



JUDICIAL EVOLUTION OF ENVIRONMENTAL JURISPRUDENCE IN INDIA: CONSTITUTIONAL MANDATES AND JUDICIAL ATTITUDES

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Abstract-- As a result of the exemplary steps taken by the UNO at various successive International Conferences, the primary responsibility of prevention, control and abatement of environment is reposed on the individual States with due awareness and collective efforts of their citizens. Consequently, it is now universally recognized that exploitation of natural resources in a *sine qua non* for economic development and such exploitation should be allowed up to such point at which both the environment and the human society can sustain not only in present but also in future. This phenomenon is named as the "Doctrine of Sustainable development". It is based upon two principles, namely, the "Precautionary Principle" and "Polluter Pays Principle". In this process, the contribution of Indian Judiciary is exemplary. Indian judiciary has touched upon all aspects of protecting the environment from the clusters of pollution by means of various directions, guidelines and orders issued from time to time and declared pollution free environment is as a Fundamental Right falling under Article 21. It has put greater barriers on the vigor of the freedom of trade guaranteed under Article 19(1) (f) and religious freedom under Article 25 and 26 of the Constitution by expending horizons of the right to life and personal liberty assured under Article 21. But when it becomes a question of implementation, the results are discouraging. An analysis of the various decisions of the Supreme Court reveals that the Apex Court aspired to protect environment from clutches of pollution caused by industrial wastes and effluents, noise, smoke, dust and heat. It wanted to protect the polluted agricultural land, water and air, coastal areas, seashores, towns and cities, public health and safety, forests and wild life, and to prohibit cruelty to animals, environmental degradation, and what not, *inter alias* by means of protective justice. For achieving the above objectives, the highest Court had exercised its writ jurisdiction through this paper, the author has made effort to assess the gap between haves and have not.

Key Words: *The Supreme Court of India, Environment Protection, Sustainable Development and Environmental Jurisprudence.*

GENERAL

Since the country after considerable period and struggle, relived from the British rule, assertion of sovereignty had the first priority, as indication of future pattern of governance of the nation and its sovereign people as democratic republic, was utmost necessary.¹ On the line of the Preamble to the Constitution of India, the welfare of people has to be secured by informing justice, to all institutions of national life.² Welfare of the people could be something besides relevance of environment. Social order explicitly excludes order of nature or environmental order. In no Constitutional Experiment, the nation and its people could be assured with certainty, promising future unless along with history and geography, tradition, heritage and religious culture have adequately been adverse to.³

It is universally recognized that the degree of socio-economic development of any country depends upon the degree of measures taken up for the protection of environment. Environment plays a prominent role in the progressive development of man and other living beings. A country, which neglects the environment, will have to experience abnormal nature and natural calamities with

¹ On 26th November 1949, We the people resolved to constitute India into 'Sovereign Democratic Republic'. The Preamble to the Constitution of India 1950.

² Article 38, the Constitution of India 1950.

³ *M.C.Mehta v. Union of India*, AIR 1987 SC 965.

disastrous consequences having direct but negative impact on the national economy and public health. Since environmental pollution has the characteristic nature of transgression from one country to other, it becomes a global problem adversely affecting the global economy.⁴ Hence, environmental issues are relevant and deserve serious consideration. But the needs of the environment require to be balanced with the needs of a developing country.⁵ Natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources have to be done with requisite attention and care so that ecology and environment may not be affected in any serious way. Preservation of the environment and keeping the ecological balance unaffected is a task, which not only the Governments, but also every citizen must undertake.⁶

ENVIRONS HISTORICAL PERSPECTIVE

In the primitive stage, worship of nature was not out of fear of unknown, but owing to deep reverence to the kindness for creation, growth and sustenance, human being owed to 'Mother Earth'. It had been imbibed into ancient culture of this sub-continent. *Atharva Veda*, the ancient scripture announced that earth is the paradise of man, which has been blessed with nature's bounties. Men, *therefore*, need not mythologically trace heaven somewhere else, and be under complete bondage of Earth and nature's bounties. Saints and monks transmitted throughout the massage of ancient scriptures. Preaching of *Gautam Buddha* and *Mahaveer* revitalized invaluable equation of the nature towards human beings. In fifteenth century, great *Saint Tukaram* propagated that trees and plants are our kith and kin.⁷ In 1913 at Harvard University, Gurudev Rabindra Nath Tagore explored that Upanishads and teaching of Gautam Buddha depict vitality of relationship between nature and human beings. To Gandhi ji the nature has been the repository of human spirit. Pandit Jawaharlal believed that Himalayas have always been part of our history, tradition, thinking and worship. Never the mountains, rivers, forests, etc. had mere geographical significance. They had articulated way of life and thinking of mankind. River and valley have been held to be cradles of civilization. *Predominantly*, India had a rural base with agro economy. That maintained intimate relationship with ardent in ecological supremacy. India's legendary cultural heritage preserved and flourished till before the First World War. The war besides destruction introduced several anti-environmental phenomena. After Second World War, India Attained independence, Sovereign people gave the Constitution to themselves.⁸

CONSTITUTIONAL ENVIRONMENTALISM

The Constitution broadly sanctions to build up modern India by material developments. Independent India undertook five-year plans and carried out massive material developments. *Certainly*, it involved destruction of considerable natural resources and nature became the first victim. 'We the people' had been hypnotised by man's power to mould the nature. One German philosopher had a vision, who cautioned that let us not to flatter over our victories over nature. For each such victory, nature takes revenge on us. After independence and commencement of the Constitution, the National Forest Policy of 1952 declared that the claims of communities living in and around forests should not override national interests. The destruction of forests to make way for road, irrigation and hydroelectric projects

⁴ N.Maheshwara Swamy, "Environment and Socio-Economic Development through Judicial Process - A Critical Analysis" in G. Manoher Rao (ed.), *Constitutional Development through Judicial Process* 425 (Asia Law House, Hyderabad, 2012).

⁵ BSES Limited v. Union of India, AIR 2001 Bom 128.

⁶ *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh & Others* with *Deoji Nandan Pandey v. Union of India & Others*, 1986 (Supp) SCC 517.

⁷ Ashok A. Desai, "Constitutional Accountability Towards Environment" 42 *JILI* 160-161 (2000).

⁸ Dr. L.M. Singhvi, a Eminent Indian Jurist believes that the value system of Gandhi ji and provision of the Constitution derived their spiritual and moral inspiration from the composite Indian Culture. *Id* at 162.



and industries was justified in the name of national interests.⁹

The darkest era of emergency had influenced *positively* the judicial psyche and opened the new way and means to take it to the highest echelons of Part III of the Constitution. Judicial approach has given a new dimension to Article 21, the right to life and personal liberty has come to occupy the position of “brooding omnipresence” and “sanctuary for human values” in the scheme of Fundamental Rights.¹⁰ In this context, the role of activist judicial approach is onerous and demand constant vigil to accelerate the momentum of human-right jurisprudence. *Fortunately*, in our country the apex court has used the armoury of the constitutional law in the positive and right direction. In the face of daunting obstacles, the Indian Courts have succeeded in sustaining a regime of Constitutional order and legal regularity with scant material resources, they have managed to adopt the structure of colonial law to the vastly different conditions of independence democratic India and to protect and extend Constitutional liberty, for all its flaws and imperfection, this is surely one of the epic legal accomplishments of this century, it has gone largely unappreciated by supports of democracy and the rule of law.¹¹

Corresponding to above, environment assumed a central role in India as a result of the major international conference on environment, namely, the United Nations Conference on Human Environment held in Stockholm in 1972. Environmental goals were subsequently incorporated in all Five-Year Plans and in the Wildlife (Protection) Act, 1972.¹² *Simultaneously*, in response to Stockholm declaration, the 42nd Constitutional Amendment took place in 1976. The Directive Principles of State Policy of the Indian Constitution spell out the nation’s commitment to protect the environment. Article 48-A of the Directive Principles states that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Environmental protection is also enshrined as a fundamental duty of the citizen. Article 51-A(g) mentions 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 living creatures.¹³

In 1976, the subject of ‘forest’ was transferred from the State list to the concurrent list by the Constitution (42nd Amendment) Act, enhancing the Centre’s power over forests. *Finally* in 1980, the Central Government enacted the Forests (Conservation) Act to check further deforestation. It also prohibited the State Governments from allowing the use of any forestlands for non-forestry purposes without prior approval of the Central Government.

RIGHT TO ENVIRONMENT AND ENVIRONMENTAL JUSTICE

Meanwhile, as a result of the exemplary steps taken by the UNO at various successive International Conferences, commencing from that held at Stockholm in 1972¹⁴ to that held at Johannesburg in 2002,¹⁵ the primary responsibility of prevention, control and abatement of environment is reposed on

⁹ S. Shanthakumar, *Introduction to Environmental Law* 2 (Wadhwa and Company, New Delhi, 2nd edn., 2007).

¹⁰ P. Sheshadri, “Social Justice and Media: Problems and Perspective – A Critical Evaluation” *All India Reporter* 49 (1996).

¹¹ G.S. Karkara, “Judicial Response to the Protection of Human Rights” *38 Journal of the Legal Studies* 1 (2007-08).

¹² Armin Rosencranz, “The Forest Rights Act 2006: The High Aspirations, Low Realization” *50 JILI* 657 (2008).

¹³ Part IV, *the Constitution of India*.

¹⁴ The first U.N. (International) Conference on Human Environment was held from 5 to 16 June 1972 in Stockholm declared that ‘to defend and improve the human environment for present and future generation has imperative goal for mankind. 26 principles were resolved in the Conference which are known as the Magna Carta on Human Environment. India was one of the signatories of this Conference.

¹⁵ Earth Summit was held at Johannesburg, South Africa, from 26th August to 4th September 2002. It was the consequential follow up action of the decision of the Earth Summit 1992. Johannesburg conference confirmed that significant progress has been made towards achieving a global consensus and partnership amongst all the people of our planet. Over 4000 delegates from about 100 countries participated in it. Stockholm Convention 2004 was held on May



the individual States with due awareness and collective efforts of their citizens. *Consequently*, it is now universally recognized that exploitation of natural resources in a *sine qua non* for economic development and such exploitation should be allowed up to such point at which both the environment and the human society can sustain not only in present but also in future. This phenomenon is named as the "Doctrine of Sustainable development". It is based upon two principles, namely, the "Precautionary Principle" and "Polluter Pays Principle".

In this process, the contribution of Indian Judiciary is exemplary. Indian judiciary has touched upon all aspects of protecting the environment from the clusters of pollution by means of various directions, guidelines and orders issued from time to time and declared pollution free environment is as a Fundamental Right falling under Article 21. It has put greater barriers on the vigor of the freedom of trade guaranteed under Article 19(1) (f) and religious freedom under Article 25 and 26 of the Constitution by expending horizons of the right to life and personal liberty assured under Article 21. But when it becomes a question of implementation, the results are discouraging. An analysis of the various decisions of the Supreme Court reveals that the Apex Court aspired to protect environment from clutches of pollution caused by industrial wastes and effluents, noise, smoke, dust and heat. It wanted to protect the polluted agricultural land, water and air, coastal areas, seashores, towns and cities, public health and safety, forests and wild life, and to prohibit cruelty to animals, environmental degradation, and what not, *inter alias* by means of protective justice. For achieving these aspects, it wants to put control on the individual rights and freedoms assured under Articles 19 (1) (f), 25 and 26. It wanted the State to undertake its ostensible responsibility enshrined under Directive Principles of State Policy¹⁶ for the well-being of mankind as well as environment protection. All these are essential for the socio-economic development of the country.

For achieving the above objectives, the highest Court had exercised its writ jurisdiction when there was leakage of hazardous gases like chlorine from the Shri Ram Fertilizer Industries,¹⁷ waste material of alcohol plant was thrown into the adjoining nala resulting in spreading of obnoxious smells being released apart from mosquito breeding,¹⁸ highly toxic effluents were discharged into River Ganga by tanneries,¹⁹ safety and insurance for the benefit of workers was required at the cost of employer,²⁰ harmful drug were required to be banned,²¹ welfare of the children born with congenital defects as a consequences of leakage of MIC gas from the Union Carbide Plant at Bhopal, was at stake,²² awareness about the environment protection was felt essential,²³ discharged untreated effluents have resulted in the land pollution of thirty five thousand acres in Tamil Nadu making the land unfit for cultivation,²⁴ when there was compelling need for protecting the Taj Mahal from pollution due to emissions of chemical and hazardous industries,²⁵ when use of loudspeakers, drums and other sound-producing instruments were causing noise pollution and disturbing the normal day life of the residents in and around places of

¹⁷ aims at phasing out 12 dangerous pesticides and industrial pollutants. More than 150 countries have signed it and about 60 have ratified it.

¹⁶ Article 48-A of Indian Constitution provides that the State to take steps to protect and improve the environment and to safeguard the forest and wild life of the country.

¹⁷ *M.C.Mehta v. Union of India*, AIR 1987 SC 965.

¹⁸ *Ratlam Municipality v. Vardhichand*, AIR 1980 SC 1622.

¹⁹ *M.C.Mehta v. Union of India & Others*, AIR 1988 SC 1037.

²⁰ *M.K. Sharma v. B.E.L.* (1987)3 SCC 231.

²¹ *Vincent Panikulangara v. Union of India* (1987) 2 SCC 165.

²² *Union Carbide of India v. Union of India*, AIR 1992 SC 248.

²³ *M.C.Mehta v. Union of India & Others*, AIR 1992 SC 382.

²⁴ *Vellore Citizens Welfare Forum v. Union of India & Others*, AIR 1996 SC 2751.

²⁵ *M.C.Mehta v. Union of India* (1997) 2 SCC 353.



worship,²⁶ when there was need to protect the construction of Narmada dam²⁷ and so on. Beside it, remaining concept of safeguarding of forest and wild life in achieving the object of protection of environment, our highest judiciary always awakened for this, as in *T.N. Godavaram Thirumulpad v. Union of India*,²⁸ in a writ petition for directing to prepare rescue plan to save wild buffalo from extinction, the plea of the State Government that there was lack of funds to undertake various programs for protection of wild buffalo, was held to be not tenable. The State Government was directed to give full effect to centrally sponsored scheme for saving wild buffalo.

While environment aspects have concern with 'life', human rights aspects have concern with 'liberty'. In the context of emerging jurisprudence relating to environmental matters, as in the case of human rights, it is the duty of the Supreme Court to render justice by taking all aspects into consideration.²⁹ Where on account of human agencies, the quality of air and of environment are threatened or affected, the Supreme Court would not hesitate to use its innovative power within its epistolary jurisdiction to enforce and safeguard the right to life and to promote public interest.³⁰

In *Association for Environmental Protection v. State of Kerala*,³¹ the Alva Municipality reclaimed part of Paeriyar River and the District Tourism Promotion Council, Ernakulam decided to construct a restaurant or the convenience of the public coming there on Shivaratri festival. The proposal was forwarded to the State Government which accorded permission to it. The project was cleared by the State Government contrary to the mandate of G.O. issued by the State Government itself under which no project costing more than Rs. 10 lakhs could be executed and implemented without a comprehensive evaluation of an expert which could assess the possible impact of the project on the environment and ecology of the area including water-bodies, rivers, lakes etc. the project was held to be violative of right to life of people in the area. The Supreme Court held that the G.O. was illustrative of the State Government's commitments to Article 48-A of the Constitution. Under Article 48-A, the State is burdened with the responsibility of making an endeavour to protect and improve the environment and to safeguard the forest and wild life of the country. Under Article 51-A, there is duty of citizens to protect and improve the natural environment including the forests, lakes, rivers and wildlife to have compassion for living creatures. Justice G.S. Singhvi of the Supreme Court in a two Judges Bench "case referred to a legal theory of "Doctrine of Public Trust" developed by the ancient Roman Empire that certain common properties such as air, sea, water and forests are of immense importance to the people in general and they must be held by the Government as a trustee for the free and unimpeded use by the general public and it would be wholly unjustified to make them a subject of private ownership. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of the few.

The right to life and personal liberty guaranteed by Article 21 should be interpreted to incorporate at least the minimum conditions for an autonomous life, including an adequate range of options. Some of these conditions are detailed in Part IV of the Constitution which are necessary to be read along with Part III or more importantly under Article 21 to make it more meaningful. Those conditions are instances of collective goods which are possibly by the foundations of autonomy of individuals. Health, environment, freedom from abuse, torture, sexual harassment, minimum wages etc, could be

²⁶ *Church of God in India v. K.K.R. Majestic Colony Welfare Association and Others*, AIR 2000 SC 2773.

²⁷ *Narmada Bachao Andolan v. Union of India & Others*, AIR 2000 SC 3751.

²⁸ AIR 2012 SC 1254.

²⁹ *A.P. Pollution Control Board v. Prof. M.V. Naidu (Retd.) and Others*, AIR 1999 SC 812.

³⁰ *V. Lakshmi Pathy and Others v. State of Karnataka and Others*, AIR 1992 Ker 57.

³¹ AIR 2013 SC 2500; *T.N. Godavarman Thirumulpad v. Union of India & Others* (2014) 1 SCR 923.

viewed and branded as collective goods which are integral to an idea of society which is infused with sense of respect for human beings. India has pulled off the astonishing feat of sustaining a regime of constitutional liberty with vigorous judicial protection of human rights in a very large, very poor and very diverse society.

The activist role of the Supreme Court has gone a long way in assuring that the basic needs of the people which are the basic human rights are met. The Seminal decision which has been the pillar of reform both in civil and political liberties and socio-economic justice has been the decision in *Maneka Gandhi v. Union of India*.³² The case involved the refusal by the Government to grant a passport to the petitioner, which thus restrained her liberty to travel. In answering the question whether this denial could be sustained without a pre-decisional hearing, the Court proceeded to explain the scope and content of the right to life and liberty. It was held therein that the Fundamental Rights are not island but have to be read along with the other rights. Hence, reading Article 21 with 14 and 19, it was held that “procedure established by law” under Article 21 of the Constitution means not just any procedure but a just, fair and reasonable procedure. This decision also stressed on the fact that the words “personal liberties” have to be given the widest possible amplitude.

The emphasis during the expansion of Article 21 has been on a wide interpretation of the words “life and liberty”. In *Kharak Singh v. State of UP*,³³ Subba Rao J quoted Field J in *Munn v. Illinois*,³⁴ to emphasize the meaning ‘life’ covered by Article 21 as something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. In *Francis Coralie Mullin v. Union Territory of Delhi*, the Court declared.³⁵

The right to life includes the right to live with human dignity and all that goes with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. The magnitude and components of this right would depend upon the extent of economic development of the country, but it must, in any view of the matter, include the bare necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self. Every act which offends against or impairs human dignity would constitute deprivation *pro tanto* of this right to live.

The negative wording of Article 21 shows that the right to life is not created but is inherited by birth in every man.³⁶ It has been held by the Supreme Court that Article 21 has not only a negative but even a positive content.³⁷ In *People's Union for civil Liberties v. Union of India*,³⁸ it was strongly stated that merely because certain rights are implied as they have been read into Article 21, would not make them any less fundamental and they also are equally enforceable as express Fundamental Rights. It was held that there cannot be any distinction between the Fundamental Rights mentioned in Chapter III of the Constitution and the declaration of such rights on the basis of the judgments rendered by this Court. The Supreme Court of India has impliedly accepted the theory of ‘unenumerated rights’ in its

³² (1978)1 SCC 248.

³³ *Kharak Singh v. State of UP*, AIR 1963 SC 1295.

³⁴ *Munn v. Illinois* (1877) 94 US 113.

³⁵ *Francis Coralie Mullin v. Union Territory of Delhi*, AIR 1981 SC 746; *Chameli Singh & Others v. State of U.P. & Another* (1996) 2 SCC 549.

³⁶ *Kartar Singh v. State of Punjab* (1994) 3 SCC 569.

³⁷ *P. Rathinam v. Union of India* (1994) 3 SCC 394.

³⁸ *People's Union for civil Liberties v. Union of India* (2003) 4 SCC 399.



interpretation of Article 21. There is adequate scope for the development of the theory of 'core rights' or 'subsistence rights'. For, traditional liberties arose out of protest against oppressive political institutions, while the subsistence rights *i.e.* social and economic rights arise out of protest against oppressive social and economic institutions. The concept of human rights is complete only when there is acknowledgement of subsistence rights along with traditional liberties. As a matter of fact, the Supreme Court of India accepted this principle and held that there is harmony and balance between Fundamental Rights and the Directive Principles of State Policy and this harmony and balance is a basic feature of the Constitution.³⁹ The Supreme Court upheld traditional liberties *i.e.* Fundamental Rights when there is a political threat to these rights. Similarly, the Supreme Court has to uphold subsistence rights when there is social and economic threat to these rights. Political threats to traditional liberties may be conscious or otherwise. But, the social and economic threats to subsistence rights being conscious only, these rights command greater attention from the judiciary. As the Supreme Court ensures the enjoyment of Fundamental Rights by warding off political threats, the Court has also to ensure enjoyment of subsistence rights by warding off social and economic threats. This is the new role of Indian superior Courts and through this role a new jurisprudence is being involved.⁴⁰ The Court innovated many rights.⁴¹ With public interest litigation, the Supreme Court has refashioned its institutional role to readily enforce social rights and even impose positive obligations on the State.⁴²

CONCLUSION

Environmental issues are relevant and deserve serious consideration. But the needs of the environment require to be balanced with the needs of a developing country.⁴³ Natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources have to be done with requisite attention and care so that ecology and environment may not be affected in any serious way. Preservation of the environment and keeping the ecological balance unaffected is a task, which not only the Governments, but also every citizen must undertake.⁴⁴

Environment assumed a central role in India as a result of the major international conference on environment, namely, the United Nations Conference on Human Environment held in Stockholm in 1972. India's National Environment Policy 2006 and the National Action Plan on Climate Change, 2008 are welcome policies as they reflect the country's concern for and commitment to the protection and preservation of environment and prevention of global warming in the light of its international obligation in this regard. But any policy is only good as its implementation. *Accordingly*, the Cabinet or a nominated Committee of the Cabinet may be requested to review the implementation of the national Environment Policy, once a year, within three months from the close of the previous fiscal year. The findings of the review should be publicly disclosed, so that stakeholders are assured of the seriousness of the Government in ensuring implementation of the policy. In this context, it is highly desirable and necessary to establish such an agency which should be on the lines of the United State Environment protection Agency. *Further*, Citizens are required more conscious toward their fundamental duties to improve their environment.

³⁹ *J & K National Panthers Party v. Union of India & Others*, AIR 2011 SC 3.

⁴⁰ Justice Kurian Loseph, "Judiciary and Social Welfare in India" 56 *Nyaya Deep* 14 (2013).

⁴¹ G.Rajasekar, "The Constitution and the Changing Approach of the Judiciary" in edited by G. Manoher Rao (ed.), *Constitutional Development through Judicial Process* 296 (Asia Law House, Hyderabad, 1st edn., 2012).

⁴² Jayna Kothari, "Social Rights and the Constitution" 6 *SCC* 32(2004).

⁴³ *BSES Limited v. Union of India*, AIR 2001 Bom 128.

⁴⁴ *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh & Others with Deoji Nandan Pandey v. Union of India & Others*, 1986 (Supp) *SCC* 517.