



Studies on Rights to Environment in India and Judicial Activism

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ABSTRACT

Environmental law is a normative system that provides for the protection of the environment and takes into account the effects of human activities on the natural environment. It also focuses on the concept of sustainable development and ensures environmental justice through fair treatment and people participation in development. Implementation and compliance with environmental laws, regulations and directives. Various socio-political and economic factors that have contributed to environmental deterioration need to be regulated to stop further deterioration. There is no shortage of environmental protection laws in India, but compliance has been satisfactory. The Constitutional obligation, as well as other environmental laws, must be enforced effectively and efficiently. In India, judiciary has played important as well as and praiseworthy role in the development of environmental jurisprudence. Taking care of and controlling for long-term development to be possible, environmental protection is vital. The judiciary plays an activist role through judicial activism to perform the tasks given to it by the constitution. The Doctrinal Method has been used for research.

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**INTRODUCTION:**

The Environmental Protection Act provides for a growing interdependence of the economic use of environmental resources and their effects on human life. Development, which inevitably has a broader perspective, must be sustainable and include not only social, economic and distributive components but also ecological dimension¹ faced the problem of resource degradation and pollution in India, despite having put in place a range of regulatory instruments in “But the law doesn't work if it works as a whole”. The judiciary, which has been an observer of environmental expropriation for more than two decades, has recently taken on a proactive role as a public educator, policymaker, super administrator and more generally, amicus environment²

METHODOLOGY:

In pursuance of present research work researcher has adopted the doctrinal method. The doctrinal method involves a comparative, analytical, evaluative and descriptive analysis of Environmental Justice and Judicial Activism in India. In order to study the laws relating to the Environmental Justice it is relied on constitutional provisions, statutory laws related to Environmental Justice and Judicial Activism, books, e-books, e-journals, newspapers, online databases and the views of writers in discipline of Environmental Justice and Judicial Activism.

The objectives Framed for this research work are as under:

- Understanding of Environmental Rights.
- Environmental Jurisprudence in India, which developed historically.
- Theoretical foundation of Environmental Law in India.
- International Documents on Environmental Law.
- Indian Judiciary has contributed in the Development of Environmental Law.
- Growth of Judicial Activism, in Indian Environmental Acts.
- Judiciary by interpreting Constitutional Provision for the Protection of Environment.

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Hypothesis is Development of Environmental Rights in India is the result of proactive participation of the Judiciary by entertaining Public Interest Litigation, which stimulated for the Development of Environmental Rights in India.

RESULT & DISCUSSION:

Judicial activism

Judicial activism is an inherent feature of judicial review. At the same time, as the polity becomes more complex and new challenges are thrown up, the judiciary has to take on a more proactive role to interpret the laws and where laws do not exist.

According to Merriam Webster's Dictionary, „judicial activism“ is “the practice in the judiciary of protecting or expending individual rights through decisions that depart from established precedent or are independent of or in opposition to supposed Constitutional or legislation interest”

Blacks Law Dictionary defines the term judicial activism thus: “Judicial Philosophy which motivates Judges to depart from strict adherence to judicial precedent in favour of progressive and new social policies which are not always consistent with the restraint expected or appellant Judges. It is commonly marked by decision calling for social engineering and occasionally these decisions represent intrusion in the legislative and executive matters”.

Justice **P.N. Bhagawati** explained judicial activism as under:

“The India Judiciary has adopted an activist goal-oriented approach in the matter of interpretation of fundamental rights. The Judiciary has expanded the frontiers of fundamental rights and the process rewritten some parts of the Constitution through a variety of techniques of judicial activism. The Supreme Court of India has undergone a radical change in the last few years and it is now increasingly being identified by the justices as well as people as “the last resort for the purpose of the bewildered.”

Justice Anand has said that judicial activism was an expression incapable of precise definition and activism was a word of convenience. However, Justice Anand mentions that it is an accepted role of judiciary that the



courts have the power of judicial review over legislative measures, salutary rules and regulations and administrative actions and executive orders, it follows that if the judiciary is to perform its true role and to dispense justice, „judicial activism“ in that strict sense cannot be excluded from the role of the courts as it is truly is “Judicial Creativity”. Justice J.S. Verma said that ordinarily judicial activism meant the access to justice to the common man and their enforcement of his fundamental rights.

According to Justice Bhagwati, Juristic Activism in India is being used for achieving justice which otherwise labelled as „Social Justice“. There is another form of constitutionalism which is concerned with substantiation of Social justice which is termed by him as „Social Activision“

Prof. Baxi notes that the term „activism“ has been used more in ascriptive sense where judges are evaluated as activists by various groups in terms of their interest, ideologies and values and they are admired or denigrated depending on whether judicial activism is seen as inimical or being to the protection and promotion of these interests and ideologies and values.

According to Rajeev Dhavan, “Judicial Activism is simply ensuring the simply ensuring the systematic enforcement of court orders and the rule of law while juristic activism is the power of the judges to interpret and perforce create law. Judicial Activism flows from the failure of the executive to adhere to law. The more responsible the executive, the lesser the judicial activism. But juristic activism flows from the judges³.”

Justice V. G. Palishkar defines, “judicial activism as process of law making by judge. It means an active interpretation of existing legislation by a judge, made with a view to enhance the utility of that legislation for social betterment⁴.”

Judicial Activism implies progressive judicial thinking, developing the law for handling constructively the contemporary socio-economic problem of the society. Where a Judge interprets the law or the Constitution not merely by giving effect to the Literal meaning of the works of the statute, or the Constitution but, by giving such meaning as he thinks is in consonance with its spirit, he is said to be an activist judge. Judicial activism is a normal phenomenon throughout the democratic world.

Judicial activism is a term used for a necessary creative activity of the judiciary. Article 141 of the Constitution states that the law declared by the Supreme Court shall be binding on all courts within the territory of India. Thus Article 141 authorizes the Supreme Court to establish law. Article 13 which empowers the Judges to declare any law null and void, if it was found to be against the spirit of the fundamental rights enshrined in the Constitution.



The term judicial activism is used with reference to the judicial decisions in various fields. Its areas are widening such as public interest litigation, Writ petitions under Arts.32 and 226, interpretation of Articles 14, 19, 21, etc. Judicial activism in India encompasses an area of legislative vacuum in the field of human rights. Judicial activism reinforces the strength of democracy and reaffirms the faith of the common man in the rule of law. Court has to function within established parameters and constitutional bounds. As judicial activism is a delicate exercise involving creativity, caution and skill are needed while deciding the cases⁵.

Public Interest Litigation:

The term "Public Interest" means the larger interests of the public, general welfare and interest of the masses⁶ and the word "Litigation" means "a legal action including all proceedings therein, initiated in a court of law with the purpose of enforcing a right or seeking a remedy." Thus, the expression 'Public Interest Litigation' means "any litigation conducted for the benefit of public or for removal of some public grievance." In simple words, public interest litigation means. Any public spirited citizen can move/approach the court for the public cause (or public interest or public welfare) by filing a petition in the Supreme Court under Art.32 of the Constitution or in the High Court under Art.226 of the Constitution or before the Court of Magistrate under Sec. 133 of the Code of Criminal Procedure, 1973. The seeds of the concept of public interest litigation were initially sown in India by Krishna Iyer J., in 1976 in *Mumbai Kamgar Sabha vs. Abdul Thai*⁷, and was initiated in *Akhil Bharatiya Shoshit Karmachari Sangh (Railway) v. Union of India*⁸, wherein an unregistered association of workers was permitted to institute a writ petition under Art.32 of the Constitution for the redressal of common grievances.

Krishna Iyer J., enunciated the reasons for liberalization of the rule of Locus Standi in *Fertilizer Corporation Kamgar Union v. Union of India*⁹, and the idea of 'Public Interest Litigation' blossomed in *S.P. Gupta and others vs. Union of India*.¹⁰

Judicial review

Judicial review is the power of Courts to pronounce upon the constitutionality of legislative and executive acts of the government which fall within their normal jurisdiction. It has the origin in the theory of limited government and in the theory of two laws, viz. an ordinary law and a supreme law i.e. Constitution¹¹.

In India neither parliament nor judiciary are supreme, there is supremacy of Constitution of India which work on the principle of rule. In order to maintain the supremacy of the Constitution, the power of Judicial Review has been granted to the Judiciary. Various Articles in the Constitution guarantee the judicial review, such as Article 13 which provides that any law that contravenes the fundamental rights is void. Article 32



and 226 are the guarantor and protector of the fundamental right. In case of infringement person can directly approach the Supreme Court or to the High Court. Provisions for Judicial review in case of pre – constitutional legislations is provided under Article 372. Articles 131 to 136 confer powers on Supreme Court to adjudicate the matters between persons, between states or between union and states. Constitution of India also mandates that the judgments of the SC are binding on all courts.

Relaxation of locus standi

Another significant leap in the realm of 'access to environmental justice' is the relaxation of the traditional notion of *locus standi*. Earlier, when environmentalists approached the courts, without being directly aggrieved or affected, relief was denied as the Court focussed its attention on the identity of the petitioner rather than the subject of the petition, i.e. environmental rights. However, now the attitude of the Courts in this regard has taken 360 degrees turn. Bona fide petitions for environmental protections are being entertained both by High Courts and Supreme Court under Article 226 and 32 respectively, even where the petitioner does not have a direct standing in the matter. This type of standing is meant to defend the rights which are so diffused among the public such that generally no individual right per se can be enforced. Therefore any individual or association who claims a right to conserve and improve environment in social interest may approach the courts for environmental justice even though he/she may not be directly affected¹². One of the earliest cases where the Public Interest Litigation originated was the Society for Protection of Silent Valley case¹³. In this case, a petition was filed by a voluntary organisation seeking to refrain the State of Kerala from proceeding to construct a hydroelectric project at the Silent Valley. The organization asserted that it would disturb the ecological balance of the area. Although High Court dismissed this petition without giving proper reason, this case created public awareness about the importance of ecological balance. However, such public interest litigations must be bonafide in nature.

In Dehradun Quarrying Case¹⁴, The Supreme Court received a letter from the Rural Litigation Kendra for stopping illegal mining. The Supreme Court treated it as a writ petition under Article 32 of the Constitution.

In Mahesh R. Desai v. Union of India ¹⁵, the apex court received a complained from the journalist that the coastline was being sullied by unplanned development that violates the central government guidelines. The court considered this letter as a Writ petition under Article 32 and issued notice to the concerned authorities in this behalf¹⁶.

Role of judiciary in the evaluation of environmental protection

Judiciary plays a vital role in administration of Justice basing on Constitution. Constitution of India is the



supreme in India. The India Judiciary is the guardian and the custodian of India Constitution. The Supreme Court of India interprets the Construction. The Supreme Court has been called upon to safeguard civil and minority rights and play the role of guardian of the social revolution. Judicial review is an essential component of the rule of law, which is a basic feature of the India Constitution. Judicial review, means overseeing the acts of the executive to ensure that they are within the powers given by the legislature. The Supreme Court of India inherited the traditions of constitutional interpretation from the Privy Council and Federal Court of India, which were its predecessors. Constitution of India is created and formulated by the constituent Assembly and the Parliament is formed under the powers of Constitution and function within the outlines of the Constitution. Parliament is the law making body and the Judiciary is the law administering body and at the same time protector of the basic structure of the Constitution along with fundamental rights. Hence, the power of judicial review has been provided in Constitution and this gave scope of judicial activism by an independent Judiciary.

The expansive and creative judicial interpretation of the word „life“ in Article 21 has led to the statutory development of an environmental jurisprudence in India. Right to life is a fundamental right under Art. 21, and since the rights to life connotes „quality of life“ a person has a rights to the enjoyment of pollution free water and air to enjoy life fully, The Supreme Court has developed the Right to Environment has an implied fundamental right from „right to life“ under Article 21 of the Constitution.

In 1990, the Supreme Court, for the first time, came close to almost declaration the rights to environment in Art. 21 in *Chhetriya Pardeshum Mudle Sangarash Samiti v. State of UP* ¹⁷and observed: “Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated in Art. 21 or the Constitution of India.”

The world „environment“ has a board spectrum and within its ambit fall “hygienic atmosphere and ecological balance. “Environmental, ecological air, water pollution etc. amountto violation of Art. 21. Hygienic environment is thus an integral part of the right to life under Art. 21 of the Constitution.

In *Bangalore Medical Trust v. B.S. Muddappa*¹⁸, though the judgment did not refer to Art. 21 and the right to environment, it is emphatic on the constitutional mandate for the protection of individual freedom and dignity and attainments of a quality of life. Which a healthy and clean environment guarantees. The judgment said:” Protection of the environment, open spaces for recreation and fresh air, play grounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. The public interest in the reservation and preservation of open spaces for parks and play grounds cannot be sanctified by leasing or



selling such sites to provide persons for conversion to other user. Any such act-would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of quality of life which makes the guaranteed rights a reality for all citizens.”

In *Consumer Education and Research Center v. Union of India*¹⁹, it was held that “The State, be it Union or State Government or an industry, public or private, is enjoined to take all such action which will promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness... Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights to the workman.”

In *Damodar Rao v. The Special Officer, Municipal Corporation of Hyderabad*²⁰[AIR 1987 AP 171 at P 187], the High Court of Andhra Pradesh reasonably held that the enjoyment of life and its attainment is a right guaranteed by Art. 21 was comprehensive one. And questions are reason why practice of violent extinguishment of life alone should be graded as violative of Article 21 of the Constitution. The slow poison by the polluted atmosphere caused by environmental pollution and spot should also be regarded as amounting to violation of Article 21 of Constitution. Mining operation therein and was causing for a large scale pollution by the line some quarries. On the basis of the report of the Commission the court ordered the government to take steps to control the affecting the safety and health of the people living in the area otherwise closed them²¹.

CONCLUSION

The quality of environment necessary for sustaining life is being progressively hampered by the growing needs of human population. Modern society has realized the importance of protecting and improving the environment for the existence of mankind. National and international governmental organizations have taken an active role in safeguarding the environment. The legal systems and legal principles formulated for this must needs be continuously revamped and reappraised in order to assess the efficacy of the environmental legal system in addressing the objectives. The legal system will be effective only when it can ensure justice to the entire community. The scope of this study is the reappraisal and assessment of the Indian environmental legal system consisting of different organs of government in addressing the questions of administration of environmental justice. Indian Constitution guarantees Right to life and liberty under Article 21, which says that “No person shall be deprived of his life or personal liberty except according to a procedure established by law.” Here, putting emphasis on “Life” part of the Article, will see that how it has broad contours to substantiate this right. Life is not construed in Article 21 of the Constitution merely the



physical act of breathing. It does not connote mere animal existence. It has a much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc.

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⁴ Referred in Article, 'judicial Activism' by Justice V.G. Palishkar, AIR 1998 Journal, Volume 8 pg. 201.

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⁶ Oxford English Dictionary 2nd Edition. Vol. XII

⁷ AIR 1976 SC 1455

⁸ AIR 1981 SC 298

⁹ AIR 1981 SC 344

¹⁰ AIR 1982 SC 149

¹¹ <https://www.latestlaws.com/articles/doctrine-of-judicial-review-in-india-a-judicial-perspective-by-fayaz-ahmed-bhat>

¹² S.N. Rao v. State of Maharashtra, AIR 1988 SC 712 at 716.

¹³ Society for Protection of Silent Valley v. Union of India, Unreported Judgement, O.P. No.3025 of 1979, Kerala High Court.

¹⁴ AIR 1988 SC 2187,2195

¹⁵ Writ Petition No. 989 of 1988

¹⁶ <https://shodhganga.inflibnet.ac.in/bitstream/20809/9/06%201.pdf>

¹⁷ AIR 1990 SC 2060

¹⁸ AIR 1991 SC 1902

¹⁹ AIR 1195 SC 922

²⁰ AIR 1987 AP 171 at P 187

²¹ Environmental Law By Dr S.R. Myneni : published by Asia Law House ,Hyderabad