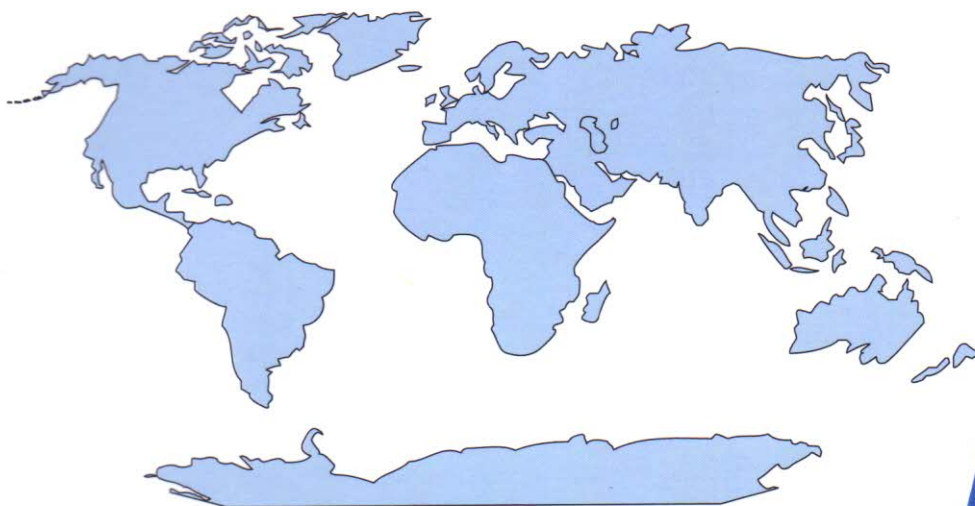


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ENVIRONMENTAL PROTECTION & SUSTAINABLE DEVELOPMENT IN INDIA: THE ROLE OF LEGAL SUPPORT SYSTEM

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ABSTRACT

The corpus of environmental jurisprudence includes the laws that have been created by statutory instruments as well and judicial pronouncements, concerning the varied aspects of environmental protection and sustainable development. Environmental jurisprudence in India has assumed a place of significance by devising important principles geared towards the attainment of environmental protection and justice and thus has attained an independent and holistic identity.

The protection of environment is needed for sustainable development. The Industrial pollution, degradation of forests, depletion of ozone layer, the green house gases results in global warming and climate which will have an adverse impact on environment and human health. There is a need for conservation of Biodiversity, protection of wetlands and prevention of environmental pollution, promotion of ecological balance enables sustainable development. There are several provisions provided in Indian Constitution for Protection of environment. There are certain legislations enacted viz. Environment Protection Act, Wildlife Preservation Act, Biodiversity Conservation Act, Water and Air pollution Prevention Acts etc The Judiciary playing a vital role in protection of Environment. Through Judicial Activism the Supreme Court can issue directions under writ Jurisdiction under Article 32 of Indian Constitution.

Key Words: Environmental Jurisprudence, Sustainable Development, Judicial Activism

INTRODUCTION

The judiciary in India has formulated sustainable development as one of the primary principle. According to Brundtland Report sustainable development means developments which meets the need of the present generations without compromising the capability of future generations to meet their own needs.

Sustainability in development has been a great challenge to human community and a nation with its limited natural resources in the present day industrial development. Degradation of quality of environment has been a matter of great concern of International and regional communities at various International forums like Conventions, declarations and treaties. Post Stockholm development in environmental jurisprudence brings into picture the Indian Constitutional, legislative and judicial commitment in tackling the distressing environmental state of affairs. Various principles have been relied by the judiciary from time to time as a step towards sustainable development. The Public Trust Doctrine holds the environmental resources as a trustee of commons. The Precautionary Principle has been reflected in judicial decisions to evolve developmental approach of sustainable development.¹

Ecological and economical sustainability are the two integral parts of sustainability. In this regard the environmental jurisprudence which has evolved in the recent past is a result of judicial activism which has given shape to the aspirations of the international community. The adherence to the principle of sustainable development has become constitutional requirement.²

In the post-independence period Indian environmental law was mainly restricted to claims of tortuous nature such as nuisance or negligence. There was no environment specific legislation to address the problems of environmental degradation. Most of the scholars trace the growth of Indian environmental jurisprudence to the United Nations Conference on the Human Environment held at Stockholm in 1972. India was a participant to this conference and this conference underlined the need of India and other states to adopt environmental measures which would be essential to deal with the environmental hazards that would be an inevitable consequence of development. In light of India's international obligations arising from the Stockholm Conference, the Forty-Second Amendment to the Indian Constitution in 1976 introduced explicit principles of environmental protection.³

¹ <http://www.legalservicesindia.com/article/article/environment-and-sustainable-development-1853-1.html>

² Ibid.

³ <http://www.lawteacher.net/free-law-essays/constitutional-law/environmental-protection-and-sustainable-development-constitutional-law-essay.php>

Prior to 1980s, litigation on India was in its rudimentary form as it could only be initiated by an aggrieved party for the vindication of his/her private interest. However around 1980 a significant change started taking place within the Indian legal framework. This change which can be primarily be attributable to leading personalities such as P.N. Bhagwati and V.R. Krishna Iyer who had a significant impact particularly in determining the path of development of environmental law in India, and this new direction abandoned previous archaic principles and was based on the edifice of social justice.⁴

The judicial activism demonstrated by the courts can be classified into two distinct spheres i.e. procedural and substantive. However the categorization of judicial innovations into procedural and substantive are neither water-tight nor mutually exclusive.⁵

The environmental crisis caused by the indiscriminate quarrying, mining, stone crushing near residential areas has created people agitation against environmental protection. Rural Litigation Entitlement Kendra v. State of U.P. (popularly known as the Doon Vally Case) was the first case of its kind in the country involving the issues relating to the environment and ecological balance which brought into sharp focus the conflict between the economic development, sustainability and protection of environment and the court has emphasized the need for reconciling the conflict between these in the larger interest of the country.⁶

JUDICIARY ON SUSTAINABILITY AND ENVIRONMENTAL PROTECTION

The protection of environment is needed for sustainable development. The Industrial pollution, degradation of forests, depletion of ozone layer, the green house gases results in global warming and climate which will have an adverse impact on environment and human health. There is a need for conservation of Biodiversity, protection of wetlands and prevention of environmental pollution, promotion of ecological balance enables sustainable development. There are several provisions provided in Indian Constitution for Protection of environment. There are certain legislations enacted viz. Environment Protection Act, Wildlife Preservation Act, Biodiversity Conservation Act, water and Air pollution prevention Acts etc The Judiciary playing a vital role in protection of Environment. Through Judicial Activism the Supreme Court can issue directions under writ Jurisdiction under Article 32 of Indian Constitution.⁷

In the late 1970s, Constitutional courts with an advent of the Public Interest Litigation (PIL),⁹⁰ dealt with 'environment versus development' controversy, such as development projects, mining and quarrying, litigation concerns big dams, gas leak disaster, hazardous wastes from industries, pollution from animal slaughter houses, protection of wetlands, water pollution, noise pollution, access to environmental information and coastal zone development and protection of livelihood and against environmental degradation. Public Interest Litigation also called as Social Action Litigation and Representative Action Litigation.⁸

In Rural Litigation and Entitlement Kendra v. State of U. P.,⁹ the Supreme Court dealt with matters relating to environment and ecological balance. In Sachidanada Pandey v. State of West Bengal,¹⁰ Chinnappa Reddy, J. rendered an elaborate and soul searching exposition of the importance and sanctity of the natural environment. Interestingly, in State of Tamil Nadu v. Abu Kavur Bai,¹¹ the court has observed that material resources are wide enough to cover not only natural or physical resources but also movable and immovable properties. Property rights of the state is inalienable. Everything of value or use in the material world is material resource and the individual being member of the community his resources are part of those community. In Subhash Kumar v. State of Bihar,¹² Justice Kuldeep Singh has remarked that "Article 21 includes the right of enjoyment of pollution free water and air for enjoyment of life."

⁴ Ibid.

⁵ Ibid.

⁶ <http://www.legalservicesindia.com/article/article/environment-and-sustainable-development-1853-1.html>

⁷ <http://employmentnews.gov.in/Protection%20of%20Environment%20.pdf>

⁸ http://shodhganga.inflibnet.ac.in/bitstream/10603/37586/12/12_chapter%206.pdf

⁹ AIR 1997 SC 1228

¹⁰ AIR 1987 SC 1109.

¹¹ AIR 1984 SC 326.

¹² AIR 1978 SC 215 at para. 95

JUDICIARY ON PRINCIPLES OF ENVIRONMENT PROTECTION

Absolute Liability Doctrine:¹³

In India, the principle of absolute liability is not a part of traditional environmental jurisprudence. The common law doctrine of strict liability, describe who can initiate proceeding for want of damages. In *Rylands v. Fletcher*,¹⁴ the Privy Council evolved a principle of strict liability to ensure remedy for the affected persons in view of environmental degradation. There some exceptions were recognised as a ground wherein the polluter might get relief from payment of damages to the victim. Hughes argues that, failure to provide a generally accepted liability remarks the weakness of the judicial system in providing remedy to the affected persons. The doctrine of absolute liability was coined because the enterprise, carrying on the hazardous activities alone had the resource to discover and guard against hazards or dangers as compared to the victim.

Public Trust Doctrine :¹⁵

The traditional use of public trust doctrine rests common property like navigation, comers and fishing only. The modern uses of the doctrine covers certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. In *M. C. Metha v. Kamalnath*,¹⁶ the Supreme Court held that "...public trust doctrine was founded to protect certain common properties such as rivers, sea-shore, forests and air were held by the government in trusteeship for the free and unimpeded use of general public.. These resources being a gift of nature, have a great importance to the people as a whole should be made freely available to everyone irrespective of the status on life. The state is a trustee of all natural resources and also state has a legal duty to protect them and that the resources were meant for public use and could not be transferred to private ownership..."

Intergenerational Equity:¹⁷

Intergenerational Equity is among the newest norms of international environmental law, it can be best understood for sustainable economic development and resource conservation. Inter Generational Equity maintain that the present generation has a moral obligation to manage the earth in a manner that will not jeopardize the aesthetic and economic welfare of the forthcoming generation. In *State of Himachal Pradesh v. Ganesh Wood Products*,¹⁸ the court recognised the significance of Inter-Generational Equity and held a government's approval is contrary to public interest involved in preserving forest wealth, maintenance of environment and ecology and considerations of sustainable growth and inter-Generational equity. In *Dighi Koli Samaj Mumbai (Regd) v. Union of India*,¹⁹ the court reiterated the successful environmental policies require many things, the most vital being the support of the common masses and that happens only if there is an ethical commitment to environmental values. *Dr. Meenakshi Bharath v. State of Karnataka*²⁰. After all, the present generation has no right to deplete all the existing forests and leave nothing for the next generation.

Precautionary Principle:²¹

Amongst the legal elements of the concept of Sustainable Development of UNCED; the precautionary principle has laid down foundation for the contemporary sustainability. The notion of precaution is stemmed with state practice by legislation and application of domestic courts, as state practice.¹⁹⁴ In *A. P. Pollution Control*

¹³ http://shodhganga.inflibnet.ac.in/bitstream/10603/37586/12/12_chapter%206.pdf

¹⁴ (1868) LR 3 HL 330.

¹⁵ http://shodhganga.inflibnet.ac.in/bitstream/10603/37586/12/12_chapter%206.pdf

¹⁶ (2006) 6 SCC 213.

¹⁷ http://shodhganga.inflibnet.ac.in/bitstream/10603/37586/12/12_chapter%206.pdf

¹⁸ AIR 1996 SC 149 at 163.

¹⁹ 2009 (5) Bom. CR 97.

²⁰ 2012 (4) Kar LJ 248.

²¹ http://shodhganga.inflibnet.ac.in/bitstream/10603/37586/12/12_chapter%206.pdf

Case,²² the court reiterate the significance of the Precautionary Principle. In Narmada Bacho Andolans' case, Chief Justice Anand and Justice Kirpal gave the following findings:²³

The precautionary principle and the corresponding burden of proof on the person who wants to change the status quo will ordinarily apply in a case of polluting or other project or industry where the extent of damage likely to be inflicted is not known. When there is a statutory uncertainty due to lack of date or material about the extent of damage or pollution likely to be caused then, in order to maintain ecological balance, the burden of proof that the said balance will be maintained must necessarily be the industry or the unit which is likely to cause pollution.

Polluter Pays Principle:²⁴

Polluter Pays Principle makes the polluter liable to pay the costs to remedy the environmental harm caused. This principle is considered to be the most efficient way of allocating costs of pollution prevention and control measures introduced by the public authorities to encourage rational use of scarce environmental resources. In *Indian Council for Enviro Legal Action v. Union of India*²⁵, compensation and remedial action for loss suffered by citizenry due to pollution. In *Research Foundation for Science v. Union of India*,²⁶ compensation under polluter pays principle was granted. In *Deepak Nitrite Ltd., v. State of Gujarat*,²⁷ Compensation was awarded for mere violation of norms/rule but only if there is damage to environment. In *Vellore Citizens Welfare Forums case*,²⁸ Polluter Pays Principles, as interpreted by the Supreme Court means that the absolute liability to harm to the environment extends not only to compensate to the victims of pollution, but also the cost of restoring the environmental degradation. Remediation of the damage and environment is part of the process of Sustainable Development and therefore polluter is liable not only to pay the cost to the individual users but also to the cost of reversing the damaged ecology.

CONCLUSION

Judiciary in India is playing a pivotal role in maintaining sustainability and thereby protecting environment by entertaining public interest litigations against environmental pollution and pronouncement of effective orders to control environmental pollution. In the process of adjudication judiciary follows strict principle and imposes heavy fines and awards high compensation against the polluters. But still the environment continues to be polluted in numerous ways and polluters still remains out of clutch of the State due to various reasons some of which are socio-economic and others are administrative. Suggestions and recommendations need to be put forward to handle this.

SUGGESTIONS

Firstly, the duty of the civil society to create awareness among the people to condemn environmental pollution and benefits of doing so.

Secondly, strict implementation of legislations relating to environmental protection in letter and spirit.

Thirdly, review of existing laws as to their applicability, scope and penalty provisions.

Last but not the least implementation of guidelines of the apex court given from time to time.

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²² A. P. Pollution Control Board v. M. V. Nayudu, (1999) 2 SCC 718; AIR 1999 SC 812.

²³ Narmada Bacho Andolan v. Union of India and Others, AIR 2000 SC 3751; (2000) 10 SCC 664.

²⁴ http://shodhganga.inflibnet.ac.in/bitstream/10603/37586/12/12_chapter%206.pdf

²⁵ (1996) 5 SCC 218.

²⁶ (2005) 10 SCC 664.

²⁷ 2004 (6) ALT 7 (SC)

²⁸ Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715; (1996) 5 SCC 647.