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Environmental Governance and the Role of Indian Supreme Court, with special focus on the period from 1988 to 1996: A Critical Analysis[i]

*Dr. Madhuri Parikh
Associate Professor, Institute of Law, Nirma University, Ahmedabad
*Corresponding Author: *Dr. Madhuri Parikh*

Abstract: *An analysis of the environmental judgments from 1988 to 1996 reveals that Indian Supreme Court has played remarkable and pivotal role in resolving environmental issues in India. For this the court has adopted various methods such as implementing the concept and principles of Sustainable Development, recognizing rights of healthy environment, directing polluters to follow the environmental laws and policies, reminding the State and various statutory authorities to perform their duties and duty under Article 48A of the Constitution. The present paper critically analyses the role of Supreme Court of India in environmental governance specifically during the above said period in India and the impact of the initiatives of Supreme Court in subsequent policy decisions in India.*

Key words: *Environmental Jurisprudence, Role of the Judiciary, Polluters pays principle, Precautionary principles*

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I. Introduction

Scope of Study

The researcher intends to confine the scope of the research to – analyzing the role of Supreme Court of India in environmental governance in India specifically during the period from 1988 to 1996 and the impact of the initiatives of Supreme Court in subsequent policy decisions in India.

Hypothesis

To do justice in the Environmental related cases the Court has discarded its traditional role of just interpreter of law and developed the law by application of various principles and innovative methods. Particularly the period from 1988 to 1996 has contributed in remarkable development of environmental law through various techniques.

Environmental Jurisprudence in India

India has not only enacted various specific laws to control the environmental pollution but has also incorporated significant provisions for the protection of the environment into its constitution.[ii] Within the last four decades in post-independence era, the development of environmental jurisprudence in India, following the Constitutional law changes, has been remarkable in the sense that it has led to the virtual creation of a fundamental right to a clean environment in Indian law. This forms part of the public law regime established by the Constitution and appears to be based not only on modern concepts of fundamental human rights but also on indigenous notions of social justice, constituting a unique human rights approach adopted through affirmative action.[iii]

This research analyzes the distinct nature of the outstanding contribution of Indian judiciary into development of environmental jurisprudence and its development within a broader constitutional and jurisprudential framework by adopting different procedural and substantive innovative methods particularly during the period from 1988 to 1996.

II Role of the Judiciary in the Development of Environmental Law in India

The emerging Indian environmental jurisprudence had relied on three interconnected elements. First, it manifests the new Indian Constitutional law rationale which now clearly accords importance to public concerns rather than to protecting private interests. Secondly, it reflects certain aspects of Indian legal culture through implicit and explicit reliance on autochthonous values based on ancient, pre-colonial indigenous notions and

concepts of law. Thirdly, it bears testimony to the uniquely activist role of the higher Indian Judiciary in promoting this new rationale. These three interconnected elements characterizes role of higher judiciary in the recent development of Indian environmental jurisprudence.[iv]

Judicial awakening and activism for protection of the environment in India began formally after the 1972 Stockholm Conference on Human Environment. The term judicial activism denotes a process where at one end there are the logically principled rules in the hands of court and at other end there are demands, desires for expectations of society pressing it to accommodate with the framework of law. This process of accommodation by court is called the civilization of law and in term is known as activism. Environmental provisions are introduced in the Constitution of India by its 42nd amendment in 1974 under Article 48 (A) and 51-A (g) as a "fundamental duty" for every state and citizen of India to protect and improve the natural environment. Several laws pertaining to the protection of the environment were enacted in India prior to it. There were a number of public laws existed which had environmental overtones. The Indian Penal Code, 1860 and the Code of Criminal Procedure, 1898[v] dealing with "public nuisance" assume special significance in this regard. The Environmental Protection Act, (EPA) of 1986 against industrial pollution and the Forest Conservation Act, 1980 to stop deforestation and habitat destruction are, among others, good pieces of legislation for the protection of the environment in India. Public Interest Litigation (PIL) to prevent environmental degradation increased in India and the judiciary has come to rescue the people on a number of occasions. There are several historic judicial decisions serving both man and environment in India.

It can be seen that the Supreme Court of India has moulded a far-reaching and innovative environmental jurisprudence which no other constitutional court anywhere in the world has ever given shape to. The High Courts have also contributed in developing this jurisprudence. In fact due to its proactive role in administering environmental law, the higher judiciary in the country has emerged as the exclusive dispenser of environmental justice. By doing so, they have succeeded to a great extent in altering the common man's perception of law courts as being mere fora for dispute adjudication thereby carving out a niche for itself as a unique human right friendly institution in justice dispensation.

The period from 1988 to 1996 is a remarkable period in the history of Environmental Law in India.

The Period from 1980 to 1987

The starting point was the Ratlam Judgment[vi]. The Court could not accept the plea of financial limitations of the municipal council for non-performing its role to maintain public health. The judgment in the Ratlam Case has showed the way that the provision under section 133 of Cr. P.C. can be used as potent weapon to compel the local bodies to maintain clean and healthy environment. It probably served to offset the insufficiency of the legal mechanism and enforcement not only in the local bodies' laws but also in other environmental legislations such as Water Act, Air Act or the Environment Act.[vii] In Rural Litigation and Entitlement, Dehradun v. State of Uttar Pradesh[viii], the plaintiff wrote the Supreme Court alleging that illegal limestone mining was damaging the ecosystems in the Dehradun region. In response, the Court directed its clerk to treat the letter as a writ petition under Article 32 of the Constitution. Although the Court's decision did not state that fundamental rights had been violated, exercise of Article 32 jurisdiction presupposed the infringement of a fundamental right. In The decisions in the M. C. Mehta cases are of great significance in the development of environmental law in India. In the Shriram Food and Fertilizer case[ix] the Court expressed concern for developing the law to control corporations employing hazardous technology and producing toxic or dangerous substances. The Court also raised the question as to the extent of liability of such corporations and remedies that can be devised for enforcing such liability with a view to securing payment of damages to the persons affected by such leakage of liquid or gas. The application for compensation for persons who had suffered harm on account of the escape of oleum gas raised significant questions in both the tort law as well as in constitutional law. The impact of the principles developed and techniques adopted in the above judgments can be seen in the subsequent decisions of the Court in environment related matters. The oleum leakage case Judgment provided the remedy of compensation in the case of violation of fundamental right. The judgment is based on the blending of Constitutional provisions and Tortious remedies. The Court has also developed a principle of absolute liability of the industries dealing with hazardous substances.

In Dehradun valley case the simple letter was treated as PIL and the Environmental concerns were shown. The Ratlam judgment clearly indicates the strict approach of the court in case of failure on the part of statutory bodies to perform their duties in protecting health of people and environment. During this period the traditional remedies of Torts and Criminal law especially public nuisance were interpreted with new dynamic approach for protecting the environment.

The Period from 1988 to 1996

This period is known for the further development of environmental law in India by implementing the principles of Sustainable development through judgments. Only selected and remarkable cases are enough to show the contribution of this period in the developing principles of environmental justice.

The ruling in Charan Lal Sahu v. Union of India[x] expanded upon this decision when Justice Kuldip Singh described the government's role in the protection of fundamental rights: "It is the obligation of the State to assume such responsibility and protect its citizens." The Court held that the government's obligation to protect fundamental rights forces it to protect the environment.

In River Ganga Pollution Case[xi] the Supreme Court declared that the nuisance caused to the river Ganga is a public nuisance. This was affecting the community at large. The Course took suo moto action and took the help of amicus curie to resolve the issue. Under the Indian Water Prevention and Control of Pollution Act of 1974, State Boards were charged with enforcing the terms of the act, including enforcing the treatment of effluent before discharging into the Ganga. Because the State Board has not taken any steps to prevent discharge of untreated effluent, citizens that were affected by the discharge could enforce their right to a healthy environment implied from Article 21 A and brig suit against the tanneries. Allowing citizens to enforce environmental laws that are not properly implemented by statutorily authorized agency is an essential part of the right to a healthful environment and could also be very useful to citizens. The court applied the principle of mutatis mutandis and ordered all the municipal councils and corporations situated on the banks of river Ganga to act to reduce river pollution.

In Vellore Citizens' Welfare Forum v. Union of India and Ors.,[xii] , The Supreme Court defined and laid down the precautionary principle along with the polluter pays principle.[xiii]

The Court observed that the Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. The Court in the said judgment, on the basis of the provisions of Articles 47, 48A and 51A(g) of the Constitution, observed that we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental laws of the country.

Again, this principle has been reiterated in the case of M.C. Mehta v. Union of India.[xiv] According to the petitioner M.C.Mehta, the Taj a Monument of international repute is on its way to degradation due to atmospheric pollution and emission of Sulphur dioxide by the foundries, chemical/hazardous industries and the refinery at Mathura, Naroa. The preventive steps are required urgently. The Court held that the industries situated near the Agra should change over natural gas as fuel. Those industries which are not in position to make this shift, they should stop functioning instead of using coal as fuel. Total 292 industries were asked to relocate.

In the said case, the Precautionary Principle has been applied and interpreted in the context of municipal law as under: (i) Environmental measures - by the State Government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation. (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environment degradation.(iii) The 'onus of proof' is on the actor or the developer/industrialist to show that his action is environmentally benign.[xv]

The implementation of this duty is that developers must assume from the fact of development activity that harm to the environment may occur, and that they should take the necessary action to prevent that harm; the onus of proof is thus placed on developers to show that their actions are environmentally benign." [xvi]

The directions which have been given in the impugned judgment are perhaps on the lines of directions given by the Court in *M.C. Mehta v. Union of India*.[xvii] The Court observed that the preventive measures have to be taken keeping in view the carrying capacity of the ecosystem operating in the environmental surroundings under consideration.

The Polluter Pays Principle has been held to be a sound principle by the Court in Indian Council for Enviro-Legal Action v. Union of India.[xviii] The Court observed[xix]: *...we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country.* The Court ruled that[xx]: *...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 upon the very nature of the activity carried on".*

Applying the Polluter Pays principle the Industries were held absolutely liable to compensate the villagers and the cost of environment restoration of that area.

III Conclusion

The period from 1988 to 1996 is remarkable for the novel technique used by the judiciary particularly by the Apex court in recognizing the right to environment as fundamental right. The PILs were entertained by the Court under Article 32, the procedural flexibility was adopted in matter of environmental issues. In such matters the court has awarded the remedy of compensation to the victims and for the recovery cost of environmental

restoration making the polluting industries absolutely liable. The Court had also taken care of that the verdict of the court should be implemented. So in many cases the Court had tried to see that the complete justice be done by showing the methods to do implement the verdict of the court. At many places the court has appointed expert committee to give inputs and monitoring implementation of judicial decisions, making spot visit to assess the environmental problem at the ground level [xxi]

Unlike other litigations, the frequency and different types of orders/directions passed periodically by the Supreme Court in environmental litigation and its continuous engagement with environmental issues has evolved a series of innovative methods in environmental jurisprudence.[xxii] A number of distinctive innovative methods are identifiable, each of which is novel and in some cases contrary to the traditional legalistic understanding of the judicial function.[xxiii]

The examination of the implications of Supreme Court's innovations for environmental jurisprudence during the period of 1988 to 1996 made long lasting impact on the subsequent cases. While the procedural innovations have widened the scope for environmental justice through recognition of citizens' right to healthy environment, entertaining petitions on behalf of affected people and inanimate objects and creative thinking of judges to arrive at a decision by making spot visit, substantive innovations have redefined the role of Court in the decision-making process through application of environmental principles and expanding the scope of environmental jurisprudence.

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[9]. M. C. Mehta v. Union of India ((1987) 1 SCC 395
[10]. (1990) 1 SCC 613
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