



Environmental Protection in India: An Appraisal of Judicial Approach

Dr. Sandeep Kumar

Assistant Prof. H.P. University Institute of Legal Studies, Ava Lodge Shimla (H.P) 171004

ABSTRACT

Since more than two decades, higher judiciary in India has done remarkable job in area of environment protection. The judiciary, in particular, the Apex Court, did not shirk its Constitutional responsibilities to protect the environmental issues. The Judiciary did not hesitate to assume upon itself administrative functions and in series of cases constituted committees of experts to suggest measures how environmental pollutants discharged from industries and tanneries in the country can be arrested. However, the approach of Indian judiciary towards undertaking of large developmental projects has not been totally pessimistic, rather, the Courts evolved several principles of sustainable development to make balance between the right to environment and the right to development. Therefore, the objective of the present paper is to examine the pro-environmental approach of Indian judiciary as exhibited by it especially in era of liberalisation, privatisation and globalisation.

KEYWORDS

Environmental Protection, Judicial approach

There is enough in the world for every one's need,
But not for every one's greed

Mahatma Gandhi

I. Introduction

The environment furnishes all essentials for life and so there has been a close link between the environment and human beings. The word environment is a broad spectrum which brings within its hue hygienic atmosphere and ecological balance. Saving this planet Earth is now of utmost concern to the entire humanity. Without a natural and congenial environment, human existence is not possible on earth. Damage to the environment is one of the crucial problems that human kind is facing today. The world is witnessing a global crisis of environmental degradation. The future of the earth is entirely linked with the sustainable development that may take place in the various countries, both developed and developing. They have to adopt a visionary approach in consonance with the needs of the man and the earth.

India had been under the colonial rule for about two centuries and even prior to that there were minor kingdoms which did not pay attention to any sort of environmental concerns. After the independence the primary concern of the administrators was to eradicate poverty. Millions of people were below the poverty line and the literacy rate was also very poor. The population growth was at alarmingly high rate. All these factors contributed to serious environmental degradation and the persons who were mostly affected by this environmental degradation were the poor and the disadvantaged sections of the society. They were the first victims of the poor sanitation, bad air, contaminated water, scarce food, fuel and fodder. For millions of Indians their only wealth and common property resources were threatened by environmental degradation. The environment protection was a least priority in India's post-independence era due to need of industrialization and political disturbances. The post-independence India was concerned with equity and growth and the environmental concern was added only as a third dimension. Thousands of people migrated to cities in search of job and basics living conditions. This resulted in massive increase in population in the cities. Our country was suffering from different environmental problems such as degradation of forest, continuing pollution by toxic substances, careless industrial and agricultural practices, and unplanned urban growth. It is a fact that environmental degradation was seriously threatening the economic and social progress of the country and that our future generations may discover that life support systems have been damaged beyond repair.

Therefore, the objective of the present paper is to examine and assess the pro-environment approach exhibited by Indian judiciary

since the last two decades. With the help of some landmark cases decided by Supreme Court and High Courts in India, an attempt would be made to know the emerging trends in area of environment protection.

II. Living Examples of Pro-Environment Judicial Approach

In recent years the Indian judiciary has occupied an important position in the nation's environmental protection. The revolutionary decisions of few liberal judges took up the task of developing mechanisms for having a check on environmental and human rights violation through judicial activism. The court's contribution in the form of public interest litigation helped in bringing social economic justice, and attracted attention of not only Indian but foreign scholars around the world as well. The discourse on India's inventive and active judiciary has considerably evolved during the past few decades. The court has taken significant measures, for example, shifting tanneries in order to save river Ganges, forcing commercial vehicles to convert to Compressed Natural Gas and shifting polluting industries out of Delhi to improve air quality of the city. The role played by Indian Judiciary can be discussed under the following heads.

A. Relaxed Locus Standi Norm

Prior to 1980s, only the aggrieved party could personally knock the doors of justice and seek remedy for his grievance and any other person who was not personally affected could not do so as a proxy for the victim or the aggrieved party. But around 1980, the Indian legal system, particularly the field of environmental law, underwent a sea change in terms of discarding its moribund approach and instead, charting out new horizons of social justice. This period was characterized by not only administrative and legislative activism but also judicial activism.

B. Endorsing Principles of Sustainable Development

The Indian judiciary have successfully adopted specific environmental law principles from international environmental law jurisprudence and have combined a liberal view towards ensuring social justice and the protection of human rights. These principles have been incorporated in the Indian environmental jurisprudence and play a key role in decisions of judges even when not explicitly mentioned in the concerned statute. The principles of Indian environmental law are resident in the judicial interpretation of laws and the Constitution, and encompass several internationally recognized principles, thereby providing some semblance of consistency between domestic and global environmental standards

a) Precautionary Principle

A new principle for guiding human activities, to prevent harm to

the environment and to human health, has been emerging during the past 10 years. It is called the "principle of precautionary action" or the "precautionary principle" or precautionary approach in short. The precautionary principle states that if an action or policy has a suspected risk of causing harm to the public or to the environment, in the absence of scientific consensus that the action or policy is harmful, the burden of proof that it is not harmful falls on those taking the action.

This principle was discussed by the Supreme Court in **Vellore's case**¹. In this case the Supreme Court accepted that the precautionary principle is part of the environmental law of the country. Another guiding principle has been that of adopting a model of sustainable development. It means that what type or extent of development can take place, which can be sustained by nature / ecology with or without mitigation. **Indian Council for Environmental Action v. Union of India**,² is a monumental judgment on environment protection and sustainable development. In this case a PIL was filed alleging environmental pollution caused by private industrial units. The PIL was filed not for issuance of writ, order or direction against such units but against the Union of India, State Government and State Pollution Board concerned to compel them to perform their statutory duties on ground and that their failure to carry out their duties violated the right to life of citizens under article 21 of the Constitution. The Apex Court held that whenever the government or its authorities will fail to take action then it is the duty of the Court to intervene and the Court can certainly issue the necessary directions.

The precautionary principle came to be directly applied in **M.C. Mehta v. Union of India**³ for protecting the Taj Mahal from air pollution. Expert studies proved that emissions from coke/coal based industries in the Taj Trapezium (TTZ) had damaging effect on the Taj. The court observed that the atmospheric pollution in TTZ has to be eliminated at any cost. They stated that not even one percent chance can be taken when human life apart the preservation of a prestigious monument like Taj is involved. They further stated that "the environmental measures must anticipate, prevent and attack the causes of environmental degradation. The "onus of proof" is on an industry to show that its operation with the aid of coke /coal is environmentally benign. It is rather proved beyond doubt that the emissions generated by the use of coke/coal by the industries in TTZ are the main polluters of ambient air.

b) Polluter Pays Principle

The polluter should pay for the administration of the pollution control system. The polluter should pay for the consequences of the pollution. This concept was further elaborated in the **Vellore Tanneries Pollution case**. The Polluter Pays Principle as interpreted by this court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.

c) Public Trust Doctrine

The Public Trust Doctrine, evolved in **M.C. Mehta v. Kamal Nath**⁴ states that certain common properties such as rivers, forests, seashores and the air were held by Government in Trusteeship for the free and unimpeded use of the general public. Granting lease to a motel located at the bank of the River Beas would interfere with the natural flow of the water and that the State Government had breached the public trust doctrine. The Supreme Court enunciated Professor Joseph Sax's doctrine of public trust in this case to further justify and perhaps extract state initiative to conserve natural resources, held that the state, as a trustee of all natural resources, was under a legal duty to protect them; and that the resources were meant for public use and could not be transferred to private ownership.

d) Inter Generational Equity Principle

It is another principle propounded by the Supreme Court. There are two types of resources i.e. one that can be generated in future and the other one is that cannot be generated in future. The

resources which cannot be generated are required to be preserved. In **State of Himachal Pradesh v. Ganesh Wood Products**⁵ the Supreme Court invalidated forest-based industry, recognizing the principle of inter-generational equity as being central to the conservation of forest resources and sustainable development.

III. Miscellaneous Initiatives Taken to Protect Environment

a) Application of Strict Liability Principle in Indian Context

The rule of strict liability was evolved in the year 1868 in the case of **Rylands vs. Fletcher**⁶ by Blackburn. This rule provides that a person who for his own purpose brings on to his land and collects and keeps there anything likely to do mischief if it escapes must keep it at his peril and if he fails to do so, is prima facie liable for the damage which is the natural consequence of its escape. The liability under this rule is strict and defence of bonafide intension were not applicable. But this rule was subject to the certain exceptions such as act of God, third party plaintiff's consent, statutory authority etc.

The rule of strict liability was evolved in the 19th century when the development of science and technology had not taken place. It cannot afford any guidance in evolving any standard of liability consistent with constitutional norms and the needs of the present day economy and social structure. Therefore, in **M.C. Mehta vs. Union of India**⁷ the Supreme Court evolved a new principle of liability which the English have not done. This new principle is absolute liability. According to this principle the defendant cannot claim any exceptions. He will be absolutely liable.

The Indian judiciary provided protection to the environment while dealing with different problems. The judiciary applied the above mentioned principle for dealing with the polluters. The actions taken by the judiciary can be discussed under the following heads.

b) Assuming Upon Itself Administrative Functions

In **Doon Vally case** AIR 1985 SC 652, the Apex Court dealt with the problem relating to environment and ecological balance. There was a clear conflict between development and conservation. The court felt the need for reconciling the two in the larger interest of the country. The Court ordered the closure of number of limestone quarries. The Court was well aware of the fact that the workers working in these mines will become unemployed. The court said that for heavy environment we will have to pay this price.

Environmental pollution is also caused by the stone-crushing activities and thus affects the right of the citizens to fresh air and to live in pollution free environment. In **M.C. Mehta v. Union of India**⁸ the Supreme Court issued orders to stop stone-crushers in and around Delhi, Faridabad, and Ballabhgarh complexes. But this does not mean that the court forgot the issue of development. The court asked the government to permit the owners to start their work at some other place.

This judgment helped the people of Himachal as well. The High Court of H.P. also banned certain stone crushers established near some any river in Himachal Pradesh.

A monumental judgment was delivered by the Supreme Court in **M.C. Mehta v. Union of India** AIR⁹. Bhopal gas tragedy was an eye opener for our country. The country was still in a shock and it received another jolt by the leakage of gas from Shriram Chemicals in Delhi. The Apex Court took this case very seriously. The Court decided that it is not necessary that the claimant shall get only that much of a relief that have been claimed by him in his petition. He will be entitled to a compensation that is deemed fit by the court itself. The major question before the court was that whether the plant can be permitted to continue working. The court appointed a committee to find out that how the defects of the plant can be removed and made safe for the environment. Keeping in view the sustainable development the court was of the view that the plant can be shifted and it can work at the existing place as well but only if it is safe.

Industries are necessary for development. At the same time they are also a source of environmental pollution. In order to minimize the harm of environmental pollution to the people, the Courts have consistently taken the view that the industries must not be situated in the populated area or near the residential area.

c) Issuing Directions to Install Modern Technology to Arrest Environmental Pollutants

One of the major problems of our country is the treatment of the industrial effluents. The industries releasing the effluents are bound by the law to take steps for the same. Still such industries are least concerned about it. Time and again the courts issued directions to the industries without causing harm to the principle of sustainable development. In **Ganga Water Pollution case**¹⁰ a public interest litigation was filed to protect this holy river from industrial effluent and for issuance of directions for installment of treatment plants for treating the trade effluents. Despite the directions the industries did not install the treatment plants. Therefore the Supreme Court asked the industries to stop their work. The Supreme Court was of the opinion that the financial position of industry is immaterial. If an industry cannot pay minimum wages it shall be closed and similarly if an industry cannot afford to install the treatment plant then it shall also be closed.

Similarly in **Vellore Citizens' Welfare Forum v. Union of India**¹¹ wherein the Supreme Court propounded the principle of polluter pays, the court issued similar directions to tanneries of Tamil Nadu. The Court took into consideration the principle of sustainable development and precautionary principle as well.

IV. Conclusion and suggestions

On the basis of the above averments it is evident that initially our country aimed at development only. Protection of environment was not the priority of our country. The seriousness towards the environment was witnessed in 1980s. It became stronger with the passage of time. The major reason behind this was the activeness of judiciary. In fact the judiciary was bound to interfere because of the failure of the state agencies to effectively enforce the environmental laws apart from non-compliance with statutory norms by the polluters resulted into further degradation of the environment which has affected the health of the people and forced the environmentalists and the residents of polluted areas as well as the non-governmental organizations to approach the judiciary, particularly the higher judiciary, for the suitable remedies. Of course the initiative for the protection of environment came from the legislature but the failure of the executive to implement the environmental laws in India created the ground for the intervention of the judiciary. The judiciary made several attempt to resolve the conflict between the development and environment. The Indian judiciary demonstrated willingness to exercise its power whenever the political / executive organs of the state failed to discharge their constitutional obligations effectively. This willingness has been often termed as judicial activism.

The environmental jurisprudence in India developed through the instrument of Public Interest Litigation (PIL). Under the PIL, the judiciary liberalized the concept of locus standi and thereby empowered the people to approach the judiciary when the public interest is harmed by either the action of the state, organization or individual. Unique feature of the Indian environmental jurisprudence is the important role played by the PIL. The activism of the higher judiciary regarding the cases related with violation of environment and human rights has acquired the name of judicial activism. The Supreme Court has not only played a leading role in the implementation of environmental laws but also interpreted the right to life under Article 21 to include a right to healthy and pollution free environment, as a fundamental right. In its efforts to protect the environment, the Supreme Court and the Indian Judiciary in general have relied on the public trust doctrine, precautionary principle, polluter pays principle, the doctrine of strict and absolute liability, the exemplary damages principle apart from the existing law of the land. In cases of complex environmental problems the Supreme Court appointed committees of experts

and decided the cases accordingly.

It is true that the judiciary is playing a great role for the protection of our environment but still a lot is required to protect our environment. It is suggested that each and every citizen shall come forward to protect environment as the charity begins at home. Let us save our environment.

References:

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2. (1996) 3 SCC 212.
3. (1997) 2 SCC 353
4. (1997) 1 SCC 388.
5. AIR 1996 SC 149.
6. (1868) LR 3 HL 330
7. AIR 1987 SC 1086.
8. (1992) 3 SCC 256.
9. 1987 SC 965.
10. Supra Note 2.
11. Supra Note 1.