

Conservation of Biological Diversity in India: Role of Judiciary

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Abstract

Environment Protection and Conservation of Biological Diversity has become not only a matter of national importance but of global concern too.. It is now a well recognized fact that without a clean environment the very continuance of humankind is in peril. Diminishing environmental quality has been shown by surging pollution levels, loss of vegetative cover and Biological Diversity, imprudent concentration of hazardous chemicals in the visible atmosphere and food chains, increasing perils of environmental mishaps and warnings to associated life and life support systems. This has brought the curiosity of entire global community which forced them to preserve, safeguard and intensify their efforts in boosting the environmental quality. Judiciary is only an alarm bell and not a timekeeper. So how could the judiciary remain a mute onlooker when the matter has gained such a high relevance and become a subject of circumspection and judicial cognizance.

Keywords: *Environment Protection, Biological Diversity, Pollution, Vegetative Cover.*

Conservation of Biological Diversity in India: Role of Judiciary

In the developing country like India, with illiterate people, conditions of severe indigence, where the consciousness of socio-economic and ecological problems is found prevalent, the judiciary has to play an pro-active role to safeguard the people's choices against miscreants order by installing trust in masses in toto for whom it exists, for as analyzed by *Justice Lodha*, "Judiciary exists for the people and not vice-versa." Judiciary, therefore, cannot caught unawares and show its helplessness but must be pro-active to make good the lacuna in law and provide reassurance and solace wherever and whenever needed. Besides, the traditional role of interpretation and practise of law, the judiciary can perform the reformative function of installing greater consciousness of mammoth problems of environmental deterioration and degeneration through a series of revealing judgments and through judicial review and judicial activism it can generate new jurisprudential tools, techniques and methods of environmental jurisprudence.

Protecting Environment and Biological Diversity: A Judicial Task and Responsibility

Being severely conscious about the growing Biological Diversity degeneration in the country and knowing Global steps in the field of the environmental law, the Indian Judicial set up has played an important part in development of environmental jurisprudence by exercising international conventions, agreement, practices and usages. Many times, the country's Judicial setup have resorted to the principles and idioms regarding environmental safeguard to bridle bureaucratic red-tapism and correct the shortcomings in the existed legislation. The judiciary has also advocated the help of international rules, regulations, principles and legislation to reinvigorate strength and broaden the jurisprudence of environmentalism in India. Indian Judiciary specially Honourable Supreme Court and the High Court of various States has played a prominent part in the safeguard of environment and preservation of biological diversity.

Indian Constitution provides for the enforcement of Fundamental Rights through writ petition as envisaged in Art. 32 and Art. 226 and Public Interest Litigation through a series of illuminating judgments. The growth of concept of environment preservation and protection of Biological Diversity in India has been largely affected and speed up by Public Interest litigation (PIL). In Public Interest Litigation the individual or a social group seek help from the court for the matter having significance for general public and not for own selfish means. This has increased unprecedented consciousness among masses about environment preservation and Biological Diversity protection, which ultimately gave a stimulus to new innovative judicial tools, techniques and methods to undermine Biological Diversity deterioration and has metamorphosed the jurisprudence of public law review. In the cases involving a public interest litigation, the subject matter of the case is essentially a petition against the infringement of fundamental rights, of downtrodden and vulnerable sections of the society or about the omission and commission of government policy and bureaucratic failure, where the plaintiff seeks to advocate a cause of social importance for the entire society and the judge plays an activist in contrast to the dormant volcano image which Judiciary is looked into.

Public interest litigation shows an economical, efficient and effective legal approach to give a fillip to Biological Diversity preservation. Public Interest litigation, make certain, the participation of the people in the decision making process so as to have better acceptability of the plans and programmes of the Government for protecting the natural resources like various flora and fauna etc., for example, when deforestation occurs, the court will not tolerate the forest department or its official who colluded with hooligans, but listen to tribal people who depend on forest produce and other informed citizens. Similarly, when preserved species are fired upon, it is needless to listen only the forest guards, who may be plotting and conniving with the pillagers, ravishers or poachers. Significantly, the concept of Public Interest Litigation highlights widening of nature and scope of judicial process, which encompasses a whole new proportions of implementation, imposition and execution covering 'rights awareness' without which the rights and interests of downtrodden and vulnerable section of the society would become barren. The easing of the doctrine of standing can be classified as follows:

Representative standing permits the downtrodden and vulnerable sections of the society to be represented by volunteers because of former's ignorance, poverty or helplessness?

Citizens standing allows concerned people to sue not as a representative of other person or group but in his or her own right as a member of citizenry to whom a public duty is owed. This relaxed standing is generally allowed in cases of executive acts of omission and commission, which may harm the Biological Diversity.

Many litigations on environment preservation and protection of Biological Diversity are in the nature of Public Interest Litigation. It arises from a strong sense of commitment to mitigate and lessen Biological Diversity deterioration. Public Interest Litigation signifies an imaginative tool and technique to speak for people's initiatives in mitigating Biological Diversity deterioration, a an interest most universal and common vis-a-via public. In addition to the awareness the positive response from the masses in relation to the protection of Biological Diversity has taken the role of a movement, which will prove to be a master piece in gaining and recognizing popular support for protection of Biological Diversity. Biological Diversity deterioration, without exception, be caused due to the absence of imposition and implementation of public duty or non-redressal of their grievances. Hence to take care of such public duty, stopping the degeneration of Biological Diversity, the law will have to initiate such a tool, technique or procedure so as to preserve public, general or popular rights and interest. Public Interest Litigation offers such apparatus, methods, tool and techniques through which the Fundamental Rights contained in the Part III of the Constitution of India and some of the enforceable rights forming part of the Directive Principles of State policy contained in Part IV of the Constitution of India, have been ingeniously and innovatively interpreted as a refuge of typical human values.

Non-execution, non-application and non compliance will lead to impoverishment, drawbacks and public injury which must be addressed efficiently. To elaborate, preservation and conservation of ecological equilibrium and safeguarding interests of tribal people dwelling in or near by a national park was considered to be of public importance. So the legality of disputed grant of tenancy or occupancy rights to some private players of some land situated in Nagarhole National Park was successfully annulled as the grant of tenancy or occupancy rights was in gross infringement and breach of Wildlife (Protection) act, 1972 and Forest (Conservation) Act, 1980.

Hence, people's desires and pro-activeness stimulated and encouraged by judicial activism have shaped the policies and programmes vis-a-vis the conservation of Biological Diversity into a active, energetic, lively and dynamic system of jurisprudence where socio-economic interests metamorphosed into legal rights.

Implementation machinery for Laws vis-a-vis preservation of Biological Diversity has been insufficiently marshaled, as for the past many years it has been mainly in State's domain to implement laws. Participation of the people in decision making progress has been missing and lacking due to which there has been problems about noticing of contravention, management, surveilling, operation and implementation of laws. The growth of Public Interest Litigation has showed that judicial process has been stimulated to evolve more efficient strategies to embolden implementation and operational measures. The vision and task has been to broaden the base of the legal system coexisting with the same rejuvenation, certain more methodologies have been developed. Citizen's suit is one of such tool and method. Environment (Protection) Act, 1986 ushered a sea change. Section 19 of the mentioned Act states that a citizen may prosecute an offender by a complaint to a magistrate but prior to making a complaint, he or she must give the Government a 60 days notice of his/her intention to complain. This information and notification, which is on the steps of Civil Procedure Code, is liable to change the Government to the offenses so that it may itself take necessary corrective step.

Participation of people in decision making process vis-a-vis preservation of Biological Diversity decision making can be only be of use and relevant if people have a right to know. This is essential in environmental matters as, the government decisions to built dams and large scale projects may remove many people from the aboriginal lands which ultimately put a dent on their lifestyles and livelihood. Right to know reinforce people participation which ultimately embolden the concept of participatory democracy coupled with information on their (use of Right to Information) hands about Government policies and programmes, people may shape decision making through representations, persuasion and public lobbying. Access to governmental information qualifies citizens to use their political choices meaningfully. Right to know is a Fundamental Right as envisaged in Part III of the Constitution of India. The Supreme Court has taken this right from the Fundamental right to freedom of speech and expression

envisaged in Article 19(1)(a) and the Fundamental Right to life and personal liberty envisaged in Article 21.

A. Public Interest Litigation and Protection of Environment and Biological Diversity

In simple words Public Interest Litigation means that a case is filed in the court of law by public spirited individual with the purpose to get comfort and solace for a deprived sections or group of people. It is not defined in any statute or in any act. It has been interpreted by Judiciary to take into consideration the wants and desires of people at large. In early 1980s, the Indian judicial system witnessed important transformation. There was emergence of a new jurisprudence – ‘Jurisprudence of Masses’ on the Indian legal scene which changed significantly the litigation scenario in India. The jurisprudence of masses had a basic philosophy behind it. It was thought that as the citizens rights are closely linked with social justice, it is through the self realization of such right alone that justice can be done to the needed which was only possible if the law is expounded imaginatively and innovatively by courts departing from so called traditional jurisprudential standards of administration of justice. Thus, a cohesive effort to bring into light the common causes and suffering of vulnerable and downtrodden sections of people so as to enable them get the ventilation of judicial redressal for their lacuna's and shortcomings was greatly felt. It was perhaps this main consideration which inspired the judiciary to evolve a different phenomena which negates the old procedural laws and barriers of justice to make a way for the vulnerable and down trodden sections of society to seek justice. This new phenomena is known as Public Interest Litigation (P.I.L.). Most environmental actions in India fall within this class. With the emergence of Public interest litigation--which substantially contrast from the Anglo-Saxon methods--a different angle to the concept of locus standi has been advocated where by the idea and notion of access to law and justice has been transformed, restructured and reorganized.

a. Customary and Established Rule of ‘Locus Standi’

When a person goes to court for the ventilation of his/her grievances, the courts should be in such a position to take note of Judicial notice. This is known as the principle of locus standi of the person asking a judicial review of the allegedly challenged administrative action. In other

words, standing is required to have court hear one's case and the latter is the right of a person to plead before the court to seek reassurance.

Traditionally, there were two prerequisites underlying as the basic principles for the application of principle of locus standi. They were: First the plaintiff should seek for his cause, i.e. plaintiff himself should be the disgruntled party. Second, the petitioner's own right must be in jeopardy, i.e. some legal right or interest of the plaintiff must be violated or infringed so that the courts can take cognizance of the matter at hand. The courts applied this traditional doctrine of standing with a great deal of strictness in domain of private law. Even in public actions, the access to courts was denied until a person asserting his/her legal right could show that he had suffered some special abuse or wrong in addition to the wrong caused to the other members of public.

Strict adherence to the traditional doctrine of locus standi had the effect of preventing the grievances of poor, underprivileged, ignorant from being heard by a court of law. Another disadvantage of the strict application of rule had been that diffuse public injuries affecting a large number of people were difficult to redress.

However, with advent of welfare state-bidding farewell to laissez faire, whereby the activities of state have expanded many fold and larger powers have been vested in public authorities, individual rights have become an incidence of public concern and intervention. The traditional rule of locus standi in an era of state accountability towards citizens and its responsibility to provide justice, has not found much solace, particularly, in the field of public law. Hence, the conventional and customary of standing has been granted a lenient interpretation in many parts of the world. In India too, a process of liberalization has also begun and the rule of standing has been expanded to make it easily accessible for the deprived and underprivileged citizens.

b. Expansion of the Rule of 'Locus Standi'

In India, the movement of PIL has been developed, encouraged and stimulated by a few Judges of Supreme Court of India. In the 1970s two forces coalesce to liberalize the prominent shortcomings of the rule of Locus Standi. The first was the expanding concern for social justice and the second was the adherence for free legal aid as is provided in Article 39-A inserted by the Forty-Second Constitutional Amendment Act. This approach in enlarging the principle of locus

standi became apparent in judicial pronouncements of the Supreme Court in the mid-1970s. For instance, in *Bar Council of India v. M.V. Dabholkar*, the Supreme Court, gave permission to the Bar Council of Maharashtra to start the case against an advocate for professional mis-endeavour by holding that Advocates Act 1961 provides that Bar is a public body or institution and constitute the collective morals and ethics of the excellence of professional behaviour, actions and deeds. In *Maharaja Singh v. State of Uttar Pradesh*, the Supreme Court noticed, “where a wrong against community interest is one, “no locus-standi”, will not always be a plea to non-suit and interested public establishment challenging the wrongdoer in the court... locus standi has a large scope and extent in current legal circles than the traditional individualist jurisprudence of previous times.

The Supreme Court, in later decisions refashioned the old rule of locus standi by overriding the procedural bottlenecks and particulars and specifics and permitted representative standing to enlarge the classical standing to expound and implement rights of downtrodden and vulnerable sections of the society. Representative standing cases in the apex court have facilitated the emancipation of forced labourers (*begar*) obtain pension for retired governmental employees to obtain release of undertrials, to improve the conditions of inmates, a protective care for women and to obtain statutory minimum wages for exploited workers. In all these litigations involving “representative standing” the Supreme Court permitted actions by any member of public who had not suffered any violation of his own right, to bring actions on behalf of those who had suffered legal wrong or injury conferred under the constitutional or some other law.

The Supreme Court has been instrumental in further modification of classical standing doctrine during 1980s. This decade also saw emergence of “citizen standing” in the process of liberalization of tradition standing rule. The apex court allowed any concerned citizen or voluntary organization, not necessarily in the representative capacity but in his own right as a member of the citizenry to bring action in cases involving executive abuse or governmental policy actions contrary to public interest. An early trend in this direction was seen in Fertilizer Corporation Case, where collective bargaining by the trade union questioned the sale of primitive tools, equipment and apparatus and a plant having affiliation to Government owned corporation on the excuse that the sale was whimsical and capricious and infringed the worker’s right to

occupation envisaged in Article 19(1)(g) of the Constitution of India. Justice Krishna Iyer on the issue of standing advocated the need for class action or citizen suit by liberalization of locus standi. His lordship speaking for himself and for Bhagwati, J., observed: “the argument is, who are you to ask about the wrong committed or illegal act of the corporation if you have suffered no personal injury to property, body, mind or reputation?... Law as I conceive it, is a social auditor and this audit function can be put into action only when someone with real public interest ignites the jurisdiction. We cannot be scared by the fear that all and sundry will be litigation happy and waste their time and money and the time of court through false and frivolous cases... Public interest litigation is part of the process of participatory justice and standing in civil litigation of that pattern must have liberal reception at the judicial door steps... If a citizen is no more than a way fairer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him. But [if] he belongs to an organization which has special interest in the subject matter, if he has some concern deeper than that of a busy body, he cannot be told off at the gates, although whether the issue raised by him is justifiable may still remain to be considered. I therefore, take the view that present petition would clearly have been permissible under Article 226.”

It was a stepping stone where from Justice Bhagwati further enlarged the scope of citizen suit as he held in the famous Judges Transfer Case that where no particular legal injury had been inflicted, any public spirited person may go to court to monitor the harm and defilement to the public interest and endorse and vindicate the rule of law.

Citizen standing has facilitated the people to monitor and hamper the insult of public establishment by high environmental functionaries, becoming apprehensive and aware of governmental policies or inaction that threatened to undermine the functioning of the Judiciary and to test the viability of a monetary policy which sided with tax evaders etc.

Thus, we see that the classical rule of locus standi has been modified by the courts in India. The scope of the locus standi now stands expanded with a liberal meaning given to the word ‘aggrieved person’ and concerned bottlenecks mitigated. This development has led to the growth of the principle of PIL under which a concerned person or a group of persons or an association

can adopt the cause of vulnerable and downtrodden section of the society against administrative faults, shortcomings and lacuna.

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