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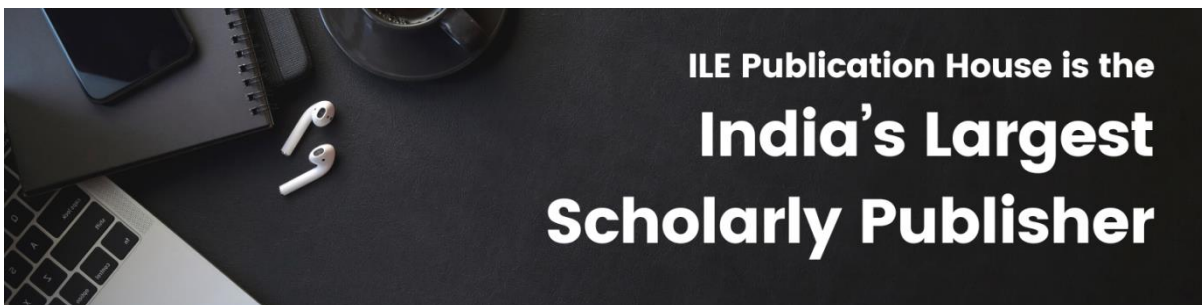
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ROLE OF THE JUDICIARY IN THE GROWTH OF ENVIRONMENTAL JURISPRUDENCE

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Abstract

This article explores the significant role of the judiciary in shaping and structuring environmental laws in the country. The development of environmental law can be traced back to the Stockholm period, which marked a crucial moment in global environmental awareness. Since then, the judiciary has played a crucial role in refining and shaping environmental legislation to address emerging challenges and societal needs. The Stockholm Conference, held in 1972, was instrumental in establishing international recognition of environmental issues and laying the groundwork for essential principles like sustainable development. Following this conference, many nations, including India, acknowledged the necessity of enacting comprehensive environmental laws to tackle various ecological concerns. In this endeavor, the Indian judiciary has been at the forefront, displaying a proactive and progressive approach to safeguarding the environment. As the highest judicial body, the Supreme Court of India has played a pivotal role in interpreting and applying constitutional provisions to protect the environment.

Keywords – Environmental laws, Polluters pay, Sustainable development, NGT, Pollution Control, Stockholm & Rio.

History and Introduction

The Indian Judiciary has played an important role in the growth of environmental jurisprudence in India. The United Nations Conference on the human environment, in 1972 was the initial step for India's legislation for ecology and environment. The Stockholm Conference had a serious influence on India's environmental laws because, as a result of the Conference, the Indian Parliament passed a number of very thorough and scientific laws relating to water, air, forests, and wildlife, as well as taking other appropriate actions to carry out the decisions made by the Government of India at the aforementioned Conference.

The Indian courts have enlarged the scope of the environmental law and have been instrumental in protecting the environment through a series of landmark cases like the M.C. Mehta case³⁸, the Maneka Gandhi case, and so on. The Indian judiciary has interpreted the constitutional provisions in a manner that gives wide-ranging powers to the courts to take action against environmental degradation and to enforce environmental laws. It has also issued several directions to the government to ensure the implementation of environmental laws and policies and to take steps for environmental protection and has been particularly active in this regard, hearing numerous cases that have dealt with a vast

³⁸ M.C. Mehta vs UOI, AIR 1987 SC 1086.

range of environmental issues, including air and water pollution, deforestation, wildlife protection, and the rights of indigenous communities.

I. Polluter pays principle

The SC of India has established the principle of “polluter pays” and has ordered compensation for environmental damage caused by industrial activities. The polluter pays principle essentially asserts that the party who caused the pollution should pay the costs involved with it. There have been several important cases in India that have contributed to the growth and development of environmental jurisprudence including *M.C. Mehta vs Union of India (1986)* also known as the Oleum gas leak case which is a landmark case. The Indian SC ruled that the “polluter-pays principle” had been implicitly applied in this case saying, “We have to evolve new principles and lay down new norms, which would adequately deal with the new problems which arise in a highly industrialized economy”³⁹ This case dealt with the problem of hazardous waste disposal and the government’s responsibility to protect the environment. The court has further also discussed the concept of “strict liability” and “absolute liability” citing the famous “*Rylands vs Fletcher*” which in simple terms means the person carrying out the activity would be held absolutely liable. In India, the supreme court has played a significant role in enforcing this principle and has made several landmark decisions to protect the environment and hold polluters accountable. The supreme court in many instances ordered the industries to pay compensation for all the environmental damage caused and has directed the government to enforce pollution control laws.

In the case of the *Indian Council for Environmental Action v. Union of India*.⁴⁰ the PPP was defined and applied for the first time.

*Vellore Citizen’s welfare forum v. Union of India (1996)*⁴¹ This case addressed the issue of

pollution caused by tannery effluent discharge, which was causing environmental damage and putting the health of the residents of the area at risk. The SC ordered to shut off of the tanneries that were causing pollution. And the SC also directed the government to take measures to prevent similar environmental harm in the future. The polluter pays principle has been taken into consideration in this case. In the case of *A.P. Pollution control board v. Prof. M.V. Nayudu and Ors*,⁴² the court further enhanced the extent of implementation of the polluter pays principle, the court directed the tribunals and other environmental institutions to apply these principles when cases are brought up to the tribunals.

Overall, the SC of India has used its powers to ensure that the “polluter pays principle” is upheld and that those who cause environmental harm are held responsible for the damage they cause.

The Vedanta Sterlite Copper Smelter Plant was closed in 2018 due to protests over pollution and environmental damage. The Honourable SC in this case ruled that the plant cannot be reopened due to its environmental impact. *T.N. Godavarman Thirumulkpad Vs Union of India*⁴³ also known as the “forest case” is a landmark case regarding the judicial intervention to protect and safeguard biodiversity. The SC issued interim directions on the conservation of our biodiversity; the interim directions have been issued under Article 32 of the Indian Constitution⁴⁴

II. Sustainable development- Firstly, the judiciary has recognized the principle of sustainable development as a fundamental tenet of environmental jurisprudence. In various landmark judgments, including the “MC Mehta v. Union of India” case, the judiciary has emphasized the need to harmonize development with environmental protection,

³⁹ Id. at 1099 per bhagwati, C.J.

⁴⁰ Indian council for enviro legal action vs UOI (1996) 2 JT (SC) 196.

⁴¹ Vellore citizen’s welfare forum vs UOI AIR (1996) SC 2715, 2721.

⁴² AP pollution control board vs prof M.V. Nayudu (1999) 2 SCC 718.

⁴³ T.N. Godavarman Thirumulkpad vs UOI (1996), 9 SCR 982.

⁴⁴ Armin Rosencranz and Sharachandra Lele, Vol. 43, No. 5, 11-14, 11, (2008).

acknowledging that economic progress should not come at the cost of ecological degradation. Furthermore, the judiciary has actively engaged in promoting environmental awareness and education. It has organized workshops, seminars, and public awareness campaigns to sensitize the public about the importance of sustainable practices and the need to protect the environment. By raising awareness, the judiciary has contributed to fostering a culture of responsible behavior towards the environment.

III. National green tribunal and Related Landmark Cases

“The National Green Tribunal” (NGT) has imposed several restrictions and fines on industries and individuals to control air pollution in Delhi. The NGT has even issued several directives to the government to clean up the Yamuna River, including the implementation of a “Clean Yamuna” project.

A. Bellandur Lake case: NGT ordered the closure of industries and the cleaning of Bellandur Lake in Bengaluru, which had become highly polluted due to discharge from nearby industries.

B. Mining in Goa: NGT ordered the closure of illegal iron ore mines in Goa, citing environmental damage caused by excessive mining.

C. Sand Mining in Uttar Pradesh: In the case of Vardaman Kaushik v. Union of India (2013), the NGT addressed the problem of unlawful sand mining in Uttar Pradesh. The NGT issued a prohibition on all sand mining operations conducted without proper environmental clearance. Additionally, the NGT instructed the state government to implement stringent measures to prevent unauthorized mining. This case underscored the NGT’s crucial role in combating illegal mining practices and safeguarding the integrity of natural resources. These cases demonstrate the role of NGT in addressing environmental issues and protecting the natural resources of India.

IV. Mass movements that led to better conservation and protection of the environment.

In the 1970s and early 1980s, when concerns about deforestation, wildlife conservation, and pollution gained widespread attention. Some of the prominent environmental movements in India include:

A. The Chipko movement also known as the “*hug the Trees*” movement in the 1970s started to protest against the destruction of forests. The movement was inspired by a woman who hugged a tree to prevent it from being cut down. The movement gained national attention and helped raise awareness about the need for environmental protection. This led to the creation of the forest act in India, to conserve forests and wildlife. The SC has not heard any cases specifically related to the Chipko movement but the movement brought attention to important environmental issues by which the SC has issued orders to protect forests and wildlife and directed the government to take steps to conserve forests and wildlife. Unknowingly Chipko movement aided in the support for ecofeminism as well.

B. The Narmada Bachao Andolan was a protest against the construction of the Narmada Dam in the 1980s. The protest highlighted the displacement of thousands of people and the destruction of ecosystems and cultural heritage sites. The protests led to a reconsideration of the project and a more thorough environmental impact assessment. The SC rulings on the Narmada bachao andolan have been complex, balancing the interests of development and environmental protection, as well as the rights of displaced people. The court has sought to ensure the rights of all parties are respected and that the environmental impact of the dam is minimized.

C. Appiko Movement: This movement started in Karnataka, 10 years after the Chipko movement for the protection of forests, and falls under the same lines as Chipko Movement. This movement was against the commercialization of forest land and products.

In the early 2000s, The Supreme Court of India intervened to protect tigers in the nation, leading to the creation of Project Tiger, a wildlife conservation program focused on tiger protection.

Conclusion

Overall, the Indian judiciary has made a substantial contribution to the development of environmental law and its enforcement in India. With its proactive approach and landmark judgments, the judiciary has significantly contributed to shaping the legal framework for environmental protection and sustainable development. The decisions of the Indian Judiciary have not only helped to enforce existing environmental laws but have also set important precedents for future environmental protection efforts in the country. The judiciary has been instrumental in recognizing the importance of environmental protection and has played a key role in establishing environmental jurisprudence. It has also issued several directions to the government to ensure the implementation of environmental laws and policies and to take steps for environmental protection. It has played a key role in understanding the extent and application of environmental laws and in making sure that the rights of the environment are safeguarded and well-balanced with the rights of citizens and institutions so that the environment is preserved for future generations. Moving forward, it is imperative to continue supporting and empowering the judiciary in its efforts to uphold environmental protection. Collaborative efforts between the judiciary, government, civil society, and citizens are vital to address emerging environmental challenges and promote sustainable practices.

By valuing the judiciary's role in environmental matters and acting upon its decisions, we can collectively work towards a future where environmental sustainability is prioritized, ensuring a healthier and greener India for generations to come.

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