Chapter 5

Conclusion

Indian Constitution is playing vital role for preservation of Environment, because it is basic law of land, from which all other laws deriveds their sanctity and validity, although India was the first Country in the world to have provision on the environment in the Constitution.

The evolution of Public Interest Litigation has liberalized the doctrine of locus standi in India. It allow a public conscious individual to file a suit under extraordinary writ jurisdiction of the High Court and Supreme Court. Public Interest Litigation has played a important role in majority Environmental, pollution cases and it has significantly contributed to the development of the law relating to Environmental compensation. This has activised the Indian Judiciary.

Prior to 1980s, only the aggrieved party could personally knock the doors of justice and seek remedy for his grievance and any other person who was not personally affected could not do so as a proxy for the victim or the aggrieved party. But around 1980, the Indian legal system, particularly the field of Environmental law, underwent a sea change in terms of discarding its moribund approach and instead, charting
out new horizons of social justice. This period was characterized by not only administrative and legislative activism but also judicial activism.

The Indian Judiciary has concretized the right to live in clean Environment, through bold and innovative interpretation of Article 21.

Public Interest Litigation (PIL) has come to stay in India. Contrary to the past practices, today a person acting bona fide and having sufficient interest can move the courts for redressing public enquiry, enforcing public duty, protecting social and collective rights and interests and vindicating public interest. In course of time there has been a wave of environmental litigation.

At present most environmental actions in India are brought under Article 32 and 226 of the Constitution. The writ procedure is preferred over the conventional suit because it is speedy, relatively inexpensive and offers direct access to the highest courts of the land. Nevertheless, class action suits also have their own advantages. The powers of the Supreme Court to issue directions under Article 32 and that of the high courts under Article 226 have attained greater significance in environmental litigation. Courts have made use of these powers to remedy past mala-fides and to check immediate and future assaults on the environment.

The formulation of certain principles to develop
a better regime for protecting the environment is a remarkable achievement. In the Bhopal Gas case, the Supreme Court formulated the doctrine of absolute liability for harm caused by hazardous and inherently dangerous industries by interpreting the scope of the power under Article 32 to issue directions or orders which ever may be appropriate in appropriate proceedings. According to the Court, this power could be utilized for forging new remedies and fashioning new strategies.

These directions were given by courts for disciplining the developmental processes, keeping in view the demands of ecological security and integrity. In one of the earlier cases, Rural Litigation Kendra, that posed an environment development dilemma, Supreme Court gave directions that were necessary to avert an ecological imbalance, such as constitution of expert committees to study and to suggest solutions, establishment of a monitoring committee to oversee afforestation programmes and stoppage of mining operations that had an adverse impact on the ecology.

The apex Court first introduced the polluter pays principle in the Bichari Village (H acid) case. The apex Court read the principle into provisions of Environmental statutes thus requiring the Central Government to issue order against factories producing highly acidic waste.
In *L.K. Koolwal v. State of Rajasthan*, the Rajasthan High Court observed that a citizens' duty to protect to protect the environment under Article 51-A(g) of the Constitution bestows upon the citizens the right to clean environment. The judiciary may go to the extent of asking the government to constitute national and state regulatory boards or environmental courts. In most cases, courts have issued directions to remind statutory authorities of their responsibility to protect the environment. Thus, directions were given to local bodies, especially municipal authorities, to remove garbage and waste and clean towns and cities.

In *Indian Council for Enviro-legal Action v. Union of India*, Supreme Court felt that such conditions in different parts of the country being better known to them, the high courts would be the appropriate forum to be moved for more effective implementation and monitoring of the anti-pollution law.

The liberal use of Public Interest Litigation (PIL) against assaults on the environment does not mean that the courts, even if it is tainted with bias, ill will or intent to black mailing will entertain every allegation. This amounts to vexatious and frivolous litigation. When the primary purpose for filing a PIL is not public interest, courts will not interfere. In *Subhash Kumar v. State of Bihar*, the Supreme Court upheld that affected persons
or even a group of social workers or journalists, but not at the instance of a person or persons who had a bias or personal grudge or enmity could initiate PIL for environmental rights.

In *M.C. Mehta* case the court evolved an Indianized principle of "strict liability" and termed its as principle of absolute liability. The court laid down that the measure of compensation must be correlated to magnitude and capacity of the enterprise so that compensation could have deterrent effect.

In *Tamilnadu tanneries* case the apex court directed the Central Government to constitute loss of ecology "prevention and payment of compensation" authority to assess the damage and estimate the compensation. Persuant to the aforesaid directive authority asked the tennaries to pay a compensation of Rs. 26.82 crore, to 29193 people as pollution damage.

Indian Judiciary has applied customary international law principles to supplement the domestic provision in deciding the claim for compensation and it draws its strength through such international convention or treaty, to which India is not party.

In the judgement chief justice Bhagwati stressed on the need to develop a law recognizing the rule of strict and absolute liability in cases of hazardous or
dangerous industries operating at the cost of environment and the human life.

It is important to note that Indian Judiciary has tried to simplify the procedural formulation and advocated for the establishment of an authority or commission to assess and determine the loss caused by environmental pollution. It has been suggested the state activate itself to recover damage from polluters, who have damaged the environment. It is submitted community based scheme will take into consideration the need of community and measures required to restore the natural environment the money should be used to compensate to the community as a whole and to provide all infrastructure which are necessary for clean and healthy environment.

This Thesis is concluded “how our judiciary have adopted various effective measure for preservation and protection of Environment. This phenomenon of Judicial activity which our courts are doing called JUDICIAL ACTIVISM towards protection of ENVIRONMENT, due to which Environment can sustain for present and future generation.”
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