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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **ROLE OF JUDICIARY IN PROTECTING THE ENVIRONMENT VIS-À-VIS ECONOMIC DEVELOPMENT**

AUTHORED BY - ANURAG CHAUHAN

## **Abstract:**

This paper will discuss about the role of judiciary in protecting the environment while balancing the economic development. It has always been a Dharma for the people in ancient India to protect the nature. So, protection of environment is not a new phenomenon in India. Environmental protection has always been a hindrance to the economic development. There always have been a debate on how to balance the development along with safeguarding the environment. The Indian courts have adopted various principles in view of it. Various times through PILs the Indian judiciary has shown judicial activism in protecting the environment. Also, the Indian judiciary has restrained itself in environmental law cases in which the courts did not put a blanket ban on development project rather mentioned regulations for such projects in view of aligning them with sustainable development. Therefore, this paper will discuss the tests and principles adopted by the judiciary in balancing the environmental protection with economic development.

**Keywords** – Environment, Development, Indian Judiciary, Economy, Sustainable.

## **INTRODUCTION**

The complex relationship between environmental protection and economic development has become a centre of attention worldwide mainly in legal, political and academic sphere. In India, a country which is experiencing rapid industrialization and economic growth, efforts to protect environment from the hazardous chemicals can be seen in government action. The judiciary from time to time has played significant role in order to protect the environment and maintain the ecological balance. In various cases we notice that apex court held that sustainable development is the need of the hour.

In this Paper, we focus mainly on the role of the Judiciary in preserving the environment within the context of India's economic approach. Section 2(a) of the Environment Protection Act, 1986 defines



the term environment expansively, including not only the physical component such as air, water and land but also the interrelatedness of human beings, other living creatures, and their habitats.

Impact of uncontrolled rapid industrialization on the environment has been intense and profound. The expeditious expansion of Industry in urban as well as rural area and infrastructure development mainly in urban and sub-urban area has significantly led to the environmental degradation, pollution, and depletion of natural resources which poses threat to the idea of sustainable development. To eradicate the tension which has grown in modern era between economic imperative and environmental sustainability demands the need for sturdy legal frameworks and judicial intervention to strike a perfect balance.

The Supreme Court of India has played a crucial role in shaping environmental policy and enforcing environmental laws. Many decisions by the court have provided a framework for environmental governance and accountability.

This paper aims to critically examine selected cases decided by the Supreme Court related to the environment protection and examine the jurisprudential principles that underpin them. By studying the judicial interpretation of environmental laws and the courts response to environmental challenges, we can discern the evolving role of the judiciary in safeguarding the environment while fostering economic development. This research attempt seeks to elucidate the close relationship between law, economics, and the environment, offering awareness into the evolving dynamics of environmental governance in India.

## **LEGAL MECHANISM**

In India, in cases of environmental protection, there are two remedies available - statutory law and tortious liability. The tortious remedies which are available are nuisance, negligence, trespass and strict liability. The statutory remedies are suit filed by a citizen for example a suit filed under Section 19 of Environmental (Protection) Act, 1986, or an activity under Section 133 of Criminal Procedure Code, 1973 or under Section 278 of the Indian Penal Code, 1860. Apart from these statutory provisions, under Article 32 and under Article 226 of the Indian Constitution, writ petition can be filed in the Supreme Court and High Court respectively. Through the Forty Second Amendment to Indian Constitution in 1976, it was the first time when states were obliged to protect the environment.



Article 48A was inserted through this amendment as per which the States shall endeavour to improve and protect the environment and to safeguard the wildlife and forest of the country. Part VI-A was also inserted through this Amendment in the Constitution which includes Fundamental duty. It consists of Article 51 A(g) which states that every citizen of this country has duty to protect and improve the environment including lakes, wildlife and forest and should have compassion for living creature. The Supreme Court has observed in *Sachidanand Pandey v State of West Bengal*<sup>1</sup> that if a problem related to ecology is brought to the court, then the court should bear in mind Article 51 A(g) and Article 48 A.

## JUDICIAL ACTIVISM AND JUDICIAL RESTRAINT

The Indian judiciary in various judgements has shown keen interest in safeguarding the ecology by implementing different impactful measures against Industries, State etc. In **Vellore Citizens Welfare Forum v. Union of India**<sup>2</sup>, the Apex Court held that the idea which considers development and environment as two contrary factor and believes that development cannot be achieved in contemporary world without inflicting harm on the ecological balance is traditional and not acceptable in modern world. Sustainable development is the key as it provides balance between these two factors. Sustainable development as defined by the United Nation Brundtland Commission 1987 “as development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”<sup>3</sup>

Indian legal system is essentially based on common law, and includes the public trust doctrine as part of its jurisprudence. State is considered as the caretaker of the natural resources, and these resources are important for the Public as they get essentials component for their day to day live from the nature itself. That’s why it is the duty of the state to protect it. In the case of **M.C. Mehta v. Kamal Nath**<sup>4</sup>, apex court applied the public trust doctrine for deciding the case related to environmental problem for the first time in India. This doctrine mainly hold the idea that the integral component of environment like water, forest, air etc holds significant importance in the life of people in their day to day life. That’s why it will be inappropriate to make them available for private ownership.

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<sup>1</sup> AIR 1987 SC 1109

<sup>2</sup> AIR 1996 SC 2715

<sup>3</sup> Sustainability, United Nations, (10 February 2024, 09:00 PM), <https://www.un.org/en/academic-impact/sustainability>

<sup>4</sup> (1997) 1 SCC 388

Rapid industrial revolution, though it had great impact on the financial stability of the country caused adverse impact on the environment. Polluter pay principle simply talks about the onus of the Polluter for the damage caused by emission of the pollutant from their work place. The apex court in the case of **Indian Council for Enviro-Legal Action v. Union of India**<sup>5</sup> held that “Industries responsible for pollution must bear the costs of environmental remediation and compensation for the harm caused to affected individuals and communities”. This decision states that the principle that polluters should internalize the costs of pollution instead of passing them on to future generations or society. In the case of **Karnataka Industrial Area Development Board v. C. Kenchappa**<sup>6</sup>, the Supreme Court noted that the polluter pays principle entails that the financial burdens resulting from pollution should be borne by the polluter, and it is not the responsibility of the government to absorb these costs.

Precautionary Principle is another principle adopted by the Indian courts. This theory believes in “prevention is better than cure”. When there is some possible risk associated with the action or the project of the industry which may cause damage to the environment and the people involved has the knowledge regarding those risk associated with it, then in those cases the burden of proof lies on the person. It suggests that one can’t take plea of dearth of scientific knowledge should not be considered as a reason for not taking the necessary steps to protect environment and prevent its degradation. In the case of **Vijayanagar Education Trust v. Karnataka State Pollution Control Board**<sup>7</sup>, the Karnataka High Court admitted that this principle is very much an important part of the Constitutional obligation which is needed in the modern world to protect the ecology and ensure that it remains liveable for the future generation. The court also gave reference to the previously decided “Nayudu case” in which it was held that developers bear the responsibility to demonstrate the benign nature of a project if uncertain and non-negligible risks are identified.

The Supreme court in the case of **MC Mehta vs Union of India**<sup>8</sup>, introduced the 'Absolute Liability Principle'. It ruled that industries like Shri Ram fertilisers, which are involved in inherently hazardous activities, would be subject to the absolute liability standard. This means that any industry engaged in dangerous activities causing harm to the environment or people through accidents would be held fully accountable. The principle of absolute liability holds that a perpetrator is fully accountable for

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<sup>5</sup> AIR 1995 SC 2252

<sup>6</sup> AIR 2006 SC 2038

<sup>7</sup> AIR 2002 Kant 123

<sup>8</sup> Air 1987 SC 965

environmental pollution without any grounds for defence. In the case of **Union Carbide Corporation v. Union of India**<sup>9</sup>, the court ruled that enterprises engaging in hazardous or perilous activities, including the handling of toxic gases, must bear strict and unconditional liability without exception. So, this was all about the judicial activism. Now we will discuss about judicial restraint exercised by Indian judiciary in protection of environment vis-a-vis economic development. By judicial restraint, it means that the judiciary restrains itself from intervening in the policy matters of the government. The court's approach is such that the judges exercise caution and they limit their exercise of power. In this, the judiciary plays a passive role and the democratic process is given due respect and preference. There are various instances where judicial restraint has been exercised by the Indian Courts. In **Narmada Bachao Andolan case**<sup>10</sup>, the Supreme Court of India exercised judicial restraint while dealing with Sardar Sarovar Dam construction. The court was approached by the petitioners for halting the project while sitting the environmental as well as social concerns. The court acknowledged importance of environmental protection but it also acknowledged the significance on national development as well as on the livelihood of the people who are dependent on it. Therefore, by exercising the judicial restraint the Supreme Court did not halt the project but directed the government to address the environmental as well as rehabilitation issues thereby making a balance between environmental protection and economic development.

**Goa Foundation case**<sup>11</sup> is another instance where judiciary applied judicial restraint. This case was filed by Goa Foundation which raised concern related to unregulated and rampant mining activities in Goa which were causing environmental degradation. In this case, the Supreme Court acknowledged the environmental impact but did not put a blanket ban on mining. The Supreme Court directed that a cap should be established for the total volume of iron ore which could be extracted per year with an aim to regulate the mining rather than to prohibit it. The Supreme Court also ordered that a fund should be created which should be funded by mining leaseholders. This fund would be dedicated for restoring the environment and for addressing the adverse effect due to mining activities. Thus, the Supreme Court did not put a blanket ban on mining as it would have been vital to the local economy. Thus, the court recognised the balanced approach to protect the environment while keeping in the mind the economic interests.

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<sup>9</sup> 1992 AIR 248

<sup>10</sup> Writ Petition (Civil) 328 of 2002.

<sup>11</sup> Goa Foundation v. Union of India, (2014) 6 SCC 590

**Larfarge Umiam Mining Private Limited case**<sup>12</sup> is a landmark case in environmental jurisprudence in India. Larfarge established a cement plant through a subsidiary in Bangladesh with limestone which were sourced from the mines in Meghalaya. Environmental clearance was granted in 2001 by the Ministry of Environment and Forests. The trouble arose in 2006 when the concerns related to forest land use were raised and the Ministry had directed Larfarge to obtain the forest clearance. The question before the Court was raised that whether Larfarge had misrepresented the nature of forest land while obtaining the initial clearances. The court had applied Margin of Appreciation Doctrine for the decisions related to environmental matter should be based on the principles of natural justice, legislative policy and proportionality.

The court found out that there was no misrepresentation and fraud. The court highlighted the importance to comply with the specified procedures and the need for due consideration by the authorities while granting clearances. The judgement not only allowed to continue the mining operations but has also let down a comprehensive guideline related to the future projects which required both environmental as well as forest clearance. The judgement emphasized upon the rights of locals in making decisions related to environment and on bringing stability in the clearance process. For this reason, the judgement was a landmark one in context of environmental law related to balancing the interest of both the project developers as well as the environmental conservation which has further set the stage for reform related to environmental governance.<sup>13</sup>

Internationally, when we talk about the USA, USA courts have several times favoured for the judicial restraint in the cases related to environmental protection. In the case of **Chevron USA Inc. v. Natural Resources Defence Council, Inc.**<sup>14</sup>, the court gave the doctrine of Chevron as per which courts should defer to the reasonable agency interpretations related to ambiguous statutes. Therefore, this case reflects an instance of judicial restraint where the court gave recognition to the expertise of the administrative agencies and restrain from involving into policy decisions. Another notable case is of **Massachusetts v. Environmental Protection Agency (EPA)**<sup>15</sup>. In this case, USA Supreme Court held that under the Clean Air Act, environmental protection agency had authority regarding the

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<sup>12</sup> W.P. No. 202 of 1995

<sup>13</sup> Deepto Roy, Lafarge judgment stabilises environmental clearance process, PVX Law Partners, (February 10, 2024, 09:00 PM), <https://pxvlaw.wordpress.com/2011/08/02/larfarge-judgment-stabilises-environmental-clearance-process/>

<sup>14</sup> 467 U.S. 837 (1984)

<sup>15</sup> 549 U.S. 497 (2007)



regulation of greenhouse gas emissions. This judgement addressed the regulatory obligations of EPF and also reflected that the code adopted judicial restraint by not creating any new environmental policy but rather by interpreting the statutory language which was already existing. This case again reflects the inclination of the court to differ to the statutory language and the expertise of the administrative agency. In UK the courts have shown instances of both judicial activism as well as judicial restraint. A notable instance of judicial activism could be seen in the case of **R vs Secretary of State for Environment, Food and Rural Affairs**<sup>16</sup> of 2017. The UK Supreme Court in this very case ruled that the air quality plans of the government were inadequate. The court had ordered the government to have a more ambitious approach for tackling the air pollution. Therefore, the court emphasized its commitment for the protection of environment despite many potential economic implications. Another instance where the UK supreme court showed an instance of judicial restraint was of *Walton v Scottish ministers*<sup>17</sup>. In this case a wind farm planning Commission was held by the court despite certain environmental concerns. This shows that the court deferred to the government's decision and therefore the court followed the principle of judicial restraint.

## **V. SUGGESTIONS AND CONCLUSIONS**

Therefore, the intricate balance between environmental protection and economic development is a major challenge for a country like India which is facing rampant industrialisation and economic growth. This research paper has discussed about the critical role played by the Indian judiciary in maintaining the balance between the environmental protection and economic development. The Supreme Court has played a major role in shaping the environmental policies and in enforcing environmental laws through various landmark judgements which has set precedents by giving various doctrines and principles like polluter pay principle, precautionary principle, sustainable development principle and public trust doctrine.

These judgements have provided a legal framework for the environmental governance as well as has established a groundwork for fixing the accountability. Further, the paper has also explored the examples of judicial restraint in balancing the environmental protection cases with economic interests. In these cases, the court have adopted a regulated approach instead of imposing a total ban

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<sup>16</sup> [2016] EWHC 2740 (Admin)

<sup>17</sup> [2012] UKSC 44

on any economic activity in order to balance such economic activity for the sustainable development. Further, this paper also highlights that the concept of judicial activism as well as judicial restraint is in cases related to environmental protection vis-a-vis economic development is not limited to only India. It can be seen internationally in other jurisdictions as well. For this, the instances of judicial activism as well as judicial restraint has been discussed briefly in context of United States of America and United Kingdom which has reflected that how by applying both judicial activism as well as judicial restraint in environmental protection matters the courts of these countries have made a balance between the environmental protection and economic development so, that none among the two is compromised.

Therefore, the research has contributed valuable insights to showcase that the judiciary has played a proactive role in protection of environment but at the same time has also restrained itself from time to time to not hamper the economic growth on lines of sustainable development.

It is suggested that the use of alternate dispute resolution mechanisms should be adopted to settle the environmental law cases and in order to reduce the legal bottlenecks. For that more reliance should be made on environmental impact assessments in the decision-making process for various projects related to economic development. The Judiciary should foster more collaboration between the government bodies industry stakeholders and environmental experts in making policies which prioritise the sustainable development. Ultimately a holistic approach should be adopted for the enforcement of the regulations related to protection of environment and for sustainable development. This will ultimately help the Indian judiciary to strike the balance between environmental protection and economic development.