

8. Enforcement of Environmental Laws and Policies-Judicial Trends in India

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8.1 Introduction:

The roots of the word, 'environment' means "that which environs us." Being "enviored" is being encircled or surrounded. Broadly speaking, the environment should be understood as the overall physical and emotional context in which we are located. It is very important, therefore, to recognize that environments are different from place-to-place and from time-to-time, depending upon who we are and where we are. India is among the bottom five countries on the Environmental Performance Index 2018, ``plummeting 36 points from 141 in 2016, according to a biennial report by Yale and Columbia Universities along with the World Economic Forum¹. Its overall low ranking that is 177 among 180 countries was linked to poor performance in the environment health policy and deaths due to air pollution categories.² Switzerland leads the world in sustainability, followed by France, Denmark, Malta and Sweden in the EPI, which found that air quality is the leading environmental threat to public health. India's low scores are influenced by poor performance in in the Environmental Health policy objective. In 2016, the Institute for Health Metrics and Evaluation estimated that diseases related to airborne pollutants contributed to two-thirds of all life-years lost to environmentally related deaths and disabilities.

The Constitution of India and Clean Environment, In the realm of the fundamental rights the most essential right is the 'right of life' guaranteed by Article 21 of the Indian Constitution, which the article says that cannot be taken away except according to procedure established by law. To safeguard this right and other fundamental rights we do have a very special feature in the Constitution of India known as right to constitutional remedies³.

Article 32 of the constitution empowers the supreme court in an appropriate proceeding to issue not only writ of mandamus, certiorari, prohibition or quo warrant but also any other direction, order or writ for the enforcement of fundamental rights. The same power is vested in the High Courts under Article 226 of the Constitution. It is upon the exercise of this power of judicial review the Courts are called upon to decide whether any instrumentality, agency or organs of the 2 state has transgressed or exceeded the limits of power conferred upon it and to ensure that the state and the public officials fulfill the obligation of the Constitution and the law under which they exist and function. In addition to Chapter on Fundamental Rights, the Constitution of India contains a Chapter on Directive Principles of State Policy, which emphasize in amplification of the preamble, that the goal of Indian polity is not laissez faire, but welfare state, where the state has positive duty to ensure to its citizens social and economic justice and dignity of the individual. According to Article 48A of the Directive Principles "the State should strive to protect and improve the environment and to safeguard forests and wildlife.

And Article 51A (g) of part IV-A of Fundamental Duties states that it shall be the duty of every citizen of Indian to protect and improve the natural environment. Life means to live with human dignity but if one cannot breathe clean air, have safe drinking water or health food, the all human rights civil, political, social or economic are meaningless⁴. Due to appalling scenario of the environmental pollution in our country the Supreme Court sharpened its tools and strategies during mid-80's and 90's by keeping aside all technical rules of procedure and liberalized the rule of 'locus standi' in order to alleviate the sufferings of the victims of environmental pollution under the banner of Public Interest Litigation (PIL). The courts have given expanded interpretation to Article 21 concerning the right to life to include all those rights which are essential and basic for the enjoyment of the quality of life free from environmental pollution and other health and consumer hazards."

8.2 Environment Laws in India:

The Ministry of Environment and Forests has been putting sincere efforts to eliminate all the ordeals and are following the main objectives laid down by the ministry of environment:

- Conservation & survey of flora, fauna, forests and wildlife.
- Prevention and control of pollution.
- Afforestation & regeneration of degraded areas.
- Protection of environment.
- Ensuring the Welfare of Animals⁵

A. Environmental Legislations:

- Wild Life (Protection Act), 1972
- The Indian Forest Act, 1927
- The Water (Prevention and Control of Pollution) Act, 1974
- Air (Prevention and Control of Pollution) Act, 1981
- Environment (Protection) Act, 1986
- The Noise Pollution (Regulation and Control) Rules, 2000

The environmental regulatory authorities (that is, the Central Pollution Control Board (CPCB) and the State Pollution Control Boards (SPCB) have been ordered by the National Green Tribunal (NGT) to strictly enforce and take into account the Comprehensive Environmental Pollution Index (CEPI). CEPI allocates weightages to various pollutants, ambient pollutant concentrations, receptors (the number of people affected) and additional high-risk elements. The original CEPI assessment was undertaken in 2009, but the CEPI criteria were updated in 2016 and the final report on CEPI was issued in 2018. The NGT⁶ in 2019 then directly supervised the enforcement of the CEPI criteria by the regulatory authorities. Industrial clusters are categorized under the CEPI as Polluted Industrial Areas (PIAs), which are each ranked as one of the following:

- A critically polluted area (CPA).
- A severely polluted area (SPA).
- Other polluted areas (OPA).

The CPCB and SPCB will now be focused on remediating these CEPI areas and seeking compensation from polluting industries; and any expansion or development of new sites in these areas will be rejected.

B. Environmental Permits:

The main environmental laws, including under which various key environmental permits (or consents) are being issued in India, include the:

- Water (Prevention and Control of Pollution) Act 1974 (Water Act), which also initially identified the powers, functions and hierarchy of the environmental agencies, the CPCB and the SPCB.
- Air (Prevention and Control of Pollution) Act 1981 (Air Act).
- Environment Protection Act 1986 (EP Act). This umbrella law enables the central government to take measures it deems necessary to protect and improve the environment, and to prevent, control and abate environmental pollution. A wide range of rules and notifications have been adopted under it, such as the:
 - a. E-Waste (Management) Rules 2016, as amended in 2018 (E-Waste Rules);
 - b. Bio-Medical Waste Management Rules 2016;
 - c. Plastic Waste Management Rules 2016;
 - d. Solid Waste Management Rules, 2016;
 - e. Construction and Demolition Waste Management Rules 2016;
 - f. Hazardous and Other Waste (Management and Trans-boundary Movement) Rules 2016, as amended in 2019 (HW Rules);
 - g. Manufacture, Storage and Import of Hazardous Chemicals Rules 1989 (MSIHC Rules);
 - viii. Coastal Regulation Zone Notification 2019; and
 - h. Environment Impact Assessment Notification 2006.
- Wild Life (Protection) Act 1972.
- Forest (Conservation) Act 1980.
- Public Liability Insurance Act 1991.
- Biological Diversity Act 2002.
- National Green Tribunal Act 2010.

The Key Regulatory authorities are the Ministry of Environment, Forests and Climate Change (MoEFCC).

The Central Pollution Control Board (CPCB) the State Pollution Control Board (SPCB) and the District Level Authorities (that is, municipal corporations).

8.3 Landmark Judgments:

The Indian State has also enshrined it in the Constitution which requires both the State and the Citizen to “protect and improve the environment”. The landmark judgments for environmental jurisprudence are as follows:

A. The 42nd Amendment to the Constitution of India which added **Article 48A and 51A (g)** these comes under the Directive Principle of State Policy and the Fundamental Duties respectively. The Supreme Court of India in **Sachidanand Pandey v/s. State of West Bengal** ⁷ stated that the Court is bound to bear in mind the above said articles whenever a case related to Environmental problem is brought to the Court.

- The Article 48A states: “The State shall endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country.”
- The Article 51A (g) imposes a duty upon every citizen of India to protect and improve the natural environment and confers right to come before the Court for appropriate relief.

Thus the court believed that State is the legal, the actual owner of the natural resources as a trustee of the people and although it is empowered to distribute the same⁸, the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good which is a prior goal for the guardian of a nation.

B. Article 21 of the Indian Constitution i.e. Right to personal Right and Liberty:

The Apex Court in **Damodar Rao v/s. S.O. Municipal Corporation**⁹ held that the environmental pollution and spoliation which is slowly poisoning and polluting the atmosphere should also be regarded as amounting to violation of **Article 21 of the Constitution**.

The High Courts have also accorded recognition to this environmental dimension of Article 21 such as judgment by the Andhra Pradesh High Court in T. Damodar Rao v/s Special Officer Municipal Corporation, Hyderabad 40 explicitly recognized an environmental dimension to Article 21 while considering a writ petition to enjoin the Life Insurance Corporation and Income Tax Department from building residential houses in a recreation zone, held: It would be reasonable to hold that the enjoyment of life and its attainment and fulfillment guaranteed by Article 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 violation of Article 21 of the Constitution¹⁰. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be regarded as violation of Article 21 of the Constitution. The Court held that the attempt of the respondents to build houses in this area is contrary to law and also contrary to Article 21 of the Constitution.

C. Public Liability and Public Nuisance: “M.C. Mehta and Anr. etc vs. Union of India and Ors. etc ¹¹” discusses the concept of Public Liability. This case is also known as Oleum Leakage Case. It is a landmark judgment in which the principle of Absolute Liability was laid down by the Supreme Court of India.

On the midnight of 2/3-12, 1984; there was a leakage of poisonous gas (methyl isocyanate) from Union Carbide Corporation India Limited, located at Bhopal, Madhya Pradesh. This disaster was described as “World’s worst industrial disaster” as it claimed the lives of 2260 people and caused serious injuries with a variety of complications to about 6 lakhs of people.

When the matter was pending before the Supreme Court, another gas disaster took place from Shri Ram Foods and Fertilizer Industries (belonging to Delhi Textile Mills Ltd.), Delhi on 4th and 6th December 1985. One advocate died and several others injured. MC Mehta, filed a “public interest litigation” petition under Article 32 of the Constitution. The Supreme Court through P.N. Bhagwati, C.J., keeping in mind the one-year-old great gas disaster of Bhopal, evolved a new rule, “Absolute Liability” in preference to 1868 rule of Strict Liability.

The Issues Raised were: Whether the plant can be allowed to continue or not? If not, what measures are required to be taken to prevent the leakages, explosions, air and water pollution? To find out the number of safety devices exists in the plant and others though necessary is not installed in the plant. Court held that the “absolute liability” of a hazardous chemical manufacturer to give compensation to all those affected by an accident was introduced in this case and it was the first time compensation was paid to victims. The court directed the Central Government to set up an Environmental Court consisting of a Judge and two experts (Ecological Sciences Research Experts) as members to assist the judge in deciding the environmental cases. Pursuant upon the recommendation, the Government of India passed the National Environment Tribunal Act, 1995 to deal with the cases of environmental pollution.

D. Municipal Corporation, Ratlam vs. Vardhichand¹²: it was held that the **plea of lack of fund will be poor alibi when people in misery cry for justice**. The office in charge and even the elected representatives will have to face a penalty if they violate the constitutional and other statutory directives. Ratlam, a city in the State of Madhya Pradesh had some of the residents of the municipality filing a complaint before the Sub-Divisional Magistrate alleging that the municipality is not constructing proper drains and there is stench and stink caused by the exertion by nearby slum-dwellers and that there was nuisance to the petitioners. The Sub Divisional Magistrate of Ratlam district instructed the municipality to prepare a proper development plan within 6 months of the complaint submitted by the residents of Ratlam city (approved by High Court). Afterwards the municipality came in appeal before the apex court of India and alleged that they do not have proper financial support as well as proper funds to comply with the direction given by the sub divisional magistrate of Ratlam city. Respondents argued that the Municipality of Ratlam city had failed to meet its obligations given by the sub divisional magistrate to provide for public health including by failing to abate pollution and other hazardous waste from impacting their homes.

Respondents focused to stop pollution caused by a runoff from a nearby alcohol plant resulting in form of malaria. The Supreme Court instructed the Municipal Council of Ratlam to immediately follow order given by the Sub Divisional Magistrate of Ratlam city to protect the area from pollution caused by alcohol plant flowing into the neighboring areas of the resident. Supreme court also ordered the municipal to take necessary steps to fulfill their obligation by providing adequate number of public laterals for specifically men and women separately along with to provide water supply and scavenging service in morning as well as in evening to ensure proper sanitation. The court also ordered that these obligations to be fulfilled within six months of court order. The problem was due to private polluters and haphazard town planning, it was held by Supreme Court that pollution free environment is an integral part of right to life under Article 21.

The Court Further held that in case municipality feel the need of resources then it will raise its demand from State government by elitist projects, request loans from the State Government from the savings account of public health expenditure to fulfill the resource requirement for the implementation of courts order.

E. Sustainable Development: The Bench of Justices PN Bhagwati and Ranganath Mishra in “**Rural Litigation and Entitlement Kendra, Dehradun vs. State of Uttar Pradesh**”¹³ introduced the concept of “Sustainable Development”. An NGO named RLEK filed a case against limestone quarrying in the valley in 1987. It was stated that the permanent assets of mankind are not to be exhausted in one generation. The natural resources should be used with requisite attention and care so that ecology and environment may not be affected in any serious way. This case is also known as the ‘**Dehradun Valley Litigation**’. In Mussoorie hill range of Himalayas, the activity of quarrying was being carried out. Limestone was extracted by blasting out the hills with dynamite. This practice has also resulted in cave-ins and slumping because the mines dug deep into the hillsides, which is an illegal practice per se. Due to lack of vegetation many landslides occurred, which killed villagers, and destroyed their homes, cattle and agricultural land. It was contended by the mining operators that the case should be dismissed by the court and the issue should be left to the administrative authorities under the Environment Protection but the Court rejected the miners’ arguments the ground that the litigation had already commenced and significant orders had been issued by the court before the adoption of the Environment Protection Act. Later a monitoring committee was made. Monitoring Committee directed the company in certain way but the lessee continued to quarry limestone in an unscientific manner and in disregard of the directions issued by the Monitoring committee. In an application filed by the committee, the court held that the mining activity secretly carried on by Vijay Shree Mines had caused immense damage to the area and directed the firm to pay Rs. 3 lakhs to the fund of the Monitoring committee.

After years, the Supreme Court of India has held that pollution caused by quarries adversely affects the health and safety of people and hence, the same should be stopped. The right to wholesome environment is a part of right to life and personal liberty guaranteed under Article 21 of the Constitution. This case was the first requiring the Supreme Court to balance environment and ecological integrity against industrial demands on the forest resources.

F. Environmental Impact Assessment Justice Jeevan Reddy in the landmark judgment of “**Indian Council for Enviro-Legal Action vs. Union of India**”¹⁴ held that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution by adopting the “**Polluter Pays Principle**”. It is an irrational interpretation of the polluter as somebody who results in harm to, not anyone, but perhaps the environment.

As the environment cannot really be actually recompensed, this allows for a justification to levy taxes upon guilty entities along with the assurance that the sum will be utilized to reverse the harm done. But in practice, these “polluter penalties” mainly help to boost the earnings of the government officials, advisors, and attorneys, most of whom profit from the method. As presently interpreted, the polluter pays concept actually winds up as just a mechanism for transferring money from polluters to non-victims who are politically very well connected.

As per the Indian scenario, legislation with respect to the imposition of criminal liability against defaulting corporations is still not found. Some even have commented that the principle of 'polluter pays' has now degenerated into the concept of 'pay and pollute', as a result of delay and insufficiency in providing executive action in such cases.¹⁵ The punishment given to industries ought to be such as to reimburse the victims as well as repair the damaged environment and somehow also discourage the polluters from performing such an act again.

G. Water Pollution Ganga Pollution Case: The writ petition filed by the activist advocate M.C. Mehta in the Supreme Court highlighted the pollution of the Ganga River by the hazardous industries located on its banks. Justice E.S. Venkataramiah gave a historic judgement in "M.C. Mehta vs. Union of India¹⁶" ordering the closure of a number of polluting tanneries near Kanpur. In this judgment it was observed that just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot setup a primary treatment plant cannot be permitted to continue to be in existence. In 1985, M.C. Mehta filed a writ petition in the nature of mandamus to prevent these leather tanneries from disposing of the domestic and industrial waste and effluents in the Ganga River.

In this petition, the petitioner requested the court to request the Supreme Court to restrain the respondents from releasing effluents into the Ganga river till the time they incorporate certain treatment plants for the treatment of toxic effluents to arrest water pollution.

The Court highlighted the importance of certain provisions in our constitutional framework, which enshrine the significance and the need for protecting our environment. Article 48-A provides that the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51-A of the Constitution of India imposes a fundamental duty on every citizen to protect and improve the natural environment, including forests, lakes, rivers, and wildlife.

The Court stated the importance of the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act). This act was passed to prevent and control water pollution and maintaining water quality. This act established central and stated boards and conferred them with power and functions relating to the control and prevention of water pollution. The question was raised that what is Trade Effluent and it was explained as any substance in the form of solid, liquid, or gaseous state which is discharged from any establishment used for carrying out any trade or industrial activity, other than domestic sewage. It was noted that the leather industry is one of the significant industries besides paper and textiles consuming large quantities of water. Most of the water used is discharged as wastewater. The wastewater contains toxic substances that deplete the Oxygen content of the clean river water in which they are discharged. This results in the death of aquatic life and emanates foul odor. The Court held the despite provisions in the Water (Prevention and Control of Pollution) Act, 1974 Act no effective steps were taken by the State Board to prevent the discharge of effluents into the river Ganga. Also, despite the provisions in the Environment Protection Act, no effective steps were taken by the Central Government to prevent the public nuisance caused by the tanneries at Kanpur. The Court ordered the tanneries to establish primary treatment plants, if not Secondary treatment plants. That is the minimum which the tanneries should do in the circumstances of the case.

H. Animal Welfare the Jallikattu Judgment: The Hon'ble Supreme Court prohibited Jallikattu and other animal races and fights. It was observed that the Bulls cannot be performing animals in the case of "Animal Welfare Board of India vs. A. Nagaraj and Ors.¹⁷". The court in the case considered the rights of animals as a "Constitutional Rights". The Court also brought into the aspect of Article 51-A (g) & (h)¹⁸, which are Fundamental Duties on the part of the citizens. The impact was the case was tremendous on the States, especially those of Tamil Nadu and Maharashtra. The States revenue decreased since large number of spectators does come to attend the Jallikattu every year. The message is loud and clear, individuals can't dispense agony and enduring on a panicked and be fuddled animal all for the sake of safeguarding social legacy. The court held that it is indeed a 'dangerous sport', both for the bulls and the people watching it. The question whether the law or a custom which has been prevailing for hundreds of years must prevail or not which was the issue in this case.

Considering the fact that thousands of people are injured and that lives are lost and moreover the fact that brutal cruelty and harassment are shown to these voiceless creatures of the earth, the decision of the court can be justified to ban the much renounced "Jallikattu and Bullock Cart racing" and shows that Definitely the law must prevail.

I. Air Pollution: The pride of India and one of the wonders of the world i.e., Taj Mahal, was facing threat due to high toxic emissions from Mathura Refineries, Iron Foundries, Glass and other chemical industries. The acid rain was a serious threat to the Taj Mahal and 255 other historic monuments within the Taj Trapezium. The Apex Court in "M.C. Mehta vs. Union of India (Taj Trapezium Case) AIR 1987¹⁹" delivered its historic judgment in 1996 giving various directions including banning the use of coal and cake and directing the industries to Compressed Natural Gas (CNG).

J. Environmental Awareness and Education Case: The Supreme Court in "M.C. Mehta vs. Union of India²⁰" ordered the Cinema theatres all over the country to exhibit two slides free of cost on environment in each show. Their licenses will be cancelled if they fail to do so. Environment has become a compulsory subject up to 12th standard from academic session 1992.

K. Wildlife and Forest Protection Case: The livelihood of forest dwellers in the Nilgiri region of Tamil Nadu was affected by the destruction of forests. The Supreme Court in "TN Godavarman Thirumulpad vs. Union of India and Ors." passed a series of directions since 1995, till the final judgment in 2014. The Apex Court decided to set up a Compensatory Afforestation Funds Management and Planning Authority (CAMPA) to monitor the afforestation efforts, to oversee the compensation who suffered on account of deforestation, and to accelerate activities for preservation of natural forests. The court held that- Environmental law is an instrument to protect and improve the environment and to control or prevent any act or omission polluting or likely to pollute the environment. In view of the enormous challenges thrown by the industrial revolutions, the legislatures throw out the world are busy in this exercise. In a number of cases, sentences of imprisonment have been imposed. Apart from the direct cost to business of complying with the stricter regulatory controls, the potential liabilities for non-compliance are also increasing. In the present case the Forest Advisory Committee under the Conservation Act on 11/07/2001 examined the renewal proposal in respect of the Company's mining lease.

The Ministry of Environment and Forests deferred a formal decision on the said recommendation as the matter was pending before this court. Taking note of factual background, it is proper to accept the time period fixed by the Forest Advisory Committee constituted under Section 3 of the Conservation Act. That means mining should be allowed till the end of 2005 by which the time the weathered secondary ore available in the already broken area should be exhausted. This is, however, subject to fulfillment of the recommendations made by the Committee on ecological aspects. However the concern was that the State and Central Government were not very consistent.

L. Public Trust and Right to Life: The Bench of Justices Kuldip Singh and Sagir Ahmed held that the Government violated the Doctrine of Public Trust in **M.C. Mehta vs. Kamal Nath and Ors.**²¹. The Himachal Pradesh State Government had leased out a protected forest area on the bank of river Beas to motels, for commercial purposes. In 1996, the Supreme Court passed a judgment that would hold the State more responsible for maintaining natural resources.

The Indian Express published an article reporting that a private company, Span Motels Private Ltd. ('the Motel Company'), owner of Span Resorts, had floated an ambitious project called Span Club. Kamal Nath who was the Minister of Environment and Forests had direct links with this company. The company encroached upon land which also included forest land. The land was regularized and subsequently leased out to the company on 11th April 1994.

The question was whether the court has wrongly inducted Mr. Kamal Nath as a Respondent in the present petition? Whether the construction activity carried out by the Motel Company justified? The Supreme Court rejected this contention and held that the forest lands which have been given on lease to the Motel by the State Governments are situated at the bank of the river Beas. The Beas is a young and dynamic river and it changes its course very often. The right bank of the river is where the Motel is located comes under forest. The area is ecologically fragile and therefore it should not be converted into private ownership. The Supreme Court applied the '**Doctrine of Public Trust**' to the present case.

Doctrine of Public trust is an ancient legal doctrine which states that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, water and the forests have such a great importance to the people as a whole that it would be unjustified to make them a subject of private ownership.

Therefore The Court quashed the lease deed by which forested land was leased to the Motel Company and held that the construction activity carried out by the Motel Company was not justified. The Motel was ordered to pay compensation by way of cost for the restitution of the environmental and ecology of the area.

The Motel was ordered to construct a boundary wall at a distance of not more than 4 meters for the building of the motel beyond which they were not allowed to use the land of the river basin. The Court also restricted the Motel from discharging untreated effluent into the river.

M. Vellore Citizens Welfare Forum v. Union of India; Supreme Court of India:²²

The petition was filed against the excessive pollution caused by River Palar due to the release of pollutants by the tanneries and other industries in the State of Tamil Nadu. Palar River is the main source of drinking and bathing water for the surrounding people. Later, the Tamil Nadu Agricultural University Research Centre, Vellore discovered that approximately 35,000 hectares of agricultural land have turned either entirely or partially unsuitable for cultivation. This is one of the landmark cases whereby the Supreme Court critically analyzed the relationship between environment and industrial development. The question which emerged for thought under the steady gaze of the Supreme Court was whether the tanneries ought to be permitted to keep on working at the expense of lives of lakhs of individuals. It was presented by the petitioner that the whole surface and sub-soil water of river Palar has been intoxicated and has resulted in the non-accessibility of consumable water to the inhabitants of the region. The Supreme Court analyzing the report conveyed its judgment putting forth all attempts to keep up a concordance among condition and improvement. The Court conceded that these Tanneries in India are the major foreign exchange earner and furthermore gives work to a large number of individuals. In any case, at the equivalent time, it wrecks nature and represents a well-being danger to everybody. The court conveying its judgment in favor of the petitioner guided all the Tanneries to submit a whole of Rs. 10,000 as fine in the Collector's office. The Court additionally coordinated the State of Tamil Nadu to grant Mr. M. C. Mehta with an entirety of Rs. 50,000 as gratefulness towards his endeavors for the security of the Environment.

N. A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.) & Ors:²³ In this case the respondent industry is ought to be establishing a new factory for the production of vegetable oils in the State of Andhra Pradesh. Respondent industry purchased a piece of land in Indore village named Peddashpur. Within the range of the village the reservoirs that provides drinking water for the 5 million of people around the area. The Issues raised were:

- The validity of the orders passed by the A.P.Pollution Control Board?
- The correctness of the orders of the Appellate Authority under section 28 of the Water Act, 1974?
- The validity of exemption granted for the operation of the 10 k.m. rule?
- In what ways that the technological aspects of the environmental law cases ought to be adjudicated?

In the impugned judgment, the Supreme Court relied on the judicial doctrine of the **Precautionary Principle**. The Precautionary Principle as it is very name suggests needs the authorities in charge to anticipate, prevent and attack the reason behind environmental pollution. This rule is based on the salutary theory that it is better to err on the side of caution and safety than in the wrong way wherever environmental damage, once done, is also irreversible. In other words, one ought to take measures in anticipation of environmental damage, instead of to hunt cure when the damage is inflicted. It would be better to stay safe earlier than be sorry later. Hindrance is healthier than cure. The Court in the present judgment directed that the authority to be appointed under Section 3(3) of the Environment (Protection) Act, 1986 that shall implement the Precautionary Principle and also the Polluter Pays Principle.

Further, it had been discovered that the new conception envisages that when a risk of great or irreversible damage to the environment is perceived, the burden of proof lies on the one that is proposing to undertake the activity in question.

O. M.C. Mehta v. Union of India- Vehicular Pollution Case²⁴: This writ petition was filed by Mr. M.C. Mehta requesting the court to pass appropriate orders for the reduction of Vehicular Pollution in Delhi. Supreme Court in this case held that Indian constitution recognizes the importance of protection of environment, life, flora and fauna by the virtue of Article 51-A and Directive principles of state policy. Therefore, it is the duty of the state to protect the environment and all the persons using automobiles should have a fair idea of the harmful effects on the environment due to emissions caused by their vehicles. A committee was setup to look in to the problem and decide on what can be done. The committee was setup with the following objectives:

- To make an assessment of the technologies available for vehicular pollution control in the world; To make an assessment of the current status of technology available in India for controlling vehicular pollution;
- To look at the low cost alternatives for operating vehicles at reduced pollution levels in the metropolitan cities of India.
- To examine the feasibility of measures to reduce/eliminate pollution from motor vehicles both on short term and long term basis and make appropriate recommendations in this regard;
- To make specific recommendations on the administrative/legal regulations required for implementing the recommendations.

The committee was ordered to give reports in two months and also mention the steps taken. This was a landmark judgment with respect to Vehicular pollution in India. Later the Supreme Court also passed orders for the provision of Lead free petrol in the country and for the use of natural gas and other mode of fuels for use in the vehicles. Lead free petrol was introduced in four metropolitan cities in 1995. All cars manufactured after 1995 were fitted with catalytic convertors to reduce emissions. CNG outlets have been setup to provide CNG gas to vehicles. As a result of this case Delhi became the first city in the world to have a complete public transport running on Compressed Natural Gas.

P. Subhash Kumar v. State of Bihar & Ors²⁵: The petition was filed by the way of Public Interest Litigation by Subhash Kumar for preventing the pollution of the water of the river Bokaro from the discharge of sludge/slurry from the Tata Iron & Steel Co. Ltd. The Petitioner alleged that the Parliament enacted Water (Prevention and Control of Pollution) Act, 1978 for maintaining the wholesomeness of water and for the prevention of water pollution. The State Pollution Control Board failed to take actions against the Company and permitted the pollution of the water and the State of Bihar instead of taking actions, it is granting a lease on the payment of royalty for collection of slurry to various persons. Issue raised was whether the water of the river Bokaro is polluted by the discharge of the slurry from the Company? The apex court held that the right to get pollution free water and air is a fundamental right under Article 21. Following this, the right to pollution free environment was incorporated under the head of right to life and all the laws courts within the Indian Territory were bound to follow.

Public health and ecology were held to be the priorities under Article 21 and the constitution of a green bench was also ordered by the Supreme Court. The Tata Iron & Steel Co. has been granted sanction from the Board for discharging effluents from their outlets under Sections 25 and 26 of the Water Prevention and Control of Pollution Act, 1974. Before granting the discharge of the effluents to the Bokaro River, the Board has analyzed and monitored that the effluents generated did not pollute the river. It was clear from the facts that and pleadings on behalf of the Respondent that there was no good reason to accept Petitioner's contentions that the water of Bokaro River was polluted by the discharge of slurry/sludge from the respondent Company, on the other hand, the bench found that effective steps were taken by State Pollution Control Board to check pollution. Therefore, the petition was dismissed.

Q. Samir Mehta v. Union of India & Ors; National Green Tribunal Judgment²⁶: In this case, an environmentalist filed an application regarding the damage caused by the sinking of a ship which was carrying coal, fuel oil and diesel. Due to the sinking, a thick oil layer was formed on the surface of the sea which caused damage to the marine ecosystem. This case was held to involve questions of public importance and significance of environmental jurisprudence. The tribunal noticed the negligence. The sinking of the ship was the result of the negligence of the Respondents and upholding the principle of Polluter Pay. The Tribunal has further held that it has power to grant compensation for the costs incurred by the Central Government to clean the wrecks which may pose hazards to navigation and to marine environment. The Court thereby reaffirmed the "Precautionary Principle" and "Polluter Pays Principle" and also recognized Right to clean environment as a fundamental right under Article 21 of the Constitution of India which guarantees protection of life and personal liberty. The Tribunal held that the ship sinking accident is said to have led to the pollution of the marine environment on three counts: (a) Dumping of the cargo on the ship, i.e., coal in to the sea; (b) Release of the Fuel oil stored on board and the resultant oil spill caused by it and (c) wreckage of the ship itself, which contained the materials. In the present case, the ship used in the transport is unseaworthy and the respondents should have never used the ship for transport purpose. Therefore, in the present case, sinking of the ship is held equivalent to dumping. Environmental compensation of Rs. 100 crores was imposed. This is one of the biggest compensation ever made by private entity to government.

R. Ms. Betty C. Alvares v. The State of Goa and Ors.; National Green Tribunal Judgment²⁷: A complaint regarding various instances of illegal construction in the Coastal Regulation Zone of Candolim, Goa was made by a personal of foreign nationality. Her name was Betta Alvarez. The first objection was that Betty Alvarez had no locus standi in the matter because she was not an Indian citizen and thus legally incompetent to file the petition under Article 21 because as a non-citizen, she has not been guaranteed any right under the Indian Constitution. The second objection was that the matter was barred by the law of limitation and should be dismissed. The case was initiated in the Honorable High Court of Bombay Bench at Goa in the form of a PIL but by an order dated Oct 23, 2012, the Writ Petition was transferred to the National Green Tribunal. Therefore The Tribunal in bold terms stated that even assuming that the Applicant – Betty Alvarez is not a citizen of India, the Application is still maintainable as she had filed several other writ petitions and contempt applications before she filed the present application, in which she had asserted that the Respondents had raised some illegal constructions by way of which they were encroaching the sea beaches along with governmental properties.

The Court laid down in very bold terms that once it is found that any person can file a proceeding related to the environmental dispute, Ms. Betty's application is maintainable without regards to the question of her nationality.

S. Art of Living Case on Yamuna Flood Plain; National Green Tribunal Judgment:

The National Green Tribunal (NGT) held the Art of Living Foundation of Sri Sri Ravi Shankar responsible for the alleged damage caused to the Yamuna floodplains due to the World Cultural Festival organized in March 2016²⁸. NGT Panel found that the organizers of the Art of Living Festival violated the environmental norms and it has severely damaged the flood plain area at the bank of Yamuna River in Delhi. Earlier, the Government of Delhi and Delhi Development Authority (DDA) has permitted the Art of living festival organizers but it was an under some conditions.

The NGT panel imposed a penalty of Rs. 5 Crore on Art of Living Foundation as environmental compensation after coming down heavily on the foundation for not disclosing its full plans. The panel also warned AOL Foundation that in case of failure to pay the penalized amount the grant of Rs.2.5 crore which the ministry of culture is supposed to pay AOL will be attached. While reacting with dismay to the verdict, the Art of Living Foundation expressed disappointment and claimed that it had complied with all environment laws and norms and its' submissions were not considered by NGT. The Art of Living Foundation said in a statement that- "We will appeal to Supreme Court. We are confident that we will get justice."

T. Save Mon Region Federation and Ors. v. Union of India and Ors.²⁹; National Green Tribunal: The Save Mon Region Federation, on behalf of the Monpa indigenous community, challenged the environmental clearance granted for the construction of a hydroelectric dam on the Naymjang Chhu River. The Federation pointed to faults in the environmental impact assessment (EIA) procedure and a lack of close scrutiny of the project by the expert appraisal committee (EAC). The National Green Tribunal concluded: "It is true that hydel power project provides eco-friendly renewable source of energy and its development is necessary, however, we are of the considered view that such development should be 'sustainable development' without there being any irretrievable loss to environment.

We are also of the view that studies done should be open for public consultation in order to offer an opportunity to affected persons having plausible stake in environment to express their concerns following such studies. This would facilitate objective decision by the EAC on all environmental issues and open a way for sustainable development of the region." Therefore, the project was close to a wintering site for a bird Black-necked Crane, which is included under Schedule I species under the Wildlife Protection Act of 1972.

It also comes under the 'Threatened Birds of India' literature by the appellants in this case. It also had other endangered species such as the red panda, snow leopard, etc. The tribunal gave orders to suspend the clearance for the project. It also directed the EAC to make a new proposal for environmental clearance. The tribunal also directed the Ministry of Environment and Forest in the country to prepare a study on the protection of the bird involved in the case.

U. Almitra H. Patel & Ors. v. Union of India and Ors.³⁰; National Green Tribunal Judgment: This case has been the biggest case dealing with the solid waste in India. In this case, Mrs. Almitra Patel and another had filed a PIL under Article 32 of the Constitution of India before the Apex Court whereby the Petitioner sought the immediate and urgent improvement in the practices that are presently adopted for the way Municipal Solid Waste or garbage is treated in India. The Tribunal found that the magnitude of the problem was gigantic because over a lakh tonnes of raw garbage is dumped every day and there is no proper treatment of this raw garbage which is dumped just outside the city limits on land, along highway, lakes. The Tribunal noted the requirement of conversion of this waste into a source of power and fuel to be used for society's benefit, taking into consideration the Principles of Circular Economy. The tribunal considered it one of the major problems faced by India over the last few years as lakh tonnes of garbage go without proper treatment and just dumped outside the city in the outskirts. The tribunal noted the requirement to solve this problem and make it a source of power for the benefit of society. After hearing the case the tribunal issued over 25 directions. The tribunal asked all the states and UTs to strictly follow and implement the Solid Management Rules, 2016. A complete prohibition on open burning of waste on lands was made after the case.

Absolute segregation has been made mandatory in waste to energy plants and landfills should be used for depositing inert waste only and are subject to bio-stabilization within 6 months. The most important direction of the Tribunal was a complete prohibition on open burning of waste on lands, including at landfills.

8.4 The National Green Tribunal (NGT) Act, 2010³²:

The NGT provided for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.³³ It follows a very simple procedure to file an application seeking compensation for environmental damage or an appeal against an order or decision of the Government. A claim for Compensation can be made for:

- Relief/compensation to the victims of pollution and other environmental damage including accidents involving hazardous substances;
- Restitution of property damaged;
- Restitution of the environment for such areas as determined by the NGT.

8.4.1 Principles of Justice Adopted by NGT:

The NGT is not bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice. Further, it is also not bound by the rules of evidence as enshrined in the Indian Evidence Act, 1872. Thus, it will be relatively easier (as opposed to approaching a court) for conservation groups to present facts and issues before the NGT, including pointing out technical flaws in a project, or proposing alternatives that could minimize environmental damage but which have not been considered.

While passing Orders/decisions/awards, the NGT will apply the **principles of sustainable development, the precautionary principle and the polluter pays principles.**

However, if a claim is false, it can impose costs including lost benefits due to any interim injunction.

If a project proponent or any authority does not comply with the directions contained in an NGT order, the **penalty can be imprisonment for three years or fine extending to 10 crores or both.** Continued failure will attract a fine of twenty five thousand rupees per day.

The Tribunal has the power to hear all civil cases relating to environmental issues and questions that are linked to the implementation of laws listed in Schedule I of the NGT Act 2010. These include the following:

- The Water (Prevention and Control of Pollution) Act, 1974;
- The Water (Prevention and Control of Pollution) Cess Act, 1977;
- The Forest (Conservation) Act, 1980;
- The Air (Prevention and Control of Pollution) Act, 1981;
- The Environment (Protection) Act, 1986;
- The Public Liability Insurance Act, 1991;
- The Biological Diversity Act, 2002.

This means that any violations pertaining only to these laws, or any order / decision taken by the Government under these laws can be challenged before the NGT. The Tribunal has not been vested with powers to hear any matter relating to the following:

- Wildlife (Protection) Act, 1972,
- The Indian Forest Act, 1927 and
- Various laws enacted by States relating to forests, tree preservation etc.

Therefore, specific and substantial issues related to these laws cannot be raised before the NGT and one has to approach the State High Court or the Supreme Court through a Writ Petition (PIL) or file an Original Suit before an appropriate Civil Judge of the taluk where the project is located.

Thus to conclude the following are covered:

- Permanent/temporary disability or other injury or sickness.
- Medical expenses incurred for treatment of injuries or sickness.
- Damages to private property.
- Loss and destruction of any property other than private property.
- Expenses incurred by the government or a local authority in providing relief, air and rehabilitation to the affected persons, or compensation for environmental degradation and restoration of the quality of the environment.
- Claims including cost of restoration on account of any harm or damage to the environment, including pollution of soil, air, water, land and ecosystems.

- Claims on account of any harm, damage or destruction to fauna and aquatic fauna and flora, crops, vegetables, trees and orchards.
- Loss of business or employment, or both.
- Any other claim arising out of or connected with any activity of handling hazardous substances.

The Act also provides that anyone who fails to comply with any order or award of the NGT Act is punishable with imprisonment for a term up to three years, or a fine up to INR100 million, or both. If the failure or breach continues, an additional fine can be imposed up to INR25, 000 per day. The penalty under the NGT Act is even stricter for companies. If a company fails to comply with an order or award of the NGT, it is liable to a fine up to INR250 million, and an additional fine up to INR100, 000 for each day the breach continues.

8.5 Conclusion:

With the problem of environmental degradation becoming globally accepted as a matter of serious and grave concern, legal solutions to environmental problems lie not in temporary legal remedies but in fundamental ideological changes in the role and use of law. The development of Indian environmental jurisprudence shows how, within a modern constitutional law framework, such a comprehensive approach can be maintained and used.

The legal development for the protection of the environment in India is firmly based on a constitutional rationale. This constitutional rationale seeks to establish a new public law regime in India. The Preamble, the Fundamental Rights, the Directive Principles of State Policy and the incorporation of the Fundamental Duties in 1976, brought about distinguishable changes to the ideology and rationale of Indian constitutionalism. These vital parts of the Constitution have, even if this was not initially obvious, laid the foundations for a new public law regime.

From an era when India hardly cared about environmental costs, it has graduated to a stage where the regulators are making it mandatory for companies to report as to how they fare on environmental, social and governance (“ESG”) parameters. The projects and policies are also streamlined to meet the sustainable development goals (“SDGs”).

The Judiciary has ensured that environmental compliance is no longer a matter of choice but a compulsion. It has ensured that the regulators discharge their statutory duties properly and make sure that the industries comply with the environmental regulations in letter and spirit.³³ Thus the judiciary over the last few decades has done an excellent job to interpret and provide clarity to the environmental laws. As India gained independence and the economy started growing, there was a need to enact legislation's which were meant to protect the natural environment and its various components, be it air, water, forests, wildlife, biodiversity etc. More importantly, since India had started becoming a signatory to various international environmental conventions, it was obligatory that it protected its environment back home. It is now being proposed that the Environment Protection Act, Air Act and Water Act be consolidated into a single environmental management law to prevent overlaps and conflicts, incorporate provisions relating to environmental compensation and tools like emissions trading scheme, extended producer responsibility etc.

While consolidation and streamlining are important and so is the need to make the laws stricter by incorporating provisions relating to environmental compensation as well as the Criminal liability. The Ministry of Environment, Forests and Climate Change (MoEFCC) has adopted a new method from 2016 of classifying the industries it regulates and introduced a new category of "white industries". These white industries are non-polluting industries that no longer need a consent to operate (CTO) or an Environmental Clearance (EC) under the Environmental Impact Assessment (EIA) Notification.

Instead, they merely need to notify the relevant SPCB. Whereas the earlier industry categories (red, orange and green) were essentially determined based on the size of industries, this new method is based on a Pollution Index (PI) for emissions (air pollutants), effluents (water pollutants) and hazardous waste generated apart from the consumption of resources. A PI score is allocated to each industrial sector as follows:

- Red category: PI score of 60 and above. For example: asbestos, nuclear power plants, shipbreaking, oil and gas extraction, and so on.
- Orange category: PI score of 41 to 59. For example: food and food processing, printing ink manufacturing, paint blending and mixing, and pharmaceutical formulations.
- Green category: PI score of 21 to 40. For example: saw mills, tyres/rube retreating, polythene and plastic products.
- White category: PI score up to 20. For example: solar power generation through solar photovoltaic cells, wind power, and mini hydro-electric power less than 25 megawatts.

The Supreme Court and the State high courts can and do impose exemplary damages for damage to the environment. For instance, in the Sterlites Industries Judgment 8 August 2013, one of the largest copper smelter plants in India was found to be operating without a valid renewal of its environmental consent to operate. When assessing the company's liability to pay damages (that is, for damage caused to the environment during the 15 years it operated without a valid environmental permit), it reviewed the company's annual report, and determined that 10% of the profit before depreciation, interest and taxes had to be paid as compensation, which amounted to INR1 billion. The Water Act, Air Act and EP Act all contain specific provisions for offences committed by companies. Under these Acts, every person who is in charge when an offence is committed, and is responsible to the company for the conduct of its business, is guilty of the offence and liable to be prosecuted and punished accordingly unless he proves that the offence was committed without his knowledge, or that he exercised all due diligence to prevent the offence. Thus importantly, the National Green Tribunal Act, 2010 (NGT Act) contains penalty provisions which are considerably higher compared to previously adopted environmental laws. Strengthening our institutions and ensuring strict implementation of our existing environmental laws is the key.

Thus to conclude Self-certification will definitely help improve accountability and India already has laws where this is being provided for. Change is the only constant though it may not be imminent in so far as our environmental law statutory framework is concerned. The key is not really consolidation but an effective and transparent implementation and interpretation of the existing laws to ensure that they serve the purpose for which they were originally enacted.³⁴

It has often been suggested that humans exercise a different relationship with their environment than other animals. "Humans," are said to "modify their environment to suit themselves; while other animals accept their environment as it is." Ignoring the fact that this is not true in detail and accepting the degree to which it is true, it is the possession of technology of which we speak. In this regard, technology is one of the chief features of our relationship with what environs us. **Philosophy of technology** is, thus, a significant subordinate to any adequate philosophy of the environment. In this sense, an ethical (wise) relationship to environments ought to be mainly expressed as a general conception of good (wise) technological behavior, a definition of appropriate behavior to which technology is responsive. When we construct things in the world, we need to consider the destiny of the world. Thus, the focus of environmental ethics, then, is not merely the idea of treating the enviroing world with respect or obligation but, more basically, returning to an understanding of dependence and reciprocity in the world. The Declaration of the United Nations Conference on the Human Environment held in Stockholm in 1972³⁵ stated that – "Man is both creature and molder of his environment which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth.

Sooner or later, we will have to recognise that the Earth has rights, too, to live without pollution. What mankind must know is that human beings cannot live without Mother Earth, but the planet can live without humans.

-Evo Morales

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