


**Topic : Global Warming And The Role Of The Indian Constitution**

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**ABSTRACT**

*The role of the Supreme Court as a final interpreter is increasingly reflected in various judgments. The most important achievement of modern law in India is the constitution of environmental problem by apex court of India. Indian environmental jurisprudence is achieving new dimensions and problem day by day. Global warming is a severe problem nowadays. Its consequences changing the biological, physiological and metabolic reaction in the body of living organism. The article 21 and 51A (g) of Indian constitution can play an important role to stop the activities which leads to change in climatic condition.*

**KEYWORDS**

Global warming, article 21 and 51 A(g).

**INTRODUCTION**

The state of the environment at the outset of the twenty first century is no more promising now than it was decades ago. Before the year of 1980 there were legislation about control of pollution but little had been done to really make pollution control. But in present time the Supreme Court of India expanding the meaning of environmental rights.

The Supreme Court making creative interpretation, which lead to the creation of new rights. As under article 21 this Court has created new rights including the rights to health and pollution free environment.

Carbon dioxide <sup>1-5</sup> is an essential gas of the biological system but when its concentration increases beyond the threshold level it causes the global warming.

Global warming <sup>6,7</sup> is an increase in the average temperature of Earth's surface. Since the last 1800's, the global warming average temperature has increased about [0.4 to 0.8 °C].

Many experts estimate that the average temperatures will raise an additional [1.4 to 5.8 °C] by 2100. The rate of increase would be much larger than most past rates of increase. Scientists worry that human societies and natural ecosystems might not adapt to rapid climate changes.

An ecosystem consists of the living organism and

physical environment in a particular area. Global warming could cause many harms, throughout the world drafted in an agreement called the Kyoto protocol. However, there is more said than one in this field because of which there is a need of creating awareness in the minds of people at large.

An increase in global temperatures is accepted to cause other changes, including sea level rise, increased intensity of extreme weather events and changes in the amount and pattern of precipitation.

**METHODS AND MATERIALS**

The study was conducted by collecting the information regarding the global warming and the role of Indian Constitution especially article 21 and 51 A(g) from reputed journals of Law and Science. Much more information was collected from different websites. Similarly information brought from reference books and research paper published in journal.

**AIMS AND OBJECTIVES**

- 1) To create awareness among the people to face the problem of global warming.
- 2) To study the causes and carry out the research on global warming.
- 3) To study the consequences of global warming on plants, animals and human beings.
- 4) To include the concept of climatic change and global warming in curriculum at School and College level of education.
- 5) To find out new strategies about climatic change and global warming.

**CAUSES OF GLOBAL WARMING**

Professor Sir David King, UK Government Chief Scientific Adviser states that "There is no bigger problem than climate change, the threat is quite simple; it's a threat to our civilization."

The editor of World Watch magazine, Ed. Ayres state that "As human-caused biodiversity loss and climate disruption gain ground, we need to keep our sights clear and understand that the measure of a threat is not a matter of whether it is made on purpose, but how much loss it may cause. It's an ancient habit to go after those we perceive to be

evil because they intended to do harm. It's harder, but more effective to go after meaning to more effectively educate and socialize, those vastly larger numbers of our fellow humans who are not evil, but whose behavior may in fact be far more destructive in the long run."

The green house effect<sup>8</sup> was discovered by Toseph Fourlor in 1824 and quantitatively investigated by Svante Arrhenius in 1896.

Green house gases create a natural green house effect without which mean temperature on earth would be an estimated 30°C lower and earth would be uninhabitable.

There are several major natural green house gases on earth and these are as follows :

- 1) Water vapors (causes about 35-70% of the green house effect.)
- 2) Carbon Dioxide (causes 9-26% green house effect)
- 3) Methane (causes 4- 9 % green house effect) .
- 4) Ozone (causes 3-7 % green house effect) .
- 5) Oxides of Nitrogen .
- 6) Sulphur Hexafluoride .

#### **Evaporation of water**

In case of warming by the addition of long lived green house gases such as CO<sub>2</sub>, the initial warming will cause more water to be evaporated into the atmosphere since water vapour it self acts as a green house Gas, these causes still more warming.

#### **Melting of Ice near the poles**

Water causes about 35 to 70% green house effect. When global temperature increase, ice near the poles melts at an increasing rate, as the ice melts, land or open water takes its place. Both land and open water are an average less reflective than ice and must absorb more solar radiation.

#### **Changes in Temperature**

Recent global temperature on both land and sea have increased by 0.75°C relative to the period 1860-1900, according to the instrumental temperature record.

#### **Degradation of Forest**

Forests are Green lungs power, forest loss is a very grave problem. The world Resources Institute W.R.I. and the U.N. food and agricultural organization FAO Consider that there has been a rapid increase in the rate of tropical forest depletion since 1970 on words. Particularly affected by the phenomenon, according to W.R.I. are the forests of Brazil, Costes Rica, India, Myanmar, the Philippines and Vietnam, this has result in environmental degradation and cause for immediate measures to set in the process of a forestation.

#### **Energy Consumption**

There is an increase in energy consumption with in the expansion of industrialization, electrification and transport networks. The current position is that relating to energy consumption is that oil makes up 38% of global commercial energy consumption. Coal 30%, Natural Gas 20%, Hydropower about 7% & Nuclear power 5%.

#### **Climatic Changes**

Generally it is acknowledged that human activities especially in the industrialized countries release a number of gases mainly carbon dioxide. CFC's, methane and Nitrous oxide that slow the escape of infrared radiations that is heat from surface of the earth into space.

It is estimated that due to increased emissions of human greenhouse gases<sup>9-11</sup> earth will warm up to at an average of nearly 2°C by 2025 and 5°C by 2100.

#### **Depletion of Ozone Layer**

The Antarctic ozone hole contributes to the general depletion of ozone layer over a wide area of the southern hemisphere. Ozone depletion is occurring around the planet because area more into power upper atmosphere. Industrialized countries have already release immense quantities of CFC's into the atmosphere.

#### **Population Explosion**

Every increasing population can play key role of environmental variables in driving environmental change. Population size combined with certain social structures, technologies and patterns of consumption makes environment degradation worse.

Accordingly it follows that demographic transition to control the population growth is essential for environmental protection.

#### **INTERNATIONAL AWAKENING**

##### **1. Montreal Protocol**

The Montreal protocol on substances that deplete the ozone layer. It was signed on 16<sup>th</sup> Sept. 1987 and made effective from 1<sup>st</sup> January 1989.

##### **2. Basal Convention**

Basel convention on the control of Tran boundary movements of hazardous wastes and their disposal. It signed on 22 March 1989 by 173 countries and effective from 5 May 1992.

##### **3. Chemical Weapons Convention**

Convention on the prohibition of the development, production, stocking and use of chemical weapons and on their destruction. It signed on 13 January 1993 by 188 countries and effective from 29<sup>th</sup> April, 1997.

**4. Kyoto Protocol**

Kyoto Protocol for the stabilization and reconstruction of green house gas concentration in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. It signed on 11<sup>th</sup> December, 1997.

**5 Cartagena Protocol**

Cartagena Protocol on Biosafety. It signed on January, 2000 by 145 countries and effective from Sept. 2003.

**6. Rotterdam Convention**

Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade. It was signed on 10<sup>th</sup> Sept. 1998 by 128 countries and made effective from 24<sup>th</sup> Feb. 2004.

**7. Stockholm Convention**

Stockholm Convention on Persistent Organic Pollutants. It signed on 23<sup>rd</sup> May 2001 by 168 countries and made effective from 17<sup>th</sup> May 2004.

**8. Bali Conference (Indonesia)**

Bali Conference on Climate change, Carbon card and Carbon trade, held on 4<sup>th</sup> December, 2007.

**CONSEQUENCES**

Though it is difficult to connect specific weather events to global warming, on increase in global temperature it may in turn cause of other changes.

- Glacial retreat and world wide sea level rise.
- Changes in the amount and pattern of precipitation may result in flooding and drought.
- Changes in Agricultural yields.
- Reduced summer stream flows.
- Species extinctions and increase in the range of disease vectors.

**Economic Losses**

In a summary of economic cost associated with climate change. The United Nations Environmental Programmed emphasis the risks to Insurers. Reinsurers and Banks of increasing traumatic and costly weather events.

**Food Security**

The changes are due to plants adapting to long prevailing climate patterns, increase in the atmospheric concentration of CO<sub>2</sub> and higher temperatures could have potentially serious consequences for both plant and animal species. It depend on periodically available resources in the ecosystems of the country.

**Forestry**

A shift towards forest types in the northeastern region and drier forest types in the northwestern region is likely, thus, impacting the bio diversity of the country also the increase in atmospheric CO<sub>2</sub> and warming could result in a 70 to 100% increase in the N.P.P. of forests.

**Health & Hygiene**

Climate change can also have a significant impact on health through vector borne diseases.

**REMEDIES**

Following are the most important remedies to reduce the emission of CO<sub>2</sub> combat global warm.

**A) Tree Plantation Drive**

Take a tree plantation drive and plant the tree in the open places. Trees take up the carbon dioxide and release oxygen.

**B) Synthesis of Carbohydrate**

In green plants, photosynthesis reaction take place. Green plants take up carbon dioxide and react with water and finally synthesized carbohydrate, energy source of life. Similarly, collect the excess of carbon dioxide from atmosphere and synthesize carbohydrate in laboratory by using the mechanism of Photosynthesis reaction.

**C) Celebrate Vehicle Free Day**

Once in a month celebrate free vehicle day. Walk, don't drive, this can leads to the reduction of carbon dioxide emission from the vehicles.

**D) Construct Green buildings****E) Use C.F.L. Bulbs.****F) Use Solar Devices.****G) Conserve water and use sprinklers or drip.****H) Turn Computers off.****I) Check air in tyres.****J) Switch off the lights.****K) Buy Energy Efficient Appliances.****L) Buy fuel efficient cars.****M) Switch to wild power****N) shun plastic bags.****O) Save paper****P) Demand clean technology.****Q) Create awareness among the peoples.****ROLE OF THE INDIAN CONSTITUTION**

Constitution is a complex document and not to be constructed as mere law, but as the machinery by which law is made. It provides for the democratic function of the Govt. of India. Indian constitution directly not hit the operations of

carbon dioxide but article 21, 51A(g)<sup>12-15</sup> can play an important role to stop the emission of CO<sub>2</sub> from the smoke of vehicle and its use in different field under controled manner.

## SCOPE

### Article 21

Article 21 explains with '**protection of life and liberty**'. The inspiration of this article is the 5<sup>th</sup> amendment of the constitution of UN of America which guarantees the fundamental right to life and personal liberty. It lay down **"no person shall be deprived of his life, personal liberty or property without due process of law"**.

Chemicals and other hazardous industries which are essentials for economic developments may have to be set up. But measure should be taken to reduce the risk of hazard or risk to the community by taking all necessary steps for locating such industries in a manner. It would pose the least risk or danger to the community and maximizing safety requirements in such industries. The Supreme Court directed the High Court to set up a green bench.

## JUDICIAL INTERVENTION

### In Vellore Citizen's v. Welfare Forum of India (1996, SCC 650)

The petitioner, Vellore Citizen's Welfare Forum, filed a writ petition by public interest litigation drawing the attention of the Court towards the pollution caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamilnadu. It was said that the tanneries are discharging untreated affluent into agricultural fields. Waterways, open lands, and rivers rendering the river water unfit for human consumption, contaminating the subsoil water and had spoiled the physicochemical properties of the soil making it unfit for agricultural purposes.

The Supreme Court held that such industries though are of vital importance to the country's development but they cannot be allowed to destroy the ecology, degrade the environment and pose a health hazard and cannot be permitted to continue their operation unless they set up pollution control devices. Kuldip Singh J. , who delivered the judgment on behalf of he Court, held that while such industries are of vital importance for the country's progress as they generate foreign exchange and provides employment avenues, but having regard to pollution caused by him, principle of **"Sustainable development"** has to be adopted as a balancing concept between ecology and development. His Lordship held that the **"precautionary principle"** and the **"Polluter Pays"**, are essential feature of

**"sustainable development"** and has to be adopted. Remediation of the damaged environment is part of the process of sustainable development and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology. "The Precautionary Principle" and the "Polluter Pays" principle the Court held, have been accepted as part of the law of the land. Art. 21 of the Constitution guarantee protection of life and personal liberty. Arts. 47, 48A and 51A(g) from the Constitutional mandate to protect and improve the environment. Apart from the constitutional mandate there are number of legislations on the subject which impose duty on the governments to percept ecology and environmental pollution. The Court directed the closer of these industries unless they install pollution control devices. All the tanneries are required to obtain the consent of the concerned Board for further operation with effect from Dec. 15, 1996. The Court imposed pollution fine of Rs. 10,000 on each industry. The money shall be deposited in the "Environmental Protection Fund" and shall be utilized for compensating the affected persons and also for restoring the damaged environment. The pollution fine shall be recovered as arrears of land revenue. The tanneries, which failed to deposit the amount, shall also be liable to the contempt of Court. The Court suggested for constituting a Special Bench. "Green Bench" of the Madras High Court to deal with these and other environmental cases as they are in better position to monitor these matters.

### Right to get pollution free water and air within Article In Subhas Kumar v. State of Bihar, (AIR 1991 S.C. 420)

It has been held that public interest litigation is maintainable for ensuring enjoyment of pollution free water and air which is included in the "right to live: under Article 21 of the Constitution.

### Article 51A(g)

### Protection of Ecology and Environment Pollution within Article 51 A(g)

Article 51 A(g) deals with fundamental duties. This provision was introduced by the 42<sup>nd</sup> amendments of constitution in the year 1976 by inserting part IVA in the constitution. This article explain, **"to protect and improve the natural environment including forest, lakes, rivers and wild life and to have compassion for living creatures"**.

Fundamental duties have been particularly invoked in litigation concerning the environment.

**In Rural litigation and Entitlement Kendra v. State of U.P. (1985 2SCC 431)**

The Court ordered the closure of certain lime stone quarries on the ground that there were serious deficiencies regarding safety and hazards in them. The Court had appointed a committee for the purpose of inspecting certain lime stone-quarries having regard to adverse impact of mining operations therein. A large scale pollution was caused by lime stone quarries adversely affecting the safety and health of the people living in the area.

In a significant judgment in **Indian Council for Environ-Legal Action v. Union of India (AIR 1996 SC 1446)** the Supreme Court has held that if by the action of private corporate bodies a person's fundamental right is violated the Court would not accept the argument that it is not 'State' within the meaning of Art.12 and, therefore, action cannot be taken against it. If the Court finds that the Government of authorities concerned have not taken the action required of them by law and this has resulted in violation of the right to life of the citizens. It will be the duty of the Court to intervene. In this case an environmentalist organization filed a writ petition under Art. 32 before the Court complaining the plight of people living in the vicinity of chemical industrial plants in India. Also request for appropriate remedial measures. The fact was that in a village Bichari in Udaipur district of Rajasthan an industrial complex had developed and respondents have established their chemical industries therein. Some of the industries were producing chemicals like Oleum and Single Phosphate. The respondent had not obtained the requisite licenses and nor did they install any equipment for treatment of highly toxic effluents discharged by them. As a result of this the water in the wells became unfit for human consumption. It spreads diseases, death and disaster in the village and surrounding areas. The villagers revolted against all this resulting in stoppage of manufacturing 'H' acid and ultimately industries were closed. But the consequences of their action remained in existence causing damage to the village. The Court requested the National Environmental Engineering Research Institute to study the situation and to submit their report. In the technical report, it was found that out of 2440 tones of Sludge, about 720 tones was still there. With a view to conceal lit from the eyes of the inspection teams the respondents had dispersed it all over the area and covered it with earth. In spite of the Court's order they did not remove the sludge. The Supreme Court held that the writ was maintainable and directed the

Government and the authorities concerned to perform their statutory duties under various Acts Environmental (Protection) Act 1986, Water (Prevention and Control of Pollution) Act, 1974 as amended up to date, Air (Prevention and Control of Pollution) Act, 1981 and Hazardous Waste (Management and Handling) Rules, 1989. This is a social action litigation on behalf of the villagers whose right to life is invaded and infringed by the respondents as is established by the various reports of the experts. The Court held that the respondents were responsible for all the damages to the soil, to the underground water and to the village in general, Regarding the determination of cost of remedial measures, the Court held the Central Government had power to decide it. The principle on which the liability of the respondents so defray the costs of remedial measures will be determined is, the "Polluter Pays" that is, the responsibility for "repairing damages is that of the offending industry".

**M.C. Mehta (2) Vs Union of India (1983 1 SCC 471)**

The Supreme court has held that under Art.51 A(g) it is the duty of central Govt. to introduce compulsory teaching of lessons at least for one hour in a week on protection and improvement of natural environment in all the educational institutional of the country. It directed the central Govt. to get text book written on that subject and distribute to the educational institutions free of cost. In order to vogue amongst people the consciousness of cleanliness of environment, it suggested the desirability of organizing keep the city clean, keep town clean, keep the village clean week in every city, town and village throughout India at least once in a year.

**In another case in M.C. Mehta v. Union of India (1996 4 SCC 750)** the Supreme Court ordered the shifting of 168 hazardous industries operating in Delhi as they were casing danger to the ecology and directed that they be reallocated lands to the National Capital Region as provided in the Master Plan for Delhi. The Court directed these industries to close down w.e.f. 30.11.1996. The Court gave necessary specific directions for the protection of the rights and benefits of the workmen employed in these industries. Likewise, in Council for Environ-legal Action v. Union of India the Court issued appropriate orders and directions for implementing and enforcing the laws to protect ecology. The petition was filed by a registered voluntary organization working for the cause of environmental protection in India as a public interest litigation complaining ecological degradation in coastal areas. It was contended that the Government was not implementing its own Notification,



which was issued to regulate activities in the said zone. It was said that there was blatant violation of this notification and industries were being set up causing serious damage to the environment and ecology of that area. It held that the matter be raised before the concerned State High Courts which shall issue necessary orders or directions.

**In another case in M.C. Mehta v. Union of India (AIR 2001 SC 1948)**

The supreme court has held that the direction to convert all basis operating in Delhi to CNG fuel mode has been given for safeguarding the health of people and their rights too if provide and protected by Art. 21 and therefore, it would override the provision of every statute including the Motor Vehicles Act. It has also been made clear the norms fixed under the Motor Vehicle Act. are in addition to and not derogation of the requirement of the Environment Pollution Act.

**DISCUSSION**

The problem of global warming in India and abroad is very high. According to references more than 39% people suffering from the global warming. For environmental problem SC reflected several judgments.

Article 21, 51A(g) and 42 amendment of Indian constitution plays an important role to stop such kind of pollutions. 42<sup>nd</sup> amendment to the constitution the directive principles categorically the need for a healthy environment and thus indicated the Do's and Don'ts needed for a healthy environment. The necessary implication was that the courts have a duty to relentlessly enforce this law. There must be separate forum to force the state to take required measures for environmental protection from CO<sub>2</sub> consequences.

The fundamental right to a wholesome environment is not expressly guaranteed by the constitution. Part III of the constitution the right to environment recognized by Supreme Court in a chain of cases, to avoid raising the controversy. Fundamental right to environment is a product of the process of widening the scope of article 21.

The power of the Court to devise procedure appropriate for the enforcement of a fundamental right, not even a sentence was given to a declaration incorporating the right to wholesome environment within the guarantee of life.

These article of Indian Constitution if properly implemented and increased awareness regarding these, can stop or minimize the emission of CO<sub>2</sub>

**CONCLUSION**

In the era of globalization global warming is a severe problem, this cannot be stop but can minimize by implementing the article 21, 51A(g) properly and creating the awareness about this. We The children of "Vasundhara" hereby solemnly decided to uphold the mother earth and contribute to the reversal of global warming by.

- Planting and Nurturing at least one tree per year on birthday.
  - conserve Energy in the form of light, water and air.
  - Reduce carbon foot print on "Vasundhara" in which every way possible.
  - Population is the root cause of pollution on "Vasundhara", curbing population will be prime aim of our life.
- Let other know you may be conserving the natural resources but if your neighbors isn't, you are still a donor. Educate others.

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