

Environmental Legislations Vis-a-vis Sustainable Development- Judicial Activism

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ABSTRACT

The concept of Sustainable Development Was used at the Time of Cocoyac Declaration on Environment and declaration in the early 1970's. It was further received impetus with the stock holm declaration resulting from the U.N. Conference on human environment In 1972. The concept of sustainable development is further developed by the U.N. conference on Environment and Development held in June 1992 at Rio Dejanerio which is known as Rio- Declaration and also kyto- conference on global warming in December 1977and another declaration at Johannesburg on sustainable development.

The important principles of sustainable development as culled out from Brundland Report And other International documents like Rio-declaration. In India much attention has been paid right from the ancient time to the present age in the field of environmental protection and improvement. There are nearly500 central and state statutes are there of which at least 300 statutes concern with the environmental protection either directly or indirectly. The environmental protection Act 1986 is a land mark legislation which provides for single focus in country for protection of Environment and aims at plugging the loopholes in existing legislation.

The Government and Parliament both have been taken number of steps to control environmental pollution and to promote the concept of Sustainable Development, but nothing has been achieved The Role of Judiciary in Controlling environmental pollution and conservation can be duly acknowledged. An overview decision of Apex court reveals a picture of active judicial interference to enforce the principlesof sustainable development and to protect environmental law. There shall be both development and proper environment and a balance has to be found out and administrative actions ought to be proceed accordingly. The credit of Environmental justice goes to the Supreme Court and the public spirited lawyers like M.C. Mehta.¹

Keywords: Environmental Legislations –Sustainable Development- Judicial Activism

Introduction:-

Man is both creature and moulder of his Environment. Which gives him Physical sustenance and affords him the opportunity for intellectual, moral, social, and spiritual growth. The various activities of human beings though necessary rather unavoidable and unscientific use of natural resources is likely to give adverse results. Man polluted the water, air caused harm to the living beings on earth, land and in the sky. The actions man caused harm to the physical, social, mental health of his fellow human beings. The natural Resources are drained, ozone layer is depleted and ecological balance is disturbed. Both aspects of mans environment .the natural and man-made are essential to his well being and to the enjoyment of basic Human Rights and the right to life.¹

Man can not afford to cause harm to the earth or to its Bio-diversity as he has to live on earth. He can not afford to dig his own grave. With an understanding between the Developed and developing countries, with advanced scientific, and technical knowledge man can achieve for him self to the posterity better environment. To defend and improve the human environment for present and future generations has become an imperative goal for man kind a goal to be pursued together with, and in harmony the established and fundamental goals of peace and of world wide economic and social development.

It was both with the initiative of Economic and social council United Nations conducted the conference on human Environment. The way the environment was getting degraded it needed immediate attention from almost all the countries. The historical conference on human Environment was held in 1972 at Stockholm. It was the first global recognition that the Environment was endangered and the governments put in effort to protect the environment .For the first time the developed countries realized that they had completely ignored the impact on the environment during their rapid development. Then UNEP (united Nations Environment Programme is formed. Almost all the countries of the world have undertaken to monitor the Quality of air, water, and other natural Resources of the World. The U.N. General Assembly laid down as many as 26 principles in the conference held at Stockholm in 1972.

¹U.N Conference on human Environment held in 1972 at Stockholm

The concept of "Sustainable Development" was used at the time of Cocoyac Declaration on Environment and Declaration in the early 1970s it was further received impetus with the Stockholm declaration resulting from the U.N. conference on human environment in 1972. It was further strengthened in world conservation strategy in 1980. It was brought in to common use by World commission on environment and development (the Brundtland commission) in 1987. The Brundtland Report defines Sustainable Development as "it is Development that Meets the Needs of the present without compromising the ability of the future Generations to meet their own Ends."² Later the concept of Sustainable Development is further developed by the United Nations conference on Environment and Development held in June 1992 at Rio Dejanerio which known as Rio-Declaration and also Kyoto- conference on Global Warming in December 1997 and another Declaration at Johannesburg on Sustainable Development.

The important principles of Sustainable Development as culled out from Brundtland Report and other International documents like Rio-Declaration are

- 1) Inter- Generational Equity,
- 2) Use and conservation of Natural Resources,
- 3) Environmental Protection
- 4) The Precautionary' Principle,
- 5) The polluter pays principle,
- 6) Obligation to Assist and co-operate,
- 7) Eradication of poverty³
- 8) Financial Assistance to Developing countries,

Indian Position:-

In India attention has been paid right from the ancient times to the present age in the field of Environmental protection and improvement. The present day legislations in India are the outcome of the growing industrialization and population pressure. There are nearly 500 central and state statutes are there of which at least 300 statutes concern with the environmental protection either directly or indirectly.

Besides this, the common law and constitutional law, civil and criminal law Remedies relating to environmental protection are also there. In the Economic development of any country Industries plays Vital and pivotal role. It also known fact that the Industries are the major contribution to the pollution of environment. The core question is whether for the sake of Environmental protection the industries / technological development can be neglected or withheld. In the Era of Economic liberalization at Global, National, state, and local levels the development activities are to be accelerated. In fact it is a Need of hour , that there should an Environmental balancing approach is necessary while pursuing the development projects .It is to be remembered that natural wealth and resources should not be exploited thoughtlessly. It is permanent assets of human beings and are not intended to be exhausted in one generation. The state has to see in protecting the environment as well as in promoting development. The harmonization of the two needs leads to the concept of "SUSTAINABLE DEVELOPMENT " The environment protection and development both have to go hand—in-hand. Economic development at the cost of degradation of environment would not be long lasting.

In India the central pollution Board monitors the industrial pollution prevention and control at the central level, and at the state level the state pollution control board are the designated agencies. In Pre-independence period the Indian government has passed one important legislation to protect the forest and wild life in the name of Indian forest Act of 1927. After 1970 comprehensive environmental laws were enacted by the central government in India. Firstly they enacted the Wild life protection Act 1972 aimed at rational and modern wild life management which was amended in 1993 2002, 2006. The water (prevention and control of pollution) Act 1974 which provides for establishment pollution control boards at center and state level to act as watch dogs for prevention and control of pollution. The Forest (conservation) Act 1980 aimed deforestation diversion of forest land for non —forestry purpose and to promote social forestry. Later the Air (prevention and control of pollution) Act 1981 aimed at checking air pollution via pollution control boards. The Environmental (protection) Act 1986 is a land mark legislation which provides for single focus in country for protection of Environment and aims at plugging the loopholes in existing legislation.

In 1991, the Public Liability insurance Act was passed to provide for mandatory insurance for the purpose of providing immediate relief to persons affected by accidents while handling any hazardous

²Our common future.The World commission on environment and development.43 (1987)

³Vellore Citizens Welfare Forum vs. Union of India (1996) S.C. 647

substances. In 1995, National Environmental Tribunal Act was passed to provide speedy disposal of environmental related cases through these tribunals.

In 1997, the National Environmental Appellate authority Act which provided the establishment of National environmental Appellate authority (NEAA) to hear appeals with respect to restrictions relating to the industries. The Biological Diversity Act was passed in 2002 to protect the Bio- diversity and to facilitate access to genetic materials. There are number of other laws which deals with the various aspects of environment protection, regulation, harmful activities and to provide for remedies in case of their breach. In constitutional law Art 48-A and Art 51-A (g) provides protection and improvement of environment. The other acts are in I.P.O 1860, code of civil procedure 1908, FactoriesAct,1948 the Mines Act 1952, The industries Development and Regulation Act, 1951 The insecticides Act1968, The Atomic Energy Act 1962, the Motor vehicles Act 1939, 1988, and Noise pollution Regulation and control Rules 2000, the Bio-Medicalwaste(Hazardous disposal Rules)1998, the Coastal Regulation Zone Notification 1991, etc.

Thus in recent Decades India employed a wide range of regulating instruments to preserve and to protect its natural resources. These new legislations: are impressive in their range covering hither to unregulated fields such as noise , hazardous environment impact assessment etc., the legislations has specified new enforcement agencies and strengthened the old ones.

Judicial Activism and Sustainable Development

The government and parliament both have taken number of steps to control environmental pollution and to promote the concept of "Sustainable Development" but nothing has been achieved .The judiciary has therefore taken the environmental challenge and contributed a lot through the strategy of judicial activism in the area of controlling environmental pollution . However the fact is that no law or authority can succeed in removing the pollution unless the people co- operate. The role of judiciary in controlling environmental pollution and conservation can be duly acknowledged.

In *Vellore citizen Welfare forum vs union of India*⁴ the supreme court -observed the Precautionary Principle and polluter Pays principle which are essential features of "Sustainable Development" .In this case the supreme court held that "Sustainable Development " as a balancing concept between ecology and development which has been accepted as a part of customary International.

In *M.C. Mehta vs Kamalnath*⁵the S.C declared the Public Trust Doctrine, which means the state as a Trustee is under a legal duty to protect the natural Resources and these resources should meant for public use which cannot be converted in to private ownership.

The enactments are plenty and the Rules associated with the Acts are umpteen. There was a good initiative from the legislature and the executive but it is the Indian judiciary which has taken a lead in terms of the actual immediate effect in the matter of protection of environment pollution. Failure of the governmental agencies to implement the laws made prompted the N.G.O and the public to approach the court as a last resort. Though the credit for the evolution of environmental jurisprudence in India goes to Supreme Court but it cannot be denied by any one that the maximum contribution goes to the famous Supreme Court Advocate and the social activist M.C. Mehta who was the Recipient of Magsaysay award winner in 1997.

As far as M.C.Mehta is concerned he has succeeded in getting new environmental policies initiated and has brought environmental protection in to Indian constitutional frame work. He has obtained almost more than 40 land mark judgments from Supreme Court against environmental pollution the notable cases among them are

M.C.Mehta vs Union of India⁶ (Ganga pollution Tanneries case)

M.C Mehta vs Union of India⁷ (Ganga pollution Municipality case)

M.C.Mehta vs Union of India⁸ (Calcutta Tanneries case)

M.C Mehta vs Union of India⁹(C.M.G Fuel /Motor vehicles case)

Apart from these the S.C decided several other cases

Centre for social justice vs Union of India¹⁰

⁴A.I.R (1996) S.O 2715

⁵(1977) 1. S.C. 388

⁶ A.I.R 1998 S.C 1037

⁷ A.I.R. 1988 S.C 1115

⁸ 1997 (2) S.C. 411

⁹ (1991) 2 S.C.137

¹⁰ S.P.I.c Gjlr vol xl I (3) 2000, 1997

R.A.Goel union of India and other¹¹

Narmada Bachao Andolan vs Union of India¹²

Municipal Council Ratlam vs Vardichand¹³ (Ratlam case)

Union of India vs Union Carbide Corporation¹⁴ (Bhopal Gas disaster case)

Shriram Food and fertilizer industries and other vs union of India¹⁵

M.C.Mehta vs union of India¹⁶(Taj Mahal case)

Jagannath vs Union of India¹⁷

In Vijay Singh puniya vs State of Rajasthan¹⁸the High court decided on the principle of Polluter pays and directed that each of the polluting industries units shall pay to the state industrial corporation 15% of its turn over by way of damages.

Conclusion :-

Judicial Activism in the sphere of environment is the need of the time specially when the legislation lagging behind in bringing lacuna in the existing legal mechanism and administration is still not equipped to meet the challenge. In future too the courts will have pay an active role in the formulation and effective determination of environmental policy so that elected persons of government became accountable to land and the public. An over view decisions of Apex court reveals a picture of active judicial interference to enforce the principles of Sustainable Development and to protect environment Law courts have a Social duty since it is a part of society and in their judgments there should be a proper balance between the protection of environment and development process. The society shall have to prosper but not at the cost of the environment and at the same time the environment shall have to be protected but not at the cost of development of society. There shall be both development and proper environment and a balance has to be found out and administrative actions ought to be proceed accordingly.

In this aspect the social workers, N.G.Os and the public spirited lawyers in India are well aware of the facts that invoking the Writ jurisdiction of Supreme Court by way of P.I.L is not sufficient to abate the environmental pollution. Prevention is better than cure. This can be achieved by the educating the general public. Their awareness can helping combating the problem on a major scale .The S.C of India directed that all over the country the cinema theatres shall exhibit the slides free of cost on environment. Now it has become a compulsory subject up to 12th standard from academic session 1992 and U.G.C will also introduce the subject in higher classes in different universities. The credit of evolution of Environmental Justice goes to the Supreme Court and the public spirited lawyers like M.C. Mehta

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¹¹ A.j.vr 200 P&h 320

¹² (2000) law report of India S.S. 319

¹³ A.I.R. 1980 S.C. 1622

¹⁴ 1986 1 Comp. Lj 25 S.C

¹⁵ (1986)1 comp LJ 25(S.C)

¹⁶ (1997) 2 S.C 353

¹⁷ 1997 2 S.C 87

¹⁸ AIR 2004 Raj 1