

Environmental Activism & Supreme Court of India

Tracing the Transformative Approach

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INTRODUCTION

Activism for Environment Protection in India can be traced back to the ancient India. Our ancestors had realized the significance of the tie between man and his environment¹. Vedas are known to be the sources of all kinds of knowledge. The Samaveda notes the Flute of Divine Love by saying: "The earth, the sea, the sky, the stars are all woven together by the soft strains of the divine music. Its vibrance echo through the corridors of time in the endless canopy of the sky."² Even before 1980s, people had enjoyed this right not as a fundamental right but as a right enforced by the courts under different laws like Law of Torts, Indian Penal Code, Civil Procedure Code, Criminal Procedure Code etc. In today's emerging legal world, environmental rights are considered as third generation rights.

The Apex court in India, has played a pivotal role in protection of Environment through various landmark precedents. The Apex Court is engaged since 1980's in interpreting the environmental jurisprudence in India. For illustration purposes, the Apex court in the Ratlam Municipal Corporation Case³ adopted an activist approach with the objective to work for public good. Prominent establishments such as, National Environmental Tribunal (NET) (1955), National Environment Appellate Authority (NEAA) (1997) are efficient outcome of Apex Court's active participation on dealing with environmental challenges.

Later, in 2010 National Green Tribunal (NGT) was formed to strengthen the environmental sphere, all

these regulatory & quasi-judicial bodies are outcome of judicial activism, another major addition to environmental protection scheme was PIL (Public Interest Litigation), aimed towards bringing social economic justice and this eventually attracted the attention of not only Indian but also the foreign scholars.

Leading Indian legal scholar Dr. Upendra Buxi commented- "For the first time Supreme Court of India became a supreme court for all Indian. Now citizens can challenge environmentally unsound practice on behalf of others, even though they may not directly suffer any harm. The court intervened in different ways in response to the plethora of environmental case brought before the court through PIL."

According to Environmental Activist M.C. Mehta- "The Supreme Court has been recognized as one of the world's most powerful judicial bodies whose judges play an unprecedented governing role."⁴

The Indian Constitution & the international commitments of India reflect the need of protection and conservation of environment and the sustainable use of natural resources in today's developing world.

SUPREME COURT AND ITS TRANSFORMATIVE APPROACH

"The Supreme Court of India became a Supreme Court for all Indians."⁵

- Prof. Dr. Upendra Buxi

¹ M.C. Mehta v. Union of India and others, (1991) 2 SCC 353.

² Dr. N. Maheswara Swamy. (2000). Constitutional Provisions and Role of Judiciary in protecting environment from pollution - An appraisal. Andhra Law Times, Vol. CVI, 1-8.

³ Municipal Council, Ratlam vs Shri Vardhichand & Ors 1980 AIR 1622, 1981 SCR (1) 97

⁴ Mehta P.B., The Rise of Judicial Sovereignty, *J. Democracy*, 18(2), 70-83 (2007)

⁵ U. Baxi, "Taking Suffering Seriously: Social Action Litigation before Supreme Court of India" *Law &*

Environmental law in India, and indeed around the world, has its origins in concepts of 'nuisance' as provided under tort law and 'public nuisance' under criminal law. From such origins in India, environmental claims, harms and wrongs have proceeded to a judicially established basis firmly rooted in the concept of rights and of human rights. The recognition of the right to environment as a human right, and of related environmental rights has been a celebrated moment for the judiciary in India.

Tort litigation is, at least as a dispute resolution method, uncommon in India. There are initiated suits. Civil litigation in India is a luxury for the wealthy and the breeding ground for collusive settlements due to court backlogs, appeals, counter appeals and a number of delaying tactics.

In view of these litigatory facts of life, the courts in India have insisted on the active conduct of business on private-owned property, which causes environmental consequences or damages to others, constitutes the tort of nuisance.

Thus, in the case of *Gobind Singh v Shanti Samp*⁶ a baker who extended his chimney 6'towards a public road, (thereby emitting smoke and flames into the road) was found guilty of nuisance under both civil and criminal law. The court ordered the chimney not be relit before it was demolished, and ordered demolition of the chimney. Having done so, it quashed an order from the magistrate that the baker cease plying his trade as a baker, as being 'too wide' and unsustainable. Thus, an attempt to strike a balance. In order to act against environmental contamination, the criminal law definition of public nuisance was seized upon by the courts. Hence the courts have held that public health endangered by public nuisance (as a result of environmental pollution caused by a fodder stockpile in a residential area) is a public nuisance violative of Section 133 of the Indian Penal Code. Public health cannot be jeopardized by private business.⁷

Similarly, even though the private corporation also achieves social aims (e.g., the production of glucose

saline), if the result is pollution in a residential area it will be restrained by the court.⁸Moreover, even though only 1 in 24 affected residents complain that a criminal complaint is appropriate for the purposes of a public nuisance. The court in fact ordered in favour of the single individual complainant on costs.

The Courts in India have gone ahead while interpreting criminal law concept of public nuisance and made it the basis for ordering local government authorities to take steps to abate the public nuisance. Thus, in *Ratlam Municipality*⁹the Municipality was ordered to construct public latrines (despite the Municipality pleas of lack of funds) to redress the serious public health problems that existed because of the lack of such latrines.

Courts in India have invoked their powers under Section 133 of the Indian Penal Code to impose criminal liability for 'public nuisance' upon both private and public sector corporations who have been guilty of environmental degradation. The irony, however, is that specific environmental legislation (for example, on air and water pollution) that aims to directly remedy certain specific aspects of pollution, has weakened the criminal authority of the courts under Section 133 as a result of inadequate drafting. Thus, for instance, the courts declined to claim such criminal authority and permitted a car repair and painting workshop to continue its air-polluting activities.¹⁰ They refused to invoke Section 133 where tea waste was dumped into the river¹¹ and it was allowed to continue with chemical, air and water contamination alleged to have contributed to the death of animals and children.¹²

But while Indian courts have abdicated jurisdiction under Section 133 of the Indian Penal Code, under civil law they have continued to exercise jurisdiction to grant perpetual injunctions and issue damages against a shellac factory, against a business that builds a chimney and ovens and closing down of a brick grinding factory.

Poverty: Critical Essays, Bombay, Tripethi 1981 at pi.

⁶AIR 1979 SC 143.

⁷*Sml. Ajeet Mehta v State of Rajasthan*, 1990, CRI.L.J. 1596.

⁸*Krishna Gopal v Slalt of MP*, 1986, CRI.L.J. 396.

⁹*Ratlam Municipality v Vardhichand*, AIR 1980, SC 1623.

¹⁰*Madhavi v Thilakan*, 1989, CRI.L.J. 499

¹¹*Tata Tea Ltd v Stale of Kerala*, K.L.T. 645.

¹²*Abdul Hamidv Gwalior Rayon Silk Mfg&Wg Co. Ltd*, 1989, CRI.L.J. 2013.

In their use of civil and criminal responsibility for nuisance in resolving environmental concerns, Indian courts have been inconsistent. In part, however, this was because they tried to transfer environmental claims to a much stronger legal basis by adoption of a fundamental rights approach to the environment. The Supreme Court has expanded the meaning of 'life', 'liberty', 'livelihood', 'health' and 'education' to include environmental questions. The right to a 'wholesome environment' has been read into the right to life (under Article 21 of the Constitution) by the Supreme Court.¹³

The ramifications of this are substantive as well as procedural. Thus, citizens can use the avenue of writs petitions constitutional litigation (in addition to conventional civil and criminal law jurisdiction) to assert or defend environmental rights. They can seek writs of *mandamus*, prohibition or *certiorari* against government authorities to redress environmental problems.

Thus, for example, a writ of *mandamus* was issued by the Supreme Court against the Municipal Board of the State of Rajasthan to ensure that 'all sewers, drains, privies, water closets, house-gullies and access pools within the municipality' will be maintained in full working condition to safeguard against water pollution problems resulting in health problems.

On the grounds of nuisance and public nuisance, the Indian courts have complemented civil and criminal jurisdiction in *two* important and meaningful ways:

One, Environmental litigation may be centered on broad 'human rights' claims (as derived from the fundamental rights chapter of the Indian Constitution), Two, Environmental litigation may be based on focus on narrow grounds of legality as well as 'abuse of power', 'excess of power' or jurisdictional arguments as well.

Thus, the Indian courts have augmented the juridical bases for environmental action from its narrow civil law based in *nuisance* and criminal law base in *public nuisance* through administrative law bases of 'abuse or excess of powers or jurisdiction', *to* abroad and

effective constitution law base of violations of fundamental rights and an international law base of violations of human rights. This has been no small achievement of judicial activism. The challenge ahead lies in preventing judicial backsliding and erosion of this human rights juridical base for environmental claims and rights.

CONSTITUTIONAL ASPECT

The year 1976 is remembered as a landmark for the Indian Constitution, because of the sweeping 42nd amendment. History often takes note of the introduction of the words secular and socialist to the Preamble, done by the Indira Gandhi government in the midst of the Emergency. For environmentalists, it stands out for making environment part of the Constitution. "The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country," reads Article 48A. The Amendment likewise embedded Part VI-A (Fundamental Duties) in the Constitution, which peruses as follows: Article 51A (g) "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."

In *Sachidanand Pandey v. Province of West Bengal*¹⁴, the Supreme Court noted "at whatever point an issue of biology is brought under the steady gaze of the court, the court will undoubtedly remember Article 48A and Article 51A(g).¹⁵

Such wide understandings of Article 21 by the Supreme Court have throughout the long term become the bedrock of ecological law.

The Supreme Court held that the Right to life under Article 21 of Indian Constitution has a pivotal place when it comes to environmental jurisprudence and it even incorporates the right to liberate water and free air from contamination for the full pleasure of life on account of *Subhash Kumar v. Province of Bihar*¹⁶. In the event that anything imperils or hinders that

¹³Subhashkumar v State of Bihar, AIR 1991 SC 420 and in *AttakqyaThangal v Union of India*, 1990 (1), KLT 580.

¹⁴*Sachidanand Pandey v. Province of West Bengal* 1987 SCR (2) 223

¹⁵INDIAN CONSTITUTION art.48A ,art. 51A (g)

¹⁶ *Subhash Kumar v. Province of Bihar* 1991 SCR (1) 5

personal satisfaction the said person has remedy under Art.32 of the Constitution.

The Supreme Court, in *Cooverjee B. Bharucha V. Excise chief, Ajmer*¹⁷ ruled that, if there is conflict between ecological security and right to opportunity of exchange and occupation, the courts need to offset natural interests with the essential rights to continue any occupations.

Further, the statutory provision of the Indian constitution and various other legislation have provided for formation of following bodies and acts:

1. The National Green Tribunal Act, 2010

The National Green Tribunal was established on 18 October 2010 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. The tribunal is not bound by the procedure laid down under the Code of Civil Procedure, 1908, but is guided by the principle of natural justice. Further, with reference to tribunals, these bodies are mandated to provide speedy environmental justice and help reduce the burden of litigation on higher court.

2. The Air (Prevention and Control of Pollution) Act, 1981

This act is a Central Act of Parliament, which provides for the prevention and control of Air Pollution and healthy air quality. This legislation has also provided for the establishment of the Central and State Boards, for the prevention and control of air pollution as given under section 3 and 4 of this said act. According to the act “Air pollution means the presence of Air Pollutants”, and “Air pollutant” are defined as any solid, liquid or gaseous substance present in the atmosphere in such a concentration as may be or tend to be injurious to human beings or other living creatures of plant or property or environment.

3. The Water (Prevention and Control of Pollution) Act, 1974

It was enacted in 1974 to provide for the prevention and control of water pollution, and for the maintenance or restoration of wholesomeness of water in the country. The act was amended in 1988. The Water (Prevention and Control of Pollution) act was enacted in 1977 to provide for the levy and collection of a cess on water consumed by the persons operating and carrying on certain types of industrial activities. “This cess is collected with a view to augment the resources to the central board and the state boards for the prevention and control of water pollution constituted under the Water (Prevention and Control of Pollution). it was last amended in 2003.”¹⁸

4. The Environment Protection Act, 1986

In the wake of the Bhopal Tragedy the government of India enacted the Environment Protection Act, 1986 under Article 253 of the constitution. It came into force on 19 November 1986. It has 26 sections. The purpose of the act is to implement the guiding principles of the United Nations Conference on the Human Environment (June, 1972). They relate to the protection and improvement of human environment and the prevention of hazards to human beings, other living creatures, plants and property. The act is an umbrella legislation designed to provide a framework for central government coordination of the activities of various central and state authorities established under previous laws, such as the water act and the air act.

GROWTH OF PUBLIC INTEREST LITIGATION AND ITS ROLE IN ENVIRONMENTAL ACTIVISM

PIL is a result of Judicial Activism and a mechanism to agitate public issues before the courts within the confines of legal and constitutional mould.¹⁹

The concept of Public Interest Litigation was inculcated in India’s legal setup in 1980s by the efforts of Justice P.N Bhagwati and Justice V.R Krishna Iyer, this initiative has played a major role in the environmental front. Activism is essential for participative public justice. Therefore, a public minded citizen must be given an opportunity to move to court in the interest of the public.

¹⁷Cooverjee B. Bharucha V. Excise chief, Ajmer 1954, SC 220

¹⁸ Social Issues & Environment; K N Mudhusarai 2010

¹⁹ Verma S.K. and Kumar K., Fifty Years of Supreme Court of India, Oxford Univ. Press (2000)

In *M.C.Mehta v. Union of India*,²⁰ popularly known as Ganga Water Pollution Case, the issue of pollution of Ganga water by the effluent discharge from the tanneries was before the Supreme Court. The Supreme Court directed the owners of the tanneries to establish the primary treatment plants so as to prevent the pollution of Ganga water which is being used by large number of people of the country, as right to clean water was also a part of Article 21²¹ of the Constitution. The Court further observed that the financial capacity of the tanneries is not relevant while requiring them to establish the treatment plants.

Further, in *Vellore Citizens Welfare Forum v. Union of India*²², Kuldeep Singh, J., stated that in view of the constitutional and statutory provision, the 'Precautionary Principle' and Polluter Pays Principle' are part of the environmental law of our country. In *M.C. Mehta v. Kamal Nath*²³, the Supreme Court made 'Public Trust Doctrine' a part of the law of the land. This doctrine enjoins upon the government to protect the resources for the enjoyment of the general public. The apex court in *Indian Council for Enviro-Legal Action v. Union of India*²⁴ stated that even though it is not the function of the court to see the day-to-day enforcement of the law, the failure of enforcement agencies to implement the law to protect the fundamental rights necessitated judicial activism.

A second significant contribution by the courts was the extensive alteration of the Traditional rule of standing by enabling the poor and disadvantaged to be represented by volunteers & specifically NGOs, who themselves might not be directly impacted by the complained. This 'representative standing' concept has even helped to ensure the liberation of bonded labour and has led to the strengthening of the conditions for women living in a protective home.

Any person, group of social activists or NGO concerned, acting in a representative capacity, can, by simple ordinary letter, notify the High Court or the Supreme Court of situations where the fundamental rights of any group of poor or oppressed people are being violated.

After the court acknowledges the letter, treating it as a writ petition, orders investigation, if necessary,

through court appointed commissions, further makes provision for legal aid, and upon hearing the case, pass necessary orders for remedy. Jurists in India have hailed this practice of exercise of 'epistolary jurisdiction'. With reference to Environment Law in India, Social Action Litigation has now taken a central role in respect of violations of fundamental rights. As a result of Social action litigation, the courts in India have before it various issues to adjudicate upon, deforestation by mining, industrialisation and its effluents, pollution by mining, pollution of rivers, overuse of ground-water, air pollution by vehicles, environmental aspects of dams and other large-scale development projects, gas leaks, issues relating to urban planning and protection of declared parks & sanctuaries.

CONCLUSION

Despite of various legislations & constitutional provisions on Environment protection, there is an urging need to bring in more reforms in active implementation of these schemes. Environment protection is still a pressing issue.

Needless to say, the collaborative approach, operational flexibility, court's follow up on its interim orders make us feel more confident in the role of Judiciary as an activist. The main stimulus for environmental judicial activism came from Bhopal Gas tragedy. After which, there was a widening of existing environmental laws in the country and increase in judicial activity through PIL.

The expansion of Article 21 by the Apex Court is in itself a step towards the transformative approach of the court in dealing with the environmental laws.

Further, planning plays a pivotal role, the country today lacks integrated spatial planning (national/state/regional/town level). The planning is mostly limited to urban areas and even in these areas the master plans do not taken into consideration the environmental aspects and the developmental needs are not well reflected. Also, the master plans are several times are violated. Lack of planning is leading to unbalanced development thereby forming uneconomical agglomerations, ecologically degraded areas and over exploitation of resources.

²⁰ *M.C.Mehta v. Union of India* 1988 SCR (2) 530

²¹ INDIAN CONSTITUTION art. 21.

²² *Vellore Citizens Welfare Forum v. Union of India* (1996) 5 SCC 647

²³ *M.C. Mehta v. Kamal Nath* (1997) 1 SCC 388

²⁴ *Indian Council for Enviro-Legal Action v. Union of India*, 1996) 5 SCC 281

Courts in India have always emphasized upon balancing of environmental and economic interests, concerning the development projects. And they have been successful in doing so where the project is of small or medium-scale length.

Qualities such as openness, willingness to accept mistakes, commitment and creativity are sine qua non to the Indian Judiciary's attempt towards preservation of Environment. Indian Judiciary has displayed remarkable imagination and creativity when it comes to conceptualization and nationalization.

As far as roles played by court is considered, the court effectively played its traditional role, including but not limited to, ruling on the constitutionality of legislation and deciding upon the exercises of executive action, as to whether the actions by executives were Ultra vires or there have been gross misuse of discretion. These are traditional roles and are relatively easy to play, the real test of Judicial activism is addressing new roles.