

Access to Justice in Environmental Matters in India

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Introduction

Access to justice is the ability of people to seek and obtain a remedy through formal or informal judicial system for grievances with some common and minimum standards. It allows the people to challenge the decisions, policies, orders or any action of the public Authorities through independent and impartial body. The system should fulfill at least minimum requirements for accessibility. There is no access to justice where citizens fear the system, if it is financially inaccessible, where individuals have no lawyers' representation, if people do not have information or knowledge of rights, where there is no rule of law justice delivery system fails. Hence to protect the environment public require the right to challenge the decisions of Government which contravene or affect the environment and its laws.

The right of access to justice in environmental matters is gaining more importance at international level¹ because access to justice is a pillar of democratic governance which promotes just and equitable outcomes thereby supporting the rule of law.

The importance of judicial institutions to adjudicate environmental disputes is widely acknowledged in international instruments. The Rio Declaration, 1992, strengthens access rights by stating 'effective access to judicial and administrative proceedings, including redress and remedy, shall be provided by states in environmental matters'². Principle 10 sets out three fundamental rights access to information, access to public participation and access to justice, as key pillars of sound environmental governance. These rights promote transparent, inclusive and accountable environmental governance. Access to information empowers citizens and

¹Aarhus Convention is the leading International Instrument securing the right of the public to challenge and seek remedy from appropriate forum for the environmental degradation. Article 9 provides right to members of the public, including NGOs, to challenge decisions, acts and omissions by public bodies that contravene their right to information, right to participation or contravene any law relating to the environment.
(<https://era.org.mt/en/Pages/Access-to-Justice.aspx>)

² The Principle 10 of the Rio Declaration states that "Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided". -
<https://www.unenvironment.org/civil-society-engagement/partnerships/principle-10>

incentivizes them to participate in decision and policy-making processes in an informed manner. Public participation encourages governments to adopt policies and enact laws addressing environmental problems and achieving sustainable development by taking community needs into account.³

To conserve the environment is not the present momentum but having the deep and pervasive impact of olden days. It is mentioned in ancient scriptures like Bible, Quran, Vedas, Puranas, accepted under Sikhism and Jainism. Ancient people use to worship trees, animals, birds and rivers too. Not to destroy the nature was the pious obligation. Even today also many people worship nature and natural resources while performing their regular activities which show the concern for protection of environment. Environment conservation is not the protection of some distinct entity but it's ours protection. The more we exploit and degrade our environment, the more ecological imbalance we create

The spectrum of environmental jurisprudence has passed through Various stages taking drastic turns and twists ever since the International bodies started taking cognizance of environmental issues that affects every aspect of living organisms more so of human beings. From Stock Holm Declaration of 1972 till date, several flow of thoughts and strategies have taken place for the protection of environment at the global as well as at the local levels. Enormous increase of human population as well as drastic developments in science and technology has deteriorated the quality of natural environment which caused a serious concern to design necessary tools to protect and preserve the natural environment. Protecting and preserving the human environment for the present and to the posterity have become an imperative goal of all nations of the world.

International Development on Environmental Protection

The growing environmental degradation raised the concern of the States to take actions to protect the environment within their borders however governments began to realize that international consensus and cooperation are required to tackle environmental issues which are affecting the entire world. The United Nations Environment Program (UNEP) was established in 1972 to address environmental issues at the global and regional level. Its aim was to provide leadership and encourage partnership in caring the environment by informing and enabling nations to improve their quality of life without compromising that of future generations. There

³ <https://www.unenvironment.org/civil-society-engagement/partnerships/principle-10>

are thousands of international agreements for environmental issues some are bilateral or trilateral, binding for the particular countries. The global inter-governmental action on environmental issues began with the United Nations conference on the Human Environment in Stockholm (Sweden) held from 5 to 16 June 1972. This led to the Stockholm Declaration and an Action Plan with over hundred recommendations on environment assessment, management, and support measures.⁴

The Stockholm conference 1972 consists of seven truths about man in his relation to environment, second part consists of twenty six principles relating to rights and duties of man in his relation to environment, natural resources of earth, duty of state to prevent pollution and the right of the state to explore environmental policies and programs and state co-operation to develop International Law regarding liability and co-operation for the victims of pollution and other environmental damages and the like. The Stockholm Conference, 1972 prompted many agencies and programs relating to environment followed by it many important global conferences have been taken place.

The objectives and action plans produced by the Stockholm Conference inspired every work on environment at global and local level. In 1983, the United Nations convened the World Commission on Environment and Development which is also called as the Brundtland Commission. The Commission discussed and devised international and national strategies for protecting and promoting sustainable development. It laid down the foundation of the Earth Summit. In June 1992, representatives of 172 nations participated in the conference convened in Rio de Janeiro Brazil, which included 108 heads of the States, 2,400 representatives from various non-governmental organizations and 10,000 journalists. An additional 17,000 NGO representatives attended a parallel NGO forum that provided recommendations to the Earth Summit.⁵

It was aimed at reaffirming the Declaration adopted at Stockholm conference and setting the principles to guide future development. It focused on the rights of the people to development, and their responsibilities to safeguard the common environment. The Declaration states that long term economic progress is to be linked with the sustainable development and the nations must establish a new global partnership involving governments, their people and the key sectors of

⁴ https://thefactfactor.com/facts/law/civil_law/environmental_laws/stockholm-declaration/871/

⁵ <https://www.encyclopedia.com/environment/energy-government-and-defense-magazines/united-nations-conference-human-environment-1972>

society.⁶ 27 Principles laid down are the standards by which Member states create domestic and international environmental policies and by which they form agreements or organizations with one another

Indian Legislative Scheme on Environment

These declarations have the significant impact on India Environment Law. These are considered as Magna Carta of Environmental law. After the Stockholm Conference, 1972, Government of India brought the 42nd amendment in the Constitution and incorporated Article 48A⁷ and Article 51A (g)⁸. Through the Article 48A the states are under the active obligation that it shall take all the efforts to protect and improve the environment and to save forest and wildlife of the country, whereas Article 51A (g) states the obligation upon every citizen to protect and improve the environment and to save forest and wildlife of the country.

Under the Indian Constitution there were no direct article relating to environment protection but under various articles of the Constitution the environment could be protected. They are -

Fundamental Rights - Article 14⁹ provides the protection against the arbitrary action of the state under which the action of the state can be struck down by the Court¹⁰. Article 19(1) (a)¹¹ includes right to know and right to be informed. It is basic right of every democratic country where every citizen should have access to the information about the government decisions affecting the environment and their life such as construction of dams or installation of plants which involved displacement of people and their resettlement and rehabilitation elsewhere. Even under the special enactments like Water Act, Air Act and Environmental Protection Act duty is imposed on the Pollution Control Boards to call for public hearing before giving permission to any project, proposal or plan. Public hearing is mandatory as per amended the Environmental Impact Assessment Notification, 1997.

⁶ https://www.sustainable-environment.org.uk/Action/Rio_Declaration.php

⁷ Article 48 A of Indian Constitution says that The State shall endeavor to protect and improve the environment and to safeguard forests and wild life of the country (provided under Directive Principles of the State Policy, Part IV
⁸ Article 51A (g) of the Indian Constitution incorporated through 42nd Amendment provides that It Shall be the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

⁹ Article 14 of Indian Constitution deals with the term equality - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

¹⁰ In Bangalore Medical Trust v. BS Mudappa, AIR 1991 the open space under a development scheme was leased out for private nursing home. The court held the conversion of invalid and an action an arbitrary and violative of Article 14 of the Constitution.

¹¹ All the Citizens shall have freedom of speech and expression - Article 19(1) (a)

The freedom of¹² speech and expression is not an absolute right. It can be barred, suspended, and restricted time to time under Article 19 (2). This freedom does not permit to use loudspeakers which may cause nuisance to the public¹³.

The Apex Court has recognized right to livelihood in environmental matters under Article 19(1) (g)¹⁴. However, Article 19(1) (g)¹⁵ is also not an absolute right. If any plant or establishment creates pollution Public Interest Litigation is maintainable against it for ensuring enjoyment of pollution free water and air which is included in the right to live under Article 21 of the Constitution.

Under Article 21¹⁶, dealing with right to life and liberty, Supreme court included and recognized requirement of healthy environment as a part of right to life in its landmark decision in Rural Litigation and Entitlement Kendra, Dehradun v. State of UP¹⁷. The Large scale pollution caused by lime stone quarries, adversely affecting the safety and health of the people were closed down.

The judiciary through Article 32 and 226 has played a crucial role in maintaining and enforcing the fundamental rights of the citizens. The advent of Public Interest Litigation and judicial activism has strengthened the right to have good environment. The Supreme Court and High Courts can grant any writ or grant any order, guideline or instructions to the government for environment protection if the pollution or environment degradation affects human health and well being of the people. There are number of examples of cases where the Indian judiciary has acted positively and sensitively.

The formulation of certain doctrines and principles to develop a better regime for protecting the environment is also a remarkable achievement of Indian Judiciary. They have consolidated the environment jurisprudence on case to case basis. These principles are

¹² Subhash Kumar v. State of Bihar, AIR 1991, Dr. J.N.Pandey, Constitutional Law of India, Central Law Agency, 55th Edn. 2018, pg. 298

¹³ *PA Jacob v. Superintendent Of Police, Kottayam, AIR 1993*

¹⁴ *Narmada Bachao Andolan v. Union of India, AIR 2000*

¹⁵ Article 19(1) of the Constitution provides that all citizens shall have the right to practice any profession, or to carry on any occupation, trade or business

¹⁶ Article 21 of the Indian Constitution deals with Right to Life and Personal Liberty and put the duty on the State that - No person shall be deprived of his life or personal liberty except according to the procedure established by law

¹⁷ AIR 1985

Doctrine of Absolute Liability¹⁸ Precautionary Principle¹⁹, Polluter Pays Principle²⁰, Public Trust Doctrine²¹, Public Liability Insurance²², Doctrine of Sustainable Development²³, Right to a wholesome environment²⁴, etc.

Directive Principles of State Policy of the Indian Constitution also have certain provisions to protect environment. State can work through- Article 47²⁵, 48²⁶, 49 and 48(A)²⁷, Other relevant articles-136²⁸,137²⁹, 226³⁰, 227³¹, 246³², 249, 250, 252, 253, 254, 256, these articles deals with legislative power.

Seventh Schedule:List-I:Entries52to55&57 - List-II:Entries:6,14,18,21,24,25 - List-III-Entries: 17A, 17B, 20(c) and (d) were indirectly related provisions but The 42nd Amendment Act incorporated the aforementioned two Articles³³ in the constitution directly dealing with environmental issues.

¹⁸ The industry dealing with hazardous activity or product is under obligation to pay compensation if harm causes to anybody. A hazardous enterprise is liable even if the disaster is an accident and not caused by the negligence or fault of the company

¹⁹ 'Precautionary principle' underlies sustainable development which requires that the developmental activity must be stopped and prevented if it causes serious and irreversible environmental damage. In Vellore Citizens Welfare Forum v. Union of India, The Supreme Court also recognized the Precautionary Principle, which is one of the principles of sustainable development

²⁰ The polluting party has to pay for the damage caused to the environment. The polluter is held responsible for environmental damage caused and has to bear the expenses of carrying out pollution and recovery amount. This Principle was recognized in Indian Council for Enviro-Legal Action & Ors v. Union of India, 1996

²¹ The Public Trust Doctrine primarily rests on the principle that natural resources like air, water, sea and the forests are of common ownership and the State is trustee of all natural resources. These are for public use and enjoyment and it cannot be given into private ownership. In the case of In, M.C. Mehta v. Kamal Nath, 1997 Hon'ble Apex Court recognized the principle

²² Public liability insurance is a insurance that covers the cost of claims made by members of the public due to personal injuries, loss or damage to property, and death that happen in connection with the business activities. Business coverage is for incidents on person's business property and at events or activities company organizes. (<https://www.thebalancesmb.com/what-is-public-liability-insurance-all-the-facts-4176621>)

²³ As per Brundtland Report, 1987, (the mission of the Brundtland Commission was to unite the countries to pursue sustainable development together), Sustainable development signifies "development that meets the needs of the present without compromising the ability of the future generations to meet their own needs" (S.Shanthakumar, Environmental Law :An Introduction, Surya Publication, Chennai, pg. 122, 123)

²⁴ In Charan Lal Sahu v. Union of India, 1990 the Supreme Court held the right to life guaranteed by Article 21 of the Constitution includes the right to a wholesome environment.

²⁵ Duty of the State to raise the level of nutrition and the standard of living and to improve public health – Article 48 of Indian Constitution (Directive Principle)

²⁶ Organisation of agriculture and animal husbandry and to take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle

²⁷ Supra 8

²⁸ Special leave petition

²⁹ Review of Judgments by Supreme Court

³⁰ Power of High Courts to issue writs to enforce the legal and fundamental rights

³¹ Power of superintendence over all courts by the High Court

³² Power of the Parliament and state legislature to legislate the laws on subject matter

³³ Articles 48-A and 51A (g) of the Indian Constitution

The Stockholm Conference, 1972 worked as a catalyst in development of environmental jurisprudence in India. The Wildlife Protection Act, 1972, the Water (Prevention and Control of Pollution) Act, 1974, the Forest Conservation Act, 1980 the Air (Prevention and Control of Pollution) Act, 1981 and the Environmental Protection Act, 1986, Protection of Plant Variety and Farmers Right Act, 2001, Biological Diversity Act, 2002, Wild Life Protection Amendment Act, 2002 and National Green Tribunal Act, 2010 were enacted³⁴

The remedies available in India for environmental protection comprise of tortuous as well as statutory law remedies. Under Indian Penal Code offences affecting public health, safety, convenience, decency and morals are given from Section 268 to 278 providing the punishment to wrong doer and who pollutes the environment. Sections 133 to 146 and Chapter XI of Criminal Procedure Code also provide provisions for granting punishment to those who damage environment. Civil Procedure Code contains specific provisions like public nuisance, protection of public rights and remedy in breach of public interest under sections 91 and 92 of CPC.

Conclusion

The environmental protection and preservation has been recognized by each and every country but access to environmental justice is the primary concern. Unsustainable development degrades the environment and affects the eco-system and the lives of people as well. Free access to information on environmental issues is a significant aspect of environmental justice. This right has been realized in the Aarhus Convention which deals with the right of citizens to access to environmental information, their right to participate in environmental decision making and their right to access justice in environmental matters³⁵

Life cannot be enjoyed without the protection and preservation of the environment, ecological balance and pollution free atmosphere. Industrial growth, technological development, science progress lead the environmental damage to our nature and natural resources. Proper legislative measures, matched by dynamic judiciary capable of stern legal policing and a proper administrative set up are the inevitable necessities if the war against the pollution of the biosphere is to be won.

³⁴ bohra, saroj, Judicial Intervention and Evolution of Environmental Principles and Doctrines (January 7, 2019). Available at SSRN: <https://ssrn.com/abstract=3311406> or <http://dx.doi.org/10.2139/ssrn.3311406>

³⁵ <http://cpreec.org/110.htm>