

## Approach Of Indian Judiciary Towards Environmental Protection

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### Abstract

The protection of man against the cruelest blows from evil, are well-known to those who wish to preserve the environment. The development of environmental law and principles in India has been greatly aided by the Supreme Court of India's involvement in settling environmental cases. Researcher's goal in this study is to analyze the steps taken by the judiciary to advance the goal of environmental preservation and conservation, despite the fact that many legislative steps have been taken to give effect to the important right of man to live in a sound environment and the corresponding duty on state and individuals to ensure environment preservation and conservation. The primary aim of this research is to determine the current situation and examine the kind and scope of changes that have occurred in different environmental statuses to date through a variety of statutes, laws, and conventions as well as a variety of concerns pertaining to court rulings and the legal system. This paper commences with the introduction of the paper. It also analyses the judicial remedies available for environmental protection and some remarkable principles and doctrine propounded by the Indian judiciary. The proposed study will lead to a more descriptive and comprehensive understanding of the environment law and the policy along with the role of Supreme in today's context to the new emerging threat which need to be combat effectively.

**Key words:** Environment, environment preservation, environment conservation, judicial remedies, environmental law.

## Introduction

“The environment is where we all meet; where we all have a mutual interest; it is the one thing all of us share.”

-Lady Bird Johnson

As civilization developed, man's materialism increased. Getting more and more material wealth was his main goal in life. This opened the door for the exploitation of natural resources by spurring technological advancement and scientific innovation. The fast-paced and uncontrolled industrialization of the world increased the risk of environmental degradation. The Second World War and the industrial catastrophe caused widespread pollution and ecological harm to the planet. People started to recognize that there was a risk to human life if this continued. In India, environmental contamination has long been an issue. Thus, the authors of the Constitution already incorporated Articles 47, 48, and 48A. Under these provisions, the state is given a set of duties to preserve the nation's natural resources and safeguard the environment. Given that India has ratified the 1972 Stockholm Declaration, the Parliament amended the constitution to include Article 51(1)(g). According to this article, people have an obligation to care for and enhance the natural environment, which includes woods, lakes, rivers, and wildlife, as well as to show compassion for other living things. In addition, the Environmental Protection Act of 1986, the Water (Prevention and Control of Pollution) Act of 1974, the Air (Prevention and Control of Pollution) Act of 1981, the Hazardous Wastes (Management and Handling) Act of 1972, the Biological Diversity Act of 2002, and other anti-pollution laws were passed by the Parliament.

When compared to the state's legislative and executive branches, the public generally has a positive opinion of the Supreme Court of India, which is a highly esteemed institution. The Supreme Court has effectively navigated a multidisciplinary and technologically sophisticated sector that is expanding and changing quickly. Numerous advancements have come about as a result of judicial activism, which also supplied the invaluable raw material needed to create an extensive environmental law in India. Therefore, when it comes to the administration of environmental justice, the Supreme Court of India has stood tallest not only before the legislative and executive branches but also before its peers in developed and developing nations of all ages. The Indian Constitution guarantees the judiciary's independence from the legislative

and executive branches of government, hence reducing its susceptibility to pressure from these entities.

### **Judicial remedies for environment pollution:**

Both statutory law remedies and tortious remedies are available in India for environmental protection. There are four types of tortious remedies: carelessness, strict responsibility, trespass, and nuisance.

The statutory remedies incorporates: Citizen's suit, e.g.,

- an activity brought under Section 19 of the Environmental (Protection) Act, 1986,
- an activity under area 133, Criminal Procedure Code, 1973.and
- and activity brought under the Section 268 for open irritation, under Indian Penal Code,1860

In addition, a writ petition may be submitted under Article 226 in the High Court or Article 32 in the Supreme Court of India.

### **Tortious liability**

The Indian judiciary has developed the following tortious remedies:

#### **Damage**

The Apex court ruled in the recent case of Shriram Gas Leak, which involved an oleum gas leak that caused significant environmental harm to Delhi residents, that the amount of damages granted must be commensurate with the amount and ability of the polluter to pay. In the case of the Bhopal Gas Tragedy<sup>1</sup>, the Apex Court did not follow this test, though.

#### **Injunction**

An injunction is meant to stop ongoing wrongdoing. Sections 37 through 42 of the Special Relief Act of 1963 govern the granting of a perpetual injunction.

#### **Nuisance**

A nuisance is an act that interferes with someone else's pleasure of the air, scent, noise, etc. Stephen defines a nuisance as any action that does not constitute trespassing that is taken to damage or annoy another person's property or tenements.

Nuisance can be divided into two categories:

- Private Nuisance- It is a substantial and unreasonable interference with the use and enjoyment of one's land.

- **Public Nuisance-** It is an unreasonable interference with a general right of the public.

### **Trespass**

It means intentional or negligent direct interference with personal or proprietary rights without lawful excuses.

The two important requirements for trespass are:

- 1) There must be an intentional or negligent interference with personal or proprietary rights.
- 2) The interference with the personal or proprietary rights must be direct rather than consequential.

### **Negligence**

It connotes failure to exercise the care that a reasonably prudent person would exercise in like circumstances.

### **Strict Liability**

The rule enunciated in *Rylands v. Fletcher* by Blackburn J. is that the person who for his own purpose brings on his land and collects and keeps there anything likely to be a mischief, if it escapes, must keep it at its peril, and if he does not do so is prima facie even though, he will be answerable for all the damage which is the natural consequence of its escape. The doctrine of strict liability has considerable utility in environmental pollution cases especially cases dealing with the harm caused by the leakage of hazardous substances<sup>2</sup>.

### **Some remarkable principles and doctrines propounded by the Indian judiciary:**

#### **1. Doctrine Of Absolute Liability**

THE BHOPAL CASE: *Union Carbide Corporation v. Union Of India*<sup>3</sup>

In this instance, the court decided that if a business engages in an activity that is inherently hazardous or dangerous and someone is harmed as a result of an accident occurring during the operation of such a dangerous or naturally unsafe movement- such as the escape of poisonous gas- the business is fully and strictly required to compensate each and every person affected by the accident. This risk is not exempt from liability. As a result, the Supreme Court established a new precedent for absolute liability with no exceptions.

#### **2. Polluter Pays Principle**

"If anyone intentionally spoils the water of another... let him not only pay damages, but purify the stream or cistern which contains the water..." – Plato

Polluter Pays Principle has become a very popular concept lately. 'If you make a mess, it's your duty to clean it up' - this is the fundamental basis of this slogan. It should be noted that the "polluter pays principle" in environmental law does not imply "fault." Rather, it advocates for a remedial approach that focuses on restoring natural damage. International environmental law has a regulation that states that the party who pollutes must pay for any harm or damage done to the environment.

Vellore Citizen's Welfare Forum v. Union of India<sup>4</sup>

According to the Supreme Court, the polluter pays principle is a crucial component of sustainable development.

### **3. Precautionary Principle**

The Supreme Court of India, in Vellore Citizens Forum Case, developed the following three concepts for the precautionary principle:

- (i) Environmental measures must anticipate, prevent and attack the causes of environmental degradation
- (ii) Lack of scientific certainty should not be used as a reason for postponing measures
- (iii) Onus of proof is on the actor to show that his action is benign

### **4. Public Trust Doctrine**

The foundation of the public trust doctrine is the idea that some resources, such as the sea, air, water, and forests, are so vital to humanity as a whole that it would be completely irrational to turn them over to private ownership.

M.C.Mehta v. Kamal Nath and Others<sup>5</sup>

The public trust doctrine, as discussed by court in this judgment is a part of the law of the land.

### **5. Doctrine Of Sustainable Development**

The notion of sustainable development is emphasized in the World Commission on Environment and Development (WCED) report, which is well-known as the "Brundtland Report," after

the commission chairman, Ms. GH Brundtland. As per Brundtland Report, sustainable development signifies "development that meets the needs of the present without compromising the ability of the future generations to meet their own needs"<sup>6</sup>. There is a need for the courts to strike a balance between development and environment.

#### Rural Litigation and Entitlement Kendra v. State of UP<sup>7</sup>

The court addressed the topic of development and the environment for the first time, ruling that it is important to never forget that these resources are the inexhaustible resources of humankind and should not be used up in a single generation.

#### Vellore Citizen's Welfare Forum<sup>8</sup>

In this instance, the Supreme Court noted that sustainable development has gained acceptance as a workable idea to end poverty and raise living standards while respecting the carrying capacity of the underlying ecosystem.

#### **The Supreme Court of India has adopted the Sustainable Development principles:**

The idea of sustainable development is not new; throughout history, numerous nations have understood how crucial it is to strike a balance between the environment, society, and economy. This idea of a worldwide industrial and information society in the twenty-first century has never been expressed before. According to the Brundtland Report, sustainable development might mean different things to different people.

"Sustainable Development is a development that meets the needs of the present without compromising the ability of future generations to meet their own needs."

Raising living standards for all people on the planet without endangering the environment's capacity to provide for them is the main goal of sustainable development. To achieve this, we must recognize that our actions have consequences and devise creative solutions to alter institutional structures and individual behaviour; in other words, we must act and modify practices, policies, and institutional frameworks at all levels.

According to the Indian Supreme Court, environmental awareness increased during the United Nations Conference on Human Environment. In addition, the concept of "sustainable development" was originally introduced at the Stockholm Conference in 1972 and is currently acknowledged as a component of customary international law.

The following sustainable development concepts are recognized by the Supreme Court of India. Sustainable development is described as an initiative or plan for long-term social and economic advancement without endangering the environment or the natural resources that are essential to development and ongoing activity.

**1. Inter-general equity consists of:** – “Right development must be accomplished so that equality meets developmental and environmental demands to current generations,” says Principle 3 of the Rio de Janeiro Declaration. The Indian Supreme Court upheld this strategy in the case of *Bombay Dyeing & Mfg. Co. Ltd. vs. Bombay Environmental Action Group*. The main objective of the idea is to prevent the current generation from abusing non-renewable resources so as to deny future generations their advantages.

**2. The Precautionary Principle is as follows:** – “In order to conserve the environment, the precautionary approach shall be extensively adopted by States according to their capacities,” says Principle 15 of the Rio de Janeiro Declaration. “Lack of full scientific certainty shall not be used as an excuse to postpone cost-effective steps to avoid environmental degradation where there is a threat of catastrophic or permanent damage.” The Indian Supreme Court accepted this strategy in a modified form, explaining that it gave rise to the burden of proof concept in environmental cases, where those wishing to alter the status quo must provide evidence that the proposed actions will not have a negative impact.

**3. Principle 16 of the Rio Declaration:** states that “national authorities should endeavour to promote the internationalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard for the public interest and without distorting international trade and investment.” It is obvious from the preceding note that the intention behind the above notion is to make polluters pay for both the costs of ecosystem rehabilitation as well as victim compensation.

**The Indian Judiciary’s Crucial Role in Interpreting laws to suit the Doctrine of Sustainable Development:**

The Sustainable Development Doctrine has been largely upheld by the Indian Supreme Court and High Courts. India has passed a number of regulations to prevent environmental degradation. The higher court in this instance has been instrumental in interpreting those legislation in a way that aligns with the Sustainable Development Doctrine.

In order to preserve the planet's and India's healthy flora and fauna, sustainable development and the growth of public and private enterprise must be achieved with the least amount of permanent environmental harm possible. This is where the Indian judiciary has played a critical role. It should be noted that, in accordance with Article 32 or Article 226 of the Indian Constitution, Public Interest Litigation (PIL) has been used to bring all environmental disputes before the court.

The Indian Supreme Court has done a great deal to save the environment, ecology, and wildlife living in forests, among other things. The court has been crucial in this sense, despite its narrow jurisdiction. While there are plenty of environmental legislation in place, the administration is ultimately responsible for enforcing them, therefore the most crucial element of environmental preservation is competent governance free from corruption.

### **Court verdicts pertaining to the Environmental Protection:**

There are numbers of the following judgments which clearly highlight the active role of judiciary in environmental protection these are follows:

#### **(A) The Right To A Wholesome Environment**

Charan Lal Sahu Cases

The Supreme Court in this case said, the right to life guaranteed by Article 21 of the Constitution includes the right to a wholesome environment.<sup>9</sup>

Damodhar Rao v. S. O. Municipal Corporation Hyderabad

The Court resorted to the Constitutional mandates under Articles 48A and 51A(g) to support this reasoning and went to the extent of stating that environmental pollution would be a violation of the fundamental right to life and personal liberty as enshrined in **Article 21** of the Constitution<sup>10</sup>.

#### **(B) Public Nuisance: The Judicial Response**

Ratlam Municipal Council v. Vardhichand<sup>11</sup>



The judgment of the Supreme Court in instant case is a landmark in the history of judicial activism in upholding the social justice component of the rule of law by fixing liability on statutory authorities to discharge their legal obligation to the people in abating public nuisance and making the environmental pollution free even if there is a budgetary constraints., **J. Krishna Iyer** observed that, "social justice is due to and therefore the people must be able to trigger off the jurisdiction vested for their benefit to any public functioning." Thus he recognized PIL as a Constitutional obligation of the courts.

### **(C) Judicial Relief Encompasses Compensation To Victims**

Delhi gas leak case: *M.C. Mehta v. Union of India*<sup>12</sup>,

In instant case, the Supreme Court laid down two important principles of law:

- 1) The power of the Supreme Court to grant remedial relief for a proved infringement of a fundamental right (in case of Article 21) includes the power to award compensation.
- 2) The judgment opened a new frontier in the Indian jurisprudence by introducing a new "no fault" liability standard (absolute liability) for industries engaged in hazardous activities which has brought about radical changes in the liability and compensation laws in India. The new standard makes hazardous industries absolutely liable from the harm resulting from its activities.

### **(D) Fundamental Right To Water**

The fundamental right to water has evolved in India, not through legislative action but through judicial interpretation. 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"<sup>13</sup>.

Right to Breath is guaranteed by protection and improvement of the environment and safeguarding forests and Wildlife as spelt out vide Article 48-A of Constitution. The Supreme Court stressed the importance of this right by protection of the environment and when read with Articles 51- A (g), 14 and 21 the following conclusions were drawn by the Municipal Corp.

of Greater Bombay v. Advance Builders (India) P. Ltd. 1972<sup>14</sup> AIR 1955 SC 170 299 Supreme Court in Subhash v. State of Bihar<sup>15</sup>, Satish v. State of U.P. and Tarun Bharat v. Union of India.<sup>16</sup>

(i) It is a constitutional duty not only of the State but also of every citizen to protect and improve the environment and natural resources of the country.

(ii) Though neither Article 48 (A) nor 51-A is judicially enforceable by itself, it becomes enforceable through the expanded interpretations of Article 21, so that in case of failure of the foregoing duties, the Supreme Court or the High Court would entertain a petition under Article 32 or 226 as a public interest: litigation brought by an individual or institution in the locality or any social action group even by a letter. However a cautious approach to the Public Interest Litigation (PIL) was suggested by the Court.

Expanding the horizons of pollution control activities the Supreme Court in Rural Litigation and Entitlement Kendra, Dehradun v. State of UP<sup>17</sup> has discussed the issues of ecological equilibrium, environmental protection and adverse impact of operation of limestone quarries. In this case the Supreme Court while affirming the closure of limestone quarries observed that the closure is a price that has to be paid for protecting and safeguarding the right of the people to live in a healthy environment and minimal disturbance of ecological balance and without avoidable hazards to them and to their cattle, homes and agricultural land and purity of air, water and environment.

The Supreme Court has also been developing innovative strategies and tactics to preserve and safeguard the environment in recent years. The Indian ecology is reviving thanks to the audacious and clear rulings made by activist courts. We anticipate more and more environmentally beneficial decisions because environmental protection and conservation are ongoing processes rather than one-time events.

### **Conclusion and Suggestions**

Development and the environment are two sides of the same coin, and none can be given up for the other. However, both are equally crucial to a better future for us. The Supreme Court and the High Courts must proceed extremely cautiously in handling these cases in order to achieve our objective of leaving our future generations with a developed nation free of pollution.

The industry's location is another issue that has to be addressed. In light of the well-being and health of the local population, it is advised that hazardous industries be located far from densely populated areas or close to colonies. It relates to Articles 48A and 51A of the Directives Principles of State Policy (g).

The concept of "sustainable development," which emphasizes that the right to development should not have a negative influence on the potential of natural resources, is another important topic that we have always kept in mind: resource management.

Since the majority of environmental cases heard by the Supreme Court are the result of Public Interest Litigation (PIL) under Articles 32 and 226 of the Indian Constitution, PILs have also been crucial in protecting the environment.

The World Commission on Environment and Development observes, "What is required is a new approach in which all nations aim at a type of development that integrates production with resource conservation and enhancement, and that links both to the provision for all of an adequate livelihood base and equitable access to resources."

Sometimes it is discovered that these industries, businesses, or trades are conducted in a way that jeopardizes aquatic life, vegetation cover, animals, and human health. However, we now know that no trade or business that endangers humans or the environment may continue operating under the guise of a fundamental right. Given this, all we can do is hope that the court would embrace a sustainable development policy and so play a crucial role in both preserving the environment and supporting India's economic development.

**There are some recommendations which need to be considered:**

- **Public Awareness:** The fourth pillar of the popular government in India is the media. It has a remarkably important and persuasive role in the nation's overall development. The various trials that the media has directed just by publishing them in its media demonstrate the impact of the media. Therefore, increasing mindfulness among the general public can help address the problem of environmental contamination, of which the media plays a crucial role. In addition to influencing people's minds, the persuasive agency of communication can help people

create positive attitudes and ideas that will help conserve the environment.

- **Regular Inspection:** A standard review apparatus is necessary, one that is capable of routinely inspecting and examining any exercise that poses a hazard to the environment. Given that prevention is preferable to treatment, this would be a fruitful step in the direction of environmental conservation.
- **Environmental Education:** Any law is useless unless it is successfully and effectively implemented, and public knowledge is a prerequisite for successful implementation. As such, it is imperative that appropriate awareness be maintained. The Apex Court further upholds this argument in the case of *M.C. Mehta v. Union of India*. In this instance, the court ordered that the Union Government issue directives to all State governments and Union territories, requiring them to use their authority to impose as a prerequisite for license on all movie theaters, the mandatory display of at least two slides or environmental messages at no cost during each show. Moreover, Law Commission of India in its 186th report made a proposal for the constitution of the environment court<sup>18</sup>. Hence, there is an urgent need to strengthen the hands of judiciary by making separate environmental courts, with a professional judge to manage the environment cases/criminal acts, so that the judiciary can perform its part more viably.<sup>19</sup>

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