

Environment Fortification and Justifiable Growth : The Judicial Approach

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ABSTRACT

This paper is an endeavour to bring forth the creative attitude of the judiciary towards the protection of the environment *vis-à-vis* sustainable development¹, and the stress area will be India. Environmental pollution is a global problem and every Nation is striving to find a solution. Legislature is doing its bit and Judiciary is also pitching in. Universally there is consensus on one thing, and that is: development cannot be shunned. There has to be compatibility between development and the protection of environment. Development demands that it fulfils the needs of the present without compromising the needs of the future. Balancing environment and industrialisation is important, especially in developing countries like India. There has to be a proper balance between the three conjoint pillars of sustainable development namely: Human Rights, Environmental Protection laws and the Economic laws². The protection of environment involves not only the protection of human rights but also the corporate social responsibility.

Key Words : Environment, Protection, Sustainable, Development, Judiciary

INTRODUCTION

*Asato Ma Sad Gamaya, Tamaso Ma Jyotir Gamaya, Mrityor Ma Amritam Gamaya, Om Shanti Shanti Shanti.*³

The meaning of the above lines by interpolation is: Lead us from darkness of destroying environment to enlightenment of protecting it, to reality of effects of pollution to ignorance from non-reality of no- impact of pollution, and from mortality by devastating the Nature to immortality by protecting the ever-sustaining Earth, let there be Peace in thought, Peace in words and Peace in action for the protection of the environment. This is what social responsibility is all about. No State can achieve success simply by enacting laws and wielding the baton of punishment and putting forth a formidable Judiciary. The principle of social responsibility demands that one stands for all and all stand for one.

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environment *vis-à-vis* sustainable development⁴, and the stress area will be India. Environmental pollution is a global problem and every Nation is striving to find a solution. Legislature is doing its bit and Judiciary is also pitching in. Universally there is consensus on one thing, and that is: development cannot be shunned. There has to be compatibility between development and the protection of environment. Development demands that it fulfils the needs of the present without compromising the needs of the future. Balancing environment and industrialisation is important, especially in developing countries like India. There has to be a proper balance between the three conjoint pillars of sustainable development namely: Human Rights, Environmental Protection laws and the Economic laws⁵. The protection of environment involves not only the protection of human rights but also the corporate social responsibility. Optimum attitude has to be acquired and attained for curbing the exploitation of natural resources. Strategy has to be evolved to combat the environmental problems. Sustainability is the buzzword of our times; in

fact it is a way of doing more with less and less resources. Degradation of land, increasing air pollution, depletion of water resources, loss of indigenous species of flora and fauna and the background of overwhelming poverty is causing concern all over. The word 'Sustainability' came to prominence ever since the Brundtland Commission in its famous report, *Our Common Future*, combined it with the word 'development'.

Since the early 1960s the deteriorating environmental conditions around the world caused great concern. Industrialisation and development started to wreck havoc all around the world. The Brundtland Commission noted that degradation of environment is also caused by poverty and social development. In fact poverty has become the greatest polluter. The Stockholm Conference on Human Environment in 1972 created a ripple effect and the environmental movement generated a plethora of literature, and heated debates too, on the role of economic growth *vis-à-vis* the sustainability. There were both anti and pro growth arguments. In 1987 the World Commission on Environment and Development under the auspices of Ms. Gro Harlem Brundtland, formerly the Prime Minister of Norway, mandated for sustainable development that would take care of both the environment and the economic growth. Twenty years since the first summit on environment at Stockholm, when the international community gathered together at Rio, a practical expression of the idea of sustainable development was created. It is both recognition and an acceptance not only of environmental responsibility, but also putting people at the centre of development. Some called it 'triple bottom line approach'⁶ while some preferred to call it 'People-Planet-Profit approach'. In the triple bottom line expression, the three lines represent society, the economy and the environment. Society depends on the economy and the economy depends on the global ecosystem, whose health represents the ultimate bottom line and, because it takes into consideration all the three interrelated aspects of sustainable development, it is also called a Profit, People and Planet approach to environmental protection and the goal of sustainability.

The legislature and the Judiciary have constantly strived to strike a balance between the needs of a man and the need to protect environment. After all environment protection and poverty elimination are the two sides of a coin. The Bhopal case⁷ is the worst ever industrial accident that happened in the history of human existence. Is it only when an accident of this magnitude

happens that everyone wakes up to a new awareness? Industrial accidents, environmental hazards, catastrophic happenings are waiting to occur and reoccur. Steps need to be taken beforehand and effectively. It has constantly been emphasized at all National and International fora that the Earth has sufficient resources for a man's need but not sufficient resources for a man's greed. The legislature has done its bit by enacting laws and incorporating provisions, keeping up with the fact that law is dynamic and not static. The Judiciary too has kept pace by being equally dynamic and evolving guidelines for the protection of the environment. The Courts in India have led the way in the enforcement of environmental laws. The judicial perspective⁸ has led to orders with specific implementation requirements and also set new policies and practices with widespread implications for the regulated community as well as regulatory agencies. This is evident from a plethora of cases starting from Ratlam Municipality Case⁹, which provoked the consciousness of the judiciary to a problem which had not attracted much attention earlier. The Courts have evolved Doctrines through landmark cases for enforcing mandatory compliance' of environmental regulations. The formulation of these doctrines has helped in developing a better regime for protecting the environment. The judicial perspective has been a remarkable achievement.

India's rapid growth is causing equally rapid environmental destruction. India as a very populous nation faces challenges that need unique responses. Here arises the need for environmental regulations and for confirming compliances of these regulations.

The Forty-Second Amendment to the Indian Constitution in 1976 introduced principles of environmental protection in an explicit manner, (Articles 48A and 51A (g)). In addition to the Constitutional mandate, India has a number of national policies governing environmental management, these are: The National Policy on Pollution Abatement (NPPA, 1992); and The National Conservation Strategy and Policy Statement on Environment and Development (NCS/PSED, 1992). While these national policies are not judicially enforceable, they serve as guiding principles for the central and state governments to follow.

As far as legislative power was concerned, the Amendment also moved the subjects of "forests" and "protection of wild animals and birds" from the State List to the Concurrent List. The Stockholm conference is honoured by references in the Air Act and the

Environment Act – a result of effective applications of Article 253 of the Constitution, which gives the Parliament the power to make laws implementing India's international obligations, as well as any decision made at an international conference, association or other body.

Key National Laws :

The Government of India has established an environmental legal and institutional system to meet these challenges within the overall framework of India's development agenda and international principles and norms. India has an elaborate legal framework with plethora of laws relating to environmental protection. The Ministry of Environment and Forests have made great effort in Environmental Impact Assessment (EIA). The responsible body for this is Central Pollution Control Board. Environmental Impact Assessment studies need a significant amount of primary and secondary environmental data. The primary data are those which need to be collected in the field to define the status of environment, like air quality data, water quality data, soil quality data and so forth. The secondary data are those data which have been collected over the years and can be used to understand the existing environmental scenario of the study area. The EIA studies are conducted over a short period of time and therefore the understanding the environmental trends based on few months of primary data has its own limitations.

The Environmental Impact Assessment (EIA) experience in India indicates that the lack of timely availability of reliable and authentic environmental data has been a major bottle neck in achieving the full benefits of EIA. The environment being a multi-disciplinary subject, a multitude of agencies is involved in collection of environmental data. However, there is no single organization in India which tracks the data available amongst these agencies and makes it available in one place, in a form and manner required by practitioners in the field of environmental impact assessment in India. Further, the environmental data is not available in value added forms that can enhance the quality of the EIA. This in turn adversely affects the time and efforts required for conducting the environmental impact assessments. With this background, Environmental Information Centre (EIC) has been set up to serve as a professionally managed clearing house of environmental information that can be used by Ministry of Environment and Forests, project proponents, consultants, NGOs and other

stakeholders involved in the process of environmental impact assessment in India. EIC caters to the need of creating and disseminating of organized environmental data for various developmental initiatives all over the country. EIC stores data and makes it available to all environmental impact assessment studies¹⁰.

Key national laws for the prevention and control of industrial and urban pollution include the following:¹¹

#Factories Act, 1948 and its Amendment in 1987:

The Act contains a comprehensive list of 29 categories of industries involving hazardous processes, which are defined as a process or activity where unless special care is taken, raw materials used therein or the intermediate or the finished products, by-products, wastes or effluents would cause material impairment to health of the persons engaged and result in the pollution of the general environment.

Public Liability Insurance Act, 1991: The PLIA, 1991 was amended in 1992, and the Central Government was authorized to establish the Environmental Relief Fund, for making relief payments.

National Environment Tribunal Act, 1995: National Environment Tribunal Act, 1995 provides strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to give relief and compensation for damages to persons, property and the environment and for the matters connected therewith or incidental thereto.

#The National Environment Appellate Authority Act, 1997: This Act of 1997 established a National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industry operation or process or class of industries, could not carry out or would be allowed to carry out operations or processes, subject to certain safeguards under the Environment (Protection) Act, 1986.

National Green Tribunal Act, 2010: The National Green Tribunal (NGT)¹² has been established under the National Green Tribunal Act, 2010 for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. It is a

specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues. Initially, the NGT is proposed to be set up at five places of sittings and will follow circuit procedure for making itself more accessible. New Delhi is the Principal Place of Sitting of the Tribunal and Bhopal, Pune, Kolkata and Chennai shall be the other places of sitting of the Tribunal.

Unfortunately, a year and a half later, the tribunal is in a sorry state. There are only two judicial members and three expert members running the show. The tribunal runs from a guesthouse meant for forest officials. The guesthouse has been turned partly into a court room. Currently the tribunal does not have a chairperson, since the last one resigned in January¹³. The Supreme Court has expressed displeasure at the plight of the National Green Tribunal.

The Primary Institutions:

The primary institutions responsible for the formulation and enforcement of environmental acts and rules include:

Ministry of Environment and Forests (MOEF), # Central Pollution Control Board (CPCB), # State Departments of Environment, # State Pollution Control Boards (SPCBs) and # Municipal Corporations.

Judicial Perspective and Protection : (Doctrines Evolved Through Landmark Cases):

- Laws usually allow only the aggrieved party to use the justice system to seek a remedy for his grievance, others who are not personally affected were unable to go before courts as proxies for the victim or aggrieved party. Public Interest Litigation, on the other hand can be broadly defined as litigation in the interest and for the protection of the public. It has become a very effective tool of social responsibility. The Courts have evolved Doctrines through cases for enforcing mandatory compliance of environmental regulations. These Doctrines have contributed significantly to the environment jurisprudence in India. The Doctrines are as follows:
- **Public Trust Doctrine:** The public trust doctrine¹⁴ is the principle that certain resources, like rivers, seashore, forests, air, are preserved for public use, and that the government holds

them in trusteeship and is required to maintain them for the public's reasonable use. These resources are either owned by no one (Res nullius) or by everyone in common (Res communis). The doctrine has been evolved through *M.C.Mehta v. Kamal Nath*¹⁵ and The Court created history. This doctrine was applied in *MI Builders Pvt. Ltd. v. Radhey Shyam Sahu*¹⁶.

- **Precautionary Principle:** The precautionary principle (PP) states that if an action or policy has a suspected risk of causing harm to the public or to the environment, in the absence of scientific consensus that the action or policy is harmful, the burden of proof that it is not harmful falls on those taking the action.¹⁷ The landmark cases for the PP doctrine are *Vellore Citizens Welfare Forum v. UOI*¹⁸ and *Narmada Bachao Andolan v. UOI*¹⁹.
- **Polluter Pays Principle:** Polluter Pays Principle (PPP) has become popular in recent times, it is simply based on the fact that: if you make a mess, it's your duty to clean it up. In environmental law, the PPP does not refer to any fault but it favors a curative approach which is concerned with the repairing of ecological damage. The *Vellore Citizens Welfare Forum v. UOI*²⁰ is the landmark case which brought about the PPP doctrine. The industry driven economy of India's has resulted in hazardous waste problems, which are difficult to manage in an environmentally friendly manner. The non-enforcement of 'Polluter Pays' principle have led to the unscientific disposal of hazardous wastes posing serious threat to human, animal and plant life. A High Power Committee on hazardous waste management, constituted by the Honourable Supreme Court of India in 1997, made similar observation and conclude that the hazardous wastes situation in India is fairly grim²¹.
- **Absolute Liability Principle**²²: The judgment in the *M.C. Mehta v. UOI*²³ has been a pioneering force in advancement of the absolute liability doctrine. This principle was forcefully reiterated in *Narmada Bacho Andolan v. UOI*²⁴.

In *M.C. Mehta v. UOI*²⁵ the Supreme Court laid down the Principle of Absolute Liability and it held:

“Where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to any one on account an accident in the operation of such hazardous and inherently dangerous activity... the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operates *vis-a-vis* the tortious principle of strict liability in *Rylands v. Fletcher*”.

It was also held that the measure of compensation must be co-related to the magnitude and capacity of the enterprise so that the compensation will have a deterrent effect²⁶.

- **Sustainable Development:** Sustainable Development²⁷ is that development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. These sentiments were laid down in the case of *M.C. Mehta v. UOI*²⁸ and in the case of *State of Himachal Pradesh v. Ganesh Wood Products*²⁹ the above mentioned sentiments on sustainable development found a resounding echo. The interplay between the environment and the development continues and so does the dilemma, but restraint has to be maintained. Development requires ‘use’ and environment demands control on ‘abuse’.

Concluding Observations:

The Courts of India have led the way in enforcement of the environmental laws through citizen-led public interest litigation that has its legal basis in the constitutional right to a healthy environment. The consciousness of the judiciary has awoken to a problem that had not attracted much attention earlier. The growth of environmental jurisprudence in India has been slow but steady. First of these cases, which is still the *Magna Carta* of the environmental jurisprudence was epitomised by Justice V.R. Krishna Iyer³⁰. The Supreme Court has responded with anxiety and concern. In view of the involvement of complex scientific and specialized issues relating to the environment, there is a need to have separate Courts manned only by persons having legal experience and assisted by persons having scientific qualification and experience in the field of environment. The industries have to go on, a man has to have his needs fulfilled and the balance in Nature and Environment has to be maintained³¹. The efforts must go on and surely success

will meet it. The judicial perspective and innovative attitude has led way to a new regime of social responsibility. The commendable judgments will continue and be enforced. It’s alarming that India ranks among the bottom 10 countries in controlling air pollution, according to the 2012 Environmental Performance Index (EPI), which addresses pollution control and natural resource management challenges. The two fastest-developing economies in the world, namely, India and China, rank poorly in 125th and 116th positions, respectively.³² In 2006 The EPI rank for India was 118th and China stood at 94th place among 133 countries. It’s quite evident that the situation has worsened in the last six years.³³

Dr. Karan Singh states³⁴:

“In our arrogance and ignorance, we have destroyed the environment of this planet. We have polluted the oceans, we have made the air unbreathable, we have desecrated nature and decimated wildlife. But the Vedantic seers knew that man was not something apart from nature, and, therefore, they constantly exhort us that, while we work for own salvation, we must also work for the welfare of all beings.”

The fortification of environment and its balance with justifiable industrial and economic growth is currently on a very delicate footing and the maintaining the balance is a continuous and non-stoppable endeavour. Finally, the sentiments and concerns of Environmentalists can be expressed aptly in the following emphasized expression which the Supreme Court of India³⁵ observed in *Tarun Bharat Sangh, Alwar v. Union of India*³⁶:

“A great American Judge emphasizing the imperative issue of environment said that he placed Government above big business, individual liberty above Government and environment above all”³⁷.

United Nations has a central role in safeguarding global development and combining positive economic development, the well-being of the people and the environment. In the context of the Johannesburg World Summit on Sustainable Development, the then Secretary-General Kofi Annan had proposed five key areas for particular focus: *water, energy, health, agriculture and bio-diversity*, and these have been brought together under the acronym WEHAB. The issue is not environment versus development, or ecology versus economy. It is how to integrate the two. Thus, it can be safely concluded: *If ‘WEHAB’ today, we have tomorrow.*

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