International Journal for Multidisciplinary Research (IJFMR)
E-ISSN: 2582-2160 ● Website: www.ijfmr.com ● Email: editor@ijfmr.com

The Evolving Jurisprudence of Environmental Protection in India: A Critical Analysis of the Judiciary's Role

Sandip Samanta

Ph.D. Research Scholar, Department of International Relations, Jadavpur University, Kolkata-700032, West Bengal.

Abstract:
The Indian judiciary has played a significant role in the environmental protection, utilizing its powers to interpret and enforce environmental legislations, upholding constitutional provisions, and address Public Interest Litigations. The environmental judgment of the court, in many cases, have significant impacts on the overall environmental protection and improvement process in India. Judicial activism, particularly in present times, has given new direction in the protection and improvement of the environment. The landmark judgments and orders of the Supreme Court and High Courts have triggered a wave of environment awareness and consciousness in our country. The Indian judiciary has developed certain environmental principles while dealing with the cases of environment protection. The aim of this paper is to analyse how the Supreme Court and High Courts make decisions about the environment. For this purpose, most of the important decisions made by our Supreme Court on important environmental issues have been collected and analysed. Analysing the case law is primarily focused on the influence or role played by the court on environmental issues.

Keywords: Indian Judiciary, Public Interest Litigation (PIL), Sustainable Development, Suo motu, Supreme Court.

Introduction:

Judiciary is one of the balancing pillars of democracy. The role played by the judiciary in the protection of environment is no less than that of the legislature and executive. In recent years the Indian judiciary has occupied an important position in the nation's politics (Khosla, 2009: 55-56). The courts have made their mark on all the important issues, whether its politics, waste management, clean air, education policy or administrative matters.

Since the last two decades, the Indian Courts have been actively engaged, in many respects, in the protection of environment. While conventionally the executive and the legislature play the major role in the environmental governance process, the Indian experience, particularly in the context of environmental issues, is that the Court has begun to play a significant role in environmental protection. Although it is not unusual for Courts in the Western democracies to play an active role in the protection of environment, the way Indian Supreme Court has been engaged since 1980s in interpreting and introducing new changes in the environmental jurisprudence is unique. Besides the assigned role of interpretation and adjudication[1] of environmental law the Court has laid down new principles to protect the environment, reinterpreted

environmental laws, created new institutions and structures, and conferred additional powers on the existing ones through a series of illuminating directions and judgments. The Court's directions on environmental issues are involved not just in general questions of law as is usually expected from the Court of the land but also in the technical details of many environmental cases. Indeed, some critics of Supreme Court describe the Court as the 'Lords of Green Bench' or 'Garbage Supervisor' (Prakash and Sarma, 1998: 56-60).

The increasing intervention of Court in environmental protection, however, is being seen as a part of the pro-active role of the Supreme Court in the form of continual creation of successive strategies to uphold the rule of law, enforce fundamental rights of the citizens and constitutional propriety aimed at the protection and improvement of environment. Environmental issues in India have evolved a series of innovative methods in environmental jurisprudence (Ramesh, 2002: 20).These innovative methods, for instance, include entertaining petitions on behalf of the affected party and inanimate objects, taking *Suo motu*[2] action against the polluter, expanding the sphere of litigation, expanding the meaning of existing Constitutional provisions, applying international environmental principles to domestic environmental problems, appointing expert committee to give inputs and monitoring implementation of judicial decisions, making spot visit to assess the environmental problem at the ground level, appointing amicus curiae to speak on behalf of the environment. It is important to note that these judicial innovations have become part of the larger Indian jurisprudence ever since the Court has started intervening in the affairs of executive in the post-emergency period (Das, 2001).

Instruments of judiciary for environment protection:

The judiciary of India has been performing its role in the protection of environment through the following instruments; (Bava, 2004: 77-91)

1. Tort law and common law;
2. Innovative interpretation of Article 21 and protection of the environment.
3. Relaxation of the rule of *locus standi* and public interest litigation;
4. Environmental principles propounded by the Indian judiciary.

1. Tort law and common law and environmental protection:

The term, 'tort' is the French equivalent of the English word 'civil wrong' which identifies the obligations between the parties even if there are no such contractual relations between them. It is the body of traditional law of England which is based upon judicial decisions, embodied in the reports of decided cases, in contrast with legislative enactments. In torts, a person is liable for breaking his own duty towards other people, and the damages are not paid until the person is found guilty. During British rule, Indian courts still follow the English law of Tort. In context of environmental cases, the four categories of Common Law are relevant - nuisance, trespass, negligence, and strict liability (Mathur, 1996: 154). To these traditional categories, the Supreme Court has added a new class based on the principle of 'absolute' liability in the post-Bhopal period and was later adopted by the legislature (Rosencranz and Divan, 2001: 88).

The Supreme Court has played an important role in tort law when it comes to environmental issues. It explains the old rules of tort in a way that makes the environmental issues more interesting. Though there is not a punishment for tort cases, that does not mean that tort does not play an important role in the environment. Several decisions show that tort law is becoming more and more important as a tool for social change when it comes to environmental hazards. It also shows that the judiciary is now giving the justice

without the influence of English law. The case of *M.C. Mehta v. Union* of India (AIR 1987 S.C.1086), is a great example of how the courts can play a big role in the law of tort.

2. Innovative interpretation of Article 21 and protection of the environment:

Article 21 guarantees "right to life" and says that no person shall be deprived of his life and personal liberty, except according to procedure established by law. The right to life under Article 21 of the Indian Constitution has been interpreted in such a way by the judiciary in India that now it includes the right to healthy environment. This right to life has been given wide interpretation by the Supreme Court in context of environment. If anyone has violated healthy and clean environment, he is deprived of his right to life under the Indian Constitution. Thus, the judiciary has expanded the boundary of Article 21 by including socio-economic aspects of rights of the citizens of India. It has been one of the landmarks in judicial interpretations by the Indian judiciary. Mostly, the cases taken up by the Public Interest Litigation are based on Article 21 of the Constitution.

One of the early cases regarding the protection of rights in the context of environment was the Municipal Corporation of Hyderabad and Others (AIR 1987 AP 171). The residents of Hyderabad filed a petition against the Municipal Corporation of Hyderabad and the Bhagyanagar Urban Development Authority, Hyderabad to develop an area as recreational park according to the development plan and should not allow it to be used by the Life Insurance Corporation or Income-tax Department as a residential area. Therefore, in the judgement it was stated that "…it would be reasonable to hold that the enjoyment of life and its attainment and fulfilment guaranteed by Art. 21 of the Constitution embraces the protection and preservation of nature's gifts without which life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violative of Art. 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoilation should also be regarded as amounting to violation of Art. 21 of the Constitution."

In the Dehradun Lime Stone Quarrying case, the Court has made it clear that economic growth cannot be achieved at the cost of environmental destruction and peoples' right to healthy environment. This exercise has been further emphasised in the Ganga water pollution case (AIR 1988 SC 1045) by Justice Venkataramiah, who has extended the right to life to include the right to defend the human environment for the present and future generation.

3. Relaxation of the rule of locus standi and public interest litigation:

Public Interest Litigation, since 1980s, has played a very important role in protection and improvement of the environment in India. As the executive has repeatedly failed to secure environmental safety and protection, people seek redressal from the judiciary. So, the judiciary has strenuously endeavoured over the past four decades to bring in laws for service of the poor and disadvantaged sections of society. The courts have progressively provided legitimacy to the legal mechanism called Public Interest Litigation (PIL)[3]. Through the mechanism of PIL, the supreme court has played a significant role in environmental protection.

The concept of judicial activism was flourished only after expansion in the rule of locus standi. It means that the court will not hear the party unless the person has a sufficient interest in the matter. But the Supreme Court lowered the standing barriers by widening the concept of the person aggrieved. Now any person can file a legal petition even though he or she has no interest in the matter but it must be related to public interest. Anyone who finds anything going on against the law or human right anywhere in the

country can knock the door of the court under Article 32 of the Constitution or in the high courts under Article 226 of the Constitution. After relaxing the locus standi, the Supreme Court and the High Court were starting treating the letters as a writ petition. Since the 1980s, Public Interest Litigation (PIL) has had a significant impact on the legal environment and the role of the higher judiciary in India. From 1980–2000, 104 environmental cases were filed in the Supreme Court. Out of 104 environmental cases, were filed by individuals who were not directly the affected parties and 28 were filed by NGOs on behalf of the affected parties (Sahu, 2008: 1-23).

One of the popular names in public interest litigation pertaining to environment protection is of lawyer M. C. Mehta. He has brought several environment issues to the Courts of India. His landmark cases include Taj Mahal Case (1996), Ganga Pollution Case (1988), Vehicular Pollution Case (1991), Environmental Awareness and Education Case (1991), Delhi Ridge Case (2004), Dust pollution case (1992), Kamal Nath Case (1996), Gamma Chamber Case (1987), Ground Water Pollution Case (1996) (http://mcmef.org/index.html).

Environmental principles propounded by the Indian judiciary:

The Indian judiciary has developed certain environmental principles while dealing with the cases of environment protection. These principles being derived from international agreements and conferences, have now become the base of the judgement of environmental cases. The important principles are precautionary principle, the Polluter Pays Principle, Sustainable Development, Inter-generational Equity, Principle of Absolute Liability. Our Apex Court had been the catalyst for accepting and adapting these principles into our environmental legal framework.

a) Precautionary Principle:

Precautionary principle aims at taking preventive measures to prevent environmental damages. The principle contemplates that an activity which poses danger and threat to environment is to be prevented. 'Precaution is better than cure' is the underlying philosophy of Precautionary Principle. "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation" (Principle 15 of the Rio conference). In M C Mehta v Union of India63, Hon'ble Justice Y. K. Sabharwal ((2004 12 SCC 118) observed that "protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment."

b) The "Polluter Pays" Principle:

The Polluter Pays Principle (PPP) is connected to the Rio Declaration, 1992 (Principle 16), which is adopted by the Supreme Court in several cases in India. PPP can be simply defined as "whoever, is responsible for causing pollution should meet the cost of mitigating the damage caused" (Dobia, 2010: 605). The Polluter Pay's Principle is commonly interpreted as; the Polluter must pay for the cost of Pollution abatement, cost of environment recovery, cost of incident management and compensation costs for the victims of the damages, if any, due to Pollution. In Indian Council for Enviro-Legal Action v Union of India (AIR 1996 SC 1446) Hon'ble Justice B. P. Jeevan Reddy quoted that "The polluter pays principal demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the

principle it is not the role of government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer."

c) Sustainable Development:

The concept of 'Sustainable Development' was developed by the Brundtland Commission in 1987. The Brundtland Report (1987) defines 'Sustainable Development' as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". The doctrine of sustainable development is considered the backbone of modern environmental jurisprudence. It aims at a fine balancing of the needs of development and protection of environment to achieve social justice not only for the present generation but also for the future generations. In Narmada Bachao Andolan v Union of India (AIR 2000 SC 3751), the Hon'ble Justice B.N.Kirpal observed that "Sustainable development means what type or extent of development can take place which can be sustained by nature/ecology with or without mitigation".

d) Inter-generational Equity:

The concept of 'inter-generational equity' was developed at the Stockholm Declaration in 1972. The 'Inter-generational Equity' principle in environmental law provides that the natural resources on this earth are belongs to every generation whether it is past, present, or future. It is duty of the current generation not to exploit the natural resources in such a way that it may harm environment for future generation (Kumar, 2001: 122-123). Therefore, the Courts must establish a balance between development and environmental protection.

e) Principle of Absolute Liability:

The environmental principles reached its zenith while formulating the principle of absolute liability to protect the victims of environmental accidents and consequences. The concept of absolute liability was developed in M C Mehta v Union of India (AIR 1987 SC 1086). In this celebrated case Hon'ble Justice Bhagwati held that "We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken."

Analysis of innovations effected by the court:

The expansion of judicial activism through environmental cases, in particular, is widely debated and discussed in India. On the one hand, critics of the theory of separation of power view this kind of judicial activism as a sign of hope to correct shortcomings on environmental issue. They argue that the approach of the Court in intervening in the affairs of executive is to ask whether the implementation or non-implementation of the policy results in a violation of the fundamental rights or not. If the Court finds a violation of the Constitutional provisions, then it can direct authorities to discharge their duties.

The Court's directions to the implementing agencies to implement the environmental laws or when it asks the polluter to pay the compensation for the damage it has done to the environment and to the people have been welcomed. This process of judicial interpretation of existing law and policy to ensure better quality of life and an attempt to check governmental lawlessness are said to have 'transformed the Supreme Court of India into a Supreme Court for Indians' (Baxi, 2000: 49).

Its continuous intervention in the affairs of executive, questioning the validity of government policy and

resuming administrative powers to protect the environment aggressively has invited steadfast resistance from administrative branches. For example, in the Delhi Vehicular pollution case, the Court directions to convert all commercial vehicles into Compressed Natural Gas (CNG) has witnessed protest not only from the private companies but also from the Government of India and the Delhi state government. Steadfast resistance from the agencies responsible for enforcing the Court order has raised serious questions about the wisdom of this decision (Mathur, 2001: 01-03). By disregarding the pleas of the Delhi government and insisting upon the implementation of its orders, the Court seems to be usurping the authority of the existing pollution control structures to execute their duties independently (http://www.cleanairnet.org/caiasia/1412/articles-69423_delhi_case.pdf). This raises both institutional and Constitutional questions, as the Court wrestles to determine which branch of government is best suited to handle pollution control matters.

These efforts of the Court are, without doubt, unprecedented. The measures appear to be an invasion over the administrative terrain. The Court, however, has denied any such usurpation. In its pronouncements, the Court has justified its action provision either under a statutory or as an aspect of their inherent powers. It is undeniable that the devices employed by the Court helped it to get detailed facts, understand complexities of social, economic, and scientific issues revolving around environmental problems and accordingly arrive at a decision. But environmental governance process has become more complex through such judicial intervention and innovations.

The impact of environmental judgments at the implementation level:

The above-mentioned judgments make it clear that judicial initiatives are a significant contribution in the field of environmental laws not only protect and improve the environment but also in creating awareness for the urgent need of sustainable development in the society and urging the state and its citizens to protect and preserve the environment. Judiciary has made a tremendous impact on environmental government through a combination of innovative methods and intervention in affairs of other organs of government. Judicial intervention has contributed to the expansion of environmental jurisprudence in several ways. First, it has made it clear that it is not necessary to check the bona fides of the petitioner in order to initiate the judicial process with respect to environmental issues that impact the large public interest, and more importantly the rights of the poor and the disadvantaged. Second, the judiciary has declared that the right to a healthy environment and the right to health are an integral part of the right to life under Article 21 of the Constitution of India. Third, it has compelled the state and other implementing agencies to discharge their constitutional duties for ensuring the rights of the citizens and also for protecting and improving the environment. Fourth, it has expanded the functional scope of environmental jurisprudence of India by applying laws and policies already initiated at the international levels to domestic environmental problems. Fifth, it has already succeeded in terms of enhancing the levels of awareness concerning India's environmental issues among the people through its aggressive response to environmental conflicts (Sahu, 2014: 155). The most significant implication of judicial intervention is that it has attempted to arrest the dysfunctional trend of other organs and enabled the effective enforcement of environmental laws in the country.

The increasing judicial intervention also reflects the growing inability and insensitivity of the executive to the problems of the weak and voiceless people. It also reflects the frailty of the political system to resolve conflicts in society. More and more groups that do not have organized strength to influence political decisions are taking recourse to judicial processes to get their grievances redressed. The perception that

political decision-making works on partisan interests, and that the judicial process is neutral and transparent has grown over the years. Courts have begun filling policy gaps and stepping in where powerful groups in society cannot be continued through political methods. However, this has in some ways devalued political institutions because people welcome the intervention of courts even in areas that strictly fall in the domain of the executive. In the environmental field, the government probably finds it convenient for the courts to find solutions to social conflicts that it cannot easily handle.

Conclusion:

In this article we sought to explain how the Indian judiciary protected the environment? Over the past few decades, the Indian judiciary has played a significant role in the environmental protection. The environmental judgment of the court, in many cases, have significant impacts on the overall environmental protection and improvement process in India. Judicial activism, particularly in present times, has given new direction in the protection and improvement of the environment. The landmark judgments and orders of the Supreme Court and High Courts have triggered a wave of environment awareness and consciousness in the country. The striking features in all these cases is the court's attempt at encouraging petitioners to employ the instrument of PIL for energizing the judiciary to play a more interventionist role in areas where the country's executive has failed to act. Judiciary revolution in the field of environmental litigation has taken away in its sweep outmoded doctrines, and fashioned new remedies and strategies to address the environmental challenges. The law of public nuisance has been sharped as a strong weapon to promote public health and environmental sustainability. The right to clean environment has been recognized as a part of the fundamental right to life guaranteed under the Indian constitution. A new indigenous jurisprudence of strict liability has been formulated without the guidance from foreign legal system. The rule of locus standi has been relaxed largely for clearing the field for judicial activism and PIL for ensuring environmental justice.

Public Interest litigation (PIL), particularly in the field of environment protection, has provided an important forum for the civil society actors to stake their claims. It has turned the judiciary into an arena in which government's lawlessness and malfunctioning are questioned, providing public exposure and, to a certain extent, relief for frustrated and even traumatized citizens. However, the impact of PIL must not be overestimated. Ideally, the environmental struggle should not be in the courts. It must be located within the administrative system. If the regulatory system is in place, then environmental decisions should be thrashed out by decision-making bodies which are part of the regulatory system. In principle, the object of the judiciary must be to ensure that the administration is performing its function.

Notes and References:

1. Speaking constitutionally, the role of the Supreme Court as proclaimed under Article 141 of the constitution of India is to 'declare' the law that shall be binding on all courts in India. As such, it does not envisage interaction, much less a direct dialogue, with the executive government of the day.
2. Suo Moto is a Latin term which means an action taken by a government agency, court, or other central authority on their own apprehension. A court takes a Suo Moto Cognizance of a legal matter when it receives information about the violation of rights or breach of duty through media or a third party's notification. Even, this 'Suo moto' power allows the Court to take up cases without any petition being filed, or interest being brought before them.

3. In the Indian context, some of the legal scholars prefer the expression 'Social Action Litigation' to 'Public Interest Litigation', as this tool for justice to protect basic rights of individuals and communities has, through innovations of higher Court in India, for greater positive impacts on the social lives of the people in India than the United States, where the PIL movement took roots. For more details, see Upendra Baxi, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India', in Tiruchelvam and Coomaraswamy eds., *The Role of the Court in Plural Societies*, (New York: St. Martin's Press, 1987).

4. Basu, D.D. (1998), *Introduction to the Constitution of India*, New Delhi: Prentice Hall of India.
5. Deshpande, V. S. (1992), "Environment, Law and Public Interest Litigation"', in P. Diwan & P. Diwan (eds.) *Environment Administration, Law and Judicial Attitude*, New Delhi: Deep & Deep Publications.
6. Jariwala, M. (2004). *Environment and Justice*, New Delhi: A P H Publishing Corporation.
7. Jona, Razzaqhue (2004), *Public Interest Environmental Litigation in India, Pakistan and Bangladesh*, Hague: Kluwer Law International.
8. Mathur, M. (1996), *Legal Control of Environmental Pollution: Jurisprudence and Laws Applicable to Environmental Violation and Prevention*, New Delhi: Deep and Deep Publication.
9. Pal, Chandra (1999), *Environmental Pollution and Development: Environmental Law, Policy and Role of Judiciary*, New Delhi: Mittal Publications.
10. Prakash, S.S. and P.V.N. Sarma, 'Environment Protection vis-a-vis Judicial Activism', 2 Supreme Court Journal 56 (1998).
11. Sahu, Geetanjoy (2014), *Environmental Jurisprudence and the Supreme Court*, New Delhi: Orient Black Swan.
12. Aparajit, J.L and A Badhe (2003), "Judicial Response towards the Protection of Environment: A Critical Evaluation", *Journal of Indian Legal Thought*, 1: 97-142.
13. Bava, Noorjahan (2004), "Environmental Policy and Administration in India: Role of Government, Parliament and Supreme Court", *Indian Journal of Public Administration*, 50: 72-91.
14. Dias A. (1994), "Judicial activism in the development and enforcement of environmental law: some comparative insights from the Indian experience," J. *Envtl. L*, 6(2): 243-262.
15. Ramesh, M.K., (2002), "Environmental Justice: Courts and Beyond", *Indian Journal of Environmental law*, 3(1): 20-27.