

# JUDICIAL ACTIVISM IN ENVIRONMENT LEGISLATION – INDIA

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## ABSTRACT

The dark ebony of the courts that thundered endlessly to shield a miniature human from the awful blows of darkness, is recognised for their ability to preserve the earth. The desire for industrialisation and political instability in the post-independence era for India rendered environmental conservation the lowest priority. But the devastating Bhopal Gas was a top-level and took environment protection to the Core. The nation was eventually extended and improved by current environmental legislation. The Supreme Court and the High Court pursued in both instances a fundamental protection to the climate, thereby applying their scope to the protection to insurance, safe sea and air. Some key options include closing the UP calcareous quarries, stopping the contaminated Tannery on the Ganges River and establishing a policy of complete liability for risky companies. The Delhi CNG Code, the Municipal Solid Waste Rules and the Municipal Karnataka (amendment) Act were drawn up in reaction to a Court Order. Policies have been drawn up and changes were made. However, in leading to social transformation the efficiency of judicial activism is questionable. While the judiciary can lay the groundwork for protection of the environment, it hasn't really proved adequate to bring sufficient results from the progress made by judicial activism.

While a range of statutory measures have been made to insure that people have a clear right to a safe environment and a reciprocal obligation for the protection and conservation of the ecosystem by the state and institutions, my research is directed at analysing acts made by the To the purpose, the judiciary. Identify the present situation and determine the nature and scope of this study significant environmental improvements introduced to date by the Indian judiciary.

## KEY WORDS:

Judicial activism, environment protection, environment, effectiveness, India, Judiciary.

## INTRODUCTION

After British era the Indian economy was left secluded from the world's economy which led decline in economic growth. After the LPG policy of 1991 there were many changes in the industrial sector of our country which led to its growth and expansion but on the other side it also had various negative effects on our environment such as Air pollution, water pollution, acid rains, deforestation were some of the primary negative effects of liberalization.

With the time many environmental activist observe that due to pollution caused by these industries there was exploitation being done to human society and our motherland which led to various cases and making of new policies so as to protect the environment and human society from such harm. This led the judiciary to eventually take command in environmental protection by the way of giving various Landmark judgments on various cases where Industries were observed causing environmental exploitation.

With judiciary taking active role in protection of environment the legislature also stepped up so as to make new guideline, policies and rules and regulations to protect environment which were to be followed by each and every industrialists while setting up and also to be followed by already functioning industries so as to control and check on the level of environmental pollution which is caused by them.

The Indian judiciary has been an integral part of national politics in recent years. The courts have struggled with all the key concerns, including its regulation, environmental control, clean environment, healthcare or regulatory policies. The use of legal power is, however, one of the instruments to hold governments responsible for the right of the State to fulfill its tasks. Justice activism can involve many aspects: reading the statute, creating a new statute or enforcing legislation by way of a rigorous judicial examination by the executive. The radical decisions taken by a few Liberal judges were to establish mechanisms to monitor climate and human rights violations by legal activism. His system of The most notable judicial achievement was the Public Interest Case (PIL) — and the most significant tool for increasing its forces. The discourse on progressive and social justice in India has been rising substantially in recent decades. The Court, for example , took crucial measures to ban Kolkata and Kanpur tanneries in order to conserve water. Driving passenger vehicles and the movement of polluting factories from Delhi into the transition to compressed natural gas (CNG) to boost the city's air quality. The paper aims at the effectiveness of judicial intervention in environmental conservation.

## PROBLEM:

Environmental protection is no longer just another concern. Today, as development and Industrialization change, it has become a necessity and a part of every citizen's legal and moral duty to protect and improve their environment. The judiciary therefore has also come up with its role in environmental protection and improvement, and has developed a mandate not only for individuals but also for all others, individuals, organizations, corporations or businesses, who are citizens and Industrial companies of India. Therefore the

problem arises whether the judiciary is doing enough by its present approach by means of its Role of environmental protection and improvement.

## **OBJECTIVE:**

The objective of doing this paper is are:

- To study the details in judicial activism in environment legislation
- To study various case laws which evolved the environment laws and Doctrines in practice in India.

## **HYPOTHESIS**

Judicial activism is the manner in which the judiciary explores the complexity of the issue and sets out a concrete solution. The task of judges is not to formulate certain doctrines and principles that adopt legislation, but it does fulfill the gaps that the legislature has left. Similarly, such policies and doctrines are enough to preserve and protect the environment, and judicial ingenuity is a very important problem, and it is answered that, with regard to the security of the environment, judgements should play a crucial role and guarantee the right of people to a clean environment under Article 21 as a matter of fundamental rights.

## **JUDICIAL ACTIVISM IN ENVIRONMENT LITIGATION**

The judiciary's position is focused on the very presence of a democratic structure in a particular country. Therefore, in liberal democracy, the democratic system and the dictatorial countries the judiciary's role is different. In liberal democracy the position of the judiciary is as critical as that of India. In addition, the Indian Constitution was inspired by the US Constitution and a specific concept of judicial review was later adopted. Judicial culture, judicial review and legal advocacy have become a rich field for legal study in independent India. The role of the judiciary in influencing environmental legislation in India and policy is well known to have not suffered in terms of legal and administrative discrepancies. The role of the Indian Supreme Court has been clearly explained to Professor S. P. Sathe and Professor Upendra Baxi, two leading academics who have written extensively on the role of the judiciary in India. Might and legal intervention of Indian courts contributed to a robust growing network of constitutional rights. A strong global awareness was established at the 1972 Stockholm Conference for Human Environment and the 42nd amendment, adopted in India in 1976. Such environmental liability for persons [Article 51A(g)] as well as for the State (Article 48-A) was implemented.

In compliance with the Constitution, In compliance with Article 51A(g) and Article 48-A, the legal situation is constitutional and will not technically tie per se, however the hunter provisions is usually and constitutionally bindingly understood by the indigenous courts. In fact, the cotes used these clauses as part of the right to life under article 21 to clarify and establish legal enforced fundamental environmental protections.

After that, attempts have been made to demonstrate how the Indian court has used international environmental "sweet" and "tight" laws in order to establish effective national environmental case-law. For certain instances, for the sake of environmental security, the Indian judiciary has adopted the arbitration process. The High Court blurred the meaning of the reluctance of strangers to make claims on behalf of poor and misguided citizens. In the following Landmark cases, which offer a new look to environmental law and to litigation, the position of judicial knowledge on environmental jurisdiction in India is studied. Only because of judicial imagination can do doctrines and different aspects relating to environmental conservation and development be found in India today.

### 1. RATLAM MUNICIPALITY V. VARICHAND<sup>1</sup>

The courts made no commitment to environmental protection until 1980. It was the first time that environmental conservation was involved.

The petitioners in this case were residents of the town of Ratlam in Madhya Pradesh State. Some of Ratlam city residents lodged a complaint before the city's subdivision magistrate on the grounds that the township in Ratlam did not construct adequate drains as needed and that the size of the area created by neighboring slum residents caused the public nuisance to the complainants. Within six months from the complaint submitted by the town's citizens, the city was directed by the subdivisional council of Ratlam to establish an appropriate development plan. The Supreme Court also accepted the guidelines for the jurisdiction. The Municipality instead appealed and claimed that the municipality was inadequately equipped to meet with the requirements established by the Subdivisional Judge of Ratlam Area. Afterwards, in compliance with the directions provided by the Divisional Judge under Article 123 of the Municipality Act, 1961 the Supreme Court advised the municipality and declared that a lack of funds is not a shield in the execution of the fundamental tasks undertaken by the local authorities of a specific nation region.<sup>2</sup>

### 2. RURAL LITIGATION AND ENTITLEMENT KENDRA V. STATE OF UTTAR PRADESH<sup>3</sup>

That is the case famous for being called the 'Litigation in Dehradun Valley.' The quarries were carried out in Mussoorie hill in the Himalayas. Limestone was extracted from the hills. This led to holes and slumping, as the mines buried deep into the hillsides, which is an unlawfulness action per se. In respect of the activity of

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<sup>1</sup> AIR 1980 SC 1622

<sup>2</sup> <http://lawtimesjournal.in/municipal-council-ratlam-vs-shri-vardhichand-ors/>

<sup>3</sup> AIR 1985 SC 652, 656

lime-stone quarrying in Mussoorie Hill, India, the Supreme Court received a letter of petition from Kendra Rural Litigation and Entitlement. The quarries were reported to have bad effect on environment and polluted the annual springs of water.

In order to audit the lime-stone quarries the Court formed an expert committee (the 'Bhargav Committee'). All of the lime-stone quarries were classified into three categories by grade (class A was least pronounced, class B had a more serious negative impact and class C had to be closed). (A) Category A had the least adverse effects. The Court claimed that the mining of limestone and the digging of the deposits of limestone appeared to damage the continuous supplies of water. However, the environmental disruption had to be balanced against the need for industrial stone quarry in the region. The decision was taken to avoid quarries of category C from being run and not to use a number of quarries listed in category B. Such category A quarries were divided into two categories, depending on their position inside or outside the Mussoorie city limits. This was permitted to operate those outside of the city boundaries. The application of the judicial system for citizens inside the city. The Court was conscious that the employees working in the closed quarries would be removed from their job by virtue of their decision. It stressed, however, there was need for labour in closed quarries to include afforestation and soil conservation programs. So, Indian Government was ordered to provide, as far as possible, jobs for the staff in the afforestation and soil conservation programmes.

### 3. MC MEHTA V. UNION OF INDIA<sup>4</sup>

Delhi Cloth Mills is a subsidiary of Shri Ram, a large-scale Delhi food and fertilizer industry. The Sulphuric Acid Plant's spill of lime gas happened on 4-12-1985 and several others were wounded by a prosecution lawyer at Tee Hazari. On 6-12-85 the same plant also suffered a minor leak. Placed by the Complaint Cr, Chapter 133. The Shri Ram Foods and Fertilizers Management was directed by District Magistrate P.C. Delhi, to shut the unit and give the reasons for the video order of 6-12-1985 Seven day(s) from now. Under Article 32 of the Constitution, MC Mehta, an applicant to the Supreme Court of Appeal for public interest trials, is a plaintiff, Supreme Court. The petitioner urged the Court, in its petition, to order the government to take the measures needed to prevent these leaks from factories engaged in hazardous and unsafe production processes. MC Mehta also requested the Court to order Shri Ram Foods and fertilizer industry management and government to relocate the Factory to a location far from the city. The Full Bench dismissed the order for U.C.C. to offer 470 million US Dollars in reimbursement for the 'complete and final resolution' of claimants

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<sup>4</sup> AIR 1987 SC 965, 982, 1086

in view of the 'past, current and potential cases, and decided on all sides of the deal (i.e. U.C.C and the Union of India) in order to reimburse victims. Maximum amount was to be compensated and accounted for in full and in the manner of the order 14-2-89 of the Supreme Court.

**The Rule of Absolute Liability:-** The "absolute responsibility" rule is an much tougher term in MC Mehta and Shri Ram food and fertilizer sectors, AIR 1987 SC 965 (Popularly regarded as "Absolute Responsibility" "Oleum Gas Leak Case").<sup>5</sup>

#### 4. INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION V. UOI<sup>6</sup>

Throughout in this situation, this court found the "polluter pays theory" to be a legitimate rule. "We believe any theory established in the name of this country should be transparent, realistic and suitable for circumstances accomplished in that region," observed the Court.

Therefore, in line with A joint petition of the Environmental NGOs to the SPCB and the CPCB to recover remedial costs under Section 32 of the Indian Constitution acts is filed as chemical firms that create harmful waste on the ground and pollute the surrounding village area as a whole, and even work without the permit. The Court held that 'if activities were undertaken, the person engaged in the activities would be inherently liable to compensate any other person for any harm caused by his or her Activities irrespective of whether the individual has taken adequate care in the exercise of his or her activity damaged ecology.'<sup>7</sup>

#### SOME IMPORTANT PRINCIPLES AND DOCTRINES PROVIDED BY SUPREME COURT FOR PROTECTION OF ENVIRONMENT:

##### 1. Doctrine of Absolute Liability

THE BHOPAL CASE: Union Carbide Corporation v. Union of India<sup>8</sup>

The Court held that if, for any cause in hazardous or normal unhealthy movements such as toxic exhaust gas, an undertaking undertakes a risky intrinsic action and damages any person, it is under a strict and entirely mandatory duty to compensate those harmed by such an impact. The Supreme Court then established, without question, an absolute standard of liability.

<sup>5</sup> <https://indianjudiciarynotes.com/case-study/case-study-mc-mehta-vs-union-of-india/>

<sup>6</sup> J.T (1996) 2 196

<sup>7</sup> [http://www.academia.edu/10362033/JUDICIAL\\_ACTIVISM\\_IN\\_ENVIRONMENTAL\\_LEGISLATION\\_IN\\_INDIA?s=t](http://www.academia.edu/10362033/JUDICIAL_ACTIVISM_IN_ENVIRONMENTAL_LEGISLATION_IN_INDIA?s=t)

<sup>8</sup> AIR 1990 SC 273

## 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<sup>9</sup>*

"If you make a mistake, it's your responsibility to clear it," has become a very popular principle recently. Polluter pays Principle. The definition that 'polluter paying' does not mean 'fault' in environmental regulation, it should be found out. It encourages a regulatory strategy that relies on the rehabilitation of natural loss. In foreign environmental law the polluting side accounts for environmental losses.

### *VELLORE CITIZEN FORUM V. UNION OF INDIA<sup>10</sup>*

In this case, the Supreme Court claimed that a key aspect of environmental growth is the polluter pay concept.

## 3. Precautionary Principle

In the Vellore Citizens Forum, The following three principles were set up by the Supreme Court of India:

- Environmental policies must avoid, predict and fix environmental degradation causes
- There should be no lack of scientific evidence as a justification for postponing behavior.
- The artist is liable for showing his positive job

## 4. Public Trust Doctrine

The Theory of Public Confidence is absolutely focused on the fact that the environmental and all human beings have a major importance for the natural resources such as air, water, the seas and forest. It is also unjustifiable to allow private ownership of such natural resources.

### *M.C.Mehta v. Kamal Nath and Others<sup>11</sup>*

The theory of popular trust is included in the law of the country, as stated by the Court in this judgment. The Theory of Public Faith is an old legal doctrine which stipulates that certain common property including rivers, banks and forests and air be openly and uninterferingly used by the general public in the country. Such services belonged either to no one (*res Nullius*), or all together (*res communio*), in compliance with Roma law. The sovereign, therefore, was allowed to own such common law properties, but ownership was restricted in nature

<sup>9</sup> [http://www.academia.edu/10362033/JUDICIAL\\_ACTIVISM\\_IN\\_ENVIRONMENTAL\\_LEGISLATION\\_IN\\_INDIA?s=t](http://www.academia.edu/10362033/JUDICIAL_ACTIVISM_IN_ENVIRONMENTAL_LEGISLATION_IN_INDIA?s=t)

<sup>10</sup> (1996) 5 SCC 647

<sup>11</sup> (1997) 1 SCC 388

and the Crown did not extend such rights on private owned land if this meant competing with public interests in shipping or farming.

Under English common law, only conventional purposes such as sailing, trade and fishing were governed by a public trust doctrine. But the American Courts also extended the definition of the law of popular faith. The reports of the Supreme Court in the Mono Lake area demonstrate explicitly that many of the natural capital, such as fresh water, wetland and riparian forests, are constitutionally associated with conserving them.

## 5. Doctrine of Sustainable Development

In the research regarded primarily as the 'Brundtland Survey,' which is named after the Panel President, Ms. GH Brundkei, the World Climate & Growth Panel (WCED). As the Brundtland study explains, sustainability implies 'creation which responds to current requirements without sacrificing the potential of to meet their own needs in future generations.'

### *Rural Litigation and Entitlement Kendra v. State of UP*<sup>12</sup>

The court addressed the topic of climate and development for the first time and announced that these are humanity's permanent properties and are meant in just a century, to be depleted.

### *Vellore Citizen's Welfare Forum*<sup>13</sup>

The High Court noted that sustainable growth has become a feasible term for eradication of deprivation and enhancing human standard of life while working within the supporting potential of the environment.

## Major bodies established by Supreme Court for protection of environment:

### 1. CPCB (central pollution control board)

#### Functions of Central Pollution Control Board:

- 1) 1) Advise the Government of Central on issues of pollution
- 2) 2) Coordination of State Council operations
- 3) Providing professional assistance to state governments, initiating and funding pollution management audits and research
- 4) Staff management preparation and organization
- 5) Collecting, recording, editing, preparing manuals, and code of conduct technical and statistical data.
- 6) Criteria to be developed

<sup>12</sup> AIR 1985 SC 652, 656

<sup>13</sup> (1996) 5 SCC 647

7) Planning the national emission control programme.

## 2. SPCB (state pollution control board)

### Functions of the State Pollution Control Boards:

3. Advise the State Government on pollution issues and industrial matters
4. Organizing the pollution management system
5. Information collection and distribution
6. Conducting our inspection
7. Establishing requirements for effluent and pollution
8. To give the permission, in compliance with controlled emission and effluent requirements, to factories and other activities.

### (1) NGT (National green tribunal)

Section 4 of Chapter II of the Act 2010 of the National Green Tribunal provides for the composition of the National Green Tribunal.

The following individuals shall be made up of the tribunal:

- A full-time chairman;
- At least 10 members and not more than 20 full-time judicial officials, the Central Government has occasionally been notified;
- At least 10 members and not more than 20 expert members, as informed Central Government from time to time.

### Powers of the National Green Tribunal

The NGT has a several powers,

- Supervision of the proceedings alone without the rules of the Code of Civil Procedure. It is in line with the concept of natural justice.
- The specification at the time of issuing orders of the theory of sustainable growth. It is also a requirement that everyone who is found to be polluting pay.
- The rules of proof referred to in the Indian proof act shall not limit NGT's.
- All cases before the Tribunal are subject to Section 196 of the Indian Penal Code granted in respect of the judicial process within the scope of Sections 193, 219 and 228.
- The tribunal is entitled to be a civil court for the purposes of section 195 and chapter XXVI of the 1973 Code of Criminal Procedure.

## CONCLUSION

There are certainly plenty of constitutional and statutory requirements in India on environmental protection. Despite these laws, rules and regulations, however, environmental conservation and sustainability is still a pressing issue. The legislative requirement and other environmental regulations must, therefore, be applied efficiently and effectively. A solid framework Environmental case law has led to the protection of the environment and its people in India. The disaster at Bhopal Gas was the major catalyst for environmental legal activism. Established environmental legislation was subsequently extended across the country and legal activity increased through PIL. The aim was to treat the climate as a fundamental constitutional right (Article 21) and to implement the duties of the State as laid out in the "Guidelines" (Article 48a and 51A). This has been completed. The PIL was shown to be an important tool for the accountable NGOs and individuals involved. The federal and state governments have made concerted attempts to devise the MSW rules, the Delhi CNG scheme and the civic regulations in Karnataka, which are a direct consequence of the judgments of the Supreme Court. Nonetheless, behind the constitutional power of the Court's order there is total ignorance where orders and guidelines give rise to a legal discussion, but still poor compliance. In addition to the administrative responsibilities and the lack of environmental integrity, the judiciary is liable. Several actions have not been enforced in recent years, ignoring financial, managerial commitment or other flaws in decision-making. However, given the repeated failure of other bodies the judiciary retains an active role.

## REFERENCES:

- 1) Judicial Activism in Post-Emergency Era – Dr. Swapna Deka Mandrinath, Notion Press, 2015- Law
- 2) Different law generals available in footnoting
- 3) MC Mehta, GROWTH OF ENVIRONMENTAL JURISPRUDENCE IN INDIA, p.71, 1999
- 4) Former Chief Justice Mr. K.G. Balakrishnan, THE ROLE OF THE JUDICIARY IN ENVIRONMENTAL PROTECTION IN D. P SHRIVASTAVA MEMORIAL LECTURE, p. 1, March 20,2010
- 5) All India reporter; Journal Articles
- 6) Upendra Baxi: 'The Avatar of Indian Judiciary Activism: Explorations in Geography of (In) justice
- 7) www.legalservicesindia.com/articles