

TOWARDS A SHARED FUTURE: RAISING AWARENESS AND PRACTICING ENVIRONMENT JUSTICE

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INTRODUCTION

Environment provides all necessities of life thus there is a close relationship between human beings and environment. Human existence is not possible on the planet without a natural and safe environment. Environment and society are inseparable and dependent on each other. The time has witnessed that the natural environment has helped many civilization in their development. Since time immemorial the main aim of social life in India has been to live in harmony with nature. Now time has changed, in order to make life more comfortable the man has always exploited the nature. Due to ever increasing rate of population and advancement in the field of science and technology, some tremendous changes has been introduced in the domain of environment. These changes not only upset the eco system of nature but also shake the balance of human lives. India is the largest population center in southern Asia, the region which is among the most vulnerable to the future effects of Environment pollution. According to the fifth Assessment Report 2014 of the Intergovernmental Panel on Climate Change, this region is likely to experience a temperature increase upto five degree centigrade by the year 2080.

NEED OF STUDY

- 1) To examine Indian legal system that underlies the environment justice,
- 2) To study various measures taken to abate degradation of environment at national and international level,
- 3) To trace the development of environment justice in India and to examine the present trends this leads to environment justice in India and
- 4) To study the impact of public participation in environmental decision making

HYPOTHESIS

Keeping in view, the aims and objectives of the Study the following hypothesis have been formulated.

- 1) Offences relating to environment pollution are on increase whereas the moral as well as ethical concern of the public towards environmental protection is on the decrease.
- 2) The environment legislation passed by the legislature of India was proved ineffective and insufficient.

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- 3) The judicial verdict are often neglected and not properly complied with by the respective agencies in the country.
- 4) The international environmental treaties were proved insufficient.

METHODOLOGY

The methodology adopted or used in this research paper is doctrinaire and analytical.

LITERATURE REVIEW

The book *Text Book of Environmental Law* 2002 by I.A.Khan widely elaborates the problems of environmental law, causes of environmental pollution in India, and the legislative measures adopted by India.

The book *Environmental Law in India* (2016) by P. Leelakrishna, provides the critical analysis of judgments passed by honorable Supreme Court and vividly discusses the International Conventions and Treaties relevant to the subject. This book also emphasizes upon the public participation in environmental decision making.

The book *Environmental Law* (2015) by S. C. Shastri, deals with different facet of judicial activism. This book is also concern with various fundamental principles which deals with environment issues.

The book *Environmental Law* (2001) by H. N. Tiwari tries to elaborate the complexity of environment. It addresses the important aspects which are related to environment protection such as effect of pollution, national and international legal provision to protect the environment.

LEGISLATIVE PROVISIONS OF ENVIRONMENTAL LAW IN INDIA

In India since the Vedic period the main aim of social life was to live in harmony with the nature. Our main saints, sages and great philosopher lived in forest and respected the nature as god. The Hindu religion enshrined a respect for nature and it was regarded a sacred duty of every person to respect and protect the environment.

And we follow the same ethics in present scenario. But due to increasing growth of population, advancement of technologies and rapid growth in deforestation India is also facing the problem of environmental pollution. India has so many legislative provisions to redress this problem and for securing the environment justice. Environment justice is a process by which various stakeholders in environment protection understand their responsibility for safer environment to the generations. It seeks the involvement of every person in environment development.

Initially the preamble of constitution of India had not placed environment justice along with the other justice as economic, social and political. But after the Stockholm Declaration in 1972 which emphasized that man bears a solemn responsibility to protect and improve the

environment not only for the present generation but also for future generation, and thus consequently the Indian government introduced the 42nd amendment in the constitution of India. The 42nd amendment inserted the two environmental related Articles 48-A and 51(A)g, in the form of Directive Principles of State Policy and Fundamental Duties respectively. It is the fundamental duty of every citizen to protect and improve the natural environment. The main drawback is that Directive principles are not enforceable by any court. So if these directives are not followed by the state, its implementation cannot be secured by any judicial proceedings. But these principles are fundamental in governance of country and it is an obligation of the state to apply this principle in law making.

The right to live in a healthy environment considered as an integral part of right to life under Article 21 of Constitution. The Supreme Court explaining the concept of right to life in healthy environment in *K. M. Chinnappa v. Union of India*¹ enjoyment of life and its attainment including the right to life with human dignity encompasses with lots ambit, the protection and preservation of the environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed.

In *Hinch Lal Tiwari v. Kamala Devi*² the supreme court held that preservation of material resources of the community such as air, forest, pond etc. is needed to maintain ecological balance so that people would enjoy a quality of life, which is essence of the right guaranteed under Article 21.

The Environment Protection Act, 1986 is work as an umbrella legislation that generated a collection of rules, regulations, notifications and orders and facilitated delegation of powers of the Central Government to various other agencies of the central and state. Environment Impact Assessment and public hearing are the example of delegated legislation.

There are many other provisions like Indian Penal Code, Criminal Procedure Code, Law of Tort, Indian Forest Act, 1927, the Water (Prevention and Control of Pollution Act, 1974, the Forest Conservation Act, 1980, and other enactments include the Public Liability Insurance Act 1991, the National Appellate Authority Act, 1997, Green Tribunal Act 2010, the Energy Conservation Act 2001, which deal with environmental justice and provides the remedies in case of environment injustice.

CONTRIBUTION OF JUDICIARY IN ENVIRONMENT JUSTICE

Supreme Court plays a significant role in the field of environmental awareness as well as in imparting the environment justice. The first initiative taken by the apex court was the relaxation in the traditional rule of locus standi and paved the way for the Public interest litigation (PIL). The seeds of concept of PIL were firstly sown by Krishna Iyer, J in the year 1976 by the case of *Mumbai Kamgar Sabha v. Abdulbhai*³, but it was not known as public interest litigation. India had to wait for 10 years and Justice Bhagwati gave a new dimension

¹ AIR 2003 SC724

² (2001) 6 SCC 496

³ AIR 1976 SC 1455

to this concept and introduced it to the Indian judicial system as public interest litigation.

The PIL has proved itself as an important tool in the hands of judiciary and environmentalist for protection the environment from pollution and providing the environmental justice to everyone. In *M.C.Mehta v. Union of India*⁴ (*Olium Gas Leak Case*) the apex court accepted the petition by a lawyer and extended the scope of Article 32. The court held that the power of the court under article 32 to grant remedial relief may also include the power of award compensation to victims in appropriate way. The Supreme Court also rejected the old principle of strict liability and introduced the absolute liability, where person absolutely liable to pay compensation in case of any harm. Such liability is not subjected to any exception like strict liability.

In *M.C.Mehta v. Union of India*⁵, A PIL was filed by a social activist for stopping the tanneries near Kanpur. As these tanneries were polluting the Ganga River by discharging trade effluents into it. The Supreme Court had taken a very strict initiative against these tanneries and passed various directions to the tanneries including Kanpur Nagar Palika to ensure that the trade waste should not be discharge in the rivers without proper treatment.

In *Narmada Bachao Andolan v. Union of India*⁶, the Supreme Court of India upheld that “water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India and the right to healthy environment and to sustainable development are fundamental human rights implicit in the right to life.

In *Vellore Citizens Welfare Forum v. Union of India*⁷, the apex court of India made request to the Madras High Court to constitute a green bench or a special bench to handle the cases of environment. And similar directions were passed to the Calcutta, Madhya Pradesh and some Other High Courts.

In *M.C.Mehta v. Union of India*⁸ Supreme Court held that in order for human conduct to be in accordance with the prescription of law it is necessary that there should be appropriate awareness about what the law requires. This should be possible only when steps are taken in the adequate measures to make people aware of the indispensable necessity of their conduct being oriented in accordance with requirement of law. Supreme Court not only checking the menace of the environment pollution but also plays an important role in promoting the environment awareness. Consequently, Environmental Studies was introduced as a compulsory subject at every level of education. Even bar council introduced ‘Environmental law’ as a compulsory paper for legal education at graduation level.

ENVIRONMENT IMPACT ASSESMENT

⁴ AIR 1987 SC 1086

⁵ AIR 1988 SC 1115

⁶ Vrinda Narain, Water as a Fundamental Right: A Perspective from India, Vol. 34. Available at: <www.vjel.org/docs/narain_water_draft>

⁷ AIR 1996 SC 2715

⁸ AIR 1992 SC 362

Environment impact assessment is also a new field in the environment justice. It's not only identifying the environmental problem which creates by new development project but also finds the solution to reduce the impact of any new project on environment. The Ministry of Environment and Forest (MoEF) in India uses EIA as a major and main tool for minimizing adverse effect of industrialization and modernization on environment and for reserving those impacts which may cause environment degradation in future or in long run. The EIA notification which was issued in 2006 categorized the new development projects into two category 'A' and 'B'. Category 'A' requires the prior clearance from MoEF on the recommendation of an Expert Appraisal Committee constituted by the central government. Category which belongs to 'B' needs prior approval of State Environment Impact Assessment Authority on the recommendation of State Expert Appraisal Committee. And division of category 'A' and 'B' depends upon the capacity of pollution potential.

UNEP also defines the Environment Impact Assessment as tool used to identify the environmental, social and economic impacts of a project prior to decision making. It aims to predict environment impact at an early stage in project planning and design, find ways and means to reduce adverse impact, shape project to suit the local environment and present the predictions and options to decision makers.⁹

ENVIRONMENT JUSTICE: AN INTERNATIONAL PERSPECTIVE

Environment justice basically emerged in United States in the early 1980s, then its spread all over the world. Environment justice usually defines the fair treatment and meaningful involvement of all people regardless their race, religion, community, nationality etc. So it is not possible to confine the environment justice to particular one country or one nation but it's a matter of international importance. So in order to secure the environmental issues there are number of treaties which deals with the environment protection. Most of these treaties have binding force for that country that ratified treaty. Like Kyoto protocol, Vienna Convention , Aarhus Convention on Access to information, Public Participation in Decision-making and Access to Justice in Environment Matters, Aarhus 1998, Boon Agreement, Espoo Convention on Environment Impact Assessment in a Transboundary context, Espoo,1991 etc.

For ensuring the environment justice some principles were drafted in First National People of Color Environment Leadership Summit held on October 24 to 27 in Washington DC. These principles are the cornerstone in the growth of environment justice. These 17 principles are as followed.¹⁰

- i. Environment justice affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction.
- ii. Environment justice demands that public policy be based on mutual respect and justice for all peoples, free from any discrimination or bias.

⁹ Available at: <<https://www.cbd.int>>

¹⁰ Available at: <www.ejnet.org/principles.html>

- iii. Environment justice mandates the right to ethical, balanced and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living things.
- iv. Environment justice call for nuclear testing and extraction that threaten the fundamental right to clean air, land, water and food.
- v. Environmental justice affirms the fundamental right to political, economic, cultural and environmental self-determination of all people.
- vi. Environment justice demands the cessation of the production of all the toxins, hazardous waste and radioactive materials.
- vii. Environment justice demands the right to participate as equal partners at every level of decision-making including needs assessment, planning, implementation, enforcement and evolution.
- viii. Environment justice affirms right of all workers to a safe and healthy environment without being forced to choose between an unsafe livelihood and unemployment.
- ix. Environment justice protects the right of victims of environmental injustice to receive full compensation and reparations for damages as well as quality health care.
- x. Environmental justice considers governmental injustice a violation of international law, the Universal Declaration of Human Rights and the United Nation Convention on Genocide.
- xi. Environment justice must recognize a special legal and natural relationship of Native Peoples to the U.S. government through treaties, agreements, compact, and covenants affirming sovereignty and self-determination.
- xii. Environment justice affirms the need for urban and rural ecological policies to clean up and rebuild our cities.
- xiii. Environment justice calls for the strict enforcement of principles of informed consent and halt to the testing of experimental reproductive and medical procedures and vaccination on people of color.
- xiv. Environment justice opposes the destructive operations of multinational corporations.
- xv. Environment justice opposes military occupation, repression and exploitation of lands, peoples and cultures and other life forms.
- xvi. Environment justice call for the of presents and future generations which emphasizes social and environmental issues.
- xvii. Environment justice requires that we as individual make personal and consumers choices to consume as little of Mother Earth's resources and to produce as little waste as possible.

CONCLUSION

In view of the foregoing discussions, it can be safely concluded that Environment Justice has grown as a social movement. All stakeholders have understood their role towards preservation of the environment and importance of environment for human lives. Many nongovernmental organizations have been leading the front, for securing the safe and clean environment. Judiciary particularly has taken stringent steps to protect environment and force

the executive to take concrete steps in this direction. However, the efforts are falling short in the era of rising population, rapid industrialization, increase in vehicles and other similar issues. Environmental Justice is not a new genre of the Justice Delivery system. The role of the judiciary has always been to secure natural environment for the generations.

SUGGESTIONS

The environment protection through environmental justice is crucial forum to improve the deteriorating environment. There is a need of constant awareness among the masses for the protection of environment. At time people get oblivion of the fact that they would be survived by their offspring. And they fail to imagine the danger of loss of environment to their children. Thus, there is a need of awareness among people to use the environment with preservative mindset. If we are able to foresee the degrading situation of environment, we could readily save the nature. The citizen is duty bound to protect the environment, as such, he must make efforts for safe and clean environment. Now comes the role of legislative, executive and judiciary. The legislative wing of the government vests with ample powers to introduce measures through appropriate legislation as felt by the environmentalists and the judiciary. India is signatory to all major international agreements on environment. In order to conform to the international standards, the legislation should bring in all necessary laws in India for safer environment. The executive is the main operational wing of the government; it needs to enforce the law precisely and meticulously. If executive is able to enforce the law in its true spirit, there would be no scope at all for people to violate the environmental laws. Ignorance deliberate or spontaneous is deeply permeated in Indian culture. People are tending to violate the laws, in the garb of ignorance. If any beneficial legislation is introduced, people violate it and moreover, the executive helplessly ignores those violations. Therefore, there is a need for stringent enforcement of laws. Now, the most important role comes of the judiciary. It is felt that the most intellectual people with good conscience sit to pass the judgment. Therefore, a careful deliberation is required on all environmental issues come up before the judiciary to decide. The environmental issue has wider impact on the society in comparison to other social crimes. The judiciary needs to suo moto initiate the issue and seek government's initiatives in an area which is overlooked. Judiciary has a bounden duty to secure justice to the nation, to its people. Though, the people, environmentalists may fail to assess the future calamity to the nature, but judiciary need to understand the issue. Last but not least, the role of human being is most important in environmental justice. He first of all, need to follow all settled laws in the country and if he feels that any aspect of environment protection is ignored or overlooked by the government, he needs to knock the door of the judiciary for redressal of the issue.