

ENVIRONMENTAL LEGISLATION AND JUDICIAL VIRTUES IN INDIA

Arpita Kulkarni¹ & Prafull Kumar²

(ABSTRACT)

Environmental degradation is the matter of extreme concern since the recent past in India. There has been a serious threat to the environment which has sometimes caused irreversible damage to the ecology. To cope up with this problem of environmental deterioration, legislature has enacted various legislations & statutes so as to prevent the harm caused to the environment.

On the other hand, Indian Judiciary being the interpreter of laws has shown great concern and sensitivity towards the issue of ecological degradation in India by way of Judicial Activism, more than the other two organs viz. legislature and executive. The honourable Supreme Court and High Courts have been entertaining various environmental petitions under Article 32 and Article 226 of the Indian Constitution constituting the infringement of Article 21 of the Constitution. Indian Judiciary has not only implemented domestic laws to deal with the situation of ecological imbalance, but has also given due regard to International Treaties and obligations by which India as a state has a positive obligation to protect and improve the environment. Judiciary has incorporated various international principles and concepts to tackle environmental degradation. In many cases, Judiciary has ruled that development and ecology has to be balanced and no one can prevail over the other. The implementation of environmental laws and Judicial Activism has introduced environmental jurisprudence in India.

Keywords:

- Brundtland Report
- Polluter Pays Principle
- Precautionary Principle
- Sustainable Development
- Environmental Jurisprudence

¹ Student, Shri Balaji Society's Balaji Law College, Pune (Pune University), Email Id - arpitakulkarni5@gmail.com

² Student, Shri Balaji Society's Balaji Law College, Pune (Pune University), Email Id - prafullkumarkp795@gmail.com

ENVIRONMENTAL LEGISLATION AND JUDICIAL VIRTUES IN INDIA

(ARTICLE)

“Vitality and beauty are gifts of NATURE, for those who live according to its laws”

-Leonardo da Vinci

✚ ECOLOGICAL DEGRADATION IN INDIA

India is a tropical country with rich variety of Flora & Fauna and a vast bio-diversity. India has one of the richest ecosystem in the World. But it seems that during the past one or two decades, India has lost its rich ecosystem to some extent due to various reasons. India's degrading Environment is due to growth of rapid Industrialisation, afforestation, migration of rural population to the cities, pollution and other socio-economic factors etc.

The Human Being is a part of Environment, but all the essential elements of environment viz. Water, Land, Soil, flora & fauna has been exploited by humans for satisfying their needs at the cost of degrading environment. India as a developing nation cannot afford to the deterioration of its ecology which results into ecological imbalance. In consequence of which legislature has enacted various legislations to tackle the problem of environmental degradation and Judiciary has implemented it strictly without being lenient towards wrong-doers.

✚ CONSTITUTIONAL AND LEGISLATIVE PROVISIONS RELATED TO ENVIRONMENT

The Constitution of India has made it mandatory on the part of State and its Citizens under Articles 48A and 51A(g) respectively to protect the environment. **Art. 48A**³ *provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.*

Art. 51A(g)⁴ *provides that It shall be the duty of every citizen of India-to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.* India has participated in major international events on environment and biodiversity conservation since 1972 as it was the need of the hour owing to ecological degradation. India has also contributed towards the protection of the environment and ratified & complied with the commitments in various international conventions relating to

³ *Inserted by Constitution (Forty second Amendment) Act,1976*

⁴ *Part IV-A: Fundamental Duties Inserted by Constitution (Forty second Amendment) Act,1976*

biodiversity. Some other international agreements which have bearing on biodiversity to which India is a Party includes United Nations Framework Convention on Climate Change (UNFCCC)-1992, Convention on Biological Diversity (CBD) 1992, United Nations Convention to Combat Desertification 1994, Stockholm Declaration, 1972, The Rio Declaration on Environment and Development 1992 etc.

There are various statutes and legislations enacted in India for environmental protection. These welfare legislations are responsible for the protection and improvement of the natural environment in India and forms the part of International laws. The Legislature has taken an effective measure for the protection of Environment as it was being subjected to degradation.

On the other hand, the Judiciary, who is the protector and guardian of the Constitution has interpreted these legislations by incorporating various concepts like Sustainable Development, Polluter Pays Principle, Precautionary Principle etc.

INDIAN JUDICIARY AND ENVIRONMENTAL LAWS

Judiciary has played an outstanding role in Environmental governance in India during the past recent years. Even when the legislature has failed in providing effective legislations for the protection of environment and also in the midst of blames regarding overstepping and interference of Judiciary in legislative and executive matters, Judiciary specially the Apex Court of India has never hesitated in using its power of Judicial Activism and has taken a firm stand on environmental issues.

➤ Wider Interpretation of Directive Principles of State Policy and Fundamental Duties of Citizens:

Judiciary has always done its duty of carrying out Constitutional Provisions of protecting the environment by giving broader interpretations to Art. 48A and Art. 51A(g) of the Constitution of India.

In *Shri Sachidanand Pandey v. State of West Bengal*⁵, Supreme Court Clarified that whenever a problem of ecology is brought before the Court, it is bound to keep in mind Art. 48A & 51A(g) and cannot leave the matter entirely to the government. “The least the court may do is to examine whether appropriate considerations are borne in mind and irrelevance excluded. In appropriate cases, the court may go further.”

⁵ AIR 1987 SC 1109

In *M.C. Mehta v. Union of India*⁶, Supreme Court said, “Art. 39(e), Art. 47 and Art. 48(A) by themselves and collectively cast a duty on the state to secure the health of the people, improve public health and protect and improve the environment”.

These instances by way of decided cases exhibits that Indian Judiciary has always taken affirmative actions to protect the environment by widening the scope of DPSP.

In **Ganga Water Pollution case: *M C Mehta v. Union of India***⁷, Court said that “Having regard to the grave consequences of the pollution of water and air and the need for protecting and improving the natural environment which is considered to be one of the fundamental duties under the Constitution [Art. 51A(g)], we are of the view that it is the duty of the Central Government to direct all the educational institutions throughout India to teach at least for one hour in a week lessons relating to the protection and the improvement of the natural environment including forests, lakes, rivers and wild life in the first ten classes. The Central Government shall get text books written for the said purpose and distribute them to the educational institutions free of cost. Clean surroundings lead to healthy body and healthy mind. This should be done throughout India.”

Although, DPSP cannot be enforced in a Court of Law, but these are positive obligations which state has to abide by. Art. 48A and 51A(g) and SC has every now and then enlarged its scope and importance so as to maintain ecological balance, improve public health and enhance the bio-diversity.

➤ ***Giving due consideration to the International concept of Sustainable Development***

The **United Nations Conference on Environment and Development (UNCED)** or the **Rio de Janeiro Earth Summit** was UN conference held in Rio de Janeiro June 1992 in which India also participated along with other 191 Countries. Explaining the inter-dependence of conservation and sustainable development. The Brundtland Report⁸ (1997) said:

“Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. Sustainable development requires meeting the basic needs of all and extending to all opportunity to satisfy their aspirations for a better life.”

⁶ JT 2002 (3) SC 527

⁷ AIR 1988 SC 1037

⁸ World Commission on Environment and Development: *Our Common Future*

The concept of Sustainable Development also includes *Precautionary Principle, Polluter Pays Principle and Doctrine of Public trust* which Indian Judiciary has time and again incorporated with the Indian Situations whenever there was a threat to the ecology.

In *Vellore Citizen Welfare Forum v. Union of India*, the dispute arose over some tanneries in the State of Tamil Nadu. These tanneries were discharging effluents in the river Palar, which was the main source of drinking water in the State. The Supreme Court held that “We have no hesitation in holding that the precautionary principle and polluter pays principle are part of the environmental law of India.”

This concept of Sustainable Development has been implemented by Courts in plethora of cases in its true sense. Most of the environmental cases have come before the courts through PILs either under Art. 32 or under 226 of the Constitution.

In *Vellore Citizen's Welfare Forum v. Union of India & ors.*⁹, Apex court held that “Remediation of the damaged environment is part of the process of 'Sustainable Development' and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.”

But before *Vellore Citizen's case*, the Supreme Court has in many cases tried to keep the balance between ecology and development. In *Rural Litigation and Entitlement Kendra Dehradun v. State of Uttar Pradesh*¹⁰, dispute arose over mining in the hilly areas. The Supreme Court after much investigation, ordered the stopping of mining work and held that—“This would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affection of air, water and environment.”

But In the case of *M.C. Mehta v. Union of India*¹¹, Apex Court gave a number of directions to 292 industries located nearby Taj Mahal. The Court observed that the old concept that development and ecology cannot go together is no longer acceptable. *Sustainable development is the answer*. The development of industry is essential for the economy of the country, but at the same time the environment and ecosystem have to be protected. The pollution created as a consequence of environment must be commensurate with the carrying capacity of our ecosystem. In any case, in view of the precautionary principle, the

⁹ (1996) 5 SCC 647

¹⁰ AIR 1989 SCC 594

¹¹(1997) 2 SCC 353

environmental measures must anticipate, prevent and attack the causes of environmental degradation.

In *A.P. Pollution Control Board v. M.V. Nayudu*¹², the Apex Court observed that where the State Government makes an attempt to balance the need of the environment and need of the economic development, it would not be proper to prohibit it from doing so. In such a case, it would be safer to apply the 'protective principle' and the 'principle of polluter pays', keeping in mind the principle of *sustainable development* and the '*principle of inter-generational equity*'.

➤ **Precautionary Principle and Polluter Pays Principle:**

Precautionary Principle was laid down in The Rio Declaration (Agenda 21 of 1992).

The *Precautionary Principle*¹³ is defined as follows: When human activities may lead to morally unacceptable harm that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that harm.

Polluter Pays Principle (PPP) is provided under Rio Declaration was laid down as Principle 16 of the UN Declaration on Environment and Development. Under OECD, Paris, 1992, PPP says that a polluter has to bear all the costs of preventing and controlling any pollution that he originates. Aside from exceptions listed by OECD, a polluter should not receive assistance of any kind to control pollution.

Supreme Court has exclusively enhanced the ambit and scope of these two Principles to implement Environmental Laws in India and has played a crucial role in preserving both these principles and laid down its importance in number of landmark cases.

In *M.C. Mehta v. Union of India*¹⁴, Court observed that "**Precautionary Principle**" has been accepted as a part of law of land. Articles 21, 47, 48A and 51A(g) of the Constitution gives a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the Country. It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The "Precautionary Principle" makes it mandatory for the State Government to anticipate, prevent and attack the causes of environmental degradation. Their lordships have no hesitation in holding that in order to protect two lakes from

¹² (1999) 2 SCC 718; AIR 1999 SC 825

¹³ UNESCO COMEST Report

¹⁴ (1997) 3 SCC 715

environmental degradation, it is necessary to limit the construction activity in the close vicinity of the lakes.

The main essential of Precautionary Principle is that Onus of Proof is on the industrialist that the development is environmentally favourable.

PPP has been held to be a sound principle by Apex Court in *Indian Council for Environmental Action vs. Union of India*¹⁵. The Court ruled that "Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on."

Consequently, the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". The "**Polluter Pays**" principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environment.

In *M.C. Mehta v. Kamal Nath*¹⁶, it was held that three principles viz. precautionary principle, polluter pays and the doctrine of public trust, have been developed by the SC in the past. It has been repeatedly held that natural resources including forest, water bodies, rivers, seashores etc. are held by the state as a trustee on behalf of the people and specially the future generations.

➤ Public Trust Doctrine

The Stockholm Declaration of United Nations on Human Environment also emphasises the Public Trust Doctrine. It primarily rests on the principle that certain resources like air, sea, waters, and the forests have such a great importance to the people as a whole that would be wholly unjustified to make them a subject of private ownership.

In *State of West Bengal v. Kesoram Industries Ltd*¹⁷.- This Doctrine was followed wherein it was observed that deep underground water belongs to the State in the sense that the Doctrine of Public Trust extends thereto. Ground water is considered as a part of national wealth and it

¹⁵ (1996) 3 SCC 212

¹⁶ (1997) 1 SCC 388

¹⁷ (2004) 10 SCC 201

belongs to the entire society. Water is a nectar sustaining life on earth and thus the State has a duty to protect ground water against excessive exploitation.

In *Intellectual Forum v State of A.P.*¹⁸, the Court held that natural resources which include lakes are held by the State as a trustee of the public, and can be disposed of only in a manner that is consistent with the nature of such a trust.

Therefore, Supreme Court has emphasised upon all the essentials of the concept of Sustainable Development that is Precautionary Principle, Public Trust Doctrine and Polluter pays Principle in number of cases, sometimes even making State responsible for not taking effective measures to protect the environment.

➤ Ecology over Development

It cannot be denied that Industrial development is necessary for the nation's economic growth as it develops new science & technology and creates novel products. But if these economic progresses hinder in the way of prevention of ecological imbalance, such developments should not be given preference over ecology.

If there has to be economic development, it should not be at the cost of deteriorating environment and environmental exploitation. Supreme Court, in various cases has upheld that both these concepts, that is, economic growth and environmental protection should not prevail over one another.

In *T.N. Godavarman Thirumulpad v. Union of India & Ors*¹⁹, Supreme Court said that "Time has come for us to apply the constitutional "doctrine of proportionality" to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilization of natural resources have to be tested on the anvil of the well-recognized principles of judicial review."

It further held that "moreover, Industrial requirements have to be subordinated to the maintenance of environment and ecology as well as *bona fide* local needs.

The importance and awareness of environment is so important and invigorating that it cannot be ignored while giving a favour to development. This view of giving preference to ecology over development has been held in various judgments of Indian Courts because development

¹⁸ (2006) 3 SCC 549

¹⁹ (2011) 7 SC 338

is not possible without respecting the nature and its constituents as it will then have an adverse impact over environment and public health.

In *Karnataka Industrial Areas Development Board v. Sri. C. Kenchappa & Ors.*²⁰, Court observed that Experience of the recent past has brought to us the realization of the deadly effects of development on ecosystem. The entire world is facing a serious problem of environmental degradation due to indiscriminate development. Industrialization, burning of fossil fuels and massive deforestation are leading to degradation of environment.

The dumping of hazardous and toxic wastes, both solid and liquid, released by the industrial plants is also the result of environment degradation in our country. **The Court directed** that “in future, before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment.”

In another case, *Indian Council for Enviro-Legal Action v. Union of India*²¹, the court observed that "While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand.”

➤ *Giving wider scope to Article 21 of Indian Constitution*

Art. 21 of Indian Constitution provides that “*No person shall be deprived of his life or personal liberty except according to a procedure established by law.*” Indian Judiciary has widened its scope to right to healthy environment. It is the most significant contribution of Judiciary towards protection of environment and ecological balance. This expansive construction of Art. 21 has led to the dawning of Environment Jurisprudence in India which is considered to be a vital role played by Judiciary to prevent environmental degradation.

In *Research Foundation for Science Technology National Resource Policy v. Union of India*²², Supreme Court emphasised upon the fact that “right to healthy environment is internationally recognised essential. For example, the Basel Convention effectuates the Fundamental Rights guaranteed under Article 21, the Right to Information and community participation for protection of environment and human health.”

²⁰ (2006) 6 SCC 371

²¹ (1996) 5 SCC 281

²² (2005) 10 SCC 510

In *State of M.P. v. Kedia Leather and Liquor Ltd.*²³, Supreme Court held that Hygienic environment is an integral facet of healthy life. Right to live with human dignity becomes illusory in the absence of humane and healthy environment.

In another case of *A.P. Pollution Control Board v. M.V. Nayadu*²⁴, Court has linked healthy environment with human rights and has taken a view that “Environmental concerns arising in this Court under Art. 32 or 136 and under Art. 226 in High Courts are, in our view, of equal importance as Human Rights concerns. In fact, both are to be traced to Article 21 which deals with Fundamental Right to life and liberty. While environmental aspects concern ‘life’, human rights aspects concern ‘liberty’. “To protect the rapidly deteriorating quality of air so as to protect the health of the people in Delhi, which is a facet of Art. 21 of the Constitution, SC has directed that the entire fleet of public transport buses be run on CNG and not on diesel” in *M.C. Mehta v. Union of India*²⁵.

Accordingly, Indian Judiciary has enlarged the scope of Art. 21 and has consequently, protected the right to healthy environment enshrined under Art. 21 of Indian Constitution.

CONCLUSION

In recent years, there has been a large amount of environmental degradation in India due to Industrial growth, afforestation, exploitation of flora & fauna and so on. No one can overlook the harm caused to the environment and growing ecological imbalance. It was a mind set in the recent past that if at all, there has to be a development, environment ought to be exploited. But, Indian Judiciary has taken out a midway between ecology and development and has taken a view to balance the both.

Judiciary has not only exclusively interpreted Indian legislations regarding Environmental Protection and also Constitutional provisions like Articles 21, 47, 48A, and 51A(g), but has also incorporated various International principles related to protection of environment. It has played a vital role in developing Environmental Jurisprudence in India and also coping up with the situation of large scale threat to the environment.

The Supreme Court has recognised that conservation and regeneration requires a policy and huge funds would be required to implement such policies. Such funds generated to protect

²³ AIR 2003 SC 727

²⁴ (1999) 2 SCC 718; AIR 1999 SC 825

²⁵ AIR 1999 SC 2583

ecology and provide for regeneration could not in the constitutional scheme be considered as a fund relatable to any specific provision of the Constitution.²⁶

JURR

²⁶ *T.N. Godavarman thirumulpad v. Union of India* (2008) 7 SCC 126; (2008) 7 JT 210

BIBLIOGRAPHY

➤ **Books Referred**

- *Indian Constitutional Law- By M.P. Jain (6th Edition)*
- *Introduction to Constitutional Law- By Durga Das Basu (4th Edition)*
- *Lal's Commentaries on Environmental Law (4th Edition Volume I)*
- *Environmental Law- By Dr. H.N. Tiwari (3rd Edition)*
- *Environmental law Case Book- By P. Leelakrishnan*

➤ **Websites Referred**

- www.moef.nic.in
- www.enfor.nic.in
- www.sconline.com
- www.legalserviceindia.com
- www.supremecourtfindia.nic.in