



The Constitution and Environmental Legislation in India

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Abstract

The Indian Constitution is living document that develops and changes with time meaning thereby adaptive in nature. This dynamic and expandable character gave rise to the constitutional provisions relating to environmental preservation. Individual dignity and a socialist social pattern are guaranteed in the preamble of our constitution. It comes with a decent level of living and a clean atmosphere. All land, water, and air, as well as the relationships between these elements and people, animals, flora, and fauna, as well as any property owned by any of these entities, are considered part of the environment according to the Environment (Protection) Act 1986. The environmental protection measures are guaranteed by the Indian Constitution, either directly or indirectly. It provides an overview of the constitutional provisions and discusses the ways in which the government has passed or revised laws over the years to implement the ecological understanding of the rights and responsibilities outlined in the documents. The highest court in India has produced many notable rulings that would help achieve the objective of long-term environmental preservation and protection by providing a broader interpretation of individuals' basic rights and guaranteeing the directive principles within the fold of fundamental rights. Public interest litigation (PIL) has played a predominant role to carry out the laws and related provisions in action included in the Constitution of India.

Keywords: Ecology, Preservation, Forest, Waste, Pollution, Emissions.

Introduction

Preserving the natural world is deeply rooted in Indian culture and is explicitly stated in the country's constitution. According to the Atharvaveda, "Man's paradise is on earth; this living world is the favourite location of everyone; it possesses the blessings of nature's gifts; live in a wonderful attitude." Therefore, we should make every effort for its preservation. The term "environment" encompasses a wide range of ideas and concepts, including not only the physical elements like water, air, and land, but also the relationships between these elements and things like people, other forms of life, plants, microbes, and private property. The scope of the term is broad enough to encompass all forms of life, including not just animals but also plants, microbes, and the interplay between these elements and the land, air, and water. Dependence on one another exists in the physical and biological environments. Environmental degradation has been accelerated by several human activities, including industrialization, urbanisation, population boom, over-exploitation of resources, disturbance of natural ecological balances, and the eradication of several plant and animal species for economic reasons. Life as we know it would not be possible without Mother Nature, and the Indian Constitution provides a foundation for safeguarding and preserving her. In order to educate the public, increase public involvement, and foster a greater sense of ecological and environmental stewardship, it is crucial that they have a firm grasp of the constitutional provisions pertaining to environmental protection.



As the supreme law of the country, the Constitution codifies our nation's dedication to preserving and protecting the environment. This corpus of legislation includes several provisions that address, either directly or indirectly, the steps necessary to ensure that the Indian people continue to live in an ecologically sound environment and to address the causes of ecological imbalance and environmental deterioration. Fundamental rights and obligations, Directive Principles of State Policy, the Seventh Schedule (Article 246), the Forty-second Amendment Act, Constitutional remedies (Articles 32, 226), and many more sections make up the vast body of legislation in the Indian Constitution.

"Man is both creature and moulder of his environment, which provides him physical substance and allows him the possibility for intellectual, moral, social and spiritual growth," reads the preamble to the U.N. Declaration on Human Environment, which was approved in Stockholm in June 1972. Articles 14, 19, and 21 of the Indian Constitution, which address the Right to Equality, Freedom of Expression, and Right to Life and Personal Liberty, respectively, reflect Principle 1 of the Stockholm Declaration.

I

The Fundamental Rights guaranteed by the Indian Constitution are enshrined in the Part III and can be enforced by the courts. In light of this, the Indian Judiciary has made substantial contributions since the 1980s to expanding the scope and character of these fundamental rights. According to Article 21 of the Constitution, the right to healthy environment has been recognised as a basic human right by the Supreme Court of India. By interpreting Article 21 in light of Articles 47, 48-A, and 51A(g), the Court has expanded the meaning of life to include environmental rights, and it has declared that Article 21 safeguards the right to life as a fundamental right. The preservation and protection of natural surroundings, ecological balance free from air and water pollution, and sanitation are all essential to the enjoyment and realisation of human dignity and the right to live in an environment free from such pollution. It is reasonable to assume that any conduct that may lead to contamination of any kind—air, water, the environment, etc.—would constitute a breach of Article 21.

In *Maneka Gandhi* case, the Supreme Court established that Articles 14 and 19 of the Constitution must be satisfied before a legislature can pass a law restricting an individual's life and liberty, and that Article 21 of the Constitution must be satisfied if the law's process is determined to be unreasonable, unfair, or unjust.

It was in the case of *Dehradun Quarry (Rural Litigation and Entitlement Kendra vs. State of U.P., AIR 1988 SC 2187)* that the idea of a wholesome environment came to be. The Rural Litigation and Entitlement Kendra, Dehradun had petitioned the Supreme Court, claiming that the limestone quarries in the Mussoorie-Dehradun region had degraded the environment and threatened the delicate ecosystems there. Therefore, the limestone quarries in the Mussoorie-Dehradun region were ordered to close by the supreme court in the *Dehradun Quarry's Case*, since they were deteriorating the delicate environment in the area, using its writ authority under Article 32.

As part of the Right to Life, as guaranteed by Article 21, the Supreme Court acknowledged in the case of *Olga Tellis vs. Bombay Municipal Corporation* the right to livelihood. The court took up the case of *Olga Tellis v. Bombay Municipal Corporation*, which challenged the government's plan to force all slum and pavement dwellers out of Bombay and send them back to their home countries. The court ordered the municipal corporation to find new homes for the slum and pavement dwellers,



as well as to build housing for the impoverished and supply them with basic necessities. With this, we hope to ensure that, as stated in Article 21 of the Constitution, no one may have their right to subsistence taken away from them without following the procedure established by law.

In the case of *Banwasi Sewa Ashram v. State of Uttar Pradesh*, the Supreme Court used its writ jurisdiction under Article 32 to tell the National Thermal Power Corporation Ltd. (NTPC) about the Rihand Super Thermal Power Project that they couldn't acquire the forest land without first providing the facilities that the court had approved to the tribal people who lived there and relied on the forest's fruits, vegetables, fodder, flowers, timber, animals, and fuel wood. Green organisations have challenged the constitutionality of arbitrary government punishments like building taxes by using Article 14 of the Indian Constitution, which says that everyone should have equal protection under the law inside the country.

Every citizen of India has the right to practise any profession or engage in any occupation, trade, or business, as stated in Article 19(1)(g) of the Constitution. As shown in the case of *Abhilash Textiles v. Rajkot Municipal Corporation*, however, appropriate constraints might be placed on this freedom to protect the public interest. The court maintained that the dyeing and printing operations of the plant could not be conducted at the expense of public health, since the release of untreated wastewater onto public roads and drains posed a serious threat to public health.

Constitutional Remedies

Much of India's environmental law is based on precedents set by Court. In order to claim one's right to a healthy environment against the state, one can use the writ jurisdiction of either the Supreme Court (Article 32) or a High Court (Article 226) to file a writ petition. When cases include environmental issues, the courts often issue the writs of mandamus, certiorari, and prohibition.

If a public authority has the jurisdiction to do something but is dishonest about using it, a writ of mandamus might be issued to force it to do something. The Municipal Board was ordered by the Rajasthan High Court to construct sewers and drains for the disposal of household, unclean, and storm water, similar to the ruling in *Rampal v. State of Rajasthan*. The purpose of issuing writs of certiorari and prohibition is to prevent public officials from abusing their power. In cases where a state pollution control board has improperly sanctioned an industry for polluting at levels beyond what is legally allowed, or where a local authority has approved construction in a park or garden that does not comply with development regulations, a writ of certiorari could be issued against them. The Supreme Court of India established that the 'Precautionary Principle' and the 'Polluter Pays Principle,' as two fundamental components of sustainable development, as well as a component of the country's environmental law in the well-known *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647 at 659-660, more commonly referred to as the T.N. Tanneries Case.

A paradigm shift in procedural jurisdiction has been brought about by judicial activism and the evolution of public interest litigation (PIL) within the writ jurisdiction of the High Courts and the Supreme Court. This has been instrumental in the development and advancement of Environmental Jurisprudence with a Human Rights perspective.

Forty-second Amendment Act, 1976



One of the few constitutions in the world that explicitly addresses environmental preservation in a human rights manner is the Indian Constitution. Every person has the inherent right to live in an environment free from pollution, where they may fully express themselves as human beings. In India, protecting the environment has been elevated to the level of a basic legislation. The Indian Constitution mandates that both the State and people are responsible for preserving and enhancing the natural world.

There was initially no clause in the Indian Constitution till 1950 that addressed the need to preserve the environment. To provide for positive state action towards the preservation and enhancement of environmental quality, the Fortieth Amendment Act of 1976 was enacted.

In 1976, the Forty-second Amendment Act of the constitution included measures on the environment in the Seventh Schedule, Part IV—Fundamental Duties, and Part IV—Directive Principles of State Policy. Part IV, which deals with the Directive Principles of State Policy, now includes Article 48-A. It states that the State shall make every effort to preserve and develop the environment, as well as to conserve the country's forests and animals.

Additionally, it added Article 51-A(g) to Part IV-A on Fundamental Duties, which states that every Indian citizen has an inherent responsibility to preserve and enhance the country's natural resources, including its forests, lakes, rivers, and animals, and to show kindness to all forms of life. Environmental preservation and the maintenance of ecological balance is an obligation that every individual, not only the government, has a responsibility to fulfil, according to Ranganath Mishra, J. As stated in Article 51-A(g) of the Constitution, it is every citizen's basic responsibility, and it is also a social obligation. This amendment also brought about certain modifications in the Seventh Schedule of the Indian Constitution, namely to List III (Concurrent List). It added entry 17-A, which sets aside land for forests, and entry 17-B, which safeguards avian and wild animal populations.

II

Government is under obligation to consider the guiding principles laid out in Part IV of the Indian Constitution while formulating policies and regulations meant to improve the lives of its citizens. There is no legal way to execute these orders, which are called the Directive Principles of State Policy. The courts, however, have decided a number of environmental disputes based on the wording and substance of these state policy directives. Article 48-A indicates a rising awareness of the need to safeguard the environment from pollution, especially in metropolitan areas, as pointed out by H.M. Seervai, precisely. Pollutants that harm human health and the environment include smoke, industrial waste, and harmful exhaust emissions from combustion engines such as vehicles. It has long been acknowledged in India that preserving forests and reforesting them is crucial, both for the purpose of retaining rainfall and to avoid soil erosion caused by cutting down trees. The 'maintenance of ecological equilibrium' necessitates the protection of animals. The idea that the state should work to enhance and safeguard the environment is appropriately emphasised in Article 48-A. (Seervai, 1991) Whenever an ecological issue is presented to the court, the court is under obligation to consider Article 48-A of the Constitution... and Article 51-A(g), the Supreme Court said in *Sachida Nand Pandey v. State of West Bengal*, adding that the issue should not be dismissed as the purview of the policy-making body. In addition, the Himachal Pradesh High Court interpreted Articles 48-A and 51-A(g) as a constitutional mandate for the state to improve and protect the environment, as well as for all Indians, regardless of rank or status, to do their part to preserve and protect the country's forests,



flora, fauna, rivers, lakes, and water resources. Disregarding or disobeying it is a defiance of the country's basic legislation. In a similar vein, the Andhra Pradesh High Court has held that the court and the government are equally obligated to safeguard the environment under Article 48-A. Concerns about the environment are explicitly addressed in Articles 39(e), 47, and 48-A of the Directive Principles of State Policy. All three—health security, better public health, and environmental protection and improvement—impose a duty on the state. Monuments, sites, and artefacts of national significance are to be protected by the State according to Article 49 of the Directive Principles of State Policy. While shielding the Ancient Monuments and Archaeological Sites and Remains Act, 1958—protected Taj Mahal from damaging industrial pollutants having drawn inspiration from Article 49 in the Taj case.

Panchayats and municipalities were both granted constitutional standing by the Constitution (Seventy-third Amendment) Act 1992 and the Constitution (Seventy-fourth Amendment) Act 1992, respectively. Agriculture, soil conservation, water management, farm forestry, social forestry, minor forest produce, drinking water, health and sanitation, community asset maintenance, and watershed development are some of the other environmental-related topics included in the Eleventh Schedule. (Basu,2011). Public health, sanitation, conservancy and solid waste management, urban forestry, protection of the environment and promotion of ecological aspects, provision of urban amenities such as park grounds, cremation grounds and electric crematoriums, regulation of slaughterhouses and tanneries, and urban planning (including town planning) are all environmental matters included in the Twelfth Schedule.

As an example, the Supreme Court established in the case *Municipal Council, Ratlam vs. Vardhichand* (AIR 1980 SC 1622) that local bodies are responsible for environmental preservation and that the law of public nuisance under the Code of Criminal Procedure is a powerful tool for enforcing these duties.

The Indian Constitution grants the ability to the Parliament to enact laws pertaining to the implementation of treaties, agreements, conventions, decisions reached at international conferences, associations, or other bodies (Article 253, Part XI). In order to implement the provisions of the Stockholm Declaration of 1972, to which India, as a member of the United Nations and a signatory to the treaty of the Stockholm Declaration, had pledged to work toward the mission of preserving the world's natural resources, the Air (Prevention and Control) Act, 1981 and the Environment (Protection) Act, 1986 were passed by the Parliament exercising its law-making power under Article 253. Additionally, the Forty-second Amendment Act, 1976 expanded the scope of Parliament's legislative authority to address the issue of natural resource preservation by transferring two issues, namely forests and preservation of wild animals and birds, from the State List to the Concurrent List.

Conclusion

Several influential groups in India have worked to shape the environmental architecture of the country, including the central government, landmark judgements of the Supreme Court, and civil society. The 'precautionary principle' and the 'polluter pays principle,' two fundamental tenets of sustainable development, have been upheld by the Supreme Court, which has adopted the idea of sustainable development as a basis for national law. Additionally, in accordance with a directive from the Supreme Court of India, environmental studies were included into the curriculum at all educational levels to ensure that students would get a holistic understanding of the issue. In response



to the serious environmental challenges that the nation is currently experiencing, India has enacted a substantial body of legislation addressing these concerns. Actually, there are over 200 laws at the federal and state levels that address different facets of environmental concerns. Greater laws mean more obstacles to enforcement, though. To ensure effective enforcement, a complete and coordinated environmental protection law is required. We need a bottom-up approach to social awareness rather than top-down legislation, as the only way for a law to be effective is for people to willingly participate in it and accept it.

Environmental protection laws have largely ignored the interests of other key players, including state governments and businesses. Ensuring compliance and enforcement is a common responsibility of state and municipal organisations. More and more, environmental issues and instances of environmental degradation or non-compliance have been brought to the attention of the public by members of civil society. A successful plan to control environmental deterioration must begin with the employment of cost-efficient technology. Without the backing of both the public and businesses, environmental laws will never be able to effectively curb environmental damage.

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