

Environmental Jurisprudence in India: An overview

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Abstract: In this paper an attempt is made to illustrate the environmental jurisprudence in India by explaining statutory as well as judicial legal framework in order to cover this ever expanding new branch of men's expedition in the present scientific era. The concept of environment and its Indian philosophy since Vedic to modern age is critically analysed. The international efforts especially after 1945 with the inception of UNO and Indian response to international legal regimes are highlighted too. The legislations of Indian parliament and their implementation along with the vital role played by supreme court of India in evolving concept like public interest litigations, polluter pays principle, pre precautionary principle and environment impact assessment system are deliberately debated in this ensuing paper. Further fundamental right to life and personal liberty and its interpretation to include pollution free environment, doctrine of public trust which shoulders the corporate bodies to consider the social determinants of natural environment are discussed/highlighted also. The maxim of absolute liability an Indian judicial innovation which resulted in the enactment of Public Liability Act, 1991 that is a live example concerning role played by the apex court in India has also been discussed. The various landmark judgments of the highest court like M.C. Mehta vs. Union of India, Ganga Pollution Case, Damodar Valley Case, Kanpur Tannery Case, Taj Mahal Case etc. are analysed in order to explain the concept of judicial activism. The constitutional provisions which deal with the environmental issues along with the relevant constitutional amendments since 1950 to till date is are taken in to consideration to explain the environmental aspect. Moreover the concept of green tribunal and its implications which resulted in the enactment of National Green Tribunal Act and the constitution of national green tribunal in the year 2010 having their functions and jurisdiction is highlighted which graded India third in the world in taking active initiative to protect the environment.

Keywords: Environmental Jurisprudence; Supreme Court; Public Interest Litigation; Environmental Impact Assessment; UNO; National Green Tribunal.

Introduction

Today the world community is combating with various common problems which are manmade as well as natural like climate change, global warming, terrorism, reduction of natural non-renewable resources, drug trafficking, food security etc. Irrespective of political boundary all are supposed to be effected by these problems.

In this research paper we have attempted to analyse the environmental jurisprudence in India because to protect environment from degrading in the industrial and scientific area is a big challenge for state government. Moreover the environmental protection, preservation or improvement is one of the major problems of the modern age. The title signifies the scope of paper. In general view the environment includes all around us like water, air, land, vegetations in the form of forests etc., whereas jurisprudence means study of law. So environment jurisprudence deals with all those statutory regimes that deal with the protection, preservation or improvement of the environment. It includes laws both statutory and judicial. The first and foremost such provisions as under the constitution of India, environmental protection laws especially deal with the environment like environmental protection Act of 1986, other statutory provisions at domestic level like Indian penal code, criminal procedure code, 1973 company

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law 1956 (amended up to 2013) or industrial legislation like factories Act etc. whereas at international level such framework may be in the form of conventions, conferences, treaties and united nations charter.

Indian philosophy of environmental protection

The environmental ethics had always been inherent part of Indian philosophy. Man nature relationship is at the centre of the Vedic vision and they proclaim man's duty to preserve his environment. The polity of Vedic mandated that the existence of human beings on the earth require a fine balance of water, vegetation and human life. The rituals and scarifies are the testimony to this assertion that ancient society was also aware about the environmental protection¹. The process of transmutation and cyclic degeneration and generation of life is an accepted postulate in the Vedic worldview. The Bhumisukuta of Atharva Veda considers Bhumi i.e. earth as the personified mother Goddess. It nurses us like mother. The Vedic lifestyle was environmentally ethical. Igniting sacred fire was a religiously recognizes mode of worship. It intended to keep the environment healthy. The firewood and butter when offered to fire the bad odour removed from the environment as found in various religious ceremonies in India is the way to protect environment from pollution². In ancient India, places of worship were mostly located in jungle and there were no difference between nature and God, it was presumed that nature can be proved to be harmful to mankind if unnecessary interfered. It was religious obligation to protect natural environment by performing worship. Ayurvedic system of medicine is principally based on utility and medicinal value of the plants and herbs. The town planning of the Indus Valley civilization is the evidence that concepts of environmental protection and pollution were there. The regular forest department in the time of Chandragupta Maurya, the Tagor's Shantinikaten and Gandhi' Ashram were established with a view to keep clean environment.

International regimes to protect environment

In developed countries environmental problems are as a result of industrialization and technological development was as in poor

countries these problems are due to less development. One of the various reasons for pollution is poverty. At world conference in 1972 former prime minister of India late Ms. Indira Gandhi said the population is the biggest pollutants in environment. She said that for developed countries development might be cause of destruction of environment, for a countries like India it was the primary means for improving the standard of living, to make valuable food products, water, cleanliness, shelter to bring about greenery in desert to make hilly and mountains worth living. Development and environment are invariably related to each other which was acknowledged in 1972 Stockholm conference on human environment. It is necessary to enlist the cooperation of all countries i.e. communist and capitalist; rich and poor, satisfied and dissatisfied otherwise the survival of the whole mankind will be in danger³.

The first major attempt to solve global problem of conservation and regulation of human environment by international agreement on a universal level was taken at Stockholm conference in the year of 1972⁴. One of the main contributions of this conference was action plan for the human environment. In this direction the next important effort to protect environment was earth summit, 1992 or it is also called as United Nations conference on environment and development began at Rio de Janero capital city of Brazil attended by 178 nations and more than 20000 participants. Major issues discussed like global warming, climate change, ozone depletion etc⁵. Further the Kyoto conference 1997 in Japan on global warming and reduction of carbon dioxide into environment.

Statutes Enacted in India vis-a-vis International Environmental Law

In India many important environmental statutes have been enacted to ratify or to fulfill national obligations under the international environmental treaties, conventions and protocols etc. Here in after, an effort has been made to present a table which contains a list of international environmental laws and relevant Indian environmental statutes showing close linkages between the same.

International Environmental Laws	Relevant Indian Environmental Statutes
The Stockholm Conference, 1972	The Air Act, 1981
The Stockholm Conference, 1972	The Environmental Protection Act, 1986
The Rio Conference, 1992	The Public Liability Insurance Act, 1991
The Rio Conference, 1992	The National Environmental Tribunal Act, 1995
Convention of Biological Diversity, 1992.	The Biological Diversity Act, 2002
Convention of International Trade in Endangered Species of Wild Fauna and Flora, 1973.	The Wild Life Protection (Amendment) Act, 2002

Judicial activism

The supreme court of India played vital role to protect the environment. The concept of public interest litigations and judicial activism are new jurisprudential evolution of Indian legal system particularly during the 1970-80s. Justice V.R. Krishna Iyer and P.N. Bhagwati were of view that poverty and ignorance should not be hurdle to access to the court of law for justice for any person. So the conventional doctrine of locus standii was waived away for new concept of public interest litigation which imply that any person of social sprit cal file petition in the court of law for the violation of fundamental rights if any irrespective of his or her personal interest. So expanding the scope of this new legal concept apex court of india has taken number of suo moto action particularly in the matter of environmental issues land laid down principle like absolute liability, polluter pay, environment impact assessment system, sustainable development, principle of inter generation equality.

Further the role of the Indian Supreme Court in enforcing international laws for the environmental protection may be explained quoting the views of Professor S.P. Sathe and Professor Upendra Baxi two leading academics who have extensively written on the role of judiciary in India. Professor Sathe has analyzed the transformation of the Indian Supreme Court "from a positivist court into an activist court". Professor Upendra Baxi, who has often supported the judicial activism in India, has also said that the "Supreme Court of India" has

often become "Supreme Court for Indians"⁶. Many observers of the Indian Supreme Court including Professor Sathe and Baxi have rightly opined that the Indian Supreme Court is one of the strongest courts of the world⁷. Power and judicial activism of the Indian courts have resulted into a strong and ever expanding regime of fundamental rights. Stockholm Conference on Human Environment, 1972, has generated a strong global international awareness and in India it facilitated the enactment of the 42nd Constitutional Amendment, 1976. This amendment has introduced certain environmental duties both on the part of the citizens [Article 51A (g)] and on the state (Article 48-A). Under the constitutional scheme the legal status of Article 51(A)-(g) and 48-A is enabling in nature and not legally binding per se, however, such provisions have often been interpreted by the Indian courts as legally binding. Moreover, these provisions have been used by the courts to justify and develop a legally binding fundamental right to environment as part of right to life under Article 21⁸. Hereinafter, an effort has been made to demonstrate that how both the 'soft' and 'hard' international environmental laws have been used by the Indian courts to develop a strong environmental jurisprudence in domestic law.

The judicial adoption of international environmental law into domestic law in India has not been done overnight rather it has been gradual. In order to understand the judicial process of such adoption the present discussion can be divided into the following three periods⁹:

First period of Judicial Adoption (1950-1984)

During the period of 1950 to 1984 the Indian courts have adopted a traditional dualist approach that treaties have no effect unless specifically incorporated into domestic law by legislation. In *Jolly George Verghese v. Bank of Cochin*¹⁰ the Supreme Court upheld the traditional dualist approach and gave overriding effect to the Civil Procedure Code over International Covenant on Civil and Political Rights.

Second period of Judicial Adoption (1985-1995)

During this period international environmental law was used to interpret the character of state obligations with respect to the right to life

(Article-21), which has been interpreted to include the right to a healthy and decent environment. Before 1996 there were very few references to international environmental treaties though by 1990 India was party to more than 70 multilateral treaties of environment significance¹¹.

Third period of Judicial Adoption (1996 onwards)

In contrast to its previous caution during 1985-1995 periods, the Supreme Court adopted a more robust attitude to customary international law in the year 1996¹². In the year 1996 the Supreme Court, led by an activist green judge-Justice Kuldip Singh, inaugurated a new environmental jurisprudence in historic Vellore case¹³ and invariably applied the ratio of this case in a series of other landmark environmental cases. In all such cases international environmental law was used 'substantively' and the Supreme Court developed a unique domestic environmental jurisprudence by blending the Indian environmental law with the international environmental law. Hereinafter, an effort has been made to discuss important cases of this period and their outcome.

Constitutional provisions to protect environment

Federalism is one of the salient features of the Indian constitution¹⁴. The federal form of government provides for two sets of governance one at union level whereas other at state level. There is specified jurisdiction for both to function on their own field. So far as the issue of environmental protection the following provisions are there in the Indian constitution where state as well as union government can legislate. Article 21 of the Indian constitution provides for right to life and personal liberty to all people. The express provision of constitution has no mention about the pollution free environment but it is all due the worthy judicial activism in India where the apex court of the country has interpreted the those right to life and personal liberty to include pollution free environment to all. Further the directive principles of the state policy which are positive obligation on the part of the state incorporated in part 4th of the Indian constitution wherein it is an obligation of the state to protect and improve the environment and to safeguard the forests and wild life of the country¹⁵.

51-A. Fundamental duties

It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures¹⁶.

Part-IXth Panchyati Raj¹⁷

Powers, authority and responsibilities of Panchayat¹⁸- Subject to the provisions of the Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to the preparation of plans for economic development and social justice with other responsibility to the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule¹⁹ in which there are 29 items and most of them are related with environment.

Part IX- A the Municipalities²⁰

Powers, Authority and Responsibilities of Municipalities etc²¹ subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such condition as may be specified therein, with respect to- the preparation of plans for economic development and social justice and also to performance of functions and the implementation of scheme as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule. The Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule²².

In fact before 42nd constitutional amendment Act, 1976 the environmental protection was in the state list means every state was empowered to frame necessary

enactments for environmental protection²³. In response to the international efforts Indian parliament decided to fulfill their obligations as accepted in the 1972 world summit on human environment. In this direction first major step was 42nd constitutional amendment to transfer environment related entries from 2nd list to third list i.e. Common list both for union as well as for state governments so that uniform efforts can be initiated to protect environment. The union parliament can legislate on these important issues of world focus. Further one directive principle under Article 48-A imposes obligation on the part of state whereas one same duty on the citizens of India in the form of fundamental duty incorporated in the part 4th-A, Article 51-A(g). In addition to it article 251 empowers the union government to execute international treaty or any obligation irrespective of the lists in seventh schedule.

Environmental protection laws in India

After 1972 world conference on human environment wherein India was represented by the PM late Ms. Indira Gandhi the Indian parliament took active initiative to pass various legislation to protect natural environment. These enactments are as under Wildlife Conservation Act, 1970, Water Act, 1974

Air Pollution Act, 1981 was incorporated under the international obligation empowered parliament²⁴, Environmental Protection Act, 1986 is first wide scope legislation to protect environment. It defined environment as includes water, air and land their interrelationship among and between them i.e. living and non living .it is first such legislation which empower the central to issue direction, order to supervise or regulate any industrial operation or process or to stop or to regulate the supply of any electricity , water or any other service. Public Liability Insurance Act, 1991 which was enacted with a view to make it expressly a statutory law which was laid down by supreme court in the case M.C. Metha v UOI²⁵ the rule of absolute liability, The National Environmental Tribunal Act, 1995 which provided for the establishment of national environmental appellate authority. The objective and statement of reason of this enactment was to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National

Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving

Relief and compensation for damages to persons, property and the environment and for matters connected therewith or incidental thereto. Further whereas decisions were taken at the United Nations Conference on Environment and

Development held at Rio de Janeiro in June, 1992, in which India participated, calling upon the States to develop national laws regarding liability and compensation for the victims of pollution and other environmental damages.

It is considered expedient to implement the decisions of the aforesaid conference so far as they relate to the protection of environment and payment of compensation for damage to persons, property and the environment while handling hazardous substances.

Energy Conservation Act, 2001 energy efficiency has become growing concern, because of India's energy needs are growing with rising income levels and a growing populations. The 9th five year plan, proposed legislations in the field of conservation of energy²⁶. So considering the vast potential of energy savings and benefits of energy efficiency, parliament of India passed this enactment. It provides for legal framework, institutional arrangement and a regulatory mechanism at the central and state level to embark upon energy efficiency derive in country, The Biology Diversity Act, 2002.

In case of Vellore Citizen Welfare Forum vs Union of India²⁷ supreme court directed madras high court to constitute special bench designed as green bench to deal with environmental cases. Keeping in view the number of cases arising out of violation of various statutory provision for environmental protection and other requisite conditions the parliament of Indian in the year of 2010 passed The National Green Tribunal Act, 2010 to establish to deal with such cases for speedy disposal thereby became third country in the world to have special court to adjudicate on environmental cases at national level. The National Green Tribunal has been established on 18th October 2010 under the National Green Tribunal Act 2010 for effective and expeditious

disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues. The Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice. The Tribunal's dedicated jurisdiction in environmental matters shall provide speedy environmental justice and help reduce the burden of litigation in the higher courts. The Tribunal is mandated to make and endeavour for disposal of applications or appeals finally within 6 months of filing of the same. New Delhi is the Principal Place of Sitting of the Tribunal and Bhopal, Pune, Kolkata and Chennai shall be the other 4 place of sitting of the Tribunal.

In Damoghar Valley Case²⁸ supreme court opined that there should be environmental for every project having impact on the local environment. Impact Assessment (EIA) is an important management tool for ensuring optimal use of natural resources for sustainable development. A beginning in this direction was made in our country with the impact assessment of river valley projects in 1978-79 and the scope has subsequently been enhanced to cover other developmental sectors such as industries, thermal power projects, mining schemes etc. To facilitate collection of environmental data and preparation of management plans, guidelines have been evolved and circulated to the concerned Central and State Government Departments. Environmental Impact Assessment has now been made mandatory under the Environmental Protection Act, 1986 for 29 categories of developmental activities involving investments of Rs. 50 cr. or above.

Conclusion and Suggestions

The above analysed legal frame work in India shows that we have made fine statutory arrangements for the protection of environment but after Bhopal gas tragedy in the year 1984 which was an unprecedented mishappening in

the industrial establishment followed by Oleium gas leakage in Delhi in 1985 as a result of which the supreme court of India reminded the government as well as the corporate sectors about their responsibility towards environment protection. The legislative enactments like Public Liability Insurance Act, 1991 and National Green Tribunal Act, 2010 are the glaring examples of verdict delivered by apex court of the country. Our's are third in the world to have special court called as green tribunal to deal with environmental cases at national level. Further international obligations undertaken and discharged by government of India by incorporating the necessary statutory provisions for the protection of environment after 1972 Stockholm world environmental conference various legislations passed in India like water Act. At present we have a full fledged ministry of environment and forest along with pollution control boards. Now environment impact assessment is mandatory for specified projects so that undue exploitation of the natural environment can be prevented. All the provisions are good depending upon their implementation.

The environment awareness at mass level should be there judicious use of modern technology keeping in view the environmental effect. We should adapt to eco-friendly way of living. The proposed developmental project should be cleared at priority so that country development may not prejudice. There should be at least one green tribunal bench in every state to adjudicate on environmental for speedy disposal. Enforcement agencies under environmental protection laws should be fully accountable and faithful. As development and environment are interrelated with each other so we cannot ignore one at the cast of other .the only solution suggested is to carry on sustainable development where the restoration to the damaged environment should be at priority level. There should be more and more plantation on the open land like road sides, government premises. Last but not least that mass level awareness should be done through media to inform the general public about the pollution their cause and prevention to protect environment to have a healthy life. As justice J.S. Verma said that mere legislation is not solution to our problem.

References

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5. S.K. Kapoor, International law, p.407
6. Upendra Baxi, 'The Avatars of Indian Judicial Activism: Explorations in the Geography of (In) justice', in S.K. Verma and Kusum (eds.), Fifty Years of the Supreme Court of India: It's Grasp and Reach (Delhi, Oxford University Press, 2000) pp. 156-209 at 157.
7. S.P. Sathe, Judicial Activism in India (New Delhi, Oxford University Press, 2000). See, Preface of this work written by Prof. Upendra Baxi, pp. ix-xxi.
8. R.L.E.K., Dehradun v State of U.P. (Doon Valley Matter) was the first case in which the Supreme Court recognized a fundamental" right to live in a healthy environment with minimum disturbance of ecological balance". A.I.R. 1985 SC 625
9. The idea of this classification and substantial information contained there under have been broadly adapted from: Michael Anderson, 'International Environmental Law in Indian Courts', Review of European Community and International Environmental Law, Vol. 7(1), 1998, 22-31.
10. (1980) 2 SCJ 358
11. Anderson, (1998)
12. Ibid.
13. Vellore Citizens' Welfare Forum v. Union of India (1996) 5 SCC 647 : AIR 1996 SC 2715 Unanimous Judgment delivered on August 28, 1996; by a three judges bench of the Supreme Court of India.
14. Part XI and XII Indian Constitution provide for union –state relations in the field of Legislative, Administrative and Financial matters.
15. Article 48-A, constitution of India: inserted by 42nd constitutional amendment ,1976
16. Article 51-A(g) ,constitution of India: inserted by 42nd constitutional amendment ,1976
17. Inserted by the Constitution (Seventy-third Amendment) Act, 1992 w.e.f.24-4-1993
18. Article 243-G
19. Agriculture, including agricultural extension, Land improvement, implementation of land reforms, land consolidation and soil conservation. Minor irrigation, water management and watershed development; Animal husbandry, dairying and poultry. Fisheries; Social forestry and farm forestry; Minor forest produce; Small scale industries, including food processing industries; Khadi, village cottage industries; Rural housing; Drinking Water; Fuel and fodder; Roads, culverts bridges, ferries, waterways and other means of communication; Rural electrification, including distribution of electricity; Non-conventional energy sources; Poverty alleviation programme; Education, including primary and secondary schools; Technical training and vocational education; Adult and non-formal education; Libraries; Cultural activities; Markets and fairs; Health and sanitation, including hospitals, primary health centers and dispensaries; Family welfare; Women and child development; Social welfare, including welfare of the handicapped and mentally retarded; Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes; Public distribution system; Maintenance of community assets"
20. Inserted by the Constitution (Seventy-fourth Amendment) Act, 1992 w.e.f.1-6-1993
21. Article 243-W
22. Urban planning including town planning; Regulation of land-use and construction of buildings; Planning for economic and social development; Roads and bridges; Water supply for domestic, industrial and commercial purposes; Public health, sanitation conservancy and solid waste management; Fire services; Urban forestry, protection of the environment and promotion of ecological aspects; Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded; Slum improvement and up gradation; Urban poverty alleviation; Provision of urban amenities and facilities such as parks, garden, play-grounds; Promotion of cultural, educational and aesthetic aspects; Burials and burial grounds; cremations, cremation grounds and electric crematoriums; Cattle pond; Prevention of cruelty to animals; Vital statistics including registration of births and deaths; Public amenities including street lighting, parking lots, bus stops and public conveniences; Regulation of slaughter houses and tanneries"
23. State legislatures have power to make laws for those subjects in the state list of the seventh schedule of the Indian Constitution
24. Ibid.251
25. AIR SC 1987 1068
26. Power India, Energy Security, Geography and You, Jan-Feb 2007.
27. AIR 1996 SC 2715
28. AIR 1996 SC 2712