

Judicial Interpretation And Role In Shaping Environmental Policies In India

Dr. Md. Ehtesham Khan

Professor

Department Of Political Science
Magadh University, Bodhgaya

Abstract

Post-independent India was initially overshadowed by rapid industrialization, urbanization, and population growth with almost no concern for environment. Only after Bhopal Gas Tragedy, a shift was made by legislature which came up with laws like Environment Protection Act of 1986. Further reinforcement came from constitutional provisions that impose duty on citizens and the state to protect and preserve the environment. Judiciary in its role has significantly expanded the Scope of provisions, interpreting the Right to life under Article 21, now encompasses the right to clean, healthy and pollution free environment. Through principles like the sustainable development, public trust doctrine and the precautionary principle, Indian Judiciary has influenced policy making while application of these principles has widened the scope of Environmental protection. Thus, Environmental laws have undergone significant evolution over the years to address the complex new challenges when in the modern age, world is all about technological advancement. This study explores judiciary's transformative role in the development of the environmental jurisprudence. The Courts have effectively bridged the disconnect between legal framework and ground realities by evolving and strengthening the principles and remedying the violations.

Keywords: protection of Environment, Environment, judiciary, Policies

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I. Introduction

Environment has everything to meet the needs of the individual and not the desire. Traditionally, environmental ethics have formed an inherent part of Indian religious precepts and philosophy, rooted in its ancient scriptures and traditions as protection of forests and environment has always been part of Dharma¹ (PC Joshi, 2007). Texts such as the Vedas, Upanishads, and Smritis emphasized the harmonious coexistence of humans and nature. Environment or ecology plays a crucial part in men's life as well as in the growth and progress of civilization. Industrialization and ever-growing technological development have damaged the environment to an alarming extent. In the modern age, when world is heavily influenced by advancement of technologies in every sector, it is followed by its own set of challenges to the environment including Global warming & climate change and therefore the relationship between man and his environment is undergoing profound changes. All along rapid industrialization and urbanization coupled with declining social values have contributed towards degradation of environment throughout the globe and India has also witnessed and contributed towards the same² (Manoj Kumar, 2011). India in its commitment to sustainability and ecological preservation, has come up with various laws from time-to-time for the protection of environment, flora and fauna. All the while the Indian Judiciary's part in the development of environmental policies is indispensable which bridges legislative gaps, enforces accountability and fosters sustainable development, strengthening environmental governance. Historically, it was British colonial rule which changed environmental governance, emphasizing resource exploitation for industrial growth in Britain, it was introduced to regulate resource use and ensure sustainable extraction. Post-1947, India's environmental legislation underwent significant transformation, driven by the need for economic development and environmental protection. main legislations include the Water Act (1974), Air Act (1981), and Environment Protection Act (1986), which laid the foundation for modern environmental governance. In recent years, India has continued to strengthen its environmental laws and policies to address emerging challenges such as climate change, biodiversity loss, and pollution. The establishment of the National Green Tribunal (NGT) in 2010 provided a specialized forum for the expeditious disposal of environmental cases. This evolution in environmental laws reflects an evolving understanding of the relationship between human and environment introduced to regulate resource use and ensure sustainable development, highlighting the need for a comprehensive approach to environmental governance. As Recently in October 2024, the Supreme Court has reiterated that the Right to live in pollution free environment is a fundamental right under Article 21 and accordingly addressed the

deteriorating air quality in NCR. The Bhopal Gas Tragedy was an eye-opening incident that arose environmental concerns among the legislators and judiciary and also the pressure from India's international commitments under United Nations Conference on Human Rights, which was responded with Environment Protection Act in 1986. Also, the judiciary has strongly depended upon incorporated provisions of environment protection under Article 48A, Article 51A(g), especially Article 21 of the Constitution which guarantees right to life as these empowered the courts to recognize a clean and healthy environment as an integral part of this Fundamental right. Myriad Landmark Judgements have further established environmental jurisprudence in India through which courts have recognized rights to clear air, sweet water and a pollution free environment as essential attributes of life. The Courts all along has evolved principles of sustainable development, public trust doctrine and the precautionary principle to ensure strict accountability in environmental governance and shaped the policy-making to protect the natural resources. Courts also ensure compliance of legal requirements in today's growing era of large infrastructure development, urbanization, industrial projects, mining and extraction, construction of hydropower dams, energy production and other similar activities.

II. Idea Of Environment Protection And Conservation

Environment denotes totality of all extrinsic, physical and biotic factors effecting the life and behavior of all lives. It consists of plants and animals and non-living objects like water, air, light, soil, temperature, etc. Thus, it becomes important that the environment which holds lives, to be preserved and protected from degeneration to enable maintenance of the ecological balance. In the present scenario no nation including India affords to overlook the emerging environmental problems of depletion of ozone layer, acid rain, greenhouse effect, soil erosion, deforestation, water pollution, air pollution, noise pollution, etc. The word "Environment" originates from a French word "Environmer", meaning encircle or encompasses within it the land, water, flora, fauna, living creatures, forests. The conservation of the environment is therefore, the efforts undertaken to prevent the degeneration of the environment and repairing of the damages done to it, it simply is the prevention of collapsing environment. In Indian legal context, there is no single comprehensive definition of environment,³ but section 2 (a) of the Environment (Protection) Act 1986 broadly defines environment as, which includes water, air and land and the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property. Likewise Environmental Pollution means the presence in the environment of any environmental pollution including any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment.

Awareness about environment protection and conservation arose largely in 1970s, today being continued with several social movements, documentaries and movies. Factors contributing to degradation are leading to depletion of natural habitats causing loss to wildlife and biodiversity with tragedies like flood, migration, scarcity, health hazards and scarcity of resources. Much like socio-economic and political challenges, environmental problems have gained attention of policy-makers, intellectuals, social movement activists and research scholars and proactive and progressive judicial approach has proven effective in its course.

The intricately intertwined existence of human and environment with the quality of an individual's environment have a profound effect on quality of life which from time to time has been reiterated by the Courts in India. The Right to pollution free environment with access to unpolluted water and pure air is fundamental to human existence as upheld in umpteen Judgements. Even recently in March 2024, in *M K Ranjitsinh & Ors. Vs. Union of India*, the Supreme Court emphasized the urgent need for environment protection and preservation focusing on endangered species. The ministries were directed to implement measures outlined in their affidavit to ensure effective conservation efforts. Yet in another case, in May, the Supreme Court expressed grave concerns over the violations of environmental norms due to commencement of construction activities and projects and criticized the National Green Tribunal for failing to fulfil its duties, thus, underscoring the role of environmental regulations in developmental projects.

Over the years, there has been an increasing consciousness among the people about their right to a healthy environment as one's fundamental right being guaranteed under Article 21 of the Indian Constitution which is one of the first Constitutions in the world containing specific Provisions for the protection and improvement of environment, under its Directive Principles of State Policies (DPSPs) and interpretations of Fundamental Rights. The right to live with dignity emphasizes a quality life means to live in the healthy environment free from pollution and to have access the clean water and air which are the basic ingredients of the healthy life.

III. The Constitutional Context Of Environmental Protection

The development of Environmental Jurisprudence in India is the result of efficient coordination among constitutional provisions, legislative measures and judicial activism. It is apparent that there is abundant of constitutional and legislative provisions on environment protection. Still, the conservation, protection and improvement of human environment have become major issues in India. The courts of India, primarily the

Supreme Court of India with its constant effort accepted the challenge to protect the environment with a view to guarantee and uphold the “right to life” of every Indian citizen. The Judiciary has developed a doctrinal web to protect the human rights of people and to uphold the cause of environmental justice by taking refuge to fundamental rights, fundamental duties and DPSPs as provided under the Constitution of India to remind people and the State of their pious obligation of protecting the nature. The judicial interpretations of these various fundamental rights have widened their scope and they proved effective in achieving environmental justice in India.

The Constitution of India, 1950, did not include any specific provision relating to environment protection or nature conservation. The Stockholm Conference on Human Environment, 1972, contributed to the initial development and strengthening environmental laws and also acted as a facilitating agent behind 42nd Constitutional Amendment Act, 1976. Specific provisions relating to certain aspects of the environment protection was laid down. It introduced certain environmental duties for both state and citizen under Article 48A and 51A(g) respectively. The provisions introduced although were not legally binding but courts have held them binding under Article 21. Article 19 (1) (g) of the Indian Constitution does appropriate justice to the problem of balancing the right to development and right to clean and healthy environment, which provisions freedom of trade and commerce along with certain reasonable restriction. Therefore, any business or trade which is offensive to flora and fauna or human beings is validly restricted by the provision. Any activity which pollutes the environment and makes it unhealthy, hazardous to human health and flora and fauna, is violative of right to live with dignity as guaranteed under Article 21 of the Indian Constitution whose expansive interpretation has made right to live in clean and unpolluted environment a fundamental right. Article 32 and 226 of the Indian Constitution also grant wide remedial powers to the Supreme and High Courts to enforce the fundamental Rights. Thus, these provisions have empowered the individual and groups to bring their claims to Court through writs and PIL as it allows judicial intervention in matters of public interest which includes environment protection. PILs have been instrumental in bringing environmental issues to the forefront. The constitutional provisions, coupled with judicial activism, create a strong foundation for environmental protection in India. They ensure that both the state and citizens are actively involved in safeguarding the environment for present and future generations.

IV. Judicial Interpretation To Shaping Environmental Policies

As Upendra Baxi said, that Supreme Court of India has often become Supreme Court for Indian, thus, through its activism has actively contributed in strengthening the fundamental rights granted by the Constitution. The Indian judiciary has been alive to environmental concerns and has adopted pragmatic and activist approach in interpreting constitutional provisions concerning environment protection. The Courts have made wide interpretation of Article 21 to protect the environmental rights of people and also have largely depended upon myriad international Laws and international Conventions including Ramsar Convention, Vienna Convention, Universal Declaration on Human Rights, etc. As in Asbestos Industries Case the court depended upon the ILO Asbestos Convention, International Convention on Economic, Social and Cultural Rights, 1966 etc. to come to a conclusion. The supreme court for the first time recognized the right to live in healthy environment as a part of article 21 only in *Rural Litigation & Entitlement Kendra, Deharadun. Vs. State of Uttar Pradesh*⁴ which was later upheld in many cases including *Chettriya Pardushan Mukti Sangarsh Samiti v. State of UP*⁵ which added that whatever endangers or impairs that quality of life, is entitled to take recourse to Article 32 of the Constitution of India. In case of *Virendra Gaur v. State of Haryana*⁶, the court stressed on the protection and preservation of environment, ecological balance free from pollution of air and water.

In the popular judgement of *M.C. Mehta v. Union of India*⁷ where a petition was filed for preventing the degradation of the Taj Mahal due to pollution caused by coal using industries via Trapezium, the Apex Court issued directions to 292 industries located in Agra to switch to Natural Gas as industrial fuel or stop functioning with coal and to apply for relocation or otherwise stop functioning w.e.f. 30-04-1997 on account of violation of Articles 21, 48A, 51A and 47 of the Constitution and with a view to safeguard the countrymen from the vices of air pollution, the Supreme Court also refused to grant blanket extension of dead line for conversion of vehicles to CNG. It is pertinent to mention here that the Supreme Court vide its order dated 28th July 1998 issued guidelines to convert vehicles to CNG in a reasonable time schedule. In *Shanti Star Builders vs. Narayan Totame*⁸, the Supreme Court held that right to life is guaranteed in a civilized society would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. Recent views of the Supreme Court in *Municipal Corporation of Greater Mumbai v. Kohinoor CTNL Infrastructure Co. (P) Ltd.*⁹, has been that right to live in clean and healthy environment is part of right to life and personal liberty guaranteed under Article 21. Such wide interpretations of Article 21 by the Supreme Court have over the years become the bedrock of environmental jurisprudence, and have served the cause of protection of India's environment. Most Recently in January, the Supreme Court has emphasized the need to maintain a balance between the development and protection of environment ecology and highlighted the significance of conservation of forest for maintaining ecology. Then in March, 2024 only, a Supreme Court judgment called for reconstitution

of Central Empowered Committee and approved a new expert body for environmental consultation, and issued guidelines to ensure transparency, accountability, and proper functioning of environmental authorities. It also mandated regular audits and committed to monitoring these institutions to safeguard the environment.

V. Doctrines And Principles Developed By The Indian Judiciary

The principles and doctrines developed by judiciary are an important input to the ecological jurisprudence in India to balance the need for development with ecological sustainability. Article 253¹⁰ of the Indian Constitution guides for Parliament to adherence decisions made at universal agreements and discussions are by incorporating into the legal system thus, with the growing challenges to the environment, courts have evolved legal mechanisms that integrate constitutional mandates with international obligations to safeguard the environment. Invention and use of the principles & doctrines in the court procedure for ecological protection are notable landmarks in the path of environmental protection law in modern India for sustainable development¹¹. Thus, the doctrines shaping sustainable practices are Public Trust Doctrine (PTD), Doctrine of Sustainable Development, Polluter Pays Principle, and Precautionary Principle. With increasing awareness and action, these doctrines are offering a pathway to sustainably balanced future.

Public Trust Doctrine

The concept of Public Trust Doctrine has its origin in Roman Law which later was integrated into English Common law on which the modern Indian legal system is essentially based. The doctrine emphasizes that the state is a guardian of natural resources for the benefit of public and it prohibits the exploitation or privatization of the natural resources for commercial gain. The state is under a legal duty to protect the natural resources. In *M.C. Mehta v. Kamal Nath*¹², the state government leased a riparian forest land for commercial purpose to a private company which had a motel located at the bank of river bias. The motel management's activities affected the natural flow of the river bias. The court held that the state being public trustee of certain resources like air, sea, water and the forests which are of public importance and so they should not be made a subject of private ownership. Similarly, in *M.I. Builders v. Radhey Shyam Sahu*¹³, the Supreme Court held that if an underground shopping complex is allowed to be constructed underneath a public park, it would be a violation of the public trust doctrine. The court, therefore, directed the demolition of the structures and the restoration of the park. Thus, from time to time the Indian Judiciary has extensively relied on the doctrine to protect natural resources and enforce environmental laws

Doctrine of Sustainable Development

The Doctrine of Sustainable development, a balancing concept between ecology and development, is an age-old concept, first articulated in 1972 Stockholm Declaration and discussed and shaped further in Brundtland Report, a report by world commission on environment, marking a turning point in global environmental discourse. It emphasized the interconnectedness of environmental protection and economic development and social equity. The modern concept of sustainable development also bridges the gap between economic aspirations and ecological needs which includes the principle of inter-generational equity, precautionary principle and polluter pays principle. The Indian Judiciary has harmonized the approach through several landmark judgments. The Supreme Court has played a pivotal part in interpreting the legislative provisions to suit the doctrine of Sustainable development. The courts ensure that any development, whether economic, social or political must not harm or affect the environmental interests and that development should not be at the cost of environmental degradation. The aim of sustainable development is the integration of developmental activities with environmental protection to meet the needs of the present without compromising the ability of the future generations to meet their own needs.

The first case before the Supreme Court which brought into sharp focus the conflict between development and conservation was the *Dehradun Quarrying Case*¹⁴. The principles laid down in this case were applied by the Himachal Pradesh High Court in *Kinkri Devi v. State of H.P.*¹⁵ where the court observed that "if industrial growth is sought to be achieved by reckless mining resulting in loss of life, loss of property, loss amenities like water supply and creation of an ecological imbalance, there may be ultimately be no real economic growth and no real prosperity. *Vellore Citizens Welfare Forum v. Union of India*¹⁶ was the first case to have applied the principle of sustainable development as a balancing concept by the Supreme Court, rejecting the traditional view that development and ecology are opposed to each other. Further, the Scope and applicability of the doctrine was laid down in *Narmada Bachao Andolan v. Union of India* in which it was observed that "Sustainable development means what type or extent of development can take place, which can be sustained by nature/ecology with or without mitigation." In this context, development primarily meant material or economic progress. As defined by Brundford; Sustainable Development means to fulfill the need of present generation without compromising the needs of future generations.

Following is some of the essential principles propounded by the doctrine of sustainable development:

Polluter Pays Principle

The 'polluter pays' principle as enshrined in 'Principle 16 of the Rio Declaration, is the commonly accepted practice emphasizing that polluter should be responsible for managing pollution and shall bear the costs associated with environmental injury and human health they inflict. The Remediation is an integral part of sustainable development. The polluter pays principle was applied for the first time by the Supreme Court in the Bichhri Case¹⁷, where remedial and clean-up costs to restore the environment was ordered to be recovered from the polluter under the writ jurisdiction of the court. The court referred to this rule as a universal rule to be applied to all polluters. The policy statement for abatement of pollution, issued by the ministry of environment and forests, Government of India, accepts the polluter pays principle as a fundamental objective of Government policy to abate pollution. In *M.C. Mehta v. Kamal Nath*¹⁸, the Supreme Court directed the Motel which had made constructions which interfered with the natural flow of the River Beas, to pay compensation for restitution of the environment and ecology. Furthering the principle in *Vellore Citizens Welfare Forum Case* the Supreme Court stated that the PPP and precautionary principle are the characteristics of sustainable development and have legal effect. More recently in 2020, in *Vizag Gas Leak Case*, the National Green Tribunal directed the LG Polymers to pay Rupees 50 crores interim compensation while the plant was shut down and the area was restricted until safety ensured. Thus, even without statutory mandate, the judicial pronouncements on the ppp have been clear, crisp and undisputable.

Precautionary Principle

'Precautionary Principle', formally acknowledged only in the Vienna Convention for the Protection of Ozone Layer, plays a significant role in determining whether the development process is sustainable or not. The principle emphasizes upon the preventive aspect of environmental laws with the main objective of ensuring that a substance or activity posing a threat to the environment is prevented from adversely affecting the environment, even if there is no conclusive scientific proof of linking that particular substance or activity to environmental damage. The Precautionary Principle has been given utmost importance in the United Nation's Conference on Environment and Development held at Rio in 1992 whose principle 15 of the 'Rio Declaration' states that

In order to protect the environment, the precautionary approach shall be widely applied by the States according to their capabilities, where there are threats as serious as of irreversible environmental degradation.

The Indian Judiciary actively promotes the principle as in *Vellore Citizens case*¹⁹, the Supreme Court held that the Precautionary Principle is a part of the environmental law of the country. The Supreme Court was shown clear evidence as to the cause of the pollution, which was the discharge of untreated chemical waste from the tanneries. It was also scientifically proven that the discharge was the cause of the pollution, and hence there was no 'scientific uncertainty' attached to it. The laws laid down at the time also opposed the action in question. The Supreme court, therefore, applied the precautionary principle. And later the principle was reviewed by the Supreme Court in *AP Control Pollution Board v. Prof. M V Nayadu* in which the court stated that it is better to go wrong in action than to wait for the issue to materialize into irreparable damage. The principle has significantly become a part of the Public International Law and has gained momentum in the sphere of sustainable development.

VI. Policies Of Indian Government On Environment

India has implemented a range of environmental policies over the years to address various environmental challenges which have evolved over the years to address the complex challenges posed by rapid industrialization, urbanization and population outburst. India is bound by international and national obligations to work towards Environmental Protection. These international agreements mandate India to implement measures aimed at environmental protection and the sustainable use of natural resources. These include The United Nations Framework Convention on Climate Change (UNFCCC), The Paris Agreement, The Convention on Biological Diversity (CBD), The Montreal Protocol and many more. The national duty of state to make provisions for the protection of environment arises under Article 48A of the Indian Constitution. India's story of environment protection dates back the implementation of the Forest Act of 1865 by the Britishers and solidified with the establishment of the Ministry of Environment and Forests in 1985. Some key environmental policies that India has come up with post independence are many in continuity. On eof the first step was Wildlife Protection Act (1972), enacted to protect India's Wildlife and control poaching, smuggling and illegal trade. The act has been amended a lot of times, most recently it was amended in 2022. Then there comes Water (Prevention and Control of Pollution) Act (1974) amended in 2024, aims to prevent and control water pollution and maintain or restore the wholesomeness of water. National Forest Policy (1988) is focused on the conservation of forests, biodiversity, and ensuring ecological balance. And since the implementation of the policy, India's forest and tree cover has increased from 19.7% of the geographical area in 1987 to 23.4% in 2005, indicating steps towards stability and ecological balance of environment. To combat air pollution and protect public health and the environment, The

Air (Prevention and Control of Pollution) Act, 1981 was enacted which established the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs) to monitor and control air pollution. In 1987, the Act was amended to include noise pollution as an air pollutant, recognizing the harmful effects of noise on health and the environment. Thereafter, The Environment Impact Assessment (EIA) Notification, 1994 was issued under the Environment (Protection) Act, 1986 which made it mandatory for certain projects to obtain environmental clearance before they could proceed. In 2006, The National Environment Policy came to integrate environmental concerns into India's development process to ensure sustainable growth. The key objectives of the Act include conservation, equity, efficiency, governance of Resource Enhancement and Livelihood Security. To fulfill its commitments under the Convention on Biological Diversity, India came up with The National Biodiversity Strategy and Action Plan (NBSAP) 2008 was developed. In 2008 came The National Action Plan on Climate Change (NAPCC), outlining India's strategy to tackle climate change while promoting sustainable development. While The Solid Waste Management Rules, 2016, mandates segregation of waste into biodegradable, non-biodegradable, and hazardous categories, assigning responsibilities for collection, processing, and disposal to various entities and encourage recycling and composting. The rules aim to minimize landfill use and apply to urban bodies, industrial areas, and other sectors. Then in the same year, The Plastic Waste Management Rules, was aimed to improve plastic waste management. Green India Mission (under National Action Plan on Climate Change) focusing on afforestation, biodiversity conservation, and sustainable management of natural resources. India has made notable strides in environmental protection through judicial ruling, legislative and regulatory updates. Legislative Updates of 2024 includes Biological Diversity Rules, 2024, Draft Liquid Waste Management while regulatory measures include guidelines against greenwashing by the Central Consumer Protection Authority, Enhanced Complaint Mechanism and also Commission for Air Quality Management activated Stage-II of graded Response Action to address worsening air quality. While district authorities in NCR and surrounding states have been empowered to prosecute officials for failing to address stubble burning, thus upholding government accountability and compliance. Therefore, all these government policies for environment protection aim to balance development with sustainability, addressing ever-growing pollution, conserving limited resources to ensure a healthier future generation.

VII. Conclusion

People have also applauded judicial activism in the field of environmental protection. In recent years, there has been a sustained focus on the role played by the higher judiciary in devising and monitoring the implementation of measures for pollution control, conservation of forests and wildlife protection. In India, courts are extremely aware and cautious about the particular nature of environmental rights, as the loss of natural resources cannot be renewed. There are recommendations that need to be considered. In the case of *M.C. Mehta v. Union of India*, the Court ordered the Union Government to issue instructions to all state and union governments to enforce the authorities as a condition of license on all cinemas, to display no less than two slides / messages on the environment in the middle of each show. In addition, the Indian Law Commission, in its 186th Report, submitted a proposal for the establishment of the Environmental Court. By fostering a resilient and adaptive approach to plan implementation, India can pave the way for a future marked by inclusive growth, environmental sustainability, and improved quality of life for its diverse population.

¹ Joshi, P. C., & Pant, A. K. (2007). Fighting forest fire: An environ-socio-legal study in Kumaon Himalaya, MDU. *Law J*, 165-179.

² Sharma, M. K. (2009). Judicial control of environmental pollution in India. *Chotanagpur Law J*, 2(2).

³ H.N. Tiwari, Environmental Law, Allahabad Law Agency, Law publishers Faridabad (Haryana).

⁴ AIR 1985 SC 652

⁵ AIR 1990 SC 2060

⁶ [1994] Supp. (6) S.C.R. 78

⁷ AIR 1997 SC 734

⁸ 1990(1) SCC 520

⁹ (2014) 4 SCC 538

¹⁰ Legislation for giving effect to international agreements notwithstanding anything in the foregoing provisions of this chapter, parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or body.

¹¹ Scotford, E. (2017). *Environmental principles and the evolution of environmental law*. Bloomsbury Publishing.

¹² (1997) 1 SCC 388.

¹³ AIR 1999 SC 2468.

¹⁴ AIR 1987 SC 359

¹⁵ AIR 1988 HP 4.

¹⁶ (1996) 5 SCC 647

¹⁷ AIR 1996 SC 1446.

¹⁸ (1997) 1 SCC 388

¹⁹ *Vellore Citizens' Welfare Forum v. Union of India and others*, (1996) 5 S.C.C.