

THE ROLE OF JUDICIARY IN ENVIRONMENT PROTECTION

*BY OSHIN DIXIT
FROM MAHATMA JYOTIBHA PHULE ROHILKHAND UNIVERSITY BAREILLY UP*

Abstract

This paper analyzes that the Judiciary has played an important role in the protection of environment in India. India is one of those countries who have adopted the provisions for the safeguard of the environment. Not many provisions were incorporated for promoting, preserving and securing a healthy environment in India's post-independence era and environmental protection was at least priority for the government, it was, in fact, after 42nd amendment Act, 1976 which incorporated various provisions for environment protection and conservation. Later, the Bhopal Gas Tragedy, the most drastic tragedy in the Indian history, acted as an eye opener and brought environment protection to the mainstream. After this, there is a wave of various environment protection laws being enacted by the government and also judicial activity increased in this arena. The Supreme Court and the High Courts, acting as a watchdog, propounded several principles and issued directions to protect environment. The Judiciary even went to the extent of making right to clean and pollution free environment under Article 21 as a fundamental right. This paper commences with the meaning of environment and goes further to discover both legislative and judicial remedies available for the environment protection. It also views upon the constitutional aspects and new judicial trends in environmental protection. The research will lead to a comprehensive understanding of the environmental law together with the role of judiciary in today's context to combat threat of losing our right to clean environment.

KEYWORD: Environment, conservation

INTRODUCTION

Environment is the plant, animal, air, water, soil, that surrounds us. It is the most intricate part of the human life, without which the human race would not be able to live even in a single second on this planet Earth. The presence of atmosphere makes life possible on the Earth, and thus our planet, Earth stands out among all the eight planets in our solar system. Environment is synonymous to the blessing of the Almighty God; it must be cherished as a sweet, delicious fruit rather than degrading its value. In developing countries like India, the quality of environment is at a great decline due to rapid industrialization, urbanization, over

consumption of natural resources, ozone layer depletion, greenhouse effect and the like. It is the present need of hour to put a break to these detrimental practices if the environment is to be protected and preserved for the future generations to come.

WHAT IS ENVIRONMENT?

The word “environment” relates to surroundings. It includes virtually everything. It can be defined as anything which may be treated as covering the physical surroundings that are common to all including air, space, land, water, plants and wildlife.[i] Literally, the expression “environment” connotes surroundings. The environment contains air, water, food, and sunlight and etc. Environment affects all the living creatures including the plants and trees. A number of necessities of life are fulfilled rather derived from the environment. Thus, it can be said that the environment is the life support system.[ii] According to Section 2(a) of the Environment (Protection) Act, 1986, “Environment” includes water, air, and land and human beings, other living creatures, plants, micro-organisms and property. Section 1(2) of the Environment Protection Act, 1990 of the United Kingdom defines the term as “environment” consists of all, or any of the following medium, namely air, water, and land and the medium of air includes the air within the buildings and the air within other natural and man-made structures above or below ground.

NEED OF ENVIRONMENT PROTECTION LAWS

Today we are living in nuclear arena. No one can overlook the harm caused to the environment by the nuclear bombs, dropped by airplanes belonging to the United States on the Japanese urban communities of Hiroshima and Nagasaki amid the last phases of World War II in 1945. Day to day innovation and advancement of technology, apart from development additionally expands the risk to human life. Accordingly, there arises an intense and an acute need of the law to keep pace with the need of the society along with individuals. So now the question of environmental protection is a matter of worldwide concern, it is not confined to any country or territory.

CONSTITUTIONAL SAFEGUARDS FOR ENVIRONMENT PRESERVATION

India is among one of those countries who have provided expressly provisions for the protection of the environment. Prior to the Independence of India, not much heed was paid towards environment protection, but as the growth of India progressed by leaps and bounds due to rise in the field of science and technology, the concept of joint family have been

transformed into the nuclear family, migration of people from rural areas for the sake on income paved its way to industrialization and urbanization, the legislature felt the need to amend and include the provisions for environmental protection in the Constitution. Subsequently, new Articles were stoned in the Fundamental Rights and Directive Principles of State Policy.

1. Article 21 of the Indian Constitution is a Fundamental Right which reads “ No person shall be deprived of his life and personal liberty except according to procedure established by law”.[iii]
2. Article 48A states that “The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.”[iv]
3. Article 51-A(g) imposes a duty on every citizen of India “to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.”[v]

Judicial remedies for environment pollution

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

- An activity brought under Section 19 of the Environment Protection Act 1986
- An activity under Section 133 of Criminal Procedure Code 1973
- An activity under Section 268 of Indian Penal Code 1860

Apart from this, a writ petition can be filed under Article 32 in the Supreme Court of India or under Article 226 in the High Court.

Tortious liability

The Indian judiciary has developed the following tortuous remedies:

Damage

In the recent case of *Shriram Gas Leak*, involving a leakage of Oleum gas which resulted in substantial environmental harm to the citizens of Delhi, the Apex court held that the quantum of damages awarded must be proportionate to the capacity and magnitude of the polluter to

pay. However, the Apex Court has deviated from this test in the *Bhopal Gas Tragedy* [\[vi\]](#).

Injunction

The purpose of injunction is to prevent continuous wrong. The grant of perpetual injunction is governed by Sec.37 to 42 of the Specific Relief Act, 1963.

Nuisance

Nuisance means the act which creates hindrance to the enjoyment of the person in form of smell, air, noise, etc.

According to Stephen, nuisance is anything done to hurt or annoyance of lands, tenements of another and not amounting to trespass.

Nuisance can be divided into two categories:

Private Nuisance – It is a substantial and unreasonable interference with the use and enjoyment of one's land.

Public Nuisance – It is an unreasonable interference with a general right of the public.

Trespass

It means intentional or negligent direct interference with personal or proprietary rights without lawful excuses.

The two important requirements for trespass are

- 1) There must be an intentional or negligent interference with personal or proprietary rights.
- 2) The interference with the personal or proprietary rights must be direct rather than consequential.

Negligence

It connotes failure to exercise the care that a reasonably prudent person would exercise in like circumstances.

Strict Liability

The rule enunciated in *Rylands v. Fletcher* by Blackburn J. is that the person who for his own purpose brings on his land and collects and keeps there anything likely to be a mischief, if it

escapes, must keep it as its peril, and if he does not do so is prima facie even though, he will be answerable for all the damage which is the natural consequence of its escape. The doctrine of strict liability has considerable utility in environmental pollution cases especially cases dealing with the harm caused by the leakage of hazardous substances [vii].

Some remarkable principles and doctrines propounded by the Indian judiciary:-

1. Doctrine of Absolute Liability

THE BHOPAL CASE: Union Carbide Corporation v. Union Of India [viii]

In this case, the court held that, where an enterprise is occupied with an inherently dangerous or a hazardous activity and harm results to anybody by virtue of a mishap in the operation of such dangerous or naturally unsafe movement coming about, for instance, in getaway of poisonous gas, the enterprise is strictly and completely obligated to repay every one of the individuals who are influenced by the accident and such risk is not subject to any exemptions. Accordingly, Supreme Court created another trend of Absolute Liability without any exemption.

2. Polluter Pays Principles

“If anyone intentionally spoils the water of another ... let him not only pay damages, but Purify the stream or cistern which contains the water...” – Plato

Polluter Pays Principle has become a very popular concept lately. ‘If you make a mess, it’s your duty to clean it up’ - this is the fundamental basis of this slogan. It should be mentioned that in environment law, the ‘polluter pays principle’ does not allude to “fault.” Instead, it supports a remedial methodology which is concerned with repairing natural harm. It’s a rule in international environmental law where the polluting party pays for the harm or damage done to the natural environment.

Vellore Citizen’s Welfare Forum v. Union of India [ix] The Supreme Court has declared that the polluter pays principle is an essential feature of the sustainable development.

3. Precautionary Principle

The Supreme Court of India, in Vellore Citizens Forum Case, developed the following three concepts for the precautionary principle:

Environmental measures must anticipate, prevent and attack the causes of environmental degradation

Lack of scientific certainty should not be used as a reason for postponing measures

Onus of proof is on the actor to show that his action is benign

4. Public Trust Doctrine

The Public Trust Doctrine primarily rests on the principle that certain resources like air, water, sea and the forests have such a great importance to people as a whole that it would be wholly unjustified to make them a subject of private ownership.

M.C.Mehta v. Kamal Nath and Others [\[x\]](#)

The public trust doctrine, as discussed by court in this judgment is a part of the law of the land.

5. Doctrine of Sustainable Development

The World commission on Environment and Development (WCED) in its report prominently known as the 'Brundtland Report' named after the Chairman of the Commission Ms. GH Brundtland highlights the concept of sustainable development. As per Brundtland Report, Sustainable development signifies "development that meets the needs of the present without compromising the ability of the future generations to meet their own needs" [\[xi\]](#). There is a need for the courts to strike a balance between development and environment.

Rural Litigation and Entitlement Kendra v. State of UP [\[xii\]](#)

The court for the first time dealt with the issue relating to the environment and development; and held that, it is always to be remembered that these are the permanent assets of mankind and or not intended to be exhausted in one generation.

Vellore Citizen's Welfare Forum [\[xiii\]](#)

In this case, the Supreme Court observed that sustainable development has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco- system.

Environmental protection: the judicial approach

There are numbers of the following judgments which clearly highlight the active role of judiciary in environmental protection these are follows:

(a) The right to a wholesome environment

Charan Lal Sahu Case

The Supreme Court in this case said, the right to life guaranteed by Article 21 of the Constitution includes the right to a wholesome environment. [\[xiv\]](#)

Damodhar Rao v. Municipal Corporation Hyderabad

The Court resorted to the Constitutional mandates under Articles 48A and 51A(g) to support this reasoning and went to the extent of stating that environmental pollution would be a violation of the fundamental right to life and personal liberty as enshrined in Article 21 of the Constitution [\[xv\]](#).

(b) Public nuisance: the judicial response

Ratlam Municipal Council v. Vardhichand [\[xvi\]](#)

The judgment of the Supreme Court in instant case is a land mark in the history of judicial activism in upholding the social justice component of the rule of law by fixing liability on statutory authorities to discharge their legal obligation to the people in abating public nuisance and making the environmental pollution free even if there is a budgetary constraints., J. Krishna Iyer observed that, "social justice is due to and therefore the people must be able to trigger off the jurisdiction vested for their benefit to any public functioning." Thus he recognized PIL as a Constitutional obligation of the courts.

(c) Judicial relief encompasses compensation to victims

Delhi gas leak case: M.C. Mehta v. Union of India [\[xvii\]](#),

In instant case, the Supreme Court laid down two important principles of law:

- 1) The power of the Supreme Court to grant remedial relief for a proved infringement of a fundamental right (in case if Article 21) includes the power to award compensation.
- 2) The judgment opened a new frontier in the Indian jurisprudence by introducing a new "no

fault” liability standard (absolute liability) for industries engaged in hazardous activities which has brought about radical changes in the liability and compensation laws in India. The new standard makes hazardous industries absolutely liable from the harm resulting from its activities.

(d) Fundamental right to water

The fundamental right to water has evolved in India, not through legislative action but through judicial interpretation. In *Narmada Bachao Andolan v. Union of India and Ors.*, the Supreme Court of India upheld that “Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India ... and the right to healthy environment and to sustainable development are fundamental human rights implicit in the right to life [\[xviii\]](#).”

CONCLUSION

Thus, after the analysis of above cases, we find that, the Supreme Court is, at the present time, stretching the different legal provisions for environmental protection. In this way, the judiciary tries to fill in the gaps where there is laciness of the legislation. These new innovations and developments in India by the judicial activism open the numerous approaches to help the country. In India, the courts are extremely cognizant and cautious about the special nature of environmental rights, considering that the loss of natural resources can't be renewed. There are some recommendations which need to be considered.

Public Awareness

In India, media is the fourth pillar of the popular government. It plays an exceptionally essential and compelling part in the general improvement of the country. The effect of media can be seen in the different trials directed by it just by publishing them in their media. Accordingly, the issue of environmental pollution can be checked by making mindfulness in the general population, in which media's part is extremely critical. The compelling agency of correspondence not just influences the mind of the individuals but is also capable of developing thoughts and desirable attitudes of the people for protecting environment.

Regular Inspection

There is a requirement for a standard review apparatus, which can inspect and examine periodically every one of those exercises which are threatening the environment. This would

be a successful step towards environment protection, since prevention is better than cure.

Environmental Education

There is no means for any law, unless it's an effective and successful implementation, and for effective implementation, public awareness is a crucial condition. Therefore, it is essential that there ought to be proper awareness. This contention is additionally maintained by the Apex Court in the instance of M.C. Mehta v. Union of India. In this case, Court directed the Union Government was obliged to issue directions to all the State governments and the union territories to enforce through authorities as a condition for license on all cinema halls, to obligatory display free of expense no less than two slides/messages on environment amid each show. Moreover, Law Commission of India in its 136th report made a proposal for the constitution of the environment court[xx]. Hence, there is an urgent need to strengthen the hands of judiciary by making separate environmental courts, with a professional judge to manage the environment cases/criminal acts, so that the judiciary can perform its part more viably[xx]



BIBLIOGRAPHY

- [i] Dr. Jai Jai Ram Upadhyay, ENVIRONMENTAL LAW, p.2, Allahabad: Central Law Agency, (2005).
- [ii] Dr SC Tripathi , Environmental Law , p.1 Central Law Publication(2013)
- [iii] The Constitution of India
- [iv] ibid
- [v] ibid
- [vi] ROLE OF THE SUPREME COURT IN THE PROTECTION OF THE ENVIRONMENT, available at urisonline.in/2010/.../role-of-supreme-court-in-environment-protection.
- [vii] Available at urisonline.in/2010/.../role-of-supreme-court-in-environment-protection.
- [viii] AIR 1990 SC 273
- [ix] AIR 1996 SCC 212.
- [x] 1997)1 SCC 388
- [xi] S .Shanthakumar, ENVIRONMENTAL LAW AN INTRODUCTION, pp. 122, 123, Chennai: Surya Publication,(2001).
- [xii] AIR 1987 SC 1037
- [xiii] AIR 1996)5 SCC 647
- [xiv] HUMAN RIGHTS APPROACH TOWARDS POLLUTION FREE ENVIRONMENT, available at www.indiastat.com/Article/14/indira/fulltext.pdf – United States
- [xv] C. M. ABRAHAM and SUSHILA ABRAHAM, THE BHOPAL CASE AND THE DEVELOPMENT OF ENVIRONMENTAL LAW IN INDIA P. 362, Vol. 40 International and Comparative Law Quarterly April 1991,available at <http://heonline.org>
- [xvi] AIR 1980 SC 1622
- [xvii] AIR 1987 SC 965
- [xviii] Vrinda Narain, WATER AS A FUNDAMENTAL RIGHT : A PERSPECTIVE FROM INDIA Vol. 34 available at www.vjcl.org/docs/Narain_Water_Draft.pdf
- [xix] One hundred eighty sixth report of Law Commission available at lawcommissionofindia.nic.in/reports/186th%20report.pdf
- [xx] M.V Ranga Rao, ROLE OF JUDICIARY IN ENVIRONMENTAL PROTECTION,p.9, vol.3, Supreme Court Journal, September- December, (2001).