International Journal of Law
ISSN: 2455-2194
Impact Factor: RJIF 5.12
www.lawjournals.org
Volume 4; Issue 4; July 2018; Page No. 95-99

Role of legislature and Indian judiciary in protection and prevention of environmental degradation

Basharat Amin[1], Shaib Abas Malik[2]
[1] LLM in Human Rights, New Law College, Pune, Maharashtra, India
[2] LLM in Business Law, New Law College, Pune, Maharashtra, India

Abstract
The concern for environmental protection in India can be traced back to Ancient times. Our Constitutional commitment towards environmental protection and management of resources is very much enshrined in different Articles and Schedules of the Constitution. In India, the Concern of environment protection has not only been raised to status of fundamental law of the land. But it is also wedded with human rights approach and it is now well established that it is the basic human right if every individual to live in pollution free environment and other statutory provisions contained in various laws relating to the environment protection, Supreme Court has held the essential feature of the 'Sustainable development' such as 'Precautionary Principles' and the 'Polluter Pays Principle'

When natural habitats are destroyed or natural resources are depleted, environment is degraded. The Honorable Supreme Court of India has played an important role as the protector of "Fundamental Rights" of Citizens of India. As Right to Health Environment is one of the Fundamental Right under the Constitution it is also protected by the Supreme Court. The objective of the research paper is how the apex court has played vital role to curb the problem of environmental degradation through the process of judicial Review and also to study the legislative and constitutional provisions which not only safeguard the environment degradation but impose penalty to the polluter.

Keywords: environment, judicial review, polluter pays principle, sustainable development, polluter

Introduction

Today's world's main concern is to preserve and protect the environment which is one of the clearest examples that all human activities on this earth are interconnected. Environmental degradation is the deterioration of the environment through depletion of resources such as air, water and soil; the destruction of ecosystems and the extinction of wildlife. So environmental degradation can be defined as any change or disturbance to the environment perceived to be deleterious or undesirable. Judicial review of Indian constitution plays a key role to check and control the environmental degradation. Judicial review is the doctrine under which legislative and executive actions are subject to review, and possible invalidation, by the judiciary. The Supreme Court has judicial review power to annul the acts of the state when it finds them incompatible with provisions of the Constitution. Need for Establishment of the Environmental Courts and the Supreme Court has asked all High Courts to establish special bench 'Green Bench' monitor and deal with cases on environmental matters. Thus the Court has prevented state from doing any such act which leads to any kind of "Environmental Degradation" and directed them to take steps for the protection of the Environment.

Environmental Degradation & Importance of Judicial Review

The importance of judicial review of executive actions as an institutional solution of human problems.

"People can ill afford to forget that the constitutional courts' power of judicial review is the only peaceful device available to control a government, which has an innate tendency to arbitrariness. People should be proud of their constitution the same way as they were of their parentage and the nation. "I personally believe that if you follow the constitution, you do not need to practice any religion on the earth, it's the power of Judicial Review of the Supreme Court that the only way to prevent the people from any arbitrary act of the Government and to protect and preserve the Environment from any kind of Environmental Degradation" Justice Kapadia told a gathering that included sitting and former judges, senior lawyers and law students.

Constitutional Provisions and Environment Protection in India

The preamble of the Constitution of India provides that our country is based on "Socialistic" pattern of society. The basic aim of socialism is to provide "decent standard of life to all", which is possible only in pollution free environment. Pollution is a social problem and the State is required to pay more attention to it. The Preamble declares India also as 'Democratic Republic' as here people have right to participate in government decisions making policy which is very important for the success of implementation of environmental policies in India

Federal system of government

As from environmental point of view, allocation of legislative authority is very important. The constitution of India deals

exhaustively with legislative powers pertaining to environmental law. The legislative powers under the scheme of the constitution is divided into three lists viz., the Union List or List – I, the State List or List –II, the Concurrent List or List – III. Part – XI (Arts. 245-263) of the constitution provides for the distribution of legislative powers between the union and the states. The union list contains 97 subjects and the Parliament alone has the power to legislate. The State List contains 66 subjects and the States have power to legislate. However, in respect of Concurrent List, which contains 52 subjects, both the Parliament and the State Legislatures have the power to legislate.

There are about 200 Central and State Legislation on environmental protection. The most important environmental legislation, passed by the parliament under Art. 249 of the Constitution are The Water (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1981; and the Environment (Protection) Act, 1986.

Fundamental Rights

Right to life and Right to Healthy Environment

The Part –III of the Constitution, containing Arts. 12 to 35, deals with fundamental rights. Articles 15(2) (b); Art. 21 and Art. 24 provide for specific provision for environmental protection.

Article 15(2) (b): According to Art. 15(2) (b), "No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them be subjected to any disability, liability, restriction or condition with regard to: the use of wells, bathing ghats, roads and places of public resort, maintained wholly or partly out for state funds or dedicated to the use of general public:.

In simple words, Art. 15(2) prohibits discrimination on the ground of sex, race, religion, caste, place of birth etc. to make use of the public places the general public. The public places, which are part and parcel of the human environment should be made available to the public. The preamble to our constitution ensures socialistic pattern of the society and decent standard of life, which can be pollution free environment.

Article 21:- According to Article 21 of the constitution, "no person shall be deprived of his life or personal liberty except according to procedure established by law".

Article 21 is the heart of the fundamental rights and has received expanded meaning from time to time after the decision of the Supreme Court in Maneka Gandhi vs. Union of India, (AIR 1978 SC 597). Art. 21 guarantees a fundamental right to life –a life of dignity to be lived in a proper environment, free of danger of disease and infection.

The right to live in a healthy environment as part of Art. 21 of the Constitution was first recognized in the case of:-

Rural Litigation and Entitlement Kendra vs. State of U.P., AIR 1988 SC 2187

It is the first case of this kind in India, involving issues relating to environment and ecological balance. The R.L. & E. Kendra and others in a letter to the Supreme Court complained about the illegal / unauthorized mining in the Missouri, Dehradun belt. As a result, the ecology of the surrounding area was adversely affected and it led to the environmental disorder.

In M.C. Mehta vs. Union of India, AIR 1987 SC 1086 (Popularly known as "Oleum Gas Leak Case")

The Supreme Court treated the right to live in pollution free environment as a part of fundamental right to life under Art. 21 of the Constitution. Further the A.P. High Court in T. Damodar Rao vs. S.O., Municipal Corporation, Hyderabad, (AIR 1987 A.P. 171) laid down that right to live in healthy environment was specially declared to be part of Art. 21 to the Constitution.

Article 24: Article 24 of the Constitution speaks about exploitation of child labour. It says that "No child below the age of 14 years shall be employed to wok in any factory or mine or engaged in any other hazardous employment" this provisions is certainly in the interest of public health and part of the environment. Further, Art. 39 (e) and 39 (f) under Directive Principles of State Policy provide for the protection of the health and strength of children below the age of 14 years.

In people's Union for Democratic Rights vs. Union of India, (AIR 1982 SC 1473), the Supreme Court held that the prohibition under Art. 24 could be enforced against any one, be it the State or private individual.

In pursuance of this obligation, parliament enacted the Child Labour (prohibition and Regulation) Act, 1986. The Act prohibits specifically the employment of children in certain industries.

Directive principles of State Policy

Article 47 of the Constitution is one of the Directive principles of the State policy and it provides that the State shall regard raising the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. The improvement of public health includes the protection and improvement of environment without which public health cannot be assured.

The Environmental protection and improvement were explicitly incorporated into the Constitution of India by the 42 Amendment Act (1976), which added Article 48A to the Directive principles of State policy and declares that," the State shall Endeavour to protect and improve the environment and to safeguard the forests and wild life for the country."

Fundamental Duties

Article 51A (g) on "Fundamental Duties" imposed a similar responsibility on every citizen to protect and improve environment. It states, "It should be the duty of every citizen of India to protect and improve the natural environment, including forests, lakes, rivers, and wildlife, and to have compassion for living creatures."

Remedies under the Constitution and the role of Judiciary

The Judiciary has played important role in protection of the environment under the constitution through writs U/A 32 & 226; where by the Supreme Court & High Court has decided many Landmark Judgments for the Protection and Prevention of any further Environmental Degradation:

1. **In People's Union for Civil Liberties V/s Union of**

India [1]: The Supreme Court held that the prohibition under Art. 24 could be enforced against any one, be it the State or private individual.

2. **In Vellore Citizens Welfare Forum V/s Union of India(Tanneries Case) [2]:** The Court held that 'Precautionary Principles' and the 'Polluter Pays Priciple' are part of the environmental law of the Country. In other words, these two are the basic principles of Sustainable development can be derived from the various provisions including the right to life under art 21 of the Constitution.
3. **In Goa Foundation V/s State of Goa [3]:** The Bombay High Court held that the question of locus standi from the premises of the fundamental duties under constitution of India. Thus the protection and improvement of the environment is a constitutional duty of every citizen.
4. **In Kinkri Devi V/s State [4]:** The Himachal Pradesh High Court held that in articles 48 A and 51 A (g) there is a both a constitutional pointer to the state and a constitutional duty of the citizens not only to protect but also to preserve and improvement of the flora and fauna.
5. **In R L & E.Kendra,Dehradun V/s State of U P(Doon Valley Case) [5]:** The Supreme Court held that the registry to treat the letter as writ petition under article 32 of the constitution (Epistolary Jurisdiction). The right to live in a healthy environment as part of Art. 21 of the Constitution was first recognized in this case.
6. **In M.C Mehta V/s Union (Oleum Gas Leakage Case) [6]**: The Supreme Court treated the right to live in pollution free environment as a part of fundamental right to life under Art. 21 of the Constitution. Further the A.P. High Court in T. Damodar Rao vs. S.O., Municipal Corporation, Hyderabad, (AIR 1987 A.P. 171) laid down that right to live in healthy environment was specially declared to be part of Art. 21 to the Constitution.
7. **In T.Damodhar Rao V/s S.O. Municipal Corporation Hyderabad [7]:** The Court held that it is now crystal clear that protection of environment is not only duty of every citizen but is also the 'obligation' of the state and all other state organs including the Courts of Law to have its Judicial Review of matters for the protection of environment.
8. **In L.K. Koolwal V/s State [8]:** The Rajasthan High Court held that maintenance of health, preservation of the sanitation and the environment falls within the purview of the Art 21 of the Constitution of India as it adversely affects the life of citizen and it is hazardous to human life if its no checked within time.
9. **In F.K. Hussain V/s Union of India [9]:**The Kerala High Court Pointed out that the right to sweet water and right to free air, are the attributes of the right of life, for those are the basic elements which sustain life itself.
10. **In Indian Council for Enviro-Legal Action V/s Union of India (H-Acid Case) [10]:** The Supreme Court held that even though the respondents are private corporate bodies and not within meaning of 'State' as under art 12, a writ petition under 32 would lie against them if such industry is continued to be run in disregard of law to the detriment of life and liberty of the citizens living in the vicinity, it further stated that the Court has the power to intervene and protect fundamental right to life and liberty of citizens of this country in any such condition.

Environmental Legislations in India

Environment Protection Act, 1986

The Government of India participated in the Stockholm conference and strongly voiced the environmental concerns. While several measures taken from time to time various legislation was passed relating the protection of environment. However the Environment Protection Act, 1986 (EPA) is the most comprehensive Act on the Indian Statute book for protection of the environment.

Objects of the Act

The EPA was passed with the following objects:

A. To implement the decisions taken in the Stockholm conference in June,1972
B. To enact general law on environmental protection which could the uncovered gaps in the previous legislation.
C. To specify the hazardous substances and prevent any further spread of the hazardous substances
D. To regulate the various agencies under existing laws for environment protection
E. To provide for deterrent punishment to those who endanger human environment, safety and health

Offences and Penalty under the Act

Section15. Penalty for contravention of the provisions of the Act and the rules, orders and directions.—(1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued there under, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.

Section16. Offences by companies.—(1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

[1] (1997)3 SCC 433
[2] (1996)5SCC 647
[3] AIR2001BOM318
[4] AIR 1988 H.P. 4
[5] AIR1985SC652
[6] AIR1987SC1086
[7] AIR1987 A P 171
[8] AIR 1988 Raj 2
[9] AIR1990Ker321
[10] (1996)5SCC212

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—for the purposes of this section,—

A. "company" means anybody corporate, and includes a firm or other association of individuals; and
B. "Director", in relation to a firm, means a partner in the firm.

The Water (Prevention and Control of Pollution) Act, 1974

Objects of the Act

The Water (Prevention and Control of Pollution) Act, 1974 is a specialized legislative measures, meant to tackle one facet of environmental pollution. Its essential object is to provide clean drinking water to the citizen's; Its other objectives are the following:

a. To provide for the prevention, control and abatement of water pollution
b. To establishment of the Central and State Board for implementation of the provisions of the Act
c. To provide the powers to the penalize the offenders by the Boards
d. To lay down the standards to maintain the quality of water.

Offences and Penalty under the Act

Penalties and Procedure

Sec 41. Failure to comply with directions under sub-section (2) or sub-section (3) of section 20, or orders issued under clause (c) of sub-section (1) of section 32 or directions issued under sub-section (2) of section 33 or section 33-A:- (1) Whoever fails to comply with any direction given under sub-section (2) or sub-section (3) of section 20 within such time as may be specified in the direction shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.

Sec 43. Penalty for contravention of provisions of section 24.—whoever contravenes the provisions of section 24 shall be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine.

Sec 44. Penalty for contravention of section 25 or section 26.—whoever contravenes the provisions of section 25 or section 26 shall be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine.

The Air (Prevention and Control of Pollution) Act, 1981

The Air (Prevention and Control of Pollution) Act, 1981 in short called the Air Act, was enacted by the parliament under Article 253 of the Constitution to implement the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972 in which India participated. It was decided to take appropriate steps for the preservation of the quality of air and control of air pollution.

Objects of the Act

The Air (Prevention and Control of Pollution) Act, 1981 is a specialized legislative measure, meant to tackle one facet of environmental pollution. Its main objectives are the following:

a. To provide for the prevention, control and abatement of air pollution
b. To establishment of the Central and State Board for implementation of the provisions of the Act
c. To provide the powers to the penalize the offenders by the Boards
d. To lay down the standards to maintain the quality of air.

Offences and Penalty under the Act

Penalties and procedure

Sec 37. Failure to comply with the provisions of section 21 or section 22 or with the directions issued under section 31-A.— (1) Whoever fails to comply with the provisions of section 21 or section 22 or directions issued under section 31-A, shall, in respect of each such failure, be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.

(2) If the failure referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine.

Sec 38. Penalties for certain acts.—whoever (a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board, or (b) Obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or (c) Damages any works or property belonging to the Board, or (d) Fails to furnish to the Board or any officer or other employee of the Board any information required by the Board or such officer or other employee for the purpose of this Act, or (e) fails to intimate the occurrence of the emission of air pollutants into the atmosphere in excess of the standards laid down by the State Board or the apprehension of such occurrence, to the State Board and other prescribed authorities or agencies as required under sub-section (1) of section 23, or (f) in giving any information which he is required to give under this Act, makes a statement which is false in any material particular, or (g) For the purpose of obtaining any consent under section 21, makes

a statement which is false in any material particular, Shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both.

Conclusion

It is clear from the above cases that involves the issues of environmental pollution, ecological destruction and conflict over natural resources are increasingly coming up for adjudication and these cases involve assessment and evolution of scientific and technical data, supreme court has suggested the setting up of Environmental courts on the regional basis with one professional Judge and two experts drawn from Ecological science Research group keeping in view the nature of the case and expertise required for its adjudication. There would of course be a right to appeal to Supreme Court from the decision of the environment court. The environmental law has seen considerable development in the last two decades in India. Most of the principles under which environmental laws works in India come within this period. So in short it is to be concluded that Apex court is continuously widening the scope of the laws that are meant for the prevention and protection of environment.

References

1. Justice TS. Doabia `s Environmental and Pollution Laws in India.
2. Environmental Jurisprudence- Polluter’s Liability, Indrajit Dube.
3. Introduction to environmental Law: S. Shanthakumar.
4. Environmental Law Case Book: P Leelakrishnan.
5. D D Basu Commentary on Constitution of India.