

ROLE OF JUDICIARY IN PROTECTION OF ENVIRONMENT AND ENFORCING CORPORATE SOCIAL RESPONSIBILITY

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Abstract

The protection of the environment and the enforcement of corporate social responsibility (CSR) have emerged as pressing global concerns in the context of the 21st century. This article delves into the pivotal the judiciary's role in resolving these issues and promoting sustainable development via successful legal actions. By interpreting and executing current environmental laws, the court plays a crucial part in protecting the environment. laws, regulations, and international conventions. Through the exercise of judicial review, courts have the power to review governmental decisions, policies, and actions pertaining to environmental protection. By providing an impartial and independent forum, the judiciary ensures that environmental laws are enforced, and violators are held accountable. Judicial decisions also establish precedents that influence future environmental policies and practices, fostering a culture of environmental consciousness and responsibility.



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Introduction

The judiciary's involvement in preserving the environment and enforcing corporate social responsibility (CSR) has become increasingly significant in the face of growing environmental challenges and the expanding influence of corporations worldwide. With environmental degradation threatening ecosystems and human well-being and businesses wielding significant power over economies and society, the judiciary is critical in preserving the ideals of sustainability, accountability, and justice. The court has not only established precedents for holding polluters responsible, but has also opened the road for creating corporate responsibility towards the people and surroundings in which they operate. This article explores the pivotal role of the judiciary in these

realms, examining key cases and its potential to foster a sustainable and responsible future¹.

Indian Judiciary's Role in Environmental Law Development

In India during the post-independence era, environmental preservation was not a top concern due to the necessity for economic growth and political upheaval. The creation of new markets, industries, and jobs for the population was crucial after independence. However, the Bhopal Gas disaster elevated environmental protection to a primary priority. After this disaster, the nation's environmental laws become more comprehensive and are subject to more court intervention. People started to voice some concern when the first environmental protection law was adopted in 1986. The main objective of the Act was to put into practice the recommendations given at the UN Conference on the Human Environments.

Interpretation of Articles 51(A)(g) and 48A

A Constitutional requirement is that the environment be improved and protected. It is an obligation for a country that adheres to welfare State values. The function of the law in ecological security Duties sections of the Indian Constitution expressly addresses environmental conservation. The fundamental right to a right to a clean and healthy environment is not a fundamental recognized in the Constitution. as a result of recent court decisions.

There were no explicit environmental protection clauses in the Indian Constitution. As a consequence of India's government adopted the 42nd amendment to the Constitution in 1976 in response to the Stockholm Conference, rising public awareness of environmental problems, and the global preservation of nature movement of the 1970s. Certain environmental safeguards were included into the constitution by an amendment. Article 48-A of the Direct Principles of State Policy was added by this 42nd Amendment.

"The State will work to defend and enhance the quality of life and to safeguard the country's forests and wildlife," according to Article 49-A. Every citizen now has a duty under the aforementioned amendment known as the Fundamental Duty. Section Article 51-A, Subsection (g) of the Indian Constitution declares that all citizens of India have a duty to protect and preserve the natural environment, specifically forests, lakes, rivers, and wildlife, as well as to show compassion for all living things." As a result, corresponding to Articles 48-A & 51-A(g), it is the obligation of

¹Bhullar, L. (2022). Environmental Constitutionalism and Duties of Individuals in India. *Journal of Environmental Law*, 34(3), 399–418. <https://doi.org/10.1093/jel/eqac010>

the State & every individual to protect & improve the natural environment².

According to Article 253, "the fact that the has the power to enact any legislation or to mandate compliance with any international custom, treaty, or agreement on behalf of the whole nation or any portion thereof. This is supported by the fact that Parliament passed the Air Act and the Environment Act under Article 253. A number of Acts were passed in order to implement the Stockholm Conference's recommendations. Citizens and the Environment: The Indian Constitution has two clauses:

- i. A command to the State to safeguard and enhance the environment.
- ii. Imposing a basic obligation on every person to contribute to the protection of the environment.
- iii. This attests to the government's knowledge of an issue of general concern. Since protecting our surroundings is now the basic duty to each citizen, it seems sense that each person should fulfil this role on a personal level by simply changing the way he lives naturally.
- iv. The only need is for the person to adopt a habitual love of pollution.

Influence of International Environmental Treaties

It is debatable whether customary law or basic environmental concepts like the "precautionary principle" and sustainable development have yet to become normative standards. Numerous bilateral and multinational environmental accords establish the duties and rights of governments. The UN Commission on Sustainable Development (UNCSD) and the UN Environment Programme (UNEP) has worked together to draught several of those accords.

The following are a handful of the most significant treaties.

- Environmental Treaties and Resource Indicators (ENTRI) - The Treaty Locator offers detailed searches over the whole of any treaty's text.
- ECOLEX, a free portal to international environmental agreements online. Additionally provided is data on the status of the treaties.

Ocean & marine sources, toxic & hazardous compounds, nuclear danger, ozone protection, pollution, toxic & hazardous substances, biodiversity, sustainable development, & commerce & the environment are among the general issues that most treaties cover³.

²Indianbarassociation. (2004). *Constitutional Provisions for the Protection of Environment With Relevant Case Laws*. 19(1). <https://www.indianbarassociation.org/wp-content/uploads/2013/02/environmental-law-article.pdf>

The following key IEL treaties are included on the UN Multimedia Library of the international law internet presence, which also provides useful introductory statements and the whole texts of many international conventions and travaux:

- The Vienna Convention for the Protection of the Ozone Layer, 1985; & The Montreal Protocol on Substances, Which Deplete the Ozone Layer, 1987
- The 1989 Basel Convention on Transboundary Movements of Hazardous Wastes & their Disposal
- Conventions on Biological Diversity, 1992; Cartagena Protocols on Biosafety to the Convention on Biological Diversity, 2000
- The United Nations Framework Convention on Climate Change (UNFCCC), which was adopted in 1992;
- The 1997 Kyoto Protocol of the United Nations Framework Convention on Climate Change

Judicial Decisions and Environmental Protection

India confronts several environmental difficulties due to its diversified ecosystems and population. Natural assets in the United States are under intense strain from a variety of factors, including as air pollution, deforestation, water shortages, and biodiversity loss. In this situation, the judiciary's role becomes crucial for maintaining environmental preservation. The Indian court have been instrumental in developing environmental governance, adjudicating disputes, and interpreting and implementing environmental legislation⁴.

The Supreme Court of India Adopted the Sustainable Development Principles

The Indian Supreme Court has adopted sustainable development ideas and stressed the need of striking a balance between the environment, society, and the economy. Despite being an old idea, the global industrial and information societies that have emerged in the twenty-first century have given this idea more prominence. The Brundtland Report states that sustainable development aims to meet present needs without jeopardizing the ability of future descendants to meet their own.

³YMPARISTOMINISTERIO. (2016). *International environmental agreements - Ministry of the Environment*. <https://ym.fi/en/international-environmental-agreements>

⁴Saumya. (2021). *Role Of Judiciary In Environment Protection | JudicateMe*. <https://judicateme.com/role-of-judiciary-in-environment-protection/>

Background of the Environment Protection Act

In India, environmental concerns are nothing new. Since ancient times, we have adhered to the notion that "VasudhaivaKutumbakam," or "the world comprises a single family," exists. All living creatures on Earth, including all plants, all animals, & all bacteria, were considered to be a single family by Indians, who have maintained this view for a very long time⁵.

Our present-day Constitution also provides testimony to our old principles. Some of them are as follows:

The second modification to the Act incorporated Article 48A of the Directive Conceptions of State Policy, which identified the policies the state should adopt. responsibility to take action to "maintain & enhance" the environment & protect the nation's natural resources. In terms of Article 51A(g), each citizen of the country has a fundamental duty "to conserve & promote the natural environment, including forested regions, lakes, rivers, & animals, & to demonstrate compassion for living beings."

Stockholm Conference, 1972

The first international conference to treat environmental issues seriously was the Stockholm Environment Conference organized by the United Nations. It sparked the creation of the Stockholm Agreement and a Plan of Action for the Human Environment as well as a plethora of additional resolutions aiming at effective environmental management. The Declaration primarily attempted to facilitate communication between industrialised and developing countries on issues of economic development, pollution of the air and water, and the general well-being of people across the world⁶.

Objectives of the Environment Protection Act

The ones that follow are the primary reasons for introducing this legislation: to put into action, the important conclusions made about the conservation and safety of the environment at the Stockholm Conference on the Human Environment in June 1972. Comprehensive legislation that filled up the gaps in the current statutes was required. since India already had several laws covering various parts of the environment. As a result, it was passed to

⁵Ipleaders. (2022). *Environment (Protection) Act, 1986 - iPleaders*.
<https://blog.ipleaders.in/environment-protection-act-1986-2/>

⁶Kutlu, K. (2020). Stockholm Declaration on the Human Environment. *The Palgrave Encyclopedia of Global Security Studies*, 3, 1–7. https://doi.org/10.1007/978-3-319-74336-3_437-1

bring about universal environmental protection law and to include other significant environmental threats that had hitherto gone unrecognized.

- In order to protect and improve the natural world, it is necessary to harmonize the previous agencies' actions and form new authority.
- To provide severe and dissuasive punishment to those who violate nature and put its safety and health in peril.
- To promote the expansion of delegated and subordinate laws on environmentally delicate issues and environmental protection.
- To encourage sustainable development, which means balancing economic growth with environmental preservation.

Environment Protection Act in India

The EIA idea initially appeared in of 1976–1977, the The Indian Planning Commission directed the Institute of Science and Technology to assess the ecological impact of a number of planned river valley development projects. The scope was subsequently expanded to further projects. The P.I.B.'s stamp of approval was required. The majority of them, however, were just arbitrary choices made by the administration. It wasn't widely recognised until the Environmental Protection Agency was created in 1986. A notification published under the Act after EPA's implementation mandated EIA for 30 specific activities. There is a duty for granting clearances lies with Government Department of Forestry and Environment. In 2006, an amended notice was sent.

CASE LAWS

1. M.C. Mehta vs. Union of India (Oleum gas leak case) (1987 SC 965)

Held:

In the case of M.C. Mehta vs. Union of India (Oleum gas leak case) (1987 SC 965), the court held that hazardous industries located in densely populated areas should be closed, removed, or relocated to prevent harm to the public residing nearby. The case was initiated through a writ petition filed by M.C. Mehta against Shriram Foods and Fertilizers Industries, situated in the densely populated area of Kirti Nagar, Delhi. The industry in question, Shriram Food and Fertilizers Ltd., was involved in the production of hazardous chemicals such as caustic soda, chlorine, oleum, and fertilizers, which emitted toxic gases posing a threat to The court recognized the grave risks posed by such industries located near dense population centers and emphasized the need to prioritize public safety over the interests of these hazardous industries.

2. Vellore Citizens Welfare Forum vs. Union of India (1996 5 SCC 647):

Held:

In the case of Vellore Citizens Welfare Forum vs. Union of India (1996 5 SCC 647), the court held that industries causing excessive water pollution by releasing pollutants into must be strictly regulated to protect the environment and prevent damage to agricultural land and the livelihood of the surrounding people. the water pollution brought on by tanneries & others enterprises dumping pollutants into the Palar River in accordance with Article 32 of the Constitution. The region's inhabitants relied heavily on the river as a source of water for their daily needs. After that, the Tamil Nadu Agricultural University Research Centre in Vellore determined that pollutants have rendered some 35,000 hectares of agricultural land completely or partly barren & unusable for agriculture. In order to strike a balance among industrial development alongside preserving the surroundings as well as people's means of subsistence, the court instructed the relevant authorities to implement the required steps to reduce water pollution, protecting the river, as well as ensure which industries performed in an environmentally responsible manner.

3. M.C. Mehta vs. Kamal Nath (1997 1 SCC 388)

Held:

In the case of 'Span Motels Private Limited' and the development of "Span Club" on the river's edge, a controversial issue arose due to the involvement of Mr. Kamal Nath, who served as the department's minister at the time. According to the Community Trust Doctrine, some natural resources belong to the public and cannot be possessed or used by private entities for commercial purposes, becomes relevant in under Mr. Kamal Nath's leadership, granted approval to 'Span Motels Private Limited' for leasing approximately 27.12 bighas of additional forest area on November 24, 1993 (Dated April 11, 1994). This approval facilitated the development of the extravagant project on the river's edge. However, the development of the "Span Club" raised concerns after Intense content named "Kamal Nath confronts the authority of Beas to keep his goals floating" was published in the Indian Express." The article highlighted issues with the project, particularly related to the river overflowing and its potential environmental impacts. Given the Public Trust Doctrine's principles, the approval granted by the Ministry to lease forest area to a private corporation for commercial purposes appears to be in violation of the public's rights to the natural resources. The case raises questions about the government's management of communal resources and the potential conflicts of interest involving public officials.

4. Indian Council for Enviro-Legal Action vs. Union of India (1996 AIR 1446)

Held:

In the case of Indian Council for Enviro-Legal Action vs. Union of India (1996 AIR 1446),

an environmental organization named the Indian Council for Enviro-Legal Action filed a writ petition against a group of chemical manufacturers in Bicchri, Udaipur District, Rajasthan, India. The manufacturers, operating under the same ownership and located in the same locality, were Hindustan Argo Chemicals Limited, engaged in the production of chemicals like Single Super Phosphates and Oleum (a highly concentrated type of sulfuric acid). The main issue included the pollution & effects on the environment brought on by the manufacture of chemicals. The primary concern was the adverse effects of these activities on the surrounding environment and the health of the local population. The case specifically highlighted the situation in the small town of Bicchri, which was affected due to the operations of Hindustan Argo Chemicals Limited. The court ruled that Article 21 of the Indian Constitution's protection of the right to life includes the right to a clean environment as a fundamental component.

5. Subhash Kumar vs. State of Bihar (1991 SCC 1 598)

Held:

In The court determined that the right to water is an essential element of Article 21 of the Indian Constitution's right to life in Subhash Kumar v. State of Bihar (1991 SCC 1598). Every individual has a basic right to, according to the article. access clean and safe drinking water. The petitioner, Subhash Kumar, filed a public interest litigation (PIL) against The Bokaro River has been accused of being polluted by the West Bokaro Collieries and the Tata Iron and Steel Company (TISCO). Petitioner argued that Respondents' actions had destroyed the river due to pollution. water unfit for drinking and irrigation. The court acknowledged the significance of PIL in protecting the interests of the public and ensuring that citizens' rights are safeguarded. As long as it complied with Sections 24 & 25 of the Water (Prevention & Control of Pollution) Act of 1974, TISCO was allowed to keep dumping rubbish into the river.

6. Andhra Pradesh Pollution Control Board vs. Prof. M. V. Nayudu (AIR 1999 SC 812)

Held:

The Supreme Court agreed with the APPCB's decision not to grant consent for the establishment of the industry. The Court said that in environmental issues involving scientific uncertainty, both the Precautionary and Polluter-Host Responsibility Principles should be used to guide decision-making. The decision emphasised the significance of environmental preservation and the relevance of these principles in Indian environmental law. Other key environmental cases, such as Vellore Citizens Welfare Forum and Shri Ram Food and Fertilisers Gas Leakage, were also cited by the Court to create legal precedents on environmental problems.

7. S Jagannath vs. Union of India (AIR 1997 2 SCC 87)

Held:

The court ruled that the conversion of farmland and salt works into aquaculture facilities was improper. It required the creation of a Central Government agency called the Coastal Management Authority to oversee coastal issues. to put the Precautionary Principle & the Polluter Pays Principle into action. Shrimp production ponds have been prohibited in coastal locations. Aquaculture enterprises within a one-kilometer radius of Chilika Lake have been forced to compensate impacted individuals. Outside the CRZ, aquaculture activities needed prior approval and clearance from the authorities; otherwise, they were obliged to discontinue operations. The decision sought to preserve the coastal environment and residents from the negative effects of aquaculture.

8. Goa Foundation vs. Konkan Railways Corporation (AIR 1992 Bom 471)

Held:

In the case of Goa Foundation vs. Konkan Railways Corporation (AIR 1992 Bom 471), the court held that while protecting the environment is crucial, projects of public utility that have significant economic and social benefits cannot be abandoned solely on environmental grounds. The case revolved around the construction of a railway line by the Konkan Railway Corporation Ltd. in the States of Maharashtra, Goa, and Karnataka. In their plea, the petitioners—speaking on behalf of the Goa Foundation—sought to force the Corporation to get environmental approval, for the planned railway line alignment that would run through the State of Goa. They argued that the project had not undergone a sufficient Environment Impact Assessment (E.I.A.), that it would cause serious environmental damage, & that it would negatively impact residents' rights under Article 21 of the Constitution. Ultimately, the court concluded that the expertise to strike this balance lay with specialized bodies familiar with environmental matters.

9. Narula Dyeing and Printing Works vs. Union of India (AIR 1995 Guj185)

Held:

In the case of Narula Dyeing and Printing Works vs. Union of India (AIR 1995 Guj 185), According to the court, Section 5 of the Environment (Protection) Act of 1986 gives the State Government the power to intervene and direct industrial units to stop production activities if they are not conforming to the specified standards for waste water discharge set by the Gujarat Pollution Control Board. Manufacturers' associations filed the petition against the State Government. actions, which included ordering the cessation of production activities until the waste water being discharged complied with the pollution control standards. The State Government argued State Board approval

letters issued under Section 25(2) of the Water (Prevention and Control of Pollution) Act were not complied with since these units lacked an operational effluent treatment facility. The judge sided with the respondents. and ruled that conditions on industries under Section 25 of the Water Act. This includes specifying conditions related about the effluent's chemical make-up, temperature, value, or outflow rate. As a result, the court dismissed the petition and directed the petitioners to comply with the directions of the State Government, emphasizing the importance of adhering to pollution control measures to safeguard the environment and water resources.

10. Bombay Environmental Action Group vs. State of Maharashtra (AIR 2006 SC 1489)

Held:

Legal proceedings between the Bombay Environmental Action Group and the State of Maharashtra (AIR 2006 SC 1489), The court ruled that while environmental concerns were important & deserving of attention, it is necessary to strike a balance between the demands of the environment, the needs of the community, as well as the interests of the nation as a whole. The case revolved around a challenge Station in District Thane, which the petitioners argued would adversely affect the local ecology and aquatic life. The defendants contended that the project site had no significant vegetation or habitation nearby, and therefore, there would be minimal environmental impact. This judgment highlights the delicate balance that courts often have to strike between environmental conservation and developmental needs, particularly in a developing country like India, where the demand for energy and infrastructure development is substantial. It underscores the importance of adhering to environmental norms while also considering the broader socio-economic context of the nation.

CONCLUSION AND SUGGESTION

The function of the law in ecological security and enforcing corporate social responsibility is undeniably crucial in fostering sustainable development and ensuring accountability in today's globalized world. Through landmark judgments, like the Vellore case in India emphasizing the "Polluter Pays" principle, and the Oleum Gas Leak Case establishing "Absolute Liability" for hazardous industries, the judiciary has played a vital role in holding industries accountable for their actions that harm the environment and public welfare. Moreover, cases like, upholding "No-Fault Liability" for the Bhopal Gas Tragedy, and *Kiobel v. Royal Dutch Petroleum Co.*, limiting the ATS application, reflect the judiciary's impact on corporate accountability for human rights and environmental abuses.

To further enhance the judiciary's role in environmental protection and corporate social

responsibility, several measures can be taken. First, encouraging international collaboration and legal harmonization helps guarantee that multinational firms are held responsible for their worldwide conduct. Second, establishing specialised environmental and corporate social responsibility tribunals may speed up the adjudication of these cases, assuring speedy justice. Third, raising public knowledge and promoting civil society engagement may help to create a more watchful climate in which firms and governments are held responsible for their environmental and social activities. Finally, in order to successfully address modern environmental and social problems, the court should continue to interpret existing laws flexibly, adjusting to growing difficulties such as climate change and developing concepts of corporate responsibility. By following these recommendations, the court may reinforce its critical role in environmental protection and corporate social responsibility for a more sustainable and fair future.

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