



ENVIRONMENTAL PROTECTION IN INDIA – AN ANALYSIS IN THE CONTEXT OF JUDICIAL ACTIVISM

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I. INTRODUCTION

‘Save Environment, Save Future’ seems to be the gospel of the entire universe in the 21st century plagued by environmental degradation. Deterioration of the Mother Earth due to population explosion, industrialization, urbanization, poverty, deforestation, unsustainable developmental plans etc, has aggravated environmental pollution¹ and gravely endangered every life source. Contamination of the nature through addition or introduction of materials which are hazardous and harmful resulting the environment to alter in a non-favourable manner is environmental pollution.²

World community has acknowledged this grim reality and has taken recourse to international, regional and national measures to protect environment and maintain balance between ecology and economic development. Global environmental issues of global warming, acid rain, climate change, ozone depletion, gas emission, deforestation etc., have been addressed in the world forum through Stockholm Conference 1972, Nairobi Conference 1982, Rio Earth Summit 1992, Kyoto Protocol 1997, Johannesburg Convention 2002 and various other international measures. International response to environmental protection through enunciation of polluter pay principle (putting the cost of compensation as well as to restore the injury to environment on the polluter)³, precautionary principle (to anticipate, prevent and attack the causes of environmental degradation)⁴ and public trust doctrine⁵ (declaring nature’s resources are common to all) which are essential features of sustainable development are commendable.

India is not immune from the problem of environmental degradation and has been facing overwhelming environmental problems. Environment induced diseases are on the rise causing suffering and death of large number of people. Every year lakhs of villagers are internally displaced due to flood and river erosion. Urbanization has led to scarcity of pure drinking water and gas emission has increased due to industrialization. Land fertility has largely diminished, thereby adversely affecting agriculture.⁶

To tackle these problems law has been invoked. Under the legal framework in India, constitutional status has been accorded to environmental protection by the 42nd Constitutional Amendment 1976 by insertion of Articles 48A and 51A (g) in the Constitution of India.⁷ State is responsible under the Constitution of India to ensure that environment is protected and improved and that the forest and wildlife of the country is safeguarded.⁸ Duty has been imposed upon citizens of India to ensure protection and improvement of natural environment, forests, lakes, wildlife and rivers and that they must be compassionate towards all living beings.⁹ By virtue of these amendments, the scope for environmental legislations in India has broadened.

Parliamentarians in India have earnestly responded to environmental issues and enacted a number of environmental legislations ranging from forest preservation, wildlife protection, water and air pollution control, protection of biodiversity etc, to an all-comprehensive environmental protection law.¹⁰ To implement the decisions of United

Nations Conference on Human Environment held at Stockholm in 1972, the Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974, the Air ((Prevention and Control of Pollution) Act, 1981, and the Environment Protection Act, 1986.

Some other legislative enactments relating to environmental protection are the Wild Life (Protection) Act, 1972, the Forest (Conservation) Act, 1980, the Biodiversity Act, 2000 etc., along with rules and notifications, Indian Penal Code 1860, Criminal Procedure Code 1973 etc., also supplement these enactments. In spite, of all the plethora of legislations being in force, the environmental problems in India are on the rise because of some lacunas such as lack of stringent punishment in some laws like (Water Act and Air Act, presence of exceptions in Environment Protection Act and the advisory nature of Board in the Forest Act etc. Moreover, the mechanism for the enforcement of fundamental duty under Article 51A(g) has not been spelled out.¹¹

Legislative intention in paper has failed to transmit into wholehearted concrete actions. The lethargic work culture and inaction on the part of the executive has impeded the effective implementation of environmental legislations. To salvage the people of India from 'no-green future', the Indian Judiciary has adorned the role of activist through judicial creativity. Judiciary being the guardian of the Constitution and custodian of fundamental and basic rights of Indian people have gone 'Green' through Judicial activism by not only recognizing customary international norms of polluter pay principle, precautionary principle etc., but also enunciated principles for protecting environment and has ushered an era of eco-friendly development for progress of the nation and thus, being a catalyst to environmental protection and justice in India.¹² Thus, the author in the present paper endeavours to analyze the activism exhibited by the judiciary in dealing with issues pertaining to environmental protection in India.

II. JUDICIAL ACTIVISM AND ENVIRONMENTAL PROTECTION IN INDIA

Judicial activism

Judicial Activism means a creative thought process through which the court displays vigour, enterprise, initiative pulsating with the urge of creating new and refined principles of law. It implies progressive judicial thinking which develops law to constructively handle complex problems of socio-economic nature in the contemporary society.¹³ Justice Anand had said that judicial activism in the strict sense cannot be excluded from the role of the courts as it is truly 'Judicial Creativity'. Justice P.N. Bhagawati while explaining judicial activism has stated that in interpreting the fundamental rights, judiciary in India has adopted an activist goal-oriented approach thereby expanding the frontiers of rights and rewritten certain parts of the Constitution.¹⁴ The internal functioning of the executive and legislative organ of the government can be reviewed through the movement of judicial activism.¹⁵

Scope of Judicial Activism

Uppendra Baxi remarked that the reasons for the increasing concern of Court in governance arenas are varied and complex but one major factor has been failure of implementing agencies to discharge their Constitutional and Statutory duties. This has led general people and civil society groups to approach Courts for suitable legal remedies. The Courts in India have positively responded pro-actively to various governance problems including protection and improvement of environment.

Judiciary in India has gone beyond its traditional role of interpretation and adjudication and has started playing a crucial role in every sphere of governance which includes protection of child rights¹⁶, prisoner's right¹⁷, sexual harassment of women at workplace¹⁸, educational rights¹⁹ etc. One other area where judiciary has played a prominent role is in dealing with environmental issues by laying down new principles to protect environment, reinterpreting environmental laws and creating new institutions through a series of decisions and directions. The judgments and decisions of the Supreme Court becomes a part of the supreme law of the land as the Constitution of India provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India.²⁰ Supreme Court of India is empowered to issue detailed guidelines to executive agencies and private parties for ensuring implementation of the various legislations including environmental statutes.²¹ These constitutional provisions have been guiding force behind judicial activism in India.

Judicial decisions in India on Environmental issues

With the dilution of the traditional concept of locus-standi and emergence and recognition of Public Interest Litigation (PIL), application of writ petition under Articles 32 and 226, and expansion interpretation of constitutional provision of Articles 14, 19 and 21, the scope of judicial activism has widened to cover environmental protection and thus led to the growth of environmental jurisprudence. An analysis into the judicial decisions of the Court in some landmark cases will highlight judicial activism on the part of Judiciary in India in addressing and protecting environmental issues.

One of the leading cases in upholding environmental protection under the impact of judicial activism has been the *Ratlam Municipal Council v Vardichand*²², wherein the Supreme Court pointed out that the local bodies are responsible to protect the environment. The Municipality had failed to discharge its duty of constructing drains and public latrines on the plea of financial constraint. The Court held that if the municipality is to justify its existence, then it cannot evade from providing proper drainage system in working conditions which would sufficiently meet the needs of the people. Municipality was directed by the Apex judiciary to construct proper drainage system for maintenance of health and preservation of sanitation and environment after an on-spot visit was conducted by Justice Krishna Iyer to assess the nature of environmental problem in Ratlam town. This case proclaimed that decent living is a public right.²³

Supreme Court addressed the issue of conflict between development and environment in the Doon Valley case²⁴. A Committee of Experts was appointed by the Court to inspect whether indiscriminate mining, continued under a legally valid license, had any adverse impact on ecology. Based on the Committee's report, the Court ordered the immediate shut down of certain lime quarries. Taking the hardship of the workers of the lime quarries into account, the Supreme Court directed that the workers were to be rehabilitated by employing them in afforestation and soil conservation programmes. Supreme Court expanded the fundamental right to life²⁵ under the Constitution of India to include the right of the people to live in healthy environment with minimum disturbance to ecological balance. The Court gave primacy to protect environment and people's right to healthy environment which cannot be jeopardized in the name of economic growth. The committee mechanism in the instant case was utilized to supervise the implementation of judicial order. Thus, the judiciary assumed executive function and filled up the administrative vacuum.²⁶

It is interesting to note that Supreme Court while advocating environmental protection has also emphasized that industries are necessary for economic development. The Apex judiciary has taken recourse to the concept of Sustainable development in several environmental cases. Sustainable development means meeting the needs of the present generation without comprising the ability of future generations to meet their own needs. For example, in the Taj Mahal Pollution case²⁷, the Supreme Court followed the path of sustainable development and accordingly directed that all industries operating in Taz Trapezium Zone (TTZ) must use natural gas as a substitute for coke/coal as an industrial fuel and the industries which are not able to obtain natural gas connections for any reason must stop functioning and relocate. Thus, courts have tried to strike balance between ecology and development. Through this case the judiciary ensured the protection of a monument of national importance from being damaged by environmental pollution²⁸ and thus fulfilled a constitutional duty imposed upon the State to protect objects, places and monuments in India²⁹.

Environmental awareness through spread of environmental education and proper use of mass media has also been propagated by the Apex judiciary. In *M.C.Mehta v Union of India*³⁰ the Supreme Court suggested that programme 'Keep the city clean' be organized once a year in India, wherein the citizens, members of executive, judiciary etc should participate in co-operation with local authorities by rendering free personal services. The Court emphasized that lessons relating to protection and improvement of environment be taught at least one hour a week in all educational institutions in India.³¹ Directions were issued by the Supreme Court for the introduction of the subject of environment as a compulsory subject in schools and colleges in *M.C.Mehta v Union of India*.³² In the instant case, the Court entrusted the government with the responsibility of spreading knowledge about the need to protect environment through the aid of governmental mass media agencies and audio-visual media.³³ It is pertinent here to point out in pursuance of such directions compulsory environmental subject has been introduced and taught in under-graduate level colleges in Assam.³⁴

International environmental principles such as polluter pays principle, precautionary principle and public trust doctrine have been adopted and applied by the Judiciary in India in administering environmental justice to resolve domestic environmental problems. Polluter pays principle was applied by the Supreme Court for the first time in the Bichhri village industrial pollution case³⁵. Industrial pollution destroyed the fertility of the land in Bichhri village and nearby villages, forcing the residents there to migrate to other places. Invoking the 'Polluter Pays Principle' the Court held that the polluter carrying on hazardous or inherently dangerous activity is liable to make good the loss caused to any other affected party by polluter's activity irrespective of the fact whether the polluter took reasonable care while carrying on his activity. The polluting industries were held liable and directed by the Supreme Court to compensate for the harm caused by them to the villagers in the affected area, to the soil and to the under-ground water and take all necessary measures to remove sludge and other pollutants lying in the affected area. The Polluter Pays Principle as interpreted by the Supreme Court was incorporated as a fundamental objective in the National Environmental Policy 2006.³⁶

In *Vellore Citizens' Welfare Forum v Union of India*³⁷, the Supreme Court ordered the closure of industries involved in tannery business which were discharging untreated effluents, thereby causing water pollution and land pollution in 59 villages of three districts and had rendered acute storage of potable water as drinking and irrigation water were polluted. Drawing inference from the internationally recognized doctrine of Precautionary Principle, the Apex judiciary imposed an obligation on every developer, industry and governmental agency to anticipate, prevent and attack the causes of environmental degradation and emphasized that the onus of proof shall be on the industrialists to show that their action is environmentally benign. The Court held that lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation when there are threats of serious and irreversible damage. Supreme Court reiterated and declared unequivocally that 'the precautionary principle' and 'the polluter pays principle' are part of the environmental jurisprudence of India.³⁸

Supreme Court enunciated the doctrine of 'Public trust' thereby obligating the State to take initiatives to conserve the natural resources. This doctrine has been referred to by the Court in *M.C Mehta v Kamal Nath*³⁹ wherein it was observed that State holds the natural resources as a trustee and cannot commit a breach of trust. The Court squashed the State Governments order of granting lease to a Motel located on the bank of river Beas and held that the State had committed a breach of trust by leasing the ecologically fragile land to the motel management. Further the public company which had got the lease was directed to compensate the cost of restitution of environment and ecology in that area.⁴⁰ Similarly, in *Animal and Environment Legal Defence Fund v Union of India*⁴¹, the Supreme Court held that every attempt should be made to preserve the fragile economy of the forest area and to protect the Tiger Reserve and the right of tribals in the State of Madhya Pradesh.⁴²

The activist spirit in Supreme Court came to forefront through evolution of the doctrine of Absolutely Liability by the then Chief Justice of India P.N Bhagwati in 1987. popularly known as Bhopal Gas Leak Disaster⁴³ and Oleum Gas Leak Case⁴⁴ are two significant cases leading to the formulation of the principle of Absolute Liability which means liability irrespective of negligence on the part of the defendants without defences. In Bhopal Gas leak disaster case, the Supreme Court stressed the need to evolve a national policy to protect national interests from ultra hazardous pursuits of economic gains and directed the Union Carbide Corporation to compensate the victims. In Oleum Gas leak case the Supreme Court held that an enterprise engaged in hazardous or inherently dangerous industry, which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone and if any harm is done on account of such activity, then the enterprise must compensate and the enterprise cannot escape liability on the plea that it had taken all reasonable care. The principle of Absolute liability is a remarkable creative innovation of the Supreme Court whereby those carrying out inherently dangerous activity can be made completely and accountable without any scope for escaping their liability.

Ganga pollution case⁴⁵ is a significant water pollution case. In the present case the Supreme Court made important observations relating to the failure of the Central and State Board under the Water (prevention and Control of Pollution) Act and the Municipalities under the U.P.Nagar Mahapalika Adhiyam in discharging their duties. The Court issued a number of directions to the Mahapalika for cleaning river Ganga such as to ensure that half burnt dead bodies were not thrown into Ganga, constructing sewers and public latrines, to take action against industries responsible for pollution etc. Supreme Court held that inspite of comprehensive provisions contained in Water

(Prevention and Control of Pollution) Act 1974 and Environment Protection Act 1986, the Government had taken no effective steps to stop grave environmental pollution caused to Ganga.

Supreme Court deserves sincere appreciation for recognizing the need to conserve forests which are traditional source of sustenance of tribals, thereby upholding the rights of tribal to forest produce and communal residence and at the same encouraging forest conservation⁴⁶ in its judgment in *Samatha v State of Andhra Pradesh*⁴⁷.

There have been instances where the Supreme Court has treated a particular case as a representative action and issued orders binding on the entire class. For example in *M.C.Mehta v Union of India*⁴⁸ (Mehta I-Tanneries), the petition was filed against Kanpur tanneries and Kanpur Municipal Council to stop polluting the river Ganga. However, all the industrialists and Municipal Corporations and the town Municipal Councils having jurisdiction over the areas through which the river flows in India were asked to appear before the Court. Supreme Court ordered for closure of Tanneries of Jajmau near Kanpur polluting the river Ganga.⁴⁹ Similarly the Supreme Court of India expanded the Godavarman case⁵⁰ from a matter of ceasing illegal operation in one forest into a reformation of the entire country's forest policy. Through such public interest litigations, the Supreme Court has played an active role in addressing environmental issues of water pollution and deforestation in greater public interest.⁵¹

III. CONCLUSION

The judiciary in India has unanimously accepted that everyone has the right to wholesome healthy environment flowing from the right to life as proclaimed in Article 21 of the Constitution of India.⁵² By expansive interpretation of Constitutional provisions, the Apex judiciary has sought to convert formal guarantees into human rights. Against the backdrop of persistent incoherence in policy making and executive inaction, judiciary has taken up its task as an activist seriously by deviating from its traditional legalistic functions and contributed towards the growth of environmental jurisprudence through various judicial innovative initiatives such as applying international principles to resolve domestic environmental problems, appointing expert committee to give inputs and monitoring implementation of judicial decisions, making on spot visits, expanding the sphere of litigation, interpreting existing constitutional provisions, evolving new principles of environmental protection etc.⁵³ With the passage of time environmental problems are becoming more complex and new principles to deal with such environmental problems have been enunciated by the judiciary. Stressing on the role of judiciary towards environmental pollution, former Chief Justice Bhagwati remarked that "We have to evolve new principles and lay down new norms, which would adequately deal with the new problems which arise in a highly industrialized economy".⁵⁴

Judicial activism has given a new positive direction to environmental laws and policies thereby transforming 'Supreme Court of India into a Supreme Court for Indians'. Indian Judiciary has been a catalyst to environmental protection in India. Clean environment is a pre-requisite for healthy existence, as such executive agencies must take necessary measures to effectively implement judgments of the Court and bring to life the laws so that environmental degradation which is rapidly gripping India can be mitigated and enable everyone to live a better life. It is hoped that judicial initiative will be wholeheartedly supplemented by the legislative and executive actions of the government.

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