



Research Paper

The Role of Judiciary in Protecting Environment

Dr.Pranjya Paramita Panda

Assistant Professor
Rourkela Law College

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“What of thee I dig out let that quickly grow over”

Atharva Veda

Environment is the most vital element on earth which actually determines the development and improvement of humanity and all its activity. The ancient people in India felt it as a Dharma to protect the nature or the environment which includes water soil, air, trees, and animals. But on the other hand due to digitalisation, modernization, new innovations such as atomic plant nuclear power thermal power and so on the natural resources are used carelessly which resulted to the issues like climatic change, global warming, acid rain etc. In the name of protection there are number of new legislations in place of old one like old wine in new bottle. But in practical sense the nature demands comprehensive analysis on protection of environment. In recent years there has been a sustained focus on the role of judiciary in monitoring the implementation of measures to control. It plays the role of a custodian of our constitution by protecting the valuable fundamental right which provided by our constitution to every citizen of India. To entertain this right healthy and hygiene environment is indispensable. But due to the unplanned and unconscious use of environmental measures and in the quest of making life more comfortable men exploit the nature and enjoy a healthy environment is become a dream for him.

Objective of the study

The aim of the study is to focus on the role of judiciary and strict implementation of various doctrines to protect the environment.

Importance of the study

As environment and human being are inseparable from each other and environment is very much essential for the existence of human being, so its protection and preservation is the need of the present situation. Because due to various reasons may be due to population or deforestation or may be due to lack of implementation of the legislations the concept of environment loose its purity and divinity. All over the world the environment is polluted or exploited by the greed of the people. Sustainable development is just going to die. The whole global environment is threatened now and in this panic situation the judiciary is only considered as a ray of hope to meet the situation with all its mechanism to safeguard the environment for the present generation along with the future generation.

Research question

The study basically involves the following questions

- What are the contribution of judiciary in protecting the environment?
- What is the mechanism of judiciary used to save our environment for future generation?
- What are the various doctrines used in India to protect environment?

Hypothesis

Judiciary through the mechanism of judicial activism, PIL and various other concepts always play a very vital role to protect the environment.

Pollution of Environment in India

The data shows that environment in all over the world is highly polluted due to various reason, it may be developed or developing country like India is concerned. Such as: population growth, deforestation,

urbanisation, research and development etc. pollution in Delhi according to the data, 458 µg/m³ (PM_{2.5} concentration), 14 µg/m³ (SO₂ concentration), 45 µg/m³ (NO₂ concentration), Maharashtra is considered as leading plastic waste generator, Gujarat is known as leading hazardous waste generator, Madhya Pradesh has highest number of landfills¹.

Constitutional provisions related with Environment Protection

Indian constitution contains specific provisions on the protection of environment which are implemented in our country or a commitment of our constitution to save the whole humanity. In the year 1976 for the first time the duty also imposed on state to protect the environment through 42nd amendment. Such as article 48 A says the state shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country²

Art 51 A (g) – it's shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, wildlife. In Sachidanand Pandey v/s State of West Bengal³ the apex court observed that wherever there is any issue regarding the environment is broad before the court and the quote must solve that in the light of article 48 A article 51 (g).

Article 32- Under this article remedies are provided for the violation of fundamental rights which include right to healthy environment, air, water etc directly in Supreme Court.

Article 226- under this article the High Court is empowered to issue certain rights.

Special legislation.-

There are plethoras of stringent laws enforced in India for the protection of the environment:

1. The world protection act, 1972
2. Water prevention and control of pollution act, 1974
3. Forest conservation act, 1980
4. Air prevention and control of pollution act 1981
5. The Environment Protection act, 1986
6. The public liability insurance act, 1991
7. The national environmental tribunal act, 1995
8. The protection of plant variety and farmers rights act, 2002
9. The wildlife protection amendment act, 2002 etc.

International concern for Environmental Protection

The year 1972 is very significant in the field of environmental jurisprudence because in this year the milestones in the development of global environmental law has been set up in the name of Stockholm declaration 1972. Though this 2 declarations are considered as soft in nature but their impacts are very profound at national and international level. But so far India is concerned this 2 conference has a great effect on the mindset of the people. Because the issue related to the protection of environment is really a major problem which effects the globe at large. The principles of various international movements states that men has the fundamental right to freedom, equality and standard of living and the human being also have the sole responsibility to protect and safeguard the environment for the present as well as for the future generation. Further to provide not only the impact on sustainable development but also focus on the common challenges what the human society faced. In the year 1987 the report of the world Commission on environment and development was also one initiative in international level. The earth summit of 1992 at Rio de Janeiro, though Rio declaration and agenda 21 has further focused on the concept of Environment Protection and sustainable development. There was a convention on climate change, 1992 which deals with climate change and adverse effects of climate change.

In spite of so many national and international laws in the field of protection of environment the target is not fulfilled yet so now the ball is in the court of judiciary. Because all the resolutions are just considered as “the old wine in a new bottle” due to various regions like unsatisfactory work of the government authorities, complicate management, executives non activism, lack of implementation of various legislation. Hence the judiciary take the lead to protect and preserve the environment from pollution rather we can say destruction through its mechanism called judicial activism.

¹ Statista.com/topics/6853/environmental;pollution;in;india

² 42nd amendment Act 1976

³ AIR 1987 SC 1109

Key role of judiciary in protection environment

In upholding the rule of law maintaining a balance between ecology and development, promote and preserve the environment the vital role is played by judiciary. By stepping into the shoes of executive the judicial activism create a positive effect in the field of environmental jurisprudence. It is not wrong if we said that the whole credit goes to the judiciary for sustainable development because due to all the effort of this Under article 21 of our constitution pollution Free environment declared as a fundamental right of every citizen⁴. It is the judiciary which through different doctrines or principles or through other measures always take initiatives to maintain the sustainable balance in society. Such as:

Principles of sustainable development

The Brundtland report highlighted various principles of sustainable development to protect and promote our environment and the fundamental right to life which also required healthy environment for human sustenance. The following are some principles

Intergenerational equity

This theory basically focused on the rights of his generation to get benefit from the culture and nature and they have also the obligation to preserve the rich heritage for future generation. In this state of Himachal Pradesh vs. Ganesh woods products⁵ (The Supreme Court recognised the significance of intergenerational equity. This is a great initiative of the Rio conference 1992 which men sound the careful or sustainable use of natural resources. Along with the betterment of the present generation use have to save for the future generation. Have it is the duty of every citizen have to preserve the environment. In order to implement this doctrine judiciary for the first time apply this in the famous case of A.P. Pollution Board vs M.V. Nayudu⁶ where the court said the right of the future generation cannot be ignored.

Public Trust doctrine

The peaceful world profounder no to connect with instant generational equity principles. The state is hand agent trustee or public for all the natural resources have in every individuals live environment play the most vital role for which it should be protected by the individual it's his primary duty. Privatization of the natural resource is not constitutionally valid⁷

Doctrine of proportionality of risk

The apex court developed this doctrine in the case of G Sundarajan v/s Union of India⁸. This theory stressed on the interest of the largest public instead of the interest of a particular individual like the thought of the positivist. This theory believed that it is necessary to avoid a greater harm a wrong can be committed and that can be protected under this doctrine.

Precautionary principle

This theory believe in "prevention is better than cure". End the main function of precautionary principle is to protect the environment from all the activities which threaten the preservation of our environment. This is also highly appreciated and adopted in the international sphere. So far India is concerned this particular principle used a lot to avoid environmental pollution or degradation.

Polluter pays principles

In 1972 this principle referred in various international social and economical organizations. This PPP act as a guiding principle to avoid environmental degradation. According to this the polluter should bear all the costs for the damage what he has done to the environment and also repair the damage. This PPP is one of the most popular and important principle in the society.

Doctrine of absolute liability

Under this doctrine the offender is liable for polluting environment absolutely without any defence. In Union Carbide Corporation v/s Union of India⁹ the court held that when any enterprise deal with any hazardous or dangerous activity or poisonous gas then the enterprise have to be label strictly or absolutely without any exemption.

Concern of Judiciary through PIL to protect Environment

Further as a initiative to handle the Environmental Protection issue judiciary also introduced PIL in various cases related to protection of environment fallen under this class. It is rightly said that justice P.N. Bhagwati and Justice V.R. Krishna Iyer was among the first judges to admit PIL cases in the court such as –

⁴ Ratlam Municipality Vs Vardhichand, AIR 1980 SC 1622

⁵ AIR 1996 SC 149

⁶ 1999 2 SCC 718

⁷ M.C. Mehta vs Kamal Nath (1997) 1 SCC 388

⁸ SLP9(c) no 27335 of 2012

⁹ AIR 1990 SC 273

In *Shriram food and fertilizer case*¹⁰ the Supreme Court directed the company to adopt all the necessary safety measures before starting the company operation as that was using poisonous and hazardous substance which were danger to the health and life off the workers and other people and the court also directed to pay ₹20,00,000 as compensation and ₹15,00,000 as security money to bank.

In *M.C.Mehta Case*¹¹ the apex code held that the right to live in a pollution free environment as part of fundamental right to life which enshrined in article 21 of the Indian constitution.

In *Subhash Kumar vs state of Bihar*¹², it has been held that public interest litigation is maintainable for ensuring enjoyment of pollution free water and air which is included in article 21 of the Indian constitution.

In *Indian council for enviro legal action vs union of India*¹³ the Supreme Court has held that if by the action of any private corporate bodies persons fundamental right is violated then it will be the duty of the judiciary to intervene in that matter and the court would not accept the plea that it is not included under the definition of state. In this case petition was filed for the protection of the people who were living in the industrial area.

In *M.C. Mehta vs Union of India*¹⁴, the Supreme Court ordered the shifting of 168 hazardous industries operating in Delhi as they were threatening the ecology. The court directed those industries to close down with effect from 30.11.1996.

In *Jagannath Vs. Union Of India*¹⁵ the apex code directed shrimp culture industry to stop operating in the ecological fragile coastal area yes they are affecting environment and coastal ecology.

In *Karnataka industrial area Development Board vs C. Kenchappa*¹⁶ the Supreme Court observed the polluter pays principles demands the financial costs which cost by the pollution and it is not the duty of the government to bear the costs

In *Deepak nitrate ltd Vs state of Gujarat*¹⁷ the apex code supported the idea that the amount of compensation must be correlated to the magnitude and capacity of the enterprise because such compensation must have way deterrent effect and the damage not only confined with the compensation rather it should be entered to the restoration of the environment from degradation.

The role of specialized environment courts-

The judiciary plays the very vital role for the protection and preservation of environment. But gradually the number of cases are increased due to growth of population and demanding of products and the result is huge pending of cases. At present the Supreme Court has more than 63,000 cases pending before it and the High Court have around 4,00,00,000 case is pending before it¹⁸. This pendency leads to the national green tribunal Act 2010 as a court of original jurisdiction to take a bold step for the protection of environment. In *Vimal Bhai Vs union of India*¹⁹ decided on 14th December 2011 the issue of deciding between forest and wildlife conservation on development of society. The case was filed regarding the hydro power plants being set up in the state of Uttarakhand which would cause large wildlife and forest loss and the NGT ordered a audit to be conducted by forming a committee with members consisting from Indian Institute of Technology, Rurkee.

Conclusion and suggestion

The judiciary has made various initiation to preserve India's natural environment by focusing on the implementation of laws and through leading concepts like polluter pays, precautionary, sustainable development into Indian law to achieve its goals.. Sustainable development of the environment is the name of the hour and the future is also guaranteed. The judiciary has established a strong jurisprudence as a base of environmental concern. The introduction of absolute liability is a major step in Environmental Protection. The international laws has been used²⁰.

¹⁰ M.C.Mehta vs UOI(Air 1987 SC 965)

¹¹ AIR 1987 SC 1086

¹² AIR 1991 SC 42

¹³ AIR 1996 3 SCC 212

¹⁴ (1996) 4 SCC 750

¹⁵ AIR 1997 SC 811

¹⁶ AIR 2006 SC 2038

¹⁷ AIR 2004 SC 3407

¹⁸ <http://main.sci.gov.in/statistics>

¹⁹ Appeal No. 5/2011

²⁰ Role of judiciary in sustainable development and environment, Manoj Kumar, volume 2, ISSN:2455-3085, October 2017

However after a deep analysis of judiciary in protecting and preserving the environmental sustainability, there are some gaps which needs to be fulfilled. Such as flaws in PIL system, conflicting interests between judiciary and social obligation, lack of awareness for sustainability etc and In order to achieve the target of healthy environment-

- a) Equal importance should be given to environment and development.
- b) Steps should be taken to create awareness in the society.
- c) The mindset of the people should be changed.
- d) Environmental education should be provided.
- e) Administration accountability should be strengthen.

Finally it can be concluded that even after the limitation the judiciary has played and will continue in playing the very vital role in protecting and preserving our environment.