JUDICIAL ENVIRONMENTALISM - THE EXPANDING ROLE OF INDIAN CONSTITUTIONAL COURTS IN ENVIRONMENTAL GOVERNANCE

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ABSTRACT

Largely due to the institutional ineffectiveness and ineffective statutory enforcement, the Indian judiciary has emerged to be a significant actor in environmental governance of the country. This article examines what is known as judicial environmentalism where through ingenious interpretations of Articles 21, 32 and 226 of the Constitution, the courts have transformed environmental protection into a constitutional obligation that must be implemented by the judiciary. One should begin with the early case like Rural Litigation & Entitlement Kendra case Subhas Kumar v. The judiciary of State of Bihar gradually added to the definition of the right to life the right to a healthy and clean environment. Such doctrines as the polluter pays, precautionary principle and the doctrine of public trust were further refined in classic judgments in the M.C. Mehta series, and in the Vellore Citizens Welfare Forum, to fill in gaps caused by legislative and executive inertia. Though the interventions have enhanced environmental justice and given voice to individuals through the virtue of Public Interest Litigation, it has also created concerns over judicial overreach and separation of powers. Relying on ad hoc expert commissions and constant monitoring of the courts is doubtful due to the lack of institutional capacity and a democratic check. In order to solve these problems, the paper suggests that a more empowerment of specialized institutions like the National Green Tribunal, enhance judicial access to expertise in the sciences and change the statutory regimes to permit the evolution of doctrine. The research demonstrates an advanced description of the manner in which judicial environmentalism has not only stretched the limits of constitutional rights, but also stretched limits of judicial power in India, through a critical review of case law, academic writing, and international influence.

Keywords: Judicial environmentalism; Indian constitutional courts; Environmental government; Article 21; Articles 32 and 226; Public interest litigation; Precautionary principle; Public trust doctrine; Sustainable

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development; Judicial activism; National green tribunal; Environmental justice;

1. INTRODUCTION:

During the previous years following its independence, India was overwhelmed with the issue of survival and its economic growth. Industrialization involved construction of big dams and poverty alleviation efforts took center stage. Issues of clean air, rivers or forests were not new but prevailed. Factories Act, 1948 and mines Act, 1952 dealt with the issues of health and safety in a small scale manner but there was not any effective coherent law which dealt with the environmental issue. It started playing a different tune only after the involvement of India in the Stockholm Conference in 1972[2] . Since that time, Parliament proposed specific legislation, including the Water (Prevention and Control of Pollution) Act, 1974 [3], and then the Air (Prevention and Control of Pollution) Act, 1981 [4]. Bhopal Gas Leak of 1984 was catastrophic and the State realised that piecemeal regulation could not work and that was followed by the Environment (Protection) Act, 1986 [5]. However, such laws were stricter on paper than on practice. When P. Leelakrishnan[6] has mentioned that the majority of the pollution control boards were not independent and knowledgeable and they were usually compromised when it came to enforcing the laws. Industries released effluents which were not treated, cities could not handle solid wastes and environmental impact assessment turned into a ritual. The issue was not lack of legislation but weak administration. Such discrepancy between the law and conception left the citizens and activists with no other option but to turn to the courts. The upper judiciary was responding in a creative yet controversial way. In the late 1970s, the Supreme Court as well as a number of High Courts began hearing petitions that also put environmental questions squarely.

The judges did not limit themselves to disputes resolution in the traditional sense using the authorities granted under Articles 32 and 226. Rather, they have construed the guarantee of the constitution particularly in Article 21 promise of the right to life in a new manner by extending them to incorporate a right to a healthy environment. By so doing, the courts ended up playing a pivotal role in the management of the environment. The Rural Litigation & Entitlement

[2] Stockholm Declaration of the United Nations Conference on the Human Environment, June 16, 1972.
[3] The Water (Prevention and Control of Pollution) Act, No. 6 of 1974,
[4] The Air (Prevention and Control of Pollution) Act, No. 14 of 1981,
[5] The Environment (Protection) Act, No. 29 of 1986,
[6] P. Leelakrishnan, *Environmental Law in India* 54–57 (4th ed. 2019).

Kendra[7] case can be considered the initial wave of this new approach. The case of State of Uttar Pradesh where the Court directed the limestone quarries in the Doon Valley to be closed. No explicit statutory ban was provided; however, the Court approached the matter as a question of constitutional rights, and put the ecological interests above the business interests. Later, the Hon. Supreme Court in a case of Subhash Kumar v. State of Bihar [8], stated that, under Article 21, Right to life has the other requirement of the right to clean air and safe water. These rulings were not only important in their results, they were important because of their effects, they have broadened the constitutional meaning because they provided the connection to the quality of the environment and human dignity.

The M.C. Mehta cases line will show the extent to which such a judicial expansion could be taken. In the case of Oleum Gas Leak[9], the Court parted ways with the English rule of strict liability and established the rule of absolute liability that applied to the case of hazardous industries. This implied that the businesses that operated with harmful and hazardous materials could not use exceptions, they would be responsible with no exception. The Court followed this ten years later through the Taj Trapezium[10] cases and ordered the polluting industries to move or modernize to cleaner technology. In this case, it incorporated the principles of the polluter pays and precautionary, which was largely aspirational in the Indian law. Later still, in M.C. Mehta[11] case, The Court applied the public trust doctrine to prevent privatisation of a riverbed, and Kamal Nath believed that natural resources were the property of the people and could not be transferred over in the hands of the individuals to exploit them. This jurisprudence was further expanded with the help of other rulings. The Apex Court also in Indian Council for Enviro Legal Action[12] case, The Court imposed hefty costs on the polluting industries, so that taxpayers would not be left to restore the environment Union of India. The T.N. Godavarman case, which had lasted long, reconstituted the management of forests, narrowing down the definition of a forest and making any diversion of forest land liable to judicial examination.

Narmada Bachao Andolan v. Union of India,[13] the Court also emphasized balancing the environment protection requirements and the requirements of development, especially when it

[7] Rural Litigation & Entitlement Kendra v. State of U.P., (1985) 2 S.C.C. 431 (India).
[8] Subhash Kumar v. State of Bihar, (1991) 1 S.C.C. 598 (India).
[9] M.C. Mehta v. Union of India (Oleum Gas Leak), (1987) 1 S.C.C. 395 (India).
[10] M.C. Mehta v. Union of India (Taj Trapezium Case), (1997) 2 S.C.C. 353 (India).
[11] M.C. Mehta v. Kamal Nath, (1997) 1 S.C.C. 388 (India).
[12] Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 S.C.C. 212 (India).
[13] Narmada Bachao Andolan v. Union of India, (2000) 10 S.C.C. 664 (India).

comes to the large dams and mass displacement. Such cases put a massive burden upon the question of how the judiciary had come to take on the functions of a regulator and gone far beyond its adjudicatory functions. The Constitutional plan offers a platform on such innovations. Article 48A[14] that contained a duty placement on behalf of the State towards environment protection and article 51A(g)[15] one that assumed a basic duty on citizens towards preservation of the natural resources was introduced. Although these provisions could not be directly enforced in a court setting, they were made interpretive aids. They were often used by judges as an indication that environmental protection was not a policy option but an obligation of the constitution. The vulnerability of the regulatory institutions became very clear during disasters like the Bhopal Gas Leak in 1984. The tragedy showed that state agencies were not able to prevent any crisis or even respond to the crisis in an adequate manner in relation to the environmental issue. Under such circumstances, the interventions of the judiciary started to be seen as an overstep and an open action yet a required correction. Simultaneously, there were foreign trends that were gaining speed. The Stockholm declaration of 1972 had already indicated the world uniting to recognize and appreciate that all humans should live in a clean and safe environment, the same being a universal standard. Rio Declaration of 1992[16] had been more elaborate, stating the principles of sustainable development, intergenerational equity and the precautionary principle. The Indian courts were not shy to borrow these and incorporate them in local jurisprudence.

The other important innovation was the procedural innovation of Public Interest Litigation (PIL). The regulations in the Indian courts were traditionally strict so that only the directly impacted individual had access to the forum of law with the emergence of PILs, the previous regime was loosened and citizens willing to give services to the communities, non governmental organizations and other activists could now file a suit on behalf of the affected communities. This was termed by Upendra Baxi as a significant change between the jurisprudence of social action and what he referred to as traditional legalism.[17] Public Interest Litigations became the new weapon in environmental issues, the courts perceived the necessity and put expert committees into the case, and passed interim orders, and kept cases on its files pending years with continuing mandamus. This oversight position enabled judiciary to make sure that compliance was attained in ways which could not have been done through normal

[14] INDIA CONST. art. 48A.
[15] INDIA CONST. art. 51A(g).
[16] Rio Declaration on Environment and Development, June 14, 1992, U.N. Doc. A/CONF.151/26.
[17] Upendra Baxi, The Avatars of Indian Judicial Activism, 156 *Indian L.J.* 245, 251–53 (1985).

litigation. The courts have not however been allowed to play the active participation role without challenge. Reserach Scholars, including Shyam Divan and Armin Rosencranz, have also indicated that inasmuch as judicial intervention has served to improve environmental protection, the judicial action also poses a threat of displacing the duty of elected branches and specialised agencies. The judges who are arguers are not trained scientists or environmental controllers, but they have ended up playing an active role of guiding the policy in the relocation of industries, choice of fuel and governance on forests. This poses a grave challenging question on whether judicial creativity is vital to constitutional requirements and whether or not it is encroaching on constitutional legislative and executive practice. The institutional issues introduce a major burden to this criticism. A judicial overseeing by continued mandamus has worked successfully in certain instances but has also overstretched the courts in their institutional designation. In its 186th Report[18], the Law Commission of India emphasized that complicated environmental conflicts usually require scientific and technical knowledge. It proposed expert forums to supplement the activity of constitutional courts.

The formation of the National Green Tribunal in 2010 may be regarded as a reaction to these issues, although the greater instance still remains the dominant one. This is a tension between the necessity of judicial creativity and the dangers of judicial overreach, which is the main issue that this study is concerned with. On the one hand, the judicial environmentalism has certainly enhanced the right to environmental justice, widened constitutional rights, and brought to book governments. To the contrary, it has made adjudication and governance seem indistinct, which has led to the issue of democratic accountability and the separation of powers. It is on this background that the research proposes five objectives. It begins by evaluating how the judiciary has broadened its mandate by interpreting the provisions of the constitution, especially Articles 21, 32 and 226 to encompass environmental rights. Second, it follows the legal implementation of the major principles which include polluter pays, precautionary principle and public trust. Third, it examines the occurrence, success and performance of judicial interventions, and focuses on those cases, where the courts monitored the inaction of the executive. Fourth, it assesses the extent to which such interventions qualify and strengthen constitutional governance or the reverse. Lastly, it determines the difficulties that courts encounter when addressing technical disputes and discusses the potential reforms to get judicial activism to be in line with democratic accountability. Based on these objectives, the research questions

[18] Law Comm'n of India, 186th Report on Proposal to Constitute Environment Courts (2003).

emerge: How have the courts extended their constitutional rights into the environmental sphere? What part have the judicial doctrines had in formulating the outcome of governance. In what degree have judicial interventions served to compensate executive and legislative failures and resulted in improved outcome. Are these interventions observant of the principles of separation of powers or are they at risk of endangering it? And what are the reforms that are needed so that courts are able to effectively solve environmental disputes without over stepping their constitutional mandate? Through the quest to answer these questions, the study will provide a fair assessment to judicial environmentalism; that is, it will acknowledge the transformative nature of judiciary in instating environmental issues in the constitutional law whilst also recognising the institutional and constitutional quandaries it elicits. Analysis places judicial environmentalism in a paradoxical place, on the one hand as a practice which has helped advance environmental justice but on the other as a challenging exercise to the judicial authority within the democratic system.

The study is associated with a dogmatic and analytical approach and is primarily based on the constitutional provisions, the reported decisions of the Supreme Courts and the High Courts as well as the major environmental laws. Article 21, 32 and 226 are the three articles, which are given specific attention as well as the directive and fundamental duty provided by the 42 nd Amendment. There are also statutory laws which include the Water Act of 1974, Air Act of 1981 and then the Environment (Protection) Act of 1986 which are discussed to demonstrate how the courts completed the schemes of legislation. The secondary literature such as standard commentaries, Law Commission reports and recent journal articles has been utilized to get an idea of the credentials of judicial environmentalism as well as the broader discussion. The study is restricted on the role of the Indian constitutional courts in environmental governance. The major argument is mostly on judicial extension of Articles 21, 32, and 226 of the Indian Constitution and formulation of tenets like polluter pays, precaution, and public trust doctrine. The research is also restricted in the sense that it excludes the lack of empirical or field based data since the research makes use of the reported cases and the published scholarship. Questions of technical and scientific nature are not discussed herein and references are prepared comparatively only when necessary. With these limits, this paper will be focused on constitutional and legal analysis.

2. LITERATURE REVIEW:

Scholars writing on judicial environmentalism in India approach the subject from different

angles, but almost all agree that the courts have gone beyond their traditional role to address ecological concerns. R. Bahri argues that the judiciary, through Public Interest Litigation, has filled the empty spaces by replacing the weak enforcement agencies, often stretching the scope of Article 21 to recognize environmental rights.[19] T. Verma presents a similar view, noting that the Supreme Court in particular has shifted from being a dispute-settler to an active participant in environmental governance.[20] In his opinion, tools like Writ of *mandamus* have emerged not by accident but as a response to consistent and persistent failures in statutory enforcement Likewise, A. Sisodiya shows how Articles 21, 48A, and 51A(g) were read together by courts to construct enforceable duties of protection, with PILs serving as the main procedural doorway for such claims.[21]

Aafreen, meanwhile, situates these developments in a wider global setting, pointing out how doctrines of sustainable development and intergenerational equity from the Rio Declaration shaped Indian rulings.[22] Another group of writers concentrate on the doctrines themselves rather than the broader constitutional setting. S. Verma describes how key environmental principles such as the precautionary rule, polluter-pays, and public trust have evolved and how has it been repeatedly used by the courts to craft remedies in cases of pollution, deforestation, and misuse of natural resources.[23] R. Khedkar, however, describes this enthusiasm as a warning that judicial innovation of doctrines can at times unsettle the traditional balance of powers.[24] While both recognize that doctrine building has been central to India's environmental jurisprudence, they differ on whether such creativity should be celebrated as necessity or whether it should be questioned as an overreach.

Some contributions add ethical and distributive layers to the discussion. G.D. Naik, for example, frames water justice not only as a legal issue but also as an ethical issue, arguing through the ideas of Amartya Sen's capability approach and the Brasília Declaration that access to clean water must be treated as a public good.[25] Srivastav and Singh explore land acquisition

[19] R. Bahri, Judicial Activism in Environmental Law: A Study on the Role of the Judiciary in Shaping Environmental Policies in India, 5 INDIAN J. LEGAL AFF. & RSCH. 45 (July 2024).
[20] T. Verma, The Evolving Role of the Judiciary in Environmental Law, LAWFUL LEGAL J. 13 (Aug. 2024).
[21] A. Sisodiya, The Role of Indian Judiciary in Protection of Environment in India,
[22] A. Aafreen, The Role of India's Judiciary in Promoting Environmental Preservation, 9 INTEGRAL U. L.J. 54 (2023).
[23] S. Verma, Judicial Contributions to Environmental Protection and Conservation, LEGAL BITES, 34 (2023),
[24] R. Khedkar, Critical Analysis of Judicial Activism with Respect to Environmental Laws, 10 LEGAL SERV. INDIA 20 (2024).
[25] G.D. Naik, Role of Courts in Ensuring Water Justice in India: Brasília Declaration on Water Justice and Beyond, 12 CHRIST U. L.J. 22 (2023).

for coal mining and express their views as to that the current laws have placed industrial needs ahead of environmental and community welfare.[26] They suggest legislative reform that draws on judicial doctrines of environmental constitutionalism. In a similar line, George and Catherine Pring highlight procedural rights such as access to justice, information, and participation, stressing that unless tribunals like the National Green Tribunal address and plays a vital role towards the marginalized communities, environmental justice will remain incomplete.[27]

Finally, the limits of judicial interventions are not ignored. Khedkar again stresses that while judicial activism has produced bold judgments, its effectiveness is often undercut by poor monitoring and weak compliance.[28] John, Pillai, and Mathew adopt a different view, arguing through their 'selective assertiveness' model that the Supreme Court intervenes most strongly when the administrative capacity for compliance exists and public opinion is supportive, but steps back in politically sensitive coupled with highly technical cases.[29] Together, these Papers suggest that judicial environmentalism in India is neither uniformly activist nor entirely restrained, it is context driven, shaped by constitutional interpretation, ethical debates, and practical limitations.

3. CONCEPTUAL FRAMEWORK OF JUDICIAL ENVIRONMENTALISM:

The term, judicial environmentalism, is not on the Indian Constitution but it has taken the centre scene in the governance of the environment in India. This term consists of the capture of how the courts and mainly the Supreme Court have intervened where the law or the institution was weak. The origins of this practice can be traced to the history of Indian constitutionalism in general. The Articles 21, 32, and 226[30] allocated space to rights based assertion, whereas Article 48A and 51A(g) of the Forty Two Amendment provided the environmental protection with a seat in the directive principles and fundamental obligations. Such provisions did not produce an overnight change, but they provided the judges with the opportunity to interpret ecological

[26] S. Srivastav & T. Singh, Greening Our Laws: Revising Land Acquisition Law for Coal Mining in India, Xiv Preprint arXiv:2304.14941 (Apr. 2023),
[27] George Pring & Catherine Pring, The Advancement of Environmental Procedural Rights in India: An Analysis of Issues, Problems and Prospects, in *ENVIRONMENTAL PROCEDURAL RIGHTS STUDIES* 101 (Taylor & Francis, 2024).
[28] Khedkar, supra note 6.
[29] J. John, V. Pillai & R. Mathew, Selectively Assertive: Interventions of India's Supreme Court to Enforce Environmental Laws, 11 SUSTAINABILITY 7234 (2019).
[30] INDIA CONST. art. 21, 32 & 226.

interests into the text of the basic rights. The earliest indications of this change were in the early 1980s. Kendra v. Rural Litigation and Entitlement, 1990. The Court ordered the closure of limestone quarries in the Doon Valley by the State of Uttar Pradesh, although the Court did not direct it to be done by a particular statute. In Subhasuk Kumar v. 10 years after this, a decade later. The Court stated that the right to clean water and air was also encompassed in the right to life provided in Article 21 of the Constitution of the State of Bihar. Small steps were taken but soon the judicial project was quite a large one. According to Bahri, this stage is characterized by the courts taking the vacuum created by the state, where the rights were stretched in defense of the environment. The M.C. Mehta series of cases are no exception to any account of judicial environmentalism. In the case of Oleum Gas Leak the Court applied the doctrine of Absolute Liability, as they did not buy into the traditional English doctrine of Strict liability. The Taj Trapezium controversies had a major influence on some of the industries to move or switch to fuel to entrench into the Indian law the polluter pays and precautionary principles. Later, in M.C. Mehta v. According to the Court, the public trust doctrine was invoked as Kamal Nath believed that rivers and natural resources could not be transferred to a private usage. These instances are usually used as evidence that the judiciary not only enforced the law that was in place but established new guidelines upon which the environmental governance is now based. S. Verma has claimed that this type of decision is indicative of the inventive aspect of Indian environmental jurisprudence that entails the formulation of new doctrines in the court. There is no unanimity in academic thought regarding these tendencies. T. Verma emphasizes the adoption of new procedures that the Court tried like continuing mandamus to make sure that compliance is met whereas Sisodiya emphasizes the deployment of PILs and expert committees to convert ecological rights into practical solutions. Naik opts to do so differently by noting that issues relating to water conflict are not merely about law but also about balance and justice that aim to find an inference on the Brasília Declaration and capability approach developed by Amartya Sen. Pring and Pring emphasize their opinion about procedural rights and conclude that even though Indian courts have identified participation and access to justice, even such institutions as the National Green Tribunal have certain obstacles to reaching marginalized groups. Collectively, judicial environmentalism in India is an innovation and precaution tale. Courts have given constitutional meaning expansions and have developed doctrines which today constitute the foundation of the environmental law. But, as academics are quick to remind us, these benefits come with the issues of enforceability, institutional competence and democratic accountability.

4. CONSTITUTIONAL FOUNDATIONS OF JUDICIAL ENVIRONMENTALISM:

The environment was not initially mentioned in the Indian Constitution. When the framers drafted, they were more focused on nation building, social justice and economic development. However, in the course of time, the Constitution was made the foundation on which the courts constructed the system of environmental rights. Article 21 is the most significant in this area as it provides guarantees to the right of life and liberty. The Maneka Gandhi[31] case is a landmark case. Union of India, Supreme Court has clarified that the life in Article 21 should be interpreted in the broad sense and not as mere survival but life with dignity. Such an interpretation subsequently enabled judges to contend that dignity must have clean air, secure water and a wholesome environment. Subhash Kumar case had made the point very clear. State of Bihar, in which the Court had ruled that right to life is the right to clean water and air. Articles 21, 32 and 226[32] have also empowered the Supreme Court and High Courts to intervene whenever the rights are in danger. Such provisions also enable everyone to petition writ, but the Indian courts have gone to greater extent and opened doors to Public Interest Litigation (PIL). Leaving the view of Upendra Baxi,[33] PIL has established a jurisprudence of social action, which makes possible groups and citizens to solve those problems which are influential to the community in general. This change of procedure was one of the key factors that allowed taking the environmental issues which in most cases concern the community and not an individual to the higher court. The constitutional framework was further widened to incorporate the 42 rd amendment of 1976 which further ordered the States to protect and improve the environment, and on the other hand the Article 51A(g) which places the responsibility to the citizens of safeguarding nature. These provisions are not binding but have a tendency of being employed by the courts as interpretative tools. Vellore citizens welfare forum[34] v. The Apex Court Union of India discussed Articles 48A and 51A(g)[35] and made a move towards the precautionary principle and the polluter pays doctrines. Creativity has been applauded and also criticized. On one hand, it has enabled the courts to ensure that the environmental rights are enforceable by law in circumstances where the legislature and the executive were not doing the same. Critics on the other hand fear that it is extending the judicial system beyond what should be in the purview of policy makers. In spite of such perceptions, the truth is that the Constitution has

[31] Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248 (India).
[32] Supra At 30
[33] Upendra Baxi, supra note 17, at 255.
[34] Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 S.C.C. 647 (India).
[35] Id

given the platform over which judicial environmentalism has been built and transformed general rights as enforceable ecological norms.

5. Lengthening of the Constitution and the Court acceptance of environmental rights:

5.1 The right to a healthy environment is stipulated in Article 21: The most positive input of the Indian judiciary towards the environment has been that it broadened Article 21 which provides a right to life and personal liberty. In its initial years, this was taken very literally. However, in the 1980s, the Supreme Court began to understand life to mean more than a physical survival[36]. In Subhash Kumar v. State of Bihar, the Court put forward its position by saying that right to life also includes right to clean water and clean air[37]. This policy allowed issues of the environment that did not have a clear constitutional foundation until the 42th Amendment[38] to be encompassed in a fundamental right. Previous decisions such as those of Rural Litigation and Entitlement Kendra case[39] The indication of this tendency to interpret the quality of the environment as the assurance of life with dignity was in the State of Uttar Pradesh in which the limestone quarries in the Doon Valley[40] were ordered to be shut down. Article 21 became the constitutional base of environmental rights through such decisions. The scope of Article 21 has always been used by scholars to express their views and opinions in reference to judicial interpretation of Article 21 in the event of the non justiciable directions like Articles 48A and 51A(g) being inculcated into enforceable norms.

5.2: Articles 32 and 226: Writ Jurisdiction, Public Interest Litigation: Article 32 and 226 provided the procedures to provide the environmental rights as Articles 21 provided the material basis to the rights. Article 32 provides that citizens may have access to the Supreme Court to have fundamental rights enforced, and Article 226 provides that the jurisdiction of High Courts extends to encompassing any other purpose (under addition to the basic rights) in Article 226. These two provisions were combined to provide a massive judicial role in environmental administration. This was even enhanced by the establishment of Public Interest Litigation (PIL). The courts demoralized the traditional rules of locus standi[41] and made the petitions open to individuals and groups representing the communities affected. This

[36] Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608.
[37] Supra At 8
[38] The Constitution (Forty-Second Amendment) Act, 1976.
[39] Rural Litigation & Entitlement Kendra, (1985) 2 S.C.C. 431.
[40] Id
[41] S.P. Gupta v. Union of India, 1981 Supp SCC 87.

transformation signified a shift in the direction of a jurisprudence of social action, as Upendra Baxi has correctly argued that, such a shift marked a rejection of a form of rigor of the law[42]. Article 32 embraced environmental petitions, which were normally presented before the Supreme Court and Article 226 presented before other High Courts. For instance, in M.C. Mehta v. Oleum Gas leak, the Supreme Court has used Article 32 jurisdiction as a direct method of creating new remedies including the doctrine of absolute liability. Similarly, the High Courts under their Article 226 powers have also intervened in local environmental devastation cases such as illegal sand mining, local waste disposal among others. The case study on judicial innovation and the rise of continuing mandamus endorses this concept via formal or informal channels

5.3 Judicial Innovation and the rise of Continuing Mandamus: The formal or informal approach to this concept has been endorsed through the case study on judicial innovation and the emergence of continuing mandamus[43]. The use of continuing mandamus as a form of ongoing oversight by the courts in an effort to ensure compliance to environmental standards has been among the more outstanding features of judicial environmentalism. Articles 32 and 226 writs previously were limited to the issuance of particular orders. Courts however have begun to issue interim directions, form expert committees and keep the years on the implementation of cases in the environmental issues. The M.C. Mehta cases chain is one of the examples of this type of innovation. The Court was not merely passing final orders in the case involving the pollution of the river Ganga or car emissions in Delhi but left the cases in limbo as cases had to be followed step by step[44]. Equally, High Courts have adopted the same strategy particularly when dealing with forests and land use. Although this prevented the executive lethargy at the expense of environmental protection, researchers like S. Divan and A. Rosencranz have cautioned that this practice presents the problem of separation of powers and institutional capacity[45]. Judicial environmentalism has been characterized by a series of mandamus, which demonstrates the manner in which the writ jurisdiction under Articles 32 and 226 has been imaginatively reconstituted to meet ecological demands.

[42] Upendra Baxi, *Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India*, 4 Third World Legal Stud. 107 (1985).
[43] Vineet Narain v. Union of India, (1998) 1 SCC 226
[44] M.C. Mehta v. Union of India (Ganga Pollution), (1988) 1 SCC 471.
[45] Shyam Divan & Armin Rosencranz, *Environmental Law and Policy in India* 146–49 (2d ed. 2001).

6. EVOLUTION AND JUDICIAL APPLICATION OF ENVIRONMENTAL DOCTRINES IN INDIA:

6.1 The origin of the Polluter Pays Principle:

The law and policy concerning the environment in India is undergoing a significant evolutionary process, which is propelled by the judicial application of environmental doctrines to its laws. The evolution of the law and the policy on the environment in India: The law and policy on the environment in India is in the process of evolving significantly which is driven by the judicial application of the environmental doctrines on the environmental laws. The Pollutant Payback Principle was developed by theorist Stuart Stiglitz in 1989[46]. The Pollutant Payback Principle was coined by theorist Stuart Stiglitz in 1989. Polluter pays principle gets strong root in the Indian laws through the environmental judgments of the Supreme Court in the 1990s. Its first articulation can be dated back to the case law of Indian Council for Enviro-Legal Action v. Union of India,[47] whereby the Court had decreed that polluting industries pay as compensation money of chemical harm caused to the villages of Rajasthan. This ruling of the Court was categorical in the sense that it was clear that the cost of degrading the environment could not be transferred to the community or the State but rather to the polluters themselves. The case was restated in Vellore Citizens Welfare Forum v. Union of India, where the Court called it a part of the law of the land.[48] Here, the Court noted that sustainable development would require the industries to internalize the cost of environmental degradation. Through publications such as the Indian Journal of Environmental Law, and the Cambridge Journal of Environmental Practice, scholars have noted that through the application of this principle, the Indian courts have in fact created economic disincentives to pollution but have sealed the loopholes in regulation that weak enforcement agencies have left. In spite of that innovation, however, there has been still criticism that there is uneven enforcement where smaller plants tend to go scot-free. The Precautionary Principle may be accepted by the judiciary by informing them of the justification behind its application, which must be justified by genuine legal and scientific concerns (Fraser, 2006).

6.2 Judicial Acceptance of the Precautionary Principle: The Supreme Court in Vellore

[46] OECD, *Recommendation on Guiding Principles Concerning International Economic Aspects of Environmental Policies* (1972).
[47] Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212
[48] Id

Citizens Welfare Forum adopted precautionary principle that demanded those measures to be taken in case of uncertain environmental hazards. The Court decided that non-existent scientific uncertainty should not be used to postpone environmental protection measures. This was an adjustment in judicial thought, which alignment of the domestic law with the international documents like the Rio Declaration of 1992 which already made precaution the core of international environmental regulation. The principle has in practice been applied in cases like A.P. Pollution Control Board v. Prof. M.V. Nayudu[49] where the venture by an industry was not permitted on the basis that environmental consequences were not assessed. P. In his work, Leelakrishnan argued that this judicial adoption of precaution shows a sense on the part of the courts that face technical uncertainty that the courts will prefer to make a mistake towards ecological security. However, scholars have also warned that too much of that will paralyze industrial progress, economic versus ecological interests.

6.3: The public trust doctrine and the constitutionalisation of natural resources: Indian law made use of the public trust doctrine in M.C. Mehta v. In Kamal Nath,[50] where the Supreme Court quashed the conversion of forest land into commercial land, the Court pegged its reason on the fact that the natural resources like rivers, forests and natural ecosystems are under the custody of the State on behalf of the people and that they cannot be converted to personal use/ gains. This doctrine has been used later on in situations to do with the regulation of the coastal areas, conservation of the forests, and even in cases of the common issues within the cities. Indian courts transformed the State-natural resources relations by implementing the principle of trusting the populace. According to the academic commentary in the journals Environmental Law Review and Law & Society, this doctrine in fact constitutionalised environmental stewardship to prevent governments considering natural resources as commodities to be sold out. It is also noted by the critics that judicial application of the principle of the public trust is tended to oppose the development policy to the point where the issue of democratic accountability and the balance of power comes up.

7. Judicial Intervention in the Environmental Administration: Frequency, Nature and Impacts:

7.1 Development of Judicial Review of Environmental Cases: In the late 1980s, Indian

[49] A.P. Pollution Control Bd. v. Prof. M.V. Nayudu, (1999) 2 SCC 718.
[50] M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388.

courts started to play a more proactive part in attempts to control environmental protection, and sometimes a dual part in controlling gaps produced by the inefficient administration[51]. The active involvement of the Supreme Court has been increased significantly especially in the form of Public Interest Litigation in Articles 32 and 226. As it has been pointed out by various scholars these frequencies of intervention is unprecedented on comparative grounds and there are very few other places where the courts assumed such an active role in its supervisory role.[52] The most gross one is the T.N. Godavarman v. Union of India[53] series was a petition established on unauthorised cutting of timber in Tamil Nadu but it turned into a long term case that has dragged over decades. The Court controlled forest use in the nation by passing interim, outlawed logging and even prescribed institutional structures of forest management.[54] The case demonstrates that judicial intervention transcended beyond the mediating of disputes but encroached on the field of policy making by giving a judicial directive.

7.2: The Supervisory Jurisdiction over Judicial remedies: Nature of Judicial remedies, Contrasting the traditional cases of the termination of a judicial process through the final order, environmental cases are likely to stay unresolved after several years under the continuing mandamus mode [55]. The tool also gives the court the power to give out regular instructions, check on adherence, and demand reports by the state agencies.[56] In the (Ganga Pollution case), the Court issued a series of orders over a period of decades to manage tanneries, sewage treatment plants and municipality. Similarly, during the Delhi Vehicular Pollution litigation[57], the Court had the public transportation changed to compressed natural gas (CNG) and special attention was paid to the transformation. According to the scholarly writers such as Lavanya Rajamani, this form of supervision is a sign that the judiciary is trying to bring into practice environmental standards in governance deficits. Still others caution of what are the facts as to how it strains the capacity of the judiciary and jeopardises democratic accountability.[58] That these remedies are ongoing, structural and sometimes even experimental points to the ingenuity as well as to resourcefulness of judicial environmentalism. The sustainability debate is fundamentally different across all three sectors of the organization, and its primary outcomes

[51] See S.P. Sathe, *Judicial Activism in India* 206–10 (2d ed. 2003).
[52] Upendra Baxi, *The Avatars of Indian Judicial Activism*, 156–60 (2001).
[53] T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267
[54] Id
[55] Supra at 43
[56] Id
[57] M.C. Mehta v. Union of India (Vehicular Pollution), (1998) 6 SCC 63.
[58] Lavanya Rajamani, *Courts and the Environment in India*, in *Environmental Law and Governance* 156, 168–72 (2009).

are presented herein, The outcomes of the active intervention of courts are the mixed picture. On the one hand, the courts have managed to drive significant environmental changes such as in Delhi where the quality of air has been improved dramatically after the CNG conversion[59], and forest conservation was given judicial protection never before by the case Godavarman. Conversely, there are still some serious doubts on how sustainable these gains will be. Narmada Bachao Andolan v., 1990. The Apex Court, Union of India allowed construction of the Sardar Sarovar Dam with an aim of focusing on the sustainable development, but there are a number of criticisms that have been raised on the decision saying that the long term ecological and social costs were underestimated. Different researchers such as S. Shastri and Shibani Ghosh have noticed that the intervention of judiciary has provided relief in the short run, and has provided ground to be followed but these have not been accompanied by a system modification.[60] The regulators do not have the resources to cover and once the court supervision is done, the rollout is usually a failure. Thus, despite the fact that judicial interventions bring about executive failure in the short run, there are chances of their sustainability in the long term.

8. Separation of Powers: Judicial Environmentalism and the Controversy:

8.1: The constitutional scheme of the separation of powers is as follows: The Indian Constitution has not explicitly embedded a dogmatic doctrine of separation of powers but it divides powers amongst the legislature, the executive, and the judiciary. Articles 245 246 put law-making powers, the executive is charged with implementation and the judiciary interprets and rights protection.[61] The distinctions have generally been lost in environmental administration. Since the 1980s, judicial environmentalism has moved courts out of the interpretation field into the realm of policy announcement and administrative supervision. In the case of Vehicular Pollution in Delhi, the Supreme Court ordered the transformation of government transport to compressed natural gas capturing this tension, the Court in effect created a transport policy, the role of which is mainly the responsibility of the executive.[62] Higher critics such as P. Ishwara Bhat argue that this intervention was necessitated by a continued executive indifference.[63] But there are still those who caution that the shortcomings

[59] Id
[60] S. Shastri, *Environmental Decision-Making and the Indian Judiciary*, 42 Econ. & Pol. Wkly. 1271, 1274 (2007), Shibani Ghosh, *Judicial Review and Environmental Governance*, 3 Indian J. Const. L. 241, 260–62 (2009).
[61] Constitution of India arts. 245–246.
[62] Supra at 57
[63] P. Ishwara Bhat, *Judicial Activism and Overreach*, 6 Nat'l L. Sch. India Rev. 45, 59–61 (1994)

of legitimacy can result when other institutions are avoided. The constitutional dilemma therefore comes as a result of weighing between the necessity to ensure environmental protection at as soon as possible and institutional checks and balances. As previously stated, judicial authority is not unlimited, but it is merely limited to reasonable levels.

8.2: Judicial Creativity vs. Judicial Overreach: The supporters of judicial activism claim that there was no option but to have courts intervene in the issue of pollution in India. Articles 32 and 226 PILs gave Article 32 and 226 High Courts and the Supreme Court a procedural tool to create a gap in governance. The example of judicial imagination is ongoing mandamus orders concerning T.N. Godavarman, in which the Court granted protection to forests that lacked active regulation. In this respect, the environmental justice was reinforced because of the expanded constitutional protection.[64] The same judgments are perceived in various ways by other commentators. Others such as S. Shastri and Shibani Ghosh caution that the judicial system is not scientifically competent and can offer technocratic adjudications independently. A judicial concept of sustainable development was used in Narmada Bachao Andolan, where the Sardar Sarovar Dam was permitted by the Court that identified risks but adjusted them by a concept of sustainable development. Others blame that this is better left to legislatures or administrative bodies rather than unelected judges because such choices are necessarily of a political nature as they are often involved with trade-offs among livelihoods and ecology and development.

9. Ecological technologies and the pursuit of accountability and ecological issues:

9.1: Technological challenges to environmental adjudication and the pursuit of accountability: Environmental Disputes in the Courts of Law, Complexity:

In the traditional legal thinking, issues presented in environmental cases tend to favor the traditional thought process. Scientific facts, environmental research and technical predictions on the effects of pollution, biodiversity or effects of climate are often asked of the judges. In A.P. Pollution Control Board case, the Supreme Court saw that judges are not professionally prepared to scrutinize such advanced scientific evidence and it is necessary to adopt precautionary measure.[65] Similarly, in the current Godavarman lawsuit, the Court almost completely depended on technical reports to decide on several issues such as the classification

[64] Supra at 53
[65] Supra at 49

of forests and the identified felling. The scholars like Lavanya Rajamani and Shibani Ghosh note that these instances show the institutional susceptibility of the courts: the constitutionally empowered courts lack the institutional framework to deal with the problems related to long-term scientific understanding. This, in its turn, has led to the reliance on ad hoc reports, amicus curiae or external committees, which is a problem as far as uniformity and accountability is concerned.

9.2 Institutional Responses: The committees, experts and tribunals: To offer solutions to these challenges, the courts have put expert committees and oversight boards to the test. Indicatively, in Delhi Vehicular Pollution case, the Court established the Environment Pollution (Prevention and Control) Authority (EPCA) to provide constant technical input. Under the case of river pollution, equal oversight committees were also appointed with an view to recommend compliance measures. These processes have empowered the courts to compensate their lack of technical expertise but their opponents have argued that they are executing a dark government that was not the aim of the constitution. An effort to institutionalize the technical expertise in the environmental adjudication process was made in the year 2010 by establishing a National Green Tribunal (NGT)[66]. On the one hand, courts lack judicial and scientific personnel, whereas the NGT has them, therefore, uniting judicial prerogative with technical power. Even though the Tribunal has given landmark rulings on cases that have ranged between industrial contamination and climate accountability, its limited jurisdiction and its repeated assault on its jurisdiction by the superior courts have restricted its influence.[67]

10. RECOMMENDATIONS AND SUGGESTIONS:

Once the Indian judicial environmentalism has been analyzed and proven to be not only potentially transformative, but also limited in its essence. A number of calibrated steps will be recommended in the future. To start with, even though courts have creatively interpreted Articles 21, 32, and 226 to save the environmental rights, such sustainability requires institutional support. High Courts can rely on institutionalized benches to provide technical knowledge and oversight capacity otherwise lacking in generalist judges, and the National Green Tribunal can be empowered to do so. Second, judges must have implementation mechanisms that are systematic. The success of such landmark judgments as M.C.Mehta or

[66] National Green Tribunal Act, 2010.
[67] Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India, (2012) 8 SCC 326.

Vellore Citizens will very much depend on executive implementation of strong doctrines that they have proclaimed. The gap between doctrine and practice could be resolved by having statutory mechanisms to provide reporting compliance, participation of citizens and third party audits. Third, parliaments need to review the original environmental law the Water Act, Air Act, and Environment (Protection) Act to update the penalties, empower regulators, and bring them into harmony with principles already established by the judiciary, such as the polluter-pays and precautionary action. This would further improve regulation by harmonisation of the statutory law with international commitments in the Rio Declaration and the Paris Agreement. Finally, judicial interference should be well-balanced with democratic responsibility. The protection of basic rights through inaction should be maintained by the courts where it is evident that inaction will dominate yet participatory governance should be encouraged by referring cases to specialized agencies and involving civil society organizations. In this way, the judiciary can play the role of a catalyst without necessarily taking the primary role of the elected and administrative institutions.

11. CONCLUSION:

In India, the direction to which the judicial system is turning towards environmentalism is a pointer of the judicial resolve to go beyond its customary adjudicating role in ensuring fundamental rights in cases where institutions have failed to respond. The Supreme Court and the High Courts have interpreted at new angles the provisions of Articles 21, 32 and 226 to ensure that the environmental protection is a major imperative in the Constitution instead of a peripheral issue. The courts have introduced a significant amount of content to the right to life under the doctrines of polluter pays, precautionary principle, and public trust doctrine and presented itself as champions of environmental justice. At the same time, the judicial environmental experience has not gone without complications. Although the judiciary sometimes has to counter the powers of the executives by being active, the judiciary has been engaging itself with the key Indian Constitution traditional concept that is separation of power. Conformity, frequent checks and balances, nomination of committees, and policy instructions are institutional competence and democratic responsibility. It is criticized that courts as generalist institutions lack the technical skills and expertise to handle long-term complex environmental issues, and they instead incline towards adhocracy rather than transformation. Despite these shortcomings, however, judicial intervention should not be denied the role of having prompted a more broad-based recognition of environmental rights in India. The

judiciary has provided marginalised communities with environmental justice as a result of answering citizen pleas through Public Interest Litigation, since the marginalised communities would otherwise have not been accorded a place in decision-making. But to render it sustainable over the long term, there is an immediate necessity to centralize complementary institutions, such as the National Green Tribunal, to enhance statutory regimes, and to establish the machinery of scientific expertise in the environmental adjudicatory process. Lastly, judicial environmentalism should be viewed as remedial and transitional. Judicial environmentalism has played a corrective role in setting immediate governance gaps, and transitional role in laying the groundwork of a more involved, responsible, and expertise centred form of environmental governance. In this respect, judicial environmentalism not only expanded constitutional rights, but also has laid the way to more powerful and democratic environmental protection in India.