

ISSN: 2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

## EDITORIAL TEAM

### EDITORS

#### **Megha Middha**



*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## Dr. Namita Jain



**Head & Associate Professor**

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC - NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## Mrs.S.Kalpana

**Assistant professor of Law**

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## 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.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

IJLRA

# **Environmental Governance**

Authored By-1. B. Hari Priya  
2. V. Janaki Devi

## **Introduction**

The environment has been defined as that outer physical and biological system in which man and other organisms live as a whole. This entire system is a complicated one as it has many interacting components. Changes in ecological system occur continuously through natural process and man's activities but the system has to a certain extent remarkable tendency to rebalance itself. This system as a whole is useful to man. Thus, there is a close relationship between man and the environment. This use of environment by man has increased considerably following the industrial, scientific and technological revolutions which in turn resulted in dis-balance in nature. It was this background which helped the signing of the Stockholm Declaration of 1972, which for the first time drew the attention of the world community for preservation and protection of human environment. India, too, has shown its concern over the continuing degradation of the environment. The most characteristic feature of the Indian Environmental law is the pivotal role played by the Apex court of India. There has been several efforts made by the legislature and the executive, but the effectiveness of Indian judiciary has taken the lead. The creativity is usually used by judiciary in two ways, i.e. either amending the constitution for giving particular kind of protection or to interpret the existing law to include something within it. In this regard, Indian constitution was amended in the year 1976 by the Forty-Second (Amendment) Act. It has therefore been the instrument in shaping india's environmental law.

## **Supreme Court And Right To Environment**

The first and foremost right developed by supreme court is 'right to live in a healthy environment'. This right derived its nexus from Universal Declaration of Human Rights 1948. The 42<sup>nd</sup> Amendment Act added two articles, i.e. Articles 48A and 51A(g) which provides that it is fundamental duty of every citizen of india to protect and improve the natural environment. For protecting right to environment it used Articles 32 and 21 as a weapon and through this Articles Supreme Court gave directions in various cases.

In Bandhua Mukti Morcha v. U.O.I., Supreme Court which is the first in this regard develop the concept of right to 'healthy environment' as a part of right to life under Article 21 of the

constitution.

In *Chhetriya Pardushan Mukti Sangarsh samiti v. State of UP*, held that “Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution of India.

Then came the era of M.C. Mehta cases, first M.C. Mehta case related to leakage of oleum gas held that case raised some seminal questions concerning scope and ambit of Arts, 21 and 32 of the constitution. In third case a new jurisprudence to pay by accused to victims compensations developed.

In *Virandar Gaur v. State of Haryana*, the Supreme court observed, “word 'environment' is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance". Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to live with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed.. Environmental, ecological, air, water, pollution, etc. should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment”.

In *B.L. Wadhwa v. U.O.I.*, public interest litigation was filed in which the court held that the “residents have constitutional as well as statutory right to live in a clean city and authorities concerned have mandatory duty to collect and dispose of waste generated from various sources”.

### **New Trends In Judicial Approach**

Environment litigation is of recent origin in India. During a short span of time, the Indian judiciary not only has successfully undertaken a complex task of balancing the environmental and development concerns but in the process of its adjudication of cases evolved new principles of the environmental jurisprudence. Here is an evaluation of role of the courts with reference to certain specific situations in the context of environmental protection.

#### (i) JUDICIAL ACTIVISM:

The new judicial trend in environmental litigation has been noticed in the form of court's assumption of executive functions and judicial legislation. The judiciary has in many public interest litigations ingresses into fields traditionally reserved for executive. The Dehradun Quarrying case is a typical example of the Supreme Court 'creeping jurisdiction. The court

entrusted an expert committee to evaluate the environmental impact of limestone quarrying operations and used the committee mechanism to supervise the implementation of judicial orders. Thus, the courts have come to fill in the administrative vacuum by assuming the executive functions. Shriram Gas Leak Case is an example of judicial activism. In this case the court refused to follow in totality the rule of strict liability as laid down in *Rylands v. Fletcher*. Instead Justice Bhagwati evolved the rule of “Absolute liability”.

This judicial legislation filled up the gaps in the law which existed prior to the adoption of Public Liability Insurance Act, 1991. Such judicial legislation despite its having now been incorporated in the statute still remains a good law though the apex court has declined to apply its principle relating to award of damage in subsequent cases.

(ii) FREEDOM OF INFORMATION AND RIGHT TO KNOW:

There is a close link between the government accountability and a citizen’s ability to secure authentic information. Public access to government information in democratic society is desirable as it enables citizens to exercise their political choice more meaningfully. The right to know at the same time in addition to improving the quality of decision making also strengthens participatory democracy. On the contrary, secrecy erodes the legitimacy of elected government by providing a cover to conceal its misdeeds.

It is unfortunate that we do not have any legislation which provide for risk communication and emergency planning mechanism against industrial negligence cases. The Bhopal gas disaster is one good example of such legal vacuum. This incident could have been avoided if the right people has obtained the right to information at a time when they were capable of appreciating it and taking appropriate preventive action. Hence, there is an urgent need of devising a regulatory mechanism to provide for the right of information to people.

The Supreme Court of India has done a commendable task in shaping the broad contours of community right to know by elaboration of Articles 19(1)(a) and 21 of the constitution pertaining to fundamental rights of freedom of speech and expression and personal liberty respectively. Justice Bhagwati has recognised the right to know as implicit in Article 19(1)(a) of the constitution in *Judges Transfer Case*. Later Justice Mukharji in *Reliance Petrochemical’s Case* recognised this right as a part of right to life as guaranteed under Article 21 of the Constitution.

In *Bombay Environmental Action Group v. Pune Cantonment Board*, the court extended the right of information not only to the social action group or any pressure group but to all persons.

The court's order has certainly widened the scope of the right to know. Thus, the citizens have virtually an unqualified right to seek information from any statutory authority affecting the interests of the people.

(iii) PUBLIC AWARENESS:

The law by itself is inadequate to bring about the desired change in society without public awareness and participation in the process. In *M.C. Mehta v. Union of India*, the court perceiving the importance of the public awareness observed: Enactment of laws regarding water and air pollution control was not sufficient. No law can indeed effectively work unless there is an element of acceptance by the people in society. In order that human conduct may be in accordance with the prescribed law, it is necessary that there should be appropriate awareness of what the law requires and an element of acceptance by the people that the requirement of the law is grounded in a philosophy which is to be followed. This is possible only when steps are taken to make the people aware of the indispensable necessity of their conduct being oriented in accordance with the requirement of the law.”

(iv) SPOT LIGHT:

Another important procedural innovation of the Court in resolving environmental dispute has been found in judges' personal interest to have first-hand information through spot visit to understand the nature of environmental problem and the issues revolving around it. In the *Ratlam Municipal v. Vardhichand* case, before arriving at a decision, Justice V.R. Krishna Iyer visited the Ratlam town and assessed the problem and then directed the Ratlam Municipality to take appropriate measures to construct proper drainage system in the city. Similarly, in the *Doon Valley* case, Justice P.N. Bhagwati visited the area and found that the environmental litigation involved certain complex issues including the rights of the workers, traders and fragile ecology of the area. He then appointed an independent committee to assess the problem. The spot visit of judges has enabled them to assess the environmental problem on the ground and hence the decisions given by these judges have made a difference in the outcome of the case. Therefore, the innovative method to arrive at a decision through spot visit has become part of individual interest of judges rather than a standard practice in the decision-making process.

(v) DOCTRINES EVOLVED:

The formulation of certain new principles and pronouncement of new doctrines “as part of the law of this country” for protection of environment is a remarkable achievement of the Indian Judiciary. Some such principles and doctrines provided by the Indian Judiciary are as follows:

(a) Principle of Absolute Liability:

This rule was evolved in *M.C. Mehta v. Union of India*, which is popularly known as the ‘oleum gas leak case’.

The court in the above case held that the principle of strict liability evolved in England more than a century ago in *Rylands v. Fletcher* was diluted. The Supreme Court held that the exceptions to the strict liability are not applicable in India in cases of determining the liability of hazardous and inherently dangerous industries.

(b) Polluter Pays Principle:

The Supreme Court for the first time applied the polluter pays principle in *Indian Council for Enviro-Legal Action v. Union of India*. The court held that the pollution industries are “liable to compensate for the harm caused by them to the villagers in the affected area, to the soil and to the under ground water and hence they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas.”

(c) Precautionary Principle:

The Supreme Court of India in *Vellore Citizens Welfare Forum v. Union of India* has declared that the “precautionary principle” is an essential feature of sustainable development. The court further declared that the “precautionary principle has been accepted as part of the law of the land”. The court held that “even otherwise once these principles are accepted as part of the customary international law there would be no difficulty in accepting them as part of the domestic law.”

(d) Public Trust Doctrine:

The Supreme Court’s decision in *M.C. Mehta v. Kamalnath* is an excellent exposition of the doctrine of public trust. In this case the Supreme Court applied the doctrine for protection of the environment. The court also observed, “Our legal system based on English Common Law includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources, which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea shore, running waters, air, forests and ecologically fragile lands.

The State as a trustee is under a legal duty to protect the natural resources.

(e) Doctrine of Inter-generational Equity:

The idea behind this doctrine is that “every generation should leave water, air and soil resources as pure and unpolluted as and when it came to earth. Each generation should leave undiminished all the species of minerals it found existing on earth.”

## **Conclusion**

The above discussion demonstrates the active role of the Supreme Court of India as People’s as well as environment court. The journey from Ratlam (1980) was not so long within which well established principles and precedents could develop. However, in this short period judicial activism has kept the administration of environmental justice responsive and vibrant. The output of the entire judicial exercise was that in nearly 80 percent of the cases the balance was tilted in favour of environment. This should not be taken to mean that the court retarded the developmental growth rather it has caught and taught a lesson to eco-enemies. The judicial activism resulted in many innovations and given important raw material for building up a comprehensive enviro-jurisprudence.

Thus in the field of administration of environment, the Supreme Court of India has stood tall not only before the two organs of the ‘State’ but also before its other counterparts.

IJLRA

## Suggestions

- Need for effective and speedy settlement of dispute systems at national , district and regional levels.
- Judges and Advocates have the responsibility to emphasize the necessity of law to achieve sustainable development and can help make institutions effective.
- Setting up of guidelines and specific criterion for the interpretation of environmental law.
- Representation of apex court judges and attorneys and other officials of the Higher court with the international organisations and forum pertaining to environmental jurisprudence is considered to be important for the legal and technical improvement.
- Moreover, property law must be reinterpreted in order to incorporate the concepts of environmental stewardship and sustainability.
- Transparency in the dispute resolution process promotes a sense of fairness and it also led to the development of environmental law.
- Judges when delivering the judgement should consider the indigenous people and also the development and life of environment instead of considering Economic development.

IJLRA