International Journal of Management, IT & Engineering
Vol. 9 Issue 02, February 2019
ISSN: 2249-0558 Impact Factor: 7.119
Journal Homepage: http://www.ijmra.us, Email: editorijmie@gmail.com
Double-Blind Peer Reviewed Refereed Open Access International Journal - Included in the International Serial Directories Indexed & Listed at: Ulrich's Periodicals Directory ©, U.S.A., Open J-Gate as well as in Cabell's Directories of Publishing Opportunities, U.S.A

Changing Dimensions of Environmental Pollution and Judicial Activism

- **Dr. Sita Ram***

Introduction

The term 'environment' owes its genesis to the French word 'environ' which means 'to encircle' and encompasses within it the land, water ,air, flora and fauna, all living creatures and everything on the earth. The Environment(Protection) Act 1986(the EPA)says: environment includes water, air, land and the inter-relationship which exists between them on the one hand, and human begins, other living creatures, plants, micro-organism and property, on the other[1].in a wider sense, the word 'environment' embraces all forms of life on this planet. Rodgers defines 'environmental law' as 'the law of planetary housekeeping, protecting the planet and its people from activities that upset the earth and its life-sustaining capacities. Environmental law, therefore, relates to the management of the environment and strategies for tackling the problems affecting the environment.

National & International Reforms for Environment.

In the Constitution of India it is clearly stated that it is the duty of the state to 'protect and improve the environment and to safeguard the forests and wildlife of the country. It imposes a duty on every citizen 'to protect and improve the natural environment including forests, lakes, rivers, and wildlife'.

A reference to the environment has also been made in the Directive Principles of State Policy as well as the Fundamental Rights. The constitutional provisions are backed by a number of laws acts, rules, and notifications. The EPA (Environment Protection Act),1986 came into force soon after the Bhopal Gas Tragedy and is considered an umbrella legislation as it fills many gaps in the existing laws. Thereafter a large number of laws came into existence as the problems began arising, for example, Handling and Management of Hazardous Waste Rules in 1989.

Over the years, together with a spreading of environmental consciousness, there has been a change in the traditionally held perception that there is a trade-off between environmental quality and economic growth as people have come to believe that the two are necessarily complementary. The current focus on environment is not new-environmental considerations have been an integral part of the Indian culture.

* Assistant Professor in Law, Gyan Vidhi P.G. Mahavidyalaya, Bikaner

The need for conservation and sustainable use of natural resources has been expressed in Indian scriptures, more than three thousand years old and is reflected in the constitutional, legislative and policy framework as also in the international commitments of the country. Even before India's independence in 1947, several environmental legislation existed but the real impetus for bringing about a well-developed framework came only after the UN Conference on the Human Environment (Stockholm,1972)[3].

Under the influence of this declaration, the National Council for Environmental Policy and Planning within the Department of Science and Technology was set up in 1972.After the Stockholm Conference, in 1976, constitutional sanction was given to environmental concerns through the 42nd Amendment, which incorporated them into the Directive Principles of State Policy and Fundamental Rights and Duties. Since the 1970s an extensive network of environmental legislation has grown in the country. The MoEF and the pollution control boards (CPCB i.e. Central Pollution Control Board and SPCBs i.e. State Pollution Control Boards) together form the regulatory and administrative core of the sector. A policy framework has also been developed to complement the legislative provisions. The Policy Statement for Abatement of Pollution and the National Conservation Strategy and Policy Statement on Environment and Development were brought out by the MoEF in 1992, to develop and promote initiatives for the protection and improvement of the environment. The EAP(Environmental Action Programme)was formulated in 1993 with the objective of improving environmental services and integrating environmental considerations in to development programme.

JUDICIAL ACTIVISM AND ENVIRONMENTAL POLLUTION

A new trend has developed amongst the social activists and voluntary organisations to seek participation of the courts in the movement for environment protection. The judiciary has responded in positive manner. In the wake of judicial activism the Supreme Court broke away the general trend in its memorable decision in Ratlam case.[4] From Ratlam to Mehta the role of judiciary is that of an activist adding new dimensions to rarely used provisions of law. In the absence of specific statutory law they evolved principles and norms to check and control environmental hazards. The growth of PIL jurisprudence has provided a new strength to the judicial activism and the Supreme Court has freed itself from the age old technical rules of procedure.[5]

In Ratlam case, the Municipality was held responsible for permitting pollution and was held responsible for permitting pollution and was directed to take necessary steps for its prevention. A new approach was evolved for extension of "Public Nuisance" under

Section 133 of Cr.P.C. for environmental protection. The M.P. High Court[6] has made use of this section as a potent provision for control of noise pollution and adding more feathers in the cap of judiciary which is actively involved in the task of environment protection and human rights. Human environment including space, air, water and forest is a common or public property. Any disturbance to the affecting health and physical existence of human or living things is to be viewed as public nuisance. Whether the hazardous activity in question has affected only one or more individuals is not material. Noise and other vibrations in the air beyond a certain level necessarily affect the public and hence a public nuisance.

The one other High Court decisions deserve notice while discussing judicial activism in environmental litigations. In Bombay case,[7] the High Court has passed certain directions to the State Government and certain public authorities responsible for the sad state of affairs with regard to roads and sanitation and public health in the city of Nagpur.

The role of forests for the maintenance of ecological balance is well-known. The effects destruction are soil erosion, floods, siltation of reservoirs and loss of genetic diversity, etc. Communities directly dependent on forests are particularly affected by environmental changes due to forestry. The emergence of ecological consciousness has resulted into famous judgments of the Supreme Court viz. the Doon Valley Quarrying Case[8] and the Tehri Dam Case.[9] In the former case the concern was to save the ecology of the area so as to protect the livelihood of deprived people; against irresponsible and reckless quarrying. in the latter case similar facts were involved. The construction of Tehri Dam at Tehri has been opposed by the local people as the construction and destruction involved in this process was going to disturb the ecology of the area, compelling local people to become refugees snatching their traditional life and livelihood. The Supreme Court without involving itself into the rationalisation of various provisions under the Mines Act, the forest Act and the Land Acquisition Act (which were outdated in context with present social change) has augmented the scope and meaning of Article 21 of the Constitution. The right to life has been interpreted as the right to livelihood of the deprived people due to the destruction of ecology in the so-called “developmental process”.

The recent thought provoking judgment of the Supreme Court in M.C. Mehta’s case[10] popularly known as Oleum Gas Leakage case is unlike other P.I.L. cases on environmental protection (which interpret right to life as right to livelihood). In this case the Supreme Court has dealt with the scope and ambit of Articles 12, 21 and 32 in the light of environment hazards due to the act of ‘State’ or a private person. Furthermore, it has laid down guidelines for fixing compensation. The entire doctrine of ‘State’ action in the

light of the growth of private power has been widened. The right to have healthy environment was held to be the right to life under Article 21. The ambit of Article 32 has been widened to grant compensation to the victims of environmental hazards. For quantum of compensation the Court has evolved the doctrine of "magnitude-cum-capacity to pay". The Rule of Ryland v.Fletcher[11] is considered to be the yardstick but without providing usual exceptions to the rule[12].

CONCLUSIONS AND SUGGESTIONS

Deposited the changes in laws, its implementation, the whole system still lacks a coordination with social changes. The colonial rulers enacted. Forest Law or Land Acquisition Law etc, based on; (a) Principle of Eminent Domain, and (b) Administration of Criminal Justice. It was to exact money from the natural resource of the country. The post-independence law are more or less broadening of these two principle. The principle of criminal liability has been expanded in water and Air Acts. The same basic principles may be noted in Forest Act of 1980 and environmental (Protection) Act 1986. The administration of criminal Justice requires a number of procedural formalities and a complex evidence system. The pollution control laws of other countries are developed more and more toward civil laws, specially law of torts to avoid these formalities and to providence damages to the victims of environmental hazards.

Much has been done by the enactment of the Act of 1986 and Amendment in Air and Water Acts etc, but still more is needed in the present context of environmental awareness. The flaws in the environmental laws necessitated special efforts from social activists and legal activists. It has resulted into a series of PN cases. In gradual course, the Supreme Court has shifted from a reactive approach to proactive approach, to reach out to disadvantaged group so-called "developmental Process". It consoled the poor masses who have strongly negative perceptions of lawyers, laws and legal justice was provided. Articles 13,21 and32 have been interpreted in accordance with the social change and new principles were evolved for compensation of damages.

In each case the judge have provided specific case remedies without going into the rationalisation of various provision of existing laws which have hampered the human rights. *Ad-hoc* remedies y the courts are not long term solution in wider perspectives.

Last but not the least the response of the governemnt and legal system keeps the hope alive that India will be able to generate a social mechanism to avert the ecological disaster and lead the way for many other developing nations.

In the light of the above study, the following suggestions are being extended;

1) Legislation will hardly serve any useful purpose unless; (a) it has a parity with the social change; (b) a strong public opinion is built up; and (c) a proper implementation is ensured.
2) In the present context there is need to shift environmental law from criminal liability to liability in torts to avoid procedural delay and to provide adequate compensation to the victims of environment hazards.
3) Environmental management is more important than environmental regulation. The environmental laws should have adequate provisions for environmental management.
4) To avoid industrial pollution there should be coordination in between Board constituted under Environmental (protection) Act. 1986 and various committees provided in chapter IV-A of the Factories Acts.
5) The developmental processes should neither ignore ecological dimension nor public interest as arisen in Doon Valley Quarrying. Tehri Dam and very recently in Narmada Project.
6) The Judicial activism in public interest litigations regarding environmental protection and remedy to the victims is a welcome development. To avoid specific case remedies the court should go into the rationalisation of existing lawsencroachingg upon the human right so as to repeal and amended them.
7) In formulation of national policy for environment protection, environmental scientist, social a activists, legal activists, employers and employees of hazardous industries should have proper representation along with administrative authorities under a various Acts.
8) Due recognition is needed to various social activists and non-governmental organisations who are involved in the task of environmental preservation and protection.
9) Special care is needed while granting permission for installation or expansion of hazardous industries. Similarly while planning the permissible standards for effluent discharge; it would be necessary to take complete geographical area into consideration.

The environmental movement even today are mostly limited to seminar, workshops and at the most discussions by the elite. There is a misunderstanding that this intellectual exercise may create ecological and environmental consciousness. Even the best legislation is infective till the masses are awakened and organised.

In spite of the above, we need to generate among citizens an awareness of their responsibilities towards creating and preserving a livable environment, because environmental education has not reached the common man yet. For this, public participation in the implementation of environmental control of environmental pollution meaningfully, people need to be educated about effects of environmental pollution, legal provisions enacted for its control, and their rights and duties. Firm decisions have to be taken at the government level. Union environment and forests minister, Jairam Ramesh has admitted many times that he too has been forced to compromise in cases of violations of green norms. He said, 'Regularization of illegality is a peculiar Indian characteristic. First you make the law and then break law. It is true that signal has to go to the people who violate law that violation of law will not be tolerated.

Judicial activism has played a fruitful role in generating public awareness of, and media interest in, environmental problems and in giving due regard to environmental groups. The value of judicial involvement in environmental matters is great, but the nature of the problem calls for better solutions. Judicial activism on its own cannot ensure environmental protection. A more comprehensive approach is needed which must also incorporate other ways of giving environmental problems the attention, they deserve.

NOTES AND REFERENCES

1. The Environment (Protection) Act 1986,s2(a).
2. Dr. A.K. Jain (Environmental Protection vis-à-vis constitutional provisions).
3. Shipra Sharma, The Green Appeal, Legal Mitra-2011.
4. Municipal Council Ratlam v. Vardi Chand- AIR – 1980, SC 1622.
5. Fertilizer Corporation Kamgar Union v. Union of India AIR – 1981 SC 344.
6. Krishan Gopal v. State of M.P. 1986 Cri. L.J. 396.
7. Citizens Action Committee v. Civil Surgeons Hospital, Nagpur AIR 1986 Bom. 136.
8. Rural Entitlement Litigation Kendra v. State of U.P. AIR 1985 SC 652.
9. Tehari Bandh Virodhi Samiti v. State of U.P.
10. AIR 1987 SC 1086.
11. 1868 L.R. I. Ex. 280.
12. M.K. Shrivastava, changing Dimensions of environmental pollution control in India.