

An Overview of Environmental Jurisprudence in India

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ABSTRACT

The main objective of this paper is to demonstrate the importance of Environmental Jurisprudence in India. This paper gives an idea that "How far must suffering and misery go before we see that even in the day of vast cities and powerful machines, the good earth is our mother and that if we destroy her, we destroy ourselves." And also includes role of law makers and various legislations related to Environment Protection in India. It also talks about the influence of International Law on the domestic legal regime to deal with the problem of environment protection. It further provides an idea about judicial approach with special reference to Public Interest Litigation and cases decided by Hon'ble Supreme Court of India. Finally the paper gives certain recommendation navigated through research for further development in the area of Environment Protection in India.

1. Introduction

The earlier century has witnessed an unmanageable boost in population, placing a tremendous burden on the available natural resources. Mother Nature has offered all she had, the earth itself is damaged due to disproportionate excessive cultivation, use of harsh chemicals and pesticides and excessive use of ground water. Water resources are badly polluted and release of toxic fumes from industry and vehicles has dispossessed us of uncontaminated air. Industrialisation and a increasing consumer economy have led to the creation of huge megapolises with their problems of indisposed garbage and uncontrolled sewage. The rate of alarming at which the ordeals are increasing, the day is not far when not only India but the whole world would get converted into a desert. The non- eco-friendly plastic bag we openly dump, to the fumes generated by our luxurious cars all are unswerving invitation to our most dreadful nightmare. One can observe this destruction in every field. The rapid melting of ice caps, polluted water bodies, epidemics arising due to that unfit water and air are nothing but a 'wake up' calls. A notice that the nature would not remain the way it is for long. And for the very first time, we Indians cannot put it as a burden on the shoulders of government as it is not the government who is exclusively liable for the deteriorating condition; it is also the common mass that is to be blamed. A final call, if we do not stick on to the principles what is taught to us by the nature, we would face the most antagonistic face of nature; Something which would be synonymous to destruction[1].

The incompetent hierarchy of priorities set up in a country is something which hinders our country from attaining the prime potential it has. We are struggling hard with problems from all categories- Terrorism, politics, scams, corruption and what not. Mid stall this, we have apparently failed to acknowledge and address a very important issue of environmental protection. Environment- One of the most neglected zones when it comes to the rack of legislations involved and the kind of judicial treatments the disputes have been getting is one of the chief concerns of all time.

In the Constitution of India it is evidently stated that it is the duty of the state to 'protect and improve the environment and to safeguard the forests and wildlife of the country'. It imposes a duty on every citizen 'to protect and improve the natural environment including forests, lakes, rivers, and wildlife.' Time and again the Indian Laws have taken a turn and tried adapting to the dynamics of the need. However there transition phase has always been miserable. There is a lot done, but the fact cannot be denied that a lot is yet to be done.

2. Role of the Law Makers

For any country the successful way of control pollution and degradation of resources is to combine traditional laws, with modern legislation. In India is concerned, the Ministry of Environment and Forests is the nodal agency at the Central level for planning, promoting and coordinating the environmental programmes, apart from policy formulation[2]. In India the Central Pollution Control Board keeps an eye on the industrial pollution prevention and control at the central level, which is a statutory authority attached to the Ministry of Environment and Forests. At the State level, the State Departments of Environment and State Pollution Control Boards are the elected agencies to perform these functions. There is much important legislation which came up, in order to slash the immediate problems which were faced. Each of the acts was evolved due to some or the other reasons. Lets us investigate the saga. Some of the wild animals have already extinct in India and others are apprehended of facing extinction. The rapid declination of wild life did not go unnoticed. An urgent need for introducing a comprehensive legislation for providing protection to wild animals and birds was felt by the central government.6 As it was realised, that state laws were not enough, thereby local provisions were amalgamated with new provisions and thus led to the formation of wild life protection act. There is similar tale behind the formation of every act. The legislators of our country do not act unless their tails are on fire.

Few milestones attained so far are Wild Life (Protection Act), 1972, The Indian Forest Act, 1927, The Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, Environment (Protection) Act, 1986, The Noise Pollution (Regulation and Control) Rules, 2000, The Serais Act, 1867, Obstruction in Fairways Act, 1881 etc.

3. Public Interest Litigation

The main characteristic feature of the Indian environmental law is the important role played by the public interest litigation. The greater part of the environment cases in India since 1985 have been brought before the court as writ petitions, normally by individuals acting on pro bono basis [3]. There have been inventiveness from the legislature and the executive but it is the Indian judiciary which has taken a lead in terms of the actual immediate effects in the matters of the environment. Disappointment from the governmental agencies to implement the laws made, prompted the NGO and Public to approach the Courts as a last resort. The glory of delivering several admirable landmark verdicts goes to the Supreme Court of India. It was Mr. M.C Mehta¹¹ who revived the concept of environmental jurisprudence in India through PIL.

4. Influence of International Law on the Domestic Legal Regime

Polluter Pays Principle

The Polluter Pays Principle was first adopted at international level in the 1972 OECD Council Recommendation on Guiding Principles regarding the International Aspects of Environmental Policies. The 1974 principle experienced revival by OECD Council in 1989 in its Recommendation on the Application of the Polluter Pays Principle to Accidental Pollution, and the principle was not to be restricted to chronic polluter. In 1991, the OECD Council reiterated the Principle in its Recommendations on the Uses of Economic Instruments in Environmental Policy. This principle was first stated in the Brundtland Report in 1987. This principle was also adverted to in Indian Council for Enviro-legal Action vs. Union of India. In this case this was held that once any activity is inherently dangerous or hazardous dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. Absolute liability is one tort [4] where fault need not be established. It is no-fault liability. In the Oleum Gas Leak case (M.C. Mehta v. Union of India), the Supreme Court laid down that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential risk to the health and safety of people working in the factory and to those residing in the surrounding areas, owes an absolute and non delegable duty to the community to ensure that no harm results to any one on account of dangerous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be totally liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without inattention on its part.

Sustainable Development

In the international arena 'Sustainable Development' came to be recognized as a concept for the first time in the Stockholm Declaration of 1972. Justice P.N. Bhagwati once made a insightful observation: 'We need judges who are alive to the socio-economic realities of Indian life' This statement explains the gradual shift in the judicial approach while dealing with the issues of sustainable development.²⁶ The first case on which the apex court had applied the doctrine of "Sustainable Development" was Vellore Citizen Welfare Forum vs. Union of India. In the immediate case, dispute arose over some tanneries in the state of Tamil Nadu. These tanneries were discharging effluents in the river Palar, which was the major source of drinking water in the state.

Public Trust Doctrine

The 'public trust' doctrine was referred to by the Supreme Court in M.C. Mehta v. Kamal Nath. The doctrine extends to natural resources such as rivers, forests, sea shores, air etc., for the purpose of protecting the eco-system. The State is holding the natural resources as a trustee and cannot commit breach of trust.

Inter-Generational Equity

Principles 1 and 2 of the 1972 Stockholm Declaration refer to this concept. Principle 1 states that Man bears solemn responsibility to protect and improve the environment for the present and future generations. Principle 2 states that the national resources of the Earth must be safeguarded for the 'benefit of the present and future generations through careful planning or management, as appropriate'. Principle 3 of the Rio Declaration, 1992 also states that the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

5. Recommendations

In view of the involvement of complex scientific and specialized issues relating to environment, there is a necessity to have separate 'Environment Courts' manned only by the persons having judicial or legal experience and assisted by persons having scientific qualification and experience in the field of environment. Also what we call for is a speedy justice when it comes to trials related to the environment. Any delay in a criminal matter may break the Right of a single person, however a delay in such matters can put the rights of millions at stake. Further it should also be note that the penalties awarded in the breach of certain duties should be increased to atleast a point where people affected can get a proper and adequate compensation. Most importantly, the legislators should remember that we aren't filling our racks with the rules and acts, we need to have a basic rule and allow the judiciary to interpret in the best way they can.

6. Conclusion

The right to live in a healthy environment as part of Article 21 of the Constitution was also recognized in the case of Rural Litigation and Entitlement Kendra vs. State of U.P., AIR 1988 SC 2187 Popularly known as Dehradun Quarrying Case. It involved issues relating to environment and ecological

balance. The R.L. & E. Kendra and others in a letter to the Supreme Court complained about the illegal / unauthorized mining in the Missouri, Dehradun belt. As a result, the ecology of the surrounding area was harmfully affected and it led to the environmental disorder.

Further the right to environment is often associated with human right, mostly right to live. Right to life is guaranteed as a fundamental right under article 21. In order to live a healthy life it is of utmost importance that our environment and surroundings be pollution free and clean. The flora fauna also impact the lives of individuals and can also be of utmost

importance for survival. Therefore there is emergence of the concept of right to environment as a fundamental right as can be seen in various judgments. Thus, in India, the judiciary has interpreted Art 21 to give it an extended meaning of including the right to a clean, safe and healthy environment. Class actions have been entertained by the Supreme Court under Art 32 of the Constitution as being part of public interest litigation actions. The High Courts, also being granted this jurisdiction under Art 226 have intervened by passing writs, orders and directions in suitable cases, thereby giving birth to an incomparable environmental jurisprudence in the form of the constitutional right to healthy environment.

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