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# Judicial Process on Environmental Development and State Policies: An Analytical Study

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## ABSTRACT

*Judiciary is the watchdog of democracy and guardian of our Constitution. Judiciary is one of the organs of the government and it is an independent authority. There should be Rule of Law in a democratic country. Where in India it was applied by means of independent judiciary. The judiciary from the commencement of constitution had played a vital role in development of society which has foreseen by the legislature. Generally, the judiciary work is to interpret laws, beyond this the judiciary has gone through their own view for extend hands to develop the society and human rights. Through this way the environment protection is one of the major areas where the judiciary has evolved a various principle to protect it. This article analyses environmental development by the judiciary which comes in conflict with the government policies. Further this article also analyses the reason behind the decision which favors the environmental protection and the government policies in various periods.*

**Keywords:** *environment ,policies , Indian Judiciary.*

## I. INTRODUCTION

In ancient period environmental philosophy was developed by some countries like Greek, India and China etc., India is also one of the countries which holds their environmental protection through their religious belief in ancient country. The environmental jurisprudence is inherently developed in India through ritual and religious belief for centuries and peoples were flourished through resources. The civilization and the change in the rule lead to the degradation of importance to environmental development. Especially, the imperialism and the colonial government leads to the depletion of environment and the people were left poor without resources. The concern for the environmental protection was developed in early twentieth century. Internationally the view on environment protection emerged after the second world war. Especially during 1960, the developed countries insisted the importance of environmental

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protection. The international environmental crisis and the event conducted for bringing out the problem also made impact in India. Thus, modern environmental philosophy in India was developed during 1970.

## **II. DEVELOPMENT OF GOVERNMENT'S INFRASTRUCTURE PROJECT**

Aftermath Independence, the government has given more importance to infrastructure development rather than protecting the environment. Because, that is the need of the hour for a new born country. To become economically Independent, we have to expand our trade and business for which the infrastructure development is needed. To make the policy come true, the government has acquired various lands where it includes bare land, forest, agricultural land, residential area from the people. It was not achieved in a one-night process. The government has faced lot of problems and challenges which is related to right of people like property as fundamental right and also the environmental issues. The policies of government are to provide employment to the people in country to develop their socio-economic status. These policies lead to the deforestation. When the developed countries insisted on western industrialization development, the poor countries like India were against this western industrialization development concept. Because, the western industrialization development concept has the balance between the development of Industries and ecology balance by the slow development of Industries. This system was followed by the countries whose industries has already developed and where the trade and commerce has flourished. But if this is applied in the country like India, the government cannot provide employment to the people. This was once mentioned by the then Prime Minister Mrs. Indra Gandhi in UNESCO (Stockholm). But later in the Consecutive years the government has realized that the deforestation and infrastructure development has not removed the poverty of the country. Beyond that, because of deforestation and self-reliance concept, the people have to fight for basic necessities like water, fuel (wood), vegetation etc. So, during the period of 1970 – 1980 many social activists have raised their voice for the protection of environment and rights of people for the resettlement of tribes and for the basic needs and rights. This created a view of giving importance to environmental protection.

## **III. OPINION OF JUDICIARY ON ENVIRONMENT AND INFRA STRUCTURE**

Indian judiciary also played a role in developing the environmental jurisprudence. When the laws are insufficient to protect the environment, Indian judiciary has extended their hands through judicial activism and by ordering the public interest litigation to protect the environment. Though it is a welcoming initiation, when it intervenes into the infrastructure policies of government, it creates losses to the government wherein the government was unable

to fulfil their duties. When the infrastructure projects like thermal projects or dams are constructed, the projects are challenged based on the environmental rights. Not only the thermal projects, but also other projects like buildings, dams etc. During the period on 1950 – 70 the approach of court is to the strict adherence of rule that it should not interfere into the government policies.

In the *Tehri Bandh Virodhi Sangarsh vs State Of U.P And Ors.*<sup>3</sup> The petitioners have filed this petition in public interest under Article 32 of the Constitution praying that the respondents be restrained from constructing and implementing the Tehri Hydro Power Project and the Tehri Dam. Her the court held,” The Court does not possess the requisite expertise to render any final opinion on the rival contentions of the experts. The court can only investigate and adjudicate the question as to whether the Government was conscious to the inherent danger as pointed out by the petitioners and applied its mind to the safety of the dam.”

And further in “*Goa Foundation and Another vs The Konkan Railway Corporation and Others*<sup>4</sup>, a writ petition was filed in the Bombay High Court by a Society asking the Court to compel the Railway Corporation to procure environmental clearance from the Ministry of Environment and Forest under the EPA, 1986 for the part of alignment passing through Goa. The petitioner claimed that the proposed alignment is wholly destructive of the environment and the ecosystem and violates Art. 21 of the Constitution. Here the court stuck to the strict adherence of provision of the act.”

Beyond this the Judiciary has recognized various concept and principles to protect the environment like polluters pay principle etc., one among them is polluter pay principle which emerges its origin after Rio declaration. In 1997 the ICJ acknowledged the ‘need to reconcile economic development with protection of environment which expressed in thew concept of sustainable development’. The sustainable concept has formally entered Indian policy planning in the year1980 and claim its importance during 1990. The plan emphasized ‘the need to focus on ecological preservation and the use of diverse set of activities, from land use and agriculture, to fisheries and mining.’ During this period the Indian supreme court began to develop the reputation for being an activist institution which made them to claim a leading role in environmental guardianship in India. The courts initial entrance to environmental jurisprudence started when they were asked to settle disputes related to termination of mining leases which signals for the end of wave of development projects which comes in contact with environmental

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<sup>3</sup> . 1990 SCR, Supl. (2) 606, 1992 SCC Supl. (1)44

<sup>4</sup> . AIR 1992 Bom 471, 1994 (1) MhLj 21

concerns.

For instance, in the cases like Highway's liquor ban case, Coal block cancellation case, Goa iron ore mining case, Sterlite company case, Central Vista case in the initial stage the court has cancelled the licence of these companies stating the reason of environmental protection which are the policy decision of the government where it involves major economic factors. The view of the judiciary was different from the previous century, the court took an ecocentric view which is more concerned towards the environment. In time, they adopted a far stricter position as over a series of decisions, it all but halted the mining operation across the country which led the judiciary to overreach against government policies. The absence of stringent rule from the executives to protect the environment and the development of ideology of globalization, liberalization throughout world also influenced the Indian judiciary in Indian judiciary in developing the environmental concept over government decision. As a consequence the country's GDP were affected. There were opinions from the experts that several number of people's basic right was affected which was the duty of state to provide. The Judiciary has faced criticism for this approach in recent period. In this regard, "Justice Bharuchua used his minority opinion in Narmada to summarize the situation that, concern for environmental phenomenon which has triggered mainly by the backlash effect of accelerated industrial growth in the developed countries. The two major criteria – the project should maximize economic returns and it should be technically feasible are no longer considered adequate to decide the desirability or even viability of the project. It is now widely recognized that the development effort may frequently produce not only sought for benefits but other often unanticipated undesirable consequences as well which may nullify the socio-economic benefits for which the project is designed."<sup>5</sup> The court has understood the concept in more ecocentric basis.

In 2013 regarding, "the dispute of operationalism of a nuclear power plant in Koodankulam, the court held that sustainable development and Corporate social responsibility are inseparable twins not merely human centric, but ecocentric".<sup>6</sup> Sustainable development understood in terms of such contradictions is liable to be found meaningless. But there are contradictions in the decision of courts in the recent years where they are acknowledging the government decision regarding the projects and policy decisions. For example, in *Shivshakthi Sugar Ltd vs- Sri Renuka Sugar Mills*, the court has changed their approach and rejected the idea of closing the company in order to protect the socio-economic rights of the people.

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<sup>5</sup> . Narmada Bachao Andolan vs- Union of India (2000) 10 SCC 664 Para 258.

<sup>6</sup> . G. Sundarajan vs UOI and Ors (2013) 6 SCC 620, Para 119

Unlike other issues on which the court has taken a lead, it is difficult to point out unambiguous correct answer in environmental protection vs economic development disputes. But in various situation the Judges have carefully justified by understanding the gaps in these areas and rendered justice. Overall, through various decade the court has changed their approach from anthrocentric approach to ecocentric approach and later from ecocentric approach to render the justice to society.

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