Right to live in Healthy Environment - In framework of Indian Constitution

Deepika Chouhan and Prabhash Dalei

Abstract—The aim of the paper is to throw light on the Fundamental Rights related to Environment in India. For achieving aim we have undertaken a concise study of all the Journals and Books which are linked with Environmental Law. The paper deals with general Introduction of the Environmental Laws in India and the amendments made into Constitution of India for Environmental Purpose. The paper also tells about the Fundamental Rights of an individual and throws light on the enforcement of Writs for environmental matters.

Keywords—Fundamental Rights, Environment Law, Right to Life, Right to Equality.

I. INTRODUCTION

The relationship between man and his environment is undergoing profound changes in the wake of modern scientific and technological developments. In India, from time to time various laws have been enacted for the protection of environment, flora and fauna, and Indian Constitution is the first constitution in the world which contains specific provisions for the protection and improvement of environment.[1] In India, in view of the various constitutional provisions and other statutory provisions contained in various laws relating to environment protection, the Supreme Court has held that the essential feature of “sustainable development” such as the “Precautionary Principle” and the “Polluter Pays Principle” are part of Environmental law of the Country.[2]

The Forty- Second Amendment Act: Environmental protection and improvement were explicitly incorporated into the Constitution by the Constitution (Forty- Second Amendment) Act of 1976. Article 48A was added to the Directive Principles of State Policy. It declares: ‘The State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country.’ Article 51A (g) in a new chapter entitled ‘Fundamental Duties’, imposes a similar responsibility on every citizen ‘to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creature. Together, the provisions highlight the national consensus on the importance of environmental protection and improvement and lay the foundation for a jurisprudence of environmental protection.[3]

II. FUNDAMENTAL RIGHTS

Principle 1 of the Stockholm Declaration finds reflection in Article 14[4], 19[5] and 21[6] of the Constitution of India dealing with the right to equality, freedom of expression and right to life and personal liberty respectively.[7] All these rights are secured to the people of India under the Constitution of India particularly in Part III dealing with Fundamental Rights.[8] The Supreme Court of India has contributed significantly especially during the 80’s in broadening the contents and contours of some of these basic rights. Right in context of environmental protection are:

A. The Right to a Wholesome Environment

The Interpretation given by the Supreme Court in Maneka Gandhi’s case has added new dimensions to the concept of personal liberty of an individual. It laid down that a law affecting life and liberty of a person has to stand the scrutiny of Articles 14 and 19 of the Constitution. In other words, if a law is enacted by a legislature which touches upon the life and liberty of a person and curtails it, then it is a mandatory requirement that the procedure established by it for curtailing the liberty of a person must be reasonable, fair and just. It is this interpretation of Article 21 which the court has extended further so as to include the right to a wholesome environment. In other words, environmental pollution which spoils the atmosphere and thereby affects the life and health of the person has been regarded as amounting to violation of Article 21 of the constitution.[9]

In Dehdradun Quarry’s case[10] the Supreme Court entertained complaints from the rural litigation and entitlement Kendra, Dehradun alleging the that the operations of lime stone quarries in the Mussoorie- Dehradun region resulted in degradation of the environment affecting the fragile ecosystems in the area. In this case the Supreme Court moving under Article 32 ordered the closure of some of these quarries on the ground that these were upsetting the ecological balance though the judgment did not make a reference to Article 21 but involving of jurisdiction by the court under Article 32 presupposed the violation of right to life guaranteed under Article 21.

B. Right to Livelihood

The judicial grammar of interpretation has further broadened the scope and ambit of Article 21 and now “right to life” includes the “right to livelihood”. The right to livelihood
as a part of right to life under Article 21 was recognized by the Supreme Court in Olga Tellis vs. Bombay Municipal Corporation.[11] In this case, the petitioners, a journalist and two pavement dwellers challenged the governmental scheme by which the pavement dwellers were being removed from the Bombay pavements. The main arguments advanced on behalf of the petitioners was that evicting a pavement dweller or slum dweller from his habitat amounts to depriving him of his right to livelihood, which is comprehended in the right guaranteed by Article 21 of the Constitution as deprivation of their livelihood would tantamount to deprivation of their life and hence unconstitutional. It was further argued that no person can be deprived of his life except according to the procedure established by law which has to be “just, fair and reasonable”. The petitioner also contended that the State is under an obligation to provide citizens the necessities of life and, in appropriate cases, the courts have the power to issue orders directing the state by affirmative action, to promote and protect the right to life. Social commitment is the quintessence of our constitution which defines the conditions under which liberty has to be enjoyed and justice has to administered. Therefore, directive principles, which are fundamental in the governance of the country, must serve as a beacon light to the interpretation of the constitutional provisions.[12] The Court held:

If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivations would not only denude the life of its effective content and meaningfulness but it would make life impossible to live.

The Court further held:

The State may not by affirmative action, be compelled to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21.

Thus, from the decision of the Summit Court it is evident that development is not antithetical to environment. However, thoughtless development may cause avoidable harm to the environment as well as it can deprive the people of their right to livelihood.[13]

C. Right to Equality

Article 14 of the Constitution which states that “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India,” guarantees the right to equality. This article is the principle instrument to strike at the arbitrariness of an action should it involve a negation of the right to equality. The right to equality as enshrined in Article 14 of the Constitution may be infringed by government decisions which may have impact on the environment, particularly in cases, where permissions are arbitrary granted, for instance, for construction, that are in contradistinction of development regulations or for mining without adequate appreciation of environmentally damaging consequences. Environmentally conscious groups have resorted to take legal proceedings under Article 14 to challenge the constitutional validity of the arbitrary official sanctions in such matters. Thus, we find that Article 14 can be used as a potent weapon against governmental decisions threatening the environment.[14] The Indian Constitution is perhaps one of the rare Constitution of the world which reflects the Human Rights approach to environment protection through various constitutional mandates. In India the concern for environment protection has not only been raised to the status of fundamental law of the land, but it is also wedded with the human right of every individual to live in pollution free environment with full human dignity. The Constitution of India obligates the “State” as well as “citizens” to “protect” and “improve” the environment.[15]

The Permanent Peoples’ Tribunal regards the “anti-humanitarian effect of industrial and environmental hazards not as an unavoidable part of the exiting industrial system, but rather a pervasive and organized violation of the most fundamental rights of Humanity. For, most among them are the right to life, health, expression and access to justice.

R.L. and E. Kendra vs. State of U.P.[16] is a landmark case which demonstrates the activist role of the Supreme Court with regard to environmental issues. In this case, the Supreme Court entertained the environmental complaints alleging that the operation of lime-stone quarries in the Himalayan range of Mussoorie resulted in degradation of the environment affecting ecological balance.

III. CONCLUSION

The Supreme Court entertained the Writ Petitions under Article 32 regarding the environmental issues and ordered the closure of some of these quarries on the ground that their operation was upsetting the ecological balance. In other words, the Supreme Court read, and rightly so, Article 48-A into article 21 of the constitution and regarded the right to live in a healthy environment as a part of life and personal liberty of the people. One of the most innovative part of the Constitution is that Right to enforce the fundamental rights by moving the Supreme Court is itself a fundamental right under Article 32 of the Constitution.[17] Writ Jurisdiction is granted to the Supreme Court under Article 32 and on all the High Courts under Article 226 of the Indian Constitution. Under these provisions, the Apex Court and the High Court have the power to issue writs or orders or directions, including writs in the nature of habeus corpus, mandamus, prohibition, quo warranto and certiorari, whichever is appropriate. The only difference between the writ jurisdictions of the Supreme Court and the High Court is that one can move to the Supreme Court only for the enforcement of fundamental rights whereas in High Courts, it may be for the enforcement of fundamental rights or for any other purpose.[18]

Generally, environmental law provides for a system of
regulation by statues. However, in India, most of the environmental jurisprudence has been developed through writ jurisdiction. Judicial activism and the development of the concept of public interest litigation (PIL) under the writ jurisdiction of the Supreme Court and the High Courts have brought a mutation change in processual jurisdiction and it has played an essential role in developing and providing impetus to Environment Jurisprudence with Human Rights approach.[19] This remedy is preferred over the tort action or public nuisance remedy as it is relatively speedy, low in cost and provides direct approach to the higher judiciary thereby reducing the chance of further appeals. The remedy under writ jurisdiction also provides flexibility to the Courts to choose an appropriate relief by issuing appropriate orders, directions or writs.

REFERENCES

[4] Article 14. Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
[5] Article 19. Protection of certain rights regarding freedom of speech etc.(1) All citizens shall have the right: (a) to freedom of speech and expression;(b) to assemble peaceably and without arms;(c) to form associations or unions;(d) to move freely throughout the territory of India;(e) to reside and settle in any part of the territory of India; and(f) to practise any profession, or to carry on any occupation, trade or business.
[6] Article 21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.
[7] Principle 1 of the Stockholm Declaration provided that man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.
[17] Article 32 (1) provides: “The Supreme Court by appropriate proceedings for the enforcement of right conferred by this Part (Part III) is guaranteed.”
[19] Ibid.