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UTKAL UNIVERSITY, VANI VIHAR
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ENVIRONMENTAL JURISPRUDENCE IN INDIA: ROLE OF INDIAN JUDICIARY IN ASSURING SUSTAINABLE DEVELOPMENT

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Abstract

The development of environmental jurisprudence in India begun in 1970s post Stockholm Conference of United Nations of 1972. A regime of legislations of environment protection along with the proactive judicial interventions have made a significant impact in the last few decades. The Judiciary in India has been assigned a dual role viz. protector and interpreter of the Constitution and upholder of the Fundamental Rights of Indian citizens. This paper makes an attempt to explore how the Judiciary in India has made its impact on both these counts in the context of environmental protection and sustainable development. The courts have primarily done this in three ways- A) expanding the scope of Right to Life as enshrined in Article 21 in several public interest litigation cases pertaining environmental concerns and B) propounding innovative principles of environmental jurisprudence. The present paper is an exploration of these three areas as they have been instrumental in enforcing many restrictions on the polluters. The methodology adopted for the research work is qualitative and explorative and is based on the secondary sources of information.

Keywords: Environmental jurisprudence, Right to Life, Supreme Court

Introduction

World today is at the highest levels of environmental degradation. In a recent report, it is stated that the concentrations of carbon dioxide, methane and nitrous oxide which are considered as the three main greenhouse gases has reached a record high in 2021 and the trend continues in 2022. The rising mean global temperature is reaching to such levels to make 2022 one of the top warmest years since 1850. Since 1993, there is a rise of about 10% in the mean rise in the sea level. Shorter winters and exceptionally warm summers in Europe, below average rainfall in Africa, extensive flooding in Pakistan, frequent cyclones at varied locations are some of the drastic and alarming highlights of this report (World Meteorological Organization, 2022).

Many of the environmental concerns mentioned above have their origins in anthropocentric models of development that were adopted in the developed countries. It was around 1960s that the world began to realize the effects of such developmental path that compounded with continuous unrestrained increase in the global population especially in the countries of Global South. In this context, several international organizations and national authorities have made notable efforts in protection of environment and promoting sustainable development. It is in this context that the present research paper seeks to explore the efforts of Indian Judiciary as a vanguard in environmental protection in India.

Objectives

Following are the objectives of the present research-

- To understand the international efforts with respect to environmental protection.
- To review the constitutional provisions related to environmental protection in India.
- To analyse the role and methods adopted by the Supreme Court in making the above provisions meaningful.



International Efforts for environmental awareness and protection

The book 'Silent Spring' by Rachel Carson published in the year 1962, brought the attention of the world community towards the horrifying effects of chemical pesticides on agriculture in particular and environment in general. Many advanced cities of the world had started experiencing alarming levels of pollution leading to deterioration of quality of life. The humongous nature of the problems pertaining to environment necessitated the action at global level. In this context, the United Nations played a catalytic role in developing international understanding, co-operation and efforts.

Stockholm Conference (1972)

The United Nations Stockholm Conference brought out a Declaration and Action Plan including 109 recommendations. The principle of sustainable development (principle 11), principle of state responsibility for transboundary harm (principle 21), liability principles (principles 22 and 24) became the guiding forces in the following years for the member countries and for foundational principles of international environmental law (United Nations Environment Programme, 1972). The Stockholm Conference was instrumental in establishing United Nations Environmental Programme (UNEP) that became the first institution within the UN system committed exclusively to the cause of environmental protection. Overall, the Stockholm Conference factored in making environmental protection as a part of UN mandate though it was not mentioned in the UN Charter officially.

Post Stockholm Conference, several treaties resulting in multilateral agreements were concluded. These covered a wide range of environmental issues including regulation of trade in endangered species¹, oceanic pollution², as well as the ozone layer depletion³. A number of protocols on environment have been made in addition to these efforts.

Rio de Janeiro Conference, 1992

Popularly mentioned as the Rio Earth Summit, 1992 is considered as the second most important global conference by United Nations. The Conference through its five documents⁴ set the agenda for environmental protection and sustainable development for the twenty-first century (United Nations, 1992). The Conference demonstrated a change in the previous perspective of UN in which environmental protection was primarily considered as the responsibility of sovereign member states. Rio Summit expanded this scope to include representatives of 700 plus representatives of non-governmental organizations. This paradigm-shift at the international level paved way for meaningful engagement of common people who got a voice and support of international organizations in the efforts of environmental protection. Rio Conference led to the establishment of UN Commission on Sustainable Development⁵.

After Rio Conference, United Nations have convened several summits and conferences such as World Summit on Sustainable Development held at Johannesburg in 2002 and UN Conference on Sustainable Development (Rio-20) in 2012 and brought out important documents and Declarations highlighting pertinent issues relating to environmental degradation worldwide and efforts needed to reverse that. The Sustainable Development Goals (SDGs) are latest in the list of efforts of UN.

On the above background of efforts at international level, it is necessary to review the status of environmental protection in India.

¹ Convention on International Trade in Endangered Species of Wild Flora and Fauna, 1973

² International Convention for Prevention of Pollution from Ships, 1973

³ Vienna Convention on Protection of Ozone Layer, 1985

⁴ Rio Declaration on Environment and Development, Agenda 21, Convention on Biological Diversity, UN Framework Convention on Climate Change and Rio Forest Principles

⁵ In 2013, this has been replaced by The High Level Political Forum for Sustainable Development

Constitution of India and Environmental Protection

The Indian Constitution did not have explicit provisions related to the environmental protection. However, with the developments at international level especially from United Nations forum, India had to take cognizance and commit itself to the cause of environmental protection and conservation. Taking inspiration from the Stockholm Conference held in June 1972, India enacted the Indian Wildlife (Protection) Act in the same year. The Act aimed at effectively protecting the wildlife in India and to establish control on smuggling, poaching and illegal trade of wildlife. It was followed by the Water (Prevention and Control of Pollution) Act in 1974. While the Parliament of India was responding in this manner, in 1976, the Forty Second Constitutional Amendment Act amended the Indian Constitution to insert two new provisions, one each in Part IV and IVA. Article 48 A added to the Part IV i.e., Directive Principles of State Policy directed the State to adopt necessary policies and measures for protection and improvement of environment and safeguard forests and wildlife (Bakshi, 2021). Simultaneously, Art 51A(g) bestowed a Fundamental Duty on every citizen of India to protect and improve natural environment including forests, lakes, rivers, and wildlife and to have compassion for living creatures (Ibid). With these changes, the Constitution of India had explicit provisions for environmental protection.

However, both these provisions were inserted in Part IV and Part IVA which are non-justiciable parts of the Indian Constitution. It is in this context that the role of Indian Judiciary in general and the Supreme Court in particular becomes significant. The Supreme Court of India has been bestowed with dual responsibility-a) to interpret the Constitution whenever it is challenged on the ground of ambiguity and b) to protect the Fundamental Rights of citizens in India. The Supreme Court since 1970s has done remarkably well on both these counts. This has been done in following ways-

- Liberal interpretation of the provisions in the Constitution through several public interest litigation cases pertaining environmental concerns
- Propounding innovative principles of environmental jurisprudence

The following section of this paper explores these in detail-

Liberal interpretation of the provisions in the Constitution through Public Interest Litigation judgements

As stated in the above discussion, the Constitution did not have specific provisions relating to environmental issues till Forty Second Amendment in 1976. However, the liberal interpretation of some other provisions particularly that of Right to Life and Personal Liberty (Article 21) has helped in bringing environmental issues to the forefront in India. The process commenced mainly with the landmark judgement delivered by the Supreme Court in *Maneka Gandhi Vs union of India* case, 1978. The Court refused to restrict the interpretation that Right to Life as provided in Article 21 to mean only mere animal existence without any dignity. The Court affirmed that Right to Life in fact means all those things that make life worth living, a life to live with dignity. Since this landmark judgement, the Supreme Court has continuously added to the meaning of Article 21 making it more and more extensive and meaningful (*Maneka Gandhi vs Union Of India*, 1978).

With the emergence of judicial activism in 1980s, the Supreme Court admitted several Public Interest Litigations pertaining to issues of environment. The judgements of the apex court have been instrumental in providing a link between right to life and right to wholesome environment. These judgements have nudged awareness in the public, legislature, and the executive by underscoring that clean air and water were indeed attributes of dignified life (Krishnadas, 2022).

In *Damodar Rao Vs S.O. Municipal Corporation* case, the Supreme Court held the environmental pollution and spoliation should be regarded as violation of Article 21. (T.

Damodhar Rao And Ors. vs The Special Officer, Municipal Corporation of Hyderabad, 1987). In Dehradun Quarrying Case, the Supreme Court held that Right to live in a healthy environment is a part of Article 21. The Court ordered closure of limestone quarries in Dehradun region to protect the right to life (Rural Litigation And Entitlement ... vs State Of U.P. & Ors, 1985). In Municipal Council, Ratlam Vs. Vardichand and Ors case, the citizens of Ratlam city had challenged the municipal council authority for failing to provide basic sanitary facilities and prevention of street contamination from a nearby alcohol plant. The municipality was attempting to run away from providing these services stating the reason that the citizens themselves had chosen to live in those contaminated areas and lack of funds with it. The Supreme Court held that the Right to Life under Article 21 includes the Right to a wholesome environment and residents have right to exercise it against the State. It refused to accept the financial inability of municipal authority to be an excuse for not fulfilling its duty of preserving public health (Municipal Council, Ratlam vs Shri Vardhichand & Ors , 1980). In Subhash Kumar Vs. State of Bihar Case, the Supreme Court declared that pollution free air and water are essential for the full enjoyment of life and therefore included in Article 21. The suit was filed as a PIL by petitioner Subhash Kumar against West Bokaro Collieries and Tata Iron and Steel Company responsible for dumping excess waste into river Bokaro making the water unfit for drinking and agriculture (Subhash Kumar vs State Of Bihar And Ors, 1991). In M.C. Mehta Vs Union of India Case 2001, the Supreme Court held that air pollution in Delhi caused due to vehicular emissions is violative of the Right to Life under Article 21.

Propounding innovative Principles of Environmental Jurisprudence

While expanding the meaning of Fundamental Rights especially Right to Life as enshrined in Article 21, the Supreme Court has laid down interesting principles under environmental jurisprudence. Many of these certainly have origins in the international conventions and agreements pertaining to environmental protection and sustainable development. But the Supreme Court has made them relevant in Indian context and thereby made them an integral part of environmental case law in India. Following is a brief review of some of these principles.

Precautionary Principle

The term, Precautionary principle emerged in 1980s implies that taking precaution to not to cause damage to the environment and people is indispensable even when specific scientific data indicating the potential damage is not available. By evoking this principle in several cases, the Supreme Court mandates the statutory authorities to foresee and inhibit the factors leading to environmental degradation. The doctrine was referred clearly in the Vellore Citizens' Welfare Forum Vs Union of India Case. Later, in T.N. Godavarman Thirumalpad Vs Union of India and Ors (2002) case, the Court opined that it is a duty of the government enshrined in Article 21 to enforce the principle as a part of environmental law.

Polluter Pays Principle

Polluter Pays Principle emerged from the deliberations at UN Stockholm Conference, 1972. The OECD (Organization for Economic Development and Cooperation) adopted the same in 1972 as an economic principle for allocating the costs of pollution control (OECD, 1992). The principle is used as curative as well as preventive tool and has been effectively used by the Supreme Court in relevant cases. For instance, in Indian Council for Environ-Legal Action Vs Union of India Case, popularly known as Bicchari Village Pollution Case, the Supreme Court held that the financial cost of prevention and provision of remedy to the damage caused by pollution should be borne by the undertakings causing the pollution by adopting Polluter Pays Principle (Indian Council for Enviro-Legal Action and Others Vs Union of India & Ors., 1989).

Public Trust Doctrine

In M.C. Mehta Vs Kamal Nath and Ors Case (1996), the Supreme Court propounded the doctrine of Public Trust. The PIL drew attention of the Court towards the irresponsible and

commercialized tourism at the cost of natural resources. Himachal Pradesh government had leased out a protected forest area on the banks of river Beas to motels for commercial use. The Supreme Court asserted that the State is a trustee of all natural resources that belong to all people (M.C. Mehta vs Kamal Nath & Ors., 1996).

Absolute Liability Principle

The principle of Absolute Liability with respect to environment was laid down by the Supreme Court in M.C. Mehta Vs Union of India and ors., 1986 case (Oleum Leakage Case). The Court held that no hazardous industry could be permitted near human habitation. The principle implies that if an industry or an enterprise is engaged in some inherently dangerous activity that gives it commercial gain and if the said activity can cause catastrophic damage, then the industry officials are liable to pay compensation to the aggrieved parties (Dwiwedi). The principle of Absolute Liability was applied in the Union Carbide Corporation Vs Union of India Case (Bhopal Gas Tragedy Case), 1989 as well.

Conclusion

Supreme Court continues to play a proactive role in the matters pertaining to environment. Diwali crackers ban in National Capital Region (NCR), phasing out the polluting diesel vehicles, formation of National Green Tribunal, Establishment of Environment Pollution (Prevention and Control) Authority and Graded Action Response Plan to deal with pollution in and around NCR, creating eco sensitive forest buffer zones of 1 km in every protected forest, national park and wildlife sanctuaries, ban on mining activities in national parks, liberal interpretations of provisions of environmental laws etc are some of the major contributions of the Supreme Court in last few years. The Supreme Court has emerged as the steward of environmental protection in India.

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