



The Role Of Judiciary In Environment Protection

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Abstract: ABSTRACT

The judiciary plays a pivotal role in the protection and preservation of the environment, acting as a key institution in the enforcement of environmental laws and the interpretation of constitutional mandates. This paper explores the judicial contributions towards environmental protection by analyzing landmark cases, innovative legal principles, and judicial activism aimed at balancing ecological sustainability with developmental goals. Courts have developed doctrines like the "Polluter Pays Principle," the "Precautionary Principle," and the concept of "Sustainable Development," emphasizing the duty to prevent harm and ensure environmental justice. Through Judicial activism, the judiciary has expanded access to justice, empowering citizens to seek redressal for environmental grievances. This active involvement has helped bridge gaps in existing legislation and enforced accountability among government and private entities. The paper highlights the transformative impact of judicial interventions in shaping environmental protection and advancing a green and equitable legal framework, underscoring the judiciary's role as a guardian of environmental rights and ecological integrity.

Key words- Judiciary, polluter pays principle, sustainable.

As a social institution, the judiciary has a special responsibility to help cure the world's environmental problems. Stability in the economy and widespread industry are the hallmarks of a developed society. Unfortunately, environmental preservation and industrialization are at odds with one another. Harmonizing these two competing interests is a formidable task for any nation's legal system. In several statements, the judiciary has highlighted the fact that ordering enterprises to cease production would have

negative consequences for the country's economic and social situation. The nation may descend into decay and ruin if poverty and unemployment take hold. Meanwhile, polluting businesses put environmental stability at risk.

Therefore, the court system believed that the pollution limits ought to be reasonable given the environment's ability to withstand it. The court went on to say that while industrialization is necessary to meet social needs, it must be done in a way that also protects the environment, since factory workers and those living nearby are particularly vulnerable to the negative health effects of pollution. One may argue that the Indian Judiciary has discovered the right solutions within the framework of sustainable development.

It is not a new concept that the Indian court has recognized the right to a healthy and clean environment. The right has been recognized by the legal system and courts for at least one hundred years. The only difference today is that the right to live in a clean and healthy environment is now a fundamental right that the Indian Constitution will not permit to be violated. Since the late 1980s, this right has only been recognized as fundamental by the Supreme Court of India and other Indian high courts. As previously stated, a number of statutes, including the Indian Penal Code, the Civil Procedure Code, the Criminal Procedure Code, and the Law of Torts, have recognized and enforced this right. prior to this era In contemporary environmental law, the concept of "third generation rights" refers to a set of communal safeguards.

THE CONSTITUTIONAL ASPECTS ON ENVIRONMENTAL LAW- Gandhian philosophy emphasises that "Nature has provided everything for our need but not for our greed" and the dharma of each individual in society is to protect Nature, and people

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worship the objects of Nature.

The Constitution (Forty-second Amendment) Act of 1976 of India mandated that states prioritize environmental preservation for the first time. The constitution of the nation contained this.

According to "Article 47, it is the responsibility of the state to enhance public health by raising the standard of living, nutrition, and overall quality of life". One of the state's principal responsibilities is to ensure its citizens have access to adequate nutrition, improve their quality of life, and reduce the prevalence of preventable diseases. The state should also work to outlaw the use of drugs and alcoholic beverages that are harmful to health, with the exception of those prescribed for medical purposes.

Article 48-A "states that it is the responsibility of a state to preserve and improve the environment, as well as the animals and forests of the nation".

Part VI-A, "Fundamental Duty," was also added to the constitution as a result of the change. It states: Section 51-A (g) - Having compassion for all living creatures and doing one's part to preserve and enhance India's natural environment, including its forests, lakes, and animals, is the responsibility of every person. The Supreme Court made the observation in *Sachidanand Pandey v. State of West Bengal* that anytime an ecological issue is presented before the court, it is obligated to consider Article 48-A and Article 51-A (g).

THE SUPREME COURT HAS RECOGNIZED ENVIRONMENTAL PRINCIPLES-After the Bhopal Gas Tragedy, environment protection became priority. After this incident, the area of environmental law widens in the country and judicial activity also increase.

The Supreme Court has incorporated many aspects of international environmental law into its decision-making process. The following are the main points of these principles:

A. Principle of Absolute Liability- In "*M.C.Mehta v. Union of India* (Oleum gas leak case) the Court laid down the principle of absolute liability of hazardous/inherently dangerous industries. The court recognizing that the right to life of the citizens was adversely affected".

In "*Narmada Bacho Andolan v. Union of India*, Supreme Court held that, the precautionary principle could not be applied to the decision for building a dam whose gains and losses were predictable and certain".

In "*Union carbide corporation v. union of India*(The Bhopal case) in this case, the court held that, where an enterprise

is occupied with an inherently dangerous or a hazardous activity and harm results to anybody by virtue of a mishap in the operation of such dangerous or naturally unsafe movement incoming about, for instance, in getaway of poisonous gas, the enterprise is strictly and incompletely obligated to repay every one of the individuals who are influenced by the accident and such iris risk not subject to any exemptions. Accordingly, Supreme Court created another trend of absolute liability without any exemption".

B. The Polluter Pays Principle-"If anyone intentionally spoils the water of another... let him not only pay damages, but purify the stream or cistern which contains the water..."- Plato

Making the polluter pay for the victims' damages is the fundamental idea behind this notion. As a matter of international environmental law, the person responsible for contaminating the environment must bear the financial burden of any damage or injury caused. In "*Vellore citizen's welfare forum v. union of India* the court held that, precautionary principle and the polluter pays principle are part of environmental law of the country".

In case of "*Indian council for Enviro Legal action vs. Union of India*, pollution by the leaching of H- Acid and sludge produced by a company named silver chemicals(located in Bichhri, a village near Udaipur, Rajasthan) along-lasting damage had been caused, to the soil, underground water, inhuman beings, cattle and to the village economy. The Supreme Court held that the company was absolutely liable for the environmental degradation due to leaching of the H-acid and based on the polluter pays principle it directed the company to pay for the restitution of the environmental damage it had caused".

C. The Precautionary Principle-



According to "precautionary principle, it is the responsibility of those carrying out the action or project to demonstrate that it is not harmful in the absence of scientific measures if that action or project carries one or more risks that could harm the public or the environment and the person carrying it is aware of those risks. In the event that scientific investigation points to a risk, the precautionary principle states that there is a social responsibility to protect the public from any kind of harm. If the person taking action can demonstrate with solid evidence that no harm will occur, these safeguards may be relaxed".

The S.C. has acknowledged the "precautionary principle in several of its rulings, which were adopted in the 1992 Rio Declaration and later incorporated into international protocols. When scientific investigation suggests a plausible risk, there is a social responsibility to protect the public from harm, even in the absence of complete scientific evidence, according to the principle. In the context of international justice, it is also irrelevant".

In "S Jagannath v Union of India (Shrimp culture case), the Supreme Court held that the government authorities must anticipate, prevent and attack the causes of environmental pollution. According to the precautionary principle the burden of proof is on the developer to show that his or her actions are environmentally sound".

In "Indian Council for Enviro-Legal Action v. Union of India case discussed above accepted this principle along with the 'polluter pays principle as part of the legal system. In Vellore citizen's welfare forum v. Union of India and Andhra Pradesh pollution control board v. MV Nayudu, the Supreme Court applied the precautionary principle directly to the facts of the cases and developed the following three concepts for the precautionary principle: Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Lack of scientific certainty should not be used as a reason for postponing measures. Onus of proof is on the actor to show that his action is benign. It is also commented that the precautionary approach is a principle meant to invert environmental disaster. The principle involves anticipation of environmental harm, adoption of preventive measures, and choice of the least environmentally harmful inactivity".

In "Vijayanagar Education Trust v. Karnataka State Pollution Control Board, the Karnataka High Court accepted that the precautionary doctrine is now part and parcel of the Constitutional mandate for the protection and improvement of the

environment".

In "A.P. control board v. M.V. Nayudu and others in this case Supreme Court was called upon to decide a question as to whether a cashew factory was a polluting unit. The court relied upon precautionary principle and explained that the principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose least environmentally harmful inactivity".

D. Doctrine of Public Trust- The public trust doctrine is a part of the jurisprudence of the Indian legal system, which is essentially based on common law. Since all natural resources are intended for public use and enjoyment, the state is their trustee. Seashores, flowing waters, airs, forests, and ecologically fragile lands benefit the general public. As trustee, the state is required by law to safeguard the natural resources. It is impossible to transfer ownership of these resources from the public to the private sector.

In "M.C. Mehta v. Kamal Nath and Others, the Supreme Court applied this doctrine for the first time in India to an environmental problem. It his doctrine primarily rests on the principle that certain resources like air, water, sea and the forests have such a great importance to people as a whole that it would be wholly unjustified to make item a subject of private ownership. The court continued that the said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins 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 I Builders Pvt. Ltd. V. Radhe Shyam Sahu, a city development authority was asked to dismantle an underground market built below a garden of historical importance".



E. Principle of Sustainable Development- The report of the World Commission on Environment and Development (WCED), titled the "Brundtland Report" in honour of the commission's chairman, is well-known. Brundtland puts the idea of sustainable development front and center. According to the Brundtland report, "development that meets the needs of the present without compromising the ability of the future generations to meet their own needs" refers to sustainable development. The courts need to strike a balance between environment and development.

In "B.K. Srinivasan v State of Karnataka" the court held that sustainable development' as a balancing concept between ecology and development has been accepted as a part of the customary international law though salient features are yet to be finalized by international law jurists. The court directed that sustainable development, precautionary principle, the polluter pays principle and the anew burden of proof as laid down by the court should be applied by the government development agencies in making decisions on environmental matters. This principle has been incorporated in the National Green Tribunal Act, 2010".

In "Rural litigation and entitlement Kendra v. State of UP, the court for the first time deal with the issue relating to the environment and development; and held that, it is always to be remembered that these are the permanent assets of mankind and not intended to be exhausted in one generation".

In "Vellore Citizen's Welfare Forum, in this case, the Supreme Court observed that sustainable development has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying incapacity of the supporting eco- system".

ENVIRONMENTAL PROTECTION AND INDIAN JUDICIARY: The judgments listed below clearly demonstrate the judiciary's active involvement in "environmental protection":

A. The Preference for a Healthful Environment- In "Charan Lal Sahu v. Union of India" the Supreme Court said that the right to life guaranteed by article 21 of the constitution includes the right to a wholesome environment".

In "Damodhar Rao v. S.O. Municipal Corporation Hyderabad, the Court decided the Constitutional mandates under Articles 48A and 51A(g) to support this reasoning and went to the extent of stating that environmental pollution would be a violation of the fundamental right to life and personal liberty as enshrined in article 21 of the constitution".

B. Public Nuisance: The Judicial Response- In "Ratlam Municipal Council v. Vardhichand" Environmental damage will be considered as public nuisance and duty is cast upon public authorities to help mitigate the effect of nuisance through public interest litigation as strong medium. the judgment of the supreme court in instant case is a land mark in the history of judicial activism in upholding the social justice component of the rule of law by fixing liability on statutory authorities to discharge their legal obligation to the people in abating public nuisance and making the environmental pollution free even if there is a budgetary constraints".

C. Judicial Relief Encompasses Compensation to Victims- In "Delhi gas leak case: M.C. Mehta v. Union of India" In this case, the Supreme Court laid down two important principles of law: 1) The power of the Supreme Court to grant remedial relief for an improved infringement of a fundamental right includes the power to award compensation. 2) The judgment opened a new phase in the Indian jurisprudence by introducing a new no fault liability (absolute liability) for industries engaged in hazardous activities which has brought about radical changes in the liability and compensation laws in India. The anew standard makes hazardous industries absolutely liable from the harm resulting from its activities".

D. Fundamental Right to Water- In India, judicial interpretation rather than legislative action has involved the fundamental right to water. In "Narmada Bacho Andolan v. Union of India and Ors., the Supreme Court of India held that water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India and the right to healthy environment and to sustainable development are fundamental human rights



implicit in the right to life".

In "Subhash Kumar v. State of Bihar, the Apex Court extended the boundaries of Art. 21 to include right to life asserting that the citizens have the right to have pure and pollution free water and air".

E. Environment Education-As a condition for licensing, the Supreme Court frequently ordered the federal government to issue instructions to all state governments and union territories requiring all movie theaters to display two free slides or messages in on environment awareness the audience during each show.

F. Important Environmental Cases-

* "Doon valley quarrying: In 1987, the rural litigation and entitlement Kendra, ion the behalf of residents of the Doon valley, filed a case in the Supreme Court against limestone quarrying. This case was the first requiring the supreme court to balance environmental and ecological integrity against industrial demands ion forest resources. The courts directed the authorities to stop quarrying in the Mussoorie hills".

* The silent valley's construction: "A writ filed by the society for the protection of the silent valley in 1980 seeking a prohibition on the construction of a hydro-electric project in the valley was thrown out by the Kerala high court. However, despite a negative assessment, environmentalists successfully stopped the project through active lobbying and grassroots action".

* Sariska's mining industry: "In 1991, the Tarun Bharat Sangh filed a writ petition with the Supreme Court to stop mining in the Sariska wildlife sanctuary. Mining in the sanctuary was outlawed by the court".

* In 1992, "India's Supreme Court issued a landmark decision to combat vehicle pollution. Together with three other members, a retired Supreme Court judge was appointed to make recommendations for reducing vehicle pollution across the country. In India, orders to use natural gas and other fuels in vehicles and to provide lead-free gasoline have been passed and implemented. Since April 1995, lead-free gasoline had been made available in the four major metropolitan areas; Since April 1995, catalytic convertors have been installed in all new vehicles; Apart from the information provided by NEERI's, COG outlets have been established to provide CNG as a clean fuel in Delhi and other Indian cities. This case made Delhi the first city in the world to run all of its public transportation on CNG".

* In "State of Himachal Pradesh, Span motel, owned by the family members of Shri Kamal Nath, Minister for environment and

forests, Govt. of India diverted the Course of river Beas to beautify the motel and also encroached upon some forest land. The court delivered a land mark judgment and established principle of exemplary damages for the first time in India. the court said that polluter must pay to reverse the damage caused by his act and imposed a fine of Rs Ten Lakhs (Rs 10,00,000) on the span motel as exemplary damages. The supreme court of India recognized polluter pays principle and public trust doctrine".

V. Conclusion and Suggestions-

1. Consequently, after analyzing the aforementioned cases, I discovered that the Supreme Court broadens the various environmental protection laws. The justice system tries to fill in the gaps when there isn't enough legislation. These new innovations and developments in India open up a variety of options for assisting the nation through judicial activism. Indian courts are extremely mindful of environmental rights and cautious in the event that natural resources are lost and cannot be replaced. There are some suggestions that should be considered.

2. Over the past two decades, environmental law in India has developed significantly. This time period encompasses the majority of the principles under which Indian environmental law operates. A significant amount of initiative has been taken by the Indian judiciary, particularly the higher judiciary, which consists of the supreme court of India and state high courts. PIL has proven to be a useful environmental protection tool.

3. The Indian judiciary utilized the strategy of public interest litigation to safeguard the environment in numerous cases. The principle that those in needy should not be denied access to justice, due to a lack of knowledge or resources is the core belief of PIL. In the interest of public health, environmental protection, and resource



conservation, the court ordered the contractors of indiscriminate mining operations, which had upset and destroyed ecological balance, to close.

4. Public awareness: The media contributes significantly to India's overall development. The effect of media can be seen in the various trials directed by it by publishing a single item in their media. The persuasive power of correspondence not only has an impact on people's minds, but it can also help them form positive attitudes and ideas about protecting the environment.

5. Regular checkups: A standard review apparatus is required to periodically inspect and examine all of the activities that pose a threat to the environment. Since it's better to prevent than cure, this would be a successful step toward environmental protection.

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