

Environmentalism and Law: A Constitutional Perspective

AnantFaujdar

Assistant Professor, School of Law

Lovely professional University, Punjab

Abstract

The Environmental issues are raking up rapidly the world over. Whether it is, the fast paced melting of glaciers at the North Pole or the menace of the plastic pollution. It has become a global phenomenon which needs to be addressed on urgent basis. The Earth is our shared heritage. It is what we all have in common and it is exactly what we must strive to preserve and protect. In this paper, the author has tried to bring to the fore the status of legal framework that we have developed as a nation to battle the natural corruption. The Indian Constitution has made it an obligation upon the citizens to protect and promote environment friendly activities. Yet it is surprising to know how little has been achieved so far. This has to be undone by committing to zero-tolerance approach towards environment pollution. With the help of stringent actions against polluters, global commitments on part of big Multi Nationals and last but not the least, awareness at all levels including the three-tiers of the Government can be expected to bring about a positive result. This paper also attempts to provide certain solutions to the current environmental problems that we all are facing not just as citizens of a nation but as human beings on planet Earth.

"ENVIRONMENTALISM" is the new movement the world over. It is acquiring such an importance in national plans and policies in developed as well as developing countries that nowadays no development is approved unless and until competent authority assesses its impact environment. It has been realized by mankind that living and non-living elements in the environment keep interacting with one another to maintain mutual balance called "ecological balance" which is vital for survival all living organisms, including human beings. It is known to all that earth is the only planet in this highly unique universe that has acquired after billions of years of its coming into being, the capacity to sustain human life through its ecological balance. Unfortunately, man in his journey to civilization started polluting his own environment in such a way that he has now realized that by disturbing ecological balance he is digging his own grave.

From the Vedas, Upanishads, Smritis and other old written works we find that man lived in complete congruity with nature. From old sacred writings of Hindu religion one discovers that the individuals gave a lot of significance to trees, plants, wild lives and different things nature that they built up a long custom of securing and venerating nature. As per Hinduism, God is inescapable and is available each component of nature, regardless of whether it is tree, plant, waterway, mountain, water, climate and so on. Along these lines, damage to any component of nature is an affront to God. This is to state, nature was held in high regard as though it spoke to the ubiquitous god-like. An ecological moral has constantly framed an intrinsic piece of Indian strict statutes and reasoning. Revering of nature - sun, moon, earth, water and so forth was not just a crude man's reaction to the obscure, yet emerged from profound adoration appeared to the powers of which supported and protected human life on this planet. The earth has from the beginning been considered as "Goddess Mother" in the antiquated sacred texts and worshipped for its tremendous capability of saving, securing and continuing all animals remembering people for it.

The established obligation depended upon the state to secure and improve the common habitat depends on the "Convention of Public Trust". This teaching initially created in old Roman realm. As indicated by this regulation, there are sure regular assets, for example, waterways, coastlines, backwoods, wild lives, air and so on., which are held by the state in trust ship for the free and unhampered utilization of overall population. As indicated by Roman law, these normal assets are either possessed by none (*res nullius*) or by everybody in like manner (*res communes*). Under the English custom-based law, in any case, the sovereign could claim these regular assets yet the proprietorship was constrained as in the crown couldn't concede these assets to private proprietors, if the impact was to meddle with the general population intrigue.

Environment under Indian Constitution

The 42nd amendment didn't keep the established commitment to improve condition just in the hands of the state however commitment down to the degree of the residents additionally by consolidating 51 A (g) in a recently presented part, to be specific part IV-An of essential obligations. This alteration is viewed as a transformation, as it was not just the first of its sort in established history communicating worry for condition and its security, yet it likewise concurred acknowledgment to Buddhist and Gandhian ecological morals, since article 51 A (g) made it a major obligation for every one of the residents of India not exclusively to ensure and improve the common habitat yet in addition to have sympathy for every living animal. Another noteworthy part of articles 48 and 51 A (g) is that the state and its residents will ensure the earth as well as protect it.

The ecological constitutionalism which prompted consolidation of Articles 48 An and 51A(g) in the Constitution got further lift in 1978 when the peak court in Maneka Gandhi case in translating articles 21, which manages the human right identifying with life and individual freedom, held the view that the suitable method for deciphering the arrangements of Part III (for example major rights) is extend the span and ambit of the key rights as opposed to weaken their significance and substance by legal translation. This has given new measurements to Article 21, however the court in translating resulting issues identifying with condition and biology has brought forth new Environmental Jurisprudence through its legal activism and held that privilege to life incorporates right to perfect and solid condition.

Similarly, another principle that emanates from the sustainable development is that economic and industrial must accommodate environmental protection, that is to say, should not be at the cost of the environment. The Supreme on this principle ordered closure of certain mines that caused environmental damage in *Doon Valley*¹, in *Ganga Pollution* case² also the apex court relying on the same principle ordered the closure of tanneries and held that though the leather industry brought a lot of required remote trade for the monetary advancement of the nation this ought not be permitted at the expense of condition. As indicated by the court, “the life, wellbeing and biology have more prominent and crucial significance to the human beings and other life forms than loss of income, business and so forth”. The court dismissed the old idea that advancement and natural safeguarding can't go together, and has held in congruity with the Agenda 21 of the Rio Declaration, 1992 that to accomplish manageable improvement ecological assurance must comprise a vital piece of the formative procedure and ought not to be considered in confinement. It has further held that sustainable development must be endorsed as a practical and feasible concept for eradication of poverty and improvement of the standard of living for human life while living within the bearable capacity of the supporting ecosystems³.

Environment, present and future generations: intergenerational equity, justice and responsibility

The world community, probably fearing that the present generation has gone beyond its environmental means and realizing the immediate need to preserve and enhance the human environment, urged people environment wisely, shape their activities in a more prudent way⁴ and

¹See *Rural Litigation and Entitlement Kendra, Dehradun v. State of U P.*, AIR 1985 SC 652.

²*M.C. Mehta v. Union of India*, AIR 1988 SC 1037

³See *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715 at 2720.

⁴See, Declaration of the United Nations Conference on the Human Environment 1416 (1972), [hereafter referred to as the Stockholm Declaration]. The Stockholm affirmed in governmental as well as non-government meetings, see generally, Hague on the Environment 1989, 28 ILM 1308 (1989) and Draft Charter on Environment Obligations 1990, 21 *Environmental Policy and law* 81 (1991)

called upon states, (i) not to isolate environmental protection from their process; (ii) to monitor biological diversity; and (iii) to control greenhouse gases⁵.

The theory of intergenerational equity and responsibility, in preceding paragraphs, warrants a few appropriate constraints on present generation in exploiting and using natural resources and obliges earth to posterity in no worse condition than it (present generation) its previous generations⁶. This inevitably requires prudent, replenish as well as non-replenish natural energy resources, effective and eco-friendly development. The concept of sustainable development by the Brundtland Commission and endorsed by the international Rio de Janeiro, in essence, is premised on the idea of intergenerational justice and responsibility.

The present age doesn't have an outright right to and aimlessly use, rather abuse, characteristic assets at the ages. It is lawfully just as ethically compelled by a sense of honor to protect, the earth for children. Who and what is to come, similar to the present right to acquire from their ancestors a naturally solid and a cautious perusing of national, territorial and worldwide instruments human condition in vogue uncovers that the present age just to itself, its unborn youngsters and to mother earth. Supportable improvement in definite examination, is introduced on the possibility of intergenerational and equity. Precepts and soul of practical improvement, most recent national ecological laws and United Nations archives oblige states to maintain a strategic distance from, if unrealistic, at any rate to limit, regular assets and unsustainable and excessively expensive examples of advancement.

At last, in course of time, this regulation of open trust came to hold the view that common assets vital to the individuals overall ought not to be made subject of private proprietorship. Such assets ought to be made accessible uninhibitedly to everybody regardless of status of life. This principle has not been applied in the natural law and as indicated by this teaching the state is the trustee of the earth and as a trustee has the "agreed obligation" to secure and improve the earth to serve the individuals who are a definitive recipients.

Therefore, it will not be an exaggeration from above that the global movement on environment is having a profound impact on judiciary of India in shaping and developing and improvement of environmentalism on Indians as degradation of environment is an international problem, and environmental jurisdiction of a country has trans-harm in other countries as well.

⁵See, Rio Declaration on Environment and Development 1992, 31 ILM 876 (1992), Also see the Convention on the Control of Trans boundary Movements of Hazardous Wastes and their Disposal, 1989 [For text see 28 ILM 657 (1989)] and the Convention for the Protection of the Ozone Layer, 1985 [for text see 26 ILM 1529 (1987)].

⁶Edith Brown Weiss, "Our Rights and Obligations to future Generations for the Environment", 84 AJIL 198 (1990). Also see, E. Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony and International Equity* (1989).

Development versus Environment: Policy and Laws in India

The Constitution of India doesn't expressly conceptualize the between connection among condition and advancement. Nonetheless, an examination of the 'Mandate Principles of State Policy' and 'Crucial Duties' joined in it uncovers that it (the Constitution) has plot potential bearings/guidelines of advancement yet additionally guaranteed insurance, conservation and improvement of condition.

Request principles of state game plan, are 'pivotal in organization of the country and power a built up commitment on the state to implement these models in drafting laws and fix specific social and financial targets for satisfaction by the state. They bury alia, picture budgetary progression of people. Article 38 directions a state 'to propel welfare of the people's standard of living by checking and guaranteeing a social solicitation seeing social, money related and political value. Article 39 attempts to lessen deviations in budgetary conditions of different layers of the masses. It likewise guides the state to figure its approach, entomb alia, to, (I) a satisfactory methods for work for its residents; (ii) circulate possession control of the material assets of the network to sub serve the normal and (iii) work the financial framework so as to not result centralization of riches and methods for generation in a couple of hands to the disservice. Article 46 guides the state to advance instructive and monetary interests of flimsier areas of the general public. Article 47 further forces an obligation on the state to raise the degree of nourishment and way of life of its residents and improves general wellbeing.

Assurance and Improvisation of Environment: Legal structure in India**(1) *The Indian Constitution***

The Constitution of India, as referenced prior, may presumably be the principal Constitution on the planet which contains explicit arrangements relating to insurance and improvement of condition and in this way concurs a sacred status to natural security and safeguarding. It likewise brings out obviously, India's sacred concern and pledge to insurance and improvisation of the human condition.

(2) *Anti-pollution Laws*

During the course of most recent two decades, Parliament of India, with a perspective to battle natural corruption and improving the disintegrated condition has so far authorized three significant enemy of contamination laws managing either part of ecological contamination. They are-(I) Water (Prevention and Control of Pollution) Act 1974 (Water Act); (ii) Air (Prevention and Control of Pollution) Act 1981 (Air Act); and (iii) the Environment (Protection) Act 1986 (Environment Act). The Air Act, instituted by Parliament in compatibility of the Stockholm

Conference, accommodates aversion, control and decrease of air contamination. It plans essentially to save the nature of air and control air contamination. The Environment Protection Statute, which was likewise instituted to execute choices taken at the Stockholm Conference, is the most exhaustive Act identifying with natural security. It accommodates assurance and improvement of condition and anticipation of dangers to individuals, other living beings like animals, plants and non-living entities like property.

State Obligation and Environment

"The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country", declares Article 48A of the Constitution. It is plain that in Bhopal the state failed in this duty. Despite the warnings it did not pull up Union Carbide. Such instances of criminal state inaction abound.

In February 1984 a three-day national seminar on "Law towards Environmental Protection" was held at Chandigarh which adopted a resolution asserting that it was the fundamental right to live in an unpolluted environment and it was the duty of every citizen to maintain the environment. Forty delegates from all over the country besides several from Punjab University contributed papers. The seminar concluded that "the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981, were defective was hardly shocking". These statutes empower the State Boards which they set up to file complaints of violation of their directives. Prosecutions are less and convictions lesser still.

The fluoride menace in Surat villages was widely reported in the press. It was exposed by Kiran Desai of the Bio-Sciences Department of South Gujarat University. According to his report, a refrigeration-gas manufacturing factory had been emitting excessive amounts of fluoride particles through gases and discharging large quantities of fluoride effluent into the Bhedurad Creek which merges with Mindhola River. The painstaking research conducted by Desai and his team established the fluoride pollution through air and water. The two Central statutes on Water and Air Pollution do not provide for prosecution by individual members of the public. But it is certainly open to members of the public who feel concerned to move the High Court for a writ of mandamus for the enforcement of Article 21 which confers the fundamental right to life.

Importance of Law in Environmental Protection and Development

The Indian constitution doesn't explicitly conceptualize the in between connection among condition and advancement. In any case, an examination of the 'Mandate Principles of State Policy' and 'Basic Duties' fused in it uncovers that it (the Constitution) has laid out potential headings of advancement as well as simultaneously likewise guaranteed security and improvement of condition.

All contemporary legitimate frameworks of the world perceive job in deciphering an 'arrangement' into 'practice'. Natural law 'controlling' human activities, that are harming or the earth, and 'rebuffing' the practitioners of, or potentially such activities, can't be a special case to this acknowledged Environment law, as the juridical formulation of environmental programs, can undoubtedly play the following roles :

(i)It can accommodate institutional instrument for assets and their utilization in formative procedure.

(ii) It can set benchmarks of nature of the earth sanctions for release in the earth of malicious advancement forms.

(iii)It can prescribe guidelines for location and operation to ensure incorporation of eco-friendly technology and thereby the environment.

(iv)It can set up an institutional expectant component for appraisal of effect of advancement activities and projects on the earth.

(v) It might order people groups' investment in basic leadership forms in issues relating to improvement and condition. It might likewise set substantive gauges and procedural protects subsequently.

(vi) It might accommodate installment of sufficient pay to casualties of ecological contamination and corruption based on tortious risk or polluter-pay standard.

Concluding Remarks

Ecological DEGRADATION is lamentably continuing at an exceptional rate - all for the sake of advancement. Advancement suggests change and circulation of financial assets for a socially and monetarily immature portion of society or locale. The procedure of financial change, clearly, involves abuse of a country's sustainable just as non-inexhaustible common assets. However, it must be understood that over-abuse and unpredictable utilization of these assets, at the appropriate time of time, bring about irreversible natural corruption, and cause genuine unfriendly impacts on the ways of life of people, plants, creatures and other living life forms. Over the long haul, over-misuse may likewise debilitate and hamper for awful the nation's very improvement limit. An over-misuse formative arrangement, without a doubt, presents genuine dangers to the human and indigenous habitat. Each formative arrangement and program, which is principally started with the "homo sapien" inclination for materialistic and other worldly needs and solaces, represents little risk to nature. The inclination for advancement, combined with the requirement for contamination free condition brings up a fundamental issue.

The inquiry is: Do we need advancement or do we need a spotless situation? To settle on a decision between the two is a troublesome errand. We can't state that we need advancement if the outcome would be an extraordinary debasement of nature. We can't likewise settle on a perfect domain if the expense is a work in progress. In a mechanical age a contamination free condition may maybe be just a perfect dream a long way from its acknowledgment. Our vote, along these lines, must be for an eco-accommodating improvement. The errand without a doubt requires a legitimate adjusting among formative and ecological approaches. Regardless of whether we can accomplish that parity relies upon our will to protect what is generally important for our endurance Environment. Our sustenance on this planet depends on how well we maintain its biological and ecological diversity. It is for all to behave responsibly towards the environment.