

JUDICIAL CONTRIBUTION TOWARDS PROTECTING ENVIRONMENT

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Abstract

In the modern world most dangerous crises is constantly increasing pollution of the environment. The ecological danger is more serious problem than as compare to others for which urgent attention is now being paid in most of the world. Perfect ecological balance may be impossibility in the wake of growing industrialization and modernization. The irony of situation is that the more the economic and industrial development in the more is the danger to environment.

Keywords: Sustainable development, environment, constitution

INTRODUCTION

“Environment” is not an easy word to define. It relates to surroundings on earth like water, air, soil, etc. Growth & development of human being is depending on the environment. If the environment is not clean then human cannot develop. We need to use the natural sources so as not to damage the ecosystem. The idea of environmental conservation is not a modern phenomenon; it can be seen in ancient civilization. It is stated in Ancient texts that it is each individual's dharma to protect the natural sources such as soil, water, trees and animals that are of great significance to us. In the modern age, the world is influenced by advancement of technology & technologies such as thermal power plants, atomic power plants etc. Global warming & climate change etc. has thus become a global problem.

ENVIRONMENT: Meaning

Climate relates to terrestrial environments such as water, air, soil, etc. Human growth & development is environmentally based.

Environment defines, according to the Webster Dictionary, as the "accumulation of all the external factors and influences that affect the life and growth of an organism on earth."¹

The Environment (Protection) Act, 1986-Section 2(a) addresses environmental issues which “includes water, air and land and the inter-relationship which exists among and between water, air, land, human beings, other living creatures, plants, micro-organism and property”.

WHY THERE WAS NEED FOR ENVIRONMENTAL LAW?

Today we are living in technological era. We can not disregard the damage done to the atmosphere by the atom bombs in Hiroshima and Nagasaki in 1945 world war-II. Owing to day to day creativity & development of technology, it's become part of development but apart from this it spread the risk to human life.

¹ R.M. Lodha, *Environmental Ruin: The Crises of Survival*, Indus Publishing Company, New Delhi, 1993.

Climate & growth is means that they will not end in themselves. Environment & development is for the people, not environment & technology people.²

So there was need of law to protect the environment & human being as well.

Throughout the British Reign in India, climate policy:-

1. Shore Nuisance (Bombay and Kolaba) Act, 1853
2. The Indian Penal Code, 1860
3. The Indian Easements Act, 1882
4. The Fisheries Act, 1897
5. The Factories Act, 1897
6. The Bengal Smoke Nuisance Act, 1905
7. The Bombay Smoke Nuisance Act, 1912
8. The Elephant's Preservation Act, 1879
9. Wild Birds and Animals Protection Act, 1912

After becoming the member of Stockholm Declaration, The Montreal Protocol, Earth Summit & Paris Agreement etc. The aim of the environmental legislation is to protect the environment and natural resources not only for present generations but for future generation also. If the environmental laws are not properly implemented then one can approach higher courts to seek justice.

We have legislative framework:-

1. Water (Prevention and Control of Pollution) Act, 1974
2. Water (Prevention and Control of Pollution) Cess Act, 1977
3. Air (Prevention and Control of Pollution) Act, 1981
4. Atomic Energy Act of 1982
5. The Wildlife (Protection) Act, 1972
6. The Forest (Conservation) Act, 1981
7. Environment (Protection) Act, 1986
8. The National Environment Appellate Authority Act, 1997
9. Public Liability Insurance Act (PLIA), 1991
10. National Green Tribunal Act, 2010

JUDICIAL CONTRIBUTION TO PROTECT ENVIRONMENT

India's Supreme Court has played a very significant role through Public Interest Litigation in the field of environmental law. There are various cases where Supreme Court & High Court used the tool Public Interest Litigation to protect the environment. The S.C. of India in various matters elaborated the scope of Article-21 of the Constitution, which deals with the security of life and personal freedom-No person shall be deprived of his life or personal liberty except as provided for by law. The right to the word of life was defined in this respect by S.C. For time to time its scope expanded, included within its framework the right to clean & safe climate. To clean & healthy environment include right to protection against Noise Pollution& access natural resources.

Environmental conflicts are viewed as cases involving a violation of human rights. Pursuant to Articles 32 and 226 of the Constitution of India, the Public Interest Litigation in India initiated by the Hon'ble Supreme Court through Human Rights jurisprudence & Environmental Jurisprudence Individual may directly approach the Supreme Court and the High Courts in respect of environmental matters.

Constitutional rules relating to environmental regulations

India's Constitution is among the few in the world which contains unique environmental protection provisions. The values of public policy and the basic duties of the chapters directive are clearly set out in the

² Dr. Paramjit S. Jaiswal & Dr. Nishtha Jaiswal , et.al, Environmental Law,p.98,Allahabad Law agency Publisher, Faridabad(Haryana)4th Ed,2016.

nation's commitment to protecting and improving the environment. In the 42nd constitutional amendment, 1976 imposes such environmental obligations on the part of the people [Art- 51A(g)] and on the states (Art 48-A) both.

Article 48-A“The State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country.” The amendment also included Section VI-A (Core Duty) in the Constitution.³

Article 51-A (g) “It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes,, and wildlife and to have compassion for living creature⁴.”

The Supreme Court and the High Court's orders & directions cover a broad range of areas including food, water , solid waste, hazardous wastes, forestry , mining, and architectural gems. The PIL offers a broader definition of the right to liberty, life & personality enshrined in Part III of the Constitution. S.C. had green bench since 1995 to 2012, now S.C. has regular forest bench which regularly passes order or directions with respect to the context of forest cover & wildlife.

Municipal Council, Ratlam v. Shri Vardichand & Ors.⁵, In a landmark case , issue of sanitation came before u/s-133 of cr.pc , SC recognise that right to clean & healthy environment is an inalienable right u/a-21 the S.C. addressed the problem of poor sewage & sanitation scheme. In this case the J. KRISHNA IYER himself visited the spot , then directed Municipal Corporation of Ratlam for taking proper measure .

Doon Valley quarrying case⁶, In this case resident of Doon valley filed Writ petition against illegal limestone quarrying & this mining caused harm to ecological diversity and beauty of massoorie hills. SC directed to stop illegal quarrying in the massoorie hills.

SOME LANDMARK DOCTRINE PUT FORWARDED BY INDIAN JUDICIARY

1. DOCTRINE OF ABSOLUTE LIABILITY

Gas leakage in factory Shriram Case⁷, In this historic case the oleum gas leak from factory Shriram in Delhi in 1986, the S.C. Ordered to pay the individual money. Many people were victimised due to leakage of oleum gas. In this case the doctrine of “absolute liability” lay down. It means person if operating, dealing or handling the hazardous substance & person shall be under the responsibility to take care of that hazardous substance not in a way that may cause injury to others or otherwise shall be responsible under absolute liability. In this case first time the compensation paid to victims.

2. POLLUTER PAYS PRINCIPLES

The theory is meant to hold the polluter responsible. It says that when the polluter damages the environment, they are responsible to pay compensation to the victims and also to recover environmental damage costs. In international environmental law it is a norm that the polluting party charges harm to the environment.

Vellore citizen's welfare forum v. Union of India⁸, The Supreme Court held that the polluter pays principle & precautionary principle are an essential aspect of country's environmental law.

³ Dr. Narendra Kumar , *Constitutional law of India* , Allahabad Law Agency , Faridabad (Haryana) ,9th Edition, 2016

⁴ *Ibid.*

⁵ AIR 1980 SC 1622

⁶ *Rural litigation & entitlement Kendra v.State of U.P.* ,AIR 1988 SC

⁷ *M.C. Mehta V. Union of India* , AIR 1987 SC 965.

⁸ AIR 1996 SC 2718

3. PRECAUTIONARY PRINCIPLE

The Supreme Court of India, in *Vellore Citizens Forum Case*⁹, The following three principles for the precautionary principle have been developed: taking preventive action in the event of uncertainty, Exploring a broad variety of harm control alternatives & Lack of scientific certainty should not be used as a justification for postponing action. In Tamil Nadu the theory was introduced to test the pollution caused by tanneries from ungrounded water.

4. PUBLIC TRUST DOCTRINE

The Public Trust Doctrine primarily provides the basis for the environmental impact assessment laws to be successful. This is founded on the idea that such resources, such as air, water, sea and forests, are of such great value to people as a whole that making them a matter of private property would be utterly unjustified.

*M.C.Mehta v. Kamal Nath and Others*¹⁰, As trustees, SC held the state and its instruments have a responsibility to protect and conserve natural resources. Therefore, the public trust doctrine was mentioned in this judgment by the court is a part of land law.

5. Doctrine of Sustainable Development

In the early 1970s the idea of "Sustainable Development" was first used in the Cocoyoc Declaration on Environment & Development. Sustainable development means growth that addresses present-day needs without undermining future generations' capacity to meet their own needs.¹¹ There is need of make balance between the development & Environment.

*M.C.Mehta v. Union of India*¹², known as *Taj Trapezium case*, the Supreme Court ordered the 292 Industries to switch over to natural gas for natural fuel which were causing the pollution in Taj Trapezium Zone. The court for the first time declared that it is to be remembered that natural resources should not be exploited in one generation.

The latter half of the 19th century marked the start of an organized forest Management in India has taken several measures to protect forests and birds.¹³ The Factories Act was enacted as a part of workplace safety to respond to the industrial revolution and to control the manufacturing activities.¹⁴ Categorically, the Tamil Nadu Public Health Act stresses the duty of local bodies to take effective action to protect public health.¹⁵

CONCLUSION

Directions have been passed by the High Court in numerous PIL's for cleaning the Yamuna river & for demolition of the slums on its bank. There are no. of cases which are still pending in the court, recently in oct-2019, it was happened in the AAREY FOREST that more than 3 thousand trees has been cut down in the name of development. So still court has to take preventive measure to check the balance between the development and environment.

From the comprehensive review it is concluded that India's Constitution in its the Directives place a obligation on the state and people to take action on resource management for environmental sustainability.

⁹ *Ibid.*

¹⁰ AIR 1996 SCC 38

¹¹ S.Shantha Kumar, *Environmental law :An Introduction*, p 122-123, Surya Publication, Chennai, 2001.

¹² AIR 1997 SC 734.

¹³ The Indian Forest Act, 1927, Act No. 16 of 1927 and World Birds and Animal Protection Act, 1912, Act No. IV of 1912.

¹⁴ Factories Act, 1948, Act No. 63 of 1948.

¹⁵ Tamil Nadu Public Health Act, 1939 Act No. 3 of 1939.

In fact, the binding essence of the definition as well as the ineffectiveness of the institutions that have remarkably created a confusion in handling developmental and environmental controversies are legislative and policy interventions on successful conservation of resources at different levels. Realizing the mandate to achieve environmental protection in catena cases, the constitutional courts relied on soft law and transformed the status of Sustainable Development principle and considerably adopted as part of our Municipal Law.

Critics argued that courts typically follow the concepts of Sustainable Development and Administrative Justice, when coping with environmental degradation issues. Ignoring, critics, the hour is required for successful cooperation between current institutions and wider understanding in order to achieve environmentally friendly policies along with global trade goals.

It should be remembered that, without being linked to national laws vice versa, the study of the legal aspects of the definition of sustainable development can not be understood. It is also evident that most of the above-mentioned legal elements specifically define a specific global policy agenda and harmonize both economically and environmentally sustainable resource use. International judicial rulings have surprisingly acknowledged that the legal aspects of the Sustainable Development framework are customary standards that can be interpreted effectively only with national and domestic involvement. Those values are seen as valid governance for environmental protection achievement.

Considering the relation with social, economic and environmental aspects at the national level; both lawmakers and courts recognize the mandate of the legal elements within the limits of what is fair is gradually to be strictly substantive in their trade and developmental activities. It is argued more cautiously that the legal elements of the Sustainable Development principle guide the states to commit themselves to participatory governance. Generally, the latest international law on state liability does not relate to the application of the Polluter Pays concept.

Though not officially accepted the idea of sustainable development either in the Constitution of India or in any environmental legislation; in catena cases, different legal elements of the principle of sustainable development were referred to by the Constitutional Courts. About the concept of Sustainable Development; the legal aspects of the concept of Sustainable Development are a synthesis of international environmental law in the context of state obligation and the compulsory international trade law. Hence, consideration as a separate branch of international law is no longer relevant. It aims to attain the new environmental order by itself. Therefore, more consideration and respect must be given to this current international legal frameworks and processes by the hour.