

# An Overview of Environmental Jurisprudence: In reference to Public Interest Litigation

Dr. Shiva Chaudhary,  
Assistant Professor, Department of Management,  
Center for Management Studies, JAIN (Deemed-to-be University), Bangalore, India  
Email Id: dr.shiva\_c@cms.ac.in

**ABSTRACT:** *Though the environmental revolution for moving from pollution-engender to effective and unpolluted technology was started in 19th-century environment protection is one of the major concerns of the 21st century. As mentioned in an article, Global Alliance on Health and Pollution 2017 reported that 15% of premature death was caused by the pollutant environment. Further, the report cited that India tops the list with 2.3 million deaths due to pollution followed by China (1.38 million). However, India in recent times had taken progressive steps towards environmental protection. The environment activists, leader, or attorney like MC Mehta have contributed to developing environmental jurisprudence which helps in establishing legal principle, statutes and some relevant provision were added or amended in the Indian Constitution. Since the considerable approach has been taken jointly by Government, Judiciary, and citizens we still fall from achieving a determined goal in protecting the environment. In this review paper, the author will discuss the importance of the environment with special reference to practices followed in ancient India. Further, the author will discuss the development of jurisprudence through public interest litigation and finally analyzes the approach of citizens towards environment protection with a conclusion and suggestion at the end.*

**KEYWORDS:** *environment, interest, jurisprudence, litigation, pollution and public*

## INTRODUCTION

In India, during the recent years' concerns regarding environment protection has been raised frequently by the government and environment activists. Environment protection is not a new concept and has been enshrined under ancient India also. In ancient time, it was believed that man and environment are not detachable and polluting environment was considered as sin.

In the ancient time, natural environment is perceived as divine inspiration and was worshipped in some or all parts of the country. In that circumstances, everyone is frightened and sacred in polluting or destroying the environment. They all are also associated with God or Goddess. The people at that time behave in particular manner and was regarded as environmental ethics.

Environment is also studied from ethical point of view concerning what is morally acceptable or not. Ethical studies revolve around theoretical values about environment, duties of personal against environment and socio-political approach in protecting and sustaining environment. The basic environment ethics believe that, every creature including plants and animal on this planet is part and parcel of human life. Secondly, it was believed that it is duty of human beings to respect, honor and take care of all non-human creatures. In this research paper an attempt was made to discuss the Environment Jurisprudence developed with the Public Interest Litigation.

### 1. Theory

#### 1.1. Responsible Behavior:

The theory of responsible behavior presented by Hines, Hungerford and Tomera suggest that intention of acting is prominent element in determining that a citizen would take on activities or not. The theory revolves around Knowledge, Control Centre, Attitudes, Personal Responsibility and intention of acting. These all elements jointly result into environmentally responsible behavior. No single factor can cause major changes in the society. For instance, person having the knowledge of the pollution throws garbage in the middle of the road reveals that they have lack of responsible behavior.

#### 1.2. Reasoned Action Theory:

The theory of reasoned/action presented by Ajzen and Fishbein advocates that human behavior is primarily grounded in rational thoughts. It further put forward that norms and belief; attitudes; intention of acting; and

behavior are responsible in stimulating action. These factors provide the understanding that why someone would act in favor of environment. Further, this theory was developed into planned behaviors theory.

### *1.3.Planned Behavior:*

The theory of planned behavior presented by Ajzen was developed from reasoned action theory. It suggests that behavior mainly depends on personal confidence on results, other's anticipation in your work and circumstantial situation supporting or preventing behaviors.

### *1.4.Environmental Citizenship Model:*

Hungerford and Volk presented environmental citizenship model which primarily explains three educational stages concerning environment awareness. First stage refers to entry level which basically deals with knowledge of the environment. Second stage refers to comprehensive knowledge and commitment for environment and third stage refers to making environmental action strategies and intention to act.

### *1.5.Human-Environment Interaction Model:*

Hammond's model discusses 4 different types of interactions between Human and Environment. Firstly, we are associated with environment for food, minerals, fibers etc. Secondly, some natural resources are used to produce different products. Thirdly, ecosystem provides life-support services like oxygen and lastly the polluted environment affects human health and welfare directly.

### *1.6.Other Theories:*

Some other theories based upon permutation and combination of above theories are Value Belief Norm theory, Diffusion and Health belief theories.

## *2. Environment in Ancient India*

### *2.1.Judicial Interference in protecting Environment: Public Interest Litigation*

The Constitution of India under Article 32 and 226 provides that any interested person can file petition pertaining to any subjects concerning public interest. The Constitution of India under Part III incorporated fundamental right. However, these fundamental rights do not have direct bearing with environment but judiciary have opined that it is the part of Article 21. Further, DPSP under Article 48A incorporated the provision which allowed the state to take appropriate measures in protecting environment. Further, article 51A which is in nature of Fundamental duties imposes a duty on every citizen to protect and improve natural environment.

### *2.2.Judicial Activism and Public Interest Litigation*

#### *2.2.1. Public Trust Doctrine:*

This doctrine states that certain natural environment like water, sea, air and land cannot be owned by any private entity or individual. The doctrine further asserted that it is our duty to preserve natural environment for our next generation.

#### *2.2.2. Precautionary Principle:*

The precautionary principle states that before establishing any industries the individual has to take all precautionary measure concerning the protection of environment.

#### *2.2.3. Polluter Pays Principle:*

This principle states that the any person responsible for polluting environment will be liable to pay compensation as well as cost spend on restoration of environment. The principle will be applied uniformly to all types of industries.

### 3. Landmark Judicial Pronouncement

#### 3.1. *Municipal Council, Ratlam Vs. Shri Vardichand and Ors.*

In this case, the petitioner who was a resident of Ratlam city filed a case against Ratlam Municipality. The main contention of the petitioner was that municipality was not performing its duty properly and as a result, a public nuisance was created in that area. The SDM has given an order under Section 123 of the M. P. Municipalities Act of 1961 to prepare a proper plan within 6 months from the date of the complaint. They challenged the SDM order before the HC whereby the HC approved the SDM order<sup>1</sup>.

Finally, the case was put forward before the SC. The Municipality in an appeal before SC computes that they do not have enough funds and resources to comply with the obligation made by the SDM. The court after hearing the contention of both the parties held that the Municipality cannot take the defense of scarcity of funds and resources in a matter concerning public health. This case is a landmark judgment where the Supreme Court being a guardian of the Constitution enforces the administrative obligation of the Municipality.

#### 3.2. *Rural Litigation and Entitlement Kendra Vs. State of UP and Ors.*

This case is commonly known as Dehradun Valley Case. In this case, the petitioner Rural Litigation and Entitlement Kendra (a Non-profit Organization) wrote a letter to the SC highlighting the activity of environment degradation by the frequent practices of illegal mining. The SC surprisingly treated the letter as a WP under Article 32 of the Indian Constitution. The petitioner raises the issue that whether the Forest Conservation Act 1980 will be retrospectively applicable to the lease agreement signed in 1962. Secondly, which should be given more priority economic factor or environmental factors<sup>2</sup>.

The petitioner contended that mining in the Dehradun valley degrade the environment which ultimately violates the fundamental rights of the person. They further contended that right to wholesome environment is part and parcel of the Article 21 of the Indian Constitution. Secondly it was contended that forest is subject matter enshrined under concurrent list and thus Central Government's approval is necessary before initiating any activities.

The defendant on the other hand contended that, it is matter of Administrative authority established under Environment Act and should not be entertained by the Supreme Court. They further contended that mining process is economically important for the country and prohibition of mining will lead to unemployment.

The Court after hearing contention of both the party's orders to constitute expert committee to review the region. Based on the report submitted by the expert committee the Supreme Court orders to cease certain mining activities and held that right to wholesome environment is part and parcel of the Article 21 of the Indian Constitution. The court further orders that Eco-Task force shall be created to forest the area damaged by mining. The court further orders that for Eco-task force worker employed in mining will be given preference.

#### 3.3. *Union Carbide Corporation Vs. Union of India*

This case is commonly known as Bhopal Gas Tragedy Case. In this case, pesticide plant of Union Carbide-an American Industrial Giant was set up in Bhopal. The agronomic engineer continuously told UCIL to take proper safety measures during the setup of plant. However, they neglect the engineer's complaint and as a result, Methyl Iso-cynate was leaked in the atmosphere. Around 26, 00 people died immediately after outbreak. The number went on increasing and around 8000 people died within fortnight<sup>3</sup>.

The court in this case applied Absolute Liability Principle and the accused were convicted under Section 304A of the Indian Penal Code for negligently causing death of the person. They were also charged for Section 336, 337, and 338 of the IPC. On the other hand, government enacted Bhopal Gas Leak Disaster Act which allowed the govt. to represent the victim in or outside the India in legal matters. The court while

<sup>1</sup> 1980 AIR 1622

<sup>2</sup> 1985 AIR 652

<sup>3</sup> 1990 AIR 273

determining the compensation applies Polluter Pay Principle. The court ordered that UCIL had to pay \$470 million as final settlement.

However, it is to be noted that the Compensation determined by the court were criticized on the basis that it is way less to the promised amount by the government. As a result, validity of the settlement was challenged. The court in an appeal held that the amount determined for compensation is fair, reasonable and just. The judgment of the Supreme Court and government action were criticized on the grounds that rights offered by the Indian Constitution is merely a bundle of rights. The main cause of criticism was-

- Government decision that our judicial system is not capable of dealing with such a matter and to fight the case in United States; and
- Amount of criticism

### *3.4.M.C. Mehta Vs. UOI, 1986*

This case is popularly known as Shriram Fertilizer Case and Oleum Gas Leak Case. In this gas Oleum gas was leaked from Shriram Food and Fertilizer's Ltd. -A Cloth Mill. As a result of outbreak various people were died immediately and severely affected by the gas. Before the gas leak MC Mehta- an environmental activist lawyer filed a writ petition under article 32 highlighting the concern that Shriram Fertilizer is involved in manufacturing hazardous substances<sup>4</sup>.

Petitioner MC Mehta requested the court to order for relocation of the Mill from densely populated area of New Delhi. The issues raised before the Hon'ble Court is –whether hazardous industries should be allowed to operate in densely populated area. Secondly, is there any need to evolve any mechanism to regulate industries in such areas and lastly, in such a case what will be the criteria for determining the liability and compensation.

The court held that we should take some progressive step instead of waiting for English Law to regulate such a case. Here in this case the companies are at fault in taking the required precaution while dealing with the hazardous activities. The court further highlighted that incident of gas leak could be controlled if all the precautionary measures had been taken. The court highlighting the severe condition of environment applied the absolute liability principle and company was held liable for their negligent. Now, with this judgment company will be informed during their setup that their work will be hazardous to health. They will be also intimated that they will be held solely responsible for any damage to the general public. The court strictly opined that companies cannot take defense that they took all the precautionary measure. Here the principle of strict and absolute liability will be applied. The court held that owner of Mill is responsible for the payment of Rs. 20 lakhs as compensation to the victims.

### *3.5.M.C. Mehta Vs. Union of India*

This case is prevalently known as Ganga Pollution Case. The Ganga River in Kanpur was polluted by toxic waste released from leather industries. MC Mehta in 1985 filed a writ petition under Article 32 for the writ of mandamus to prevent these leather industries to dispose of toxic (and other) waste in to the river<sup>5</sup>.

The court in this case held that there should not be discharge of any waste material in the river without being properly treated. The court explained term "trade effluent" and observed that it is primary source for water pollution while writing the judgment the court also highlighted the important provision enshrined under Indian Constitution. For instance, article 48A which is in nature of directive principle to the state to take appropriate measures in protecting environment. Further, article 51A which is in nature of Fundamental duties imposes a duty on every citizen to protect and improve natural environment. The court further highlighted the significance of Water (Prevention and Control of Pollution) Act, 1974 and held that despite being an explicit provision in the act no action was taken by the State board to ensure that no waste material will be released in the river Ganga. The court further ordered that treatment plans should be setup by the industries.

<sup>4</sup> 1987 AIR 1086

<sup>5</sup> [1987] 4 SCC 463



In another writ petition<sup>6</sup> the Supreme Court orders Municipalities to take all precautionary and adequate measures to prevent water pollution. The court observed that dairies in Kanpur was also responsible for polluted river. In this circumstances, the court orders either to shift the dairies or dispose of their waste material outside the city.

### 3.6. Delhi Stone Crushing Case

In this case MC Mehta file, a writ petition under Article 32 of the Indian Constitution concerning the prohibition on activities like mining and stone crushing. The issue which was raised before the Supreme Court was that whether these plants should be allowed to operate in the area of Lal Kuan and Surajkund and what will be the minimum radius within which no mining or construction plan is allowed to function<sup>7</sup>.

The court held that the mining and crushing plant set in the location is not permitted by the Delhi and Haryana Development Authority. Thus in that circumstances the court highlighted that even if they were following pollution standard they are not allowed to run their plant in those areas. Further, the Supreme Court held that:

- For mining activity plant can be established outside the radius of 2 km from tourist resorts;
- For construction activity plant can be established outside the radius of 5 km from tourist resorts;
- Renewal of lease is not allowed within the tourist areas.

The court is of the view that statute is not capable enough to control the pollution. There is need to make awareness among public concerning importance of environment. This would result in law abiding citizen who will give positive contribution in protecting environment.

### 3.7. Vellore Citizen Welfare Forum vs. Union of India

In this case Vellore Citizen Welfare Forum filed a writ petition under Article 32 against the tanneries and industries in the State of Tamil Nadu responsible for polluting Palar River by discharging their waste material in the river. Palar River is the main basis of drinking water for the people living in the nearby places. Further, due to discharge of waste material in the river around 35,000 ha agricultural land becomes partially or completely unfit for cultivation. The question raised before the Supreme Court is that whether they will be allowed to continue their business at the cost of people<sup>8</sup>.

In this case the court applied the Polluter Pay and Precautionary Principle. The court further recognizes the concept of sustainable development and its relationship with environment. Here in this case the court held that tanneries and industries will be responsible to pay compensation as they have harmfully affected the environment. The court further, asserted that any deviation from the prescribed standards, rule or instruction will result in permanently closer of the industries.

### 3.8. Indian Council for Enviro-legal Action vs. UOI

In this case ICELA-a non-governmental organization filed a writ petition under Article 32 of the Indian Constitution against chemical companies for polluting soil by creating harmful wastes. The Court in this case imposed compensation of nearly 37 Cr. on Hindustan Agro Chemicals Ltd<sup>9</sup>.

The court in this case for the first time applied Polluter Pay Principle. The PP Principle states that the any person responsible for polluting environment will be liable to pay compensation as well as cost spend on restoration of environment. The principle will be applied uniformly to all types of industries.

<sup>6</sup> Mehta II (M.C. Mehta v. Union of India 1988 AIR 1115).

<sup>7</sup> 1991 SCR (1) 866

<sup>8</sup> AIR 1996 SC 2715

<sup>9</sup> 1996 SCC (3) 212

### 3.9. Taz Trapezium Case

This case was related to the one of the World Heritage- Taj Mahal. In this case MC Mehta filed a petition concerning the increasing of the pollution in the surrounding area due to which it started turning yellow. It was observed that it was due to emission of Sulphur Dioxide from the surrounding industries. The court thus ordered UP Pollution Control Board to make a comprehensive list of industries situated in Taz Trapezium Zone (About 10,400 sq.km). The court then orders the industries to control emission of pollution or relocate the industries outside the Taz Trapezium Zone<sup>10</sup>.

### 3.10. M.C. Mehta Vs. Kamal Nath

In this case the government order for granting to prepare motel at bank of River Beas was criticized in a national newspaper. It was claimed that building of motel at the bank of River Beas will divert the flow of river Beas. The Supreme Court *suomo to* take the matter since it was related to the environment degradation. In this case for the first time public Trust Doctrine was applied and all the lease in favor of motel was quashed<sup>11</sup>.

## CONCLUSION

The theories concerning environmental protection discussed above concludes that while neither of these hypotheses can explain human-environment interaction on their own, combining them would certainly provide additional perspectives and potential solutions to the growing environmental problems faced by humans and their invented technologies in the twenty-first century. Further we have observed that, how Judiciary have evolved Polluter Pays and Precautionary Principle and Public Trust Doctrine in order to protect environment from hazardous pollutants.

In all the above cases, the major concern was striking a balance between environment and development. It can be seen that how court was successful in striking a balance between environment and development. Court had clearly said that economic benefit cannot overtake environment destruction. Thus it cannot be denied that judiciary has played a vital role in formulation of different principle and protection of environment. However, as observed by the court in Delhi Stone Crushing Case statute and law is not sufficient and there is need for conducting more awareness programs related to the importance of environment.

<sup>10</sup> 1987 AIR 1086

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