

DEVELOPMENT OF ENVIRONMENTAL JURISPRUDENCE THROUGH THE AEGIS OF ARTICLE 136 OF INDIAN CONSTITUTION: A CASE STUDY

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Abstract:

The development of environmental jurisprudence in India under the umbrella of Article 136 of the Indian Constitution signifies stimulating aspect of the judiciary's role in shaping environmental law and policy. Article 136 empowers the Supreme Court to grant special leave to appeal against any judgment, decree, determination, sentence, or order in any matter passed or made by any court or tribunal in the country.

This article delves into how Article 136 has been utilized as a tool for the evolution of environmental jurisprudence in India by the Supreme Court of India. It focuses on pivotal cases where the Supreme Court, exercising its discretionary power under Article 136, has delivered landmark judgments that have significantly influenced environmental law and policy.

Through a meticulous analysis of various cases, such as the M.C. Mehta v. Union of India series, Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh, T.V. Godavaram vs. Union of India, and others, this study illustrates the proactive role of the Supreme Court in environmental protection and conservation.

This article explores how the Supreme court has interpreted and expanded the ambit of environmental jurisprudence by utilizing Article 136, thereby ensuring the enforcement of environmental laws, protecting natural resources, and upholding the fundamental right to a healthy environment as an intrinsic part of the right to life under Article 21 of the Constitution. Moreover, it evaluates the effectiveness of judicial interventions facilitated by Article 136 in addressing complex environmental challenges, setting precedents, and establishing principles such as the 'polluter pays' and 'precautionary principle', 'sustainable development' and 'public trust' in environmental jurisprudence.

The analysis also sheds light on the court's efforts to balance environmental concerns with developmental imperatives and how its decisions have influenced legislative and executive actions, leading to the formulation of policies aimed at sustainable development and ecological preservation. Ultimately, this case study showcases how the Supreme Court, utilizing its discretionary authority under Article 136, has played a pivotal role in the development and consolidation of environmental jurisprudence in India, contributing significantly to the country's commitment to environmental protection and sustainable growth.

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Introduction:

Environmental jurisprudence in India began to take shape primarily in response to increasing concerns about environmental degradation and the need for legal frameworks to protect the environment. Here are some key milestones in the development of environmental jurisprudence in India;

1. **Early Legislation:** The roots of environmental law in India can be traced back to various provisions in the Constitution of India. Article 48A of the Directive Principles of State Policy directs the state to protect and

improve the environment and safeguard forests and wildlife. Additionally, Article 51A (g) imposes a fundamental duty on every citizen to protect and improve the natural environment.

2. 1960s-1970s - Judicial Activism: The judiciary, particularly the Supreme Court of India, began playing a pivotal role in environmental protection during the 1970s. The case of Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh¹ in 1985 marked a significant moment. Writ Petitions were relating to the mining of lime stone quarries in Dehradun mining area. During the pendency of the Writ Petitions, the Court appointed a committee known as Bhargava Committee² for the purpose of inspecting the lime stone. Government has also constituted committee. In this way, the court intervened in issues related to mining in the Mussoorie hills and laid the foundation for public interest litigation (PIL) in environmental matters.

3. 1980s - Bhopal Gas Tragedy: The Bhopal Gas Tragedy in 1984, one of the world's worst industrial disasters. The incident highlighted the need for stringent regulations and mechanisms to deal with industrial disasters and their aftermath. The Bhopal disaster or Bhopal gas tragedy was a chemical accident on the night of 2–3 December 1984 at the Union Carbide India Limited (UCIL) pesticide plant in Bhopal, Madhya Pradesh, India. Considered the world's worst industrial disaster, over 500,000 people in the small towns around the plant were exposed to the highly toxic gas methyl isocyanate (MIC).

Civil and criminal cases were filed in the District Court of Bhopal, India, involving UCC, UCIL, and Anderson. In June 2010, seven Indian nationals who were UCIL employees in 1984, including the former UCIL chairman Keshub Mahindra, were convicted in Bhopal of causing death by negligence and sentenced to two years' imprisonment and a fine of about \$2,000 each, the maximum punishment allowed by Indian law. According to victims, the legal framework is not sufficient to deal with such type of tragedies and consequences thereof. Considering the above facts and circumstances, the tragedy prompted for series of legal reforms.

Key Environmental Laws in India

India enacted various environmental laws addressing different aspects of environmental protection. Some of the essential laws include the Environment Protection Act, 1986, the Wildlife Protection Act, 1972, the Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control of Pollution) Act 1981, and the Forest Conservation Act (1980), among others.

National Green Tribunal (NGT): The establishment of the National Green Tribunal in 2010 was a significant step in environmental jurisprudence. It is a specialized body for effective and expeditious disposal of cases related to environmental protection and conservation of forests and other natural resources.

One significant case study that exemplifies this progression is the Vellore Citizens Welfare Forum v. Union of India case in 1996. In this landmark case, the Supreme Court used its jurisdiction to address environmental

¹ 1985 AIR 652, 1985 SCR (3) 169

² The Bhargava Committee classified the mines in the area into three groups being A, B and C. So far as the mines in Group (C) were concerned, the Committee was of the view that they were not suitable for continuance and should, therefore, be closed down.

degradation caused by industries in the Vellore district of Tamil Nadu. The court emphasized the significance of the 'precautionary principle' and the 'polluter pays' principle, advocating for strict adherence to environmental norms and the responsibility of industries to bear the costs of pollution control.

Again, in the year 2001, Supreme court in the case of A.P. Pollution Control Board Vs. M.V. Naydu and Ors,³ reiterated above principle. The instant case is in respect of prevention of water pollution as per the water (Prevention and control of Pollution) Act 1974. In this case, the Hon'ble Apex Court referred the “precautionary principle” and “Rule of burden of proof” in the matter of environmental pollution. The Apex Court observed that the right to access drinking water is the fundamental to the life and it is the duty of the state to provide clean drinking water to its citizen under the Article 21.

Today's emerging jurisprudence, environmental right which encompasses a group of collective right are described “third generation rights”. First generation are political rights and second generation are social and economic rights as per the International Covenants. The Apex Court also requested the government to consider the question of review of environmental law. Further, it also proposes two tier environmental court which would having the jurisdiction and power to review environmental matters.

This case exemplifies how Article 136 has been instrumental in shaping environmental jurisprudence by allowing the apex court to intervene in matters concerning environmental protection and preservation, thus setting precedent for subsequent environmental cases in India.

MC Mehta v. Union of India:⁴ This case led to the introduction of Public Interest Litigation (PIL) in environmental matters. It addressed issues like air pollution in Delhi and led to the implementation of measures such as the conversion of public transport vehicles to CNG, which significantly reduced pollution levels. Taj Trapezium Case⁵: The Supreme Court intervened to protect the iconic Taj Mahal from environmental degradation caused by industries in the vicinity. It imposed strict regulations to preserve the monument.

In the year 2004, the Supreme Court of India has considered the scope of Section 29 of Wild Life Protection Act, 1972 in the case of Essar Oil Limited Vs. Halar Utkarsh Samiti and Ors.⁶, In this case, application was filed by Essar Oil Limited and Ors. for laying pipelines to pump crude oil across marine national park and marine sanctuary to their oil refineries in Jamnagar District. The public interest litigation was filed in Gujrat High Court and the Hon'ble High Court allowed to lay pipelines to one M/s. Bharat Oman Refineries Limited, but restrained others. The decision was challenged in Special Leave Petition under article 136 before the Supreme Court and it allowed the appeal by observing that it would be a question of fact that whether there would be any damage to the wildlife and it should have been determined by the experts. No permission should be granted, unless there is

³ (2001) 2 SCC 62

⁴ MC Mehta, known as the Green Avenger of India, is an Indian public interest attorney and environmental activist who has single-handedly won multiple landmark judgments in several public interest litigations (PILs) filed on environmental issues. For his activities and concerns to protect the environment, he is also known as the “green lawyer of India”.

⁵ AIR 1997 SUPREME COURT 734, 1997 (2) SCC 353, 1997 AIR SCW 552, 1997 LAB. I. C. 667

⁶ AIR 2004 SC 1834

a positive proof of the betterment of the lot of wild life. Once the state government has taken all precautions to ensure that the impact on environment is minimal, court will not substitute its own assessment in place of opinion of experts. Since there was no study of expert body the order of High Court was set aside. Further, the directions were given to the state government to issue authorization. In this case, the Apex court also observed that importance of maintaining a balance between economic development on the one hand and the environment protection on the other is mentioned in principle 11 of Stockholm Declaration of 1972 which has been described as the Magna-Carta of our environment.

In the case of A. Chowgule and Company Limited Vs. Goa Foundation and Ors ⁷, the petitioner was authorized to setup export-oriented unit in Sanguem Taluka, Goa. But, the public interest litigation was filed before the Goa Bench of Bombay High Court against the installation of the plant. Then, the High Court decided the matter and declared the lease null and void on the ground of destruction or damage to forest as per Forest (Conservation) Rules, 1981. Hence, the Special Leave Petition under article 136 was filed against the judgment of High Court. While disposing the appeal the Hon'ble Apex Court observed that the approval of Central Government is necessary for the diversion of forest land and its use for some other purpose. If the said permission is not obtained then the lease will be null and void and therefore, dismissed the appeal. In this case, the Hon'ble Apex Court has taken strict view in respect of conservation and protection of forest land by dismissing the appeal for non-compliance of statutory rules.

In T. N. Godavaraman Thirumulkpad Vs. Union of India and Ors.⁸, the issue pertaining to conservation and protection of forest has been considered by the Apex Court in detail. The Apex Court has issued some directions in order to protect the forest as per the scope and object of Forest Conservation Act, 1980. The Apex Court also directed every state government shall ensure cessation of activities which are prima facie violation of provisions of Forest Conservation Act. Further, the ban on activities have been created by way of this judgment and the expert committee has been constituted at state level for various states. This case has laid down guidelines way back in the year 1997 while dealing with the issue of development at the cost of conservation and protection of forests.

Again, in Nature Lovers Movement Vs. State of Kerala and Ors.⁹, the Hon'ble Apex Court has considered the scope of Forest Conservation Act and issued some directions in respect of conservation of forest and given emphasis on the aspect of prior approval of Central Government before passing any order of de reservation of reserved forest or any portion thereof or use of any forest land for any other purpose. It is also observed that sages and saints of India lived in forest and their preaching mentioned in Vedas and Upanishadas and Smrutis are ample evidence of the societies respect for plant, trees, earth, sky, air, water and any form of life. The main moto of social life is to live in harmony with nature. It is a sacred duty of everyone to protect them.

⁷ (2008) 12 SCC 646

⁸ AIR 1997 SC 1228

⁹ (2009) 5 SCC 373

In the case of Intellectuals Forum, Tirupati Vs. State of A. P. And Ors.¹⁰, it was the allegation that, there was a destruction of percolation, irrigation and drinking water tanks in Tirupati and therefore, the writ petition was filed to protect the natural resources before the High Court. Then, the matter went to the Supreme Court under article 136. The Supreme Court has propounded the doctrine of “sustainable development” in this case. It has also discussed the Rio Declaration on Environment and Development passed during Earth Summit at 1992 to which India was also party. Further, the Apex court also propounded the doctrine of “public trust” which means natural resources including lake are held by the state as a trustee of the public and those can be disposed of only in a manner i.e. consistent with the nature of such trust. The above doctrine has been also reiterated by the Hon'ble Apex Court in its subsequent several judgments. The Apex Court in India has laid down several ratios which asserts the need of environmental protection and conservation of natural resources and these two aspects have been conferred the status of fundamental right under the garb of Article 21 of Constitution of India.

Recently in the year 2021, Hon'ble Apex Court in Citizens for Green Doon and Ors. Vs. Union of India¹¹, made significant observation on the aspect of sustainable development. This case is pertaining to Chardham Mahamarg Vikas Pariyojana. The Hon'ble Apex Court observed that preservation of natural environment for present and future generation is the meaning of sustainable development. The jurisprudence in environmental matter must acknowledge that there is a immense interdependence between right to development and right to natural environment and on the basis of above observations the Apex Court issued directions in respect of completion of project.

Above landmark judgments and several many judgments have been delivered, setting important precedents and evolving environmental law in the country. Some key cases and principles have emerged as discussed herein above. The court has played a crucial role in interpreting laws, expanding environmental rights, and holding governments and industries accountable for environmental protection. The development of environmental jurisprudence through Article 136 has not only facilitated the protection of the environment, but has also ensured that environmental concerns are given due consideration in legal matters, setting benchmarks for future cases and legislation. It will be worth to mention here that Article 141 of Constitution of India states that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The law declared has to be construed as a principle of law that derives from a judgment.

Conclusion:

Article 136 is discretionary power of the Supreme Court to grant special leave to appeal against any judgment, decree, determination, sentence, or order in any cause or matter passed or made by any court or tribunal in the territory of India. Article 136 does not specifically address environmental issues. Environmental issues in India are being typically addressed through various constitutional provisions, statutes, and judicial interpretations. The Constitution of India itself does not have a dedicated article specifically focused on environmental protection. Instead, environmental concerns are often addressed through the interpretation of the fundamental rights

¹⁰ AIR 2006 SC 1350

¹¹ (2021) SCC Online SC 1243

guaranteed under Part III of the Constitution, particularly the right to life and personal liberty (Article 21). The Supreme Court has utilized Article 136 to hear cases related to environmental protection and conservation. This provision has become instrumental in shaping environmental jurisprudence in India. The Supreme Court has shaped environmental jurisprudence on its own by exercising the discretionary power under section 136 of Constitution of India by issuing several guidelines consistently despite of environmental laws and policies in the country while deciding the Special Leave Petitions. At the same time, the Supreme Court has also maintained the balance while issuing directions by respecting the theory of separation of powers of the legislature and the judiciary.

The Hon'ble Apex Court has played the proactive role in preserving and protecting the environment on the basis of several international principles which have been propounded by the international declarations and covenants. While protecting the environment, the Hon'ble Apex Court has also supported the development activities on the principle of sustainable development, public trust, polluter pays and precautionary principle. It has recognized certain environment rights as fundamental rights to protect the environment and also issued directions under Article 142 of Constitution of India while dealing with the appeals of the tribunals and the High Court by exercising discretionary power under article 136 of Constitution of India.

The role played of the Supreme Court has resulted into development of country by securing the goal of protection of environment as per the international environment protection doctrines or standards. In other words, the Hon'ble Apex Court has struck the balance between the sustainable development and the environmental protection while exercising power under article 136 of Constitution of India.

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