

“The Constitution of India and the Judiciary’s Take on Climate Change: Does it suffice the Need of the Hour”

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Abstract:

The current climate change mitigation steps evidently do not suffice the need of the hour. With the global temperature escalating with the GDP of India, it is necessary that all the Constitutional machineries i.e., the Legislative, the Judiciary and the Executive work in unison and with a common goal. India being a developing country with economic constraints which also act as a limiting factor in developing expertise for mitigation of relevant technologies and their adaptation faces the brunt of climate change. The analysis of the relevant articles in the Constitution of India and the judicial actions was done to analyze the Judiciary’s conduct on climate change mitigation. The analysis of the relevant articles in Part III and Part IV of the Constitution do indicate the judiciary’s helm in matters related to climate change and at the same time indicates the limitations of the socio economic approach of the system and its side effects on the climate. The need and authority of the judiciary to actually take steps in implementing clean technologies to reduce emission is discussed in this paper.

Key words: Constitution, climate change, clean energy

**“Man’s paradise is on earth;
This living world is the beloved place of all;
It has the blessings of nature’s bounties;
Live in a lovely spirit”..... Atharvaveda (5.30.6)**

I. INTRODUCTION:

From ancient times our predecessors have been preaching about the blessings of Mother Nature and its importance to mankind and the need for preservation. With time and with the development of science accompanied by the ever increasing population, the pollution caused by mankind is leading to irreversible change in climate. With the world wide race for economic development some where the focus of man’s concern has shifted from environment to Energy.

Energy security is a major concern worldwide. All countries are at a dearth of energy resources to facilitate the fast growing pace of economy and industrialization. The total production of energy has increased across the world by 2.1% in the year 2012². The primary energy

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²ENERDATA: GLOBAL ENERGY STATISTICAL YEAR BOOK 2013 (Aug 2014),
<http://yearbook.enerdata.net/#energy-primary-production.html>

production has greatly slackened across the world³. The consumption of energy across the world has increased by 1.4% in the year 2012⁴ the pace of which has been reduced by almost 50% since 2011⁵. It is evident that there is a continuous increase in total installed capacity but the gap between supply and demand is continuously increasing. This is expected to increase to approximately 33% by 2035⁶. And at the same time this extensive use of fuel has resulted in the enormous amount of green house gas emissions. The distress foremost stemming from extensive energy utilization for global industrialization is climate change. Hence climate change mitigation. Climate change mitigation has been referred to as “a unique challenge for economics; it is the greatest and widest-ranging market failure ever seen”⁷.

In order to avoid the irreparable damage of the environment all efforts are riveted on the 2050 deadline of carbon emission control which will ensure global stability of climate without much ado of destabilization of the global economic scenario. To ensure that the global warming does not exceed the limiting value of 2°C, global emissions will have to decline by 50-80% at today's values by 2050, considering that they peak no later than 2020. Barring which, even a delay of 10 years will fix the world into a high carbon infrastructure⁸.

In the current scenario energy policies have to balance for very crucial yet contradicting objectives. The first three being, sustained economic growth coupled with energy access for the poor and an enhanced energy security⁹. All the above targets point directly at the intentions of sustainable economic development and industrialization along with better facilities for the poor. These objectives are all expected to increase the green house gas emission even more. The fourth objective aims at improving the environment while working on the first three objectives¹⁰. The target of being environment friendly at the very same time as being an energy efficient system with an ever growing economy to sustain, indirectly defies the other three previously mentioned objectives. With such incorrigible challenges in the list, India steps ahead as being the third highest green house gas emitter in the world¹¹. This makes the challenge of controlling

³ ENERDATA: GLOBAL ENERGY STATISTICAL YEAR BOOK 2013 (Aug 2014),

<http://yearbook.enerdata.net/#energy-primary-production.html>

⁴ ENERDATA: GLOBAL ENERGY STATISTICAL YEAR BOOK 2013 (Aug 2014),

<http://yearbook.enerdata.net/#energy-consumption-data.html>

⁵ ENERDATA: GLOBAL ENERGY STATISTICAL YEAR BOOK 2013 (Aug 2014),

<http://yearbook.enerdata.net/#energy-consumption-data.html>

⁶ World Energy Outlook Factsheet 2011, “HOW WILL GLOBAL ENERGY MARKETS EVOLVE TO 2035?”, International Energy Agency, OECD/IEA, 2011, <http://www.iea.org/weo/docs/weo2011/factsheets.pdf>.

⁷ Nicholas Stern, STERN REVIEW: THE ECONOMICS OF CLIMATE CHANGE, (Oct 30, 2006)

⁸ World Development Report 2010, Development and Climate Change, Energizing Development without Compromising the Climate, Ch. 4, at 189

⁹ World Development Report 2010, Development and Climate Change, Energizing Development without Compromising the Climate, Ch. 4, at 191

¹⁰ World Development Report 2010, DEVELOPMENT AND CLIMATE CHANGE, ENERGIZING DEVELOPMENT WITHOUT COMPROMISING THE CLIMATE, Ch. 4, at 191

¹¹ World Energy Outlook: REDRAWING THE ENERGY CLIMATE MAP (2013),

http://www.iea.org/publications/freepublications/publication/WEO_Special_Report_2013_Redrawing_the_Energy_Climate_Map.pdf IEA 2013 at 29

climate change by reduction of GHG emission even more difficult for a developing economy like India. So it is really not unexpected of India to be having over ambitious targets to be fulfilled in the 8 National Action Plan Missions and through very many policies.

But it is surprising that a country like India, being one of the very few countries having a Constitution that emphasizes on environment protection facing huddles to meet climate change targets. As *MsDeepaBadrinarayan* had rightly voiced that the climate change can actually be the cause of a great catastrophe by directly coming in the way of a person's right to life¹². Thus the two major questions that are to be explored in this article are:

So is The Constitution of India sufficient? If not, then where is it falling short?

II. HOW FAR CAN THE JUDICIARY INTERVENE:

Under Article 32¹³ and 226¹⁴ of the Constitution of India, the Public Interest Litigations have been an eye opener in Environmental issues for a long time. The leading cases decided by the Supreme Court of India has been PIL cases. The Delhi Vehicular Case¹⁵ regarding the Pollution

¹²DeepaBadrinarayan, *Climate Law and Developing Countries, INDIA'S CONSTITUTIONAL CHALLENGE: A LESS VISIBLE CLIMATE CHANGE CATASTROPHE*, Ch. 3 Edward Elgar (2009) at 63-81

¹³Article 32, CONSTITUTION OF INDIA, 1950. Remedies for enforcement of rights conferred by this Part(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution

¹⁴Article 226, CONSTITUTION OF INDIA, 1950. Power of High Courts to issue certain writs (1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories (3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without (a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32

¹⁵*M.C.Mehtavs Union of India* Writ Petition (Civil) No.13029/1985

of Delhi is one of the most famous Public Interest Litigations in this regard. This Petition was filed by M.C.Mehta to save many lives that were being affected by the pollution, and the Supreme Court took a stand in this case and went to the extent of setting up an expert committee and implementing the decisions of the committee. The court had exhibited their authority in environmental issues also in the Dehradun Quarrying case¹⁶. In dealing with these cases, though not directly but indirectly the Supreme Court has already taken steps to mitigate climate change. Since the Supreme Court had taken a step forward in introducing technologies, it would not be very wrong to assume that faced with a similar problem in hand there are chances that, keeping all aspects and expert comments in mind the Supreme court might take active decisions regarding climate change mitigation.

In the following discussion, the extent to which these PIL's have affected the Judiciary's decision making and the exact role that the Supreme Court can play in mitigating climate change is deliberated upon.

III. DISCUSSION:THE CONSTITUTION OF INDIA

The Constitution of India was adopted on the 26th of November 1949. The Constitution of India clearly states in its preamble that it is written by the people of India for the people of India¹⁷. It is one of the most comprehensive constitutions in the world. It is divided into 22 parts, which contain a total of 395 articles and 12 Schedules. It also very clearly emphasizes on the "Sovereignty" of India. Needless to say, that the Constitution of India strongly emphasizes on the welfare of its people. Considering the current outrageous climatic conditions, taking actions for the welfare of the people of India can be considered to be an integral part too. When it comes to environmental issues Part II and Part IV are the key considerations. In *C.B.Boarding and lodging vs State of Mysore*¹⁸ it was held that "there was no conflict on the whole between the provisions contained in Part III and Part IV" and that "they are complimentary and supplementary to one another". The ultimate decision was iterated in the *Minerva Mills Ltd vs Union of India*¹⁹. In this case the Supreme Court held that "harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution". Thus of the many articles the ones of relevance to us in our current context are: Article 19 (1) (g) and Article 21 of Part III, Article 48A and Article 51A of Part IV.

A. PART III OF CONSTITUTION OF INDIA

A (i) Article 19(1) (g) and 19(6)

Article 19 (1) (g) of the Constitution of India provides its citizens with the Freedom "to practice any profession, or to carry on any occupation, trade or business". Article 19 (1) (g) flanked with

¹⁶Rural Litigation and Entitlement Kendra v. State of U.P., AIR 1985 SC 652

¹⁷ Preamble, CONSTITUTION OF INDIA, 1950

¹⁸*C.B.Boarding and lodging vs State of Mysore* 1970 AIR 2042, 1970 SCR (2) 600

¹⁹*Minerva Mills Ltd vs Union of India* 1980 AIR 1789, 1981 SCR (1) 206

article 19(6)²⁰ is the key player of concern. The freedom so provided in 19 (g) is actually controlled and/or restricted by Clause 6 of the Article. The restrictions thus imposable under this clause has to be “reasonable restrictions in the interests of the general public”, “*prescribes necessary qualifications (both professional and technical) for any profession, trade or business*” and “*allows State to carry out any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise*”.

This article focuses on two main aspects, firstly “*in the interest of general public*” and secondly “*reasonable restriction*”. In explaining the term “*in the interest of general public*” the Court in the *Usmanbhai case*²¹ held that “....The expression “in the interest of general public” is of wide import comprehending public order, public health, public security, morals, economic welfare of the community and the objects mentioned in Part IV of the Constitution. Nobody can dispute a law providing for basic amenities; for the dignity of human labor as a social welfare measure in the interest of general public.”²²In explaining “*reasonable restriction*” the Supreme Court held that “*The tests of reasonableness have to be viewed in the context of the issues which faced the legislature. In the construction of such laws and in judging their validity, Courts must approach the problem from the point of view of 703. And that, furthering the social interest which it is the purpose of the legislation to promote. They are not in these matters functioning in vacuo but as part of society which is trying, by the enacted law to solve its problem and furthering the moral and material progress of the community as a whole*”²³. Thus it can be stated that the judiciary deciphers that Clause (6) does provide the Judiciary, the Centre and State with the right to intervene when it finds any trade bearing a negative impact on the citizens; it can be concluded that this includes the reason of environmental pollution.

In the case of *Govind Singh vs Shanti Sarup*²⁴ in the Supreme Court Chief Justice Chandrachud observed that, when the concern “....*is a matter of health safety and convenience of the public at large*”, the right to freedom of trade and occupation can be restricted. The court duty is to not let fundamental rights to carry on any occupations outweighs environmental interests. The judicial system works on balancing the two in a justified way. This was best described in the renowned Supreme Court decision in *Chintaman Rao vs State of Madhya*

²⁰Art 19(6), CONSTITUTION OF INDIA, 1950

“ Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise”

²¹*Municipal Corporation of the city of Ahmedabad vs. Jan Mohd. Usmanbhai* (1986) 3SCC 20,31 (*UsmanBhai Case*)

²²*Municipal Corporation of the city of Ahmedabad vs. Jan Mohd. Usmanbhai* (1986) 3SCC 20,31

²³*Municipal Corporation of the city of Ahmedabad vs. Jan Mohd. Usmanbhai* (1986) 3SCC 20,31

²⁴*Govind Singh vs Shanti Sarup* 1979 AIR 143, 1979 SCR (1) 806

Pradesh.²⁵ This case focuses on the fact that even if for the health and safety, but Article 19(6) has to be applied with the intention of balancing environment and economy.

A (ii) Article 21:

Article 21 of the constitution of India confers on its citizens the fundamental right to life and personal liberty.²⁶ In the *Maneka Gandhi Case*²⁷ the Supreme Court clearly focuses that Article 19, 14 and 21 are not mutually exclusive and by doing so vastly broadening the horizons of Article 21. The Right of life and liberty can be inferred to extend to confer within its limits many ancillary rights which are way beyond mere survival, environmental pollution being one such very important issue. The right to a healthy clean environment is considered to be blanketed under Article 21.

The landmark case in this regard is the Supreme Court case *M.C.Mehtavs Union of India*, commonly known as the “*Delhi Vehicular Pollution Case*”²⁸. In this case a writ petition was filed by M.C.Mehta in 1985 against the negligence in the part of the government leading to the emission of toxic levels of vehicular and hazardous industrial pollutants in the air. This was causing serious problems especially in the thickly populated areas of Delhi. It was leading to chronic ailments of the residents as well. In 1992 the Supreme Court delivered a landmark judgment against vehicular pollution for the first time. A four member committee headed by a retired judge of Supreme Court and members being the petitioner, the Chairman of the Central Pollution control board and a representative member of Indian automobiles Manufacturers was given the responsibility to figure out solution for nationwide vehicular pollution and submit a report every two months to the Supreme Court from 1991. The Committee could also co-opt experts not exceeding three. The Joint Secretary of the Ministry of Environment and Forests was appointed the Convenor-Secretary of the Committee. It is in this case that the Supreme Court clearly stated that it is the government’s responsibility to control pollution²⁹.

In the Supreme Court case, *Indian Council for Enviro Legal Action vs Union of India*³⁰ Justice Dalveer Bhandari and H.L. Dattu also had clearly ruled that the Right to wholesome environment under the ambit of Article 21, and applied the “*polluter pays principle*”. The Andhra Pradesh High Court in the case of *M.P.Rambabuvvs Divisional Forest Officer* held that “*In terms of Article 21 of the Constitution, a person has a right to a decent life, good environment and maintenance of ecology.*”³¹

B. PART IV OF CONSTITUTION OF INDIA

²⁵*Chintaman Rao vs State of Madhya Pradesh* 1951 AIR 118, 1950 SCR 759

²⁶ Art 21, CONSTITUTION OF INDIA, 1950

²⁷*Maneka Gandhi vs Union of India* 1978 AIR 597, 1978 SCR (2) 621 (Maneka Gandhi Case)

²⁸*M.C.Mehtavs Union of India* Writ Petition (Civil) No.13029/1985

²⁹[Http://Envis.Mse.Ac.In/Problems%20pdf/VEHICULAR%20POLLUTION%20IN%20DELHI.Pdf](http://Envis.Mse.Ac.In/Problems%20pdf/VEHICULAR%20POLLUTION%20IN%20DELHI.Pdf)

³⁰*Indian Council for Enviro Legal Action vs Union of India* WRIT PETITION (C) No.967 OF 1989

³¹*M.P.Rambabuvvs Divisional Forest Officer* AIR 2002 AP 256

B(i) Article 48A

The article 48A³² was added to part IV of The Constitution of India after the Forty-Second Amendment Act 1976. The concern for the environment had been a key factor. In this part (Article 37 to 51) the states responsibilities and obligations are iterated under Directive Principles of State Policy (DPSP). The DPSP has two basic characteristics³³:

- a) They are not judicially enforceable and thus if not complied to and so cannot be secured through Court proceedings.
- b) As they are Fundamental, the State has the duty to incorporate the principles in making laws.

Though not enforceable by any court of law, but as DrAmbedkar had himself while mentioning about the objective of laying down DPSP stated “ it is no use giving a fixed, rigid form to something which is not rigid, which is fundamentally changing and must, having regard to the circumstances and the times, keep on changing..... In my judgment, the directive principles have a great value; for they lay down that our ideal is economic democracy”.³⁴

Directly in regard to Article 48A, the Delhi Vehicular Pollution Case is of great importance In this case the Supreme Court strongly intervened and under Article 21, Art 48A was dealt together. It is one such case where DPSP came under the purview of judicial intervention and Delhi Municipal Corporation was ordered to properly enforce preventive measures.

B(ii) Article 51-A (g):

The Article 51-A (g)³⁵ was also introduced after the Forty Second Constitutional Amendment. This article while enumerating the duties of the citizen's of India specifies his duty to protect and improve the environment. In the Rajasthan High Court case of *L.K.Koolwalvs State of Rajasthan*³⁶, the directions were given to the Municipal authorities of Jaipur city emphasizing on the fundamental duties iterated under Art 51-A (g). The judiciary ascertains its ability to remind the citizen of their duties and that it is the Municipalities duty as well. Thus as much providing it binding to the authorities to provide its citizens with a clean environment and financial inability was considered non-pleable³⁷.

IV. Conclusion:

³²Article 48A Of Constitution Of India

³³Mahendra P Singh , V.N. SHUKLA'S CONSTITUTION OF INDIA (Ed11, 2010)

³⁴ Constituent Assembly Debates, Vol VII, at 494-495

³⁵ Article51-A(g), CONSTITUTION OF INDIA, 1950

states that "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures."

³⁶*L.K.Koolwalvs State*AIR 1988 Raj 2, 1987 (1) WLN 134

³⁷DhruveshsinghYadav, ENVIRONMENTAL LEGISLATION AND ITS LEGAL APECTS, (May 14, 2010), http://www.legalservicesindia.com/article/print.php?art_id=162

Currently most important factor that is to be considered when Article 19 is in question is which direction does the balance tilt, with economic development in one hand and climate change in the other. But with all the instructions given delivered and adjudged, India has very ambitious economic targets to meet and a population to provide for with food, shelter, clothing and energy to add up with the new targets claimed under the recent 5 year plan³⁸. The economic activities add up the stress on the environment have inter temporal effects³⁹. Thus it can be inferred that for India's sustainable economic development environmental concerns need to be integrated⁴⁰.

The Apex Court in *Damodar Rao vs. Municipal Corporation*⁴¹, held that the slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be regarded as amounting to violation of Article 21 of Indian Constitution. Thus from the above discussion it can be emphasized that Article 21 not only considers the right to a wholesome environment to be inclusive in the terminology but also clearly focuses in the betterment of the environment and in creating a pollution free environment which can be said to be synonymous to healthy environment which today can be considered synonymous to climate change control in the current economic scenario.

With all the scrutinization over the judiciary's extent of enforceability, the Supreme Court in *Sachidanand Pandey vs. State of West Bengal*⁴² adjudged that when an ecological problem is in question, The court should keep in mind Articles 48-A and Art 51 A (g) of the Constitution. The basis of the decision shadowing the *Wednesbury* rules was a landmark considering the current situation regarding the need for balancing economy and Green house gas emissions. So far all decisions adjudged have been based on the Right to a clean and healthy environment. But currently what needs even more concern is the reduction of Green house gases so that the Fundamental rights and duties of citizens are not questionable in the long run.

Thus be it under the principles of "*Absolute and strict liability*" or "*the Precautionary Principle*" or "*the Polluter pays Principle*", the Supreme Court so far has taken probable steps to maintain ecological harmony. In *Goa Foundation vs Union of India*⁴³, witnessed the Supreme Courts seriousness in this matter when 218 industrial units across the country were shut down for infringing environmental norms.

On the contrary cases such as *Karnataka Industrial Areas Development Board v Sri. C. Kenchappa & Ors*⁴⁴ are of common occurrence. In this case the Karnataka High Court ruled in

³⁸12th Five year plan 2012-2017 PLANNING COMMISSION OF INDIA.

³⁹Twelveth Five Year Plan, REPORT OF THE SUBGROUP ON ENVIRONMENT

http://planningcommission.gov.in/aboutus/committee/wrkgrp12/enf/wg_envr.pdf at 59

⁴⁰Twelveth Five Year Plan, REPORT OF THE SUBGROUP ON ENVIRONMENT

http://planningcommission.gov.in/aboutus/committee/wrkgrp12/enf/wg_envr.pdf at 59

⁴¹*Damodar Rao vs. Municipal Corporation* AIR 1987 AP 171

⁴²*Sachidanand Pandey vs. State of West Bengal* AIR 1987 SC 1109

⁴³*Goa Foundation vs Union of India*, WRIT PETITION (CIVIL) No. 435 OF 2012

⁴⁴*Karnataka Industrial Areas Development Board v Sri. C. Kenchappa & Ors* Appeal (civil) 7405 of 2000

favor of the Defendant and the one kilometer buffer zone land that was to be maintained as 'green area' around the periphery of a village was over ridden. Subject to lack of evidence the rule was said to be hampering industrial development. Justice PN Bhagwati had once quoted "We need judges who are alive to the socio-economic realities of Indian life"⁴⁵.

Thus we can say that the Courts needed to provide the stability that our current economy demands. And the emphasis of the court on economy or ecology is a call that the Judges need to take at times. At one point of time it was necessary for the judges to choose economy over ecology, even if in some cases it meant compromising ecology and public health. But with the current climatic scenario and international obligations in mind, it seems that its time that the focus shifts back to ecology, even if it means compromising economy at times.

With the Supreme Court at times over riding the very stricture of the Constitution of India and broadening its horizons to maintain ecological balance. And as has been in cases such as "the Delhi vehicular Pollution", where the Supreme Court had taken it on them to decide the applicable emission of vehicles and the kind of technology that can be set for use by the introduction of Euro I and Euro II, as suggested by the committee, it definitely will not be absolutely out of the helm of Supreme Court to similarly take stands in introducing and mandating clean energy technologies.

With the most recent case of Tamil Nadu, the government had mandated Solar Purchase Obligation (SPO) under the Solar Policy of the State. The Tamil nadu Spinning Mills Association (TASMA)⁴⁶, who already own 3,000 MW of wind power capacity in the State went to the Appellate Tribunal for Electricity (APTEL) against the SPO as it was costing them a rupee more for every unit to fulfill the obligation. With the Renewable Purchase Obligation which includes 0.25% solar already in place for the State, the Appellate Tribunal Set aside the state government SPO directive. In the mean time Tangedco had tendered for the purchase of solar power and purchase for 700 MW of to-be-built solar power plants was in process. Tangedco's filing of the petition⁴⁷ against the appellate tribunal decision will be heard by the Apex Court⁴⁸ on October 17th. The decision of this case will be a turning point in deciding the Judiciary's role in implementation of clean energy technologies to mitigate climate change.

Thus from the following discussion it can be concluded that the constitution of India though does not directly iterate on climate change but its provisions are enough to give the courts the required leverage to facilitate climate mitigation issues. It can also be emphasized that for a developing country like India at many times the ecological sacrifice may seem necessary but the balance

⁴⁵Raghav Sharma, 'GREEN COURTS IN INDIA: STRENGTHENING ENVIRONMENTAL GOVERNANCE?', 4/1 Law, Environment and Development Journal (2008), <http://www.lead-journal.org/content/08050.pdf>. at 50

⁴⁶ M Ramesh, SPINNING MILLS BODY FILES CASE AGAINST TN SOLAR PLICY, The Hindu Businessline, Chennai April 19, 2013

⁴⁷Tangedco's Civil Appeal No. 10567 of 2014

⁴⁸ M Ramesh, TN GOES TO COURT AGAINST TRIBUNAL ORDER, The Hindu Businessline, Chennai Aug 17, 2014

between development and climate change mitigation is the apt description for “sustainable development”.