

## **Judicial Trend in developing environmental jurisprudence**

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### ***Introduction***

The judiciary has emerged as a mature and dynamic institution in deciding the matters pertaining to environmental issues. It is the basic tenant that the bend will be on party who is opposing the spread of industrialization or urbanization but the bend of the judicial conscience will remain on the hauling out welfare of the public. The independence of the judiciary has led to achieve the laudatory goals imbibed in the constitution. It can be said that it is the conscience of the judges which plays a paramount role in decisions pertaining environment issues. As the evolutionary phase of industrialization cannot be put at a stay blindly as not only it amounts to the stagnancy in the growth progress of the country but it also inculcate the new versions of litigation through the mirror of ‘environment fortification justice’. Elaborating it further, the conscience of the judges has to be passed through the sharp edged sword of iconoclasts, so that their decision does not, in any way, defeat and defy the provisions that are meant as the construction of all the other legal norms and rules. The law making mechanism for environment laws has been stigmatized due to its opacity. Since environment laws are the best example of the most neglected area of the legislators which has labeled it as ‘third generation right’, it is the judiciary which has gone to an extent of including it in the ambit of Article 21. Quoting an instance, when prayers were recited in church by using loudspeakers and drums, there was a complaint of noise pollution. Orders were given by the High Court to authorities to follow

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guidelines laid down for control of noise pollution as issued and to make the church to keep the speakers at a lower level.<sup>3</sup> It was held that such directions given by the High Court were not illegal in vision of clear pollution control provisions. Appreciably, our judicial system is imbibing rather welcoming the international pollution control principals. Damages to be awarded must have some broad correlation not only with the magnitude and the capacity of the venture but also with the harm caused by it<sup>4</sup>. This pro-bono publico judicial process has three main features: first, judges are swathed towards political pressures so they adjudicate decisions according to best of their knowledge and going through the merit of the case on the incus of public welfare. The second feature of the judicial procedure is that it often compels that the defendant project is challenged in court by a group of environmentalist; the promoters frequently spend more finances on environmental impact assessment and pollution up gradation (abatement) than they otherwise might. Third, it should be remembered that the courts can only respond to the cases that come before them. Courts in India are playing an active part in conservation of environment and citing a famous case, the Ganges pollution Case,<sup>5</sup> where gigantic judicial efforts were taken to curb the environmental problem by cleaning the river Ganga. So there is every reason to believe that judiciary has played a role of conscience custodian.

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<sup>3</sup> 1995 AIHC 4168

<sup>4</sup> Subhash Kumar vs. State of Bihar AIR 1991 SC 420

<sup>5</sup> MC Mehta vs. Union of India AIR 1988 SC 1037

### **Conscience Custodian**

The Public Interest Litigation is becoming the recuperate to the poor and suppressed classes and a tool by which the ears of the judiciary could be lent quite easily, “The role of the telegram to the door of justice is very well played by a post card which was never before played that advantageously by more than one smidgens of paper”.<sup>6</sup> Rural litigation case is said to be the herald of the revolution which has opened the floodgates of the PIL s for curbing environmental problems. Mere filing of petitions does not suffice the purpose, rather after filing the petition, these are the judges who are to entertain petition, and that naturally depends on the bent of their mind. The cases having the bone of contention as the environmental degradation were really speaking cases against inaction of the state or wrong action of the state. The court of law made it clear that petition alleging environmental pollution caused by private industrial units will be against the union of India, the state government, and the pollution control boards established under Environmental Protection Act 1986, which were supposed to protect environmental hazards, to be the guiding rationale for the judges. Government’s failure, to perform their statutory duties, results in violation of the right to life and liberty of the residents guaranteed by Article 21 of the Constitution of India, 1950<sup>7</sup>. The Court entertained a petition by the local residents of Bangalore objecting to the approval of developmental schemes that were likely to adversely affect the quantity and quality of water of a river which supported their day to day life. The Court had to actually keep an eye on restrictions on mining operations that were conducted by the authorities, hazardous to the health of the people living in surrounding areas by appointing a committee to supervise the implementation of the court’s directions. The Bhopal

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<sup>6</sup> Subash Kumar v. State of Bihar, AIR 1991 SC 420

<sup>7</sup> MC Mehta vs. Union of India AIR 1988 SC 1115

gas tragedy is considered as one case which was more than a apocalypse at catastrophic level; it was that big disaster due to repercussions of which the souls of the died persons are still loitering in the air for the justice and the justice is not confined to deciding that very case; rather for making or framing such laws which are not only for the decisional benefit of the case, but for avoiding the upcoming similar tragedies. The directions were given by the court for disciplining the development processes, keeping in view the demands of ecological security and integrity<sup>8</sup>. The Court of law has dealt with environmental issues such as pollution by recreational industries, protection and conservation of forests, urban and solid waste management, protection and conservation of wildlife and vehicular pollution in metropolitan cities due to location of mechanized slaughter houses.<sup>9</sup> The apex Court was also approached against the degradation of the shine of the marbels of one of the best monuments of the world, Taj Mahal, pollution of the river Ganges by Calcutta t. anneries that discharged untreated noxious and poisonous effluents. The Court also laid down the principle that the polluter has the liability upon his shoulder to pay for the pollution. In another case, the Court held that in matters of environment, the burden of proof will lie on the party that wants to change the status quo<sup>10</sup>. As India being a welfare state, it is high time when somebody has to be the crusader against the environmental challenges in the society. There are loads of problems that are piling up in front of us as the concept of environmental protection is a recent born practice in judicial parlance. Moreover, the action of the administrative agencies cannot be taken in a lighter way. The judges have to concentrate on each and every action of government in protection of environment which, no denying the fact is considered as judicial

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<sup>8</sup> AIR 1991 SC 420

<sup>9</sup> AIR 1985 SC 652

<sup>10</sup> MC Mehta vs. Union of India AIR 1988 SC 1115

activism, but there is no harm in taking active cognizance and participation of environment protection cases.<sup>11</sup> The legislature seems to be more occupied by the issues such as industrialization, urbanization, and moral aspects of society. The law making mechanism for environment laws has been stigmatized due to its opacity.

### **Chapter Iii : Mc Mehta; A Judicial Activist**

There is no denying the fact that it is the judicial dictum which holds the paramount importance however it is a self-evident truth that rationality and just is required over the facts for proper litigation. M.C Mehta is one of the world's most renowned and successful activists. A lawyer by profession and a dedicated environmentalist by choice, he has made the fight to safeguard India's environment as his unending mission. He has pioneered legal cases for environmental protection and is a live example against a popular saying that one man can't make a difference<sup>12</sup>. The lawyers are not only retrieve to the degrading environment but also are a sort of nightmare to those whose degrade it, i.e. those who are leaping towards industrialization and urbanization. Mr. Mehta is unquestionably a public lawyer who has time and again, set glorious precedents which actually have opened a way, for the green colored litigating paper i.e. PIL related to environmental problem, to enter the dwellings of law. Furthermore, in a case M.C Mehta vs. Union of India<sup>13</sup> concerned closing down a chlorine plant of Shriram industries, the one known as Oleum gas leak case was decided by a constitutional bench of five judges of the Supreme Court, in view of gravity of the legal questions as the bone of contention. The court of law has welcomed this

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<sup>11</sup> Attakoya Thangal v. Union Of India, 1990 (1) KLT 580

<sup>12</sup> AIR 1987 SC 965

<sup>13</sup> Ibid

green letter of M.C Mehta, i.e. the PIL concerning environmental issues with open arms and imposed absolute liability on the hazardous industry. Again, in *M.C Mehta vs. Union of India*<sup>14</sup> the contemplation was done regarding discharge of effluents by tanneries and chemical industries into holy river Ganges. The apex Court ordered its office to serve notice about institution of that case to all such industries and after hearing both the sides to the suit ordered those tanneries, not having pretreatment plants approved by the pollution control board, to hold their release of chemical effluents. In yet another case of the Mehta series, the issue under consideration was that whether the petitioner, who was not a riparian owner, could be granted stay to move for prevention of annoyance for pollution in river Ganges.<sup>15</sup> The court held that he was a person interested in protecting the lives of the local people who make use of the water of the river and so could move. In the opinion of the court, in public interest litigation, it is prudent to allow any person to take proceedings on behalf of the community at large. So the attempts made by M.C. Mehta has left no stone unturned which is really appreciable and with him, the works of Justice Kuldip Singh cannot be ignored but an alarming question arises before the researcher and the public at large and the question still remains to be answered i.e. who next. It can't be denied that the activists working for the environment are not always genuine and that is why the P.I.L is criticized as cosmetic or pseudo activism.

### **National And International Endeavors**

International treaties and conventions have laid down many rules, norms and statutes. The first was the United Nations in its International Conference<sup>16</sup> in the

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<sup>14</sup> 1992 SUPP (2) SCC 633

<sup>15</sup> *Mukti Morcha v. Union of India* 1984 (3) SCC 161

<sup>16</sup> UN International Conference on Human Environment at Stockholm, from 5<sup>th</sup> to 16<sup>th</sup> June 1972.

year 1972, laid down its agenda as “to defend and improve the human environment for a present and future generation has become an imperative goal for mankind”. It positively summoned all the Governments of the Republic of the World to put forth common efforts for the preservation and improvement of the Human as well as Humanly Environment. This Conference, at Stockholm, became the turning point for Environmental Jurisprudence. It laid down twenty six principles which, are popularly known as, Magna Carta of the Environment laws. The Republic Of India was also one of the parties and signatories of the Stockholm Conference. Therefore, in light of the promise made at the Conference, the Indian Parliament enacted the 42nd amendment to the Constitution in 1976 (also known as mini constitution) and incorporated especially two Articles( 48 A & 51A) relating to protection and up gradation of the environment. Thus, India became the first country and was among the pioneers in the world to step forward for preventing this precious sensation and have provisions in the Constitution. Despite this, India has been one of the pioneers in passing various legislations for the protection of the Environment such as:

- Water (Prevention and Control of Pollution) Act, 1974.
- Air (Prevention and Control of Pollution) Act, 1981.
- Forest Conservation Act, 1980

And many more. Not only this, there are penal provisions in the statute of India, for example, Sections 268 to 294A of the IPC, 1860 which penalizes the person who pollutes the environment and Sections 133 to 146 of the Code of Criminal Procedure, 1973.

## Conclusion And Suggestions

The Supreme Court of India had taken into account the two parameters, right to a healthy environment and the second to be the right to sustainable development and had balanced both of them. This concept of right to a healthy environment and sustainable development are the fundamental human rights imbibed in the right to life, which had already been constructed as such in many countries. The present work was an attempt to analyze the desideratum of the independence of judiciary and the jurisprudential insight given by judges for deciding the matter with bone of contention as environment law. The entire judicial construction, with the help of public interest litigations, by the Supreme Court and the High Courts, reveal the humanitarian approach to these environmental laws. The Indian apex Court was the first to develop the concept of right to healthy environment as a part of life under Article 21 of our constitution.<sup>17</sup> This principle is now setting an example on an international front and now it is been adopted and followed in various other countries now.

It is really flabbergasting that the law in its very way has faced, time and again, the ditch which is itself created by law. Elaborating it further, the laws which are made to serve for the right of people are overlapping with the laws which already exist.

Suggestions:-

- The issue of environmental protection can be addressed to every suffering or suffered individual and state entity. The state should not only impose the environmental policy as the political will over the individuals but the level of understanding should also be developed amongst the individuals. The reason being these environmental issues will be confined to government policies and guidelines will not bear any fruit.
- The problem can be very well addressed to masses with the help of clinical and critical environmental education, as there will be specialized treatment to aware

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<sup>17</sup> Bhandu Mukti Morcha vs. Union Of India, 1984 (3) SCC 161.

people about environmental problems. Moreover, innovative minds can come out with very practical solutions.

- The judiciary should be proactive in deciding and resolving environmental disputes. Judicial Activism, had been, and can act as a potent weapon to curb problems of viable pollution. There should also be the establishment of Green Benches like ADR and lok adalats whose only duty would be to dispose of matters relating to the environment and giving guidelines for environmental protection.
- Governments of the nations can make provisions for environmental protection officers, those who should have the power to accept grievances against the public authorities who are not responding to policies of government concerning environment protection.
- There should be an inception of an environment tax. It should be implemented in proportion to the amount of exploitation of environment done by the private sector.
- The irresponsible acts of a nation towards environment should be termed as international crime under the jurisdiction of ICJ or ICC, so that individual responsibility should be ascertained. A degree should be defined for country as per their growth requirement so that excessive pollution should not happen due to irresponsible activities.
- The centre as well as the state should formulate their legislative policies as to include the issue of environmental protection to become part of the social security legislation. Issues of environmental protection should be at par with the issues of Maternity benefit, disabled protection, and labour protection and other day to day grievances.
- Countries should adopt a mechanism of speedy incorporation of treaties and conventions in municipal legal systems.

