

ROLE OF JUDICIARY AND REGULATORY AUTHORITIES IN ENVIRONMENT PROTECTION, AND THE DOCTRINES AND PRIORITY OF ENVIRONMENT

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Introduction –

The Constitution of India is amongst the few in the world that recognizes specific provisions for the protection of the ecology and environment. There is a growing awareness that immediate and necessary measures should be taken to protect the environment. To enable broad steps are taken for the purpose, wildlife and forest are now part of the concurrent list so that the besides the state, the central government can also have an explicit role in the concerned area. The natural resources of energy cannot be utilized if it results in the irreversible damage to the ecology. The court has said numerous times that the right to live is a fundamental right under Article-21 of the Constitution of India and it includes the right to have a pollution free environment.¹ Further, by the Forty Second Amendment, Article 48A has been inserted in the Constitution in Part IV; under Article 48A of the Constitution of India it has been written that “the state shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country”. Also, Article 51A says that it shall be the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers, and wildlife to have compassion for creatures. Article 47 which provides that it shall be the duty of the state to raise the level of nutrition and the standard of living and to improve public health is also relevant in this connection. The most essential aspects are covered under Article 21 of the Constitution and cannot be allowed to be misused or to be polluted so as to deteriorate the quality of life of others. Again the natural resources of energy cannot be utilized if it results in the irreversible damage to the ecology. The court has said numerous times that the right to live

¹ Subhas Kumar Vs State of Bihar, (1991) 1 S.C.C. 598.

is a fundamental right under Article-21 of the Constitution of India and it includes the right to have a pollution free environment.

Role of Judiciary

The judiciary has played its role by drawing out decisions as a mandate in the last few decades. The Supreme Court has clarified that whenever there is an issue related to ecological misbalance, the court bound to keep in mind Article 48-A and 51A(g) and cannot rest the matter entirely in the hands of the government. "The least that the Court can do is to testify whether required consideration is borne in mind and all irrelevant excluded. In appropriate matters, the Court may go further."² In *MC Mehta Vs UOI* the Court said; "Article 39(e), 47, and 48A of the Constitution of India by themselves and collectively cast a duty upon the state to secure the health of people at large and improve the environment."³ There is existing legislation but the administration did not give a much concern to the environmental pollution and accordingly the Court has to intervene in this area as a matter of fact.⁴

To safeguard environment the court may take affirmative action by mandating the State to take action for the matter. Reading Article 21, 47, 48A, and 51A (g) together, the Supreme Court has taken an active interest in the protection of the environment. Various regarding environment and ecology has also been brought before the Court by the way of PIL.

In the case of *MC Mehta Vs UOI*,⁵ the court held that life, public health, and the environment holds priority over revenue and employment. Sustainable Development definition as per Brundtland "Sustainable development is a development that meets the needs of the present without compromising the ability of future generations to meet their own needs" which he gave almost three decades back still holds good. It covers the development only meant for the needs of the present without compromising the ability of the future generation's needs. In *Narmada Bachao Andolan Vs UOI*⁶ the court observed that sustainable development does means that it can have a place and can be stored by nature with or without migration. In these entire cases, one must take a calculated risk or here harm to the environment taking cognizance of public interest being a reasonable person. "The Court seeks to make equilibrium between preservation

² *Shri Sachidanand Pandey vs State of West Bengal*, (1987) 2 S.C.C. 295.

³ *MC Mehta vs UOI, JT* (2002) 3 SC 527.

⁴ *MC Mehta Vs UOI*, 2002 (4) S.C.C. 356.

⁵ *MC Mehta Vs UOI*, (1987) 4 S.C.C. 463.

⁶ *A.P. Pollution Control Board Vs Prof. M.V. Nayudu*, (1999) 2 S.C.C. 718.

and protection of environment along with sustainable development. The Courts have to adjust and reconcile between the imperatives of the environment and the development of economy within the country.⁷ It has to approach in a liberal way towards ensuring social justice and protection of human rights.

Role of Authorities

It is individual's right to move to High Court under Article 226 of the Constitution if in particular there is a violation of Article 21. The court mentioned that protection of the environment is not a concern of educated and the affluent solely but it has socio-political dimensions. The effective implementation of environmental regulations could change the basic nature of administration in the country. For that shake, mining operation is hazardous in nature and against a person's right to natural resources. For those who are indulged in mining in areas close to a township are likely to degrade environment and impair the quality of life of inhabitants, there remains a greater responsibility on the part of the entrepreneur. There is a necessity to disclose the potential burden upon the ecology with a possible increase in the quantum of pollution; all those including authority may decide whether the permission can be granted for carrying such an activity. The regulatory The Government of India has introduced a system of obtaining permission for certain groups in the industrial sector and development projects. As per the Environment Protection Act of India, 1986, persons are required to seek environmental clearance for a proposed expansion if it exceeds the resultant pollution level. The pollution may be of any form, it covers liquid effluences, emissions, and solid and semi-solid waste. The project manager will have to approach the STATE POLLUTION CONTROL BOARD for certifying whether the upcoming project likely to exceed the existing pollution level. The project promoter will be required to submit an executive summary, in brief, stating the necessity of project and the environmental lags coupled with it.

The regulatory authority has to act at the fullest in ensuring the safety of norms and standards to be observed by such entrepreneurs. If asked they must be ready to show that said authorities acted as per power conferred to him. Whenever the authority acts negligently by not taking suitable action to prevent the damage to the environment, natural resources, and health of the people the principle of accountability of restoration and compensation has to be given.⁸

⁷ National Lovers Movement Vs State of Kerala, A.I.R. (2000) Ker. 131.

⁸ Samaradatiya Pal, India's Constitution Origins and Evolution 865-69 (2d ed. 2015)

The Doctrines

Three principles, viz “Precautionary Principle”, the “Polluter Pays Principle”, and the doctrine of “public trust” have been developed by the Supreme Court.⁹

In *MC Mehta Vs Kamal Nath*,¹⁰ the Supreme Court used this doctrine for the first time to an environmental problem. The respondent’s family had a direct connection with Span Motel. The family had another venture, Span Club, encroaching upon a land, including forest area. Span Resort management used earthmovers and bulldozers to control the course of the nearby river. Once the river was diverted, the Span management planned to occupy some part of the land also. The court went into history and said that the public trust doctrine primarily rests on the principle that all natural resources have such great importance to the people at large that it would be unjustified to make them a subject of private ownership. The said resources being a gift of nature should be made easily available to everyone. The doctrine shares the burden with the Government to protect the natural resources for ease of the general public rather than to allow the usage for private commercial purposes.¹¹ The court went on and quoted Professor Sax and said that three restrictions government are often thought to be imposed by the public trust. First, the public must be used for public purpose only, secondly the property must not be sold, even a fair price, and at last, the property must be maintained for specific uses.

The 'polluter pays' principle is the commonly accepted practice that those who cause pollution should manage the costs to prevent damage to human health and the environment. Basically, the ancient Roman Empire developed this legal theory i.e. Doctrine of the Public Trust. The countries under development had to face the serious problem of providing compensation to the victims of pollution or environmental hazards. In the case of *MC Mehta Vs UOI*,¹² a petition was filed under Article 32 of Indian Constitution to close down a factory engaged in hazardous manufacturing. The Oleum Gas leaking out of plant caused grave injuries to several people, even one of the person died as a consequence. Applications were filed for compensation. The court formulated general principle of liability for industries indulged in hazardous operation. The court was of the view that an entity engaged in a hazardous operation which poses an apparent threat to the natives and its own workers owes an absolute and non-delegable duty to ensure

⁹ *MC Mehta Vs Kamal Nath*, (1997) 1 S.C.C. 388; *Intellectuals Forum Vs State of AP*, (2006) 3 S.C.C. 549.

¹⁰ *M C Mehta Vs Kamal Nath*, (1997) 1 S.C.C. 388.

¹¹ Jaffe, Book review, 84 Harv L Rev, p 1562.

¹² *M C Mehta Vs UOI*, (1987) SC 1086.

that no harm or damage would result to anyone. The entity must work with the highest standard of safety and even though it causes any miscarriage the enterprise must be liable absolutely. In the same case, the Court held that the compensation provided must be in correspondence with the magnitude of the enterprise.

The prevention or precautionary principle is the basic framework behind laws regulating the generation, transportation, treatment, and disposal of hazardous waste. The principle was the foundation of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989), which sought to minimize the production of hazardous waste and to combat illegal dumping. In *Vellore Citizens Welfare Forum Vs UOI*,¹³ the Supreme Court applied this principle in a wider sense. The case was related to the pollution caused by the tanneries and other industries by the discharge of waste in the state of Tamil Nadu. The petitioner highlighted the reports of Tamil Nadu Agricultural University. The main allegation was that untreated effluent contaminates the groundwater resulting in scarcity of usable water, therefore causing immense harm to the agriculture. The court observed that the precautionary principle and polluter pays principle has been accepted as the law of the land. It mentioned Article 21, 47 48A, and 51A of the Constitution of India, along with Water Act, Air Act, and EPA. The court held that *for sure environment contains useful provisions for environmental protection. The sole purpose of the EPA was to create an authority that can have adequate powers to control pollution and protect the environment. It is high time that the Central Government realizes its responsibility to safeguard the environment. It was directed that there a need to construct Green Bench to deal with cases related to the environment.*

Open Space or Infrastructure

Industrialization or development is an attractive slogan for a developing country. Now the big Q is what can the natural resources be destroyed in the wake of industrialization? It may be a wide problem for the planners indulged in it. In *V Lakshmi pathy Vs State* the petitioners challenged the operation of industries in a residential area as a violation of Karnataka Town and Country Planning Act along with Article 21 of the constitution. The court held that the mandate of our Constitution is to guarantee the welfare of society and give effect to the Directive Principles of State Policy. If the constitution is properly discharged by the administration, then the court cannot turn Nelson's eye. Environment and its protection is a

¹³ *Vellore Citizens Welfare forum Vs UOI*, A.I.R. (1996) SC 2715.

concern of both the judiciary and the administration. It is a constitutional priority and if neglected it is an invitation to disaster.

There is saying in the OECD that is necessary to make an impact study of a said development project. The slogan seems to be supported by the decisions of the Court when it requires creating a balance between the environmental values of open space and an attempt to construct a hospital. Interestingly both the infrastructures are to solve the crisis of health. In the case of Bangalore Medical Trust Vs BS Muddappa¹⁴, the residential project had prior permissions of the State Authority. It proposed an open area for the purpose of a park. Shortly, the open area was used for the construction of a hospital on approval of State. In the court, there was a certain question raised so as to whether an open space meant for park or for a play area in a formally approved project be allotted to a private person for the purpose of the hospital? Do the residents of the locality have a say to prevent such a conversion of land? Are they aggrieved by such conversion before the eyes of the law? “It was held that protection of the environment, open spaces and playgrounds are of great importance for the public. The interest of the public of reservation and prevention cannot be sacrificed by allowing private parties for the conversion of land for some other purposes. Any such act is against the legislative intent and is inconsistent with the requirement of statutory. Further, it would be in conflict with the constitution to ensure that the action of the state is inspired by the basic values of freedom and dignity of an individual and seeks to attain a quality of life which makes the rights reality for all the citizens.” The judges held that *the scheme was not validly altered by the Bangalore Development Authority (BDA). The State Government has no power to direct the BDA to change the very objective of law; it was against the legislative purpose to ensure the health, safety, and welfare of people.* Justice Sahai gave a separate judgment in the same case-

He said “*Public Park as a place reserved for the beauty was developed in 18th and 19th century and it is coupled with the notion of equality and recognition to general people. Free and healthy natural air the splendid surroundings is a privilege of a few only. Healthy air has gained importance with the passage of time with an emphasis on environment and pollution. In modern architecture, it occupies an important place as part of social ecology. On the other hand, a private nursing home is essentially a commercial venture and is profit oriented. Service may be its motto but at the end, it will ask for the return profits. A private nursing home cannot*

¹⁴ Bangalore Medical trust Vs BS Muddappa, A.I.R. (1991) SC 1902.

replace a public park. There would be no town planner who would prepare a blueprint without reserving space in it.”

It was held that the government’s move to convert Public Park into a private construction place for a nursing home and the resolution of BDA in connotation to it were null and void without any jurisdiction.

Conclusion

Development, and environment have never been contrary to each other, but only if development is done with minimum harm to the environment. It is possible to continue development with sustainability. Development is necessary and one cannot afford to lose a lap in the field of agriculture, transportation or infrastructure along with the need to improve employment opportunities. A balance needs to be maintained. Rio convention of 1992 explicitly states that the applicability of the precautionary principle shall not be termed as a cost-effective method to protect the environment. If any hazardous is allowed to continue it may cause irreversible damage to the entire humanity, therefore there remains no space for doubts whether to prioritize the environment over any other thing or not. There is existing legislation with specific objective and guidelines to be followed and only by that real meaning of environment protection would come into the picture. The harm can be prevented even before on reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment.

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