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Environmental Jurisprudence in India: Harmonizing Constitutional Mandates with Judicial Intervention

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Abstract

The role of the Supreme Court in resolving disputes concerning environmental issues assumes great significance, as there exist powerful competing claims and counterclaims over the use and management of natural resources. Apart from resolving conflicting claims, the role of the Supreme Court, as recognized by the Constitution, is not only to ensure that the enactment of laws by the legislature is in conformity with constitutional provisions, but also that these laws are implemented by the administrative agencies involved in the protection and improvement of the environment. Constitutionally and through its own interventions, the Supreme Court has become an important factor in environmental jurisprudence in India. The Supreme Court of India's growing reputation as a "Green Court" arises out of its increasing interventions in protecting and improving the environment. The Supreme Court has significantly widened the sphere of litigation and introduced various environmental principles such as the *'polluter pays principle'*—a principle in international environmental law, where the polluting party pays for the damage done to the natural environment, the *'precautionary principle'*—this principle aims to provide guidance for protecting public health and the environment in the face of uncertain risks, stating that the absence of full scientific certainty shall not be used as a reason to postpone measures where there is a risk of serious or irreversible harm to public health or the environment., the principle of *'absolute liability'*—this principle speaks of complete legal responsibility for causing harm can be imposed on the wrong doer even without proof of negligence, the *'public trust doctrine'*—according to this doctrine certain resources are preserved for public use, and that the government is required to maintain them for reasonable use by the public. etc., not only for environmental safety but also for the well-being of the people.

Keywords

Constitutional obligation; protection of environment; environmental jurisprudence; absolute liability

1. Introduction

The Supreme Court's growing role in environmental governance raises the question as to why there is a need for such active judicial intervention in resolving environment-related disputes. The answer possibly lies in the fact that India's other organs of government have not been effective in curbing pollution and environmental degradation. Yet, it would be unfair to say that the legislature has made no effort at all to solve India's environmental problems. For example, in response to the Stockholm Conference on Human Environment of 1972 and the growing awareness of the environmental crises in the country, the Indian Parliament made an amendment to the Constitution in which it incorporated direct provisions for the

protection of the environment. The Constitution (Forty-Second Amendment) Act, 1976, makes it a fundamental duty to protect and improve the natural environment. Despite these legislative attempts, the judiciary had to intervene to make a clean and wholesome environment a reality. Some of these interventions include recognizing the right to a healthy environment as a part of the fundamental right to life; directing the polluters to follow environmental norms and regulations; ordering the implementing agencies to discharge their constitutional duties in terms of protecting and improving the environment; determining the quantum of compensation for people affected by pollution.

2. Environmental Protection in India: Constitutional & Legislative Framework

2.1 Environmental Protection in India: Ancient Traditions [1]

India has an ancient tradition of protecting the environment. There exist several writings which prove that in ancient India every individual had to practice the *dharma* to protect and worship nature. A look at the environmental ethics of the olden times contained in *the Vedas*, *Upanishads*, smritis and *purans* discloses environmental harmony and conservation since sun, air, fire, water and earth were considered as manifestations of divine personification[1]. Sacred groves were kept unmolested and undisturbed since time immemorial [2]. Causing harm to these groves was believed to offend the forest spirits and deities[2]. Trees [3] were worshiped[3]. *Rishis* warned against deforestation and cutting of trees as such acts would result in poor rainfall.

2.2 Constitutional Obligation[4]

The Constitution of India, which is the supreme law of the land, has imposed an obligation to protect the natural environment both on the States as well as the citizens of India. Part IV of the Constitution of India, called the Directive Principles of State Policy, has imposed certain duties on the State to protect the environment. Part IV A of the Constitution has imposed a fundamental duty on every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures [4].

2.2.1 Obligations on the State

The following constitutional obligations are imposed on the State under the scheme of the Constitution of India:

1. *Article 39 (b)* of the Constitution of India provides that the State shall direct its policy to see "that the ownership and control of the material resources of the community are so distributed as best to subserve the common good." The term 'material resources of the community' embraces all things which are capable of producing wealth for the community[5]. The expression 'material resources of the community' has been held to include such resources in the hands of private persons and not only those which have already vested in the state[6].
2. The Constitution of India, through *Article 42*, has directed the state to endeavour to secure just and humane conditions of work.
3. Under *Article 47*, it imposes a duty upon the state to raise the level of nutrition and the standard of living of its people and improve public health.
4. The Supreme Court in *Municipal Council, Ratlam v. Vardhichand*[7] observed that the state will realize that *Article 47* makes it a paramount principle of governance that steps are taken for the improvement of public health as amongst its primary duties.
5. *Article 48* directs the state to take steps to organize agriculture and animal husbandry on modern and scientific lines. In particular, it is directed to take steps for preserving and improving the breeds and prohibiting the slaughter of cows, calves and other milch and draught cattle.
6. Of all Articles, *Article 48A*, which was added to the Constitution of India through the 42nd Amendment Act in the year 1976, expressly directs the state *"to protect and improve the natural environment and to safeguard forests and wildlife"*.

[1] P. Leelakrishnan, Environmental Law in India, 7th Edn. 2025, LexisNexis Butterworth Wadhwa, Nagpur, p. 4.
[2] VD Vartak, 'Scared Groves- A Sanctuary for Lofty Trees. and Lianas', in Eco-development of West of Western Ghats, Kerala Forest Research Institute, 1986, p.55 at p. 58.
[3] HD Bhattacharya, 'Minor Religious Sects', in RC Majumdar, Advanced History of India, 1968, Vol.II, p.473.
[4] S. Shantha Kumar, Introduction to the Environmental Law, 2nd Edn Rep. 2010, LexisNexis Butterworths Wadhwa.
[5] Assam Sillimanite Ltd. v. Union of India, AIR 1992 SC 938.
[6] Sanjeev Coke Mfg. Co. Bharat Coking Coal Ltd., AIR 1983 SC 239.
[7] AIR 1980 SC 1622.

7. The Madras High Court in *M.K. Janardhanam v. District Collector, Tiruvaslur*[8] observed that "the phrase used in Articles 48A and 51A is 'protect and improve' which implies that the phrase appears to contemplate affirmative governmental action to improve the quality of the environment and not just to preserve the environment in its degraded form."
8. *Article 51* provides that the state should strive to "foster respect for international law and treaty obligations".
9. Most important is *Article 37*, which declares that the directive principles contained in Part IV of the Constitution are "fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws."

In all the above articles, the expression *'state'* is used in the sense as defined under *Article 12*. The framers of the Constitution of India chose to adopt the same definition for the word *'state'* as defined in *Article 12* for the purpose of Part IV of the Constitution as well[9]. This was done to enable the judiciary to interpret it so widely as to bring all "agencies and instrumentalities of the state" under the scope of the word *'state'*. The object was to direct all such agencies and instrumentalities of the state to apply the directive principles in making laws.

2.2.2 Legislative Measures: Early Legislative Measures in India [5]

- **Protection of Water:** A survey of early environmental legislation indicates the nature and levels of governmental awareness of environmental issues. Apart from forest laws, 19th-century legislation also partially regulated two other aspects of the environment in India: water and wildlife. *The Shore Nuisance (Bombay and Kolaba) Act, 1853* was one of the earliest laws concerning water pollution. It authorized the Collector of Land Revenue in Bombay to order the removal of any nuisance below the high-water mark in Bombay harbour. *The Indian Penal Code, 1860* imposed a fine on a person who voluntarily 'fouls the water of any public spring or reservoir'[10]. *The Indian Easements Act, 1882* protected riparian owners against 'unreasonable' pollution by upstream users. The *Indian Fisheries Act, 1897* penalised the killing of fish by poisoning water and by using explosives. Legislative provisions regulating the discharge of oil into port waters[11] and prohibiting the poisoning of water in forests[12] were enacted prior to independence.

Two early post-independence laws touched on water pollution. First, section 12 of the *Factories Act, 1948* which required all factories to make 'effective arrangements' for waste disposal and empowered state governments to frame rules implementing this directive. Second, River Boards, established under the *River Boards Act, 1956*, were empowered to prevent water pollution.

- **Protection of Air:** The earliest laws aimed at controlling air pollution were the *Bengal Smoke Nuisance Act, 1905* and the *Bombay Smoke Nuisance Act, 1912*.
- **Protection of Wildlife:** In the field of wildlife protection, early legislation was limited to specific areas and particular species. In 1873, Madras enacted the first wildlife statute for the protection of wild elephants. The first effort by the Central Government came six years later with the enactment of the *Elephants' Preservation Act, 1879*. In 1887, the Centre enacted the *Wild Birds Protection Act*, prohibiting the possession or sale of wild birds during notified breeding seasons. The first comprehensive law for the protection of wildlife and its habitat was the *Hailey National Park Act of 1936*, which established the Hailey (now Corbett) National Park in the State of Uttar Pradesh[13].

2.2.3 Laws and Regulations Adopted in the Post-Stockholm Conference

In the post-Stockholm Conference period, both Central and State Legislatures and Administrative Authorities have adopted a number of Enactments, Rules and Regulations for the protection and improvement of the environment. Some of which are as follows:

1. The Water (Prevention and Control of Pollution) Act, 1974;
2. The Forest (Conservation) Act, 1980;
    - The Forest (Conservation) Rules, 1981;
    - The Panchayat (Extension to Scheduled Areas) Act, 1996;

[8] 2003-1-LW. 262.
[9] Article 36, The Constitution of India, 1950.
[10] Section 277, IPC, 1860.
[11] Section 21, Indian Ports Act, 1908
[12] Section 26, Indian Forest Act, 1927.
[13] S. Divan & A. Rosencranz, Environmental Law and Policy in India, 3rd Edn. 2023, Oxford University Press, New Delhi, p. 29.

- Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights), 2006;
- The Forest (Conservation) Rules, 2022;
- The Forest (Conservation) Amendment Act, 2023

3. The Air (Prevention and Control of Pollution) Act, 1981;
   - The Air (Prevention and Control of Pollution) Rules, 1982;
4. The Environment (Protection) Act, 1986;
   - The Environment (Protection) Rules, 1986;
5. The Manufacture, Storage and Import of Hazardous Chemical Rules, 1989;
6. The Hazardous Waste (Management and Handling) Rules, 1989;
7. Hazardous Waste (Management, Handling & Transboundary Movement) Rules, 2008[14]
   - First Amendment Rules, 21.07.2009
   - Second Amendment Rules, 23.09.2009
   - Third Amendment Rules, 30.03.2010
   - Fourth Amendment Rules, 13.08.2010
8. Hazardous and Other Wastes (Management & Transboundary Movement) Rules, 2016[15]
   - First Amendment Rules, 06.07.2016
   - Second Amendment Rules, 28.02.2017
   - Third Amendment Rules, 11.06.2018
   - Fourth Amendment Rules, 01.03.2019
   - Fifth Amendment Rules, 09.10.2020
   - Sixth Amendment Rules, 12.11.2021
   - Seventh Amendment Rules, 21.07.2022 (EPR Waste Tyre)
   - Eighth Amendment Rules, 18.09.2023 (EPR Used Oil)
   - Ninth Amendment Rules, 12.03.2024
   - Tenth Amendment Rules, 12.11.2024
9. The Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms/Genetically Engineered Organisms or Cells Rules, 1989;
10. The Public Liability Insurance Act, 1991;
11. The National Environmental Tribunal Act, 1995; (Got replaced with NGTA, 2010)
12. The Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996;
13. The National Environment Appellate Authority Act, 1997; (Got replaced with NGTA, 2010);
14. The Biomedical Waste (Management and Handling) Rules, 1998;
    - Bio-medical Waste Management Rules, 2016
    - Bio-medical Waste Management Rules, 2016 (Amended) 16.03.2018
    - Bio-medical Waste Management Rules, 2016 (Amended) 19.02.2019
    - Bio-medical Waste Management Rules, 2016 (Amended) 10.05.2019
15. The Recycled Plastic Manufacture and Usage Rules, 1999;
16. Plastic Waste Management Rules, 2016, as amended, 2018
    - Plastic Waste Management Rules, 2016, as amended, 2021
    - 2nd Amendment of Plastic Waste Management Rules, 2022
17. The Municipal Solid Wastes (Management and Handling) Rules, 2000;
    - Solid Waste Management Rules, 2026
18. The Ozone Depleting Substances (Regulation and Control) Rules, 2000;
19. The Noise Pollution (Regulation and Control) Rules, 2000;
20. The Batteries (Management and Handling) Rules, 2001;
    - Battery Waste Management Rules, 2022
    - Battery Waste Management Rules, 2023
    - Battery Waste Management Rules, 2024

[14] https://cpcb.gov.in/rules/ accessed on 24.07.2026.
[15] https://cpcb.gov.in/rules/ accessed on 24.07.2026.

- Battery Waste Management Rules, 2025

21. The Biological Diversity Protection Act, 2002; GL to be added
22. The National Environmental Policy, 2006
23. The National Green Tribunal Act, 2010
24. E-Waste Management Rules, 2022
    - E-Waste First Amendment Rules, 2023
    - E-Waste Second Amendment Rules, 2023
    - E-Waste Third Amendment Rules, 2024
25. Carbon Credit Rules, 2023
26. Environment Impact Assessment Notification, 2006;[16]
    - Latest Notification Date: 30.08.2023
27. Wild Life Protection (Amendment) Act, 2002
28. Construction & Demolition Waste Management Rules, 2016

- Construction and Demolition Waste Management Rules, 2025

29. The Environment Protection (Management of Contaminated Sites) Rules, 2025

However, in spite of this plethora of Constitutional provisions and laws, at both central and state levels, we have not been able to prevent environmental degradation in the country. In fact, the last three decades have witnessed a rapid degradation of the environment, and there has been little headway in controlling the depletion process. Environmental laws, by and large, remain unenforced or mismanaged. The problem of environmental degradation continues to remain a great concern for India. Most Indian rivers and freshwater streams are polluted with industrial wastes or effluents.

2.2.4 Judiciary and the Constitutional Obligations

The judiciary, to fulfill the above-mentioned Constitutional obligations, was and is still prepared to issue appropriate orders, directions and writs against those who cause environmental pollution and ecological imbalance. This is evident from a plethora of cases decided by the Supreme Court, starting with *Ratlam*[17]. Ratlam provoked the consciousness of the judiciary to a problem, which had not attracted that much attention before. The Supreme Court responded with equal anxiety and raised the issue to be covered within the mandate of the Constitution. In *Rural Litigation Entitlement Kendra v. State of UP*[18] the Supreme Court ordered the closure of certain limestone quarries on the ground that there were serious deficiencies regarding safety and hazards in them. Large-scale pollution was being caused by limestone quarries, adversely affecting the safety and health of the people living in the area. In *M.C. Mehta v. Union of India*[19], the Supreme Court ordered the closure of tanneries at Jajmau near Kanpur, polluting the River Ganga. The matter was brought to the notice of the court by the petitioner, a social worker, through a PIL. The Supreme Court, on another occasion[20], directed the Mahapalika to get the dairies shifted to a place outside the city and arrange for removal of wastes accumulated at the dairies so that it may not reach the River Ganga.

In the *Delhi Industries Pollution Case*[21], the Supreme Court directed the shifting of 168 hazardous industries operating in Delhi as they were causing danger to the ecology. In a significant judgment in *Indian Council for Enviro-Legal Action v. Union of India*[22], the Supreme Court held that if, by the action of private corporate bodies, a person's fundamental right is violated, the Court would not accept the argument that it is not 'State' within the meaning of Article 12 and, therefore, action cannot be taken against it. If the Court finds that the Government or the Authorities concerned have not taken the action required of them by law, and this has resulted in violation of the right to life of the citizens. It will be the duty of the Court to intervene.

2.2.5 Obligations on the Part of Citizens

Citizens also have certain duties or obligations imposed upon them under the Constitution of India.

1. The Constitution in its Part IV A, under Article *51A (g)*, has declared that it shall be the fundamental duty of a citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have

[16] https://environmentclearance.nic.in/report/View_EIA_Notifications.aspx accessed on 24.07.2026.
[17] Municipal Council, Ratlam v. Vardhichand, AIR 1980 SC 1622.
[18] (1985) 2 SCC 431.
[19] (1987) 4 SCC 463.
[20] M.C. Mehta v. Union of India (1988) 1 SCC 471.
[21] M.C. Mehta v. Union of India (1996) 4 SCC 740.
[22] (1996) 3 SCC 212.

compassion for living creatures".

2. *Article 51A (j)* has imposed another fundamental duty on the citizen that is "to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement."
3. The Rajasthan High Court in *Vijay Singh Puniya v. State of Rajasthan*[23] observed that "any person who disturbs the ecological balance or degrades, pollutes and tinkers with the gifts of nature such as air, water, river, sea and other elements of nature, he not only violates the fundamental right guaranteed under Article 21 of the Constitution but also breaches the fundamental duty to protect the environment under article 51 A (g)."

2.2.6 The Big Question Mark Before Us?

The question before us is whether we, as citizens of India, have fulfilled our part of the obligation imposed by the Constitution of India. The answer is certainly 'NO'.

- As Plato's Allegory of the Cave reminds us, we remain like prisoners who see only shadows of reality—our environmental consciousness is still superficial, despite constitutional mandates[24].
- Paras Diwan [6] has opined that the people in India love pollution to such an extent that they cannot live without it, because "traditionally we are a pollution-loving nation. We pollute the air by bursting crackers on Dussehra, Diwali, and on the occasions of marriages and other festivals. We pollute our rivers by disposing of dead bodies and all other human and other wastes. We take out so much wood from our trees for fuel that in many areas trees have become scarce. We are lovers of cleanliness and, therefore, sweep out all of our household and other waste onto the public streets. Any space is good enough for us to ease; we are a country which believes in open latrines. Municipalities are oblivious of their duties, and all city wastes, human and industrial effluents, are allowed to flow in open drains and to flood the streets[25].

3. Fundamental Right to Live in a Healthy Environment

The right to live in a clean and healthy environment is not a recent invention of the higher judiciary in India. This right has been recognised by the legal system and by the judiciary in particular, for over a century or so. The only difference in the enjoyment of the right to live in a clean and pollution-free environment today is that it has attained the status of a fundamental right, the violation of which the Constitution of India will not permit. It was only from the late eighties that the Supreme Court and various High Courts of India have designated this right as a fundamental right. In today's emerging jurisprudence, environmental rights [7], which encompass a group of collective rights, are described as "third generation rights". The "first generation rights" are generally civil and political rights such as those found in the ICCPR, 1966, while the "second generation rights" are economic, social and cultural rights as found in the ICESCR, 1966[26].

3.1 Right to Live in a Healthy Environment as a Basic Human Right

Right to life being the most important of all human rights implies the right to live without the deleterious invasion of pollution, environmental degradation, and ecological imbalances. There is a growing recognition in various countries that the right to a healthy environment and to sustainable development are fundamental human rights implicit in the right to life[27].

- **UDHR 1948:** The Universal Declaration of Human Rights, 1948, has declared that everyone has the right to life[28] and that everyone has a right to a standard of living adequate for health and well-being of himself and of his family[29].
- **ICESCR 1966:** The International Covenant on Economic, Social and Cultural Rights, 1966, declares that the States Parties to the covenant recognise the right of everyone to an adequate standard of living for himself and his family. and to the continuous improvement of living conditions[30]. The Covenant further declares that the States Parties

[23] AIR 2004 Raj. 1.
[24] Plato, *Republic*, (Book VII).
[25] Paras Diwan, Environmental Protection: Issues and Problems in Environmental Administration, Law and Judicial Attitude, Eds, Paras Diwan and Peeyushi Diwan, 2nd Edn. 1997, p.5 [Quoted in S. Shantha Kumar, Introduction to the Environmental Law, 2nd Edn Rep. 2010, Lexis Nexis Butterworths Wadhwa at p.89-90].
[26] John Lee, "Right to Healthy Environment", Columbia Journal of Environmental Law, Vol.25, 293-394 (2000) cf. A.P. Pollution Control Board II v. Prof. M.V. Nayudu, 2000 SOL Case No 673.
[27] A.P. Pollution Control Board II v. Prof. M.V. Nayudu, 2000 SOL Case No 673.
[28] Article 3, UDHR, 1948.
[29] Article 25, UDHR, 1948.
[30] Article 11, ICESCR, 1966.

recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health[31].

- **ICCPR 1966:** The International Covenant on Civil and Political Rights, 1966 proclaims that every human being has the inherent right to life. This right shall be protected by law[32].
- **ECPHR 1950:** The European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 provides that everyone's right to life shall be protected by law[33].
- **The Stockholm Declaration 1972:** Principle 1 of the Declaration of the United Nations Conference on the Human Environment, 1972, held at Stockholm, proclaims that "man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that proclaims a life of dignity and well-being."

After the Stockholm Declaration 1972, references to the right to a decent, healthy and viable environment were incorporated in several Global and Regional Human Rights Treaties and in the Declarations and Resolutions of International Organizations. For example:

1) Article 24 of the African Charter on Human Rights and People's Rights, 1981;
2) Principle 23 of the World Charter for Nature, 1982;
3) Article 11 of the Additional Protocol to the Inter-American Convention on Human Rights, 1988;
4) Article 24(2) of the Convention on the Rights of the Child, 1989;
5) Hague Declaration on the Environment, 1989.

The UNCED 1992: In the year 1992, the United Nations Conference on Environment and Development, held at Rio de Janeiro, laid down a global partnership for the protection of the environment. The road from Stockholm to Rio de Janeiro was encircled by several international attempts at protection of the human environment.

The Earth Summit 1997: The 1997 Earth Summit meeting of 100 nations in New York reflected the principle that in order to achieve "sustainable development, environment protection shall constitute an integral part of the development process and cannot be considered in isolation of it". The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities undertook a Study on "Human Rights and the Environment" and submitted its Report in 1994. The most fundamental conclusion of the Report is that there has been a "shift from the environmental law to the right to a healthy and decent environment" and that it is capable of immediate implementation by Human Rights Bodies.

It is worth mentioning here that India is also a party to the United Nations Framework Convention on Climate Change (UNFCCC, 1992) and the Government of India attaches great importance to issues related to Climate Change [8]. India is a non-Annex I country party that ratified the Kyoto Protocol on August 26, 2002, and the Paris Agreement on October 2, 2016[34].

3.2 Right to Live in a Healthy Environment as a Constitutional Right: International Standards

Immediately after the Stockholm Declaration, there was a growing trend in National Legal Systems to give constitutional status to environmental protection. For example:

1) Article 24 of the *Swiss Constitution*, adopted on June 6, 1976, provides that "the Federal Legislature shall enact laws concerning the protection of man and his natural environment against burdensome influences."
2) Article 24 of the *Greek Constitution*, 1975, provides that "the protection of the natural and cultural environment constitutes a duty of the State".
3) Article 45 of the *Spanish Constitution*, 1978 provides that "everyone has the right to enjoy an environment sustainable for the development of the person as well as the duty to preserve it."
4) The *Netherlands* amended its Constitution in 1983 to include Article 21, which provides that "it shall be the concern of the authorities to keep the country heritable and to protect and improve the environment".
5) Article 225 of the *Constitution of the Federal Republic of Brazil* 1988 declares that "everyone is entitled to an ecologically balanced environment."
6) In *India*, *the Constitution* was amended in 1976 by the Constitution (Forty-second Amendment) Act, 1976, which added, among other articles, Article 48A and 51A.
    - Article 48A provides that "the State shall endeavour to protect and improve the environment to safeguard the forests and wild life of the country".

[31] Article 12(1), ICESCR, 1966.
[32] Article 6, ICCPR, 1966.
[33] Article 2, ECPHR, 1950.
[34] Dr Chiradeep Basak, Global Climate Change and Environmental Laws in India, 1st Edn. 2021, Thomson Reuters South Asia Pvt Ltd. Gurgaon, p.12.

- Article 51A (g) provides that it is the fundamental 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."

7) Our Supreme Court is one of the first courts to develop the concept of the right to a "healthy environment" as part of the "right to life" under Article 21 of the Constitution[35].
8) This principle has now been adopted in various countries today. The Philippine Supreme Court dealt with the action of the Government not to continue licensing agreements permitting deforestation so that the "right to a balanced and healthful ecology in accordance with the rhythm and harmony of nature" is not affected[36].
9) The Constitutional Court of *Colombia* in *Fundepublico v. Mayor of Bugalagrande and Others*[37] held that the right to the environment is a fundamental human right and treated the right as part of customary international law.
10) The Supreme Court of *South Africa* in *Wildlife Society of Southern Africa v. Minister of Environmental Affairs and Tourism of the Republic of South Africa*[38] dealt with the right to a healthy environment.
11) About 60 Nations since 1990 have recognized in their Constitutions the right to a healthy environment as a corollary duty to defend the environment.

4. Factors Contributing to Judicial Decision Making

The legal factors contributing to the judicial decision-making process can be understood in two ways:

- first, the legal framework for environmental protection and
- second, the Supreme Court's power to protect the environment in the context of non-implementation of the existing legal framework. Indian environmental laws are based on two broad legal principles, namely, eminent domain and criminal liability.

4.1 The Legal Framework for Environmental Protection

The concept of *eminent domain* establishes the supremacy of the state over all natural resources and is based on the premise that the state is sovereign and is entitled to compulsory acquisition of any land and property, including private property, by the due process of law. On the other hand, conservation and prevention laws such as the Water (Prevention and Control of Pollution) Act, 1974; the Air (Prevention and Control of Pollution) Act, 1981; the Forest Conservation Act, 1980; the Environmental Protection Act, 1986, etc., are based on the notion of criminal liability, i.e., non-compliance with the provisions of these laws would necessitate penal actions. The Environmental Protection Act of 1986, however, is an umbrella legislation [9] which has vested power in the central government to take any and all measures it deems necessary for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution (Section 3)[39].

4.2 Supreme Court's Power to Intervene in Case of Non-Compliance

As far as ensuring compliance with the legal framework is concerned, the Constitution has specifically mentioned that if the constitutional authority fails to discharge its constitutional duties and violates the fundamental rights of people, then citizens have the right under Article 32 to move the Supreme Court for the issue of a constitutional writ for the enforcement of fundamental rights, as an original jurisdiction of the Supreme Court. The Supreme Court is also the highest court of appeal among all courts in India[40].

These assigned functions of the Supreme Court enable it to respond whenever its attention is drawn to a case of violation of constitutional provisions due to the failure of other organs of government and to remind these organs to discharge their constitutional role in upholding the rule of law, fundamental rights or constitutional propriety. The intervention of the judiciary in environmental governance has largely been found to be necessary due to the failure of the other organs in effectively implementing the laws and policies aimed at the protection and improvement of the environment. As a result,

[35] Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161.
[36] Minors Opasa v. Department of Environment and Natural Resources, 33 ILM 173 (1994).
[37] Judgment No. T-415/92, Delivered by the Constitutional Court of Colombia on June 17, 1992.
[38] 1996 SACLR LEXIS 30.
[39] For more details on environmental law provisions in India, see Sanjay Upadhyay and Videsh Upadhyay, Handbook on Environmental Law (New Delhi: The LexisNexis Group of Companies, 2002).
[40] Articles 132 and 133(1) specifically mention that an appeal through the high court can be made to the Supreme Court on both constitutional and non-constitutional matters.

there has been a flurry of environmental litigation coming to the Supreme Court either in the form of original jurisdiction or as appellate jurisdiction. These litigations have accused the state agencies of failing to discharge their constitutional duties and thereby violating legal doctrines concerning environmental protection, fundamental rights, constitutional provisions, and the rule of law.

5. Intervention of the Judiciary: Birth of Environmental Jurisprudence [10]

Unlike other litigation, the frequency and variety of orders passed by the Supreme Court in environmental litigation, and the Court's continuous engagement with environmental issues, have led to the development of a series of innovative methods in environmental jurisprudence[41]. The importance of legal factors in judicial decision-making has clearly been reflected in a number of environmental cases. A drastic change in the Indian jurisprudence scenario occurred in the 1970s, especially with the efforts made by Justice P. N. Bhagwati and Justice V. R. Krishna Iyer in terms of bringing into the PIL ambit wider issues affecting the general public, including prisoners' and asylum inmates' rights, bonded labour, the right of the poor to education, shelter and other essential amenities, sexual harassment of women, corruption in public offices and utilization of public funds for development. By the mid-1970s, the concept of PIL had become an established principle of the Indian legal system. In many subsequent cases, the Supreme Court described the concept of PIL as an important instrument to bring justice to the doorstep for the poor and weaker sections of society. For instance, in the case of *Dr. Upendra Baxi v. State of Uttar Pradesh and Others*[42], when it was found that the inmates of the protective home at Agra were living in inhuman and degrading conditions in blatant violation of Article 21 of the Constitution and that they were not in a position to move the Court for judicial redress by reason of their socially and economically disadvantaged position, two law professors of Delhi University—Dr. Upendra Baxi and Mrs. Latika Sarkar—addressed a letter to the Supreme Court seeking enforcement of the constitutional right of the inmates under Article 21 for the improvement of the living conditions in the protective home, so that the inmates can live with human dignity in the protective home. The Supreme Court treated the letter as a writ petition and permitted the two law professors to maintain an action for an appropriate writ to enforce the constitutional right of the inmates of the protective home and provide judicial redress to them.

Likewise, the Court's approach to entertain PIL for environmental protection started in the early 1980s. PIL has subsequently become an important instrument for environmental groups to protect the rights of inanimate objects and of people affected by pollution in many significant ways. Prior to the emergence of the concept of PIL, criminal law provisions as contained in the Indian Penal Code, civil law remedies under the law of torts and the provisions of the Criminal Procedure Code were the main legal tools for providing remedies in respect of public nuisance cases, including air, water and noise pollution. However, because people lacked awareness about environmental problems and had limited knowledge of environmental laws, it was difficult to draw the attention of the Court towards environmental problems. Moreover, there was no provision in the environmental legal framework [11] for allowing a third party to seek the intervention of the Court if the party concerned was not directly affected by environmental problems[43]. Hence, the biggest hurdle in the path of litigation for seeking environmental justice was the traditional concept of *locus standi.* Earlier, when a petitioner approached the appellate Court, seeking relief for an injury he had not suffered directly, the case was not maintainable as the appellate Court would invariably focus on the status of the petitioner rather than the subject of the petition. However, now that the judicial approach has changed, any member of the public with genuine interest (known as *pro bono publico*) in the situation may be allowed to initiate the legal process with a view to asserting diffused and meta-individual rights. A number of cases related to environmental issues have been brought to the attention of the Judiciary, some of which can be summarized as under:

- In **Municipal Council, Ratlam v. Vardhichand[44]**, the petitioner drew the attention of the judiciary under Section 133 of the Code of Criminal Procedure and Section 123 of the Municipalities Act of Madhya Pradesh while seeking an order to the Municipal Council of Ratlam to do its duty to the public by stopping the stench emanating from the open drains and public excretion in nearby slums. The Court observed that there was no way the municipality could extricate itself from its responsibility. However, the municipality pleaded that it was not financially viable to discharge its statutory liability. The Court, on its partc, made it clear that the Criminal Procedure Code was applicable to the statutory bodies regardless of their financial status and that human rights under Part III of the Constitution were to be

[41] M.K. Ramesh, 'Environmental Justice: Courts and Beyond', Indian Journal of Environmental Law, 3(1) (2002): 20-37.
[42] 1982 [1] SCALE 502.
[43] See Atiyah Curmally, Environmental Governance and Regulation in India (New Delhi: Indian Infrastructure Report, (2002) 96.
[44] AIR 1980 SC 1622.

respected by the state regardless of budgetary provisions. Likewise, Section 123 of the Municipalities Act has no saving clause whenever the Municipal Council is short of finance. Otherwise, a profligate statutory body or government agency might legally defy its duties under the law by pleading a self-created bankruptcy or distorted expenditure budget as its defence. Therefore, the Court, armed with the provisions of these two Codes and the statutory obligation imposed by Section 123 of the Municipalities Act, directed the Municipal Council to discharge its mandated duties for the precise purpose of preserving public health.

- In **Rural Litigation Entitlement Kendra v. State of Uttar Pradesh**[45], the Supreme Court admitted the following fact while observing: 'It is for the government and the nation, and not for the Court, to decide whether the limestone deposit should be exploited at the cost of ecology and environment considerations or industrial requirements should be otherwise satisfied. The government should take a policy decision and firmly implement the same'. As is evident from the discussion above, the application of legal provisions to the resolution of environmental disputes in accordance with existing green laws and policies is one of the constitutional duties of the judiciary. However, there are a number of environmental cases in which the judges have gone beyond the existing legal framework or, in some cases, have proceeded, even in the absence of legal doctrine, to protect the environment and the rights of people affected by pollution. Supreme Court judges have introduced a number of innovative methods in the field of environmental jurisprudence, which have produced and affected a series of green judgments from 1980 to 2010. As a result, an analysis of how various legal factors apply to these innovative methods becomes essential in order to understand their effects.
- In the **Ganga Water Pollution Case**[46], the Court directed all the municipal councils and authorities with control over the areas through which the river flows to discharge their statutory duties to prevent and control pollution. The Court also noted that the municipal councils must take up the major responsibility of preventing the pollution of Ganga by tanneries and other pollution sources. It directed various Pollution Control Boards to close down those tanneries that were releasing untreated effluents into the river, which amounted to a violation of the Water (Prevention and Control of Pollution) Act, 1974, and ordered that no licenses be issued to any new industry without ascertaining that it had taken adequate measures for the treatment of effluents.
- **M.C. Mehta v. Union of India** (Oleum Gas Leakage Case)[47]. It is one of the landmark environmental cases in India. The incident of oleum gas leakage took place at the Shriram Food and Fertiliser Industries, an industrial unit of Delhi Cloth Mills Limited, situated in Kirti Nagar, Delhi, in December 1985, causing severe harm to the people who were exposed to the gas. A writ was filed under Articles 21 and 32 of the Constitution of India by MC Mehta. While delivering the judgment, Hon'ble Justice PN Bhagwati propounded the principle of *Absolute Liability* for the industries engaged in hazardous activities, which was a major development in Indian Environmental Law. While propounding the principle of *Absolute Liability*, Hon'ble Justice Bhagwati observed that: *we have to evolve new principle and lay down new norms which can adequately deal with the problems which arise in a highly industrialized economy like us. We cannot allow our judicial thinking to be constricted by reference to a law as it prevails in England. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence.*
- The Supreme Court regarded **Tarun Bharat Sangh, Alwar v. Union of India**[48] as an open-and-shut case wherein mining activity in protected areas was a violation of statutory acts such as the Forest Act, Wildlife Protection Act and Environmental Protection Act. The petitioner argued that the license for mining in protected forest areas had been given by the state of Rajasthan without the prior permission of the Government of India, and appealed to the Supreme Court to direct the state to cancel the license. The Supreme Court observed that once the area had been declared as a protected forest, it would come within the purview of the Forest (Conservation) Act, 1980 and that it had become a forest land within the meaning of Section 2. The effect of this position was that no non-forest activity could be carried out in the concerned area without the prior approval of the central government. Even the state government could not pursue non-forest activity in this area without prior approval. Thus, the Court held that the grant and renewal of mining leases and licenses by the state government without prior approval from the central government was contrary to the law.
- For example, the polluter pays principle was invoked by the Supreme Court in **Indian Council for Enviro-Legal Action v. Union of India**[49] (the Bichhri village industrial pollution case). While delivering the judgment on 13

[45] AIR 1985 SC 652.
[46] AIR 1988 SC 1115.
[47] AIR 1987 SC 1086.
[48] 1993 SCR (3) 21.
[49] (1996) 3SCC 212.

February 1996, the judges observed that: *we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country. Once the activity carried on is hazardous or inherently dangerous, the polluter carrying on such activity is liable to make good the loss caused to any other affected party by the polluter's activity, irrespective of the fact whether the polluter took reasonable care while carrying on his activity.* In this case, the Court stated that the polluter pays principle placed absolute liability upon the polluter for whatever harm they had caused to the environment and that this liability extended not only to the compensation for victims of the pollution but also to the cost of repairing the environmental degradation caused. Subsequently, the polluter pays principle, as interpreted by the Court, has been recognized as a fundamental component of the government's environmental policy towards preventing and controlling pollution[50].

- In **Vellore Citizens' Welfare Forum v. Union of India[51]**, the petitioner filed a writ petition by way of public interest litigation drawing the attention of the court towards the pollution caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. The Supreme Court held that such tanneries, though of vital importance to the country's development, cannot be allowed to destroy the ecology, degrade the environment, and pose a health hazard, and cannot be permitted to continue their operation unless they set up pollution control devices. The Court held that a balancing concept between ecology and development has to be adopted; the Court further held that the *'precautionary principle'* and the *'polluter pays principle'* are the essential features of sustainable development and have to be adopted. In **S. Jagannath v. Union of India[52],** the Supreme Court held that setting up shrimp culture farms within the prohibited areas and in ecologically fragile coastal areas has adverse effects on the environment, coastal ecology, and economics; hence, they cannot be permitted to operate. The precautionary principle has also been emphasized in cases such as **M. C. Mehta v. Union of India and A. P. Pollution Control Board v. M.V. Nayudu[53].**

6. Conclusion

Since the post-Emergency period, societal forces in general and environmental groups and activists in particular have been advocating and protecting the rights of people affected by pollution and environmental degradation, particularly those who are disadvantaged. One of the core objectives of citizens and lawyers acting in the public interest was to ensure the effective implementation of environmental laws and policies and protect the constitutional rights of people by filing public interest litigation. The most important [12] procedural change observed in the realm of environmental jurisprudence is the relaxation of the traditional process of standing in the Court and the introduction of the concept of public interest litigation (PIL)[54]. There are a number of environmental litigations that demonstrate how the ideological values and preferences of judges have made a difference in the outcomes of environmental litigation. Their experience and interest in environmental jurisprudence in other countries have also helped them popularize international environmental jurisprudence principles such as absolute liability, precautionary principle, polluters pay principle, public trust doctrine, intergenerational equity, and sustainable development within Indian jurisprudence. These principles have not only helped to shape and reshape the process of environmental jurisprudence in India but also to protect the rights of the poor and the disadvantaged.

Until the early 1970s, litigation in India was in its rudimentary stage and was largely seen as a pursuit for the vindication of private vested interests. During this phase, the initiation and pursuance of litigation rested entirely with the individual aggrieved party. But eventually, the traditional *locus standi* doctrine with respect to environmental litigation got liberalized. The philosophy behind the entertainment of petitions seeking the protection of the environment without questioning whether or not the petitioner is *bona fide* has been widely shared by many other Supreme Court judges from 1980 to 2010. In delivering judgments on environmental issues, these judges have largely relied on the precedents laid down by Justice P. N. Bhagwati and Justice V. R. Krishna Iyer. The precedents laid down in environmental cases by Kuldip Singh and V. R. Krishna Iyer have motivated a number of judges to follow in their footsteps in resolving various environmental

[50] See Government of India, Ministry of Environment and Forests, National Environmental Policy, 2006, available at http://envfor.nic.in/sites/default/files/introduction-nep2006e.pdf. (accessed 14 January 2014).
[51] (1996) 5 SCC 650.
[52] AIR 1997 SC 811.
[53] Andhra Pradesh Pollution Control Board v. Prof. M.V. Nayudu, AIR 1999 SC 812.
[54] In the Indian context, some legal scholars prefer the expression 'social action litigation 'to 'public interest litigation'. In India, this kind of litigation is a tool for protecting the basic rights of individuals and communities through innovations in the higher courts, and it aims for greater positive impacts on the social lives of the people in India than similar litigation did in the United States, where the PIL movement first took root. For more details, see Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" in The Role of the Court in Plural Societies, ed. Tiruchelvam and Coomaraswamy (New York: St. Martin's Press,1987).

litigations[55]. For example, with regard to the Vellore Industrial Pollution case (heard by Justice Kuldip Singh, Justice K. Venkataswami and Justice Faizan Uddin), the Bichhri Village Pollution case in Rajasthan (heard by Justice B. R Jeevan Reddy and Justice It N. Kripal), the Patancheru Industrial Pollution case (heard by Justice A M. Ahmedi and Justice K. S. Paripoornan), the Coastal Zone Management case (heard by Justice Kuldip Singh, Justice S. Saghir Ahmad and Justice B.N. Kripal), the *Tarun Bharat Sangh v. Union of India* case (heard by Justice M. N. Venketachaliah and Justice K. Jayachandra Reddy), the *M.C. Mehta v. Union of India* case (heard by Justice Kuldip Singh and Justice S. Saghir Ahmad), among others, Supreme Court judges entertained litigations demanding the effective implementation of law to protect and improve the environment.

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[55] Many Supreme Court Judges like G.B. Pattanaik, Kuldip Singh, J.S. Verma, Ranganath Mishra say that the precedents laid down by Krishna Iyer and P.N. Bhagwati have paved the way for other judges to follow suit in resolving environmental disputes.