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Development of Environmental Torts in India

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ABSTRACT

The paper analyses the implementation and development of tort principles in India in the matter related to environmental harm. In various cases the principles of tort have been applied by Indian judiciary for environmental damage violating people's right to a clean and healthy environment. The paper also talks about the development of tortious liability and locus standi in the case of environmental law. It also takes into account various acts passed through legislation and by judicial interpretation of various environmental matters. It also speaks about the wide interpretation of Art. 32 which was formulated with the introduction of new rights and remedies. It also takes into account in what ways the common law provides remedies for causing harm to the environment, in what ways safety regulations can prevent environmental harm, and how safety regulations are breached in specific cases. Further the paper analyses the majority of environmental pollution cases in India which falls under-Nuisance, Negligence, and Strict liability. The aim of this paper is to highlight the importance of the environmental policy based on tort law and discussion of the present enactments and developments for enviro-justice and other procedures and remedies for the same.

Keywords: Environment, Tort law, Development, Environmental Activism.

I. INTRODUCTION

After nineties there was a rapid and tremendous growth observed by our country. In order to sustain and stimulate the growth wagon of our country government overlooked the mass at large. India employs a range of regulatory instruments to preserve and protect the natural resources around the country. Thus, it is enshrined in our constitution that, "*It should be duty of every citizen of India to protect the environment and surroundings which includes forests, lakes, rivers, wild life and to have compassion for living creatures*"² The need of protecting the environment is an age-old idea which is assimilated in the Indian Cultural ethos or beliefs since time immemorial. Thus, to understand the present-day legal system on conservation of environment it is very important to look into past traditions and practices of Indians in protecting

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² INDIA CONT. art 51A(g).

the environment. Whereas a great sense of concern has been shown by our legislature and judiciary regarding the environment.

Environment awareness have been existed even in the Prevedic Indian valley civilization this could be evident from the archaeological evidence gathered from Mohenjo-Daro and Harappa which were amongst the prominent cities of civilization. The knowledge that they used to have regarding sanitation and hygiene which could be evident as they used to build ventilated houses, numerous wells, public baths, bath rooms, orderly streets and covered underground drains. Also, under the Artharashtra which is an ancient book on statecraft, military strategy and economic policy various punishments were given for damaging or cutting forests or for killing animals and destroying the environmental ethics of the nature. While after independence of India our honourable Supreme Court through its various judgements held that the mandate of right to life includes right to clean and safe environment and pollution free atmosphere³. The United Nation Conference on human environment turned the attention of our Indian government to protect its native environment.⁴ It also aimed at modern wildlife management⁵. The parliament also brought an act for restoring the wholesomeness of water through various guidelines.⁶ Another act which aims to protect the human environment by preventing the hazards caused to human beings, living creatures, plants etc.⁷ Another major legislation for conserving the biological diversity through sustainable use and equitable sharing of the benefits arising out of it.⁸

In a nutshell the rules or policies regarding the environment has changed very rapidly various through judicial interpretation and legislation still there is a huge need of growth and future developments in this regard. The Indian government with other nations came up together to cooperate internationally on development issues.⁹

Tort law is brought in order to compensate the damages caused to an individual human being or if there is a violation of his private right. Stephan Shavell an economist once said that, "*Risk control measures and compensation goals are to be met separately but the case is different in torts where both can be harnessed simultaneously on equal footing and while considering environmental concerns, more efficient and better remedies are available as compared to*

³ INDIA CONST. art. 21.

⁴The Stockholm Declaration, United Nations Conference on the Human Environment, 1972.

⁵ The Wildlife Protection Act, Act of the Parliament of India, 1972.

⁶ Water (Prevention and Control of Pollution) Acts, Acts of Parliament, 1974.

⁷ The Environment Protection Acts, Acts of Parliament, 1986.

⁸ The Biological Diversity Act, Acts of Parliament, 2002

⁹ Rio de Janeiro Earth Summit United Nations Conference on Environment and Development (UNCED),1992.

torts”¹⁰ The Earth’s environment or its biome is not someone personal property hence one cannot claim restitution for its damage. The Bhopal Catastrophe case proved to be an initiator for the rise in judicial activism and increase in environmental- tort litigation in India. The case was all about leak of poisonous Methyl Isocyanate gas because of which millions of people suffered various health problem and a lot of people died because of immediate effect of the gas. With such massive destruction to the human life and the surrounding environment, the doctrine of absolute liability started to evolve and finally advanced in MC Mehta case. The Bhopal case was an eye opener for various people from different backgrounds including state and the central government, social activists, media, litigators and various social and industrial workers. A new attribute got added to our judicial system when the citizens’ started linking environment with tort. Along with that there was a huge growth in the concept of punitive damages¹¹

The Bhopal gas tragedy developed a new doctrine of absolute liability which is different from strict liability, an English concept which comes into effect with certain defences. Whereas, there is no defence available to the defendant in case of absolute liability.¹² Also due to change in time and technological advancements there was an amendment of old concept from No-Fault Liability to No Liability.

In the case of Mahesh Chandra Mehta there was a leak of oleum gas in Shriram food and fertilizers Ltd which is situated in Delhi. A PIL was filed by him in the court of law. The court finally came up with a concrete doctrine of absolute liability so that the fast-growing Industrial Indian economy may be able to deal with challenges that are coming from harmful industries. The court also gave a theory known as - Deep Pocket Theory of Compensation and a very wide interpretation of Art. 32 was constructed with the introduction of new rights and remedies.¹³ The case opened new possibilities in tortious environment litigation and a new technique of issuing a direction under Art. 32 was invoked.¹⁴ It also opened a new path for later growth of the law and accepted the polluter pays principle as part of our environmental regime. Another case in which although the principle of absolute liability was not reconsidered but the court said that the compensation in case of any damage should not be limited to its workers who have visible symptoms but also to those workers who suffer from any disease or get symptoms after their

¹⁰ STEPHAN SHAVELL, *Economic Analysis Of Accidental Law* 279 (Harvard University Press, 1987); See also, Richard B. Steward, Regulatory Compliance Preclusion of Tort Liability: Limiting the Dual Track System, *GEO L.J.* 88 (2000) 2183-83.

¹¹ Stephan L. Cummings, International Mass Tort Litigation: Forum Non Conveniens and the Adequate Affirmative Forum in Light of the Bhopal Disaster, 109 (16) *GA. J. OF INT’L & COMP. L.*, 136-142.

¹² P. LEELAKRISHNAN, *Environmental Law in India* 126 (Butterworths 1999).

¹³ M.C. Mehta v. Union of India, AIR 1987 SC 1086 (INDIA).

¹⁴ *Id.* at 1091.

retirement. The court also showed the sign that in case of any violation of fundamental rights of the citizens, directions which are given under Art. 32 cannot be limited to the State but it can also be extended to other persons and company acting under any statutory power or license.¹⁵ Another case by the supreme court upholding the judgement of MC Mehta where the court stated that with the changing needs of society the law needs to accommodate itself in the country like India where economic and social transformation is a great challenge due to rapid industrialization and also applied the principle of polluter pays'. The court also said that they will provide an instant and adequate remedy if there is a need. The victim can directly approach the court under Article 32 of constitution if he is suffering from any personal damage.¹⁶ Also, the court is concerned particularly about those harms which consist of both human rights violation and environmental damage. In such cases, those who are responsible for the said act will be required to pay repair costs also.¹⁷ Another landmark judgement in which supreme court said that the power of court under article 32 is not limited to issuing writs or guidelines, to enforce fundamental right but it also puts an obligation on the court that whether the fundamental rights are protected or not. It was also declared that for protecting fundamental rights the court has the power to invent new types of remedies and strategies for enforcement of fundamental rights.¹⁸ Another judgement, in which court differentiated between fine and exemplary damages by stating that both are different types of consideration. The court also restated that they can award damages through PIL's and writ mentioned under article 32. The court put pollution in the category of civil wrong and stated that polluting the environment is a tort committed against the whole community.¹⁹

There has been a huge development in environmental activism, throughout India. One of the reasons for judicial activism in specific environmental cases has been due to the relaxation of the rule of locus standi giving a prospect to the citizen to approach the Court under Articles 226 and 32 of the Indian Constitution. Also, as mentioned earlier the recognition of environmental rights as a 'fundamental right' under Article 21 of the Indian Constitution has given a constitutional sanctity to the right to enjoy a clean and healthy environment.

Majority of environment pollution cases in India falls under-Nuisance, Negligence, Strict liability.

¹⁵ Consumer Education and Research Centre (CERC) v. Union of India, AIR 1995 SC 922(INDIA).

¹⁶ Indian Council for Enviro-Legal Action v. Union of India, AIR 1996 SC 1466(INDIA).

¹⁷ Vellore Citizen Welfare Forum v. Union of India, AIR 1996 SC 2715; Indian Council for Enviro-Legal Action v. Union of India, AIR 1996 SC 1466 (INDIA).

¹⁸ Bandhua Mukti Morcha v. Union of India 7 (1984) 3 SCC 161(INDIA).

¹⁹ M.C Mehta v. Kamal Nath and Ors. 9 AIR 2002 SC 1515(INDIA).

Nuisance is concerned with interference which is unlawful in nature with a person's enjoyment of land or some or the other right over or in connection with it. It may be due to some offensive smell, dust, smoke vibrations etc. It may be public nuisance which derives its support from section 91 of CPC or can be private in nature. A case in which PIL was filed for the grievance of use of fireworks during marriages and festivals which causes physical and mental health hazards amongst the adult as well as children. The Delhi high court observed that the effects of noise pollution is an important matter which has not received the total attention of judiciary.²⁰ Negligence is another specific tort in which a common law action to prevent environmental pollution can be instituted. Another renowned case where Donoghue went to a cafe with her friend. So, the friend brought her a bottle of ginger beer and the contents were not visible from outside. Donoghue drank some of the contents and her friend poured the remaining content into a tumbler where they found a snail dropped out of the bottle. As a result, Donoghue suffered from a serious nervous shock and gastroenteritis. Court held the case in favour of Donoghue, as a duty can be owed to the ultimate consumer.²¹ While as under Strict liability a case where the court laid down a principle of liability that if a person who brings on to his land something and collects and keeps there anything which is likely to do harm and if such thing escapes and does damage to another, he is liable to compensate for the damages caused.²²

Finally coming on to the remedies provided in common law system. A plaintiff in the tort action may sue for damages or can seek an injunction or both. In addition, the Parliament has provided special channels to redress in certain special types of environmental cases. The Act provides immediate relief to the persons affected by any hazardous substance²³. Another act which provides a summary remedy to the victims of the hazardous industrial accident.²⁴

Thus, the new means and mechanisms will introduce the greatest possible transparency and accountability in the functioning of the Government and modes and measures of enforcing laws effectively in dealing with offences against the environment which is the greatest affluence or plethora shared by all citizens.

In the end, it may be said that, although there is a dearth of tort and especially environmental torts litigation in India, but the recent developments in the past three decades have been satisfactory. The recent development in combining tort law with the constitutional right to personal liberty and its remedy through compensation is a good step which definitely created a

²⁰ Free Legal Aid Cell vs Govt of NCT of Delhi, AIR 2001 Del 455.

²¹ Donoghue vs Stevenson (1932) AC 562.

²² Ryland vs Fletcher (1968) LR3HC 330.

²³ Public Liability Insurance Act, Acts of Parliament, 1991

²⁴ National Environment Tribunal Act, Acts of Parliament, 1995.

new legal framework for environmental protection in India.
