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“THE ROLE OF JUDICIARY IN PROTECTING BIODIVERSITY IN INDIA”

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ABSTRACT

The right to life and liberty are guaranteed by Article 21 of the Indian Constitution. Here, we can see how the word "Life," which is used frequently in the Article, has strong contours that support this right. The definition of life in Article 21 of the Constitution goes beyond just breathing. It also doesn't mean that animals only exist. Its definition is much more expansive and covers rights to livelihood, health, and the ability to live in dignity, among other things. It is the only Constitutional provision that has been interpreted as broadly as possible. Implying that in addition to biological mass, outside forces also support human life. The phrase "healthy environment" describes biotic and all-natural elements that enable individuals to exercise their right to a life that is unadulterated. Humans and the environment have always had a close relationship because the environment provides all of life's necessities.

It is impossible for humans to survive on Earth without a friendly and natural environment. In an effort to improve his quality of life, man has always taken advantage of nature. Growth in infrastructure, industrialization, and agriculture all contribute to the exploitation of natural resources. A variety of wastes and byproducts from human activity can accumulate over time and endanger humans, animals, and naturally growing plants. The state of India is also mandated by some articles of the Indian Constitution to protect the environment. Therefore, the parliament has passed a number of acts to address these ever-growing issues. However, courts frequently oversee the proper implementation of these enactments, and the judiciary has been crucial in interpreting the laws to protect the environment.

Key words: Constitutional Obligation, Wildlife Conservation, Wildlife Habitats, Strict Liability, Absolute Liability, Polluters pay Principle, Principle of Precautionary Measures, Public Trust Doctrine, Sustainable Development

I. INTRODUCTION

India is fortunate to have a wide variety of wildlife, including many species that support the ecological balance of the nation. Acknowledging the paramount significance of conserving this ecological legacy, the Indian judiciary has been instrumental in moulding and upholding legislation concerning the preservation of wildlife. This article explores the important role that India's judiciary plays in wildlife conservation by looking at important cases and their legal ramifications for safeguarding our ecosystems and wildlife.

The judiciary plays a crucial role in environmental protection. As a result of the courts' historic rulings on environmental cases heard by environmental NGOs and well-informed public figures like M.C. Mehta, public bodies are now required to address urgent environmental concerns.

Judicial activism in the area of environmental protection has also received praise. But it's crucial to keep in mind that judicial activism has serious limits and that it cannot address executive inaction and environmental indifference on its own.

II CONSTITUTIONAL PROVISIONS FOR THE PROTECTION OF ENVIRONMENT

Preserving and enhancing the natural world is a constitutional obligation. It is a pledge made by a nation devoted to the principles of a welfare state. The Directive Principles of State Policy and Fundamental Duties chapters of the Indian Constitution include specific environmental protection provisions. Judicial activism in recent times has sparked the lack of a specific provision in the Constitution acknowledging the fundamental right to a clean and healthy environment.

1. Articles 48-A and 51-A. Clause (g):

At first, there were no explicit environmental protection provisions in the Indian Constitution. The Indian government passed the 42nd Amendment to the Constitution in 1976 as a result of

growing environmental awareness during the 1970s, the Stockholm Conference, and other global environmental protection movements. Direct environmental protection provisions were added to the Constitution through an amendment. Article 48-A was added to the Directive Principles of State Policy by this 42nd Amendment. Article 48-A talks about the protection and improvement of the natural environment and safeguarding forests and wildlife. It is the fundamental duty of the State to safeguard and protect the forests and wildlife of the country.¹ The Article 51-A (g) states the fundamental duty of the State to protect and improve the natural environment that includes forests, rivers, lakes, and wildlife.²

2. Article 49-A:

The Article states: “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.” The said amendment imposed a responsibility on every citizen in the form of Fundamental Duty.³

3. Article 51-A, Clause (g):

Article 51-A (g) which deals with Fundamental Duties of the citizens states: “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.” Thus, protection and improvement of natural environment is the duty of the State (Article 48-A) and every citizen (Article 51- A (g)).⁴

4. Article 253:

Article 253 states that ‘Parliament has power to make any law for the whole or any part of the country for implementing any treaty, agreement or convention with any other country. In simple words this Article suggests that in the wake of Stockholm Conference of 1972, Parliament has the power to legislate on all matters linked to the preservation of natural environment. Parliament’s use of Article 253 to enact Air Act and Environment Act confirms this view. These Acts were enacted to implement the decisions reached at Stockholm Conference.⁵

¹ Article 48-A of Constitution of India

² Article 51-A (g) of Constitution of India

³ Article 49-A of Constitution of India

⁴ Article 51-A Clause (g) of Constitution of India

⁵ Article 253 of Constitution of India

III. JUDICIAL INTERPRETATION OF WILDLIFE

CONSERVATION LAWS:

Endangered Species Protection: The judiciary has always placed a strong emphasis on protecting endangered species. The court's dedication to protecting rare and threatened species has been demonstrated by significant cases like **M.C. Mehta v. Kamal Nath (1997)**⁶, **Animal Welfare Board of India v. A. Nagaraja (2014)**⁷, and **Centre for Environmental Law v. Union of India (2021)**⁸. The Blackbuck antelope, which is critically endangered, was negatively affecting its habitat in Delhi when a polluting factory was ordered to close in the M.C. Mehta case. The Supreme Court ordered the government to take action to safeguard the state of Orissa's critically endangered tiger population in the Wildlife Society of Orissa case. The government was mandated by the Supreme Court to initiate a public awareness campaign regarding the significance of wildlife conservation in the Animal Welfare Board of India case. The Supreme Court acknowledged the idea of "ecosystem services" in the Centre for Environmental Law case and ruled that the government has an obligation to safeguard these services.

IV. HABITAT CONSERVATION:

The importance of protecting ecosystems and habitats that are essential to the survival of wildlife has been acknowledged by courts. The Supreme Court strengthened protections for wildlife habitats when it ruled in **T.N. Godavarman Thirumulpad v. Union of India (2006)**⁹ that all forested areas, regardless of classification, were deemed forests. The Supreme Court of India halted the construction of a dam on the Narmada River in the **Narmada Bachao Andolan v. Union of India (2000)**¹⁰ case due to concerns about the dam's impact on wildlife habitat.

V. STRICT LIABILITY AND OFFENCES

The rule of strict liability was propounded by the House of Lords in **Rylands v. Fletcher**.¹¹ This rule is that a person who, in the course of non-natural use of his land is or is deemed to be, responsible for the accumulation on it of any thing likely to do harm, if it escapes, is liable for

⁶ M.C. Mehta v. Kamal Nath [(1997) 1SCC 388,

⁷ Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547

⁸ Centre for Environmental Law v. Union of India 2000 SCC Online SC 119

⁹ T.N. Godavarman Thirumulpad v. Union of India [(1997) 2 SCC 267]

¹⁰ Narmada Bachao Andolan v. Union of India 10 SCC 664, 18 October 2000

¹¹ Rylands v. Fletcher, (1868) 19 LT 220

the interference with the use of the land of another which results from the escape at the thing from his land. This is known as the rule of strict liability.¹²

VI. ABSOLUTE LIABILITY:

The concept of absolute liability is based on the principle of no fault liability. In India the concept of absolute liability was originated from the **Shriram Gas Leak Case**.¹³ If industrial accident took place on account of dangerous or hazardous activity, the enterprise involved in such activity is liable to compensate the persons affected by such industrial accident. It is immaterial to examine, who committed negligence.¹⁴

VII. POLLUTER PAYS PRINCIPLE:

As a “precautionary principle” the Supreme Court in **Vellore Citizens Welfare Forum v. Union of India**.¹⁵ Propounded the polluters pay principle, and this principle has become the law of land as by virtue of Article 141 of the Constitution. “The polluters pay principle means that the absolute liability for harm to environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.”¹⁶

VIII. THE PRINCIPLE OF PRECAUTIONARY MEASURES:

The principle of precautionary measures requires environmental actions to foresee, avert, and target the root causes of environmental degradation. Actions shouldn't be put off because of a lack of scientific certainty.

IX. PUBLIC TRUST DOCTRINE:

This theory holds that certain resources, like the sea, forests, air, and water, are so vital to the common good that it would be entirely irrational to turn them into private property. The case of **M.C. Mehta vs. Kamalnath & Others**¹⁷ established it.

¹² Dr. S.C. Tripathi, Environmental law, pg no. 298

¹³ M.C. Mehta v. Union Of India, A.I.R. 1987 S.C. 1086.

¹⁴ Dr. S.C. Tripathi, Environmental law, pg no. 300

¹⁵ Vellore Citizens Welfare Forum v. Union of India. A.I.R. 1996 S.C. 2715

¹⁶ Dr. S.C. Tripathi, Environmental law, pg no. 250

¹⁷ M.C. Mehta vs. Kamalnath & Others [(1997)] 1 S.C.C. 388

X. THE CONCEPT OF SUSTAINABLE DEVELOPMENT:

The Supreme Court declared in the Vellore Citizens case and the RLEK, Dehradun case that sustainable development has gained acceptance as a workable solution for ending poverty and raising the standard of living for people while maintaining the carrying capacity of the supporting ecosystem.

The Supreme Court of India ruled in **Narmada Bachao Andolan v. Union of India and Ors.**¹⁸ That the fundamental right to water is part of the right to life and human rights guaranteed by Article 21 of the Indian Constitution and that water is a basic necessity for human existence.

XI. COMPENSATION FOR VICTIMS OF ENVIRONMENTAL DEGRADATION:

The Supreme Court has the authority to grant compensation in cases where a violation of fundamental rights has been established and remedial relief has been granted. The Delhi gas leak case led to the adoption of the "no fault" liability standard (absolute liability) for industries involved in hazardous activities, which significantly improved India's liability and compensation laws.

In the **Charan Lal Sahu case**,¹⁹ the Supreme Court held that the right to life, which includes the right to a healthy environment, is guaranteed by Article 21 of the Constitution. The Court used Articles 48A and 51A (g) of the Constitution to bolster this claim, adding that environmental contamination would be against Article 21.

XII. PUBLIC INTEREST LITIGATION (PIL):

PILs have become an effective means of protecting wildlife and ensuring that government officials are held responsible. PILs have proven to be crucial in tackling matters like the illicit trade in wildlife, the expansion of protected areas, and the preservation of particular species. Positive changes in wildlife conservation policies have been made possible by cases such as **Salim Ali v. Union of India (1996)**, **People for Animals v. Union of India (2013)**, **Animal Welfare Board of India v. A.K. Jain (2003)**, and **Centre for Environmental Law v. Union**

¹⁸ Narmada Bachao Andolan v. Union of India and Ors. 10 S.C.C. 664, 18 October 2000

¹⁹ Charan Lal Sahu v. Union Of India 1988 A.I.R. 107 1988 S.C.R.

of India (2002). The Gujarat state's critically endangered flamingo population was ordered to be protected by the Supreme Court in the Salim Ali case. The Supreme Court ordered the government to take action to stop the killing of stray dogs in the state of Delhi in the People for Animals case.

XIII. JUDICIAL ACTIVISM FOR ENVIRONMENTAL CONSERVATION:

"Judicial activism" describes the higher judiciary's involvement in cases involving violations of human rights and the environment. The Supreme Court has interpreted Article 21 of the Constitution to guarantee a fundamental right to a clean and safe environment, making it essential for upholding environmental laws.

The Indian judiciary interpreted the law to benefit marginalised citizens by recognising environmental conservation as an expense borne by populations living near nature, because ecological balance also supports industrial production. These communities would then receive a portion of the financial gains from environmental preservation from entrepreneurs. The robust moral and legal base of the Indian judiciary has served as a model for the entire environmental revolution in India, and they are currently leading the way globally.

The Indian judiciary, in particular the Supreme Court of India, has consolidated environmental jurisprudence on a case-by-case basis and produced some notable guidelines that lower courts should adhere to when handling environmental cases. They have attempted to bridge the void left by the legislature, which the government apparatus rendered inoperable.

Apart from the noncompliance of polluters with legal requirements, the insufficiency of state agencies in enforcing environmental laws resulted in further environmental degradation. This adversely affected public health and prompted legal complaints from environmentalists, residents of polluted areas, and non-governmental organisations. When the legislature realised that action was necessary, it took the initiative to protect the environment. But because the Indian executive branch was powerless to enforce environmental laws, the judiciary got involved.

The courts have made multiple attempts to resolve the conflict between environmental protection and construction. India's Public Interest Litigation tool was used to establish its environmental

law. The PIL allowed citizens to petition the courts in cases where the public interest is jeopardised by the actions of the government, a department, or another entity by liberalising the concept of locus standi. The PIL principle plays a significant role in Indian environmental law, which sets it apart.

XIV. ROLE OF SPECIALIZED TRIBUNALS:

In order to expedite cases pertaining to wildlife and streamline legal proceedings, India has established specialised tribunals like the National Green Tribunal (NGT). The NGT, which provides an effective forum for adjudication, has been instrumental in resolving conflicts pertaining to environmental and wildlife conservation issues. The Yamuna River is home to several endangered species. In the 2010 case of Anil Agarwal v. Union of India, the NGT ordered the government to take action to reduce pollution in the river.

XV. CONCLUSION:

Since independence, the environment has been the only thing the judiciary has protected and managed. Judges took it very seriously, and even though they made no observations, they closely watched its implementation to ensure that it was carried out exactly as intended. Over the past 15 to 20 years, environmental law in India has seen an exponential transformation. The federal government and state governments have taken the lead in developing plans to safeguard and maintain the environment.

The Indian judiciary has played a major role in the development of laws in this area, particularly the higher judiciary, which consists of the Supreme Court of India and state high courts. Some excellent and respectable environmental protection measures have been made possible by the idea of public interest litigation. Public interest lawsuits have been a tactic employed by the Indian judiciary on multiple occasions to encourage environmental conservation. Public interest litigation is based on the fundamental idea that those who are impoverished shouldn't be excluded from the legal system because they lack resources or education.

The Indian judiciary has exhibited a robust dedication to wildlife conservation by means of interpreting and enforcing laws, rendering significant rulings, and instituting specialised tribunals. The judiciary has made a substantial contribution to the cause of wildlife conservation by enforcing strict liability, safeguarding endangered species, and maintaining habitats. It is

imperative that we as conscientious citizens understand the value of conserving our natural heritage and back the judiciary's efforts to protect our fauna and ecosystems.

For India's wildlife conservation efforts to continue, the judiciary's work is crucial. But the court cannot accomplish this on its own. The public, the government, and other stakeholders must all support it. The judiciary must have the resources from the government to effectively enforce the law. The public must be made aware of the value of protecting wildlife and the necessity of lending support to the legal system. Businesses and environmental organisations are examples of additional stakeholders that must be involved in wildlife conservation.

