

Environmental justice through the interpretation of article 21 of the constitution of India

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Abstract

The issues related to the environmental pollution is the central theme of this paper which studies the role of judiciary in expanding the scope of right to life and securing the pollution free environment. In India, there is no such environmental legislation which declares right to pollution free environment as a statutory right. Though, article 21 of Indian Constitution prescribes 'right to life' however, there was no further elaboration of this right to include right to get pollution free environment. The Supreme Court for the first time in 1991 with the decision of Subash Kumar case observed that the right to get pollution free water and air should come under the purview of article 21 of the Indian Constitution. The present article makes an effort to analyse various cases decided by the courts in India to support the right to pollution free environment as a fundamental right.

Keywords: right to life, right to pollution free environment, water pollution

Introduction

Environment Pollution is a basic reason for global warming. The causes of pollution are many and one of the important factors is unequal distribution of various causes by race and class in the different stages of the society. A number of conventions like Vienna Convention, Stockholm Convention on Persistent Organic Pollutants, Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal are the initiatives taken at the international level to control the environmental pollution. It is surprised to note that in India, there is no such environmental legislation which prescribes right to pollution free environment as a statutory right. Therefore, getting environmental Justice through the available statutory provisions will be difficult proposition for citizens in India. Accordingly, it was an effort of the courts in India to find out a solution from the mandates of Indian Constitution. Though article 48A and 51A (g) of the Indian Constitution prescribes for state policy as well as fundamental duties, however, there is no declaration of right to pollution free environment as fundamental right. In order to provide environmental Justice, the courts in India, in particular, the honourable Supreme Court ventured further with the help of 'right to life' as enshrined under article 21 of Indian Constitution and finally declared that right to pollution free environment is a fundamental right under article 21. However, it is to be noted that the courts in India have elaborated the scope and ambit of article 21 in number of instances, for example, right to travel^[1], right to privacy^[2], right to speedy trial^[3], right to prisoners

to interview^[4], right to fair trial^[5], right against torture and custodial violence^[6], right to free legal aid^[7], right to primary education^[8], right to health and medical care^[9], right to pollution free environment^[10], right to safe drinking water^[11], right of working women against sexual harassment^[12], right to a quality life^[13] and right to family pension^[14], now, they all have become integral part of right to life and personal liberty under article 21 of Indian Constitution.

The role of high courts in settling the environmental disputes

Most of the environmental Justice provided to the citizens in India, because of implementation of the theory of public interest litigation. The public interest litigation helped many persons to bring against the violation of fundamental rights before the highest Courts in India, that is, Supreme Court under article 32 of the Indian Constitution and the apex court provided environmental Justice, whenever there was violation of fundamental right. Similarly, the High Court under article 226 of the Indian Constitution accepted the public interest litigation and delivering environmental Justice for the violation of fundamental rights.

The Andhra Pradesh High Court was the first High Court to

⁴ Prabha Dutt v. Union of India 1982CriLJ148

⁵ Police Commissioner, Delhi v. Registrar, Delhi High Court 1997CriLJ90

⁶ D.K. Basu v. State of West Bengal 1997CriLJ743

⁷ State of Maharashtra v. M.P. Vashi AIR1996SC1

⁸ Unnikrishnan v. State of A.P. [1993]1SCR594, T.M.A. Pai Foundation v. State of Karnataka (2002)8SCC481

⁹ CERC v. Union of India (1995) IILLJ768SC, State of Punjab v. M.S. Chawla [AIR 1997 SCC 125]

¹⁰ M.C. Mehta v. Union of India [1986]1SCR312

¹¹ APPCB v. M.V. Naidu AIR 1999 SC 822

¹² Visakha v. State of Rajasthan AIR1997SC3011, AEPC v. A.K. Chopra (1999) ILLJ962SC

¹³ (SIC) Lal Tiwari v. Kamala Devi and Ors. AIR2001SC3215

¹⁴ S.K. Mastan Bee v. General Manager South Central Railway (2003) ILLJ561SC

¹ Maneka Gandhi v. Union of India [1978] 2 SCR 621, Satwant Singh v. A.P.O., New Delhi [1967]3 SCR 525

² Kharak Singh v. State of U.P. 1963CriLJ329, Sharda v. Dharampal [2003] 3 SCR 106

³ Common Cause, a Registered Society v. Union of India 1997CriLJ195

deliver the environmental Justice in the light of article 21 of the Indian Constitution. A writ petition was filed before the Andhra Pradesh High Court in the year 1987 by Mr T Damodhar ^[15] requesting the intervention of the High Court to promote public park/open space for fresh air and demanded that this open space should be free from the construction by the private/public operators. The present case is connected with the elaboration of master plan prepared by the municipality, which is earmarked an open space/public park for public purpose only. But, the open space was allotted to life insurance Corporation of India for the construction of residential houses by the government of Andhra Pradesh.

The honourable High Court examined the scope of Article 21 of Indian Constitution and asserted that with the description of Article 48 A and Article 51 A (g) “*it would be reasonable to hold that the enjoyment of life and its attainment and fulfilment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature’s gift, without which life cannot be enjoyed*”. The High Court also reminded the responsibility of India towards Stockholm declaration 1972, where right to environment has been placed as human right to environment as well including giving a status of fundamental right.

The role of supreme court in settling the environmental disputes

The Supreme Court made a remarkable effort in 1991 while analysing the ambit of Article 21 of Indian Constitution in *Subhash Kumar* case ^[16]. The Supreme Court dismissed the petition and stated that there was no process of water pollution in the River Bokaro and the petition is not public interest but private interest litigation as the petitioner had a long pending score to be settled against the respondent. It is important to mention here that before concluding the judgement the apex court made an excellent remark that right to get pollution free water and air has been included under the purview of article 21 of the Indian Constitution which deals with ‘right to life’. Many cases approached before the Supreme Court for environmental dispute settlement and the apex court with the help of article 21 of Indian Constitution delivered environmental Justice.

Important judgements on the right to pollution free environment

It is true that the apex court has taken the mandates of article 21 of Indian Constitution very seriously and settled most of the environmental disputes while connecting it meticulously with the environmental violation. Earlier, the honourable Supreme Court started looking to the constitutional mandate for providing environmental Justice in *Shriram fertiliser* ^[17] case, however, in *Subhas Kumar* ^[18] case the Apex Court found the jackpot that it is only article 21 of Indian Constitution which guarantees right to get pollution free water and air and must be considered as fundamental right only

under the scope of ‘right to life’. From this point the honourable Supreme Court went further and analysed efficiently the scope of article 21 of Indian Constitution and provided environmental Justice in various ways. Some substantial cases will be depicted below for proper understanding of the declaration of right to pollution free environment under the scope of article 21 of Indian Constitution.

The honourable Supreme Court did bring the environmental issue under the scope of fundamental right during the 1980s. In *M.C. Mehta v. Union of India* ^[19] case, the apex court was dealing with the application of compensation to be paid to the victims, who were exposed to oleum gas, however, the Counsel from the opposite party pleaded that for composition the applicant can approach before the Civil Court. Though, the Supreme Court did not agree with the argument and stated that there is substantial question of law and that is to be addressed with the help of mandates of article 21 of the Indian Constitution, whether any act of the industry affecting the health and the environment will lead to violation of fundamental right.

The honourable Supreme Court categorically mentioned that article 21 of the Indian Constitution is the source of various human rights jurisprudence and accordingly, right to get pollution free environment is one of them. This has been stated by the apex court in *Unni Krishnan V. State of Andhra Pradesh* ^[20] case

The Supreme Court in *Consumer Education and Research Center V. Union of India* ^[21] case, while adding reference from *Kanpur Tanneries* case (AIR 1988 SC 1037) clarified that right to healthy and clean environment will come under article 21 of the Indian Constitution.

In *Vellore Citizens Welfare Forum v. Union of India* ^[22] case, the Supreme Court observed the importance of constitutional mandates including the viability of environmental legislations and stated that individual’s own right to fresh air, clean water should be protected by the environmental legislations and constitutional mandates. The court also clarified the position of common law and stated that there is an inalienable right to clean environment and whereas right to life and personal liberty is the integral part of the Indian Constitution, particularly, under article 21.

What is full enjoyment of life has been explained by the Supreme Court in *K.M. Chinnappa and T.N. Godavarman Thirumalpad V. Union of India* ^[23] case. In this case it has been clarified by the apex court that article 21 of the Indian Constitution is one of the fundamental right, but the meaning of this right is wider than that of normal appearance, for example, the right will also include right to life with human dignity, accordingly, pollution free water and year, sanitation, preservation and protection of natural environment and ecological balance, all these will have to be considered for full enjoyment of life.

The Supreme Court in *N.D. Jayal V. Union of India* ^[24] case

¹⁵ T. Damodhar Rao V. The Special Officer, Municipal Corporation of Hyderabad, AIR1987AP171

¹⁶ Subhash Kumar Vs. State of Bihar AIR 1991 SC 420

¹⁷ 1987 SCR (1) 819

¹⁸ See, *Supra* Note No. 32

¹⁹ AIR 1987 SC 1086

²⁰ AIR1993SC2178

²¹ AIR1995SC922

²² AIR1996 SC 2715 at 2720

²³ AIR2003SC724

²⁴ (2004)9SCC362

clarified that right to development is also an integral part of article 21 of Indian Constitution like right to get pollution free environment.

In *In Re: Noise Pollution* ^[25] case the honourable Supreme Court asserted The person can claim the violation of article 21 of Indian Constitution which guarantees right to live in comfortable, peaceful and pollution free environment, if the person or the community is its ports to undesired, obnoxious and unbearable nature of noise.

The Supreme Court in *Tirupur Dyeing Factory Owners Association V. Noyyal River Ayacutdars Protection Association* ^[26] case, has held that It is an obligation for the state to provide River water free of pollution, because article 21 of Indian Constitution directs the states to do so, therefore, Noyyal River water should be free from all sorts of pollution.

It has been categorically pronounced by the Supreme Court In *Court on its Own Motion v. Union of India* ^[27] that right to live with the safety and dignity are the integral part of right to life as enshrined under article 21 of Indian Constitution

In *T.N. Godavarman Thirumulpad V. Union of India* ^[28] case the honourable Supreme Court made it very clear that the degradation of the forest land and deforestation of the examples under which pollution free environment can never be achieved. The court further stated that as per the provisions of article 21 of Indian Constitution ‘right to life’ will promote preservation and protection of forest and forest land, which will help to achieve pollution free environment

The honourable Supreme Court in *Gulf Goans Hotels Company Ltd V. Union of India* ^[29] case mentioned that “Violation of Article 21 of Constitution on account of alleged environmental violation could not be subjectively and individually determined when parameters of permissible/impermissible conduct were required to be legislatively or statutorily determined”.

The Supreme Court in *Hindustan Zinc Ltd. V. Rajasthan Electricity Regulatory Commission* ^[30] clarified that healthy life is guaranteed under article 21 of Indian Constitution, which means to live healthy life, pollution free environment is a necessity. Therefore, promoting renewable energy is nothing but promoting pollution free environment.

Conclusion

Hence, from the above discussion it can be concluded that the right to development and right to pollution free environment both are the very integral part of article 21 of Indian Constitution. It is to be mentioned here that the right to pollution free environment has not been incorporated in any environmental statutes. Therefore, it is not a statutory right. This is worth mentioning that article 21 of Indian Constitution clearly deals with right to clean water and fresh air, right to pollution free environment, right to clean environment etc. Apart from article 21, the article 48 A and article 51 A (g) of Indian Constitution take massive role in conservation, preservation and protection in country like India. The cases

above mentioned are the example of twofold theories, for example, the first theory is that, where the courts in India have deliberated upon the environmental disputes and provide environmental Justice with the help of the provisions of environment legislations and of course with the mandates of Indian Constitution and, the second theory, under which the courts in India have provided a balance between genuine claim and false claim with regard to right to get pollution free environment. The courts have clearly stated that, unless the parameters mentioned in the constitutional mandates are fulfilled by the claimant/petitioners no relief can be granted. Accordingly, this can be very well established that many provisions including the provisions connected with article 21 of the Indian Constitution play vital role for the settlement of environmental disputes in India.

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²⁵ AIR2005SC3136

²⁶ AIR2010SC3645

²⁷ 2012 (12) SCALE 307

²⁸ AIR2014SC3614

²⁹ AIR2015SC2032

³⁰ 2015(6) SCALE706