

Judicial creativity: A godsend to create environment

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Abstract

Environment pollution is a global issue and needs a global solution too. International community has been witnessed many challenges and came with legal measures in the form of convention, covenants and declarations. As we know international laws is mere morality till it is recognized by the nation. The Indian government has taken environment as a vital issue and recognized it as a fundamental right, directive principle as well as citizen's duty. Legislature has shown its sensitivity and has been continuously involved in making environment prone laws whether it is forest act, water, air, etc. All these national and international efforts became voidable until and unless they are enforced properly. The dead letter of the act takes its authority from the judicial tone. Wholesome environment is right to life under art 21. The government owes the land as a trustee of public. These verdicts gave new hope in the field of environment protection. The ambiguous and absurd words of the legislature were always interpreted in the favour of protection of the environment by the judiciary. The various principle propounded by the judiciary to save guard the environment are the backbone for the sustainable environment protection. The paper will recognize the role of judiciary as the guardian of justice. Various tools utilized by the Indian judiciary to resolve the environment issues will also be discussed. Relevant judicial pronouncement, which leads to create the important principles of environment jurisprudence, will also be subject matter of paper.

Key Words: Environment, Pollution, Judiciary.

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INTRODUCTION

Environment is the wellspring of life on earth like water, air, soil, etc., and determines the presence, development and improvement of humanity and all its activities. The concept of ecological protection and preservation is not new. It has been intrinsic to many ancient civilizations. Ancient India texts 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 'Atharva Veda', the ancient Hindu Scepters stated "What of thee I dig out let that quickly grow over"¹ Pollution is contamination of the land, water or air by harmful or potentially harmful substances. As per Sec. 2 (a) of the environment protection Act '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.' According to Sec. 2 (c) "Environmental pollution" means the presence in the environment of any environmental pollutant.

ENVIRONMENT CONCERNS

Our Mother Earth is currently facing lot of environmental problems. The environmental problems like global warming, acid rain, air pollution, urban sprawl, waste disposal, ozone layer depletion, water pollution, climate change and many more affect every human, animal and nation on this planet. Over the last few decades, the exploitation of our planet and degradation of our environment have gone up at an alarming rate. As our actions have been not in favor of protecting this planet, we have seen natural disasters striking us more often in the form of flash floods, tsunamis and cyclones.²

Laws related to environment laws in India: General as well as several specific laws deals with environment protection. Environmental pollution is declared civil as well as criminal wrong.

Constitutional Provisions and Environment: Indian constitution provides various rights of environment. Like Art 21 postulates, "Right to pollution free environment."

- Art 48-A imposes duty on states that "The state shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.

- Citizens are duty bound under Art 51-A(g) it states “duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.”
 - **Environmental Legislations** –all kinds of pollutions Forest, wildlife, Water, Air, noise, soil etc. are regulated by various acts. Torts-Nuisance, Trespass, Negligence ,MPLRC ,IPC, Cr.P.C These are few specific legislation the laws
 - 1927 - The Indian Forest Act and Amendment, 1984, is one of the many surviving colonial statutes. It was enacted to ‘consolidate the law related to forest, the transit of forest produce, and the duty leviable on timber and other forest produce’.
 - 1972 - The Wildlife Protection Act, Rules 1973 and Amendment.
 - 1974 - The Water (Prevention and Control of Pollution) Act establishes an institutional structure for preventing and abating water pollution. It establishes standards for water quality and effluent. Polluting industries must seek permission to discharge waste into effluent bodies. The CPCB (Central Pollution Control Board) was constituted under this act.
 - 1977 - The Water (Prevention and Control of Pollution) Cess Act provides for the levy and collection of cess or fees on water consuming industries and local authorities.
 - 1978 - The Water (Prevention and Control of Pollution) Cess Rules contains the standard definitions and indicate the kind of and location of meters that every consumer of water is required to affix.
 - 1980 - The Forest (Conservation) Act and Rules, 1981, provides for the protection of and the conservation of the forests.
 - 1982 - The Air (Prevention and Control of Pollution) Rules defines the procedures of the meetings of the Boards and the powers entrusted to them.
 - 1987 - The Air (Prevention and Control of Pollution) Amendment Act empowers the central and state pollution control boards to meet with grave emergencies of air pollution. 1986 -The Environment (Protection) Act authorizes the central government to protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and /or operation of any industrial facility on environmental grounds.
 - 1989 - The objective of Hazardous Waste (Management and Handling) Rules is to control the generation, collection, treatment, import, storage, and handling of hazardous waste.
 - 1991 - The Coastal Regulation Zone Notification puts regulations on various activities, including construction. It gives some protection to the backwaters and estuaries. 1991 provides for the protection of birds and animals and for all matters that are connected to it whether it be their habitat or the waterhole or the forests that sustain them.
 - 1998 - The Biomedical waste (Management and Handling) Rules is a legal binding on the health care institutions to streamline the process of proper handling of hospital waste such as segregation, disposal, collection, and treatment.
 - 2000 - The Municipal Solid Wastes (Management and Handling) Rules, 2000 apply to every municipal authority responsible for the collection, segregation, storage, transportation, processing, and disposal of municipal solid wastes.
 - 2002 - The Noise Pollution (Regulation and Control) (Amendment) Rules lay down such terms and conditions as are necessary to reduce noise pollution, permit use of loud speakers or public address systems during night hours on or during any cultural or religious festive occasion. Forest and wildlife
 - 2002 - The Biological Diversity Act is an act to provide for the conservation of biological diversity, sustainable use of its components, and fair and equitable sharing of the benefits arising out of the use of biological resources and knowledge associated with it.
 - 2010 – Wetland Rules Air³
- Remedies**
- General remedies include compensation, damages, and injunction. The statutory remedies incorporates: Citizen’s suit, e.g.,
 - An activity brought under Section 19 of the Environmental (Protection) Act, 1986,
 - An activity under area 133, Criminal Procedure Code, 1973.and
 - And activity brought under the Section 268 for open irritation, under 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.
- Contribution of Indian Judiciary:** In spite of number of laws people are only keeping eyes on the judiciary to get

justice. Following principles given by the judiciary fulfills the dreams of common man. These principles underpin most of the regulation of pollution affecting land, water and air.

Strict Liability: Engaged in a hazardous or inherently dangerous activity, the enterprise is strictly liable to compensate all those who are affected by any accident, except. Exceptions-Act of god, Contributory Negligence, Act of third party.

The principle of strict liability evolved in the case of *Rylands v Fletcher* (1868) L.R. 3 H.L. 330 In the year 1868, the principle of strict liability states that any person who keeps hazardous substances on his premises will be held responsible if such substances escape the premises and causes any damage. Going into the facts of the case, F had a mill on his land, and to power the mill, F built a reservoir on his land. Due to some accident, the water from the reservoir flooded the coalmines owned by R. Subsequently, R filed a suit against F. The Court held that the defendant built the reservoir at his risk, and in course of it, if any accident happens then the defendant will be liable for the accident and escape of the material.³

Precautionary Principle: 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.

Polluters pays principle: A step ahead to precautionary principle, the 'polluters pays' principle is accepted. It the com: monly accepted practice that those who produce pollution should bear the costs of managing it to prevent damage to human health or the environment. For eg- A factory that produces a potentially poisonous substance as a by product of its activities is usually held responsible for its safe disposal. The polluter pays principle has also been applied on climate change cases more specifically to emissions of green house gases. The SC in *Vellore Citizens Welfare Forum v Union of India* (AIR 1996 SC 2715) accepted the concept of sustainable development and polluter pays principle as the law of the land. SC applied the Precautionary Principle and Polluter Pays Principle in the Ganga pollution case and held that one who pollutes the environment must pay to reverse the damage caused by his acts.

Public Trust Doctrine: Public trust doctrine is the part of the law of the land. Supreme Court based its ruling on the public trust doctrine, under which the Government is the trustee of all natural resources, which are by nature meant for public use and enjoyment. *M C Mehta v Kamal Nath*³ In this case, the Supreme Court of India held that the public trust doctrine applied in India .The State

Government of H.P. granted lease of riparian forestland to a private company for commercial purpose. The purpose of the lease was to build a motel at the bank of the River Beas. A report titled "Kamal Nath dares the mighty Beas to keep his dreams afloat" published in a national newspaper alleged that the motel management interfered with the natural flow of the river in order to divert its course and to save the motel from future floods. The Supreme Court initiated suo motu action based on the newspaper article. The Supreme Court stated that the Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and forests have such great importance to the people as a whole that it would be unjustified to make them a subject of private ownership. The court observed that: As rivers, forests, minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation. Thus, the Public Trust doctrine is a part of the law of the land

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 and 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"³ Sustainable development plays a very important role in all aspects of life. Sustainable Development means an integration of development and environment imperative means development in harmony with environmental consideration. To be sustainable, development must possess both economic and ecological sustainability. It is a development process where exploitation of resources, direction of investment, orientation of technology development and institutional changes are all in harmony. It also implies local control over the resource use, and is the only path for conserving and promoting socio-economic wellbeing in a democratic form. Rio declaration 1992 declares broader principles to guide sustainable development worldwide. There is a need for the courts to strike a balance between development and environment. *Rural Litigation and Entitlement Kendra v. State of Up*³. 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 Forum³ 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 ecosystem.

CONCLUSION SUGGESTIONS

In short we can say that the Supreme Court is, at the present time, doing its best 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 cautious about the special nature of environmental rights, considering that the loss of natural resources can't be renewed. But alone judiciary can't do the protection. We should also contribute for the good environment goals and especially for the sustainable environment. There are various methods with the help of which we can do it.

Environmental Education: Public awareness is necessary for proper implementation. There is no means for any law, unless it's an effective and successful implementation,. Therefore, it is essential that there ought to be proper awareness.

Public Awareness: In India, media plays a crucial role because it is the fourth pillar of the popular government the effect of media can be seen in the different trials directed by it. Just by publishing them in their media. so the issue of environment can be raised by media and providing the proper popularity to it. 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. Hence it is necessary step towards environment protection.

Regular Inspection: There is a requirement of regular inspection, who can 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.

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