

## **ROLE OF INDIAN JUDICIARY IN UPHOLDING INTERNATIONAL PRINCIPLES OF ENVIRONMENTAL LAW**

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The advent of Industrial Revolution created major impacts on the economy and environment. While it led to economic development and technological advancement, it had a negative impact on the environment. It paved way for deforestation, dumping of toxic waste into water bodies and open land, endangerment to wildlife, destruction flora/fauna, and so on, which ultimately increased carbon emissions and induced an anthropogenic phenomenon, otherwise known as Global Warming.

To prevent further deterioration of the environment, both international and national authorities created protocols, treaties, statutes, laws and bylaws to be duly followed by Countries. International Treaties and agreements such as the Rio Declaration, Stockholm Convention, Kyoto Protocol, Paris Agreement, and United Nations Framework Convention on Climate Change (UNFCCC), among many others, set forth important environmental principles that ought to be followed by member states who are party to these treaties/declarations. It was the duty of these nations to imbibe such doctrines within the framework of their Constitutions and this could be achieved through, rules, bylaws, Statutes and laws. Important principles that would be touched upon in this Article are- the Precautionary Principle, Polluter Pays Principle, and the Public Trust Doctrine.

The three bodies of the government (Legislative, Executive and Judiciary) work hand-in-hand with each other. As we already know, the function of the legislative is to create laws, executive- to execute said law and judiciary- to interpret the law. With respect to environmental law, the legislative authority in India has come out with various statutes such as-the Environment Protection Act, Water (Prevention and Control) Act, Air (Prevention and Control) Act, and Wildlife Protection Act with their respective rules and bylaws. *Article 48A* of the Directive Principles of State Policy (Part IV of the Constitution) places responsibility on the state to protect and improve the environment, which also includes protecting forests and wildlife. Over the course of case laws, the judiciary has further interpreted *Article 21* (Right to life) to include the right to a clean and healthy environment. In the Dehradun limestone quarrying case<sup>1</sup>, the Supreme Court held that economic development cannot be

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<sup>1</sup> *Rural Litigation and Entitlement Kendra Dehradun and Ors. Vs State of U.P and Ors.*, 1985 AIR 652, 1985 SCR (3) 169

reached at the cost of destroying the environment or people's livelihood. It was through this case that the Court held *Article 21* to include the right to live in a healthy environment with minimal disturbance to the ecology and protect people's livelihood and land without contaminating the air, water or environment<sup>2</sup>. Justice Venkataramiah in the Ganga Pollution case<sup>3</sup> further extended said Article to include the right to preserve the environment for the present and future generations. The Court further went on to hold that environmental pollution and industrial hazards would not only make up potential civil tort cases but could also be a violation of right to health as well. This was how environmental law started to gain significance among people.

Doctrine of strict liability through the case of *Ryland V Fletcher*<sup>4</sup>, in some way was the first step towards environmental law in India. It had further evolved through the *Oleum Gas Leak* case<sup>5</sup>, which introduced the doctrine of absolute liability. It can be inferred that the Indian Judiciary in some manner already started to implement international principles and doctrines to achieve environmental justice. This had further grown through the implementation of the above-mentioned principles over course of time with the aim to protect the environment.

The 'Polluter Pays Principle' as stated literally means 'those who pollute pay for damage and harm caused'. This principle was used in the *Enviro-Legal Action Vs UOI*<sup>6</sup> matter, wherein the Court held that the polluter carrying on any hazardous or inherently dangerous activity must be liable to pay for the loss caused to any affected parties (by that polluter's activity), even though reasonable care was exercised by said polluter. Additionally, they stated that any international principle/doctrine adopted must be simple, practical and suitable to the laws of the country. The Court moreover states that the absolute liability for harm to the environment is not limited to compensating the victims of pollution but is also the cost to restore the environment from such degradation<sup>7</sup>. This doctrine takes on a restorative objective to protect the ecology and recently has been seen as an internalizing factor in terms of pollution-related costs in an economic context.

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<sup>2</sup> Geetanjoy Sahu, 'Implications of Indian Supreme Court's Innovations for Environmental Jurisprudence', 4/1 Law, Environment and Development Journal (2008), p. 9

<sup>3</sup> *M.C Mehta Vs UOI*, (1987) 4 SCC 463

<sup>4</sup> [1868] UKHL 1, (1868) LR 3 HL 330

<sup>5</sup> 1987 SCR (1) 819, AIR 1987 965

<sup>6</sup> 1996 (3) SCC 212

<sup>7</sup> Geetanjoy Sahu, 'Implications of Indian Supreme Court's Innovations for Environmental Jurisprudence', 4/1 Law, Environment and Development Journal (2008), p. 10

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Following this would be the Precautionary Principle, which postulates that certain decisions may have a negative impact on the environment hence making it the duty of the decision maker to ensure that preventive steps are taken in order to avoid/reduce such effects. This can best be understood through the *Vellore Citizens' Welfare Forum Vs UOI*<sup>8</sup> matter where the Supreme Court was of the view that the said principle imposes a responsibility on people whether a developer, industry or governmental agency to anticipate, prevent and attack the causes of environmental ruin<sup>9</sup>. Moreover, they hold that in a situation where irreversible damage has been caused, an argument scientific uncertainty cannot be used to justify postponing precautionary measures. Finally, they clarified that the Onus of proof to show no environmental degradation or damage will be on the actor/industrialist. This principle was also employed in the *Narmada Bachao Andolan Vs UOI*<sup>10</sup> case, where the Court was of the opinion that said doctrine can only be used when its impacts are uncertain and non-negligible. Other cases that adopted this principle would be the *Andhra Pradesh Pollution Control Board v. Prof. M.V. Nayudu*<sup>11</sup>, *Shobana Ramasubramanyam and Ors. Vs The Member Secretary Chennai*<sup>12</sup>, and *M.C Mehta Vs UOI (Taj Trapezium Case)*<sup>13</sup> among other matters.

Lastly, Courts place emphasis on the doctrine of Public Trust, which primarily is based on the principle that natural resources such as air, water and forests are a sources of sustenance to all living organisms and should be made available to everyone irrespective of their caste, creed, gender, status, or any other categorizing factor. It would be wholly unjustified if they are subjected to private ownership. It is the obligation of the government to protect these natural resources and regulate them accordingly for public use. The case of *M.C Mehta Vs Kamal Nath*<sup>14</sup>, places emphasis on this doctrine. The court here applied said principle and cancelled the lease of forestland granted to the Respondent Hotel and the State Government was given the responsibility to restore the area to its original condition. Although the Supreme and High Court have not specifically referred to the doctrine in certain cases, it has done so implicitly.

Although environmental law in India has widely developed, there are situations where these doctrines and principles have not been followed properly. Many loopholes have been created which absolve

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<sup>8</sup> AIR 1996 SC 2716

<sup>9</sup> Ibid.

<sup>10</sup> (2000) 10 SCC 664

<sup>11</sup> AIR 1999 SC 812

<sup>12</sup> AIR 2002 Mad 125

<sup>13</sup> 1987 AIR 1086, 1987 SCR (1) 819

<sup>14</sup> 1997 (1) SCC 388

these decision makers from the liability, thereby affecting the lives of many. It should be the duty of the government to create stricter laws with regard to environmental matters, with stringent punishments so that they are well followed and regulated.

While the government has taken substantial steps to help create awareness about environmental degradation, it should also be every individual's responsibility to take their own steps to help contribute to this global issue. A more sustainable form of development should be employed, to create a peaceful co-existence between man, wildlife and natural resources.