

THE EVOLVING ROLE OF JUDICIARY IN ENSURING ENVIRONMENTAL ACCOUNTABILITY.

by - *Rajiv Dutta*,
Senior Advocate, Supreme Court of India

A. Introduction

Today, as the sweetness of Winters has started seeping in our homes and the weather starts to change, it is imperative and important to address a matter of profound significance—the environment, the role it plays in our daily lives and the laws that seek to protect it. The environment is not merely a backdrop to human existence; it is the very foundation of life, sustaining every breath we take, every resource we consume, and every aspiration we pursue. Yet, it faces unprecedented threats—climate change, pollution, deforestation, and biodiversity loss—challenges that demand robust legal frameworks and vigilant judicial oversight. In the recent Monsoon season, we got to witness the fury and wrath of the nature in our sensitive Himalayan regions especially the states of Uttarakhand and Himachal Pradesh that bore extreme floods that took the lives of hundreds if not thousands. This begs to us the question that where are we heading and what are we doing for the aid of our environment and towards sustainability. Our Hon'ble Supreme Court has been extremely vocal and omnipresent with respect to issues concerning environment and the trajectory of this court has changed from being inclined more towards ecocentrism.

In this lecture, I will outline the environmental challenges confronting India, the evolution of our environmental laws, the pivotal role of this Hon'ble Court in shaping environmental jurisprudence, and the path forward to ensure a sustainable future. My aim is to underscore how law, as an instrument of justice, can harmonize human progress with ecological preservation.

B. The Pressing Issues

India, with its rich biodiversity and diverse ecosystems, is uniquely vulnerable to environmental degradation. We are the custodians of the Himalayas, the Western Ghats, the Sundarbans, and over 7,500 kms of coastline. Yet, we grapple with air pollution that chokes our cities, rivers burdened with industrial effluents, and forests dwindling under the pressures of development. The 2023 Air Quality Life Index reported that air pollution in India reduces life expectancy by an average of 5.3 years, with Delhi's air quality often ranking among the worst globally. Plastic waste, estimated at 26,000 tons daily, clogs our waterways, while climate change threatens agriculture, water security, and coastal communities. These challenges are not merely scientific or economic; they are deeply legal and ethical. The right to a clean environment is intertwined with the right to life under Article 21 of our Constitution, a principle this Hon'ble Court has consistently upheld. Environmental degradation disproportionately affects the marginalized—tribal communities displaced by mining, farmers impacted by erratic monsoons, and urban poor exposed to polluted air and water. The law, therefore, must serve as a bulwark against ecological injustice, ensuring that development does not come at the cost of survival.

C. The Beginning

In 1972 at Stockholm Conference on man and environment, in her closing remarks, former Prime Minister late Smt. Indira Gandhi said and I quote *“Modern man must reestablish unbroken link with nature and with life. He must again learn to invoke the energy of growing things and to recognize as did the Ancients in India centuries ago, that one can take from the Earth and the atmosphere only so much as one puts into them. In their hymn to earth, the sagas of the Atharva Veda chanted and I quote - “what of thee I dig out, let that quickly grow over. Let me*

not hit thy heart". So can man himself be vital and of good heart and conscious of his responsibilities. This was our country's stand before the world more than half a century ago"

D. Evolution of Environmental Laws in India

India's environmental legal framework has evolved significantly since independence, reflecting a growing recognition of ecological imperatives. Let me highlight key milestones:

1. Constitutional Provisions:

The 42nd Amendment in 1976 introduced Article 48A, directing the State to protect and improve the environment, and Article 51A(g), which imposes a fundamental duty on citizens to safeguard nature. These provisions elevated environmental protection to a constitutional mandate.

2. Legislative Framework:

- The Water (Prevention and Control of Pollution) Act, 1974, established Pollution Control Boards to regulate water pollution, addressing industrial and municipal discharges.
- The Air (Prevention and Control of Pollution) Act, 1981, tackled air quality, a critical issue in urban centres.
- The Environment (Protection) Act, 1986, enacted post the Bhopal Gas Tragedy, is a landmark legislation empowering the Central Government to regulate environmental pollution comprehensively. It introduced mechanisms like Environmental Impact Assessments (EIAs).
- The Forest (Conservation) Act, 1980, curbs deforestation by regulating the diversion of forest land for non-forest purposes.

- The Wildlife Protection Act, 1972, protects India's rich fauna, with amendments strengthening measures against poaching and habitat destruction.
- Recent additions, like the Plastic Waste Management Rules, 2016, address the growing menace of single-use plastics.

3. International Commitments:

India is a signatory to global treaties like the Paris Agreement (2015), committing to reduce carbon emissions, and the Convention on Biological Diversity, emphasizing conservation. These obligations are integrated into domestic laws, reflecting India's global leadership in sustainable development.

However, implementation remains a challenge. Weak enforcement, inadequate funding, and bureaucratic delays often undermine these laws. For instance, the National Green Tribunal in 2023 noted that over 60% of India's water bodies remain polluted despite regulatory frameworks. This gap between law and reality underscores the judiciary's critical role.

E. The Judiciary's Role in Environmental Jurisprudence

The Supreme Court of India has been a trailblazer in environmental jurisprudence, transforming abstract constitutional provisions into actionable rights. Through the doctrine of Public Interest Litigation (PIL), this Hon'ble Court has democratized access to environmental justice, giving voice to citizens and NGOs. Let me highlight landmark judgments that have shaped this landscape:

1. Rural Litigation and Entitlement Kendra, Dehradun and Ors. vs. State of Uttar Pradesh and Ors. 1985 INSC 49

The Rural Litigation and Entitlement Kendra v. State of U.P. case was India's first environmental PIL addressing illegal limestone mining in the Dehradun

hills. The Supreme Court found the mining caused severe ecological damage and ordered closure of several quarries. It emphasized the need to balance environmental protection with development.

The case established the right to a healthy environment as part of Article 21 of the Constitution

2. Sachidanand Pandey v State of West Bengal (1987) 2SCC 295

Supreme Court dealt with the allocation of public land for constructing a hotel near the zoological garden in Kolkata. The Court held that whenever public property or natural resources are used for private purposes, it must serve a public interest and follow transparent procedures. It emphasized the duty of the State to protect the environment under Article 48A and Article 51A(g).

The judgment reinforced that environmental considerations must guide all developmental decisions.

3. M.C. Mehta v. Union of India (1987) 1SCC 395

The Oleum Gas Leak case expanded the scope of Article 21, affirming the right to a pollution-free environment as part of the right to life. The principle of “absolute liability” held industries accountable for environmental harm, setting a global precedent.

4. Subhash Kumar v. State of Bihar 1991 1SCC 598

The Court explicitly recognized the right to a wholesome environment as part of Article 21, empowering citizens to seek judicial remedies for pollution.

5. Vellore Citizens Welfare Forum v. Union of India 1996 (5) SCC 647

This case introduced the “precautionary principle” and “polluter pays principle” into Indian law, mandating preventive measures and accountability for environmental damage. The Court’s directive to clean the Palar River demonstrated proactive judicial intervention.

6. Indian Council for Enviro-Legal Action v. Union of India 1996 3SCC 212

The Court ordered the closure of polluting industries in Bichhri, Rajasthan, reinforcing the polluter pays principle and emphasizing remedial action.

7. T.N. Godavarman Thirumulpad v. Union of India 1996 INSC 1477

This ongoing case, known as the Forest Case, led to the creation of the Compensatory Afforestation Fund and stricter oversight of forest diversion, safeguarding India's green cover.

8. M.K. Ranjitsinh and Ors. v. Union of India and Ors. (2021) 15SCC 1

There was a writ Petition filed to the Supreme Court of India, invoking its jurisdiction and to issue the necessary order to protect two endangered birds, the Great Indian Bustard (GIB) and Lesser Florican. The Supreme Court noted the need to balance the interests of conserving the GIB with India's commitment to reduce emissions and move away from fossil fuel-based energy resources. By an order dated 21 March 2024, the SC restricted the undergrounding requirement under the 2021 Order to only the priority GIB areas (approximately 13,163 square km), subject to feasibility to be determined by an expanded seven-member expert committee. The Supreme Court also modified the 2021 Order by easing the restrictions imposed by the 2021 Order in the potential GIB areas.

9. M.K. Ranjitsinh and Ors. v. Union of India and Ors. 2024 INSC 280

The Supreme Court of India addressed the conservation of the critically endangered Great Indian Bustard (GIB) while balancing the need for renewable energy development. The court modified its earlier directive to underground all power transmission lines in priority areas, citing technical, environmental, and economic challenges. Instead, it appointed an expert committee to assess feasible conservation measures, including the use of bird diverters and habitat restoration. The judgment emphasized the importance of

protecting biodiversity alongside India's international commitments to combat climate change through renewable energy. The Union Government was directed to implement conservation measures and submit a report by July 2024.

The establishment of the National Green Tribunal (NGT) in 2010, under the National Green Tribunal Act, was a direct outcome of judicial advocacy. The NGT has expedited environmental dispute resolution, issuing over 30,000 orders by 2024, addressing issues from illegal mining to urban waste management. The judiciary has also championed sustainable development, balancing economic growth with ecological preservation. In *Goa Foundation v. Union of India* (2014), the Court capped iron ore mining in Goa to protect biodiversity, demonstrating a nuanced approach to development. Similarly, in *Lafarge Umiam Mining Pvt. Ltd. v. Union of India* (2011), the Court approved mining subject to stringent environmental safeguards, reflecting a pragmatic yet principled stance. These judgments illustrate the judiciary's role as a guardian of the environment, filling legislative and executive gaps through creative interpretation and proactive directives. Your Lordships have ensured that the environment is not an afterthought but a priority in India's developmental narrative.

Even today when during the present Monsoon season, the floods ravaged our Himalayan states, this Hon'ble Court was extremely instrumental to take stock of the situation and staged a much-needed intervention. In the recently filed Writ Petition bearing the title *Anamika Rana vs. Union of India*, this Hon'ble Court raised and highlighted serious concerns with respect to illegal felling of trees that was touted as one of the key factors responsible for the floods that ravaged the states of Jammu and Kashmir, Uttarakhand, Himachal Pradesh, Punjab, etc.

In another recent case before this court titled *M/s Pristine Hotels and Resorts Pvt. Ltd. Vs. State Of Himachal Pradesh & Anr.*, the bench of Justice Pardiwala and Justice Mahadevan while hearing a Special Leave Petition (SLP) filed by a

private company against the Himachal Pradesh High Court's judgement that refused to quash a notification designating "green areas" in the state said and I quote, *"If things proceed the way they are as on date, then the day is not far when the entire State of Himachal Pradesh may vanish in thin air from the map of the country"*. These observations give us a glimpse into the mindset of this Hon'ble Court that believes in the concept of Ecocentrism and lives by it. It gives the general public and those involved in preservation of environment that the top most court if the land is ready to tame the bull by its horns if the cause of environment is concerned.

I have spoken at length about the cases this Hon'ble Court has dealt with. However, as your fellow member at the bar and an advocate of environment, it is unfair for me to preach you all to work for the environment when the question raises to my efforts towards the preservation of this integral resource. Let me give you some anecdotes wherein I have through judicial means worked towards the betterment of the environment:

1. MC Mehta vs Kamal Nath and Ors. 2000 (6) SCC 213
2. Aditya Prasad vs Union of India, NGT, O.A. No. 215 of 2014
3. Rituparn Uniyal vs. Union of India & Ors. W.P. (C) No. 767 of 2019
4. Rajiv Dutta vs. State of NCT of Delhi, Delhi High Court, W.P.(C) 12271/2022

F. Challenges and Way Forward

Despite these achievements, significant challenges persist. First, enforcement remains inconsistent. Pollution Control Boards often lack the resources or autonomy to act decisively. Second, rapid urbanization and industrialization strain existing laws, necessitating updates to address emerging issues like e-waste and microplastics. Third, climate change demands adaptive legal frameworks, such as regulations for renewable energy and carbon trading. Fourth, public awareness and participation in environmental governance

remain limited, undermining citizen-driven enforcement under Article 51A(g). To address these, I propose the following:

1. Strengthening Institutions: Empower Pollution Control Boards and the NGT with greater funding, technical expertise, and autonomy.
2. Leveraging Technology: Use AI and satellite monitoring to track pollution and deforestation in real-time, aiding enforcement.
3. Judicial Innovation: Continue expanding PILs to include climate litigation, addressing issues like carbon emissions and renewable energy adoption.
4. Local Litigation: Reach out to people working in the area of environmental laws and try to understand the issues faced by them and how can you build a pressure on local officials to act towards the same.
5. Public Engagement: Promote environmental education and incentivize community-led conservation, aligning with Article 51A(g).
6. Global Cooperation: Strengthen India's role in international climate negotiations, ensuring technology transfers and funding for adaptation measures.

The judiciary can lead by integrating climate justice into its jurisprudence, recognizing the intergenerational equity principle—ensuring that future generations inherit a liveable planet. A potential framework could involve mandating climate impact assessments for major projects, akin to EIAs, and fostering specialized environmental benches within courts.

G. Conclusion

The environment is not a resource to exploit but a legacy to preserve. The Supreme Court of India has been a beacon of hope, weaving environmental protection into the fabric of constitutional justice. From Article 21 to the NGT, your Lordships have ensured that the law evolves with the times, safeguarding nature while upholding human dignity. As, we stand at the crossroads of development and sustainability, I urge this Hon'ble Court to continue its pioneering role—interpreting laws creatively, holding polluters accountable, and inspiring a nation to cherish its natural heritage.

As a fellow member of the bar, I want to state that, today we are in the Apex Court of the country, the court where advocates from the different states of our country practice, it is my suggestion that those from out of states should connect with those working for the preservation of the environment and try to understand the issues they are facing. Try to build pressure on officials to act and follow the law or else they would be taken into account and made answerable to the Courts. This noble profession that we are in and the gowns we wear, puts a lot of responsibility on our shoulders to act and work for the society. I am aware that financial stability is extremely important so I advise everyone to pursue 9 cases that pay you well, however, pursue 1 case that can make an impact to this society.

Let us remember that a clean environment is not just a legal obligation but a moral imperative, a promise to our children and the planet they will inherit.

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