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Judicial Activism for Environment Protection in India

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Abstract

The environment protection was a least priority in India's post-independence era due to need of industrialization and political disturbances. However, the Bhopal Gas tragedy acted as an eye opener and brought Environment protection at the Centre stage. After which, there was a widening of existing environmental laws in the country and increase in judicial activity. The Supreme Court and High Court have worked from case to case for making environment as a fundamental right and then extending its meaning to right for compensation, clean water and air. The closure of limestone quarries in UP, halting of polluting tanneries along the Ganges river, the introduction of the principle of Absolute Liability for hazardous firms are some of the landmark decisions. In response to the court's order different rules and policy changes have been developed such as CNG Policy in Delhi, Municipal Solid Waste (Management and Handling) Rules and Karnataka Municipal (Amendment) Act. However, the effectiveness of judicial activism in bringing about the social transformation is questionable. Although, the judiciary is able to form some strong foundation for environmental protection, but the developments brought about by judicial activism have been proven insufficient to bring satisfactory outcomes.

Keywords: Judicial activism, environment protection, effectiveness, india.

Introduction

In recent years the Indian judiciary has occupied an important position in the nation's politics[1]. The courts have made their mark on all the important issues, whether its politics, waste management, clean air, education policyor administrative matters. According to Mehta, the court has been recognized as one of the world's most powerful judicial bodies whose judges play an unprecedented governing role[2]. Mehta emphasized this fact by coating words of one of the leading Indian legal scholars Upendra Baxi. As chemotherapy is a treatment for a carcinogenic body, similarly judicial activism is a dire cure for a drastic disorder called politics. But there are other critics who opposed the judiciary's rise. Ramachandran has observed that the basic structure doctrine has meant unelected judges have assumed vast political power not given to them by the constitution[3]. Nevertheless, the use of judicial power to ensure that the state rightly does its job is one of the means to make governments accountable. The judicial activism can mean many things: interpretation of legislation, the creation of a new law or the exercise of policy by extensive judicial review of executive action. The revolutionary decisions of few liberal judges took up the task of developing mechanisms for having a check on environmental and human rights violation through judicial activism. The court's contribution in the form of public interest litigation (PIL) helped in bringing social economic justice, and attracted attention of not only Indian but foreign scholars around the world as well. The discourse on India's inventive and active judiciary has considerably evolved during the past few decades. The court has taken significant measures, for example, shifting tanneries from Kolkata and Kanpur in order to save river Ganges, forcing commercial vehicles to convert to Compressed Natural Gas (CNG) and shifting polluting industries out of Delhi to improve air quality of the city. The paper examines the effectiveness of judicial activism in bringing about the social transformation. The discussions on the activist nature of a decision usually begin, and end, with whether the judgment is able to transcend the judicial boundaries and enter the field of the execution or the legislature. Unless the decision of the court is executed and properly implemented its effectiveness is questionable. It is pertinent to mention that the corpus of environmental jurisprudence provides that the implementation of any law or policy starts with the concerned citizens who are ready to follow them from their heart. According to Judge Hand people resttoo much hopes upon constitutions, laws, and courts. According to him, these are false hopes asliberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it[4].

Hypothesis: The Indian Judiciary is able to form some strong foundation for environmental protection, but the developments brought about by judicial activism have been proven insufficient to bring satisfactory outcomes.

Methodology

Environmental Protection in the Post-Independence Era: Environment protection was a least priority in India's post-independence era due to need of industrialization and other political disturbances. India was under British rule, which plagued India and it lagged behind in industrial growth. In 1947,

as India became independent, a strong need for industrialization was felt not only for creating employment opportunities, but to increase Gross Domestic Product (GDP) as well. The Industrial Policy Resolution adopted in 1947 and in 1956 resulted in large scale industrialization and multipurpose river valley projects. The growth achieved by haphazard and reckless industrialization, created an ecological imbalance which resulted in no real economic growth because of environmental destruction. During the early years of Indian independence, there was no candid environmental policy and all the statutes were scattered and piecemeal. Two early post-independence laws were only related to water pollution. Some other acts such as the Factories Act, 1948 were introduced which also dealt with the effective arrangements for waste disposal.

The year of 1972 marked a revolution in the history of environmental management in India. It was the year in which a Conference on Human Environment was held in Stockholm in response to the initiative of the United Nations. To implement the decision taken at the conference, the Indian Parliament introduced a landmark change in the field of environmental management. It was in this decade that environmental protection was accorded a Constitutional status and environment was made a directive principle by the Forty Second Constitution Amendment. Article 48A and 51A (g) were inserted, making State as well as the citizens, both under constitutional obligation to conserve, perceive, protect and improve the environment. These provisions have been extensively used by courts to justify and develop a legally binding fundamental right to the environment as a part of Right to life and personal liberty under article 21. Parliament enacted nationwide comprehensive laws; like The Wildlife Protection Act, 1972 and Water (Prevention and Control of pollution) Act, 1974.

While these developments were taking place, by mid-1974, the polity was heading for a break-down. A year later, the Prime Minister, Ms. Indira Gandhi when unseated by a court in a disputed election, advised the President to evoke Emergency powers. During the emergency period, even if the executive killed or imprisoned a person, the Court did notexamine the validity of such actions. In the matter of A.D.M. Jabalpur v. Shivkant Shaklee A.I.R. 1976 S.C. 1349, Justice Beg uncritically approved the emergency regime and mentioned that he understand the care and concern bestowed by the state authorities upon the welfare of detenus who are well housed, well fed and well treated, is almost maternal. However, the emergency brought about several atrocities, an engineering student detained in Kakayam police camp had died under police torture during the emergency period. While there were nationwide bans on food articles to be consumed or usage of other necessary facilities for the survival of human life, nobody could think of environment per se. Initially the judicial response to the problems of the environment had been far from ideal and the Courts outlook may be regarded as insensitive towards environmental issues and problems because of the unstable political scenario, secular riots and insufficient infrastructure.

Till 1980s not much contribution was made by the courts in preserving the environment, but one of the earliest cases which came to the Supreme Court of India formed the foundation of judicial response. In Ratlam Municipality v. Vardhich and A.I.R. 1980 S.C. 1623, Judge Krishna Iyer highlighted the need for environmental consciousness and has elaborated the scopeof the criminal law concept of public nuisance. In this case the Supreme Court increased the range of section 133 of the Code of Criminal Procedure touphold a magistrate's order directing the municipality to carry out its duty towards residents. The municipality was ordered to remove the nuisance caused to the residents of the locality by the existence of open drains and of public refuse from nearby slum dwellers. The court observed that the non-availability of funds cannot be pleaded as ground for non-performance of municipality's statutory obligations. The case put forth the need of clean environment in all aspects.

In the early 1980s, Forest Conservation Act, 1980 and the Air (Prevention and Control of Pollution) Act, 1981 were passed. But the authorities had shown reluctance to use their statutory power against the polluters which resulted in an accelerated degradation of the environment. Therefore the judiciary took the lead and played a key role in protecting and preserving the environment through its judicial pronouncements. The development of the environmental jurisprudence in India through the innovative judicial decisions of the Supreme Court and the High Courts is a reaction towards the failure on the part of the Governmental agencies to effectively enforce the environmental laws. It needs to be pointed out that the new activist role of judicial policing over environmental issues triggered specially after the Bhopal Gas leak tragedy.

Results and Discussion

Bhopal gas Tragedy, An eye opener: In India there was no proper system in place for effective and adequate environmental law enforcement before the Bhopal mass disaster. It was only after this incident that judicial and legal relief system came actively into play on the environmental front. The inadequacy of environmental law became painfully bare in 1984, when a large number of people either died or were seriously affected in the Bhopal Gas Leak tragedy. The 40 tonnes of deadly toxic methyl isocynate from Union Carbide's pesticide factory (US based company) in Bhopal, India leaked into the atmosphere, causing 3,500 casualties and injuring 200,000 people[5]. The disaster caused severe soil and groundwater pollution around the plant. When a license was applied for the carbide plant in 1934, many factors have been ignored due to the strong need for industrialization, such as a housing estate was being built close the site and the Bhopal railway station, was only three kilometers away. The government has given approval to the plant, whose design was defective and had been rejected by Canada[6]. There were some initial warning signs and accident reporting before the major accident took place, but the government did not act[7]. The Bhopal disaster disclosed the malady of the legal system that failed to stress on the mandatory

need for an open Environmental Impact Assessment (EIA)[8]. It is pertinent to mention here that before the accident the submission of EIA report was not mandatory in India for obtaining the approval of authorities.

The primary legislative response to the Bhopal gas leak was Bhopal Act, 1985 which gave the exclusive right to the Indian government, to represent all claimants within and outside India and directed the government to register and process all victims' claims. Shortly after the Bhopal Act was passed, the Indian Government sued Union Carbide in United States. However, The American court refused to try Bhopal lawsuit, declaring that Indian courtbeing a more suitable forum. It shows a bias of American courts and a need to promote common international standards for Trans National Cooperation (TNC). This was beginning of legal mechanization of the Bhopal case in which moral and ethical views concerning the effect of tragedy on the victims were remain unnoticed. In 1986 the Indian Government sued Union carbide in the court of district judge Bhopal, for Rs 3,900 crores in damages. In 1988, the court awarded interim relief of Rs 250 crores to which both parties disagreed and appealed to the Apex Court. The legislature of India at that time was seriously insufficient with respect to environmental issues and thus could not cater to the unique needs of this case. During the course of the hearing in the Indian Supreme Court, the idea of compromise arose. To avoid any further delay to justice, in 1989 the court mediated an overall settlement amount of US $ 470 million (15 percent of the original US $3 billion claimed in the lawsuit) to be paid to the Indian government on behalf of claims made by all the victims (including any future claims), both civil and criminal, arising from Bhopal disaster. The compensation rate indicates the low value of life estimated in developing countries as compared to developed countries. Had compensation in Bhopal been paid at the same rate that asbestosis victims which were awarded in US courts by defendant, including Union Carbide – the liability would have been greater than the US $10 billion[9]. To make the things worse victims of the Bhopal case were not even notified and did not get an opportunity to be heard on settlement. The court tried to rationalize its view by declaring to do a great right, after all it is permissible to do a little wrong[10]. In 1991, the court reviewed a component of its decision and restrained criminal charges against all accused. In the criminal case against Union carbide, India's Central Bureau of Investigation (CBI), charged 12 people with culpable homicide not amounting to murder. The first trial shown no results and thus in 1996 India's Supreme Court reduced the charges. In 2010, after 26 years of the world's most tragic industrial accident, eight accused, convicted of causing death by negligence and sentenced to two years imprisonment. However, the accused were fined about Rs 1 lakh each and immediately granted bail. It was a disturbing end to the case which has eroded the credibility and raised questions on the Indian judiciary.

In the aftermath of the disaster the biases and priorities of the medical, administrative, legal and other system with poor class were exposed on many occasions[11]. For example, according to Sarangithe claims of people under 18 were not registered and children born to gas exposed women shown to be physically and mentally retarded through medical research were not considered to be entitled to claim damages. Further, during the medical examination three most important tests viz, pulmonary function test, exercise tolerance test and ophthalmic were not carried out on over 80 percent of claimants who were medically examined. Injuries caused to the brain, reproductive and immune systems were not even considered for assessment. To add up the misery of sufferers, the claims of many affected persons have not been registered and less than one-fifth of the people whose claims have been registered have received humiliatingly low compensation: 5,325 cases related to death claims received Rs 93,000 and for personal injuries Rs 24,000. According to the Bhopal Gas Tragedy Relief and Rehabilitation Department a total compensation of Rs 1548 crores has been awarded to 57,426,6 cases till 2008. The Supreme Court of India ordered the government to pay out remaining amount of 15 billion rupees, a part of the original compensation kept in reserve bank since 1992[12].

This major industrial disaster has attracted considerable attention towards the misery of the survivors and judicial failure for providing any relief to them. Commentators have described the settlement of U S $ 470 million in the Bhopal case as another calamity for the gas victims, travesty of justice, pyrrhic victory, shocking and monstrous outcome of an agreement between two wrong doers at the back of the victims. Further, in criminal proceedings, the court has given its decision based on technical grounds and evidence submitted by CBI. But the victims' groups and activists, who had sought more serious charges, criticized the verdict. Bhopal is a case of mass devastation where justice got delayed and denied. Bhopal disaster raised some legal and ethical questions which are still unanswered. For example, there is a lack of clarity regarding legal and social responsibility of parent companies towards their subsidiaries, norms and regulations for TNC engaged in hazardous activities and the stand of government stuck in in between attracting foreign business investment while simultaneously protecting the environment and its citizens. While in race of economic development, governments may resist enforcing environmental legislations on TNCs, but NGOs have acted as the watchdogs on the TNCs. Post Bhopal disaster, some judges responded through aggressive judicial decisions and with creative innovation to develop environmental law in India. However, in some instances the inconsistent and inappropriate behavior of the courts was evident, depending upon the case and the size of the problem, before it.

Judicial Activism: A number of policy and law reform measures were catalyzed by the Bhopal tragedy, and in this effort, an already activist judiciary has been unwilling to play the role of a passive spectator[13]. Supreme Court and High Court worked from case to case for making clean environment as a fundamental right and extending its boundaries to formulate the

right for compensation, clean water and air. In the process, the court tried to fill the gap between development and enforcement of environmental laws such as Mining Laws, Water Act and Environment Protection Act (EPA). The reason for adopting an activist stance by the Supreme Court is based on its perception that there is no proper remedy in existing legislation and thus, it has greatly extended its judicial activism to environmental issues and concerns. One of the major outcomes of Bhopal disaster is the EPA, the umbrella legislation which has filled the existing gap in the legislative framework. Before the enactment of the EPA, only government could prosecute under Indian environmental laws, while there was no statutory remedy for public interest groups or citizens who were willing to act against a polluter discharging an effluent beyond the permissible limit. However, under Section 19 of the EPA, a citizen can now prosecute any offender provided a 60-day notice is given to the government of his intention to prosecute. Other provisions like Section 43 of the Air Act (amended in 1987), and Section 49 of the Water Act (amended in 1988) allows citizens to participate in the enforcement of pollution laws. Both of these Amendments demands from Pollution Control Board to disclose their internal reports to citizens seeking to prosecute a polluter. The EPA and other Acts have been an important guideline to sort out the environmental problems. However, EPA can improve the situation to a limited extent. The citizens' initiative provision under section 19 of EPA appears to give public significant power is characterized as mere eyewash. In practice, there are no significant reported decisions in cases arising from a citizen's complaint under section 19 of the EPA. Most environmental groups and concerned citizen prefer to obtain redress through the PIL channel developed by the High Court and the Supreme Court under their constitutional jurisdiction.

Public Interest Litigation: PIL is a result of judicial activism and a mechanism to agitate public issues before the courts within the confines of legal and constitutional mould[14]. The use of PIL through litigants ensures them a wide locus standi. In addition, there are no adverse effects of the proceedings, prompt action is taken on the decision, the courts canalso assistin examinations and investigations, the various judgments of courts shape up the future rulings and policy decisions and public hearing helps in mass awareness. The Judiciary evolved methods to bring justice to the victims by providing *locus standi* to persons or voluntary organizations that act in the public interest by taking up cases on behalf of affected people. As a leading Indian jurist Dr. Upendra Baxi said that for the first time, the Supreme Court of India became a Supreme Court for all Indians[15]. Now, citizens can challenge environmentally unsound practices on behalf of others, even though they may not directly suffer any harm. The courts intervened in different waysin response to the plethora of environmental cases brought before the courts through PIL.

The Courts monitored implementation of existing laws and policies and issued directions in various types of cases to ensure a safe and clean environment along with development. For the first time indication towards a wholesome environment as part of life was given in the R. L. and Kendra, Dehradun v. State of U.P. A.I.R. 1985 SC 1259, popularly known as Dehradun Quarrying Case. The case categorically emphasized that the right to life without clean and hygienic environment is meaningless. In this case the court observed that Industrial development is necessary for the economic growth of the country. If, however, industrial growth is sought to be achieved by haphazard and reckless working of the mines, resulting in loss of life, property and basic amenities like the supply of water, creating thereby an ecological imbalance, there may ultimately be no real economic growth and no real prosperity. It is necessary to strike a proper balance.

The State of Uttar Pradesh was failed to regulate the mining as required by the then existing mining laws. In 1983, a letter was written to the Supreme Court alleging that illegal, haphazard and dangerous limestone mining in the Mussorie Dehradoon region was devastating the ecosystem. The court accepted the letter as a form of PIL under article 32 of the Constitution, with notice to the Uttar Pradesh government and the collector of Dehradoon. It corrected abuses of power on the part of implementing agencies through appropriate orders. On the basis of Bhargawa committee report, the court decided to stop all fresh quarrying in the Dehradun District and directed the closure of several mines in the area. Thus, the courts filled the gaps in the existing legislative system through the process of judicial law-making and referring to article 51A (g) of the constitution held that it is not only the state but the duty of citizens to protect the environment. The case indicates that though pollution control laws could be used to redress a particular environmental problem (for example, industrial or commercial activities) but they are not capable of addressing complicated issues like environmental sustainability.

Redressal Mechanism: Historically, compensations for environmental damage ranged from no compensation to very low compensation as seen in Bhopal case. The court developed the absolute liability principle of compensation through interpretation of constitutional provisions and thus clarified ambiguities in specific legislation. The principle of strict liability permitted the growth of hazardous industries, while ensuring that such enterprises would be held responsible for the damage caused due to escape of hazardous substance. In the Shriram gas leak case, M.C. Mehta v. Union of India A.I.R. 1987 SC 1086, the Indian Supreme Court got the first chance to review the rule of strict liability, immediately after the Bhopal tragedy. The court evolved new jurisprudence of liability towards the victims of pollution caused by industry engaged in hazardous activity. The ongoing Bhopal litigation had a considerable effect on the court's decision in Shriram case. However, it is an irony that although the Bhopal Gas disaster formed the basis on which the Supreme Court subsequently evolved the principle of absolute liability, this principle has never come to be applied in the Bhopal case. The court introduced the principle of absolute liability (liability without

exception) on which quantum of compensation could be computed and paid. The court emphasized that the compensation should be paid in proportion to the magnitude and the capacity of the enterprise.

In Shriram case, the petitioner M.C. Mehta, an activist advocate and social worker filed a PIL to seek the court's orders to close and relocate the Shriram'scaustic chlorine and sulphuric acid plants, which was located in a densely populated area of Delhi. Shortly after Mehta filed the petition, oleum leaked from Shriram's plant, resulted in death of one person and affected several others. On the behalf of affected, applications were filed for the compensation in the original petition. The company ceased to carry manufacturing operations, but ultimately allowed to reopen 'temporarily' (considering 4000 jobs at stake and chlorine is needed to purify the Delhi's water supply) with environmental and safety measures including compliance with the recommendation of the expert committee report, introducing worker's participation in safety management, publicizing preventive measures in case of emergency and requiring trained personnel to handle hazardous substances. Apart from that Shriram industry was required to present bank guarantee of Rs 15 lakhs for any future victims and Rs 20 lakhs to compensate oleum leak claimants. Court appointed monitoring committee to ensure compliance with its order. The court deserves praise for minimizing danger to workers and the surrounding community by requiring Shriram to take stringent safety measures before restarting its closed unit. The Principal of absolute liability was considered in later cases as well. For example, In Bicchri village where the chemical industries for manufacture of toxic H acid were located, the Supreme Court ordered remedial actions. In some other cases the court regarded polluter pay principle as part of environmental law in India and required the polluter to bear allthe remedial or cleanup costs andpay the compensation amounts to the victims of environmental damage.

Strengthening Accountability of Administrators: Often, financial deficiency, political pressure, technical and manpower incompetence serve as reason for non-performance of government agencies. The courts can intervene through appropriate orders to make implementing agency work, which deliberately not performing its duties. In Sep, 2014, the Supreme Court while acting on a PIL filed by M.C. Mehta for cleaning drive of river Ganges, alleged government by saying that it seems that the steps taken so far will not lead to the cleaning of the country's holiest river even after 200 years and asked for formulating stage wise plan[16]. The high volume of pollution in the river Ganga poses a severe threat to its health and life. The situation is critical and cleaning of the river is a subject of political agenda. About Rs. 20,000 crore has been spent on the cleanup programme called Ganga Action Plan, which was launched under the then Prime Minister Rajiv Gandhi in 1985, but with little to show on the ground[17]. The project is reinvigorated following Prime Minister Narendra Modi's personal commitment to clean up the river and the Centre has given clearance for six new sewage treatment plants (STPs).

A number of cases on the issue of Ganga pollution have been initiated through PIL in Supreme Court, in which the Central Government, state pollution control boards were asked to monitor the enforcement of its orders. In 1985, M.C. Mehta, filed the first river pollution case as a writ petition under Article 32 of the constitution. Among other things, the petition was directed at the Kanpur Municipality's failure to stop sewage from polluting the Gangariver. Mehta in his PIL asked the court to give directions to the Government authorities and tanneries in Kanpur to prevent polluting the river with waste water and trade effluents. Justice Kuldeep Singh expanded this petition to include all large cities in the Ganga basin. In Ganga Pollution (Tanneries) case, the Supreme Court noticed industries were inevitably disregarding the instructions of pollution boards and deliberately violating the consent conditions fortheir operation. It also observed negligence of boards in their functioning. According to Mehta the court ordered more than 5000 industries located in the Ganges Basin to install effluent treatment plants (ETP) and air pollution control devices[18]. The court through its various orders closed down almost 157 tanneries, 191 other industries in Uttar Pradesh and many others in the States of West Bengal and Bihar. The Central Government, state pollution control board and district magistrate were asked to monitor the enforcement of its order. Assigning the watchdog function to the authorities gave them an awareness and strength for taking up anti-pollution measures. The court, while ruling against the tanneries laid great emphasis on the protection of the environment over the economic interests and feasibility arguments made by the polluting tanneries. In Ganga Pollution (Municipalities) case, the court ruled against municipalities and other Government entities and ordered them to take steps to prevent the pollution of the Ganges. It gave interim directions to make administration more responsive than before to the constitutional ethic and law. The judge played an unprecedented role by *suo moto* interventions, the appointment of investigation committees, spot visits, monitoring exercises to ensure conformity with the law.

The important part of the court's decision is the high level of accountability that it makes for the concerned authorities and statutory bodies, with respect to the protection of the environment. Although the observations and directions were related to the pollution of the river Ganga, they had the force of law in relation to similar cases of pollution throughout the country. It may seem impressive, but there is limit of courts in the face of an indifferent bureaucracy. Despite of specific rulings and direct monitoring, the administrators have not faithfully implemented the orders. The boards in Ganga case appear to do no work except for an involuntary response to the court order. If the Supreme Court order is to have a lasting impact, there is need of new political will in form of budgetary allocations at municipal levels and greater community pressure on pollution boards. Some critics have criticized the court in

Ganga case, for executing the law and violating the limits imposed by separation of power. This is what Anant and Singh referred to as executive judicial activism and a violation to the limits imposed by separation of power[19]. The role of the court is criticized as it does not haveany institutional arrangement for undertaking legislative or executive functions. This also results in the problem of information gaps, since legislator has only defined a broad framework, and it is up to executive to set specific standards using its informational expertise. Indifferent of the criticism the court not only pushed the government to implement existing law and policies, but also contributed significantly in developing new policies.

The Central and State Government have taken some active steps to preempt judicial and community pressure. However, these were a direct result of various Supreme Court and High Court orders in public interest environment cases. The new legal opportunities, pressure on government institutions to enforce legislation, the emergence of NGOs and informed citizens that watch over government agencies and industries, have all helped in creating a greater public awareness on environmental issues, made industries vigilant about their environmental performance and lead to the development of new governmental policies such as CNG Policy in Delhi, Municipal Solid Waste (Management and Handling Rules) and Karnataka Municipal (Amendment) Act.

Delhi Government's Policy to curtail Air pollution: The Supreme Court involved in anti-air pollution policies started with PIL filed by M.C. Mehta over the concerns about rising levels of air pollution and the government's failure in dealing with it. In 1986 the court directed Delhi administration to specify its attempts made to reduce air pollution. In response to the court's intervention the government enacted several laws and policies such as shifting of hazardous industries from Delhi, Motor vehicle act of 1988 and vehicular exhaust emission standards. Nevertheless, these policies were hardly implemented and did not lead to any satisfactory outcome. In mid 1990s Delhi was one of the world's 10 most polluted cities, with vehicles accounting 70 percent of polluting emissions[20]. The court took proactive steps to abate air pollution, however, its focus shifted from one scheme to another. The Delhi pollution case took a most significant turn when on 28 July 1998, the Indian Supreme Court based on the Bhurelal committee report issued a controversial *suo moto* order requiring the entire fleet of diesel buses in Delhi to be converted to compressed natural gas (CNG) by 31 March 2001.It was among the first comprehensive policies on air pollution control. The Delhi government questioned the reliability and practicality of CNG arguing that the technology is still in the developmental stage, making it both risky and costly. The court disregarding government appeal, insisted upon the implementation of its order. The then Delhi government had to follow the court's decision in spite of several protests by private bus operators, thereby making Delhi to have the largest fleet of CNG buses in the world used as public transport.

In 2003, Delhi's CNG experiment got Clean City International Award. The data collected by the Central pollution control board (CPCB) suggests that level of suspended particles (SPM) has fallen indicating the improvement in Delhi's air quality[21]. Compared with 1997, the CO in 2002 fell by 32 percent and SO2dropped by 39 percent[22]. However, there was no all-round improvement as NOx has risen after CNG conversion, whereas SPM and PM10 have shown a marginal fall. According to Center for Science and Environment (CSE) the CNG vehicles require high maintenance and NO2emissions can increase to high proportions in lack of proper maintenance of CNG vehicles. There is also a constant increase of new vehicles in the city every year, which might have superseded the benefit of the CNG conversion policy. The city has been subject to a number of air quality interventions by the court, but it failed to bring much difference in the situation and Delhi was reported as world's most polluted city by WHO in 2014.

The critics have questioned court's decisions for establishing unclear standards which fail to determine the acceptable pollution level or the level of risk that will not be considered as a violation. Although the entire population of Delhi was affected by the court's decision, but relatively a small number of stakeholders actually played a part in the deliberations. The private bus operators who constituted 80 percent of public transportation notified fifteen month after the court order[23]. When there is a lack of involvement by the stakeholder in court proceedings, information gathering and enforcement problem may result and impede efficient pollution reduction measures. Moreover, the court took almost two decades to satisfactorily assess and rule the issue of air pollution which required an urgent redressal. The vehicular pollution case was proven as least successful cases of M.C. Mehta in terms of effective outcomes.

Municipal Solid Waste Management Rules, 2000: The court orders in various matters have led to the development of many rules and regulation, such as the Municipal Solid Waste Management Rules or MSW Rules which were formulated by MoEF on the court's direction in response to Almitra H. Patel v. Union of India, WP 888/1996. The PIL argued that government agency neglected their statutory obligation in relation to proper management and hygienic disposal or recycling of MSW. The rules are the first set of comprehensive legislation which ensures proper collection, storage, segregation, transportation, processing, and disposal of municipal solid wastes. However, according to Planning Commission of India, in 128 cities except for street sweeping and transportation, compliance was less than 50 percent and in respect of disposal compliance was a dismal 1.4 percent[24]. Further, except for 22 States which have set up processing and disposal facilities, the rest of the States have made no effort till 2013. A close examination of rule reveals that although they direct recycling, but ignore recyclers and rather encourage private sectors that in lieu of profit making did not recycle, but mostly dumps the waste. Some NGOs observe that the MSW rules lack any incentive or mechanism either to

encourage recycling or to reduce waste while contracting the private firms. The informal recycling sector, which constitute a major part of waste economy have never been considered by the court. In other words the rules are techno legal rather than social legal. Further, some critics argue that the time limit set by the courts was unrealistic and thus far from being achieved.

Karnataka Municipal Corporations (Amendment) Act, 2013: In 2012, India for the first time saw a nationwide public protest from north most Jammu and Kashmir to Southern most Tamil Nadu against improper waste management improper waste management. The Mavallipura village near Bangalore, where the garbage has been disposed of for many years is an excellent example to show how this garbage turned into a menace to the local people. Since March 2012, four people have died in last six months due to various diseases and many are suffering from jaundice, asthma chikengunia and other allergic disorders due to the pollution from the landfill site[25]. It resulted in citizen protest. Thus, Karnataka State Pollution Control Board had directed the Commissioner of the Bruhat Bengaluru Mahanagara Palike (BBMP, Bangalore's city corporation) and Ramky Infrastructure Pvt. Ltd. (the private operator of the landfill), to stop receiving waste and close the facility with immediate effect. However, in spite of resistance from the local residents, the landfill was soon reopened as there was a lack of availability of new landfill sites in the city. The citizen protested and a PIL was filed by ESG and others challenging the order of the Karnataka State Pollution Control Board dated 25 October 2012, that temporarily extended authorization to operate the landfill at Mavallipura, revoking an earlier well-reasoned closure order of 11 July 2012.

The High Court of Karnataka issued a series of unprecedented orders for the progressive municipal solid waste management inthe Bangalore city. The court threatened to supersede and dissolve the state's elected municipal council, if it do not cooperate in the city's efforts to improve waste management. In response to High Court's decision the Karnataka Municipal Corporations (Amendment) Bill, 2013, which proposes a penalty on those who do not segregate dry and wet waste and those who litter public places, was passed in the Legislative Assembly. However, so far only 600 tonnes of segregated wet waste which is just 15 percent of the total waste is being collected[26]. It not only shows a lack of enforcement of rules, but also indicates towards the present trend of the ballooning garbage mafia in public services. According to Bangalore city councilor, the garbage mafia is operating in solid waste management in 79 wards out of the 93 wards[27]. He further emphasized that in September 2013 the High Court ordered BBMP to ensure that the contracts with the old contractors (garbage mafia) are terminated. However, the court's orders have been violated. To change this overall picture some ray of hope has come from newly announced Swachh Bharat Mission ('clean India' campaign) launched on Gandhi Jayanti, Oct 2, 2014. The mission is proposed to be implemented over a span of 5 years with a total investment in the programme, Rs. 62,000 crore in all 4041 statutory towns[28]. It is yet to be seen that whether this national policy on waste would be successful in bringing up the desired change or would prove to be another futile attempt.

Conclusion

It is evident that there is ample of constitutional and legislative provisions on environment protection in India. But despite of these legislations, rules and regulations, protection and preservation of the environment is still a pressing issue. Hence there is a need for an effective and efficient enforcement of the constitutional mandate and the other environmental legislations. A strong foundation for environmental jurisprudence in India helped in the protection and preservation of its environment as well as its people. The collaborative approach, operational flexibility, court's follow up on its interim orders and futuristic approach makes people feel more secure as they are confident of getting relief for environmental damage through the courts. The main stimulus for environmental judicial activism came from Bhopal Gas tragedy. After which, there was a widening of existing environmental laws in the country and increase in judicial activity through PIL. This has been achieved by interpreting environment as a fundamental right in the Constitution (Article 21) and by imposing obligations on the State to carry out its duties as guided by the 'Directive Principles' (Article 48A and 51A). PIL has been proven a successful tool for the responsible NGOs and concerned individuals. The environmentally conscious groups and citizen were able to put pressure on industrial units for adopting anti-pollution measures. The closure of limestone quarries in UP, halting of polluting tanneries along the Ganges river, the introduction of the principle of Absolute Liability for hazardous firms are some of the landmark decisions. The Central and State Government have taken some proactive steps in the formulation of MSW Rules, Delhi's CNG policy, Karnataka Municipal Act, which were the direct result of Supreme Court orders. Yet behind the constitutional strength of court order lie a complete incompetency where orders and directions, facilitate legal discourse, but result in poor implementation on the ground. The judiciary is also criticized for overstepping the administrative function and for lack of expertise on the environmental matters. In the past few years, several judgments have not been implemented, for lack of political or administrative will or because of other lacunae. Nevertheless Judiciary is actively playing its role in spite of repetitive failure of other organs. In public perception, the judiciary is the last hope and it is necessary that the executive enforces its orders. In addition, the role of concerned citizens, NGOs and the media viz enactment of various provisions of the law, especially related to development and environmental issues, has become phenomenal. If laws need to benefit society, then they have to continue being watchdogs and educate implementing agencies to remain effective. It must be recognized that for further environmental activism by the judiciary, the support of other branches of government and obedience of judicial orders from

people is indispensable or else the courts would be severely weakened.

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