

Article 21 and Right to Clean Environment

Shaurya Singh¹

¹Student, Amity University

Abstract- Right to clean environment has been inferred by the Supreme Court of India in context of Right to life under article 21 of the Indian Constitution. Although this Right was not unequivocally mentioned in the Constitution but Indian Judiciary through its effective interpretation has granted this Right. Bhopal Gas Disaster, Oleum Gas Leakage, signing of international convention on environment protection, constant arising awareness nationally or internationally and environment friendly approach by Judiciary as a whole brought Right to clean environment as a fundamental right under article 21 of the Indian Constitution.

Keywords- clean environment, Constitution, Bhopal Gas Disaster, Oleum Gas Leakage

INTRODUCTION

The term environment is not a single word which could be defined precisely rather it in itself has a very wide ambit involving different subjects such as ecology, biology, geography, physiology, psychology etc. In very basic terms environment can be defined as the surrounding such as atmosphere, natural resources, water bodies in which a living organism (person, animal or plant) survives or operates. According to Einstein, “the environment is everything that isn’t me”.

According to S.C. Shastri, - “The main motto of social life since Vedic period was ‘to live in harmony with Nature’. People used to worship plants, trees, Mother Earth, sky, water, air and animals so as to be kind to everything. The Hindu religion enshrined a respect for Nature, environmental harmony and conversation. The philosophy behind it was that these all are creations of God, so destruction of nature means destruction of mankind.”

In the ancient times, environment was regarded as an indivisible part of human life as a healthy environment is entirely essential for the comfort and good of all organisms. Environment meets our all requirements whether big or small. But, now the situation is distorted. With the changing time, man’s needs has also changed or more precisely increased, he has become greedy. With greed comes degradation, more is the greed more the exploitation. Man started transforming his environs to congregate his growing material needs and desires. Gradually he started exploiting the resources to the extent, that now has transformed from preserver to destroyer. Increased exploitation resulted in increasing levels of pollution. The problem of pollution is of concern for the most as it has reached to a frightening position. So, there was a urgent need to look into this matter sincerely and for the same purpose our judiciary has contributed a lot.

ENVIRONMENT AND THE LIFE

Environment is the natural world, surroundings or conditions in which a living being i.e. plant, animal or plants survives or operates.

Environment and life are very inter-related concepts as no human life can exist without the proper environment. Thus, the existence of human life is directly dependant on ecosystem and environment.

About 70 percent of the Indian population single-handedly depends on land-based occupations, forests, wetlands and marine habitats, fundamental subsistence requirements in terms of water, food, fuel, housing, fodder, and medicine, and also for ecological livelihoods and cultural support. So, this clearly puts the close interdependence of living beings to their environment and thus the culture of societies is notably affected by their surroundings.

ARTICLE 21 AND RIGHT TO CLEAN ENVIRONMENT

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

The term ‘Life’ mentioned in Article 21 has acted as a golden method in interpreting the provisions of environmental justice by the Judiciary. ‘Life’ in Article 21 of the Constitution is not simply the physical act of breathing. It does not indicate mere animal existence i.e. eat, breathe and move but it also includes right to live with human dignity, right to livelihood, right to health, right to clean environment, right to pollution free air and water etc.

The power-sharing scheme between the center and the state, authorized the particular government to take the needful steps to safeguard the environment. As we are acquainted

with the fact that socio-economic justice is the substratum of the Preamble of Constitution of India. Part 3rd of the Indian Constitution deals with Fundamental Rights like right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and right to Constitutional remedies. Thus, the Indian judiciary has broadened the extent of these Fundamental Rights in contemplation of accomplish environmental justice.

The Indian Constitution is amidst the rare Constitution in the world that that is enshrined with few of the provisions for environment protection but it was not the same since the making of the Constitution as there is not a single provision regarding the same in the original constitution. In that era due to less modernization, industrialization and no concept of globalization the architects of the Constitution did not feel the need for including concepts of environment protection but in the changing scenario due to increasing modernization the problem of pollution become so terrible. Thus the urgent need was felt and till then the precedents for the same kept on adding.

The Directive Principles of State Policy puts basic responsibility on the government to preserve and improve the Constitution. These measures are illuminated well by the Indian Judiciary and created a dogma to preserve and promote the idea of environmental justice and lies basic duty for the protection of the environment by finding shelter under fundamental rights and fundamental duties as provided in the Indian Constitution.

JUDICIAL PRONOUNCEMENTS

Judiciary has played the most important rule in bringing concept of environmental justice in India. The environmental disputes settlement basically started from Shriram fertilizer case, however after that the Supreme

Court never looked back and keep on widening the scope of environment protection in multi-dimensional way.

Few of the case laws regarding settlement of environmental dispute and assertion of right to clean environment are listed below.

• **M.C. Mehta vs. Union of India (1987)** - In this case, there was claim of money in the form of compensation to be paid to those persons who suffered harm because of Oleum gas leak from one of the plants of Shriram fertilizer. The opposite Council stated that for fixing compensation the petitioner may go to apply before the civil court. However, the apex court clarified that since the present case involves substantial question of law to be decided in the light of article 21 of Indian Constitution, therefore, this court can issue directions to authorities for the protection of fundamental right. The Supreme Court established a new concept of managerial liability - 'absolute and non-delegable' - for disasters arising from the storage of or use of hazardous materials from their factories. The enterprise must ensure that no harm results to anyone irrespective of the fact that it was negligent or not. However, the Apex Court has deviated from this test in the Bhopal Gas Tragedy.

Some of the conditions formulated by the government were :-

1. The Central Pollution Control Board to appoint an inspector to inspect and see that pollution standards set under the Water Act and Air Act to be followed.
2. To constitute Worker's Safety Committee
3. Industry to publicize the effects of chlorine and its appropriate treatment
4. Instruct and train its workers in plant safety through audio visual program, install loudspeaker to alert neighbors in the event of leakage of gas
5. Workers to use safety devices like masks and belts

6. And that the workers of Shriram to furnish undertaking from Chairman of DCM Limited, that in case of escape of gas resulting in death or injury to workmen or people living in vicinity they will be "personally responsible " for payment of compensation of such death or injury .

• **The Bhopal Case: Union Carbide Corporation v. Union Of India (1990)** - In this case, the court held that, whenever an industry or enterprise is occupied with an innately risky or a hazardous activity and the harm thus caused to anyone by any such act while mishandling or negligence of unavoidable measures like necessary precautions not taken while handling hazardous gas or proper disposal of the hazardous wastes. In this scenario there lies strict and absolute liability on the enterprise to pay compensation to each individual who is affected or died by the cause of such accident. Further such liability comes without any defense of escape like in strict liability. Thus the concept of 'Absolute Liability' emerged as a major doctrine after this case in field of environmental protection.

• **Indian Council for Environment Legal Action v. Union Of India (1996)** – In this case, The Supreme Court of India acted in accordance with the principle laid down in MC Mehta and held that 'If the activity carried on results as hazardous or extremely risky, the person or Once the activity carried on is hazardous or inherently dangerous, the person carrying out any such action is liable to bear the loss and compensate for it to the person affected, notwithstanding the fact whether or not he took reasonable care irrespective of the fact whether or not he took reasonable care while carrying on the activity.' This without doubt has been the most suitable and obligatory pronouncement by far.

• **Vellore Citizen's Welfare Forum v. Union of India (1996)**–In this case, The Supreme Court was of the view that

though industries and industrialization can not be looked down in developing country such as India, but for that sake we can not overlook the pollution caused by them. Development at the cost of exploitation is far too expensive deal thus the court highlighted concepts such as ‘Sustainable Development’ needs to be encouraged so as to keep the balance in the surroundings. Further ‘Precautionary Principle’ and ‘Polluter Pay Principle’ has been incorporated in the law of the country.

• **M.C. Mehta v. Kamal Nath and Others (1997)**—This case serves to be a landmark case in environmental law as for the first time Public Trust Doctrine was brought into light under Indian scenario. Under this doctrine it is mentioned that resources like air, water, sea and forests are of public importance as a whole and thus it is totally unjust to issue their ownership to private individuals. Thus in this case pollution caused by Motels in river Beas due to construction near the riverbed needs to be stopped and reversed.

• **Maneka Gandhi v. Union Of India (1978)** - The court by delivering this judgment has served the common people. The court unanimously came harshly upon the contention of the respondent when it contended that the procedure established by law need not necessarily be just, fair and reasonable. The respondent’s argument that the law is valid as long as it is not repealed by the legislature. The court rightly rejected this faulty argument of the respondent and gave the Right to Life and Personal Liberty a new expansive and liberal interpretation.

The court held that though the phrase used in Article 21 is “*procedure established by law*” instead of “*due process of law*” however, the procedure must be free from arbitrariness and irrationality. The court also managed to respect and protect the sanctity of the Constitution makers by this black

stain that the legislature was trying to portray. The procedure established by law must satisfy certain requisites in the sense of being reasonable and just and it cannot be arbitrary depriving the citizens the Fundamental rights.

CONCLUSION

Right to life is primary to our very existence as without that we cannot exist as a human being and thus incorporates all those aspects of life, which make a human life purposeful, absolute and worthwhile. Article 21 probably is the only article in the Constitution which has the widest possible ambit of interpretation. Under the shade of Article 21, many rights bloomed and flourished. Like so, the bare requisites, minimal and vital needs which are crucial and inescapable for a person is the key notion of the Right to life.

ENDNOTES

- 1987 AIR 1086, 1987 SCR (1) 819
- 1990 AIR 273, 1989 SCC (2) 540
- 1996 AIR 1446, 1996 SCC (3) 212
- 1996 5 SCC 647
- 19971 SCC 388
- AIR 1978 SC 597