

JUDICIAL APPROACH ON VIOLATION OF ENVIRONMENTAL LAWS IN INDIA WITH SPECIAL REFERENCE TO CHATTISGARH

Akanksha Garg Agarwal¹
Dr. J.K.Patel²

INTRODUCTION

It is very well said that “we are the last generation with the real opportunities to save the world”³. The need of environmental protection was at stake at the time of post independence era due to large inclined nature towards industrializations and lot of political disturbance. However Bhopal Gas tragedy was the turning point for environmental laws and gathered people's concern towards its protection in India. After that India has widened its scope for environmental protection and increased its judicial activities. Lately, The Indian judiciary has occupied its position in the nation's politics.⁴ Protection and improvement of environment is a judicial mandate. It is a commitment or an obligation for a country wedded with the concept of welfare state. Initially, constitution of India does not recognize the principal of environmental protection nor it has any idea of imposing sanctions on the violators of environmental laws in India. But now the parliament of India also made some amendments in respect to environmental protection and environmental management to work on the basic rules and principal of Stockholm Conference, 1964. It was the most historic moment when safety of environment has got its status and gave ray of light to India while emerging it in DPSP (Directive Principles of State Policy) by 42nd constitutional amendment act, 1976.⁵

Amendments in the constitution in respect of violation of environmental laws have been strongly gripped by the Hon'ble courts to work for the safety of the environment and simultaneously bringing it into force with the glue of Article 21⁶. Due to the surge of environmental protection many acts picked up their pace in the race of protecting the environment. Wildlife protection act, pollution controlling act also came to their forefront in order to protect environment under the special supervision of the judiciary.

Hon'ble High Court of Bihar⁷ stated that Right to drink pure water and right to live in an environment which is pollution free are the basic attributes of Right to life which has been recognized in Article 21 of the Indian constitution. These are the staple conditions which sustain the life of an individual. Various pronouncements by The Supreme Court of India also recognized and observed that it is the basic and a fundamental right to live in an environment which is suitable for mankind and no person shall be deprived of it. It is very well encrypted in article 21 with all the terms. On the same hand judiciary has come up like some super hero to prevent the environment. Judiciary not only imposes heavy sanctions on the people who violates the laws in respect to environment but also ensure sustainable development in the country. As far as now, it never failed to be an important

¹ PhD. Research Scholar, Department of Law, Dr. C.V.Raman University, Kota, Bilaspur, Chhattisgarh.

² Associate Professor (Faculty of Law), Department of Law, Dr. C.V.Raman University, Kota, Bilaspur, Chhattisgarh.

³ Laurence Overmire

⁴ Khosla M., Indian Supreme Court: Towards an Evolved Debate, Hastings Int'l and Comp. L. Rev., 32(55), 55-100 (2009)

⁵ The constitution of India, 1949

⁶ The constitution of India, 1949

⁷ Subhashkumar V. State of Bihar, ors 1991

factor in interpreting all the legal conditions, executing it properly and ensuring to punish offenders of environment offenders in the country.

PRONOUNCEMENT MADE BY SUPREME COURT OF INDIA

There were several doctrines which are evolved by the courts and the doctrine acted as an important factor in environmental law. Article 253⁸ indicates the concept of legal principal and decisions embodied in the thread of legal system. The planning and adoption of new principals and laws in respect to environmental law is commendably working for the welfare of the society.

The judiciary of India has done specific alterations and enforcements in laws in respect to health and environment. In one of the landmark matter of **Subhash Kumar V State of Bihar**⁹, The Supreme Court of India has recognized water and air an irrespirable part of the life under article 21 of the Indian Constitution.

In vellore citizen's¹⁰ case judges of the apex court of India has enforced the idea of sustainable development and explained the environmental jurisprudence and also stated importance of environment and life.

In one of the landmark case of **Rural Litigation and entitlement Kendra**¹¹, **Dehradun V State of Uttar Pradesh**, the apex court held that protection and safeguarding the rights of every citizen should never be put at stake, Even if government has to bear economic cost.

Water is one of the most staple necessities to carry out life and it has also been recognized by the judiciary under article 21 of the constitution of India.¹² While listing down some essentials into the fundamental right of Right to life and liberty under article 21 and the apex court also had developed some important doctrines in respect with the environmental protection and safety and also stated some important features to live a healthy life.

The Supreme Court stated that the offenders of causing pollution pay principle and therefore safeguard principal can be a vital part for republic of India. The court observed that the polluters or the offenders are absolute liable for the wrongful deeds they have committed.¹³

M.C. Mehta V Union of India¹⁴ which most popularly famous as Oleum Gas Leak Case, in this case the apex court concluded that any enterprise engaged in some chemical or dangerous products which can even put life of citizen's at stake, shall be absolute liable. No delegation of duty is acceptable. The enterprise shall be absolute liable for the offence and shall compensate for all the damages and harm to the society.

Every industry irrespective of their size has to compensate for the damage caused by them. Nobody can waive off the amount of the compensation.¹⁵

This doctrine was also applied in the Taj Mahal Case also whereby the court asked the close by industry to shift or shut down as their existence was decreasing the glory of beautiful Taj Mahal¹⁶.

⁸ The constitution of India

⁹ Subhash Kumar V State of Bihar, 1991 AIR 420, 1991 SCR (1) 5

¹⁰ Vellore Citizens Welfare Forum V Union of India & Ors on 28 August, 1996

¹¹ Rural Litigation And Entitlement V State of UP & Ors on 12 March, 1985

¹² Narmada Bachao Andolan V. Union of India and ors

¹³ Vellore Citizen Welfare Forum V Union of India 1996(5)SCC 647

¹⁴ M.C.Mehta V Union of India, 1987 SCR(1)819, AIR 1987 965

¹⁵ Oleum Gas Leak case (M.C .Mehta V. Union of India)

¹⁶ M.C.Mehta(Taj Trapezium Matter) V. Union of India 1987 AIR 1086, 1987 SCR(1)819

The Supreme Court of India has concluded that the causing pollution is wrong to society as a whole and any person liable to it will be liable for tort. And any person, who will be found as a civil wrong doer will be liable for compensation to restore the glory of the environment.¹⁷

ANALYSIS OF JUDGEMENT ON AIR, WATER, SOIL AND SOLID MANAGEMENT

BY THE NATIONAL GREEN TRIBUNAL-

The national green tribunal was established on 18th October 2010 as a dedicated environmental court under the national green tribunal act, 2010 which came into effect on 4th of July 2011. The national green tribunal was made up with the idea of ensuring discipline with the necessary specialization for the effective and speedy disposal of cases relating to environmental safety, forest conservation and implementation of legal rights in respect of environmental protection.

The principal bench of NGT at New Delhi given some powerful judgments lately which have given immense support to the process of obtaining environmental clearances. In one of the most important cases of **M.P. Patil V. Union of India**¹⁸, in this case the tribunal observed that the environmental clearance was obtained by the National Thermal Power Corporation Ltd.

The NGT works specially for the welfare and the management of the things related to the environment.

In **Vardhaman Kaushik V. Union of India**¹⁹, the court declared that all the vehicles which are 15 years old will not be permissible to operate on the road and this step has been taken to curb the effect of pollution. All the vehicles which are older than 15 years old create more pollution than newly advanced cars. This judgment was one of the most historic judgments to curb the effect of rising pollution. NGT is wedded with the principle of welfare of the environment. There are a lot of judgments made by the NGT which acted as a turning point for environmental safety.

The NGT has worked as the most efficient body of the government. Speedy trials and delivery of judgment is the ultimate goal of this body. It neither favors infrastructure projects nor does it delay the case before it. It selects the environmental expert to deal with all the issues.

BY HIGH COURT OF CHHATTISGARH

Chhattisgarh has emerged as a role model, in protecting the environment, for the world. Several decisions made by the High Court of Chhattisgarh made it a landmark in the history of Chhattisgarh.

In one of the landmark cases of **Nitin Singhvi V State of Chhattisgarh**²⁰, “in this case, the jurisprudence in respect of environment has grown from days of scratch. When there were minimum liabilities for the offender. Other doctrines, including injunctive jurisdiction, are developing. The holistic concept in which earth is conceived by the culture of this land cannot be ignored nor put at the stake. This case states that every citizen is bound by the fundamental duties stipulated under Article 51 A of The Indian Constitution. It is the corollary duties and obligations are also constitutional obligations and duties of the official concerned.”

¹⁷M.C. Mehta v Kamal Nath and Ors (1997) 1 SCC 388.

¹⁸ M.P. Patil V. Union of India

¹⁹Original Application No. 21 of 2014.

²⁰Nitin Singhvi V State of Chhattisgarh on 27 April, 2017

In the above mentioned case High court has laid down various principals, rules and doctrines for protecting the environment. It also stated the fundamental duties to protect the environment.

In the case of *M/s. E. Tech Projects private V State of Chhattisgarh*²¹, in this case High court has ordered to the operators of the bio-medical waste to form an application of all the storage, collection, treatment, and all such activities shall be conducted only after the permission of the authorities. Which help the state to control its bio-waste material and make it waste Free State. Rule 14 also mandates the responsibility of the occupier producing bio-medical waste /producer of bio-medical waste treatment facility to arrange for suitable steps individual or in regard to comply the rule of 1998.

POLICIES INITIATED BY CHATTISGARH FOR ENVIRONMENTAL PROTECTION

All over the world environmental protection are now treated as a subject of concern. And India is not sitting idle when it comes to protect the environment. New innovative initiatives like renewable energy, sustainable development, mobilizing youth in the right direction are the key to protect the environment. India is putting its step forward for protecting environment and to address the environmental issues at world level, and its biggest example can be drawn from the state of Chhattisgarh, how Chhattisgarh has plugged out most of the environmental issues is commendable. Many stories from the state of Chhattisgarh have inspired the world. Many states are coming forward to appreciate the initiatives and the policies lay down by this state

1. Pollution- Chhattisgarh banning firecrackers and crop residual²²

In India air pollution has gained lot of popularity, bad popularity. And burning of the crop residue is one of the biggest problems. Banning Burning of crop residual was like banning air pollution from the state. So, Government of Chhattisgarh started by banning burning of crop residual. This method gave eco-friendly techniques to the farmer which helps in eco-sustainability. Chhattisgarh has also linked up to various agencies in order to ensure better alternatives for the farmers and for the environment. 6 major cities of Chhattisgarh has followed the method of banning crackers, these cities are; Raipur, Bilai, Durg, Bilaspur, Korba and Raigarh, and they have decided to ban during December and January-famous for weddings. All these initiative towards environmental protection made Chhattisgarh one of the less polluted state in the country.

2. MANAGEMENT OF WASTE-AIMING FOR ZERO WASTE STATE²³

Chhattisgarh, holding a small city in its heart, Ambikapur, has now become an inspiration for many big cities across India. Ambikapur has proved that how small cities can do wonders if the right tools and the right will are there. It ended up becoming zero-waste city in all 28 wards; the story of it becoming zero-waste and dustbin free is a goal of many. Well, it is all about proper garbage collection and

²¹ M/S E. V. State of Chhattisgarh on 23rd March, 2018

²² Chhattisgarh Environment Conservation Board, Raipur

²³ The United Nations Center for regional Development

segregating it. The first step towards waste management is garbage segregation and state of Chhattisgarh has followed this rule by categorizing organic and inorganic waste. Red box for inorganic waste and green box for organic waste, and this has been only possible with the corporation of 477 self help groups, 48 wards collected waste door-to-door. The second and the most important step are segregating the waste, recycling it or giving it for composing. All the organic leftover are used to fed domestic animals and the entire inorganic waster are being recycled. This state has used the best of technology and makes it a profitable deal for their state. The city has earned a huge profit; it has earned 3lakh by selling compost and 67.03Lakh by selling recyclable products. This method, proper planning, operating, directing has generated so many employments and made the city sustainably developed.

3. Water conservation: a step forward to save a dying lake.²⁴

Raipur being a capital city of Chhattisgarh saw a huge rise in Industries, infrastructure development, which impacted the conservation of the water and resulted in the decrease in the ground water table. Katoratalab, one of the most beautiful and biggest lakes of Raipur, revived from drying up, by the initiative of the people of Raipur. They prevented it from becoming a heap of garbage. Proper campaign were organized, large media coverage was This city has took an important step by planting 500 trees, particularly drawn and socializing the problem to the citizens put heartbeat to the heart of the river. Mini island was created in the middle of the river to recharge the water table level and prevent the lake from drying up and losing its essence, now this step has glorified the lake and became a habitat of large amount of birds and animals, every body's corporation helped the eco-system and they also made a gym for the citizens to carry a healthy lifestyle. The district administration ended up making 22 ponds and saved the river from drying up.

4. INCREASING GREEN COVERS IN THE CITY.²⁵

When world is trying to pull down the trees for the purpose of uplifting infrastructure, to construct huge buildings; Raipur, capital of Chhattisgarh, is doing totally contrast. Raipur is speeding up their pace of saving the environment by demolishing 70 –odd government offices and planting about 19-acre small area for forest or “oxy-zone” in Raipur. The land of 19 acres which has been devote to plant trees and convert it into a forest, once housed 70 government offices. 95% of these offices were being demolished for the purpose of saving environment by planting more trees. And 5% of the buildings has been kept for the purpose of building museum and cultural centers. No new buildings are allowed I the oxy-zone area. About 80 poor families were being migrated to better places from slums, with the help of the government. The oxy-zone area is only a place for trees not for any commercial purposes. The zone will not have any gardens or any public area. It will help trees to generate maximum oxygen and heal the environment. It will also enable ground water to get recharged in that area. Oxy-zone also will be for the common public. They can do exercise and yoga, walking, jogging and can present their lungs with some fresh air.

²⁴ Water Resource Department, Government of Chhattisgarh

²⁵ Chhattisgarh Environment conservation Board

People could also get some amount of fresh air in their lungs. They have also planned “oxy-reading zone”-an indoor –outdoor library which will help young bird to interact with the environment and read, learn and explore in the beautiful nature.

CONCLUSION

Thus after the analysis of above judicial pronouncements and the initiatives by the government of Chhattisgarh, it can be seen that how Supreme Court is showing its concern over so many environmental issues. Lately, judiciary is trying to fill up all the grey areas. This novel innovative approach towards environmental protection by judicial activism opens the door of wide range of scope of improvement in environmental sector. In India courts are all geared up and concerned about the changing environment. Judiciary is not even skipping a single chance to feed offenders with their own poison. More strict laws and more attention has been given to environmental protection which concludes that it's “NOW OR NEVER”

In India, awareness for the protection of environment is needed and nobody other than media could do that. It acts as a significant role in generating awareness about the environmental protection. Media is the best tool for telling people, generating awareness and drawing people's attention over this serious issue. Scientist from all over the world has issued a warning and stated that this generation might be the last generation to save the future, and we can even witness that. Supreme Court of India is taking all the measure to ensure environmental safety, by imposing strict laws, imposing sanctions and punishing them for their offence. This evolution can be seen and witnessed and can be seen that the time to save the environment is now.

People from all over the world should come together and do something for the protection of environment. It is a duty of the judiciary to protect the environment and so it is everybody's duty to protect it, until it is too late.

There is no point of enforcing law, unless it is being used effectively used for the betterment of the public awareness, and improvement of the society. Therefore, it is essential to have a proper awareness about the environment. This contention is stated by the Hon'ble Supreme Court of India in the case of M.C. Mehta V. Union of India.

In this case court made central government mandate that it will issue direction to all the state government to work for the protection of the environment.

Therefore it can be stated that judiciary has now made this fight for environmental protection better and helped India to achieve sustainable development by punishing offenders.

BIBLIOGRAPHY

1. Air Pollution and Health in India: A review of the current evidence and opportunities for the future report (July 2017), published by Centre for Environmental Health & Public Health Foundation of India.
2. Environment Protection Act, 1986.
3. Khosla M., Indian Supreme Court: Towards an Evolved Debate, Hastings Int'l and Comp. L. Rev., 32(55), 55-100 (2009)
4. The constitution of India, 1949
5. Subhash Kumar V State of Bihar, 1991 AIR 420, 1991 SCR (1) 5
6. Vellore Citizens Welfare Forum V Union Of India & Ors on 28 August, 1996
7. Rural Litigation And Entitlement ... vs State Of U.P. & Ors on 12 March, 1985
8. Narmada Bachao Andolan V. Union of India and Ors.
9. Vellore Citizens Welfare Forum v Union of India 1996(5) SCC 647
10. M.C. Mehta V Union of India, 1987 SCR (1) 819, AIR 1987 965
11. The Oleum Gas Leak case (M.C. Mehta v Union of India)
12. M.C. Mehta (Taj Trapezium Matter) V. Union of India.
13. M.C. Mehta v Kamal Nath and Ors (1997) 1 SCC 388.
14. M.P. Patil V. Union of India
15. Original Application No. 21 of 2014.
16. M/s E. V. State of Chhattisgarh 23rd march 2018
17. NITIN Singh V state of Chhattisgarh 27th april, 2017
18. www.cpcb.nic.in
19. www.cseindia.org
20. www.enviscecb.org
21. www.highcourt.cg.gov.in