

“SEPARATION OF POWERS AND JUDICIAL ACTIVISM”*

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My Lord the Chief Justice and other learned Judges of the High Court, Distinguished Members of the Bar and Friends :

I am greatly obliged to my Lord the Chief Justice for kindly giving me the opportunity to participate in the Sesquicentennial Celebrations of our High Court, one of the great institutions which has been dispensing justice over the years, and in a remarkable manner, which has won the approbation of the litigants, specially since our independence and the coming into force of our Constitution, a document which represents the country’s ethos, hopes and aspirations.

His Lordship has desired me to speak on the topic of “Separation of Powers and Judicial Activism.” Although I have retired from the profession nearly two decades back, I cannot even dream of disobeying the judicial mandate.

With some trepidation, I beg to deal with the subject as during my tenure as Speaker, Lok Sabha, I had to face quite a few critical remarks for expressing some views about the proper scope and amplitude of the concept of Separation of Powers, specially in the relationship between the Judiciary and the Legislature. Now, that I am a non-entity, I hope my views, even if not very popular, will be treated with tolerance.

Parliamentary democracy was identified by our Founding Fathers to be the most suitable system of governance, as they perceived that only a democratic set up based on Parliamentary system with a federal structure would be able to solve effectively the myriad socio-economic problems that the nation faced at the time of independence and would be able to deal with our vast array of diversity on all fronts of our national existence.

One of the characteristic features of several constitutional systems across the world is the doctrine of separation of powers, providing for the functions of the three primary organs of the State — the Executive, the Leg-

islature and the judiciary to be carried out by separate bodies. The system envisages an Executive with governing powers; an elected Legislature with the three main functions of representing popular will, enforcing the accountability of the Government and making laws; and the judiciary, to administer civil and criminal justice both between private persons and as between private persons and the State. It also entails that none of these organs should be vested with absolute or unbridled powers, so that no organ or individual assumes power of despotic proportions.

Our Constitution makers also provided in our organic law, namely, our Constitution, that all the three organs of the State, namely, the Legislature, the Judiciary and the Executive would have their distinct roles to play. Through the provisions of the Constitution, they enumerated their powers and responsibilities to be the facilitators of national weal, leaving hardly any scope for doubt or confusion in their mutual relationship.

The doctrine of separation of powers, is an integral part of the evolution of democracy itself. The doctrine, which provides for checks and balances amongst the organs of the State, is one of the most characteristic features of our constitutional scheme.

Our great leaders who framed our Constitution were able to foresee that excessive power, if vested with any of the three organs of State, could possibly lead to unwarranted situations of conflict, which could compromise the quality and content of our democracy itself. Accordingly, they visualised that all organs of the State would need to co-exist harmoniously in a joint and participatory role and with mutual respect amongst them, so that they could work in a smooth and co-ordinated manner in the areas demarcated for them, for the larger national well being. In our constitutional scheme, there is no exclusive primacy of any one organ nor any organ has absolute power, which is anathema to democracy, as the former Chief Justice of India J. S. Verma

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has observed. As our Constitution ordains, it is the Parliament that enacts laws; the Executive implements them; and the judiciary is the independent authority interpreting them.

Our Constitution makers ensured that the rights of the people were preserved and protected effectively against any Legislative or Executive excesses. Our constitutional set up has enabled the judiciary to set aside not only laws passed by the Parliament but also executive actions which are held to be not in consonance with the rights of the citizens under our Constitution and its several provisions. Our Constitution contemplates that the Courts will interpret and scrutinise the constitutionality or validity of laws and executive actions but not will decide what the law should be nor matters of policy nor will usurp the functions of the executive.

It was explicitly stated in the Constituent Assembly by many leading members that the doctrine of judicial independence was not to enable the judiciary to function as a kind of a 'super Legislature' or a 'super Executive.' In this context, all should be reminded of the wise and profound observations of Pandit Jawaharlal Nehru in the Constituent Assembly : (I quote)

"No Supreme Court and no judiciary can stand in judgment over the sovereign Will of Parliament representing the Will of the entire community. If we go wrong here and there, it can point it out, but in the ultimate analysis, where the future of the community is concerned, no judiciary can come in the way..... ultimately the fact remains that the Legislature must be supreme and must not be interfered with by the Court of law in measures of social reforms." (Unquote).

In the early years of the Republic, the Supreme Court had already recognised that the Indian Legislature had a distinctly superior position vis-a-vis the other organs of the State. The observations of Justice S. R. Das, who later adorned the office of the Chief Justice of India with great lustre, in the famous case of *A. K. Gopalan v. State of Madras* (AIR 1950 SC 27 : 1950 Cri LJ 1383) made it very clear and I quote :

"Although our Constitution has imposed some limitations..... (it) has left our Parliament and the State Legislature supreme in their

respective legislative fields. In the main, subject to limitations..... our Constitution has preferred the supremacy of the Legislature to that of the judiciary..... and the Court has no authority to question the wisdom or policy of the law duly made by the appropriate legislature..... and this is a basic fact which the Court must not overlook." (unquote).

Similarly, commenting on the nature of separation of powers delineated by our Constitution, one of our most eminent Judges, the Hon'ble Chief Justice B. K. Mukherjea, in the Supreme Court, in *Ram Jawaya Kapur v. State of Punjab* (AIR 1955 SC 549), observed :

"Our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another."

As the supreme representative and law-making body, the Legislature has been accorded a pre-eminent position in our constitutional set up. The power to make laws, its control over the nation's purse, the Executive being made accountable to the popular House, its role in the election and impeachment of the Head of State as well as in the removal of incumbents of high constitutional offices, its constituent powers, and its powers during an emergency, testify to such pre-eminence. Yet, the Legislature must function within the confines as laid down by the Constitution.

To quote former Chief Justice Verma, "The sovereign will of the people finds expression through their chosen representatives in the Parliament..... The real political executive is the Council of Ministers, which also controls the Lok Sabha, wherein lies the real legislative power. Parliament exercises political and financial control over the Executive, and there are inherent checks and balances to keep every organ within the limits of constitutional power. The grey areas are meant to be covered by healthy conventions developed on the basis of mutual respect keeping in view the common purpose to be served by the exercise of that power." (unquote)

By its very representative character, in a democracy, no organ other than the legislature is better placed to understand the people's priorities. It is expected of the people's representative bodies to voice people's problems, their demands, their urges and aspirations, and,

in the ultimate analysis, to protect and promote their fundamental democratic rights. The inalienable constitutional right of the Legislature to scrutinise and oversee the functioning of the Executive arises from this basic premise and it has been specifically provided that the Council of Ministers in the Centre shall be responsible to the House of People, which is the directly elected body. There are similar provisions in the Constitution which provide that the State Government are responsible to the Legislative Assemblies in the State. The responsibility for identifying and defining people's rights and for providing statutory sanction for them and for giving the general direction and momentum to the institutions for social engineering in our democracy has thus been thoughtfully bestowed by our Founding Fathers on our Parliament and our State Legislatures, which represent the people of India as a whole, or the States, respectively.

All institutions of governance in a democracy are expected and are indeed required to remain accountable to the people directly or indirectly. It is this notion of abiding accountability to the people, which holds the key to the success and sustenance of democracy. Elaborate procedure has been laid down for the Legislature to discharge its function of enforcing the accountability of the Executive to the Legislature and thereby to the elected representatives of the people and ultimately to the people themselves. The Members of the Legislature on their turn remain accountable to the people, as they have to face the electorate every five years and their tenure depends on the people's verdict. However, in view of its insular position, members of the judiciary have to be accountable to the higher Tribunals and the learned Judges of the Apex Court to their own conscience and to the Constitution and they cannot be above it. Provision of any law, on the basis of which, a Court's verdict is given can be altered or repealed only by the Legislature and cannot be changed or ignored by the Judges.

The framers of our Constitution took great care to provide for an independent and impartial judiciary as the interpreter of the Constitution and as the custodian of the rights of the citizens. The role that our judiciary has played

over the years in ensuring the Rule of Law in general and in providing socio-economic justice to the people at large has been extremely noteworthy. We have had and have many outstanding Judges and eminent members of the legal fraternity, who have contributed and are contributing immensely towards strengthening the edifice of Rule of Law in our country.

There was a lot of appreciation when our Supreme Court was pleased to hold that justice can be provided, through an innovative procedure, to the oppressed citizens, especially those belonging to the vulnerable sections of the community, who have no means, no facilities and, in fact, no possibility on their own to approach the Court, even in cases of glaring injustice and discrimination, by giving a liberal meaning to the concept of locus standi, without in any way, entering into the areas preserved for the legislature or the executive. I was one of many, who felt greatly excited by the possibility of judicial redress to those who were till then the oppressed victims with no hope of redressal.

However, for quite a few years now, it is being noticed that the lines demarcating the jurisdiction of the different organs of the State have got and are getting blurred, as a section of the judiciary, with all respect, seems to be of the view that it has the authority by way of what is described as 'judicial activism' to exercise powers, which are earmarked by the Constitution for the legislative or the Executive Branches and are beyond the area of clearly demarcated judicial functions.

One may point out that the Hon'ble Supreme Court has itself construed that the concept of separation of powers is a 'basic feature' of the Constitution. That being so, necessarily, each organ of the State has separate areas of functioning, into which no other organ can enter or intervene, unless permitted by the Constitution itself, and if it so does, it will be contrary to one of the 'basic features' of our Constitution and that includes the judiciary also.

Our Constitution contemplates "judicial review" and not "judicial activism" which is of much later coinage and extends, as one finds, much beyond review. But it has not authorised any organ to superintend over the exercise of powers and functions of another, unless it is

strictly provided.

It is obvious that all organs of the State should act only according to the constitutional mandate and should not be astute to find any undisclosed source of power or authority to expand its own jurisdiction, which will give rise to avoidable conflicts and affect the harmonious functioning of the different organs of the State.

While he was a Judge of the Supreme Court, Hon'ble Mr. Justice Srikrishna, observed very appropriately, if I may say so, in a lecture delivered at a Law College, that "in the name of judicial activism, modern day Judges in India have abandoned the traditional role of a neutral referee and have increasingly resorted to tipping the scales of justice in the name of distributive justice. The legitimacy of such actions needs critical appraisal at the hands of the legal fraternity." Further, the learned Judge pointed out that "political questions which were meant to be out-of-bounds for the Courts have often been thrown into the laps of Judges. Instead of throwing them back, the Courts have, with great enthusiasm, essayed into adjudication of such questions, often with unsatisfactory results." As the former Chief Justice of India, Justice Ahmadi has stated, "sometimes this activism has the potential to transcend the borders of judicial review and turn into populism and excessivism."

Mr. Soli Sorabjee, former Attorney General of India and a known votary of judicial activism, admits that "problems really stem from the judiciary's role in entertaining Public Interest Litigation petitions. Some orders and directions passed are beyond the judicial sphere and at times smack of judicial adventurism..... Judges must withstand the temptation of publicity and also rid themselves of the belief that the judiciary alone can solve all the problems that afflict our nation and remember that PIL is not a pill for every ill..... friction can be avoided if each organ of the State correctly understands and respects the constitutional functions of the other organs."

Justice A. S. Anand, former Chief Justice of India, has also observed that (I quote) "Courts have to function within the established parameters and constitutional bounds. Decisions should have a jurisprudential base with

clearly discernible principles..... Courts have to be careful to see that they do not overstep their limits because to them is assigned the sacred duty of guarding the Constitution. Policy matters, fiscal, educational or otherwise, are thus best left to the judgment of the executive. The danger of judiciary creating a multiplicity of rights without the possibility of adequate enforcement will, in the ultimate analysis, be counter productive and undermine the credibility of the institution. Courts cannot "create rights" where none exists nor can they go on making orders which are incapable of enforcement or violative of other laws or settled legal principles..... With a view to see that judicial activism does not become "judicial adventurism", the Courts must act with caution and proper restraint. Public adulation must not sway the judges and personal aggrandizement must be eschewed. It is imperative to preserve the sanctity and credibility of judicial process. It needs to be remembered that Courts cannot run the Government..... The judiciary should act only as an alarm clock but not as a time keeper. After ringing the alarm bell, it should ensure that the executive has become alive to perform its duties." (unquote)

Shri Rajeev Dhavan, a leading lawyer of the Hon'ble Supreme Court, in an article in the media has observed that "public interest litigation was a wonderful tool to help the poor and the disadvantaged and to explore public causes. But how far will the Court go? Today, it is acting as the Ministry of Forests in the Godavarman case. No electricity line, school, project can be built in India without the Supreme Court's permission and its dreaded self-appointed committee which is a law unto itself"..... "The Supreme Court must recognise that "policy" is for the Government, and "law" for the Court."

The Hon'ble Mr. Justice Markandey Katju, while a Judge of the Supreme Court, while dealing with some matters before him, was reported to have observed, that "it has become a fashion to file PILs raising almost all matters before the Court which normally fell within the domain of the executive. I do not subscribe to the view that judiciary should be seen as running the Government. Everything is being raised through PILs. The judiciary must

know its limits, otherwise there would be a reaction.” Judges should exercise some self-restraint. The Supreme Court has become an authority on all subjects, be it health, education or even election. I am going to lodge my complaint.”

Some years earlier, on 14 April, 2007, it was reported in the Press that a Bench of the Supreme Court while hearing a petition under PIL observed as follows :

“Courts cannot interfere with Government policies on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review..... Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy. Nor are Courts advisors to the executive on matters of policy which the executive is entitled to formulate..... The scope of judicial review when examining a policy..... is to check whether it violates the fundamental rights of citizens or is opposed to provisions of the Constitution or opposed to any statutory provision or (is) manifestly arbitrary.”

These observations, from some of the highest judicial authority in the country are sometimes not adhered to even by High Court Judges, apart from Supreme Court Judges themselves. Sometimes, by reason of their own personal opinions, the Judges have imposed new duties on the executive for which there is no provision whatsoever, even entailing incurring of expenditure, for which there are no budgetary provisions.

As Justice Srikrishna recognised in his lecture that “the answers to many socio-economic and political problems lie with Parliament and in a polling booth and not in a courtroom,” and that such activism “strains the institutional resources of the Court. It also diverts the time, talent and energy of Judges into channels that they are neither required to navigate, nor equipped to, for lack of competence, skill or resources.”

Justice Srikrishna’s warning of the inherent dangers in such intrusions into the domains of the other branches of the Government merits serious attention. He said (and I quote) :

“The legislative and the executive wings of the body politic, which possess the core competence and specialisation in dealing with complex socio-economic problems, are getting progressively marginalized. The judicial organ of the State, the least equipped to deal with socio-political-economic issues, has occupied the center stage, and has got bogged down in more and more of such cases. Sheer expediency or the urge for immediate justice in an abstract sense is hardly a justification for taking on problems with myriad fine details that the Court is ill-equipped to handle.”

The above views of many eminent judges and learned lawyers with which I humbly and substantially associate myself, emphasise important issues, which should be looked into, if I may say so, primarily by the judiciary itself, as also by others.

To my mind, as I submit, the responsibility for managing public affairs should be well left to those on whom the Constitution has imposed such obligation and for which, in the ultimate analysis, they are accountable to the people. There should be no assumption that any particular organ has any inherent superiority or a monopoly over the concern for the people or that it alone can solve their problems. I believe that activism of any institution has to be, first and foremost, directed to the due discharging of its own basic and fundamental duties.

But today, there is a considerable feeling even in well meaning quarters that we have travelled a long way from that objective. On many occasions, the Hon’ble Supreme Court itself has felt it necessary to condemn motivated and frivolous approaches to Court in the garb of Public Interest Litigation (PIL), which goes much beyond the scope of judicial review. By way of warning, Chief Justice Verma, in his Dr. K. L. Dubey Lecture, has drawn attention to ‘the deliberate misuse of the judicial process by some vested interests to settle political scores, or to shift the responsibility to the judiciary for deciding some delicate political issue found inconvenient by the political executive for decision.’

Chief Justice Verma has also expressed the view that ‘judicial activism should be neither judicial ad hocism nor judicial tyranny and that

while commanding performance by the concerned authority, the judiciary should not take over the function itself, as it will not be a legitimate judicial intervention, which can only be when it comes within the scope of permissible judicial review.'

There are umpteen instances where judiciary has intervened in matters entirely within the domain of the executive, including policy decisions. An important instance has been the direction of the Supreme Court on the Central Government for providing food grains to the poor people free of cost prompting the Prime Minister to remind the Court that it should not deal with policy decisions.

No one can question the Courts' concern for the well-being of the people, which obviously includes their right to have food security. But what can the Court do to ensure it? The Court clarified that it made an order and not gave any suggestion. Every Court order should be implementable by processes known in and provided by laws themselves. But except making an extremely popular "decision," which received a lot of public approbation, it did not really serve any purpose as an "order" of the Court. Populism should not influence judicial interventions. As the learned Chief Justice Verma has pointed out in his Dr. K. L. Dubey Lecture :

"..... Judiciary has intervened to question a 'mysterious car' racing down the Tughlaq Road in Delhi, allotment of a particular bungalow to a Judge, specific bungalows for the Judge's pool, monkeys capering colonies to stray cattle on the streets, cleaning public conveniences, and levying congestion charges at peak hours at airports with heavy traffic, etc., under the threat of use of contempt power to enforce compliance of its orders. Misuse of the contempt power to force railway authorities to give reservation in a train is an extreme instance."

Some time back, a media correspondent in Delhi compiled a list of issues and matters in which the Courts have apparently, if not clearly, strayed into executive domain or in matters of policy. He noted that the orders passed by one High Court had dealt with subjects ranging from age and other criteria for nursery admissions, unauthorised schools, criteria for free

seats in schools, supply of drinking water in schools, type of conveyance to be used to reach the schools, number of free beds in hospitals on public land, use and misuse of ambulances, requirements for establishing a world class burns ward in the hospital, the kind of air Delhi breath, begging in public, the use of sub-ways, the nature of buses we board, the legality of constructions in a major city, identifying the buildings to be demolished, the size of speed-breakers on roads, auto-rickshaw over-charging, growing frequency of road accidents and enhancing of road fines. And I am sure, there are umpteen such instances in the records of other High Courts as well. Recently, some Court has decided what should be the dress of lady teachers of a school and whether women should be given commissions in the Army or not. And the glaring instance is that by appointing its own committees, the Apex Court has almost taken over the sole jurisdiction and authority over forests with neither any accountability nor any legal provision whatsoever. And now of course, the decision that every Government asset should be dealt with only by public auction has created immense problems to all public authorities.

The Jagadambika Pal case of 1998, involving the Uttar Pradesh Legislative Assembly and the Jharkhand Assembly case of 2005, to my mind, were two glaring examples of deviations from the clearly provided constitutional scheme of separation of powers. The interim order of the Supreme Court in these two cases, to my mind, clearly upset the delicate constitutional balance between the judiciary and the legislature. I feel that these were instances of palpable intrusion by the Supreme Court into well demarcated areas of powers of the legislatures, contrary to the provisions of Arts. 122 and 212 of the Constitution. Chief Justice Verma has recently described the orders in the U.P. and Jharkhand cases as judicial aberrations and has expressed his hope that the Supreme Court would soon correct them. As the then Speaker of the Lok Sabha, I lodged my humble but strong protest against the decision of the Supreme Court in the Jharkhand Assembly case, as it was against the constitutional provisions. The Speakers' conference in our country also passed a resolution en-

dorsing my stand.

I do agree that there is considerable cynicism among our people about the way our institutions function, particularly the Parliament, the Legislative Assemblies and the Executive. Many a time the judiciary is applauded for its interventions in forcing the arm of the executive to do certain things or in restraining it from doing certain things. People appreciate it, at least, that is what the media reports. Criticisms of the executive and legislatures, from time to time, have been made from the Bench in very strong words while hearing what are described as Public Interest Litigations (PIL).

In my humble view, the contention that the judiciary should take on itself the onerous responsibility of the governance of the country, in a Parliamentary Democracy with a written Constitution in matters, which the Constitution has imposed on either the executive or legislature, has serious implications.

Administration of justice derives its strength only from the confidence of the people in the system. The most important way in which the judiciary can maintain the people's confidence is by providing speedy and effective justice to them.

People's rights can be effectively protected if they are able to approach the Court and have their matters taken up by competent lawyers at affordable costs and have their cases disposed of within a reasonable time. Delay in trial by itself constitutes denial of justice. The right to speedy disposal of cases is an essential right of the people in a democracy. The slow movement of the judicial system, the mounting arrears of cases and the lack of easy affordability and accessibility to the legal process are some of the major concerns our people have vis-a-vis the judiciary today. It is understood that there are over three crores of pending cases with various Courts in the country, some of them for periods ranging from 5, 10 or 20 years.

There is a clear perception in our society and as it seems to be the fact that the best legal services are available only to the affluent and due access to the doors of justice is denied to the poor and the socially disadvantaged. The biggest challenge before the judicial system in the country today is that of ensuring

that everybody has affordable access to justice and an assurance that everyone gets equal treatment before the law. The delay in our criminal justice system is particularly of gravest concern and there is a growing feeling among the people that dispensation of justice can be affected or frustrated by people of means and of questionable integrity.

To my mind, what is required for any institution to perform most effectively is, to start with, a realistic role-perception within the broader systemic framework. Once the judiciary gets involved with an issue, which falls within the executive domain, it precludes the possibility of the legislature exercising its assigned role of ensuring executive accountability through effective legislative scrutiny. It is important for the judiciary to remind itself, if I may humbly submit, that its "task does not include an amorphous supervision of the Government."

It is often seen that the judiciary is applauded for its "activism." The issue involved, however, is more serious than the perception of a section of the people, who have access to the media. It is about the very basis of our constitutional scheme of power-relationship. Self-restraint is the primary balancing element in the exercise of judicial power. Justice Frankfurter of the US Supreme Court reiterated this in the case of *Trope v. Dulles* (1958), when he said :

"..... It is not the business of this Court to pronounce policy. It must observe a fastidious regard for limitation on its own power, and this precludes the Court's giving effect to its own notions of what is wise or politic. That self-restraint is of the essence in the observation of the judicial oath, for the Constitution has not authorised the justices to sit in judgment on the wisdom of what Congress and the executive branch do."

The same principle would apply in our country too.

I humbly submit that for any organ or authority under the Constitution, to enjoy any power, not specifically or by clear implication conferred by the Constitution, the source of power is or can be only the Parliament and no other authority. As has been held, the Supreme Court can declare the law and cannot enact

law.

Almost all votaries of judicial activism, including the Hon'ble Judges themselves, while exercising power in such assumed jurisdiction justify it on the supposed failure of the legislature or the executive authorities in taking proper action to mitigate the people's grievances or to find solutions to people's problems.

But with regard to dispensation of justice, how many ordinary citizens of the country, who are oppressed and subjected to various forms of discrimination and denial of rights, particularly women who are victims of torture and exploitation, can have access to the Courts, specially the highest Court of our country, if he or she needs to approach the Courts or contest effectively proceedings initiated against them? How many dismissed employees, how many victimised teachers, how many peasants dispossessed of their lands, how many senior citizens, how many disadvantaged people staying in far flung areas of the country, who would need to seek justice, can approach the Apex Court of our country? The geographical distance, prohibitive cost of litigation, inordinately long time taken for disposal of matters, discourage or otherwise make it impossible for ordinary litigants to approach the Court. The situation should disturb the nation's conscience, and if I may say so, it is for the judiciary to find ways and means to make the temples of justice easily accessible to the common people.

The large number of arrears pending in almost all the Courts is affecting the people's faith in our justice delivery system. These issues require to be given very serious attention not only by the Legislature or the Executive but also by the judiciary. One has to admit that in many instances the judiciary (without attributing any fault to it) is not able to cater to the needs of the common people of the country in adequate measure. Now, in such a case, can any other organ of the State take up on itself the right to exercise judicial powers on the plea that judiciary has not adequately been able to do so? Obviously neither the legislature nor the executive can do so, because it has no such power under the Constitution. We can assess the validity of some contentions

by extreme examples. So, in my submission, no organ under the Constitution can take upon itself the function of any other organ on the ground that there is supposed malfunctioning or non-functioning or inadequate functioning of that particular organ.

I yield to none in my commitment to an independent judiciary and in my respect for the judiciary, which is an integral part of our constitutional set up.

The principle of separation of powers, clearly provided for in our Constitution, to my mind, is not an optional feature to be selectively recognised by the organs of the State, but is one of the most essential directives of our Constitution, which has to inform every aspect of administration in the country.

In a democratic set up, the space and role of every institution is expected to be clearly earmarked in the Constitution that creates it. It is in the effective discharge of those functions, that it serves the people for whom the institutions are meant. This can be accomplished without intruding into or trivializing the role of the co-ordinate institutions or without undermining the the importance of fundamental democratic processes. To my mind, when institutions succeed in functioning strictly within the domain assigned to each, not only do they grow in public esteem, but they also create the ideal conditions for the effective functioning of the entire system.

To my mind, there is definitely sufficient space in our system for all the institutions to co-exist and work together for the common benefit. Undoubtedly, the people look up to the Courts, which are temples of justice, with great expectation, hope and confidence. Similarly, people look up to the Parliament and State Legislatives, of which the Executive is a part, also with expectation and hope, because under the Constitution, the Parliament is the supreme legislative institution of the country, the people's institution par excellence, through which laws for the people are made and executive accountability is enforced. We must recognise that Constitution is the supreme law and no organ of the State should go beyond the role assigned to it by the Constitution. It is the duty of all concerned, including the legislature, the Executive and the judiciary, to en-

sure that this balance is scrupulously adhered to. No organ can be the substitute of another. Visionary leaders of our country strove all through their life to preserve and protect this lofty ideal of our constitutional system, an ideal which needs repeated reiteration, as it has an eternal bearing on our parliamentary polity and constitutional and democratic framework.

Most unfortunately and rather alarmingly, issues like intolerance, divisiveness, corruption, confrontations and disrespect for dissent are increasingly vitiating our socio-political system. The cynicism that is creeping into the minds of the people, specially the youth, about the functioning of our democratic structure is undoubtedly a matter of grave concern. The greatest challenge of good governance is to bridge the gap between the expectations of the people and the effectiveness of the delivery mechanisms. To my mind, we have to create a culture of commitment to democracy as our Constitution delineates and to democratic values such as equality, justice, freedom, concern for other's well being, secularism, respect for human dignity and rights and in this respect, our judiciary indeed has a positive role to play, along with other constitutional organs as an independent arbiter, dispensing speedy and inexpensive justice to every section of the people. We need to take effective steps to facilitate access to the higher judiciary for the common people.

And that is why I have always been of the view that the concept of Public Interest Litigation is a most welcome development in our

legal procedure, but my appeal to the well meaning learned Judges that it should be exercised with proper care and in due regard to our constitutional provisions, and based on pronounced judicial doctrines and not on the basis of one's personal predilections.

All our citizens have to get to feel that the constitutional authorities exist to serve them and that they are ultimately accountable to them. We must recognise that there is a symbiotic relationship between institutions of the State. If we do anything that could weaken one, its adverse consequences would be felt by the entire system.

Sixty three years have rolled by since the Constitution of India came into force. These years have seen many crises, phases of turbulence; uncertainty and even confrontation. But the Constitution has, on the whole, served the nation very well. It has not failed the people. It is not without its shortcomings. But the failures have been due more to lapses of those who operated the Constitution rather than to any shortcomings in the Constitution itself. It is my earnest hope that, both in spirit and in letter, the constitutional scheme of separation of powers and, with it, the checks and balances, that are indispensable to democratic governance, will be respected, and the spirit of moderation and mutual respect, animated by a common commitment to the Constitution are followed in all cases and our efforts are fully directed towards improving the social and economic conditions of our people, which they have a right to expect that of us.

AN OVERVIEW ON HISTORICAL EVOLUTION OF LEGAL REGIME OF POLLUTION OF MARINE ENVIRONMENT

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INTRODUCTION

The law of the sea extends back to Roman times and perhaps earlier, these laws were driven by commercial and military concerns and aimed to regulate the use and passage on maritime area, with exception of a small number of fisheries agreements. Until the Second World War environmental matters were not at all a concern for the ocean laws, because of lack of understanding of marine ecology and

also the pollution remained in small scale¹.

At the beginning of the modern law of the seas, these laws were built upon a small number of basic principles like the "freedom of the seas" originally it is a part of 'Roman Law', but was re-introduced as a legal doctrine dur-

1. David Hunter, James Salman, Durwood Zaelke, International Environmental Law and Policy, Second edition, foundation, foundation press, page 657, and Para 2.

ing 1609. Again the book entitled "MARELIBE RUM" written by the Dutch Scholar Hugo Grotius, has defend the Netherlands right to sail in the Indian ocean and on eastern seas in order to promote the maritime trade with India. In the same book Grotius has mentioned about the exercise of both commercial and political dominion over this region and by the East Indies of Spain and Portugal and their desire to exclude the competitor mercantile nations from this region². Grotius has argued that peaceful navigation and fishing on the high seas is a basic right of all nations. According to Grotius "The Sea is common to all" because it is so limitless that it cannot come under the possession of one and hence this region belongs to whole man kind³. By the early 1800 this legal principle was universally accepted by major powers. Grotius principle was straight forward, which has granted traditional freedom of the seas and has not imposed parallel responsibility to work collectively for the conservation of marine resources. In addition, this freedom has always been limited by a customary law of territorial seas permitting exclusive national jurisdiction over a narrow marine zone off the coast (generally 3 miles) which is popularly known as the cannon short rule⁴. However in 1930, initial attempts were made by the League of Nations to codify the law of the seas. Aftermath of 2nd world war, the new super power United States has dramatically challenged the traditional freedom of the seas doctrine. The Truman proclamation has extended the American coastal jurisdiction and control over its natural resources, sea bed of its contiguous continental shelf, fisheries in its coastal waters and the claims of sovereign authority over high seas resources directly off the coast. These extended rights over the seas have elimi-

2. Nico Shrijver, Institute of social studies, sovereignty over natural resources-balancing rights and duties. The Hague, United Kingdom at the University Press.

3. Ibid.

4. At the beginning of the maritime laws the cannon shot rule was in existence. According to which the state can exercise its jurisdiction till which a cannon shot can shoot, normally which was 3 miles.

nated the traditional cannon shot approach (three mile limit) of the territorial seas⁵. This precedent has been quickly adopted by other nations laying similar claims, led by Latin American Countries and by 1958 almost 20 countries had declared legal control over their continental shelves. This "creeping jurisdiction" continued for the next 30 years which greatly weakened the freedom of seas doctrine and causing international conflicts between coastal states and fishing nations. United Nations held its first conference on the law of the sea in 1958 and in this conference four conventions on law of the seas were adopted. They are,

- Convention on the Territorial Seas and Contiguous Zone.
- Convention on the High Seas.
- Convention on Fishing and Conservation of Living Resources of High Seas.
- Convention on the Continental Shelf⁶.

However the environmental concern was not forgotten, as the Geneva Convention on High seas addressed specific sources of pollution, such as oil pollution, pollution from vessels and pollution from radioactive substances etc. But the protection granted by these conventions were too weak because these conventions have neither established a comprehensive duty towards the protection of marine environment nor assigned respective duties and responsibilities of states to address the marine pollution. While indicative of emerging customary international law, none of the conventions came into force.

The second United Nations Conference on the Law of the Sea was held in 1960, but failed to reach agreement to the context of the territorial sea. In deed the fundamental conflict between UNCLOS-I and UNCLOS-II and central conflict in most law of the sea, has created tension between the interest of maritime nations who rely on the seas for commerce and navigation, and the interests of the coastal states who rely on the seas for commerce and navigation, and the interests of the coastal

5. Supra Note No. 2.

6. Joe Verhoeven, Phillip Sands, and Maxwell Bruce, the Antarctic Environment and Law, International law and policy series.

states who rely on the natural resources of the adjacent sea. Maritime nations have favored the expansive freedom of seas and limited national jurisdiction over coastal waters, as they are the title holder in both word and deed of enlarged national jurisdiction over coastal waters, as they are the title holder in both word and deed of enlarged national jurisdiction over adjacent waters. This enlarged jurisdiction over adjacent waters has important implications not only for control of resources but for compliance and enforcement of pollution laws. By the end of 1973 over 1/3 of the ocean, equal in surface area to the land mass of the earth, had been claimed by coastal states as subject to national jurisdiction. Again United Nations Convention on Law of the Sea 1982-III, part XII has been completely devoted towards the protection and preservation of marine environment against all perceptible kinds of pollution. The convention is based on two paramount principles, the rule of law and the progressive realization of the public interest. In principle this convention uses two different means of balancing the interests of states in order to establish the required equitable regime of utilization and management of the maritime area. It partitions the maritime areas into different zones in which the competencies of the coastal states decrease in proportion to the distance from the coast. However, states rights in all zones, including the territorial seas, are not of an absolute nature, but rather functionally limited⁷.

HISTORICAL EVOLUTION OF POLLUTION OF MARINE ENVIRONMENT AT INTERNATIONAL LEVEL

Marine pollution is relatively a long standing concern; the initial efforts to regulate it were unsuccessful. However in 1926, an international conference was convened by the United States, where a convention was elaborated to limit the discharges of oil and gas into the sea, but this treaty was not signed. Second draft was prepared under the auspices of the League of Nations in 1935 it contains many of the same provisions but was also failed to gain the acceptance. In 1954, for the first time, the International Convention for the Prevention of the Pollution of the Sea by oil was

7. Supra Note no. 2.

adopted. This convention prohibits the deliberate discharge of oil into the specified zones, then in 1969 to substitute a general prohibition on oil pollution for the system zones and finally in 1971. But this convention has given its full attention towards the protection of the marine environment against oil pollution.

In 1958 two United Nations Convention on Law of Seas⁸ were came in to force, which contained the prohibition relating to pollution of the sea by oil or by pipelines and also by radioactive waste and waste regulating form oil drilling form the continental shelf; waste resulting form the exploitation and exploration of the sea bed and its sub soil. Further the same convention obligates the states to take necessary measures in accordance with the regulations drawn under treaty obligation to prevent pollution of the seas from the dumping of radioactive waste, and to co-operate with the competent International Organization for the prevention and protection of seas against the pollution that resulting form any activities with radio active materials of other harmful agents. Hence these are the first treaties that were addressed the oceanic disposal of solid waste. In 1967, the Torrey canyon tanker accident⁹ gave rise to the general environmental awareness. Soon after this disaster the UN General Assembly was adopted a resolution¹⁰ which obligates the international member states and organizations to promote and to adopt the effective international agreements for the prevention and control of marine pollution¹¹. Another resolution was adopted on the prevention of pollution of the marine environment by sea bed development.

Two years later, in a recommendations¹² the General Assembly has requested the Secretary General to review the harmful substances

8. Supra Note No. 6.

9. It is one among the great maritime disasters, which spilled over 1,00,000 tons of crude oil into the English Channel which caused serious damage to both the French and English coast lines.

10. Resolution No. 2414.

11. December 21, 1968.

12. A/Res/2566 (XXIV) of December-13th, 1969, concerning effective measures for the prevention and control of marine pollution.

affecting the ocean and activities of member nations and international agencies dealing with the prevention and control of marine pollution and also to sought views of member nations on the desirability and feasibility of an international treaty on this subject. Aftermath of Torrey Canyon Oil Spill, the global efforts were centered on finding a solution to the problems posed by accidents that causing serious pollution and also to the difficulty of resolving the numerous compensation claims and liability issue under then existing law. As a result the Maritime Consultative Organization (now IMO) has drafted two conventions¹³ among these two conventions one concerning civil responsibility for oil pollution damage and other relating to intervention on the high seas in cases of oil pollution casualties¹⁴. These measures were supplemented in 1971 convention, which was drafted mainly to create International Fund for Compensation for oil Pollution Damage¹⁵. Again the International Maritime Organization gave much importance to the Oil Pollution and related problems. In 1972, the Stock Holm Conference gave new start to the development of International Environmental Regime. Principle 6 of this declaration contains general principle regarding pollution and provides that the discharge of toxic substance or of other substances and release of heat in quantities or concentrations should not exceed the assimilative capacity of the environment. Principle 7 of this declaration specifically addressed the marine pollution by declaring that states shall take all necessary steps to prevent the pollution of the seas by substances that are liable to create hazards to human health and harm to living resources and aquatic life damages to amenities or interfere with other legitimate uses of the sea. In addition 86 to 94th Recommendations of Stock Holm Action Plan addressed the marine pollution. 86th Recommendation provides that states to adhere to and implement the existing instruments to combat marine pollution and to develop further norms both in the national and international level, to effectively prevent the further marine pollution. In 1972, a new international instrument

13. In 1969.

14. Brussels, November 29th, 1969.

15. Supra Note No. 6.

was signed, at a conference in London viz. Convention on Prevention of Marine Pollution by Dumping of Wastes and Other matter¹⁶. Further on November 2nd, 1973 a conference was held by International Maritime Consultative Organization (Now IMO) in London, in that conference the International Convention for the Prevention of Pollution by Ships (MARPOL) was adopted. This convention addresses all kinds of marine pollution caused by ships. In the same year (i.e. in 1973) the drafting work of the third UNCLOS 1982¹⁷ was started, which was adopted in December 10th, 1982. Part XII of the UNCLOS 1982 contains elaborate provisions for the protection and preservation of marine environment¹⁸ from probable kinds of marine pollutants. Part XII of UNCLOS 1982 specifically aims to prevent the pollution of marine environment. This convention empowered the coastal states to frame their own environmental legislations based on their socio-economic conditions¹⁹ the convention has also addressed the pollution relating to the Exclusive Economic Zone which is newly developed area of jurisdiction in International law and this convention does not address the pollution of high seas. It is the most eminent global convention that has addressed many kinds of marine pollution in general with lot many loop holes.

HISTORICAL EVOLUTION OF REGIONAL INSTRUMENTS ON POLLUTION OF MARINE ENVIRONMENT

We can recognize the equally rapid evolution of treaty regime at the regional level. In response to the Torrey Canyon accident, the eight European states parties were accepted the principle of co-operation to combat the marine pollution of the North Sea. Consequently in June 9th, 1969 the first regional convention was signed which was dedicated to the problem of marine pollution viz. Agreement of co-operation in dealing with pollution of North Sea by oil²⁰. In September 16-1971

16. 29 December, 1972.

17. United Nations Convention on the Law of the Sea 1982.

18. Article 192 to 222 of the UNCLOS 1982.

19. Article 207 of the UNCLOS 1982.

20. Bonn Convention June 9th 1969.

another regional agreement concerning co-operation in taking measures against pollution of the sea by oil was signed in Copenhagen, by Denmark, Finland, Norway and Sweden²¹. These two conventions are convened with the oil pollution and not directly applicable to the marine pollution due to the solid waste. In 1972 twelve European states signed the OSLO Convention which addressed the previously ignored problem of marine pollution caused by dumping of wastes from ships and air craft. But this agreement concerns only a part of the Atlantic and the Arctic oceans and excludes the Baltic and Mediterranean seas. However to the context of solid waste this is the first regional convention but restrained with the limited and regional application. The same maritime zone is covered by one more convention that was signed by the same European Countries in Paris²² entitled Convention for the prevention of the Land Based Sources (Paris June 4th, 1974). This convention aimed at the prevention of marine pollution from Land Based Source. In March 22nd, 1974, another legal instrument was created for the protection of marine environment of the Baltic Sea area entitled Helsinki Convention. For the First time, seven littoral states²³ have agreed to comprehensively address all forms of marine pollution. The fundamental principle of the convention is that the parties shall take all appropriate measures whether individually or jointly to protect and enhance the marine environment. They also agree to counter act to the introduction of all forms of hazardous substances in to sea by air, water and otherwise²⁴.

The United Nations Environmental Program has adopted the approach of the Baltic Sea Convention and launched a program for Eight Regional seas. For each sea, the resulting se-

21. Agreement concerning co-operation in taking measures against pollution of the sea by oil (Copenhagen September 16th, 1971).

22. Supra Note No. 6.

23. Denmark, Finland, Germany, Poland, Sweden and USSR.

24. Alexander Kiss and Dinah Sheton, International Environmental Law, transnational publishers, INC Ardsly on Hudson, New York Graham and Tortman Ltd. London, England, Page 189.

ries of agreements generally that consists of a plan and a general convention for the protection of the marine environment, accompanied by special protocols devoted to the problems, such as the dumping of waste and co-operation in case of accident or Land Based Pollution²⁵. In Feb 11th, 1976, convention for the protection of Mediterranean Sea against pollution was signed which accompanied by the two protocols, and was signed in the same day. One addresses the dumping from ships and air crafts and another concerning co-operation in combating pollution by oil and other harmful substances in cases of emergency. Subsequently, two additional protocols were substantially concluded. The first aims to protect the Mediterranean Sea against land based pollution²⁶. The second related to Mediterranean Sea specifically protected and indirectly concerns pollution²⁷.

Article 7(b) of the second additional protocol prohibits the discharge of dumping of waste or other matter which could detrimentally affect a protected area. Other regional seas are similarly regulated by UNEP- sponsored groups of instruments, e.g. for the Persian, Gulf; Kuwait regional convention for co-operation on the protection of marine environment from pollution; protocol concerning Regional co-operation in combating pollution by oil and other harmful substances in cases of emergency²⁸ and protocol concerning marine pollution resulting from exploration and exploitation of the continental shelf. Similarly in the west and Central Africa. Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the west and central African Region, For Abidjan; a protocol concerning co-operation in combating pollution in cases of emergency both signed in March 23rd, 1981. Lima Convention²⁹ has been designed for the Protection of Marine Environment and coastal area of the South East Pacific. Agreement on regional co-operation in combating pollution of the South

25. Ibid.

26. Athens protocol, May 17th, 1980.

27. Ibid.

28. Geneva, April 3rd, 1982.

29. April 24th, 1978.

East Pacific by hydrocarbons or other harmful substances in case of emergency, both signed in November 12th 1981. Again Quito protocol has been formulated for the protection and preservation of the marine environment of the South East Pacific against pollution from landbased sources³⁰. In addition supplementary protocol to the agreement on regional co-operation in combating pollution of the South-Pacific by hydrocarbons or other harmful substances has been established³¹. Apart from the Barcelona system, whose four protocols make it the most complete regulatory system, the regional convention for the South East Pacific provides the most precise rates concerning land based pollution, and others regulating land based pollution only in the emergency situations. Further for the protection of the Gulf of Aden and the Red-sea, two documents were signed³², namely Jeddah regional convention for the conservation of the Red Sea of the Gulf of Aden environment; secondly, protocol relating to regional co-operation to combat pollution by oil and other harmful substances in case of emergency. Two instruments were signed for the protection of Caribbean Region³³ they are, Convention for the Protection and Preservation of the Marine Environment of wider Caribbean Region, Cartagena de Indies and protocol concerning co-operation in combating oil spills in the wider Caribbean region. For the protection of South Pacific Region Convention on the protection of the natural resources and environment of the South Pacific Region has been established³⁴ called as Noumea Convention and its protocol has addressed the problems relating to the land based solid waste of South Pacific Region. One of the most recent treaty concerning the marine environment that has been adopted on September 13th, 1983, in the regional context is the Bonn agreement for the co-operation in dealing with pollution of the North Sea by oil and other harmful substance. The 1969 Bonn agreement, which regulated the pollution by oil was replaced by the 1983s Bonn Agree-

30. December 11, 1988.

31. July 22nd, 1983.

32. In Feb 14th, 1982.

33. In 24 March, 1983.

34. November 24th, 1986.

ment in January 26th, 1982, to combat the vessel based pollution western European states have initiated a creative approach for the enforcement of International norms concerning maritime commerce. Under this approach the port states were signed a memorandum of understanding on the Surveillance of ships. The primary objective the fourteen signatory states are to dissuade dangerous ships which could pollute the environment of European ports and adjacent waters, frequently. The contracting states have agreed to enforce, with in their ports, a body of International Conventions regarding the security of ships and the prevention of pollution. In case, if the flag is not contracting party, then also such ships have to follow the rules and regulations of the agreements, while they are passing through the water of European States. In addition, the contracting maritime authorities have agreed to exchange information and evidence regarding breaches of maritime rules and pollution. At the out set results form application of memorandum of understanding was very encouraging. During the initial four years, 38,000 ships or 21.5% of those entering in to European ports were subject to inquiry. Among these, 1500 were in port because of infractions. Nearly one-quarter i.e. 23.6% were held for violation of norms concerning pollution, and 13% for irregular documents more then half of which related to the international certificate on oil pollution³⁵.

In addition Basel Convention on the Transboundary Movement of hazardous Waste, Bamako Convention, Basel Ban, Basel liability Convention and Lome Convention that are addressed the Transboundary movement of hazardous waste and trade in hazardous waste. Similarly the International Convention on the Liability and Compensation for Damage caused due to the Carriage of Hazardous and Noxious Substances by Sea 1996 was established which covered the problems relating to the payment of compensation in case of damages caused to the marine environment due to the Hazardous and Noxious Substances including solid waste. The close examination of the literature reveals that prior to the United Nation Convention on the Law of Sea 1982

35. 20. U. Miami Inter-AML. Rev.579.

(UNCLOS) the problems relating to marine pollution did not occupy a prominent position in the hierarchy of international concerns and were consequently given scant consideration, but it does not mean that there is a paucity of instruments on marine pollution problems.

However only few legal instruments are there to tackle the marine pollution that caused due to the solid waste. They are MARPOL 73/78, London Dumping Convention, OSLO convention, Barcelona convention, Lima convention, Athens protocol, Quito Protocol and UNEP regional seas programme. The first regional convention appeared in 1974 which is relatively late in International perspective. The London Dumping convention specifically addressed the Land Based Sources of marine pollution. This convention regulates dumping of wastes by establishing 3 lists i.e., the black, grey and white. The black list contains the wastes that are considered as most dangerous. The dumping of these wastes are prohibited, but with certain exceptions. This convention has specifically banned the high level radioactive wastes with certain exceptions. With this end, the IAEA has specifically defined the High Level Radio-Active waste. However, the exceptions provided under this convention would pose future threat to the marine environment. The Helsinki (1974) convention specifically addressed the Baltic Sea area. This convention was agreed between seven Baltic Sea States to take all appropriate legislative, administrative and other relevant measures to prevent the pollution of Baltic Sea area specifically from the Land based sources.

Barcelona convention also governs the marine pollution of Mediterranean area, caused due to the discharges from Rivers, coastal establishments or outfalls or emanating from other sources within their territories and those parties should co-operate in the formulation and adoption of measures, including procedures and standards for the prevention and control of marine pollution of that area. In spite of these legal instruments the marine pollution is still increasing at a rate and in some areas the marine pollution is exceeding even the assimilative capacity of the ocean. E.g. : Baltic Sea and Mediterranean Sea³⁶.

36. Ian Brownlie, CBE, QC Guys. Goodwin-Gill. Basic Documents on Human Rights, Oxford University Press, Fourth edition.

Further, UNCLOS, 1982 is the only global instrument addressing the land based sources of marine pollution which is not specific and insufficient. It has conferred wide discretion on the states to formulate their own rules and regulations to regulate the different kinds of marine pollution by considering their socio-economic conditions. Such wide discretion without fixing any standards, guidelines can give rise to the weak laws as well as non-uniform laws. Again the same article has insisted that such rules and regulations should be in conformity with the international standards. This part of the article is too ambiguous as it presupposes the existence of some international standards but in fact there are no such standards. Hence the primordial regulation to govern the marine pollution due to the solid waste is not sufficient to govern the global challenge like marine pollution.

HISTORICAL EVOLUTION OF LEGAL REGIME OF POLLUTION OF MARINE ENVIRONMENT IN INDIA

India can trace its history even before Indus Valley Civilization. During its Vedic period it was known as the most developed dominion, hence was always being raided by invaders specifically the Macedonians invasion of Alexander, Ghazni etc. It was ruled by various powerful rulers and small kingdoms, that of the Guptas, the Mayuryans and sultanate of Delhi. Ultimately it came under the rule of the Mughals under Babur from 1526, the dynasty ended with the last Mughal emperor Aurangzeb in 1707. With the weakening of the Mughals the country came under small principalities, the most powerful among them being the East India Company. After a century of territorial expansion by the British, the Indian felt threatened by the company's attitude and revolted in 1857-58. The immediate result was the India Act, 1858 which transferred the company's authority to the British crown under a viceroy, the area under British rule co-existed with the independent states ruled by the Indian Princes. The revolt gathered momentum for independence continued with M. K. Gandhi at its helm from 1930. On 15th August, 1947 India became independent with in the commonwealth as a federal union of former British. Pakistan was carved out of it.

In 1950 it became republic with in the commonwealth. Pt. J. L. Nehru becomes its first prime minister. In 1956 the State Reorganization Act created a new structure of states and territories with boundaries. At present the Nation have its exclusive sovereign right over the territorial waters, Contiguous Zone, Exclusive Economic Zone, Continental Shelf, hence the country has the exclave right over the marine resources and this right is correlated with the responsibility for the protection and preservation of the marine environment and also cooperate with other nations for the protection and preservation of the marine environment. India has a long history of administration of marine environment but the first official administrative policy was laid under the Indian Forest Act, 1927. It was clubbed with Natural Resource Conservation. Secondly, the Forest Conservation Act, 1980 and then the National Forest Policy, 1988. It was also discussed in the Wild Life (protection) Act of 1972. Environmental Protection Act, 1986, Water Act, 1974, Coastal Zone Regulation Act 1992. Coastal Zone Management Plans of the State Government. Maritime and port policies and Port Act of the State, Coast Guard Act, 1976, Territorial Waters, Continental Shelf, Exclusive Economis Zone and other Maritime Zones Act, 1976, are other marine environmental administrative tools. These legislations have not effectively addressed the problems relating to the marine pollution in general and solid waste in particular. Many of these legislations have forwarded more general provisions and tackled the marine pollution and relate problems incidentally. Such negligence can be attributing to the exaggeration of the assimilative capacity of the ocean. Hence India has to give immediate attention to frame effective regulations to govern the marine pollution and related problems. Again equal importance should be given to ensure the effective implementation of the existing legislations.

IX. CONCLUSION :

Environment has no boundaries and it is not possible to stop the Transboundary ma-

rine pollution, since the ocean currents are active and in continues circulation. These problems relating to Transboundary pollution of global environment gave good start to the International Environmental law. In addition the various principles established in many cases that contain international environmental issues have contributed significantly to the evolution of International Environmental Law. However these principles do not address the marine pollution specifically hence inference can be drawn from the decisions of the cases containing the environmental issues. Approximately, more than 80% of the solid waste generates on land and rest of the waste accumulates from the other sources like vessel sources dumping of hazardous waste etc. Marine is severely being polluted form the land based solid waste, particularly in densely populated areas like Mediterranean Sea and Baltic Sea, also in the coastal area as well as the coastal regions known for tourism. According to a survey conducted by Pan American Health Organization, more than 70% of the marine pollution is caused due to the Land Based Sources. But it is unfortunate that there is no comprehensive global scheme to govern the land based sources of marine pollution. UNEP guidelines pre-suppose the existence of international standards. In addition, directives of European Economic Council are regional and apply only to its member States. Therefore there is a need for comprehensive global legislation for an effective regulation of marine pollution, which should be applicable to all the States irrespective of their socio-economic conditions. However as a matter of fact, sea is the ultimate sink for planetary wastes, thus complete eradication of pollution of this major area of earth surface is impossible. But with strict compliance to the existing legal regime and by taking adequate measures to overcome form the existing loopholes, we can effectively reduce the pollution and balance it with the assimilative capacity of the ocean.