



# ROLE OF JUDICIARY IN INDIA IN PROMOTING THE GOALS OF SUSTAINABLE DEVELOPMENT

**\*DR<sup>1</sup>.C.P.GUPTA**

<sup>1</sup> Dean & Head ,Department of Law, jagannath university,jaipur

## ABSTRACT

In fact the emerging Indian environmental jurisprudence had relied on three interconnected elements. First, it manifests the new Indian Constitutional law rationale which now clearly accords importance to public concerns rather than to protecting private interests. Secondly, it reflects certain aspects of Indian legal culture through implicit and explicit reliance on autochthonous values based on ancient, pre-colonial indigenous notions and concept of law. Thirdly, it bears testimony to the uniquely activist role of the higher Indian Judiciary in promoting this new rationale. These three interconnected elements characterizes role of higher judiciary in the recent development of Indian environmental jurisprudence.

**KEY WORDS:** jurisprudence, fundamental right, **ENVIRONMENT, PROTECTION**

## INTRODUCTION

In developing countries like, India there has been environmental degradation due to over exploitation of resources, depletion of traditional resources, industrialization, urbanization and population explosion. Since man is the creator and moulder of his environment, his conduct can be regulated through his instrument of law. In fact, India has always been in the fore front of taking all possible steps for the protection and improvement of the environment and aiming sustainable development. However, neither the law nor the environment static. The changing pace of the environment is so fast that in order to keep the law on the same wave-length either law have to be amended quite frequently to meet the new challenges.

India has enacted various laws at almost regular interval to deal with the problems of environmental degradation. Apart from the provisions under the water Act and the Air Act, there exist a clear constitutional mandate for the protection of environment including prevention of air and water pollution. By an activist interpretation of these provisions, the High Courts have substantially enriched environmental jurisprudence in India. Extricating itself from the principles of locus standi and using the

instrument of public interest litigation to the maximum effect, the apex court has laid down that sustainable development is a legal obligation of every government.

In the first environment case before the Supreme Court itself, it was held that no municipality could put forth lack of money as a ground for not discharging its primary duty of looking after the health and safety of its residents. The High Court was the first to come up with direct and specific pronouncements on citizens 'Fundamental Right to pollution free Environment. Thus, the Andhra Pradesh High Court ruled in 1987 that nature's gift without which the life cannot be enjoyed. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be regarded as amounting to violation of Art.21 of the Indian Constitution. On the same lines, amounting to violation of Art.21 of the Indian Constitution is one of the recognized human rights' and further held that Right to life inherent in Art.21 of the Constitution does not fall short the requirement of quality of life which is possible only in an environment of quality'

Interpreting the laws in such a manner which not only helped in protecting environment but also in promoting sustainable development. In fact, the judiciary in India has created a new "environmental jurisprudence". The problem of environmental degradation of social problem. It is now well-settled principle of law that socio-economic conditions of the country cannot be ignored by a court of law because the benefit of the society ought to be the prime consideration of law courts. Thus the courts must take cognizance of the environmental problem.

India has not only enacted various specific laws to control the environmental pollution but has also incorporated significant provisions for the protection of the environment in to its constitution. Within the last three decades, the development of environmental jurisprudence in India, following these constitutional law changes, has been remarkable in the sense that it has lead to the virtual creation of a fundamental right to a clean environment in Indian laws. This forma the part of public law regime established by the constitution and appears to be based not only on modern concept of fundamental Human Right but also on indigenous notions of social justice, constituting a unique human rights approach adopted through affirmative action.

## **OBJECT & BACK GROUNG**

The main aim to analyze to focus the distinct nature of the outstanding of Indian judiciary to prevent and protect water from pollution and the control of pollution within a broader constitutional and jurisprudential framework. In fact, the emerging Indian environmental jurisprudence had relied on three interconnected elements. First, it manifests the new Indian Constitutional law rationale which now clearly accords importance to public concerns rather than to protecting private interests. Secondly, it reflects certain aspects of Indian legal culture through implicit and explicit reliance on autochthonous values based on ancient, pre-colonial indigenous notions and concept of law. Thirdly, it bears testimony to the uniquely activist role of the higher Indian Judiciary in promoting this new rationale. These three interconnected elements characterizes role of higher judiciary in the recent development of Indian environmental jurisprudence.

It is paradox that despite the presence of such diverse laws, the pollution rate has crossed the dead line. This is probably because of the reason that the law is complicated and vague that even that expert may know the intricacies of it. The judiciary in India has been taking steps directing state agencies, to strictly adhere to the legislations in protecting the environment and totally arresting the various manmade disasters. The Judiciary has taken such steps especially, because of the various public interest litigations arisen out of manmade disasters such as Bhopal Gas tragedy etc. It was held in MC Mehta v. Union of India and others that one of the principles underlying environmental law is sustainable development. This principle requires development to take place which ecologically sustainable. It was further held that there are two essential features of sustainable development such as precautionary principle and polluter pays principle.

The precautionary principle was elucidated by the Supreme Court in Vellore Citizens Welfare Forum v. Union of India and other state that the state government and its agencies must anticipate, prevent and attack the causes of environmental degradation. State should not take up any activity and measure which is not environmentally benign. It seems that lack of efficient funds allocation to the Ministry of Environment and Forests, lack of sufficient number of qualified and trained staff such as academicians, legal professionals, medical experts and technologists in the Ministry and its subordinate offices all over the country, lack of commitment of the people and awareness about the environment protection and improvement complicated procedures for approvals and authorizations of the Pollution Control Boards, are the main reason for ineffective implementation of environmental laws.

## **ENVIRONMENT PROTECTION AND THE JUDICIARY**

The Right to live in a clean and healthy environment is not a recent invention of the higher judiciary in India. The Right has been recognized by the legal system and the judiciary in particular for over a century. The only difference in the enjoyment of Right to live in a clean and healthy environment today is that it has attained the status of the fundamental right. It was only from the late eighties and thereafter, various High Courts and the Supreme Court of India have designated this right as a fundamental right. Prior to this period, as pointed out earlier, people had enjoyed this right not as a constitutionally guaranteed fundamental right but as a right recognized and enforced by the courts under different laws like Law of Torts, Indian Penal code, Civil Procedure Code, In today's 'emerging jurisprudence, environmental rights which encompass a group of collective rights are described as third generation rights.

## **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 the trustee of all natural resources, which are by nature meant for public use and enjoyment. Public at large is the beneficiary of seashore, running waters, airs, forests, and ecologically fragile lands. The state as trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into 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. There are two conflicting interests and their harmonization is a major challenge before the judicial system of a country. The judiciary in different pronouncements, has pointed out that there will be adverse effects on the country's economic and social conditions, 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 impend 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 fact, Roscoe Pound's concept of social engineering which advocates for the resolution of conflicting interests, whereby there will be maximization of interest with minimum waste is quite appropriate in these cases. The Court further added that there should be balanced approach of the fulfillment of the social needs, through industrialization and preservation of environment, because the polluted environment, because the polluted environment is major cause of health hazards, especially of persons working in the factories or residing in the surrounding areas. It may therefore be asserted that the Judiciary in India found its appropriate answers in the concept of sustainable 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. Polluter must pay the damage caused by him is a salutary principle evolved very early in Europe when that continent was haunted by a new specter, that of unprecedented pollution. In the case Bhopal gas leak this principle was received great attention by it and almost pushed the government and its institutions, including the judiciary.

#### *Rylands v. Fletcher*

The rule in was evolved in the year 1866. It provide that a person who for his own purpose brings on to his land collect and keep there anything likely to do mischief if it escapes, must keep it at his peril, and if he fails to do so, is prima facie liable for the damage which is the natural consequence of its escape. The liability under this rule is strict liability. The Supreme Court was quite sure the exceptions evolved in England to Rylands rule of strict liability in subsequent decisions are not applicable at present rapidly developing country like India. These principles were formulated at a time when developments science and technology had not taken place. Science and technology could not afford any guidance for evolving standards of liability consistent with constitutional norms, and needs of current economy and social structure. Observing that law has to grow in order to keep abreast with the economic developments taking place the country, the Supreme Court emphasized on their responsibilities in the following words

We have to evolve new principle and lay down new norms, which would adequately deal with the new problems which arise, in a highly industrialized economy. We cannot allow our judicial thinking to be constructed by reference to the law as it's prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order.' The Court should think that it is not hold its hand back and it ventured to evolve a new principle of liability known as absolute liability.

### ***Indian council for enviro- legal action v. Union of India***

It was held that central government was is empowered under the Environment Protection Article to take all the measure as it deems necessary or expedient for the purpose of protecting and improving the quality of environment'. In the present case, the said powers will include iving directions for the removal of sludge, for undertaking the remedial measures on the offending industry and to utilize the amount so recovered for carrying out remedial measures.

The Court did say by reiterating the MC Mehta case principle of absolute liability of hazardous and inherently dangerous industry. The Court explained the polluter pays principle" According to which the responsibility for repairing damage is that of the offending industry. In the circumstances, the task of determining the amount required for carry out remedial measures is placed upon the Central Government.

### **PRECAUTIONARY PRINCIPLE**

The precautionary principle or precautionary approach state that if an action has a suspected risk of causing harm to the public or to environment in the absence of scientific consensus that the action or policy is harmful, the burden of proof that it is not harmful falls on those taking the action. This principle allows policy makers to make discretionary decisions in situations where there is the possibility of harm from taking a particular course or making a certain decision when extensive scientific knowledge on the matter is lacking. The principle implies that there is social responsibility to protect the public from exposure to harm, when scientific investigation has found a plausible risk. These protections can be relaxed only if further scientific findings emerge that provide sound evidence that no harm will result.

### **RIO DECLARATION**

States that on order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation. Thus the precautionary principle got international recognition in the Rio conference on Environmental and development in 1992.



In this case discussed above accepted this principle along with the polluter pays principle“ as a part of the legal system. In other two cases i.e

- *Vellore citizen welfare forum v. Union of India*
- *Andhra Pradesh Pollution Control Board v. MV Nayudu*

The Supreme Court applied the precautionary principle directly to the facts of the cases.

In *Vellore citizen welfare* case the Supreme Court was appraised of the pollution caused by the enormous discharge of untreated effluent by tanneries and other industries in the state of Tamil Nadu. The petitioner highlighted the evil on the strength of reports from the Tamil Nadu agricultural University Research Centre, an independent survey conducted by non- government organizations, and a study by two lawyers deputed by the legal Aid and Advice Board of Tamil Nadu. The main allegation was that the untreated effluents contaminated the underground water resulting in non-availability of potable water, thereby causing immense harm to agriculture. Despite the persuasion of the Tamil Nadu government and Board, and despite the central Government’s offer of subsidy to construct common treatment plant, most of the tanneries hardly take any steps to control pollution. The court referred to its earlier orders.

The Court ordered the Central Government to establish an authority to deal with the situation created by the tanneries and other polluting industries in the state of Tamil Nadu. This authority shall implement the precautionary principle and the polluters pays principle, and identify the

- (1) Loss to the ecology\ Environment
- (2) Individuals\ families who have suffered because of the pollution

And then determine the compensation to reverse this environmental damage and compensate those who have suffered from the pollution. The collector shall collect and disburse this money

The court also explained the “Precautionary Principle” in the context of the municipal law as under.

- Environmental measure by the state government and statutory authorities. They must anticipate, prevent and attack the cause of environmental degradation.
- Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- The “onus of proof” is on the actor to show that his action is environmentally benign.

***Narmada Bachao Andolan v. Union of India***

The Precautionary Principle came to be considered by the majority judges in this case. The Court took the view that the doctrine is to be employed only in cases of pollution when its impact is uncertain and non-negligible. The majority is of the view that the doctrine has to be put on back burner when the impact of a development project is curtailed and can be quantified. Sustainable Development means what type or extent of development can take place, which can be sustained by nature and ecology with or without mitigation. The Court noted that the question in the Narmada Bachao Andolan case<sup>503</sup> is not concerned with the polluting industry, and the effect of the project already known.

**ENVIRONMENTAL JURISPRUDENCE**

The application of the doctrines in the judicial process for environmental protection is remarkable milestone in the path of environmental law in India. It is interesting to note that all such cases arose out of public interest litigation. Undue influence of political bigwigs who make environmentally malign decisions is blocked. Skeletons in the governmental and administrative cupboards were revealed. Illegal contracts with adverse impact on ecology will be invalidated. The Court directed to apply this jurisprudence when an entire village in Rajasthan was under an ecological catastrophe from non-disposal of hazardous wastes.

**JUDICIAL ACTIVISM**

The Term Judicial Activism is used to refer to the “extended arm of judiciary” or the increasing active interest that the judiciary is taking in our everyday life. This activism on the part of the judiciary derives its constitutional legitimacy from Article 141 of the Constitution which lays down that the Supreme Court declaration of law is final and Article 13 which empowers the judges to declare any law null and void if it was found to be against the provisions of Part III of the Constitution. Its areas of activity are widening such as Public Interest Litigation, Writ Petitions under Article 32 interpretation of Articles. 12, 14, 19, 21 etc.

Supreme Court lawyer and a jurist felt that the basic cause of judicial activism is the non-existence of effective government where as Rajeev Dhawan felt that activist judiciary was one which was dedicated to mould the law and its interpretations to achieve social justice and rule of law aim of the Constitution. Meera Sapatnekar, on the other hand feels that the object of the judiciary is to clear all social, political and national maladies of the country as the executive has failed to perform his duties and made it necessary for the judiciary to intervene to give justice to the people and the nation. The Vice-president of India has attributed the over-activism of the judiciary mainly to the “Downward Spira” of the rule of law and malfunctioning of the institutions of the State, particularly the executive.

Governance as we all, know is a decision making process, which has always existed since the dawn of Human civilization. The Role of Judiciary lies in protecting the interest of individuals and others against the misuse of power by authorities. Despite judicial review and Public Interest Litigation, there is an erosion of public confidence in the system itself due to lack of effective access to justice, huge backlog of cases and long delay in decisions.

The key to good governance, as articulated by the United Nations Development Programme, are rule of law, participation, and accountability and transparency. “The role of the judicial branch of the government is critical in ensuring the implementation of the principles of both the rules of law and accountability. Firstly, the functioning of a society according to the rule of law is based on the judiciary. Secondly the judiciary ensures the accountability of other institutions of government and individuals.

On environmental law interpretation and law making, although most people would argue that judges are there merely to interpret legislation and not to make laws, several distinguished jurists have pointed out that the judiciary also contributes to defacto law making through precedents. On the capabilities of jurists, several issues need attention, but one possible solution is the enhancement of their awareness and knowledge of global and regional environmental issues viewed from a wider context of sustainable development.

Judicial awakening and activism for the protection of environment in India began formally after the 1972 Stockholm Conference on Human Environment. The judicial activism denote a process where at one end there are the logically principled rules in the hands of court and at other end there are demands, desires for expectations of society pressing it to accommodate with the framework of law. This process of accommodation by court is called the civilization of law and in term is known as activism. Environmental provisions are introduced in the Constitution of India by its 42nd amendment in 1974 under Article 48(A) and 51 (A)g as a fundamental duty for every state and citizen of India to protect and improve the natural environment. Several laws pertaining to the protection of the environment were enacted in India prior to it. There were a number of public laws existed which had environmental overtones. The Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 dealing with the “Public nuisance assume special significance in this regard.

The environmental Act of 1986 against industrial pollution and the Conservation of Forest and Natural Ecosystems Act of 1994 to stop deforestation and habitat destruction are, among others, good pieces of legislation for the protection of the environment in India. Public Interest Litigation to prevent environmental degradation has been increasing in India and the judiciary has come to rescue the people on a number of occasions. There are several historic judicial decisions serving both man and environment in India. It can be seen that the Supreme Court of India has moulded a far-reaching and innovative environmental jurisprudence which no other constitutional court anywhere in the world has ever shape to. The High Court have also contributed their bit in developing this jurisprudence. In fact due to its



proactive role in administering environmental law, the higher judiciary in the country has emerged as the exclusive dispenser of environmental justice. By doing so they have succeeded to a great extent in altering the common man's perception of laws Courts has been mere for a for dispute adjudication thereby carving out a niche for itself as a unique human right friendly institution in justice dispensation.

The ever increasing number of PILs being filed in the Supreme Court and in the High Court over every conceivable environmental problem by public interest groups and individuals, bear testimony to do this unshaken faith which the public has reposed in the system and in this context, the role essayed by the superior judiciary can be gauged at two levels. The increasing intervention of Court in environmental governance, however, is being seen as a part of the pro-active role of the Supreme Court in the form of continual creation of successive strategies to uphold rule of law, enforce fundamental right of every citizens and constitutional propriety aimed at the protection and improvement of environment. Unlike other litigations, the frequency and different types of order passed periodically by the Supreme Court in environmental litigation and its continuous engagement with the environmental issue has evolved a series of innovative methods in environmental jurisprudence.

## **PUBLIC INTEREST LITIGATION**

Public Interest Litigation has had a profound effect on the development of environmental law in India. PIL allows any bona fide person to take a matter of public interest to the higher judiciary, even when the person who is supporting the cause is not personally or directly affected by the interest that is being brought to the courts.

The concept of Public Interest Litigation is well entrenched in India contrary to the past practices, today a person acting bonafide and having sufficient interest can move the courts for redressing public injury, enforcing public duty, protecting social and collective rights and interests, and vindicating public interest. In the eighties and nineties a wave of environmental litigation was witnessed. Most of such cases were in the form of class action and PIL, as environmental issues relate to diffusing of interests, rather than to ascertainable injury to individuals.

The concept of class action is embodied in the Code of Civil Procedure, where if numerous persons have common interests, one or more of such persons can file a suit. A recent example of class action is the Bhopal Gas Leak disaster litigation. This community interest can also be agitated under the law of public nuisance incorporated in the CrPC. An individual, a group of individuals, or an executive magistrate, suo motu, can move the Courts This provision has proved to be a potent weapon for regulatory measures as well as affirmative action by the government and the local bodies or protection of the environment, provide that the executive magistrates exercise their discretion independently without undue influence from their bureaucratic or political superiors.

. It extends from compassion to animals, privileges of tribal people and fishermen to the ecosystem of Himalayas and forests, ecotourism, land use patterns, and vindication of an eco-malady of a village. The cause of environment being taken up through PIL was championed by a wide spectrum of people in society. Lawyers, association of Lawyers, environmentalists, group and centre dedicated to environmental protection and forest conservation, welfare forums including those for tribal welfare, societies registered under the Societies Registration Act and consumer research centers have successfully agitated environmental issues before Courts. Urban social activists, the women's wing of a society for animal protection, chairman of rural voluntary associations and residents of housing colonies were also involved in advocating environmental issues.

To summarize the environmental issues that have been brought to the courts under PILs in the past include,

- Riverine pollution by tanneries, industrial effluents, and untreated sewage;
- Soil and groundwater Pollution
- Indiscriminate mining
- Protection of Forest
- Fencing of Parks and sanctuaries
- Preservation of monuments of archaeological and historical significance and their protection from vandalism and industrial pollutants
- Automobile Pollution

The judicial prescriptions have included

- Remedial measure offered by clean up technologies
- Liability measures based on application of the "polluter pays principle"
- Monetary penalties
- Revised environmental standards

**CONCLUSION:** Environmental governance & the judiciary has also the difficult role of considering not only environmental instruments, but also the economic, development and political as well as social instruments. The compliance and enforcement of sustainable development instruments also serves in the promotion of synergies or inter linkages among multiple issues, also known as the inter linkages approach. This is because compliance and enforcement require cooperation and coherence in policies across multiple departments and branches of government

PILs have given the judiciary enormous scope for intervening in environmental matters. Indian Courts have been categorical in their adoption of the values of sustainable development and the "precautionary principle", which asserts that a lack of scientific certainty should not be reason for postponing measures to prevent environmental degradation.

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