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How Indian Judiciary Showed its Maturity & the Government its Immaturity in Imparting Environmental Justice?

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ABSTRACT

In the current epoch, environmental justice is something that is quite debated upon and rightfully so, essentially due to the rampant exploitation of the environment and degradation of the same due to such exploitation. The very word environmental justice is something that has a plethora of facets to it but at the basic level, in the context of this paper, it is meant to be the rightful protection that essentially should be granted to the environment.

In most of the states in general and India in particular, legal protection can be granted by either the Government through passing legislations or by the judiciary by setting out and bolstering clear legal principles within the ambit of the already existing legalities.

This paper seeks to understand and analyze the respective roles that the Government of India and the Indian Judiciary has in imparting environmental justice to the citizens of the state. This is essentially done by analyzing particular landmark cases and delving deep into them in meticulous detail.

In the end, it proves how the Indian Judiciary has been much more proactive and effective in imparting environmental justice to the common citizens of the nation.

I. INTRODUCTION

Environmental justice, environmental equity, and environmental racism are different phrases that describe and explain central features of the environmental justice movement, focusing on the disparate impact of hazardous waste sites and other polluting facilities located in or near distressed neighbourhoods with high concentrations of ethnic minorities and economically disadvantaged populations. Because the concepts and contexts associated with each of these labels are complex and multidimensional, the meaning of environmental justice and injustice has changed over time and can differ considerably.

Following the core definition from the Environmental Protection Agency (EPA),

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environmental justice seeks the equitable treatment and involvement of people of all races, cultures, incomes, and educational levels in the development, implementation, and enforcement of environmental programs, laws, rules, and policies. Therefore, the concept of environmental justice as a term with a more political connotation implies justice on a distributive, procedural, and precautionary level. Distributive justice requires an equitable distribution of the costs of environmental risks and of the benefits of environmental values across the demographic and geographic scales. Considerable emphasis is placed on procedural justice defined as the extent to which political decision-making processes are applied fairly and people are empowered to control and influence the decisions that affect them. The precautionary principle is based on the attitude that uncertainties in short- or long-term environmental impacts resulting from deteriorating conditions in the everyday environment where people live and work call for decision-making to keep public health from harm.

With recent distributional challenges of globalization, urbanization, and environmental degradation (e.g., depletion of the ozone layer, water security, declining biodiversity, and deforestation) as well as climate change, the environmental justice concept has moved toward a broader understanding, now including generational and international environmental justice. Generational environmental justice refers to the concept of sustainability (including global ecological integrity and global environmental justice) and the responsibility of current generations to ensure a healthy and safe environment for future generations. Therefore avoiding or at least trying to avoid environmental degradation, which brings injustice to future generations for the sake of short-term economic gains in the present. As more environmental resources become ever scarcer, the increasing burden in hazardous environmental conditions imposed by more affluent countries on developing countries touches on an important issue of international environmental justice. Therefore, the concept of environmental justice has been taken up by many countries in the current epoch and India is one of them.

II. Current situation of the Indian government with respect to environmental justice and its delivery

Although India has a somewhat regime of laws and regulations in place to ensure environmental justice, the problem lies in the implementation of those laws and hence big corporations and industrialists coupled with financers and banks take on projects which might have extremely well economic implications on society in the long run but in the due process, the environment gets ruined on a very large scale and this intervention with the environment is more often than not pardoned by the government for the sake of economic development. This

very idea of flouting and non-conformity to laws is problematic in a developing country like India wherein the social and cultural diversity is so huge and people of a lot of regions heavily depend on some sort of natural resource like forest and/or river for their daily living.

The overall environmental condition of India wasn't very good since the beginning of the 21st century and it has only deteriorated hence it has further distanced itself from reaching the Sustainable Development Goals (SDG) as set out by the United Nations.

India currently faces multiple environmental and social crises that have directly resulted from the unjust political and economic systems that operate in the country. A coherent political account of how we could respond to these challenges for law and sustainable development in India requires the conceptual arsenal provided by environmental justice theory and practice. Ideas of environmental justice, therefore, enable "new critical engagements with the relations between economy, environment and society, and illuminate the radical potential of sustainability." Making the quest for environmental and social justice a central concern requires confronting the fundamental underlying processes (and their associated power structures, social relations, institutional configurations, discourses, and belief systems) that generate environmental and social injustices. As David Harvey has perceptively pointed out, the fundamental problem remains one of "unrelenting capital accumulation and the extraordinary asymmetric of money and political power that are embedded in that process[2]."

It is but evident that there is rampant corruption in the government and it won't be incorrect to accuse directly government officials for providing the corporations with these lee-ways of flouting the legalities in place and this is done by using or rather misusing certain loopholes present in the legislations which is made and enacted by the parliament itself. Therefore, what we can conclude from a thorough study of the environmental law regime of India is that though the substantive laws are there in place, they are not effective at the ground level and the regime as a whole is not at all robust due to which these loopholes are rendered to use by the corporations who wish to exploit the nature in order to book profits and it won't be a lie to say that the government officials also have a hefty cut from the profits that are made by directly or indirectly exploiting the nature. This clearly points out the grim situation of the environmental justice delivery by the government of India. Also, another major drawback of the Indian government while formulating legalities with regard to the environment, the local and direct stakeholders aren't consulted which leads to a gap between the needs of the locals and the laws enacted. This gap in turn leads to multifaceted disputes like that of loss of livelihood of the

[2] (Naik, 2020)

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locals to the locals getting majorly affected by any industry that is being set up or is already there in that locality. Also, in the Indian subcontinent, people of specific areas have certain emotional and/or religious attachments with some environmental parts like a particular kind of trees or a lake. When and if this attachment of people and their sense of ownership of the environment could be used by the government in a positive manner, then and only then will the government be able to achieve environmental justice and hence we would be able to call the decisions of the government mature and prudent.

III. HOW HAS THE JUDICIARY SHOWN MATURITY IN IMPARTING ENVIRONMENTAL JUSTICE

The Indian judiciary on the other hand unlike the Indian government has been very proactive in imparting environmental justice to the common citizens in several ways like for example by taking *suo-moto* cognizance of any environmental matter that the Supreme Court is feeling to be in violation of any laws or legalities or just if that enterprise that is being carried out can in any way impede the normal and healthy living standards of the people residing in areas nearby. Other than this, the Supreme Court and also the High Courts very actively hear any matter that is regarding the environment and tries to dispose of it as soon as possible and deliver a prudent judgement in an expedited fashion.

To prove these claims we will be taking a look at two cases.

- **Kanpur Tanneries case[3]**

The Kanpur tanneries case[4] is often hailed as one of the landmark environmental public interest litigation cases in India. The case was brought on the basis of a petition by MC Mehta, a noted environmental campaigner, against the open discharge of toxic industrial effluents into the Ganga. The case involved several rulings but one of the most significant of these was the orders against the tanneries near the city of Kanpur and their continued and long-standing practice of discharging toxic chemicals into the river. The issue of environmental consequences of the leather industry has drawn media attention since, in addition to polluting the environment, the chemicals used in the tanning process cause severe health problems for workers, an issue noted by Human Rights Watch. The documentary, The Toxic Price of Leather, by Sean Gallagher, is a powerful narration of the pollution and public health impact of the tannery industry in Kanpur. In a wide-ranging order, the Supreme Court alluded to both the spiritual significance of the river in the lives of millions of Indians and also to the constitutionally guaranteed right to health

[3] (Shalini Iyengar, 2019)
[4] 1988 AIR 1115, 1988 SCR (2) 530

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and a clean environment to rule that the tanneries must set up effluent treatment plants. The judgment cast a dual responsibility on public and private entities to prevent the dumping of effluents and noted that financial incapacity was no basis to claim an inability to prevent the dumping. In the Court's words: "Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery, which cannot set up a primary treatment plant, cannot be permitted to continue to be in existence for the adverse effect on the public at large." Why did the Court assert itself in the Tanneries case? After all, closing them down would have imposed concentrated costs on a specific group of actors. By some estimates, there were 400 tanneries functioning in Kanpur before the intervention of the Court. While this case throws up important questions about the appropriateness of judicial intervention in fundamentally political matters, it is instructive to recall the circumstances that gave rise to this case being heard by the Court. In its order dated 12 January 1988 the Court pointedly remarked upon the tardiness of the municipal authorities while directing them to take action. This comment would appear to reflect the Court's assessment of institutional interests, legal considerations, and elected branch preferences. As noted above, there are multiple factors that judge consciously and subconsciously rely upon in their decision making and we argue that institutional interests, preferences of the elected wings of government, the decision's consequences, public opinion, and legal considerations all play a role in their orders and judgments. For example, the Court repeatedly cites the municipal authorities' non-compliance with their statutory responsibilities in justifying their decision to entertain the case as public interest litigation. This justification showed the court couching its intervention as a response to government inaction—an effort that could be seen as a way to pre-empt charges of judicial activism. Moreover, the Court sought to ground their order in existing laws and policies instead of environmental principles in an effort that might reflect their interest in showing that their intervention was based on law rather than perception. Such an approach works to signal that the Judiciary is directing compliance rather than engaging in policy-making. Arguably, the court believed that local authorities had the capacity to implement its order, and the political costs for doing so would be marginal for the court. This is because most of the groups affected directly by the order did not have the political clout: the majority of the tanners are Muslims, migrant workers, and from the lower castes. Furthermore, there is a very large constituency that favours the cleaning of Ganga since it is widely recognized that Ganga, the holiest of all Indian rivers, is polluted. The causes are many including the dumping of raw sewage and industrial effluents, the disruption of the natural flow due to multiple dams along its course, and the abstraction of an estimated 90–95% of its flow for irrigation. Indeed, the Ganga Action Plan to clean up the river was

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launched in the 1980s by the Congress Government and has continued in various incarnations, till this date.

While the extent of the judgment's effectiveness remains questionable, there was tremendous public and rhetorical support for cleaning the river Ganga from religious, public health, and ecological points of view. The river is considered holy by many millions of Indians and the health risks posed by the river's pollution were extensively discussed in the decision as well. Thus, while the political costs of disrupting the tannery industry of Kanpur were low, the Court's decision had widespread support. This calculation, as suggested, motivated the Court to take the Government to task for not enforcing the clean water laws and this consideration aligns well with the hypothesis that courts are sensitive to the need to consider public opinion in decisions that impose significant costs on the Government.

- **Air Pollution and the Diesel Ban Case**

While much of the focus over Delhi's air pollution woes have tended to focus on the past few years, it is important to recall that pollution in Delhi is a long-standing issue and, indeed, that the city had appeared to be "winning" its battle against pollutants as recently as a decade ago. In 1985, alarm at New Delhi's worsening air quality led the noted environmentalist MC Mehta to file a public interest litigation case before the Supreme Court of India. In his petition, Mr Mehta called attention to the rising levels of air pollution in New Delhi and accused the administration of violating both the right of Delhi's residents to breathe clean air as well as the country's environmental statutes. He called upon the Delhi Government to file an affidavit detailing the steps it had taken to counter air pollution in the capital and, among other things, asked the Court to take up the case against vehicles polluting the city's air. While the first Public Interest Litigation in the matter was filed in 1985, and significant orders in the case were issued from 1991 onwards, it was not until 1998 that the efforts finally began to bear fruit. The orders from 1991 led to a long line of cases which established statutory committees under the EPA, the appointment of expert authority, and the drafting of multiple policies, action plans, and white papers before the final Supreme Court order in July 1998 directing, inter alia, a change-over to compressed natural gas (CNG) as the fuel for all commercial vehicles in the capital. In addition to the directions on CNG, the wide-ranging order also saw the Court directing the phase-out of old commercial vehicles, increasing the number of public buses on Delhi's roads and banning certain fuels from being supplied or used within the city. Notably, the Court also threatened contempt proceedings against those failing to adhere to the terms of the order. Subsequently, in April 1999, the Court laid down emission norms for vehicles

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registered within New Delhi. After passing these series of orders, the Court's efforts focused on ensuring compliance with its directions within the timelines articulated by it. The Court's intervention received some level of pushback from organized interests, who were arguably more powerful than the ones in the Kanpur tanneries case. Transport companies and even the Delhi Government noted the technical difficulties, infrastructural deficiencies, commuter welfare, and prohibitive costs were hampering their ability to change over to cleaner fuels and argued that the Court's timelines should be extended. In an interesting contrast to the Court's stance in its later judgments regarding Delhi's air pollution, the Court pushed back against most of such efforts to seek extensions. Indeed, when, in 2001, the Delhi Government even announced its unwillingness to comply with the Court's directions even at the risk of facing contempt proceedings in order to protect the interests of Delhi's residents the Court delivered a sharply worded criticism which ultimately ensured that the Government reversed its rhetoric and filed an affidavit in Court pledging to comply with the Court's directions. Notably, this case shows clearly that the Court was responding to reports in the media and explicitly referenced this in its decision by stating that: "We are distressed at certain reports which have appeared in the print and electronic media, exhibiting defiant attitude on the part of the Delhi Administration to comply with our orders. The attitude, as reflected in the newspapers/electronic media, if correct, is wholly objectionable and not acceptable."

Looking at the entire line of orders for over a decade reveals that the Court's final order reflected, in essence, an effort by the Court to prod the administration to fulfil its existing commitments. It is also worthwhile to remember that the court persisted with its insistence for enforcement of the law although such changes did not occur overnight. We suggest that the Court's willingness to pass orders to correct enforcement failures cohere well with elements of Kapiszewski's theory of tactical balancing. First, the CNG cases posited a relatively discrete technical solution to the problem at hand with little adverse political and economic consequences. This is because while the costs of this change were substantial, they were still reasonably concentrated in a small group of stakeholders: transport operators. While the citizens did face considerable inconvenience, the Court was quick to highlight that this was attributable to Executive inaction rather than its orders. Moreover, given the visibly high levels of air pollution in Delhi, the court's actions had widespread public support. Indeed, once the conversion from diesel to CNG was completed and air pollution came down, all political parties rushed to take credit for it. The Court is keenly aware of its position vis-à-vis the other wings of Government as well as the manner in which it is perceived by the public at large. One could, thus, argue that the Court's position was at least in part derived from its desire to both enforce

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the orders that it believed would benefit the public as well as emphasize its standing, a finding that reflects well with the Court's consciousness of its institutional interests as well as its consciousness of the importance of public support.

These abovementioned two cases are just an example of how the judiciary of the country has been proactive and also pervasive when it comes to rendering environmental justice and with the current state and stand of the government on matters relating to the environment, judicial intervention is not only welcomed but is quintessential for achieving the long term environmental goals of sustainability and reaching the pedestal that the whole world collectively has envisioned.

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