

Development: An Overview

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Abstract

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 is due to initiative taken by the Indian judiciary, particularly the Supreme Court and High Courts.¹ No doubt that legislature of India has enacted number of laws for the protection and preservation of natural environment. But due to lack of application and effective implementation of Constitutional as well as legislative provisions, problems of environmental pollution could not be controlled. Therefore it became necessary for judiciary to adopt some effective remedial measures to protect environmental pollution. It has brought about remarkable changes in Indian legal system by promoting public interest litigation as a useful tool for redressal of public grievances arising out of environmental pollution. In this paper the researcher has analysed the role of Indian judiciary in protecting environment and promoting sustainable development. The paper also covers judicial contribution in the development of Environmental Jurisprudence in India.

Key words: Environmental Protection, Sustainable Development, Role of Judiciary, Environmental Jurisprudence.

Introduction

In India, like any other developing country, there has been environmental degradation due to industrialisation, urbanization, population explosion, poverty, over exploitation of resources, depletion of traditional resources of energy and raw materials and the search for new sources of energy and raw materials.² While the scientific and technological progress of man has invested him with immense power over nature, it has also resulted in the unthinking use of the power, encroaching endlessly on nature.³

Though, India has enacted various laws at almost regular intervals to deal with the problems of environmental degradation. However, neither the law nor the environment can remain static as both are dynamic in nature. The changing pace of the environment is so fast that in order to keep the law on the same wave-length either laws have to be amended quite frequently to meet the new challenges or it has to be given new direction by the judicial interpretation. This becomes

all the more important in view of the ever increasing scientific and technological development and advancement which man has made. To overcome this challenge the judiciary in India has played a pivotal role in 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.”⁴

However, the courts are required to balance development needs with the protection of the environment and ecology. It is the duty of the State under our Constitution to devise and implement a coherent and co-ordinated programme to meet its obligation of sustainable development based on inter-generational equity.⁵ It is true that in a developing country there shall have to be developments, but that development shall have to be in closest possible harmony with environment, as otherwise there would be development but no environment, which would result in total devastation. So, there has to be a proper balance between the development and environment so that both can co-exist without affecting the other.⁶ The judiciary in India has played a very important role in the environmental protection and has applied the principles of sustainable development while deciding the cases mostly through Public Interest Litigation as per the provisions Constitution of India.⁷

Constitutional Perspective of Environmental Protection

Indian Constitution is perhaps one of the rare constitutions of the world which contains specific provisions relating to environment protection. It puts duty on the “State” as well as “Citizens” to protect and improve the environment.⁸ The judicial grammar of interpretation has made the right to live in healthy environment as *sanctum sanctorum* of human rights. Now it is considered as an integral part of right to life under Article 21 of the Constitution. Article 32 and 226 of the Constitution empowers the Supreme Court and the High Courts, respectively to issue directions, orders or writs for environmental Protection.

The Indian judiciary has made an extensive use of these constitutional provisions and developed a new “environmental jurisprudence” of India. It is worthwhile to note that, most of the environmental matters have been brought before the judiciary through “Public Interest Litigation” The Supreme Court while developing a new environmental jurisprudence has held that the powers of the Supreme Court under Article 32 are not restricted and it could award damages in public interest litigation or writ petition in those cases where there has been any harm or damage to the environment due to pollution. In addition to damages, the person guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as deterrent for others not to cause pollution in any manner. The said approach of the Supreme Court is based on “Polluter Pays Principle”⁹ and has imposed exemplary damages on

multinational companies such as Coca Cola and Pepsi for damaging the ecology in the States of Himachal Pradesh and Jammu & Kashmir by painting advertisements on the rocks and also directed them to remove these advertisements without further polluting the environment.

International Perspectives of Environmental Protection & Sustainable Development

The U.N. Conference on Human Environment and Development at Stockholm in 1972 is considered to be the *Magna Carta* of international concern for environment protection and sustainable development. It was for the first time that the world community got together to deliberate seriously on an important issue of environment protection and sustainable development. This conference resulted in the “Stockholm Declaration on the Human Environment”. The protection and improvement of the human environment is a major issue which affects the well-being of people and economic development throughout the world.

Again in 1987 the report of the World Commission on Environment and Development not only provided impetus to sustainable development but also brought into focus the common concerns of the people, common challenges which we face the world over and the common endeavours which we need for peace, security development and environment. Earth Summit of 1992 at Rio de Janeiro, through Rio Declaration and Agenda 21, has further concretised the concept of environment protection and sustainable development. In 1997, the World Climate Conference was held at Kyoto (Japan) where a historic accord was signed by the participating countries for mandatory cuts in emission of green house gases particularly by the industrialized nations to help in saving the planets from global warming.

Again in 2002 the World Summit on Sustainable Development was held in Johannesburg, South Africa and reaffirmed their commitment to sustainable development and to build a humane, equitable and caring global society cognizant of the need for human dignity for all. The United Nations Conference on Sustainable Development (UNCSD), also known as Rio 2012 or Earth Summit 2012, was the third international conference on sustainable development aimed at reconciling the economic and environmental goals of the global community.

Judicial Contribution in the Development of Environmental Jurisprudence in India

No doubt that legislature of India has enacted number of laws for the protection and preservation of natural environment. But due to lack of application and effective implementation of Constitutional as well as legislative provisions, problems of environmental pollution could not be controlled. Therefore it became necessary for judiciary to adopt some effective remedial measures to protect environmental pollution. It has brought about remarkable changes in Indian legal system by promoting public interest litigation as a useful tool for redressal of public grievances arising out of environmental pollution.¹⁰

The Hon'ble Supreme Court and also various High Courts have taken innumerable measures in a series of their landmark judgments. Over the year the Supreme Court has been paying special attention for the protection of environment by giving effective directions to all the persons concerned with the matter by invoking its powers under the Article 32. Following are some of the major contributions of judiciary in the development of environmental jurisprudence in India

Judicial Interpretation of Doctrine of Sustainable Development

The concept of sustainable development is one of the international principle on which the judiciary has relied upon to sustain the growth of environmental jurisprudence. Many environmental principles and remedies not covered by existing environmental legislations have been called from the concept of sustainable development.¹¹ The World Commission on Environment and Development, established by a UN General Assembly resolution, in its Report called for the global adoption of a strategy of sustainable development. It seeks to meet the needs and aspirations of the people of the present without compromising the ability to meet those of the future.¹² The concept demands that all nations must aim at a type of development that integrates production with resource conservation and enhancement, and that links both to the provision for all of an adequate livelihood base and equitable access to resources.

In India, Public interest litigation has played a significant role in the judicial implementation of sustainable development which insists on the balanced synthesis of developmental and environmental imperative.¹³ While hearing public interest litigations filed with a view to protect the environment, the Supreme Court of India embraced judicial activism and has consistently held that sustainable development is a part of the environmental law in India.¹⁴

In *Vellore Citizen's Welfare Forum v. Union of India*¹⁵, the Supreme Court emphatically held that sustainable development as a balancing concept between ecology and development has been accepted as a part of customary international law. The Supreme Court further held that the "precautionary principle" and "polluter pays principle" constituted fundamental principles of the international environmental law and stated that the "precautionary principle", the "polluter pays principle" and the special concept of onus of proof have merged and govern the law of our country as is clear from Article 47, 48-A and 51-A(g) of the Constitution and that, in fact, in various environmental statutes, such a Water (Prevention and Control of Pollution) Act, 1974, the Environment (Protection) Act, 1986 and other statutes, these concepts are implied.

The above cases demonstrate that the Supreme Court became so active in public interest litigation that the fundamental principles of international environmental jurisprudence, namely "sustainable development", "precautionary principle" and "polluter pays principle", inter generational equity, conservation of natural resources, environment protection, eradication of

poverty and financial assistance to the developing countries have been treated by the Supreme Court as part of the Constitution of India as well as the environmental statutes and were applied to make the development process ecologically sound and sustainable.

Judicial Approach towards Polluter Pays Principle

The polluter pays principle basically means that the producer of goods or other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. This includes environmental cost as well as direct cost to the people or property; it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environmental cost and not just those which are immediately tangible. The principle also does not mean that the polluter can pollute and pay for it. The nature and extent of cost and the circumstances in which the principle will apply may differ from case to case.¹⁶

In *Vellore Citizens Welfare Forum v. Union of India and others*¹⁷ the court laid emphasis on the principle of Polluter-pays and said that, “pollution is a civil wrong. It is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution, has to pay damages or compensation for restoration of the environment and ecology”. The Compensation so collected to be kept under a separate Environment Protection Fund to be utilized to compensate the affected persons.

Judicial Response to Precautionary Principle

The precautionary principle emphasised by the United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro in the year 1992, signifies a preventive approach. It states:

“In 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.”¹⁸

In *Vellore Citizens Welfare Forum v. UOI*¹ case, the Supreme Court accepted that the Precautionary Principle is part of the environmental law of the country and shifted the burden of proof on the developer or industrialist who is proposing to alter the status. They found that it is “necessary to explain the meaning of the principles in more detail so that courts and environmental authorities can properly apply the said principles in the matters which come before them. In this case petition was filed against the pollution caused by tanneries and other industries in the State of Tamil Nadu. The Court held that “though the leather industry is of vital importance to the country as it generates foreign exchange and provides employment avenues it

¹ AIR 1996 SC 2715

has no right to destroy the ecology, degrade the environment and pose as a health hazard". The Court recognized that a balance must be struck between the economy and the environment.¹⁹

Relaxation of Rule of *Locus Standi*

The Public Interest Litigations (PIL) in India initiated by the Hon'ble Supreme Court emerged through human rights jurisprudence and environmental jurisprudence. The traditional concept of *Locus Standi* is no longer a bar for the community oriented Public Interest Litigations. Though not an aggrieved party, environmentally conscious individuals, groups or NGOs may have access to the Supreme Court or High Courts by way of PIL. The Courts have also relaxed the requirement of a formal writ to seek redressal before the Court. Any citizen can invoke the jurisdiction of the Court, especially in human rights and environmental matters even by writing a simple postcard.²⁰

The efforts of the Apex Court in environment pollution control through public interest litigation is indeed laudable particularly when the legislature is lagging behind in bridging the lacuna in the existing legal system and administration is not well equipped to meet the challenge.²¹ But judiciary is failed until and unless the people's vision would be changed. Therefore, necessary action should be taken by the government in mitigating environment pollution.

Judicial Recognition of Right to Environmental Protection

Judicial activism in India is playing leading role in interpreting various un-enumerated rights in Part III of the Constitution. It may be pointed out that though specific provisions for the protection of environment have been made in Part IV dealing with Directive Principles and Part VIA dealing with fundamental duties, even then right to live in a healthy environment has been interpreted by the judiciary in several provisions of Part III relating to Fundamental Rights. In this way judiciary in India played leading role in providing impetus to the human rights approach for the protection of environment.²²

One of the major premises of sustainable development is that all human beings have a fundamental right to an environment adequate for their health and well being. The Indian judiciary has expanded the scope of the fundamental right to life and personal liberty guaranteed in Article 21 of the Constitution to include environmental protection.

In *Subhash Kumar v. State of Bihar*²³ the Supreme Court held that right to life is a fundamental right guaranteed in Article 21 of the Constitution and it includes the right to enjoyment of pollution free water and air for full enjoyment of life. Thus, the judiciary being aware that the right to environment is a basic principle of sustainable development has recognised the right to environment and environment protection. As the right to environment is a fundamental right under Article 21, it has become easier to enlarge the scope and boundaries of environment

protection helping in the development of environmental jurisprudence in India. Environmental PIL has emerged because of the court's interpretation of Article 21 and 32 along with Directive Principles of the State in the Constitution.

Inter-generational Equity and Public Trust Doctrine

Inter-generational equity emanating from the principle of sustainable development imposes a duty on the present generation not to use the natural environment in a manner degrading the environment. We hold the earth in trust for future generations. This theory of trust under inter-generational equity and sustainable development to certain extent can be equated with the 'public trust doctrine' that exists within the municipal systems which is another judicial innovation for the protection of natural resources.

Public trust doctrine has been read into our environmental jurisprudence in *M.C. Mehta v. Kamal Nath*.²⁴ In this case, the Supreme Court referred to the 'Public Trust' doctrine and stated that it extends to natural resources such as rivers, forests, seashores, air, etc. for the purpose of protecting the ecosystem. It held that by granting a lease to a motel located at the bank of the river Beas which resulted in interference by the Motel, of the natural flow of the water, the State Government had breached the above doctrine. The Court held that the State as a trustee of all natural resources has a legal obligation and duty to protect them as the resources were of public good and for the benefit of the general public, the same cannot transfer to private parties. In this case the government sanction to the deviation of the river was held to be violating the trust conferred on the state to protect natural resources.

The Onus of Proof Principle

The Supreme court explained the principle of onus of proof that 'when there is a state of uncertainty due to lack of data or material about the extent of damage or pollution likely to caused than, in order to maintain the ecology balance, the burden of proof that the said balance will be maintained must necessarily be on the industry or the unit which is likely to cause pollution.'²⁵ The Court declared these principles as silent features of sustainable development and as part of the environmental law of the country.

Principle of Absolute Liability

In *M.C. Mehta v. Union of India*,²⁶ the Apex Court was of the view that the rule laid down in *Ryland v. Fletcher*,²⁷ has become obsolete in the context of environmental jurisprudence. The Court evolved new principle of Absolute liability for the industries engaged in hazardous or inherently dangerous activities. The principle of absolute liability is not subjected to any exceptions which operate in the tort principle of strict liability under the rule of *Ryland v.*

Fletcher. The Supreme Court by upholding the principle of absolute liability has significantly contributed to the jurisprudence of compensation regarding the quantification of damages.

Promoting Environmental Awareness and Education

The directives of the Supreme Court went to the extent of spreading environmental awareness and literacy, as well as launching environmental education. In *M.C. Mehta v. UOI*,²⁸ the Supreme Court stressed the need for introducing such schemes in the following words:

“In order for the human conduct to be in accordance with the presentation of law it is necessary that there should be appropriate awareness about what the law requires. This should be possible only when steps are taken in the adequate measure to make people aware of the indispensable necessity of their conduct being oriented in accordance with the requirements of law.”

The directions of the Court to All India Radio and Doordarshan, to focus their programmes on various aspects of the environment, have been immediately complied with. The Court also required every state government and education board to take steps for environmental education. Further, tune with these directions, various authorities have taken up meaningful schemes of environmental education.²⁹

Judicial efforts for an Alternative Forum

The inherent limitations of the judicial system to review substantive questions relating to the environment make it desirable to establish an alternative forum, with an alternative strategy. Conferring environmental decisions-making power entirely on scientists and administrators is untenable in a rule of law society. Fusion of diverse expertise in planning, science, technology, environment, law and public policy into a new institution for environmental decision-making is essential for integrating environmental values with development issues.³⁰

The Supreme Court in *M.C. Mehta v. UOI*³¹ said:

Since cases involving issues of environmental pollution, ecological destruction and conflicts over natural resources are increasingly coming up for adjudication and these cases involve assessment and evaluation of scientific and technical data, it might be desirable to set up Environment Courts on the regional basis with one professional Judge and two experts drawn from the Ecological Science Research Group keeping in view the nature of the case and the expertise required for its adjudication. Again in *Andhra Pradesh Pollution Control Board v. M.V. Nayudu*,³² the Apex Court suggested amendments to the existing laws and constitution of environment courts consisting of judicial and technical personnel.

This led the Law Commission of India to seriously consider the matter and make a proposal to constitute environment courts.³³ The alternate strategy would develop the law independently and help reducing the burden on the High Courts and the Supreme Court. Finally the National Green

Tribunal (NGT) Act 2010 had repealed the NEAA Act 1997 and is designed to be a potent and efficacious alternative forum to decide all questions of protection and improvement of environment.

Conclusion

Thus we can conclude that environmental jurisprudence in India has been enormously enriched by the courts while hearing public interest litigations. The Indian judiciary has realised that the failure to give effect to the constitutional mandate of environmental protection would result in breach of its constitutional duty. In order to comply with the constitutional duty, the judiciary has demonstrated exemplary activism and has further liberalised the concept of “*locus standi*” in the public interest litigation filed with the objective of environmental protection. The Supreme Court has also laid down innovative principles of environmental jurisprudence which have introduced new dimensions in it.³⁴ For instance, under Article 21, the court has created new rights including the right to health and pollution free environment. Of course the initiative for the protection of environment came from the legislature but the failure of the executive to implement the environmental laws in India created the ground for the intervention of the judiciary. The wide range of cases on various issues related to environment decided by the Supreme Court to bring environ-justice is worth appreciating.³⁵

However, in spite of the high ideals put forth by the judiciary and the legislature, in actual practice Indian pollution control laws are crammed with flaws. There is no flexibility in the standards as they are more prescriptive and define uniform standards without taking into account the type or size of the industry or the cost of pollution abatement. The current method of environment regulation has failed to monitor industrial pollution in India. In spite of various provision in the constitution, legislative enactments, decisions and court’s monitoring, the situation is not encouraging and conducive for the protection and the preservation of the environment because many provisions in the air, water and Environment Protection Act as well as other laws are not being applied and implemented in a true spirit, to regulate pollution disseminated by industries and to fix individual and collective liberty.³⁶

Therefore, there is need to protect the mankind against the growing menace of environmental pollution and to secure clean and unpolluted environment which can be achieved through public awareness, regular inspection and environmental education. The problem of environmental degradation is a social problem and considering its impact on the society, law courts should also rise up to the occasion to deal with the situation as it demands in the present day context. However, it is suggested that, law courts ought not to put an embargo to any development project which may be in the offing.³⁷ The courts are required to strike a balance between the

development and ecology and there should be no compromise with each other.³⁸ In other words, the courts, while dealing with the problem of environmental degradation, must apply the principles of sustainable development.

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