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Possible Solutions to the Environment vs Development Conundrum in India in light of the Judgment of Indian Council for Enviro-legal Action vs Union of India

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ABSTRACT

India as a developing country faces a constant dilemma amidst the increasing awareness towards environmental concerns between ensuring environmental sustainability while ensuring growth and attempts to strike a balance between environment and development. The judiciary plays a vital role in this process by adjudicating disputes regarding the same and thus through the years have passed various judgements which has led to the inception of various principles. One of the landmark judgments pertaining to this is the judgment of Indian council for enviro-legal action V/s Union of India which showcases the challenges India attempts to address constantly. Therefore this study seeks to provide possible solutions to the Environment V/s Development conundrum in India in light of the case of Indian council for enviro-legal action V/s Union of India.

I. INTRODUCTION

“Pursuit of profit has absolutely drained them of any feeling for fellow human beings-for that matter, for anything else and the law seems to have been helpless.”

These were the words of justice B.P Jeevan Reddy while delivering the judgement in the case of Indian council for enviro-legal action v/s union of India. The case originates in the village of Bichhri situated in the Udaipur district of Rajasthan. Its woes began in 1987 when a major industrial establishment, Hindustan Agro chemicals started producing chemicals like oleum and single super phosphate. The situation further deteriorated when a company called silver chemicals commenced the production of ‘H’ acid which was exclusively meant for export. The production of this acid dispensed a lot of highly toxic effluents into the environment in its vicinity resulting in the contamination of water and land. According to the reports submitted in the court, around 375 megatonne of ‘H’ acid was produced by the company which created around 2500MT of poisonous sludge, all of which was untreated and was disposed of in the

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nearby area. A pertinent thing to mention here is that because of the nature of the waste emerging from 'H' acid, its production has been banned in western countries but the need of the acid persists and therefore companies like silver chemicals tend to cater to that need.

As a result, the accumulation of harmful substances in the neighbouring environment polluted the soil, groundwater and even contaminated underground water. The contamination made the sources of water like wells unfit for consumption which affected the irrigation as well as the general usage of water in the region. The polluted soil also severely affected the irrigation which was the primary source of income for many in the region. Furthermore it led to the spreading of various diseases and disorders in the nearby region. The supreme court broadly framed two issues. First, whether the industries involved in the production took any measures to ensure environmental wellbeing and secondly, whether the defendant be legally responsible for paying the sum of money required to carry out corrective measures (polluters pay principle). The court ruled that the onus of repairing the damage is on the offending industry and thus they were directed to pay a sum of Rs. 37,385,000 with a compound interest of 12%p.a to compensate for the losses. Therefore the court upheld and implemented the polluters pay principle.

This case embodies an environmental problem India has faced constantly-the environment v/s development dilemma. As a developing country, the country has always tussled between managing industries for economic growth along with ensuring environmental wellbeing. The hazardous waste produced by these industries causes severe degradation of livelihoods. Furthermore, this case also demonstrates that with the rapid industrialisation of the global south, the environmental pressure on developing countries has increased drastically. The case also introduces the principle of polluters pay in India. The polluters pay principle is commonsensical in nature, the one who damages the environment remedies it. But this principle is susceptible to misuse as industries might treat it as "pay and pollute" and view this principle as merely another investment. Therefore this study attempts to give possible solutions for the environmental conundrum in India along with analysing the applicability of the polluters pay principle in India.

II. ENVIRONMENT VIS-A-VIS DEVELOPMENT

From the mid-late twentieth century, there was an increased awareness regarding the limited nature of resources which paved the way for the environment-development conundrum. On a global scale, emphasis has been laid on sustainable development measures, reversing global warming to pre-industrial levels etc. but as a developing nation with inherent social inequality,

India needs to mediate between cautious use of the environment and development to grow as well as better the plight of the marginalised.

In the present case, the court takes a pro-environment stance but the institutions of the state cannot be rigid on their stance as these institutions play a vital role in ensuring balance between environment and development. This dual role of state is enabled by the constitution as the right to environment² comes under article 21 and the directive principles of state policy account for right to the environment under article 48A. Furthermore, relying on various judgments of the Supreme Court, we can also interpret the right to development as a part of article 21³. Therefore the state plays a role in ensuring regulations pertaining to environmental usage along with circumstantial solutions for environmental disputes instead of having a rigid stance. This has also been reiterated by the supreme court in *M.C Mehta V/s Union of India* which states *“we cannot possibly adopt a policy of not having any chemical or other hazardous industry merely because they pose hazard or risk to the community. Industries, even if hazardous, have to be set up since they are essential for economic development and for advancement of well being of the people. We can only hope to reduce the element of hazard or risk to the community by taking all necessary measures for locating such industries in a manner which would pose least risk or danger to the community and maximizing safety requirements in such industries.”*⁴ In light of this statement, what are the possible solutions which can be incorporated to pacify the risks of industrial hazards?

Introduction of eco-industrial parks can be a possible solution. A 2021 World Bank report provides co-location and introduction of eco-industrial park (EIP) offering mechanisms for energy efficiency. Co-location is a process in which industries share a common location where waste products, energy, heat and water can be shared along with renewable energy and waste treatment costs. The introduction of EIP's might have some shortcomings like displacement and relocation of a large population but it organises hazardous industries therefore concentrating the environmental pressure. These EIP's however need strong framework and governance because they are prone to straining local resources.⁵

Furthermore, India can experiment with shifting from a linear economy to a circular economy.

² M.C Mehta v. Union of India, AIR 1987 SC 965

³ Riya Jain, Article 21: Understanding The Right to Life and Personal Liberty from Case laws', Academike explainer, 24 January (8 April 2025), <https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>

⁴ Supra note 2

⁵ Hira, A., Pacini, H., Pereira, A. S., Attafuah-Wadee, K., Rashid, A., Gara, F., & Munene, K., Shifting to Circular Manufacturing in the Global South: Challenges and Pathways. *Journal of Developing Societies*, 38(3), 310-335. (2022)

India is the most populous country in the world with finite resources, a linear economy results in rapid industrialisation at the behest of the environment because it creates more wastage due to its idea of using and disposing of resources. In contrast, the circular economy is based on the principle of circulation without wastage in the economy. It keeps the resources in use for longer periods of time thus reducing environmental impact. Through this India can keep the economy in flow while reducing the impact on the environment. Therefore, reducing waste through the incorporation of a circular economy along with concentration of industrial hazards to designated areas will reduce wastage along with reducing its impacts on the population.

Furthermore, emphasis should be on changing the persistent idea of development solely on the basis of economic development. Environmental protection is also a form of development as it improves the quality of life as well as resources and at the same time acts as an enabler of economic development. The same has been reiterated by the supreme court in the second Tehri Dam case as it states that right to development cannot be treated as mere right to economic development.⁶

The polluters pay principle can also be seen as a fragment of the environment-development conundrum as it believes in remedying the damage done during the course of production. But is the principle viable?

III. POLLUTERS PAY OR PAY AND POLLUTE?

First mentioned by the OECD in 1972, the polluters pay principle formally came into being through principle 16 of the Rio summit of 1992⁷. The doctrine gained precedence in India through the aforementioned case. Since then the court has upheld the principle in various landmark cases such as M.C Mehta v/s Union of India, vellore citizens case etc. making it a settled principle in Indian jurisprudence. This doctrine seems *prima facie* practical but is susceptible to misuse. Polluters' pay principle has some very implicit shortcomings. Firstly, The principle fails to conclusively define who is a polluter. Legally, a polluter is someone who directly or indirectly damages the environment or who creates conditions relating to such damage. This definition causes an ambiguity in determining the polluter as this definition has a wide connotation. Furthermore, determining environmental damage in monetary terms might fall short of doing justice to the victims. Lastly, the polluters pay principle might make the environment a commodity; if you can afford it, pay it. This study will focus on addressing these issues in the Indian context.

⁶ N.D Jayal and anr v. Union of India, [2003] Supp. (3) S.C.R. 152

⁷ Shrishti Sahu, 'polluters pay principle in India', IPleaders, (7 April 2025), <https://blog.ipleaders.in/the-concept-of-polluter-pays-and-its-potential-in-india/>

The supreme court in its judgement in *research foundation for science(18) V/s Union of India* provides us with a clarification of the shortcomings. The court states that the principle means “*the producer of goods or other items should be responsible for the cost of preventing or dealing with any pollution that the process causes*” therefore shrinking the ambit of the earlier definition. Furthermore the court states that the cost paid by the wrongdoer includes environmental cost, direct cost of people and their property, cost incurred in avoiding pollution. Therefore the cost would cover the entire range of damage done, not just the immediate tangible costs⁸. Furthermore in India, there exist a plethora of legislations and precedents pertaining to environment protection. For instance the environment protection act, 1986 prevents pollution, regulates industrial locations and establishes safeguards etc. Furthermore the apex court has established right to environment as a part of right to life and therefore protected under article 21⁹. Therefore in the Indian context, polluters cannot merely pay to pollute as the principle of polluters pay is a small fragment of environmental protection in India and violation to the environment attracts not only violation of ordinary legislation but fundamental rights as well. Therefore this principle can also act as a tool to strike balance between environment and development.

Furthermore, this principle works on the principle of compensating for the pollution caused and looks to monetise the use of natural resources. Deriving from this the government can also look to introduce measures such as carbon pricing or cap and trade system as possible solutions to the environment-development conundrum. The carbon pricing system assigns a monetary cost to carbon emissions whereas the cap and trade system puts a cap on emissions along with allowing companies to trade in their surplus allowance. For instance if a corporation has a cap of 100 units of emission but only emits 80, it can trade the extra 20 units. These measures might incentivise industries to resort to more efficient methods.

IV. UNDOING THE ENVIRONMENTAL BURDEN CAUSED BY INDUSTRIALISATION OF GLOBAL SOUTH

The increased awareness about the finite nature of resources led to the introduction of environmental regulations due to which industries relocated themselves in developing nations with less regulations with a need for economic development¹⁰. The present case is an illustration of the same. Currently India is the fifth biggest manufacturer in the world¹¹. Due to

⁸ 2005 INSC 11

⁹ Supra note 2

¹⁰ Karen Baker, ‘neoliberalization of nature’ in Routledge handbook of political ecology(Routledge 2015)

¹¹ Top 10 manufacturing countries in the world in 2024, safeguard global,(8 April

this, it faces a huge environmental burden. To break the shackles of this burden, India should look to transform into a knowledge economy and emerge as a technology based production industry with focus on providing education and R&D¹². Initiatives pertaining to this have been undertaken by the government by launching a few science, technology and innovation(STI) policies¹³. This would help undo the ill effects of the rapid industrialisation and also become a self-sufficient economy.

V. CONCLUSION

The case of Indian council for enviro-legal action V/s Union of India embodies a plethora of contestations pertaining to the environment-development conundrum which still find relevance after more than three decades. India as a developing country needs industries to flourish economically along with focusing on environmental protection as well. This can be achieved through better management of industrial waste along with circumstantial adjudication of environmental v/s developmental conflicts. For this the role of state becomes important as a policymaking as well as adjudicating body. Furthermore, treating environmental wellbeing as an offset of development would further benefit the cause.

2025)<https://www.safeguardglobal.com/resources/blog/top-10-manufacturing-countries-in-the-world/>

¹² Oussama Chaabane, 'The global south and the challenge of the "fourth industrial revolution"' (Trtworld, 2018)

¹³ Office of the principle scientific advisor to the government of India, 5th national science, technology and innovation policy, 2020