

# Indian Judiciary and Environmental Protection

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## ABSTRACT

Since more than two decades, higher judiciary in India has done remarkable job in area of environment protection. The judiciary, in particular, the Apex Court, did not shirk its Constitutional responsibilities to protect the environmental issues. The Judiciary did not hesitate to assume upon itself administrative functions and in series of cases constituted committees of experts to suggest measures how environmental pollutants discharged from industries and tanneries in the country can be arrested. However, the approach of Indian judiciary towards undertaking of large developmental projects has not been totally pessimistic, rather, the Courts evolved several principles of sustainable development to make balance between the right to environment and the right to development. Therefore, the objective of the present paper is to examine the pro-environmental approach of Indian judiciary as exhibited by it especially in era of liberalisation, privatisation and globalisation.

**Key Words:** Environment, Judiciary, Constitution, Environmental Jurisprudence

## INTRODUCTION:

The protection of environment was not important in post-independence era of India because of need of industrial development and political disturbances. Post-independence, the main concern was to setup markets, industries, to make new jobs for the citizens. However, after the Bhopal Gas tragedy, Environment protection became priority. After this incident, the area of Environmental law widens in the country and judicial activity also increases. After 1986, when first act related to the environmental protection was passed, people showed some concern about it. The main purpose of the act was to implement the decisions of the United Nations Conference on the Human Environments. The Act is like a safe guard for the nature from the newly emerged industries and the urbanization. Before this Act of 1986, a major enactment came out just after 2 years after the Stockholm Conference in 1972. The Indian Parliament made important changes in the area of environmental management to implement the resolutions that were taken at the conference. During this time environmental protection was granted a Constitutional status and environment was included in Directive Principles of State Policy by the 42nd Constitution Amendment. The constitution also provides obligations under Article 48 A and Article 51 A (g) to both the State and citizen to preserve and protect the environment. These provisions have been extensively used by courts to justify and develop a legally binding fundamental right to the environment as a part of Right to life and personal liberty under Article 21. Parliament enacted comprehensive laws; like The Wildlife Protection Act, 1972 and Water (Prevention and Control of pollution) Act, 1974.

The judicial pronouncements reiterated the position by holding that the Right to Sweet Water and the Right to Free Air are attributes of the Right to Life, for; these are the basic elements which sustain life itself. Following these pronouncements, the Supreme Court also recognized and asserted the Fundamental Right to Clean Environment under Art.21 of the Constitution in very categorical terms. At the same time the judiciary in India has played a significant role in interpreting the laws in such a manner which not only helps in protecting

environment but also in promoting sustainable development<sup>1</sup>. In fact, the judiciary in India has created a new “environmental jurisprudence.”<sup>2</sup>

## Indian Constitution and Environment

The constitution of India is not an inert but a living document which evolves and grows with time. The specific provisions on environment protection in the constitution are also result of this evolving nature and growth potential of the fundamental law of the land. The preamble to our constitution ensures socialist pattern of the society and dignity of the individual.

The Constitution of India under part III guarantees fundamental rights which are essential for the development of every individual and to which a person is inherently entitled by virtue of being human alone. Right to environment is also a right without which development of individual and realisation of his or her full potential shall not be possible. Articles 21, 14 and 19 of this part have been used for environmental protection.

According to Article 21 of the constitution, “no person shall be deprived of his life or personal liberty except according to procedure established by law”. Article 21 has received liberal interpretation from time to time after the decision of the Supreme Court in *Maneka Gandhi v. Union of India*,<sup>3</sup> Article 21 guarantees fundamental right to life. Right to environment, free of danger of disease and infection is inherent in it. Right to healthy environment is important attribute of right to live with human dignity. The right to live in a healthy environment as part of Article 21 of the Constitution was first recognized in the case of *Rural Litigation and Entitlement Kendra v. State of UP*.<sup>4</sup> It is the first case of this kind in India, involving issues relating to environment and ecological balance in which Supreme Court directed to stop the illegal mining under the Environment (Protection) Act, 1986. In *M.C. Mehta v. Union of India*,<sup>5</sup> the Supreme Court treated the right to live in pollution free environment as a part of fundamental right to life under Article 21 of the Constitution.<sup>6</sup>

Article 14 of the Constitution guarantees equality before the law and equal protection under the law. It cannot be infringed by the state since this fundamental right implies that the state must be fair when taking decisions relating to environmental protection. In cases when state authorities have exercised arbitrary powers, the courts have been severe in preventing the arbitrary sanction. The use of discretionary powers without regard for the public interest is a violation of the people’s fundamental right to equality.

In *Bangalore Medical Trust v. B.S Muddappa*<sup>7</sup> the city improvement board of Bangalore created an improvement scheme for the objective of enlarging the city. A low-level park was to be built, and a portion of the land was set aside for it as part of this plan. However, the space set aside for the low-level park was to be transformed into a municipal amenity site, where the hospital would be built, on the orders of the chief minister. The Supreme Court dismissed the appeal by highlighting the significance of open spaces and parks in the establishment of metropolitan areas. The Hon’ble observed that open spaces, recreation, playing fields, and environmental protection are all important in the public interest and necessary for development. Maintaining open spaces for the public good is justifiable, and they cannot be sold or leased to any private entity purely for financial gain.

<sup>1</sup> Paramjit S. Jaswal, *Directive Principles Jurisprudence And Socio-Economic Justice in India*, 543(1996). See also, Paramjit S. Jaswal and Nishtha Jaswal, *Human Rights and The Law*, 172-180 (1996)

<sup>2</sup> *People United for Better Living in Calcutta v. State of W.B.*, AIR 1993 Cal.215 at 228

<sup>3</sup> AIR 1978 SC 597

<sup>4</sup> AIR 1988 SC 2187(Popularly known as Dehradun Quarrying Case).

<sup>5</sup> AIR 1987 SC 1086

<sup>6</sup> *Environment Protection under Constitutional Framework of India*, <http://employmentnews.gov.in/Environment-Protection.pdf>

<sup>7</sup> 1991 SCC (4) 54

Excessive noise creates pollution in the society. The constitution of India under Article 19 (1) (a) read with Article 21 of the constitution guarantees right to decent environment and right to live peacefully. In *P.A Jacob v. The Superintendent of Police Kottayam*,<sup>8</sup> the Kerala High Court held that freedom of speech under article 19 (1)(a) does not include freedom to use loud speakers or sound amplifiers. Thus, noise pollution caused by the loud speakers<sup>9</sup> can be controlled under article 19 (1) (a) of the constitution.

Article 19 (1) (g) of the Indian constitution confers fundamental right on every citizen to practice any profession or to carry on any occupation, trade or business. This is subject to reasonable restrictions.

A citizen cannot carry on business activity, if it is health hazards to the society or general public. Thus safeguards for environment protection are inherent in this. The Supreme Court, while deciding the matter relating to carrying on trade of liquor in *Cooverjee B. Bharucha v. Excise commissioner, Ajmer*<sup>10</sup> observed that, if there is clash between environmental protection and right to freedom of trade and occupation, the courts have to balance environmental interests with the fundamental rights to carry on any occupations.

The Directive principles under the Indian constitution directed towards ideals of building welfare state. Healthy environment is also one of the elements of welfare state. Article 47 provides that 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. The improvement of public health also includes the protection and improvement of environment without which public health cannot be assured. Article 48 deals with organization of agriculture and animal husbandry. It directs the State to take steps to organize agriculture and animal husbandry on modern and scientific lines. In particular, it should take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle. Article 48 -A of the constitution says that “the state shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country”.

The chapter on fundamental duties of the Indian Constitution clearly imposes duty on every citizen to protect environment. Article 51-A (g), says that “It shall be 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.”

## Judicial Activism and Environmental Protection

Judicial activism in the field of environmental protection has been applauded by many people.<sup>11</sup> However, it is important to note that judicial activism has serious limitations, and executive laxity and unconcern towards environment cannot be made good just by judicial activism. Judicial activism cannot make good laxity in the enforcement of environmental laws. There can be no substitute for a check on the executive by a vigilant public and a people’s movement to save the environment.

By the powers vested in the Judiciary, and through its activism, it has actively contributed in the strengthening the fundamental rights granted by the Constitution.

<sup>8</sup> AIR 1993 Ker 1

<sup>9</sup> In *Rajni Kant v State*, the petitioner, the leader of a political party was not allowed to use loudspeakers in the public meeting he wanted to organise. The petitioner, in this case, contended that such restriction is violative of his right to freedom of speech under Art 19(1) (a) of the Constitution. The court held that the impugned bylaws do not infringe Art 19(1) (a) of the Constitution.

<sup>10</sup> 1954 SC 220

<sup>11</sup> like *M.C. Mehta, Satyaranjan Sathe, Justice Kuldeep Singh and Justice Ashok Desai*.

Sanitation in Ratlam<sup>12</sup>: 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.

Doon valley Case<sup>13</sup>: 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.

Gas leak in Shriram factory<sup>14</sup>: 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.

Construction in Silent Valley<sup>15</sup>: In 1980, the Kerala High Court rejected 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 a unfavourable judgment, active lobbying and grassroots action by environmentalists stopped the project.

In 1985, activist-advocate M C Mehta filed a writ petition in the Supreme Court to highlight the pollution of the Ganga<sup>16</sup> 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.”

Mining in Sariska<sup>17</sup>: 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.

Against vehicular pollution in India the Supreme Court delivered a landmark judgment in 1991.<sup>18</sup> A retired Judge of the Supreme Court was appointed along with three members to recommend measures for the nationwide control of vehicular pollution. Orders for providing Lead free petrol in the country and for the use of natural gas and other mode of fuels for use in the vehicles in India have been passed and carried out. Lead-free petrol had been introduced in the four metropolitan cities from April 1995. All new cars registered from April 1995 onwards have been fitted with catalytic convertors. Compressed Natural Gas - CNG outlets have been set up to provide CNG as a clean fuel in Delhi and other cities in India apart from Euro 2 norms. As a result of this case, Delhi has become the first city in the world to have complete public transportation running on CNG.

In the State of Himachal Pradesh, Span motel, owned by the family members of Shri Kamal Nath,<sup>19</sup> 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 land mark judgment and established principle of exemplary damages for the first time in India. The Court said

<sup>12</sup> Ratlam Municipality v. Vardichand AIR 1980 SC 1622

<sup>13</sup> Rural Litigation and Entitlement Kendra v. State of UP, AIR 1985 SC 652

<sup>14</sup> M C Mehta v. Union of India, AIR 1987 SC 965

<sup>15</sup> Society for Protection of Silent Valley v. Union of India and other AIR 1980 Ker 24

<sup>16</sup> M.C Mehta v. Union of Union of India, AIR 1987 SC 985

<sup>17</sup> Tarun Bharat Sangh, Alwar v. Union of India, AIR 1992 SC 514

<sup>18</sup> M. C Mehta v. Union of India, 1991 SCC (2) 353

<sup>19</sup> M. C Mehta v. Kamalnath ,Span Motel Case,(1997) 1 SCC 388

that polluter must pay to reverse the damage caused by his act on the Span motel an exemplary damages. The Supreme Court of India recognized Polluter Pays Principle and Public Trust Doctrine.

Despite Coastal Zone Regulation Notification of February 1991, none of the coastal states had formulated coastal zone management plan, with the result haphazard construction and industrial activity was being permitted anywhere in the coast leading to large scale damage to coastal ecology and loss of livelihood to lakhs of fishermen and other indigenous communities dependent on marine resources. A writ petition was filed on behalf of Indian Council for Enviro- Legal Action<sup>20</sup> (ICELA) and the Supreme Court delivered a landmark Judgement banning industrial/ construction activity within 500 metres 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.

In Asbestos Industries Case<sup>21</sup> 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 Case<sup>22</sup> the Calcutta High Court stated that India being party to the Ramsar Convention on Wetland, 1971, is bound to promote conservation of wetlands.

## Environmental jurisprudence

Environmental ethics had always been an inherent part of Indian philosophy. Gandhian philosophy emphasises that “Nature has provided everything for our need but not for our greed” and the dharma of each individual in society is to protect Nature, and people worship the objects of Nature.

The doctrines evolved by courts are a significant contribution to the environmental jurisprudence in India. The Supreme Court has contributed to the environmental jurisprudence in India through a two pronged approach of interpreting the Constitution and laying down dicta to protect the environment and also through innovating in the processes of enforcing these protections such that they do not remain empty promises. The formulation and application of the doctrines in the judicial process for environmental protection are remarkable milestones in the path of environmental law in India. Indian Judiciary, especially, Supreme Court of India had consolidated the environmental Jurisprudence on case to case basis and developed some outstanding principles to be followed by lower courts while dealing environment cases. They have tried to fill the vacuum created by legislature and paralyzed by administrative machinery. Indian Judiciary has got the necessary impetus from Civil Society’s activism in environment protection.

<sup>20</sup> Indian Council for Enviro-Legal Action v. Union of India, Popularly known as ‘Sludges Case’, AIR 1996 SC 1466

<sup>21</sup> Consumer Research and Education Centre v. Union of India, (1995) 3 SCC 42

<sup>22</sup> People United for Better Living (PUBLIC) in Calcutta v. State of West Bengal, AIR WB 134.

## Public Trust Doctrine

Indian legal system is essentially based on common law, and includes the public trust doctrine as part of its jurisprudence. The state is a guardian of natural resources, and natural resources are available for public for their enjoyment by nature and it cannot be changed into private property. The state is under a legal duty to protect the natural resources. In *M.C. Mehta v. Kamalnath*<sup>23</sup>, the Supreme Court applied this doctrine for the first time in India to an environmental problem. According to the Supreme Court, the public trust doctrine primarily rests on the principle that certain resources like air, sea waters and forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership.

## Doctrine of Sustainable Development

Environmental pollution and degradation is a serious problem nowadays. Judiciary to being a social institution has a significant role to play in the redressal of this problem. The progress of a society lies in industrialization and financial stability. But, industrialization is contrary to the concept of preservation of environment. These are two conflicting interests and their harmonization is a major challenge before the judicial system of a country. The judiciary, in different pronouncements<sup>24</sup>, has pointed out that there will be adverse effects on the country's economic and social condition, if industries are ordered to stop production. Unemployment and poverty may sweep the country and lead it towards degeneration and destruction. At the same time, polluting industries affect the stability of the environment.

The judiciary was, therefore, of the opinion that the pollution limit should be within the sustainable capacity of the environment. In *Vellore Citizens Welfare Forum v. Union of India*<sup>25</sup>, the Supreme Court opined, the traditional concept that development and ecology are opposed to each other, is no longer acceptable, sustainable development is the answer. Sustainable Development means to fulfil the need of present generation without compromising the needs of future generation. Sustainable development is a balancing concept between ecology and development.

## Polluter Pays Principle

The countries moving towards the industrial development had to face the serious problems of giving adequate compensation to the victims of pollution and environmental hazards. That the polluter must pay for the damage caused by him is a salutary principle evolved very early in Europe when that continent was haunted by a new spectre, that of unprecedented pollution. In *M.C. Mehta v. Union of India*<sup>26</sup>, a petition was filed under Article 32 of the Constitution of India, seeking closure of a factory engaged in manufacturing of hazardous products. While the case was pending, oleum gas leaking out from the factory injured several persons. The significance of the case lies in its formulation of the general principle of liability of industries engaged in hazardous and inherently dangerous activity.

## Precautionary Principle

The precautionary principle says that if any action or project has some possible risk which can cause harm to public and environment and the person who is taking that action has knowledge about those risk, that in the absence of scientific measures that action or project is harmful, then the burden of proof lies on those persons who are taking that action that it is not harmful. The Precautionary principle says that there is a social responsibility to protect the public from any kind of harm, in case when scientific investigation point towards a

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<sup>23</sup> (1997) 1 SCC 388

<sup>24</sup> Ayesha Dias, 'Judicial Activism in the Development and Enforcement of Environmental Law: Some Comparative Insights from the Indian Experience', *Journal of Environmental Law*, no 6, (1994).

<sup>25</sup> AIR 1996 SC 2715

<sup>26</sup> 1987 SCR (1) 819

risk. These protections can be relaxed in the case when person taking action can prove with sound evidence that no harm will result.

In *Vijayanagar Education Trust v. Karnataka State Pollution Control Board, Karnataka*<sup>27</sup> the Karnataka High Court accepted that the precautionary doctrine is now part and parcel of the Constitutional mandate for the protection and improvement of the environment. The Court referred to *Nayudu cases*<sup>28</sup> which laid down that the burden to prove the benign nature of the project is on the developer if it is found that there are uncertain and non-negligible risks.

## CONCLUSION

Protection of environment was not the priority of our country. The seriousness towards the environment was witnessed in 1980s. It became stronger with the passage of time. The major reason behind this was the activeness of judiciary. In fact the judiciary was bound to interfere because of the failure of the state agencies to effectively enforce the environmental laws apart from non-compliance with statutory norms by the polluters resulted into further degradation of the environment which has affected the health of the people and forced the environmentalists and the residents of polluted areas as well as the non-governmental organizations to approach the judiciary, particularly the higher judiciary, for the suitable remedies. The judiciary made several attempt to resolve the conflict between the development and environment. This willingness has been often termed as judicial activism. The environmental jurisprudence developed through the instrument of Public Interest Litigation, the judiciary liberalized the concept of locus standi and thereby empowered the people to approach the judiciary when the public interest is harmed by either the action of the state, organization or individual. Unique feature of the Indian environmental jurisprudence is the important role played by the PIL. The activism of the higher judiciary regarding the cases related with violation of environment and human rights has acquired the name of judicial activism. In cases of complex environmental problems the Supreme Court appointed committees of experts and decided the cases accordingly. It is true that the judiciary is playing a great role for the protection of our environment but still a lot is required to protect our environment. It is suggested that each and every citizen shall come forward to protect environment as the charity begins at home. Let us save our environment.

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<sup>27</sup> AIR 2002 Kant 123

<sup>28</sup> *Andhra Pradesh Pollution Control Board v. MV Nayudu*, AIR 1999 SC 812

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