

ROLE OF INDIAN JUDICIARY IN PROTECTION OF ENVIRONMENT IN INDIA

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"The environment and the economy are really both two sides of same coin. If we cannot sustain the environment we cannot sustain ourselves".

Wangari Maathai

ABSTRACT

In India, the concept of environmental protection can be seen derived from the period of Vedas. Numerous legislative steps have been taken to give effect to the significant right of man to live in a sound environment and the corresponding duty on state and individuals to make sure environment preservation and conservation, my endeavour, in this study, is to analyse the steps taken by judiciary to forward this goal. This article discusses and analyses the judicial activism and its application in protecting environment, and steps taken by judiciary to accelerate this objective. The main objective behind this research is to identify the contemporary picture and study the nature and extent of till date developments in various environmental statuses through judicial procedure. It also analyses the role of judiciary, recent development and improvement of environment protection. It further views upon the constitutional aspects and the new trends in judicial approach in environment protection.

Keywords- Environment, Conservation, PIL, Sustainable Development, Pollution.

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INTRODUCTION

Man is a creator and destroyer of the environment. The word "environment" refers to the totality of surroundings conditions. The development of science and technology and the increasing world population has brought about tremendous changes in the earth's environment and the need for protection and improvement of environment has become a major issue. In recent years, the judiciary is playing a very important role in carrying out the measures for pollution control, conservation of forests and wildlife protection. Many of these judicial interventions have been prompted by the persistent incoherence in policy-making as well as the lack of capacity-building amongst the executive agencies. Devices such as Public Interest Litigation (PIL) have been prominently relied upon to outfit environmental problems, and this approach has its supporters as well as critics.

In the quest of making life more comfortable the man has always exploited the nature. Agriculture, industrialization and infrastructural developments are the causes of exploitation of natural resources. Human activities create a variety of wastes and by-products which accumulate over a period of time and may become toxic to the naturally growing plants, animal and the mankind. The rapid and unplanned industrialization has given birth to factories emitting noxious gas fumes and toxic effluents, making life more difficult on earth. These things are constantly causing damage to environment. It is also the duty of the state to protect the environment as embodied under article 48-A, 39 (e) and 47 of the Indian Constitution. So in order to deal with these ever-growing problems, many acts have also been enacted by the parliament but it is a court which always keeps a check on proper implementation of these enactments and judiciary had played an important role in interpreting the laws to protect the environment.

MEANING AND DEFINITION OF ENVIRONMENT

Environment etymologically relates to "surrounding". Environment in its generic sense comprises of air, water, land, the things imbibed and also embedded in the land. The more

specific meaning is taken as covering the common physical surroundings such as air, space, waters, land, plants and wildlife. Even this meaning is still a vague and general one.²

According to the Webster Dictionary, it is defined as the “Aggregate of all the external condition and influences affecting the life and development of an organism”.³

The Environment (Protection) Act, 1986

Section 2(a) environment “includes water, air and land and the inter- relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property”.⁴

Thus, after analyzing all the above definitions, the basic idea that can be concluded is that environment means the surroundings in which we live and is essential for our life.

ROLE OF THE JUDICIARY IN PROTECTION OF ENVIRONMENT

In India, the concept of environmental protection can be seen originated from the period of Vedas. PIL plays vital role in the judiciary in environmental protection. Several local NGOs and public spirited individuals who have moved the courts to seek relief against numerous problems such as those created by unchecked vehicular and industrial pollution, negligence in management of solid waste, construction of large projects and increasing deforestation. Lawyers and NGOs are well aware of how the device of Public Interest Litigation (PIL) was devised by our Supreme Court. In order to improve access to justice for poor and disadvantaged sections, the traditional rules of ‘locus standi’ were diluted and a practice was initiated where by public - spirited individuals could approach the court on behalf of such sections. In the present time the Supreme Court of India expand the meaning of environmental right. The Supreme Court is making and creating interpretation which led to the creation of new rights. As under Article 21, this court has created new rights including the right to health and pollution free environment.

²Simon Ball & Stuart Bell, “Environmental Law” 1991.

³ R.M. Lodha, Environmental Ruin: The Crises Of Survival, P.364 .New Delhi: Indus Publishing company (1993).

⁴envfor.nic.in/legis/env/env1.html

PUBLIC INTEREST LITIGATION (PIL)

Since more than two decade, Public Interest Litigation (PIL) has played a vital role by which possessions to all walks of life and especially the down-trodden are getting social justice from the Supreme Court as well as the High courts. Introducing the PIL concept in the case of **Ratlam Municipal Council vs. Vardhichand case**⁵, Justice Krishna Iyer observed that social justice is due to the people and therefore the people must be able to trigger off the jurisdiction vested for their benefit to any functioning. He recognized Public Interest Litigation as a constitutional obligation of the Courts. In the case **S.P. Gupta vs. President of India And others case**⁶, Justice P.N. Bhagwati says: procedure being merely a handmaiden of justice it should not stand in the way of access to justice to the weaker section of Indian humanity and therefore, where the poor and the disadvantaged are concerned this court will not insist on a regular writ petition and even a letter addressed by a public spirited individual or social action group acting pro bono public would suffice to invite the jurisdiction of this court.

On the **Rural Litigation And Entitlement vs. State of Uttar Pradesh**,⁷ it is one of the span making decisions of the Supreme Court. The court has struck a balance between conservation of environment and ecology on the one hand and economic development on the other. It was held that the question arising for considerations are of grave movement and significance not only to the people residing in Mussoorie hill range forming part of Himalayas but also in their implications to the welfare of the generality of people living in the country.

In **Dr. K.C. Malhotra vs. State of Madhya Pradesh**,⁸ the inhabitants belong to the backward class or weaker section of the society. The Madhya Pradesh High court held that they have fundamental rights under constitution of India entitling them to live as human beings in the area which was in the limit of Gwalior Municipal Corporation.

⁵ 1981 SCR (1) 97

⁶ AIR 1982 SC 149

⁷ AIR 1985 S.C. 652

⁸ AIR 1994 MP 48

In **Resident of Sanjay Nagar and others vs. State of Rajasthan** and others case,⁹ court ordered to unauthorized slaughter house to be closed.

In this case the petitioner sought a direction to the respondents to close down the slaughter houses illegally operating in Sanjay Nagar and also for a direction to the State Pollution Control Board, Rajasthan, India to take step for preventing creation of air pollution generated by functioning of the slaughter houses in the area in question. According to facts and circumstances, Rajasthan High court held decision that – having regard to the circumstances of the case and keeping in view the health of the residents, we are having the view that unauthorized and illegal slaughter houses in the area should be closed immediately. Bringing environmental awareness by means of education as a compulsory subject of study shall be implemented at least from 2004-2005.

Lawyers and NGOs are well aware of how the device of Public Interest Litigation (PIL) was devised by our Supreme Court. In order to improve access to justice for poor and disadvantaged sections, the traditional rules of ‘locus standi’ were diluted and a practice was initiated whereby public-spirited individuals could approach the court on behalf of such sections.

Noise pollution was caused due to use of high – sounding fireworks and others blaring sound – producing devices thus resulting in pollution of sound. In the case of **Free Legal Aid Cell ShriSugan Chand Aggarwal alias Bhagatji vs. Govt. of NCT of Delhi and others**,¹⁰ it was alleged that because of the indiscriminate use of loudspeakers, noise pollution had become a routine affairs affecting mental as well as physical health of citizen etc. In the facts and circumstances of the case, a division bench of the Delhi High court held that the environmental situation has to be treated as an emergency situation. The environmental pollutions till regarded as subject of hailing legislation, hypocritical implementation and helping interpretation, as observed by apex court. Not only the environmental laws should be refined in a manner which could give a legal justification to assessment in terms of compensation but also to be re-evaluated in a manner that violation of pollution of law should become unnecessary in the time

⁹AIR 2004 RAJ 116

¹⁰AIR 2001 DELHI 455

to come and this can be materialized by providing sufficient incentives to the industries and education to the layman.

Thus a person can claim injunction to stop nuisance if in a noisy locality, there is substantial addition to the noise by introducing some machine instrument or performance at dependant's premises which materially affects the physical comfort of the occupants of the plane life house.

SOME REMARKABLE PRINCIPLES AND DOCTRINE PROPOUNDED BY THE INDIAN JUDICIARY

Indian Judiciary as being the guardian of Fundamental Rights of an Individual has taken active role in Environment Protection. Hon. Supreme Court through several of its decisions laid down various principles for Environment protection as follows:

1) DOCTRINE OF ABSOLUTE LIABILITY

The Bhopal Case: Union Carbide Corporation vs. Union of India¹¹

In this case, the court held that, where an enterprise is occupied with an inherently dangerous or a hazardous activity and harm results to anybody by virtue of a mishap in the operation of such dangerous or naturally unsafe movement coming about, for instance, in getaway of poisonous gas, the enterprise is strictly and completely obligated to repay every one of the individuals who are influenced by the accident and such risk is not subject to any exemptions. Accordingly, Supreme Court created another trend of Absolute Liability without any exemption.

2) POLLUTER PAYS PRINCIPLES

Polluter Pays Principle has become a very popular concept lately. 'If you make a mess, it's your duty to clean it up' - this is the fundamental basis of this slogan. It should be mentioned that in environment law, the 'polluter pays principle' does not allude to "fault." Instead, it supports a remedial methodology which is concerned with repairing natural harm. It's a rule in international

¹¹ AIR 1989 SCC(2) 540

environmental law where the polluting party pays for the harm or damage done to the natural environment.

Vellore citizen's welfare forum vs. union of India¹²

The Supreme Court has declared that the polluter pays principle is an essential feature of the sustainable development.

3. PRECAUTIONARY PRINCIPLE

The Supreme Court of India, in Vellore Citizens Forum Case, developed the following three concepts for the precautionary principle:

- 1) Environmental measures must anticipate, prevent and attack the causes of environmental degradation
- 2) Lack of scientific certainty should not be used as a reason for postponing measures
- 3) Onus of proof is on the actor to show that his action is benign.

4. PUBLIC TRUST DOCTRINE

The Public Trust Doctrine primarily rests on the principle that certain resources like air, water, sea and the forests have such a great importance to people as a whole that it would be wholly unjustified to make them a subject of private ownership.

M.C. Mehta vs. Kamal Nath and Others¹³

The public trust doctrine, as discussed by court in this judgment is a part of the law of the land.

5. DOCTRINE OF SUSTAINABLE DEVELOPMENT

¹² AIR 1996 SC 2715

¹³ AIR 1997 SCC (1) 388

The World commission on Environment and Development (WCED) in its report prominently known as the 'Brundtland Report' named after the Chairman of the Commission Ms. GH Brundtland highlights the concept of sustainable development. As per Brundtland Report, Sustainable development signifies "development that meets the needs of the present without compromising the ability of the future generations to meet their own needs"¹⁴ There is a need for the courts to strike a balance between development and environment.

Rural Litigation and Entitlement Kendra vs. State of UP¹⁵

The court for the first time dealt with the issue relating to the environment and development; and held that, it is always to be remembered that these are the permanent assets of mankind and or not intended to be exhausted in one generation.

THE CONSTITUTIONAL PROVISIONS FOR ENVIRONMENT PROTECTION:

The Indian Constitution is amongst the few in the world that contains specific provisions on environment protection. The chapters directive principles of state policy¹⁶ and the fundamental duties are explicitly enunciated the nation commitment to protect and improve the environment. It was the first time when responsibility of protection of the environment imposed upon the states through Constitution (42nd Amendment) Act, 1976.

Article 21¹⁷ "It is to be noted that the Judicial Activism relating to Protection of Environment is laudable. Several pronouncements reiterated by the Supreme Court for this purpose. Supreme Court in various cases held that right to get free air, water, etc have been included in the Article 21 of Constitution of India."

Article 48-A "The State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country."

¹⁴S.Shanthakumar, Environmental Law: an introduction, pp. 122, 123, Chennai: Surya Publication, (2001).

¹⁵ AIR 1985 SC 652

¹⁶H.K.Saharay, The Constitution of India-An Analytical Approach, Eastern Law House.

¹⁷Dr. Durga Das Basu, Introduction to the Constitution of India, LexisNexis.

This 42nd Amendment added Article 48-A to the Directive Principles of State Policy

Article 51-A (g) “It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, and wildlife and to have compassion for living creature.” In **Sachidananda Pandey vs. State of West Bengal**¹⁸, the Supreme Court observed “whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48-A and Article 51-A (g).

LEGAL PROVISIONS FOR ENVIRONMENT PROTECTION IN INDIA:

The constitutional provisions are backed by a number of laws – Acts, Rules, and Notifications. The EPA (Environment Protection Act), 1986 came into force soon after the Bhopal Gas Tragedy and is considered an umbrella legislation as it fills many gaps in the existing laws. Thereafter a large number of laws came into existence as the problems began arising. Some of the important environmental laws are as follows:

GENERAL

1986 - The Environment (Protection) Act authorizes the central government to protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and /or operation of any industrial facility on environmental grounds.

1995 - The National Environmental Tribunal Act has been created to award compensation for damages to persons, property, and the environment arising from any activity involving hazardous substances.

1997 - The National Environment Appellate Authority Act has been created to hear appeals with respect to restrictions of areas in which classes of industries etc. are carried out or prescribed subject to certain safeguards under the EPA.

¹⁸ AIR 1987 SC 1109

2002 - The Biological Diversity Act is an act to provide for the conservation of biological diversity, sustainable use of its components, and fair and equitable sharing of the benefits arising out of the use of biological resources and knowledge associated with it.

FOREST AND WILDLIFE

1927 - The Indian Forest Act and Amendment, 1984, is one of the many surviving colonial statutes. It was enacted to 'consolidate the law related to forest, the transit of forest produce, and the duty leviable on timber and other forest produce'.

1972 - The Wildlife Protection Act, Rules 1973 and Amendment 1991 provides for the protection of birds and animals and for all matters that are connected to it whether it be their habitat or the waterhole or the forests that sustain them.

WATER

1882 - The Easement Act allows private rights to use a resource that is, groundwater, by viewing it as an attachment to the land. It also states that all surface water belongs to the state and is a state property.

1897 - The Indian Fisheries Act establishes two sets of penal offences whereby the government can sue any person who uses dynamite or other explosive substance in any way (whether coastal or inland) with intent to catch or destroy any fish or poisonous fish in order to kill.

1956 - The River Boards Act enables the states to enroll the central government in setting up an Advisory River Board to resolve issues in inter-state cooperation.

1970 - The Merchant Shipping Act aims to deal with waste arising from ships along the coastal areas within a specified radius.

1974 - The Water (Prevention and Control of Pollution) Act establishes an institutional structure for preventing and abating water pollution. It establishes standards for water quality and effluent. Polluting industries must seek permission to discharge waste into effluent bodies. The CPCB (Central Pollution Control Board) was constituted under this act.

AIR:

1981 - The Air (Prevention and Control of Pollution) Act provides for the control and abatement of air pollution. It entrusts the power of enforcing this act to the CPCB.

1982 - The Air (Prevention and Control of Pollution) Rules defines the procedures of the meetings of the Boards and the powers entrusted to them.

1982 - The Atomic Energy Act deals with the radioactive waste.

1987 - The Air (Prevention and Control of Pollution) Amendment Act empowers the central and state pollution control boards to meet with grave emergencies of air pollution.

1988 - The Motor Vehicles Act states that all hazardous waste is to be properly packaged, labelled, and transported.

CONCLUSION

Environmental law has seen considerable development in the last two decades in India. 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 states. PIL has proved to be a productive tool in the area of environmental protection. The Indian judiciary embrace the technique of public interest litigation for the cause of environmental protection in many cases. The basic ideology behind adopting PIL is that access to justice ought not to be denied to the needy for the lack of knowledge or finance. On the basis of above discussion we may conclude that the Indian judiciary has played very important role in the protection of environment. It has expanded and stretched the existing legal provisions to address the environmental issues. It has evolved new doctrine and principles to deal with conflicting interests of various group of the society.

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