

M.C Mehta Case on the Protection of Environment

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1. Introduction

For every individual it is their basic human rights to live in a pollution free environment with full human dignity. There are various laws relating to environment protection in the constitutional provision and the other statutory provision. Amongst the few in the world the Indian Constitution contains specific provision on environment protection.

Article 48-A the provision reads as follows: "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

Article 21 provides: "no person shall be deprived of his life or personal liberty except according to procedure established by law." This article provides Right to Life to every person and right to life also includes the pollution free environment¹.

Article 51- A (g) provides: It shall be the duty of every citizen of India - to protect and improve the natural environment including forest, lakes, rivers and wildlife, and to have compassion for living creatures.

According to Section 2(a) environment "includes water, air, and land and the interrelationship which exists among and between water air and land and human beings other living creature, plant, micro-organism and property."

The ancient Hindu Scepters of Atharva Veda, speaks "What of thee I dig out let that quickly grow over".

Doctrine of public trust: In the case, *M.C Mehta v. Kamal Nath*, the honourable Supreme Court held the Public Trust Doctrine applied in India. It basically rests on the principle that certain resources like air, water, sea and the forest have such a paramount importance to people as whole that it would be wholly unjustified to make them subject of private ownership.

Sustainable development: The first time the issue relating to the environment was dealt and held that, it is always to be remembered that these are permanent assets or mankind and not intended to be exhausted in one generation. In the Taj Trapezium Case (*M.C Mehta v. Union Of India*) while taking note of the disastrous effects on Taj Mahal due to emission from Mathura Oil Refinery, the Supreme Court applied the principle of Sustainable Development and apart from passing several direction, it stepped into execute and also supervising the consequent actions.

Polluter pays principle: The polluters pays principle means that one who carries on a hazardous activity is liable to make

good the loss or damage caused to another person by such activity. Once hazardous or inherently dangerous activity is carried on, the person carrying on all such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether or not he has taken reasonable care while carrying on his activity. In other words, "polluter pays principle" means paying of the cost of pollution.

Research Question.1: Whether National Court will use the provision "right to life" as a legal tool to protect environment?

Apart from several personal rights which the Supreme Court has spelt out of Article 21, as stated above, the Supreme Court has made a signal contribution to the welfare of the people by using Article 21 for the environment. The Supreme Court has pointed out that two salutary principles governing environment are

- i) Principle of sustainable development
- ii) Precautionary principle

The "right to life" under article 21 has been interpreted to mean a life of dignity to be lived in a proper environment free from the danger of diseases and infection. Clean surroundings lead to a healthy mind and healthy body. The right includes the right to enjoyment of pollution free water in the sufficient quantity and air and for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has a right to have recourse to Article 32 for removing the pollution of water or air which may be detrimental to the quality of life.

The fundamental right to water has evolved in India, not through legislative action but through judicial interpretation. Right to water as also quality of life, are envisaged under article 21 but also, has been recognised in article 47 and 48A. Article 51A furthermore, makes a fundamental duty of every citizen, to protect and improve the natural environment, including forests, lakes, rivers, wildlife. However, mere change in environment does not per se violate right under article 21, especially when ameliorative steps are taken not only to preserve but to improve ecology and environment. Holding that care for environment was an ongoing process in *Narmada Bachao Andolan v. Union of India and Ors.*, the Supreme Court of India upheld that:

"Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India ... and the right to healthy environment and to sustainable development are fundamental human rights implicit in the right to life[xxi]"

The issue before the Supreme court was whether the environmental relief granted by the Union of India for the construction of a dam had been given without proper study and understanding of the environmental effect of the project and its consequences. Further, it was examined whether the environmental conditions imposed by the Ministry of Environment had been violated and if so, what was the legal effect of the violation of such conditions. The evidence disclosed that the Government had been deeply concerned with the environmental aspects of the project and because there was a contrast between the views of the Ministries of Water Resources and of the Environment and Forests the matter was dealt with by the then Prime Minister Atal Bihari Vajpayee, who gave the clearance. The court ordered compensatory measures for environmental protection in compliance with the scheme framed by the Government and ordered the construction to continue while the appropriate measures were carried out by the different agencies.

In a nexus of cases, the apex court has reiterated that the right to clean environment is a guaranteed fundamental right. However, it has been ruled that balance has to be maintained between environmental protection and development activities, which can be achieved by strictly following the principle of "sustainable development"⁷, without which the life of coming generation will be in jeopardy. The right to development has also been, may be in different context held to be a component part of Article 21.

Explaining that the object and purpose of the Environment Protection Act 1986, which says; "the protection and improvement of environment", "sustainable development", the court said, was one of the means to achieve it. Thus, construction of a dam or a mega project, the court ruled, was definitely an attempt to achieve the goal of wholesome development. The doctrine of sustainable development, has to be held not to empty slogan, it is required to be implemented, taking a pragmatic view and not on ipse dixit (Latin for "he said it himself") of the court.

Research Question.2: What are the public interest environmental litigation cases of M.C.Mehta and what precisely are the principle laid according to the Indian constitution?

M.C. Mehta vs. Kamal Nath and Ors

In the river bed in Manali, Motel constructing walls and bunds on the river banks which resulted into the degradation of environment. Keeping in view the Himachal Pradesh Government held to have committed patent breach of public trust by leasing the ecologically fragile land to the motel. As detailed in the final judgment the liability to pay damages on the principle of "polluter pays" in addition to damages, exemplary damages for having committed the acts set out. Taking in account the object underlying the award of exemplary damages to be to serve a deterrent for others not to cause pollution in the environment in any manner, quantum fixed at Rs.10 Lakhs only. Section 24(a)9 of the Water (Prevention & Control of Pollution) Act, 1974 which provides that "Prohibition on use of stream or well for disposal of polluting matter, etc".

Excerpt from the judgment of M.C. Mehta v. Kamal Nath:-

The Motel was ordered to pay compensation by way of cost for the restitution of the environment and ecology of the area of damage. The pollution caused to the riverbed and the banks of River Beas by various constructions done by the Motel has to be removed and reversed. It was directed to NEERI through its Director to inspect this area, if necessary, and assessment must be given to the cost which is likely to be incurred for reversing the damage caused by the Motel to the environment and ecology of the area. NEERI may study the report provided by the Board in this respect. The Motel through its management shall show cause why pollution fine in addition be not imposed on the Motel.

On the date 29.2.2000, at the hearing Senior Advocate, Shri G.L. Sanghi, appeared for M/s Span Motels (P) Ltd. He challenged the legality of the proposed levy of fine. In response to Shri G.L. Sanghi for submission Mr. M.C. Mehta, was permitted to submit a note apart from making submissions. Taking into account the respective standard on behalf of parties on other accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any 1[stream or well or sewer or on land]; Article 32 of the Constitution of India, it was held that; "pollution is a civil wrong. By its very nature, it is a civil wrong committed against community as a whole. Therefore, a person found guilty of pollution has to pay damages (compensation) so as to restore the environment and the ecology as well as for those who on account t of the act of the offender has suffered loss.

The technical report of the Central Pollution Control Board, sets out the various activities of the Span Motels considered to be illegal and constituted, "callous interference with the natural flow of river Bias" resulting in the degradation of the environment and for that purpose indicted them with having "interfered with the natural flow of the river by trying to block the natural relief channel of the river". The Himachal Pradesh government was found to be liable for committing a patent breach of public trust in form of leasing the ecologically fragile land to the M/S Span Motel was held in this case. Also, the "polluter prays" principle was applicable as interpreted in this case by the Court with liability for harm to compensate not only the victims but also the cost of restoring the environmental degradation and reversing the damaged caused to the ecology.

Further, question remaining was for consideration relating to the award of exemplary damages which is only as to the quantum. For different categories of punishment various laws in force to prevent, control pollution and protect environment and ecology provided in case for imposition of fine as well as or imprisonment or either of them, depending upon the nature and extent of violation of the law. The fine that may be imposed alone may even go to an extend of one lakh of rupees. Taking into account all of these and the very essential object of the imposition of imprisonment and fine under the relevant laws is not only to punish the individual concerned but also to serve as a deterrent to stop others from indulging in such wrongs which is consider to be almost similar to the purpose and aim of awarding exemplary damages, it would be both in public interest as well as in the

interests of justice as fixed in the quantum of exemplary damages payable by Span Motels Pvt. Ltd. at Rupees Ten lakhs only. The fixing of the amount is done keeping in view the undertaking given by them to bear a fair share of the project cost of ecological restoration which would be quite separate and apart from their liability for the exemplary damages.

As discussed by court in the judgment of M.C. Mehta v. Kamal Nath and Ors. the Doctrine of the Public Trust is a part of the law of the land. The primarily principle on which the Public Trust Doctrine rests is the principle that certain resources like air, sea, waters and the forests have such a great importance to the lives of people as a whole that it would be wholly unjustified to make them a subject of private ownership. The aforesaid resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life they have. The doctrine enjoins upon the Government to protect the resources provided by the nature for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes for their own benefit. The Public trust doctrine serves two main purposes:

- It mandates affirmative state action for effective management of resources
- It gives the authority to the citizens to question ineffective management of natural resources.
- The doctrine has been invoked for giving judicial protection to environment, ecology and natural resources.

M.C. Mehta (Taj Trapezium Matter) vs. Union of India (UOI) and Ors. (30.12.1996 - SC)

Taj Mahal

Amongst the World Wonders the Taj Mahal- is the "King Emperor". The Taj Mahal is the final achievement and acme of the Moghul Art. It stands for one of the most refined aesthetic values. It is a fantasy-like grandeur. Amongst the most outstanding examples of decorative workmanship are the marble in-lay walls of the Taj. The rich symmetry of its outside and the elevated elegance of its domes and minarets inspire the viewer in a way never to be overlooked. It emerges as a standout amongst the most invaluable national landmarks, of outperforming magnificence and worth, a brilliant tribute to man's accomplishment in Architecture and Engineering.

The Taj as described by Lord Roberts in his work "Forty-one years in India" is as under:

"Neither words nor pencil could give to the most imaginative reader the slightest idea of all the satisfying beauty and purity of this glorious conception. To those who have not seen it, I would say, Go to India; the Taj alone is well worth the journey."

Whereas poet describes the Taj as under:

"It is too pure, too holy to be the work of human hands. Angels must have brought it from heaven and a glass case should be thrown over it to preserve it from each breath of air."

In the current scenario, the Taj is threatened with deterioration and damage not only by the traditional causes of decay but also by the changing social and economic

conditions occurring day-to-day which aggravate the situation even more with an alarming phenomenon of damage or destruction. According to a private sector preservation organisation known as "World Monuments Fund" (American Express Company) has published a list of 100 most endangered sites (1996) in the World among which Taj Mahal is one of it.

According to the petition filed, the major sources of damage to the Taj is the foundries, chemical/hazardous industries and the refinery at Mathura. The Sulphur Dioxide emitted by the Mathura Refinery and the industries when combined with Oxygen which when aid with moisture in the atmosphere will forms sulphuric acid called "Acid rain" which has a corroding effect on the gleaming white marble. The component primarily responsible for polluting the ambient air around Taj Trapezium (TTZ) are the Industrial emissions, brickkilns, vehicular traffic and generator-sets. As stated by the petition the marbles are getting yellowed and blackened in places. The decay is more apparent inside the Taj. The entire monument penetrated by the yellow pallor, also few yellow hues is magnified by ugly brown and black spots in places. The original graves of Shah Jahan and Mumtaz Mahal has the worst fungal deterioration in its inner chamber of it. The Taj, a monument of international repute is on its way of degradation caused by atmosphere pollution and it is mandatory that preventive steps are taken and soon as stated by the petition. The petitioner has also sought various appropriate directions to the authorities concerned to take immediate steps to stop air pollution in the TTZ and save the Taj.

Few recommendations made by Varadharajan Committee, are as under:

- To assure the step taken that no new industry whether small industries or other units causing pollution shall be located in the north-east of the Taj. While efforts to relocate the existing industry in the south-east Agra beyond Taj mahal
- In operation industrial activities which are in Agra city and its outskirts could be categorized as under like Ferrous Metal Casting using Cupolas (Foundry); Ferro-alloy and Non-Ferrous Castings using Crucibles, Rotary Furnaces etc.
- Also, "Over-view report" given by National Environment Engineering Research Institute (NEERI) regarding status of air pollution around the Taj.

The impact of the air pollution on the Taj are stated as under:

The rapid development of industries in Agra-Mathura region has resulted in acidic emissions (acid rain) into the atmosphere at an alarming rate. Further, leading to causes a serious concern on the well-being of Taj Mahal. Being acidic in nature the gaseous pollutants, significantly has impact on both the biotic as well as a biotic component of the ecosystem like plants and building material like marble and red stone.

Consideration of the affidavit by the Board and passed filed the Court gave following order on May 5,1993, the filed affidavit by the U.P Pollution Control Board content of

which is the term of the courts order, issuing of notice by the Board to 511 industries in the Agra region attached with the information about the names and address. NEERI, on October 16/18, 1993 meanwhile submitted its report dated regarding sulphur dioxide emission control measures at Mathura Refinery stating the suffice with the use of natural gas. The report also indicates the air-pollution effects on the Taj.

Time to time various orders has been passed by this court relating to the relocating of the industries away from TTZ. The natural gas has been brought as a substitute for coke/coal. The court took the reference of the case *Vellore Citizens Welfare Forum v. Union of India and Ors.* for defining the "precautionary principle" and the "polluter pays principle". For Sustainable development the principle of "precautionary principle"(Environmental measures-by the State Government) and the "polluter pays principle" (the absolute liability for harm to the environment extends not only to compensate the cost of restoring the environmental degradation but also the victims of pollution) are an essential element. These essential features have been accepted as part of the law of the land. The Constitution of India under Article 21 of guarantees protection of life and personal liberty. Also, Articles 48A, and 51A(g) of the Constitution which are as under:

48A. "Protection and improvement of environment and safeguarding of forest and wild life, the State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country".

51A(g). "To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. The precautionary principle and the polluter pays principle have been accepted as part of the law of the land".

The respective articles 48A and articles 51(g) enjoin on the state and the citizen, is not only the duty to protect but also to improve and preserve and safeguard the environment's natural forest flora and fauna. These articles have to be considered in the light of Article 21 which secures right to life and personal liberty.

Based on the reports of various technical authorities mentioned in this judgment, we have already reached the finding that the emissions generated by the coke/coal consuming industries are air-pollutants and have damaging effect on the Taj and the people living in the TTZ. The atmospheric pollution in TTZ has to be eliminated at any cost.

The reports based on various technical authorities mentioned in this judgment, concluding we have already reached to the finding that the emissions generated by the coke/coal which industries consumed are air-pollutants and shows damaging effect on the Taj and the people living in the area of TTZ. The atmospheric pollution in TTZ has to be eliminated at any cost.

2. Environmental Awareness

In *M.C. Mehta v. Union of India*, the Supreme Court favoured the opinion of educating the people about the hazardous or inherently dangerous of environmental pollution. The judges agreed on the point of view that law alone could not be an effective instrument for protecting environment against pollution unless there is an element of social pressure or social acceptance and when the interaction will take place voluntary. The central and state governments were directed by the court to exhibit slides in cinema theatres containing information and messages on environment and its degradation and spread related information through radio, television and social media and making environment a compulsory subject in schools and colleges. This kind of messages were designed to educate the people about their social obligation in the matter of the upkeep the environment in proper shape and making them alive to their obligation not to act as polluting agencies or factors to the environment. All cinema halls, tourist cinemas were directed the authorities to invariably enforce as a condition of license by the court.

Few steps that can be taken to prevent environment degradation are:

- The pollution of the water bodies be prevented.
- Safeguarded of heritage of wildlife and its habitat should be done.
- Protection of economic system
- Support to the struggle against pollution
- For the benefit of the present and the future generations Water resources to be safeguarded through a careful planning or management.
- All men should bear a solemn responsibility to protect and improve the environment for present and future generations.
- The fundamental right to equality, freedom and adequate condition of life in a quality environment is given to every men which permits them to have a life of dignity and well-being.

3. Conclusion

In this research paper constitutional provisions and the related cases have been presented. The active role of the Supreme Court and high court during the last decade is demonstrated *M.C. Mehta (Taj Trapezium Matter) vs. Union of India (UOI) and Ors*, *M.C. Mehta vs. Kamal Nath and Ors*, *Narmada Bachao Andolan v. Union of India and Ors* are the examples where the court has evolved the concept of public interest litigation.

For the purpose of maintaining ecological balance the court has laid down that mining within the principle of sustainable development comes within the concept of "balancing" whereas mining beyond the principle of sustainable development comes within the concept of "banning". Article 21 protects the right to life as fundamental right, and it encompasses within its ambit enjoyment of life and right to life with human dignity, protection and preservation of environment, ecological balance free from pollution of air and water, without which life cannot be enjoyed.

Accordingly, there is an imperative need that state as well as all the citizen must sit up and take notice of environmental degradation taking place and take appropriate steps to improve it so that not only one generation or our generation but also the future generation can have the benefits of it

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- [9] *Ratanlam municipality v. Vardhi Chand*, AIR 1980 SC 1622
- [10] AIR 2000 SC 3751
- [11] *M.C. Mehta v. Union of India*, AIR 1987 SC 965 M.C. Mehta v Union of India, AIR 2001 SC 1948.
- [12] [(1997) 1 SCC 388]
- [13] (a) no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in
- [14] AIR 1992 SC 382.