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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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Environmental Protection and Sustainable Development: Constitutional Duties and Judicial Innovations

By - Akanksha Sharma & Bhavya Sharma

Ph.D. Scholar (Guru Nanak Dev University, Amritsar)

ABSTRACT

“Protecting our environment today is the foundation for thriving communities tomorrow.” The campaign of environment protection and sustainable development is not a new concept but has been in prevalence since time immemorial. Since the ancient times humans and environment are regarded as inseparable. Environmental protection refers to the deliberate actions and measures taken to preserve, conserve, and safeguard the natural environment. It is vital because it ensures the conservation and sustainable management of the natural resources and life-supporting systems. On the other hand, sustainable development refers to improvement in the human wellbeing that allows us to meet the needs of the present without compromising the ability of future generations to meet their own needs. Sustainable development is not an option, but an urgent responsibility we owe to future generations. With the growth of industrialisation and recent economic development we need to focus on the controlled, restricted and mindful use of the natural resources. This article explores the critical relationship between environmental protection and sustainable development through the lens of constitutional duties and judicial innovations in India. The study aims to analyse the constitutional framework that mandates environmental stewardship, particularly examining Articles 48A and 51A(g) of the Indian Constitution, which impose fundamental duties on the state and citizens to protect and improve the environment. Additionally, it investigates the judiciary's role in interpreting and expanding these constitutional duties to promote sustainable development. This article undertakes detailed analysis of constitutional provisions, landmark Supreme Court rulings, and relevant legal scholarship. The key findings of the paper demonstrates that judicial activism has been instrumental in advancing environmental protection beyond legislative frameworks,

using Public Interest Litigations (PILs) as a strategic tool to address environmental degradation and enforce constitutional mandates. It underscores the synergy between constitutional duties and judicial interventions in creating a robust legal framework that enables sustainable development while safeguarding ecological integrity.

Keywords: environment, fundamental duties, constitution of India, PIL, judicial activism

Introduction

The term environment has been derived from a French word “environ” which means to encircle or to surround. Literally the expression “environment” means to surround. According to section 2(a) of environment protection act, 1986 "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 property”.¹ The environment plays a very crucial role in regulating the ecosystems and sustaining the life on earth. However, humans are degrading it through a course of activities. These activities include over exploitation of natural resources, deforestations and pollution of soil, water, air which in return contribute to climate change, urbanization and unsustainable agriculture practices as well result in loss of biodiversity, climate disruptions, soil erosion collectively degrading environment quality and sustainability making environment pollution an urgent global concern.

The campaign of environment protection is not a new concept but has been a topic of prevalence since time immemorial. It is to be noted that even during the ancient times the human beings and the environment was regarded as inseparable. At that time man never took an opportunity to pollute the environment indiscriminately as we are doing today. The man at that time was afraid of natural environment however in the recent times the trend of polluting the environment is at its peak. The concept of environment also finds its place in Kautilya's Artha shastra. In his words, jurisprudence dealt with law relating to environment Protection. The rulers at the time were duty bound to protect and to maintain the forest and its produce. Every individual was under a duty to protect the nature. The trees, animals, air, water& land were all treated as divine powers which supervise the universe. For the variety of other reasons these were worshipped by the ancient man. According to the Rig Veda, these basic elements form the foundation of all the creatures in the universe.

Environment under the constitution of India 1950

¹ Section 2(a) of Environment protection act, 1986

The constitution of India makes no specific constitutional provisions to protect and safeguard the environment in general but the part IV-A which consist of article 51 A(g) was inserted by the 42nd (amendment act) of 1976. This article states that “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for the living creatures”.² Thus it can be said that our constitution emphasize on environment protection. It is one of the fundamental duties of every citizen to protect the natural assets concerning not only the human beings but also all the living creatures including the wildlife. These fundamental duties incorporated in part IV-A are statutory duties and shall be enforceable by the court of law. The relevant laws also provide further penalties for the breach of above duties. The Apex Court of India in MC Mehta vs Union of India³ has held that under article 51-A(g) it shall be the duty of the central government to introduce the compulsory teaching of lessons for at least one hour per week on the protection and improvement of natural environment at all the education institutions of the country. The apex court also directed the central government to get textbooks written on that subject and to distribute them free of cost to the educational institutions.

Environment Protection as a fundamental duty

Part IV-A of the Constitution containing the fundamental duties of the citizen of India has been incorporated in the constitution by (42nd Amendment) act of 1976. The Apex court held in Surya Narain vs Union of India⁴ that these duties are the duties of individual citizens. These fundamental duties are not enforceable by the means of writ of mandamus. However, Article 51-A(g) provides that “It shall be the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion to the living creatures.” However, for the effective enforcement of fundamental duties it is necessary that all the citizens shall have their knowledge. The Supreme Court in MC Mehta versus Union of India has held that the compulsory teaching of lessons on prediction and improvement of environment should be introduced in educational institutions throughout the country. This initiative was taken with the view to bring awareness among the people regarding environment protection. Also, the government urged the local bodies to organise the city clean week, keep the town clean and keep the village clean week within the sponsorship of the respective government.

² Article 51(A) of constitution of India, 1950

³ (1983)1 S.C.C 471

⁴ (1982) Raj.1

Environment Protection and Directive Principles of State policy

Article 48-A of the Constitution of India i.e. directive principle of state policy consists of provision related to environment protection. However, these provisions are not enforceable by the state like fundamental rights as the idea of fundamental rights can only be achieved if the state endeavour to achieve them with a high sense of moral duty. Article 48-A deals with the protection and improvement of forests and wildlife. However, it reads as under “The state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.” Thus, it requires the State to safeguard and protect the wildlife of the country. The apex court in MC Mehta versus Union of India while relying on Article 48-A directed the central government and the state government and various local bodies and boards under various statutes to take various measures for the prevention and control of pollution of water.⁵

Public interest litigation and Environment Protection

Article 32 of the Constitution of India talks about the right to issue writs. It states that whenever there is a violation of fundamental rights any person whether aggrieved or otherwise can approach the court of law for the appropriate remedy. It also emphasises that it is a settled rule that the right to move to the Supreme Court is only available to the person whose fundamental right has been infringed. This power can only be exercised by honourable Supreme Court for the enforcement of the fundamental rights contained in part III of the constitution. However, the Supreme Court in its recent judgements has relaxed this traditional rule of “locus standi” which states that only a person whose fundamental right has been infringed can approach the Supreme Court under article 32. The Supreme Court now permits that public interest litigation can be filed at the instance of any public spirited citizens for the enforcement of constitutional and other legal rights of any person or a class of persons who because of economic or social disadvantaged position is unable to approach the court of law.⁶

In the matter of, MC Mehta versus Union of India⁷ a PIL was filed, and the victims of the gas leak were heard and granted compensation. In this case there was a gas leak from a plant of Shriram foods and fertilisers industries which caused injuries to several people. In this case the right for damages was allowed and it was held that the industries had an absolute liability that is the owner shall be liable to pay compensation without any exception however the amount of

⁵ AIR 1988 SC 1057

⁶ Prof. J.N Pandey on Constitution law of India ,38th ed. P. 314

⁷ AIR 1987 S.C 1086

compensation shall be proportionate to the financial capacity of the respected company. In another PIL filed by MC Mehta versus Union of India⁸ the Supreme Court issued guidelines for the enforcement of statutory provisions pertaining to prevention of nuisance caused by dirty water by polluting the river, Ganga. In the matter of another public interest litigation in the case of Rural Litigation Entitlement Kendra, Dehradun versus the State of Uttar Pradesh⁹ some public spirited individuals brought a notice to the court that some quarry owners are indiscriminately mining the slippery slopes and therefore are depriving them of the trees and our damaging the natural structure in the valley due to the over extraction of the limestone resulting in blockage of underground water channels and landslides. In this case the court held that closing of the illegal mines shall be the prize that shall we paid for the protection of the rights of the common citizens and to check though ecological disturbance in the Doon valley. Another landmark judgement that uses PIL as a tool for environment protection is the case of NS Subba Rao vs the Government of AP.¹⁰ In this very case the citizens of a particular locality were given relief whose life became miserable by the emission of pungent smell from a bone factory.

Judicial activism and environment

The judiciary is the guardian of the constitution and is not expected to sit as a silent spectator with closed eyes and be unbothered about the prevailing problems which the society faces. The power of the Supreme Court for the protection of environmental rights of the citizens has the widest amplitude and there is no such reason for the court do not adopt activist approach and issue directions to the state to implement environmental measures against the unchecked pollution add ecological disturbances. This is to be noted that civil pronouncements made by the Supreme Court has now made the right to get clean air, water etc within ambit of article 21 of the constitution of India. The Supreme court in Re, Bhavani River vs Shakti sugars ltd¹¹ took serious view in the respect of the discharge of has hazardous and objectionable effluents from the distillery in the adjoining river areas. Another judgement of Municipal Corporation, Ratlam vs Vardichand¹² held that human rights which call for a clean and unpolluted environment must be implemented irrespective of the financial barriers¹³. The Andhra Pradesh High Court in another case of T Damodar Rao& ors. vs the special officer Municipal Corporation

⁸ AIR 1988 S.C 2217

⁹ AIR 1985 SC 652

¹⁰ AIR 1968A.P 98

¹¹ AIR 1988 S.C 2578

¹² AIR 1980 SC 1622

¹³ AIR 1980S.C 2578

Hyderabad¹⁴ held that “the protection of environment is not only the duty of the citizens, but it shall also be an obligation of the state and other organs including the courts”.

Undoubtedly judicial activism has now added the right to clean and pollution free environment within the ambit of article 21 of the constitution i.e right to life and personal liberty. But despite that fact this right can't be exercised at the grassroot level due to the financial incapacity of the local bodies.

Article 21 Of Indian Constitution and Environment Protection

The link between human life and environment is unbreakable and any attempt made to break it would be dangerous not only for the humans but for all the species on this planet. Our country is heading to enormous industrialisation, and its impact can be seen as an ecological disturbance all over the country. Therefore, the constitutional duty of the state is not merely discharged by enacting environment protection laws, but they are also bound to bring environmental awareness among the citizens. Although article 48A and article 51 A(g) talks about environment protection, but these constitution provisions are not added to Part III i.e fundamental rights and are therefore not enforceable. Therefore, the Supreme Court through various landmark judgements had made a claim that the right to life under article 21 of the constitution includes the right to pollution free air and water. It also held that right to live what is a fundamental right under article 21 includes the right to enjoy a clean and pollution free water and air which are essential components for enjoyment of life. Thus, the right to enjoy a pollution free environment is a justiciable and enforceable right. The Supreme Court has said that anything that impairs with the quality of life is the violation of law and any public-spirited individual can file a PIL under article 32 which is a constitutional remedy before the Supreme Court for the purpose of removing pollution which is detrimental to the quality of life. It further said that the natural resources like forest, mountains, rivers are natural assets, and it is a duty to protect them. It has come up with various principles like “polluter must pay”, “precautionary principle”, “public trust doctrine” etc through a medium of various judgements. The SC in Vellore citizen welfare forum vs Union of India¹⁵ pronounced the very popular polluter principle which has become law by virtue of article 141 of the constitution binding all though courts and agencies. This principle means the absolute liability for the Environment harm

¹⁴ AIR 1987 A.P 171

¹⁵ AIR 1996 S.C 2715

means not only to compensate the victims but also to pay the cost of restoring the environmental degradation. In another landmark judgement of AP pollution control board vs M.V Naidu¹⁶ the Supreme Court observed that it is better to err on the side of caution and prevent environment pollution.

Lacunae in the existing law and judicial activism

India has enacted number of legislations for the purpose of environment protection but no good can be done without the effective participation of general public and the law enforcing agencies. In India there has always been a lack of public awareness related to environment protection, and it still prevails. The acres of land covering dense forest are being killed due to human encroachment. Although special laws have been made for the purpose of checking ecological disturbances but still these government agencies are overburdened to check environment pollution. There has been number of loopholes in the existing laws. The ordinary courts are reluctant to enter the domain of administration of environment but when these serious problems related to environment and its protection was brought into the notice by the means of public interest litigation the government agency showed a lenient attitude. Therefore, the Supreme Court appointed various committees to examine these matters. The creative role of the courts deserves applause for filling the statutory voids and inviting environmental assessment. Even the Supreme Court played a balancing role between environment protection and sustainable development and expressed its view that States endeavours is of paramount importance and can always tackle the issue of pollution by adopting the scientific measures and removing the hurdles in the way of development activities.

¹⁶ AIR 1999 S.C 2715

