SESSION 7: PUBLIC INTEREST LITIGATION IN ENVIRONMENTAL CASES

Public Interest Litigation

1. A predominant part of the existing environmental law has developed in India through careful judicial thinking in the Supreme Court and the High Courts. While exercising their powers under Article 32 and 226 of the Constitution of India, the Supreme Court and the High Courts respectively, have played a pivotal role in interpreting Article 21 for redressal of environmental grievances. The Courts have successfully evolved indigenous juristic techniques by incorporating various international doctrines relating to environment for purposes of interpreting the Constitution and the Statutes, combined with a liberal view towards ensuring social justice and the protection of human rights as a part of the environmental jurisprudence of India.

2. The most characteristic feature of the Indian environmental law is the important role played by the public interest litigation. A majority of the environment cases in India since 1985 have been brought before the courts as writ petitions, normally by individuals acting on a pro bono basis. Public interest litigation is a result of the relaxation of the locus standi rules. There was departure from the “proof of injury” approach. This form is usually more
efficient in dealing with environmental cases, for the reason that these cases are concerned with the rights of the community rather than the individual.

3. The judiciary looked into constitutional provisions to provide the court with the necessary jurisdiction to address specific issues. Disputes that are normally matters of torts in other common law jurisdictions are treated as cases pertaining to fundamental rights in India. Though the fundamental rights enshrined in Part III of the Constitution of India do not specifically mention environmental matters, but the courts have held that Article 21 of the Constitution of India entitles citizens to invoke the writ jurisdictions of the Supreme Court and High Courts under Articles 32 and 226 of the Constitution, respectively. These remedies have proven to be powerful and expeditious tools for redressing environmental grievances because they provide for direct access to the High Courts and the Supreme Court and eliminate the expense and delay of normal appeals.

4. In India, in the past two and a half decades, environmental law has evolved at a fast pace establishing a number of fundamental principles for its better implementation. A major share of this innovation can be attributed to the Indian judiciary, particularly the higher judiciary consisting of the Supreme Court of India, the High Courts of the States and now the National Green Tribunal by incorporating various international doctrines relating to
environment as part of the environmental jurisprudence in India. The concept of PIL has therefore, facilitated access to justice for all classes of the society, whether rich or poor, educated or illiterate, an individual or an entire community, even an NGO.

5. The Indian Judiciary has upheld the doctrine of Public Trust. The orders and directions of the Supreme Court and the High Courts at State level cover a wide range of areas be it air, water, solid waste or hazardous waste. The field covered is very vast such as – vehicular pollution, pollution by industries, depletion of forests, illegal felling of trees, conservation of wild life, dumping of hazardous waste, solid waste management, plastic degradation, pollution of rivers, illegal mining etc. The list is unending. The Supreme Court has passed several orders for closure of polluting industries and environmentally harmful aqua-farms, mandated cleaner fuel for vehicles, stopped illegal mining activity, protected forests and preserved architectural treasures like the *Taj Mahal* and prohibited construction activities in sensitive areas.

6. A plethora of PIL’s are filed regularly before the Supreme Court and the High Courts and they have played a pivotal role in creating environmental jurisprudence. Due to the paucity of time, I am referring to a
few of the landmark cases relating to preservation of the environment, which are as follows:

7. In the case of **Ratlam Municipal Council v. Vardhichand, (AIR 1980 SC 1622)** where the Municipal body of the city of Ratlam, had failed to perform its duty of ensuring establishment of a proper drainage system on the grounds of paucity of funds, the Supreme Court had introduced the concept of PIL for the first time and had observed that a responsible Municipal Council constituted for the precise purpose of preserving public health, cannot escape from its primary duty by pleading financial inability.

8. Ever since then, the Indian Judiciary has been evolving old principles and formulating new ones to meet the need of the hour. A perfect example is the case of **M. C. Mehta v. UOI,(AIR 1987 SC 1086)** where an oleum gas leak at an industrial plant in the capital city of Delhi in the year 1985 had led to the death of a person and had raised serious health issues in the general populous. In this case, the Supreme Court had introduced the doctrine of ‘**Absolute Liability**’ on the user of hazardous material, thereby eroding the possibility of the offending party taking any defense to wriggle out of its accountability. This rule was evolved from the established principle of ‘**strict liability**’.
9. In **Tarun Bharat Sangh, Alwar v. Union of India**, (Sariska Bio-Reserve) (AIR 1992 SC 514 and AIR 1993 SC 293), a distinguished NGO had filed a PIL in the Supreme Court in the year 1991, regarding large scale mining activities illegally sanctioned by the State Government within the protected area that was steadily destroying the Tiger habitat and pushing them towards virtual extinction. The Supreme Court directed the constitution of a Committee headed by a retired Supreme Court Judge, (Justice M.L. Jain) to prepare a list of the mines within the protected area and to ensure the enforcement of the notifications and the orders of the Court. It prohibited all mining activities in Sariska National Park and the area notified as a Tiger Reserve. In the year 1996, the Chief Justice of India established a permanent Forest Bench to deal with cases relating to environment and forest. In the year 2013, the Forest Bench was rechristened as the “Green Bench” and it continues to oversee matters relating to Sanctuaries and National parks as these matters do not fall within the jurisdiction of the National Green Tribunal.

10. The Indian Judiciary has the unenviable task of drawing a fine balance between environmental concerns and competing demands of development that generates employment and adds to the national wealth. Keeping that in mind, in the case of **Vellore Citizen Welfare Forum v. Union of India & others**,(1996) 5 SCC 647, the Supreme Court had invoked the ‘polluters
pay' principle. Here, the untreated effluents of tanneries and industries were being directly discharged in river Palar that was the main source of water supply to the residents of the city of Vellore in Tamil Nadu. The Supreme Court held that the “absolute liability” principle for harm caused to the environment extends not only to compensate the victims of pollution, but also covers the cost of restoring environmental degradation.

11. In the case of Research Foundation for Science Technology and Natural Resources Policy v. UOI, ((2007) 8 SCC 583), in the year 2005, the petitioner had filed a PIL in the Supreme Court invoking the fundamental rights of a citizen as enshrined in Article 21 of the Constitution of India and asking for intervention when a French ship ‘Clemenceau’ had posed a threat to the maritime environment at the Alang Shipbreaking Yard situated in the State of Gujarat. The Supreme Court responded by issuing a direction denying access to the ship to make port at the Alang Shipbreaking Yard for dismantling. Showing deep concern over the operation of ship breaking, the Court had asked for recommendations from a Committee of technical experts constituted by it. Directions were also issued to the Government of India to enact a legislation on this aspect, and as an interim measure, the court had laid down a set of guidelines to be followed in order to mitigate the harm caused to the environment by this activity that included decontamination of the ship prior to its breaking and classification of the
waste generated by the shipbreaking process into hazardous and non-
hazardous categories.

12. In the case of **Him Privesh Environment Protection Society Vs. State of Himachal Pradesh through Secretary Industries and Ors.**, in the year 2010 petitions were filed before the High Court of Himachal Pradesh, challenging the setting up of a Cement Plant by an Industrial House in District Solan, H.P. alleging that the cement plant had been set up in total violation of the environment laws, especially the EIA Notifications. The plant had demolished a good part of the forest area and taken lands from nearby villages without a proper public hearing. Conscious of the fact that passing of a closure or demolition order in respect of the cement plant would cause immense hardship and adversely impact the livelihood of thousands of innocent citizens, the High Court had invoked the principle of “polluter pays” and imposed damages on the Cement Plant owner to the tune of Rs.100 crores, i.e., 25% of the total cost of the project. The aforesaid decision was challenged by the Cement Plant owner before the Supreme Court but the appeal was dismissed in the year 2013.

13. I may add here that in order to provide effective and expeditious disposal of cases pertaining to environmental protection and forest conservation, the National Green Tribunal was established in the year 2010. The National Tribunal Act, 2010, vests the Tribunal with jurisdiction over all
civil cases with respect to water, forest, air, environment and biological diversity, where a substantial question relating to environment is involved. Appeals against the orders of National Green Tribunal lie in the Supreme Court.

14. To sum up, the Indian judiciary has proved itself to be a strategic partner in promoting environmental governance, upholding the rule of law and in ensuring a fair balance between protection of the environment, social commitments and developmental considerations of the country.

Thank you

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