

ENVIRO-JUSTICE UNDER RULE OF LAW

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ABSTRACT

Environmental right is one of the important rights because other rights can only be enjoyed when there is a healthy environment. Indian constitution imposes liability on state under directive principle of state policy and on citizen under fundamental duties. If state and citizen perform their duties in their sphere then aim of environmental justice can be achieved at a certain extent. But, due to lack of the sense of duty it is beyond reach. Justice is a dynamic term we can not give a single definition. Society itself is dynamic so the problem also changed with time and places. Environmental problem is the impact of technological development and enviro-justice as a legal tool to solve the problem

So this paper is an investigation about state machinery how state is able to ensure environmental justice in India under constitutional mandate.

INTRODUCTION

In a democracy all the natural resources are under the control of state. Only state has power to take decision that how these resources should be utilized. Before the democratic system of governance there was more interference of state in individual freedom. Now this system has provided more freedom to individual in economic right and the consequences are before us in form of environmental degradation. We are leading towards irreversible environmental degradation. It's the time to rethink that how these resources should be used so that balance may be maintained in economy and environment. The ultimate aim of development is to facilitate people in improving their life standard. But if we are failing to make balance in these two opposite claim then it will affect the life not only of human being but all living creature on this planet.

The natural resources of a country are the symbol of its prosperity. It should be utilized in such a way that it may help a nation in achieving prosperity without creating environmental hazards. The gift of nature is for all because nature does not distinguish between poor and rich. But the natural resources are in hand of some countable number of persons and majority of persons are gating their due in form of different environmental problem. This visible scene raises so many questions about developmental model adopted by the democratic country like us. Environmental problems were invisible before scientific development. Scientific development has their own merit and demerit but it has provided tools to the persons to use natural resources to make their own benefit. The impact of unrestricted use is before us. Our opinion may differ on merit and demerit of this developmental pattern but our view will be common about effect of these activities. Now we are leading towards a world where all rights either provided by basic law of the

land or created by judicial interpretation is going to be affected because all rights will be fruitless if there will not be a healthy environment.

In India environmental law has seen considerable development in the last two decades. Most of the principles under which environmental law works in India come within this period. The development of the laws in this area has seen a considerable share of initiative by the Indian judiciary, particularly the higher judiciary, consisting of the Supreme Court of India, and the High Courts of the States. The role of the administration, although a critical factor in the success of any environmental management programme, has seen its share of problems of scale and definition. The essence of the existing law relating to the environment has developed through legislative and judicial initiativeⁱ.

In *Wazirchand v. State of Himachal Pradesh*ⁱⁱ the Court said that the Rule of Law meant that the State or its executive officers cannot interfere with the rights of persons unless they can show some specific Rule of Law which authorizes their acts. In another caseⁱⁱⁱ the Supreme Court declared that Rule of Law means that the government could not take the law into its own hands, that it cannot dispossess persons by a display of force, and it cannot disregard the normal requirements of procedures in a society governed by a Constitution that guarantees its citizens protection against arbitrary invasion of their rights. This is the principle that nobody is above the law including the State. In *Som Raj v. State of Haryana*^{iv} it was observed that the basic postulate of the Rule of Law is the absence of unguided discretion, so that when discretion is conferred on an executive authority it must be within clearly defined limits. This is another side of Rule of Law which is fairness and reasonableness in the state action^v.

Rule of Law can function most effectively in a democracy and Judiciary has a role to see that the democratic principle imbibed in our Constitution is never allowed to be shattered in the hands of executive during emergency and in normalcy times too. *N.A Palkhiwala* observed that the danger to our

democracy is that the noise created by few politicians is misunderstood as the voice of the masses and the well thought out advice tendered by experts and persons of maturity are ignored as the voice of reaction. Rule of law is under serious threat even today^{vi}.

Rule of law means, that the law is supreme and not the state. Indian Constitution provides various limitations in exercise of powers by different organs and also provides with special powers to various wings of the government. These powers have to be exercised whenever the Rule of Law is breached and the faith of people is shaken in the administration of justice. Court has to interpret the constitution in a dynamic manner to make it a living constitution.

Our constitution has enough safeguards for the protection of Rule of Law in India. What is needed is a proper execution of these principles and whenever there is encroachment by the executive, the role of judiciary is to check such acts of executive. Constitution must be interpreted as per the views of Constitution maker and keeping in mind the objective of the Constitution. In this regard the broad interpretation of art. 21 of the Constitution by the Judiciary are laudable.

The role of state has a great importance in implementing the concept of rule of law. Administration of justice is possible, only in a politically organized society. So here it will be relevant to know the meaning of state.

MEANING OF STATE

The meaning of word 'state' as used in Article 12 of the constitution and decided by different court cases in different time.

The framers of the constitution of India chose to adopt the same definition for the word 'State' as defined in Article 12 for the purpose of Part IV of the Constitution as well.^{vii} The objective behind it was to enable the judiciary to interpret it so widely to bring all agencies and instrumentality of the state under the scope of the word 'state'. The purpose was to

direct all such agencies and instrumentality of the state to apply the directive principles in making laws. The word state as defined in Article 12 and as interpreted by the Supreme Court through various cases decided by it means and includes:

- 1- The executive and the legislature of the union.
- 2- The executive and the legislature of the state.
- 3- The judiciary^{viii}
- 4- Local authorities like Municipalities, District Boards, Panchayats, Townships, Corporations, Improvement Trusts, etc. and
- 5- Other authorities which are agencies or instrumentality of the state.^{ix}

By a generous interpretation of the word 'State' the Supreme Court has now included many institutions including societies registered under the Societies Registration Act, 1860^x, a Government Company^{xi} incorporated under Sec. 617 of the Companies Act, and every 'other authority' as a 'state' if it is an instrumentality of the state. The wide interpretation given to the expression 'state' by the Supreme Court is to widen the scope and amplitude of the fundamental Rights and the Directive Principles of state policy. Hence now it has become the fundamental duty of all 'authorities' coming under the purview of article 12 to fulfil the obligations contained in Part IV of the constitution of India.

THE CONCEPT OF JUSTICE

The concept of justice is as old as origin and growth of human society itself. The social nature of man demands that he must live peacefully in society. While living so, he experienced a conflict of interests and expects rightful conduct on the part of others. This is the reason why Salmond and Roscoe Pound have emphasised the importance of justice in their definitions of law. As Salmond rightly observed, "it is through instrumentality of law that justice is

administered by the state. Likewise, Roscoe Pound held that law is a body of principles recognised and enforced by state for administration of justice. According to Blackstone, justice is a reservoir from where the concept of right, duty and equity evolves^{xii}.

ENVIRONMENTAL JUSTICE

Justice is a dynamic term we can not give a single definition. Society itself is dynamic so the problem also changed with time and places. The problem of environmental degradation is of recent origin in comparison of other social issue. This problem is different in nature too because it deals relation of human being with nature. State is the trustee for its natural resources. Indian constitution ensure about quality of opportunity so opportunity to utilize these natural resources should equal for all either it may be poor or rich. Due to unplanned way of development the persons who are in a position to use these resources are taking fruit while a large number of population taking his due in form of various environmental problem. As in case of controversies to use resources between developed and developing nation same is the case with rich and poor. Even the people who are facing with problem of poverty are not aware about their environmental rights.

Therefore environmental justice is due for Indian citizen. It can be ensured only when we will be able to implement concept of rule of law.

MEANING OF RULE OF LAW

In all the statute discrimination has been prohibited either national or international level on the ground of religion, race, caste or sex. While, there is not a single statute, which make provision, to minimise the gap between rich and poor. Here rich persons are those who have enough means to use these natural resources. In a democracy there are a number of question yet to be answered as who is the owner of these natural resources? How these resources should be utilized? How much limit should

be imposed on individual economic liberty? As these resources are for all living within that particular state in other word we can say that all the citizen have equal share then why some countable number of person are utilizing all these resources in the name of their economic right.

In *Wazirchand v. State of Himachal Pradesh*^{xiii} the Court said that the Rule of Law meant that the State or its executive officers cannot interfere with the rights of persons unless they can show some specific Rule of Law which authorizes their acts. In 1961^{xiv}, the Supreme Court declared that Rule of Law means that the government could not take the law into its own hands, that it cannot dispossess persons by a display of force, and it cannot disregard the normal requirements of procedures in a society governed by a Constitution that guarantees its citizens protection against arbitrary invasion of their rights. This is the principle that nobody is above the law including the State. In *Som Raj v. State of Haryana*^{xv} it was observed that the basic postulate of the Rule of Law is the absence of unguided discretion, so that when discretion is conferred on an executive authority it must be within clearly defined limits. This is another side of Rule of Law which is fairness and reasonableness in the state action^{xvi}.

One of the greatest Prime Minister who held office for the longest period as British Prime Minister was William Pitt the younger. He was a great apostle of the pristine doctrine of the Rule of Law. To highlight its importance he said thus 200 years ago: Where law ends tyranny begins. Rule of law is a sentinel or watch-guard for protecting a republic from tyranny. Our constitution has provided the coverage of the Rule of Law for this republic^{xvii}.

Law and state are intimately inter-linked. The question as to which of the two is supreme has to be answered in context of the polity of the state concerned. Thus in England, the supremacy of the state is evident from the fact that law is considered to be a command of the sovereign who is above and beyond law. But in India, it is not so. Even the *Upanishads* have reiterated more than once that "Law is the king of Kings" and no one, not even the king is

above law. The code of Manu has also acknowledged the supremacy of law over the ruler and expected the king to follow the tenets of *Dharma* i.e. the law in governance of his subjects^{xviii}.

The modern Indian polity also upholds the supremacy of law as a constitutional mandate. The Supreme Court has again and again upheld the supremacy of the constitution to strengthen Rule of Law. Therefore in *I.M. Singh vs. Borobubu Singh*^{xix}, the Apex Court observed;

"No one in this country is above law and governance is not of men but of the rule of law which permits no one to claim to be above law."

As here in Indian context as stated above we can say that we are governed by rule of law and no one is above law.

CONCLUSION AND SUGGESTIONS

The concept of rule of law is now well established principle of every democracy including India. In absence of this principle a state can not ensure justice at all in all sphere of life. Environmental problems were not so severe before the scientific development but we can not say that this development is only cause for such situation. Scientific development may be helpful to tackle the environmental issue too. There is lack of will power behind it because decision making authorities are not taking it seriously. We can not say that attempt has not been made by state to tackle environmental problem but steps taken is not enough to tackle the issue.

Rule of law is an ideal stage in a democracy. It is not so easy to make such a society where the entire person can share equal rights and duties in a state. In India we govern by rule of law. Although in Indian constitution the term "rule of law" has not been used directly but provisions^{xx} given shows that the framer of Indian constitution were of will to establish a society under rule of law. Although we can not achieve this ideal stage in a democracy but we can reach more nearer to this ideal stage.

As there is separation of power between all the organ of the state therefore each institution has to be within the confines of its limit and must create an atmosphere where the all of them can function effectively. Rule of Law can be restored in India only when all the three wings of the Government work in consonance with the Constitution.

State is under a constitutional mandate to ensure justice for all either it may be poor or rich. As state is guardian for its entire population i.e. citizen so it has a responsibility to minimize gap between poor and rich people. The natural resources should be used in such a way that it may not cause harm to the natural environment. When controversy arises between economy and environment then protection of environment should be preferred over economy.

Although environmental problem is of recent origin but these problem are growing in such an alarming rate that it is going to be more severe for future living condition. Now time is moving towards its pre-stage of more interference by state

in individual economic liberty. It is the demand of environmental justice under rule of law that environmental right of public at large should be shaved. Some countable numbers of people are hampering environmental rights of people at large scale in the name of economic right.

On the ground of observation following suggestion have been submitted

- 1) Indian constitution ensure equality before law and equal protection of law so state should also consider the rights of those who are not in a position to exploit natural resources and who are in a position to exploit in decision making.
- 2) There should be transparency in decision making so that public can access the ground of decision.
- 3) All the principles which Indian judiciary has recognized in different pronouncement should taken into consideration in decision making at every level.

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- ⁱ -With few exceptions such as Environment Impact Assessment (1994), Coastal Regulation Zone Notification (1991), and the Joint Forest Management Programme, the wealth of Indian environmental management stems from legislative and judicial actions. However, the Ministry of Environment and Forests.
- ⁱⁱ -AIR 1961 SC 1570
- ⁱⁱⁱ -Bishan v. State of Punjab AIR 1961 SC 1570
- ^{iv} -AIR 1990 SC 1176
- ^v -Goolam E. Vahanvati, Rule of Law The Sieges Within, Rule of law in a Free Society, Oxford University press, 2008, p. 28.
- ^{vi} -K.T Thomas, The constitution of India and the rule of law, Rule of law in a Free Society, Oxford University press, 2008, p.33-38
- ^{vii} Article 36, Constitution of India, 1950
- ^{viii} A.R. Antulay v. R.S. Nayak, AIR 1988 SC 1531
- ^{ix} R.D.Shetty v. International Airport Authority of India AIR 1979 SC 1628
- ^x Sheela Barse v. Secretary Children's And society (1987) 3 SCC 50
- ^{xi} Star Enterprises v. C.T.D.C. of Maharashtra Ltd. (1990) 3 SCC 280
- ^{xii} -Dr.N.V.Pranjape, "Studies in Jurisprudence and legal theory" Central Law Agency Allahabad, 3rd edi.(2001) at p. 160.
- ^{xiii} - AIR 1961 SC 1570
- ^{xiv} - Bishan v. State of Punjab AIR 1961 SC 1570
- ^{xv} - AIR 1990 SC 1176
- ^{xvi} - Goolam E. Vahanvati, Rule of Law The Sieges Within, Rule of law in a Free Society, Oxford University press, 2008, p. 28.
- ^{xvii} -K.T Thomas, The constitution of India and the rule of law, Rule of Law in a Free Society, Oxford University Press, 2008, p.33-38.
- ^{xviii} - Dr.N.V.Pranjape, "Studies in Jurisprudence and legal theory" Central Law Agency Allahabad, 3rd edi.(2001) at p.126.
- ^{xix} -AIR 1994 SC 505 (512)
- ^{xx} -Article 14 and 21 of Indian constitution.