



Right to healthy environment and constitution of India

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Abstract

Right to live in healthy environment is a part of fundamental right provided under article 21 of constitution of India by judicial interpretation. In ancient period people depended on nature and in return they use to take care and worship the environment. The environment is life support system. Man cannot imagine his survival without nature. Now days due to environmental degradation neither we can inhale pure air nor can we drink fresh water because of contaminated air and water. The judiciary has from time to time handed down its judgment and decision on various environmental issues. But the positive results are not forth coming. The situation is becoming alarming due to increasing degradation of the environment.

The main objective of this article is that how to control the ever degrading environment by effective legislative major and public awareness program including government initiative.

Keywords: healthy environment, fundamental right, nature

Introduction

“The air is the guru, water our father, and the great earth, our mother”^[1]

The above quotation gives the clear indication that air, water and earth are the fundamental basis of not only the human life but all the living creatures on the planet. Survival of human being is directly related with the nature. Almost all the necessities of life are depended on the nature. It's necessary for “life support system” without the support from the healthy environment it's very difficult to survive. Most of the necessity of life are fulfilled by the factors derived from the environment.

We are advancing slowly but steadily towards the endangered present and future generation because of the unhealthy environment. Now a days due to environmental degradation neither we can inhale pure air, nor can we drink fresh water because of contaminated air and water. All of us all over the globe face grave environmental problem, the continuing deterioration of earth and ecological imbalance poses a serious threat to the pollution free environment. One of the most complex challenges facing our generation is to maintain a workable synergy between sustainable economic development and pollution free environment.

The concept of human rights in general emerged after the 2nd world war, but right to live in a healthy environment, was never a priority. Today this right is an emerging concept that is being hotly debated in the human rights arena. A healthy environment is an essential aspect of the right to life not only for human being but also for other living creatures on the planet. Therefore, unhealthy environment is potentially a violation of basic right of life^[2]. The preservation of the environment is such an important issue and it has already taken a serious position in front of all the countries across the world as a crisis and it is very critical and necessary to take appropriate steps to protect the healthy environment and its

ecology so all the living being will continue to survive smoothly and happily on the earth. There have been already so many adequate steps taken as a part of environmental protection initiatives.

Objective of Research

The main objective of the proposed research work focuses solely on one of the most serious issues i.e. environment degradation and it is to inspire and motivate the people & their ideas on how to control the ever degrading environment by effective legislative measures and public awareness programmes including govt. initiatives and interventions. My research work aims at promoting the radical and concrete steps which should be taken by the govt. authorities.

History and background of environment protection International initiatives

First time in June 1972 an International Conference on environment was held in Stockholm by the United Nations organisation and declared that defending and improving the environment for the present and future generations is already an imperative goal for the entire mankind. So the conference addressed all the govts. And people of the world for putting in common efforts for the preservation and improvement of the environment. The conference resolved twenty six principles which were called “magna carta” on environment. The then Prime Minister of India Mrs. Indira Gandhi also voiced her concern about the eco imbalance, pollution and degradation of environment in her address to the conference^[3].

In 1987 Gro Harlem Brundtland presented its report through world commission on environment and development on our common future which contained 22 legal principles divided into four categories –

- a. General principle rights and responsibilities.
- b. Principles, rights and obligations concerning trans

boundary natural resources and environmental interference.

- c. State responsibilities
- d. Peaceful settlement of disputes.

Some of the important principles are as follows ^[4].

1. State shall maintain ecosystem and ecological process essential for the functioning of the biosphere, shall preserve biological diversity, and shall observe the principle of optimum sustainable yield in the use of living natural resources and ecosystem.
2. State shall conserve and use the environment and natural resources for the benefit of present and future generations.
3. All human beings have the fundamental right to healthy environment adequate for their health and well being.
4. State shall establish adequate environmental protection, standards and monitor changes in and publish relevant data on environmental quality and resources.
5. Strict liability :- State shall take all reasonable precautionary measures to limit the risk when carrying out or permitted certain dangerous but beneficial activities and shall ensure that compensation is provided to the people for trans boundary harm occur even if the activities were not known to harmful at the time they were undertaken.
6. State shall make or require environmental assessment of proposed activities which may significantly affect the environment or use of a natural resource.
7. State Responsibility - State shall cease activities which breach in international obligation regarding the environment and provide compensation for the effected people.

Indian Initiatives

Before the Bhopal Gas tragedy in 1984, the panic in India was never felt really on the problems of pollution but soon after Stockholm Conference Indian parliament also passed several acts to protect and improve the environment. Wildlife (Protection) Act 1972, Water (Prevention and Control of Pollution) Act - 1974, Air (Prevention and Control of Pollution) Act 1981, Forest Environment (Protection) Act 1989, Biological Diversity Act 2002, Cigarettes and Other Tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce Production, Supply and Distribution) Act 2003 and National Environment policy 2006.

Further the Indian Constitutional (42nd Amendment) Act 1976 incorporated two significant Article 48-A and 51-A (g).

Article 48-A directs the state to protect and improve the environment and to safeguard the forests and wildlife of the country. There is a growing consciousness and awareness among the masses that suitable measures be adopted to protect the environment, forests and wildlife. The Central Government may play a meaningful role in this increasingly significant problem of environment ^[5].

Accordingly to Art.51-A (g), it shall be a duty of every Citizen of India to protect and improve the environment including forest, lakes and wildlife and to have Compassion for living creatures.

The National Committee on Environment Planning and Co-ordination (NCEPC) was established in February, 1972 and

within its preview were covered several environment projects like human settlement, planning survey of natural eco-systems, like west lands and spreading of environmental awareness.

Judicial Interpretation

The Judiciary has, from time to time, handed down its judgment and decision on various environmental issues. The remedies available in India for pollution comprise common law remedies, remedies under the law of Torts, Criminal Law remedies, Civil remedy and Constitutional remedies ^[6]. According to the Stockholm Declaration, 1972, every person has a fundamental right to an environment of quality that permit a life of dignity and well-being, and has a solemn responsibility to protect and improve the environment for present and future generations. This principle of Stockholm Declaration is directly related to the right to life and personal liberty, equality, freedom of expression and right to trade and Commerce guaranteed under the Constitution of India by Judicial Interpretation. The Courts have contributed substantially in protecting and improving environment by issuing orders/directions on environment. Some of them are as follows

In the case of *Rural v. State of U.P. & Others* ^[7], the Supreme Court ordered closure of all lime-stone quarries in the Doon Valley taking notice of the fact that lime-stone quarries and excavation in the area had adversely affected water springs and environmental ecology. While commencing on the closure of the lime-stone quarries, the court stated that this would undoubtedly cause hardship to owners of the lime-stone quarries, but it is the price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimum disturbance to ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land, air, water and environment.

In the case of *Vellore Citizens Welfare Forum v. Union of India & Others* ^[8] this court ruled that precautionary principle and the polluter pays principle are parts of the environmental law of the country. This court declared Articles 47, 48A and 51A (g) to be part of the constitutional mandate to protect and improve the environment.

In the case of *M. C. Mehta v. Union of India & Others* ^[9] this court observed that the effluent discharged in river Ganga from a tannery is ten times noxious when compared with the domestic sewage water which flows into the river from any urban area on its banks. The court further observed that the financial capacity of the tanneries should be considered as irrelevant without requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effect on the public at large.

In the case of *M. C. Mehta v. Union of India & others* ^[10] this court observed that in order to preserve and protect the ancient monument Taj Mahal from sulphurdioxide emission by industries near Taj Mahal, the court ordered 299 industries to ban the use of coke/coal. The court further directed them to shift-over to Compressed natural Gas (CNG) or re-locate them.

In the case of *A. P. Pollution Control Board v. Prof. M. V. Nayadu (Retd.) & Others* ^[11] this Court quoted A. Fritsch, "Environmental Ethics: Choices for concerned citizens". The same is reproduced as under.

"The basic insight of ecology is that all living things exist in interrelated systems; nothing exists in isolation. The world system is weblike; to pluck one strand is to cause all to vibrate;

Whatever happens to one part has ramifications or all the rest. Our actions are not individual but social; they reverberate throughout the whole ecosystem", [Science Action Coalition by A. Fritsch, *Environmental Ethics: Choices for Concerned Citizens* 3-4 (1980): (1988) Vol.12 *Harv. Env. L. Rev.* at 313)."

The court in this case gave emphasis that the directions of the court should meet the requirements of public interest, environmental protection, elimination of pollution and sustainable development. While ensuring sustainable development, it must be kept in view that there is no danger to the environment or to the ecology.

In the case of *Essar Oil Ltd. v. Halar Utkarsh Samiti & Others* ^[12] while maintaining the balance between economic development and environmental protection, the court observed as under. "Certain principles were enunciated in the Stockholm Declaration giving broad parameters and guidelines for the purposes of sustaining humanity and its environment. Of these parameters, a few principles are extracted which are of relevance to the present debate. Principle 2 provides that the natural resources of the earth including the air, water, land, flora and fauna especially representative samples of natural eco-systems must be safeguarded for the benefit of present and future generations through careful planning and management as appropriate. In the same vein, the 4th principle says "man has special responsibility to safeguard and wisely manage the heritage of wild life and its habitat which are now gravely imperiled by a combination of adverse factors. Nature conservation including wild life must, therefore, receive importance in planning for economic developments". These two principles highlight the need to factor in considerations of the environment while providing for economic development. The need for economic development has been dealt with in Principle 8 where it is said that "economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for improvement of the quality of life".

On sustainable development, (Bhandari, J.) in *Karnataka Industrial Areas Development Board v. Sri C. Kenchappa & Others* ^[13], observed that there has to be balance between sustainable development and environment. This Court observed that before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development, they do not gravely impair the ecology and environment; State Industrial Areas Development Board to incorporate the condition of allotment to obtain clearance from the Karnataka State Pollution Control Board before the land is allotted for development. The said directory condition of allotment of lands is converted into a mandatory condition for all the projects to be sanctioned in future.

In another important decision of this Court in the case of *M. C. Mehta v. Kamal Nath & Others* ^[14], this Court was of the opinion that Articles 48A and 51-A (g) have to be considered in the light of Article 21 of the Constitution. Any disturbance of the basic environment elements, namely air, water and soil, which are necessary for "life", would be hazardous to "life" within the meaning of Article 21. In the matter of enforcement of rights under Article 21, this Court, besides enforcing the provisions of the Acts referred to above, has also given effect to Fundamental Rights under Articles 14 and 21 and has held that if those rights are violated by disturbing the environment, it can award damages not only for the restoration of the ecological balance, but also for the victims who have suffered due to that disturbance. In order to protect the "life", in order to protect "environment" and in order to protect "air, water and soil" from pollution, this Court, through its various judgments has given effect to the rights available, to the citizens and persons alike, under Article 21. The court also laid emphasis on the principle of Polluter-pays. According to the court, pollution is a civil wrong. It is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution, has to pay damages or compensation for restoration of the environment and ecology. *A.P.S.R.T.C. v. S.P. Satyanarayana* ^[15], the Supreme Court referred to the White Paper published by the Government of India that the vehicular pollution contributes 70% of the air pollution as compared to 20% in 1970. The Apex Court gave comprehensive directions to reduce the air pollution on the recommendation of an Expert Committee of Bhure Lal appointed by this Court.

In *Re. Noise Pollution case* ^[16], the Supreme Court while dealing with the issue of noise pollution, was of the opinion that there is need for creating general awareness towards the hazardous effects of noise pollution. Particularly, in our country, in our country the people generally lack consciousness of the ill effects of noise pollution creates and how the society including them themselves stand to benefit by preventing generation and emission of noise pollution.

In the case of *Indian Council for Environ-Legal Action v. Union of India & Others* ^[17] the main grievance in the petition is that a notification dated 19.02.1991 declaring coastal stretches as Coastal Regulation Zones which regulates the activities in the said zones has not been implemented or enforced. This has led to continued degradation of ecology in the said coastal areas. The court observed that while economic development should not be allowed to take place at the cost of ecology or by causing widespread environmental destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment.

In the case of *S. Jaganath v. Union Of India & Others* ^[18], the Supreme Court dealt with a public interest petition filed by the Gram Swaraj Movement, a voluntary organization working for the upliftment of the weaker section of society, wherein the petitioner sought the enforcement of Coastal Zone Regulation Notification dated 19.02.1991 and stoppage of

intensive and semi-intensive type of prawn farming in the ecologically fragile coastal areas. This Court passed significant directions as under:

1. The Central Government shall constitute an authority conferring on the said authority all the powers necessary to protect the ecologically fragile coastal areas, seashore, waterfront and other coastal areas and specially to deal with the situation created by the shrimp culture industry in coastal States.
2. The authority so constituted by the Central Government shall implement “the Precautionary principle” and “the Polluter Pays” principles.
3. The shrimp culture industry/the shrimp ponds are covered by the prohibition contained in Para 2(i) of the CRZ Notification. No shrimp culture pond can be constructed or set up within the coastal regulation zone as defined in the CRZ notification. This shall be applicable to all seas, bays, estuaries, Creeks Rivers and backwaters. This direction shall not apply to traditional and improved traditional types of technologies (as defined in Alagarswani report) which are practiced in the coastal low lying areas.
4. All aquaculture industries/shrimp culture industries/shrimp culture ponds operating/set up in the coastal regulation zone as defined under the CRZ Notification shall be demolished and removed from the said area before March 31, 1997.
5. The agricultural lands, salt pan lands, mangroves, wet lands, forest lands, land for village common purpose and the land meant for public purposes shall not be used/converted for construction of the shrimp culture ponds.
6. No agriculture industry/shrimp culture industry/shrimp culture ponds shall be constructed/set up within 1000 meter of Chilka Lake and Pulicat Lake (including Bird Sanctuaries namely Yadurapattu and Nelapattu).
7. Aquaculture industry / shrimp culture industry / shrimp culture ponds already operating and functioning in the said area of 100 meter shall be closed and demolished before March 31, 1997.
8. The Court also directed that the shrimp industries functioning within 1000 meter from the Coastal Regulation Zone shall be liable to compensate the affected persons on the basis of the “polluter pays” principle.
9. The authority was directed to compute the compensation under two heads namely, for reversing the ecology and for payment to individuals.
10. The compensation amount recovered from the polluters shall be deposited under a separate head called “Environment Protection Fund” and shall be utilized for compensating the affected persons as identified by the authority and also for restoring the damaged environment.

Abhilash Textiles V. Rajkot Municipal Corporation ^[19]S.C. direction to municipalities to maintain proper drainage and sewage system for the preservation of environmental and public health.....

G.N.K Hujurja V. D.D.A. ^[20]:- The court ordered that the portion of nursery school building already constructed be demolished and the land brought to its original form for developing a park keeping in view the environmental needs.....

Govind V. Shanti Sarup ^[21] under sec.133 of the code of Criminal procedure was used by the Court to preserve the environment in the interest of “health”.....

Conclusion

Thus in spite of the Apex Court & legislature by the Govt. the positive results are not forth coming. The situation is becoming alarming due to increasing degradation of the environment. In such a scenario there is a need for full-fledged war to check the environmental pollution. The govt. the N.G.O. and the general public should take steps so that environmental pollution should not be degraded further. The major problem of environmental pollution can be solved upto a certain extent if there is an effective mechanism to implement the environmental laws and there is also a need of mass education and awareness about the environment.

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