

Direction of Environmental Virtue an Epilogue: A Critical Analysis of 19th Century Case Laws

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Abstract

In this race the Indian legislature, fortunately, has not lagged far behind and has shown great concern for degradation of environment” and made specific legislative attempts to control different environmental pollution in particular. On the other hand, the second limb of the state, the executive, has been moving at a snail’s pace or what Justice Krishna Iyer says, the bureaucratic machinery, which difunctionally, has passion for files, not for the people.” Whereas, the judiciary is trying its best to balance the environment and development. In view of the degrading environment which poses a problem for the very survival of living things, the environmental law academics lately started paying attention to this underdeveloped field. Out of the three components of the state, the academics in India have generally confined their discussions to the approach of the legislature. The executive approach in environment has yet to attract serious attention of the law academics’ writings. However, the judicial approach finds some place in the law writings. The present paper makes an attempt to take further the discussion on Indian judicial approach in the field of environment. Such academic exercise is all the more necessary in the present time because Indian judiciary since 1980 is taking special cognizance of the pollution explosion and there is a substantial increase in the case law in environment. Is not the time ripe to take stock of the direction of environmental legality in India? The present paper makes a humble attempt in this direction. It confines discussion to the cases of 1987 decided by the Supreme Court of India and the High Courts. This specific year has been selected because the graph of case law in environment from the year 1950 to 1990 shows its highest peak in 1987.

Key Words: *environmental pollution, environmental degradation, balanced approach, environmental legality, industrial activities*

Introduction

The life of human beings depends upon the ecological balance and environmental protection. If the human beings protect the environment and promote the ecological development automatically an environment free from pollution may be developed and with that development of the living conditions of human beings and living organisms will be developed. The environmental damage will be caused not only in the nation where it occurs but at the global level in general. All public institutions, including the judiciary, need

to make collective effort to fight against this universal peril. Human activities sometimes tend to submerge concepts such as respect for nature, trusteeship of earth resources and community interests in common amenities, present in the traditions of many developing countries. These traditions can be a rich source of inspiration for the environmental law of the future, where relevant attention is drawn to them. Environmental problems stem from two main categories of human activities. First, the use of resources at unsustainable levels and contamination of the environment through pollution and secondly discharge of the wastes at levels beyond the capacity of the earth and environment to absorb them or render them harmless results in ecological damage and environmental degradation. Environmental damage around the world includes: biodiversity loss, pollution of water and consequent health problems, air pollution resulting increase in respiratory diseases, causing

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deterioration of buildings and monuments, loss of soil fertility, desertification, increase in skin cancers and eye diseases in certain areas due to ozone depletion, and more widespread diseases. Environmental hazards are created by the excess consumption propensities of rich people, while the weight of environmental degradation is primarily borne by the poor people.

The year 1987 saw many judgments handed down by the Supreme Court of India while few cases were decided by the High Courts.¹³ As regards the Supreme Court cases, many cases were decided by the Division Bench consisting of two judges and some cases by three judges. All the judgments were unanimous except the Sachidanand Pandey case where Justice Khalid, “fully agreeing” with the conclusion of Chinnappa Reddy “added few lines” to “delineate the parameters of public interest litigation.” And also, in the M.C. Mehta case, Justice K.N. Singh, “agreeing with every word” of Venkataramiah J. “added few words.” In the above two cases the individual judges, delivering separate opinions, did not deviate from the unanimous approach. Justice Ranganath Misra participated in the maximum number of environmental law cases followed by Justices P.N. Bhagwati and G. L. Oza. It was Justice Misra who wrote the maximum number of judgments. In the cases of 1987 during the Chief Justiceship of Justice Bhagwati, one finds that the Bench had invariably at least one judge who was already there deciding environmental law matters. As regards the High Court case law, the environmental law matter was handled mainly by three High Courts: Allahabad, Andhra Pradesh and Karnataka. The judgment of the Allahabad High Court was a decision of the Division Bench consisting of two judges, whereas, in the other cases it was a single judge opinion. But the Damodar Rao case makes history in the field of environmental law where Justice Choudary, under the influence of Maneka Gandhi’s wavelength tried to bring right to the enjoyment of a pollution free life under Article 21 of the Indian Constitution.

Now coming to the subject matter, the question of balancing ecology attracted maximum litigation. In most of the cases the petitioners pleaded for protection of environment. The pollutants which attracted the most attention included, industrial activities, mining technology, deforestation and building construction, with industrial pollution alone attracting ten case law. In this paper some cases the government or other authorities were defendants and in other cases the writ

petitions were filed against private parties. It is very clear in such cases that administration of environmental justice received a sympathetic consideration when the legal battle was fought by the social organization or social activist.

There are criticisms against the administration of environmental justice. An attempt is made in the present paper to find out how far it is true to label the Indian judiciary as not possessing the pool of skills, the fund of experience or being “not innovative and ill-equipped to deal with complex legal issues,”¹⁴ The present study also examines different dimensions of environmental justice in India.

Industrial activities

The most dangerous pollutions caused by industry include air, water and noise. The problem of gradual deterioration in the environment of the present case law industries which attracted litigation included fertilizer, slaughterhouse and mining activities. In many cases, the Supreme Court adopted a balanced approach and allowed industrial activities to continue with certain riders. It is interesting to note that the balanced approach orders or judgments were delivered by judges like Bhagwati, Ranganath Misra and Oza JJ. who were mostly on more than one Bench handling environmental cases. But this should not be taken to indicate that these judges learned in favour of balancing the competing interests.

Food and fertilizer industry

The multi-dimensional issues relating to environmental pollution were raised in M.C. Mehta v. Union of India, A.I.R. 1987 S.C. 965 case where the sole question was whether Shriram should be allowed to restart the caustic chlorine plant. The flashback of this case was that, there was a major leakage of oleum gas from one of the units of Shriram affecting a large number of persons, both amongst workmen and public, and it was alleged that an advocate practicing at the Tis Hazari Court died due to the leakage and within two days there was another minor oleum gas leakage. In view of these incidents, the inspector and assistant commissioner of factories issued orders prohibiting Shriram from operating their plants.

The aftermath of the Bhopal tragedy, opened the eyes of the Government of India and it started examining the question whether industries employing hazardous

technology and producing dangerous commodities, were equipped with proper and people living around them. There were committees after committees of accidental release of hazardous gas could endanger life of the people living in the vicinity of the caustic chlorine plant. Further, they were all unanimous that there was considerable negligence on the part of the management of Sriram in the maintenance and operation of the said plant.

The Supreme Court in this case was confronted with the problem of how to balance the pollution hazard of the chlorine gas over the (i) safety arrangements made by Sriram, (ii) interests of workmen, (iii) scarcity of chlorine, and also (iv) a task and with considerable hesitation, bordering almost on trepidation. While balancing development and environment, it tilted the scale in favour of development. It further stated that such an approach was essential for economic development and advancement of well-being of the people.

Some of the “stringent conditions” which the court imposed so as, “to almost reduce to nil” the hazard or risk, included:

First, the installation of effluent treatment plants.

Second, operator of the safety device and head of the chlorine plant would be held personally responsible if the expert committee or factory inspector found that the safety measures were not properly functioning.

Third, chief inspector of the factory or any senior inspector nominated by him or deputed by the Central Board would inspect the caustic chlorine plant at least once a week by paying a surprise visit

Fourth, the Chairman and Managing Director of the Delhi Cloth Mills Ltd., which was the owner of various units of Sriram, would give an undertaking that they would be held personally responsible for payment of compensation for any death or injury. It may be mentioned that section 16(1) and (2) of the Environment (Protection) Act 1986 specifically imposes personal responsibility on the above officers of the company. In view of the statutory strict liability the undertaking had no meaning.

Fifth, the condition provided that there would be a Committee of Workmen’s Union to look after the safety arrangements in the caustic chlorine plant.

Sixth, there were also conditions for protection of the workmen including training of workers in regard to functioning of the plant, warning and safety devices. The introduction of environmental education is one of the basic needs for protection and improvement of the environment.

Finally, Sriram was required to deposit Rs. 20 lakhs and bank guarantee for Rs. 15 lakhs had to be furnished within two weeks from the date of the present judgment for payment of compensation claims of the victims of oleum gas.

Slaughterhouse

An abattoir, having its plant in the agricultural area, was not permitted to further run its business. It was alleged that the abattoir was likely to pollute the rivet water used by human beings and animals and in no circumstances should it be permitted to run the plant. The Supreme Court¹⁵ upheld the order of cancellation of permission in the public interest. In this case, unfortunately, no light is thrown on the ecological problem, whereas the aspects of environmental problem involved were, first use of agricultural land for non-agricultural purposes; and second, pollution which could be caused by a large meat export industry.

Mining activities

Mining activity is a source of environmental pollution. In Rural Litigation and Entitlement Kendra,¹⁶ the main question before the Supreme Court was whether the mine lessees could be allowed to mine quarrying operations. The court was confronted with the difficult task either to protect the ecology and environment or to make available to the country, high grade lime stone deposits. The court in the present case shifted its responsibility and preferred a decision by the bureaucrats over the judicial finding.

At the same time, the court insisted that the natural resources have got to be tapped for the purpose of social development but this should be done with requisite attention and care so that ecology and environment was not affected in any serious way. Use of the word ‘serious’ in this judgment implied the court’s inclination towards the development process. Further, how far the government will seriously balance the competing



interests is a doubtful question.¹⁷

Direction of environmental justice an epilogue

The Judiciary maintained a distinction between an established industry and an industry to be established. To prevent the environmental pollution, the judiciary turned down the rigid control mechanism on the industrial process. The private industries at times did not give cooperation to the judiciary in observing the minimum standards. In such cases the court came down with iron hands to that the inactive capitalists could be forced to rise to the occasion and fulfil their constitutional duty relating to environment.

Whatever was the wavelength in balancing environmental justice in the present case law, one bright side was that the case law brought to light the pollutants and polluters who would have otherwise remained in the dark. And here comes the need of social action organisations to publicize their anti-pollution role so that a mass movement could be developed against those who commit offences not just against the present generation, but the generations to come.

Conclusion

The environment cases of 1987 saw new directions of environmental education, protection of public and workers' health and the economics of pollution. The discussions of fundamental right, fundamental duty and the directive principles relating to environment had also some place in a few cases. The important judicial innovation in this field was recognition of the fundamental right to live in a clean environment, which has yet to find a place in other environmental jurisprudence. This development imposes a constitutional duty on the state and other authorities to provide all the people of India a loveable environment.

The environmental justice is a developing branch where Indian judiciary has made new innovations in the administration of justice. These include, for example, the forging of new remedies, principle of absolute liability, Indian jurisprudence of judicial process, foregoing the hyper-technicalities, speedy and cheap environmental justice, adjusting the scale of justice with changing time and situation, environment court, neutral environment experts, pollution insurance, etc. At times, the Indian judiciary, while administering environmental justice, laced difficulty in balancing the environment and

development, but it did not shirk its responsibility. The court tried its best to see that, on the one hand the environment was least interfered with, and on the other, the development process for a developing country, like India, was permitted within a reasonable dimension. In view of the above developments and innovations, in the Indian environmental jurisprudence, the environmental justice is still in a nascent stage and this tender plant has yet to reach deep into the Indian soil. So, our Indian judiciary is "very progressive" and "super-innovative".

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5. *Satish Sabharwal vs State of Maharashtra*, U.J. (S.C.) 1987 (1) 265
6. *Rural Litigation and Entitlement Kendra v. State of U.P.*, A.I.R. 1987 S.C. 355; see, the earlier decision of the Supreme Court in this case, A.I.R. 1985 S.C. 652. where it tilted the balloter in favour of protection of the environment. The court in the instant case realised that its order —would undoubtedly cause hardship" but it opined, "it is a price that has to be paid"; *id.* at 656.
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