

INDIAN JUDICIARY- PROTECTOR OF RIGHT TO HEALTHY ENVIRONMENT

-Nitesh Bhandari ¹

ABSTRACT

India being a developing nation requires economical growth at a significant rate. In the race of achieving economical goals, ecological and environmental matters have been given less importance. Although Indian government in past years have shown great dedication in enacting the legislation for protection of environment but executive inefficacy has led to failure achieving the success in protecting the environment. Although socialist word is included and enumerated in the constitution to depict the welfare nature of the state, but government's failure to protect the rights of people has forced the judiciary to intervene in the matter. Judiciary through its creative, pragmatic and practical approach invented certain doctrines and incorporated the same in Indian legal framework to ensure the enforceability of the right of people and obligation of the state. Right to environment was not expressly enumerated in the constitution but judicial decisions by higher judiciary have upheld the Right to environment as a part of Right to life under article 21 of the constitution. Judiciary has emerged as a saviour and protector of common people's right and ensured fair and equal justice to everybody. Although separation of power prohibits the judiciary to intervene in policy matters and legislative jurisdiction but creative progressive approach by Indian judiciary to protect the rights of people has been praised in all over the world. Although judiciary is playing its role in upholding the rights of people but India need proper and effective implementation of the policies framed by the government and judicial pronouncements made by the judiciary.

KEY WORD

Right to Healthy Environment, Industrialization, overexploitation of natural resources, environmental degradation, Public Interest Litigation, Public duty, Polluter Pays Principle, Precautionary Principle, Sustainable Development, Strict Liability.

¹ Student, Institute of Law, Nirma University, Ahmadabad (Gujarat), Email Id- 14bal003@nirmauni.ac.in

INTRODUCTION

In developing countries like India, environment degradation and depletion is due to large scale industrialization, overexploitation of natural resources, population explosion and inefficiency of legal framework. International conventions and domestic legislations are not enough to stop environmental degradation rather effective implementation of the same determines the positive outcome.² Post independence, Indian government felt need of industrialization and therefore came up with industrial policies of 1947 and 1956, which encouraged heavy industrialization.³ Human rights and environmental rights perspective were ignored and avoided in the process of realization of economic goals.⁴ India being a developing country required economic growth at a substantial rate and moderation in terms of environmental norms was inevitable.

LEGAL FRAMEWORK

In early years after independence, India had no stern norms and regulations pertaining to environmental protection. The existing laws were not sufficient to muddle through prevalent scenario considering the heavy industrialization. Stockholm conference in 1972 was a foundation stone in the journey of India for environment protection. After participating in the conference, India became a member nation. Being a signatory party, Indian government in coming years took significant steps in formulating the policies for environment protection. The Indian government under the leadership Ms. Indira Gandhi passed a comprehensive enactment Wildlife Conservation Act, 1972. In 1976, through 42nd constitutional amendment, article 48-A and 51-A (g) were inserted into the constitution under the head of Directive Principles of State Policy and Fundamental Duties. The provisions were appended to put obligations on state as well as citizens to protect the environment. Certain changes were made in seventh schedule of the constitution to transfer environment matter from state list to concurrent list so as to enable and facilitate the central government to pass the legislation which was earlier under legislative competency of states only.

The proactive approach of Indian government led to enactment of many other significant Acts in coming years which includes Water (Prevention and Control of Pollution) Act 1974, The Water (Prevention and Control of Pollution) Cess Act, 1977, The Forest Conservation Act 1980, The Air (Prevention and Control of Pollution) Act 1981, Environment Protection Act 1986, The National Environment Tribunal Act 1995, The National Environment Appellate Authority Act 1997, National Green Tribunal Act 2010 etc. Further to cater the specific needs The Motor Vehicle Act 1988, and The Public Liability Act 1991 were also

² S.K. Saini, M.M. Sheikh, *Principles of International Environmental Law and Legal Status in India*, INT. J. GOLBAL RES., January 2016, at 103.

³ Mahajan Niyati, *Judicial Activism for Environment Protection in India*, INT. RES. J. SOCIAL SCI. April 2015, at 7, 8.

⁴ Ibid.

introduced and enacted. Hazardous Wastes (Management and Handling) Rules 1989, Manufacture, Storage and Import of Hazardous Chemical Rules 1989, Noise Pollution (Regulation and Control) Rules, 2000 were also enacted by the legislature to fulfil the lingering need. Environment Impact Assessment Notification of 2006 is very crucial in current scenario considering the industrialization rising at a significant rate. Further regular notifications issued by the government are regulating the pollution and industrial activities causing pollution.

ROLE OF JUDICIARY

Even after having plethora of legislations to protect the environment, prevent and control the pollution, actual scenario and condition of the environment in India speak otherwise. Proactive approach of India towards protection of environment failed to reach its success due to inefficacy and ineffectiveness of executive in appropriate implementation and enforcement of the legislations and rules framed. Legislations made by the parliament are interpreted by the judiciary. There is separation of power among legislature, executive and judiciary and transgression over others authority is not permissible under constitutional mechanism. The judiciary has played a crucial role in framing the environmental jurisprudence in India while maintaining the constitutional framework. Relaxation in the concept of *Locus Standi* and incorporation of Public Interest Litigation under existing framework encouraged people to approach the court of law to enforce fundamental rights. The judicial intervention in executive work dimension is attracted public agencies fail in dispensing quality service, public welfare, public duty and justice delivery. Failure of public agencies and government led people and public organization to approach the court of law for resolving grievances.

Initially Right to healthy environment was not included under article 21 of the constitution i.e. Right to life. Judicial activism came out as saviour of the environment rights of the people. Through several pronouncements, judiciary upheld Right to healthy environment as a part and parcel of Right to life enumerated under article 21. The role of judiciary in protection of environment cannot be disregarded as it has put huge efforts to render environment justice.

The judiciary has been actively protecting and upholding the rights of people pertaining to environment through its judicial pronouncements and orders. In *Municipal Council Ratlam v. Vardhichand*⁵ Supreme Court held that municipality has obligation to maintain hygiene and sanitation in its jurisdiction area and insufficiency of funds cannot be entertained as excuse. People can approach magistrate to pass order for removal of public nuisance. High courts initiated the process of recognizing the Right to environment and

⁵ AIR 1980 SC 1622.

certain orders were passed. In case of *Damodhar Rao v. SO Municipal Corporation, Hyderabad*⁶ the AP High Court held that right to pollution free environment is protected under article 21 of the constitution and continuous poisoning of environment by pollutants can be regarded violative of article 21. The Karnataka High court in *V. Lakshimipathy v. State*⁷ reiterated the same view as posited by the AP High Court. Court held that right to clear and pollution free environment is a basic human right element. Further Kerala High Court held that the Right to sweet water and Right to free air as basic human rights elements and covered under article 21 of the constitution.

The apex court i.e. Supreme Court at the same time also proactively approached the environment issues and upheld the right to environment and expanded the environmental jurisprudence in India. Environment degradation is a socio economic problem. Socio-economic condition of a country cannot be ignored while delivering the justice therefore a court of law should take cognizance of the environment matters.⁸ The supreme court of India keeping in mind the above mentioned principle delivered judgement ordering state to protect the right to people. In Charan Lal Sahu case⁹ the Supreme Court for the first time recognized right to wholesome environment and pollution free environment. Right to environment include right to pollution free water and free air.¹⁰ People have right to pollution free water and free air. Right to pollution free water and air is covered under right to life under article 21 of the Indian constitution. But this right does not allow a person to fulfil his personal pecuniary gain. Any member of public can approach the court of law for enforcing the fundamental right but vexatious and frivolous PILs for personal gain shall be discouraged.¹¹ In *Rural Litigation Entitlement Kendra V. State of U.P and An.*¹² court expanded the dimensions of environmental jurisprudence and held that right to clean and free environment is protected under article 21 of the constitution. Court also observed that development aspect shall not ignore the environmental perspective therefore sustainable development is required. The mining industry in deharadoon valley was creating ecological imbalance. The court emphasised on need of sustainable development and described the importance of the concept of sustainable development for a developing country like India. Further the court order some mines to shut down the mining activity forever as the mines were already overexploited. The court directed the state to ensure employment for the people who got unemployed due to order of the court for closing the mining in certain mines. Again in *Shanti Star Builders vs. Narayan Totame*¹³ court reiterated

⁶ AIR 1987 AP 170.

⁷ AIR 1992 Kant 57.

⁸ *People United for Better Living in Calcutta v. State of W.B.*, AIR 1993 Cal.215 at 228.

⁹ 1988 SCR (1) 441

¹⁰ *Subhas Kumar v state of Bihar* AIR 1991 SC 420.

¹¹ *ibid.*

¹² AIR 1985 SC 652.

¹³ 1990(1) SCC 520

that right to decent and healthy environment is protected under fundamental rights. These are the initial judicial pronouncements which moulded the environmental jurisprudence in India.

Later on the certain new principles were incorporated by the courts in Indian environmental jurisprudence. In *M.C Mehta v. Union of India*¹⁴ (oleam gas leak case), concept of managerial liability was evolved. A company or organization shall ensure that hazardous elements do not escape and cause harm. In case of escape, the organization will be liable irrespective of negligence. The officer who is responsible for management of the activity of the company shall be made liable for the loss caused due to negligence. In *Vellore Citizens Welfare Forum vs. Union of India*¹⁵ the court incorporated two new international law principles. Polluter Pays and Precautionary Principles were introduced in Indian legal framework. Polluter pays principle imposes liability on the polluter to pay fine for the loss caused to environment. The precautionary principle put obligation on the polluter as well as government to abate, control and prevent the pollution.¹⁶ These international laws principles have become grundnorm for Indian environmental jurisprudence. In later years, the Supreme Court has accepted the applicability of these two principles in Indian environmental law jurisprudence. While delivering the judgement court said that if international law provisions are not contravening the provisions of domestic laws, the international law provisions can be adopted and implemented. Concept of sustainable development was defined by the court in the case. The court stated that development shall not be at the cost of environment.

Later judgements by the court have adopted both the principles as a part and parcel of domestic laws. In *Enviro-Legal Action vs. Union of India*¹⁷ (the Bichhri pollution case), the court followed the polluter pays principle and precautionary principle and asked the polluter to pay fine for the harms caused to the environment. The court asked the polluter to pay damages to the victims and restores the damage caused to the environment by the sludge and slurry discharged by the industry. The court emphasised on restoration of the ecology which was harmed by the industry. The water got contaminated and people were left with no other choice then to approach the court of law for enforcement of fundamental right. The court ordered the relevant authorities to take action against the polluting industries and facilitate the restoration of the ecology. Later in *M.C.Mehta v. Kamalnath*¹⁸ SC defined and incorporated the concept of public trust. Court held that leasing out economical fragile area to private entity for exploitation of natural resources is a serious breach of trust. Land, air, sea, water, forests etc are public property and state is entrusted to ensure the equal and justifiable use of the resources. Through this judgement, SC incorporated the public breach trust doctrine in

¹⁴ 1987 SCR (I) 819

¹⁵ AIR 1996 SC 2715

¹⁶ T.N Godavarman Thirumalpad v. Union of India , AIR 2003 SC 724.

¹⁷ 1996 3 SCC 212

¹⁸ (1997) 1 SCC 388.

environmental law jurisprudence. State is working as a trustee of the natural resources and monopoly given to one private entity for exploitation of natural resources will be contravening the constitutional values.

Active role of NGO and public organizations has proved significant in moulding the judicial interpretation of environmental laws in India. *Tehri Bandh Virodhi Sangharsh Samiti vs. State of Uttar Pradesh*¹⁹ (Tehri Dem Case), *Narmada Bachao Andolan vs. Union of India*²⁰ (Narmada Dem Case), *T. N Godavarman Thirumulpad vs. Union of India*²¹ (pertaining to deforestation), *Tarun Bharat Sangh, Alwar vs. Union of India*²² (Aravali Maning Case), *Rural Litigation and Entitlement Kendra, Dehradun vs. State of Uttar Pradesh*²³ (Dehradun Mining case), *Samatha vs. State of Andhra Pradesh (Mining in Adivasi Area)*, *WWF vs. Union of India* (Wildlife Conservation Act implementation), and *Goa Foundation vs. North Goa Planning and Development Authority*²⁴ (Costal Regulation Zone), are certain important cases pertaining to different dimensions of environmental laws. In all the judgements the court reiterated the fundamental right to clean, decent and healthy environment. All the judgements emphasise on the important of the environment and state's duty toward protection of environment and prevention of pollution.

The Supreme Court and the high courts have proved the importance of the environmental matter and have passed order according to that. The above mentioned judicial pronouncements upheld the rights of people but executive implementation raises serious question.

The Supreme Court in Bhopal gas tragedy case incorporated the strict liability concept so as to protect the environment rights of people. The court took progressive approach to assure justice and compensation to victim. The deterrence created by the judgement is questionable. Although the court imposed strict liability on union carbide but implementation and delivery of justice raise question on the Right to environment being a fundamental right. The court imposed a significant fine on company but acquittal of the perpetrator pose serious question. Can environment degradation be quantified in terms of money? The concept of fine under environmental law itself lowers the seriousness of the issue. Fine cannot be deterrence for a huge profit making company and therefore can lead to repetition of the offences.

Recently National Green Tribunal levied fine of Rs. 5 Crore on Art of Living Foundation for damaging Yamuna flood plain. The imposition of fine has become common these days. Prevention, control and abetment of pollution have not been given proper attention by the government. Both government and the

¹⁹ 1992 SUP (1) SCC 44

²⁰ AIR 1999 SC 3345

²¹ 2000 SC 1636

²² 1992 SC 514

²³ *Supra Note* .

²⁴ 1995(1) GLT 181

person carrying any activity are responsible for controlling and prevention of the pollution. Considering the disastrous environment degradation and loose approach of enforcement agencies, India needs certain changes in its traditional approach.

CONCLUSION

India being a developing nation needs balance between social and economical aspects of the governance. Policy formation is the working arena of the legislature and judiciary is entrusted with work of interpretation of the legislations made by the legislature. But with the time moving ahead, the work of the judiciary has changed from being a mere interpretation to a watchdog of justice delivery system. Considering the vast number of judicial pronouncements and orders passed by the judiciary, judiciary shall be praised for the work it has done so far. Creative interpretation by higher judiciary has facilitated the common people to access justice quickly. The doctrines incorporated and evolved are praise worthy.

There have been many incidences where negligence of government has been proved. The state is considered protector of the rights of people. Negligence and inactive approach shall be discouraged. Judicial intervention is required to protect and upheld the rights of people. Enormous industrialization and magnitude of pollution caused by the industries require strict regulation to stern norms. Development shall not be at the cost of environmental harm. Sustainable development concept shall be implemented to balance industrialization, economic goals and basic human rights.

Although India has plethora of legislations, rules and judicial pronouncements pertaining to protection of environment but effectiveness and efficacy of executive in enforcement and implementation of the stringent norms render environmental justice futile. Legislations and norms require reformation considering the state of affairs in India.