

JUDICIAL APPROACH ON ENVIRONMENTAL PROTECTION

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ABSTRACT

In recent years, there has been a sustained focus on the role played by the higher judiciary in devising and monitoring the implementation of measures for pollution control, conservation of forests and wildlife protection. Many of these judicial interventions have been triggered 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 tackle environmental problems, and this approach has its supporters as well as critics. The main objective behind this study made by the author is to identify the present scenario and analyse the nature and extent of developments till date in various environmental statuses through statutes, law, conventions and various other issues regarding the court decisions and judicial processes.

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.

It has been recognized to be inseparable part of Right to Life under Article 21 and well established if we take into account some other provisions of the constitutions.

Judicial remedies for environment pollution

The remedies available in India for environmental protection comprise of tortuous as well as statutory law remedies. The tortuous remedies available are trespass, nuisance, strict liability and negligence. The statutory remedies incorporates: Citizen's suit, e.g.

- an activity brought under Section 19 of the Environmental (Protection) Act, 1986,
- an activity under Section 133, Criminal Procedure Code, 1973, and
- and activity brought under the Section 268 for open irritation, under Indian Penal Code, 1860.

Apart from this, a writ petition can be filed under Article 32 in the Supreme Court of India or under Article 226 in the High Court. Further, the PILs got constitutional sanction in the 42nd Constitution Amendment Act 1974, which introduced Article 39-A in the Indian Constitution to provide equal justice and free legal aid.

Provisions of Indian Constitution relevant to Environment:

Article 47- “Duty of the State to raise the level of nutrition and the standard of living and to improve public health”:

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Article 48 A- “Protection and improvement of environment and safeguarding of forests and wild life”:

The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Article 51A (g)- To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

Article 253 “Legislation for giving effect to international agreements”:

Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

Article 246 “Subject matter of laws made by Parliament and by the Legislatures of States”:(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List)

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List).

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the “State List”).

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List.

Article 32- “Remedies for enforcement of rights conferred by this Part”:

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Article 226 “Power of High Courts to issue certain writs”:

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo-warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

Important Interpretation of Constitution vis-à-vis Health & Environment by Judiciary:

- I-** The Supreme Court of India recognized **Water and air is inalienable part of “life”** under Article 21 of the Constitution in the case of Subhash Kumar Vs State of Bihar¹. This was almost first step in the direction of constitutional interpretation for the protection of healthy environment for life.
- II-** Supreme Court of India in case of Rural Litigation and Entitlement Kendra, Dehradun Vs State of UP² that **protection and safeguarding the rights of the people to live in healthy environment has to be done even it has some economical cost.**
- III-** While explaining the importance of environment and health aspect of life in case of Vellore Citizens’ case³, Judges have formulated the concept of **Sustainable Development for the first time in Environmental Jurisprudence in India.**
- IV-** The Supreme Court of India, while incorporating certain features into fundamental right of Right to life and Liberty through wide interpretation, had developed some important principles, which were necessary to ensure atmosphere for Right to live in healthy environment.

1 1991 AIR 420

2 AIR 1987 SC 1037

3 AIR 1996 5 SCC 647

- V- Polluter Pays Principal**– it supports a remedial methodology which is concerned with repairing natural harm. It's a rule in international environmental law where the polluting party pays for the harm or damage done to the natural environment. It was made part of constitutional ruling in case of Vellore Citizen's Welfare Forum v. Union of India⁴.
- VI- Precautionary Principle**-Environmental measures must anticipate, prevent and attack the causes of environmental degradation Lack of scientific certainty should not be used as a reason for postponing measures.
- VII- 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. It was established in case of M.C. Mehta Vs Kamalnath & Others⁵.
- VIII- Doctrine of Sustainable Development**– Supreme Court observed that sustainable development has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco- system in Vellore Citizens' case⁶ and RLEK, Dehradun case⁷.
- IX- Fundamental right of Water**– In Narmada Bachao Andolan v. Union of India and Ors.⁸ the Supreme Court of India upheld that **“Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India.**
- X- Compensation to Victim of Environmental degradation**- The power of the Supreme Court to grant remedial relief for a proved infringement of a fundamental right (in case if Article 21) includes the power to award compensation. In Delhi gas Leak case⁹ “no fault” liability standard (absolute liability) was introduced for industries engaged in hazardous activities which have brought about radical changes in the liability and compensation laws in India.
- XI- In Charan Lal Sahu case**¹⁰, Supreme Court had said that the **right to life guaranteed by Article 21 of the Constitution includes the right to a wholesome environment.** The Court resorted to the Constitutional mandates under Articles 48A and 51A(g) to support this reasoning and went to the extent of stating that environmental pollution would be a violation of the fundamental right to life and personal liberty as enshrined in Article 21 of the Constitution.

4 ibid

5 (1997) 1 SCC 388

6 ibid

7 1985 SCR (3) 169

8 Vrinda Narain, WATER AS A FUNDAMENTAL RIGHT: A PERSPECTIVE FROM INDIA Vol. 34 available at www.vjel.org/docs/Narain_Water_Draft.pdf

9 AIR 1987 965

10 1988 SCR (1) 441

- XII- Environmental damage will be considered as Public Nuisance and duty is cast upon public authorities to help mitigate the effect of nuisance through Public Interest Litigation as strong medium. (Ratlam Municipal Council v. Vardhichand¹¹).**
- XIII-** As a part of Environment education, Supreme Court in **M.C. Mehta case**¹² directed the Union Government was obliged to issue directions to all the State governments and the union territories to enforce through authorities as a condition for license on all cinema halls, to obligatory display free of expense no less than two slides/messages on environment amid each show.

Indian Judiciary's role in development of Environmental Jurisprudence –

Many observers of the Indian Supreme Court have rightly opined that the Indian Supreme Court is one of the strongest courts of the world. Power and judicial activism of the Indian Courts have resulted into a strong and ever expanding regime of fundamental rights. Stockholm Conference on Human Environment, 1972, has generated a strong global international awareness and in India it facilitated the enactment of the 42nd Constitutional Amendment, 1976. This amendment has introduced certain environmental duties both on the part of the citizens [Article 51A (g)] and on the state (Article 48-A).

Under the constitutional scheme the legal status of Article 51(A)-(g) and 48-A is enabling in nature and not legally binding per se, however, such provisions have often been interpreted by the Indian courts as legally binding. Moreover, these provisions have been used by the courts to justify and develop a legally binding fundamental right to environment as part of right to life under Article 21. In Asbestos Industries Case¹³, the Supreme Court extensively quoted many international laws namely ILO Asbestos Convention, 1986, Universal Declaration of Human Rights, 1948, and International Convention of Economic, Social and Cultural Rights, 1966. In this case, the court dealt the issues relating to occupational health hazards of the workers working in asbestos industries. The court held that right to the health of such workers is a fundamental right under article 21 and issued detailed directions to the authorities. In Calcutta Wetland Case¹⁴, the Calcutta High Court stated that India being party to the Ramsar Convention on Wetland, 1971, is bound to promote conservation of wetlands.

Important disposal off Environmental cases by Indian Judiciary-

- I- **Sanitation in Ratlam**¹⁵: In a landmark judgment in 1980, the Supreme Court explicitly recognized the impact of a deteriorating urban environment on the poor. It linked basic public health facilities to human rights and compelled the municipality to provide proper sanitation and drainage

11 AIR 1980 SC 1622

12 lawcommissionofindia.nic.in/reports/186th%20report.pdf

13 The Role played by Indian Judiciary in Environment Protection by Supriya Guru

14 Principles of International Environmental Law and Judicial Response in India by Dr.S.K. Gupta

15 AIR 1980 SC 1622

- II- **Doon valley quarrying**¹⁶: In 1987, the Rural Litigation and Entitlement Kendra, on the behalf of residents of the Doon valley, filed a case in the Supreme Court against limestone quarrying. This case was the first requiring the Supreme Court to balance environmental and ecological integrity against industrial demands on forest resources. The courts directed the authorities to stop quarrying in the Mussoorie hills.
- III- **Gas leak in Shriram factory**¹⁷: In the historic case of the oleum gas leak from the Shriram Food and Fertilizer factory in Delhi, in 1986, the Supreme Court ordered the management to pay compensation to the victims of the gas leak. The “absolute liability” of a hazardous chemical manufacturer to give compensation to all those affected by an accident was introduced in this case and it was the first time compensation was paid to victims.
- IV- **Construction in Silent Valley**: In 1980, the Kerala High Court threw out a writ filed by the Society for the Protection of the Silent Valley seeking a ban on construction of a hydro-electric project in the valley. However, despite an unfavourable judgment, active lobbying and grassroots action by environmentalists stopped the project.
- V- In 1985, activist-advocate M C Mehta filed a writ petition in the Supreme Court to highlight the pollution of the Ganga by industries and municipalities located on its banks. In a historic judgment in 1987, the court ordered the closure of a number of polluting tanneries near Kanpur. Justice E S Venkataramiah, in his judgment, observed: “Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence.”
- VI- **Mining in Sariska**: A writ petition was filed in the Supreme Court in 1991 by the Tarun Bharat Sangh to stop mining in the Sariska wildlife sanctuary. The court banned mining in the sanctuary.
- VII- In the State of Himachal Pradesh, Span motel¹⁸, owned by the family members of Shri Kamal Nath, Minister for Environment and Forests, Govt. of India diverted the Course of river Beas to beautify the motel and also encroached upon some forest land. The apex court ordered the management of the Span motel to hand over forest land to the Govt. of Himachal Pradesh and remove all sorts of encroachments. The Court delivered a landmark judgment and established principle of exemplary damages for the first time in India. The Court said that polluter must pay to reverse the damage caused by his act and imposed a fine of Rs Ten Lakhs (Rs 10,00,000) on the Span motel as exemplary damages. The Supreme Court of India recognized Polluter Pays Principle and Public Trust Doctrine.
- VIII- A writ petition was filed on behalf of Indian Council for Enviro-Legal Action (ICELA)¹⁹ and the Supreme Court delivered a landmark Judgement banning industrial/ construction

16 1989 SCC Supl. (1) 537

17 1987 SC 1086

18 (1997) 1 SCC 388

19 1996 AIR 1446

activity within 500 mtrs of the High Tide Line and set a time limit for the coastal states to formulate coastal management plans.

Many more such cases could be added from the history of Indian Judiciary who is most vocal in support of Environment and healthy life than other pillars of Indian Democracy. They have capitalized the provisions mentioned in the constitution itself while taking advantage of cardinal principles of International treaties and conventions.

Conclusion:

Government of India as well as State Government have now started to chart out the plans sector wise, lay out was drafted, guidelines being issued, compliance report is being submitted to Higher courts regarding steps taken by them to ensure the standard of environment protection. After Independence, if anything that was single handedly covered and regulated by Judiciary is, Environment protection. Judges have taken it very seriously and observations were not made but compliance was closely watched till it is done in letter and spirit.

Environmental law has seen considerable development in the last two decades in India. 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 states. PIL has proved to be an effective tool in the area of environmental protection. The Indian judiciary adopted the technique of public interest litigation for the cause of environmental protection in many cases. In PIL, a public spirited individual or an organization can maintain petition on behalf of poor and ignorant individuals. Due to PIL, the court indicated contractors of indiscriminate mining operations which had disturbed and destroyed ecological balance and ordered for their closure in the interest of protection of natural environment and conservation of natural resources for public health. The Supreme Court recognized several unarticulated liberties which were implied in Article 21 of the constitution like the right to free legal assistance and the prisoners to be treated with dignity were recognized as part of fundamental right. Supreme Court also interpreted the right and personal liberty to include the right to wholesome environment. The most important achievement of the Indian constitution is the constitutionalism of the environmental problems by the apex court.