

ROLE OF INDIAN JUDICIARY IN PROTECTION OF ENVIRONMENTAL POLLUTION**KHALID SHAMIM¹**

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ABSTRACT

When we got independence the thrust was on the economic development of the country. Policies were framed to support the industrial development. Indian Courts too interpreted law to support the cause of industrial development. But after realizing the devil effect of industrial development on environment Court came forward vehemently to protect environment much before the legislature and executive. This paper analyses the role of Indian judiciary in the protection of environment.

KEYWORDS : Industrial development, Environmental pollution, Supreme Court, Legal principles public interest litigation (PIL)

Every breakthrough in science and technology, one way or the other, affects the society, its social institutions and the surroundings i.e. environment. In this paper an attempt has been made to find out that how the Indian judiciary has addressed environment and development. For the sake of convenience this paper is divided into three parts. Part I introduces the topic. Part II evaluates the role of the Indian Judiciary in the protection of environment. Part III concludes the topic.

Introduction

The seed of environmental pollution lies in the internationally acknowledged slogan 'Industrialize or perish'. When the race of development and industrialization reached to its zenith it became a 'Frankenstein Monster'. After realizing the devil effects of the monster, international community gave a fresh thought to the industrialization which led to the international legislation on environmental protection. The first effort came in the form of Stockholm Conference, 1972.

Under the obligation of Stockholm Conference, 1972, for the protection of environment, legislation started in India too (Wild Life Protection Act, 1972, Water Act, 1974, Air Act, 1981 and finally the Environment (Protection) Act, 1986). There are two obvious questions, first how the Indian Judiciary has tackled the environmental issues before 1972 without having direct enactments? And second how far the direct enactment after 1972 helped the Indian Judiciary to deal with the environmental issues?

Role of Indian Judiciary**Before 1972**

After independence the thrust was on the economic development of the country. Policies were framed

to support the development of industries and the natural resources were exploited to supply the raw materials. There was no as such law to define the ambit and scope of pollution. Legal provisions and principles were there but were not adequate to deal with the environmental pollution (Offences affecting public health, IPC Sections: 268-278. As the punishments has no deterrent effect on the polluters of the environmental. On the other hand civil law dealing with nuisance, trespass, negligence and strict liability as tort the remedies was not adequate). In Madras Railway Co. v. Zamindar ((1947) 1 IA 364 (PC)) and K Nagireddi v. Govt. of AP (AIR 1982 AP 119) Court declined to recognize principle of 'Strict Liability' laid down in Ryland v. Fletcher ((1868) LR 3 HL 330) which makes a person strictly liable for non-natural use of the land. The concept of environmental pollution and environmental protection had not found any place under the Indian jurisprudence. No remarkable contribution was made before 1972.

After 1972

The Stockholm conference, 1972 worked as a catalyst in development of environmental jurisprudence in India. Legislative and executive efforts have been made in the field of environmental law. The Wildlife Protection Act, 1972, the Water (Prevention and Control of Pollution) Act, 1974, the Forest (Conservation) Act, 1980 the Air (Prevention and Control of Pollution) Act, 1981 and the Environmental (Protection) Act, 1986, Protection of Plant Variety and Farmers Right Act, 2001, Biological Diversity Act, 2002, Wild Life (Protection) Amendment Act, 2002 and National Green Tribunal Act, 2010 (NGT) were enacted. The aim and objective was to protect and improve the natural environment including forest, lakes, rivers and

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wildlife and to have compassion for living creatures.

But in majority of Acts individual was assigned very little role and the complaints in respect to the environmental pollution, generally, only can root through governmental authorities (Section 19 of Environment Protection Act, 1986). The boards created to take the cognizance have only power to give direction (Section 5 of Environment Protection Act, 1986).

Similarly an independent Department of Environment was established by the Government of India in 1980 to impart environmental awareness by encouraging research on environmental problems. But this department is merely an administrative set up and lacks power to prosecute the defaulters.

In these circumstances the role of Indian judiciary needs special reference in the development environmental jurisprudence in India.

A close analysis of different pronouncement of the Supreme Court reveals that it had tried very hard to protect the land, water, air, coastal areas, seashores, towns and cities, public health & safety, forests and wildlife, environment degradation. Not only this, but it has attained the optimum by declaring pollution free environment as fundamental right under Article 21 of the Constitution (Ratlam Municipality v. Vardhichand, AIR 1980 SC 1622).

Indian Courts did not hesitate to entertain PIL to secure environmental justice in India. Through PIL the Court has addressed each and every environmental problem ranging from the leakage of hazardous gases like chlorine from the Shriram Fertilizer Industries (M.C.Mehta v. Union of India and Ors, (1987) 4 SCC 463, see also AIR 1988 SC1037), waste material from alcohol plant resulting in spreading of obnoxious smells apart from mosquito breeding (Ratlam Municipality v. Vardhichand, AIR 1980 SC 1622), highly toxic discharge from tanneries into river Ganga (M.C.Mehta v. Union of India and Ors, (1987) 4 SCC 463, see also AIR 1988 SC1037), safety and insurance for employees at the cost of employer (M.K.Sarma v. B.E.L.(1987)3 SCC 231), issue of harmful drugs ban (Vincent Panikulangara v. Union of India, (1987)2 SCC 165), welfare of the children suffering with congenital defects as consequence of leakage of MIC gas from the

Union Carbide Plant at Bhopal (Union Carbide of India v. Union of India, AIR 1992 SC 248), awareness about the environment protection (M.C.Mehta v Union of India and Ors. AIR 1992 SC 382), discharge of untreated effluents making the land unfit for cultivation (Vellore Citizens Welfare Forum v. Union of India and others, AIR1996 SC 2751), protecting the Taj Mahal (M.C.Mehta v. Union of India (1997) 2 SCC 353) noise pollution in residential areas (Church of God (Full Gospel) in India v. K.K .R. Majestic Colony Welfare Association and Others, AIR 2000 SC 2773), protection of environment & the construction of Narmada dam (Narmada Bachao Andolan etc. v. Union of India and others, AIR 2000 SC 3751), etc. and by doing so the judiciary has made the environmental protection as its constitutional obligation.

The herculean task of the Indian Judiciary in respect of environmental protection may be studied under the following heads :

Evolution of Legal Principles & Doctrine in Environmental Jurisprudence

Under this head we will see how the Supreme Court of India has interpreted the law to meet out the challenges posed by the industrialization to our environment. Supreme Court of India in, M. C. Mehta v. Union of India (AIR 1986 SC 1086), formulated the doctrine of 'Absolute Liability'. This made the hazardous and inherently dangerous industries absolutely liable for any injury caused to the environment irrespective of their negligence, motive or intention. Once again the Supreme Court in, Indian Council for Enviro-Legal Action v. Union of India (AIR 1996 SC 1446) & Vellore Citizens Welfare Forum v. Union of India (AIR 1996 SC 2715) not only reiterated the same doctrine but moved a step ahead by laying down the 'Polluter Pays' principle. Under this principle the responsibility of repairing the environment is put on the shoulder of the offending industry.

In, M.C. Mehta v. Union of India (AIR 1997 SC 734), Supreme Court of Indian laid down another principle for the protection of the environment i.e. the 'Precautionary Principle'. Supreme Court explaining precautionary principle held that the concerns engaged industries not only take the measures for environmental protection but also

anticipate, prevent & attack the cause of environmental pollution & degradation.

In, *M.C. Mehta v. Kamalnat.* (1997 1 SCC 388), Supreme Court laid down the Public Trust Doctrine. The Supreme Court held that the state is the trustee of all natural resources. The natural resources are meant for public use & enjoyment and it cannot be given into private ownership.

Conflicting Interests

There has always been a great challenge before judiciary to balance the conflicting interests. While dealing with environmental issues a court has to weigh the right to development and right to pollution free environment. In developing countries it becomes more complex, so it needs more and more care and caution. In *Rural Litigation and Entitlement Kendra v. State of UP* (AIR 1987 SC 2187) and *Banwasi Seva Ashram v. State of U P* (AIR 1987 SC 374) dealing with the right to development & right to environment sought the rehabilitation of people who had been displaced due to the implementation of development project.

Conflicting Social Values

The development of a country affects its social environment too. It becomes incumbent upon the judiciary to take care of the socially disadvantageous people. Supreme Court in *CERC v. Union of India* (AIR 1995 SC 922 at P. 942) protected the social rights of labourers. Court held that the labourers engaged in the asbestos industry are entitled to get medical benefits and compensation for health hazard, detected even after their retirements.

Establishment, closure and relocation of industries makes people to lose their place of habitat and jobs. Supreme Court dealing with similar situation in *M. C. Mehta v. Union of India* (AIR 1995 SC 922 4SCC 750) held that dislocated be properly rehabilitated.

For the sake of development, generally, rivers and forests are exploited. It makes habitant to suffer. Supreme Court came forward in *Pradeep Kishan v. Union of India* (AIR 1996 SC 2140 at 2047) and protected traditional rights of tribal's and fishermen.

The Latches in Law & the Administration

Supreme Court while dealing with the environmental issues experienced gaps in existing laws and

lack of administrative efforts *CERC v. Union of India* (AIR 1995 SC 922). So it went to the extent to ask the government to constitute national and state regulatory authorities or environment courts (*Indian Council for Enviro-Legal Action V. Union of India* (1996) SSCC 281 at P. 302, AIR 1996 SC 1426 at P.1489). It gave directions to local bodies, especially municipal authorities, to remove garbage and waste and clean towns (*L K Koolwal V. State* AIR 1997 SC3297). In, *Vellore Citizens Welfare Forum v. Union of India* (AIR 1996 SC 2715 at P.2727) the Supreme Court made request to the Chief Justice of the Madras High Court to constitute a special bench 'A green bench' to deal with the environment related matters and similarly to the Calcutta, Madhya Pradesh and some other High Courts.

Environmental Awareness

Supreme Court along with above efforts to check and curb the menace of the environment pollution also played an important role in disseminating the environmental awareness. In *MC Mehta v. Union of India* (AIR 1992 SC 362) held:

“In order for the human conduct to be in accordance with the prescription of law it is necessary that there should be appropriate awareness about what the law requires. This should be possible only when steps are taken in the adequate measures to make people aware of the indispensable necessity of their conduct being oriented in accordance with the requirements of law (Id P. 384).

Consequently, 'Environmental Studies' was introduced and made part of the curriculum at every level of education. Even Bar council of India introduced 'Environmental Law' as a compulsory paper for legal education at the graduate level.

CONCLUSION

On the basis of above discussion we may conclude that the Indian Judiciary has played very important role in the protection of environment. It has expanded and stretched the existing legal provisions to address the environmental issues. It has evolved new doctrine and principles to deal with conflicting interests of various group of the society. It gave various directions, guidelines and

orders from time to time to check the menace of the environmental pollution.

In the last few weeks we have witnessed a lot on the environmental issues both on the international as well as national plane. At international plane international community addressed the issue of environment change at Paris. On the other Delhi High Court has compared Delhi as gas chamber, Supreme Court has asked for heavy taxes on luxury cars, Delhi Government planning to introduce odd and even formula to control the air pollution, on the direction of Allahabad High Court the UP Government has banned the use of polythene and NGT also issued directions to control the environmental pollution. All these are welcome steps but we have miles to go.

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