

Jurisprudence Of Environmental Justice – A Judicialrelook In India

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ABSTRACT

The world is confronting with climate change, pollution, biodiversity and deforestation due to these climatic changes vulnerable, marginalised and common people are adversely affected Environmental rule of law ensures the accountability of governmental institutions matters related to environment. with the drastic changes in climate, the rights of the individual are not protected. Therefore, in response to that the individual, women, children, indigenous community etc approached the adjudicatory mechanism for getting relief for getting their life meaningful therefore it worsens environmental injustices and threaten the enjoyment and defence of human rights. Sustainable development and realization of human rights are closely related to the current environmental catastrophe, which is entwined with the inequality crisis.

Increased environmental dangers pose a significant challenge to human rights and contribute to environmental inequities, leaving some behind in the pursuit of sustainable peace and development. Therefore, issues related to the environment needs increase in access to information, public participation and access to justice on environmental matters.

Introduction

The environmental justice focuses on the fair treatment and meaningful involvement of all individuals, regardless of race, colour, national origin, or income, in decisions concerning environmental policies and regulations. It includes equitable distribution of environmental benefits and burdens within human populations, emphasizing the relationship between people and the natural world. The principle of environmental justice highlights the presence of inequities in the distribution of environmental hazards, connecting the environment to social justice concerns. The unequal distribution of resources and the environmental problems faced by the minority and low income groups regarding hazardous waste disposal, pollution, occupational hazards etc resulted for the rise and growth of a new movement called environmental Justice movement . it shows its development in the last three decades and it address the inequality and unequal distribution of environmental resources.

The inequalities exist in the society demanded for the growth and development of environmental movements worldwide. In USA the civil right movement and environmentalism are the two social movements works for environmental justice . But by last three decades the environmentalism and civil rights do have similarity in their actions. Instead both the movements highlighted human rights violations of the marginalised community.

Environmental justice addresses public health, social inequality, environmental degradation, focusing on self-determination, sovereignty, human rights, and access to natural resources. It goes beyond environmental impacts to address restorative justice principles, advocating for mutual respect and participation.

EVOLUTION OF ENVIRONMENTAL JUSTICE – AN OUT LOOK

According to Indian philosophy , the human beings consists of pancha bhutas ie five elements like air, water, fire , land and the sky¹ . Therefore traditional hindu culture worship environment as God and they fear to pollute the atmosphere . The Romans considered environment as common for all and they believe in the law of nature. it means the things in the nature considered as the common for all, the air, flowing water, sea and seashore. the

¹ Bornali Buragohain and Polly Rajkhowa, Studies in Indian Place Names (UGC Care Journal) ISSN 2394-3114 Vol. 40 Issue 10, February 2020 accessed on 2021 file:///C:/Users/tntri/Downloads/5965-Article%20Text-11355-1-10-20200329.pdf

shariat law of muslims also considered conservation of atmosphere is an essential part of life². during the development stage of international law, the law focused only on the areas of ocean, aircrafts etc for a long period of time there was a vacuum in the international law dealing with air pollution, till the United States domestic court faced with the air pollution case in *State of Georgia v. the Tennessee Copper Company*³ and the former case was precured by the famous case *Trail Smelter*⁴. Both the cases are leading cases with transboundary air pollution and the courts in both cases decided to compensate the sovereign with the principle of polluter pay against the action of the defendant. the preventive principle adopted in these cases are adopted in the principle 21 of the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) in 1972. The rise in industrial accident after 1970's impacted for transboundary air pollution designed for a convention on the Transboundary Effects of Industrial Accidents (1992) through preventive measures to reduce their severity and mitigate their impacts⁵.

After 1960's the international environmental law faces new challenges in environmental protection with the impacts of environmental pollution as well as the rapid development and industrialisation. it's net resulted for acid rain, as well as ultra hazardous activities in the nature of operation of oil tankers, aircrafts and nuclear powerplant and space objects. because of these aggressive nature of pollution, it is very difficult to identify its source of point of pollution and therefore it is difficult to identify blame to the polluter generator state⁶. The international conventions like United Nations Conference on the Human Environment (Stockholm Declaration) in 1972⁷. Later after twenty years of Stockholm declaration, the historic Earth Summit was originated in 1992 in Rio de Janeiro. on this conference Agenda 21 was adopted for protecting the environment with the global collaboration. Basically, it was considered as a reflection to the sustainable development goals⁸. In the Rio declaration three major agreements were adopted by the states for the management of forests, climate change⁹ and biodiversity¹⁰. Since international law developed many hardlaws relating to forest conservation, law of the sea, climate change and biodiversity conservation. But law for atmosphere, as it is considers as the first largest single natural resources. is not a present subject in the international regime¹¹. Since it is not recognised in the international regime what would be the basics for the protection of environment? . Later in 1997 Earth Summit

1.1 ² **Bagader, Abubakr Ahmed et al. (1994)** Environmental Protection in Islam / La Protection de l'Environnement en Islam. **IUCN Environmental Policy and Law Series, no. 20. Gland. Switzerland. Second revised edition. ISBN: 2-88032-088-7**
<https://www.silene.org/en/documentation-centre/strategical-documents/environmental-protection-in-islam-protection-environnement-islam>

³ 206 U.S. 230 (1907)

⁴ *United State v Canada* 3 R.I.A.A 1905

⁵ See Convention on the Transboundary Effects of Industrial Accidents

⁶ First report on the protection of the atmosphere, by Mr. Shinya Murase, Special Rapporteur*https://legal.un.org/ilc/documentation/english/a_cn4_667.pdf

⁷ It is the first conference adopted by the UN on the issues related to the environment. this conference adopted landmark decisions with the issues related to environmental degradation. The conference adopted plan of action for the preservation and protection of environment and this conference created UNEP, for environmental protection.

⁸ The Rio declaration adopted 27 principles on equitable partnership and cooperation among states. it introduced responsibility to the sovereign states as well as the individuals to safeguard their environment (see principle 1 to 27). https://www.iau-hesd.net/sites/default/files/documents/rio_e.pdf

⁹ Since 1980's the world witness great deterioration in the atmosphere, which resulted with frequent disasters, ozone depletion, glacier falling etc. therefore in the year 1992 with the Agenda 21, the UN adopted the convention of Climate Change and following this convention the kyoto protocol was adopted in the year 1997. Chapter 9 of Agenda 21 speaks for the protection of the atmosphere by promoting sustainable development goals. see <https://sustainabledevelopment.un.org>, Commission on Sustainable development of Economic and Social Council in the year 2001 made a report for the protection of atmosphere See E/2001/29 <http://www.un.org>, UN's Commission on Sustainable development, Report on the Fifteen Session speaks about the protection of atmosphere and Air Pollution

¹⁰ <https://www.un.org/en/conferences/environment> (see E/2007/29), <http://digitallibrary.un.org>

¹¹¹ Peter H.Sand& Jonathan B Wiener, Towards a New International Law of the Atmosphere, *Goettingen Journal of International Law* 7 (2016) 2, 195-223 <http://www.gojil.eu>

+5 was adopted in a special session of UN General Assembly to examine the working progress of Agenda 21 and proposed programmes for future implementation¹². In 2000 the Millennium Development Goals were adopted in the Millennium Summit¹³ and later in 2002 world summit on sustainable development was adopted in Johannesburg. Here new action plan for sustainable development goal was born and later in the subsequent years the actions of millennium development goal were reviewed in a high-level meeting¹⁴. The United Nations Conference on Sustainable Development (Rio +20), 2012 established a United Nations Environmental Assembly, which is the global high-level decision-making body on environment and gives priorities for global environmental policies and develop international environmental law. Because of the limitations in the implementation of millennium development goals the United Nations in the year 2015, gave birth to seventeen sustainable development goals (Agenda 2030). All the goals are interconnected and are interlinked with the environment.

Apart from these international conventions there are bilateral and multilateral conventions and agreements between the nations to protect the environment¹⁵.

TOOLS TO ENSURE ENVIRONMENTAL JUSTICE IN INDIA

In USA the environmental justice got its legal acceptance in 1994 with the executive order passed by the Bill Clinton, ordering to all federal agencies to make environmental justice as an integral part of their projects¹⁶. In India judiciary play a vital role in imparting justice

ROLE OF JUDICIARY IN IMPARTING ENVIRONMENTAL JUSTICE IN INDIA

The judiciary in India after the Stockholm declaration, 1986 became more concerned about environmental degradation. This led to the development of principles and doctrines from international laws and conventions to protect the environment. However, these principles alone cannot eradicate and punish those responsible for environmental degradation. In the case *M.C. Mehta v UOI*¹⁷ Justice Bhagavathy observed that

“we have to evolve new principles and lay down new norms, which would adequately deal with the new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for matter of that in any other foreign country. We no longer need the crutches of a foreign legal order”. The court moved from the doctrine of strict liability to absolute liability in this case.

The industrial revolution resulted for environmental degradation through air pollution, water pollution and land pollution. These pollutions are the major threats to the environment for its sustainability and ecological balance. The first report on the Protection of atmosphere was submitted by the International Law Commission in the United Nations General Assembly in the year 2013¹⁸.

In 2024, there have been significant developments in environmental justice in India, including cases such as *Ridhima Pandey v. Union of India* and *Gaurav Bansal v. Union of India* that address climate change mitigation efforts and state-level climate action plans. The Supreme Court of India has also issued rulings, like *M.K. Ranjitsinh and Others v. Union of India*, recognizing the right to be free from adverse effects of climate change. These cases highlight the growing importance of environmental protection and human rights in the Indian legal system. These recent cases demonstrate India's evolving approach to environmental justice, balancing development with ecological concerns. The courts are increasingly recognizing climate change as a critical issue affecting fundamental rights.

¹² Review on the working of Agenda 21 was checked in the 19th special session of the General Assembly in the year 1997. <https://www.un.org/en/conferences/environment/newyork1997>

¹³ [https://www.who.int/news-room/fact-sheets/detail/millennium-development-goals-\(mdgs\)](https://www.who.int/news-room/fact-sheets/detail/millennium-development-goals-(mdgs))

¹⁴ Ibid

¹⁵ Convention on long range transboundary Air pollution. The convention has 51 parties and eight protocols, U.S. Department of State <http://www.state.gov>, Convention on the Transboundary Effects of Industrial Accidents, 1992. This convention is a pan-European convention, Chapter XXVII Environment, <http://trieties.un.org>, Association of Southeast Asian Nations Agreement on Transboundary Haze Pollution, 2002. An agreement was signed with the collaboration of UNEP to tackle the pollution in the member states countries. https://unece.org/sites/default/files/2021-06/2004_lrtap_eng.pdf

¹⁶ But the Bush administration were stepped back with the enforcement of environmental policies after the Clinton administration. Therefore the environmentalism has its own limitations with the influential factors of social, economic and political factors

¹⁷ AIR 1987 SC 1086 at p 1089.

¹⁸ International Law Commission Sixty-sixth session Geneva, 5 May-6 June and 7 July-8 August 2014 A/68/10, para. 168 <https://documents.un.org/doc/undoc/gen/n14/237/23/pdf>

Indian states have taken various steps relating to environmental justice in 2024. The recent judgment by the Indian Supreme Court recognizes the right against climate change, emphasizing the importance of environmental protection and human rights. Additionally, efforts have been made to understand the capacity for enforcement and the political economy of environmental regulation in India, aiming to improve compliance and reduce environmental impacts. Environmental justice movements in India have a long history, with grassroots resistances dating back to early movements against British rule and continuing to present-day movements against corporate giants. State and federal efforts in India have also been focused on advancing environmental justice, including defining terms, collecting data, and using screening tools to identify environmental and demographic indicators for policy goals.

CONCLUSION

Environmental Justice is a part of environmental rule of law. Rule of Law is fundamental concept to every countries constitution. For ensuring environmental justice a fair and transparent judicial system is relevant. this would also increase social cohesion and social inclusion. Globally the concept of environmental justice has increased its importance recently by the involvement and active participation of NGOs, Citizens, women and children. the access to justice in the environmental matters helps to improve the realisation of the environmental related rights, accountability in the application of environmental law, reduces the environmental harms. There are also many challenges regarding the environmental adjudication due to the financial, geographical and jurisdictional barriers.

Near future the matter of environmental justice or access to justice for environmental issues will predominant because of the increase in damages in the climate , food insecurity, water and air pollution. Therefore the environmental adjudication should be fair, reasoned and transparent with the legal and constitutional provisions of a country .

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