

## **Impact of Indian Judicial Activism in Protection to Pollution Free Environment**

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A clean and healthy environment is the essential need of the exercise of the life. From time to time, the Indian judiciary has been demonstrating its commitment for the protection of environment and it has given prime importance to the environmental protection through various trend setting judgements. "Right to live" is now globally recognised as a fundamental right to an environment adequate for health well- being of human beings.

The elaborate conundrums of the present day are the environmental pollution and hence, the subject 'Environmental Protection' has attained noble matter all over world. As food, clothing and shelter are the basic human needs; "Unpolluted air, un contaminated water and hygienic condition to live" in for human personality.

The main object of this Research article is to brief search/focus the different directions/ guidelines or decisions of the Indian judiciary and its impact in the way of protection of environment and controls of environmental pollution.

### **Judicial Activism and Environment**

The right to healthy environment has been incorporated, directly or indirectly, into the judgments of the court. In Environmental Litigation, "Judicial Activism" signifies the anxiety of Indian judiciary to find out appropriate remedies for environmental maladies. At global level, the right to live is now recognised as a fundamental right to an environment adequate for health and wellbeing of human rights. In the context of such developments in the international scenario, the judicial decisions in India Particularly worth examination. Justice Iyer Krishna held in case, "Ratlam Municipality v/s. Vardhichand," 1) that "the human rights calling unpolluted environment must be implemented irrespective of financial constraints. The public nuisance because of pollutants is a challenge to the social justice component of the rule of law."

In this case "Chameli Singh v/s. State of UP," 2) held that the need for a decent and civilized life includes the right to food, water, and a decent environment. In the same sentiment the Court was of the said that:- "In any organized society, the right to live as human being is not ensured by meeting only the animal need of men. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this subject. The right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care, and shelter. These are basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration on Human Rights or Convention or under the Constitution of India cannot be exercised without these human rights".

In the words of Justice Bhagwati P.N. 'social activism' is a most complex and challenging task facing the modern judiciary today, particularly in the developing country like India? In the present age of globalization, the problems of environmental protection have not remained the problems confined to one or some countries; they have become the global problems. The modern judiciary cannot afford to hide behind notions of legal justice and plead incapacity when social justice issues are addressed to it. This challenge is important because the judges owe duty to do justice with a view to creating and moulding a just society, but because a modern judiciary can no longer obtain social and political legitimacy without make in a substantial contribution to issues of social justice. 3)

### **Creative unprecedented role of Judiciary**

The judiciary has performed a tremendous role to secure enviro-justice in India. The quest of judiciary to secure enviro-justice has led it to play active role in India. From the phase of creativity and craft it led the judiciary to judicial activism, rather social activism. The widening of the entertaining public Interest Litigation under Article 32 and 226 of the Constitution has provided a proper canvas to the judiciary to draw a new pattern of environmental protection in India. The analysis of the judgments of the Supreme Court in various public interest litigation filed clearly indicates that the judiciary has developed an environmental law through the tool of PIL.

The comprehensive interpretation and seldom effective Suo moto action or Cognizance of "Free Environmental Pollution & its Protection with Promotion" in India is due to active role of Indian Judiciary. For example, during the year 2013-16, High Court, Patna had issued clear instruction to the Govt. machinery/local administration to keep Patna neat and clean through proper management of garbage and waste materials. 4) Delhi High Court had also directed to the Govt. machinery/local administration provide street lights, cleaning of sewerage system, solution of water logging in the street and on the road and also to keep from the main city and control the garbage and waste materials. 5) Use of polythene bags was also prohibited by the Govt. administration on the direction of the judiciary. As a result; administration is trying to act up on the direction of the court.

### **Evolved important principles or doctrine**

The Indian judiciary played creative unprecedented role in formulating/evolved important principles or doctrine in different environmental pollution cases. For examples are under:-

Principle of Absolute Liability- "Union Carbide Corporation v/s. Union of India." 6) Popularly known as Bhopal Gas Leak Disaster Case or Bhopal Gas Tragedy) Absolute Liability means- Liability irrespective of negligence on the part of the defendant without defences.

Principle of Public Trust Doctrine- "M.C.Mehta v. Kamal Nath." 7) Public Trust Doctrine mans- The state as trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. The public trust doctrine primarily rests on the principle that certain resources like air, sea, water and forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership.

Principle of Polluter Pays- "Indian Council for Enviro-Legal Action and Others v/s. Union of India & Ors." 8) Such case is also popularly known as "Bichhri Case." Bichhri village located in District Udaipur, State of Rajasthan. 'Polluter Pays Principle' means that is absolutely liable to pay

compensation to the victims and also to restore the environment to its original condition and to repair the environmental damage is that of the polluter's.

Principle of Precautionary- "Vellore Citizen Welfare Forum v/s, Union of India & Ors." 9) Precautionary Principle means- to take necessary measures to protect the environment from a substance or activity causing environmental pollution. The principle implies that there is a social responsibility to protect the public from exposure to harm, when scientific investigation has found a plausible risk.

The judicial creativity and craft reached its zenith in interpretation of Constitutional provisions for environmental protection. This has led to the judicial intervention in legislative and executive functions. The legislative and executive inaction has been severely criticized by the judiciary. This culmination of judicial activism has accelerated the growth of environmental jurisprudence in India.

### **Remarkable Directions or Guidelines -**

Issuing interim directions or guidelines by Indian Judiciary in different cases in light of "Free Environmental Pollution & Protection of Environment" matter. Some important guidelines are under-

Article 48-A of the Constitution provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Article 51-A of the Constitution imposes as one of the fundamental duties on every citizen the duty to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. 10)

In no circumstances loudspeaker be used from 10.00 P.M. in the night to 06.00 A.M. in morning. 11)

In the day time the Officer Incharge of the respective Police Station should check whether the permission for the use of loudspeaker has been taken from the Sub Divisional Officer or not and the sound is within permission decibel.12)

In case of any violation, action should be taken under various Sections of the "Environment (Protection) Act 1986, Noise Pollution (Regulation and Control) Rules, 2000 (Amended Rules 2010) and provisions of the Loudspeaker Act." 13)

To stop industries from discharging toxic waste into water bodies. In industrial areas, the local bodies have been told to set up common effluent plants within three years. If a municipality doesn't have the budget to build one, they can get the factories concerned to foot the bill for the effluent plant. 14)

### **Conclusion-**

In the recent years, there has been a sustained focus on the role played by the higher judiciary in devising and monitoring the implementation of measures for pollution control, conservation of forests and wildlife protection. Thus, after the analysis of above cases, we find that, the Supreme Court is, at the present time, stretching the different legal provisions for environmental protection. In this way, the judiciary tries to fill in the gaps where there is laciness of the legislation. These new innovations and developments in India by the judicial activism open the numerous approaches to help the country.

The judiciary has played a very vital role in protecting the environment and moderation its pollution. The “Free Environmental Pollution & its Protection” was a main primary priority of Indian judiciary in India’s post-independence era due to need of industrialization and political disturbances. In which he presented the supreme role through his judicial decisions or orders, guidelines or directions. It clearly exhibits that “Judicial Activism” is an effective and in the right sense. Thanks to the supreme power of the activist character of the Indian Judiciary.

### References-

- 1) AIR 1980 SC 1622.
- 2) Environmental Law, Jaswal P.S., and Jaswal Nishtha, 45 Allahabad Law Agency: Haryana, 3rd Edition, 2009, Reprint 2012.
- 3) Bhagwati J., The Role of Judiciary in the Democratic Process: Balancing activism and Judicial Restraint, 18 Commonwealth Law Bulletin, 1992 P. 1262.
- 4) “Who is responsible for the garbage collection and its disposal in the City”? –year 2013. According to Website- <http://www.go4patna.com>; the bench comprising Justice Sinha Navin and Pandey Shivaji.
- 5) “Pollution at 'Serious' Level, Needs Multi-Pronged Approach: Supreme Court,” Delhi, Press Trust of India, December 10, 2015.
- 6) (1986) 2 C.L.J. 169 (U.S.).
- 7) Leelakrishnan P., Environmental Law in India, 3<sup>rd</sup> Edition, First Reprint, (2009), Lexis Nexis Butterworths Wadhwa, Nagpur.
- 8) Writ Petition (C) NO.967 of 1989; date of judgment- 13.02.1996; judgement by Justice Reedy B.P.( Bench)
- 9) AIR 1996 SC 2115.
- 10) “M.C. Mehta v/.s Union of India & Ors.” (Such case popularly known as Ganga Water Pollution case or Kanpur tanneries case) AIR 1988 1115.
- 11) Samir Kumar v/s The State of Bihar & Ors. On January18, 2016.
- 12) Ibid.
- 13) Ibid.
- 14) “Supreme Court's Ultimatum to Polluting Industries,” on February 22, 2017- According to Electronic Media-NDTV India News; Reported by a Vaidyanathan, Edited by Tikku Alope.

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