



# An Over View On Role Of Indian Judiciary In Environment Protection

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**Abstract**--The day by day degrading environment is the prime concern of the world and the governments and different systems are taking initiative to tackle the everlasting problem climate change. Various policies, agreements and laws were formulated to deal with the problem. In Indian constitution there are provisions to protect the environment and the Indian judiciary, the custodian of constitution, has been giving beacon light for implementation of such valuable provisions of law in a sensitive manner. Judicial Chronology is full of landmark decisions, which embarked upon that Right to life far exceeds mere breathing and walking and developed Environment Jurisprudence. Judiciary plays the vital role in the protection of environment. One of the main developments in the Indian Judiciary is the Public Interest Litigation (PIL). The Supreme Court and the High Courts have been entertaining environmental petitions under Articles 32 and 226 of the Indian Constitution as constituting violation of Article 21. While entertaining environmental litigations by environmental NGOs and enlightened public figures, these courts have passed landmark judgments, thereby forcing public bodies to take action on burning environmental issues.

**Keywords:** Indian judiciary, environment, protection, landmark judgments

## INTRODUCTION

It is a basic right of all to live in a healthy environment, as guaranteed under United Nations Declaration on Human Rights at International level and by constitution of India, at National level under Article 21. Environment pollution consists of five kinds of pollution namely; air, water, soil, noise and light weight. The depletion of ozone layer and global warming (Green House Effect) is one of the major problems before the present generation.<sup>1</sup> Indian constitution is perhaps one of the rare constitutions of the world which contains specific provision relating to environment protection. It puts duty on the State<sup>2</sup> as well as on citizens<sup>3</sup> to protect and improve the environment. The Indian judiciary has made extensive use of these constitutional provisions and developed a new “environmental jurisprudence” in India (Jaswal and Jaswal, 2014).<sup>4</sup>

## ROLE OF INDIAN JUDICIARY

There are around 500 Central and State statues which have at least some concern with environmental protection, either directly or indirectly. Besides that, the common law and Constitutional remedies relating to environmental protection are also there. So India has a rich and well developed environmental law.<sup>5</sup> But the main problem lies in their implementation so the role Indian judiciary becomes important. The first initiative to recognise the right to live in healthy environment as a part of Article 21 was evident from the case of *R.L and E. Kendra, Dehradun v. State of U.P.*<sup>6</sup> In *M.C Mehta v. Union of India*,<sup>7</sup> (Oleum Gas Leakage case), the Supreme Court once again impliedly treated the right to live in pollution free environment as a part of fundamental right to life under Article 21 of the constitution. In *A.P. Pollution Control Board (II) v. Prof. M.V Nayadu*,<sup>8</sup> our Supreme Court held that in today ‘emerging jurisprudence’ environmental rights which encompass a group of collective rights, are described as “Third Generation Rights”. In *Research Foundation For Science Technology National Resource Policy v. Union of India*,<sup>9</sup> the Supreme Court clearly laid down that right to information and community participation (right to know as implied in article 21) necessary for protection of environment and human health is an inalienable part of article 21 which is also followed by accepted environment principles. So it is the duty of the government and the authorities to encourage the public participation by formulating the necessary programmes. In *M.C. Mehta v. Union of India*<sup>10</sup> (CNG case) the court observed that Articles 39(e), 47, 48-A by themselves and collectively cast a duty on the State to secure the health of the people, improve public health and protect and improve the environment. Indian judiciary has been playing a very important role from 1972 UN Conference on Human Environment at Stockholm to Paris conference on environmental issues in their incorporation in Indian



system. In *Vellore Citizens Welfare Forum v. Union of India*<sup>11</sup> the Supreme Court held that it is an accepted proposition of law that the rules of customary International law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. In *N.D. Jayal v. Union of India*<sup>12</sup> Supreme Court held that India is a signatory to various international agreements and like understandings in the field of environment, important principles like “the precautionary principle,” has become a part of domestic law, i.e. the Environment (Protection) Act, 1986. In *L.K. Koolwal v. State*<sup>13</sup>, Rajasthan High Court held that it is the requirement of time that we should be real citizens of the country striving towards excellence in all sphere of individual and collective activity including the protection of environment.

In general environmental law provides for a system of regulation by statutes. But in India, most of the environmental jurisprudence has been developed by our higher judiciary through writ jurisdiction. Judicial activism and the development of the concept of public interest litigation under the writ jurisdiction of higher judiciary brought a dynamic change in procedural jurisdiction and it played a pivotal role in developing and providing impetus to environmental jurisprudence with Human Rights perspective. In *M.C. Metha v. Union of India*<sup>14</sup> the court encouraged environmentalist by awarding rewards and discouraged the access to writ jurisdiction for satisfying personal grudge rivalry. Our judiciary evolved the concept of environmental jurisprudence by using the constitutional provision. The courts have not only spreading public awareness regarding environmental issues but at the same time bring about an urgency in executive lethargy, if any, particularly in cases involving environmental issues.<sup>15</sup>

In *State of HP v. Ganesh Wood Products*,<sup>16</sup> the Supreme Court relied upon the National Forest Policy and the State Forest Policy of Himachal Pradesh to invalidate a decision taken by the State industrial project authority. It was held that the policy of “economic liberalization” has to be understood in the light of the National Forest Policy and forest laws enacted by the government. In 1987, shortly after the Bhopal gas tragedy and the Supreme Court’s ruling in the *Shriram Gas Leak Case*,<sup>17</sup> the 1987 amendment to the Factories Act introduced special provisions on hazardous industrial activities. The amendment empowers the states to appoint site appraisal committees to advice on the initial location of factories using hazardous processes. The occupier of every hazardous unit must disclose to her workers the Factory Inspector the local authority and the general public in the vicinity all particulars regarding health hazards at the factory, and the preventive measures taken. In *Vellore Citizens Welfare Forum v. Union of India* (popularly known as T. N. Tanneries Case)<sup>18</sup> (See also *S. Jagannath v. Union of India*),<sup>19</sup> the Supreme Court directed the Central Government to constitute authority under section 3(3) of the EPA. The Central Government accordingly constituted the “Loss of Ecology (Prevention and Payment of Compensation) Authority”<sup>20</sup> for the state of Tamil Nadu which was also conferred with the power to implement the polluter pays principle and the precautionary principle. The Central Government has constituted the “Environment Impact Assessment for the National Capital Region”<sup>21</sup> and the “Environment Pollution (Prevention and control) Authority for the National Capital Region”.<sup>22</sup> In *Indian Council for Enviro-Legal Action v. UOI*<sup>23</sup> the Supreme Court observed that “the head of several units/agencies should be made personally accountable for any lapse and/or negligence on the part of their units/agencies”.

In *Vellore Citizens’ Welfare Forum v. Union of India Case*<sup>24</sup>, the Supreme Court made a request to the Chief Justice of the Madras High Court to constitute a special bench - a ‘green bench’ to deal with cases on environmental matters, as is done in Calcutta, Madhya Pradesh, and Punjab and Haryana High Courts. In *Indian Council for Enviro-Legal Action v. Union of India* (Coastal Protection Case),<sup>25</sup> the apex court suggested that environmental matters should first be raised before the High Court having the territorial jurisdiction over the areas in question. In *Indian Council for Enviro-Legal Action v. Union of India*,<sup>26</sup> the apex court again reiterated the need for creating environmental courts “to deal with all matters, civil and criminal, relating to the environment” (in view of the fact that procedure in ordinary courts takes a long time and thus defeat the very purpose of granting the relief). According to the court, such courts should be managed by legally trained persons/judicial officers and should be



allowed to adopt summary proceedings. In *A.P. Pollution Control Board v. M.V. Nayudu*<sup>27</sup> case the Supreme Court again expressed the need for the establishment of environmental courts consisting of judicial and scientific expertise

In *People United for Better Living in Calcutta v. State of W.B.*<sup>28</sup> the court observed that “While it is true that in a developing country there shall have to be developments, but that development shall have to be in closest possible harmony with the environment, as otherwise there would be development but no environment, which would result in total devastation (Sustainable development.).

In *Manoj Mishra v. Union of India and others*<sup>29</sup> case the NGT said that the health of Yamuna will be affected by the proposed recreational facilities on the river. The NGT also recommended the Government to declare a 52 km stretch of the Yamuna in Delhi and Uttar Pradesh as a conservation zone.

The National Green Tribunal has cancelled the clearance given by the then Union Environment and Forests Minister, Jairam Ramesh, to the Parsa East and Kante-Basan captive coal blocks in the Hasdeo-Arand forests of Chhattisgarh, overruling the statutory Forest Advisory Committee (*SudiepShrivastava v. Union of India and others*).<sup>30</sup>

#### CONCLUSION

Indian judiciary is also playing dynamic role in this movement. But all these effort still seems ineffective. The main problem lies in the implementation of these laws and same view is expressed by the judiciary also. At same time it is essential that the people should be aware of the adverse effects of environmental pollution and they should not only protect and improve the environment but also ensure the compliance of anti pollution laws and if need be to take help of judicial system to ensure effective enforcement of such laws.

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- <sup>9</sup>(2005) 10 SCC 5 10 at 532.
- <sup>10</sup>(2002) 4 SCC. 356.
- <sup>11</sup>(1996) 5 SCC 647 at 660.
- <sup>12</sup>(2004) 9 SCC 362 at 414-15. (per Dharmadhikari, j)
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