

## LEAVING BETTER WORLD:

### Role of Judiciary in Protecting Environment

*This paper is an introduction to the 'Role of Judiciary in Protecting Environment' and broadly explains the principles established by the courts for environmental protection.*

*This talk was delivered on 14.09.2013 in the inaugural function of Indian Law Institute, Bilaspur, Chhattisgarh.*

The last century was the century of physicists but it is no longer true. This century is the century of biologist, a century of environmentalists. Environmental issues will play a crucial role in this century.

Of ten, the State does not take proper steps to protect environment; it chooses to sleep over—it is guided by vote politics and short term gains. It is left to the judiciary to take tough decision and corrective measures. It is for this reason that today's topic, Role of Judiciary in Protecting Environment, is relevant.

I am sure, we will here more about those tough decisions, corrective measures from Brother patnaik because he is the one who has now been entrusted to take these tough decisions; he heads the Green bench. But let me lay down foundation for that. And before I do it, a few words about sustainable development—the most important concept in this field.

### WORLD ENVIRONMENT DAY

Sustainable development was conceived in the Stockholm Declaration of 1972. It was result of an international conference on Human Environment (also known as the Stockholm Conference) at Stockholm, Sweden from June 5-16, 1972 under the auspices of United Nations.

This conference was the UN's first major conference on international environmental issues, and was a turning point in the development of international environmental protection. It started on 5<sup>th</sup> of June and that is why, this day is observed as World Environment Day.

Stockholm Declaration was given definite shape in 1987 by the World Commission on

Environment and Development<sup>1</sup> in its report, 'Our Common Future'. This commission was chaired by the then Prime Minister of Norway Ms. GH Brundtland<sup>2</sup> and this report is also known as 'Brundtland Report'.

## SUSTAINABLE DEVELOPMENT

Sustainable Development means that the development should meet the needs of the present without compromising the ability of the future to meet their own needs. Its salient features are,

- (i) Inter Generational Equity,
- (ii) Use and Conservation of Natural Resources,
- (iii) Environmental Protection,
- (iv) The Precautionary Principle,
- (v) Polluter Pays principle,
- (vi) Obligation to assist and cooperate,
- (vii) Eradication of Poverty and,
- (viii) Financial Assistance to the developing countries.

This was explained by the courts in different cases. Let's briefly consider the cases and the principles established therein.

## THE CASES AND THE PRINCIPLES

### The Vellore Case

The concept of 'sustainable development' was explained in *Vellore Citizen Welfare Forum Vs. Union of India* AIR 1996 SC 2715 (the Vellore case). It was filed against the pollution caused by discharge of untreated effluents by the tanneries and other industries in Tamil Nadu.

The Court accepted the precautionary principle as legally enforceable principle and elaborated it as:

- (a) Environmental measures must anticipate, prevent, and attack the cause of environmental degradation.
- (b) Where there are threats of serious and irreversible damage, lack of scientific

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<sup>1</sup> It was commission's recommendation that led to the Earth Summit – the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992.

<sup>2</sup> GH Brundtland is a medical doctor and was Prime Minister of Norway for 10 years. She stepped down as a Prime Minister to become Director General of World Health Organisation.

certainty should not be used as a reason for postponing measures to prevent environmental degradation.

- (c) The onus of proof is on the actor or the developer/ industrialist to show that his action is environmentally benign.

### **The Enviro-Action Case**

The principle of 'polluter pays' was accepted in *Indian Council for Enviro-Legal Action Vs. Union of India* AIR 1996 SC 1447 (the Enviro-Action case).

Chemical industries in village Bicheri district Udaipur, Rajasthan were releasing toxic effluents damaging soil and water. They were closed but no action was taken to undo the damage done by them. This case was filed for remedial action.

The Supreme Court accepted the principle of polluter pays and explained that the financial cost of preventing or remedying damage lies with the undertaking causing the pollution. It cannot be saddled on the government; taxpayers money cannot be utilised.

### **The Kamalnath case**

The State is a trustee of all natural resources and holds them for the benefit of the public; it is under legal duty to protect it. This was applied in *M/s MC Mehta Vs. Kamalnath* 1997 (1) SCC 388 (The Kamalnath case).

M/s Span motels was given a lease on 29.9.1972 of about 40 bighas 3 biswa of land for a period of 99 years from 1.10.1972 to 1.10.2071. By 1981, almost all shares of this motel were



taken over by the family of Kamalnath. On 29.11.1981, a fresh lease for the same period was executed. By this time, the Motel also illegally occupied forest land.

Subsequently, when Kamal Nath was the Minister incharge of the Ministry of Environment

and Forest, Government of India, an approval was granted on 24.11.1993 for grant of further lease of 27 bighas and 12 biswa of the land that was illegally occupied by the motel.

The lease deed of the fresh area was executed by the Himanchal Pradesh Government on 11.4.1994. Thereafter, a news item was published in the Indian Express on 25.2.1996 that:

- The motel had made constructions over forest land after encroaching it;
- This illegal activity was being regularised;
- The course of river Beas was being changed.

On the aforesaid report, the Supreme Court took suo motu action; held the lease granted on 11.4.1994 to be illegal; and cancelled the same on the public trust doctrine.

### The Godavarman Case

Green is the most beautiful colour: it is colour of the nature. It is honour to be Chief Justice of the High Court of the State, whose 44% area is green. It is to be protected: deforestation causes ecological imbalance: forests, trees and bio-diversity are to be protected.

The Supreme Court in *TN Godavarman Thirumulkad Vs. Union of India* 1997(2) SCC 267 (the Godavarman case) provided a safeguard to protect greenery by liberally interpreting the Forest Conservation Act 1980. The Court held that:

- Forest Conservation Act was enacted to check deforestation and applies to all forests irrespective of nature of their ownership or classification and includes the forests designated as reserved, private, or otherwise;
- Prior approval of the central Government is required for any non-forest activity within the area of any forest.



## The Oleum Gas case

The principle of 'Absolute' was established in *MC Mehta Vs. Union of India*: AIR 1987 SC 1086 (The Oleum Gas case).

Oleum gas leaked from Sri Ram food and fertilizers factory in December 1985 and a case was filed for determining,

- The liability of the enterprises engaged in sale and manufacture of hazardous products; and
- The conditions in which they should be permitted to operate.

The Supreme Court while deciding this case referred to the leading case of *Ryland Vs Fletcher* 1861-1873 All ELR (Reprint) 1 (The Ryland case)<sup>3</sup> but did not accept the principle laid down therein.

The Court held that if any damage is caused due to hazardous or dangerous activity then the sufferer is liable to be compensated irrespective of the fact that reasonable care was taken in carrying out the activity. The liability is absolute; there are no exceptions as held in the Ryland case.

The aforesaid principle has been given statutory recognition by enacting the Public Liability Insurance Act, 1991 and the National Green Tribunal Act 2010.

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<sup>3</sup>In the Ryland case, the defendant had made water reservoir. However, beneath the site of the reservoir were the old shafts of unused coal workings. They communicated with other coal workings including the plaintiff's colliery which was adjoining to it. There was no default on the part of the defendants in selecting the site or construction of the reservoir but reasonable care was not used by the persons employed with reference to the shafts, which failed to bear the water pressure. The reservoir burst downwards. Consequently, the water in the reservoir found its way into plaintiff's colliery. The House of Lords upheld the decision of court below granting damages against the defendant. The law laid down in this case and its subsequent departure has been summarised in Halsbury laws of England (Volume 45 4<sup>th</sup> Ed paragraphs 1305) as follows.

'A person who for his own purposes brings onto his land and collects and keeps there anything likely to do mischief if it escapes must keep it in at his peril and, if he fails to do so, is prima facie liable for the damage which is the natural consequence of its escape. Liability under the rule is strict, and it is no defence that the thing escaped without the defendant's wilful act, default or neglect, or even he had no knowledge of its existence. The rule applies only to non-natural user of the land. It does not apply

- (i) To things naturally on the land;
- (ii) Where the escape is due to an act of God, the act of a stranger or the default of the plaintiff;
- (iii) Where the thing which escapes is present by consent of the person injured;
- (iv) In certain cases where there is statutory authority.'

Thus, the Supreme Court has established the following principles in the aforesaid cases.

- (i) There should be Sustainable Development.
- (ii) Precautionary Principles should be adopted.
- (iii) Polluter Pays.
- (iv) Public Trust Doctrine.
- (v) Save Forests, trees, biodiversity.
- (vi) The Rule of Absolute Liability.

### THE FORGOTTEN REMEDIES

The principles have been established. But, often we rush to the higher courts, forgetting the remedies that are available at the district level. They should be properly utilised: they ensure greater participation of local residents, who should in these matters be more concerned, and may be more effective. These have also been explained in a recent decision of the Supreme Court in *Kachrual Bhaigirath Agrawal Vs. State of Maharashtra* (2005) 9 SCC 36 (paragraph 10).

- (i) Chapter X (B- *Public Nuisance*) Sections 133<sup>4</sup>-143 and (C- *Urgent cases of nuisance or apprehended danger*) section 144 of the Criminal Procedure Code (Cr PC). Kindly See *Ratlam Municipality Vs. Vardhichand* AIR 1980 SC 1622. In this case, there were slums in Ratlam. There were neither public lavatories nor drain etc. This was creating nuisance. The SDM, Ratlam, under section 133 CrPC, held that it was the duty of the Ratlam Municipality to remove the nuisance and issued necessary directions. This was upset by the District and Sessions Judge but was upheld by the High Court as well as by the Supreme Court;
- (ii) Criminal Prosecution under chapter XIV (*Of Offences affecting the Public Health, Safety, Convenience, Decency, and Morals*) Sections 268-294-A of the Indian Penal Code (IPC);
- (iii) Suits concerning *Public nuisances and other wrongful acts affecting the public* under section 91 of the Civil Procedure Code (CPC);

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<sup>4</sup>The continuance of section 133 CrPC was challenged on the ground that it is impliedly repealed by the Water (Prevention and Control of Pollution) Act, 1974. It was accepted by the MP High Court but the Supreme Court reversed the decision and rejected the challenge in *State of MP Vs. Kedia Leather & Liquor Ltd.* 2003 (3) SCC 389. The Court observed :

‘The area of operation in the Code and the pollution laws in question are different with wholly different aims and objects, and though they alleviate nuisance, that is not of identical nature. They operate in their respective fields and there is no impediment for their existence side by side.’

(iv) Representative suits under Order 1 Rule 8 of the CPC.

### THE GOLDEN RULE

But is there anything that we can do at the personal level? Yes, there is: some tips to follow are mentioned in **Appendix-1**. And if our actions are guided by the simple principle that:

‘We have not inherited this planet from our parents  
But have merely borrowed it from our children’

Then, there is no doubt that we will not only leave a better World but our future generation will be able to say,

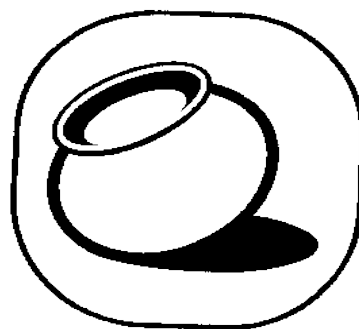
जहां डाल डाल पर,  
सोने की चिड़ियां करती हैं बसेरा,  
वो भारत देश है मेरा।  
जय भारती, जय भारती



## Appendix-1

Here are some tips to be a good environmentalist.

- (i) Buy environment-friendly products (Eco-labeled) goods;
- (ii) Use recycled goods;
- (iii) Buy products that come in reusable packaging - like resealable containers, bottles;
- (iv) Get into the habit of taking your own bag when you shop;
- (v) Don't waste paper: use both sides of each sheet;
- (vi) Collect all discarded paper for recycling;
- (vii) Avoid plastic packaging. Fruits, vegetables & meat do not need plastic trays to protect them;
- (viii) Look for products that come in simple refillable containers and refill them each time.
- (ix) Store food in reusable airtight containers and not in cling wraps;
- (x) Use cycles - save petrol, pollute less;
- (xi) Encourage car-pooling amongst offices, colleges, and neighbours;
- (xii) Switch off electricity when not in use;
- (xiii) Lobby - protect trees and forests;
- (xiv) Use energy efficient electrical appliances – compact fluorescent lamps (CFLs) and light emitting diodes (LEDs) instead of ordinary incandescent bulbs. They cost more but last longer and use less power. LEDs can be used effectively with solar cells.



*Our Eco-mark Logo*

