



Expanding horizons of environmental jurisprudence: A judicial creativity in India

Dr. VG Shinde¹

¹ Associate Professor, Law College, Osmanabad, Maharashtra, India

Abstract

Environmental jurisprudence is a developing branch of law in India. Degradation of environment is most alarming stage in human history which may result in to complete elimination of human race and other living things from on the earth. There is abundantly use of science and technologies have given birth too many problems of the environmental protections. Healthy environment is need of everyone. Due to polluted environment adverse impacts took place our life in several ways. This growth is conspicuous by the remarkable activism on part of the judiciary and legislature in the latter part of 20th century. A large number of socioeconomic problem faced in the nation were discussed by the courts in various cases over a broad range of issue which cropped up from time to time with the eventuality that old laws were sharpened to meet the changing social needs. New laws were framed to meet the emerging challenges the environmental protection. Indian judiciary is said to be the first to show greater concern and due attention to the protection of environment against the environmental pollution in India. 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: environment, environmental jurisprudence, role of the judiciary, protection of environment, judicial activism

Introduction

Protection of environment is an increasing issue all over the world. Many countries and most of the organization have paid attention towards environment protection. World 'Environment Day' is celebrated every year on 5th June since 1973 to raise the global awareness regarding the environment, but day by day surrounding environments being damaged and degrading due to using ample of natural sources. Environmental jurisprudence is a developing branch of law in India and has not yet established its roots firmly in the soil of the Indian judicial system through we can definitely say that such roots have struck water. This growth is conspicuous by the remarkable activism on part of the judiciary and legislature in the latter part of 20th century. A large number of socioeconomic problem faced in the nation were discussed by the courts in various cases over a broad range of issue which cropped up from time to time with the eventuality that old laws were sharpened to meet the changing social needs. New laws were framed to meet the emerging challenges the environmental protection. The legislative and executive efforts have been over the past two decades towards including the principles of environmental protection in the legal jurisprudence in India. Most-notable thing is the 42nd amendment to the Constitution of India in 1976 which explicitly laid a part of the Constitutional mandate and enforcement of the environmental protection Act, 1986. Though there have been initiatives taken by the legislature and executive, the judiciary has taken a lead in this race through carefully judicial thinking of the Supreme Court which has been providing more tools both qualitatively and quantitatively to deal with issues related to environmental protection.

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 in detail
2. To analyze the Constitutional measures in protection of environment
3. To study judicial pronouncements in upholding environmental rights
4. To find out judicial approaches about protection of environment

Concept and meaning of environment

Development of modern technology and ample use of science encroached upon environmental ethics. Every country has full of right to utilize its natural resources. India has also having ample of natural resources. A natural resource plays an important role for development of the nation. The concept of environment cannot be defined precisely. It is old concept of the Nature itself. Environment means sum total of all conditions and influences that affects the development of life of all organisms^[1]. Environment includes water, air and land and interrelationship which exist among. This is an expression of very wide amplitude as it takes into accounts all these factors which directly or indirectly have bearing upon natural

surroundings of human being. As per *Dr. T. N. Khoshoo* environment means it is sum total of all conditions and influences that affect the development and life of all organs. Environment includes water, air, land and the inter relationship which exist among and between water, air, land human beings, other living creatures, plants, micro-organisms and property. It is observed that, environment is an inseparable whole and is constituted by the interacting systems of physical and biological elements which are interlinking individually as well as collectively in myriad ways. Physical elements i.e., space, landforms, water bodies, climates, soils, rocks, and other minerals determine the variable characters of the human habitats. Biological elements means plants, animals and micro-organisms etc. Hence Environment includes water, air and land and human beings, other living creatures, plants, micro organisms and property [2].

Need for the environmental laws

Degradation of environment is most alarming stage in human history which may result in to complete elimination of human race and other living things from on the earth. 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

The Constitution of India came in to force on 26th January, 1950. There are several provisions of the Indian Constitution interpret the significance of the environment. Nevertheless certain specific provisions have been included in 1976 by 42nd of the Constitutional amendment and subsequent amendments. The Constitution being the fundamental law of the land has a binding force on citizens, non-citizens as well as the State. The farmer of the Indian Constitution mandates that the Fundamental Rights and Directive Principles of State Policy underline our national commitment to protect and improve the environment. The judiciary also gave a possible interpretation to the Constitutional provision relating to protecting and improvement of the environment.

All citizens are entitled to use and enjoy the natural resources like wells, roads, public resort, maintained by the State funds. They shall not be discriminated on grounds only of their

religion, race, sex, cast, place of birth etc. [3], to make use of general places. The public places, which are part and parcel of the human environment, should be made available to the public. The Preamble of our Constitution ensures socialistic pattern of the society and decent standard of life which can be pollution free environment.

Part III of the Constitution of India incorporates fundamental rights which have been made judicially enforceable; an attempt here is being made to examine this perspective in the context of environmental protection. The Right to a wholesome Environment has been laid down by the Supreme Court in *Maneka Gandhi case* [4] that if law is enacted by a legislature which touches upon the life and liberty of a person then it is mandatory requirement that the procedure established by it for curtailing the liberty of a person must be reasonable fair and just. Environmental pollution which spoils the atmosphere and thereby affects the life and health of the person has been regarded as amounting to violation of Article 21 of the constitution Article 21 of the Constitution is plays a very significance role in the protection of the wholesome rights of the citizens which is residing in India. It contains the fundamental right to life and personal liberty to the all people of the India. Right to life and personal liberty includes the right to have a living environment congenial to human existence. Supreme Court has expanded the scope and ambit of Article 21 to have a dignified life which includes a pollution free environment.

The higher judiciary in various cases significantly interpreted towards the protection of the environment and has received expanded meaning from time to time in various cases. Right to live in healthy environment, pleasant environment, and favorable environment in accordance with established standards [5]. Right to have healthy life, balanced environment; guarantee of the right to live in a pollution free environment for health and life, Right to a clean, healthy environment; Right to safe environment for healthy life; the State and all citizens have to make efforts to conserved, guarantee of fundamental right to life [6], in *Dehradun Quarrying Case* Court stated that, a life of dignity to be lived in a proper environment, free from disease and infection. The right to live in a healthy environment as part of Article 21 of the Indian Constitution.

Part- IV of the Constitution Article 48 A is incorporated with the protection and improvement of environment and safeguarding of forest and wildlife. In *Rfatlam Municipality v. Vardhichand* [7] Supreme Court gave directions for removal of open drains and prevention public excretion by the nearby slum dwellers. As per Constitution improvement of public health and improve the environment and safe guard the forest and wildlife of the country [8]. Similarly Article 51 A (g) was added to the list of fundamental duties. It shall be the duty of every citizen of India to protect and improve the natural environment including forest, lake, rivers, and wells etc., Supreme Court stated that, whenever a problem of ecosystem is brought before the court, the court bound to bear in a mind Article 48 A and 51 A (g) of the Constitution [9].

Legal mechanism in protection of environment

Environmental law is key to protect the environment and control any act which likely to pollute the environment.

Various laws have been framed in India for the protection of environment and some of them are cited as Environmental pollution may be considered public or private nuisance public nuisance causes environmental pollution those who found guilty found of nuisance and causing injury, damages danger or annoyance to public liable to punishment under Indian Penal Code ^[10]. Spreading of infectious diseases dangerous to the life shall be punished; such act will also lead to environmental pollution in the form of public ill-health ^[11]. A person who voluntarily vitiates the atmosphere in any place so as to make it noxious to the health, liable for punishment under Penal code ^[12] Under section 277 of Indian Penal Code 1860, a person who voluntarily corrupts or fouls the water of any public spring or reservoir shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to Rs 500 or with both.

The Code of Criminal Procedure, 1973 deals with maintenance of public order and tranquility has some relevance to the procedural aspects of the offences governed by I P C which in turn may have relevance to the subject of environmental pollution. Section 133, 134, 135 137 138, 139 of Code deals with the procedure about preventive powers has been given to the court. Some other relevant provisions using court may issue order against the pollutant for preventing environmental pollution.

Under the Law of Torts, special damage can be claimed from nuisance maker or violator of environment, The Environment (Protection) Act, 1986, The Water (Prevention and Control of Pollution) Act 1974, The Air (Prevention and Control of Pollution) Act 1981, The Hazardous wastes (Management and Handling) Rule 1989, The Indian Forest Act, 1927

Forest conservation act, 1980 amended, 1988

This Act provide for conservation of forests and for matters connected therewith or ancillary or incidental thereto.

The water (prevention and control of pollution) act 1974 amended 1988

This Act provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water

The forest policy, 1988

The policy that emphasizes the twin objectives of ecological stability and social justice, highlighting the need for stronger conservation measures, it points to symbiotic relationship between tribes and other poor people and forests. It recommends treating local needs as the first charge on forest produce, and creates space for the participation of forest dependent communities in the management of forests.

Judicial creativity

Indian judiciary is said to be the first to show greater concern and due attention to the protection of environment against the environmental pollution in India. 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.

In *Chhetrya Pardushan Mukti Sangharsh Samiti v. State of U. P* ^[13] and in *Subhah Kumar v. State Biha* ^[14] the Supreme Court held that, the Constitution under Article 21 includes the right to enjoyment of pollution free water and air for the full enjoyment of life. In *Charan Lal Sahu Case* in 1991 the Supreme Court interpreted the right to life guaranteed by Article 21 of the Constitution to include the right to a wholesome environment. In case of *Indian Council for Environmental Legal Action v. Union of India* ^[15] Supreme Court held that, the Article 21 includes right to food water decent environment as a part of the right to life enshrined in Article 21 of Constitution. And also intervened and found that the private industrial houses were flouting the provisions of law and accordingly held that the right to life as guaranteed under Article 21 of the Constitutional Law was invaded and seriously infringement by the Private industrial houses. *B. I. Wadhwa v. Union of India* ^[16] this case related to non-performance of mandatory duties of Municipal Corporation, like garbage clearance, scavenging, and cleaning *Delhi* city. Supreme Court held that, non-availability of funds; machinery etc. cannot be pleaded as non-performance of statutory obligation. Directions issued to scavenged and clean *Delhi* city every day and also appoint Municipal Magistrates for trial of offence under Corporation Act.

In another case *Chameli Singh v. State of U.P* ^[17]. Supreme Court held that, Article 21 includes right to food, water, decent environment medical care, shelter and education. *M. C Mehta v. Union of India* ^[18] 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* ^[19] laid down that right to live in healthy environment was specifically declared to be part of Article 21 of the Constitution. In *Ratlam Municipal Corporation v. Vardihchand* ^[20] 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. 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).

In significance decision in *Re Noise Pollution Case* ^[22] the Supreme Court held that, under Article 21 of Constitution every person has right to live with noise free environment which cannot be defeated by exercise of right under Article 19 (10) (a) of the Constitution even in *Resident of Sanjay and Others v. State of Rajasthan* ^[23] High Court given direction for bringing environmental awareness by means of education as a compulsory subject of study shall be implemented at least from the academic year 2004 - 2005. In *M. C Mehta v. Kamal Nath* ^[24] 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. *M. C Mehta v. Union of India* ^[25] 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. In *Vellore Citizen's Welfare Forum v. Union of India* ^[26] the Court held that, precautionary principle and the polluter pays principle are part of environmental law of the country.

Conclusion

Healthy and prosperous life cannot be imaging without healthy environment. Therefore it is not duty of the State but also it is duty of the every citizen of the country to maintain hygienic healthy environment. Legislative body has made the number of effective rules and regulations about the protection of environment. The right to clean and whole some environment is now elevated to the States of fundamental rights there by underlying its preeminent position as a basic rights as judicial creativity. Supreme Court and High Court has taken innumerable measures and a special attention has been taken for protection of environment. Right to life and personal liberty includes the right to have a living environment congenital to human existence. Therefore Supreme Court has expanded the scope and ambit of Article 21 to have a dignified life which includes a pollution free environment.

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