



Inaugural address of his Lordship Honorable V.M Sahai the Acting Chief Justice, High Court of Gujarat, Ahmadabad on the occasion of inaugural session of Conference on “Strengthen Climate Justice initiative; Livelihood Challenges at local Level with a focus on farmers”

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General Note



Article is recommended to print as color version in recycled paper. *Save Trees, Save Climate.*

His Lordship Honorable Mr. Justice H.L. Dattu, Chief Justice Supreme Court of India.

His Excellency the Governor of Gujarat Shri Om Prakash Kohli.

Honorable Mr. Justice B.P. Singh, President, NCCSD and former Judge of Supreme Court of India.

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Honourable Minister Education, Consumers Affairs, Government of Gujarat.

Former Judge of the Supreme Court of India, My brother and sister of Gujarat High Court.

Dr.Kirit N.Shelat Executive Chairman, NCCSD.

Prof. (Dr.) Purvi Pokhariyal and Mr.Ashok Singh, Director General Nirma University, Co-organizer of this Conference.

Distinguished expert and scientist in the various fields.

Other Distinguished dignitaries and my beloved stakeholders including the Farmers and ladies and gentlemen.

I am enthralled and elated in the inaugural session of the Conference on "Strengthen climate Justice Initiatives; Livelihood challenges at local level with a focus on Farmers" The reason for my elatedness is not far to seek, but lies in the fact that this conference would go in to scientific data in respect of climate change, its impact on environment in general and livelihood challenges to farmers in particular. The offshoot of the deliberation might touch upon the livelihood challenges to other segment of the society as well. This reminds me the vision of our founding father who has not only envisioned the justice from the angle of economic trait, but from the standpoint of social arena as well. This vision has found prime and prominent position in the preamble to the constitution of India in the form of "Secure to all its citizens; Justice Social, Economic and political;"This is not empty rhetoric but has very concrete substance.

While going through the Concept note, I found very interesting comparison of opportunities being offered to the farmers and industries from production to market vis-a vis the climate change and other areas. The reflection from the prism of said comparison provokes thought process which culminates into

Expectation or requirement of acquiring of the scientific knowledge in the sphere of environmental concept and specifics there of so as to establish connect between causes and effect. Justice initiative and justice both operate on given set of facts constituting proof of fact in issue entitling the seeker of justice to have the specific relief sought in the legal action, lis or proceedings.

Before going in to further details of justice initiatives and delivering of justice to the subject of this conference, let me set my clock back into history of distance past and peep into the vedic wisdom which talked about preventive measures which would relive the human race from the consequences of climate change.

At the outset to fathom to the core the concept of environment ,its core and centrality ,the vedic hymn that is aptly and succinctly couched needs to be quoted, which runs into following fashion;

The treasure of original environment science form the Vedas does not stop at that .The Vedic seers' comprehension and knowledge of the present stream is there to be gauged from the verses in the translated form go a follows;

"O Earth! What on you, I dig out, let that quickly grow over".

"O Earth! Let me not hit your vitals".

The petal of rose in the form of Vedic verse takes about the concord with the universe-"peace of sky, peace of mid-region, peace of earth, peace of waters, peace of plants, peace of trees, peace of all gods, peace of Brahman, peace of universe, peace of peace: may that peace come to me!"

The echo of this wisdom resonates into modern concept of the environment .While assigning the meaning to this term, the modern status on the environment protection describes that environment is the interrelationship which exists among and between water ,air, and land human being ,other living creature, plants, micro-organism and property.

When it comes to translating ancient and modern wisdom into practice ,there surface challenges in the face of prevalence of general perceptions in the country where 2/3 humanity directly or indirectly depends upon the agriculture sector for their sustenance ,that ideas of environment in common parlance are perceived to be wishful thinking, utopia and ivory tower idealism.

To confute the said perceptions which stand on mishmash of misguided and misconceived notion, it is desirable to fall back on the ancient wisdom, percolated into international instruments, covenants, conventions and treaties ultimately converting themselves into action at ground level through the statutory framework operating into the country.

Coming near to the subject from philosophical pedestal to actionable instruments, there are remedies in the sphere of civil and criminal jurisdiction. The former compensates the wrongs and later creates deterrence by punishing the wrong doers. The civil rights of the subject viz. the farmers in the case at hand are emerging from the law of torts. There is no codified law in this area. Of course, the principle of absolute liability in the sphere of tortious jurisdiction has paved the way for the dispensation of justice to the victims of certain tragedy like Bhopal Gas Leak Case. The foundation of justice was laid in Oleum Gas Leakage where Hon'ble Apex Court has carved out an exception to the principal of strict liability which operates in the field of tortious jurisdiction and which was originally enunciated in the English jurisprudence in Ryland Vs Fletcher case .The edict emerges from the said decision heralds the era of absolute and non delegable duty on the part of the enterprise which is engaged in a hazardous and inherently dangerous industry which possesses a potential threat to the health and safety of the persons working therein and habituating in the surroundings thereof.

Zeroing in on the specific and strictly drawing the precinct of the subject, it hinges around the livelihood of the farmers qua the impact of climate change. Still drawing ourselves near to the subject, deluge and other facets which impact upon the crop pattern, its yield from the stand point of quality or quality-wise etc., This is gray area where lots of scientific research needs to be put in to establish rational and direct connect between the climate change resulting into great downpour, flash flood, drought or lacuna in germination, nourishment of any sort of crops etc., Since tort is a civil wrong, it requires the proof of cause and its effect by way of legal evidence. For instance the deluge or drought is the direct result of climate change and the climate change is caused by someone needs to be established, fixing of the tortious liability required wrong doer, cause emerging from beach of duty and its

resultant impact culminating into the damages. Damages to the farmer on account of drought or deluge normally escape under the principle of vis major which operates on the belief that certain happenings occur naturally or for the causes which are beyond the control of human being.

Situation poses very interesting and intriguing question: does the flood or deluge or drought happen due to manmade cause or natural cause? To circumvent the exception being carved out by principle vis major in tortious liability needs to be rethought out. Rethinking necessitates great research in the area of climate change from two angles; (a) Establishment of link through legally reliable evidence between the action of doer and climate change causing flood, deluge, drought etc., and (b) Phenomena of climate change solely occurs as a result of the activities of doer and natural causes or forces having played no role.

This is great challenge for scientific community to enter into establishing cause and effect relationship in apparently natural phenomena. The legal structure or framework for solving any issue or challenge can be created on the basis of factual aspects. The oft repeated adage is very apt to describe this situation by saying that a law never operated in vacuum. In the topic at hand, the vacuum or void in the form of absence of connects or relationship between cause and effect is there.

Per contra the operation of criminal liability rests on the defined offences that have been created in the Indian Penal Code and other special statutes. The criminal liability needs very strict degree of proof that hinges around the principle of beyond the reasonable doubt proof.

Similarly, the provisions incorporated in Chapter X and XIV helps in ameliorating the environmental position. Introduction of environmental audit, of course, takes us little far in helping the cause of an environmental improvement.

Taking more about the development in the recent past, where enunciation of the principle of polluter pays has opened up new vistas for imposing a sort of civil liability on the polluters. This principle may in future be advancing the cause of farmers too by stretching it little bit with a caveat that there must be establishment of connect between the cause and effect.

Concept of carbon credit may be termed as good weapon in the hands of lesser polluter or a little polluter against the acute and very high polluter. This concept in a way reminds us the equity jurisdiction which solely operates and is based upon the pure equity where the statutory remedies fall short of dispensing real and effective justice. I would, of course, not like to make a statement which may have repercussions on real scientific data, but let me state that if proper mechanism for assessing carbon credit puts in place, then to my mind, the agriculture sector would come out with a flying color and would become zero polluter and augmenting the capacity of other sector like industry by strengthening them with its capacity of absorption of CO₂ and release of Oxygen.

To give justice, the issues and challenges that appear to have been met with by, need to be tackled by two pronged strategies. As I said in the beginning, first, measures are to be adopted precluding the release of greenhouse gases of CO₂ in the environment and second, structuring the proper legal framework which could take into account the concerns of one and all including the farmers too. Existing legal framework especially in the area of climate change vis-à-vis the farmers' livelihood does not seem to be adequate, sufficient and efficient. As talked about principle of vis major or force majeure which is of course not fully an expression of vis major, but operates on wider sense in the French jurisdiction have got their own imports. These principles couples with existing legal framework at least in civil jurisdiction may not be termed as adequate. Adequacy of legal framework via statutes, precedents and through other instruments needs to be strengthened.

The remedy or ways and means for these challenges could be through the codification of law of torts or other special enactments to be thought out and brought about should be the part of the deliberations that are to be happened as part of this programme.

The topic at hand throws lots of issues and challenges which are required to be gone into and the nitty-gritty of the topic requires very qualitative and substantial deliberations. The importance of the debate lies in the title which not only seeks to strengthen the justice initiatives on the basis of existing legal framework, but seems to have been going beyond that and seeks to have justice for the protection of the livelihood of the farmers by getting them remedy through preventive measures as well as creation of new legal framework, if need be, treating the rights of the farmers to the level of higher pedestal by having shelter under the fundamental rights under Article 21 of Constitution of India which is repository of almost all the human rights of the humanity.

I hope and expect that this Conference will help in strengthening and protecting the farmers against their livelihood challenges by coming out with concrete solutions thereof which may soothe and bring succor to their lives forever.