



Remedies of Environmental Jurisprudence in India

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Abstract

The development of International environmental law started in the nineteenth century with the domestic environmental laws. which developed along with environmental degradation In 1972 the United Nations-sponsored Stockholm conference on the Human environment gave a non-binding Declaration of principles and a programme for action. After this united nations established a specialized subsidiary body of the united nations general Assembly the " United Nations environmental Programme i.e, UNEP, having it's headquarter in Nairobi Today UNEP is the only international body concerned. with environmental matters.

Keywords :- Environmental, Jurisprudence, Remedies, Environmental Protection

Environmental Jurisprudence In India

Right from birth, one needs clean air to breathe, pure water to drink, nutritious food to eat, and hygienic condition to live in. These requirements are satisfied by the environment. But today the air becoming polluted and water becoming contaminated due to human's greed for exploitation of environmental resources beyond their necessity and if the development is done at the cost of the environment then it is not said to be a developed nation. The environment is a very complex phenomenon. The beginning of Environmental jurisprudence in India marked its presence by the 42nd Amendment to the Indian Constitution and the insertion of Article 48-A and 51-A (g).

The area of Environmental Jurisprudence is very wide. It includes laws that can be both statutory and judicial. It also includes different concerned aspects of environmental protection and sustainable development. Especially in India various laws have been enacted by the parliament as well as the judiciary for the protection of the environment. The movement for the protection of environmental issues got its momentum with the judicial intervention in the 1980s and 90s.

DEVELOPMENT OF THE ENVIRONMENTAL JURISPRUDENCE

In India Law for Environment Protection is not a new concept. The concept of environmental protection has been imbibed with Indian culture and ethos from time immemorial. The traditions of Vedic culture, the prehistoric and historic period, medieval India tell the magnitude of India's awareness of the importance of environmental protection. To understand the present-day legal system for environmental protection, it is very important to peep into the past Indian traditions of protecting the environment.

During Ancient Period

In the Hindu dogma forests, wildlife, trees were held to be in high esteem and given high respect.(1) A wide description of trees and plants and wildlife and their importance to inhabitants of the earth was given in Vedas, Puranas, and Upanishads Rig Veda, has mentioned in some of its principles on nature in observing the climate, the increase in fertility, and the improvement of human life dwelling on the connection with nature. The late Vedic period was spread over the span of 1900 to 1000 BC. It is also known as the Brahmana period. In the 5th century BC, Siddhartha Gautama founded

the religion of Buddhism, a profoundly influential work of human thought still espoused by much of the world. In the same, another religion called Jainism was founded by Mahavir.

Medieval India

During the medieval period the development of environmental jurisprudence and also, Mughal kings developed gardens all over India. Several provisions for forest protection and animals were made by other Hindu Kings also e.g. King Ashoka, in Pillar edict expressed the viewpoint about the welfare of creatures in his Kingdom.

Environmental Policies in British India

An analysis of the early days of the British Empire in India reveals that environmental protection was not important at that time. The actual need was felt only after the raising of the Industrial Revolution, in which exploitation of natural resources is started taking place. The onslaught on forests was primarily due to the increasing demands for raw materials for industry, military purposes, Royal Navy.

THE PROTECTION OF THE ENVIRONMENT IN POST-INDEPENDENCE

1. Constitutional Mandates

The Constitution of any country is the basis the source of law, and different provisions of all other laws are derived from or in accordance with the provisions of the Constitution itself. The Indian Constitution is among the few constitutions of the world which contain specific dedicated provisions on the issues of environmental protection. The various provision of the Constitution lay the foundation for a jurisprudence of environmental protection which highlights the national consensus focused on the importance of Environmental Protection and development as well as improvement.

2. Five Year Plans and Environmental Protection

The national planning process was started in 1951 in India. During these plans the policy was directed towards the promotion of agricultural & Industrialization & improvement of human-environment e.g. sanitation, public health, water supply, and housing. Wildlife conservation was taken care of several wildlife sanctuaries were established, A new scheme 'Pre-environment survey of forest resources was started, Van Mahotsava, the era of environmental awareness, development of national parks, strengthening of research in endangered animals and projects tiger plan, Government has conducted various research programmes for environmental protection, the public Liability Insurance Act has been enacted whereby public liability insurance cover has been made mandatory for all hazardous chemical industries, control of Ozone Depleting Substances, the Biological Diversity Act, 2002, the Hazardous Waste (Management & Handling) Rules, 2003, the establishment of National Green Tribunal- a special fast-track court for speedy disposal of environment-related civil cases.

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

The Air (Prevention and Control of Pollution) Act, 1981 (the "Air Act") - which is an act to provide measures for the protection, prevention, control, and abatement for air pollution and it also provides for the establishment of the Boards at the Central and State levels which is established to carry out the aforesaid purposes.

To encounter the problems which are associated with air pollution, ambient air quality standards were established under the Air Act. Whereas the Air Act provides measures to fight air pollution by prohibiting and restricting the use of fuels and substances causing pollution, and also by regulating appliances that cause air pollution. This said Act empowers the State Government to declare any area or areas within the State as air pollution control area or areas, after consultation with the SPCBs, Under this Act, the establishment or operation of any industrial plant in the pollution-controlled area requires consent from SPCBs, SPCBs are also authorized to test the air in case of air pollution-free areas to inspect pollution control equipment and manufacturing processes.

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

The Water Prevention and Control of Pollution Act, 1974 which is popularly known as the "Water Act" has been enacted to provide certain measures for the prevention and control of water pollution. It also provides clauses to maintain or restore the quality of water in the country. It also provides for the establishment of Boards for the prevention and control of water pollution which is aimed at carrying out the above- mentioned purposes. The Water Act prohibits the discharge of polluting substances into water bodies beyond a given standard specified by the authorized bodies, which also lays down the penalties for non-compliances. At the Centre level, the Water Act has set up the CPCB and this authority lays

down standards for the prevention, protection, and control of water pollution which is under the direction of the CPCB and at the State Government level (2) At the State level, it is SPCBs (3)

The Water (Prevention and Control of Pollution) Cess Act was enacted in 1977. It provides clauses for the levy and collection of a specific type of tax named as cess on water consumed by such persons operating and carrying out certain types of industrial functioning and activities. This cess is collected from those persons to augment the resources provided by the Central Board and the State Boards for the prevention and control of water pollution which is constituted under the Water (Prevention and Control of Pollution) Act, 1974. The last amendment of the act was done in 2003.

The main objectives of this Act are to provide legal provisions for the prevention and control of water pollution and the maintenance or restoration of the wholesomeness of water and the establishment of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.

5. **The Environment Protection Act, 1986**

The Environment Protection Act, 1986 (the "Environment Act") is an act that provides for the protection and improvement of the environment. This Environment Protection Act establishes the framework for studying, planning, and implementing long-term requirements of environmental safety and laying down a system of speedy and adequate response to situations threatening the environment. It is specific legislation enacted to provide a framework for the coordination of central and state authorities established under the Water Act, 1974, and the Air Act. The term "environment" is understood in a very wide term under s 2(a) of the Environment Act. It includes water, air, and land as well as the interrelationship which exists between water, air, and land, and human beings, other living creatures, plants, and all micro-organisms and property.

Under the Environment Act, the Central Government is empowered to take measures necessary to protect and improve the quality of the environment by setting standards for emissions and discharges of pollution in the atmosphere by any person carrying on an industry or activity, regulating the location of industries; management of hazardous wastes, and protection of public health and welfare. From time to time, the Central Government issues notifications under the Environment Act for the protection of ecologically-sensitive areas or issues guidelines for matters under the Environment Act.

6. **Hazardous Wastes Management Regulations**

Hazardous waste means any waste which, because of any of its physical, chemical, reactive, toxic, flammable, explosive, or corrosive characteristics, causes danger or is likely to cause danger to health or environment, whether alone or when in contact with other wastes or substances.

There are several legislations that directly or indirectly deal with hazardous waste management. The relevant legislations are the Factories Act, 1948, the Public Liability Insurance Act, 1991, the National Environment Tribunal Act, 1995, and rules and notifications under the Environmental Act. Some of the rules dealing with hazardous waste management are discussed below:

Hazardous Wastes (Management, Handling and Transboundary) Rules, 2008 The act brought out a guide for manufacture, storage, and import of hazardous chemicals and management of hazardous wastes.

Biomedical Waste (Management and Handling) Rules, 1998, this act was formulated along parallel lines, for proper disposal, segregation, transport, etc, of infectious wastes.

Municipal Solid Wastes (Management and Handling) Rules, 2000 the act aims at enabling municipalities to dispose of municipal solid waste scientifically.

E-Waste (Management and Handling) Rules, 2011 (4) This act have been notified on May 1, 2011, and came into effect from May 1, 2012, with the primary objective to reduce the use of hazardous substances in electrical and electronic equipment by specifying the threshold for use of hazardous material and to channelize the e-waste generated in the country for environmentally sound recycling.

Batteries (Management & Handling) Rules, 2001 this act deals with the proper and effective management and handling of lead-acid batteries waste. The Act requires all manufacturers, assemblers, re-conditioners, importers, dealers, auctioneers, bulk consumers, consumers, involved in the manufacture, processing, sale, purchase, and use of batteries or components thereof, to comply with the provisions of Batteries (Management & Handling) Rules, 2001.

7. The Wildlife Protection Act, 1972

The Wild Life (Protection) Act, 1972 was enacted to effectively protect the wildlife of this country and control poaching, smuggling, and illegal trade in wildlife and its derivatives. The Act was amended in January 2003 and punishment and penalty for offenses under the Act have been made more stringent. The objective is to protect the listed endangered flora and fauna and ecologically important protected areas.

The Forest Conservation Act, 1980

The Forest Conservation Act, 1980 was enacted to help conserve the country's forests. It strictly restricts and regulates the de-reservation of forests or use of forest land for non-forest purposes without the prior approval of the Central Government.

The Indian Forest Act, 1927

Consolidates the law relating to forests, the transit of forest produce, and the duty livable on timber and other forest produce,

PUBLIC LIABILITY INSURANCE ACT, 1991

The Public Liability Insurance Act, 1991 was enacted with the objectives to provide for damages to victims of an accident that occurs as a result of handling any hazardous substance. The Act applies to all owners associated with the production or handling of any hazardous chemicals.

THE BIOLOGICAL DIVERSITY ACT, 2002

The Biological Diversity Act 2002 was born out of India's attempt to realize the objectives enshrined in the United Nations Convention on Biological Diversity (CBD), 1992. The Act aims at the conservation of biological resources and associated knowledge as well as sustainably facilitating access to them.

COASTAL REGULATION ZONE NOTIFICATION

The Ministry of Environment and Forests had issued the Coastal Regulation Zone 2011 with an objective to ensure livelihood security to the fishing communities and other local communities living in the coastal areas, to conserve and protect coastal stretches, and to promote development sustainably based on scientific principles, taking into account the dangers of natural hazards in the coastal areas and sea-level rise due to global warming.

THE NATIONAL GREEN TRIBUNAL ACT, 2010

The National Green Tribunal Act, 2010 has been enacted with the objectives to provide for the establishment of a National Green Tribunal (NGT) for the 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 the environment and giving relief and compensation for damages to persons and property and matters connected therewith or incidental thereto.

The Act received the assent of the President of India on June 2, 2010, and was enforced by the Central Government effect from October 18, 2010. The Act envisages the establishment of NGT to deal with all environmental laws relating to air and water pollution, the Environment Protection Act, the Forest Conservation Act, and the Biodiversity Act as having been set out in Schedule I of the NGT Act

NATIONAL STRATEGY ON ENVIRONMENT PROTECTION TO 2020 WITH VISIONS TO 2030

Environment protection is vital to human beings; The Strategy on Environment Protection is an indispensable component of the Socio-economic Development Strategy and the Sustainable Development Strategy; environment protection must facilitate sustainable development to meet demands of current generations while preserving potentials and opportunities for future generations; investment in environmental protection is the investment in sustainable development (5)

The reverence for nature is imbibed in the cultural tradition of India. From Bonze age to the present in India, nature worship is a common practice. But with scientific and industrial development, the need for environmental protection has become acute. The invasions of various tribes and people have left their impact on the environment and resources of India. To meet the new challenges and protect and preserve the environment, a number of laws have been enacted in India. Indian judiciary has also performed a stellar role in environmental protection.

So the different human activities have given birth to different kinds of environmental pollution & put a serious threat to the environment as well as to the human health. The environment needs to be protected from such pollutions. Such human activities and development activities should not take place at the cost of the environment and human health. It should be in harmony & rhythm with the environment. To control this increasing pollution stringent legal provisions are required in a country. In India, several environmental laws have been enacted to control such environmental pollution and its health hazards.

Conclusion,

The judicial approach to environmental Cases varies from case to case The supreme Court deviates from it's decisions given in previously decided cases from time to time. In some cases, relevant to the environment. Court gave the direction to close down the industries comply with environmental law and Constitutional provisions and sometimes allow industries to operate based on certain conditions to prevent environmental Pollution. In some cases, the court has come down heavily against state- agencies for their failure in implementing laws and polices, but at other times. in some cases, it has shown a hand-off approach against environmental problems due to infrastructure projects initiated by the state. The judiciary one hand upheld the rights of the poor and recognized the social justice. Principles as part of environmental jurisprudence but at other times it has rejected human and environmental effects and upheld the development aspects in deciding the environmental cases,

FootNotes:-

1. <https://www.indianbarassociation.org/wp-content/uploads/2013/02/environmental-law-article.pdf>
2. Water (Prevention and Control of Pollution) Act, 1974, S. 3
3. Ibid. Sec.19.
4. <https://www.mondaq.com/india/waste-management/624836/environment-laws-in-india>
5. www.chinhphu.vn/portal/page/portal/English/strategies/strategiesdetails?categoryId=30&articleId=10_051159 last access date 21-02-2020, at 1:00 PM.

