

Environmental Problems and Role of Judiciary: An indepth Study

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Abstract: Environmental pollution is one of the burning problems of today which has arrested the minds of many statesman, politicians, judges and environmentalists. In the year 1986 Environment protection Act was passed. The objective of this Act is to protect and improve the environment and environmental conditions and to take strict actions against all those who harm the environment. Article 47 of the constitution declares raising of the level of nutrition and the standard of the living of its people and improvement of public health as one of the primary duties of the state. Article 48 provides that the state shall endeavour to protect and improve the environment and to safeguard forest and wildlife of the country. Article 51-A (g) says that. "It shall be duty of every citizen of India to protect and improve natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures". Specific legislative measures to contral environment pollution'. Parliament of India has also passed some special statutes for the environment protection. The supreme court has laid down that the "Precautionary principle" and the "polluter pays principle" are the essential features of "sustainable development". These concepts are part of environmental law of the country.

I. INTRODUCTION

Protection and promotion of the human rights enshrined in the two covenants is also dependent upon a number of factors. Important amongst them are the material conditions and restructure of the social and economic order. Environment too has an impact on human rights. It therefore has to be conserved. It is required that environment is protected from pollution which may be caused due to change in physical, chemical or biological conditions. Pollution harmfully affects the quality of human life. Presently, the growing environmental pollution and its unpleasant ramifications have posed many problems in the entire India. Heavily industries areas of India have been affected by the pollution in all its forms. Polluted environment affects directly in the health, mental as, well as physical of human beings, and therefore, it is human being alone whose survival has become difficult due

to change in physical, chemical and biological conditions in the environment. Discharge effluents and the atmosphere, oil spills, dumping, acid rains and noise are some of the instances of pollutions that has considerably affected the quality of human life. They have a direct impact on a number of economic, social, cultural and civil and political rights. However the Indian judiciary has responded to these naked issues more promptly than the legislature by the process of "Judicial activism". The social change and judicial activism infused life in the legislature to respond accordingly. So a comprehensive legislation for the protection of environment was passed along with appropriate amendments in existing laws.

In Hinduism, we find that from Vedic period, the environment was part of ethos of ancient people. In Rig Veda it is mentioned that the universe consists of five basic elements. They are Earth, Water, Air, Fire and Ether (space). These five elements provide the basis for life in everything and man is ordained to conserve them. It is further ordained that nobody will destroy vegetation and no one shall kill animals. Thus, it shows compassion for both animals and plants. The Yajna or sacrificial fire, apparently done to worship one or the other deity, also help in purifying the air and thus keeping the environment health. In Yajurveda, the significance of Yajna has been explained by stating that butter and firewood are offered into the sacrificial fire, it dissolves them to their subtlety so as to settle in the atmosphere and thus making it free from impurities and stink. Similarly, Samaveda also highlights the importance of sacrificial fire as it helps in keeping away the mosquitoes and other insects. Yajna or sacrificial fire is also considered the cause of biological evolution. Sholoka 14 of chapter 3 of Shri Bhawat Gita explains that the blood and the semen is chemical transformation of the cereal consumed. From the seminal sperm creatures are begotten. But the cereal grows because of water that rains and the rains are brought about through the Yajna or the sacrificial fires. In the Manusmriti also it is stated

that the Yajna or sacrificial fire is the cause of biological evolution¹.

II. MEANING OF ENVIRONMENT

The term “Environment” is formulated on the word “Environ” derive from the French word “Environner” which means “to surround” Thus, the term “Environment” literally means The surroundings and conditions under which man lives and works”. In other words “It is physical and biological world that we live in”

As per the encyclopaedia Britannica, “The environment means the entire range of external influence acting on an organism, both the physical and biological, and other organism, i.e. forces of nature surrounding an individual”.

According to section 2 (a) of the Indian environment protection act, 1986, the term “environment” includes” water, air and land, and the interrelationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organisms and property.

Dr. T.N. Khoshoo:- (Secretary Dept. of Environment Govt, India) defines environment as “the sum total of all conditions and influences that affect the development and life of all organs”.

III. MEANING OF ENVIRONMENTAL POLLUTION

The word “pollution” is derived from the Latin word “polluere” which means to contaminate any feature of the environment” or “to soil or defile.”

Pollution means “any introduction by man, directly or indirectly of substance or energy into the environment resulting in deleterious effects of such a nature as to endanger human health, harm living resources, eco-systems and material property and impair amenities or interfere with other legitimate uses of environment”².

Pollution occurs when there is potential for harm. Harm for man is not confined to physical injury but encompasses offence caused to any of his senses, harm to his property, therefore smells and noise which may not cause injury can constitute pollution harm to living organisms can include harm to their health or interference with the ecological systems of which they form a part.³

IV. CONSTITUTIONAL AND LEGAL POSITION

The constitution of India came in to force on 26 January 1950 at that time no specific provision was directly deal with environment, only provision which has some relations with environment that is article 47 of the Directive Principle of state policy which reads.

“The state shall regard the raising of the level of nutrition and standard of living of its people and improvement of public health as among its primary duties”.

Article 48 A of the constitution of India which was inserted by the constitution (42nd Amendment) Act, 1976 in part IV of the constitution of India containing the directive principles of state policy states that “the state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”.

Article 51-A (g) in part IV-A containing fundamental duties which was inserted by the constitution (42nd Amendment) Act, 1976 it shall be the duty of every citizen of india to protect and improve the nature environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

In a number of cases the supreme court of India has passed direction to the central government and the authorities to take measures in the field of environment protection and the court has gone to the extent of declaring that by virtue of article 21 of the constitution of India every citizen has a right to healthy environmental pollution free life and personal liberty. To illustrate this point the Supreme Court in Hinchlal Tiwari V. Kamla Devi⁴, has held that the material resources of the community like ponds, forests and mountains etc, are bounty of nature. They are responsible for maintaining ecological balance all over. Therefore, they need to be protected for proper and healthy environment which enables people to enjoy quality of life which is the essence of the guaranteed right under article 21 of the constitution of India. Thus, the government and its agencies are under constitutional obligation to protect and improve the natural environment. When the constitution itself provides concept and object for protection and improvement of natural environment then an act to provide for the protection and improvement of environment and for

matters connected there with cannot be said to be unconstitutional in any way.

In another case, the Andhra Pradesh High Court in *T.Damodar Rao v. the special officer, Municipal Corporation of Hyderabad*,⁵ has held that article 48-A of the constitution imposes an obligation on the government and courts to protect the environment.⁶

Article 21 of the constitution, speaks “no person shall be deprived of his life or personal liberty except according to procedure established by law”

Article 21 is the heart of the fundamental rights and has received expanded meaning from time to time after the decision of the Supreme Court in *Maneka Gandhi vs. Union of India*.⁷ Art 21 guarantees a fundamental right to life a life of dignity to be lived in a proper environment free of danger of disease and infection.

There are various statutory provisions in India which play a very important role in preventing and controlling all kinds of pollution. *Bharatiya Nyaya Sanhita, 2023* makes various acts affecting environment as offences. Section 270 to 297 deals with the offences affecting the public health safety and convenience with a view to safeguard the public health by causing those acts punishable which make environment polluted or threaten the life of the people.

Section 91 of the code of civil procedure, 1908 also contains provisions for the abatement of air and water pollution when it becomes nuisance to the people similarly, the *Bharatiya Nagarik Suraksha Sanhita, 2023* can also be invoked to prevent the pollution of almost of all kinds, section 152 to 163 can provide most effective and speedy remedy for preventing and controlling public nuisance causing air, water and noise pollution. The water (prevention and control of pollution) Act, 1974. “Water” being a “state subject”, parliament can exercise the power to legislate on “water” only under Articles 249 and 252 of the constitution of India.

The Air (prevention and control of pollution) Act, 1981- It is a specialized legislative measures, meant to tackle one facet of environmental pollution. The main objectives of the Act are:- To provide for the prevention, control and abatement of air pollution.

The environment (protection) Act, 1986 This act was enacted under the provisions of article 253 of

the constitution with a view to implementing the decisions of the United Nations Conference on the Human Environment, which was held in Stockholm in the year 1972.

The Supreme Court has laid down that the “precautionary principle” and the “polluter pays principle”

V. THE PRECAUTIONARY PRINCIPLE

“Where there are threats of serious or irreversible environmental damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. The implication of this duty is that the developers must assume from the fact of development activity that harm to environment may occur and that they should take necessary action to prevent that harm. This principle is known as precautionary principle”⁸.

VI. “POLLUTER PAYS” PRINCIPLE

This principle has been outlined by the Supreme Court in *Indian Council for Enviro-legal Action v. Union of India*⁹, under article 32, the Supreme Court awards damages against those who disturb ecological balance by causing pollution in the environment. The “polluter pays” principle is a means of paying for the cost of pollution. The polluter is under an obligation to make good the damage caused to the environment.

The rule is presumed upon the very nature of the activity carried on. Consequently, the polluting industries are absolutely liable.

The Supreme Court has laid down that the “precautionary principle” and the polluter pays principle” are the essential features of “sustainable development”. These concepts are part of environmental law of the country.

VII. ROLE OF JUDICIARY

In rural litigation and entitlement *Kendra v. State of U.P.*¹⁰, the court had ordered the closure of certain lime stone quarries on the ground that there were serious deficiencies regarding safety and hazards in them. The court had appointed a committee for the purpose of inspecting certain lime stone- quarries. The committee had suggested the closure of certain categories of stone quarries having regard to adverse impact of mining operations therein. A large scale

pollution was caused by lime stone quarries adversely affected the safety and health of the people living in the area.

In *M.C Mehta v. Union of India*¹¹, the Supreme Court ordered the closure of tanneries at Jajmau near Kanpur, polluting the Ganga. The matter was brought to the notice of the court by the petitioner, a social worker, through public interest litigation.

In *M.C Mehta V. Union of India*¹², (popularly known as Oleum Gas Leak Case) The Supreme Court treated the right to live in pollution free environment as a part of fundamental right to life under Art.21 of the constitution.

In *F.K Hussain V. Union of India*¹³, the Kerala High Court held that the right to sweet water and the right to free air, are attributes of the right to life under Art 21 of the constitution, for, those are the basic elements which sustain life itself.

Supreme Court in *Municipal Council V.S Vardhi Chad*¹⁴ ordered the municipality to construct drainage system to give relief to the residents who were tormented by the stench caused by open drains and excreta of the slum dwellers.

In case of *Subba Rao VS. State of HP*¹⁵, In this aforesaid case the hon'ble Supreme Court accepted public interest litigation and directed the closure of a bone factory that was polluting the environment by its pungent smell and making the life of the people miserable.

The Supreme Court in *Milk Producers Association, Orissa V. State of Orissa*¹⁶ has rightly observed that "in civil society, town planning indisputably plays an important role. Unauthorised occupation by the encroachers in the areas which are meant for planned development goes a long way in thwarting the goals sought to be achieved by such town planning."¹⁷

In *Sushila Saw Mill v. State of Orissa*¹⁸, the supreme court held that the right to carry on any trade or business envisaged under article 19 (1)(g) is subject to statutory regulation. When the statute prescribes total prohibition to continue to operate even the existing saw mills situated within the prohibited area, the right to carry on trade or business is subject to the provisions of the Act.

In *T.Damodar Rao and others vs. The special officer, municipal corporation, Hyderabad*¹⁹, the

hon'ble court observed that protection of environment is not only duty of the citizens but is also obligation of the state and all other state organs including the court. It that extend environmental law and personal liberty from the clutches of common law theory of individual ownership.

VIII. CONCLUSIONS AND SUGGESTIONS

Despite the notable changes in laws, its implementation, the whole system still lacks coordination with the social change. Now the principle of criminal liability has been extended in water and Air Acts. But the administration of criminal justice requires a number of procedural formalities and a complex evidence system. The pollution control laws of other countries are developed more and more towards civil laws, especially law of torts to avoid these formalities and to provide damages to the victims of environmental hazards.

Environmental safety has also become an additional dimension for the determination of legal policy with respect to human activities undertaken or about to be initiated for promoting the social, economic and political orders of human communities.

In each case the judges have provided specific case remedies without going into the rationalisation of various provisions of existing laws which have hampered the human rights. Ad-hoc remedies by the courts are not long term solution in wider perspectives.

Last but not the least the response of the governments and legal systems keeps the hope alive that India will be able to generate social mechanisms to avert the ecological disaster and lead the way for many other developing nations.

In the light of above study, the following suggestions are being extended.

1. Both the private industries and the public sector undertakings should be made equally liable under the laws for environmental violations. It should be made clear that the latter should not escape liability under the old sovereign immunity argument.
2. The industries should be asked to set apart at least one percent of their revenues to be used for the environmental protection.
3. Licensing of industries should be conditional upon environmental safeguard. There should be

public hearing of licensing proceedings and any number of the public should have a right to participate in such proceedings.

4. The punishment provision should be strengthened individual should have a right to sue a pollution control board for its inaction or misaction.
5. The tortious liability of local bodies, companies and public sector undertakings should be specified in terms of principles of strict liability and a victim of pollution should have a right to resort in court of justice directly.
6. India's environmental policy should be based on integrated approach, taking into account a wide variety of factors, including the cultural factors of the community.
7. Legislation will hardly serve any useful purpose unless (a) it has parity with the social change, (b) a strong public opinion is built up, (c) a proper implementation is ensured
8. The judicial activism in public interest litigations regarding environmental protection and remedy to the victims is a welcome development to avoid specific case remedies the court should go into the rationalisation of existing laws encroaching upon the human rights so as to repeal and amend them.
9. In formulation of national policy for environmental protection, environmental scientists, social activists, legal activists, employers and employees of hazardous industries should have proper representation along with administrative authorities under various Acts.

Lastly, in summing up, the environmental movement even today are mostly limited to seminars, workshops and at the most to discussions by the elite. There is a misunderstanding that these intellectual exercises may create ecological and environmental consciousness. Even the best legislation is ineffective till the masses are a woken and organised.

NOTES & REFERENCES

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- [2] This definition was adopted by the "International law associating is the committee on legal aspects of the conservation of the

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- [4] 2001 (6) SCC 496.
- [5] A.I.R 1987 A.P 171.
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- [10] (1985) 2 SCC 431
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- [16] (2006) 3, SCC 229
- [17] Milk Producers association, Orissa v.state of Orissa (2006) 3 SCC 229 at P.No 239.
- [18] AIR 1995 SC 2484.
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