

A STUDY ON PRINCIPLE AND DOCTRINE BY SUPREME COURT FOR PROTECTION OF ENVIRONMENTAL LAW

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Abstract:

The black ebony staves of judiciary which has thumped time and again for protection of man miniature against excruciating blows of evil is known on the aspiration for protecting environment. Although numerous legislative steps have been taken to give effect to the significant right of man to live in a sound environment and the corresponding duty on state and individuals to ensure environment preservation and conservation, my endeavour, in this study, is to analyse the steps taken by judiciary to forward this goal. The main objective behind this research is to identify the present scenario and study the nature and extent of till date developments in various environmental statuses through various statutes, law and convention and various issues regarding the court decisions and judicial process. This paper commences with the meaning and need for environmental laws. It also analyses the judicial remedies available for environmental protection and some remarkable principles and doctrine propounded by the Indian judiciary. It further views upon the constitutional aspects and the new trends in judicial approach in environmental protection. The proposed study will lead to a more descriptive and comprehensive understanding of the environment law and the policy along with the role of Supreme in today's context to the new emerging threat which need to be combat effectively. Basically, the ancient Roman Empire developed this legal theory i.e.

Doctrine of the Public Trust. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.

Keywords: Environmental law, Absolute liability, polluter pays principle, precautionary principle, public trust doctrine.

INTRODUCTION

Environment is the wellspring of life on earth like water, air, soil, etc., and determines the presence, development and improvement of humanity and all its activities. The concept of ecological protection and preservation is not new. It has been intrinsic to many ancient civilizations.(Chandra Mehta et al. 2018) Ancient India texts highlights that it is the dharma of each individual in the society to protect nature and the term 'nature' includes land, water, trees and animals which are of great importance to us. . In the '*Atharva Veda*', the ancient Hindu Scepters stated "What of thee I dig out let that quickly grow over".³

At the same time, new innovations like, thermal power, atomic plant and so on without any sufficient natural assurance pose another danger to the situations, the aftereffect of which results in issues like global warming, climate change, acid rain, etc. Moreover, according to pattern of Indian legislature to make a number of legislations as opposed to addressing the reason for failure and disappointment, and passing new bills consistently is just like 'old wine in new bottle'.(Managi 2015) Therefore, there arises a requirement for a comprehensive analysis of the protection of the environment. In recent years, there has been a sustained focus on the role played by the higher judiciary in devising and monitoring the implementation of measures for pollution control, conservation of forests and wildlife protection. Many of these judicial interventions have been triggered by the persistent incoherence in policy-making as well as the lack of capacity-building amongst the executive

³ MC Mehta, GROWTH OF ENVIRONMENTAL JURISPRUDENCE IN INDIA, p.71, 1999.

agencies. Devices such as Public Interest Litigation (PIL) have been prominently relied upon to tackle environmental problems, and this approach has its supporters as well as critics.⁴

Aim of the Study:

To analyse the doctrine of absolute liability, precautionary principle and the supreme court ruling and guidelines to prevention and protection of environment.

Hypothesis:

Negative: The supreme court is trying to fill the gap and stretching the provision not preventing or protecting the people of India.

Positive: The supreme court laid down principle to prevent and protect the environment for the people.

Research Questions:

- Whether the supreme court laid down principles are protecting and preventing or stretching and filling gap of the environmental provision?

Materials and methods

- Materials mainly internet source and some book in online.
- Methods of study is doctrine which is theoretical study by which using the secondary source of data.

PRINCIPLES LAID DOWN BY SUPREME COURT

The word “environment” relates to surroundings. It includes virtually everything. It can be defined as anything which may be treated as covering the physical surroundings that are common to all of us, including air, space, land, water, plants and wildlife.⁵ According to the Webster Dictionary, it is defined as the “Aggregate of all the external condition and influences affecting the life and development of an organism.”⁶ (Kumar & Bhadauriya 2013)The Environment (Protection) Act, 1986 Section 2(a) environment “includes water, air

⁴ Former Chief Justice Mr. K.G. Balakrishnan, THE ROLE OF THE JUDICIARY IN ENVIRONMENTAL PROTECTION IN D. P SHRIVASTAVA MEMORIAL LECTUER, p. 1, March 20,2010.

⁵ Dr. Jai Jai Ram Upadhyay, ENVIRONMENTAL LAW, p.2, Allahabad: Central Law Agency, (2005)

⁶ R.M. Lodha, ENVIRONMENTAL RUIN: THE CRISES OF SURVIVAL, P.364 .New Delhi: Indus Publishing Company,(1993).

and land and the inter- relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.⁷ Thus, after analyzing all the above definitions, the basic idea that can be concluded is that environment means the surroundings in which we live and is essential for our life.

Need for environmental laws

Today we are living in nuclear arena. No one can overlook the harm caused to the environment by the nuclear bombs, dropped by airplanes belonging to the United States on the Japanese urban communities of Hiroshima and Nagasaki amid the last phases of World War II in 1945. Day to day innovation and advancement of technology, apart from development additionally expands the risk to human life. Accordingly, there arises an intense and an acute need of the law to keep pace with the need of the society along with individuals. So now the question of environmental protection is a matter of worldwide concern, it is not confined to any country or territory. (Anon 2007)

Judicial remedies for environment pollution

The remedies available in India for environmental protection comprise of tortious as well as statutory law remedies. The tortious remedies available are trespass, nuisance, strict liability and negligence. (Thakur 1997) The statutory remedies incorporates: Citizen's suit, e.g.,

- an activity brought under Section 19 of the Environmental (Protection) Act, 1986,
- an activity under area 133, Criminal Procedure Code, 1973. and
- and activity brought under the Section 268 for open irritation, under Indian Penal Code, 1860

Apart from this, a writ petition can be filed under Article 32 in the Supreme Court of India or under Article 226 in the High Court.

Tortious liability

The Indian judiciary has developed the following tortious remedies:

⁷ envfor.nic.in/legis/env/env1.html

Damage

In the recent case of *Shriram Gas Leak*, involving a leakage of Oleum gas which resulted in substantial environmental harm to the citizens of Delhi, the Apex court held that the quantum of damages awarded must be proportionate to the capacity and magnitude of the polluter to pay. [\(Hughes 1995\)](#) However, the Apex Court has deviated from this test in the *Bhopal Gas Tragedy*.⁸

Injunction

The purpose of injunction is to prevent continuous wrong. The grant of perpetual injunction is governed by Sec.37 to 42 of the Specific Relief Act, 1963.

Nuisance

Nuisance means the act which creates hindrance to the enjoyment of the person in form of smell, air, noise, etc.

According to Stephen, nuisance is anything done to hurt or annoyance of lands, tenements of another and not amounting to trespass.

Nuisance can be divided into two categories:

Private Nuisance – It is a substantial and unreasonable interference with the use and enjoyment of one's land.

Public Nuisance – It is an unreasonable interference with a general right of the public.

Trespass

It means intentional or negligent direct interference with personal or proprietary rights without lawful excuses.

The two important requirements for trespass are:

1) There must be an intentional or negligent interference with personal or proprietary rights.

⁸ ROLE OF THE SUPREME COURT IN THE PROTECTION OF THE ENVIRONMENT, available at urisonline.in/2010/.../role-of-supreme-court-in-environment-protection.

2) The interference with the personal or proprietary rights must be direct rather than consequential.

Negligence

It connotes failure to exercise the care that a reasonably prudent person would exercise in like circumstances.

Strict Liability

The rule enunciated in *Rylands v. Fletcher* by Blackburn J. is that the person who for his own purpose brings on his land and collects and keeps there anything likely to be a mischief, if it escapes, must keep it as its peril, and if he does not do so is prima facie even though, he will be answerable for all the damage which is the natural consequence of its escape. The doctrine of strict liability has considerable utility in environmental pollution cases especially cases dealing with the harm caused by the leakage of hazardous substances [\(Nolan 1989\)](#)⁹

Some remarkable principles and doctrines propounded by the Indian judiciary:

1. Doctrine of Absolute Liability

THE BHOPAL CASE: *Union Carbide Corporation v. Union Of India*¹⁰

In this case, the court held that, where an enterprise is occupied with an inherently dangerous or a hazardous activity and harm results to anybody by virtue of a mishap in the operation of such dangerous or naturally unsafe movement coming about, for instance, in getaway of poisonous gas, the enterprise is strictly and completely obligated to repay every one of the individuals who are influenced by the accident and such risk is not subject to any exemptions. Accordingly, Supreme Court created another trend of Absolute Liability without any exemption.

2. Polluter Pays Principles

“If anyone intentionally spoils the water of another ... let him not only pay damages, but purify the stream or cistern which contains the water...” – Plato

⁹ urisonline.in/2010/.../role-of-supreme-court-in-environment-protection.

¹⁰ AIR 1990 SC 273

Polluter Pays Principle has become a very popular concept lately. 'If you make a mess, it's your duty to clean it up' - this is the fundamental basis of this slogan. It should be mentioned that in environment law, the 'polluter pays principle' does not allude to "fault." Instead, it supports a remedial methodology which is concerned with repairing natural harm. It's a rule in international environmental law where the polluting party pays for the harm or damage done to the natural environment.

*Vellore Citizen's Welfare Forum v. Union of India*¹¹

The Supreme Court has declared that the polluter pays principle is an essential feature of the sustainable development.

3. Precautionary Principle

The Supreme Court of India, in Vellore Citizens Forum Case, developed the following three concepts for the precautionary principle:

Environmental measures must anticipate, prevent and attack the causes of environmental degradation

Lack of scientific certainty should not be used as a reason for postponing measures

Onus of proof is on the actor to show that his action is benign

4. Public Trust Doctrine

The Public Trust Doctrine primarily rests on the principle that certain resources like air, water, sea and the forests have such a great importance to people as a whole that it would be wholly unjustified to make them a subject of private ownership.

*M.C.Mehta v. Kamal Nath and Others*¹²

The public trust doctrine, as discussed by court in this judgment is a part of the law of the land.

¹¹ AIR 1996 SCC 212.

¹² 1997)1 SCC 388.

5. Doctrine of Sustainable Development

The World commission on Environment and Development (WCED) in its report prominently known as the 'Brundtland Report' named after the Chairman of the Commission Ms. GH Brundtland highlights the concept of sustainable development. As per Brundtland Report, Sustainable development signifies "development that meets the needs of the present without compromising the ability of the future generations to meet their own needs"¹³. There is a need for the courts to strike a balance between development and environment.

*Rural Litigation and Entitlement Kendra v. State of UP*¹⁴

The court for the first time dealt with the issue relating to the environment and development; and held that, it is always to be remembered that these are the permanent assets of mankind and or not intended to be exhausted in one generation..

*Vellore Citizen's Welfare Forum*¹⁵

In this case, the Supreme Court observed that sustainable development has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco-system.

THE CONSTITUTIONAL ASPECTS ON ENVIRONMENTAL LAW

The Indian Constitution is amongst the few in the world that contains specific provisions on environment protection. The chapters directive principles of state policy and the fundamental duties are explicitly enunciated the nation commitment to protect and improve the environment. It was the first time when responsibility of protection of the environment imposed upon the states through Constitution (Forty Second Amendment) Act, 1976. [\(Yadav 2011\)](#)

Article 48-A¹⁶the provision reads as follows: "The State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. "The

¹³ S .Shanthakumar, ENVIRONMENTAL LAW AN INTRODUCTION, pp. 122, 123, Chennai: Surya Publication,(2001).

¹⁴ AIR 1987 SC 1037

¹⁵ AIR 1996 5 SCC 647

¹⁶ THE CONSTITUTION OF INDIA, 1950.

Amendment also inserted Part VI-A (Fundamental duty) in the Constitution, which reads as follows:

Article 51-A (g)¹⁷ “It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes,, and wildlife and to have compassion for living creature.”

In *Sachidanand Pandey v. State of West Bengal*¹⁸

The Supreme Court observed “whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48-A and Article 51-A(g).

Environmental protection: the judicial approach

There are numbers of the following judgments which clearly highlight the active role of judiciary in environmental protection these are follows:

(a) The right to a wholesome environment

Charan Lal Sahu Case

The Supreme Court in this case said, the right to life guaranteed by Article 21 of the Constitution includes the right to a wholesome environment.¹⁹

Damodhar Rao v. S. O. Municipal Corporation Hyderabad

The Court resorted to the Constitutional mandates under Articles 48A and 51A(g) to support this reasoning and went to the extent of stating that environmental pollution would be a violation of the fundamental right to life and personal liberty as enshrined in **Article 21** of the Constitution²⁰

¹⁷ *Id.* 3

¹⁸ AIR 1987 SC 1109

¹⁹ HUMAN RIGHTS APPROACH TOWARDS POLLUTION FREE ENVIRONMENT, available at www.indiastat.com/Article/14/indira/fulltext.pdf – United States

²⁰ C. M. ABRAHAM and SUSHILA ABRAHAM, THE BHOPAL CASE AND THE DEVELOPMENT OF ENVIRONMENTAL LAW IN INDIA P. 362, Vol. 40 International and Comparative Law Quarterly April 1991, available at <http://heinonline.org>

(b) Public nuisance: the judicial response

*Ratlam Municipal Council v. Vardhichand*²¹

The judgment of the Supreme Court in instant case is a land mark in the history of judicial activism in upholding the social justice component of the rule of law by fixing liability on statutory authorities to discharge their legal obligation to the people in abating public nuisance and making the environmental pollution free even if there is a budgetary constraints., **J. Krishna Iyer** observed that, "social justice is due to and therefore the people must be able to trigger off the jurisdiction vested for their benefit to any public functioning." Thus he recognized PIL as a Constitutional obligation of the courts. ([Tromans 2001](#))

(c) Judicial relief encompasses compensation to victims

Delhi gas leak case: *M.C. Mehta v. Union of India*²²

In instant case, the Supreme Court laid down two important principles of law:

1) The power of the Supreme Court to grant remedial relief for a proved infringement of a fundamental right (in case if Article 21) includes the power to award compensation.

2) The judgment opened a new frontier in the Indian jurisprudence by introducing a new "no fault" liability standard (absolute liability) for industries engaged in hazardous activities which has brought about radical changes in the liability and compensation laws in India. The new standard makes hazardous industries absolutely liable from the harm resulting from its activities.

(d) Fundamental right to water

The fundamental right to water has evolved in India, not through legislative action but through judicial interpretation. In *Narmada Bachao Andolan v. Union of India and Ors.*, the Supreme Court of India upheld that "Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution

²¹ AIR 1980 SC 1622

²² AIR 1987 SC 965

of India([Goel 2015](#)) ... and the right to healthy environment and to sustainable development are fundamental human rights implicit in the right to life²³

SUGGESTIONS:

Public Awareness

In India, media is the fourth pillar of the popular government. It plays an exceptionally essential and compelling part in the general improvement of the country. The effect of media can be seen in the different trials directed by it just by publishing them in their media. Accordingly, the issue of environmental pollution can be checked by making mindfulness in the general population, in which media's part is extremely critical. The compelling agency of correspondence not just influences the mind of the individuals but is also capable of developing thoughts and desirable attitudes of the people for protecting environment.

Regular Inspection

There is a requirement for a standard review apparatus, which can inspect and examine periodically every one of those exercises which are threatening the environment. This would be a successful step towards environment protection, since prevention is better than cure.

Environmental Education

There is no means for any law, unless it's an effective and successful implementation, and for effective implementation, public awareness is a crucial condition. Therefore, it is essential that there ought to be proper awareness.[\(Abraham and Abraham 1991\)](#) This contention is additionally maintained by the Apex Court in the instance of *M.C. Mehta v. Union of India*. In this case, Court directed the Union Government was obliged to issue directions to all the State governments and the union territories to enforce through authorities as a condition for license on all cinema halls, to obligatory display free of expense no less than two slides/messages on environment amid each show. Moreover, Law Commission of India in its 186th report made a proposal for the constitution of the environment

²³ Vrinda Narain, WATER AS A FUNDAMENTAL RIGHT : A PERSPECTIVE FROM INDIA Vol. 34 available at www.vjel.org/docs/Narain_Water_Draft.pdf

court.²⁴ Hence, there is an urgent need to strengthen the hands of judiciary by making separate environmental courts, with a professional judge to manage the environment cases/criminal acts, so that the judiciary can perform its part more viably.²⁵

CONCLUSION

From the above discussions on the doctrine and various case laws, it is evident that the state is not the owner of the natural resources in the country but a trustee who holds fiduciary relationship with the people. By accepting this task the government is expected to be loyal to the interests of its citizens and to discharge its duty with the interest of the citizens at heart and involve them in decision-making process concerning the management of natural resources in the country. The Public Trust Doctrine may provide the means for increasing the effectiveness of environmental impact assessment laws. Thus, under this doctrine, the state has a duty as a trustee under art. 48A to protect and improve the environment and safeguard the forests and wildlife of the country. While applying art. 21 (right to life), the state is obliged to take account of art. 48A, a Directive Principle of State Policy. The state's trusteeship duties has been expanded to include a right to a healthy environment.

Thus, after the analysis of above cases, we find that, the Supreme Court is, at the present time, stretching the different legal provisions for environmental protection. In this way, the judiciary tries to fill in the gaps where there is laciness of the legislation. These new innovations and developments in India by the judicial activism open the numerous approaches to help the country. In India, the courts are extremely cognizant and cautious about the special nature of environmental rights, considering that the loss of natural resources can't be renewed.

BIBLIOGRAPHY

- MC Mehta, GROWTH OF ENVIRONMENTAL JURISPRUDENCE IN INDIA, p.71, 1999.

²⁴ One hundred eighty sixth report of Law Commission available at lawcommissionofindia.nic.in/reports/186th%20report.pdf

²⁵ M.V Ranga Rao, ROLE OF JUDICIARY IN ENVIRONMENTAL PROTECTION,p.9, vol.3, Supreme Court Journal, September- December, (2001).

- Former Chief Justice Mr. K.G. Balakrishnan, THE ROLE OF THE JUDICIARY IN ENVIRONMENTAL PROTECTION IN D. P SHRIVASTAVA MEMORIAL LECTURE, p. 1, March 20,2010.
- Dr. Jai Jai Ram Upadhyay, ENVIRONMENTAL LAW, p.2, Allahabad: Central Law Agency, (2005)
- R.M. Lodha, ENVIRONMENTAL RUIN: THE CRISES OF SURVIVAL, P.364 .New Delhi: Indus Publishing Company,(1993).
- envfor.nic.in/legis/env/env1.html
- ROLE OF THE SUPREME COURT IN THE PROTECTION OF THE ENVIRONMENT, available at urisonline.in/2010/.../role-of-supreme-court-in-environment-protection,25/05/2018.
- urisonline.in/2010/.../role-of-supreme-court-in-environment-protection,25/05/2018.
- AIR 1990 SC 273
- AIR 1996 SCC 212.
- *1997)1 SCC 388*.
- S .Shanthakumar, ENVIRONMENTAL LAW AN INTRODUCTION, pp. 122, 123, Chennai: Surya Publication,(2001).
- AIR 1987 SC 1037
- AIR 1996 5 SCC 647
- THE CONSTITUTION OF INDIA, 1950.
- *Id.* 3
- AIR 1987 SC 1109
- HUMAN RIGHTS APPROACH TOWARDS POLLUTION FREE ENVIRONMENT, available at www.indiastat.com/Article/14/indira/fulltext.pdf – United States
- C. M. ABRAHAM and SUSHILA ABRAHAM, THE BHOPAL CASE AND THE DEVELOPMENT OF ENVIRONMENTAL LAW IN INDIA P. 362, Vol. 40 International and Comparative Law Quarterly April 1991,available at <http://heinonline.org>
- AIR 1980 SC 1622
- AIR 1987 SC 965

- Vrinda Narain, WATER AS A FUNDAMENTAL RIGHT : A PERSPECTIVE FROM INDIA Vol. 34 available at www.vjel.org/docs/Narain_Water_Draft.pdf
- One hundred eighty sixth report of Law Commission available at lawcommissionofindia.nic.in/reports/186th%20report.pdf
- M.V Ranga Rao, ROLE OF JUDICIARY IN ENVIRONMENTAL PROTECTION, p.9, vol.3, Supreme Court Journal, September- December, (2001).
- Anon, 2007. *Taft, William Howard, (15 Sept. 1857–8 March 1930), Chief Justice, United States, 1921–30,*
- Chandra Mehta, D.M., Mehta, M.C. & Kaur, P.H., 2018. Growth of Mutual Fund Industry in India. *American Journal of Economics and Business Management*, 1(2), pp.43–52.
- Kumar, A. & Bhadauriya, A., 2013. Growth and Development of Industrial Jurisprudence in India. *SSRN Electronic Journal*. Available at: <http://dx.doi.org/10.2139/ssrn.2243724>.
- Managi, S., 2015. *The Routledge Handbook of Environmental Economics in Asia*, Routledge.
- Thakur, K., 1997. *Environmental Protection Law and Policy in India*, Deep and Deep Publications.
- Dr.Lakshmi T and Rajeshkumar S “In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes”, *International Research Journal of Multidisciplinary Science & Technology*, Volume No. 3 , Issue No. 3, P.No 20-25, March 2018.
- Trishala A , Lakshmi T and Rajeshkumar S, “ Physicochemical profile of Acacia catechu bark extract –An In vitro study”, *International Research Journal of Multidisciplinary Science & Technology*, Volume No. 3 , Issue No. 4, P.No 26-30, April 2018.

