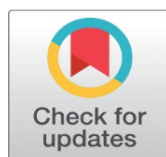
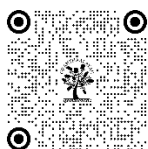


THE ROLE OF JUDICIARY IN ENVIRONMENTAL PROTECTION (A SPECIAL EMPHASIS ON THE POLLUTION CONTROL BOARD)

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ABSTRACT

India with its diverse ecosystem and population faces numerous environmental challenges. From Air pollution and deforestation to water scarcity and Biodiversity loss, the country's natural resources are Under significant pressure. In this context, the role of the Judiciary becomes paramount in ensuring environmental protection. The Indian judiciary has played a crucial role in interpreting and enforcing environmental Laws adjudicating disputes, safeguarding environmental rights and shaping environmental governance. India has inherited a culture of tolerance, equity and Compassion for animate objective. Air, water, land, animal plants, and human beings are creations of one superior power - God. Therefore, the fundamental ethics of behavior of each other was to be in harmony with each other because it is realised that each one of them is dependent on one other and destruction or damage to the other is the destruction of Self and is complementary to each other.

Keywords: Environmental Protection, Environmental Challenges, Air Pollution

1. INTRODUCTION

India with its diverse ecosystem and population faces numerous environmental challenges. From Air pollution and deforestation to water scarcity and Biodiversity loss, the country's natural resources are Under significant pressure. In this context, the role of the Judiciary becomes paramount in ensuring environmental protection. The Indian judiciary has played a crucial role in interpreting and enforcing environmental Laws adjudicating disputes, safeguarding environmental rights and shaping environmental governance. India has inherited a culture of tolerance, equity and Compassion for animate objective. Air, water, land, animal plants, and human beings are creations of one superior power - God. Therefore, the

fundamental ethics of behavior of each other was to be in harmony with each other because it is realised that each one of them is dependent on one other and destruction or damage to the other is the destruction of Self and is complementary to each other.

For the last five decades, we have witnessed a world movement to preserve and protect the environment, of which man is one of its components. The first international conference on the human environment was held in 1972 in Stockholm and since then it has taken place for 10 years. The local themes of the first international conference were to defend and improve the human environment for present and future generations and that the natural resources of the earth, including the Air, water, land flora and fauna and especially representative Sample of the natural ecosystem, must be Safeguarded for the benefit of present and future generation through careful planning or management as appropriate.

Thus, anthropocentric approach was the crux of the declaration, which has repeatedly been followed in all other international conferences, which were held during the last four decades. This approach to maintaining ecological balance and preventing environmental degradation for the Safeguard of Homo Sapiens was also adopted the world over and Indian Supreme Court also reiterated it in many judgments.

1.1. ENVIRONMENTAL ETHICS

1.1.1. ANTHROPOCENTRIC ECO-CENTRIC APPROACH: A PARADIGM SHIFT

The Supreme Court always emphasized preserving the quality of Various components of environmental vegetation cover. Air, water, land, flora & fauna, etc. to Safeguard the human being. Another component of the environment was to protect the present and future generations and mankind. This approach is known as the anthropocentric approach. Recently the Supreme Court of India has made a Paradigm Shift from its anthropocentric approach. According to the anthropocentric approach other components or natural things are being maintained or protected as they are essential for the existence of human beings. The need for mankind is the sole criterion to safeguard natural resources and to maintain their quality.

If we analyse and examine the international declarations the Stockholm Declaration of 1972, and the Rio Declaration of 1992, we find that human beings have kept in mind all the things and the natural resources may be utilized in such a way that it does not cause, directly or indirectly, any harm to humans. The Rio Declaration on Environment and Sustainable Development in the year 2012 mentioned we recognize that the people are at the Centre of Sustainable Development and in this regard, we strive for a world that is just, equitable and inclusive, and we commit to working together to promote Sustainable and inclusive economic, growth, social development and environment protection and thereby benefit to all. (Principle. 6) Even the Brundtland Report of 1987 defined the term "Sustainable Development" as "Development that heeds of the present without compromising the ability of future generations to meet their own needs". It also stresses the Survival and existence of human beings and therefore an anthropocentric ethic. "The protection and improvement of the human environment is a major issue which affects the well-being of people and economic development throughout the world."

Man has the Fundamental Right to freedom and adequate condition of Life, in an environmental quality that permits life and well-being. He bears a solemn

responsibility to protect and improve the environment for present and future generations. Moreover, these international declarations have been accepted and followed by the Court in many environmental Cases. The Court in *M.C. Mehta V Kamalnath* referred to the Stockholm Declaration 1972 and Brundland Commission Report and observed that sustainable development, intergenerational equity, the polluter pay principle and the precautionary principle are part of our environmental Jurisprudence. The Court also based its judgment on these principles but they all were based on anthropocentric principles. Thus, humans have been the focal point in the protection of natural resources. A similar approach was also adopted and applied in *Taj - Trapazium case*, *Delhi, Vehicular Case*, and *oleum gas leak Case*. In these cases, environmental pollution was the cause but the end to be achieved was human health and well-being.

2. METHODOLOGY

2.1. OBJECTIVE OF STUDY

The objective of study present study is Undertaken with the following points

- To analyse the concept of environment and identify the problems and their causes and to mention ways to protect the environment
- To study Various Court judgments and Tribunal for the protection of the environment
- To study and analyse the Role played by the Maharashtra Pollution Control Board, in the protection of the environment.
- To observe and verify briefly general laws and other laws bearing provisions for the protection of the environment.

2.2. HYPOTHESIS

To verify the results achieved in the protection of the environment by Various institutions like pollution control boards, Municipalities, Ministry of Environment and Forest and Courts and tribunals.

2.3. RESEARCH METHODOLOGY AND SOURCE OF DATA

The Research paper study is completely done in Doctrinal Study. The secondary source is also done in the form of Doctrinal Research. The Secondary Sources of Data Are Books, journals, Articles, websites, and citations.

3. POLLUTION CONTROL BOARD - ENVIRONMENTAL REGULATOR

3.1. THE BOARD

Constitution of Central Board and the State Board - To fulfil the objective of the Act, Section 3 clause (1) mandates the Central Government to constitute a central Board Accordingly Central Board for Prevention and Control of Water Pollution was set up by the Central Government.

3.2. CONSTITUTION OF THE STATE BOARD

Water being a 'state' subject, the parliament can exercise the power to Legislate on water only Under Articles 249 and 252 of the constitution of India. In pursuance

of Article 252 (1) of the constitution, a resolution was passed by the House of Legislature of State. Accordingly, the parliament enacted the water (prevention and control of pollution) Act, 1974. The fundamental objective of the Water Act is to provide clean drinking water to Citizens. The Air (prevention and control of pollution) Act, 1981 in short called Air Act was enacted by the Parliament Under Article 253 of the Constitution to implement the decision taken at United Nations. The objective of the Air Act is to provide for the prevention, control and abatement of Air pollution

4. ROLE OF JUDICIARY

The Judiciary in India has played a very prominent role in environmental protection and has applied the principles of sustainable development while deciding the case. There are several Cases on this point and therefore, it will be necessary to study and analyse a few important Cases. It is to be mentioned that most of the environmental Cases have come before the courts through "Public Interest Litigation"

1) Quarrying, Mining, Stone Crushing, Tree felling and Sustainable Development:

In India in the early eighty the environmental crisis of mining, was caused by indiscriminate Quarrying, mining, stone crushing near the populated area or the national highway and felling of trees resulting in deforestation and other environmental degradation. Rural Litigation and Entitlement Kendra, (RLEK) popularly known as Doon Valley Case.

In these cases, issues relating to the environment and ecological balance brought into sharp, focus the conflict between development and conservation. The Supreme Court was cautious in its approach when it pointed out that it is for the Government and the Nation and not for the Courts, to decide whether the deposits should be exploited at the cost of ecology and environmental consideration or the industrial requirement Should be otherwise Satisfied. However, the concerns of the Court towards ecological balance were evident.

In M.C. Mehta V Union of India, a P.I.L. was filed seeking direction from the Court to stop mining activities in the vicinity of the touring resort of Budkal Lake and Surajkund in Haryana. The Haryana Pollution Control Board recommended that mining activities within a radius of 5 km from the tourist Resort Should be stopped. The Court held that mining activities in the vicinity of tourist resorts were bound to cause severe impacts on the local ecology, therefor mining activities Should be stopped.

2) Industrial Development and Sustainable Development:

It is essential for developed Countries, to widen their development base and meet the growing needs. The negative environmental impact of industrial activities was perceived as a localised problem of Air, water and Land pollution. A monumental Judgement was delivered by the Supreme Court in M.C. Mehta V Union of India. Bhopal Catastrophe manifestation of the potential Hazards of all chemical industries in India. None of which are amenable to effective regulation.

In Deepak Nitrite Ltd. V State of Gujrat, the appeal, was against the order of Gujrat High Court wherein PIL was filed alleging that the effluent treatment project has exceeded certain parameters, fixed by Gujrat pollution control Board and thereby caused damage to the environment. The High Court had directed the industry to pay 1% of the maximum annual turnover of any of the preceding three years towards compensation and betterment of the environment.

Taj Mahal Case is yet another case in which the judgment of the Court is based on the principles of sustainable development and where the court applied the precautionary principle.

In Dahanu Taluka Environmental Protection Group V. Bombay Suburban Electric Supply Co. a public interest Litigation was filed against the Setting up of a public project involving environmental mental problems. The Government clearance to the proposal of the respondent Company for the construction of a thermal power plant at a place near Bombay was challenged on the ground that it poses a threat to ecology.

The Court on in-depth examination found no fault with the decision of the Government. The court refused the proposal of the respondent Company. However, direction was issued to ensure strict compliance with the Safeguard provided in the Environment Protection Rules 1986. It is evident that the court has allowed the process of development and at the same time ensured environmental protection.

3) Urbanization and Sustainable Development:

The present century is the century of urban revolution. Due to the rapid growth of urbanization and changing global plans and policies, there has been a tremendous effect on the environment. Sometimes even the development plan is not followed and the land reserved for recreation plans under the development plan is acquired for the construction of different structures/buildings. This harms the open environment. The rapid increase in urban population has adversely affected the facilities needed for an adequate human life such as clean water and air sanitation, schools and transportation. The urban solid waste is posing serious threat to the environment. The urban poor suffer from the high incidence of diseases most of which are environmentally based. It has increased slum dwellers, over-crowding, insect and rodent population, air pollutants and street filth. According to a report by the Centre for Science and Environment, out of India's 3,119 towns and cities, only 209 had partial and only 8 had full sewage and sewage treatment facilities. On the river Ganges, 114 cities each with 50,000 or more inhabitants dump untreated sewage into the river every day. 183 The section of the Yamuna River which flows through Delhi collects nearly 2000 million litres of untreated sewage daily. In Delhi alone, nearly 2,000 metric tons of air pollutants are thrown up every day. This has made the capital the fourth most polluted city in the world. There has been an increase of 40 percent in respiratory diseases in the past decade. The Indian judiciary has shown its concern for the problems of urbanization and the need for protecting and preserving the environment.

In M.L. Sud v. Union of India, 185 it was alleged that the Delhi Development Authority (DDA) was denuding the forest by cutting trees and putting up construction and laying roads in the city forest area which was shown in the Master Plan as "Green" and was to be maintained as city forest. The Supreme Court issued the necessary directions to the concerned authorities for maintaining the city forest.

In People United for Better Living in Calcutta v. State of West Bengal, the Calcutta High Court held that the Court must find a balance between the development program and the environment. In this case, the High Court highlighted the importance of wetlands and the part played by it in the proper maintenance of environmental equilibrium in the city of Calcutta. Given the facts and circumstances of the instance case, the High Court granted an injunction against the reclamation of the wetland. It was further held that wetlands is important in the maintenance of environmental equilibrium and necessary to preserve the environment. While it is true that in a developing country, there shall have to be development, that development shall have to be in the closest possible harmony with the environment,

as otherwise there would be development but no environment, which would result in total devastation, though however, may not be felt at present but at some future point of time, but then it would be too late in the day, however, to control and improve the environment. Nature will not tolerate us after a certain degree of its destruction and it will, in any event, have its toll on the lives of the people. Can the present-day society afford to have such a state and allow nature to take its toll in future-the answer shall have to be negative.

The present-day society has a responsibility towards the posterity for their proper day society development to allow the posterity to breathe normally and live in a cleaner environment and have a consequent fuller development. Time has now come therefore, to check and control the degradation of the environment and since the law courts also have a duty towards the society for its proper growth and further development and more so because of definite legislations in regard thereto as noted hereinafter, it is a plain exercise of the judicial power to see that there is no such degradation of the society and there ought not to be any hesitation in regard thereto-but does that mean and imply the stoppage of every developmental program-the answer is again 'no'. There shall have to be a proper balance between the development and the environment so that both can coexist without affecting the other.

The Supreme Court has also reiterated the above observations in *Goa Foundation, Goa v. Diksha Holdings Pvt. Ltd.* A public interest litigation was filed against the construction of a hotel and sea beach resort in the Goa coastal area on the ground that it would cause ecological or environmental damage of the coastal area. The Court held that the permission granted to the proposed hotel project was based on consideration of relevant material and having regard to the Coastal Regulation Zone Notification dated 19.02.1991 issued by the Ministry of Environment and Forest under sections 3(1) and 3(2)(v) of the Environment (Protection) Act, 1986. Also, there was no evidence of ecological degradation in the construction of the proposed hotel complex, hence, the petition was dismissed.

In *Citizen, Consumer and Civic Action Group v. Union of India*, 189 the Madras High Court observed that while the courts have social accountability in the matter of protection of the environment, there should be a proper balance between the same and the developmental activities, which are essential for progress. There can be no dispute that society has to prosper, but it shall not be at the expense of the environment. In the same vein, the environment shall have to be protected, but not at the cost of development of the society. Both the environment and the development shall co-exist and go hand in hand. Therefore, a balance has to be struck and the administrative actions ought to proceed in accordance therewith, and not de-hors the same.

In *Ajay Singh Rawat v. Union of India*, a public interest litigation (PIL) was filed alleging water, air and noise pollution in Nainital. It was found that in Nainital there was unauthorized construction of buildings, Ballia Ravine through which the outflow of Nainital lake water passes during rains was in a dilapidated condition, hill cutting and destruction of forests was going on in the catchment area of the lake, water was full of human waste, horse dung and other waste and heavy vehicles were plying on Mall Road and the bridge.

5. CONCLUSION

In conclusion, the judiciary plays a Crucial Role in environmental protection in India. Through its proactive approach and innovative use of legal principles, the

Judiciary has emerged as a powerful force in ensuring sustainable development and safeguarding the environment and future generations. One of the key contributions of the Judiciary is the recognition of the Right to a healthy environment as a fundamental Right, through landmark Judgement, the Courts have established the link between environmental Quality and the right to Life, emphasizing the importance of clean Air, water and soil for the overall wellbeing of individuals.

The Judiciary has also introduced ground-breaking concepts Such as absolute liability which holds industries Accountable for disaster arising from Hazardous activities. This principle ensures that enterprises take necessary precautions to prevent harm to the environment and public health, regardless of negligence. Moreover, the courts have emphasized the principles of Sustainable development including the precautionary principle and polluter pay principles as Integral Components of Environmental laws. Public Interest Litigation has been a powerful tool and utilized by the judiciary to address environmental Issues.

CONFLICT OF INTERESTS

None.

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