
ENVIRONMENTAL JURISPRUDENCE AND REGULAR MANDAMUS: A MODERN ACTIVISM OF JUSTICE

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“Humans are thinking of harnessing some other planet. But destroying that planet is also just a question of time.”

ABSTRACT

Right to life in true spirit is possible only where all biotic and natural factors encompass contributing to a healthy environment. Nature is always on the verge of its exploitation for the never ending greed's, needs and comfort of man highlighting the ever growing industrialization, infrastructural developments, agriculture and what not.

Many ancient civilizations had deep rooted concept of ecological protection and preservation. No Indian text is untouched with the description of Dharma highlighting the importance of protection of its nature and society which includes land, water, trees and animals. Even in 'Atharva Veda' we can read the holy text saying to Almighty: “What of thee I dig out let that grow over quickly.” Which means whatever god of earth I dig out of you, let it grow over again from you.

Now scope of new regulations are rotating on innovative catastrophic outlooks of humans for the so called comfort zone or now known better as power to be known supreme with thermal, atomic or nuclear powers evident enough to cause acid rain, climatic change global warming or tectonic eruptions underground the earth.

Keywords: Justice, environmental jurisprudence, society, judicial activism, legal periphery, regular mandamus, Judicial activism, Public Interest Litigation, right to life Article 21, Constitution.

Introduction

With the introduction of Public Interest Litigation in India in 1979 giving legal aid for public at large for their benefits in enforcing public duty, protecting collective and social rights and interest, redressing public inquiry, defending the public interest. Due to which there has been immense increase in the environmental litigations.

Countless efforts are initiated towards the direction of right to live in a healthy environment and the relative duties on state and individuals to make sure the proper preservation and conservation of our nature through different laws, conventions, statues and judicial proceedings. Many important legal remedies have also been proposed for protection of our environment, earmarking great principles and doctrines by Indian judiciary. Also many new trends and approaches towards the constitutional aspects are developed encouraging more descriptive and in-depth understanding for environment law and its dealings which allows the Supreme law to handle issues effectively in a combat manner.

Research Methodology:

Theoretical and non-theoretical material will be collected in this study. Also, this study work depends on the collection and interpretation of various information. In which the information given by learned authors is based on books, journals, articles, articles, newspapers, national-international reports and other research documents and findings of research and court decisions which will help in research work and the broad nature of the research topic. Reason: Internet access will also be used for additional data.

Environment: Definition, scope and legal implications

We all are well equipped with the knowledge of what our surrounding is and what it should not be. Then why we all cannot willing stop the use of plastic, why there is the need of proposing all the laws, rules and regulations, 24*7 police departments working for the security of the nation. The answers lie within us, the delay is only in our conscious acceptance of it. Lots of legal provisions are enacted defining environment, hundreds of seminars, convocations and organizations are formed and still working in the direction for the protection of mother earth. The question arises till how long and how much effective they are in real scenario? The Indian constitution defines environment in THE ENVIRONMENT (PROTECTION) ACT, 1986 Section 2 (a) as follows:

Environment includes air, water and land and inter-relationship between them with humans, plants, microorganisms, other living creation and property.

Important environmental acts enacted in India include:

1. Noise Pollution Act.
2. Indian Forest Act, 1927.
3. Wildlife Protection Act of 1972.
4. Water (Prevention and Control of Pollution), 1974.
5. Forest Conservation Act, 1980.
6. Air (Prevention and Control of Pollution) Act, 1981.
7. Environment (Protection) Act, 1986.
8. Hazardous waste handling and management Act 1989.
9. Public Liability Insurance Act, 1991.
10. Protection of Plant Varieties and Farmers' Rights Act of 2001.
11. Wild Life (Protection) Amendment Act, 2002.
12. Biological Diversity Act, 2002.
13. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
14. National Green Tribunal Act, 2010.

In the name of environmental protection, we have enacted specific legislation along with new fundamental rights ensuring a better future oriented clean environment in the Constitution from the last two decades. There are narrow differences in endorsement of methods and models which seems similar to other common laws but they are posing deep changes in legal development of India. Cautiously enacted legal orders get new characteristics by our Indian environmental jurisprudence.

Legal scholars concluded environmental jurisprudence in various context of its implementations ranging from overlooking private interests and supporting the larger concerns of general public at large; from the age old conception of rigid protection of dharma at any cost through strong legal concepts and lastly the activist role of Indian judiciary manifesting its effect in all the areas of law including Indian environmental Jurisprudence which can be concluded as presence of postmodern public law in the evolution of environmental jurisprudence.

Mandamus

When an act or performance is enforced by a competent jurisdiction court in form of an issued extraordinary writ upon:

- Any person
- -a corporation
- An administrative agency
- A public official
- -an subordinate tribunal

Also the enforcing forces acting here are:

- * The duty under law to compel the act to be done
- * Performance of right is with the litigator
- * Absence of alternate satisfactory remedy

Far better if implementation of mandamus is done, in welfare for the society other than indirect purposes as it is an unrestricted remedy whose issue cannot be denied by any sanction. The burden of proof is on the litigator making sufficient claim in the court proving his legal right to the complete the legal duty totally different from the circumstances.

General outlook for issue of a mandamus writ is to demolish an illegal order. In no other circumstances it is required. Also when such conditions arise that even after a written order of performance said authorities are delaying the act which in turn should be done well on time. With the increasing dissatisfaction and greed in human mind, as we can generally see the conditions of Parliament, even discussion of major issues is becoming a big hindrance with the majority parties.

“No man is left to the option of delaying things but if this becomes a trend even within the judicial periphery, where a common man will look upon for justice?”

Judicial Activism

The longing for the protection of environment is hammered from the pillars of judiciary for the protection of human breeds or against it for sustenance of the environment. For the sale of

balancing the ever growing imbalance between nature and greed's of man, the Indian legal system too has cultivated a great number of changes in 1980, especially in the field of environmental law overthrowing the old obsolescent way in dealing with the encroachments on nature and framing out new dimensions for social justice. This approach not only gave new spheres to administrative and legislation activism but also opened more for judicial activism.

The relaxation of the rule of locus standi along with Article 32 and 226 has opened doors for general public at large in specific environmental cases giving it a major form of judicial activism. Right to enjoy a clean and healthy environment is also sanctioned as a fundamental right under Article 21. The existing legal structure has manifested environmental jurisprudence in such a way that it comprises of ideas from national and international level.

It's a peek pace to not only stand and think for the environment but also to take action actively and to support others working in this direction. The following platforms are available in the Indian Constitution for the cause of environment:

- * Fundamental duties and the directive principle of state policy
- * Fundamental Rights
- * Jurisdiction of Supreme Court and the High Courts
- * Acceptance of international principles
- * International obligations towards the environment.

Public Interest litigation - A Short insight

Much before the birth of the concept of PIL they were only fewer laws on public nuisance cases under noise, air water pollution which were governed by Indian Penal code through the provisions of Criminal Law, Civil Law awarding remedies under law of torts. Third party help was not available earlier permitted to get legal aid if it is not directly hampered by the issues of environment. As the direction of the Appellate Court was; not on the subject matter of the case but on the identity of the petitioner. Gradually the current scenario is in the favor of those who in any number want to ignite the legal proceeding and postulate and stop the action demanding their meta-individual rights in the cases where no personal injury has been noticed. Here are the names of few landmark cases which deep rooted the effects of PIL in legal history:

- Dehradun lime stone quarrying case in 1983
- Ganga Water Pollution case
- Delhi Vehicular Pollution case
- Oleum Gas Leak case
- Tehri Dam case,
- Narmada Dam case
- Coastal Management case
- Industrial pollution in Patancheru, and
- T.N. Godavarman case

Important Constitutional remarks as Judicial approach towards the protection of environment:

(A) The Right to a Wholesome Environment

*** Name of case: Charan Lal Sahu Case**

Held: Article 21 was further expanded giving it a one more conclusion stating that the right to life obviously means the the right to a the entire ie wholesome environment.

*** Name of case : Damodhar Rao v. S. 0. Municipal Corporation Hyderabad**

Held: Environmental pollution is a violation of the fundamental right to life and under Article 48A Protection and improvement of environment and safeguarding of forests and wildlife and 51A (g) and Article 21 as personal liberty under the Indian Constitution.

(B) Public Nuisance: The Judicial Response

***Name of Case: Ratlam Municipal Council v. Vardhichand**

Held: Another historical judgment was propounded by the honorable Supreme Court identifying Public Interest Litigation as Constitutional compulsion of the Courts, stating the due responsibility of the statutory authorities to subside the public nuisance and helping in

providing a pollution free environment even though it falls under the issue of a monetary constraint.

(C) Judicial Relief Encompasses Compensation To Victims

***Name of Case: Delhi gas leak case: M.C. Mehta v. Union of India**

Held: Two most important principles of law were evolved from the above case:

- 1) The ability to grant compensation is an inbuilt power of the Supreme Court coming from the power to provide remedial relief in cases of proved encroachment of a fundamental right under Article 21.
- 2) The second principle made all the industries working in hazardous environment absolutely liable for their actions posing threat to the common lives at large.

(D) Fundamental Right to Water

***Name of Case: Narmada Bachao Andolan v. Union of India and Ors.,**

Held: With the judicial understanding of Article 21 of the Constitution, which very clearly mention water as an indispensable part of human life and right to life and included in the dimensions of basic human rights. Supreme Court also clarifies it under the right to healthy environment and to sustainable development is obviously included as the fundamental human rights in right to life.

Conclusion:

1. The study urges readers to become a conscious human by providing full contribution in protecting and preserving the environment at any cost.
2. Not only the dependency of judicial interference will help to save the remaining condition of our planet but also a genuine effort by each individual is required to stop the issues of regular mandamus.
3. Regular reviews of the basic principles evolved out of landmark judgments should be done to check a proper follow up of the law enacted.
4. Introduction of the concept of PIL should not be related to individual or any kind of lime light seeking portfolio as the main motto of PIL is to address the public issues.

5. Symmetry should be maintained in between the implementing agencies so that a effective mechanism is conducted in response of the guidelines provided by the Court.
6. In the absence of public support, Courts are providing innovative measures in cases of lack of public support which is over-shadowing and at the same time again its showing the importance of law in the society that whether any one is there or not judiciary is always there in support of the justice conducted in a proper manner.
7. Regular mandamus and judicial activism are becoming part and parcel of legal periphery defining a new scope for typical cases which requires harsh measures and urgent attention of public at large.

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