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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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THE EVOLVING ROLE OF THE INDIAN JUDICIARY IN ADDRESSING THE CLIMATE CHANGE

AUTHORED BY - MS. DISHA*

ABSTRACT

The climate change is one of the major problems of our country and the various reasons for the climate change is, it is due to the burning of the fossil fuels, deforestation, greenhouse gases, industrialization, urbanization, human activities and so on. In India the Parliament has enacted many legislations in order to protect the environment from the pollution and to prevent the environment degradation. In various cases the Supreme Court held that the Article 21 of the Indian Constitution includes the right to enjoyment of pollution free environment. The State shall protect and improve the environment as it is the duty of the State under Article 48A of the Constitution and also it is our duty under Article 51A(g) to protect and improve the natural environment such as forests, lakes, rivers and wildlife. The judiciary of our country plays a significant role in addressing the issues of climate change. The judiciary in interpreting the various cases relating to climate change, tried to emerge many doctrines and principles such as Absolute Liability, Precautionary Principle, Polluter Pays Principle, Public Trust Doctrine, Sustainable development etc. However, there are many challenges are involved in deciding the issues of climate change. This paper tries to highlight the role of the Indian judiciary in addressing the climate change and the major problems involved in addressing the environmental cases and also analysed the previous important cases relating to environment degradation and the judiciaries interpretation on those cases and made an attempt to bring some suggestions that has been found in the area of study.

Key Words: Climate Change, Environment pollution, Indian Judiciary, Supreme Court Cases

* Assistant Professor, SDM Law College, Mangalore

INTRODUCTION

Climate Change refers to the change in the temperature, weather patterns, disrupt ecosystems. It is due to the burning of the fossil fuels, deforestation, industrial activities, human activities, greenhouse gases which makes the changes in the weather and temperature of the earth. The greenhouse gases which release the gases like carbon dioxide, methane in the atmosphere and creates global warming in the environment. Global warming is one of the biggest problems of our country, due to the increases in the greenhouse gases the temperature of the earth increases, which leads to environmental imbalances. The global warming which leads to the consequences like floods, drought, storms, wildfires are becoming common due to the change in the weather and temperature. There are many groups and authorities are trying to slowdown the climate change, they are National Governments, Local Governments, International Organisations, NGOs, Scientists, Researchers, Judiciary and Legal Institutions, Corporations etc. Judiciary is one such organ who are playing major role in the prevention and curing of climate change by interpreting and analysing the environmental laws and also addressing the issues of climate change by bringing the new provisions of environmental laws and also having the power to increase the penalties and punishment for the wrongdoers. Judiciary being the supreme it can protect the vulnerable sections of the society who often suffered by the climate change and can set the legal precedents for the future situations.

CONSTITUTION AND LEGAL FRAMEWORK

Article 14: “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” It provides equality of law and equal protection of law. This fundamental right imposes the duty upon the State Government to be fair while taking action towards the environmental protection and cannot be against article 14. The Government must be fair, transparent and non-arbitrary. If the State acts arbitrarily favouring the corporations or ignoring article 14, then the judiciary can strike down such actions under article 14.¹

M.C. Mehta v. Union of India, 1987 SCR (1) 819, - Oleum Gas Leak Case:

There was a significant gas leak occurred at Shriram Food and Fertiliser industries plant, Delhi leading to public harm and also death of a lawyer due to oleum gas inhalation. M.C Mehta filed

¹ Pooja Kapur, “Constitutional Provisions for Environmental Protection in India” (Ipleaders, 28 June 2019) < <https://blog.ipleaders.in/constitution-environment-provisions/> > accessed on 11.04.2025 at 9 am

the writ petition, seeking the closure of the industries and liability of the enterprises in hazardous activities. The Supreme Court implemented the concept of Absolute liability, holding the enterprises liable for the damage caused by the hazardous activities. Article 14 provides that all the individuals must be treated equally before the law, under this case the right to life and liberty was affected by the gas leak. Here the Judiciary interprets article 14 by protecting the vulnerable groups, affected families, those who may not have equal access to justice or resources. The absolute liability ensures that the law equally applies to all irrespective of the person's background.

A.P. Pollution Control Board v. M.V. Nayudu, AIR 1999 SUPREME COURT 812

M.V. Nayudu owned an industry in Andhra Pradesh and the application for an NOC was rejected by the Andhra Pradesh Pollution Control Board (APPCB) due to environmental concerns. The company appealed the decision under section 28 of the Water Act. Under the appeal the company got the favourable ruling in their favour. And the APPCB challenged the appeal in the Supreme Court. The Supreme Court ruled in favour of APPCB, citing the Precautionary and Polluter Pays Principle. The Supreme Court emphasized that the decision relating to environment protection must be made fairly, non-arbitrarily and with the help of expertise. If it was made arbitrarily or without proper scientific basis then they are violative of Article 14.²

Article 21: “No person shall be deprived of his life or personal liberty except according to procedure established by law.” Incidents like Bhopal gas tragedy, Vishakhapatnam gas tragedy make us realize about the importance of good and healthy environment. Pollution free environment is very important for the healthy life otherwise it will be very difficult for the entire ecology system to survive. The Indian Judiciary interpreted article 21 which exclusively includes the right to clean and healthy environment as an essential part of the right to life. And this interpretation laid the foundation for various environment protection measures through judicial activism.

Subhash Kumar v. State of Bihar, 1991 (1) SCC 598

In this case the Supreme Court expanded the scope of right to life under Article 21 of the Indian

² Anushrijoshi, 'Case Analysis: Andhra Pradesh Pollution Control Board v/s Prof. M.V. Nayudu (Retd)' (Legal Service in India) < <https://legalserviceindia.com/legal/article-17304-case-analysis-andhra-pradesh-pollution-control-board-v-s-prof-m-v-nayudu-ret-d-.html> > accessed on 11.04.25 at 2pm

Constitution. And included the right to pollution free environment and enjoyment of pollution free water and air under Article 21 of the Indian Constitution. This case highlighted judiciary role in protecting the environment and safeguarding the fundamental rights of the individual

M.C Mehta v. Union of India, (Ganga Pollution) AIR 1988 SC 1037

The river Ganga one of the most sacred rivers in India is polluted due to the municipal and industrial discharge, because of this the health of the people affected, which violated the right to life under article 21 of the Indian Constitution. M.C. Mehta, a renowned environmental lawyer filed the public interest litigation under Article 32 of the Indian Constitution for seeking the Supreme Court intervention in the ganga pollution case, particularly focusing the industrial pollution by the tanneries. The Court emphasised that the industries are responsible for the ganga pollution and ordered for the closer of the industries that failed to take pollution control the measures and held that Municipal Corporation are responsible for ensuring that there is no industrial waste was discharged to the river and directed for the setup of sewage treatment plants and to take necessary measures to prevent the pollution.³ The court once again reiterated that the right to life also includes the right to clean and pollution free environment.

Directive Principles of State Policy:

Article 48A: “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.” The Sate shall strive to protect and improve the natural environment including forests, lake, rivers, wildlife and shall aim to preserve natural resources for the future generations., This article also provides the constitutional framework for the State to develop the policy for the protection of the environment.

T.N Godavarman Thirumulpad v. Union of India (1997) 2 SCC 267

T. N Godavarman initiated the petition to the Supreme Court through writ. The Petition was to stop the illegal cutting of the sandalwood forest and about the degradation of forest lands due to various developmental activities. In this case the judiciary have given the broad definition of ‘Forest’ and the court extended the rulings to all the States and Union Territories and imposed the ban on the felling of trees in all forests across India, unless approved by the Central Government as per Forest (Conservation) Act, 1980. The Supreme Court invoked the Public

³Parnika Basak, ‘M.C Mehta V. Union of India (1986): Ganga Pollution Case’ (The Legal Quorum, 21 October 2024) < <https://thelegalquorum.com/m-c-mehta-v-union-of-india-1986-ganga-pollution-case/> >visited on 11.04.25 at 3pm

Trust Doctrine, aligning it with Article 48A, to state that natural resources are held in trust by the State for public purpose.

FUNDAMENTAL DUTIES:

Article 51A (g): "It shall be the 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 creatures." Article 51A(g) of the Indian Constitution plays a significant role in the environment protection by imposing the duty on the citizen and thereby compelling them to protect the environment including forests, lakes, rivers and wildlife etc. The Article 51A(g) guided the government creating policies like The Environment (Protection) Act, 1986; Forest Conservation Act, 1980; Air Act, 1981; Water Act, 1974 etc. This article creates the bridge among the citizen, judicial activism and state policy. It imposes duties or responsibility on the citizens and making judiciary to interpret and state bring the policies relating to environment protection.

Rural Litigation and Entitlement Kendra v. State of U.P (1985) 2 SCC 431

In this case a writ petition was filed before the Supreme Court to address the issue of unauthorized and illegal limestone mining activities, in the Mussoorie, Dehradun. The Petitioner contended that the mining operation created danger to the human life and ecology system and resulting in irreparable harm.⁴ The Court appointed committee for the purpose of inspecting certain lime stone-quarries. On the suggestion given by the committee, the Court ordered the closure of the certain lime stone quarries as there were large scale of pollution created by the lime stone quarries and which adversely affected the safety and health of the people living in that area.⁵ The Court ordered for the closure of the harmful quarries, invoking the need to protect the environment and applying Article 51A (g) to justify the balancing development with ecological concerns.

ROLE OF THE NATIONAL GREEN TRIBUNAL (NGT)

The National Green Tribunal plays an important role in the protection of environment by providing the forum to address the issues relating to environmental laws and regulations. The National Green Tribunal was established in the year 2010. According to Article 21 of the Indian

⁴ Gargee Yadav, 'Rural Litigation and Entitlement Kendra vs State of U.P.' (Lawfoyer, June 23, 2023) <<https://lawfoyer.in/rural-litigation-and-entitlement-kendra-vs-state-of-u-p/>> visited on 13.04.25 at 11am

⁵ Dr. J. N. Pandey, Constitutional Law of India, (Central Law Agency, 59th Edition, 2022) 468

Constitution, which provides that the right to healthy environment. The Supreme Court in the oleum gas leakage case felt the need for the National Tribunal to hear the environmental cases.⁶ Therefore, there was necessity to form the National Green Tribunal for the effective and expeditious disposal of cases and providing damages arising out of any accident occurring out of any hazardous substance.⁷ The NGT was guided by the two principles- the 'Polluter Pays' principle and 'Sustainable Development' principle.

Objectives:

- To provide for effective and expeditious disposal of cases relating to environmental protection
- To provide for the Conservation of forests and other natural resources
- To provide for giving relief and compensation for damages to person and property
- To repeal the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997
- To deal with matters connected therewith or incidental thereto⁸

Cases Laws:

VIZAG GAS TRAGEDY, (2020)

The Visakhapatnam gas leak occurred on 7th May, 2020 at the LG Polymers chemical plant in Visakhapatnam, Andhra Pradesh. At about 3 a.m. on the 7th May, 2020, there was styrene gas leaked out of a storage tank and the dangerous vapour spread over 3km. As a result, 500 people being hospitalized with breathing and vision problems and caused 12 deaths. In response, the National Green Tribunal took suo motu cognizance of the incident. The NGT formed the committee to visit the site and prepare the report about the gas leak. After receiving the report, the Tribunal directed LG Polymers India Pvt. Ltd to deposit payment of Rs.50 crore with the District Magistrate of Visakhapatnam. The Tribunal observed that the leakage of the hazardous gases adversely affects the public health and environment and it comes under the principle of 'Absolute Liability'. According to Absolute Liability the enterprise engaged in the hazardous activity and any danger caused to the general public because of such dangerous industries then

⁶ Jisha Garg, "All about National Green Tribunal" (Ipleaders, April 10, 2021) < <https://blog.ipleaders.in/national-green-tribunal/> > visited on 13.04.2025 at 12pm

⁷ Dr. Paramjith S. Jaswal, Dr. Nishtha Jaswal, Vibhuti Jaswal, Environmental Law, (Allahabad Law Agency, 5th edition, 2022) 417

⁸ Dr. Paramjith S. Jaswal, Dr. Nishtha Jaswal, Vibhuti Jaswal, Environmental Law, (Allahabad Law Agency, 5th edition, 2022) 418 & 419

the enterprise will be absolute liable for all the losses and it is their responsibility to provide the damages to the effected persons.⁹

Save Mon Region Federation and others v. Union of India, (2012)

In this case the organization named Save Mon Region Federation and other social activist filed an appeal against the grant of Environmental clearance for a hydro project on the Naymjang Chhu River. The said project was located near to the wintering site for a bird named Black – necked Crane. And this area was also a home to several other species such as leopard, red panda etc. The National Green Tribunal revoked the Environmental Clearance granted to the project with the intention to protect the biodiversity and save the endangered species.¹⁰

EMERGED PRINCIPLES AND DOCTRINES

Indian Judiciary plays a significant role in shaping the Environmental laws, particularly in the context of climate change, by applying and developing several principles and doctrines. The followings are the various principles and doctrines emerged by the judiciary while interpreting the climate change related cases.

Doctrine of Absolute Liability: - In the Landmark case of **M.C Mehta v. Union of India (Oleum gas Leak Case), 1987** the Supreme Court took the bold decision and evolved the rule of ‘Absolute Liability.’ The court held that when any industrial enterprise carries any hazardous activities, it is strictly and absolutely liable for the harm caused as a result of accidents in such operation.¹¹

Polluter Pays Principle: - In simple terms it means “you pollute you pay.” Under the Polluter Pays Principle the liability for the harm to the environmental extends not only to compensate the victim but also the cost of restoring the environmental degradation. Under this principle if any person commits any pollution, he is responsible for bearing the cost associated with the pollution. The Supreme Court in the case of **Indian Council for Enviro – Legal Action v.**

⁹ Anushka Yadav, “ Bhopal to Vizag legal aspects” (Ipleaders, January 15, 2021) <<https://blog.ipleaders.in/national-green-tribunal/> > visited on 14.04.25 at 3pm

¹⁰ Shibani Gosh, ‘Case Note Access to Information as Ruled by the Indian Environmental Tribunal: Save Mon Region Federation v. Union of India’ (2013) <chrome extension://efaidnbmnnnibpcajpcglclefindmkaj/<https://www.sustainablefutures.org/wp-content/uploads/2024/03/Shibani-Case-Note-Access-to-Information-as-Ruled-by-the-Indian-Environmental-Tribunal-Save-Mon-Region-Federation-v.-Union-of-India-2013.pdf> > visited on 14.04.25 at 4pm

¹¹ Dr. R.K. Bangia, Law of Torts, (Allahabad Law Agency, 24th edition, 2019) 339

Union of India (1996), upheld the Polluter Pays Principle and made the polluters liable for the environmental restoration.¹²

Precautionary Principle: The Precautionary Principle is the guiding principle and it means that if there is a strong suspicion that a certain activity which may cause environmental harm, it is better to control that activity now, instead of waiting for the harm to take place. It is basically talking about the prevention of potential environmental harm, even if there is lack of conclusive scientific evidence confirming the risk. In the case of **Vellore Citizen's Welfare Forum v. Union of India (1996)**, the Supreme Court held that preventive measures must be taken when there is threat of environmental degradation.¹³

Public Trust Doctrine: - The Public Trust Doctrine is based on the principle that certain resources such as air, water, forest are of significant important to the society and considered as public assets and therefore should not subject to private ownership and accessible to all the citizens. The Court have used this to hold the government liable for failing to protect the environment. The Supreme Court in case of **MC Mehta v. Kamal Nath (1997)** held that the State is a trustee of all the natural resources.

Doctrine of Sustainable Development: - The Brundtland commission defined sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs." The balance between the environmental protection and developmental activities could only be maintained by following the principles of "Sustainable Development." In simple terms it means that the all the developmental activities related to environment must be benefit to the people and at same time balancing the environment protection. In the case of **Narmada Bachao Andolan v. Union of India (2000)** the Supreme Court faced the challenging task of balancing developmental needs against environmental and human rights concerns. The court allowed the construction of dam for certain height, but with the strict condition regarding environmental clearances and rehabilitation measures.¹⁴

¹²Dr. Paramjith S. Jaswal, Dr. Nishtha Jaswal, Vibhuti Jaswal, Environmental Law, (Allahabad Law Agency, 5th edition, 2022) 170

¹³ "Incorporation of Precautionary Principle in Environmental Legislation" (Lawbhoomi, May 1, 2020) <<https://lawbhoomi.com/incorporation-of-precautionary-principle-in-environmental-legislation/>> visited on 19.04.2025 at 1pm

¹⁴Aishwarya Agarwal, "Narmada Bachao Andolan vs Union of India and Ors" (Lawbhoomi, May 20, 2024) <<https://lawbhoomi.com/narmada-bachao-andolan-vs-union-of-india-and-ors/>> visited on 18.04.25 at 8pm

LANDMARK SUPREME COURT CASES

Vellore Citizens Welfare Forum V. Union of India & Others, AIR 1996 Supreme Court 2715

The Vellore Citizens Welfare Forum an NGO filed a public interest litigation under Article 32 of the Indian Constitution. The Petition addressed the pollution caused by the discharge of untreated effluents by tanneries and other industries in Tamil Nadu, particularly affecting the Palar River, a primary water sources for the locals. The Court felt the need for the urgent action to be taken to protect the environment and health of the residents. The court recognized the importance of “Precautionary Principle” and the “Polluter Pays Principle”. The Court noticed that the development activities should not hinder the public health and cleanliness of the environment. The Court highlighted the need for Sustainable Development where the development must meet present needs without compromising the ability of future generations to meet theirs. The Court directed the closure of tanneries, those who fail to follow the pollution control measures and mandated the installation of the pollution control devices. And also directed for the authority to be established under the Environment (protection) Act, 1986 to oversee the environmental safeguards and ensure damages for the affected communities¹⁵.

M.C. MEHTA VS. UNION OF INDIA & ORS (TAJ TRAPEZIUM CASE) AIR 1997 2 SCC 353

Under this case an environmental lawyer M.C Mehta filed the public interest litigation addressing the environmental degradation of the Taj Mahal due to pollution from the surrounding industries and seeking the appropriate directives to stop the pollution in the TTZ and save the monument. The Court directed the industries to switch to natural gases or relocation or closure of 292 polluting industries in the Taj Trapezium Zone (TTZ). The court also directed that the workers should not be deprived of their right to livelihood and ordered for the provision of “shifting bonus” to assist in their relocation. The court also directed the Central government to prepare the plan for the protection of the Taj Mahal and its environment. In this case court applied the principles such as Sustainable Development, Precautionary

¹⁵ Nisha Gupta, “Case Analysis: Vellore Citizens Welfare Forum v/s Union of India” (Legal Service in India) <<https://legalserviceindia.com/legal/article-17302-balancing-environment-and-development-a-case-analysis-of-vellore-citizens-welfare-forum-v-s-union-of-india.html> visited on 14.04.25 at 4pm

Principle and Polluter Pays Principle¹⁶.

INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION V. UNION OF INDIA (1996) 3 SCC 212

The Indian Council for Enviro Legal Action filed the public interest litigation to address the environmental degradation caused by the hazardous industries in village Bichari in Udaipur District of Rajasthan. The industries are producing the chemicals like Oleum and Sludge Phosphate. These industries have not taken the licence and not installed any equipment for treating the highly toxic effluents discharged by them. As a result of this the water of the well become unfit for human consumption and it spread the diseases in and around the village. The Court upheld the 'Polluter Pays Principle' and ordered for the closure of the industries in the Bichari village. The Court held that the industries are held responsible for all the damages to the soil, to the under-ground water and to the village in general.¹⁷

CHALLENGES

The Indian judiciary faces a lot of challenges while deciding the issues like climate change. And each time judiciary will interpret the case and try to bring the new principles like Absolute Liability, Precautionary Principle and Polluter Pays Principle. Due to the challenges faced by the judges, there was a delay in the judicial proceedings and which affects the speedy disposal of the cases. The following are the major challenges which is involved in the issue of climate change:

Scientific and Technical Expertise: Climate cases often involve complex scientific and technical issues. As the judges are trained in law, they require the technical experts help to decide the cases. Without the help of the experts in the field of the science and technology judges finds it difficult to interpret the scientific terms.

Separation of Powers: As the power is divided between the three organs, the judiciary should not step into the role of the executive and legislative branches. Climate changes often require the policy intervention, executing the policy and bringing new legislations in relation to climate

¹⁶ Aishwarya Agarwal, "Taj Trapezium Case [M.C. Mehta vs. Union of India & Ors]" (Lawbhoomi, August 12, 2024) <<https://lawbhoomi.com/taj-trapezium-case/#:~:text=Taj%20Trapezium%20Case%20Summary,-The%20Taj%20Trapezium&text=The%20Supreme%20Court%20of%20India,and%20the%20polluter%20pays%20principle>> visited on 18.04.2025 at 7pm

¹⁷ Dr. J. N. Pandey, Constitutional Law of India, (Central Law Agency, 59th Edition, 2022) 324-325

change. However, this executive work is outside the scope of the judiciary and because of the slow progress in the executive role the judiciary finds it difficult to dispose the cases effectively.

Delay in Judicial Proceedings: Environmental cases also need lot of investigations before delivering the judgements and this need to done through a proper procedure and which is time consuming and creates the delay in the judgement. The delays can be weakening the hope on the victim to attain the justice. And because of the delay in the climate change judgement there arises the difficulty to give the instant relief to the victims of the climate change.

Balancing Environment and Development: The judiciary has to balance the environmental concerns with the economic development and public interest. The interpretation should be in such a way that the judgement paves the way for the environmental protection and economic development.

Increase in the Pollution and Ineffective Laws: In India, we are having many environmental laws like Environment Protection Act, 1986; Wildlife Protection Act, 1972; Forest (Conservation) Act, 1980 etc., but still few problems of the climate change were left unaddressed. Because of the ineffective laws, the judiciary was put under the need to interpret and emerge the new doctrines and principles. And till today it is not possible to stop the pollution completely. Every day the pollution is taking place in our country in one or the other form it may be air pollution, water pollution, noise pollution and so on. So, what does it indicating us? Whether laws are ineffective or the judiciary's role is not sufficient, it is a big question mark.

SUGGESTIONS:

Judicial Training: - The Judges must be provided with the training on the matters like environmental science, scientific term, technical issues and also workshops in collaboration with experts from climate science. By providing the specialized knowledge in the field of science and technology relating to climate change, the judges can able to understand meaning of these scientific term without the expert help and which will make the judges speedy disposal of the cases.

Amending Existing laws/ New Laws: Strengthening the existing laws or enacting new laws

to address specific climate change issues and thereby making the judicial process easier and more flexible.

Specialized Climate Change benches: There must be establishment of specialized benches or courts to exclusively handle the climate change cases and must prescribe the time limit for deciding the cases, this will make the speedy disposal of the cases and can avoid the delay in the judicial proceedings.

Proper Implementation of the Policies: If the executive organ properly implements the policies relating to climate change, it will pave the way for the judges to rely on those legislations while interpreting the issues related to climate change and this will again make the proceeding smooth and speedy delivery of judgments otherwise the judiciary has to bring new principles and doctrines in the absence of proper climate change policies which is time consuming.

CONCLUSIONS:

The judiciary plays a crucial and evolving role in addressing the climate change, judiciary is acting as the guardian of constitutional and environmental rights by interpreting laws and wherever requires, bringing the new principles and doctrines relating to climate change and also promotes the protection of climate change. Under various landmark cases Supreme Court expanded the scope of Article 21 by including the right to clean and healthy environment and protected the rights of the victims by taking action such as directing the closure of the industries, by invoking the principles such as Precautionary Principle, Polluter Pays Principle, Public trust Doctrine. However, there exists a lot of challenges for the judiciary in deciding the climate change cases. Despite these hurdles, courts have made commendable progress by invoking constitutional principles, international laws and environmental doctrines. Judiciary tried its best in saving the victim's interest and protecting the environment in whatever way possible and also striving to protect and preserve the environment for the future generations.