



RIGHT TO CLEAN ENVIRONMENT AND ROLE OF JUDICIARY

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ABSTRACT:

The right to live in a clean and healthy environment is not a recent invention of the higher judiciary in India. The right has been recognised by the legal system and the judiciary in particular for over a century or so. The only difference in the enjoyment of the right to live in a clean and healthy environment today is that it has attained the status of a fundamental right the violation of which, the Constitution of India will not permit. Environmental degradation is one of the most severe problems human beings are suffering from. Many people do not have access to clean air and drinking water and experience health problems due to the increasing pollution.

Right to clean environment has been held to be implicit by the supreme court in the guarantee of right to life under art.21 of the Indian constitution. Although this right was not expressly recognized in the constitution of India the judiciary through creative interpretation has asserted this right. The purpose of this paper is to analyse the relationship between the right to clean environment and the right to life as guaranteed under the Article 21 of the Constitution

KEYWORDS : environment, clean environment, supreme court, constitution,

CONCEPT OF ENVIRONMENT:

The term 'environment' cannot be defined precisely as it is linked with many subjects like ecology, biology, geography, physiology, psychology etc. But, in the layman terms, environment can be defined as the surroundings like natural resources, atmosphere, water bodies, etc in which an individual or an organism lives. According to Einstein, "the environment is everything that isn't me." The resources form an important part of an individual's life. Not only individuals but also animals are shelter in addition to the social needs like entertainment, medicines, etc.

In the earlier periods (Vedic period), the environment had been seen altogether differently. There were ethical rules behind environment. According to S.C. Shastri, "The main motto of social life since Vedic period was 'to live in harmony with Nature'. People used to worship plants, trees, Mother Earth, sky, water, air and animals so as to be kind to everything. The Hindu religion enshrined a respect for Nature, environmental harmony and conservation. The philosophy behind it was that these all are creations of God, so destruction of nature means destruction of mankind."

In the case of *Rural Litigation and Entitlement Kendra vs. State of Uttar Pradesh*, it was mentioned that, "air and water are the most indispensable gifts of Nature for preservation of life. In ancient times, trees were worshipped as gods and forests were necessary for mankind as they provided shelter. The world is considered to be the beloved place as it has the blessings of nature's bounties."

The crux is that in the ancient times, environment was considered to be an inseparable part of one's life as a healthy environment is absolutely necessary for the well-being of all organisms. All our needs, big and small are being met by the environment only. However, now the position is changed. With the time, man's needs have also increased, he has become greedy. Man has felt the urge to transform his surroundings to meet his increasing material needs and desires. He started exploiting the resources of the earth and has

been transformed from preserver to destroyer. The problem of pollution is one which concerns most as it has gained threatening position. So, the need has been felt to look into this matter seriously and for that purpose our judiciary has tried to do a lot.

CLEAN ENVIRONMENT AS A FUNDAMENTAL RIGHT :

A very fascinating development in Indian constitutional jurisprudence is the extended dimension given to article 21. Right to clean environment is not expressly provided to the people under Indian constitution. The S.C. has asserted that in order to treat a fundamental right, it is not necessary that it should be expressly stated in the constitution as a fundamental right. Political, social, and economic change in the country entail the recognition of new rights. The law in its eternal youth grows to meet the demands of the society. The right to life enshrined in art. 21 has been liberally interpreted so as to mean something more than mere survival and mere existence or animal existence. It therefore includes all those aspects of life which go to make a man's life meaningful, and worth living. The expansive interpretation of life in art. 21 has led to the salutary development of an environmental jurisprudence in India. Although a number of statutes have been enacted with a view to protect environment against pollution, and an administrative machinery has been put in place for the purpose of enforcement of these statutes, the unfortunate fact remains that the administration has done nothing concrete towards reducing environmental pollution. On the question of relationship between ecology and art. 21, the thinking of the court is that since the right to life is a fundamental right under art. 21, and since the right to life connotes quality of life, a person has a right to the enjoyment of pollution free water and air to enjoy life fully.

Subhash Kumar v. State of Bihar AIR 1991 SC 420.

In the instant case the Court observed that 'right to life guaranteed by article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life.' Through this case, the Court recognised the right to a wholesome environment as part of the fundamental right to life. This case also indicated that the municipalities and a large number of other concerned governmental agencies could no longer rest content with unimplemented measures for the abatement and prevention of pollution. They may be compelled to take positive measures to improve the environment.

In *Shanti Star Builders vs. Narayan Totame*. [12], the Supreme Court held that right to life is guaranteed in a civilized society would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.

In *M. C. Mehta vs. Union of India* 1987 SCR (I) 819 (the *Oleum Gas Leak case*), the Supreme Court established a new concept of managerial liability absolute and non-delegable – for disasters arising from the storage of or use of hazardous materials from their factories. The enterprise must ensure that no harm results to anyone irrespective of the fact that it was negligent or not.

In *Vellore Citizens Welfare Forum vs. Union of India*, AIR 1996 SC 2715, the Supreme Court held that industries are vital for the country's development, but having regard to pollution caused by them, principle of 'Sustainable Development' has to be adopted as the balancing concept. 'Precautionary Principle' and 'Polluter Pays Principle' has been accepted as a part of the law of the country.

In *Indian Council of Enviro-Legal Action vs. Union of India*, 1996 3 SCC 212 (the *Bichhri pollution case*), following the decision in the *Oleum Gas leak case* and based on the polluter pays principle, the polluting industries were directed to compensate for the harm caused by them to the villagers in the affected areas, specially to the soil and to the underground water. Enunciating the doctrine of 'Public Trust' in *M. C. Mehta vs. Kamal Nath* (1997) 1 SCC 388, the SC held that resources such as air, sea, waters and the forests have such a great importance to the people as a whole that by leasing ecologically fragile land to the Motel management, the State Government had committed a serious breach of public trust.

The changing trajectory of environmental rights in India, from a historical perspective Active judicial intervention by NGOs, community groups, and others, have also set a series of important precedents that

go beyond what the bare laws provide. There are many initiatives in Public Interest Litigation (PIL). Some of these include the cases against the construction of the Tehri Dam (Tehri Bandh Virodhi Sangharsh Samiti vs. State of Uttar Pradesh, 1992 SUP (1) SCC 44) and Narmada Dams (Narmada Bachao Andolan vs. Union of India AIR 1999 SC 3345); against deforestation (T. N Godavarman Thirumulpad vs. Union of India, 2000 SC 1636, a case that has since then spawned dozens orders pertaining to forests in India); against mining in the Aravallis (Tarun Bharat Sangh, Alwar vs. Union of India 1992 SC 514, 516); against mining in the Dehra Dun hills (Rural Litigation and Entitlement Kendra, Dehradun vs. State of Uttar Pradesh, 1985 SC 652); against mining in adivasi lands of Andhra Pradesh (Samatha vs. State of Andhra Pradesh, 1997, a judgment with important consequences for acquisition or use of adivasi lands elsewhere too); on implementation of the Wild Life (Protection) Act 1972 (WWF vs. Union of India, WP No. 337/95); on implementation of Coastal Regulation Zone measures (Indian Council for Enviro-Legal Action vs. Union of India, 1996(3) 579); on protection of the coastal area against destructive practices (Prof.Sergio Carvalho vs. The State of Goa, 1989 (1) GLT 276); on the right of citizens to inspect official records (this was before the Right to Information Act came into force) (Goa Foundation vs. North Goa Planning and Development Authority. 1995(1) GLT 181); against forest logging and other environmental aspects of Andaman and Nicobar Islands. The judgments in other cases have set important precedents and directions for the further development of policy, law and practice.

For instance, the Godavarman and the WWF vs Union of India cases have led to the orders that no forest, National Park or Sanctuary can be dereserved without the approval of the Supreme Court, no non-forest activity is permitted in any National Park or Sanctuary even if prior approval under the Forest (Conservation) Act, 1980 had been obtained, New authorities, committees and agencies have been set up such as the Central Empowered Committee (CEC) and the Compensatory Afforestation Management and Planning Agency.

Some judgments not directly related to environmental cases, also have significant implications for the struggle to establish environment as a human right. Mention should especially be made of a number of cases in which the Constitutional Right to Life (Article 21) has been interpreted widely to include a series of basic rights that include environment and livelihoods.

In Francis Coralie vs. Union Territory of Delhi (AIR 1981 SC 746), Justice Bhagwati observed: “We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings.

In Shantistar Builders vs. Narayan Khimalal Totame (AIR 1990 SC 630), the Supreme Court said: “Basic needs of man have traditionally been accepted to be three – food, clothing, and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.”

In Olga Tellis case (AIR 1986 SC 180) the Supreme Court observed “An important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.... That which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life.” environmental crisis is causing enormous disruption of lives and livelihoods, threatening the collapse of its entire life-support system.

In Re Noise Pollution (V). the cries of a rape victim for help went unheeded in the blaring noise of loudspeaker in the neighborhood. The victim committed suicide. Public interest litigation was filed. The court said that article 21 of the constitution guarantees life and personal liberty to all persons... it guarantees a right of persons to life with human dignity. Therein are included, all the aspects of life which go to make a person’s life meaning full, complete and worth living.

The human life has its charm and there is no reason why the life should not be enjoyed along with all permissible pleasures. Any one who wishes to live in peace, comfort and quiet within his house has a right to prevent the noise as pollutant reaching him. No one can claim a right to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbours or others. Any noise which has the effect of materially interfering with the ordinary comforts of life judged by the standard of a reasonable man is nuisance. How and when a nuisance created by noise becomes actionable has to be answered by reference to the degree and the surrounding circumstances, the place and the time.

In *Research Foundation for science Technology and Natural resources Policy v. Union of India* [15] Dumping of hazardous waste, whether directions shall be issued for destruction of consignments with a view to protect environment and, if not, in what other manner consignments may be dealt with it was held, precautionary principles are fully applicable to facts and circumstances of the case and only appropriate course to protect environments is to direct destruction of consignments by incineration as recommended by Monitoring Committee.

In *Intellectuals Forum, Tirupathi v. State of AP* [16] Leave granted. The present matter raises two kinds of questions. Firstly, at a jurisprudential level, it falls on this Court to lay down the law regarding the use of public lands or natural resources. In this case the Court has reiterated the importance of the Doctrine of Public Trust in maintaining sustainable development which has been declared as inalienable human right by UN General Assembly.

In *MC Mehta v. Union of India* [17] whether mining activity carried out in Villages Khori Jamalpur and Sirohi in District Faridabad in Haryana are in violation of the orders passed by this Court on 6th May, 2002 was in question. It was held, it does not appear that area in question falls under any category of prohibition for carrying out mining activity. But another aspect that remains to be examined is about impact of mining in the villages in question on environment, Merely on basis of photographs or plying of large number of trucks per day, a direction can not be made for stopping mining activity Monitoring Committee constituted in terms of

directions in *M.C. Mehta's* case is directed to inspect the mining activity being carried on in 75.05 hectares in village Khori Jamalpur and in 50.568 hectares in village Sirohi in Faridabad district and report the impact. In *Karnataka Industrial Areas Development Board v. C. Kenchappa and others* [18] in consonance with the principle of 'Sustainable Development', a serious endeavour has been made in the impugned judgment to strike a golden balance between the industrial development and ecological preservation.

In *Murli s. Deora v uoi* (2001)8scc765 realising the gravity of the situation and considering the adverse effect of smoking on the smokers and passive smokers, the court directed and prohibited smoking in public places and issued direction to the union of india ,state governments and uts to take effective steps to ensure prohibiting smoking in public places. In *milk men colony vikas samiti v state of rajasthan*(2007)2 scc 413 s.c. held that the right to life means clean surrounding which lead to healthy body and mind .it includes right to freedom from stray cattle and animals in urban areas.

CONCLUSION :

On the above discussion we may say that the Indian judiciary shown unprecedented dynamism by expanding the scope of article 21 by including in it right to clean and wholesome environment. This feat is remarkable as even some of the developed countries have yet to achieve such distinction. Earlier the article 21 of the Constitution had a bit narrow scope but with the time, the concept of Article 21 has been broadened. The Judiciary has played a vital role in interpreting the Article 21 of the Indian Constitution. The scope of Article 21 of the Constitution has been considerably expanded by the Indian Supreme Court, which has interpreted the right of life to mean the right to live a civilized life and it also includes the right to clean environment. But the Constitution does not explicitly provide for the citizen's right to a clean and safe environment.

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