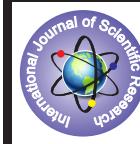


Right to Live in a Pollution free Environment: a Critique



Law

KEYWORDS :

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ABSTRACT

The right to live in clean and healthy environment is fundamental to human life. The right to live in a pollution free environment is recognised as a fundamental right in India. Various laws are made by the legislature to provide clean environment to the citizens and the judiciary also play a momentous role in protecting the environment, but irrespective of all the efforts made by the legislature and the judiciary many people do not have access to clean air and drinking water due to degradation of environment.

INTRODUCTION:-

Environment and life are interconnected. The continuation of life on earth depends on the harmonious relationship between ecosystem and environment. Human beings are at the centre of concerns for sustainable development and that they are entitled to a healthy and productive life in harmony with nature.

The Stockholm Conference is considered an important starting point in developing environmental law at the global as well as national level. Principle 1 of the Stockholm Declaration linked environmental protection to human rights norms, stating,

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.

To protect the environment various environment protection laws were made by the parliament for e.g. Water pollution Act 1974, Air pollution Act 1981, Environment protection Act 1986 etc. The aim and the objective of all the statutes is to curb the environment pollution Irrespective of all the laws in India several hundred million people have been increasingly forced to live far below the minimum levels required for a decent human existence, deprived of adequate water, food, clothing, shelter and education, health and sanitation. Development, which was supposed to alleviate such problems, has often increased them, especially by allowing the powerful sections of society to appropriate the natural resources of poor and resource-dependent people.¹

ENVIRONMENT AND CONSTITUTION:-

Part III of the constitution contains a long list of fundamental rights. This chapter of the constitution of India has very well been described as the *Magna Carta* of India. The Americans were first to give Bill of Rights a Constitutional status. Thus when the constitution of India was being framed the background for the incorporation of Bill of Rights was already present.

Our founding father took inspiration from this and incorporated a full Chapter in the Constitution dealing with fundamental rights. But the declaration of fundamental rights in the Indian Constitution is the most elaborate and comprehensive.

In *Nagraj v. Union of India*² the Supreme Court speaking about the importance of the fundamental rights held that fundamental rights are not gift from the state to citizens. Part III does not confer fundamental rights but confirm their existence and give them protection. Individuals possess basic these rights are important as they possess intrinsic values. Its purpose is to withdraw certain subjects from the area of political controversy to place them beyond the reach of majorities and officials and to

establish them as legal principles to be applied by the Courts.³

Originally the Indian Constitution of 1950 did not have explicit reference to environment protection; the Indian parliament passed a historic amendment -42nd Constitution Amendment Act, 1976.⁴ This amendment incorporated two significant articles i.e. Article 48A (Directive Principle Of State Policy) and 51A (g) (Fundamental Duties) to protect and improve the environment. In addition to that it introduces certain changes in the seventh schedule of the constitution. Thus, various entries of state List II were transferred to list III which empowered parliament to legislate on environmental issues such as forest, wildlife population control, family planning, etc. It is necessary to make such changes to bring uniformity in law throughout the country.⁵

In *Chhetriya pardushan mukti Sangharsh Samiti v. State of U.P.*⁶, the Supreme Court declared that every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the constitution. Anything which endangers or impairs by conduct of anybody, either in violation or in derogation of laws, the quality of life and living by the people is entitled to be taken recourse of Article 32 of the Constitution.

RIGHT TO POLLUTION FREE ENVIRONMENT:-

Article 21 of the Indian Constitution states: 'No person shall be deprived of his life or personal liberty except according to procedures established by law.' Article 21 is the heart of all other fundamental rights. After the *Maneka Gandhi case*⁷ the horizon of Art. 21 are expanded by the apex court through judicial pronouncement.

According to Bhagwati, J., Article 21 "embodies a constitutional value of supreme importance in a democratic society".⁸ Iyer, J., has characterized Article 21 as "the procedural magna carta protective of life and liberty".⁹ This right has been held to be the heart of the Constitution¹⁰, the most organic and progressive provision in our living constitution, the foundation of our laws.¹¹

The expression life assured in Article 21 of the Constitution does not connote mere animal existence of continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standards of life, and hygienic condition in workplace.¹²

The "Right to Life" under Article 21 means a life of dignity to be lived in a proper Environment free from the dangers of diseases and infection.¹³ Maintenance of health, preservation of the sanitation and environment have been held to fall within the purview of Article 21 as it adversely affects the life of the citizens and it amounts to slow poisoning and reducing the life of the citizens because of the hazards created if not checked.¹⁴

In *M.C. Mehta v. Union of India*¹⁵, the Supreme Court ordered

closure of tanneries which were polluting water. In *M.C. Mehta v. Union of India*¹⁶ the Supreme Court issued several guideline and directions for the protection of the Taj Mahal, an ancient monument, from environmental degradation. In *Vellore Citizens Welfare Forum v. Union of India*¹⁷, the Court took cognizance of the environmental problems being caused by tanneries which were polluting the water resources, rivers, canals, underground water and agricultural land. The Court issued several directions to deal with the problem.

In *Murli S. Deora v. Union of India*¹⁸, the persons not indulging in smoking cannot be compelled to or subjected to passive smoking on account of act of smokers. Right to Life under Article 21 is affected as a non-smoker may become a victim of someone smoking in a public place.

In re: Noise Pollution.¹⁹ The Apex Court held that nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers. While one has a right to speech, others have a right to listen or to decline to listen. If anyone increases the his volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels then the person speaking is violating the right of others to a peaceful, comfortable and pollution free life guaranteed in Article 21.

In *Inch Lal Tiwari v. Kamla Devi*²⁰, the Supreme Court declared that material resources of a community like forests, tanks, ponds, hillocks, mountain etc. are nature's bounty. They maintain the delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality of life which is the essence of the guaranteed right under Article 21 of the constitution. The court decided that the pond's land not be allotted for a residential purpose.

In M.C. Mehta v. Kamal Nath²¹, **Saghir Ahmad explained :**

In order to afford protection to 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 other persons alike under Article 21 of the constitution. In *Taj Trapezium case*,²² the Supreme Court evolved a new principle of labour environmental jurisprudence for the protection of an ancient monument -Taj Mahal. While ordaining for the closure and relocation of listed coal/diesel -using industries, the rights and benefits of the workers involved in the industry were spelled out in the judgment. The court ordered for shifting bonus to employees who agreed to shift with the industry and additional compensation of six years

wages to employees of the industries that opted to close. All this was awarded in addition to amount payable and compensation as per section 25-F (b) of the Industrial Disputes Act, 1947. The court also suggested "single -window "facility to industries in this case.²³

The fundamental right to a clean environment and its implications were also considered by a Bench of the Tribunal in a recent judgment in the case of *M/s Sterlite Industries Ltd. v. Tamil Nadu Pollution Control Board*²⁴. Where the Tribunal, upon deliberation, held as under:

Right to clean environment is a guaranteed fundamental right. Various courts, particularly the superior courts in India are vested with wide powers, especially in terms of Articles 32 and 226 of the Constitution of India to deal with issues relating to the fundamental rights of the persons. The courts, in fact, can even impose exemplary damages against the polluter. Proper and healthy environment enables people to enjoy a quality life which is the essence of the right guaranteed under Article 21. The State and the citizens are under a fundamental obligation to protect and improve the environment including forests, lakes, rivers, wild life and to have compassion for living creatures. Right to have living atmosphere congenial to human existence is a right to life. The State has a duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment.

CONCLUSION:-

Indian Judiciary is playing a significant role in maintaining sustainable development and curbing the hasty growth of industrialization by various public and private agencies, without giving least consideration to irreparable damage accrued to natural environment essential to maintain healthy flora and fauna. From the perusal of various judgments, it is evident that the Indian judiciary has used the potent provisions of constitutional law to develop a new "environmental jurisprudence". The Courts have not only created public awareness regarding environmental issues but also it has brought about an urgency in executive lethargy, if any particular case involving environmental issues.²⁵ Unfortunately even after 69 years of independence in India nearly five hundred

environmental laws are enacted by the legislature, which deals with environment protection. Irrespective of all the judgments and the laws related with environment whether our future generation will enjoy the right to clean environment as a fundamental right or is it illusion?

REFERENCE

Ashish Kothari, Anuprita Patel, Environment and Human Rights An IntroductoryEssay and Essential Readings NATIONAL HUMAN RIGHTS COMMISSION Faridkot House, Copernicus Marg, New Delhi 110 001, India | AIR 2007 SC 71 | Dr. J. N. Pandey ;The constitutional law of India ; It came into force on 7-1-1977 | C.M. Jefriwala, "The constitution 42nd Amendment and the Environment "in S.L. Agarwal (Ed).Legal Control of Environment pollution (1980). | (1990) 4 SCC 449; AIR 1990 SC 2060 | AIR 1978 | Francis Coralsi v. Union Territory of Delhi AIR 1981 SC 746 | P.S.R. Sadhananthan v. R.S Naik, AIR 1992SC 1701 | L.R. Coelho v. State of Tamil Nadu, AIR 2007 SC 861 | Rajneesh Kapoor v. Union of India , AIR 2007 MT 204 | Consumer Education and Research Centre v. Union of India,(1995) 3 SCC 42. | Ratlam Municipality v. Vardhi Chand , AIR 1980 SC 1622. | L.K. Koolwel v. State of Rajasthan , AIR 1988 Raj 2. | AIR 1988 SC 1037 : (1987) 4 SCC 463. | AIR 1997 SC 734 : (1997) 2 SCC 353. | AIR 1996 SC 2721 : (1996) 5 SCC 647. | AIR 2002 SC 40 : (2001) 8 SCC 765. | AIR 2005 SC 3136 : (2005) SCC 733. | (2001) 6 SCC 496; AIR 2001 SC 3215. | (2000)6 SCC213 : AIR 2000 SC 1997. | M.C. Mehta v. union of India (1997) 2 SCC 535; AIR 1997 SC 734. | Prof. Satish C. Shastri, Environmental law fourth Edition, Eastern Book Company. (2012) | 2013 Vol.i All India Reporter page 368 | Justice B.N. Kripal, "M.C. Bhandari Memorial Lecture: Environment justice in India," (2002)7SCC (1) 1-16. |