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# **AN ARTICLE ON ROLE OF INDIAN JUDICIARY IN PROTECTION OF ENVIRONMENT**

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## **ABSTRACT**

The Indian judiciary plays a crucial role in environmental protection through its proactive interpretation and enforcement of environmental laws. This research paper explores the evolution of environmental jurisprudence in India, highlighting landmark decisions that have shaped the country's environmental policies. By analyzing key cases, such as the MC Mehta cases and the Vellore Citizens Welfare Forum case, this paper examines how the judiciary has acted as a custodian of environmental rights, holding governments and industries accountable for their actions. Additionally, the paper discusses the role of public interest litigation in empowering citizens to seek redressal for environmental violations. This paper aims to analyze the contribution of the judiciary in environmental protection by examining legal principles, and the evolution of environmental jurisprudence in India. It will explore the proactive approach of the courts in safeguarding natural resources, promoting sustainable development, and enforcing environmental laws. The paper will also highlight the impact of public interest litigation (PIL) in addressing environmental concerns and the role of judicial decisions in shaping environmental policies. Through a critical review of judicial interventions, this paper seeks to demonstrate the judiciary's role as a guardian of environmental justice and its influence on environmental governance in India.

**KEYWORD:** ENVIRONMENT, POLLUTION, INDIAN JUDICIARY, PROTECTION, CONSTITUTION.

## **INTRODUCTION**

The role of the Indian judiciary in the protection of the environment is of paramount importance in the context of environmental conservation and sustainable development. As one of the pillars of the Indian democratic framework, the judiciary has consistently demonstrated a proactive approach in addressing environmental issues and upholding the principles of environmental justice. Through judicial activism and progressive interpretations of environmental laws, the Indian courts have played a significant role in shaping the country's environmental policies and legal framework.

This research paper aims to delve into the multifaceted role of the Indian judiciary in environmental protection, with a particular focus on landmark cases, legal doctrines, and the evolution of environmental jurisprudence. By examining the judicial interventions aimed at safeguarding natural resources, preventing environmental degradation, and promoting sustainable development, this paper seeks to highlight the judiciary's pivotal role as a guardian of environmental interests.

Furthermore, the paper will explore the impact of public interest litigation (PIL) as a potent tool for addressing environmental concerns and compelling governmental action to mitigate environmental harm. The judiciary's proactive stance in enforcing environmental laws, holding violators accountable, and ensuring compliance with environmental regulations will also be a focal point of this analysis. Through a critical review of the judicial decisions and their repercussions on environmental governance, this paper aims to underscore the judiciary's catalytic role in environmental protection and its influence on the broader discourse of environmental law and policy in India. By charting the trajectory of judicial pronouncements and their implications for environmental conservation, this research endeavors to illuminate the profound significance of the Indian judiciary as a vanguard of environmental preservation and sustainable development.

## **OBJECTIVE**

- To know about the judicial remedies for environmental pollution.
- To find out remarkable principles and doctrine propounded by the Indian judiciary and
- To study about the constitutional aspects on environmental law.

## **JUDICIAL REMEDIES FOR ENVIRONMENT POLLUTION**

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The statutory remedies incorporates: Citizen's suit, e.g.,

- an activity brought under Section 19 of the Environmental (Protection) Act, 1986,<sup>1</sup>

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<sup>1</sup>[https://ijariie.com/AdminUploadPdf/JUDICIAL\\_APPROACH\\_ON\\_ENVIRONMENTAL\\_PROTECTION\\_ijariie\\_17291.pdf](https://ijariie.com/AdminUploadPdf/JUDICIAL_APPROACH_ON_ENVIRONMENTAL_PROTECTION_ijariie_17291.pdf)

- an activity under area 133, Criminal Procedure Code, 1973.and
- and activity brought under the Section 268 for open irritation, under Indian Penal Code,1860<sup>2</sup>

Aside from this, a writ appeal to can be recorded under Article 32 in the Supreme Court of India or under Article 226 in the High Court.

## **SOME REMARKABLE PRINCIPLES AND DOCTRINES**

### **PROPOUNDED BY THE INDIAN JUDICIARY:-**

#### DOCTRINE OF ABSOLUTE LIABILITY

The Bhopal case: Association Carbide Partnership v. Association Of India For this situation, the court held that, where an undertaking is involved with a characteristically risky or a perilous action and damage results to anyone by goodness of an incident in the activity of such hazardous or normally dangerous development coming to fruition, for example, in escape of toxic gas, the endeavor is entirely and totally committed to reimburse each one of the people who are impacted by the mishap and such hazard isn't liable to any exclusions. As needs be, Incomparable Court made another pattern of Supreme Obligation with no exclusion.<sup>3</sup>

#### POLLUTER PAYS PRINCIPLE

"In the event that anybody purposefully ruins the water of another ... let him pay harms, as well as cleanse the stream or reservoir which contains the water... " – Plato

Polluter Pays Guideline has turned into an extremely well known idea of late. 'In the event that you make a wreck, it's your obligation to tidy it up '- this is the major premise of this motto. It ought to be said that in condition law, the 'polluter pays standard' does not insinuate "blame." Rather, it underpins a therapeutic technique which is worried about repairing common damage. It's a run in global ecological law where the dirtying party pays for the mischief or harm done to the indigenous habitat.

Vellore Citizen welfare Forum vs Union of India (1996)- The Supreme Court has proclaimed that the polluter pays guideline is a fundamental element of the supportable advancement.

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<sup>2</sup> <https://acadpubl.eu/hub/2018-120-5/3/203.pdf>.

<sup>3</sup> [https://www.academia.edu/32116470/ADMINISTRATIVE\\_LAW\\_PUBLIC\\_INTEREST\\_LITIGATION\\_ENVIRONMENTAL\\_LAW](https://www.academia.edu/32116470/ADMINISTRATIVE_LAW_PUBLIC_INTEREST_LITIGATION_ENVIRONMENTAL_LAW).

### PRECAUTIONARY PRINCIPLE

The Precautionary Principle, articulated by the judiciary, emphasizes preventive action in the face of environmental risks and uncertainties. It requires that lack of scientific certainty should not be used as a reason to postpone measures to prevent environmental degradation, placing the onus on proponents of potentially harmful activities to demonstrate their safety.

### PUBLIC TRUST DOCTRINE

The Indian judiciary has invoked the Public Trust Doctrine, which holds that natural resources such as air, water, forests, and wildlife are held in trust by the state for the benefit of the public. This doctrine imposes a duty on the government to protect and preserve these resources for present and future generations, transcending individual property rights.

### DOCTRINE OF SUSTAINABLE DEVELOPMENT

The Indian judiciary has underscored the principle of sustainable development, recognizing the interdependence of economic progress, social equity, and environmental conservation. Judicial pronouncements have emphasized the need to balance developmental imperatives with the preservation of the environment, thereby fostering a holistic approach to resource management.

## **THE CONSTITUTIONAL ASPECTS ON ENVIRONMENTAL LAW**

**ARTICLE 47**” Duty of the State to raise the level of nutrition and the standard of living and to improve public health The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.<sup>4</sup>

**ARTICLE 48 A** “Protection and improvement of environment and safeguarding of forests and wild life The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. <sup>5</sup>

**ARTICLE 51A (g)** “to protect and improve the natural environment including forests, lakes,

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<sup>4</sup> <https://indiankanoon.org/doc/1551554/>.

<sup>5</sup> <https://indiankanoon.org/doc/1452355/>.

rivers and wildlife, and to have compassion for living creatures<sup>6</sup>

**ARTICLE 253** “Legislation for giving effect to international agreements Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body<sup>7</sup>

**ARTICLE 246** “ Subject matter of laws made by Parliament and by the Legislatures of States:(1) Notwithstanding anything in clauses ( 2 ) and ( 3 ), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List) (2) Notwithstanding anything in clause ( 3 ), Parliament, and, subject to clause ( 1 ), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List) (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List<sup>8</sup>

**ARTICLE 32** “Remedies for enforcement of rights conferred by this Part (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part (3) Without prejudice to the powers conferred on the Supreme Court by clause ( 1 ) and ( 2 ), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause ( 2 ). (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.<sup>9</sup>

**ARTICLE 226**” Power of High Courts to issue certain writs (1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it

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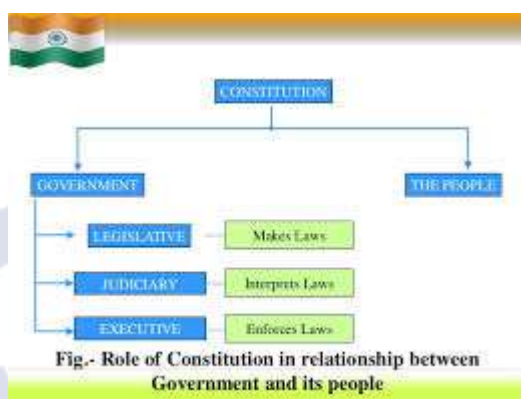
<sup>6</sup> <https://indiankanoon.org/doc/1644544/>.

<sup>7</sup> <https://indiankanoon.org/doc/741672/>.

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<sup>9</sup> <https://indiankanoon.org/doc/981147/>.

exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo-warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose (2) The power conferred by clause ( 1 ) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.<sup>10</sup>



<sup>10</sup> <https://indiankanoon.org/doc/1712542/>.

# **ENVIRONMENTAL PROTECTION: THE JUDICIAL**

## **APPROACH**

The judicial approach to environmental protection in India is characterized by a proactive and interventionist stance aimed at safeguarding the environment and balancing developmental imperatives with ecological sustainability. The Indian judiciary has played a pivotal role in evolving and enforcing environmental norms, principles, and safeguards through its interpretative role and judicial pronouncements.

### **Here are some key aspects of the judicial approach to environmental protection in India:**

1. **Expansive Interpretation of Fundamental Rights:** The Indian judiciary has expansively interpreted the right to a healthy environment as an integral part of the fundamental right to life under Article 21 of the Constitution. This broad interpretation has led to the recognition of environmental protection as a constitutional imperative and has empowered the judiciary to intervene in environmental matters to ensure the enforcement of environmental laws and regulations.
2. **Public Interest Litigations (PILs):** The judiciary has been open to hearing Public Interest Litigations (PILs) filed by concerned citizens, environmental groups, and activists, thereby providing access to justice and enabling public participation in environmental decision-making. PILs have been instrumental in highlighting environmental violations, demanding accountability from the authorities, and advocating for environmental justice.
3. **Judicial Activism:** Indian courts have displayed a proactive and activist approach in addressing environmental concerns by issuing directives, mandating compliance with environmental regulations, and monitoring the implementation of environmental laws. This judicial activism has resulted in the protection of ecologically sensitive areas, regulation of industrial pollution, and conservation of natural resources.
4. **Application of Environmental Principles:** The judiciary has invoked and applied environmental principles such as the Public Trust Doctrine, Precautionary Principle, Polluter Pays Principle, Sustainable Development, and Inter-generational Equity to adjudicate environmental disputes and guide environmental governance. These principles have formed the cornerstone of judicial decisions, ensuring a holistic and environmentally conscious approach to development and resource management.
5. **Enforcement of Environmental Regulations:** Indian courts have been instrumental in enforcing environmental laws, regulations, and norms by imposing penalties, directing

remedial measures, and ensuring compliance with environmental standards. The judiciary's role in upholding the rule of law and environmental accountability has contributed to the deterrence of environmental violations and the protection of natural ecosystems.

6. **Judicial Review of Environmental Policies:** The judiciary has engaged in the judicial review of environmental policies, legislative measures, and executive actions to assess their impact on the environment and public health. This judicial scrutiny has facilitated the refinement of environmental policies and the correction of regulatory deficiencies, contributing to the strengthening of environmental governance.
7. **Public Awareness and Education:** Courts have used their platform to raise public awareness about environmental issues, disseminate environmental knowledge, and promote environmental consciousness among the general populace. By judiciously addressing environmental matters, courts have contributed to fostering a culture of environmental responsibility and civic engagement.

#### **Some important cases under Indian environmental law:**

1. **M.C. Mehta v. Union of India (1986):** This case, also known as the "Oleum Gas Leak Case," involved a toxic gas leak from a chemical plant in Delhi. The Supreme Court's intervention led to the formulation of the concept of "Absolute Liability" for hazardous industries, where the principle of "strict liability" was applied, holding the industries absolutely liable for environmental damage caused by their operations.
2. **Indian Council for Enviro-Legal Action v. Union of India (1996):** This case, popularly known as the "Vellore Case," addressed the pollution of the Palar River in Tamil Nadu. The Supreme Court stressed the Polluter Pays Principle and directed the closure of polluting industries until they complied with environmental standards, setting a significant precedent for holding industries accountable for pollution.
3. **Subhash Kumar v. State of Bihar (1991):** In this case, the Supreme Court recognized the right to a clean and healthy environment as a fundamental right under Article 21 of the Constitution. The Court held that the right to life includes the right to a pollution-free environment, establishing environmental protection as a constitutional imperative.
4. **M.C. Mehta v. Kamal Nath (1997):** The "Taj Trapezium Case" addressed environmental degradation in the vicinity of the Taj Mahal due to industrial pollution. The Supreme Court implemented stringent measures to control pollution in the Taj Trapezium Zone,

emphasizing the protection of heritage sites and the environment and promoting sustainable development.

5. Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh (1985): Also known as the "Dehradun Quarrying Case," this case addressed the adverse environmental impact of limestone quarrying in the Mussoorie hills. The Supreme Court's judgment led to the closure of mining operations and highlighted the Public Trust Doctrine and the duty of the state to protect natural resources for the benefit of the public.
6. T.N. Godavarman Thirumulpad v. Union of India (1997): The "Forest Conservation Case" dealt with the protection of forests and conservation of biodiversity. The Supreme Court issued directives to regulate forest-related activities, prevent illegal logging, and protect wildlife habitats, emphasizing the importance of sustainable forest management and biodiversity conservation.
7. MC Mehta v. Union of India (1996): In this case, the Supreme Court banned the use of hazardous chemicals and other materials in inks and dyes used in firecrackers, emphasizing the need to protect public health and the environment from hazardous substances.
8. Okhla Bird Sanctuary Case: In 2018, the Supreme Court of India upheld the importance of protecting the Okhla Bird Sanctuary, emphasizing the need to balance development with environmental conservation. The judgment highlighted the significance of preserving critical habitats for endangered bird species and biodiversity.

## **RECOMMENDATION**

The laws, regulation and rules which are framed is not so effective to protect the environment. Though there is a punishment and fine imposed by IPC and CRPC which should be amended and speedy remedies should be given and special protection should be given for the environment. It is the duty of a human being to keep the environment clean and pollution free so every people should take care of the environment. Like some foreign countries Indian government can also follow the strict rules to stop the environmental pollution

## **CONCLUSION**

The role of the Indian judiciary in the protection of the environment is undeniably significant and impactful. The judiciary has emerged as a proactive and interventionist guardian of environmental rights, shaping environmental law and policy in India through its jurisprudence

and judicial activism.

By proactively interpreting fundamental rights to include the right to a healthy environment, the judiciary has integrated environmental considerations into the fabric of constitutional imperatives, emphasizing the fundamental nature of environmental protection. Through landmark cases and legal precedents, the judiciary has expanded the scope of environmental protection, established legal principles, and influenced environmental policies and governance.

The application of environmental principles such as the Public Trust Doctrine, the Precautionary Principle, and the Polluter Pays Principle has guided judicial decisions, contributing to the regulation of industries, the formulation of environmental standards, and the promotion of sustainable development. The acceptance of Public Interest Litigations (PILs) has empowered citizens to seek judicial redress for environmental concerns, holding authorities accountable and contributing to public awareness about environmental issues. Looking ahead, the judiciary's role in environmental protection is poised to have continued significance, with potential for further interventions and advancements in environmental governance. As India grapples with diverse environmental challenges, including pollution, conservation of natural resources, and climate change, the judiciary's role in ensuring environmental accountability, policy influence, and public awareness is vital for sustainable development and the protection of the environment and public health. The Indian judiciary's role in environmental protection is characterized by its proactive and transformative impact, positioning it as a guardian of environmental rights and a key driver of environmental sustainability and accountability in India.

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