

Judicial Doctrines and Principles by Indian Judiciary for the Protection of Environment

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Abstract

The key doctrines and principles that have emerged from Indian judicial decisions related to environmental conservation have been recognized and applied in many Indian cases related to environmental protection, and have helped to strengthen India's legal framework for environmental conservation.

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Introduction

Judicial doctrines are principles or rules of law that have been established by courts over time through their interpretation and application of legal statutes, regulations, and precedents. These doctrines often guide judges in making decisions in cases that involve similar legal issues or questions. The Indian judiciary has played a significant role in protecting the environment through various landmark judgments and orders establishing strong principles and doctrines like Polluter's Pay, Precautionary Principle, and Sustainable development, Intergenerational equity, and absolute liability in environmental jurisprudence.

Polluter Pays Principle

The "*polluter pays*" principle has been upheld and enforced by the Indian judiciary in a number of cases over the years. The *polluter pays principle* ensures that the costs of environmental damage caused by polluting activities are borne in full by the person responsible for such polluting activities. Under the principle it is not the role of the Government to meet the costs involved in either prevention of damage caused by pollution or in Carrying out remedial measures, rather these are the responsibilities of the polluter. In *M.C. Mehta v. Union of India*¹, the Supreme Court citing the polluter pays principle ordered the closure of polluting industries in Delhi, which led to the relocation of over 1500 factories outside the city. In another case of *Vellore Citizens Welfare Forum v. Union of India*² the Supreme Court, held that the "*polluter pays principle*" was an essential part of Indian environmental law. The court directed the Tamil Nadu Pollution Control Board to take action against industries that were polluting the groundwater in the Vellore district.

Precautionary Principle

The "*precautionary principle*" indicates that a lack of scientific certainty is no reason to postpone action to avoid potentially serious or irreversible harm to the environment. The old concept of 'assimilative capacity' has given way to the modern precautionary principle. Now the world is clear that pollution cannot wait for effective measures to be postponed for investigation of its quality, concentration and boundaries.

In India, the Precautionary Principle has been recognized and applied by the judiciary in a number of cases. For example, in the case of *Vellore Citizens Welfare Forum v. Union of India*³, the Supreme Court of India held that "the 'precautionary principle' and 'polluter pays principle' are essential features of

‘sustainable development’. Similarly, in the case of *Indian Council for Environmental Action v. Union of India*⁴, the Supreme Court held that “where there is a threat of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.” In it, the Supreme Court ordered the closure of limestone quarries in the Dehradun-Mussoorie region of Uttarakhand, which was causing extensive damage to the environment. The court also directed the state government to conduct an environmental impact assessment before granting any mining leases in the region.

Sustainable Development

The Supreme Court of India has recognized and accepted the concept of “*sustainable development*” as an important principle in maintaining the balance between the environment and development. In *Intellectuals Forum v. State of A.P.*⁵, one of the leading cases the Supreme Court has defined “*sustainable development*”, as development that can be achieved without compromising upon the needs of the future generations. In *Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group*⁶, the court once again touched upon the issue of *sustainable development* and examined its relation with *Article 21* of the *Constitution of India*. The court underlined the importance of this principle for the preservation of the environment.

Intergenerational Equity

The principle of “*intergenerational equity*” is an important part of the concept of sustainable development. It emphasizes the need to preserve the environment for the benefit of present as well as future generations. The principle has got recognition and acceptance at various international forums including the Stockholm Conference and Rio Summit. The

Indian Supreme Court has utilized the principle of intergenerational equity in the course of delivering environmental justice. In *State of H.P. v. Ganesh Wood Products*⁷ the Supreme Court has recognized this principle in a case involving the indiscriminate commissioning of agro-based industries using wood which primarily were engaged in the business of producing kattha. In *Dahanu Taluka Environment Protection Group v. Bombay Suburban Electricity Supply Co. Ltd.*⁸ reiterated the same in the Dahanu pollution case. This continuous emphasis and reiteration of this concept by the courts have made it an important and effective tool for the environmental protection regime which has added more teeth to the regulatory framework by adding a new dimension to it.

Public Trust Doctrine

The doctrine of “*public trust*” is founded on the idea that certain common properties such as rivers, Sea shore, forests and air are held by the government in trusteeship for the free and unimpeded use of the general public. In *Kamal Nath’s Case*, the Indian Supreme Court has declared that the doctrine of “*public trust*” is included in our legal system. Explaining the principle the Court held that the State is the trustee of all natural resources which are by nature meant for public use and enjoyment. The State as a trustee is under a legal duty to protect the natural resources. In *T.N. Godavarman Thirumulpad v. Union of India*⁹ the Supreme Court held that the Public Trust Doctrine applies to the protection of wildlife, and that the government must act as a trustee of wildlife resources for the benefit of the public. In another case, the Supreme Court held that the Public Trust Doctrine applies to the protection of the Yamuna River, and that the government must act as a trustee of the river for the benefit of the public.

Overall, the Public Trust Doctrine has been an important legal principle in India, and has been used by the judiciary to protect natural resources from overexploitation and degradation, and to ensure that these resources are managed in the interests of the public.

Absolute Liability

According to the “*absolute liability principle*,” an enterprise engaged in a hazardous or inherently dangerous industry owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of the activity which it has undertaken. If any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm. Such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability. Moreover, the liability to compensate is correlated to the magnitude and capacity of the enterprise; the larger and more prosperous the enterprise, the higher must be the amount of compensation payable by it.

The Supreme Court in *M.C. Mehta v. Union of India*¹⁰ also known as the *Oleum Gas Leak Case*. The Court rejected the rule of strict liability in such cases and held that the law has to grow in order to satisfy the needs of the fast-changing society and keep abreast with the economic development taking place in the country. In *Charan Lal Sahu v. Union of India*¹¹ case, which involved the transportation of hazardous materials, specifically a tanker carrying liquefied petroleum gas (LPG) that overturned and caught fire, resulting in the deaths of

several people. The Supreme Court held that the principle of absolute liability applies to the transportation of hazardous materials as well, and that transporters of such materials must take all necessary precautions to prevent harm to the public. In a similar case, *Indian Council for Enviro-Legal Action v. Union of India*¹², popularly known as the Sludge's case the Supreme Court reiterated the Mehta principle of absolute liability and imposed on the erring respondents not only the liability for the environmental hazards but also the cost of all measures including remedial measures. In *Kamal Nath*¹³'s case, the court emphatically held that 'one who pollutes the environment must pay to reverse the damage caused by his acts.

The impact of the judiciary in environmental governance through its innovative methods and interference in the affairs of other organs has demonstrated that during the last two decades, the Supreme Court has exhibited its legal scholarship in the development of environmental jurisprudence. First, it has made it clear that in initiating the judicial process on environmental issues, it does not require asking the bonafide of the petitioner in order to address a larger public interest and more importantly the rights of the poor and disadvantaged sections of the society. Second, for the first time judiciary has made it mandatory that the right to a healthy environment and right to health are an integral part of the right to life under Article 21 of the Indian constitution. Third, the judiciary has compelled the state and other implementing agencies to discharge their constitutional duties to ensure the above-mentioned rights of the citizens and also in protecting and improving the environment. Fourth, the judiciary has also applied laws and policies initiated at the international level to solve domestic environmental problems and thereby setting the trend for new principles in the environmental jurisprudence of India. Fifth, by aggressively and controversially addressing conflicts around environmental problems, the Supreme Court has also raised awareness concerning India's environmental issues.

Limitations of these Doctrines

In India, there are several judicial doctrines that have been developed over time to address environmental issues. However, these doctrines also have some limitations.

- *Limited scope:* The judicial doctrines on the environment in India have a limited scope as they primarily focus on specific issues such as air pollution, water pollution, and forest conservation. There are several other environmental issues such as noise pollution, waste management,

and climate change, which are not adequately addressed by the existing doctrines.

- *Lack of implementation:* Even though there are several judicial doctrines on the environment in India, there is a lack of implementation. Many industries and individuals continue to violate environmental norms without any fear of punishment or penalty. There are several instances where the orders of the courts have not been implemented, and the violators have gone unpunished.
- *Limited participation:* The participation of stakeholders such as local communities, civil society organizations, and environmental experts in the decision-making process is limited. The judicial doctrines are often seen as a top-down approach, and the views of the local communities and other stakeholders are not given due consideration.
- *The slow pace of justice:* The legal system in India is often criticized for its slow pace of justice. The judicial doctrines on the environment are no exception, and it may take years or even decades for a case to be resolved. This delay often results in irreversible damage to the environment.
- *Lack of scientific expertise:* The judiciary may not always have the necessary scientific expertise to understand complex environmental issues. This can lead to judgments that are not well-informed and may not adequately protect the environment.

Conclusion

Judicial doctrines in India have played a crucial role in promoting environmental protection. Firstly, it has helped in enhancing public participation in environmental decision-making. Participation of stakeholders like civil society and the private sector has increased the transparency and accountability in environmental decision-making. Secondly, it has also led to the Strengthening of Environmental Laws in the country. Court interpretation of environmental laws and policies in a manner that promotes sustainable development and environmental protection has filled the gaps in existing laws and policies. The judges approach of consulting environmental experts, study of international environmental laws and the principles evolved in multilateral environmental organizations have enhanced the environmental jurisprudence in the country. Thirdly, it has also led to the generation of awareness of the environmental issues among the masses. Overall, while the judicial doctrines on the environment

in India have contributed significantly to the protection of the environment, there are still several limitations that need to be addressed to make them more effective.

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