

Judicial activism and environmental jurisprudence in India

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Abstract

In a modern welfare state, justice has to address social realities and meet the demands of time. Protection of the environment throws up a host of problems for a developing nation like ours. Administrative and legislative strategies of harmonization of environmental values with developmental values are a must and are to be formulated in the crucible of prevalent socio-economic conditions in the country. In determining the scope of the powers and functions of administrative agencies and in striking a balance between the environment and development, the courts have a crucial role to play. Principle 10 of the Rio Declaration of 1992 specifically provides for effective access to judicial and administrative proceedings, including redress and remedy. The judiciary's anxiety for combating environmental assaults has already been well elucidated. Its concern for the maintenance and preservation of forests, one of our depleting natural resources has also been highlighted.

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INTRODUCTION

Prior to 1980s, only the aggrieved party could personally knock the doors of justice and seek remedy for his grievance and any other person who was not personally affected could not do so as a proxy for the victim or the aggrieved party. But around 1980, the Indian legal system, particularly the field of environmental law, underwent a sea change in terms of discarding its moribund approach and instead, charting out new horizons of social justice. This period was characterized by not only administrative and legislative activism but also judicial activism. Public Interest Litigation (PIL) has come to stay in India. "Public Interest Litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are

affected." Contrary to the past practices, today a person acting bona fide and having sufficient interest can move the courts for redressing public enquiry, enforcing public duty, protecting social and collective rights and interests and vindicating public interest. In course of time there has been a wave of environmental litigation. At present most environmental actions in India are brought under Articles 32 and 226 of the Constitution. The writ procedure is preferred over the conventional suit because it is speedy, relatively inexpensive and offers direct access to the highest courts of the land. Nevertheless, class action suits also have their own advantages. The powers of the Supreme Court to issue directions under Article 32 and that of the high courts under Article 226 have attained greater significance in environmental litigation. Courts have made use of these powers to remedy past mala-fides and to check immediate and future assaults on the environment. The formulation of certain principles to develop a better regime for protecting the environment is a remarkable achievement. In the Bhopal Gas case, the Supreme Court formulated the doctrine of absolute liability for harm caused by hazardous and inherently dangerous industries by interpreting the scope of the power under Article 32 to issue directions or orders which ever may be appropriate in appropriate proceedings. According to the Court, this power could be utilized for forging new remedies and fashioning new strategies. These directions were given by courts for disciplining the

developmental processes, keeping in view the demands of ecological security and integrity. In one of the earlier cases, Rural Litigation Kendra, that posed an environment development dilemma, Supreme Court gave directions that were necessary to avert an ecological imbalance, such as constitution of expert committees to study and to suggest solutions, establishment of a monitoring committee to oversee afforestation programmes and stoppage of mining operations that had an adverse impact on the ecology. The rights to livelihood and clean environment are of grave concern to the courts whenever they issue a direction in an environmental case. In CERCs case, Labourers engaged in the asbestos industry were declared to be entitled to medical benefits and compensation for health hazards, which were detected after retirement. Whenever industries are closed or relocated, labourers losing their jobs and people who are thereby dislocated were directed to be properly rehabilitated. The traditional rights of tribal people and fisherman are not neglected when court issue directions for protection of flora and fauna near sanctuaries or for management of coastal zones. In *L. K. Koolwal v. State of Rajasthan*¹, the Rajasthan High Court observed that a citizens duty to protect to protect the environment under Article. 51-A (g) of the Constitution bestows upon the citizens the right to clean environment. The judiciary may go to the extent of asking the government to constitute national and state regulatory boards or environmental courts. In most cases, courts have issued directions to remind statutory authorities of their responsibility to protect the environment. Thus, directions were given to local bodies, especially municipal authorities, to remove garbage and waste and clean towns and cities. In *Indian Council for Environ-legal Action v. Union of India*¹, Supreme Court felt that such conditions in different parts of the country being better known to them, the high courts would be the appropriate forum to be moved for more effective implementation and monitoring of the anti-pollution law. The liberal use of PIL against assaults on the environment does not mean that the courts, even if it is tainted with bias, ill will or intent to black mailing will entertain every allegation. This amounts to vexatious and frivolous litigation. When the primary purpose for filing a PIL is not public interest, courts will not interfere. In *Subhash Kumar v. State of Bihar*³, the Supreme Court upheld that affected persons or even a group of social workers or journalists, but not at the instance of a person or persons who had a bias or personal grudge or enmity could initiate PIL for environmental rights. The apex court in landmark judgement of *S.P. Gupta v. Union of India*⁴, elucidated in the following words: "but we must hasten to make it clear that the individual who moves to court for judicial redress in cases of this kind must be

acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the court should not allow itself to be activated at the instance of such person and must reject his application at the threshold". The right to humane and healthy environment is seen indirectly approved in the MC Mehta group of cases, decided subsequently by the Supreme Court. The first MC Mehta case enlarged the scope of the right to live and said that the state had power to restrict hazardous industrial activities for the purpose of protecting the right of the people to live in a healthy environment. Although the second MC Mehta case modified some of the conditions, the third MC Mehta case posed an important question concerning the amount of compensation payable to the victims affected by the leakage of oleum gas from the factory. The Court held that it could entertain a petition under Article 32 of the Constitution and lay down the principles on which the quantum of compensation could be computed and paid. This case is significant as it evolved a new jurisprudence of liability to the victims of pollution caused by an industry engaged in hazardous and inherently dangerous activities. The fourth MC Mehta case was regarding the tanning industries located on the banks of Ganga was alleged to be polluting the river. The Court issued directions to them to set up effluent plants within six months from the date of the order. It was specified that failure to do so would entail closure of business. The four MC Mehta cases came before the Supreme Court under Article 32 of the constitution on the initiative of the public-spirited lawyer. He filed the petitions on the behalf of the people who were affected or likely to be affected by some action or inaction. The petitioner had no direct interest in the subject and had suffered no personal injury. Still standing to sue was not raised at the threshold question to be decided by the Court. The Supreme Court has further expanded Right to life in recent years. In *Consumer Education and Research Centre v. Union of India*, the Court said, Social security, just and humane conditions of work and leisure to workmen are as a part of his meaningful right to life. The court held that this fundamental right to health and medical aid should continue even after retirement. Significantly, the Court said that in appropriate cases, appropriate directions could be issued to the state or private employer with a view to protecting the environment, preventing pollution in the workplace safeguarding the health of the workmen or preserving free and unpolluted water for safety and health of the people. Directions were issued to the asbestos industry, and the union and state authorities are meant to fill up the yawning gaps in the interpretation of the law. The concept of compensation for environmental

degradation has evolved at a snails pace over a period. It started with the strict liability principle followed by the absolute liability principle and then compensation under Article 32 and finally the polluter pays principle. The polluter pays principle means two things:

1. The polluter should pay for the administration of the pollution control system;
2. The polluter should pay for the consequences of the pollution

This concept was further elaborated in the Vellore Tanneries Pollution case, as follows: The Polluter Pays Principle as interpreted by this court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of Sustainable Development and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost to the individual sufferers as well as the cost for reversing the damaged ecology. The society shall have to prosper, but not at the cost of the environment and in the similar vein, the environment

shall have to be protected but not at the cost of development of the society. The need of the hour is to strike a balance between the two i.e., development on one side and pollution free environment on the other. A process by which development can be sustained for generations by improving the quality of human life while at the same time living in harmony with nature and maintaining the carrying capacity of life supporting ecosystem. It focuses at integration of developmental and environmental imperatives. Thus, sustainable development is the only answer and administrative actions ought to proceed in accordance therewith and not de hors the same.

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