

Enforcement of the Right to Environment Protection through Public Interest Litigation

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Abstract

"A small group of thoughtful people could change the world. Indeed, it's the only thing that ever has."

~ Margaret Meade ~

This paper aims to discuss the background of right to environment and the different ways for its implementation. It illustrates that Indian citizens constitutional right to a clean, healthy life and the liability of pollution damage on polluters have encouraged community action through Public Interest Litigation (PIL). The right to environment requires States to refrain from activities harmful to the environment, and to adopt and enforce policies promoting conservation and improvement of the quality of the environment. This paper makes a comparative analysis of the development of the concept of PIL in India with respect to various other countries. A comprehensive approach has been adopted to find out the solutions to the various environmental issues. Preliminary research suggests that the existing system of penalties have not been sufficient to achieve complete compliance with the laws for the protection of the environment. Problem being that economic growth is seen as the first element in the relationship between development and environment and that the human rights dimension is left aside, although human rights should constitute an essential means and end of development. This research indicates that the enforcement of laws can be enhanced if the governments become more diligent in fulfilling their obligations. The findings and conclusions of this research raise serious issues which need to be discussed, formulated and implemented.

Keywords: Environmental Issues, Conservation, Development.

Introduction

Human being has been able to become the master of the universe due to his control over technology and has acted in total disregard of other organisms which inhabit this planet. This arrogance of technological power has led to severe ecological disturbances and destruction and has created dangerous portents for the survival of human beings themselves. In order to tackle this problem, it is important that we develop strategies for modifying human behavior towards environmentally benign practices and away from environmentally damaging ones.

At the Stockholm Conference on the Human Environment (UNCHE) 1972, the participants proclaimed that:

Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights; even the right to life itself. Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.¹

Environmental protection is a pre-condition to the enjoyment of internationally guaranteed human rights, especially the rights to life and health. Those who pollute or destroy the natural environment are not just committing a crime against nature, but are violating human rights as well.

In the almost thirty-five years since the Stockholm Conference, the links that were established by these first declaratory statements have been reformulated and elaborated in various ways in international legal instruments and the decisions of human rights bodies. The Stockholm Declaration established a foundation for linking human rights, health and environmental protection.

¹U.N. Doc. A/Conf.48/14/Rev.1 (1973); 11 I.L.M. 1416 (1972).

Preservation, conservation and restoration of the environment are a necessary and integral part of the enjoyment of the rights to health, to food and to life including a decent quality of life. The linkage between environmental and human rights concerns has been seen in terms of the protection or conservation of a clean or healthy environment for the benefit of individuals whose conditions of life are threatened.

A report from the Office of the High Commissioner on Human Rights emphasizes the key point that:

While the Universal Human Right's Treaties do not refer to a specific right to a safe and healthy environment, the United Nation's Human Right's treaty bodies all recognize the intrinsic link between the environment and the realization of a range of Human Rights, such as the right to life, to health, to food, to water and to housing.

A Matter of Grave Concern

"We could view the environment- the oceans, the atmosphere- as global common property (public good), and then the problem would be to prevent excessive use or misuse of the global common, which would once again require international cooperation".²

Our society, and our world, have largely emphasised short-term gains, especially in a capitalistic economy in which we emphasise profit and keeping costs to a minimum (and hence not wanting to include the costs of pollution and waste storage) rather than considering long-term costs such as climate change and ozone depletion. In considering the environmental problem, we need to think in long-term ways rather than short-term ways.³

In addition to agreeing on goals, agreements need to be negotiated among nations as to what they want to do and how they want to accomplish their goals. This is not an easy task. Usually the national vested interests collide with international environmental policy. For example, President George W. Bush backed out of the Kyoto Protocol, an agreement among nations to decrease carbon dioxide emissions.⁴ So, for international agreements to work, rich and powerful nations will need to be part of these agreements.

Comparative Study

The judiciary has contributed to environmental protection in India in two ways. It has introduced procedural innovations to provide much wider access to justice. And it has, by a positive and expansive interpretation of the 'right to life' enshrined in Article 21 of the Constitution, included within its ambit a 'right to a healthy environment'. The right to environment was given judicial recognition in the Dehradun Lime Quarries Case,⁵ where the Supreme Court prohibited the continuance of mining operations terming it to be adversely affecting the environment, and reaffirmed in the Sriram Gas Leak Case.⁶ The ability to invoke the original jurisdiction of the Supreme Court and the High Courts under Articles 32 and 226 of the Constitution is a remarkable step in providing protection to the environment. The writ procedure is preferred over the conventional suit because it is speedy, relatively inexpensive and offers direct access to the highest courts of the land.

Hon'ble Supreme Court while taking cognizance on the petitions has further relaxed the requirement of a formal writ to seek redressal before the Court. Any citizen can invoke the jurisdiction of the Court, especially in human rights and environmental matters even by writing a simple postcard.

The basic ideology behind adopting PIL is that access to justice ought not to be denied to the needy for the lack of knowledge or finances. It has been used as a tool for great social change in India and other countries on such diverse issues as the environment, health and land issues. PIL is not in the nature

²JAMES A. CRONE, HOW CAN WE SOLVE OUR SOCIAL PROBLEMS? 216 (David Repetto ed., Pine Forge Press 2011) (2010).

³*Id.* at 215.

⁴*Id.* at 217. (The reason being, the United States of America produces 20% of all the carbon dioxide and is the wealthiest and most powerful nation in the world, when it backs out of an agreement, the original agreement can be hurt considerably. Proceeding without the USA has been very difficult, not only because it produces around one-quarter of global carbon dioxide emissions, but also because its failure to be involved affects the willingness of others to participate, and particularly the fast-developing economies of the South.)

⁵Rural Litigation and Entitlements Kendra Dehradun and Ors v. State of Uttar Pradesh, A.I.R. 1985 SC 552.

⁶M.C. Mehta vs. Union of India, 1987 SCR (1) 819.

of adversary litigation but a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice.

United States of America can be said to be the originator of the concept of Public Interest Litigation. In 1876, the first legal aid office was established in New York City in connection with the famous *Gideon's case*⁷ of USA.

The case of *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*⁸ is of major significance because it is the first time that the Inter-American Court issued a judgment in favour of the rights of indigenous people to their ancestral land. It is a key precedent for defending indigenous rights in Latin America. Further the European Court ruled that "severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely".⁹ The case reveals a successful strategy to claim economic, social and cultural rights through civil and political rights where the regional human rights system does not provide an effective protection of economic, social and cultural rights.

"The minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come".¹⁰

In the *Pascua Lama Case*, a project under construction involving investments for more than 5 billion dollars was stopped until certain conditions related to preventing water pollution and other human rights violations are met. It is also significant that the Court of Appeals based its decision on the failure to comply with the Environmental Assessment Resolution and the "threat" posed by such failure to comply on the environment and the health of the population, without seeing the need for verifying the actual existence of pollution. The Court adopted a broader view of the environment and acknowledged the fact that the impact goes beyond a specific community and covers future generations, stating the need to ensure sustainable development.

Other Landmark Cases in India

Justice Krishna Iyer in *Mumbai Kamgar Sabha v. Abdullabhai* observed:

Public interest is promoted by a spacious construction of locus standi in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualisation of the right to invoke the higher courts where the remedy is shared by a considerable number, particularly when they are weaker.

In *P.V. Kapoor v. Union of India 1992*, the Delhi High Court observed that PIL is meant to be a cooperative and collaborative effort of the parties and the court to secure justice for the poor and the weaker sections of the community.

In the *Ganges water pollution case*,¹¹ a bench of the Supreme Court, while directing that several tanneries be closed down for discharging untreated effluents into the Ganges river, held that "we are conscious that closure of tanneries may bring unemployment (and) loss of revenue, but life, health and ecology have greater importance to the people."

Conclusion

It is not enough simply to enact laws and regulations. They must also be effectively implemented, administered, and enforced. However, compliance sometimes turns out to be politically, technically, administratively, or financially impossible, even if a government remains committed to the regime. The scientific complexity of environmental issues can challenge the capacity of government bureaucracies to understand the problem or implement proper solutions. A reason for inadequate compliance is insufficient state capacity to implement, administer, or enforce the relevant domestic policies and regulations. Weak legislative and bureaucratic infrastructures or a lack of expertise on the issue can also prevent compliance. Public Interest Litigation by individual enthusiasts and the NGOs has helped

⁷*Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁸*Inter-Am. Ct. Hum. Rts. (Ser. C) Case No. 79 (2001)*.

⁹*Lopez Ostra vs. Spain*, 20 EHRR 277, (1994).

¹⁰*Oposa et al. v. Fulgencio S. Factoran, Jr. et al*, 33 I.L.M. 173, 187 (1994).

¹¹*M. C. Mehta v. Union of India (Kanpur Tanneries)*, 1987 (4) SCC 463.

to a great extent in protection of the environment. It is a comparatively new concept and every innovation takes time to get into proper shape.

Environmental issues do not wait for the policy process. As the process of regime creation and expansion drags on, environmental problems become worse, not better, making it even more difficult to create and implement effective regimes. One of the most important factors in improving compliance is elevating awareness, concern, and knowledge among government elites and the general public regarding environmental issues. There must be sufficient concern within the government, and perhaps among the public at large, so that states decide to devote resources to examining and addressing the problem and implementing potential solutions. Awakening the public towards their right to live in a pollution free environment is more essential. Public awareness alone can achieve desired results. Solution to environmental problems lies in our hands. A feeling of responsibility needs to be generated among the citizens for preserving and creating a liveable environment.

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