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Golden Research Thoughts

Abstract:-

The most vital thing for any human being is undoubtedly - survival. In modern 21 century man posses scientific knowledge. In pursuance of his ever-increasing quest for better quality of life and materialistic comforts, he has been indiscriminately consuming natural resources which unfortunately led to a serious ecological imbalance like Acid rain, Global Warming and the consequential sea rise, Ozone Depletion, Water and Air Pollution, Extinction of numerous animal and plant species, loss of biodiversity, Industrial disasters etc,.

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THE ROLE OF LAW IN CONTROLLING INDUSTRIAL DISASTERS IN INDIA

Keywords:

Controlling Industrial , serious ecological , consequential sea rise.

INTRODUCTION

All disasters are distressing for humanity but the industrial disaster causes a immensely dreadful and loss to the not only living but future generations as well. Speedy and unprecedented industrial development has brought, in its innumerable environmental pollution and harmful health problems. They have adversely affected the natural environment.

Disasters and Environmental degradation and human rights are closely related. Disaster of any kind has undesirable effects directly on the natural ecosystems. An industrial disaster understood as when activity result or pose threat to people around. It is being recognized that a healthy environment and sustainability are essential to ensure the well¬being of people and secure the availability of essential resources.. Incorporating human rights offers Environmental justice, which ensures promotion of environment protection.

Corporate industries are expected to bear responsibility to protect environment as well as to deal with disasters. Undoubtedly, the human rights and environmental protection symbolize the two major worldwide challenges in 21 century. There are conflicting interests are being identified between the protection of environment and human rights.

OCCURRENCES OF INDUSTRIAL DISASTERS

Industrial disasters considered as collective disasters caused by industrial companies either by accident, negligence or due to lack of ability. The major disasters until date caused are either by boiler explosion, by contamination of air and water sources, chemical tank rupture, gas leakage, fire etc. They are causing immeasurable damage to water reservoirs and health of people. Industrial disasters results in human deaths, and create problems of pollution for future generations. There are various kinds of industrial disasters: The major industrial disasters category includes Nuclear or radioactive industrial disaster, Chemical disaster etc., which may likely to cause colossal harm to human beings and environment as well Incomprehensible Impact of Industrial Disasters on the Environment Industrial activities are considered as inevitable source of air, water and land pollution. They lead to infection and loss of life and Health as well. The majority of industrial disasters causes environmental degradation since they release harmful substances leading to pollution.

The problem we face is how to strike a balance between the benefits of a rising standard of living and its costs in terms of deterioration of the physical environment and the quality of life. . The number of persons dying in urban areas due to worsening air and water quality increased each year and no steps are being taken to tackle this ticklish problem of pollution. The negative effects includes such as Poor water quality, loss of biodiversity, increasing the menace of many variety of infections, marine pollution, compulsory forced immigration due to overexploitation and exhaustion of natural resources. The environment problem is a global issue. However, the effects of man-made disasters are domestic as well as international issue. Those who pollute the natural environment are not only committing a crime against nature, but also committing crimes against humanity.

Environmental Protection at International Level

The Stockholm Declaration in 1972 and the Rio Declaration 1992 recognize the principle of environmental protection. Principle 1 of the Stockholm Declaration "Man has the fundamental right to freedom, equality and an adequate condition of life, in an environment of a quality that permits a life of dignity and well-being, and he bears provides a solemn responsibility to protect and improve the environment for present and future generations'.

The Rio Declaration was also an effort to reflect growing international consensus of the importance of environmental protection and requires state involvement in achieving sustainable development. The International agreement against dumping of hazardous waste is established by several treaties and domestic legislation. Amongst them most remarkable is the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and Their Disposal. The Basel Convention requires in Article 4(1) (c) that parties

shall prohibit or shall not permit the export of hazardous waste and other wastes if the State of import does not consent in writing to the specific import, in the case where that State of import has not prohibited the I mport of such wastes.

The Basel Convention further requires that parties ensure the availability of adequate disposal facilities, for environmentally sound management of hazardous wastes and other wastes that shall be located to the extentpossible, within it, whatever the place of their disposal

The Basel Convention that has been ratified by 158 countries in February 2004 came into effect in May 1992. This international treaty prohibits exporting hazardous waste to countries that lack the technical, administrative and legal capability to manage the waste in an environmentally safe manner. Even though Principle I of the Stockholm Declaration has inspired many nationwide constitutional provisions, which recognize the right to environment as a fundamental right under domestic law, still it has not been accepted as a binding rule of international law of universal relevance. The Right to life is set out in the Universal

Declaration of Human Rights 1948 and many other human rights treaties. For instance, Article 6 of the International Covenant on Civil and Political Rights 1966, a legally binding treaty to which India adopted in 1979, states:

"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrary deprived of his life." The right to health is enshrined under Article 12 in the International Covenant on Economic, Social and Cultural Rights also a legally binding treaty to which India adopted in 1979, states:

The state parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health';"

Article12 (2) (b) of the International Covenant on Economic, Social and Cultural Rights requires states parties to take steps necessary for "the improvement of all aspects of environmental and industrial hygiene".

Article 2 of the International Covenant on Civil and Political Rights 1966 provides the right to remedy which states that:

Each state Party to the present covenant undertakes: a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; b) To ensure that any person claiming such a remedy shall have 'bis right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; c) To ensure that the competent authorities shall enforce such remedies when granted

The First Global Ministerial Environment Forum, held in Malmo, Sweden, from May 29 to 31, 2000, issued a call for a greater commitment by the private sector in relation to the environment. The Malmo Ministerial Declaration acknowledges the emergence of the private sector as a worldwide actor that has a significant impact on environmental trends through its investment and technology decisions.

Environmental Protection at National Level

Reference to the environment has been made in the Directive Principles of State Policy as well as the Fundamental Rights. The Indian Constitution under Article 48-A clearly stated that *'state shall endeavor to 'protect and improve the environment and to safeguard the forests and wildlife of the country'*. And Article 51-A(g) imposes a duty on every citizen *'To protect and improve the natural environment including forests, lakes, rivers,* and wildlife and to have a compassion to living creatures. The Department of Environment was established in India in 1980 to ensure a healthy environment for the 1985.

The Supreme Court while interpreting Article 21 of Indian Constitution held that this Article includes the right to good health; an obligation to prevent damage to the environment; the right to clean and safe environment; and the right to clean air and water.

Indian Courts have held that companies to account for health and the environment. Courts have ordered polluting businesses to move and to pay exemplary fines to serve as deterrent to other enterprises. The Court also held that such an enterprise is liable to compensate all those affected by the accident and further, that such liability is subject to no exceptions and that compensation must be correlated to the magnitude and capacity of the enterprise.

The dimensions of the right to life and liberty have been expanded mainly through Public Interest Litigation, a strategy developed for the purpose of an advantage for the poor and those unable to represent themselves. Consequently, clean environment is a fundamental right of the persons and the Supreme Court and the High Courts can be moved under Articles 32 and 226 of the Constitution, respectively. As a result, the right to appropriate relief against the harmful effects of X-ray radiation on the employees of a State Corporation has also been recognized under Article 21.

The *Hazardous Waste* (*Management, Handling and Trans-boundary Movement) Rules, 2008* as amended in 2009: deal with the wastes, which are specified in the Schedules of the Rules. *It imposes 'responsibility upon a person generating or operating hazardous wastes for proper handling, storage and disposal of wastes without adversely effecting the environment* The rules provide that only such registered persons are eligible for recycling, reprocessing or reuse the hazardous waste, which have environmentally sound technologies and processes, adequate technical capabilities, requisite facilities, and equipment to recycle, reprocess or reuse the hazardous wastes The import of hazardous wastes into India for the purposes of disposal is prohibited. It is important to point out here that the radioactive wastes, waste discharged from ships, water wastes, the exhaust hazardous gases, bio-medical waste, municipal wastes and lead acid batteries are not regulated under the Rules, 2008 as amended in 2009.

The *Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 as amended in 2000:* Under these rules, Central and State Pollution Control Boards are required to enforce government directions and procedures pertaining to the isolate storage of hazardous chemicals, and District Collector is required to prepare off-site emergency plans to contain major chemical accident . It further determines the responsibility of preparing and upgrading on-site emergency plans upon the occupier of the industry. An occupier is required to identity major hazards posed by his industry, take steps to prevent and limit the consequences of an accident, and inform and train workers in occupational safety. Under the rules an importer of hazardous chemicals into India must disclose complete product safety information.

POLLUTER PAYS PRINCIPLE

This principle aims at ensuring that the costs of environmental damage caused by polluting activities are borne in full by the person responsible for such pollution. The Rio Declaration adopted in 1992 also recognizes this Principle. The Polluter will have to pay for the management of the pollution control system and also for the consequences of the pollution such as compensation. This principle was for the first time expressly applied by the Supreme Court in *Indian Council for Enviro-Legal Action v. Union of India* . The Court held polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie to the undertakings which cause the pollution, or produce the goods which cause must disclose complete product safety information. Where the imported chemical is likely to cause a 'major accident the designated governmental authorities are empowered to issue directions including an order to stop the import.

The *Rules for the Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms, Genetically Engineered Organisms or Cells*, 1989: These Rules are applicable to industries, hospitals, research institutions and other establishments that handle micro¬organism or are engaged in genetic engineering.

The *Chemical Accidents (Emergency Planning, Preparedness and Response) Rules*, 1996: Under these Rules the Centre as well as States are required to form crises groups at the national, state, district and local levels. The Central Crises Groups is required to monitor post accident situations, review the adequacy of district off-site emergency plans, suggest measures to reduce risks in industrial zones and render financial and infra structural help to the States in the event of chemical accidents.

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The polluter pays principle demands that the financial costs of preven ting or remedying damage caused by pollution should lie toiih the undertakings which cause the pollution, or produce the goods which cause the pollution. Under tile principle, it is not the role of Government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because tile effect of this would be to shift the financiai burden of the pollution incident to the tax payer ... Thus, according to this principle the responsibility for repairing the damage is that of the offering industry. Sections 3 and 5 of the Environment (Protection) Act] empower the Central Government to give directions and take measures for giving effect to this principle .

The rule was further explained in the case of *Vellore Citizens' Welfare Forum v. Union of India , as:*

The 'polluter pays' principle as interpreted by this court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of damaged environment is a part of the process of 'sustainable development' and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

PRECAUTIONARY PRINCIPLE

The lack of scientific certainty should not be the reason to postpone action to avoid potentially serious or irreversible harm to the environment. Under the Rio Declaration, 1992, Principle 15 recognizes this principle for the first time at the international level. The principle states that:

In order to protect the encironment , the precautionary approach shallbe applied by the States according to their capabilities . Where there are threats of serious or irresversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost -effective measure to prevent environmental degradation.

Disaster Management

The Disaster Management Act, 2005 was one of the legislation dealing with effective management of disasters and came into effect from 26th December; 2005.

The Act aimed at providing mandatory institutional mechanism for drawing up and monitoring the realization of the disaster management plans, ensuring steps to be taken by various means and methods of Governments for prevention and mitigating effects of disasters and for undertaking a holistic, coordinated and prompt response to any disaster situation. This Act permits the States to have an independent legislation on disaster management. National Disaster Management Authority under the Prime Minister with nine more members for laying down the policies, plans and guidelines for disaster management. Advisory Committee consisting of experts in the field of disaster management. A National Executive Committee of Secretaries to Central Government will assist the Authority. It shall prepare a National Disaster Management Plan in

consultation with State Governments National Plan to include measures for prevention and mitigation, integration of mitigation measures in the development plans, and preparedness and capacity structure to respond effectively. The National Authority will recommend guidelines for the least standards of aid.

CONCLUSION

The policies of the state should strictly implement and plans, guidelines, directions compulsorily to be complied with. All Corporations should create and innovate the decision making process in which stakeholders like labor and people around corporations and the like should have voice. The government should create coherent legal legislation to curb corrupt practices by officials to ensure better administration on justice. International community should enhance scope for education, training and awareness activities and techniques relating to pollution free methods of production in consultation with industrial and relevant national authorities. The financial assistance is to be extended for installation of Common Effluent treatment plants for small scale industries and enterpreures. The formation of 'Green Benches' to deal with exclusive cases of environmental issues is the need of the hour..

NOTES AND REFERENCES

1.Section 2(d) of the Disaster Management Act, 2005 defines disaster as "a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man- made causes, or by accident or negligence which result in substantial loss of life or human suffering or damage to, and destruction of, property. or damage to, or degradation of, environment. and is of such a nature of magnitude as to the beyond the coping capacity of the community of the affected are.

2.In 1956 at Japan due to Hazardous Chemical Waste Minamata disease officially recognized Mercury poisoning that developed in people who ate contaminated seafood taken from Minamata Bay and adjacent coastal waters in the period after World War II when methyl mercury was dumped into the sea as an unwanted by-product of acetaldehyde processing at t e Chisso industrial plant in Minamata, Japan; In 1967 at Russia Hazardous product Toxics the accident at Chelyabinsk nuclear complex near Kyshtyn. ; In 1968 at USA West Virginia coal mine Explosion taken place resulting in killing 78 men at the consol No 9 mines at Farmigton, West Virginia ; In 1972 at West Virginia coal mine due tp Dam failure at Buffalo mine in Saunders killed 125.; In 1976 U.S.A.Massachusetts Argo Merchant runs aground on the Nantucket Shoals of Cape Cod , spilling 7.6 mission gallons of No.6 fuel oil. ; In 1977 at USA New York due to Hazardous chemical waste at Hooker Chemical Company used uncompleted canal for dumping byproducts. Once the canal was fiooed with waste, the was covered over and sold to the Niagara Falls city school board for $2.00 and a school and subdivision of homes was on top. The chemicals were detected leaking out of the site in 1977 and residents were eventually evacuated. In 1978 at France Amoco Cadiz oil taker runs aground off the coast of Framce , spilling 1.6 million barrels of crude oil ; In 1979 at USA Pennsylvania Over 140,000 people evacuated within 15miles area due to Three Mile Island nuclear power plant leakage. In 1982 at USA Missouri in 1996-97, 265,354 tons of soil and other toxins contaminated material from Times Beach and 26 other sites in eastern Missouri had been incinerated. In 1984, Times Beach's 2,242 residents were evacuated after dioxin found in soil/; In 1984 at Bhopal, India, due to Explosion at Union Carbide pesticide plant in Bhopal India released cloud of methyl isocyanate, killing at least 2,000 and injured 50,000 people; In 1986 at Ukraine due to Chernobyl nuclear power station in USSR chemical explosion at the station's reactor and an uncontrolled graphite fire that followed led to the release of more than 450 radio-nuclides, comprising about 3.5 per cent of the fuel stored in the reactor core. The Ukrainian government has estimated the number of deaths among clean-up workers alone about as 7.000 to 8,000; In 1989 USA Alaska Exxon Valdez oil tanker spills 11million gallons of crude oil into Price William Sound ; In 1993at Thailand Toy Factory killed 188 women and injured over 400people ; In 2001 at France Fertilizer Factory in the month of September 21 explosion at Azzote de France agricultural chemicals factory near Toulouse .31 people dead, at least 650 people dozens more missing and 1 were trapped. In 2004, 6,027 Chinese mine workers were killed-van average of about 16 deaths a day. In 2004 at China Gas explosion in Daping coal mine in Henan province killed 56 people and left dozens more missing and 1 were trapped. In 2004, 6,027 Chinese mine workers were killed-van average of about 16 deaths a day.

3. Royal Commission on Environment Pollution. First Report .4 (1971

4.Basel Convention Art. 4.1(c),

5.Animal and Environment Legal Defense Fund v Union of India (1997) 3 scc 549. para 15.

6.S Jaganath v Union of India (1997) 2 see 87.

7.M . K. Sharma v. Bharat Electronics Ltd.(1987)3 SCC 395

8.See. Rule 4. Hazardous Waste (Management, Handling and Trans-boundary Movement) Rules, 2008

9.See. Rule 8. . Hazardous Waste (Management, Handling and Trans-boundary Movement) Rules, 2008

10.Rule 3, The Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, read with Column 3 and Column 8 of Schedule 5

11.See Rule 13

12.See Rule 4

13.Principle 16.

14.AIR1996 SC1446

15.Section 2 Ol of the Rules defines the term 'major accident' as an occurrence including any particular

major emission, fire or explosion involving one or more hazardous chemicals and resulting from uncontrolled developments in the course of an industrial activity or due to natural events leading to serious effects both immediate or delayed, inside or outside the installation likely to cause substantial loss of life and property including adverse effects on the environment

16.See Rule 5, Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996.

17.Principle 16.

18.AIR1996 SC1446

19. id at 1466

20.AIR 1966 SC 2715

21. id. at 2715

22.Section 2(e) of the Disaster Management Act, 2005 deFines disaster management as "continuous and integrated process of planning. organizing. and implementing measures which are necessary or expedient for- (i) prevention of danger or any threat of any disaster; (ii) mitigating3 or reduction of risk of any disaster or its severity or consequences; (iii) capacity- buildtng-t; (iv) preparedness to deal with any disaster; (v) prompt response to nay threatening disaster; (vi) assessing the severity or magnitude o effects of any disaster; (vii) evacuation, rescue and relief; (viii) rehabilitation and construction;"