

## **Judicial Activism in Balancing Business & Sustainability Under Indian Constitution**

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### **ABSTRACT**

Environment means & consist water, air, land, and the relationship which exist among other living creatures, trees, animals and property (Movable and immovable). Sustainable Development means an integration of development and environmental Imperatives. Environment and its protection are at present concern of the mankind. At present scenario society interaction with nature is extensive that environmental question has assumed all humanity. Pollution, Deforestation, and degradation of environment have seriously threatened human beings and their health too. To safe nature or environment there is necessity of balancing business and sustainability. After Stock Holm Declaration 1972 all countries become aware regarding environment protection and collectively attempted to conserve environment for future generations. India also participated as member in declaration and implemented the principles of Stock Holm declaration through 42<sup>nd</sup> amendment of Indian Constitution. Judicial response to almost all environmental litigations has been very positive in India. At recent past of Supreme Court of India has entertained several public Interest Litigation relating to the environmental problems.

### **KEYWORD**

- (1) Article
- (2) Supreme Court
- (3) Indian Constitution
- (4) Balance Business
- (5) Sustainable Development
- (6) Environment
- (7) AIR
- (8) Judicial activism
- (9) Environment Protection etc.

### **INTRODUCTION**

Generally to define environment is difficult but environment relates to surrounding or the situations under which a person or things exists or develops his or its character. To save environment is big task in all over the world. It is necessary to safe environment for future generations. Industries raw material and use of vehicles are major source of environment

pollution. To control pollution and deforestation Indian judiciary pronounced several landmark judgments under article 32 of Indian Constitution. Justice P.N. Bhagwati is founder of public interest litigation India. Article 21 of Indian Constitution hold that “No person shall be deprived of his life or personal liberty except according to procedure established by law.” In case of Vellore Citizen Welfare Vs Union of India Supreme Court hold that right to unpolluted environment and preservation and protection of nature’s gifts has also been conceded under article 21. Under article 21 of Indian constitution right to live in clean environment designated as a fundamental right. It is also enforceable by Supreme Court under article 32 and by high court under article 226 of Indian constitution. To conserve environment provisions inserted by 42<sup>nd</sup> amendment 1976 in part IV of Indian Constitution by article 48-A and Part IV-A as fundamental Duty after the Stock Holm declaration 1972.

**International Perspective:-** after establishment of united nations organization 1945 world level two most conferences were organized first was Stock Holm Declaration on Human Environment & second was Earth Summit of 1992 at Rio De Janerio. **In Stock Holm Declaration on Human Environment 1972** declared that “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and Man bears a solemn responsibility to protect and improve the environment for present and future generations.” **Earth Summit of 1992 at Rio De Janerio (Rio Declaration and Agenda – 21)** set forth certain principles such as Human beings are at the center of concerns for sustainable development. To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies. Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities and the opportunity to participate in decision-making processes.

**Indian Perspective:-** Indian Culture was very aware regarding environment protection since ancient time. It is seen from writings in Smritis and Puranas that every Individual worshipped trees and rivers considered as goddess. It was the dharma of every individual to protect and worship nature. India was the primary member in Stockholm declaration 1972 and for implementing the provisions of declaration 42<sup>nd</sup> constitutional amendment 1976 made under chapter IV by inserting article 48-A and chapter IV –A inserted article 51 (A) (g) inserted as fundamental duty to protect environment. Article 48(A) holds that “The state shall Endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.” Article 51(A) Sub-clause (g) explains that “It shall be the duty of every citizens of India- to protect and improve the natural environment including forests, lakes, rivers and Wildlife, and to have compassion for living creatures”. At present there are several laws in India regarding environment protection like In Constitution article 48(A) , 51A (g) , 21, 32, 226, 243, Schedule VII, Indian Penal Code 1860, Civil Procedure Code 1908, Criminal Procedure Code 1973, Environment Protection Act 1986, The Water (Prevention and Control of Pollution) Act 1974, Air (Prevention and Control of Pollution) Act 1981, The Wild Life

(Protection) Act 1972, The National Environment Tribunal Act 1985, The Public Liability Insurance Act 1991, The Indian Forest Act 1927 etc. There are stated to be over 200 Central and State Statutes which have at least some concern with environment protection either directly or indirectly.

**Judicial Perspective:-** Indian judiciary played an important role to implement the statutes and law relating to environment protection some landmark judgments are as follows:-

**Ratlam Municipality Vs VardhiChand AIR 1980 SC 1622** Court observed that “ if the legislature or state government feels that the law enacted by them cannot be implemented, then the legislature has the liberty to scrap it, but the law which remains on the statutory books will have to implemented, particularly when it relates to primary duty.”

**Rural litigation and Environment Kendra Vs State of U.P. AIR 1985 SC 652** is the first case where the Supreme Court made an attempt to look into the question of how to bring about a balance between the environment and development. The Court said there can be no gainsaying that limestone quarrying and excavation of the limestone deposits do seem to affect the perennial water springs. This environmental disturbance has however to be weighed in the balance against the need of limestone quarrying Industrial purposes in the country and we have taken this aspect into account while making this order.

**M. C. Mehta Vs. Union of India AIR 1987 SC 1080, Chief Justice Bhagwati** Said that we have to evolve new principles and lay down new norms, which would adequately deal with the new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need to crutches of a foreign legal order. It was a public Interest Litigation under article 32 of the Indian constitution by a public spirited lawyer seeking the closure of a factory engaged in manufacturing hazardous product.

**Union Carbide Corporation Vs Union of India AIR 1992** the court observed that “ While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation, at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of Environment.”

**Indian Council for Enviro legal Action Vs Union of India AIR 1996** the court observed that even though it is not the function of the court to see day- to – day enforcement of law, that being the function of executive, but because of non functioning of the enforcement agencies, the court as of necessity have had to pass orders directing the enforcement agencies to implement the law for the protection of fundamental rights of the people.

**Indian Council for Enviro legal Action Vs Union of India AIR 1996 (5) SCC 281, 303.** The Supreme Court lamented that if the mere enactment of laws relating to the protection of environment was to ensure a clean and pollution free environment, then India would, perhaps, be the least polluted country in the world. But this is not so. There are stated to be over 200 Central and State Statutes which have at least some concern with environment protection either directly or indirectly. The plethora of such enactments has, unfortunately, not resulted in preventing environmental degradation which on the contrary, has increased over the years.

**In Vellore Citizen's welfare forum Vs Union of India AIR 1996** the supreme court laid down that in view of the constitutional provisions contained in Article 21, 47, 48A, 51-A (g) and other relevant statutory provisions, the Precautionary Principle and Polluter Pay Principle are the part of the environmental law of the country. It is thus clear that two basic principles of sustainable development can be derived from various statutory provisions and right to life under the article 21 of the constitution.

**T.N. Godavarman Thirumulpad v. Union of India, (2006)** Natural resources are the assets of the entire nation. It is the obligation of all concerned, including the Union Government and State Governments to conserve and not waste these resources. Article 48A of the Constitution requires that the State shall Endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Under Article 51-A, it is the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures."

**In M.C. Mehta Vs Union of India AIR 2018** the apex Court reiterated that article 21 of the constitution includes the right to a decent environment, which is within the scope of right of a citizen to live in a clean environment. In case there is a conflict between health and wealth. Obviously, health will have to be given, precedence. The court enumerated that the effect of pollution on the environments and health is so huge that cannot be compensated in the marginal extra profits that the manufacturer of vehicles which are technologically much more advanced than even BS-IV compliant vehicles. The amount spent on countering the ills of pollution such as polluted air damaged lungs and the cost of health care for outweigh the profits earn by the vehicle manufacturers. The need of hour is to move a cleaner fuel as early as possible and therefore, no vehicle conforming to the emission standard BS-IV shall be sold or registered in the entire country with effect from April 1<sup>st</sup> 2020.

**In Alim Vs State of Uttarakhand MANU/U/C/0567/2018 decided on 10 August 2018** Uttarakhand High Court invoking paren patriae doctrine issued directions to the respondent that no person shall slaughter any cow, bull, bullock, heifer or calf forthwith and no person shall export directly and indirectly through agent or servant, the slaughter stuff. Prosecution should be launched under 289/428/429/ and other provisions of IPC against the owner of any cattle which are found on streets, roads or public places.

## CONCLUSION

Consequentially here I would conclude with Supreme Court judgment lamented in year 1996 “if the mere enactment of laws relating to the protection of environment was to ensure a clean and pollution free environment, then India would, perhaps, be the least polluted country in the world. But this is not so. There are stated to be over 200 Central and State Statutes which have at least some concern with environment protection either directly or indirectly. The plethora of such enactments has, unfortunately, not resulted in preventing environmental degradation which on the contrary, has increased over the years.”

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