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Dr. Navtika Singh

Nautiyal



Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

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More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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ENVIRONMENTAL PROTECTION, **PRESERVATION VIS A VIS ROLE OF JUDICIARY**

AUTHORED BY – ADV. NAVDEEP KAUR

Abstract:

Right to life which has been enshrined in part III of Our Indian Constitution that is Fundamental rights not only means mere right to live but it also includes right to live in healthy and Pollution free environment. Environmental laws are in place in India and yet people are the suffering and having no respite from the brunt of extreme weather conditions. India's judiciary has great role to play in environmental protection and uplift privileges provided to its citizens under Article 21 of the Constitution on the Right to Life, Article 48-A (4) of the Directive Principles of State Policy and Article 51-A (g) of the Indian constitution on the fundamental duties of every citizen of India. Through its various judgements the Indian judiciary helped in improving the environment by introducing important principles like sustainable development. Sustainable development seeks to meet the needs of the people and it is the aspiration of the people of the present without compromising the ability to meet those in future. Sustainable development has two main Principles: polluter pays Principle and Precautionary principles. Public Interest litigation also played significant role as this has been filled by the public spirited person who use to file petition on behalf of needy person who are the victims of environmental pollution but because of lack of knowledge and resources not able to get justice. On the other hand, National Green tribunal also has great role to protect the environment as the National Green tribunal is the fast track court who provides justice to the people in shorter time period and ensures implementation of environment Legislation. So many important steps were taken by the National Green tribunal and compensation was provided to the victims. The National Green Tribunal was enacted under the National Green Tribunal Act 2010. Origin of National Green tribunal was done in United Nations Conference in RIO in the year 1992.

Introduction

As industrialization and urbanization is increasing we can see the degradation in Environment. Environment includes water, air, earth, land etc. Environment protection is very important to preserve the health of the people living in the society as we know that right to live in healthy environment is the part of right to life which is enshrined in article 21 of the Indian constitution. In our India though we have Laws for the protection of Environment but yet we can see the degradation in the environment. Air pollution is the main pollution which has been caused due to industries. As progress is increasing, degradation in environment is also evitable. Environmental laws are in place in India and yet people are the suffering and having no respite from the brunt of extreme weather conditions.

Environmental Pollution means contamination of the environment in such a way that it causes hazards or creates potential hazards to health and well being of the living persons and non living beings.¹

Air pollution is one of the major causes which is raising concerns about the health of the people. Diseases like respiratory infections, allergic reactions, asthma, chronic obstructive pulmonary diseases, lung dysfunctions, acute bronchitis and skin and eye infections are multiplying because of Air Pollution. ²Despite of several steps Government has taken; it still seems uncontrollable and increasing. With the growth of urbanisation and industrialisation, the degradation in environment and increase in Air Pollution is becoming inevitable. Major causes of Air Pollution are industrial emissions, abrupt dumping of industrial wastes, fossil fuels, agro waste vehicular emissions. So as pollution is increasing and environment is degrading, we can see that Global Warming is also increasing which is causing major impact on the climate. ³Climate change is the major concern and problem which needs attention. Climate change is the weather condition wide spreading in an area in general or over a long period. Sustainable development is the best method, but due to lack of proper laws on it, its execution is not possible. Climate change laws are very essential as they will help to protect the environment in effective manner. India is the largest democracy and owns one of the biggest emerging economies. Although there has been a surge of environmental movements, the idea to co-exist in an ecosystem is getting reduced only to a desire. India's judiciary has great role to play

¹ Dr. J.J.R. Upadhyaya, *Environmental Law*, Central Law Agency, Allahabad, 4th Edition, 2017, p: 90

² Gurdeep Singh, *Environmental Law*, page no: 324,329 (Easteren Book Company, Lucknow, 2nd Edition, 2016).

³ Gurdeep Singh, *Environmental Law*, page no: 330,350 (Easteren Book Company, Lucknow, 2nd Edition, 2016).

in environmental protection and uplift privileges provided to its citizens under Article 21 of the Constitution on the Right to Life, Article 48-A (4) of the Directive Principles of State Policy and Article 51-A (g) of the Indian constitution on the fundamental duties of every citizen of India.

Role of Indian Judiciary:

Indian Judiciary has played a great role in protecting the environment. In order to promote environmental protection supreme court has delivered various judgment to protect the environment. Sustainable development in India was introduced by the case of Vellore *citizen's welfare forum v. union of India*

In Vellore Citizens Welfare Forum v. Union of India⁴

In this case Supreme Court opined, that the traditional concept that development and ecology are opposed to each other, is no longer acceptable, sustainable development is the answer. Sustainable Development means to fulfil the need of present generation without compromising the needs of future generation. Sustainable development is a balancing concept between ecology and development.

In order to comply with the Fundamental Right to Life and liberty sustainable development was adopted in order to protect the environment. Sustainable development further has two principles: these are Polluter pays principle and precautionary principle.

Sustainable development seeks to meet the needs of the people and it is the aspiration of the people of the present without compromising the ability to meet those in future.⁵

The case for conservation of nature should not rest only with the development goals. It is a part of moral obligation, humanity to other living beings and future generations. Essentially, sustainable development signifies not only intergenerational equity but also intergenerational equity. Unlimited exploitation of natural resources results in the sudden exhaustion leaving no chance for the coming generations to make use of them this is the basis why it is said that the present generation shall exploit

⁴ AIR 1996 SC 2715

⁵ Report of the World commission on Environment and development, our common future, oxford university Press New Delhi, 1987, p 40.

them in sustainable manner without destroying their resource base.⁶

The Supreme Court of India has stated that the **United Nations Conference on Human Environment** raised environmental consciousness. The idea of “sustainable development” was established at the Stockholm Conference in 1972 for the first time, and it is now recognized as a part of Customary International Law.

Indian judiciary has played significant role in promoting sustainable development and fostering public and private industry while minimizing the risk of irreversible damage to the natural environment, which is necessary to maintain the planet's and India's healthy flora and fauna. It should be mentioned that all lawsuits involving environmental issues have been brought before the court through Public Interest Litigation (PIL) under Article 32 or Article 226 of the Indian Constitution.

The Supreme Court of India has made a tremendous contribution to environmental and ecological protection, as well as the protection of forest wildlife, among other things. Despite the court's limited jurisdiction, it has played an important role in this regard. True, we have enough environmental regulations, but their execution is in the hands of administrative authorities, and in this regard, excellent governance devoid of corruption is the most important requirement for environmental protection.

Sustainable development has following salient principles:

1. Inter-generational equity
2. Use and conservation of natural resources
3. Environmental protection
4. The precautionary principles
5. he Polluter pays principle
6. Obligation to assist and cooperate
7. Eradication of poverty
8. Financial Assistance to the developing countries

⁶ P255

So Indian Judiciary has played significant role as it interpreted polluter pays principle in order to held liable the wrongdoer who has polluted the environment.

Polluter Pays Principle:

The countries moving towards the industrial development had to face the serious problems of giving adequate compensation to the victims of pollution and environmental hazards. That the polluter must pay for the damage caused by him is a salutary principle evolved very early in Europe when that continent was haunted by a new specter, that of unprecedented pollution.

In M.C. Mehta v. Union of India⁷

In this case petition was filed under Article 32 of the Constitution of India, seeking closure of a factory engaged in manufacturing of hazardous products. While the case was pending, oleum gas leaking out from the factory injured several persons. The significance of the case lies in its formulation of the general principle of liability of industries engaged in hazardous and inherently dangerous activity.

Precautionary Principle

The precautionary principle says that if any action or project has some possible risk which can cause harm to public and environment and the person who is taking that action has knowledge about those risk, that in the absence of scientific measures that action or project is harmful, then the burden of proof lies on those persons who are taking that action that it is not harmful. The Precautionary principle says that there is a social responsibility to protect the public from any kind of harm, in case when scientific investigation point towards a risk. These protections can be relaxed in the case when person taking action can prove with sound evidence that no harm will result.

In Vijayanagar Education Trust v. Karnataka State Pollution Control Board, Karnataka⁸

In this case the Karnataka High Court accepted that the precautionary doctrine is now part and parcel of the Constitutional mandate for the protection and improvement of the environment. The court referred to Nayudu cases which laid down that the burden to prove the benign nature of the project is

⁷ 1987 SCR (1) 819

⁸ AIR 2002 Kant 123

on the developer if it is found that there are uncertain and non-negligible risks.

Judicial activism has played a significant role for environmental protection instead of government's and parliament's actions and steps. When there is a case for environmental pollution it can be civil or criminal.

***Municipal Council, Ratlam v. Vardichand*⁹**

This case also known AS Ratlam Case and this is the leading case on public nuisance. In this case residents of that areas were suffering from pungent smell from open drains and this forced people to approach to Magistrate under section 133 of CRPC for a remedy. After appreciating evidence produced by the complainants the magistrate ordered for removal of the nuisance and orders were given to municipal council to adhere to the directions. Municipal council approached high court in an appeal against the order of the magistrate High Court upheld the order given by the magistrate. Then Municipal council approached to the supreme court in an appeal. Supreme court too upheld the directions given by the magistrate. And held that if these directions were not followed then Sub Divisional Magistrate will prosecute the officers responsible for the same as it is mandatory in order to ensure healthy environment.

Role of Public Interest Litigation:

Supreme court adopted the technique of Public interest litigation for the cause of environmental protection in many cases. Ideology of PIL is to provide access to justice to needy one who should not lack due to any reason. In the area of environmental protection PIL has significant role to play as it is filed by public spirited person who file this for the welfare of others.

***Rural Entitlement Kendra v. state of UP*¹⁰**

In this case Supreme court prohibited continuance of mining operation which were effecting the environment.

⁹ AIR 1980 SC 1622

¹⁰ 1985 AIR 652, 1985 SCR (3) 169

M.C Mehta v. UOI

In this case Supreme court held that Air pollution in Delhi caused by vehicles violated Right to life under article 21.

Role of National Green Tribunal in Environmental Protection:

National green tribunal was enacted in 2010 as a special tribunal to deal with the cases related to environmental protection under the National Green Tribunal Act 2010. Idea of enacting it has been taken from article 21 of Indian Constitution as this article talks about right to life and right to life does not only mean mere right to live, it also includes right to live in healthy environment as it is necessary for health. National green tribunal is third speedy or fast track court of the country, as it gives speedy remedy in the cases related to environmental protection. As we know the Directive principles of state policy imposes duty on the state to protect and improve the environment and to safeguard the forests and wildlife of the country and bestow upon the citizens, the duty to protect the environment. It is the powerful unit and punishes the wrongdoer for violating the basic norms and the person who is liable to put other person's life in danger due to his activities, for example if some toxic substances are being released from his industry and they are causing threat to the life of the people residing nearby.

Origin of National Green tribunal was done in **United Nations Conference in RIO in the year 1992.**

The basic purpose of this tribunal is speedy disposal of cases related to environmental pollution. As we know ordinary courts are already overburdened and if this type of cases related to environment start taken up by them, speedy disposal is not possible as these courts are already overburdened, because of which victims will be the sufferers for so long. After Bhopal Gas Tragedy there was the requirement to resolve the cases and give compensation to the victims. So National Green Tribunal ensure that Law related to environment or legislation related to environment must be implemented in better manner.

National Green Tribunal consist of Chairperson and judicial and expert members. National Green Tribunal provides a method for the development of environmental jurisprudence through the evolution of an alternative dispute resolution mechanism. It helps in the reduction of the litigation burden on environmental matters in the Higher courts.

It has been provided under section 20 of the National Green Tribunal Act that at the time of giving directions National Green Tribunal shall apply the principle of sustainable development, precautionary principle and polluters pay principle. The National Green Tribunal has the same power as of the civil court in deciding the matter falling within these seven legal acts.

Orders of National Green Tribunal

In *Manoj Misra v. Union of India*,¹¹(Floodplain Yamuna case) fine of Rs five crore was imposed by national green tribunal on Art of Living Foundation because World Cultural Festival on Yamuna floodplain was organized which affected the environment and which made people sufferers for the same.

Petition has been filled by Mr. Manoj Mishra, in the National Green tribunal to stop the event's continuing construction on the Yamuna flood plains, as he was of the view that irreversible environmental devastation may happen. Permission was given by National green tribunal to conduct the festival on the condition that accomplishment of basic Environmental norms should be followed notwithstanding an investigation by an appointed expert who also revealed widespread damage to the plains.

Fire cracker ban¹² in the year 2020, the National Green Tribunal under the principal bench headed by Justice Adarsh Kumar Goel has directed a total ban on the sale and bursting of crackers in the cities where ambient air quality falls under the 'poor' and above category and also to limit the use of firecrackers to green crackers and for no more than two hours in cities/towns where air quality is 'moderate' or 'lower'.

National Green tribunal banned 15-year-old diesel vehicles in the state of Delhi when air quality started deteriorated.

In *Delta case* National Green tribunal imposed fine on Delta Shipping Marine which was causing environmental pollution. In this National Green Tribunal by using Polluter pays guidelines fine was

¹¹ 2015

¹² 2020

imposed.

National Green tribunal has ordered closure of industries who were reason for polluting the environment.

So many construction activities were banned when environment started deteriorating.

Taj Case:

In Taj case National Green tribunal ordered to close industries who were the reason because of which marble of the Taj was turning yellow.

Yamuna Conservation Zone

On 25 April 2014, The NGT said that the health of Yamuna will be affected by the proposed recreational facilities on the river. The NGT also recommended the Government to declare a 52 km stretch of the Yamuna in Delhi and Uttar Pradesh as a conservation zone.

Coal Blocks in Chhattisgarh Forests

The National Green Tribunal has cancelled the clearance given by the then Union Environment and Forests Minister, Jairam Ramesh, to the Parsa East and Kante - Basan captive coal blocks in the Hasdeo - Arand forests of Chhattisgarh, overruling the statutory Forest Advisory Committee.

Conclusion:

Environment protection is very important to preserve the health of the people living in the society as we know that right to live in healthy environment is the part of right to life which is enshrined in article 21 of the Indian constitution. In our India though we have Laws for the protection of Environment but yet we can see the degradation in the environment. Air pollution is the main pollution which has been caused due to industries. As progress is increasing, degradation in environment is also evitable. Environmental laws are in place in India and yet people are the suffering and having no respite from the brunt of extreme weather conditions. With the growth of urbanisation and industrialisation, the degradation in environment and increase in Air Pollution is becoming

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So many notable orders were delivered by National Green tribunal for the Environmental protection.