

The Role of Indian Judiciary in Protection of Environment in India

Dr. Boregowda S.B.

Assistant Professor

Vidyavardhaka Law College, Mysuru

Abstract: *In the modern world most dangerous crises is constantly increasing pollution of the environment. The idea of environmental protection is not a new phenomenon; it can be seen in antique civilization. It is stated in Ancient texts that it is each individual's dharma to protect the natural sources such as soil, water, trees and animals that are of great significance to us. In the modern age, the world is influenced by advancement of technology & technologies such as thermal power plants, atomic power plants etc. Global warming & climate change etc. has thus become a global problem.*

Keywords: Role of Indian Judiciary

I. INTRODUCTION

In the modern world most dangerous crises is constantly increasing pollution of the environment. The idea of environmental protection is not a new phenomenon; it can be seen in antique civilization. It is stated in Ancient texts that it is each individual's dharma to protect the natural sources such as soil, water, trees and animals that are of great significance to us. In the modern age, the world is influenced by advancement of technology & technologies such as thermal power plants, atomic power plants etc. Global warming & climate change etc. has thus become a global problem.

Today we are living in technological era. We cannot disregard the damage done to the atmosphere by the atom bombs in Hiroshima and Nagasaki in 1945 world war-II. Owing to day to day creativity & development of technology, it's become part of development but apart from this it spread the risk to human life. Climate & growth is means that they will not end in themselves. Environment & development is for the people, not environment & technology people.

Environment is living and non-living things which surround us. It consists of plants and animals and non-living objects like water, air, light, soil, temperature, etc. Section 2(A) of the Environment protection Act, 1986 defines Environment¹. It includes water, air and land and human beings, other living creatures, plants, micro-organisms and property. It means and includes all factors, which directly or indirectly have bearing upon the natural surroundings of human being. It is the sum total of all conditions and influences that effect the development and life of all organisms.

Environment is also defined as Man's total environmental system which includes not only the biosphere but also his interactions which his natural and man-made surroundings. Environment is also the entire range of external influences acting on an organism. Both the physical and biological i.e., other organism, Forces of nature surrounding an individual.

Quality of environment is necessary for all organisms to lead a quality life and also sustain their life and existence qualitatively. Even a child in mother's womb needs a quality environment for example, quality of air, quality of food and hygienic water. It is not only the duty of State to protect the environment but it is increasingly felt that it is an international and global issue².

The inter-connected oceans, the blowing winds, the soil connections, etc., have great effects between one country and another. Environment is responsible for our genetic composition, our existence and the existence of animals and plants. It is therefore important that the environment is preserved and protected from degradation and to enable us to maintain the ecological balance. Natural resources are the basis of all our activities whether it is agriculture, industry, science or

¹ S. Shanthakumara's, Introduction to Environmental Law, Lexis Nexis, 2nd ed, 2012 p-151.

² P. Leelakrishnan, Environmental law in India, Lexis Nexis, 3rd ed, 2015, p-202.

technology, etc. The protection of natural resources and their conservation both qualitatively and quantitatively is very much essential.

Judicial Contribution to Protect Environment:

The protection of environment was not significant in post-independence period of India, because of need of business development and civil disturbances. Post-independence, the key concern was to setup markets, trades, to make different jobs for the citizens. However, after the Bhopal Gas tragedy, Environment protection became importance. After this instance, the area of Environmental law broadens in the state and judicial movement also rises. After 1986, when major act related to the environmental protection was accepted, public exposed some concern about it. The chief purpose of the act was to implement the decisions of the United Nations Conference on the Human Environments. The Act is like a safe guard for the environment from the newly emerged industries and the development. Before this act of 1986, a major enactment was come out just after 2 years after the Stockholm Conference in 1974. The Indian Parliament makes important change in the area of environmental management to implement the decisions that were taken at the conference. It was this time when environmental protection was granted a Constitutional status and environment was included in DPSP by the 42nd Constitution Amendment³. The constitution also provides obligations under Article 48 A⁴ and Article 51 A (g)⁵ to both the State and citizen to preserve and protect the environment. These provisions have been extensively used by courts to justify and develop a legally binding fundamental right to the environment as a part of Right to life and personal liberty under Article 21⁶. Parliament enacted nationwide comprehensive laws; like The Wildlife Protection Act, 1972 and Water (Prevention and Control of pollution) Act, 1974. In modern era, environmental rights are considered as third age group rights⁷.

In contemporary world utmost hazardous crises is continuously growing pollution of the environment. The environmental danger is more severe problem than as compare to others for which urgent attention is now being paid in most of the universe. Perfect natural balance may be impossibility in the wake of growing economic development, industrialization and modernization. The irony of situation is that the more the economic and industrial development in the more is the danger to environment. Currently we are breathing in technical and scientific age. We cannot neglect the injury done to the atmosphere by the nuclear bombs in Hiroshima and Nagasaki. Due to day to day creativity & development of technology, it's become part of development but apart from this it spread the risk to human life. Climate & growth is means that they will not end in themselves. Environment & development is for the people, not environment & technology people.

Doctrines and Principles Developed by the Indian Judiciary:

The principles and doctrines developed by judiciary are an important input to the ecological jurisprudence in India. Article 253⁸ of the Indian Constitution shows the way on how decisions made at universal agreements and discussions

³ S.C. Shastri, Environmental law, Eastern Book Company, 5th ed, 2015, p-78-80.

⁴ The State shall endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country.

⁵ It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, and wildlife and to have compassion for living creature.

⁶ No person shall be deprived of his life or personal liberty except according to the procedure established by law.

⁷ [environment protection.pdf](#) dated on 28-10-2021 at 2:30pm

⁸ Legislation for giving effect to international agreements notwithstanding anything in the foregoing provisions of this chapter, parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or body.

are incorporated into the legal system. Invention and use of the principles & doctrines in the court procedure for ecological protection are notable landmarks in the path of environmental law in modern India⁹.

Doctrine and Principles are

- Public Trust Doctrine
- Doctrine of Sustainable Development
- Polluter Pays Principle
- Precautionary Principle

Public Trust Doctrine: this is the principle that certain resources are conserved for civic or public use or purpose, and that the government is required to maintain resources for public's reasonable purpose. The ancient romans developed a legal theory known as the Doctrine of public trust. In fact this doctrine is a part of the principle of sustainable development, and it lays down that certain resources like air, sea, water, forests, etc. can never be the subject-matter of private ownership. Such resources are a gift of nature and should therefore be available to all- irrespective of a person's cultural, religious, social or financial status¹⁰. In *M.C. Mehta v. Kamalnath*¹¹, the state government leased a riparian forest land for commercial purpose to a private company which had a motel located at the bank of river bias. The motel management's activities affected the natural flow of the river bias. The court held that the state is a public trust of certain resources like air, sea, water and the forests which are public importance and so they should not be made as a subject of private ownership. Here, state had committed a breach of public trust. In *M.I.Builders v. Radhey Shyam Sahu*¹², the Supreme Court held that if an underground shopping complex is allowed to be constructed underneath a public park, it would be a violation of the public trust doctrine. The court, therefore, directed the demolition of the structures and the restoration of the park.

In the Spam Motel case¹³ the Supreme Court held that the public trust doctrine is part of Indian law and it implies the following three restrictions on the authority of the government, namely,

- Such property must not only be used for a public purpose, but it must also be made available for use by the general public.
- Such property cannot be sold to a private user, even for a fair cash equivalent.
- The property must be maintained for particular types of uses only.

This doctrine also found a staunch in the form of Mahatma Gandhi.

Doctrine of Sustainable Development: the judiciary in India has not lagged behind in this regard and several landmark of the Supreme Court have enthusiastically supported and applied the principles of sustainable development in cases involving public interest litigation.

Any development, whether economic, social or political must not harm or affect the environmental interests. While development is necessary, it should not be at the cost of environmental pollution. The development should be continuous process for which natural resources must be continuously in existence.

One generation should not totally exploit the natural resources, which must be continuously kept for the benefit of future generations. The aim of sustainable development is the integration of developmental activities and environmental protection. In other words, development must possess both economical sustainability and ecological sustainability. The developmental plans must be such that it takes into account the environmental factors also¹⁴.

Sustainable development is development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. Sustainable development is a new concept of economic growth. It involves

⁹ Stuart Bell and Donald MC Gillivray, Introduction to Environmental Law, oxford university press, 2nd ed, 2004, p-5

¹⁰ S. Shanthakumara's, Introduction to Environmental Law, Lexis Nexis, 2nd ed, 2012 p-108.

¹¹(1997) 1 SCC 388.

¹² AIR 1999SC 2468.

¹³(1997) 1 SCC 388

¹⁴ Dr. Vinay N. Paranjape, Environmental Law, central law agency, 2nd ed, 2016, p-82-83.

progressive transformation of economy and society. All policies must aim for sustainable development in economic, social and ecological fields. All factors responsible for preventing sustainable development like poverty etc., must be eradicated.

The first case before the Supreme Court which brought into sharp focus the conflict between development and conservation was the Dehradun Quarrying Case¹⁵. The Supreme Court in this case emphasized the need for reconciling the two concepts in the larger interests of society¹⁶. The principles laid down in this case were applied by the High Court of Himachal Pradesh in *Kinkri Devi v. State of H.P.*¹⁷. In this case court observed that “ if industrial growth is sought to be achieved by reckless mining resulting in loss of life, loss of property, loss amenities like water supply and creation of an ecological imbalance, there may be ultimately be no real economic growth and no real prosperity. In *Vellore Citizens Welfare Forum v. Union of India*¹⁸ the Supreme Court adopted the principle of sustainable development as a balancing concept, rejecting the traditional view that development and ecology are opposed to each other. The courts observed that the precautionary principle and the polluter pays principle are essential features of sustainable development and that they have been accepted as part of the law of the land in India.

Polluter Pays Principle: now it is widely accepted by most countries in the world, including India. The policy statement for abatement of pollution, issued by the ministry of environment and forests, Government of India, accepts the polluter pays principle as a fundamental objective of Government policy to abate pollution. The 'polluter pays' principle is the commonly accepted practice that those who produce pollution should bear the costs of managing it to prevent damage to human health or the environment¹⁹. The polluter pays principle was applied for the first time by the Supreme Court in the Bichhri Case²⁰, where remedial and clean-up costs to restore the environment was ordered to be recovered from the polluter under the writ jurisdiction of the court. The court referred to this rule as a universal rule to be applied to all polluters. The polluter was, therefore, directed to pay compensation for the harm caused to the affected villagers, to the soil and to the underground water supply. Although the polluter pays principle has been vigorously applied since more than thirty years, there is still some dispute about the exact scope of this rule and in particular, the limits of such payment. In *M.C. Mehta v. Kamal Nath*²¹, the Supreme Court directed the Motel which had made constructions which interfered with the natural flow of the River Beas, to pay compensation for restitution of the environment and ecology.

Precautionary Principle: Environmental scientists play a key role in society's responses to environmental problems, and many of the studies they perform are intended ultimately to affect policy. The precautionary principle, proposed as a new guideline in environmental decision making, has four central components: taking preventive action in the face of uncertainty; shifting the burden of proof to the proponents of an activity; exploring a wide range of alternatives to possibly harmful actions; and increasing public participation in decision making²². The precautionary principle today has been accepted by most countries of the world, including India. In the Vellore Citizen's Welfare Forum's case, the Supreme Court had no hesitation in laying down that precautionary principle is now part of the law of the land. The principle was also applied in the Taj Mahal Case to protect the Taj Mahal from environmental pollution.

II. CONCLUSION

People have also applauded judicial activism in the field of environmental protection. It is important to remember, however, that judicial activism has significant limitations, and that executive laxity and environmental apathy cannot be remedied solely by judicial activism. In recent years, there has been a sustained focus on the role played by the higher

¹⁵ AIR 1987 SC 359

¹⁶ S. Shanthakumara's, Introduction to Environmental Law, Lexis Nexis, 2nd ed, 2012 p-111.

¹⁷ AIR 1988 HP 4.

¹⁸ (1996)5 SCC 647

¹⁹ Shyam Divan, environmental law and policy in India, oxford university press, 1st ed, 2001, p-26

²⁰ AIR 1996 SC 1446.

²¹ (1997) 1 SCC 388

²² S. Shanthakumara's, Introduction to Environmental Law, Lexis Nexis, 2nd ed, 2012 p-107

judiciary in devising and monitoring the implementation of measures for pollution control, conservation of forests and wildlife protection. Many of these judicial interventions have been triggered by the persistent incoherence in policy-making as well as the lack of capacity-building amongst the executive agencies. Devices such as Public Interest Litigation (PIL) have been prominently relied upon to tackle environmental problems, and this approach has its supporters as well as critics. Today judiciary plays an important role for protection of components of environment, because without components of environment it's very difficult to sustain. Therefore people should participate in decision making process and government should implement the decision and principles made by the Judiciary.

REFERENCES

- [1]. S. Shanthakumara's, Introduction to Environmental Law, Lexis Nexis, 2nd ed, 2012.
- [2]. Shyam Divan, Environmental law and policy in India, oxford university press, 1st ed, 2001.
- [3]. Dr. Vinay N. Paranjape, Environmental Law, central law agency, 2nd ed, 2016.
- [4]. Stuart Bell and Donald MC Gillivray, Introduction to Environmental Law, oxford university press, 2nd ed, 2004.
- [5]. S.C.Shastri, Environmental law, Eastern Book Company, 5th ed, 2015.
- [6]. P. Leelakrishnan, Environmental law in India, Lexis Nexis, 3rd ed, 2015.