should have a right to regulate the activities of man for access to wild. This new shape of wild law can secure better environment for all and can restore environmental discipline throughout the universe.

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Thank you

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