

Challenges for Indian Judiciary in Protection of Environment

Parvinder

Research Scholar, Faculty of Law, MDU, Rohtak

Introduction

There is no dearth of legislations on environmental protection in India but their enforcement has been far from satisfactory. There is need for the effective and efficient enforcement of the Constitutional mandate and other environmental legislations. The creative role of judiciary has been significant and laudable. Pursuant to the Constitutional provisions contained in Articles 48A and 51A (h), many Public Interest Litigations have been instituted in the Supreme Court of India against many industries for failing to provide adequate pollution control and also against Pollution Control Boards to direct them to take appropriate measures to ensure pollution control. For the purpose of efficient and effective enforcement of these laws, it is necessary to set up an Adjudatory Body which should consist of legal as well as technical experts. Caring for regulating and protecting the environment is essentially a desire to see that national development should proceed along the rational sustainable laws.

Today, the conservation, protection and improvement of human environment are major issues all over the world¹. Human, environment consists of both physical environment and biological environment. Physical environment covers land, water and air. Biological environment includes plants, animals and other organisms. Both physical and biological environment are inter-dependent. Industrialization, urbanization, explosion of population, over-exploitation of resources, disruption of natural ecological balances, destruction of a multitude of animal and plant species for economic reasons are the factors which have contributed to environmental deterioration². One country's degradation of environment degrades the global environment for all the countries³. The problem of environmental pollution has acquired international dimension and India is no exception to it. In the present paper, an attempt has been made to briefly outline the Indian laws which are primarily and more relevant to protect and improve the environment. The enforcement of these laws has also been examined and evaluated.

Meaning of Environment

The word "environment" relates to surroundings. It includes virtually everything. It can be defined as anything which may be treated as covering the physical surroundings that are common to all of us, including air, space, land, water, plants and wildlife⁴. According to the Webster Dictionary, it is defined as the "Aggregate of all the external condition and influences affecting the life and development of an organism."⁵ The Environment (Protection) Act, 1986 Section 2(a)

¹Murli S.. Deora v. Union of India (2001) 3 SCC 765

² Sachidanand Pandey v. State of West Bengal, AIR 1987 SC 1109

³ See Armin Rosenzanz, Shyam Divan and Martha L.Noble, Environmental Law and Policy in India (1991), p. 25

⁴Dr. Jai Jai Ram Upadhyay, ENVIRONMENTAL LAW, p.2, Allahabad: Central Law Agency, (2005).

⁵ R.M. Lodha, ENVIRONMENTAL RUIN: THE CRISES OF SURVIVAL, P.364 .New Delhi: Indus Publishing Company,(1993).

environment “includes water, air and land and the inter- relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property⁶.”

JUDICIAL CONTRIBUTION

The right of a person to pollution free environment is a part of basic jurisprudence of the land. Article 21 of the Constitution of India guarantees a fundamental right to life and personal liberty. The Supreme Court has interpreted the right to life and personal liberty to include the right to wholesome environment⁷. The Court through its various judgments⁸ has held that the mandate of right to life includes right to clean environment, drinking-water and pollution free atmosphere.

Taj Mahal Case:

In Taj Mahal's case⁹ the Supreme Court issued directions that coal and coke based industries in Taj Trapezium (TTZ) which were damaging Taj should either change over to natural gas or to be relocated outside TTZ. Again the Supreme Court directed to protect the plants planted around Taj by the Forest Department as under. The Divisional Forest Officer, Agra is directed to take immediate steps for seeing that water is supplied to the plants. The Union Government is directed to release the funds immediately without waiting for receipt of the proposal from the U.P. Government on the basis of the copy of the report. Funding may be subsequently settled with the U.P. Government, but in any set of circumstances for want of funds the officer is directed to see that plants do not wither away.

Dehradun Valley Case:

In that case¹⁰, carrying haphazard and dangerous limestone quarrying in the Missouri Hill range of the Himalaya, mines blasting out the hills with dynamite, extracting lime stone from thousands of acres had upset the hydrological system of the valley. The Supreme Court ordered the closing of lime stone quarrying in the hills and observed. This would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance.

Smoking in Public Places

In 2001, the Supreme Court of India imposed ban on smoking of tobacco in public places all over the country¹¹. Smoking causes harm not only to the smokers but also to non smokers who are forced to inhale the second hand smoke. More than 3 million people die every year in India as a result of smoking tobacco including bidis and cigarettes. One lakh Indians get lung cancer every year because of smoking. Indeed, lung cancer kills 95% of its victims. That is why the apex Court ruling has immense social value. But no one cares for the ban. As you know the cigarettes and biris are openly sold in tobacco-free railway stations, bus stands, cinema houses, etc. The statutory warning 'smoking

⁶ Available at envfor.nic.in/legis/env/env1.html

⁷ Rural Litigation and Entitlement Kendra, Dehradun V. State of U.P., AIR 1988 SC 1037

⁸ See for example, Subhash Kumar v. State of Bihar, AIR 1991 SC 420; M.C. Mehta V. Union of India AIR 2000 SC 1997

⁹ M.C.Mehta v. Union of India, AIR 1997 SC 734; see also M.C.Mehta v. Union of India, AIR 1999 S.C

¹⁰ Rural Litigation & Entitlement Kendra v. Slate of U.P., AIR 1985 SC 652; see also AIR 1988 SC 2187

¹¹ Murli S.. Deora v. Union of India (2001) 3 SCC 765

is injurious to health' is printed in such small prints and colour that hardly it is readable. Even if it is readable it has not served any purpose. So it is the social awakening which can only help us to prevent smoking.

Sustainable Development:

'Sustainable development' means development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. The Supreme Court of India in *Vellore Citizens Welfare Forum v. Union of India*¹², elaborately discussed the concept of 'sustainable development' which has been accepted as part of the law of the land. The 'precautionary principle' and the 'polluter pays principle' are essential features of 'sustainable development'. The 'precautionary principle' makes it mandatory for the State Government to anticipate prevent and attack the causes of environment degradation.

Conclusion:

Environmental modification is as old as the history of human development. In the last century, development and modification have come much faster than ever before. While it took a few thousand years for man to pass from Paleolithic to Neolithic tools, it has taken less than a century to modify conventional weaponry to nuclear devices. Development has been so rapid that nature has not had time to adapt to these changes and to human requirement and greed. The last century has seen an unmanageable increase in population, placing a tremendous burden on natural resources. There is not enough food for the world's hungry. Also, the earth itself is worn out due to excessive farming, use of chemicals and pesticides and excessive use of ground water. Water resources are badly polluted and emission of toxic fumes from industry and vehicles has deprived us of clean air. Industrialization and a growing consumer economy have led to the creation of huge mega polices with their problems of un disposed garbage and uncontrolled sewage. To combat these problems, world bodies like the United Nations and the World Commission on Environment and Development have been formulating ideas for environmental protection and sustainable development. Several international conferences have been held on this subject, starting with the first one in Tbilisi in 1977 to the Earth Summit in Rio de Janeiro, the Population Summit at Copenhagen, the world Summit on Sustainable Development in Johannesburg and several others. It is clearly evident that 25 years after the first conference in Tbilisi, there has not been an appreciable change in lifestyles or the level of awareness. Countries have put their own interests ahead of environmental protection and the future of coming generations.

References:

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¹² AIR 1996 SC 2715



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6. Ramakrishna, 'The Emergence of Environmental Laws in the Developing Countries: A Case Study of India', in *12 JUDICIARY.Q.*, (1985).