

## THE IMPACT OF JUDICIAL PRONOUNCEMENTS IN PROMOTING ENVIRONMENTAL CONCERNS

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*Environment is the wellspring of life on earth like water, air, soil etc. It determines the presence of development and improvement of humanity and all its activities, but the new technology inventions like thermal power and atomic plants etc. are destroying the environment it results in global warming etc. so it is necessary to protect the environment. Judiciary is one of the three pillar of the government, its function is to administration of justice and interpretation of law which is passed by the legislation. As we know that there are number of legislative steps has been taken to give effect the significant right of the men to live in the clean and sound environment. It is the fundamental duty of every state and every individual to ensure the preservation and conservation of the environment. The research is analyzing that how the black ebony staves of judiciary is carrying forward the goal of legislation. Our main objective behind the research is to identify the role of judiciary in the present scenario in environmental law. The research analyze that how the device like Public Interest Litigation (PIL) have been prominently relied upon to tackle environmental problem. The research analyze that what are the development in the environment law by judicial decision. The research analyze the remarkable principles and doctrines pronounced by the Indian and foreign judiciary in relation to the environmental law. It also throws the light on the constitutional and tortious liability aspects and new trend of judiciary in environmental law. The research is descriptive in nature. It also discuss the new emerging threats which judiciary need to combat effectively.*

### INTRODUCTION

There is no doubt on this fact that there is a rapid growth in the inventions of new technologies. Although they are giving the comforts and pleasure to the human but on the other hand they are affecting the environment at huge extent. So in long term these comforts are going to be very dangerous for us and our upcoming generations because environment and life are very closely related with each other. Our lives depend on natural resources such as air, water, and land. Environmental destruction threatens survival only. Various inventions like, atomic plant, thermal power and so on without any sufficient natural assurance leads to another danger to the situations, which leads to the issues like global warming, climate change, acid rain, etc.

Protection of environment is the duty of every individual, and the concept of ecological protection is not new, various texts of ancient India highlights that it is the dharma of each individual in the society to protect nature and the term 'nature' includes land, water, trees and animals which are of great importance to us.

In the ancient Hindu Scepters 'Atharva Veda' it is stated that "What of thee I dig out let that quickly grow over

Moreover, instead of addressing the reason for failure and disappointment of the policies and legislations, the Indian legislature consistently used to make a number of legislations just like "old wine in a new bottle". There is no use making these laws if they don't work on reasons for the failure of the policies and legislations. In recent years, there has been a sustained focus on the role played by the higher judiciary in devising and monitoring the implementation of measures for pollution control, conservation of forests and wildlife protection. Devices such as Public Interest Litigation (PIL) have been prominently relied upon to deal with the environmental problems,

### MEANING OF ENVIRONMENT

[1]The term environment is derived from a French word 'environner' which means surrounding. It is a complex system that includes physical, chemical, biological, social and cultural elements which are inter-linked to each other

[2]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 of us, including air, space, land, water, plants and wildlife

[3]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 property

Thus, after analyzing all the above definitions, we can that environment means the surroundings in which we live and is essential for our life.

### Requirement/Need for environmental 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.

### Judiciary as an environment protector

Judiciary has played an important role in the protection of environment for last decades. Various judicial remedies are there for environment protection comprise of tortious, statutory and the most important constitutional remedies. In addition to it there are various remarkable principles and doctrines propounded by the Indian judiciary in various cases.

### Tortious liability

The Indian judiciary has developed the following tortious remedies:

#### Damage

In Shriram Gas Leak case, 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

#### 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

It include anything which cause annoys, hurt or which is offensive like obnoxious smells, noise, fumes, air or water pollution. It can be any kind of interference in the right of any person to which he is legally entitled.

It is of two types-

Public nuisance it refers to interference in the right of general public.

Private Nuisance it means interference in the right of one individual.

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

**Noise Pollution V, In Re**[4] supreme court observed that noise is more than just a nuisance. It constitutes a real and present danger to people health. At every time and every place noise can produce serious physical and psychological stress. No one is immune to this stress. Now a days noise pollution become major pollutant and has serious effects on humans

#### 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

When there is duty to take care and the person failed to take care and other person suffer some harm then it is called negligence. The condition for the negligence suit is that there must be negligence on the part of the defendant.

#### Strict Liability

##### Strict liability

This rule is very helpful in environment pollution cases. For the applicability of this rule two conditions must be fulfilled first there must be unnatural use of land and second there must be some harm due to escape of use of the land. This rule is subject to certain exceptions these are:-

- An act of god
- The plaintiffs own fault
- The plaintiffs consent
- The natural use of land by defendant
- Statutory authority.

This rule laid down in 1868 in **Rylands v. Fletcher**[5] 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.

### 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

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 Principle

This is international environmental law principle where the party who damage the environment will pay for the damage to the environment. It is a remedial principle which related with repairing natural harm 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.

"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

#### **Vellor Citizen's Forum v Union of India**[6]

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. Doctrine of public trust

The Public Trust Doctrine basically rests on the principle that certain resources like air, water, sea and the forests have such a paramount 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 & others**[7] the honorable supreme court held that the doctrine discussed in this case is a part of the law of the land.

#### 5. Principle of Sustainable Development

The World commission on Environment and Development (WCED) in its report prominently known as the 'Brutland Report' named after the Chairman of the Commission Ms. GH Brutland highlights the concept of sustainable development. As per Brutland 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"[8]. There is a need for the courts to strike a balance between development and environment.

Rural Litigation and Entitlement Kendra v. State of UP[9]

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[10]

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.

#### Statutory remedies

The various statutory remedies regarding environment in different Indian statutes are -

### Civil Procedure Code

**Section 91 of Civil Procedure code** provides a right which can be taken in case of public nuisance. It can be used when any wrongful act effect or likely to effect the public for the declaration or injunction or any such relief. However the penalty for such offence is only two hundred.

### Indian Penal Code

Chapter 14 of Indian Penal code contains provisions for environment protection under section 268 to 294-A.

Section 268 Public any person who does any act which cause any common injury, damage or annoyance to the public or the people who living in the vicinity is guilty of public nuisance.[11]

### Section 290 Punishment for Public Nuisance

If any person commits public nuisance then he will be liable to fine of Rs 200.

### Criminal Procedure Code

Chapter 10 and part C consists of provisions under section 133 to 144 which can be invoke in case of environment pollution. For the applicability of these section it is necessary that there must be eminent danger to the life and consequential nuisance to the public. Section 133 of code also covers statutory bodies and corporation in case of any act or omission which cause public nuisance and environment pollution.[12]

**Ratlam Municipality v. Vardhichand**[13] supreme court through justice Krishna Iyer held that statutory bodies also covered under the provisions of criminal procedure code regardless the cash offer in their hands. The supreme court direct the Municipality to provide drainage system within one year and improve other sanitary conditions

### Statutory bodies:- The various statutory bodies are -

**National Green Tribunal** it is formed for the speedy disposal of the cases related to environment. A appeal can lie to supreme court in certain cases.

In **Manoj Misra v Union of India**[14] in this case the members of Yamuna Jiyo Abhiyaan filed PIL before tribunal to control extensive pollution in river Yamuna. The tribunal ordered to establish a Sewage treatment

plant and common Effluent Treatment Plant. And the expenses will be born by the authority which own the industry. And also passed a prohibition order to prevent the throwing of pooja material into the river. And also cleaning of plain of the river.

### Central and State Board for prevention of AIR and WATER pollution

On the national level a board is constituted to ensure the prevention of air and water pollution. Similarly at the state level a board is constituted to prevent the air and water pollution. Similarly central board constituted for the protection of wild life animal.

### The Constitutional aspects on environmental law

The Indian Constitution is one of those few in the world that contains specific provisions on environment protection. The Part IV and IV-A of Indian constitution i.e. directive principles of state policy and the fundamental duties are explicitly enunciated the nation commitment to protect and improve the environment. It was the first time when responsibility of protection of the environment imposed upon the states by Constitution (Forty Second Amendment) Act, 1976.

Part 4 of the constitution deals with Directive Principle of State Policy. Article 47 of the constitution put obligation on the state to raise the level of nutrition and stander of living of its citizens. This also includes the improvement of environment without which living stander cannot be improve.

**M.C Mehta v. Union of India** [15](CNG case) the court held that article 39(e), 47 and 48-A by themselves and collectively cast a duty on the state to protect the health of people and environment.

Article 48-A of Indian constitution states that. "The State shall endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country.

"The Amendment also inserted Part VI-A (Fundamental duty) in the Constitution i.e. Article 51-A (g) which states that "It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, and wildlife and to have compassion for living creature."

In **Sachidanand Pandey v. State of West Bengal**[16] the Supreme Court observed "whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48-A and Article 51-A(g).

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:

**R.L & E. Kendra Dehradun v. State of UP[17]** in this case the court order to stop the mining. And it also refers to the hardship faced by the workers employed there. But court observed that it is a price has to be paid for protecting and safeguarding the rights of the people to live in healthy environment.

**T.N Godavarman Thirumulpad (60) v. Union Of India[18]** the honorable Supreme Court banned mining in Aravalli Hills, especially in that part which has been regarded as forest area under environment protection act 1986.

**Deepak Kumar v. State of Haryana [19]** the court held that all lease of minor minerals including their renewal for an area of less than five hectares could be granted only after getting environment impact assessment clearance.

**Sterlite Industries (India) Ltd v. Union of India[20]** in this case the court applied the polluter pays principle and consider the capacity of the of the appellatant company to pay the compensation of 100 crore for operating the plant without renewal.

**Association for Environment Protection v. State of Kerala [21]** in this case the court applied the doctrine of public trust for demolishing the illegal construction posing threat to environment.

**Parmod Kumar Tyagi v. Art of living International Center and others [22]** national green tribunal passed the order that fine of Rs 1 lakh imposed on Delhi Pollution Control Board on the ground that it is failed to discharge its statutory obligations. Fine of Rs.5 lakh imposed on Delhi Development Authority for non performance of statutory obligation. Tribunal also impose the fine of Rs. 1 crore for restoration and rejuvenation of the flood plains to its original status.

#### (a) The right to a wholesome environment

Charan Lal Sahu Case[23]

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.

Damodhar Rao v. S. O. Municipal Corporation Hyderabad[24]

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.

#### (b) Public nuisance: the judicial response

Ratlam Municipal Council v. Vardhichan[25]

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[26]

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[27]

## Fundamental right

Article 21 of Indian constitution provides Right to Life and Personal Liberty to every person. Right to life also includes the pollution free environment[28]

Under this article right to pollution free environment also evolved by the judiciary. This right first evolved in **R.L. & E Kendra v State of UP**[29] the case related with lime stone quarrying which leads to pollution of water, air and environment. And which leads to infringement of right to life and personal liberty under article 21 of the constitution. This public interest litigation filed under article 32 of constitution.

**M.C. Mehta v. Union Of India**[30]( **Oleum Gas Leakage case**) Supreme Court held that the right to live in pollution free environment also covered under article 21 of the constitution which covered right to life and liberty as a fundamental right.

**P.A. Jacob v. Superintendent of Police, Kottayam**[31] Supreme court held that right to life under article 21 also include right to safe environment and it also include right to noise free environment.

### Article 19(1)(a) freedom of speech and expression

It is provide right to speech and expression. But this right is not absolute. In **P.A. Jacob v. Superintendent of Police, Kottayam** the honorable supreme court held that freedom of speech and expression under article 19(1)(a) does not include right to use loud speakers which leads to noise pollution.

### Article 19(1)(g) provide for freedom trade and profession

This article provide right to join any profession and carry on any trade or business. But it does not mean a person can do any business even if it effects public health at large. In **Abhilash Textile v. Rajkot Municipal Corporation**[32] the court held that a person should take into consideration fundamental duty under article 51-A(g) to protect and improve the environment. And he should not do any business activity which effect the health of public by releasing contaminated water on road.

### Article 32 and 226 writ jurisdiction of Supreme court and High Courts

Under the article 32 of constitution a person can approach to the Supreme court in case of violation of fundamental right. Similarly under article 226 a person can approach to high court for the same purpose. Under these articles the court can issue writs habeas corpus,

mandamus, prohibition, quo warranto and certiorari. Supreme court also directed the high court to establish "Green Bench" for dealing with environment cases. These benches already established in Calcutta, Madhya Pradesh, Madras, Allahabad, Punjab and Haryana high court.

## Conclusion and suggestions

Denial to interfere in delhi governments odd-even formula by high court of delhi. Which was initiated by the state government of delhi to tackle the air pollution. And the fining on shri shri Ravi Shankar's by NGT for the compensation of damage caused due to construction activity on the flood plains of Yamuna are the recent judicial activism for the environment protection

Thus, after the analysis of various provisions of environmental law and cases related with it , we can say that, the Apex 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 laziness of the legislation regarding protection of environment. In recent cases like

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 for the environment protection -

To Aware the public

In India, media is considered as fourth pillar of the popular government. It exceptionally plays an important 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 mandatory 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. So we can say that 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

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