

## Contribution of Judiciary in Environmental Protection



### Law

KEYWORDS : Environmental Protection, Principles of Judiciary, Power of Supreme Court.

**Sanjith M.N.**

Research Scholar, Department of Law, Kuvempu University, Jnanasahyadri, Shankaraghatta, Shivamogga - 577451

**Dr. A. Mohanram**

Research Guide, Department of Law, Kuvempu University, Jnanasahyadri, Shankaraghatta, Shivamogga - 577451

### ABSTRACT

*Environmental awareness is increasing globally, resulting an influence on emerging environmental jurisprudence. The Courts appear to be ready to be proactive and deliver judgments that should result in greater environmental protection or reduced environmental harm. As environmental jurisprudence develops to provide the opportunity, members of the public are showing a willingness to take on the role of environmental advocates, notably through Public Interest Litigation and therefore environmental jurisprudence appears to be moving in a positive direction.*

### Introduction

Judiciary is a key mechanism for ensuring legal effectiveness of environmental law and institutional regimes. It is well prepared and informed with rapidly expanding powers. Judiciary plays a crucial role in the implementation and enforcement of environmental law through the successful conclusion of environmental cases. Enforcement of environmental rights including right to information, by providing access to the public and civil society to judicial procedures. The coherent networking among judiciaries, exchange of judgments, sharing information on environmental cases and international jurisprudence are widening the area of environmental law. To decide the environmental cases in a better manner, judiciary is adopting some of the principles, are as follows:

#### 1. Doctrine of Locus Standi

In *S.P. Gupta V. Union of India*<sup>1</sup> it was said that the doctrine of Locus Standi applicable in the traditional private law litigation has been liberalized by the Indian courts in the case of Public Interest Litigation. The courts have accepted a new approach by allowing any member of the public to seek judicial redress for a legal wrong caused to a person or to a determinate class of persons, who by reasons of poverty helplessness or disability or a socially disadvantageous position are unable to approach the court directly.

This modification of traditional Locus Standi could be termed as representation of another person or group of persons. The concept of representation standing reflects the traditional assumption that only a person motivated by self-interest will present a case<sup>2</sup>. Therefore any person or group of person can appear before the judiciary regarding the protection of the environment as well as protection of the rights of the public in general.

#### 2. Principle of Absolute Liability

In *Sriram gas leakage case*; Oleum gas leaked from a unit of the Shriram food and fertilizer industries and affected the residents of Delhi. The Supreme Court in this case laid down the Principle of Absolute Liability.

The court observed that an enterprise which is engaged in a hazardous or inherently dangerous industry was an absolute duty towards community to ensure that such industry which causes harm by its hazardous operation is strictly and absolutely liable to compensate all those affected by the subject to any explosions. In this progressive judgment the Supreme Court emphasized the significance of judicial activism. It observed that law has to grow in order to satisfy the needs of the fast changing development taking place in the country. A new situations aris-

es the law has to be evolved in order to meet challenge of such new situation. This would adequately deal with the new norms problems which arise in a highly industrialized economy.<sup>3</sup>

#### 3. Precautionary principle:

The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by the concern for risk potential.

The *Vellore citizens welfare form V. Union of India*<sup>4</sup> case is a landmark case where the issue of pollution caused by untreated effluent of tanneries and other industries in the state of Tamil Nadu was addressed. The court asserted that precautionary principle has been accepted as part of the law of the land.

It said, In view of the constitutional and statutory provisions we have no hesitation in holiday that the precautionary principle and the polluter pays principle are part of the environmental law of the country<sup>5</sup>.

#### 4. Polluter Pay Principle

The Polluter Pay Principle means that the absolute liability for harm to the environment extends not only to the compensation the victims of pollution but also to the cost of restoring the environmental degradation.

The Polluter Pay Principle was for the first time applied and defined in the case of *Indian Council for Enviro Legal Action V. UOI*<sup>6</sup> It was declared by the court that redemption of the damaged environment is a part of the process of sustainable development and as such polluter is liable to pay the cost of the individual sufferers as well as the cost of reversing the damaged ecology.

#### 5. Public Trust Doctrine:

The doctrine of public trust was first developed as a legal theory within the precincts of the Raman Empire. It was founded on the principle that the government this the sole proprietor of certain common properties such as rivers, seashore, forests and the air in trusteeship for the free and unimpeded use of the general public.

The Public Trust Doctrine primarily rest on the principle that certain resources like air, sea, water and forests have such a great importance to the people as a whole. The doctrine rejoins upon the government to protect the resources for the enjoyment of the general public rather than to permit their use for private

ownership or commercial purposes.

In *M.C Mehta V. Kamal Nath*<sup>7</sup> case that the apex court approved this doctrine for the first time. The government sanction to the deviation of the natural flow of a river for the sake of increasing the facilities of a motel was held to be violating the trust conferred on the state to protect natural resources.

In *M.I. Builders Pvt Ltd v. Radhey shyam sahu*<sup>8</sup> case the Supreme Court applied the doctrine when it found that the Lucknow Mahapalika entered into a contract with the petitioners for constructing an underground shopping complex beneath a park. Although the major part of the work was over the court held that the contract was without tender and also against Public Trust Doctrine as the Mahapalika had deprived themselves of their obligatory duties or a trustee to maintain parks. The underground market changed the garden of historical importance into a terraced garden<sup>9</sup>.

## 6. Doctrine of Parens Patriae

The concept of Parens Patriae literally means parent of the country and refers traditionally to the role of the state as the sovereign and guardian of a person with legal disability. The doctrine has its roots in the common law concept of the royal prerogative. The royal prerogative included the right or responsibility to take care of persons who were legally unable to take proper care of them. In the colonial Indian context it set the King as the protector of all citizens and as a parent.

In *Charan Lal Sahu V. Union of India*<sup>10</sup> the validity of the Bhopal Gas Disaster Act of 1985 was challenged on the ground that it allows the state to take away the right of the victims to claim compensation by themselves. To decide the validity of the act, the Supreme Court discussed the doctrine of Parens Patriae in detail and asserted that the prerogative of the doctrine is inherent in the supreme power of every state whether that power is lodged in a most beneficent function. In India, the preamble of the Constitution read with articles 38, 39 and 39A of the Directive Principles of State Policy enjoys the states to take up such responsibilities. The government is within its duty to protect and control persons under disability. It is the protective measure to which a social welfare state is committed. The Supreme Court after discussing two American decisions in support of its view concluded that conceptually and from the jurisprudential point of view. It is possible to authorize the central government to take over the claims of the victims if they were disabled in pursuing their claims.

## 7. Inter Generational Equity

Inter Generational Equity refers to the right of each generation of human beings to benefit from the cultural and natural inheritance from the obligations to preserve such a heritage for future generations.

The Supreme Court in the *Ganesh Wood Products V. State of Himachal Pradesh*<sup>11</sup> case recognized the obligation of the present generation to preserve natural resources for the next and future generations. The courts relayed on the principle of Inter Generational Equity and explained. Inter Generational Equity means the concern for the generations yet to come. The present generation has no right to imperil the safety and well being of the next generation or the generations to come thereafter.

In a judgment, the court quoted from the report of the World Commission on Environment and Development as:

"Environmental protection and sustainable development must be an integral part of the mandates of all agencies of governments of international organizations and of major private sector institutions. There must be made responsible and accountable

for ensuring that their policies programs and budgets encourage and support activities that are economically and ecologically sustainable both in the short and longer terms".

Similarly in the *Indian Council for Enviro Legal Action v/s Union of India*<sup>12</sup> case the court observed that environmental statutes were enacted to ensure a good quality of life for unborn generations since it is they who must bear the front of ecological degradation<sup>13</sup>.

## 8. Labour Jurisprudence

The concept of Labour Jurisprudence was developed by the judiciary. The courts are deciding the Public Interest Litigation cases. In that there are so many cases are relates to the environmental protection. The court may order for vacate the persons from those areas where the activities are resulting in environmental degradation. By this order of the court, the persons who are working in that activity will lose their employment and residence.

So to protect the interest of those persons the courts adopt the concept of Labour Jurisprudence. Here the persons should be rehabilitated those who are suffered from losing their employment and residence. This concept is given with the importance by the courts while deciding the cases and they will order for the Rehabilitation of the sufferers.

## Conclusion

In India environmental law has seen considerable development after 1980's. Most of the principles under which environmental law works in India emerged in this period. The development of the laws in this area has seen a considerable share of initiative by the Indian judiciary, particularly the higher judiciary, consisting of the Supreme Court of India, and the High Courts of certain States. The judiciary is adopting various principles while deciding the environmental cases. The essence of the existing law relating to the environment has developed through Legislative and Judicial initiative.

## Reference

1. Abraham P. Meachinkarn, *Evolving Environmental Jurisprudence in India*. C.U.L.R, Vol.28, 2004
2. Jaswal P. S. and Jaswal Nishtha, *Environmental Law*, Reprint 2000, Pioneer Publications, Allahabad Law Agency, Faridabad.
3. Leela Krishnan P. *Environmental Law in India*, Edition - 1999, Lexis Nexis, Butterworths, New Delhi.
4. Thakur Kailash, *Environmental Protection Law and Policy in India*, Deep and Deep Publication, New Delhi.