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Evolution of Environmental Jurisprudence in India

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ABSTRACT

Over 70% of all human illnesses, according to the WHO, are impacted by deteriorating environmental conditions. The sources of harmful pollutants and effluents are the industries. Agricultural chemicals used as herbicides and insecticides also leave harmful residues. Transport contaminates the environment, whether it is through land, water, or air. Sewage, trash, and drainage systems are examples of public health infrastructure that harms the environment. Our health is impacted by the toxins in the food, water, and homes we live in, which can lead to a variety of diseases.

In order to uphold its constitutional duties, the court was and continues to be ready to issue "appropriate" orders, directives, and writs against individuals responsible for ecological imbalance and pollution. This is clear from the numerous instances it has resolved, beginning with the Ratlam municipality case. This essay tries to draw attention to how environmental laws have evolved as a result of judicial activism and precedents set over the years in various case laws that have called into question the legality of related legislation. Environmental laws have been interpreted and applied in different ways when the court's responsibility to protect state resources as part of its operation has been raised. The article focuses on the development of environmental law jurisprudence in India.

Keywords: *Judicial activism, environmental protection, hazardous industries.*

I. INTRODUCTION

Stockholm Conference in the year 1972, was for the first time, as the world is familiar with that the countries of the world decided to assemble at a common table to discuss about the repercussions that had been caused because of pollution. In the Stockholm Declaration it was recognised that man is a part of nature and life depends on it.

U. Thant, the Secretary General, United Nations, in Stockholm Conference appealed:

"Like or not we are travelling together on a common planet and we have no national alternative but to work together, to make an environment in which we and our children can live a full and peaceful life."

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But, some ancient texts tell us that our society paid more attention to protecting the environment than we can imagine. These texts tell us that it was the dharma of each individual in society to protect Nature, so much so that people worshipped the objects of Nature. Trees, water, land and animals had considerable importance in our ancient texts; and the Manu smriti prescribed different punishments for causing injury to plants. Kautilya is said to have gone a step further and determined punishments on the basis of the importance of a particular part of a tree. Some important trees were even elevated to a divine position.

This was the reason which led to the common masses thinking that the management of the environment and control of pollution was not an individual's responsibility, as he himself did not constitute a society, this opened the eyesight of the society as a whole, that the protection of the environment is a joint task. The dharma that was being talked in the Vedas was to ensure the progress and welfare of all the masses by protecting the environment. It stated that not only the culprit should be punished but the eco system should be balanced. To clear the debate between the right to exploit the environment and the solemn duty to conserve it, the concept of 'sustainable development' acted as an intermediary to resolve the dispute.

The definition of the term 'environment' in the Indian subcontinent has been very broad because of the relation towards mother nature right from the human existence can be recalled. Even today environmental law in India has a very broader perspective in terms of sustainable development, preservation of forest and wildlife, air and water pollution, noise pollution, and above all preserving our ancient heritage which defines our evolution to date. Community resources such as tanks, ponds, etc. have now been articulated by the Supreme Court for inclusion in the concept of environment, and why should it not be so, considering they all affect the quality and enjoyment of our life. Awareness about the environment and, particularly matters relating to pollution, have been reborn, so to say, such that it is difficult to imagine that our modern environmental jurisprudence is a little over three decades old. In these decades, however, the march of the law has been so rapid and sure that one is tempted to repeat the statement of Lord Woolf that "while environmental law is now clearly a permanent feature of the legal scene, it still lacks clear boundaries" .

II. EVOLUTION OF THE JURISPRUDENCE

In India the environmental jurisprudence started to evolve in the mid-seventies, with the enactment of the water (prevention and control of pollution) act, 1974. But soon after this enactment the Indian government took a leap with the amendment of the constitution in the year 1976, with the incorporation of article 48-A in the Directive Principles of State Policy and

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subsequently 51-A(g) in the Fundamental Duties that has to be a followed by the citizens of India. These articles provided for the protection of the environment in the initial days. In the following years the parliament enacted the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986. These legislation were not that stringent in the ways that was necessary for the Indian subcontinent, as strong legislations were required for the preservation of the environment.

The Supreme Court felt the need for sternness in problems related to environment, and seized the opportunity in the case of Municipal Council, Ratlam. The brief facts of the case was that a residential society was faced with extreme filth and stench, due to the discharge of fluids from an alcohol plant onto the public street, which was a result of the complete negligence on the part of the municipal body of that area as they failed in providing maintaining the basic public sanitation. A few people took this opportunity to make the available legal resources to the use and lodges a complaint under section 133 of the Criminal Procedure Code, that require the municipal corporation to carry out its obligations under section 123 of the M.P. Municipalities act of 1961. Though the Sub-Divisional Magistrate issues necessary orders, however the sessions court held them as unjustified. The High Court also upheld the views of the sub-divisional magistrate. The municipal council then approached the honourable apex court, where on the questions put towards the court was whether "by affirmative action a court can compel a statutory body to carry out its duty to the community by constructing sanitation facilities at great cost…".

The Supreme Court answered the question in the affirmative while noting the low priority granted to public health and sanitation, and the dimensions of environmental pollution. It was said that the municipality's plea that notwithstanding the public nuisance, financial inability validly exonerates it from statutory liability has no juridical basis. It was held by the Supreme Court that:

"Public nuisance, because of pollutants being discharged by big factories to the detriment of the poorer sections, is a challenge to the social justice component of the rule of law."

A little later in the decision, it was said that, "Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies".

The Supreme Court for taking such provocative approach in matters relating to environment was reasoned later in a letter petition filed by an NGO named Rural Litigation and Entitlement Kendra. This initiated the first case that dealt directly with the environment and the ecological balance of the environment. In a series of decisions the Supreme Court considered the complaint

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of the petitioner regarding illegal and unauthorized limestone quarrying and excavation of limestone deposits which apparently affected the ecology of the area, caused environmental disturbances which damaged the perennial water springs in the Mussoorie Hills, disturbed the natural water system and the supply of water both for drinking as well as for irrigation. All this was naturally a matter of grave concern and required somber reflection.

In the later years the apex court was held to be the last resort, when any of the legal framework present or that was established under various statutes were unable to be of any help, as the Supreme Court did a delicate exercise to come up with novel and innovative solutions to tackle the crisis. Various committees was established from time to time to conduct enquiry into the problems faced by the environment.

The Bhargava Committee was established to look whether safety standard were met by the management which operated mines, as they were severely prone to landslide due to quarrying and there was eminent danger to human life, as indirectly impacted the cattle, individuals, agricultural lands that was adjacent to the mining operations.

To look into the disturbance of the ecology, water, air, and environmental pollution due to quarrying and use of stone crushers, an expert committee known as the Wadia Committee was set up.

A High Powered Committee headed by Mr. Bandopadhyay to look into some of the aspects mentioned above and also a Monitoring Committee called the Geetakrishnan Committee to monitor the directions issued by the Supreme Court.

It was not that the Supreme Court directly accepted these reports, the court also accepted objections against these reports, if it was filed within a reasonable time in the manner prescribed. These objections were considered, and when the Supreme Court found it necessary, issued orders to prohibit these mining activity and quarrying of stones were prohibited. The Supreme Court recognised the challenges that both the mine lessees and the workers would face and ordered action to be taken to assist the displaced mine lessees as well as the formation of an Eco Task Force by the Government of India to take control of and reclaim the land as well as to engage workers in the task of afforestation and soil conservation.

Obviously none of this was accomplished overnight; it took many years. The Mussoorie Hills have now been returned to its former pristine splendour, and the results obtained with the Supreme Court's involvement were more than satisfying.

On December 4 and 6, 1985, a somewhat spectacular occurrence took place in Delhi around this time. Oleum gas leaked from the Shriram Foods and Fertiliser Industries manufacturing

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grounds. Numerous people were impacted by the gas leak, and one Delhi district court attorney perished. Instantly, memories of the Bhopal Gas Disaster from the previous year came flooding back.

M.C. Mehta immediately initiated proceedings in the Supreme Court bringing out the problem caused by the leakage of oleum gas. During the hearings, it was revealed that a committee known as the Manmohan Singh Committee had investigated Shriram Foods and Fertiliser Industries' safety and pollution control measures in March of that year with the goal of reducing community risk. A group of specialists was assembled by the Supreme Court to investigate these suggestions. The group claimed that the Manmohan Singh Committee's recommendations were being followed. But this Expert Committee also identified a number of flaws in the plant and expressed the opinion that, as long as it remained in Delhi, it would be impossible to completely eradicate public safety risks. The Supreme Court established the Nilay Chaudhry Committee, a Committee of Experts, in response to the contradicting information it had received.

A review of the findings from each of these distinct communities revealed that they all came to the same conclusion—that the danger to workers and the general public could only be reduced, but not entirely removed.

In light of this, the Supreme Court recommended that the Government develop a National Policy for the placement of poisonous and hazardous enterprises and establish a separate centre with professionals with the necessary credentials and a commitment to the public good to give scientific and technological input. This happened because the Supreme Court had a hard time finding the right information and expertise to help it make an informed conclusion.

The Supreme Court has suggested the creation of Environmental Courts to handle cases of this nature.

The Supreme Court's finding that an enterprise has an absolute, non-delegable duty to the community to prevent any harm from occurring as a result of its activity and that such an enterprise is engaged in a hazardous or inherently dangerous industry that endangers the health and safety of its employees and the residents of nearby areas is what makes this case so significant. If any damage is caused, the company is legally required to pay for it, and claiming that it exercised all reasonable caution or that there was no carelessness on its side is not an adequate defence. In other words, the Supreme Court established a rule of unlimited responsibility and rejected all of the Rylands v. Fletcher case's exceptions.

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III. CASES THAT LED TO EVOLUTION OF ENVIRONMENTAL JURISPRUDENCE

The Supreme Court began to acknowledge certain significant and widely acknowledged environmental concepts in the middle of the 1990s. During this time, the Supreme Court started relying more and more on Article 21 of the Constitution and expanded the definition of "environment" to include quality of life as opposed to merely existing as an animal . This is actually the time when environmental law started to take off.

The Polluter Pays theory has been confirmed by the Supreme Court in Indian Council for Enviro-Legal Action. In this instance, dangerous chemicals like oleum and other products were generated in various chemical facilities in Bichhri (Udaipur District).

These industries lacked the proper permits, licences, etc., as well as the tools required to remediate the harmful effluents they released. poisonous compounds percolated into the Earth's interior as a result of poisonous sludge and untreated waste waters. Aquifers and underground water sources became contaminated; wells and streams grew murky and unclean; and water became unsafe not only for human consumption but also for the drinking of animals and for irrigation of land. In fact, even the soi became unfit for cultivation. The inhabitants in the region progressively revolted as a result of this severe environmental deterioration, which led to death, sickness, and other tragedies. To prevent any unfortunate occurrence, the district magistrate in the region had to use Section 144 of the Criminal Procedure Code.

The Supreme Court received a writ petition under Article 32 of the Constitution and requested that the National Environmental Engineering Research Institute (NEERI) submit a report on the variety and scope of potential remedial measures. In light of the fact that "the incident involved deliberate release of untreated acidic process waste water and negligent handling of waste sludge knowing fully well the implication of such acts, " NEERI recommended using the Polluter Pays principle.

Around 40 crores of rupees were projected to be spent on rehabilitation. The Supreme Court looked at all the evidence and came to the conclusion that the industries were solely to blame for the harm done to the soil, subterranean water, and the community as a whole.

The Supreme Court held that as per the Polluter Pays principle

"… once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised on the very nature of the activity carried on."

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The Supreme Court cited with approval the following passage pertaining to the Polluter Pays principle: -

"The Polluter Pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of Government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer."

The Supreme Court subsequently expressed the opinion that in order to implement the polluter pays principle, compensation must be correlated with both the harm produced by the firm as well as its size and capabilities. The implementation of the polluter-pays concept must be reasonable, uncomplicated, and straightforward. In Deepak Nitrite, the Supreme Court stated its opinion that the potential of 1% of the enterprise's turnover may be sufficient compensation while remanding the case to the High Court for reconsideration.

The Supreme Court formed and implemented the idea of sustainable development in Vellore Citizens Welfare Forum . The Stockholm Declaration of 1972 was the first official recognition of this idea. After that, the World Commission on Environment and Development, led by Ms. Brundtland, the then-Norwegian Prime Minister, gave it solid shape in its 1987 report titled "Our Common Future." This report defined sustainable development as

"Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs."

An large amount of untreated effluent including over 170 different types of chemicals was being discharged into agricultural fields, highways, rivers, and open ground by approximately 900 tanneries in five districts of the State of Tamil Nadu, according to the Vellore Citizens Welfare Forum. A total of 35, 000 hectares of land were rendered completely or partially unusable for farming. The local water supply became unsuitable for drinking and irrigation.

An important instruction issued by the Supreme Court, in this case, was included in an order issued in 1995, which forced some organisations to construct wastewater treatment facilities. The Supreme Court sent letters to several of the tanneries in another ruling from 1996 asking them to demonstrate why they should not be required to pay a pollution fine.

One of the sustainable development tenets, the precautionary principle, was also acknowledged by the Supreme Court. The Precautionary Principle has been interpreted as

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Environmental measures - to foresee, prevent, and combat the causes of environmental damage.

The lack of scientific investigation should not be used as an excuse to put off taking action to avert environmental damage.

The performer, developer, or manufacturer is required to provide evidence that his behaviour is not harmful to the environment.

In this case, the concept of the "onus of proof" was introduced for the first time as a factor important for environmental preservation.

The Supreme Court endorsed the Polluter Pays principle, which was earlier recognized in Indian Council for Enviro-Legal Action. It was said,

“The Polluter Pays Principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.”

In this case, the Supreme Court issued two key rulings. One was for establishing a fund for environmental protection. The Environment Protection Fund was requested of each tanning facility that was required to pay a pollution charge in this instance. The Supreme Court's other important directive was to establish "Green Benches" in the High Courts.

The A.P. Pollution Control Board cases provide a very useful exposition of the Polluter Pays and Precautionary Principles. The Stockholm Declaration and the 1982 United Nations General Assembly Resolution on the World Charter for Nature were both cited by the Supreme Court in this case. In a case involving the import of hazardous waste, the principle has recently been dramatically expanded to encompass the costs of both preventing pollution and repairing the harm. The terms "the nature and extent of cost and the circumstances in which the principle will apply may differ from case to case" were used in reference to Principles 15 and 16 of the Rio Declaration.

The Precautionary Principle, which was coined by the World Charter for Nature and adopted by the Rio Declaration on Environment and Development in 1992, changed the emphasis. The 'lack of full scientific certainty' is the basis of this principle. It is best "to err on the side of caution and prevent activities that may cause serious or irreversible harm, " according to the primary tenet of this philosophy. When new information becomes available or funding makes it possible to do more study, an option may be made utilising information.

The public trust concept is yet another important principle that the Supreme Court has upheld. The Kamal Nath case raised questions about this theory.

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In this occasion, a scenario that was somewhat unique had developed. Because it used to flood Span Motels in the Kulu Manali valley, where a well-known politician's family had a direct stake, the river Beas' course was purposefully changed. The State Government had also granted protected forestland to the hotel, which had also encroached on it. This encroachment was later legalised.

In this decision, the Supreme Court reinstated the natural environment under the public trust theory. In a nutshell, this concept asserts that the public has a right to anticipate that certain lands and natural regions will maintain their original features. Roman law recognised the public trust theory, according to which the government held common resources including rivers, seashores, woods, and the air in trust for the people's unrestricted and free use. Either no one possessed these resources (res nullious) or everyone did (res communicative).

The State Government was instructed to seize control of the region and return it to its natural state when the Supreme Court, using the public trust theory, revoked the forestland lease awarded in favour of Span Motels. The hotel was ordered to make reparation payments (damages for the restoration of the local ecology and ecosystem). Additionally, a justification for not imposing a pollution fine was requested. The Supreme Court found that in order to levy a fine for pollution, there must first be a trial and a determination that the hotel committed an offence in violation of the Water (Prevention and Control of Pollution) Act of 1974. As a result, Span Motels did not receive a pollution violation, but was instead asked to justify why it should not be required to pay exemplary damages. Following consideration of Span Motels' response, exemplary damages in the amount of Rs. 10 lakhs were levied.

IV. CONCLUSION

The higher judiciary in India did not invent the right to live in a hygienic environment recently. For more than a century or more, the legal system and the courts have upheld this privilege. The only difference in how the right to live in a clean and healthy environment is exercised now is that it has been elevated to the status of a basic right, the violation of which is prohibited by both the Constitution and the legal system. As far back as Homo sapiens' evolution on this planet, there has been a concern with environmental conservation. The human environment saw significant changes as a result of the advancement of science and technology as well as the rising global population. The Indian judiciary has already demonstrated tremendous excitement for loosening the restrictions of locus standi and developing tactics to force decision-making bodies to take environmental considerations into account. Public participation in administrative procedures shouldn't only be a formality; it should also serve as an assurance that the relevant

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authorities would consider the public's input when making judgements. Environmental decisions are subject to judicial scrutiny to see if this is done.

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