

ENVIRONMENTAL JURISPRUDENCE IN INDIA

Social Work and the Role of NGOs and Community Participation including Corporate Social Responsibility in protection of Environment.

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Abstract

The major problem of pollution is there from the very starting or we can say it expands with the evolution of human beings. The development of science and technology and the ever increasing world population brought about tremendous changes in the earth's environment. In our day to day life we can see these pollution problems by increasing global warming which is heating up the surface of earth like anything. Each year, temperature is breaking up last 10 year records. These changes are shaking up the balance of human life. Thus it is becoming very necessary to bring up changes to the outlook we have towards our environment. This attitude of taking everything for granted should be changed as soon as possible before it's too late.

It is very much clear that with this kind of attitude we easily can't come over this situation. We need to regulate human behavior and social truncation with new laws designed to fit in the changing conditions and values. In order to manage and face the myriad challenges of the ever changing environment, a new branch of law, known as environmental law.

In this research paper we will discuss about Social Work and the Role of NGOs and Community Participation including Corporate Social Responsibility in protection of Environment.

- The work done by NGO's is only for showoff or does it actually give any result?
- Steps taken by/ should be taken by cooperate as a social responsibility.
- Only NGO's, community and cooperates have a duty to protect our environment?
- The steps taken by the society to protect the environment is enough?

This paper also includes

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- All the laws made as an initiative to protect environment and also the decision to involve environmental laws in Art. 21 of the Indian Constitution.
- Public participation in Environmental Decision Making.

With the help of this paper we will learn that “we have not inherited earth from our ancestors, we have borrowed it from our upcoming generation.”



An introduction.

A very high priority has been given to industrial sector as it is an emerging sector of our economy. India's National Manufacturing Policy plans to increase the sector's share of GDP from 16 percent to 25 percent¹. Government hopes to create 100 million manufacturing sector job over the period of next 10 years. India stands on 10th rank in terms of manufacturing. Such progress results in ecological problems. Environmental pollution caused by the hazardous waste created by the industries is a challenge to life and also to balance between human and nature. Industrial development should not be proceed at the cost of environmental health but at the same time environmental protection plans should not deprive the country from industrial development. Thus both industrial development as well as environment protection should go hand-in-hand.

The natural environment has provided the healthiest living condition for the human being but these conditions have been changed by the mankind. These changes have been brought for productive ends. Many hazardous components have been added by the mankind like plastic, concrete, toxic chemicals, smoke, etc., to the environment. Although all these are added to the environment just to minimize the efforts of human being but we have to understand that it is a very high time to use alternatives in place of hazardous elements to protect the environment. There are some major factors where we use all these hazardous components such as industrialization, urbanization, factors responsible for environmental pollution and subsequent health hazard to human being are over-exploitation of natural resources, depletion of traditional source of energy and search for new ones, as well as the disruption of ecological balances for economic development.

Many a times, air pollution as well as human health hazards caused by industrial accidents has been reported from many parts of the country. *Bhopal gas tragedy*² is one of the major tragedies reported in our history. This accident has created a virtual killer environment, by destroying overnight what nature

¹121221_WadhvaniChair_USIndiaInsight.pdf.

²Union Carbide Corporation vs Union Of India Etc (1990 AIR 273, 1989 SCC (2) 540)

has taken thousands of years to create. In this tragedy 3787 people were killed whereas over 16000 were claimed to be dead. At least 558125 people were seriously injured (non-fatal injury)³.

From the very starting we are criticizing industrial development for the cause of environmental disturbance. Though it is true we can't aspire to achieve the state of purity of the environment as existed in pre-industrialisation societies but we can create such a situation in which there is an appropriate balance between environment and mankind. To understand how it can be done we have to understand the two phases. First is India's ancient tradition or outlook of ancient people toward nature and the second phase is current outlook of people toward nature.

India's Ancient Tradition:

India has an ancient tradition to protect the environment. There are several manuscripts, writings, vedas, puranas in which it is proved that in ancient India every individual have to practice some rituals to protect and worship nature. Several group of trees kept untouched and undisturbed since immemorial time. Trees, plants were worshiped like "Neem tree, Banyan tree, Tulsi plant, Bodhi tree etc.). Causing harm to these plants believed to be a sin. *Rishis* warned people against cutting of trees as such activities would result in poor rainfall. This statement is also scientifically true. In ancient period people perform *yagyas* to purify the surrounding air. While the holders of political power, like their counterparts of the present, were concerned with the physical and worldly comforts, the religious leaders and writers had a fundamentally positive approach towards the protection of environment.

From the above paragraph we can easily understand that our ancestors have the knowledge of upcoming destructions from the very beginning. Also if we people don't control the our habit of taking anything for granted then there will be a time when we want to get our environment back in its purest form but any amount of efforts can't bring it back.

And the same happens. In our present time, as discussed earlier "it is true we can't aspire to achieve the state of purity of the environment as existed in pre-industrialisation societies"

Present traditions:

There is minor difference between ancient traditions and present day traditions is that they worship the nature presuming to be their god but now a days we worship our god but at the cost of harming our nature. There are many examples for this, like very popular *Ganesh Visarjan*. On the occasion of ganesh visarjan people used to submerge the idol of god ganesh into the sea/river. These idols cause

³https://en.wikipedia.org/wiki/Bhopal_disaster

harm to the water bodies. Not only on Ganesh Visarjan but on Durga Puja same practices are followed. On Diwali, people used to burn crackers and cause air pollution in the name of rituals.

There were many debates on these problems and many a solutions were suggested like making of idols of such material which don't affect our environment. People advised not to burn crackers. But all these suggestions cause a very minor effect on our environment. If we really want to make any big change then only suggestions can't help. Some laws have to be imposing on people. In order to face the challenges of ever changing environment we have The Environment (Protection) Act 1968.

Since we have The Environmental (Protection) Act 1968, we need a provision in The Constitution of India for the protection of our environment.

The 42nd amendment⁴ of the constitution of India introduced certain significant provisions relating to environment. Under the new provision added in the directive principles, which guide the state in moulding its laws, the state shall endeavor to protect and improve the environment and to safe guard the forest and wildlife of the country⁵. Among the fundamental duties of the citizen in-cooperated by 42nd amendment, the duty to protect the environment is significant. Every citizen has a fundamental 'duty to protect and better the natural environment including forests, lakes, rivers, and wildlife and to have compassion foe living creatures'⁶. Not only the above mention things, but public health, sanitation, agriculture, landed fisheries and water also comes under the state list. Parliament enacted the Water (Prevention and Control of Pollution) act 1974⁷(Water Act), for the control of pollution of water at the request from state, under article 252 of the Constitution. Article 252 empowers Parliament to enact in a state subject if two or more state makes such a request. The Air (Prevention and Control of Pollution) Act 1981⁸, was passed by Parliament with a view to implementing the decision of Stockholm Conference, which added the member states to take appropriate steps, among other things, for the prevention of quality of air and control of air pollution.

RIGHT TO LIVE WITH HUMAN DIGNITY-

⁴The constitution (42nd Amendment) Act 1976, which came into force with effect from 3 January, 1977

⁵ Constitution of India 1950, art. 48A.

⁶Ibid, art 51A(g).

⁷ Act 6 of 1974.

⁸ Act 14 of 1981.

In this context we have a question, “do the dimensions of right to life extend to the right to health and other hygienic conditions”?

For the very first time this question was raised by Supreme Court in *The Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*⁹. It ordered the closure of mining operations in certain areas, though in certain other areas it allowed them to be phased out in due course. Notably, the court considered the hardship caused to the lessees, but was of the view that ‘it is price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with least disturbance of ecological balance’¹⁰.

The case was filed under art 32 of the Constitution, and orders were given with stress on the need to protect the environment. It is evident that the court was evolving a new right to environment without specifically mentioning it¹¹. The right to healthy environment is seen to be approved in the *MC Mehta* group of cases.

In the very first *MC Mehta* case, the court had to deal specifically with the impact of activities concerning manufacturing of hazardous product in a factory, as well as members of a general public living outside. The leakage of oleum gas from the factory resulted in the death of a person and affected the health of several others. Several conditions were laid down under which industries of hazardous products could be allowed to restart. In doing so the court found that the case rose ‘some questions concerning the scope of arts 21 and 32 of the Constitution’. It has enlarged the scope of the right to live and said court that the state had authority to restrict dangerous industrial activities for the purpose of protecting the right of the people to live in a healthy environment.

Although in second *MC Mehta* case some conditions have been modified. Meanwhile in the third *MC Mehta* case an important question has been posed concerning the amount of compensation payable to the victims affected by leakage of oleum gas from the factory. It was held by the court that it could entertain a petition under art. 32 of the Constitution, namely a petition for the enforcement of fundamental rights, and that it could lay down the principles on which the quantity of compensation could be computed and paid. It has taken a step forward than the first case and held that read with remedies under art 32 including issuance of directions for enforcement and fundamental rights, the right to live also contains the right to claim compensation for the victims of pollution hazards¹².

⁹ AIR 1985 SC 652

¹⁰ AIR 1985 SC 652, pp656, 657

¹¹ Environmental Laws in India- P Leelakrishnan

¹² Environmental Laws in India- P Leelakrishnan

The vigilance to safeguard the fundamental rights and the readiness to interfere for saving the life and health of the people were clearly spelled out in these judicial pronouncements. Despite the presence of specific laws dealing with the matter, the court wanted to ensure that the activities authorized under these laws were carried out without harming the environment to which every person has a fundamental right. Commissions were appointed to examine these questions and report the same so that the court could get more insight into the situation before making any final decision. These initiatives lead to be an irresistible conclusion that the right to life in art 21 is wide and comprehensive. The rights becomes meaningless if it doesn't contain such elements for enhancing the quality of life as a right to clean, humane and healthy environment, and the right to get fair compensation when this right is violated.

Till now we have a lot about judicial decisions regarding environmental issues and it basically talks about rights in art 21 of the Indian Constitution. But as we know with rights we have duties as well. So in next phase we'll discuss about 'public participation in Environmental Decision Making'.

PUBLIC PARTICIPATION

Public participation arguments environmental protection measures, and reflects the aspirations of the present as well as future generations. Once people become conscious, mass movements gain momentum and their role in the governance of the country is accepted; traditional discretionary models of environmental decisions turn out to be out of date. The awareness has to be profitably utilized. Law can't be allowed to lag behind changing social situations, and the legal system has to incorporate people's participation in this process of environmental decision making.

PUBLIC PARTICIPATION CAN BE DONE IN VARIOUS MODES: first public opinion modulates governmental process or even creates law. Secondly, external vigilance of the people focuses attention on potential harm to the environment, and paves the way for essential counter measures. Thirdly, public interest groups take up environmental litigation at different levels and thus enlighten development proponents, decision makes and judicial and quasi-judicial institutions. Fourthly, environmental groups become spoke persons of environmental cause impact inquiries held prior to making decision. Fifthly, they can contribute substantially towards involving sound environmental decisions by being member of advisory panels. Sixthly, people can participate and influence formulation of rules and regulations laying down substantive criteria for arriving at environmental decision. Draft schemes, programs and regulations are published with the object of eliciting public opinion which will mold their final shape.

Now the question arises why public participation is necessary where there are so many laws and statutes are there. Also environment protection is also mentioned in constitution.

The reason behind the increasing public participation is that, with the increased protection of environment states have assumed the responsibility to meet danger and risks, which may give a threat to a great number of citizens and even the general public. Therefore, state have been increasingly begun to recognize that, in the law of environmental protection, the structures of individual participation

and judicial protection of individual which they follow traditionally is inadequate, and that the public, interested citizens and firms ought to have the opportunity to participate in the administrative decision making process. When there is a situation in which public is the one for who interest environmental protection measures are taken, and when it is the public who all are expected to accept those measures, the public should have the chance to develop and communicate its opinion, and to air it during the process of decision making regarding environment.¹³

It is essential in a democracy¹⁴ to have a access to information so that citizen can exercise their rights in a meaningful manner. Democratization of the decisions making is another notable rationale for public participation. It often alleged that public participation in an empty slogan, and creates the problem of democratic legitimacy in a representative government. However, representative government doesn't exclude direct democracy, which helps the state and its agencies to fulfill their duties in an effective way.

On one side, interest of public is being affected by environmental violations which are heterogeneous in character. On other hand, industrial undertakings and proponents of projects do have direct interests and concentrated stake in planning and development decisions. The industrial development has vast resources at their disposal. In a case involving conflicts between environment and development, the project proponents present their case in a persuasive manner and succeed to press for its acceptance. This is valid justification for the involvement of environmental associations and organisations that off sets the influence of the project proponents. The mandatory need to hear the views of public in decision making assumes importance here. It bridges the gap and removes the unequal positions between members of the general public and the industrial giants. Besides, active public participation helps the industry and the public know each other's views and improve mutual relations.

Improvement in decisions:

Consultation with the public streamlines the work of, and energises, environmental decisions-making agencies. When number of public express their views on a proposed projects, alternative views on a proposed projects, alternative views, otherwise not represented, are presented. This paves the way for decision-making agencies to be thorough in their analysis, and create a balance between development gains and environmental values. Instead of delay and procreation, public participation facilitates an objective process, as decision making agencies arrives at the crux after hearing diverse views and opinions. When all possible views and objections are considered and decision taken, there can be no room for recourse to judicial procedures. In this sense, public participation is said to be supplementing, or in certain cases eliminating, judicial reviews of administrative action. To sum up, it helps to improve the quality of administrative process by providing an opportunity to consider every aspect of an environmental problem, and to make an objective decision.

¹³Role Of Communities In Environmental Decisions

¹⁴<http://www.lawteacher.net/free-law-essays/environmental-law/role-of-communities-in-environmental-decisions.php>

A meaningful mechanism of public participation renders reasonable and effective opportunities to all interests, affected or likely to be affected, to present their opinion and cases. It generates public confidence in the decision making process and ensure public acceptance of the decisions. Participation by the public makes it possible to arrive at quality decisions for healthy environment. Consultation with the public may help to unveil inadequacies in legislative and regulatory guideline, and pave the way for reforms to the decision making process.

NGO's Participation.

As we know NGO's are the organisations who mostly took a forward a step toward environment protection. They are involved in whole process which starts from creating environmental awareness to undertaking watershed development; from providing a helping hand in disaster management to sustainable livelihood. Now-a-days NGO's are playing a vital role in framing environmental policies, encouraging public to conserve our environment. Following are the name of the agencies who are being involved in protecting environment.

- **Agency for Non-conventional Energy and Rural Technology (ANERT)**
- **Environmental Foundation of India**
- **Centre for Science and Environment (CSE)**
- **Conserve**
- **Delhi Greens (NGO)**
- **PoovulaginNanbargal**
- **Green Peace**

And many more. But the question appears here is after so many helping hands why we have still that level of pollution that we have to opt odd-even day. Rio-de-Janeiro summit have to take strict actions to reduce the level of pollution in India. There are many a reason behind these actions is that we use to do what we meant to do but no further efforts are done by our side. A very clear example is that NGOs' organised so many event on environment day, earth day etc.; on this day they used to plant saplings. But after that day was over how many groups are there who use to take care of those plants. How many plants actually grow up. This is what we need to do. If proper care is given to them then many of plants will actually grow and this helps to make earth greener.

At last we will discuss the responsibility of cooperate toward environment.

Cooperate social responsibility

As organisations, cooperates and production units takes resources from the society either in the form of raw material or man power so it is their prime duty to return it to the society as well. Not only in the form of processed goods but also recover the harm had they created to the environment.

The company's commitment towards is absolute. The company believes in sustainable development by ensuring that the activities are in harmony with environment. The company in the process of various

steps of manufacturing is committed to achieving excellence in environmental performance and towards this objective shall¹⁵:

- Adopt appropriate operational practices and suitable technologies to monitor, control and minimise the impact of its activities on environment.
- Continually improve its performance by setting the objectives and targets to prevent or reduce pollution and waste and minimise the use of resources
- Comply with all relevant legislative and regulatory environmental requirements.
- Develop and maintain a highly motivated workforce trained for effective management of environment and emergency situation.
- Provide relevant information on environmental policy to the concerned authorities and interested parties and ensure that the policy is understood, implemented and explained by the employees at all levels within the organisation.
- Evaluate and modify environmental management practices keeping in view regulatory requirements, community concerns and technological advancements.

In a fast developing country like India, environmental issues keep arising. All we need to do is to perform a balancing function between industrialisation and environmental protection.

The logo for IJESLS is presented on a horizontal scroll with a parchment-like texture and frayed edges. The letters 'IJESLS' are rendered in a large, bold, grey, blocky font with a slight 3D effect, centered on the scroll.

IJESLS

¹⁵<http://www.legalservicesindia.com/article/article/corporate-social-responsibility-and-environmental-protection-1920-1.html>