AN ANALYSIS OF ENVIRONMENTAL JURISPRUDENCE IN INDIA

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ABSTRACT

The foremost objective of this paper is to illustrate on the importance of Environmental Jurisprudence in India. It gives an insight on how much suffering or misery one must undertake. When humans exploit nature and mother earth for satisfying their never ending needs, they indirectly cause damage to themselves. This paper also highlights the role played by lawmakers and the various legislations relating to the Environmental Protection in India. It further throws light on the judicial approach with particular reference to Public Interest Litigation and cases decided by Hon’ble Supreme Court of India. Finally, this paper provides certain recommendations for further development in the field of Environmental Protection in India.

Keywords: Environmental Jurisprudence, Judiciary, Environmental Protection, Legislations.
INTRODUCTION

The growing population has placed a burden on the availability of natural resources that are scarce. Mother earth has been overexploited due to over cultivation, pollution of the groundwater with the use of harmful pesticides and chemicals that are released into it, contamination of the air because of vehicular emissions. Rapid industrialization and widespread growth of consumers has led to the creation of a larger economy which has encountered with the problems such as undisposed garbage and uncontrolled sewage. Usage of fossil fuels, plastics and other non-biodegradable materials have caused immense damage to the environment and the level at which destruction has been caused is alarming. These are all mere indications and signs to take correct steps and actions in order to prevent further damage. If we do not adhere to the principles what is taught to us by the nature, we would face the most antagonistic face of nature; something which would be synonymous to destruction.1

Environment which ought to be one of the important issues, primary concern or priority for a country has been neglected on various levels i.e. the legislations that are framed, judicial pronouncements, etc.

The Indian Constitution clearly states that it is the duty of the state to protect and improve the environment and to safeguard the forests and wildlife of the country. It imposes a duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife.2

The Indian laws have been amended and modified so as to adapt to the changing needs but this transition hasn’t been smooth and successful. Even though a lot has been done, but there remains a lot that is yet to be done.

THE CURRENT STATUS QUA

The Ministry of Environment and Forests have laid down objectives and have taken various measures and efforts to eliminate all the inefficiencies. The main objectives that have been focused upon by the ministry are as follows:

The Indian Government have taken various measures in the past and continue to do so in the present as well to safeguard and protect the environment by keeping a regular check through conducting surveys on what is going on and also with the help of various organisations like NGOs which are supporting the same cause.

Though there has been a number of measures taken by the ministry, various laws which have been enacted with this regard as well, but unfortunately all these acts and regulations aren’t enough to protect the environment as the exploitation that has taken place due to the existence of corrupt officials who assist individuals to misuse the laws that have been laid down is on a massive scale. Globalization and opening up of the market for foreign players has further added to it as it has depleted the natural resources which weren’t utilized judiciously and thereby causing ecological destruction.

ROLE OF OFFICIALS

The lawmakers play a key role in framing laws for effective control of pollution and in prevention of degradation of scarce natural resources. In India, the Ministry of Environment and Forests is the nodal agency at the Central level for planning, promoting and coordinating the environmental programs, apart from policy formulation.4

A Central Pollution Control Board is setup at the apex level to monitor the industrial pollution and for ensuring prevention and control of the same while State Pollution Boards have been setup at each state who perform the duties and functions designated to them.

Various programs have also been initiated by the officials to protect the wildlife of the country as a few species have already become extinct and there is an immediate need for introducing a comprehensive legislation which provides protection to wild animals and birds. It was found that state laws were not adequate, thereby local provisions were amalgamated with new provisions and thus led to the formation of wild life protection Act, as legislators don’t act unless there arises a need.

FEW LEGISLATIONS ENACTED SO FAR

*The Environment (Protection) Act, 1986*

The main objective of this act was the protection and improvement of the environment and for matters connected herewith. This has also been enshrined in the Indian Constitution which speaks about the Protection and improvement of environment and safeguarding of forests and wild life. The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country. It shall be the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

The objectives of this umbrella legislation are of three fold:

1) Protection of Environment
2) Improvement of Environment
3) Prevention of hazards to
   a) Human beings,
   b) Other living creatures,
   c) Plants and

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6 Art 51A(g) of Indian Constitution, Directive Principles of State Policy and Fundamental Duties
d) Property

**Indian Wildlife (Protection) Act, 1972**

The scope of the act is to protect the wildlife, flora and the fauna, and their habitats. It empowers the central and state government to declare areas as wildlife sanctuary, national park or closed area. A Wildlife Advisory Board has been constituted under this act and endowed with specific powers and duties mainly with the objective to advise the state government on certain areas.

**The Water (Prevention and Control of Pollution) Act, 1974**

The purview of this act was to provide for the prevention and control of water pollution, and for the maintaining or restoring of wholesomeness of water in the country. It was designed with the main view to prevent pollution of water by industrial, agricultural and household wastewater that contaminate water sources, assess the pollution levels and punish the polluters.

**The Air (Prevention and Control Of Pollution) Act, 1981**

A central act which provides for the prevention and control of air pollution and maintenance of a good quality of the air, for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connecting therewith. It has the power to declare pollution control areas, impose restrictions on certain industries so as to limit the emissions of air pollutants and impose penalties on the offenders.

**PUBLIC INTEREST LITIGATION – A MECHANISIM FOR REFORMATION**

A very important and key role was played by the public interest litigation in the area of environment protection.

In *Rural Litigation and Entitlement Kendra vs. State of UP*\(^7\) the Supreme Court was aware that the continuance of mining operations carried on in the Mussoorie hills would adversely affect the

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\(^7\) AIR 1985 SC 652
environment and hence had ordered to stop the same thereby protecting ecological balance and violation of Art.51A (g).

In *EnviroLegalAction vs. UOI* ⁸ it was held that the Central Government should consider treating chemical industries separately from other industries as these industries discharged dangerous acids which is a violation of the right to wholesome environment and finally right to life i.e. Art.21, and must closely monitor them to ensure they did not pollute the environment.

In *M C Mehta vs. UOI* ⁹ the Supreme court directed all commercial vehicles to switch to compressed natural gas (CNGs) as the emissions from the vehicles polluted the air affecting the quality of air which is a violation of Art.21 i.e. right to life for safeguarding the health of people.

In *M C Mehta vs. UOI* ¹⁰ (Ganga Pollution case) has passed orders and given directions to a number of polluting industries established on the banks of river that discharged untreated effluents to setup either primary treatment plants or shutdown and pay for all the losses that had been incurred.

In the case of *Vellore Citizen’s Welfare Forum vs. UOI* ¹¹ the court ordered the tanneries around Palar river that were discharging toxic chemicals into the river to shut down and compensate for the damage that has been caused to the river as well as to the health of people residing in that area.

Therefore the Indian Judiciary has actively involved itself in protecting the environment by using PIL as an effective tool.

**PRINCIPLES EVOLVED FOR ENVIRONMENTAL PROTECTION**

*Sustainable Development*

Development that meets the needs of the present generations without compromising on the needs of the future generations. It focuses on economic growth, development and environment protection. Sustainable development features the following principles:

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⁸ AIR 1996 SC 1446
⁹ AIR 2001 SC 1948
¹⁰ AIR 1987 SC 1086
¹¹ AIR 1996 SC 2715
➢ **Polluters Pay Principle**

It means the absolute liability for harm caused to the environment and it is not only concerned with compensating the victims who have been affected but also includes environmental costs that would be incurred for restoring the environment back to the state had such damage not been caused. The scope of the principle over the extent of limits on payment for damage caused are always disputed as it is held that the polluter is liable to pay costs to sufferers as well as for reversing damaged ecology and it is not the responsibility of the government to incur these costs. The principle was first stated in the Brundtland Report in 1987.

➢ **Precautionary Principle**

It’s based on the idea that precaution is better than cure and that environmentalists must anticipate, foresee and prevent the causes of environmental degradation. Main purpose is to ensure that a substance or activity posing a threat to environment is prevented from adversely affecting the environment, even if there is no conclusive scientific proof of linking that particular substance or activity to environmental damage. The government shall at large apply this principle to the industrial projects and assess their effect and impact on the environment and not allow those projects that would cause damage.

➢ **Inter-Generational Equity**

It is right of every generation to benefit from the cultural heritage and natural resources of the previous generations and are under a duty to preserve it for the future generations as well. It is concerned with preserving biodiversity, renewable resources like forests, air and water. It is essential that one must satisfy his needs but not at the cost of other’s needs. Resources must therefore be used judiciously and shared equally by all the generations.

➢ **Public Trust Doctrine**

The Public Trust Doctrine (PTD) has come about into existence through various cases. Doctrine states that the state shall own the natural resources on behalf of the public for public good and welfare. It’s because certain resources like air, water, soil, etc. are primarily resources that are of great importance to all and hence they ought not to be subject
to private ownership as the said resources are gifts of nature to mankind and hence they should be freely available to all i.e. everyone must have access to it.

The doctrine serves two purposes: affirmative state action for effective management of resources and empowering citizens to question ineffective management of natural resources.

The doctrine was first mentioned in *M C Mehta v. Kamalnath* where the Supreme Court of India had applied this principle for conservation and preservation of natural resources and this case was a suo moto initiative of the apex court in order to prevent serious environmental effects.

**RECOMMENDATIONS**

As the issues pertaining to environmental damage are large in number, courts must place more importance to these and allocate more time to such cases. It is essential that these cases be addressed at the earliest as justice delayed is justice denied.

The existing legislations are not effective and are highly inadequate to help combat the increasing issues pertaining to environment. Therefore the judiciary must play a key and active role. Experienced persons must be given the task to review and monitor the performance of Pollution Control Boards (PCBs) and also for assessing the viability of the different projects.

Penalties imposed on breach of duties may be increased so as to prevent violation and also to ensure that affected individuals get adequate compensation. Strict action should be taken against frequent offenders.

**CONCLUSION**

The existence of a lot of lacunae and loopholes still continues in the system thereby hindering the smooth functioning of the various legislations enacted. The concept of right to healthy environment as a part of right to life under Art 21 of our Constitution is developing through

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12 1997 1 SCC 388
judgements. Further the right to environment is often associated with human right, mostly right to live. Right to life is guaranteed as a fundamental right under article 21. In order to live a healthy life it is of utmost importance that our environment and surroundings be pollution free and clean. The flora fauna also impact the lives of individuals and can also be of utmost importance for survival. Therefore there is emergence of the concept of right to environment as a fundamental right as can be seen in various judgements mentioned above. Thus, in India, the judiciary has interpreted Art 21 to give it an expanded meaning of including the right to a clean, safe and healthy environment. Class actions have been entertained by the Supreme Court under Art 32 of the Constitution as being part of public interest litigation actions. The High Courts, also being granted this jurisdiction under Art 226 have intervened by passing writs, orders and directions in appropriate cases, thereby giving birth to an incomparable environmental jurisprudence in the form of the constitutional right to healthy environment.
REFERENCES & BIBLIOGRAPHY

Books

Articles
1. Geetanjoy Sahu, Implications Of Indian Supreme Court’s Innovations For Environmental Jurisprudence, http://www.lead-journal.org/content/08001.pdf