

ROLE OF LAW AND JUDICIARY IN PROTECTING ENVIRONMENT

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Introduction

The pollution problem is as old as the human civilization itself. It was there since the ancient period. But it was so negligible during those days hardly any one paid any heed to those problems. With the advancement of the society and civilization there was progress in all the fields. This growth of civilization brought with it rapid increase in population and overcrowded cities which contributed to poor sanitation and environmental problems. To cope with the emergence of industrial era, we witnessed in our country, a race for rapid industrialization to achieve speedy economic growth. Particularly in the aftermath of independence we have seen unprecedented developmental activities because in our country desire for industrialization- for rapid industrialization was very much there.¹

In order to get quick benefits, we utilised our nature and natural resources in such an uncontrollable way that we are forced to face irreversible consequences. As a result, we are faced with the danger of environmental pollution and degradation which is going to jeopardise our quality of life. The right to a clean and wholesome environment is now elevated to the status of a Fundamental Right hereby underlying its pre-eminent position as a Basic Human Right.

The credit for this development in a large measure goes to the judiciary for evolving an Environmental Jurisprudence relating to the fundamental issues of Human Rights through its “creative interpretation and bold innovation”. Apart from the global and regional strategies, national law provides for certain innovative and non conventional techniques, like PIL, citizen suit, rights connected with environmental degradations.²

Meaning of environment

Our environment simply means surrounding. The word environment originated from Greek word ‘envirous’ means surrounding.

¹ Dr. Sukanta K. Nanda, Environmental laws, central Law Publication, Fourth Edition 2015

²<http://www.legalserviceindia.com/articles/wild.htm>

Environment means air, water, land, plants, animals, micro organism and property which is present in our surrounding.

According to Indian Law Prof. Leelu Krishnan from Cochin University Environment law is the synthesis of statutes, principles and concepts. In environmental law apart from statutes we have certain principles such as polluter pays principles and sustainable development. Environment includes plants, animals, living micro organism and its variety of life, it is nothing but biodiversity.

Legal Provisions relating to environment

The SC while dealing with protection of sandalwoods which has got a rich value is associated with our culture and heritage, referring to various legislations, Constitutional provisions and international conventions dealt extensively on the ethical aspects of environment when it relates to all life forms on the earth. *T.N. Gadavarman Thirumulpad V. UOI (2012) 4 SCC 362³*

1] The Environmental Protection Act, 1986

The object of the Act is to provide for the protection and improvement of environment and for matters connected therewith and to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property;

2) The water (prevention and Control of Pollution) Act, 1974,

The object of this Act is to prevent and control water pollution and to maintain wholesomeness of water by establishing central and state pollution control board to monitor and enforce the regulations.

3) Forest (Conservation) Act, 1980

The object is to provide for the conservation of forests and for matters connected therewith .

4) The Air (prevention and Control of pollution) Act, 1981,

The object of this Act is for prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected.

5) Biological Diversity Act, 2002.⁴

³ Dr.S.C. Tripathi, Environmental Laws, Central Law Publications, third edition, 2008

⁴ P.S. Jaswal, Environmental Law, Pioneer Publication, Delhi-2003, p-2

The object of the Act is to provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith.

CONSTITUTIONAL PERSPECTIVE

As we know that Constitution of India is the law of the land. So the constitutional validity of every Act should be tested upon touchstone of constitution itself. As per list first Central Government is competent legislature to make law in relation to environment. In seventh schedule, list 1st entry 14 provide for entering into treaties, agreements and conventions with foreign countries. In list 3, entry 17 prevents cruelty to animals.

In list 3, entry 17(A) it provide for protection of forest and for conservation also.

In list 3, entry 17(B) is for protection of wild animal and bird.

Environment and Fundamental Rights:-

Part III of Indian Constitution exclusively provide for fundamental right which are available to citizen as well as non citizen also. The development of fundamental right was extended by Supreme Court in Maneka Gandhi's case.

1)Article 14-

Equality before the law- The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It means every person has equality before the law which has been interpreted as the right against unreasonableness and arbitrariness.

2)Article 21

Protection of life and personal liberty-No person shall be deprived of his life or personal liberty except according to procedure established by law. Right to life has been given very wide interpretation wherein many rights such as right to livelihood, life with human dignity.

The expansive interpretation of life in Article 21 has laid to the salutary development on environment jurisprudence in India on question of relationship between ecology and Article 21. The thinking of Court is that since right to life is fundamental right and since right to life connotes quality of life a person has right to enjoyment of pollution free water and air to enjoy life fully.⁵

*M.C. Mehta v. Kamal Nath*⁶

⁵ M.P. Jain, Indian Constitutional Law, Wadhwa Publication, Nagpur, fifth Edition, Reprint 2004,p-1137

⁶ AIR 1988 SC 462

In this case it is held that resources are the gift of nature and States are the trustees thereof are duty bound to protect them. The state is the trustee and general public is the beneficiary of such natural resources such as sea, running water, forest, animals and ecologically fragile land.

3)Article 32 and Article 226

These articles speak about enforcement of fundamental rights through writ proceedings at the Supreme Court and High Court respectively.

Directive Principles

4)Article 39(b)

That the ownership and control of the material resources of the community are so distributed as best to subserve the common good.

Fundamental Duty

Article 51 A(g)

It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.⁷

HUMAN RIGHTS ASPECT

The expression “Human Rights” is comparatively recent in origin. It is formerly and universally become recognized only after formation of the United Nations in 1945. The term “Human Rights” denotes all those rights which are inherent in their nature and without which we cannot live as human beings. Human Rights under the United Nations Charter:-

1)Universal Declaration of Human Rights,1948

The Universal Declaration enumerated the basic postulates and principles of Human Rights in most comprehensive manner as follows-

A] Article 3:- Right to life, liberty and security of persons-Right to life includes right to live in clean environment.

B] Article 17- Right to own property- right to property means everyone has right to enjoy the property. So everyone has right to enjoy the natural property.

The Economic and Social Rights in article 25 states that everyone has right to adequate standard of living for the health of himself and of his family. For such adequate standard biodiversity or natural resources shall be maintained and conserved.

⁷ Dr.H.N.Tiwari, Environmental Laws, Allahabad Law Agency, Haryana, third edition,2005

2] Covenant on Civil and Political rights:-

The Articles relating to it are as follows i.e. Article 6- Right to life

3] Covenant on Economic, Social and Cultural Rights:-

Article 12- Right to physical and mental health- right to physical and mental health can be achieved only when there is clean environment.

International Conventions:-

- 1) Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES)
- 2) International Union for Conservation of Nature and Natural Resources (IUCN)
- 3) Convention on Migratory Species

Issues and challenges

1) Bio-piracy:-

'Bio-Piracy' can refer to-1] Unauthorised use of biological resources. E.g. plants, animals, organs, micro-organisms, genes.

2] Unauthorised use of traditional community's knowledge on biological resources.

3] Unequal share of benefits between a patent holder and the indigenous community whose resource and knowledge has been used.

2) Bio-Safety:-

Bio-Safety Protocol:- The objective of Bio-safety Protocol is to contribute to ensure an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health and specifically focusing on transboundary movement.

1] The Bio-safety Protocol 1999 and 2000

2] Hazardous Micro Organism Rules

3] Indian 1989 Hazardous Micro Organisms Rules (Bio Safety rules)

3) Bio- Medical Wastes:-

Bio-medical waste means any waste, which is generated during the diagnosis, treatment or immunization of human beings or animals or in research activities pertaining thereto. Medical wastes may be generated throughout healthcare facilities wherever medical procedures are

conducted. The ill effects of poor management of bio-medical wastes have aroused concern all over the world especially due to its far reaching effects on human health and environment.

Environment Protection Act 1986 makes possible the issuance of many Rules:-

1989 Hazardous Waste Rules

1998 Biomedical Waste Rules

1999 Rules for Recycled Plastics

1999 Fly Ash Notifications

2000 Municipal Solid Waste Rules

4) Hazardous Waste Management:-

We have become conscious of the fact of dumping of hazardous waste in our country not long back. Though the Basel Convention was in existence, having been ratified by India, not many people were aware of it. And there were no protests against the continuing acts of the industrialised nations dumping their wastes due to stricter environmental laws in their countries, higher cost at recycling, people's opposition and the difficulty faced in locating final disposal sites.

India was therefore discovered as a convenient place for dumping, with no resistance either from the authorities or from the people. The authorities (Central Pollution Control Board and State Pollution Control Boards) were totally ignorant about the menace of dumping of hazardous waste. It is a shocking fact that none of the industries recycling hazardous waste had any facility for safe disposal of such waste in an environmentally sound manner. There was no control whatsoever.

5)E-Waste:-

"E-Waste" may be defined as all secondary computers, entertainment device, electronics, mobile phones and other items such as TVs and refrigerators, whether sold, donated or discarded by their original owners. This definition includes used electronics which are destined for reuse, resale, salvage, recycling or disposal. Others define the reusable (working and repairable electronics) and secondary scrap (copper, steel, plastic etc.) to be "commodities", and reserve the term "waste" for residue or material which was represented as working or repairable but which was discarded by the buyer.

Environment Impact Assessment:-

Sustainable Development:-

The term sustainable development means sustainable development that meets the need of present without compromising the ability of future generations to meet their own needs. This

contributed to the understanding that sustainable development encompasses a number of areas and highlights sustainability as the idea of environmental, economic and social progress. Sustainable Development brings about a balance between environment and development. Sustainable development is kind of moral obligation imposed on the present generation to save natural resources for the future generation. For eg. EIA is a tool to achieve the sustainable development.⁸

Salient features of sustainable development:-

A] Intergenerational Equity:- This theory states that equity is the right of each generation of human being to benefit from the cultural and natural inheritance of the past generation as well as “obligation” to preserve such heritage for future generation. It requires conserving the diversity and quality of biological resources and renewable resources such as water and soil.⁹

B] Optimum use of natural resources:-

To meet the needs of sustainable basis it is absolutely necessary to use Earth’s natural resources carefully. Such resources must be conserved and enhanced. It is a part of our moral obligation to other living beings and future generations.

C] The precautionary principle:-

The main motto of this principle is to ensure that a substance or activity posing a threat to the environment is prevented from adversely affecting the environment. Even if there is no conclusive scientific proofs of living that particular substance or activity imply activities introduced as a result of human intervention.

D] The Polluter Pay Principle:-

It means the absolute liability for the harm caused to environment to compensate for it which includes compensation payable to the victim of pollution as well as to pay the cost for restoring the environmental degradation.

E] Eradication of Poverty:-

The sustainable development has to address the problem of the large number of people lives in absolute poverty and who cannot satisfy even their basic needs. At the Stockholm Conference in 1972, our Prime Minister Mrs. Indira Gandhi said: “of all pollutants we face, the worst is poverty”.

F] Financial Assistance to Developing Countries:-

⁸ Singh J. Biodiversity Planning for Sustainable Development, Deep & Deep Publication, Delhi 2006 pg-44

⁹ Amin Rosencranz, environmental law policy in India, 1991, pg-60

The developing countries face poverty as the worst pollutant. The people in the developing countries strain their natural resources and over exploit them to meet their basic needs. Therefore the financial assistance and transfer of technology from the developed nations to the developing countries is a must if we want to achieve the goal of sustainable development and biodiversity protection.

JUDICIAL ACTIVISM

PUBLIC INTEREST LITIGATION:-

The growth of environmental law in India has been largely influenced and accelerated by PIL. It has generated tremendous awaking amongst people about environment protection which has ushered in the evolution of innovative judicial techniques. PIL is one such tool to help poor, underprivileged, downtrodden and exploited millions. It is essentially a cooperative or collaborative effort on the part of the petitioners.

1] Right to wholesome environment:-

*Rural Litigation and Entitlement Kendra, Dehradun V. State of U.P*¹⁰

In this case, Supreme Court treated a letter from an NGO as a writ petition under Article 32, with the notice to the Government of U.P and the Collector of Dehradun. The NGO had alleged in its letter that the illegal limestone mining in the Doon Valley was devastating the fragile eco-systems in the area. Since the S.C exercised its jurisdiction under article 32 shows that there was violation of Fundamental Rights, especially the Right to life under article 21.

*M.C Mehta v. Union of India (Oleum Gas Leak Case)*¹¹

The Court in this case held that the power to issue directions under article 32 includes the power to issue directions for the payment of compensation. In this case also the Supreme Court did not specifically state whether the right to a clean environment did come under the right to life under article 21, but the trend of the decision is too obvious to sustain a contrary opinion or to leave anybody in doubt.

This case also, “extended the scope of the Right to life and lay down that the State had the power to place restrictions on carrying on hazardous industrial activity for protecting the right of people to live in a healthy and safe environment”.

*Subhash Kumar V. The State of Bihar*¹²

¹⁰ AIR 1988 SC 2187

¹¹ AIR 1987 SC 965

¹² AIR 1991 SC 424

The Supreme Court made a significant judgement and made its mind clear with regard to the Right to life under article 21 of the Constitution vis-a-vis the right to a clean environment when it held: "Right to live a Fundamental Right under Article 21 of the Constitution and it includes the right of enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has a right to have recourse to Article 32 of the Constitution.

*State of Tripura V. Sudhir Rajan Kumar Nath*¹³

The government of Tripura imposed a complete ban on transport of timber from forest area. This decision was challenged by petitioner on right to carry on any trade business under Article 19(1) (g). In this case Supreme Court held that right to carry on trade and business cannot be an absolute right and from protecting forests such right can be taken away therefore the ban on transport of timber from forest area is constitutional.

2) Creating mass awareness and sensitivity

Most of the environmental litigations are in the nature of PIL. It arises from a strong commitment to fulfil a sense of urgency in preventing environmental degradation, which has assumed serious magnitude in the recent times. The purpose of PIL is to promote public interest which mandates that violation of legal constitutional rights of a vast majority, who are poor, ignorant and socially and economically disadvantaged, should not remain unredressed.

*M.C.Mehta V. Union of India*¹⁴

In this case Court prescribed certain mechanisms to be adopted to spread mass awareness. The Court directed that the cinema hall, touring cinema hall and video parlours would now to be given license to run their establishment in each show undertaken by them. The quality of slides would be such that it not only 'efficiently carry the messages on various aspects of environment' but also 'at once to be impressive, striking and leave on impact of everyone who sees the slides'. The Court also issued direction relating to teaching of environment in the educational institutions.

3) Instrument for effectuation of rights:-

Deforestation and loss of wildlife lead to large scale environmental degradation resulting in disaster. A plethora of rights and legal principles have been created in the legal system through PIL to enforce protection of environment so that legal order continues to promotes sustainable development infused with equity and justice.

¹³ AIR 1999 SCC 267

¹⁴ AIR 1992 SC 382

*In Indian Council for Enviro-Legal Action v. Union of India*¹⁵

The polluter pays principle was applied in this case to fasten the liability for defraying the costs of remedial measures. The task of determining the amount required for carrying out the remedial measures, its recovery or realization and the task of undertaking the remedial measures was placed in this case upon the Central Government.

The Apex Court ruled that the failure to carry out their statutory duties by State Authorities will seriously undermine the right to life guaranteed by article 21 of the Indian Constitution.

*Nagarhole Budakhattu Hakka Sthapna Samithi V. State*¹⁶

To illustrate maintenance of ecological balance, protection of interest of tribals residing or nearby a national park was held to be a public interest. Thus, legality of impugned grant of leasehold rights to some private individuals of certain properties situated in Nagarhole national park was successfully assailed as the ground of leasehold rights was in Flagrant violation of Wildlife Act, 1972 and Forest Conservation Act, 1980.

4) Right to ecological stability:-

The evolution of indigenous law relating to maintenance of ecological balance and stability commence in the wake of massive industrial development to fulfil socio-economic needs of vast population accelerating depletion of natural resources and received a flip after the Stockholm Conference of human environment in 1972.

In Vellore Citizen's Welfare Forum V. Union of India & others, (1996) 5 SCC 647

A three Judge Bench of this Court, after referring to the principles evolved in international conferences and to the concept of "sustainable development", inter alia, held that the precautionary principle and polluter pays principle have now emerged and govern the law in our country, as is clear from Articles 47, 48-A and 51 (g) of our Constitution and that, in fact, in the various environmental statutes including the Environment (Protection) Act, 1986 these concepts are already implied.

Research Foundation for Science, Technology & Natural Resources Policy V. Union of India AIR 2005 SC 657

Considering the alarming situation created by dumping of hazardous waste, its generation and serious and irreversible damage as a result thereof to the environment, flora and fauna and also

¹⁵ AIR 1996 (3) SCC 212

¹⁶ AIR 1978 SC 853

having regard to the magnitude of the problem as a result of failure of the authorities to appreciate the gravity of situation & the need for prompt measures being taken to prevent serious and adverse consequences the Court on report of High Powered Committee issued a direction to pay compensation on polluter pays principle.

5) Protection of Wildlife:-

State of Bihar V. Murad Ali Khan, AIR 1989 SC 1189

In this case Murad Ali Khan killed an elephant in forest of Bihar. The J.M.F.C issued a summons against him on the ground that he has killed an elephant, which is an endangered species. The order of J.M.F.C was challenged before the SC by Murad Ali Khan.

Supreme Court rejecting the argument and held that hunting of elephant is an offence under the Wildlife Protection Act and which can be tried by the J.M.F.C action taken is proper because elephant is one of the endangered species.

CONCLUSION :-

Thus, we may conclude that sustainability is the key to prevent or reduce the effect of environmental issues. There is now clear scientific evidence that humanity is living unsustainably, and that an unprecedented collective effort is needed to return human use of natural resources to within sustainable limits. For humans to live sustainably, the Earth's resources must be used at a rate which they can be replenished.

Also, public interest litigation has cornerstone of the entire environmental movement and has greatly influenced the campaign for conservation of environment. The recognition of various rights through creative judicial interpretation has not only established that unregulated depletion of forests, flora and fauna must be halted, but has also provided necessary legal tool to ensure that and promote their conservation. Thus, PIL and other judicial techniques have been instrumental in promotion of 'sustainable development' by ensuring conservation of environment.