

## Taking Environmental Law Seriously: An Indian Perspective

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### Abstract

The black ebony staves of judiciary which has thumped time and again for protection of man miniature against excruciating blows of evil is known on the aspiration for protecting environment. Although numerous legislative steps have been taken to give effect to the significant right of man to live in a sound environment and the corresponding duty on state and individuals to ensure environment preservation and conservation, my endeavor, in this study, is to analyze the steps taken by judiciary to forward this goal. The main objective behind this research is to identify the present scenario and study the nature and extent of till date developments in various environmental statuses through various statutes, law and convention and various issues regarding the court decisions and judicial process

### Introduction

The Indian Heritage and Culture has an intimate relation with the conservation and protection of the environment. The Indian State has also enshrined it in the Constitution which requires both the State and the Citizen to "protect and improve the environment". The Environment Act, 1986 is one of those acts which extends to the whole of India without any exception.

Initially, environmental protection was seen by many developing nations, including India, as a goal conflicting with developmental priorities. Some nations even regarded the industrialized nations' recommendations that developing countries adopt environmental policies as a ploy to divert them from achieving their own economic development. The late Indian Prime Minister Indira Gandhi expressed this attitude in 1972 at the United Nations Conference on the Human Environment, <sup>1</sup>when she asked: "How can we speak to those who live in villages and in slums about keeping the oceans, rivers and the air clean when their own lives are contaminated at the source?"

The need for protection and conservation of environment and sustainable use of natural resources is reflected in the constitutional framework of India and also in the international commitments of India. The Constitution under Part IVA (Art 51A-Fundamental Duties) casts a duty on every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures. Further, the Constitution of India under Part IV (Art 48A-Directive Principles of State Policies) stipulates that the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.

Environment is the wellspring of life on earth like water, air, soil, etc., and determines the presence, development and improvement of humanity and all its activities. The concept of ecological protection and preservation is not new. It has been intrinsic to many ancient civilizations. Ancient India texts highlights that it is the dharma of each individual in the society to protect nature and the term 'nature' includes land, water, trees and animals which are of great importance to us. . In the '*Atharva Veda*', the ancient Hindu Scepters stated "What of thee I dig out let that quickly grow over".

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**Meaning of Environment**

The word “environment” relates to surroundings. It includes virtually everything. It can be defined as anything which may be treated as covering the physical surroundings that are common to all of us, including air, space, land, water, plants and wildlife<sup>4</sup>.

According to the Webster Dictionary, it is defined as the “Aggregate of all the external condition and influences affecting the life and development of an organism.”<sup>5</sup>

**The Environment (Protection) Act, 1986**

Section 2(a) environment “includes water, air and land and the inter- relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property<sup>6</sup>.”

Thus, after analyzing all the above definitions, the basic idea that can be concluded is that environment means the surroundings in which we live and is essential for our life.

Some of the important legislations for environment protection are as follows:

- The National Green Tribunal Act, 2010
- The Air (Prevention and Control of Pollution) Act, 1981
- The Water (Prevention and Control of Pollution) Act, 1974
- The Environment Protection Act, 1986
- The Hazardous Waste Management Regulations, etc.

Several environment protection legislations existed even before Independence of India. However, the true thrust for putting in force a well-developed framework came only after the UN Conference on the Human Environment (Stockholm, 1972). After the Stockholm Conference, the National Council for Environmental Policy and Planning was set up in 1972 within the Department of Science and Technology to establish a regulatory body to look after the environment-related issues. This Council later evolved into a full-fledged Ministry of Environment and Forests (MoEF).

**Constitutional Interpretation of Environment:-**

The 42nd Amendment to the Constitution of India added Article 48A and 51A (g) which comes under the Directive Principle of State Policy and the Fundamental Duties respectively. The Supreme Court of India in “Sachidanand Pandey v. State of West Bengal AIR 1987 SC 1109” stated that the Court is bound to bear in mind the above said articles whenever a case related to Environmental problem is brought to the Court.

The Article 48A states:

- “The State shall endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country.”
- The Article 51A(g) imposes a duty upon every citizen of India to protect and improve the natural environment and confers right to come before the Court for appropriate relief.
- The Apex Court in “Damodar Rao v. S.O. Municipal Corporation AIR 1987 AP 171” held that the environmental pollution and spoliation which is slowly poisoning and polluting the

atmosphere should also be regarded as amounting to violation of Article 21 of the Indian Constitution.

### **Some Remarkable Principles and Doctrines Propounded By The Indian Judiciary**

#### **Doctrine of Absolute Liability**

**THE BHOPAL CASE:** Union Carbide Corporation v. Union of India

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 coming about, for instance, in getaway of poisonous gas, the enterprise is strictly and completely obligated to repay every one of the individuals who are influenced by the accident and such risk is not subject to any exemptions. Accordingly, Supreme Court created another trend of Absolute Liability without any exemption.

#### **Public Liability and Public Nuisance:-**

“M.C. Mehta and Anr. Etc vs. Union Of India and Ors. Etc 1986 SCR (1) 312” discusses the concept of Public Liability. This case is also known as Oleum Leakage Case. It is a landmark judgment in which the principle of Absolute Liability was laid down by the Supreme Court of India. The Court held that the permission for carrying out any hazardous industry very close to the human habitation could not be given and the industry was relocated. When the Directive Principles of State Policy has clear statutory expressions then the Court will not allow Municipal Government to make fun of the Statutes by sitting idly. It was decided by the Supreme Court in the “Municipal Corporation, Ratlam vs. Vardhichand AIR 1980 SC 1622”. The plea of lack of fund will be poor alibi when people in misery cry for justice. The office in charge and even the elected representatives will have to face a penalty if they violate the constitutional and other statutory directives.

#### **Sustainable Development**

The Bench of Justices PN Bhagwati and Ranganath Mishra in “Rural Litigation and Entitlement Kendra, Dehradun vs. State of Uttar Pradesh AIR 1987 SC 2187” introduced the concept of “Sustainable Development”. An NGO named RLEK filed a case against limestone quarrying in the valley in 1987. It was stated that the permanent assets of mankind are not to be exhausted in one generation. The natural resources should be used with requisite attention and care so that ecology and environment may not be affected in any serious way.

#### **Environmental Impact Assessment**

Justice Jeevan Reddy in the landmark judgment of “Indian Council for Environ-Legal Action vs. Union of India AIR 1999 SC 1502” held that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution by adopting the “Polluter Pays Principle”.

#### **Water Pollution**

The writ petition filed by the activist advocate M.C. Mehta in the Supreme Court highlighted the pollution of the Ganga river by the hazardous industries located on its banks. Justice ES Venkataramiah gave a historic judgment in “M.C. Mehta vs. Union of India AIR 1988 SCR (2) 538” ordering the closure of a number of polluting tanneries near Kanpur.

In this judgment it was observed that just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot setup a primary treatment plant cannot be permitted to continue to be in existence.

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**Air Pollution**

The Apex Court in “M.C. Mehta vs. Union of India (Taj Trapezium Case) AIR 1987” delivered its historic judgment in 1996 giving various directions including banning the use of coal and cake and directing the industries to Compressed Natural Gas (CNG).

**Environmental Awareness and Education Case**

The Supreme Court in “M.C. Mehta vs. Union of India WP 860/1991” ordered the Cinema theatres all over the country to exhibit two slides free of cost on environment in each show. Their licenses will be cancelled if they fail to do so.

The Television network in the country will give 5 to 7 minutes to televise programmes on environment apart from giving a regular weekly programme on environment. Environment has become a compulsory subject up to 12th standard from academic session 1992 and University Grants Commission will also introduce this subject in higher classes in different Universities.

**Public Trust and Right to Life**

The Bench of Justices Kuldip Singh and Sagir Ahmed held that the Government violated the Doctrine of Public Trust in “M.C. Mehta vs. Kamal Nath and Ors. (1996)”. The Himachal Pradesh State Government had leased out a protected forest area on the bank of river Beas to motels, for commercial purposes.

In 1996, the Supreme Court passed a judgment that would hold the State more responsible for maintaining natural resources.

The Right to Pollution Free Environment was declared to be a part of Right to Life under Article 21 of the Constitution of India in the case of “Subhash Kumar vs. State of Bihar and Ors. (1991)”. Right to Life is a Fundamental Right which includes the Right of enjoyment of pollution free water and air for full enjoyment of life.

**Conclusion and Suggestions**

Thus, after the analysis of above cases, we find that, the Supreme Court is, at the present time, stretching the different legal provisions for environmental protection. In this way, the judiciary tries to fill in the gaps where there is laciness of the legislation. These new innovations and developments in India by the judicial activism open the numerous approaches to help the country. In India, the courts are extremely cognizant and cautious about the special nature of environmental rights, considering that the loss of natural resources can't be renewed. There are some recommendations which need to be considered.

**Regular Inspection**

There is a requirement for a standard review apparatus, which can inspect and examine periodically every one of those exercises which are threatening the environment. This would be a successful step towards environment protection, since prevention is better than cure.

**Environmental Education**

There is no means for any law, unless it's an effective and successful implementation, and for effective implementation, public awareness is a crucial condition. Therefore, it is essential that there ought to be proper awareness. This contention is additionally maintained by the Apex Court in the instance of M.C. Mehta v. Union of India.

In this case, Court directed the Union Government was obliged to issue directions to all the State governments and the union territories to enforce through authorities as a condition for license on all cinema halls, to obligatory display free of expense no less than two slides/messages on environment amid each show. Moreover, Law Commission of India in its 186th report made a proposal for the constitution of the environment court<sup>9</sup>. Hence, there is an urgent need to strengthen the hands of judiciary by making separate environmental courts, with a professional judge to manage the environment cases/criminal acts, so that the judiciary can perform its part more viably

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### **References**

- The Conference took place in Stockholm on June 5-16, 1972. See Report of the United Nations Conference on the Human Environment, U.N. Doc. A/CONF.48/14/REV.1 (1972).
- Prime Minister Gandhi added that "the rich countries may look upon development as the cause of environmental destruction, but to us it is one of the primary means of improving the environment of living, of providing food, water, sanitation and shelter, of making the deserts green and mountains habitable." Times of India (New Delhi), June 15, 1972.
- Mc Mehta, Growth Of Environmental Jurisprudence In India, P.71, 1999.
- Dr. Jai Jai Ram Upadhyay, Environmental Law, P.2, Allahabad: Central Law Agency, (2005).
- R.M. Lodha, Environmental Ruin: The Crises Of Survival, P.364 .New Delhi: Indus Publishing Company,(1993).
- Available At Envfor.Nic.In/Legis/Env/Env1.Html
- Air 1990 Sc 273
- S .Shanthakumar, Environmental Law An Introduction Chennai: Surya Publication,
- One Hundred Eighty Sixth Report Of Law Commission Available At Lawcommissionofindia.Nic.In/Reports/186th%20report.Pdf
- M.V Ranga Rao, Role Of Judiciary In Environmental Protection, P.9, Vol.3.