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Role of the Judiciary in the Growth and Development of Environmental Jurisprudence of India

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ABSTRACT

The United Nations Conference on the Human Environment, 1972 was the starting point for India's legislations for ecology, environment and biodiversity. Following this Conference, the Parliament of India enacted a number of comprehensive legislations relating to water, air and forests and wildlife and, thereby, initiating appropriate steps, in this regard, to implement the decisions taken by the Government of India in the said Conference. The role of the judiciary was very crucial in this phase. Because the judicial interpretation of Article 21 of the Constitution of India, in its historic judgement delivered by the Apex Court in the famous Maneka Gandhi's case, was the epicenter of evergrowing environmental jurisprudence of India. Facts remain that the pronouncement of the Supreme Court on the "right to live" which accorded a new dimension, to the "right to life" became a judicial breakthrough in the area of environmental protection in the post Maneka Gandhi cases involving issues of forests, wildlife and biodiversity. On the foundation of the "affirmative duty doctrine" enunciated in the Maneka Gandhi's case, the Supreme Court enunciated the theory that it is open to the Court to enforce the duty implied by Article 48-A through the device of issuing directions under Article 48-A through the device of issuing directions under Article 32(2) of the Constitution. The pronouncement of the Supreme Court of India made the Directive Principle of State Policy contained in Article 48-A judicially enforceable. In the famous Oleum Gas Leak Case, the Apex Court while rejecting the "rule of strict liability" introduced a new rule called the "rule of absolute liability" for the industries engaged with hazardous activities. The Supreme Court, while taking recourse to an ecocentric approach to environment, started passing directions for the protection and preservation of fragile ecosystems including forests, wildlife, wetlands, mountains, rivers, hillocks etc. The Apex Court also declared the "public trust doctrine" as an integral part of environmental jurisprudence of India in a number of public interest litigations involving issues of ecology and environment. The Court recognized the citizen's "right to live in a healthy environment" as a solidarity right emerging from Article 21 of the Constitution. Apart from that, the "right to information concerning the environment" was also recognized as a basic procedural human right.

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According to the Court, this right promises environmental protection essentially by way of democracy and informed debate. A strong argument, in this regard, is that the democratic decision making always lead to environmentally friendly policies.

Keywords: *Environmental Jurisprudence, Stockholm Conference, The Supreme Court, Rule of Absolute Liability, Public Trust Doctrine, the Right to A Healthy Environment and Maneka Gandhi's case.*

I. INTRODUCTION

The Stockholm Conference², 1972 stands as a landmark decision in the development of the link between natural environments and human rights in International Law.

The Stockholm Conference was very significant in the matter of environmental legislations, in India, in view of the fact that following the Conference, the Parliament of India started enacting a number of very comprehensive and scientific legislations pertaining to water, air, forests and wildlife and thereby, initiating appropriate steps, in this regard, to implement the decisions³ taken by the Government of India in the said Conference.

Apart from that, the Indian Constitution is a unique document containing provisions for environmental protection in its Articles 48-A⁴ and 51-A(g)⁵. While Article 48-A, in Part-IV of the Constitution, is a fundamental duty of the State, Article 51-A(g), in Part IV-A, is a fundamental duty of every citizen of India, in this regard.

The development of legislative environmentalism, in India, can be divided into three phases significantly in the post Stockholm⁶, Rio⁷ and Copenhagen⁸ periods, as stated below:

² Stockholm Conference, 1972 is the United Nation's Conference on the Human Environment held at Stockholm, Sweden from 5th to 16th June, 1972. India participated in the Conference and became a signatory to it. Mrs. Indira Gandhi, the late Prime Minister of India, who led the Indian delegation in the Stockholm Conference, represented the Third World countries. In an eloquent speech, in the Conference, she had identified "poverty" as the most important polluter of our environment.

³ Article 253 of the Constitution of India empowers the Parliament to enact legislations and, thereby to implement the commitments given by the Govt. of India.

⁴ Article 48-A is a Directive Principle of State Policy inserted into the Constitution by the Constitution (42nd Amendment) Act, 1976.

⁵ Article 51-A(g) is a fundamental duty of every citizen of India in Part-IV-A of the Constitution inserted into the Constitution by the Constitution (42nd Amendment) Act, 1976.

⁶ Supra n.1

⁷ The United Nations Conference on Environment and Development held at Rio de Janeiro in Brazil from 3rd to 14th June, 1992. Indian delegation was led by late Narasimha Rao, the then Prime Minister of India.

⁸ Copenhagen Meet on climate change in 2009. Significantly, thereafter, the National Green Tribunal Act, 2010 was passed by the Indian Parliament to implement the commitments given by the Government of India in the said Conference.

Phase-I : (Stockholm and thereafter) :

- (i) The Wildlife (Protection) Act, 1972;
- (ii) The Water (Prevention & Control of Pollution) Act, 1974;
- (iii) The Constitution (42nd Amendment) Act, 1976;
- (iv) The Water (Prevention & Control of Pollution) Cess Act, 1977;
- (v) The Forest (Conservation) Act, 1980;
- (vi) The Air (Prevention & Control of Pollution) Act, 1981;
- (vii) The Environment (Protection) Act, 1986;
- (viii) The Public Liability Insurance Act, 1991;

Phase-II: (Rio and thereafter)

- (ix) The Protection of Human Rights Act, 1993;
- (x) The National Environment Tribunal Act, 1995;
- (xi) The National Environment Appellate Authority Act, 1997;
- (xii) The Protection of Plant Varieties and Farmers Rights Act, 2001;
- (xiii) The Biological Diversity Act, 2002;
- (xiv) The Right to Information Act, 2005;

Phase-III : (Copenhagen and thereafter) :

- (xv) The National Green Tribunal Act, 2010, the Parliament, thereby, repealing the earlier two legislations of 1995 and 1997. This new legislation draws inspiration from the India's constitutional provision of Article 21 which assures the citizens of India the right to a healthy environment.

The National Green Tribunal (NGT) came to be established, in India, under the National Green Tribunal Act, 2010. It started functioning w.e.f. 18th of October, 2010 and has already seen a

large number of cases being transferred from the erstwhile National Environment Appellate Authority and from the various Courts including the Supreme Court of India.

There are, at present, four circuit branches of NGT with eastern branch at Kolkata, the western branch at Pune, the central (northern) one at Bhopal and the southern branch in Chennai. New Delhi is the principal place of sitting of the National Green Tribunal besides the above Bhopal, Pune, Kolkata and Chennai circuit branches.

II. JUDICIAL BREAKTHROUGH IN THE AREA OF ENVIRONMENTAL PROTECTION

A major breakthrough emerged in the field of environmental protection as a result of the Apex Court's historic pronouncement in Maneka Gandhi's⁹ case. While taking recourse to a dynamic interpretation of the citizen's right to life, the Supreme Court of India accorded a novel dimension to Article 21. It was held that the right to live is not merely confined to physical existence but it includes within its ambit the right to live with human dignity.¹⁰

Keeping in view the Maneka's philosophy pertaining to right to life and personal liberty, the Supreme Court of India, in a number of subsequent cases involving issues of forests, wildlife, biodiversity and pollution of environment, widened the scope of Article 21 of the Constitution by stipulating that a clean and healthy environment is essential to human survival.¹¹ Public Interest Petitions have, thus, been founded on Article 21 to comprehend health hazard due to ecological imbalance caused by pollution deforestation and destruction of wetlands, wildlife and biodiversity.¹² It needs to mention that loss of insects is the first sign of collapse of ecosystems¹³. The Supreme Court observed¹⁴

“The natural resources of the communities like forests, wildlife, hillocks, flora and fauna maintain delicate ecological balance. They need to be protected for a proper and healthy environment which is the essence of Article 21 of the Constitution.”

In the history of Public Interest Litigation jurisprudence of India pertaining to environment and forests and wildlife, there are series of such cases filed by M.C. Mehta the renowned Advocate of the Supreme Court.

The first M.C. Mehta¹⁵ case enlarged the scope of the right to life and said that the State had

⁹ Maneka Gandhi –Vs- Union of India, AIR 1978 SC 597.

¹⁰ Ibid.

¹¹ Chhatriya Pradushan Mukti Sangarsh Samiti -Vs- State of U.P. AIR 1990 SC 2060.

¹² Ibid.

¹³ According to a retired IFS Officer. Recently he was invited as a Resource Person in the 7 days virtual National Wildlife Week organized by ICFAI, Dehradun from 1st to 7th of October, 2020.

¹⁴ H.L. Tiwari –Vs- Kamal Devi (2001) 6 SCC 466.

¹⁵ M.C. Mehta –Vs- Union of India, AIR 1987 SC 385.

power to restrict hazardous industrial activities for the purpose of protecting the right of the people to live in a healthy environment. The third M.C. Mehta case¹⁶ took a step forward and held that readwith the remedies under Article 32 including issuance of directions for enforcement of fundamental rights, the right to live contains the right to claim compensation for the victims of pollution hazards. In the fourth M.C. Mehta case,¹⁷ the tanning industries located on the banks of Ganga were alleged to be polluting the river. The Court played a pro-environment role and noted that pollution of river Ganga was affecting the life, health and ecology of Indo-Gangetic plan. The Court further held that although the closure of tanneries might result in unemployment and loss of revenue but life, health and ecology had greater importance.¹⁸

The first time when the Supreme Court came close to almost declaring the right to environment in Article 21 was in 1990 in Chhetriya Pradustan Mukti Sangarsh Samiti –Vs- State of Uttar Pradesh.¹⁹ Subhash Kumar –Vs- State of Bihar,²⁰ is another notable case where the Apex Court took a step forward. In Chhatriya Pradushan, the then Chief Justice Sabyasachi Mukerji observed, “*every citizen has a fundamental right to have the enjoyment of the quality of life and living as contemplated in Article 21 of the Constitution of India.*” In Subhash Kumar, Justice K.N. Singh observed in a more vivid manner that “*right to live includes the right to enjoyment of pollution free water and air for enjoyment of life.*”

A most remarkable feature of this expansion of Article 21 is that the non-justiciable directive principle contained in Article 48-A has been resurrected as enforceable fundamental right in a manner beyond the comprehension of the makers of the Constitution by promoting the directives for practical purposes to the status of fundamental right enforceable by a writ petition under Article 32 of the Constitution by the magic wand of judicial activism playing on Article 21. For example, right to healthy environment.²¹

A corollary of this development is that while so long the negative language of Article 21 and use of the word “deprived” was supposed to impose upon the State the negative duty not to interfere with the life or liberty of an individual without the sanction of law, activist judges have now imposed a positive obligation²² upon the State to take steps for ensuring to the individual a better enjoyment of his life and dignity, namely, elimination of water and air

¹⁶ M.C. Mehta –Vs- Union of India, AIR 1987 SC 1086.

¹⁷ M.C. Mehta –Vs- Union of India, AIR 1988 SC 1037.

¹⁸ M.C. Mehta –Vs- Union of India, AIR 1988 SC 1037.

¹⁹ Chhatriya Pradushan Mukti Sangarsh Samiti –Vs- Union of India, AIR 1990 SC 2060.

²⁰ Subhash Kumar –Vs- State of Bihar AIR 1991 SC 420.

²¹ M.C. Mehta –Vs- Union of India (1991) 2 SCC 353.

²² M.C. Mehta –Vs- Union of India, 1998 SC 1115.

pollution.²³

III. JUDICIAL INTERVENTION TO CONSERVE FORESTS, WILDLIFE AND BIODIVERSITY

In a case where the Apex Court intervened to protect the forest wealth and wildlife from the ravages of mining in and around Sariska Wildlife Sanctuary in the Alwar district of Rajasthan,²⁴ the Court viewed its constitutional role thus :

“This litigation concerns environment. A great American judge emphasizing the imperative issue of environment said he placed Government above big business, individual liberty above the Government and environment above all. The issues of environment must and shall receive the highest attention from this court.”

In Animal and Environment Legal Defence Fund –Vs- Union of India²⁵ the Supreme Court of India held that on the promulgation of the Constitution, the right to safeguard forests and wildlife has received constitutional sanction. Moreover, in order to maintain ecological stability, the Court observed that it could not afford to allow any further shrinkage in the national forest cover.

T.N. Godavarman Thirumulkpad –Vs- Union of India²⁶ is a leading case regarding judicial intervention to conserve biodiversity. The Supreme Court of India issued interim directions on 12.12.1996 to conserve our biodiversity wealth. The interim directions were issued in a Public Interest Litigation filled by T. N. Godavarman Thirumulkpad under Article 32 of the Constitution of India vide Writ Petition (Civil) number 202 of 1995.

The Supreme Court passed orders for the protection of the forests by prohibiting new felling and movement of timber. The interim directions issued by the Apex Court have made it mandatory on the part of Union of India and State Governments to take measures to protect forests wealth and conserve the richness of floral and faunal biodiversity. The interim directions also touched upon complex issues concerning interpretations of the term "forest" for the purpose of the Forest (Conservation) Act, 1980 and the National Forest Policy, 1988.

Forests help in maintaining the ecological balance. They render the climate equable, add to the fertility of the soil, prevent soil erosion and promote perennial stream flow in rain-fed river. The Supreme Court took note of this role in Rural Litigation and Entitlement Kendra –Vs-

²³ M.C. Mehta –Vs- Union of India, 1992 Supp. (2) SCC 85.

²⁴ Tarun Bharat Sangh, Alwar –Vs- Union of India, 1992 Supp. (2) SCC 750.

²⁵ AIR 1997 SC 1071.

²⁶ AIR 1997 SC 1228.

State of U.P.²⁷ Convinced of the need to stop mining that caused an ecological imbalance in a forest area, the Court said:

“The trees in the forest draw water from the bowels of the earth and release the same into the atmosphere by the process of transpiration and the same is received back by way of rain as a result of condensation of clouds formed out of the atmospheric moisture. Forests, thus, help the cycle to be completed. Trees are responsible to purify the air by releasing oxygen into the atmosphere through the process of photosynthesis. It has, therefore, been rightly said that there is a balance on earth between air, water, soil, plant. Forests hold up mountains, cushion the rains and they discipline the rivers and control the floods. They sustain the springs; they break the winds; they keep the air cool and clean.....”

Wetlands are bogs; swamps and marshes. They provide numerous ecosystem services including water purification, maintaining surface moisture, curbing soil erosion, reducing the impacts of floods and droughts and re-charging wells. Wetlands support a host of wildlife, such as, birds, fish, reptiles, amphibians and insects. There is no specific statute regulating wetland use of conversion, leaving the field open to judicial control on a case to case basis. The pioneering judgment in this field was delivered by the Calcutta High Court, which responded to a petition filed by an NGO concerned about the rapid dredging and filling of the marshes near Calcutta. Convinced of the need to stop further damage to the wetlands, the Court observed:²⁸

“In the Calcutta wetlands we find that there are 40 species of algae and 2 species of fern, 7 species of monocods and 21 species of dicods. Latest data suggest the presence of about 155 species of summer birds of which 64 species are resident birds and 91 are migratory. There are 90 species of winter birds of which 44 are residents and 46 are migratory. Calcutta wetlands present a unique ecosystem apart from the material benefit to the society at large Wetlands also help in mitigating floods, recharging aquifers and in reducing surface run-off and consequent erosion.....”

Within a period of one year after the Bhopal Tragedy,²⁹ on the 2nd and 4th December, 1985, there was another incident of leakage of Oleum Gas³⁰ from one of the units of Shriram Food

²⁷ AIR 1985 SC 652.

²⁸ People United for Better Living in Calcutta (PUBLIC) –Vs- State of WB, AIR 1993 CAL 265.

²⁹ Bhopal Tragedy of 1984. Facts remain that on the 3rd December, 1984 just after the midnight about 40 tons of highly toxic Methyl Iso Cyanate (MIC) which had been manufactured and stored in the Union Carbide Corporation (UCC) Chemical Plant in Bhopal allegedly escaped into the atmosphere killing 4000 people and inflicting injuries on more than 2 lakhs others (initial estimate).

³⁰ M.C. Mehta –Vs- Union of India, AIR 1987 SC 1086.

and Fertilisers Industries belonging to Delhi Cloth Mills Ltd. As a consequence of this leakage, it was alleged that one person had died and several others were injured by the same. Mahesh Chandra Mehta an environmental activist and an Advocate on Record of the Supreme Court of India moved the Apex Court through a writ petition under Article 32(1) of the Constitution by way of Public Interest Litigation.

The Constitutional Bench of the Supreme Court of India took a bold decision holding that we are not bound to follow the rule of strict liability laid down by the House of Lords in *Ryland - Vs- Fletcher*³¹ in England over a century ago. We have to evolve a new environmental jurisprudence in India. The Apex Court, thereby, introduced the Rule of Absolute Liability - as part of Indian law.

The Apex Court further made it clear that this new rule is not subject to any exceptions as earlier recognized in *Ryland -Vs- Fletcher* in England.

Bhagwati, C.J. said:

*"We have to evolve principles and lay down new norms which will adequately deal with new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constructed by reference to the law as it prevails in England or for the matter of that in any foreign country. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence."*³²

Significantly, thereafter, the Parliament of India, passed a legislation called the Public Liability Insurance Act, 1991 to implement the rule of absolute liability on the part of the "owner" and the "insurer" as well, to pay relief to the victims of environmental accidents.

IV. PUBLIC INTEREST LITIGATIONS AGAINST ILLEGAL COAL MINING IN DEHING PATKAI ELEPHANT RESERVE:

Altogether four Public Interest Litigations (PIL) including one of the Gauhati High Court, itself, have been filed on the issues of mining in the Dehing Patkai region.³³

The petitions have been filed in the Gauhati High Court opposing the opencast mining in the proposed Saleki Reserve Forest in Dehing Patkai Elephant Reserve.

The plea was filed online against the opencast project by North Eastern Coal Fields, a unit of Coal India Limited near the Dehing Patkai Wildlife Sanctuary. The sanctuary, as stated earlier,

³¹ (1868) HL1.

³² Oleum Gas Leak Case. Supra n.29.

³³ energy.economicstimes.indiatimes.com, pratidintime.com, www.eastmojo.com

is referred to as the “Amazon of the East” and it is spread over a huge area in the upper Assam region.³⁴

According to the petitioners the illegal mining carried out by CIL in the Saleki proposed reserve forest is violative of the right to life of the citizens of the State guaranteed under Article 21 of the Constitution of India.

The instant petitions are being filed under Article 226 of the Constitution espousing the cause of the people of the State of Assam to safeguard the flora and fauna particularly the wildlife of the Dehing Patkai Forest Reserve and to protect the ecological balance of the entire State.

The PILs sought to declare the Dehing Patkai Wildlife Sanctuary as a heritage site under the Biological Diversity Act, 2002.

The Gauhati High Court has issued notices to the State government, Central government and CIL seeking the reason for permitting coal mining in the wildlife sanctuary.³⁵

The Supreme Court of India on June 11, 2020 directed the Centre to come out with a proposal to seek for an alternative site for coal mining in place of Saleki proposed reserve forest within three weeks.³⁶ The Standing Committee of NBWL had, earlier on April 7, accorded approval to North Eastern Coal Fields of CIL for mining in the Saleki RPF. Saleki’s total lease area of 98.59 hectares is situated within the 10 km. eco-sensitive zone of the 111.19 sq.km. Dehing Patkai Wildlife Sanctuary and also near to an elephant corridor.³⁷

The Apex Court, thereby, calls for finding middle path between ecology and development. The Court observed that saving the environment should not come at the cost of economic development adding that a balance should be struck between the two.³⁸

The above observation by the top Court came on a plea filed by a lawyer seeking a ban on mining in the Saleki forest reserve, situated close to the Dehing Patkai Wildlife Sanctuary in Asam.³⁹

Faced with conflicting positions between environment and development, the Supreme Court Bench, consisting of Chief Justice of India (CJI) SA Bobde and Justices AS Bopanna and Hrishikesh Roy, said “*we are conscious of the fact that our orders in favour of environment affect economic development adversely. There has to be some method by which economic*

³⁴ www.time8.in

³⁵ www.guwahatipius.com

³⁶ www.outlookindia.com

³⁷ www.thehindu.com

³⁸ www.northeasttoday.in

³⁹ m.hindustantimes.com

*development is not retarded as this has a direct impact on poverty in the country.*⁴⁰

The Bench further said that it was aware of the constitutional duty to protect the environment but at the same time, it cannot be oblivious to the economic impact.⁴¹

The Apex Court, therefore, directed the centre to come out with a proposal for an alternative site in three weeks.

As reported, the NBWL on July 22, 2020 ordered the CIL to stop all mining activities inside the Dehing Patkai Forest in Assam.⁴²

Facts remain that earlier the NBWL had recommended the CIL's proposal of legalizing the illegal mining, which the company was indulging from 2003 to 2019 inside the forest, for approval provided it fulfills certain conditions. Reportedly the North Eastern Coal Fields, a unit of CIL failed to fulfill the conditions leading to violation of the provisions of the Forest (Conservation) Act, 1980.⁴²

In a significant case Kamal Nath –Vs- Union of India, the Apex Court held that Public Trust Doctrine is an integral part of Indian Legal System. As such, the Government is only a trustee of the national resources and, therefore, under an obligation to protect the trust corpus i.e., forest, wildlife, rivers, mountains, water, air and land.

V. CONCLUSION

In India executive inaction is well known. The forest department, inspite of having its sufficient forest officials and forest protection force alongwith adequate maintenance fund, is not able to save the country's fast depleting bio-diversity. Precisely, it is in this background that the role of the judiciary becomes important.

India is fortunate in having an Apex Court that can respond effectively to cries for help. The fight against environmental degradation does not belong to the government alone. The common citizen must understand the gravity of the environmental problems and engage themselves wholeheartedly for their solution. Success of the environmental protection movement largely depends upon the public participation with full awareness of their rights as per exhaustive interpretation of Article 21 by the Supreme Court of India in its landmark judgement in the Maneka Gandhi's case.

In Dehing Patkai case, the Apex Court calls for finding middle path between ecology and

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

economy. The Supreme Court has taken recourse to a sustainable approach while maintaining a balance between two conflicting interests, namely, environment and development. Development is necessary for the economy of our country but at the same time environment and ecosystems have to be protected.
