



Effectiveness of Judicial Response to Protect Environment and Sustainable Development.

Research Holder

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Abstract:

In this chapter researcher focused on environment and judicial response which are related to protect the environment with case law. Nation of Sustainable Development and Factors governing the same. It covered Precautionary Principle and Polluter Pays Principle. In this chapter concept of sustainable development was elaborated in view of precautionary principle and highlighted on polluter pays principle.

Every legal systems is based on three basic principles i.e. justice, equity and rule of law. Every person possesses certain rights that may be fundamental or natural, given to him by law. To protect these rights and the make amends for wrong, we have established the judicial system. The Indian judiciary has established several norms, law and guidelines by delivering several verdicts in the context of human rights and social justice.

Introduction:

The right of live in peace is a basic and essential right in the context of human rights and freedoms. **Article 21 of the Constitution of India, provides that**

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

‘Life’ in Article 21 of the Constitution has much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc. Right to life is fundamental to our very existence without which we cannot live as human beings and includes all those aspects to life which go to make a man’s life meaningful, complete and worth living. It is the only Article in the Constitution which has received the widely possible interpretation. Supreme Court, through its various decisions has elaborated of Article 21.

It is the need of the hour to take human rights in the positive sense and not allow its politicization. It has often been seen that Human Rights Movement start with great principles like morality, ethics, respect of human beings etc. but soon become the instruments of power



game. To prevent this, we must educate the masses about their rights and duties and help them fight for the same.

Human being since his existence has exploited the natural resources for his sustenance in the universe. The greed for more has caused severe pollution and damage to the environment. Man's ambition for limitless enjoyment and comfort has led him towards the exploitation of nature's wealth so indiscriminately and so shamelessly as to reduce nature's capacity for self-stabilization.¹ The Earth's environment has a self-cleansing system that maintains the state of equilibrium but human society imposes intense stress, which imbalances the nature's state of equilibrium. And the nature retaliates causing great suffering to human beings.

Threat to our environment is multidimensional. We are today facing numerous kinds and forms of pollution viz. Water Pollution, Air Pollution, Noise Pollution, Thermal Pollution and Radioactive Pollution etc. Several new types of Pollution and issues pertaining to the environment are cropping up each passing day. And the human being can rightly be called the creator of these issues.² A part of the speech of Maurice E. Strong, former Secretary General of United Nations may quote here.

The basic fundamental issue posed by the environmental crises is how man is to manage the world's first technological civilization in which he has the power to shape his own future the power to create and the power to destroy ... It is important to emphasize that in using the phrase "the human environment", it is necessary to include all elements, both natural and man-made. It embraces urban and rural poverty as well as the dangers of atmospheric pollution from automobiles and factories. It includes the discovery and development of natural resources as well as the inefficient and wasteful use of presently exploited resources. It covers air, water and soil. It includes the methods by which good production can be increased."

¹ Paras Diwan, Parag Diwan, Environmental management Law & Administration, 1998, Deep & Deep Publications, New Delhi.

² Aparajit, J. L. (2003). Judicial Response towards The Protection of Environment: A critical Evaluation JiLT, 1(97), p. 99.



Man is the creator, molder and the destroyer of his own environment. According to the Facts & Figures published in the Week,³ "84,000 people die every year in India because of Air Pollution. Delhi has been rated the fourth most polluted city in the world through the 1990's. The Benzene levels in the capital are 10 times more than the European Union standards". The Air Pollution is a direct result of massive industrialization, motorization combustion of various fossil fuels, incineration and agricultural activities in the form of sprays etc. Noise pollution is also treated as a component of Air Pollution. Besides these problems the upcoming problems are of smog and green house effect. All these problems require an immediate attention to stop its further spread.

The water pollution -problem in India has become acute in number of regions, Water is mainly polluted through discharge of trade effluents, sewerage effluents, dumping of garbage, throwing of half burned bodies thermal wastes and agricultural wastes etc. Ground water, the water in lakes and rivers also get polluted due to rain washing of solid wastes and of mines and by the Air Pollutants⁴ which settle on these water bodies. Polluted water when consumed causes several diseases. The Citizens Reports,⁵ states that "two-thirds of all illness in India are related to water borne diseases, such as typhoid, infective hepatitis (Jaundice), cholera, diarrhoea and dysentery. Many of them have become of epidemic proportions".

"Besides the problems of air and water pollution we are facing the problem of land pollution. Various modes through which land pollution is caused are indiscriminate disposal of solid wastes, contamination of land by man-made chemicals and dumping of hazardous substances etc. Environmental degradation is caused due to mining activities, improper land use and planning, deforestation⁶ and desertification.⁷

Our bio-diversity is getting lost rapidly due to cutting of forests. Poaching and Hunting has reduced the Population of wild species to a considerable extent. If this remains the state of affair

³ The Week, Dec, 1, 2002 at p. 6.

⁴ Chhatwal, G. R., Mehra, M. C., Karyal, T., Katyal, M and Nagnhira, T. (1986). Encyclopedia of Environmental Pollution and its Control, 2(144).

⁵ Unpublished Citizens Report, by the Centre for Serene and Environment, New Delhi, Entitled. "The state of India's Environment, 1982" at p. 17.

⁶ World Development Report 1992, Development and Environment. Box 8.S at 163.

⁷ J:S. Satnia, Environmental Degradation. Land under Pressure. The Tribune, Spectrum, June 10, 1993 at IV.



we would be required to pay a severe penalty and face the fury of Mother Nature. To overcome this danger India has enacted several legislations to protect and conserve the environment: Some of these legislations are regulatory while some are punitive and others prevent the damage to the environment

Recent Trends of Environment Protection in the Country:

In today's world technology and development are moving at a very fast pace. One has to keep on upgrading oneself with the latest, so as to be in the race. While attempting to achieve more and reach greater heights, the environment many a time is neglected. Even though today's economic forces demand an industry to be ISO 14000 certified, many do not simply bother and go for short term benefits. In the recent past there have been much hue and cry over the environment internationally and also at the domestic front but the situation has not improved even a little. Efforts to save the environment were comparatively much less compared to the destruction caused.

In the year 1999 the Courts have stressed on the constitutional mandates, namely, protecting and improving the environment. Innovative doctrines like precautionary approach and public trust were stressed into the environmental decision making process during this year.

Constitutional Rights to carry on business under Article 19 (1) (g) freedom of religion under Articles 25 and 26 and freedom of trade and commerce under Articles 301 and 304 are often challenged due to regulations imposed on them for the purpose of protecting and improving the environment.

In *M/s. Indian Wood Products Co. Ltd. V. State of U.P.*⁸, the Court examined whether compulsion in the state rules framed under the forest law to obtain pass for transit of forest produce violated Articles 19 (1) (g), 301 and 304. The Rules were held to be valid as they were enacted to prevent illegal exploitation and to maintain ecological balance. Violation of Article 19 (1) (g) was also challenged in *Baleshwar Singh v. State of U.P.*⁹ and *Obbayya Pujari Secretary, KSPCB, Banqaiore.*¹⁰ In the latter case it was held that, a license in favor of stone crushing units

⁸ AIR 1999 All 222

⁹ AIR 1999 All 84

¹⁰ AIR 1999 Kant 157



does not confer on them absolute rights to carry on commercial activities of trade or occupation without limitation. The rights are subject to reasonable restriction and can be regulated by court direction as the necessary for controlling pollution from such units.

In *Utpal Barbara v. State of Assam*¹¹, the Additional District Magistrate banned the use of polythene bags in particular district. The Court held that the rights of the suppliers and manufactures under Article 19 (1) (g) had been clouded by the ban. The remedy available to the district administration is to regular the use and disposal of polythene bags and not to impose a total ban.

In *S.K Garg. v. State of U.P.*¹² the Court observed that the right to get water is part of right to life guaranteed by Article 21. The Supreme Court observed in *A.P. State Pollution Control Board v. M. V. Nayadu*¹³ that “*Environmental concerns are, in our view, of equal importance as human rights. In fact both are to be traced to Article 21 which deals with fundamental rights to life and liberty while environmental aspects concern life, human rights aspect concern liberty*”.

In *A.P. Pollution Control Board v. M. V. Nayadu*¹⁴ question before the court was how to avert a serious and irreversible tragedy brought by development projects not based on environmental expertise. The Court referred to the Precautionary Principle laid down in the Rio Conference held that, inadequacies of science being the real basis of the principle, to err on the side of caution on preventing environmental damage was better than to allow serious or irreversible harm. The Court adopted the Precautionary Principle and reiterated that the burden is on the developer or the industrialist to prove that his action is environmentally benign.

In the celebrated decision, *M.C. Mehta v. Kamal Nath*¹⁵ the Supreme Court had highlighted the public trust doctrine in the context of protection of forest and preservation of natural resources in the year 1997. The Jammu and Kashmir High Court in *The Majra Singh v.*

¹¹ AIR 1999 Guj 78

¹² AIR 1999 All 41

¹³ AIR 1999 SC 812

¹⁴ AIR 1999 SC 812

¹⁵ (1997) 1 SCC 38



*Indian Oil Corporation*¹⁶ made a passing reference of the doctrine. In *M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahuw*¹⁷, the Supreme Court applies the doctrine in meaningful manner. The Lucknow Mahapalika gave a contract for the construction of an underground shopping complex beneath a park to the appellants. The Major party of the work was completed. The court found that the contract was not only one without inviting tender but also against the Public Trust doctrine. It was held that the Mahapalika had failed in their obligatory duties as a trustee to maintain parks.

In *Maharaja Fetshihnarao Zoo Trust v. State of Gujrat*¹⁸ the petitioner had put up a plea that lands which it held in surplus could not be acquired on the ground that the lands were in private forests and that forest land could not be used for agricultural operations, a non-forest purpose, without the prior approval of the Central Government. The court dismissed this contention and held: "*If there is a forest in the land which is declared surplus, obviously the provisions Forests (Conservation) Act, 1980 would apply and such forest land cannot be put to use for non-forest purpose without the prior approval of the Central Government That requirement of prior approval cannot be utilized by the petitioner for protecting its holding in excess of the ceiling area*".

In *M.C. Mehta v. Union of India*¹⁹ the Supreme Court highlighted the aspect of pollution control in the Taj Trapezium. This case was a sequel to the Taj Case²⁰ decided in 1996 where coal and coke based industries in Taj Trapezium (TTZ) were ordered to either change over to natural gas or to be relocated outside TTZ. The Supreme Court in 1999 remarked. The question is whether the danger to the environment does not require urgent action. The data already

¹⁶ AIR 1999 J&K 81

¹⁷ AIR 1999 SC 2468

¹⁸ AIR 1999 Guj. 346 More judgements on forest protection were laid down in, Tea Plantation. Corporation Ltd. v. Shrinuas Timbers AIR 1999 SC 311; Godavarman's case AIR 1999 SC 43 and AIR 1999 SC 97; Banaswara Marble Mines v. Union of India AIR 1999 Raj 154; Goa Foundation v. Conservator of Forests, Panji AIR 1999 Born 177 and Indian Wood Produces Co. Ltd. V. State of UP AIR 1999 All 222.

¹⁹ AIR 1999 SC 3192. More-decisions on control of pollution were given in, Obayya Pujari v. KSPCB Bangalore AIR 1999 Kant 157; The Majra Singh v. IOC AIR 1999 J&K 81; Utpal Barbara v. State of Assam AIR 1999 Gaj 78; Citizen Council v. State of Bihar AIR 1999 Pat 1 ; VedKaWChandel v. State of He AIR 1999 HP 59 and SuoMota v. Secretary, Home Govt. of Gujrat AIR 1999 Guj. 326.

²⁰ M.C. Mehta v. Union of India AIR 1997 SC 734



collected shows high levels of pollution is Agra in this area affecting the environment in TTZ area.

In the year 2000 judgments given by the courts pertaining to environment covered matters relating to encroachment of public places; nuisance by smoke; pollution of stream water and garbage clearance. The Court emphasized on protection of forests and wildlife from unauthorized encroachments.

In *Kuldip Singh v. Subhas Chandra Jain*²¹, The plaintiff feared that the baking oven and 12 foot chimney built by his neighbor would cause a nuisance when the bakery commenced. The trial court restrained defendant on the ground that operation of oven 'would result in emitting smell and generating heat and smoke which taken together would an output to nuisance'. Drawing the distinction between existing nuisance and future nuisance the court held: "*In case of future nuisance, a mere possibility of injury will not provide the plaintiff with a cause of action unless the threat be so certain or imminent that an injury actionable in law will arise unless prevented by an injunction. The Court may not require proof of absolute certainty or a proof beyond reasonable doubt before it may interfere; but a strong case of probability that the apprehended mischief will in fact arise must be shown by the plaintiff*". The Apex court held that the plaintiff's apprehension about a smoke from the oven next door causing a nuisance was not justified."

Objectives of study:

Environment is the key for existence of life on the earth. However, recent research studies show that there is drastic change in the environment as a function of various anthropometric activities, which led to global warming, excessive pollution of the environmental compartments, uncontrolled industrialization etc. Basically, the natural environment is a precious gift of nature and we the humankind need to conserve it for the benefit of life in future. The environment is an important issue even when society is faced with numerous issues like economic crises, wars, and unending social problems. It matters because Earth is the only home that humans have, and it

²¹ 2000 (2) Scale 582



provides air, food, and other needs. Environment is the sole factor for existence of life on earth. Without it, there can be no life on earth. In our solar system there are other big planets but, having no life due to lack of environment.

hypothesis:

Environment and Constitution of India

The protect and improve the environment is a constitutional mandate. It is a commitment for a country wedded to the ideas of a welfare State. The Indian Constitution contains specific provisions for environment protection under the chapters of Directive Principles of State Policy and Fundamental Duties. The absence of a specific provision in the Constitution recognizing the fundamental right to clean and wholesome environment has been set off by judicial activism in the recent times.

Articles 48-A and 51-A. Clause (g):

Initially, the Constitution of India had no direct provision for environmental protection. Global consciousness for the protection of environment in the seventies, Stockholm Conference and increasing awareness of the environmental crisis prompted the Indian Government to enact 42nd Amendment to the Constitution in 1976. The Constitution was amended to introduce direct provisions for protection of environment. This 42nd Amendment added Article 48-A to the Directive Principles of State Policy.

Article 49-A:

The Article states:

“The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.” The said amendment imposed a responsibility on every citizen in the form of Fundamental Duty.

Article 51-A, Clause (g):

Article 51-A (g) which deals with Fundamental Duties of the citizens states:

“It shall be the 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.” Thus, protection and improvement of natural environment is the duty of the State (Article 48-A) and every citizen (Article 51- A (g)).

Article 253:

Article 253 states that ‘Parliament has power to make any law for the whole or any part of the country for implementing any treaty, agreement or convention with any other country. In simple words this Article suggests that in the wake of Stockholm Conference of 1972, Parliament has the power to legislate on all matters linked to the preservation of natural environment. Parliament’s use of Article 253 to enact Air Act and Environment Act confirms this view. These Acts were enacted to implement the decisions reached at Stockholm Conference.

Environment and Citizens:

The Constitution of India has made a double provision:

- (i) A directive to the State for protection and improvement of environment.
- (ii) Imposing on every citizen in the form of fundamental duty to help in the preservation of natural environment. This is the testimony of Government’s awareness of a problem of worldwide concern. Since protection of environment is now a fundamental duty of every citizen, it is natural that every individual should do it as personal obligation, merely by regulating the mode of his natural life. The citizen has simply to develop a habitual love for pollution.

Article 14 Protection of the Environment

14.1

The Government and the Contractor recognize that Petroleum Operations will cause some impact on the environment in the Contract Area. Accordingly, in performance of the Contract, the Contractor shall conduct its Petroleum Operations with due regard to concerns with respect to protection of the environment and conservation of natural resources and shall in particular; (a) employ modern oilfield and petroleum industry practices and standards including advanced techniques, practices and methods of operation for the prevention of Environmental Damage in conducting its Petroleum Operations; (b) take necessary and adequate steps to: (i) prevent Environmental Damage and, where some adverse impact on the environment is unavoidable, to minimize such damage and the consequential effects thereof on property and



people; (ii) ensure adequate compensation for injury to persons or damage to property caused by the effect of Petroleum Operations; and (c) comply with the requirements of applicable laws and the reasonable requirements of the Government from time to time.

14.2

If the Contractor fails to comply with the provisions of paragraph (b)(i) of Article 14.1 or contravenes any relevant law, and such failure or contravention results in any Environmental Damage, the Contractor shall forthwith take all necessary and reasonable measures to remedy the failure and the effects thereof.

14.3

If the Government in accordance with the laws has good reason to believe that any works or installations erected by the Contractor or any operations conducted by the Contractor are endangering or may endanger persons or any property of any person, or are causing or may cause pollution, or are harming or may harm fauna or flora or the environment to a degree which the Government deems unacceptable, the Government may require the Contractor to take remedial measures within such reasonable period as may be determined by the Government and to repair any damage to the environment. If the Government deems it necessary, it may also require

Conclusion:

Environmental law is undoubtedly a pillar of environmental protection, but after many decades, it is still suffering in most of the world due to poor implementation. As a result, the organization of the courts and their environmental sensibility, as well as the national systems of access to justice, have become crucial issues in the implementation of both environmental law and the principle of sustainable development. In this perspective, especially in developing or recently developed countries, the current trend has been to build up specialized courts and tribunals to deal with environmental cases and to make the access to justice easier for citizens, NGOs, and disadvantaged groups.

References:

- Aparajit, J. L. (2003). Judicial Response towards The Protection of Environmental: A critical Evaluation JiLT, 1(97), p. 99.
- ¹ The Week, Dec, 1, 2002 at p. 6.
- AIR 2000 Guj. 33
- ¹ AIR 2001 SC 1846
- ¹ AIR 2001 Delhi 455, Noise Pollution was also dealt in SayeedMaqsoor Ali v. The State of MP, AIR 2001 MP 220



- ¹ Murli S. Deere v. Union of India, 2002 (1) JCR 5(SC)
- ¹ AIR 2002 SC 1913
- ¹ Id At. 1930
- ¹ Supra note 24 at 146
- ¹ Decide 64 Patna High Court on 26th October 2010
- ¹ Id At 66, 67.