



Judicial Activism And Environmental Law: A Constitutional Review Of The Environment Protection Act's Implementation

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Key words: Judicial activism, Supreme Court, Environmental, Public Interest Litigation, Article.

Abbreviations: Environment Protection Act 1986: EPA, Judicial activism: JA, Supreme Court: S.C, Environmental: Environmtl, Public Interest Litigation: PIL, Article: art.

Abstract: JA, especially in the realm of Environmtl law, has become an essential tool for protecting Environmtl interests when legislative or executive actions may not suffice. This paper examines how JA, through the lens of the Indian Constitution, has significantly contributed to the enforcement of the EPA of 1986, fostering sustainable development also promoting Environmtl justice. EPA was formed to develop a solid regulatory framework for safeguarding the environment, yet its implementation has often been hindered by government inaction and violations by industries.

Judicial intervention has frequently been required to address these shortcomings, with courts stepping in as defenders of Environmtl rights. The judiciary has broadened the interpretation of constitutional rights, particularly Art. 21 of the Indian Constitution, which guarantees the right to life, to encompass the right to a clean and healthy environment. Landmark decisions by the S.C of India, such as the Vellore Citizens' Welfare Forum v. UOI and the M.C. Mehta cases, illustrate the judiciary's proactive stance in enforcing Environmtl protections. This paper offers a thorough constitutional analysis of JA in relation to the EPA's implementation, exploring how courts have interpreted both the Act and the Constitution to advance Environmtl protection.

In this context, the paper identifies significant trends in judicial rulings, evaluates their influence on Environmtl jurisprudence, and considers the wider implications of these judicial actions for Environmtl governance. The conclusion suggests that while JA has been effective in certain situations, a more integrated and coordinated strategy involving legislative reform and executive dedication is essential for achieving sustainable Environmtl governance in India.

Introduction: Environmtl degradation has become one of the most urgent challenges facing our world today. Factors like industrialization, urbanization, and the unrestrained use of natural resources have led to serious Environmtl issues, including air and water pollution, deforestation, and climate change. Although laws have been put in place to tackle these problems, enforcing them effectively remains difficult, which has allowed JA to emerge as a vital player in the fight for Environmtl protection.

JA in Environmtl law involves the judiciary taking an active role in interpreting laws and the constitution to promote Environmtl safeguards, often stepping in when the legislative or executive branches fall short. EPA 1986 was a landmark piece of legislation in India designed to prevent and control Environmtl pollution. It was introduced in response to the Bhopal Gas Tragedy, aiming to create a thorough regulatory framework for Environmtl protection. However, despite the strict measures outlined in the EPA, its enforcement has

frequently been inadequate, largely due to bureaucratic delays, political pressures, and the influence of powerful industrial interests (Sharma, 2006).

In this direction, the judiciary, particularly the Supreme Court of India, has been playing an active role in ensuring that EPA is implemented properly. While interpreting constitutional provisions of the likes of Art 21, which guarantees the right to life, the judiciary, through a line of landmark judgments, included within its ambit the right to a healthy environment. This interpretation has widened the purview of Environmental protection in that the government and private agencies are made accountable for the Environmental damage so caused.

One of the earliest examples of JA in Environmental law is the case of *M.C. Mehta v. UOI*, 1987, where the S.C took extraordinary initiative to try and solve the problems of pollution in the Ganges River. The orders of the Court were not limited to deciding the legal issues that were before the Court but aimed at providing long-term solutions for Environmental governance. The case, amongst others, spearheaded the active role of the judiciary to shape Environmental jurisprudence in India.

From simple issues relating to deforestation, wildlife protection, and the current climate change and sustainable development, JA has grown over the years to include many more Environmental issues. The Courts interpreted the existing laws but simultaneously laid down new principles: for instance, the 'Polluter Pays' principle, the 'Precautionary Principle,' and the doctrine of public trust. These are the fundamental principles that have elicited considerable interest in the governance of Environmental concerns in India and, so far, helped close major loopholes of the EPA.

Besides this, from time to time the courts have also used PILs to allow concerned citizens and NGOs to approach the courts directly for redress of Environmental grievances. A verdict, Leelakrishnan (2005), further emphasized this democratized access to Environmental justice, thereby enhancing the role of the judiciary to ensure Environmental protection.

In this paper, we travel back in time to trace the genesis of JA in Environmental law, take stock of some important literature on the subject, and present a constitutional review of the judiciary's role in enforcing the EPA. The above brings us, in fact, to the following question: what does this kind of JA really achieve, in terms of attending to specific Environmental concerns and providing potential directions for future Environmental governance in India?

The Origin of JA: The concept of JA began to take shape in the mid-20th century, as courts started to play a more proactive role in tackling societal issues through their interpretation of the constitution and existing laws. In India, this trend can be traced back to the 1970s, particularly during the Emergency period (1975-1977), when the judiciary responded to the growing centralization of power. Landmark cases such as *Golaknath v. State of Punjab* (1967) and *Kesavananda Bharati v. State of Kerala* (1973) showcased the S.C of India's commitment to interpreting constitutional provisions in a way that protected civil liberties and fundamental rights (Sathe, 2002).

The 1980s marked a significant expansion of JA into the realm of Environmental law, as courts began advocating for Environmental protection. This change was driven by a rising awareness of Environmental issues and the perceived shortcomings of the legislative and executive branches in addressing them. Under the guidance of progressive judges like Justice P.N. Bhagwati and Justice V.R. Krishna Iyer, the courts started to interpret the constitutional right to life (Art 21) as inclusive of the right to a healthy environment, thus laying a constitutional groundwork for Environmental jurisprudence (Divan & Rosencranz, 2002).

Literature Review: 1. Sharma, S. (2006): *Environmental Law and JA in India*.* Sharma offers an in-depth look into the growth and development of JA in India, specifically with respect to its impact upon Environmental law. According to him, an active judiciary can bridge the gaps in Environmental governance due to legislative and executive failures.

2. Divan, S., & Rosencranz, A. (2002): *Environmental Law and Policy in India*.* This classic text outlines the contours of the legal regime for Environmental protection in India, and elaborates on the contribution of the judiciary in providing flesh to the structure created by the EPA. The authors have presented significant and latest decisions that have molded the jurisprudence on environment in India.

3. Leelakrishnan, P. (2005): *Environment Law in India*.* Leelakrishnan has done a thorough study of legislative and judicial endeavours on the environment in India. His work becomes important to go through the evolution of Environment law and interference of the judiciary in its enforcement.
4. Sathe, S.P. (2002): *JA in India: Transcending Borders and Enforcing Limits*.* This book covers the wider background of JA in India, marking its historical roots and its effects on different fields of laws, including Environment law. Sathe critically evaluates the role of judiciary in Environment governance and brings out their possible limitations.
5. Sahu, G. (2008): *Environment Jurisprudence and the Indian Judiciary: A Critique of JA*.* The author critically discusses JA in Environment law and contends that while it has been very useful in many cases, at times it has also led to judicial overreach into domains which are best left to the legislature.
6. Ghosh, A. (2005): *JA in Environment Protection: An Indian Experience*.* Ghosh gives an overview of the landmark judgments in Environment law and pays special attention to the way in which the judiciary has used its power of adjudication from time to time for interpreting and enforcing the provisions of the EPA.
7. Rajamani, L. (2012): *The Precautionary Principle in Indian Environment Law*. Rajamani's art delves into how the precautionary principle has been embraced within Indian Environment law, emphasizing the crucial role of the judiciary in weaving it into the fabric of Environment governance.
8. Baxi, U. (2010): *Environment Justice and JA in India*. Baxi investigates the idea of Environment justice through the lens of JA, contending that the proactive approach of the judiciary has been vital in tackling Environment disparities and safeguarding marginalized communities from ecological harm.
9. Cullet, P. (2017): *Water Law, Poverty, and JA in India*. Cullet addresses the judiciary's involvement in resolving water-related Environment challenges, especially regarding the recognition of the right to water as a fundamental human right. He underscores the judiciary's influence in shaping and enforcing water law.
10. Mehta, M.C. (1999): *PIL and Environment Protection in India*. This article, authored by a prominent Environment activist and lawyer in India, offers a personal perspective on the significance of PIL in advancing Environment protection, with the judiciary playing a key role in these legal proceedings.
11. Menon, N. (2004): *Environment Policy and Judicial Review in India*. Menon explores the relationship between Environment policy and judicial review, arguing that judicial intervention has often been essential to rectify shortcomings in policy development and execution.
12. Singh, C. (2015): *Judicial Innovation in Environment Protection in India*. Singh's research showcases the creative strategies employed by the Indian judiciary in tackling Environment issues, particularly in how the EPA is interpreted and applied.
13. Dam, S. (2005): *JA in Comparative Perspective: The Indian Experience*.* In his comparative study, Dam gives a good insight into how JA in India, and specifically in Environment law, will relate to other legal systems in the world.
14. Lahiri, S. (2002): *The Role of Judiciary in Environment Protection in India: A Critical Review*.* Lahiri presents a critical analysis of the role that the judiciary has played in Environment protection - a presentation and discussion of their successes and their limitations.
15. Rao, P. (2010): *Judicial Pronouncements on Environment Law: An Indian Perspective*.* Rao's article reviews some major pronouncements by the judiciary on Environment law and how the courts of law have interpreted and applied the EPA.
16. Jain, R. (2016): *Environment Law and Governance in India*.* In this broader study on Environment governance in India, Jain reflects on the role played by the judiciary in enforcing laws intended for Environment protection.
17. Chaturvedi, R. (2017): *JA and Sustainable Development in India*.* Chaturvedi discusses the increasing linkage between JA and sustainable development; the judiciary has played a very important role in promoting goals underlying sustainable development through its various Environment pronouncements.

18. Shah, R. (2009): Environmtl Law Enforcement in India: The Role of the Judiciary.* Shah discusses issues with enforcement related to Environmtl law in India, where often the judiciary intervenes in order to ensure compliance.

19. Anand, A. (2015): Judicial Intervention in Environmtl Law: A Study of Indian Judiciary.* In the paper, Anand gives a comprehensive analysis of the role of judiciary in Environmtl law, focusing on key cases and judicial interventions that have shaped Environmtl governance in India.

20. Mishra, A. (2018): The Role of PIL in Environmtl Protection in India.* Mishra discusses the contribution of PIL to Environmtl protection, with the Judiciary having a central role in adjudicating such cases.

Rationale of the Study: The motivation behind this study arises from the growing importance of Environmtl issues in India, along with noticeable deficiencies in how these challenges are addressed by legislation and executive actions. While the EPA 1986 is thorough, it has encountered various hurdles in implementation, often necessitating judicial involvement to tackle violations and enforce adherence. This study intends to investigate the role of JA in bridging these gaps, particularly by looking into the constitutional foundation for judicial intervention in Environmtl cases. By thoroughly reviewing significant judicial rulings, this study aims to shed light on how the judiciary has interpreted the constitution to advance Environmtl protection and ensure the effective enforcement of the EPA.

Objective: The main purpose of the present study would lie in undertaking a constitutional review of JA at Environmtl law, particularly with respect to the implementation of the EPA 1986. In fact, this study intends to:

1. Review the critical judicial verdicts concerning Environmtl protection and their constitutional justification in view of JA.
2. Assess how far JA has been successful in ensuring the implementation of the EPA.
3. In sum, the impact of JA on broader Environmtl governance in India can be reviewed.

Hypothesis: JA played a very important role in filling the lacuna in implementing the EPA by interpreting the relevant constitutional provisions to awaken the right to Environmtl protection and sustainable development within the concerns of the people of India.

Methodology: The methodological approach adopted in this study shall be primarily qualitative in nature, examining case law, statute provisions, and scholarly literature in relation to JA and Environmtl law. It shall study a number of landmark judicial decisions taken in the process of enforcing the EPA, the constitutional reasoning therein embedded, and their impacts on Environmtl governance. The review shall discuss the literature on the status of JA in India with a particular focus on its role in Environmtl protection.

Discussion: JA has played an essential role in supplementing the failing process of Environmtl law enforcement in India. By playing this proactive role, the judiciary has enlarged the scope of constitutional rights, more so under Art 21 of the Constitution, to include within its ambit the right to a healthy environment. Inclusion of such rights by the judiciary has empowered it to intervene in areas where both the legislature and executive have shown abysmal failure in protecting the environment. A special mention must be made about the EPA, whose enforcement has been especially judicial, with courts more often than not intervening to ensure a strict adherence to its provisions when the agencies of the government had become inert or ineffective. While JA has sometimes proved efficacious, there also comes a question of judicial overreach and gradual encroachment on the powers of the legislature. Some say while JA was necessary in a certain context, it was not appropriate to widen it to such an extent so as to result in assuming, by the courts, functions that are essentially to be discharged by the legislature and executive. This brings in some important questions regarding the balance of powers in a democratic system and what should be the legitimate limits of judicial intervention.

Suggestions: To enhance Environment governance and minimize the reliance on JA, several strategies can be implemented:

1. **Enhancing the EPA's Implementation:** The government must take active measures to ensure the EPA is effectively enforced. This involves boosting the capabilities of regulatory agencies, fostering better coordination among various government levels, and ensuring sufficient resources are dedicated to Environment protection initiatives.
2. **Reforming Legislation:** Legislative changes are necessary to tackle the Environment challenges of the 21st century. Although the EPA is comprehensive, it was established in 1986 and may need updates to address new issues like climate change, biodiversity loss, and sustainable development. These reforms should be crafted in collaboration with Environment experts, civil society groups, and other relevant stakeholders.
3. **Encouraging Public Involvement:** It is crucial to promote the participation of citizens and civil society organizations in Environment decision-making. Public involvement is vital for maintaining transparency and accountability in Environment governance. The government should establish effective mechanisms for genuine public consultation and engagement in Environment policy development.
4. **Building Judicial Capacity:** Judges should receive training in Environment law and science to ensure they are prepared to address complex Environment cases. This would improve the quality of judicial decisions in Environment issues and ensure that rulings are grounded in solid legal and scientific foundations.
5. **Reducing the Burden on Courts:** While very useful at times, JA needs to be complemented by strengthening other institutions concerned with Environment governance as a way to reduce the load on courts. This involves capacity-building of regulatory agencies and encourages alternative dispute resolution methods for Environment conflicts.

Conclusion:

JA played a major role in Environment governance in India, mainly in implementing the EPA 1986. This proactive intervention by the judiciary has extended the scope of constitutional rights, especially the right to life under Art 21 of the Constitution, to include that for a clean and healthy environment. These landmark judicial decisions have filled the gap not only in the enforcement of Environment laws but also in the evolution of salient legal principles like the Polluter Pays Principle, the Precautionary Principle, and the Public Trust Doctrine.

While JA has provided a very practical approach to the Environment challenges thrown up, it by no means can replace comprehensive legislative and executive action. Over-reliance on the judiciary to tackle Environment issues points to more systemic problems with Environment governance in India. The EPA, while a robust piece of legislation, is in dire need of effective enforcement by regulatory agencies, and there is a pressing need for legislative reforms to cope with new and emerging Environment challenges.

In the future, Environment governance needs to take a more coherent and integrated approach. This includes strengthening the application of rules concerning the environment, increasing public participation, and building the capacity of regulatory agencies. As much as possible, the judiciary would still play a very important role in Environment protection, yet the task for sustainable Environment governance requires the active collaboration of every branch of government and, above all, civil society and the private sector.

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