



Email:editorijless@gmail.com

Volume: 5, Issue2, 2018 (April-June)

INTERNATIONAL JOURNAL OF LAW, EDUCATION, SOCIAL AND SPORTS STUDIES (IJLESS)

<http://www.ijless.kypublications.com/>

ISSN:2455-0418 (Print), 2394-9724 (online)

2013©KY PUBLICATIONS, INDIA

www.kypublications.com

Editor-in-Chief

Dr M BOSU BABU

(Education-Sports-Social Studies)

Editor-in-Chief

DONIPATI BABJI

(Law)

©KY PUBLICATIONS



ROLE OF JUDICIARY IN IMPLEMENTING ENVIRONMENTAL JUSTICE IN INDIA- WITH SPECIAL REFERENCE TO WATER POLLUTION

K. SOFIYA

Asst. Professor, School of Law, Sathyabama Institute of Science and Technology, Chennai



ABSTRACT

“We won't have a society if we destroy the environment” - Margaret Mead

Our Society and our Environment is always interrelated. This is clearly understood by studying and interpreting the Constitutional provisions related to the environment, which says Right to life includes “Right to live with dignity which further includes the right to live in a clean environment”. Water is an elixir of life and its vital significance is greatly understood now due to huge scarcity and depletion of water resources and the growing menace of water pollution. This paper attempts to highlight the issue of water pollution in India, its causes and effects and the inevitable role of Indian Judiciary and also emphasize the lacunae in providing clean environment to all and points out the need to enact and implement more stringent laws to curb water pollution and save the earth.

Keywords: Environmental protection, water pollution, Art. 21, Sustainable development

INTRODUCTION

Out of million causes of water pollution, the important causes were Sewage, Domestic or Sanitary Sewage, Agricultural Run-Off, Industrial Effluents, Thermal Pollution, Ecological Pollution, Chemical Waste, Radioactive Waste, Oil Pollution, Plastics and so on¹. Polluted water is the major cause for numerous diseases and its effects on the population in unprecedentable as it also impact the future generation and turn the earth hazardous to live. According to a report, published on the website of Central Pollution Control Board (CPCB), only 13.5 % of the sewage in India is treated. This shows a dismal status of the sewage treatment in our country. This report indicates that more than 80% of the sewage is left untreated. It is one of the main cause of pollution of all the rivers and lakes in our country.

ROLE OF CONSTITUTION IN INVOKING ENVIRONMENTAL JURISPRUDENCE

Article 47 of the Constitution is considered to be more important, because it imposes the primary duty on the State to provide public with improved health, raised level of nutrition and ultimately improved standard of living. Public health can be assured to the public only by offering the safe and protected environment to live in. This enabled the framers of our Constitution to be more conscious on the environmental concern

Article 51(c) provides that “the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with one another”.

Article 51-A (g) refers to the fundamental duty of every citizen to protect and improve “natural environment”.

¹ www.environmentalpollution.in

ART 21 AND ENVIRONMENTAL JURISPRUDENCE

Thus Article 21 of the Indian Constitution states that:

“No person shall be deprived of his life or personal liberty except according to the procedure established by law.”

“By the term ‘life’ as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs by which life is enjoyed.”

Supreme Court Justice Bhagwati J². held: *“We think that right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of Life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself on diverse forms and so on.”*

By interpreting Art. 21, Right to life includes right to live in a clean environment, to have an access to clean water and clean air. It holistically grants rights to claim the right of living in a clean and decent environment which applies to foreigners also, as this very obligation vests on the state.

The right to live in a healthy environment as part of Article 21 of the Constitution was first recognized in the case of **Rural Litigation and Entitlement Kendra vs. State**³. Art. 21 which is also a root for the birth of Compensatory Jurisprudence invoke the doctrine of **“Polluter Pays Principle”** in environmental arena which also includes the right to claim exemplary damages. The Indian Constitution plays a significant role in protecting the living environment of the citizens through which the historical Judicial Precedents was laid down, is claimed till today.

ROLE OF JUDICIARY AND ITS IMPACT echoed...

The Water Pollution Act, 1974 is a wholesome act which is enacted and functioning in centre and state level helps in curbing the water pollution to some extent. But still in environmental issues it would be a major flaw if Public Interest Litigation filed and corresponding Judgments and doctrines evolved as a result of the numerous PIL filed is not mentioned in this research. The PIL and the doctrines evoked by Judiciary is a major activism in Environmental jurisprudence. Some of the landmark cases are

The Ganga is India’s largest river basin, covering 26 percent of the nation’s landmass and supporting 43 percent of its population, according to the CSE report. Along the entire stretch of the Ganga – and its tributaries, Kali and Ramganga – 764 industries consume 1,123 million litres of water, throwing back about half of that as effluents. About 90 percent of the industries are in Uttar Pradesh, India’s most populous state. And the stretch from Kanpur to Varanasi is the worst polluted. The National Green Tribunal last year ordered closure of about 100 of 402 registered tanneries along the Ganga⁴. The growth of the tannery industries in Northern India has resulted in the excessive dumping of waste into the rivers. MC Mehta filed a Public Interest Litigation (PIL) before the Supreme Court of India against Kanpur Tanneries⁵ regarding the dumping of effluents into the river untreated

The Supreme Court in its verdict uncompromisingly held that protecting the river and its dependent environment, water resources is vital than any industrial establishments. Supreme Court ordered the industries and tanneries to have treatment plants to treat the effluents, if not then the industries will be ordered to shutdown. This verdict is taken as a precedent and implemented in many cases latter.

In **Vellore Citizens Welfare Forum v. Union of India**⁶, popularly known as **T.N. Tanneries case**, the Judiciary upheld the concept of Sustainable development in a different perspective. It declared Sustainable development can’t be achieved without implementing Polluter Pays Principle which means the Polluter who causes the damage should contribute and compensate the loss caused by his act of pollution and The Precautionary Principle which emphasize the precautionary measures should be taken to prevent from hazardous consequences of pollution. The Supreme Court constituted the

² Prafullachandra Natwarlal Bhagwati was the 17th Chief Justice of India, serving from 12 July 1985 until his retirement on 20 December 1986.

³ AIR 1988 SC 2187 - Popularly known as Dehradun Quarrying Case

⁴ www.thequint.com

⁵ Case MC Mehta v. Union of India 1988 AIR 1115, 1988 SCR (2) 530

⁶ WP 914/1991 (1996.04.26)

Green Bench to deal with this case and ordered for closure if not the treatment plant is not established and directed State of Tamil Nadu to pay Rs. 50,000 to M.C.Mehta for the legal expenses incurred by him to file PIL in this regard.

The above discussed cases were very few which reflects the scenario of water pollution in the nation and its effects. Not only the pollution in river Ganges affects the nation but it is a reflection of the pathetic condition of rivers affected by pollution from Industries. The perennial water sources were dry as the Judiciary again should play a crucial role in protecting and saving of water resources.

RECOMMENDATIONS

Even after all the Acts enacted and the functions of Central Pollution Control Board and State Pollution Control Board in all the facets and India being the party to International Environmental Conventions, till now the water pollution cannot be curbed to the fullest. **The Independent Environmental regulatory body with strict implementation of judicial precedents and regulations is the need of the hour.** This paper is not against the Industrial growth, but the growth should not be at the cost of the basic need of humans and other living beings. The Sustainable development and self-reliance in protection of water resources will make a nation to concentrate on next level of growth. The Economic growth of a nation and the quality life of a citizen should go hand in hand. This is the high time to invoke Environmental Jurisprudence through Constitutional provisions and set up an Independent Regulatory Mechanism for Protection and Conservation of Water resources as this is a fundamental right of every citizen in the nation. Judiciary plays a significant role in this aspect and its contribution towards curtailing water pollution is enormous. But it is also the duty and responsibility of state and citizen together to provide pollution free, perennial water resource for the future generation.

BIBLIOGRAPHY

Journal

- Saroj Gupta, "The Role of Judiciary in Promoting Sustainable Development: Need of Specialized Environment Court in India" Research scholar, Bharati University
- Sukhvinder Singh Dari & Rangam Sharma, "An Overview of Environmental Jurisprudence in India" Journal of General Management Research, Symbiosis Law School, Noida, India
- Deepika Chouhan and Prabhash Dalei "Right to live in Healthy Environment - In framework of Indian Constitution", International Conference on Humanities, Economics and Geography (ICHEG'2012) March 17-18, 2012 Bangkok

Web references

- www.researchgate.net - Last visited on 25/06/2018
- www.conserve-energy-future.com - Last visited on 25/06/2018
- www.crin.org - Last visited on 25/06/2018
- www.vagabomb.com - Last visited on 25/06/2018
- www.environmentalpollution.in - Last visited on 25/06/2018
- www.thequint.com - Last visited on 25/06/2018
- www.lexsaturates.org - Last visited on 25/06/2018

Magazine

- The Guardian
- Business world
-