



## **Judicial Activism in India to Protect the Environment and its Sustainability**

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### **ABSTRACT**

*In post-independence era the protection and preservation of environment was not given much importance, the main concern at that time was the growth in industrialization and to set up new markets and to create new jobs for the people of the country. However, after certain incidents happened in the country especially after the poignant occurrence of the Bhopal Gas Tragedy, laws and regulations related to environment became the utmost priority. The need was felt to have proper laws and regulations to protect and preserve the eco system of the country. The environment conservation is utterly important for the humanity and for the generations to come. Though, Indian legislature has applied almost all international instruments related to environment protection either in the form of law or policy but the country has its own restrictions because of its socioeconomic structure. And looking to the rapid growth in urbanization, industrialization, mechanization, population growth and other elements they all are ponderously degrading the environment and the natural resources. Article 21 of the Constitution of India provides right to have a pollution free environment to every citizen of the country and due to the rapid deterioration of environment this basic fundamental right gets violated. Therefore, to curb the environment degradation and to ensure a healthy environment to all the citizens the judiciary of the country emerges as a custodian and numerous celebrated judgements have been delivered by it in this direction. The present paper aims to analyse the role of Indian judiciary in protecting the environment and conserving its sustainability.*

**Keywords:** Environment, Protection, Constitution, Industrialization, Pollution, Sustainability.

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### **INTRODUCTION**

The world is rapidly changing with the advancement and progress of humankind. This growth has led to the urbanization, industrialization, deforestation, soil explosion, depletion of natural resources and degradation of environment and various kinds of environment pollution. Due to all these environmental issues life on the earth has become uninhabitable and unendurable for all the species. A balanced environment is required for the very existence of survival of life on the earth but in the race of development human beings are causing great threat to the nature and creating global crisis. Homo sapiens should remember that growth and development of the country must be done in a sustainable manner looking to the environmental problems which are getting worse every day.

The Constitution of India which is considered as the supreme law of the country itself declares that every person has a right to live in a pollution free and healthy environment. Economic and social growth of the country cannot be undermined but at the same time we should not exploit the natural resources in an unreasonable and absurd manner but rather sustainable development should be opted so that the future generation can also reap the benefits of natural resources. The concept of sustainable development was originated in the Stockholm Declaration in 1972 in which 113 countries participated so that an effective international legislation on environment protection could be formed and the signing countries would be under obligation to adopt the legislation in their country to preserve and protect the environment.

India being one of the signatory countries of this convention was under obligation to apply the agreement and the legislature and executive were given task to execute the convention. Though sufficient laws have been passed by the parliament but they could not be executed properly then came the judiciary of the country as a savior of the environment and mankind. The judiciary in every case relating to environment ensures that a pollution free environment is a fundamental right of every person and it has left no stone unturned in protecting the natural resources and to provide clean air and water to the people by passing

various landmark judgments and setting different principles which proved to be the crucial in harnessing sustainable development.

The paper attempts to analyse the role of Indian judiciary in protecting and preserving the environment and to ensure that the economic and social growth should be done in a sustainable manner.

### **PRINCIPLES AND DOCTRINES ESTABLISHED BY THE JUDICIARY**

Various doctrines have been established by the higher judiciary of the country in order to protect the environment and these doctrines have played an important role in maintaining the eco system of the country. Where the law is not sufficient and there is a vacuum of a proper law then judiciary never hesitate in stepping into the role of legislature and pass a proper doctrine so that the gap can be filled until the nation has a proper law on that. Article 253 of the Constitution of India provides that the international treaties and agreements in which India is a signatory authority should be incorporated in Indian legal system and judiciary is playing a very crucial role by evolving relevant theories time to time. Some of the doctrine established by the Supreme Court to prevent environmental pollution are discussed here:

1. **PUBLIC TRUST DOCTRINE:** this doctrine is a common law jurisprudence and according to it the State is a guardian of natural resources and these resources should be made reasonably available to the public but these resources can never be converted into a private property. State is under an obligation to maintain and preserve these resources. The doctrine was evolved in the case of *MC Mehta v Kamal Nath* [1], in this case the Apex court of the country applied the doctrine for the first time and held that the natural resources of the country such as air, water, sea forests etc hold great value to the people, they are of utmost importance to sustain on this planet and they cannot be made subject of private ownership. This is an absolute State's duty to use these resources very wisely and diligently.
2. **SUSTAINABLE DEVELOPMENT DOCTRINE:** Environmental pollution and degradation has become a major problem these days. Rapid growth in industrialization and urbanization has led to serious threat to the environment globally. For the economic and social growth of the country establishment and existence of industries and factories and other entities are required but at the same time they are posing great threat to the environment. Development and environment protection have become two conflicting interests. Financial stability and social growth of the country depends on the growth of industries but at the same time they are causing irreparable injury to the ecosystem. Therefore, harmony must be maintained in these two concepts. It is a big challenge for the judiciary to take these two things together. In *Vellore Citizens Welfare Forum v Union of India* [2] the Supreme Court held that the age old concept that development and ecology cannot go together has become obsolete now and the answer to this is sustainable development. Sustainable development means that the present generation should use the natural resources reasonably so that the future generation can also enjoy the fruits of the nature. It is basically maintaining a proper balance between development and environment.
3. **POLLUTER PAYS PRINCIPLE:** The principle was evolved in Europe and according to it the person who is liable to cause pollution has to pay the compensation for the damage caused to the victims of the pollution. It was applied by the Supreme Court for the first time in the case of *Indian Council for enviro Legal Action v Union of India* [3] and further applied in the case of *M C Mehta v Union of India* [4]. The judgment is significant because it laid down the principle of absolute liability on the industries and enterprises involved in inherently dangerous and hazardous activities. It was held that it is an absolute responsibility of the industries carrying hazardous activities to pay compensation to the victims if they cause any damage to them.
4. **PRECAUTIONARY PRINCIPLE:** this doctrine is based on the concept of social responsibility that everyone owes an obligation towards the society that he/she should not be involved in the activities which can cause any kind of harm to anyone and every possible precaution should be taken by the person carrying out such activities and the burden of proof lies on that person only who has caused pollution that he had taken every possible effort to avoid the accident. In *Vijaynagar Education Trust v Karnataka State Pollution Control Board, Karnataka* [5] the Karnataka High Court affirms that the Precautionary Principle is now an integral part of the Constitutional Mandate for maintaining and preserving the environment of the country.

### **THE LANDMARK JUDGMENTS PASSED BY THE JUDICIARY TO PROTECT THE ENVIRONMENT**

Post-independence the Supreme Court has emerged as a savior when it comes to protecting the Fundamental Rights of the citizens. Pollution free environment for a quality life is now been declared as a fundamental right of every citizen under Article 21 of the Constitution of India by the higher judiciary of

the country in ample of cases. Article 21 provides right to life to every person residing in this country and the term life implies not merely the physical existence of a human being but right to live with respect and dignity. The Stockholm Conference on Environment Protection in 1972 further strengthens the environmental laws mechanism in the country. The conference led to the insertion of various provisions in the Constitution of India which impose an obligation on the State and the Citizens to protect the environment.

The rise in filing Public Interest Litigations has also played a vital role in addressing the issues of environmental pollution which has been very aptly handled by our judiciary. Some important cases are:

M C Mehta v Union of India [6], popularly known as the Shriram Fertilizers Industries Case, in this case the Court had passed injunction order against the factories which are causing environmental pollution because of the leakage of poisonous gases in the air which were adversely affecting the health and life of the workers and the persons who are living nearby those factories. The Supreme Court held that it is a well-established fact now that pollution free environment is a fundamental right of every citizen under Article 21 of the Constitution and it can't be denied to them at any cost and it imposed penalty on the owners of the factories and ordered them to pay reasonable compensation to the affected persons.

Ratlam Municipality v Vardhichand [7] in this an Alcohol plant was releasing untreated wastes which was causing unbearable odour and increasing mosquito breeding was ordered by the court to be closed down and fined and the judges asked the factories owners that they should also keep the welfare of the society in their mind and should not make excuses like lack of funds because they also have the onus to maintain the environment and preserve the natural resources of the country.

Vincent Panikulangara v Union of India [8] this case was brought before the court against the using of harmful drugs in the government hospital which were proving fatal for the people who were consuming it and its production process was also causing serious damage to the environment.

Union Carbide of India v Union of India [9], this is also known as Bhopal Gas Tragedy Case. The principle of absolute liability was evolved in this case and the enterprise was held responsible for each and every individual who got affected by the leakage of gas.

M C Mehta v Union of India [10], a PIL was filed in this causing serious concern for Taj Mahal turning into yellow marble due to the pollutants and acid rain coming from the industries being set up in proximity of the monument. In this case the Supreme Court evolved the doctrine of Precautionary Principle and also ordered the shifting of all manufacturing units 20 kms away from the historical monument to any other place to slow down the pollution process.

## CONCLUSION

Sustainable development of the country is the need of today's time. For the economic growth and financial stability of the country the development of industries is utterly required but at the same time these industries are causing immense harm to the environment and making the earth less livable for all the living beings. There is a requirement to maintain a fine balance between the growth and environment protection and Judiciary has come out with the solution in the form of sustainable development. The idea of sustainable development is to use the natural resources in a way to satisfy the needs of the present generation and simultaneously preserve them for the future generations as well. The Apex Court of the country has very well applied the concept of sustainable development in ample of cases and declares it every time that this has to be observed by every individual and industries who are involved in the process of causing any kind of environmental pollution. The Supreme Court has very well justified its role in maintaining the environment and preserving the natural resources of the country even when the country is lacking in stringent environmental laws and their proper execution.

## CONFLICT OF INTEREST

The authors declare that they have no conflict of interest.

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