
ENVIRONMENTAL JURISPRUDENCE AND THE ROLE OF INDIAN JUDICIARY

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ABSTRACT

India is facing the environmental issues and resource degradation for many years now. Humans have exploited the nature and its resources to an extent that their quality and quantity has started to degrade. Despite, all the range of resource regulators and measures taken to protect environment, the loss of biodiversity and increased pollution is still a threat to environmental protection. It can be said that Environmentalism is not a fixed concept but, it's always influenced by context. The evolution of Indian legislatures dedicated to protecting environment and nature has marked a rapid evolution over these years. The principle objective of this article is to illustrate the importance of evolution of Environmental Jurisprudence in India. The existence of an era of development and a close relationship between the Indian Judiciary and the needs of Environment. To comprehend the today's modern environmental laws, it is important to understand the past Indian traditions and early environmental policies and their results. During the course of years, there are various landmark judgments by the Judiciary of India that reflects the need to protect environment from the threats and pollution spreading across the globe.

KEYWORDS: Environment, Jurisprudence, Constitution, Principles of Environment, Protection, Environmental Degradation, Fundamental Right

INTRODUCTION TO HISTORY OF ENVIRONMENTAL JURISPRUDENCE

The idea of protection of environment and preserving its existent state is not new to India, the prehistoric civilizations have witnessed it, the archaeological evidences suggest that civilizations as early as Harappa and Mohenjo-Daro had environmental awareness by sense of hygiene and proper sanitation. Under the Arthashastra, the ancient book on economic policies and statecraft also, mentioned punishments for activities like killing animals, cutting down trees and damaging forests. The Ancient India as part of "Artharva Veda", the Hindu Scripture has mentioned environmental protection as duty of every individual to protect environment.

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While, the British India witnessed the legislations like the Fisheries Act, 1897, Wild Birds and Animals Protection Act of 1912 and Bombay Smoke Nuisance Act, 1912 etc.

Whereas, the Indian Constitution constituted in the year 1950, didn't mention any subject of prevention or protection of environment and control of pollution and other threats to environment. But, during the 1960's India was facing troubles with the development and industrialization because of the sudden increase in pollution. And, around 1980's the field of Environmental Law could actually make its place in the Indian Legal System. The Stockholm Declaration that held in the year 1972 was the first conference at global level that was able to pull the attention of the Indian government towards broader narrative of environmental protection. It led to the special environmental laws in India enacted by the Central government.

The National Council for Environmental Policy and Planning established in 1972 evolved to what we know as Ministry of Environment and Forests (MoEF) in the year 1985. Then came the Water (Prevention and Control of Pollution) Act, the Wildlife (Protection) Act, the Forest (Conservation) Act, the Air (Prevention and Control of Pollution) Act etc. They all led to an umbrella legislation known as, the **Environment Protection Act, 1981** that provided single focus on the country's need to protect environment and aimed to correct all loopholes of existing legislations¹. Environment is everything surrounding us and as per the **Section 2 of the Environmental Protection Act, 1986** the term "Environment" is defined as what includes air, land, water and the inter-relationship between all their existence, that includes humans and all other living creatures such as, micro-organisms etc. As, per the **Article 51A(g) of the Indian Constitution**, the protection of environment and maintaining the ecological balance is a fundamental duty and a social obligation for all citizens. The Indian Constitution enshrines it as a duty of the state to "protect and improve the environment". Currently, India has a Central Pollution Control Board at the central level to monitor and prevent the industrial pollution, it is related to the statutory authority of Ministry of Environment and Forests. Whereas, at the state level are the State Pollution Control Boards and the State Departments that are dedicated specifically to environment.

THE FUNDAMENTAL ENVIRONMENTAL PRINCIPLES

¹ <https://cpcb.nic.in/displaypdf.php?id=aG9tZS9lcGEvZXByb3RIY3RfYWw0XzE5ODYucGRm>

Polluter Pays Principle – In the 1972 OECD Council recommendations on principles governing the Environmental policies in the International regime, the principle of Polluter Pays was adopted. It was first officially stated in the year of 1987 in Brundtland Report. Whereas, in India, it adverted by the famous case of **Enviro-legal Action Vs. Union of India**². In this case, any person engaging in inherently dangerous activity or hazardous activity was made responsible to compensate the loss caused to any other person by his activity and the fact that the reasonable care was taken is irrespective.

Precautionary Principle – This principle has its origin from the German term ‘Vorsorgeprinzip’, in the mid-1980’s. In India they were introduced through the case of **Vellore Citizens’ Welfare Forum Vs. Union of India**³, in which the Court declared this principle as a customary law in the country. It was held that in cases where proof of absence of injurious effect is in question, in such environmental cases the burden of proof will lie on those who want to challenge the order and change status quo. It is called the ‘Burden Proof’.

Sustainable Development – As per the Brundtland Report, this term is defined as the development that fulfills the needs of the present generation without compromising on ability of the resources to fulfill the needs of the future generations. The Report emphasized that sustainable development is vital for the economic integration at all stages in country. It ultimately contributes to the improved quality of human existence. It is a way to conserve and promote the socio-economic well-being of the human beingsSciences

Public Trust Doctrine – The Supreme Court of India has accepted the principle of Public Trust Doctrine as an essential tool to protect natural resources of the country. In India, this was marked by the case **M.C. Mehta Vs. Kamal Nath**⁴. In this case, natural resources like forests, rivers, air, sea shores etc. were protected by the state for the purpose of their role in the ecosystem. The State is the trustee and is obligated to take care of natural resources for free of cost and unimpeded use of them by public.

THE ROLE OF INDIAN JUDICIARY IN ENVIRONMENTAL IMPROVEMENT

The most important feature of the Indian environmental law is the vital role played by the Public Interest Litigation (PIL). Majority of the cases in India, relating to environmental issues

² 1996(3) SCC 212

³ 1996(5) SCC 647

⁴ 1997 (1) SCC 388

were brought before the courts ever since 1985 as writ petitions. the famous representative that introduced environmental jurisprudence through PIL's in India is Mr. M.C. Mehta. Over the years, various judgments shared a small role in the development of environmental jurisprudence in the country.

Ganges Pollution Case: In response to the Public interest Litigations, the Supreme court passed several judgments and numerous orders against the industries that were polluting the Ganga Basin and discharging harmful effluents into the water. In result to this, millions of people were protected from the water pollution of the Ganga Basin that covers almost 8 states of the country⁵.

Andhra Pradesh Polluting Industries Case: Nakka Vagu, a source of fresh water in a village that provided water for irrigation and drinking. But, the nearby industries discharged harmful effluents into the stream and didn't comply with the installation of mandatory sewage treatment plan condition for industries. The Supreme Court decided that amount of 20 million will be paid as a compensation to the farmer, who suffered due to the air and water pollution. Further, Court directed the authorities to monitor the installation of devices that control pollution by the polluting industries⁶.

Taj Trapezium Case⁷: This case is a historical judgment that helped in directing the notice of concerned authorities towards environmental damage around Taj Mahal. Several industries around Agra particularly, the iron foundries, Mathura Reinert and glass industries amongst them were given directions by the Supreme Court to ban the use of coal and coke and switch these resources with Compressed Natural Gas (CNG) and to relocate the ones near the monument. Further, special guidelines were issued relating to the directions giving dimension to pollution standards of the relocated industries⁸.

JUDICIAL REMEDIES AVAILABLE FOR ENVIRONMENTAL POLLUTION

⁵ AIR 1987 SC 1086

⁶ (1996) 6 SCC 26

⁷ AIR 1997 SC 734

⁸ <https://lawcorner.in/taj-trapezium-case-m-c-mehta-v-union-of-india-1986/#:~:text=newly%20relocated%20industries,-Conclusion.environmental%20problems%20related%20to%20it>

In India, environmental protection can be availed by filing of writ petition under the High Court and Supreme Court, under the Section 226 and 32 of the Indian Constitution. Besides this, individual can seek for the statutory as well as tortious law remedies.

The remedies under Tort law that are –

- Trespass,
- Strict Liability,
- Negligence and
- Nuisance

Whereas, the Statutory remedies available under –

- The Section 133 of the Criminal Procedure Code, 1973,
- The Section 19 of the Environmental Protection Act, 1986 and
- The Section 268 of the Indian Penal Code, 1860

CONCLUSION

Today, we are living in a world where the harm caused to environment and the threats to its preservation can't be overlooked. The environmental protection is a worldwide concern and is not restricted to any particular territory or nation. Like any other nation, India effectively combined its traditional laws with modern legislations to develop and evolve the sense of environmental protection and preservation of biological natural resources, to prevent degradation. According to the Article 21 of the Indian Constitution, the right to life includes the right to a healthy environment. It has a wider application that extends to a right to healthy, clean and safe environment. And, as a result of many historical landmark judgments by the Indian Judiciary, the issues of ecological balance and preservation of environment have come to a stabilized state. The Human rights like Right to live includes the Right to healthy environment for the citizens. For a healthy environment, it is important to ensure that our surroundings are clean and free from all types of pollution. As, we know flora and fauna have a direct interlink with lives of human beings and are of vital nature for their survival. Various judgments have established the concept of Right to Environment as a Fundamental Right for all. The High Courts and Supreme Court have jurisdiction under Article 226 and 32 of the Indian Constitution to entertain Class Action Suits as a part of public interest litigation and issue writs indicating directions and orders for it.