

ROLE OF JUDICIARY IN CURBING VEHICULAR POLLUTION**Dr Abhijeet Rajan**

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ABSTRACT

The drafters our constitution were much concerned regarding the issue of environmental protection. This can be witnessed in many articles of the constitution .The article 48A casts the duty on the state to protect and improve natural environment and article 51A(g) enjoins similar duty on citizens of India.¹ In this paper we will see the emergence of right to live in pollution free environment as fundamental right and catena of other cases where Supreme Court has emphasized on pollution free environment. Further this paper analyses the loopholes in the international environmental jurisprudence regarding the problem of environmental protection.

Constitutional Commitment to Environmental Concerns

After stressing on the import and importance of Article 48A and 51A(g) of the Indian Constitution Justice A.R. Lakshmanan, in *Intellectuals forum case*² observed that in order to comprehend the scope and intent of the fundamental rights protected by the Indian Constitution as well as the many legislation that will be passed over time by the Parliament and the State Legislature, it is important to keep these two articles in mind.

The interrelationship between development and the environment is mandated by the Constitution, this is discernible by the careful reading of these articles in the Part IV of the Constitution. The DPSP's impose a constitutional obligation on the State to use these principles while crafting laws intended to achieve certain social and economic development goals. These guiding principles include, among other things, the nation's and the people's socioeconomic progress. As a result, the State must design its socioeconomic programmes in a way that advances the broad constitutional principles of environmental policy. The State must also maintain a social order that ensures uniform fairness in the social, economic, and political spheres.³ The State shall, in particular, direct its policy towards ensuring that the ownership and control of the material resources of the community are so distributed so as to best serve the common good and further current economic system does not result in the conglomeration of wealth and means of production to the common detriment. Children's youth should be protected from exploitation and moral and material abandonment, and the health and strength of workers—both men and women—as well as their young age should not be exploited. Additionally, citizens should not be forced to engage in occupations that are out of proportion to their age or strength out of necessity for survival. The State is also required to work to raise the level of nutrition and living standards for its citizens as well as to promote public health.

When read with other Part IV provisions of the Constitution, Articles 48A and 51A(g) have great constitutional significance because they establish the necessary constitutional framework for the concept of Sustainable development in the nation. They also help by prescribing a roadmap for social and economic development within the larger framework of an environmental protection strategy.⁴ Therefore, it is indispensable that the growth of Indian environmental law must strike a right chord between development and sustainable development.

¹ The Supreme court also starting right from Rural litigation and Entitlement Kendra case has laid that right to live in pollution free environment is a fundamental right under article 21

² Intellectual Forum Vs State of A.P.(2006) 3 SCC 549

³ M.P. Jain, "Indian Constitutional Law", Lexis Nexis Publication, 7th Edition, 2014, pg 1437

⁴ M.P.Jain , Indian Constitutional Law, Lexis Nexis Publication, 7th Edition, 2014, pg 1437

This approach has been amply radiated in the decisions of the Indian Apex Court as well as several High Courts of the Country⁵.

It is of immense interest to note that while the Indian constitution imposes a constitutional duty both on the State and on the individual to protect the natural environment by taking all possible appropriate measures, it does not confer an express constitutional right to healthy environment on the individual. Now, it comes to us that whether we should have the right to live in pollution free environment? The answer is of course affirmative but it goes a long way than simply nodding the head.

The Right to Hygienic Environment

There is no provision in the Indian Constitution which expressly provides the right to environment, much less, hygienic environment. The only provision which can be considered to subsume this right is Article 21⁶. It should be noted that for almost three decades following the Constitution's inception, this section was believed to be harmless because it was believed to simply embody the English common law rule of law in the domain of personal liberty. The right to life and personal liberty, which is significantly different from what the Indian Constitution's writers meant in 1950, was not established as a basic right until the Supreme Court itself decided to do so in 1978 under the guise of judicial activism. After the emergency period, it was the Supreme Court's job to defend and preserve fundamental rights against interference from the legislative and executive branches. It utilized its power of judicial review for this purpose, took different form in name of judicial activism, with regard to interpretation of fundamental rights. Articulating the Supreme Court's new judicial approach to the interpretation of fundamental rights, Justice Bhagwati, in the path breaking case of "Maneka Gandhi"⁷, declared that the attempt of the court should be to enlarge the reach and ambit of the fundamental rights rather than attenuate their meaning and content by a process of contraction.

In congruence with the spirit of this new judicial perception, the Indian Apex Court is no longer content with its traditional adjudicatory role with all its restraints. It claims to assume and play a more activist and creative role in order to ensure the efficacy and spirit of some of the most basic fundamental rights guaranteed to the Indian people. It is encouraging to see that the Indian Supreme Court has not only creatively interpreted basic rights to give them a broader meaning and content, but has also expanded their scope and application by developing fresh judicial tactics for their efficient enforcement and enjoyment. The fundamental right granted in Article 21 of the Constitution was transformed by the Apex Court into the cornerstone of all fundamental rights by its liberal and creative interpretation. The meaning and scope of "the right to personal liberty" has been judicially expanded so as to cover all those unremunerated rights, which were peripheral.⁸

THE RIGHT TO HYGIENIC ENVIRONMENT: A DERIVATIVE RIGHT OF THE RIGHT TO LIFE

Similar to this, the right to life, which up until 1981 was sort of ignored by the courts, has all of a sudden taken on a crucial role in the framework of fundamental rights. The dynamic idea of human dignity, the cornerstone of all other human rights, including the right to a respectable environment, has now become ingrained in it.

The country's Supreme Court and High Courts have ruled in numerous cases that the right to a healthy environment is a component of the right to life.. The first case where the Supreme Court recognized the right to clean environment, as an aspect of the right to life, is *Rural Litigation and Entitlement Kendra* case⁹. Whether limestone mining in the Mussoorie-Dehradun region produced ecological disturbance and, as a result, violated the

⁵ Vellore Citizen Welfare Forum case, A.P. Pollution Control Board v Naidu, Goa Foundation Case etc.

⁶ M.P.Jain, Indian Constitutional law, Lexis Nexis Publication, 7th Edition, 2014, pg 1173

⁷ Maneka Gandhi vs Union of India AIR 1978 SC 597

⁸ M.P.Jain , "Indian Constitutional law", Lexis Nexis Publication, 7th edition , 2014 pg 1174

⁹ AIR 1985 SC652

right to life of the people in that region was the pertinent question in this case for the purposes of our examination. The Supreme Court ruled that these actions infringed people's right to life since they damaged the environment. The Supreme Court impliedly interpreted the right to a clean environment in the right to life when ordering the closure of some of the limestone quarries.¹⁰

Role of Judiciary in Curbing Vehicular Pollution

The most pioneer case related with vehicular pollution was *Murali Purushothaman*¹¹ case, where the petitioner had tried to attract the attention on the after-math consequences of vehicular pollution created through imbalanced and unmitigated automobile use. He begged before the court for suitable guidelines in this regard. The court also grabbed the gravity of the problem. The Court ordered the State government to take suitable measures regarding implementation of Rule 115 and Rule 116 of the Central Motor Vehicles Rules. The court also ordered installation of sufficient machinery so that constant monitoring of air quality can be done

In *Ajay Singh Rawat case*¹² the Supreme Court observed that the vehicular traffic on account of heavy vehicles moving on roads caused lot of air pollution and the problem needs immediate redressal. The Supreme Court of India taking note of the sensitivity of the problem ordered for the control of heavy vehicles on the road.

M.C. Mehta case¹³

In this case, the court took note of poor air quality in Delhi. Earlier it was because of this interference by the apex Court that various measures were taken for controlling pollution as (a) reducing of sulphur content in diesel and petrol (b) making obligatory fitting of catalytic converters (c) proper lubrication of engines of two-wheelers and three-wheelers; (d) phasing out older vehicles (e) reducing of the benzene content in petrol; and (e) strict compliance of emission standards.

It was during these proceedings that the Bhure Lal Committee was set up under Section 3 of the Environment (Protection) Act, 1986.

It was on the basis of report of Bhure Lal committee that orders were passed by apex Court for the use of CNG. Even time limit was fixed within which the conversion had to take place. It may be mentioned here that the option of alternative fuel was there in the considerations of the court for quite long time. This is evident from the order dated 21 st October, 1994, in which the court said that on an earlier occasion when this issue appeared, it was directed that for starting point of view the government vehicles can be equipped with CNG kits with all necessary modifications in the vehicles to avoid vehicular pollution.

Earlier also in march 1995, long before the receipt of the Bhure Lal Committee report, there was suggestion for conversion of government vehicles to CNG but governmental authorities could not match up with the order of the court.

These orders were passed in congruence with the spirit of sustainable development. The precautionary principle and polluter pays principle are very essential ingredients of principle of sustainable development.

The precautionary principle is a principle which establishes that any kind of developmental activity which is causing threat to the environment must be stopped immediately. It further goes on establishing that the developmental activity must be stopped even if there is no scientific proof of the exact damage caused to the

¹⁰ Various other cases reflect same idea as Charan Lal Sahu Case, Subash Kumar v State of Bihar Case, Virendra Gaur vs State of Haryana case etc.

¹¹ Murali Purshuthaman vs Union of India AIR 1993 KER 297

¹² Ajay singh Rawat vs Union of India 1995 SCC (3) 266

¹³ AIR 2002 SC 1696

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environment. It is enough if there are strong aspersions that damage may appear in future. The whole philosophy of precautionary principle is that it is better to be safe than to repent later.

The polluter pays principle simply conveys the idea that polluter is not only responsible for compensating the victims arising out of his environmental polluting act but also restoring the environment to its original or previous condition. This principle is very much relevant in current scenario because big multinational corporations go on polluting the environment without thinking a tinge regarding environmental safety. It may be noted that environment gets polluted when giant companies manufacture their products. They injure the environment to a large extent when they are engaged in production of their goods. The common people even if they are harming the environment, the extent is small.

Over the issue of shortage of CNG, the court said that even if there is deficit supply of CNG, then also the preference must be given to it.

The court further said that even if there is shortage of CNG, if crude oil can be imported then definitely CNG can also be imported. There is no reason in prohibiting the import of CNG.

The court also took note of major diseases which are linked with vehicular pollution as :

- "(1) Acute Respiratory disease:
- (2) Pulmonary Diseases (PD)
- (3) Cancer of Lungs
- (4) Bronchitis:
- (5) Tuberculosis;
- (6) Cardio Vascular Disease
- (7) Blindness:

The court concluded that there was urgent need to control air pollution, and one of the measures was to reduce the use of diesel. It was with this aim and objective the Bhure Lal Committee recommended the use of CNG. It should be accepted by all the parties.

The use of CNG as an alternative fuel as per as orders of the apex court was really a milestone towards curbing vehicular pollution. Today the relevance of CNG as an alternative fuel has elevated to much larger extent. In current scenario, the government is also looking for other options as alternative fuel like biodiesel, blends of alcohol with diesel or petrol etc. But the vehemency with which court proceeded in the case of CNG as an automobile fuel is really notable. This is very much in congruence with fundamental principle of sustainable development along with precautionary principle and polluter pays principle.

Precautionary principle in the sense that if the use of petrol/diesel is causing damage to the environment as well as human beings then it should not be used as a fuel in automobiles. The polluter pays principle in the sense that even if the use of alternative fuels is turning out to be expensive then also there should not be any reluctance in bringing them in use in the motor vehicles.

Another remarkable case in context of vehicular pollution is **M. C. Mehta's case** (writ petition no. 13029 of 1985), the judgement regarding which was delivered on 24th October, 2018. The only issue to be settled in this case was whether Bharat Stage IV (for short BSIV) compliant vehicles should be permitted to be retailed in India after 31st march 2020.

Actually the Government of India in a move to harmonize the need for a clean environment, considering the pragmatic difficulties faced by the manufacturers had given a three months' notice to the automobile

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manufacturers to remove the vehicles conforming to BS IV norms. It had been alleged on behalf of SIAM¹⁴ that throughout the world, the normal practice is that near about one year's time is granted to the automobile manufacturers in case of introduction of a higher quality of fuel and the here in current case, fuel is introduced much earlier. According to SIAM, BSVI fuel would be made available in the entire country only with effect from 1st April 2020 and manufacturers were, therefore, compelled to stop production after 31st March 2020. Therefore, it was not feasible for the manufacturers to switch over to BSVI compliant vehicles in such short duration.. It had also been urged that earlier BSVI fuel was to be inducted with effect from 1st April, 2024, which was pre-poned to 1st April, 2023 and it was then pre-poned to 1st April 2020. It was further urged that such a sharp and inadequate jump was really terrible for automobile manufacturers.

It was alleged on behalf of manufacturers that they were already making vehicles which are both BS IV and BS VI fuel compliant and they in the market already. It was further alleged that keeping in mind the hindrances faced by the manufacturers and harmonizing the need to have clean environment, three months window period should be given to the manufacturers. It was contended from the opposite side that keeping in view the consequences of persisting poor air quality there should not be any delay in enforcing Bharat Stage six Norms.

The apex court also took note of the fact that BS-VI fuel is far better than BS-IV fuel as far as quality and environment friendliness is concerned. This is mainly because of the fact that sulphur content in BS-VI fuel is around 10 ppm (parts per million) while sulphur content in BS-IV fuel is 50 ppm. Thus sulphur content in BS-VI fuel is five times lower than BS-IV fuel.

The apex court observed that Article 21 guarantees every individual the right to dwell in impurity free, pure and serene environment. The right to live with dignity becomes illusory and nugatory in absence of healthy environment. The right to life under article 21 includes the right to live healthy and robust life in clean and pollution free environment. That is why sustainable development has always been centre of focus. The concept of sustainable development allows people to maintain a healthy lifestyle with clean environment.

Thus it is equitable that whenever there is conflict between health and wealth, health should be given priority. When the issue is between the health of entire existing generation as well as coming generation, the bigotry and parochial view of automobile manufacturers should definitely be ignored.

The apex court thus concluded that it was therefore necessary to ensure that BSVI are complied throughout the country as soon as possible.

APPROACH OF INTERNATIONAL COURT OF JUSTICE

For a long duration, the contribution of International Court of Justice (ICJ) to the environment was very little. But later on few cases changed the overall scenario.

In the case of Request for an Examination of the Situation in the Nuclear Tests (Newzealand v France) , New Zealand alleged before ICJ that France should carry out fair EIA (Environmental Impact assessment) before conducting nuclear tests in the Pacific. Though court realized that it had no jurisdiction over the matter yet it very firmly and boldly said that France should conduct an EIA before conducting nuclear tests.

The ICJ's landmark judgement in context of environment is the decision in the case concerning *Gabcikovo-Nagymaros Dam*. The issue stemmed from a 1977 pact in which Hungary and Czechoslovakia agreed to continue a project to improve Danube navigation and flood management. Hungary withdrew from the project in 1989, claiming that the project in question violated EIA standards. Following that, Slovakia began operating in a way that was solely beneficial to it. Hungary objected, and the case was taken to the International Court of Justice. The court recommended the parties to deal in good faith and establish an acceptable agreement in accordance with Sustainable Development principles. The court stressed the importance of balancing economic development with

¹⁴ Society of Indian automobile manufacturers

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environmental conservation.²¹ Though the term "Sustainable Development" was not mentioned in the majority judgement

yet Judge Weeramantry, has given it special consideration in a separate opinion. Sustainable Development, he asserted, is more than a notion. Its widespread and universal acceptance in the global society has given it normative value. Multinational treaties, international declarations, founding documents of international organisations, regional declarations, and other documents demonstrate this acceptance. As a result, the notion of sustainable development has become part of modern international law, not only because of its importance, but also because of its widespread acceptability around the world (Alan Boyle and David Freestone, *International Law and Sustainable development 21*, Oxford University Press)

Recently in 2018, ICJ rendered its first decision on environmental damage and compensation in *Costa Rica Vs Nicaragua case*. In 2010, Costa Rica filed a complaint with the ICJ against the Republic of Nicaragua for illegal invasion and substantial damage to protected forests and wetlands. The International Court of Justice imposed compensation for environmental damage on Nicaragua.

CONCLUSION

Articles 48A and 51A(g) are strong enough to meet the necessity of environmental protection. Article 48A compels the state to take all the necessary steps for environmental protection while Article 51A(g) motivates the citizens our country to be cautious for the protection of their own environment. Thus these two articles supplement each other for the noble cause of environmental protection.

The Indian higher Judiciary's innovative approach to the explication of the constitutional provisions, has been the chief source of the development of environmental jurisprudence in India. It may be appreciated that the Apex Court's progressive, innovative and dynamic interpretation of various Articles (12, 21, 32, 48A, 51A) of the Indian Constitution has been the linchpin of the structure of the environmental jurisprudence in India.

Looking in totality the entire issue at a global level, it can be also said that though the level of pollution in a particular country is its own individual affair yet it is matter of concern for neighboring countries as well because pollution has got its effect beyond boundaries also. The problem of transboundary air pollution is widely acknowledged in the field of international environmental law. There also exists a number of judicial and arbitral tribunals laying down the regulatory framework in this regard. But still more is required in the field of international environmental law.