



PROTECTION OF ENVIRONMENT AND WILDLIFE: THE JUDICIAL APPROACH

**Uttam Kumar Sharma, IFS
Director, Lion Project.
Kuno & Madhav NP,
MP.**



(Sariska case). *Tarun Bharat Sangh, Alwar v Union of India Writ Petition (Civil) No. 509 of 1991, SC*

“The litigation concerns environment. A great American Judge emphasizing the imperative issue of environment said that he placed Government above big business, individual liberty above Government and environment above all..... The issues of environment must and shall receive the highest attention from this court”.

Biodiversity on Earth

- **Plants & Animals : 5-10 million sp,**
- **30 m?; 100m?.**
- **Identified in world so far: 1.77 million sp.**
 - **70% animal, 22% plants**
- **1 million Animal (75% Insects);**
- **2,48,000 Higher Plants,**
- **69,000 Fungi**

Species extinction

- 1 million species already extinct!
- @150 species / day = 50000 species / year
- 2 million species in the next decade
- 50% species of insects



Biodiversity in India

8+% of World's biodiversity in India

- **5,000 Bacteria & 1,000 Viruses**
- **31,000 Protozoa,**
- **Fungi: 14500+**
- **27,000 Algae,**
- **45,500+ Species of Plants**
- **91,000+Species of Animals**

✓ India- One of the 17 Mega-Biodiverse countries in the world.

➤ Of the 34 globally identified biodiversity hotspots, India harbors four hotspots:

1.Himalaya

2.Indo-Burma

3. Western Ghats & Sri Lanka

4. Sundaland

➤ **104 National Parks & 551 Wildlife Sanctuaries**

- **54 Tiger reserves**

➤ **88 Conservation Reserves**

➤ **127 Community Reserves**



Ecosystem Services



Environment governance in India

Pre-1947

- **1865: First Indian Forest Act**
- **1894: First National Forest Policy**
 - Agriculture dev on forest land, exploitation for revenue, “state property”
- **Wild Animals & Birds Protection Act 1912**
- **1927: “Indian Forest Act 1927”**



Post- 1947

- **1952: Second National Forest Policy**
 - Focus on Revenue Generation from forest

✓ 1972

Stockholm Conference

➡ *UN Conference on the Human Environment*

- First International conference on Environment issues
- Recognized:
 - Interrelationship between “Social- Economy-Ecology”
 - Right of every person to have a quality environment
 - Inter-generational Equity

Post 1972

➤ **1972: Enactment of Wildlife (Protection) Act, 1972**

- National Park
- Sanctuaries
- Tiger Reserve
- Prohibition on Hunting and Trade of wild animals
- More stringent punishment

✓ **1973**

Convention On International Trade in Endangered

Species of Fauna and Flora

(CITES)



➤ **1974:** The Water (Prevention and control of Pollution) Act, 1974

➤ **1976: 42nd Amendment** of the Constitution of India

(a) Transfer of Forests and Wildlife subjects from
State to **Concurrent List**

(b) Protection and improvement of forests, wildlife
& environment under **Directive Principles**
(Art 48 A) & Fundamental Duties [Art 51A(g)]

1980: Enactment of 'Forest (Conservation) Act, 1980'

Prior permission of Central Govt.

- 1) De-reservation**
- 2) Using forest for Non-Forestry purpose**
- 3) Giving forest land to Private party**
- 4) Green felling**

1981: The Air (Prevention and control of Pollution) Act



1980's Post-Bhopal

1984: Bhopal Gas tragedy

- **1985:** Creation of separate Ministry of Environment & Forests in Government of India
- **1986: Environment (Protection) Act**
 - Amendments to Water Act and Air Act

Delegated Legislation under EPA 1986

- ▶ Environment (Protection) Rules, 1986
- ▶ Noise Pollution (Regulation and Control) Rules, Feb 2000
- ▶ The Hazardous wastes (Management and Handling) Rules, July 1989
- ▶ The Manufacture, Storage and Import of Hazardous Chemicals Rules, Nov 1989
- ▶ Chemical Accidents (Emergency, Planning, Preparedness and Response) Rules, Aug 1996
- ▶ Bio-medical waste (Management and Handling) Rules, July 1998
- ▶ EIA Regulations, Jan 1994 (29 projects/industries)
- ▶ Coastal Zone Regulations, Feb 1991 (500mtrs)
- ▶ Ecomark labelling, 1991
- ▶ Recycled Plastic Manufacture and Usage Rules, 1999



1988: Revision of 'National Forest Policy'

Principal aim

To ensure environmental stability

And

Maintenance of ecological balance

And

Creating massive People's movement



✓ 1987

Burndtland Commission Report

“SUSTAINABLE DEVELOPMENT”

led to

**‘United Nation Conference on Environment and Development’
(UNCED)**

June 1992 at Earth Summit

1. UNFCCC
2. CCD



3. Convention on Biological Diversity (CBD)

196 countries around the world have joined the international treaty that sets general goals and rules for conserving Biodiversity



BD as Common heritage
of mankind

CBD 1992



Sovereign rights of
the State over
their BD

Biological Diversity Act, 2002



संरक्षण

**Conservation
of Biological
Diversity**



सतत
उपयोग


**Sustainable
Use of the
components**



लाभ का
बटवारा

**Fair and
equitable
sharing of
benefits**





Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006.

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- **Recognition of Individual and Community
rights**



National Environment Policy 2006.

- **comprehensive policy on**
‘Environmental preservation and control of pollution’




The National Green Tribunal Act, 2010

An Act to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

Stockholm in June, 1972,

Rio de Janeiro in June, 1992,

AND WHEREAS in the judicial pronouncement in India, the right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution;



“If the mere enactment of the laws relating to protection of environment was to ensure a clean and pollution free environment, then **India would, perhaps, be the least polluted country in the world. But this is not so.**

*Indian Council for Enviro-Legal Action
vs. Union of India (1996) 5 SCC 281*



Supreme Court of India *on* *Environmental Issues*



New Principles of Environmental Jurisprudence evolved during last 3 decades

1. Principle of Strict Liability
2. Polluters Pay Principle - Absolute liability
3. Precautionary Principle
4. Principle of Doctrine of Public Trust
5. Principle of Exemplary damage

1. Principle of Strict Liability

- Principle of Strict Liability was laid down by SC in Oleum Gas Leak Case(Shri Ram food & fertilizers, Delhi)

- **M C Mehta vs UOI (1987)**

Principle of Strict Liability

Once the activity carried on is hazardous or inherently dangerous, the person carrying on such liability is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity.

Polluters Pays Principle

- ➡ SC held that **Polluters Pay Principle** means
 - Absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.

**Vellore Citizen Welfare Forum vs UOI,
(WP No 1991 decided on 28/08/1996)**

Precautionary Principle

Vellore Citizen Welfare Forum v Union of India (SC 1996)

➤ SC held that **Precautionary Principle** in the context of municipal law means-

(1) State Government and the Statutory Authorities- **must anticipate, prevent and attack the cause of environmental degradation.**

(2) Where there are threats of serious and irreversible damage, **lack of scientific certainty should not be used as reason for postponing measures** to prevent environmental degradation.

(3) The **onus of proof** is on the actor or the developer /industrialist to show that his action is environmentally benign.

Doctrine of Public Trust

- M C Mehta v Kamal Nath (SC WP No 182 of 1996)
- SC held that
 - HP government committed breach of Public Trust Doctrine by leasing Ecologically Fragile land to 'Span Motel'.

Principle of Exemplary Damage

✓ **M C Mehta vs Kamal Nath & Others**

(SC WP No 182 of 1996 decided on 15 March 2002)

- Rs 10 lac was fixed as quantum of exemplary damages payable by Span Motel besides fair contribution for Ecological restoration of the area.

SC: Godavarman Judgment

W.P. 202 of 1995 by T.N. Godavarman Thirumulpad
&

W.P. 171 of 1995 by 'Environmental Awareness Forum'

First SC Judgment on 12/12/1996

"Forest" shall be understood in the **dictionary sense**.

Order dt. 14/02/2000

Prohibition on removal of grasses, dead and decaying trees, drift wood, etc., from National Park & Sanctuaries.

SC: Godavarman Judgment

Order dt. 13/11/2000

Prohibition on de-reservation of NP, Sanctuaries and forest
without the approval of SC .

Order dt. 29/10/2002

- Provided for Net Present Value (**NPV**) based on
'Users Pay Principle' (UPP)
- Constituted “ Compensatory Afforestation Fund
management and Planning Authority” (**CAMPA**)

Judiciary: Green roles

➤ **Public Educator**

MC Mehta vs UoI AIR1992 SC 382 Court direction to broadcast ecology programmes on electronic media and include environmental study in school and college curricula

➤ **Policy Maker**

MC Mehta vs UoI AIR1996(2) scale92 SC Court directions for the introduction of unleaded petrol vehicles

➤ **Supreme-administrator**

MC Mehta vs UoI AIR1992(Supp.2) SCC 633 Court directions in the Ganga Pollution Case to riparian industries, tanneries and distilleries regarding abatement of pollution

➤ **Tax man & Finances**

Court imposed penalties, NPV, Ecological classes, CAMPA

Judicial Interpretation (Green)

➤ Right to Wholesome environment

- ✓ Right to live (**Art 21**) includes right to enjoyment of pollution free water and air
- ✓ A citizen has a right to invoke **Art 32** for removing pollution.

- *Municipal Council, Ratlam vs. Shri Vardhichand AIR 1980SC 1622*
 - *Dehradun quarrying case AIR 1988 SC 2187*
 - *Subhash Kumar vs State of Bihar AIR 1991 SC 420,424*
 - *Virender Gaur vs State of Haryana AIR 1995(2) SCC 577*

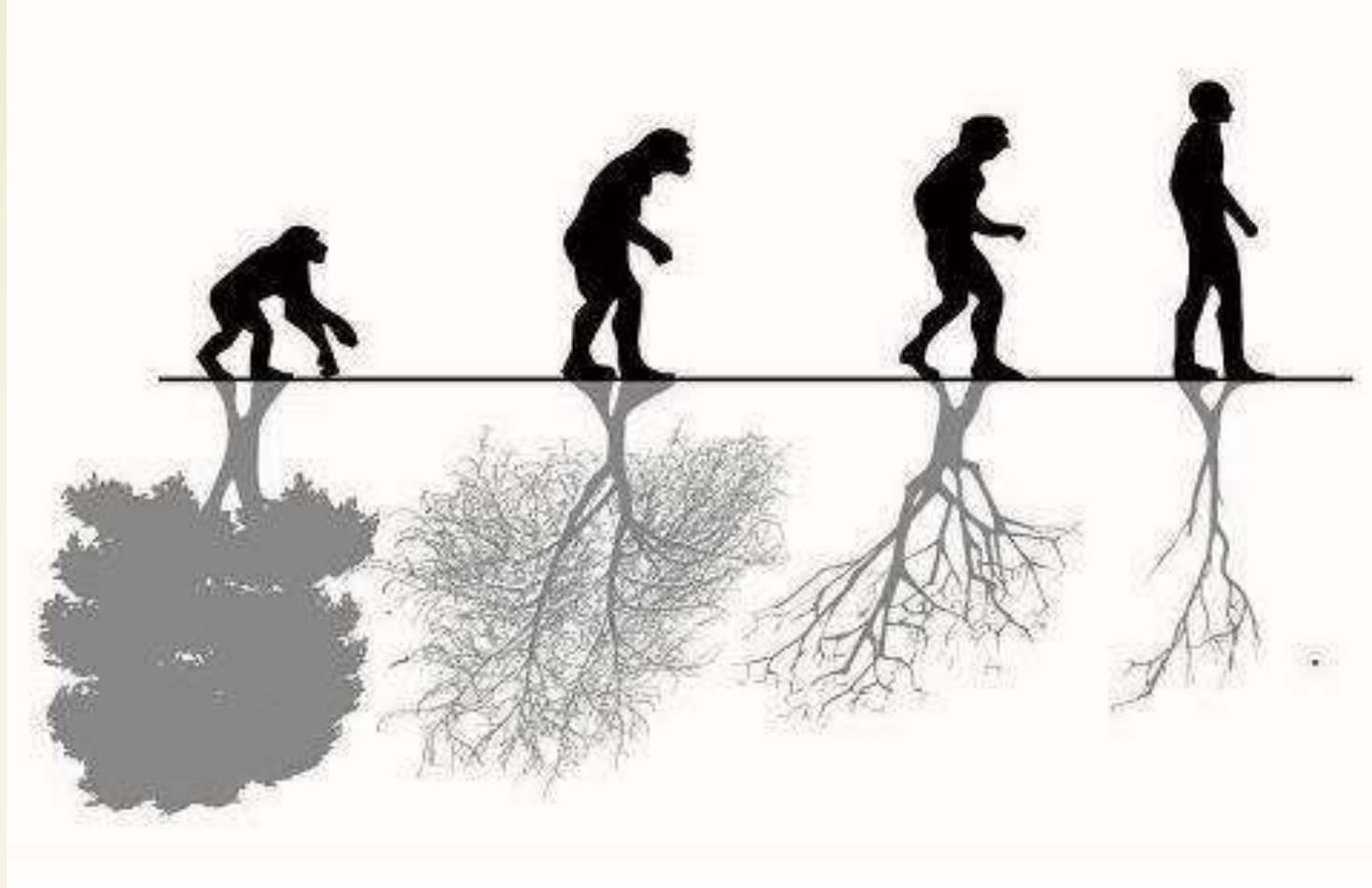
➤ International obligations like UN conventions enforceability (Art 253)

➤ “**Purposive interpretation**” Statutes interpretation along with Policies & DPSP

“Purposive interpretation”

Uday Singh & others vs State of MP, SC 2019

.... As an effective tool for protecting and preserving environment, these provisions must receive a purposive interpretation. For, it is only when the interpretation of law keeps pace with the object of the Legislature that the grave evils which pose a danger to our natural environment can be suppressed. The consequences of climate change are bearing down on every day of our existence. Statutory interpretation must remain eternally vigilant to the daily assaults on the environment.



How to Reconcile the rights and livelihood requirements of locals with the right of the Nation on the forests (Nature) before it is too late??

Thanks for a patient hearing...

Uttam Kumar Sharma, IFS

Email: uttam628@yahoo.co.in

Mobile number: 9412057112

Website: uttamifs.com

