



Judicial contribution in enhancing environmental jurisprudence

Dr. VG Shinde

Assistant Professor, Law College, Osmanabad, Maharashtra, India

Abstract

Healthy environment is need of everyone. It impacts our life in several ways. Therefore, it is our duty to protect environment, the environmental protection is need of day. Today we witness ecological imbalance, degrading environment, depredated earth, traumatic subversion of the eco-system, poisoning of air, water and food and technological plunder of resources of nature. Constitution of India is basic law of land and played very important role in protection of environment. It is observed that, Indian Constitution contains several provisions which require the State and the citizens to protect environment. Indian judiciary is said to be the first to show greater concern and due attention to the protection of environment from various pollinations. A perusal of the thought provoking decisions of various High Court's as well as the Supreme Court speaks volumes about the significant role played by the judiciary has opened new aspirations in the arena of environmental protection. Through its activist approach took initiative in development of environmental Jurisprudence.

Keywords: environmental pollution, protection of environmental, judicial activism, environmental jurisprudence, role of the judiciary

Introduction

In India protection of environment is not a new concept but has been prevalence from times immemorial. During ancient times man and environment were said to be inseparable. Tremendous use of science and technologies have given birth too many problems of the environmental protections. Healthy environment is need of everyone. It impacts our life in several ways. Therefore, it is our duty to protect environment, the environmental protection is need of day. Today we witness ecological imbalance, degrading environment, depredated earth, traumatic subversion of the eco-system, poisoning of air, water and food and technological plunder of resources of nature. The global community including India facing problems like global warming, cyclones, earthquake, tsunami, flood, draught, and what not. Air, water, land pollution and radiation have leads to the contamination of food with chemicals which leads to causes serious diseases to living beings. Therefore protection of environment shall not be neglected at the cost of human life and loss of living being from the earth. To meet these challenges to mankind various measures have been adopted in India. The development of the environmental jurisprudence in India through the innovative judicial decisions of the Supreme Court and High Courts is probably great inspiration to protection of environment. Judiciary played significant role it has opened new aspirations in the arena of environmental protection. Through its activist approach took initiative in development of environmental Jurisprudence

Methodology

The researcher methodology used for the present research article doctrinal research method. As most of the information can be sought from the available literature, so the researcher

has chosen doctrinal method as method of research for the present article and has used books, laws, case laws, journals, research articles for preparation of the same.

Objectives of the Study

The main objectives of the research work are:

1. To study the concept of environment justice in detail.
2. To analyze the role of the judiciary in protection of environment.
3. To find out Constitutional mandate about protection of environment.
4. To study role of judiciary in implementation of environmental administration in India.

Concept of Environment and Pollution

In India protection of environment is not a modern concept but has been prevalence from times immemorial. During ancient times man and environment were said to be inseparable. Environment includes everything on the earth in natural state. It majorly includes soil, stone, water, air, living creatures also. The concept of environment cannot be defined precisely. Environment means sum total of all conditions and influences that affects the development of life of all organisms^[1]. According to *McLaughlin* environmental pollution means introduction by man into any part of the environment, of wastes, water energy or energy or surplus energy which so changes the environment directly or indirectly adversely to affect the opportunity of men to use or enjoy it. Environmental pollution means the presence in the environment of any environmental pollutants^[2]. As per section 2 (b) of Environment (Protection) Act, 1986, environment pollution means any solid, liquid or gaseous substance present in such concentration as may be or tend to be injurious to

environment. In other words it can be also stated as the unfavorable alteration of our surroundings. Environmental pollution is categorized as air pollution, water pollution, soil pollution etc. The environmental pollution caused due to industrialization, urbanization and due to natural calamities also. It is very derogatory for human life and all living beings.

Importance of Environmental Protection

There is abundantly use of science and technologies have given birth too many problems of the environmental protections. Healthy environment is need of everyone. It impacts our life in several ways. Therefore, it is our duty to protect environment, the environmental protection is need of day. Today we witness ecological imbalance, degrading environment, depredated earth, traumatic subversion of the eco-system, poisoning of air, water and food and technological plunder of resources of nature. The global community including India facing problems like global warming, cyclones, earthquake, tsunami, flood, draught, and what not. Air, water, land pollution and radiation have leads to the contamination of food with chemicals which leads to causes serious diseases to living beings. Therefore protection of environment shall not be neglected at the cost of human life and loss of living being from the earth. To meet these challenges to mankind various measures have been adopted in India including legal measures. Many laws have been passed by the Indian Parliament and State legislatures to minimize problem of environmental pollution.

Constitutional Mandate

Constitution of India is basic law of land and played very important role in protection of environment. It is observed that, Indian Constitution contains several provisions which require the State and the citizens to protect environment. Though in the Constitution as it stood on 26th Jan, 1950, there was no specific provision for environmental protection, there were other significant provisions, like Article 21 of the Constitution stated as No person shall be deprived of his life or personal liberty except according to procedure established by law. The state shall make provisions for security just and humane conditions of work and for maternity relief^[3]. The State shall regard the rising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the state shall endeavor to bring about prohibition of the consumptions for medicinal purposes of intoxicating drinks and of drugs which are injurious to health^[4]. It shall be obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by parliament, to be a national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be^[5].

The Stockholm Declaration of 1972 however resulted in several amendments to the Constitution. 42nd amendment^[6] under directive principles of State policy says that the State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country^[7]. There after a new chapter added to the Constitution by the same amendment act directing to protect and improve the natural

environment including forests, lakes, rivers and wildlife and to have compassion for living creatures^[8]

In India the law relating to environment has gained significant movement only through the public interest litigation. It is an instrument for seeking administration of justice when there is gross violation of fundamental rights. There is a the original jurisdiction of Supreme Court and High Courts under Article 32 and 226 of the Constitution is a remarkable step forward in providing protection for the environment. Courts have widened the dimensions of the substantive rights to health and a clean and unpolluted environment. In *Tarun Bharat Sangh Alwar v. Union of India*^[9] a social action group challenged the legality of granting a mining license in the protected area of a reserved forest. Upholding the contention the Supreme Court observed that, this litigation should not be treated as the usual adversarial litigation. Petitioners are acting in aid of a purpose high on the national agenda. Petitioners concern for the environment ecology and the wildlife should be shared by the government.

In *M. C Mehta v. Kamal Nath*^[10] the court held that as a trustee of all natural resources was under a legal duty to protect them, and that the resources were meant for public use and could not be transferred to private ownership. The most remarkable contributions of Judiciary have been adoption of sustainable development as a hardcore of environment in India.

Judicial Contribution in Environmental Jurisprudence

Indian judiciary is said to be the first to show greater concern and due attention to the protection of environment from various pollinations. A perusal of the thought provoking decisions of various High Court's as well as the Supreme Court speaks volumes about the significant role played by the judiciary has opened new aspirations in the arena of environmental protection. Through its activist approach took initiative in development of environmental Jurisprudence.

Sustainable Development

M C Mehta v. Union of India^[11] while taking note of the disastrous effects that the emissions from the Mathura Oil Refinery had on the *Taj Mahal* Supreme Court applied the principle of sustainable development to the case and apart from passing various directions stepped in to execute and surprise the resultant actions.

Right to Live in Pollution Free Environment

M C Mehta v. Union of India^[12] the Supreme Court treated the right to live in pollution free environment as a part of fundamental right to life Under Article 21 of the Indian Constitution. Also A. P. High Court in *T. Damodar Rao v. S. O. Municipal Corporation, Hyderabad*^[13] laid down that right to live in healthy environment was specifically declared to be part of Article 21 of the Constitution.

Absolute Liability Principle

In the *M C Mehta v. Union of India (Oleum Gas Leak Case)*^[14] the principle was adopted to compensate victims caused by inherently dangerous industries. Also in *Narmada Bacho Andolan v. Union of India*^[15] Supreme Court held that, the

precautionary principle could not be applied to the decision for building a dam whose gains and losses were predictable and certain.

Public Trust Doctrine

In case of *M C Mehta v. Kamal Nath*^[16] where in attempt was made to divert flow of a river for augmentation facilities at a motel, it was held that, State and its instrumentalities as trustees have a duty to protect and preserve natural resources also in *M I Builders Pvt. Ltd. V. Radhet Shyam Sahu*^[17] s city development authority was asked to dismantle an underground market built beneath a garden of historical importance

Application of Law of Public Nuisance

In *Ratlam Municipal Corporation v. Vardihchand*^[18] Supreme Court made the use of dormant provisions of code of criminal procedure 1973 as a potent instrument for resolving pollution problems and for the enforcement of statutory duty.

Precautionary Principles

A. P. Control Board v. M. V. Nayudu and Others^[19] in this case Supreme Court was called upon to decide a question as to whether a cashew factory was a polluting unit. The Court relied upon precautionary principle and explained that the principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose least environmentally harmful activity. In *Vellore Citizen's Welfare Forum v. Union of India*^[20] the precautionary principle established that, a lack of information does not justify the absence of management measures. On the contrary management measures should be established in order to maintain the conservation of the resources. The assumptions and methods used for the determination of the scientific basis of the management should be presented.

To Stop Illegal mining hazardous to Environment

In the *R.L. & E. Kendra and Others v. State of U P*^[21] (Popularly known as Dehradun Quarrying Case) the Supreme Court complained about the illegal / unauthorized mining in the Missouri, Dehradun belt. As a result the ecology of the surrounding area was adversely affected and it leads to the environmental disorder. The Supreme Court treated the letter as a writ petition under Article 32 of the Constitution and directed to stop the excavation (illegal mining).

Polluter pays Principles

The main object of this principle is to make the polluter liable for the compensation to the victims. In *Vellore Citizen's Welfare Forum v. Union of India*^[22] the Court held that, precautionary principle and the polluter pays principle are part of environmental law of the country.

Suggestions

After analysis of need and importance of environmental protection and judicial contribution in environmental protection the author would like to recommended following suggestions

1. It is essential things that, all Government must be an effective implementation plan and monitory mechanisms.

2. There must be implement existing legal framework and stringent punishments must be provided for violations of environmental rules and regulations
3. Guidelines on preventions of industrial pollutions must be supervised and monitored by environmental pollution boards.
4. To establish of fast tract courts to tackled problems of environmental pollution.
5. There must be required mass education and awareness environmental pollution
6. It is duty of each country and their citizens to maintain ecological balance.

Conclusion

Since primitive society loves environment and environment in turns nourishes them. Environment and society are thus interdependent and it is duty of society to protect environment. Therefore, In India number of Act enacted by Parliament for the protection of environment, and effectively interprets by the court of law. Indian judiciary has been very sensitive and alive to protection of environment. The Supreme Court has refashioned its institutional role to readily enforce rights of the people to clean and healthy environment and even impose positive obligations on the state. It is not only duty of judiciary to protect the environment, but it is duty of every country and their citizen to protect the environment.

Reference

1. R.P. Anand Law, Science and Environment Ed. 1987 P. xxix
2. U/S 2 (c) of the Environment (Protection) Act,1986
3. Article 43 of the Indian Constitution
4. Article 47 of the Indian Constitution
5. Article 49 of the Indian Constitution
6. The Constitution (Forty-second amendment) Act,1976 (which came into force on 03/01/1977)
7. Article 48 A of the Indian Constitution
8. Article 51 (a) (g) of the Indian Constitution
9. AIR 1992 SC 514
10. (1999) 1 SSC 702
11. AIR 1997 SC 734
12. AIR 1987 SC 1086
13. AIR 1987 A. P 171
14. AIR 1987 SC 1086
15. AIR 2000 SC 375
16. (1996) 1 SCC 38
17. AIR 1996 SC 2468
18. AIR 1980 SC 1622
19. AIR 1999 SC 812
20. AIR 1996 SC 2718
21. AIR 1988 SC 2187
22. AIR 1996 SC 2718