

# Role of Judiciary in Protection of Environment in India

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## ABSTRACT

Protection and preservation of the environment has become integral to the cultural and religious ethos of most of the human communities. Nature has been venerated by ancient Hindus, Greeks, native Americans and other religions around the world. They worship all forms of nature believing that it has the spirit of God. According to Hinduism Earth is our mother and we are all her children. So the concept of environment protection and preservation is not modern. It can be seen from the period of Vedas. It is the duty of every individual in our society to protect nature and the term nature includes land, water, trees and animals which are of great significance to us.

**Keywords:** Spirit of God, Hinduism Earth, Industrialization, Environment Protection.

## I. INTRODUCTION

Industrial development is considered to be essential for economic growth and development. It is a common practice that the process of industrialization is based on maximum use of natural resources. However, the process of industrialization exploits the natural resources and violates the ecological equilibrium which results in issues like global warming, climate change, acid rain etc. Indian legislature has made a number of legislation which proves failure and disappointment and passing new bills consistently is just old wine in new bottle. In recent years' higher judiciary plays an important role in monitoring the implementation of measures for pollution control, conservation of forest and wildlife protection.

### Meaning of Environment

According to the Webster Dictionary Environment is, 'Aggregate of all external condition and influences affecting the life and development of an organism.'

According to Justice P.N Bhagwati, the term Environment refers to all condition within and around an organism which affect the behavior, growth and development or life processes directly or indirectly. It includes the conditions with which the organisms interact.

The Environment (protection)Act 1986 Section 2(a) environment includes water, air and land and the inter relationship which exists among and between water, air and land and human beings, other living creature, plants, microorganisms and property

### Constitutional Aspect on Environmental Law

Initially Constitution of India has no direct provision for environmental protection. global consciousness for the protection of environment in the Seventies, Stockholm Conference and increasing awareness of the environmental crisis prompted the Indian government to enact 42<sup>nd</sup> amendment to the Constitution in 1966. The 42<sup>nd</sup> amendment added Article 48(A) to the Directive Principles of State Policies and Art.51(A)(g) to the fundamental duties.

Article 48-A of the constitution says that “the State shall endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country. Article 51-A(g), says that “it shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creature.”

In **Sachidanand Pandey vs State of West Bengal**, the Supreme Court held that “Whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48(a) and Article 51-(A)(g)

### Remarkable Principles and Doctrines Propounded by Indian Judiciary

In the case of **Subash Kumar vs State of Bihar**, the Supreme Court of India recognized water and air are inalienable part of life under Article-21 of the constitution of India. This was the first time of the constitutional interpretation for protection of healthy environment for life

#### 1. Doctrine of Absolute Liability

In **M.C Mehta vs Union of India** the principle of absolute liability was developed by the supreme court,” Where an industrial unit is engaged in a hazardous or naturally unsafe activities and harm results to anyone on account of an accident in the operation of such hazardous or naturally unsafe activities resulting. for example, in escape of toxic gas the industrial unit is strictly an absolutely liable to compensate to all those who are affected by the accident.

#### 2. Polluter Pays Principle

The principle of polluter pay was propounded by the Supreme Court of India in the following cases

- a. **Indian Council for Enviro-legal Action Vs Union of India** the Court held that, ‘once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to

make good the laws caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity.

- b. **Vellore Citizen’s Welfare Forum Vs Union of India**, the Court interpreted the meaning of polluter pay principle as the absolute liability for harm to the environment extends not only to compensate the victims of the pollution but also the cost resorting the environmental degradation.
- c. **M.C Mehta vs Union of India (the oleum gas leak case)** the court held that the enterprise engaged in hazardous or dangerous or dangerous industry which poses a potential threat to health and safety of person working in the factory and those residing in the surrounding areas is absolutely liable to compensate for such harm and irrespective of all reasonable care taken on his account

#### 3. Precautionary Principle

In **A.P Control Board Vs M.P Nayudu and Others**, the Court relied upon precautionary principle and explained that the environmental harm and taking measures to avoid it or to choose least environmentally harmful activity

#### 4. Public Trust Doctrine

- a. In **M.C Mehta vs Kamal Nath**, an attempt was made to divert flow of a river for augmentation facilities at a motel. It was held that State and its instrumentalities as trustees have a duty to protect and preserve natural resources
- b. **M. I. Builders Pvt. Ltd vs Radhey Shyam Sahu** the Court asks a city development authority to dismantle an underground market build beneath garden of historical importance

#### 5. Public nuisance

- a. In **Ratlam Municipal Corporation Vs Vardhichand** the Supreme Court made the use of dormant provisions of Code of Criminal Procedure 1973 as an instrument for resolving pollution problems and for the enforcement of statutory duty

## 6. Doctrine of Sustainable Development

- a. **In Vellore Citizens Welfare Forum**, the Supreme Court observe that sustainable development has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of supporting eco-system.
- b. **Rural Litigation and Entitlement Kendra VS State of UP**, the court held that environment is permanent asset of mankind and not intended to be exhausted in one generations.

- [7]. AIR 1987 SC 965
- [8]. AIR 1980 SC 1622
- [9]. AIR 1996 SC 2715
- [10]. (1996) 5 SCC 281
- [11]. (1997) 1 SCC 388
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## II. CONCLUSION

The Indian judiciary has made several attempts to resolve the conflict between the development and environment .The environmental jurisprudence In India develop through public interest litigation .The Supreme Court has not only played a living role in the implementation of environmental laws but also interpreted right to life under Article-21 to include right to healthy and pollution free environment as fundamental right .Indian judiciary plays remarkable role of protecting and preserving the environment through its various landmark judgements .Environment is the gift of nature and it is duty of every person to conserve the beauty of environment .So environment protection is really a need of hours It is needed to understand the message of Rabindra Nath Tagore's words

**“GIVE US BACK THE FOREST CULTURE AND TAKE BACK THE MODERN CIVILIZATION”**

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