

ENVIRONMENTAL POLLUTION - JUDICIAL ACTIVISM*By***—P. JESROON**, B.Com., LL.M., PGDPM,Lecturer in Law Akhik Bharathi College of Law,
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Ecology, which is Natural Resource Law, is new in full focus of global attention. Pollution has come to stay in its diverse stings, and the whole humanity is out on a crusade for environmental balance.

In India, the pollution problems have been adventitious to her developmental programmes and her campaign to eradicate poverty. The efforts to boost progress has simultaneously put dire pressure on natural resources of the country. Irrigation facilities produced salinity and the result was land pollution. Industrial development was a pollutant of air and water. Medical facilities have reduced the death rate from 27.4 per thousand to 11.9 per thousand and the repercussive concomitant is pollution explosion. Eradication of poverty warranted over exploitation of natural resources of the country, like land forests and water to cope with the escalated need for employment, for shelter involving housing schemes, for fuel and fodder and furniture. An estimated 100 million hectares of land, almost one-third of total area, now stands infected by degradation, erosion, salinity, alkalinity, and wind erosion. The automobiles have littered the twin of air and noise pollution. Consumption of timber in diverse sophisticate modes of modernity have resulted into deforestation accelerated by intense biotic pressures owing to increasing population of men and livestock, in addition to the acute pressure on wood by industries. Deforestation has resulted into uneven availability of water, exhibiting an alternating cycle of flood and droughts. Untreated human wastes in towns and cities and domestic discharge have contaminated the quality of surface and ground water. The

overall picture is dismal and horrendous. A network of laws and vast literature have come forth to alert people to monster the monster of pollution.

The problem of environmental pollution is as old as the evolution of "Homosapiens" on this planet. With the development of science and technology and with the ever-increasing world population, came tremendous changes in the human environment. These changes upset the eco-laws, shook the balance between human life and the brought along innumerable problems affection the environment. It become necessary to regulate human behaviour and social transactions with new laws, designed to suit the changing conditions and values. A new branch of law, called environmental law, grew at this stage in order to manage and face the myriad challenges of such system.

Environmental law is of recent origin. The Environment (Protection) Act, 1986, hereinafter the EPA, defines environment which includes water, air and land and the inter-relationship which exists between them on the one hand, and human beings, other living creatures, plants, micro-organism and property, on the other. In a wider sense, it may embrace all forms of life on this planet. It is not surprising that *Rodgers* defines environmental law as the law of planetary housekeeping, protecting the planet and its people from activities that upset the earth and its life-sustaining capacities. Environmental law therefore, relates to the management of the environment and strategies for tackling the problems affection the environment. It is generally believed

that in modern times, environmental protection is mostly confined to the control of pollution by hazardous products, gases and effluents which are the by-products of industrialisation. However, preventive and remedial measures to meet the hazards of pollution are also major concerns of environmental law. The law embraces a wide spectrum of environmental issues. This may include the natural environment, namely physical conditions of land, air and water, and the human environment namely health, social and other man-made conditions affecting human beings on earth.

Pollution may be defined as contamination of the environment in such a way that it creates hazards or potential hazards to health and well being of living and non-living beings. Since the expression "pollution" is not defined legally, therefore, a working definition is accepted. Every substance existing in the environment has definite composition when a foreign body is introduced into it, or the proportion of its constituents is modified then that substance loses its original character and qualities. The original constitution of the substance was meant to serve a definite purpose but the changed constitution is not going to serve the same purpose. This modified version is termed as polluted or adulterated substance and the process of polluting a substance is termed as pollution.

The common effect of pollution is that it ruins natural composition of substances, it interferes with food chain, carbon cycle, nitrogen cycle, oxygen cycle, hydrogen cycle and thus causes damage to the plant and animal life. It makes the survival of the living being difficult and troublesome. Pollution affects not only the living beings but also the property and buildings.

There are two main causes of pollution :

- (1) *Population growth* :—The quality of our environment is determined by the

intricate process of man kinds making a living and enjoying life. The use of the four essentials of life by man viz., land, food, water and air, affects the dynamic of all plant and animal life on earth by altering the ecological balances. The continuous increase in population has enhanced the density of population in various areas and this has created many social and psychological problems.

- (2) *Industrial activities* :—Man has been inventive right from beginning. He has inherited this quality from the nature itself. In order to meet his requirements, and to raise his standards of living he has been carrying on various activities. In this process he is affecting for the worse all the four components, i.e., land, water, air and food, which is essential for the survival of human beings. Due to industrial activities a good amount of dust and smoke is released in the atmosphere. This accumulation in the atmosphere cuts off the heat of sun reaching the earth, which may cause a global decrease in temperature thereby creating lot of hardships for mankind.

Development and better life is the natural instinct of man. But the things and material which help us develop and lead better life come from the nature, the environment. We take things and materials from the nature and we dump waste products as garbage in the nature.

Before 42nd Amendment

The Constitution of India came into force on 26th January, 1950. At the time it did not contain any specific provision dealing directly with environment. Only provision which was of some significance was Article 47 of the Directive Principles of State Policy which reads :

“The State shall regard the raising of the level of nutrition and standard of living of its people and improvement of public health as among its primary duties.

Article 21 of the Constitution which deals with the right to life and personal liberty was not of much help in the bringing as it was given a very restricted and narrow meaning.

42nd Constitution amendment was passed and provision regarding the protection of environment were incorporated into it. In the Charged of Directive Principles of State Policy, a new provision in the form of a Article 48-A was incorporated. *48-A protection and improvement of environment and safeguarding of forest and wild life.*

The State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country.

Apart from this provision a new provision in the form of fundamental duties as Article 51-A was also incorporated by the 42nd Constitution amendment sub-class G of Article 51-A important which provides “it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.”

The above mentioned constitutional provisions impose two fold responsibilities on the one hand it gives directive to the State for the protection and improvement of environment and the other it casts a duty on every citizen to help in the preservation of natural environment.

Judicial Activism

Judicial Activism in matters of the environmental pollution has began in our country with the decision of the Supreme Court in *Ratlam Municipality v. Virdhi*

Chand, AIR 1980 SC 1622. In this case on the southern side of New Road of Ratlam Municipality some houses were situated and behind these house and attached to the college boundary the Municipality constructed a road and this new road touched the Government college and its boundary. In between the said area a Nala (Stream of waste water) was flowing which was in the middle of the new road just in the heart of the city. In this Nala the waste materials of alcohol plant having chemical and obnoxious smell was released very often.

This filth also so helped bulk of mosquitoes breeding. The half constructed drain allowed dirty water to over flow. Moreover the slum dwellers used the bank of drain as an open latrines. The malaria department of the State was also negligent in eradication of the mosquitoes. This situation was having very harmful effect on the residents. Against this many applications were submitted to remove the nuisance but all of them fell of deaf ears. People approached Sub-Divisional Magistrate, Ratlam to take action under Section 133 of Criminal Procedure Code about the nuisance by ordering the municipality to construct drain and to the despoliation.

The Magistrate held in favour of the applicants. The Supreme Court also upheld the order of the Sub-Divisional Magistrate.

In *M.C. Mehta v. Union of India*, AIR 1997 SC 734, popularly known as *Taj Trapezium* case the petitioner *M.C. Mehta* presented his petition for the protection of Taj Mahal at Agra. His contention was that foundries chemical/hazardous industrial and refinery at Mathura are the major sources which will damage the Taj. The Mathura refinery emits higher quantity of sulphur-dioxide which combined with oxygen in the presents of moisture in the atmosphere sulphuric acid is formed and then it falls on

the earth in the form of rain known as acid rain. Acid has the ability of affect marble surface.

It was held that 292 industries located and operating in Agra much change over within time schedule to nature gas as industrial fuel or stop functioning within time schedule to nature gas as industrial fuel or stop functioning with coal/coke and get relocated.

So far as work men employed in such industries are concerned the Court held that an additional compensation of six years wages to be given to employees of industries going to be closed.

In a fast developing country like India, where enormous activities take place every day, environmental issues may crop up any

time. The balancing function is of course with the administration, which makes decisions, and the Legislature, which initiates measures for achieving the goals of sustainable development. As in every other welfare measure, the contributions of the Courts will only be marginal in achieving social, political and economic set up conducive to sustainable development. However, judicial vigilance with judicial restraint will be a guarantee for discipline and helps orientation of administrative and legislative authorities in their battle for environmental protection. The decisions of Courts have widened the scope of the right to life by reading into it, the right to a clean environment. The Courts in India have lived up to the needs of the time and have made significant contributions in evolving new principles and remedies.
