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# **ROLE OF JUDICIAL ACTIVISM IN ENVIRONMENT PROTECTION**

Authored By - Aryan Srivastava

## **ABSTRACT**

The protection and improvement of the environment is a major issue which affects the well-being of people throughout the world. Environment protection and its preservation is the duty of every human being living on the earth. The Supreme Court of India has passed many judgments for the prevention of environmental pollution. Due to urbanization and modernization there is a heavy loss to our natural beauty. To deal with the problems of industrialization and over-exploitation of natural resources, the entire World came together in the year 1972 at Stockholm in the "Conference on Human Environment". The purpose of this conference was to find a solution to the problems of environment. The concept of the term 'Sustainable Development' was also evolved in this conference. The Stockholm Declaration, 1972 is called as the 'Magna Carta' of environment protection. The world community also discussed the concept of sustainable development on Environment and Development in its report of 1982 and again in 1987 in the Brundtland Report. The judiciary has played a vital role in the protection of our environment by passing various landmark judgments. Mr. M.C. Mehta, a very renowned lawyer and a famous environmentalist contributed a lot for the protection of Environment. He filed many PILs (Public Interest Litigations) for saving our Mother Nature, monuments and rivers. "United Nations Climate Change Conference" was held in Nusa Dua, Bali (Indonesia) from 03 Dec to 14 December 2007 where more than 10,000 participants from 180 countries attended this conference. The purpose of this conference was to find a solution to the problems of environment. This paper commences with the meaning and need for environmental laws. It also analyzes the judicial remedies available for environmental protection and some remarkable principles and doctrine propounded by the Indian judiciary. It further views upon the constitutional aspects and the new trends in judicial approach in environmental protection.

## INTRODUCTION

<sup>1</sup>Environment protection is part of our cultural values and traditions. In Atharvaveda, it has been said that "Man's paradise is on earth; this living world is the beloved place of all; It has the blessings of nature's bounties; live in a lovely spirit". Earth is our paradise and it is our duty to protect our paradise. The constitution of India embodies the framework of protection and preservation of nature without which life cannot be enjoyed. The knowledge of constitutional provisions regarding environment protection is need of the day to bring greater public participation, environmental awareness, environmental education and sensitize the people to preserve ecology and environment. In a world where urbanization and pollution are above the danger level we have a duty to protect our environment. In our constitution also it is mentioned that we the citizens of India also owe a duty to protect our environment. Article 48A of the Indian Constitution provides that we have a fundamental duty to preserve our environment , lakes , rivers and ponds. Under Article 21 it is also provided that Right to Life includes right to live in a pollution free environment.

"Sustainable development is the development that meets the needs of the present without compromising the ability of future generations to meet their own needs."<sup>1</sup> Sustainable development is a socio-ecological process characterized by the fulfillment of human needs while maintaining the quality of the natural environment indefinitely. The linkage between environment and development was globally recognized in 1980, when the International Union for the Conservation of Nature published the World Conservation Strategy and used the term "Sustainable Development". The concept came into general usage following publication of the 1987 report of the Brundtland Commission set up by the United Nations General Assembly, the Brundtland Commission coined what was to become the most often-quoted definition of sustainable development as development that "meets the needs of the present generation without compromising the ability of future generations to meet their own needs". Further it elaborates the concept by stating that "...cultural diversity is as necessary for humankind as biodiversity is for nature"; <sup>2</sup> it becomes "one of the roots of development understood not simply in terms of economic growth, but also as a means to achieve a more satisfactory intellectual, emotional, moral and spiritual existence". In this vision, cultural diversity is the fourth policy area of sustainable development. The importance of doctrine of Sustainable Development was emphasized in Rural

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<sup>1</sup> Brundtland Report , 1987

<sup>2</sup> Universal Declaration on Cultural Diversity (UNESCO,2001)

Litigation and Entitlement Kendra Vs State of UP also known as the Doon Valley Case. In the above case the limestone mining caused great damage to Mussorie and Dehradun hills and also caused problems like landslides, slumping which killed the villagers and also destroyed their homes and cattle's. The Supreme Court in the above case held that the valley was designated as an ecologically fragile under Environment Protection Act. A Doon Valley Board was also constituted to inspect the limestone quarries in the area and conserve the degraded areas of the valley. The judgment also emphasized that the use of natural resources should be practiced with necessary consideration and attention so that environment and climate are not affected in a severe manner.

## **INDIAN LEGISLATIVE PROVISION REGARDING ENVIRONMENTAL PROTECTION**

India employs a range of regulatory instruments to preserve and protect its natural resources. As a system for doing so, the law works badly, when it works at all. The legislature is quick to enact laws regulating most aspects of industrial and development activity, but chary to sanction enforcement budgets or require effective implementation. Certain environmental laws were in force in India well before the Stockholm Declaration of 1972, such as the Indian Forest Act etc. Besides this action could also be taken under Sections 268 and 290 of IPC against public nuisance relating to environment. However, with India's participation in the United Nations' Conference on Human Environment held in Stockholm in the year 1972 the need arose to enact specific laws. All these circumstances led to enactment of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986 and the Forest (Conservation) Act, 1980. Not only around the world, but in India also, people have shown positive response to the need for protection of the environment and full support has been given by the judiciary. People cautious of their rights to a healthy and pollution-free environment have formed groups such as Centre for Science and Environment seeking directions from the courts to protect the environment and it has been done so by way of public interest litigation. These groups have often pressurized the executive to take decisions on certain development projects only after making proper environment impact assessment. Chipko Movement and Appiko Movement in Karnataka for saving the trees from exploitation are examples of initiatives taken by public-spirited persons.

## ROLE OF JUDICIARY REGARDING ENVIRONMENT PROTECTION

The primary effort of the courts while dealing with environmental issues had been to not only punish the offender but also to seek proper enforcement of such laws.

In this case the Hon'ble Court held that even though, it is not the function of the court to see the day-to-day enforcement of the laws, that being the function of the executive, but because of the<sup>2</sup> non-functioning by the enforcement agency, the courts as of necessity had to pass orders or direction to the enforcement agencies to implement the law for the protection of the fundamental rights of the people.<sup>3</sup> The Hon'ble Supreme Court has time and again dealt with various environmental problems and orders have been passed for this purpose. Courts not only pass orders at the initial stage but also monitor the functioning of the Pollution Control Boards and the polluters. Some of the leading cases are mentioned hereinafter.

In this case the Apex Court directed for shifting/relocation of 168 industries identified as hazardous and large industries operating in Delhi to other towns of NCR as per the master plan of 2001.<sup>4</sup>

The Court passed several directions for preventing air pollution in Delhi. While reaffirming the need for public transport system to run on ONG it directed for phasing out of diesel buses in a time-bound manner."<sup>5</sup>

The Hon'ble Court took note of the environmental pollution due to stone-crushing activities in and around Delhi, Faridabad and Ballabhgarh complexes and directed for relocating of such units within six months.<sup>6</sup>

In this case the intervention of the Court was sought to prevent pollution of River Gomti in U.P due to discharge of effluents from the distillery of Mohan Meakins Ltd. The Court directed the

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<sup>3</sup> Indian Council Of Enviro Legal Action v. Union of India (AIR1996)5 SSC 281

<sup>4</sup> M.C. Mehta v. Union of India (AIR 1996) 4 SCC 750

<sup>5</sup> M.C. Mehta v. Union of India (AIR 2002) SCC 356

<sup>6</sup> M.C. Mehta v. Union of India (AIR 1992) 3 SCC 256

<sup>7</sup> Vineet Kumar Mathur v Union of India (AIR 1996) 7 SCC 714

<sup>8</sup> S. Jagannath v. Union of India (AIR 1996) 3 SCC 212

removal of deficiencies in the effluent treatment plant as well as imposed a fine of Rs 5 lakhs on the Company.<sup>7</sup>

In this case the Court held that shrimp industry is to be permitted on after passing a strict environment test.<sup>8</sup>

<sup>3</sup> In this case the Court dealt with the problem of pollution being cause by enormous discharge of untreated effluents by tanneries in the State of Tamil Nadu and also imposed a fine of Rs. 10,000/- on the polluting industries.<sup>9</sup>

The Court directed closure of industries in Bichhari village in Udaipur (Rajasthan) discharging highly toxic effluents leading to soil arid water pollution and also directed for removal of the sludge etc.<sup>10</sup>

In Calcutta Tanneries case, the Court directed for shifting/relocating the tanneries in question causing pollution.<sup>11</sup>

Here the question is whether civil action against the polluters by applying the Precautionary Principle and Polluter-Pays Principle is enough or penalty should also be initiated against such offenders. Environment laws besides providing for protection of the environment also provide for penal action against the polluters. For e.g. Section 15 of the Environment (Protection) Act, 1986: provides for contravention of the provisions of the Act and the rules and regulations issued under the Act to be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues.

Similar are the provisions provided by the Air (Prevention and Control of Pollution) Act, 1981 as well as the Water (Prevention and Control of Pollution) Act, 1974.

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<sup>9</sup> Vellore Citizen's Welfare Forum v. Union of India (AIR 1996) SCR 241

<sup>10</sup> Indian Council of Enviro Legal Action v. Union of India ( Bichhri Case) (AIR 1996) 3 SCC 212

<sup>11</sup> M.C. Mehta v. Union of India (AIR 1997) 2 SCC 411

The Pollution Control Boards have powers to initiate action against the polluters. However, these Boards had till the recent past been functioning as record-keepers maintaining statistics regarding pollution and only during the last few years these Boards have taken some initiatives to protect and improve the environment after being directed by the courts. It is a matter of surprise that <sup>4</sup>even where pollution was easily visible or was being felt for e.g. air pollution in Delhi, the Boards acted as silent spectators till the Court intervened.

In this case it was observed by the Hon'ble Court said that enactment of law but tolerating its infringement is worse than not enacting the law at all. Violation of anti-pollution laws not only adversely affects the existing quality of life but its adverse effects will have to be borne by the future generation.<sup>12</sup>

In fact, criminal prosecution of the polluters has been a low priority amongst the Pollution Boards. Though the Apex Court has time and again given directions for taking penal action, offenders will go scot-free unless the Boards start taking penal action against them. Therefore, the need of the hour is to initiate criminal prosecution against the offenders in appropriate cases. The past experience regarding the functioning and performance of the statutory authorities including the Pollution Control Board shows that the powers conferred upon them have not been properly exercised.

There can be no doubt that there is any shortage of the environmental statutes or that there are not enough statutes to deal with various aspects of environment for example air, water, soil, and their interrelationship with human beings. The need is to effectively involve the common man in initiating appropriate penal action against the offenders. The judiciary, a spectator to environmental despoliation for more than two decades has recently assumed a pro-active role of public educator, policy maker, super administrator and more generally amicus environment.<sup>13</sup>

The environmental laws provide for a certain procedure for taking cognizance of offences for e.g. Section 49 of the Water (Prevention and Control of Pollution) Act, 1974 provides that no court shall take cognizance of any offence under this Act except on a complaint made by a Board or any

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<sup>12</sup> Indian Council of Enviro Legal Action v. Union of India (AIR 1996) SC 1228

<sup>13</sup> T. N. Godavarman Thirumulkpad v. Union of India (AIR 1997) SC 1228

officer authorized in this behalf by it; or any person who has given notice of not less than sixty days, of his intention to make a complaint, to the Board or officer authorized as aforesaid.

Similar are the provisions relating to cognizance under Sections 43 and 19 of the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 respectively. The procedure for filing complaint should be simplified. The requirement of giving notice to the Board or to the Central Government in case of offences under the Environment (Protect on) Act, 1986 should be done away and instead of this, it should be provided that every person should have a right to directly file a criminal complaint against the offender in accordance with the procedure laid down in Section 200 Cr.PC., 1973. However, as a matter of safeguard against malicious prosecution it can be provided that the court shall call for a report from the Pollution Control Board concerned before summoning the accused. But at the same time it should also be provided that the complainant shall have the right to challenge the report of the Board by way of scientific or other evidence.

In this case the Supreme Court of India held that Article 32 is designed for the enforcement of Fundamental Rights of a citizen by the Apex Court. It provides for an extraordinary procedure to safeguard the Fundamental rights of a citizen. Right to live is a fundamental right under Art. 21 of the Constitution and, it includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Art. 32 of the Constitution for removing the pollution of water or air which may be determined to the quality of life. A petition under Art. 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists. But recourse to proceeding under Art. 32 of the Constitution should be taken by a person genuinely interested in the protection of society on behalf of the community. Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32, are entertained it would amount to abuse of process of the Court, preventing speedy remedy to other genuine petitioners from this Court. Personal interest cannot be enforced through the process of this Court under Art. 32 of the Constitution in the garb of public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Art. 32 must approach this Court

for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation.<sup>14</sup>

## **POLLUTION FREE ENVIRONMENT A BASIC HUMAN RIGHT**

<sup>5</sup>Everyone has the right to live in a world free from toxic pollution and environmental degradation, the United Nations Commission on Human Rights has concluded this decision, the first time the Commission has linked between the environment and human rights, was made at its annual meeting which ended in Geneva.<sup>15</sup>

"Environmental conditions clearly help to determine the extent to which people enjoy their basic rights to life, health, adequate food and housing, and traditional livelihood and culture. It is time to recognize that those who pollute or destroy the natural environment are not just committing a crime against nature, but are violating human rights as well," he said. "Human rights cannot be secured in a degraded or polluted environment," said Mr. Toepfer. "The fundamental right to life is threatened by soil degradation, deforestation and by exposures to toxic chemicals, hazardous wastes, and contaminated drinking water."

"For this reason, we believe that the successful implementation of environmental treaties on biodiversity, climate change, desertification and chemicals can make a major contribution to protecting human rights. We would welcome the Commission's continued work on the environmental dimensions of human rights, including enforcement and compliance," said by Mr. Toepfer. Human Rights and environment are linked to each other: a clean, healthy and sustainable environment is essential in enjoyment of our human rights. On 28<sup>th</sup> July 2022, the United Nations General Assembly declared that everyone on the planet has a right to a healthy environment. A resolution was passed by United Nations General Assembly at UN headquarters in New York City, where it was emphasized that climate change and environmental degradation were some of the most pressing threats to humanity's future. "This resolution sends a message that nobody can take nature, clean air and water, or a stable climate away from us – at least, not without a fight."<sup>15</sup>

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<sup>14</sup> Subhash Kumar v. State of Bihar , (AIR 1991) SC 420

<sup>15</sup> United Nations General Assembly 28<sup>th</sup> July 2022

## CONCLUSION AND SUGGESTION

<sup>6</sup>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 principle, precautionary principle, sustainable development into Indian law to achieve its goals. Sustainable development of the environment is the need 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 used.<sup>16</sup>

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-

- Equal importance should be given to environment and development.
- Steps should be taken to create awareness in the society.
- The mindset of the people should be changed.
- Environmental education should be provided.
- Administration accountability should be strengthened.

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.

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<sup>16</sup> Role of judiciary in sustainable development and environment, Manoj Kumar, volume 2, ISSN: 2455-3085, October 2017