Evolution of Judicial Specialization in Environmental Law

HIGH COURT OF DELHI

Justice Hima Kohli
India
Historical Backdrop

Ancient India

Philosophy of living in harmony with nature had a religious connotation attached to it.

The Vedas, Upanishads, Smritis etc. are ample evidence of society's respect for plants, trees, earth, sky, air, water and every form of life.
POST INDEPENDENCE

Massive industrialization

Urbanization

Population growth

Environment Degradation
Environmental Provisions in India

A. PROMINENT LEGISLATIONS

Stockholm Conference, 1972 accelerated the pace of environmental legislation in India.

1. Water (Prevention and Control of Pollution) Act, 1974

2. The Forest (Conservation) Act, 1980

3. Air (Prevention and Control of Pollution) Act, 1981

4. Environment (Protection Act, 1986


7. The National Appellate Authority Act, 1997
B. CONSTITUTIONAL PROVISIONS

- Article 21: - Fundamental Right to life and personal liberty.
  - Interpreted by Judiciary to include the right to a wholesome environment.

Environmental provisions incorporated vide 42nd Amendment in 1974.

- Article 48 A: - Protect & improve the environment.
  - Safeguard the forests & wildlife of the country.

- Article 51 A: - Protect & improve the natural environment including
  - forests, lakes, rivers and wildlife.
  To have compassion for living creatures.
Evolution of Environmental Law & Jurisprudence in India

- Judicial Innovation & Judicial Creativity

- Trend of judicial intervention changed significantly after Bhopal Gas Leak Tragedy in the year 1984.

- 1985: treated as watershed—environment cases brought before Courts by individuals acting on a pro bono basis.

- Public Interest Litigation (PIL) – result of relaxation of *locus standi* rules.

- Declaration of right to a healthy environment as a fundamental right under Art. 21 of the Constitution of India in the year 1989.
Internalizing the International Principles & Doctrines

- Sustainable Development
- Public Trust Doctrine
- Precautionary Principle
- Polluters Pay Principle
- Absolute Liability
- Intergenerational Equity
Supreme Court of India and the High Courts have concurrent jurisdiction as regards enforcement of Fundamental Rights.

High Courts are in a better position to monitor the local issues, particularly the ecological matters in their respective states.

Supreme Court of India has recognized that in matters relating to environmental concerns, High Courts can shoulder greater responsibility as this would ensure better effectiveness and compliance of the order passed.
Development of Environment Law
High Court of Delhi

- Solid Waste Management in the context of use of plastic bags.

- Slaughter house ordered to be shut down keeping in mind the environmental concern.

- Direction for reduction of noise pollution in the city.
- Conservation, revitalization, upgradation of ‘green areas’ all over Delhi.

- Water management - Rain water harvesting to be implemented.

- Vehicular Pollution - conforming to the Bharat Stage emission standards.
- Conservation of forest ridge area in Delhi, which is an extension of Aravalli ranges.

- Water Pollution-Cleaning of River Yamuna and clearing the embankments from encroachment.

- Closure of hazardous and noxious industries in National Capital Territory of Delhi