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Important Role of Indian Judiciary in Environment Protection

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Abstract

The main objective of this paper is to demonstrate the importance of Indian Judiciary in environment protection. From the dawn of 21st Century the environment issues and problems has emerged as a major concern for the well-being of the people. In India, the concept of environmental protection can be seen originated from the period of Vedas. The conception of ecological protection and preservation is not modern. In the present time the Supreme Court of India expand the meaning of environmental right. The Supreme Court is making and creating interpretation which led to the creation of new rights. As under Article 21, this court has created new rights including the right to health and pollution free environment. In India Judicial activism (PIL, evolution of Doctrines), NGO's and public spirited individuals plays a vital role to protect the environment.

Key Words: Public Interest Litigation, Social justice, Public Trust, Environmental right, Apex court, Doctrines, Precautionary Principle, Strict Liability, Sustainable development, Polluters pays.

Meaning of environment:

Environment is our surrounding, which gives a person a fresh atmosphere to grow faster. It's a need of a common man to live in a healthy atmosphere .It includes circumstances, objects and condition by which all are surrounded.

Section 2(a) environment "includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property³." (The Environment Protection Act, 1986)

³ The Environment Protection Act, 1986.

METHODOLOGY

Most of the part of this research paper has performed through secondary data. Hence AIRs, PIL cases and books were referred to evaluate the paper.

Development of Environmental Jurisprudence in India:

The enhance role i.e. Judicial activism of courts resolved the different governance problem especially in the field of environment protection. This has prompted civil society groups and the people to approach the Courts, particularly the Supreme Court, for suitable relief and remedies. The Courts has also shown interest to resolve the problems i.e. played and pro-active role.⁴

Involvement of the Courts in governance starts creating different strategies, rules regulations to maintain the rule of law in the society and for this Courts enforce fundamental rights of citizens and Constitutional propriety aimed at the protection and improvement especially in the field of environment. Unlike other litigations, the Courts in their orders and decisions related to environmental issues has evolve different Doctrines and new dimensions which were responsible for the development of environmental jurisprudence in India.⁵ In new dimensions Courts includes entertaining petitions on behalf of the aggrieved party taking suo motto action against the polluter, increasing the sphere of litigation expanding the meaning of existing Constitutional provisions, applying international environmental principles to domestic environmental problems, appointing expert committee to give inputs and monitoring implementation of judicial decisions, making spot visit to assess the environmental problem at the ground level, appointing amicus curiae to speak on behalf the environment, and encouraging petitioners and lawyers to draw the attention of the Court about environmental problems through cash award. It is important to note that these judicial innovations have become part of larger Indian jurisprudence ever since the Court has started intervening in the affairs of executives in the post-emergency period.⁶

Role of Public Interest Litigation (PIL):

The Court's approach to entertain PIL for environmental protection, however, is significant in many ways. PIL is the most important procedural innovation for environmental jurisprudence has been the relaxation of traditional process of standing in the Court and introducing the concept of Public Interest Litigation (PIL)⁷.

Public Interest Litigation (PIL) has played a vital role by which belonging to all walks of life and especially getting social justice from the Supreme Court and the High courts⁸, in this case Justice Krishna Iyar recognized Public Interest Litigation as a constitutional obligation of the Courts.

Justice P.N. Bhagwati says: procedure being merely a handmaiden of justice it should not stand in the way of access to justice to the weaker section of Indian humanity and therefore, where the poor and the disadvantaged are concerned this court will not insist on a regular writ petition and even a letter addressed by a public spirited individual or social action group acting pro bono public would suffice to invite the jurisdiction of this court⁹.

Judicial awakening and activism started after Stockholm Conference on Human Environment. In India environmental provisions are introduced in the Constitution of India by its 42nd amendment in 1977 under Article 48(A) and 51-A (g) as a fundamental duty" for every state and citizens of India to protect and improve the environment. The Indian Penal Code, 1860, and the Code of Criminal Procedure, 1974, dealing with "public nuisance".¹⁰

⁴ S.P. Sathe, 'Post emergency Judicial Activism: Liberty and Good Governance', 10(4).

⁵ M. K. Ramesh, 'Environmental Justice Courts and Beyond', 3(1) Indian Journal of Environmental Law 20(2002).

⁶ Geetanjoy Sahu, 'Implications of Indian Supreme Court's Environmental Jurisprudence for Innovation', LEAD Journal.

⁷ Upendra Baxi, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India'.

⁸ Ratlam Municipal Council Vs. Vardhichand .

⁹ S.P.Gupta V.Union of India.

¹⁰ Upendra Baxi Environmental Law.

Environmental Jurisprudence during 1980:

An Account of the interpretation of right to environment as a part of fundamental right to life would illustrate the efforts of Court to expand the scope of existing fundamental right to life. For instance, in the Ratlam Municipal case, the Court has upheld that public nuisance is a challenge to the social justice component of the rule of law. Decency and dignity are non-negotiable facts of human rights and are first charge on local self-governing bodies¹¹. Likewise, in Dehradun Lime Stone Quarrying case, the Court has made it clear that economic growth cannot be achieved at the cost of environmental destruction and peoples. In the Doon Valley case, concerning mining environment, the Court has interpreted Article 21 to include the right to live in healthy environment with minimum disturbance of ecological balance and without avoidable hazard to them and to their cattle, house and agricultural land and undue affection of air, water and environment.¹² This exercise has been further emphasized in the Ganga water Pollution case, Right to life to include the right to defend the human environment for the present and future generation. This interpretation expand the meaning of right to life have brought new contribution not only in the environmental jurisprudence but also the discourse on human rights in India. The credit for creation of a host of environmental rights and enforcing them as fundamental rights goes to the Supreme Court of India. This is a significant contribution for environmental jurisprudence in India, if one learns from experiences elsewhere. The legal system may guarantee Constitutional rights to environment participate in environmental protection for citizens.

The Period from 1988 to 1996:

This period Courts in their decision adopted principles of Sustainable development. In Charan Lal Sahu v. Union of India. In this case “It is the obligation of the State to assume such responsibility and protect its citizens.” The Court held that the government’s obligation to protect fundamental rights forces it to protect the environment

In Vellore Citizens welfare Forum v. Union of India and Others¹³, the Supreme Court defined and laid down the precautionary principle along with the polluter pays principle. Again, in case, M.C. Mehta v. Union of India.¹⁴ The Taj a Monument of international repute is on its way to degradation

Due to atmospheric pollution and emission of Sulphur dioxide by the foundries, chemical/hazardous industries.

The Polluter Pays Principle has been held to a sound principle by the Court in Indian Council for Enviro-Legal Action v. Union of India.¹⁵ Giving the judgment, the Judges held that we are of opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country. Once the activity carried on is hazardous or inherently liable to make good the loss caused to any other affected party by polluter’s activity irrespective of the fact whether the polluter took reasonable care while carrying on his activity. In this case, the Court has stated that the “polluter Pays Principle” means that the absolute liability for harm to the environment extends not only to compensate the victims of the pollution but the cost of restoring the environmental degradation.

To further justify and perhaps extract the state initiative to conserve natural resources, the Court also enunciated the doctrine of ‘Public Trust’ thereby obligating conservation by the state. The ‘public trust’ doctrine has been referred to by the Court in M.C. Mehta v. Kamal Nath.¹⁶ The State holds the natural resources as a trustee and cannot breach of trust.

In the international arena ‘Sustainable Development’ came to existence. Justice P.N. Bhagwati once made an insightful observation: ‘We need judges who are alive to the socio-economic realities of Indian life.’ This statement explains the gradual shift in the judicial approach while dealing with the issues of sustainable development.¹⁷ “Sustainable

¹¹ Ratlam Municipalit v Vardhichandra and Others AIR, 1980 SC 1622.

¹² RLEK v. State of Uttar Pradesh and Others, Supreme Court of India, AIR 1985 SC

¹³ AIR 1996 SC 2715.

¹⁴ AIR (1997)2 SCC 353.

¹⁵ AIR 1996 SC 1446.

¹⁶ AIR 1997(1) SCC 388

¹⁷ Sukhvinder Singh Dari and Rangam Shurma, *An overview of Environmental Jurisprudence in India* 2014.ISSN 2348-2869

Development” was Vellore Citizen Welfare Forum V. Union of India and in the case, dispute arose over some tanneries in the State of Tamil Nadu. These tanneries were discharging effluents in the river Palar, which was main source of drinking water in the State.

Supreme Court while dealing with the environmental issues experienced gaps in existing laws and lack of administrative efforts CERC v. Union of India.¹⁸ So it went to extent to ask the government to constitute national and state regulatory authorities or environment courts.

Supreme Court along with above efforts to check and curb the menace of environmental pollution also played an important role in disseminating the environmental awareness and the world’s worst industrial disaster in Bhopal, the Parliament, enacted the National Green Tribunal Act, 2010. The Act is a critical step towards capacity development because it strengthens the framework of global environmental governance. The Tribunal’s dedicated jurisdiction in environmental matters shall provide speedy environmental justice and help reduce the burden of litigation in the higher courts. The Tribunal is mandated to make and endeavor for disposal of applications or appeals finally within 6 months of filing of the same.¹⁹ Initially, the NGT is proposed to be set up at five places of sittings and will follow circuit procedure for making itself more accessible. New Delhi is the Principal Place of Sitting of the Tribunal and Bhopal, Pune, Kolkata and Chennai shall be the other four place of sitting of the Tribunal.²⁰

The Right to Pollution Free Environment was declared to be a part of Right to Life under Article 21 of the Constitution of India in the case of “Subhash Kumar vs. State of Bihar and Ors. (1991)”.²¹ Right to Life is a Fundamental Right which includes the Right of enjoyment of pollution free water and air for full enjoyment of life.

Relevant Acts for environment Protection:

Wild Life (Protection Act), 1972

Protection of wild life is very essential because they play impotent primary role in our ecosystem. Every State has to constitute a Wild Life Advisory Board and certain areas are to be declared as sanctuaries and National Parks. This Act provides protection to animals, plant, birds, flora, fauna, and endangered species. In these areas hunting and shooting of wild animals is prohibited and punishable offence but when wild animals becomes dangerous to the human beings and become diseased than with special permission hunting is allowed.²²

The Indian Forest Act, 1927:

Section 26(i) of the Act makes it punishable if any person who, in contravention of the rule made by the State Government, poisons water of a forest area. The State Government has empowered under Section 32(f) to make rules relating to poisoning water in forest.²³

The Water (Prevention and Control of Pollution) Act, 1974:

India lacks an umbrella frame work to regulate freshwater in all its dimensions. The exiting water law framework in India is characterized by the existence of a number of different principles, rules and acts adopted over many decades. These includes common law principles well as more recent regulation of water quality and judicial recognition of human right to water. The Supreme Court said that “water is the basic need for the survival of human beings and is part of right to life and human rights as enshrined in Article 21 of the Constitution of India”. Pollution caused by tanning industry, existed in M.C. Mehta cases.²⁴ In the Subhash Kumar v. State of Bihar²⁵. In Enviro-legal Action v. Union of India²⁶. Narmada Bachao v. Union of India²⁷

¹⁸ AIR 1995 SC 922

¹⁹ Section 18 (3) National Green Tribunal Act, 2010

²⁰ The Weekend Leader, India’s 1st Green Tribunal will soon have regional benches , Last up to 25 September, 2012

²¹ AIR SC 1991

²² Sukhvinder Singh Dari& Rangam Sharma., *An overview of Environmental Jurisprudence in India* 2014.

²³ Ibid.

²⁴ AIR 1988 SC 1037.

²⁵ AIR 1991 SC 420, p 424.

²⁶ AIR 1996 SC 1446.

Air (Prevention and Control of Pollution) Act, 1981:

This Act basically aimed at the industrial pollution and automobile pollution. The main aim of this Act was to provide prevention, control and abatement of air pollution. *Murli S. Deora v. Union of India*²⁸, in this case the Court prohibiting smoking in public places.

Environment (Protection) Act, 1986:

The objectives of this Act is to provide protection of the environment, Improvement of environment, Prevention of hazardous substances harmful to human being, animals, plants, and to Property.

The Noise Pollution (Regulation and Control) Rules, 2000:

According to this act the State Government shall categorize industrial, commercial, and residential or silence zones and implement noise standard and also restricts the use of loudspeakers, amplifiers, beats of drum.

Hazardous Wastes (management, Handling and Transboundary Movement) Rules, 2008:

The objectives of this Rules to make responsible to the occupier for the safe and environmentally sound handling of such substances generated in his establishment. The hazardous waste shall be sent to a recycler or reuser or reprocess or registered or authorized or should be disposed off in an authorized disposal facility.

E-Waste Management:

The main objectives to control e-waste. Science and technology are increasingly employed in every walk of life, there will be certain element of hazard and risk inherent in the very use of science and technology.²⁹

Implementation of Court Directions:

For implementation Courts give directions through its decisions. In judgment, though the Court issues directions to the agencies of the State as to how its decision has to be implemented but after the Court did not examine the extent of its implementation and the nature of its impact. The authorized agencies are found to take advantage by postponing or making excuse in not implementation of decisions. In *Oleum Gas Leak* case, the Court has evolved the doctrine of absolute liability (Strict liability) in *Ryland v. Fletcher* case³⁰. The Ganga river pollution case has also not been implemented. The tanneries continue to operate even though strict action has been ordered by the Court against the polluted industries.³¹

²⁷ AIR 2000 SC 3751.

²⁸ AIR 2002 SC 40.

²⁹ Ms. Pooja and Mr. Shanu Thomas, *E-waste management and environment protection*, 2016

³⁰ *Rylands v. Fletcher* is a landmark English legal case 1868

³¹ Geetanjoy Sahu, *Implications of Indian Supreme Court's innovations for environmental Jurisprudence*

CONCLUSION

On the basis of the above analytical study we may conclude that the Indian Judiciary has played very important role in the protection of environment. It has expanded its existing legal area of jurisdiction by giving interpretation related to Indian Constitution. It has evolved new doctrine and principles to deal with conflicting interests of various group of the society. The development of the laws for environment protection 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 basic ideology behind adopting PIL is that access to justice ought not to be denied to the needy for the lack of knowledge or a finance 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 constitutionalisation of the environmental problems by the apex court. The Supreme Court has created new rights including the right to health and pollution free environment under Article 21 under Constitution of India.

In the past years we have witnessed a lot on the environmental issues, in Delhi Government adopted even odd formula to control air pollution; use of CNG gas in automobiles, keeping animals outside cities, banned the use of polythene, wide campaign from 2014-2019, to eliminate open defecation and improve solid waste management in urban and rural areas in India “Swachh Bharat Mission”

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