




Jurisprudence on Environmental Law: Contribution of the Supreme Court

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- ▶ **Protection of Environment under the Indian Constitutional Mandate**
 - ▶ **Public Trust Doctrine,**
 - ▶ **Judicial Role as *parens patriae* to protect the environment and wildlife**
 - ▶ **Significance of Judicial Activism in protection of Environment & Wildlife**
 - ▶ **Innovative Approaches to meet the Global Challenges**

Before the topic, I may refer to global challenge due to climate change

1972 stockholm conference – since 1800 abnormal rise in temp due to industrial activities – fossil fuels – coal, gas and oil -now rise is 1.1 degree c compared to 1800 – make common efforts for improvement of environment – 26 principles formulated

- ▶ 1988 UNEP & World meteorological orgn set up intergovernmental panel on CC to evaluate past trends and future prospects – finding 0.1 degree per year
- ▶ 1992 Rio conference – reaffirmed 1972 sustainable development – 27 principles – common but differentiated responsibilities
- ▶ UN Framework convention on CC – greenhouse gases result in climate change –
- ▶ 1995 – ist cop
- ▶ 1997 Kyoto Protocol - National action plans on CC by all States- clean energy fund
- ▶ 2015 Paris conference – advanced countries to contribute 100 bn pa from 2020 but given 83 bn so far
- ▶ Glasgow Cop 26 2021 – 500 gw by 2030 energy alternative to fossil fuels, by 2070 carbon neutral – india contributes 4%, fourth most affected
- ▶ By 2030 1.5 degree will be breached

10 Big Findings from the 2023 IPCC Report on Climate Change

March 20 marked the release of the final installment of the Intergovernmental Panel on Climate Change's (IPCC) Sixth Assessment Report (AR6), an eight-year long undertaking from the world's most authoritative scientific body on climate change. Drawing on the findings of 234 scientists on the physical science of climate change, 270 scientists on impacts, adaptation and vulnerability to climate change, and 278 scientists on climate change mitigation, this IPCC synthesis report provides the most comprehensive, best available scientific assessment of climate change.

It also makes for grim reading. Across nearly 8,000 pages, the AR6 details the devastating consequences of rising greenhouse gas (GHG) emissions around the world — the destruction of homes, the loss of livelihoods and the fragmentation of communities, for example — as well as the increasingly dangerous and irreversible risks should we fail to change course.

But the IPCC also offers hope, highlighting pathways to avoid these intensifying risks. It identifies readily available, and in some cases, highly cost-effective actions that can be undertaken now to reduce GHG emissions, scale up carbon removal and build resilience. While the window to address the climate crisis is rapidly closing, the IPCC affirms that we can still secure a safe, livable future.

Ten findings

- ▶ Human-induced global warming of 1.1 degrees C has spurred changes to the Earth's climate that are unprecedented in recent human history.
- ▶ Climate impacts on people and ecosystems are more widespread and severe than expected, and future risks will escalate rapidly with every fraction of a degree of warming.
- ▶ Adaptation measures can effectively build resilience, but more finance is needed to scale solutions.
- ▶ Some climate impacts are already so severe they cannot be adapted to, leading to losses and damages.
- ▶ Global GHG emissions peak before 2025 in 1.5 degrees C-aligned pathways.
- ▶ The world must rapidly shift away from burning fossil fuels — the number one cause of the climate crisis.
- ▶ We also need urgent, system wide transformations to secure a net-zero, climate-resilient future.
- ▶ Carbon removal is now essential to limit global temperature rise to 1.5 degrees C.
- ▶ Climate finance for both mitigation and adaptation must increase dramatically this decade.
- ▶ Climate change — as well as our collective efforts to adapt to and mitigate it — will exacerbate inequity should we fail to ensure a just transition.

UN Campaign in 26th Cop in 2021
by way a film using computer
generated dinosaur



2023 UN Climate Change Conference (UNFCCC COP 28)

Letter dated July 2023 of the Incoming Presidency that COP 28 will focus on four paradigm shifts:

- ▶ Fast-tracking the energy transition and slashing emissions before 2030;
- ▶ Transforming climate finance, by delivering on old promises and setting the framework for a new deal on finance;
- ▶ Putting nature, people, lives, and livelihoods at the heart of climate action; and
- ▶ Mobilizing for the most inclusive COP ever.

Protection of Environment under the Indian Constitutional Mandate

Sachidanand Pandey & Anr. v. State of West Bengal & Ors., (1987) 2 SCC 295

A hundred and thirty-two years ago, in 1854, 'the wise Indian Chief of Seattle' replied to the offer of 'the great White Chief in Washington' to buy their land.

"How can you buy or sell the sky, the warmth of the land? If we do not own the freshness of the air and the sparkle of the water, how can you buy them? Every part of the earth is sacred. We are part of the earth and it is part of us. The perfumed flowers are our sisters; the horse, the great eagle, these are our brothers. The rocky crests, the juices in the meadows, the body heat of the pony, and man – all belong to the same family. What is man without the beasts? If all the beasts were gone, man would die from a great loneliness of spirit. For whatever happens to the beasts soon happens to man. All things are connected. This we know: The earth does not belong to man; man belongs to the earth.

Protection of Environment under the Indian Constitutional Mandate

...Industrialisation, urbanization, explosion of population, over-exploitation of resources, depletion of traditional sources of energy and raw materials and the search for new sources of energy and raw materials, the disruption of natural ecological balances, the destruction of a multitude of animal and plant species for economic reasons and sometimes for no good reason at all are factors which have contributed to environmental deterioration.

While the scientific and technological progress of man has invested him with immense power over nature, it has also resulted in the unthinking use of the power, encroaching endlessly on nature. If man is able to transform deserts into oases, he is also leaving behind deserts in the place of oases. ... For each such victory nature takes its revenge on us.

Protection of Environment under the Indian Constitutional Mandate

Ecologists are of the opinion that the most important ecological and social problem is the wide-spread disappearance all over the world of certain species of living organisms. Biologists forecast the extinction of animal and plant species on a scale that is incomparably greater than their extinction over the course of millions of years. It is said that over half the species which became extinct over the last 2,000 years did so after 1900. The International Association for the Protection of Nature and Natural Resources calculates that now, on an average, one species or sub-species is lost every year. It is said that approximately 1,000 bird and animal species are facing extinction at present. So it is that the environmental question has become urgent and it has to be properly understood and squarely met by man.

Protection of Environment under the Indian Constitutional Mandate

4. *...Whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Article 48A of the Constitution, the Directive Principle which enjoins that "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country," and Article 51A(g) which proclaims it to be the fundamental duty of every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures." When the Court is called upon to give effect to the Directive Principle and the fundamental duty, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority. The least that the Court may do is to examine whether appropriate consideration are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case."*

Protection of Environment under the Indian Constitutional Mandate

Virender Gaur v. State of Haryana, (1995) 2 SCC 577

Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life 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. Any contra acts or actions would cause environmental pollution. 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. Environmental protection, therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment. Therefore, there is a constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment.

Protection of Environment under the Indian Constitutional Mandate

M.C. Mehta & Anr. v. Union of India & Ors., (1987) 1 SCC 395

“... It may now be taken as well settled that [Article 32](#) does not merely confer power on this Court to issue a direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental rights of the people and for that purpose **this Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to' enforce the fundamental rights.**

Public Trust Doctrine

M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388

“34. 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 beneficiary of the seashore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.”

Judicial Role as *parens patriae* to protect the environment and wildlife

Vellore Citizens' Welfare forum v. Union of India, (1996) 5 SCC 647

"10. The traditional concept that development and ecology are opposed to each other, is no longer acceptable. "Sustainable Development" is the answer. In the International sphere "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future". The Commission was chaired by the then Prime Minister of Norway Ms. G.N. Brundtland and as such the report is popularly known as "Brundtland Report". In 1991 the World Conservation Union, United Nations Environment Programme and World Wide Fund for Nature, jointly came out with a document called "Caring for the Earth" which is a strategy for sustainable living. Finally, came the Earth Summit held in June, 1992 at Rio which saw the largest gathering of world leaders ever in the history - deliberating and chalking out a blue print for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non binding documents namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution.

Significance of Judicial Activism in protection of Environment & Wildlife

Vellore Citizens' Welfare forum v. Union of India, (1996) 5 SCC 647

During the two decades from Stockholm to Rio "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco-systems. "Sustainable Development" as defined by the Brundtland Report means "development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". We have no hesitation in holding that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the Customary International Law though its salient features have yet to be finalised by the International Law jurists.

11. Some of the salient principles of "Sustainable Development", as culled-out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays principle, Obligation to assist and cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays" principle are essential features of "Sustainable Development

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"Precautionary Principle" - in the context of the municipal law - means:

- (i) Environmental measures - by the State Government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation.*
- (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*
- (iii) The "Onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign."*

Significance of Judicial Activism in protection of Environment & Wildlife

M.C. Mehta & Anr. v. Union of India, (1987) 1 SCC 395

31. ...We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher."

Significance of Judicial Activism in protection of Environment & Wildlife

Vellore Citizens' Welfare forum v. Union of India, (1996) 5 SCC 647

13. The precautionary principle and the polluter pays principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Article 47 48A and 51A(g) of the Constitutional are as under:

“47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health. - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the State shall endeavour to bring about prohibition of the consumption except from medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48-A. Protection and improvement of environment and safeguarding of forests and wildlife. - The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

51-A(g). to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.”

14. In view of the above mentioned constitutional and statutory provisions we have no hesitation in holding that the precautionary principle and the polluter pays principle are part of the environmental law of the country.”

Significance of Judicial Activism in protection of Environment & Wildlife

Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547

As early as 1500-600 BC in Isha-Upanishads, it is professed as follows:

“The universe along with its creatures belongs to the land. No creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species.”

” The World Charter for Nature proclaims that “every form of life is unique, warranting respect regardless of its worth to man”.

The Universal Declaration of Animal Welfare (UDAW) is a campaign led by World Society for the Protection of Animals (WSPA) in an attempt to secure international recognition for the principles of animal welfare. UDAW has had considerable support from various countries, including India. WSPA believes that the world should look to the success of the Universal Declaration of Human Rights (UDHR) to set out what UDAW can achieve for animals. Five freedoms referred to in UDAW, which we will deal with in the latter part of the judgment, find support in the PCA Act and the Rules framed thereunder to a great extent.

World Health Organisation of Animal Health (OIE) says that an animal is in good state of welfare if (as indicated by scientific evidence) it is healthy, comfortable, well nourished, safe, able to express innate behaviour and if it is not suffering from unpleasant states such as pain, fear and distress.

Significance of Judicial Activism in protection of Environment & Wildlife

Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547

Five internationally recognised freedoms for animals,

(i) freedom from hunger, thirst and malnutrition;

(ii) freedom from fear and distress;

(iii) freedom from physical and thermal discomfort;

(iv) freedom from pain, injury and disease; and

(v) freedom to express normal patterns of behaviour

these freedoms find a place in Sections 3 and 11 of the PCA Act and they are for animals like the rights guaranteed to the citizens of this country under Part III of the Constitution of India.

Significance of Judicial Activism in protection of Environment & Wildlife

Right to live in a healthy and clean atmosphere and right to get protection from human beings against inflicting unnecessary pain or suffering is a right guaranteed to the animals under Sections 3 and 11 of the PCA Act read with Article 51-A(g) of the Constitution. Right to get food, shelter is also a guaranteed right under Sections 3 and 11 of the PCA Act and the Rules framed thereunder, especially when they are domesticated. The right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well. The right, not to be beaten, kicked, overridden, overloaded is also a right recognised by Section 11 read with Section 3 of the PCA Act. Animals also have a right against human beings not to be tortured and against infliction of unnecessary pain or suffering. Penalty for violation of those rights are insignificant, since laws are made by humans. Punishment prescribed in Section 11(1) is not commensurate with the gravity of the offence, hence being violated with impunity defeating the very object and purpose of the Act, hence the necessity of taking disciplinary action against those officers who fail to discharge their duties to safeguard the statutory rights of animals under the PCA Act.

Significance of Judicial Activism in protection of Environment & Wildlife

- ▶ Subsequent judgement 18.5.23 Animal Welfare Board v UOI 5 judge bench.
- ▶ We do not accept the view reflected in the case of A. Nagaraja that performance of Jallikattu is not a part of the cultural heritage of the people of the State of Tamil Nadu. We do not think there was sufficient material before the Court for coming to this conclusion. No fundamental right of animals and Nagaraja also does not hold so. It is left at advisory level.

Innovative Approaches to meet the Global Challenges

Hanuman Laxman Aroskar v. Union of India, (2019) 15 SCC 401

World Declaration on the Environmental Rule of Law outlines 13 principles for developing and implementing solutions for ecologically sustainable development:

(i) Obligation to Protect Nature

(ii) Right to Nature and Rights of Nature

(iii) Right to Environment.

(iv) Ecological Sustainability and Resilience

(v) In Dubio Pro Natura

(vi) Ecological Functions of Property

(vii) Intragenerational Equity

(viii) Intergenerational Equity

(ix) Gender Equality

(x) Participation of Minority and Vulnerable Groups

(xi) Indigenous and Tribal Peoples

(xii) Non-regression

(xiii) Progression

Innovative Approaches to meet the Global Challenges

Hanuman Laxman Aroskar v. Union of India, (2019) 15 SCC 401

In 2015, the International Community adopted the 2030 Agenda for Sustainable Development and its 17 SDGs. These 17 goals are:

- (i) Eradication of poverty;*
- (ii) Eradication of hunger;*
- (iii) Good health and well-being;*
- (iv) Quality education;*
- (v) Gender equality;*
- (vi) Clean water and sanitation;*
- (vii) Affordable and clean energy;*
- (viii) Decent work and economic growth;*
- (ix) Industry, innovation and infrastructure;*
- (x) Reduced inequalities;*
- (xi) Sustainable cities and communities;*
- (xii) Sustainable consumption and production;*
- (xiii) Climate action;*
- (xiv) Protecting life below water;*
- (xv) Life on land;*
- (xvi) Peace, justice and strong institutions; and*
- (xvii) Partnerships to achieve the goals.*

Innovative Approaches to meet the Global Challenges

Hanuman Laxman Aroskar v. Union of India, (2019) 15 SCC 401 at 465

SDG 13 emphasises the urgent action required to combat climate change and its impacts. This is based on the recognition that extreme weather events such as heat waves, droughts, floods and tropical cyclones have aggravated the need for water management, pose a threat to food security, increase health risks, damage critical infrastructure and interrupt the provision of basic civil services. The statistics on climate change indicate that:

Between 1880 and 2012, average global temperatures have increased by 0.85°C.

Between 1901 and 2010, as ocean expanded, the global average sea level has risen by 19 cm.

Since 1990, global emissions of CO₂ increased by almost 50%.

Between 2000 and 2010, emissions grew at a more rapid rate than each of the three decades preceding it.

Innovative Approaches to meet the Global Challenges

Hanuman Laxman Aroskar v. Union of India, (2019) 15 SCC 401 at 465

In this backdrop, SDG 16 emphasises the need to protect, restore and promote sustainable use and management of terrestrial ecosystems and forests, combat desertification of river lands, prevent land degradation and halt the loss of biodiversity. Terrestrial ecosystems provide a range of ecosystem services including the capture of carbon, maintenance of soil quality, provision of habitat for biodiversity, maintenance of water quality and regulation of water flow together with control over erosion. Maintenance of ecosystems is hence crucial to efforts to combat climate change, mitigate and reduce the risks of natural disasters including floods and landslides. In this backdrop, promoting environmental justice and ensuring strong institutions is quintessential to promoting peaceful and inclusive societies for sustainable development. SDG 16, therefore, construes the promotion of the rule of law as intrinsic towards implementing multilateral environmental agreements and progressing towards internationally agreed environmental goals

Thank You

