



Judicial march to promote environmental issues as human rights

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Abstract

A society develops with the interaction between its individuals. Interaction improves the status of the society rise by the presence of human rights for the protection of the individual of society. The problem of pollution has attracted worldwide attention and much anxiety has been expressed over the question of pollution during the last few years. Over the past decade or so, more and more attention is being paid all over the world to man's environment on which human existence depends. Its maintenance is now being considered as essential for mankind. By environment is meant those natural things that surround us-such as the earth's atmosphere, healthy air and drinkable water together with the nonessentials that help to make life sustainable, such as wild animals or wild places or human living space. However Human rights are for all and Social Justice is for limited people. Article 21 says that no person shall be deprived of his life and personal liberty except procedure established by law. As per this article pollution free environmental is a fundamental right as well as under article 48 (A) of over constitution guaranteed same right. Article 51-A (g) specifically deals with the fundamental duty with respect to environment. It provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. To put it simple Article 51-A (g) refers to the fundamental duty of every citizen to protect and improve natural environment.

This paper analyzed as well as elaborate the environmental issues and provisions in this regards and other mechanism which is help to curb the environmental problem in India.

Keywords: judicial march, environmental issues, human rights

Introduction

Now we have realized that we have been destroying these valuable resources for development, expansion and growth. This is murder of the environment which involves poisoning of the earth, air and water and destruction of forest wealth, may be described a ecocide or pollution. Man little realizes that what he considers progress is seriously disturbing the ecological balance and leading to the breakdown of the life-supporting system on the earth.

It is true that the UDHR, does not lay down binding legal obligations to all the nations but is equally true that it being future agenda of mankind, every country follows it. The slim document of UDHR contains 30 articles in all but it is supported with

covenants etc. which make it complete document to cover each aspect of the betterhood of all men, across the globe.

A. The Indian Constitution and the UDHR

India being founding member nation and signatory to the UDHR has a special role to play. The UDHR has great persuasive value. It is for this reason that visible imprints of the UDHR are clearly there in our constitution. Part III i.e. Fundamental Rights are almost replica of the UDHR. The preamble and the Directive Principles of the State Policy are also there to reflect the human rights philosophy. A table is given below which shows relevance of the UDHR on the constitution of India ^[1].

Table 1

| Sr. No. | Name of Right | Provision of UDHR | Provision in the Constitution of India |
|----------------|----------------------------------------------------------------|--------------------------|----------------------------------------------------------------------------------------------|
| 1 | Equality and brotherhood | Art. 1 | Preamble |
| 2 | Ban on discrimination based on race, sex, religion etc. | Art. 2 | Arts. 15 and 16 |
| 3 | Right to life, liberty and security of person. | Art. 3 | Arts. 21 |
| 4 | Freedom from slavery, servitude and slave trade. | Art. 4 | Arts. 17 and 23 (recognized in part) |
| 5. | Freedom from torture, cruel and inhuman treatment. | Art. 5 | Judicially recognized under article 21 (D.G. and DIG Police, V. Prem Sagar, (1999) 5 SCC 700 |
| 6. | Equality before law and equal protection of laws. | Art. 7 | Art. 14 |
| 7. | Right to effective legal remedy to protect fundamental rights. | Art. 8 | Arts. 32 and 226 |
| 8. | Freedom from arbitrary arrest | Art. 9 | Arts. 22 |
| 9. | Independent and impartial tribunals. | Art. 10 | Independence of judiciary is secured in Parts V and VI of the Constitution. |

| | | | |
|-----|--------------------------------------------------------------------------|----------------|---------------------------------------------------------------------------------------------------------------------|
| 10. | Right against retroactive penal laws. | Art. 11 | Art. 20(1) |
| 11. | Right to privacy. | Art. 12 | Arts. 21 as interpreted by the Supreme Court [R. Rajgopal v. State of Tamil Nadu (1994) 6 SCC 632: AIR 1995 SC 264] |
| 12. | Right to movement and Residence. | Art. 13 | Art. 19(1) (d) and (e) |
| 13. | Right to own property and protection from arbitrary deprivation thereof. | Art. 17 | Art. 31 before the 44 th Amendment and now Article 300-A – not a fundamental right now. |
| 14. | Right to freedom of religion. | Art. 18 | Arts. 25 and 26 |
| 15. | Right to freedom of opinion, expression, assembly and association. | Art. 19 and 20 | Arts. 19(1) (a) (b) and (c) |

B. Human Rights Concern and Environmental Issues

Keeping in mind the human right concern the thrust area of environmental hazards. A nuisance is an unlawful interference with the plaintiff's enjoyment of land. According to Sec. 268, IPC, public nuisance interferes with public right. Persons causing environmental pollution by conducting offensive trade or business affecting the health or comfort of those dwelling in neighborhood are liable to be prosecuted for causing public nuisance. The other remedies for public nuisance are civil action by Advocate General or two or more members of public. The IPC provides imprisonment for a period upto six month or fine or both but meager penalty of fine of Rs. 200 make it point less for a citizen to move to court of law^[2]. So Sec. 133 of the criminal procedure code is more effective tool in the matter, for it provides independent, summary and speedy remedy against the public nuisance.

The Indian courts have always considered the pollution caused by dust^[3] smoke^[4] and odour⁵ to be actionable under the tort of nuisance. Infact the Magistrate's power under Sec. 133 Cr. P.C. to issue conditional order is taken to be discretionary but the Supreme Court of India in *Ratlam Municipality v Vardichand* (1980) has interpreted it to be mandatory. It is pertinent to mention that the above decision of the Supreme Court is a Land Mark in the history of Judicial activism. Similarly, the Rajasthan High Court in *Ajeet Mehta* case confirm the order of the Magistrate under Sec. 133 Cr. P.C. directing the removal of the folder business enterprise due to health hazards to the citizen of residential area^[6].

These decision are just for reference but have set a trend in keeping with social need to combat the threat of health hazard and environmental issues but still more needs to be done.

C. Right to Whole Some Environment and Ecological Balance.

There being no fundamental rights, writ jurisdiction may be invoked by the High Court's in matter relating to environment. The formal adjudication is not the only the object, the ultimate goal is to have affirmative action so naturally Articles 32 and 226 of the Constitution of India re to be pressed into action. Judicial Activism and Public Interest Litigation/S.A.L. is also proper remedy for this purpose. The Court's therefore have accepted the cases of Ganga Pollution, Shriram Gas Leakage Case and Bhopal Case Tragedy the UCC.

Personal Liberty also means pollution free atmosphere. If the state fails to provide pollution free environment, the right to life is adversely affected. The right to life has been interpreted to mean not only animals life rather it means living atmosphere which is of course inherent under Article 21, as opined long back in *Khark Singh Vs. State of U.P*^[7].

There is well known case of Rural Litigation Kendra's^[8]. Case in which a letter to the Supreme Court of India against illegal lime stone mining was taken note of and the Collector of Dehradun was instructed for redressal.

In a similar case of *Kinkri Devi*^[9], the petition highlight damage to Shivalik Hillsin Sirmaur District in Himachal Pradesh. There was a threat to ecological balance. The court issued proper instructions in this matter. In *L.K. Koolwal's* case¹⁰ a citizen of Jaipur filed a writ in the High Court, Jaipur asking the Jaipur Municipal Council to ensure cleanliness of certain residential colonies of Jaipur. The Court provided remedy for it by opining that maintenance of health, preservation of sanitation and enforcement fell within the perview of Article 21 of the constitution of India.

Again in the follow up of the Ganga Pollution Case¹¹ the Apex Court pulled up statutory bodies and held the Kanpur Nagar Mahapalika responsible for Ganga Water Pollution and to maintain ecological balance.

D. Right To Carry On Trade Vis – A- Vis Duty To Protect Environment.

Article 19 (i)g, a fundamental right is there to carry on occupation, trade and business which must be conformity with a fundamental duty as mentioned in Article 51 (A)g of the Constitution of India. It is requires every citizen to protect, preserve and improve the environment. The conflict arising of this issue was set right in the matter of *Abhilash Textile v. Rajkot Municipal Corporation*¹². The Court directed that the desire to carry on business calls for the minimum requirement of providing purification (from factory wastes and effluents) plant in the textile mill.

E. Role of National Green Tribunal (NGT)

In India, the National Green Tribunal (NGT) has been established on 18.10.2010 under the National Green Tribunal Act 2010 for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues. The Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908 but shall be guided by principles of natural justice. The Tribunal's dedicated jurisdiction in environmental matters shall provide speedy environmental justice and help reduce the burden of litigation in the higher courts. The Tribunal is mandated to make and endeavour for disposal of applications or appeals finally within 6 months of filing of the same. Initially,

the NGT is proposed to be set up at five places of sittings and will follow circuit procedure for making itself more accessible. The Principal Bench of NGT is located in New Delhi and the other four places of sitting of the Tribunal includes Bhopal, Pune, Kolkata and Chennai.

1. Jurisdiction of National Green Tribunal

The Tribunal has Original Jurisdiction on matters of “substantial question relating to environment” (i.e. a community at large is affected, damage to public health at broader level) & “damage to environment due to specific activity” (such as pollution). However there is no specific method is defined in Law for determining “substantial” damage to environment, property or public health. There is restricted access to an individual only if damage to environment is substantial. The powers of tribunal related to an award are equivalent to Civil court and tribunal may transmit any order/award to civil court have local jurisdiction. The Bill specifies that an application for dispute related to environment can be filled within six months only when first time dispute arose (provide tribunal can accept application after 60 days if it is satisfied that appellant was prevented by sufficient cause from filling the application). Also Tribunal is competent to hear cases for several acts such as Forest (Conservation) Act, Biological Diversity Act, Environment (Protection) Act, Water & Air (Prevention & control of Pollution) Acts etc. and also have appellate jurisdiction related to above acts after establishment of Tribunal within a period of 30 days of award or order received by aggrieved party. Proper institutional development of National Green Tribunal has significantly affected the compliance. However, the probability of detection will remain considerably low in the absence of capacity development. The National Green Tribunal has played a significant role in developing and enforcement of the law relating to environment by passing several directions to the central and state governments and other private corporate entities. Few of the tall standing examples of judicial activism by the National Green Tribunal are given below:

2. Awaaz Foundation and Anr Vs State of Maharashtra and Ors ^[13].

The case of the Applicants is was that in exercise of powers U/s. 3 of the Environment (Protection) Act 1986 and Rule 5(d) of the Environment (Protection) Rules 1986, the Ministry of Environment and Finance (MoEF) issued CRZ Notification dated February 19th, 1991 declaring some Coastal Stretches of seas, bays, estuaries creeks, rivers and backwater as Coastal Regulation Zones (CRZ) for the purpose of controlling certain categories of activities within the said area. State of Maharashtra prepared a Coastal Zone Management Plan (CZMP) as required under the said CRZ Notification. The CZMP was approved by the competent authority on September 27th, 1996. One of the activity is absolutely prohibited under the CRZ Notification is mining of sand, rocks and other substrata materials excluding only two (2) limited exceptions. Sand Mining and dredging of the Sea bed has become a huge commercial activity along the coastal areas in the State of Maharashtra. The unbridled, uncontrolled and rampant dredging of sea, dredging of Rivers for extraction of sand is being carried out in violation of CRZ Notification and other statutory provisions. A large number of sand mafias are indulging in such business that is causing damage to the environment, ecology and the flora and fauna. The gangs of sand mafias have encroached

on various spots of the creeks, tidal water, Estuaries and stretches of sea beds for the purpose of sand mining/dredging as well as transportation thereof. Unabated sand, dredging/mining activities would lead to damage to mangroves, marine life, interference with natural tidal flow of seawater on and along creeks and back water/estuaries.

The authorities of the State have failed to adopt proper control measures to prohibit the dredging and illegal sand mining activities of the sand mafias.

While allowing the Application the National Green tribunal deemed it proper to issue following directions:

- The extraction of the sand from coastal area by manual method may be permitted but the quantification of such sand shall be set out and if so required, the same traditional fishermen, if can be found eligible may be assigned the work of “maintenance dredging” without use of mechanical equipments in the channels which are required to be cleared.
- The sand extracted from the channels which are to be cleared/already cleared by dredging shall not be allowed to Transported by any transport vehicle within HTL area.
- The contractors to whom the work for clearance of the channel is given on contract basis shall be allowed to use dredgers only during daytime between 11.00 a.m. to 4.00 p.m. The transportation vehicles also shall not be permitted to be used beyond the day time and in any case the same shall not be allowed to be parked in the CRZ areas.
- The Collector may act as coordinator over auctioning process and controller for the activities, so also for the purpose of collecting the revenue after „e” auction sale of the sand so extracted.
- The competent authorities, including the controlling authority like Police/Coastal Police shall give full support/assistance to the Maharashtra Maritime Board (MMB) and CRZ authorities to ensure compliances of the CRZ.

The Court in the Ganga Pollution by Tanneries case gave due force to the assurance as given in the preamble of our constitution viz. “Justice: Social, Economic and Political” and also linked environmental care by opining that.

“Just like an industry, which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot setup a primary treatment plant cannot be permitted to continue to the existence for the adverse effect on the public at large”.....^[14]

3. Tribunal at its own motion Vs Ministry of Environment Others ^[15].

On the basis of a news item published on the front page of a daily in Bhopal the NGT suo-motu took cognizance by issuing notice to Ministry of Environment with a direction to place on record the particulars of Mining Leases mentioned in the news item.

After considering the arguments of both the parties the Tribunal directed that a meeting be convened immediately at the highest level under the chairmanship of the Chief Secretary to the Government of Madhya Pradesh involving other officials of various department of State Government to examine and take certain actions in accordance with law duly fixing a time limit for each of the issues to be taken up and completed with promptitude by the authorities concerned. The Tribunal directed that necessary penal action shall be initiated against those Mining

lease holders who were found violating the provisions of Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981 as well as the Mining Lease conditions and Forest Act and even revoking their license if repeatedly found violating the provisions of law.

4. The Sarpanch, Gram Panchayat Tiroda & Ors. V/s Ministry of Environment & Forest and Ors ^[16].

The Sarpanch of Gram Panchayat, Tiroda village approached the National Green Tribunal with a grievance that the Environment Clearance granted by the Ministry of Environment and Forest for the project of mining at Tiroda Village iron mine was without proper examination of the environmental problems that would be created by the mining operations of iron ore at Tiroda Village. It was pleaded by the Gram Panchayat that the said project is hazardous to human health and further it is polluting the river joining the sea. It was alleged that there was no study conducted by the Expert Appraisal Committee as to the existence of creeks, mangroves and the fact of the mining operations thereof. After considering various judgments and the submissions, the Hon^{ble} Tribunal was pleased to dispose of the appeal with the following directions keeping in view the balance to be maintained between the environment and development and the precautionary principle

1. The environment Clearance granted in favour of one of the mining company was kept in abeyance with immediate effect.
2. The Expert Appraisal Committee was directed to call for a fresh report as to existence of number of iron ore mines in the village.
3. The Expert Appraisal Committee was also directed to call for fresh report in so far as causing air, noise and water pollution keeping in view the proximity of the school or may recommend for relocating the school by constructing in new building.

F. Right to Information about Hazardous Installations

Knowledge is virtue, Socrates has put so, and information is the source of knowledge. The Right to know therefore is quite important in the matters of the environment, particularly when it affects thousand of people in their life style and livelihood. It appears that the Union Carbide case (Bhopal) and Sitapura Petroleum leakage and explosion at Jaipur would have been averted and lessened if the preventive action on the basis of advance information would, have been taken. It is perhaps for this reason that the Supreme Court has recognized the right to know as basic right emanating from the right to life ^[17].

G. Environmental protection for sustainable development- Role of Indian Judiciary:

It is very well known that the Judiciary and particularly the Apex Court has shown a sincere concern towards environmental issues and no doubt ample remedies have been provided in this regard. A number of cases as M.C. Mehta series, Rural litigation and entitlement Kendra Ganga Pollution Case, Central Pollution Control Board, New Delhi Cases, Bhopal UCC, Shri Ram Chemical and Vellore Citizen welfare council case etc. are there in which the Supreme Court has come for the rescue promptly and has invoked writ jurisdiction frequently and sufficiently.

The Supreme Court has mainly relied upon “the precautionary principle” through the Vellore Citizens welfare forum case ^[18]. to explain that: (1) environmental measures and the Statutory authorities must anticipate, prevent and attack the causes of environmental degradation (2) in case of serious threat to irreversible damage lack of scientific certainty may not be reason for slowing down the preventive methods for environmental degradation (3) the “onus of proof” is always in the industrialist to the effect that his actions were environment friendly.

Secondly, “The Pollutor Pays” principle as interpreted by the Supreme Court means that the absolute liability for harm to the environment extends not only to compensate the victim of pollution but also the cost of restoring environmental degradation ^[19].

It is therefore also submitted as observed by the Supreme Court of India law alone, however strong it may be, cannot help in controlling pollution therefore sustained efforts with full enthusiasm and resulted oriented strategic action could also be effective in this direction ^[20].

People must not tolerate unclean air, water and smoke. In India the menace of pollution is still with in control but timely measures can save much distress and hazards to health.

Obviously, the Indian Judiciary particularly the writ jurisdiction through PIL and Judicial Activism has under taken the task of protecting environment in a big way. Certainly the role of judiciary has been quite laudable and effective in this direction. The Judiciary under Article 32 and 226 of the Constitution has widened the doctrine of locus standi. It has really accepted to enforced fundamental rights. The judiciary of course deserve for credit to adopting proper measures to safeguard environment Specially when the executive is adopting authoritative role.

Despite a number of central enactments on water pollution, air pollution and hazardous substance there are State Acts too on water pollution and smoke control. In addition a number of rules are there to control pollution and special Acts like Bhopal Gas Leak disaster Act. 1985, provisions of IPC, Cr. P.C. and Indian Easement Act, 1882 and Labour Laws are also there but truth is that environment issues cannot be dealt with by statutes alone. So there is need to enforce judicial pronouncements properly.

To combat all these problems is necessary in order to sustain life on earth. Nature, which gave us life, is on the verge of collapsing. And it is necessary to protect this environment in order to survive. The fresh air, the natural landscapes, the water, the food are all vital to our life. Some suggestions to curb this problem are given below

1. Pollution can be checked by altering the production process, installing anti-pollution equipment and reusing wastes.
2. Industrial pollution must be regularly monitored and it must become an integral part of business planning.
3. Public opinion must be enlightened.
4. More scientists and technical experts should be employed to keep the atmosphere and the water supplies clean and healthy.
5. Strict control of tree felling and destruction of foliage and greenery is also essential.
6. It is our collective responsibility that we must respect the pattern of nature as created by God.
7. We must plant more trees and learn to maintain cleanliness to reduce the various forms of pollution around us.

8. This is the responsibility of not only our government but of each and every individual of this planet to curb this environment problems.

To sum up

The basic need is to keep the environment clean and conducive to health. We therefore certainly need fair, honest, competent and responsible enforcement machinery to ensure human dignity by pollution free our society and next generations. We must help ourselves by reducing these worst and the hazardous activity of nuclear tests as well as industrialization to curb this problem.

References

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