
ENVIRONMENTAL JUSTICE AND TRANSFORMATIVE CONSTITUTIONALISM IN INDIA: A PATH TO SUSTAINABLE DEVELOPMENT

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ABSTRACT

“What we are doing to the forests of the world is but a mirror reflection of what we are doing to ourselves and to one another.”

- Mahatma Gandhi

Environmental constitutionalism defines state obligations as well as subject rights related to environmental protection through conservation principles integrated into the Indian Constitution. Through its attendance at the 1972 United Nations Conference in Stockholm Prime Minister Indira Gandhi and representatives from 113 countries established both a national committee for environmental planning as well as coordination mechanisms. Following commitments at this conference India became the first nation to add environmental protection into its Constitution after the 1976 Constitution (Forty-Second Amendment) Act adopted Articles 48A and 51A(g). The new approach established a connection between basic rights and environmental conservation through Articles 14, 19 and 21 where principles from the Stockholm Declaration manifest. Through public interest litigation the Supreme Court along with High Courts have issued judgments that protect the environment together with promoting sustainable development. Future environmental actions require joint initiatives because constitutionalism maintains fundamental ties to environmental rights according to these crucial rulings.

Keywords: Conference, Citizen, Duties, Environmental Constitutionalism, India, Individual, Sustainable development, Rights.

1. INTRODUCTION

India has distinguished itself as a leading force in the realm of environmental constitutionalism, becoming one of the first countries to enshrine such protections within its constitutional framework. This commitment to safeguarding environmental quality is harmoniously aligned with the pursuit of sustainable development. The Indian judiciary has played a pivotal role in interpreting legal provisions to not only protect the environment but also to advance the principles of sustainable development, culminating in the establishment of a comprehensive and sophisticated framework known as “Environmental Jurisprudence.” This concept embodies both the rights and responsibilities of the state and its citizens. The journey towards robust environmental protection took significant strides in 1972, when the Late Prime Minister Indira Gandhi made an impactful address at the United Nations Conference on the Human Environment in Stockholm, bringing global attention to critical issues of environmental degradation and ecological balance.¹ In the Indian context, environmental protection is now recognized as a fundamental principle enshrined in law, intricately linked to the notion of human rights.² This connection ensures that every individual has the right to live in a pollution-free environment that upholds their dignity. Landmark judicial decisions have further strengthened this legal framework, establishing essential principles such as the “Precautionary Principle” and the “Polluter Pays Principle”—cornerstones of India’s environmental law.³ The Constitution obliges both the state and its citizens to take proactive measures to protect and enhance the environment.⁴ Moreover, the Stockholm Declaration serves as a vital instrument for fostering cooperation on environmental issues, reinforced by a UN General Assembly resolution in December 1972 that called for international collaboration in the protection of the human environment.⁵

In line with the principles outlined in the Stockholm Declaration, the Constitution was enriched by the 42nd Amendment Act of 1976, which included environmental protection in Articles

¹Indira Gandhi, *Speech at the United Nations Conference on the Human Environment*, Stockholm (1972), https://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.48/14/Rev.1 (last accessed May 29, 2025)..

² *Subhash Kumar v. State of Bihar*, A.I.R. 1991 S.C. 420 (India) (recognizing the right to pollution-free water and air as part of the right to life under Article 21 of the Constitution).

³ *Vellore Citizens' Welfare Forum v. Union of India*, A.I.R. 1996 S.C. 2715 (India); see also *Indian Council for Enviro-Legal Action v. Union of India*, A.I.R. 1996 S.C. 1446 (India).

⁴ India Const. art. 48A, art. 51A(g).

⁵ *United Nations Conference on the Human Environment, Stockholm Declaration*, U.N. Doc. A/CONF.48/14/Rev.1 (1972); G.A. Res. 2994 (XXVII), U.N. GAOR, 27th Sess., U.N. Doc. A/RES/2994(XXVII) (Dec. 15, 1972).

48A and 51A(g).⁶ This legal framework thoughtfully examines the rights and duties of both the state and individuals, nurturing a culture of environmental stewardship. Additionally, the principles of Sustainable Development, as implemented by the judiciary, resonate within Articles 14, 19, and 21 of the Constitution, which relate to the rights to equality, freedom of expression, and the right to life and personal liberty. ⁷This article endeavors to trace the evolution of the Indian Constitution from its establishment in 1950 to the present day, highlighting the amendments and reforms that have fortified environmental protection. Ultimately, this constitutional design establishes a robust foundation for exploring the intricate relationship between environmental rights and responsibilities, reflecting India's steadfast commitment to a sustainable and harmonious future.

2. THE ORIGIN OF TRANSFORMATIVE CONSTITUTIONALISM AND ITS STRONG CONNECTION TO ENVIRONMENTAL PROTECTION IN INDIA

The concept of transformative constitutionalism has its origins in the rich context of the South African Constitution and the broader freedom movement, with significant contributions from scholars such as Karl Klare in 1998.⁸ Klare viewed transformative constitutionalism as a long-term endeavor, emphasizing its capacity to shape political and social institutions through thoughtful interpretation, enactment, and enforcement of constitutional principles, all aimed at enhancing democracy over time. Justice Langa further articulated the inspiring vision of this concept, suggesting that it serves to mend the wounds of the past while leading society toward a more promising future.⁹

While initially contextualized within South Africa, the principles of transformative constitutionalism hold relevance for other democratic nations, including India. It seeks to effect societal change by promoting ideals of equality, liberty, fraternity, and dignity. This approach underscores the importance of constitutional morality, prioritizing it over prevailing societal norms. Importantly, it acknowledges that while the fundamental framework of the Indian Constitution is immutable, the Constitution itself should adapt and evolve in pursuit of societal betterment.

⁶ *The Constitution (Forty-Second Amendment) Act*, 1976 (India).

⁷ *India Const. arts. 14, 19 & 21; MC Mehta v. Union of India*, A.I.R. 1987 S.C. 1086 (India) (recognizing the right to life and a clean environment).

⁸ Karl Klare, *Legal Culture and Transformative Constitutionalism*, 14 *S. Afr. J. on Hum. Rts.* 146 (1998).

⁹ Pius Langa, *Transformative Constitutionalism*, 17 *Stellenbosch L. Rev.* 351 (2006).

As Justice Chandrachud rightly said in this perspective, “*Transformative constitutionalism refers to the infusion of the values of liberty, equality, fraternity, and dignity in the social order. Thus, transformative constitutionalism is an inevitable as well as a significant process that helps to define the essence of democracy and a constitution within it.*”¹⁰

The constitution of India 1950 as originally enacted did not set out any specific duties of citizens. In 1947, Sir BN Rau, the constituent Assembly’s constitutional adviser, prepared and submitted a Draft Constitution to the Drafting Committee. Chapter XI Of the draft included a section on duty's citizens, but it was dropped. During the constituent assembly debate 1948 - 1949, few members proposed the insertion of duties or obligations of all responsibilities of citizens in the constitution of India. During this time the members Include that Every right has a corresponding duty.¹¹ After certain years in 1969, the Supreme Court acknowledged the existence of constitutional duties of citizens, and identified part IV of the constitution, which set out DPSP as they are suits and the court observed:

*It is a fallacy to think that under our constitution there are only rights and no duties. The provision of part IV enables the legislature and the government to impose various duties on citizens. The provision they are in our knowingly created elastic because the obligations imposed on the citizen depend on a certain extent to which the directive principles are implemented.*¹²

On 26th February 1976, Congress President D.K. Barooah decisively appointed a committee, led by the accomplished former Defence Minister Sardar Swaran Singh, to explore amendments to the Constitution rooted in practical experiences. During a pivotal All India Congress Committee (AICC) meeting on 29th May 1976, Dr. Karan Singh emphatically proposed the inclusion of fundamental duties and obligations for citizens, arguing that this would effectively balance their rights.¹³ The committee conducted a thorough analysis of duties outlined in other constitutions while deeply considering India's unique socio-economic context. They proposed eight fundamental duties, although initially overlooking a fundamental environmental duty. However, the AICC embraced some of the committee's recommendations and took the crucial step of adding the environmental duty. This led to the formulation of

¹⁰ *Navej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India) (Chandrachud, J., concurring).

¹¹ *Constituent Assembly Debates* (1948–1949), <https://cadindia.clpr.org.in/> (last accessed May 29, 2025).

¹² *Chandra Bhavan Boarding and Lodging, Bangalore v. State of Mysore*, A.I.R. 1970 S.C. 2042, 2050 (India).

¹³ *Constituent Assembly Secretariat, Report of the Swaran Singh Committee on Fundamental Duties* (1976); *All India Congress Committee (AICC)*, Minutes of Meeting (May 29, 1976).

Clause 11 of the Constitution (44th Amendment) Bill, which introduced a new Part IVA to specify citizens' duties, including the imperative of protecting the natural environment and showing compassion for living creatures.¹⁴ Minister H.R. Gokhale introduced the bill in the Lok Sabha on 1st September 1976, where it was robustly passed on 2nd November 1976. It subsequently advanced to the Rajya Sabha, where it received approval on 11th November 1976. Following ratification and presidential assent, this bill transformed into the Constitution (42nd Amendment) Act 1976, which firmly established ten fundamental duties, including the vital environmental duty.¹⁵ Part IV (A) of the constitution article 51 A now sets out 10 fundamental duties including the fundamental environmental duty of every citizen of India.

Since then, the Supreme Court of India has affirmed that both the state and citizens share the unequivocal responsibility of protecting the environment. While the right to a pollution-free environment is crucial, it is inherently implied under Article 21 of the Constitution, which prioritizes the right to life and personal liberty, rather than being explicitly stated.¹⁶

3. VARIOUS CONSTITUTIONAL PROVISIONS AND ENVIRONMENT PROTECTION IN INDIA

Human activity is undeniably the primary driver of environmental degradation in India. The law serves as a critical regulator of human conduct and behavior in this context. It plays an essential role in safeguarding the environment from various forms of pollution, including water and air pollution, all of which stem from human activities. Over the years, India has enacted numerous laws aimed at protecting the environment, as well as its flora and fauna. Notably, India stands out as the first country to enshrine constitutional protection for the environment. The Indian Constitution mandates both the state and its citizens to actively protect and enhance the environment, reflecting our unique circumstances. The influence of this constitutional provision extends beyond India, inspiring other nations to follow suit. A prime example is South Africa, where the framers of their Constitution were significantly impacted by India's environmental provisions, leading them to establish similar protections. This article aims to thoroughly analyze the various constitutional provisions that focus on environmental protection

¹⁴ Constitution (*Forty-Fourth Amendment*) Bill, 1976, cl. 11 (India).

¹⁵ Constitution (*Forty-Second Amendment*) Act, 1976, § 11 (India) (inserting Part IVA, art. 51A).

¹⁶ *MC Mehta v. Union of India*, A.I.R. 1987 S.C. 1086 (India); *Subhash Kumar v. State of Bihar*, A.I.R. 1991 S.C. 420 (India).

and assess the extent to which principles of Sustainable Development have been realized through the judicial system in India.

3.1 FEDERAL SYSTEM OF GOVERNMENT

Legislative and administrative relations between the Union and the states are firmly established by Part XI of the Constitution, specifically from Articles 245 to 246.¹⁷ Article 245 empowers Parliament to make laws applicable across the entire country, while state legislatures are granted the authority to legislate for their respective states.¹⁸ Article 246 delineates the legislative subjects between the Union and the State, categorizing them into three distinct lists found in the VII Schedule of the Constitution: the Union List, the State List, and the Concurrent List.¹⁹ The Union List (List I) comprises 97 subjects, over which Parliament holds exclusive legislative power. Additionally, Parliament possesses the residual power to legislate on any matter not explicitly covered by these three lists.²⁰ The subjects included in the Union List encompass critical areas such as atomic energy, mineral resources, defense, participation in international organizations, and the implementation of decisions from international conferences, treaties, and agreements with foreign nations. It also covers inter-state transportation, shipping, regulation of major ports, air traffic, and the development of oil and mineral resources, along with the regulation of inter-state rivers and fishing. Therefore, subjects with inter-territorial environmental impacts fall squarely within Parliament's jurisdiction to ensure they are regulated under uniform national laws. Furthermore, Article 254 addresses any inconsistencies between laws enacted by Parliament and those passed by state legislatures.²¹ It asserts that when a central law conflicts with a state law concerning subjects in the Concurrent List, the central law will take precedence. However, if a state law is enacted after a central law and has received the President's assent, it will prevail. This framework guarantees a coherent legislative approach while respecting the authority of both the central and state governments.

3.2 INDIAN'S INTERNATIONAL OBLIGATION TOWARDS CONSTITUTION

Parliament has the authority under Article 253 of the Indian Constitution to enact laws for

¹⁷ *India Const.* pt. XI, arts. 245–246.

¹⁸ *India Const.* art. 245.

¹⁹ *India Const.* art. 246; id. sched. VII.

²⁰ *India Const.* art. 248 (residuary powers).

²¹ *India Const.* art. 254(1).

implementing international treaties or decisions.²² This provision empowers courts to uphold such legislation when enacted under Article 253, linked with Entries 13 and 14 of the Union List.²³ In line with Article 253, Parliament has enacted the Air (Prevention and Control of Pollution) Act, 1981, and the Environment (Protection) Act, 1986.²⁴

In *People's Union for Civil Liberties v. Union of India (1997)*,²⁵ The Supreme Court held that the provision of the international covenant, which elucidates and effectuates the fundamental rights guaranteed by our constitution, can certainly be relied upon by courts as a bevel of those fundamental rights and hence, enforceable as such.

In *Vellore Citizens' Welfare Forum v. Union of India (1996)*²⁶

The Supreme Court held that it is nearly an accepted submission of laws which basis rule of customary international laws that are not create any inconsistency with the domestic law and shall be followed by the court of law.

Article 51 (C) of the Indian Constitution establishes the state's commitment to respecting international law and treaty obligations in interactions among organized groups. Since its enactment, India has actively engaged in a wide array of international treaties and conferences, firmly adopting vital environmental principles such as the precautionary principle, the polluter pays principle, and the public trust doctrine.²⁷ The Constitution unequivocally empowers Parliament to implement decisions from international treaties and agreements, ensuring they align with its provisions, which serve as the supreme law of the land. As such, Indian courts are fully equipped to recognize and enforce these international covenants when they do not conflict with constitutional mandates.²⁸

4. CITIZENS FUNDAMENTAL DUTY TO PROTECT THE ENVIRONMENT FROM DEGRADATION AND DAMAGES

The Constitution (Forty-Second Amendment) Act of 1976 significantly enhanced the Indian

²² India Const. art. 253.

²³ India Const. sched. VII, list I, entries 13 & 14.

²⁴ Air (Prevention and Control of Pollution) Act, 1981 (India); Environment (Protection) Act, 1986 (India).

²⁵ People's Union for Civil Liberties v. Union of India, (1997) 3 S.C.C. 433 (India).

²⁶ Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 S.C.C. 647 (India).

²⁷ India Const. art. 51(c).

²⁸ India Const. arts. 13 & 253.

Constitution by incorporating a new Part IV (A) that outlines fundamental duties.²⁹ Among these duties, Article 51-A specifies ten key responsibilities, one of which mandates the protection and improvement of the environment.³⁰ This important Committee addition was a result of the recommendations put forth by the Swaran Singh.³¹ Notably, Article 51(A)(g) is dedicated specifically to the fundamental duty related to environmental stewardship, providing clear guidance on this crucial responsibility.

*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.*³²

Every citizen of India has a crucial responsibility to protect the environment and preserve our natural resources. While the state establishes guidelines for environmental protection, individuals ultimately have to step up, as a pollution-free environment is essential for life.³³

Article 51-A boldly underscores that "citizens" are entrusted with fundamental duties, creating a strong sense of ownership and connection rather than treating individuals as mere "subjects," a term that has rightfully been abolished since our independence.³⁴

This principle was put to the test in the Rajasthan High Court case of ***L.K. Koolwal vs. State of Rajasthan (1988)***,³⁵ where the Jaipur municipal authority was found egregiously negligent in maintaining public hygiene. Their failure to uphold their responsibilities led to significant sanitation issues that jeopardized the health of residents. Mr. Koolwal and his fellow citizens rightly took action under Article 226 of the Indian Constitution to hold the municipality accountable for its gross negligence.

The court accepted the petition and explained the actual scope of Article 51-A in the following terms:

²⁹ Constitution (Forty-Second Amendment) Act, 1976 (India).

³⁰ India Const. art. 51A.

³¹ Report of the Swaran Singh Committee on Fundamental Duties (1976).

³² India Const. art. 51A(g).

³³ MC Mehta v. Union of India, (2004) 12 S.C.C. 118 (India).

³⁴ Id.

³⁵ L.K. Koolwal v. State of Rajasthan, A.I.R. 1988 Raj. 2 (India).

We Can call article 51 -A ordinarily the duty of the citizens, but it is the right of the citizens as it creates the right in favor of citizens to move to the court to see that perform their duties faithfully and the obligatory and primary duties are performed following the law of the land. Omissions or commissions are brought to the notice of the court by the citizen and thus, Article 51-A gives a right to the citizens to move the court for the enforcement of the duty cast on state, instrumentalists, agencies, departments, local bodies, and statutory authorities created under the particular law of the state.

In the case of *M. C. Mehta v. State, (1992)*³⁶ the court emphasized a fundamental principle: “Rights and duties co-exist. There cannot be any right without any duty, and there cannot be any duty without any right.” It was made clear that inadequate sanitation results in slow poisoning, severely impacting the lives of citizens, and thus it falls squarely within the framework of Article 21 of the Constitution. Consequently, every citizen must ensure that the rights they possess under the Constitution are actively upheld.

In the case of *Goa Foundation v. State of Goa, (2001)*³⁷ the petitioner, a society registered under the appropriate legal provisions, highlighted a crucial point: citizens in India have a fundamental duty under Article 51-A(G) to protect and improve their natural environment, which includes forests, lakes, rivers, wildlife, and showing compassion for living creatures. The pivotal question before the court was whether such a society shares these same responsibilities. The court affirmatively confirmed that the society indeed bears these duties. These ruling grants the petitioner the standing necessary to take legal action to combat ecological degradation, formulate and execute programs aimed at rehabilitating the environment, and to restore the ecological balance. Given that the protection and enhancement of the environment is a constitutional duty for every citizen, it is clear that there should be no restrictions or limitations on public interest litigation in the realm of environmental issues.

5. DIRECTIVE PRINCIPAL OF STATE POLICY AND PROTECTION OF THE ENVIRONMENT

Part IV of the Constitution clearly outlines the Directive Principles of State Policy. Although these principles are not enforceable in a court of law, the state needs to adhere to them when enacting laws and regulations. Notably, the 42nd Amendment of the Constitution, enacted in

³⁶ *MC Mehta v State of Tamil Nadu* (1992) 3 SCC 358 (India).

³⁷ *Goa Foundation v State of Goa* (2001) 2 SCC 97 (India).

1976, added a significant directive principle in Article 48A, which mandates the protection and improvement of the environment.³⁸ This reinforces the state's commitment to environmental stewardship. It Stated as follows:

*The state shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country.*³⁹

In this way, the Constitution of India became the first Constitution of the world where specific provision was made in the Supreme Law putting obligations on the “state” under Article 48-A as well as “Citizens” under Article 51A (g) to protect and improve the environment.⁴⁰ It's the positive development of Indian Law.

Even, Article 37 of the Constitution provides:

*The provisions contained in this part (part IV) shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.*⁴¹

The Indian judicial system plays a crucial role in safeguarding and enhancing the environment, demonstrating that directive principles are not merely 'guiding principles' of policy but are, in fact, justiciable and must be enforced. In the landmark case of **Shri Sachidanand Pandey v. State of W.B., (1987)**,⁴² the Supreme Court emphasized that whenever ecological issues are presented, the court must take into account Articles 48-A and 51-A(g) of the Constitution. The court further observed:

The court unequivocally stated that when called upon to enforce these directive principles and fundamental duties, it will not dismiss its responsibilities by claiming that priorities fall solely within the domain of policy-making. Instead, the court is prepared to consider relevant factors while excluding irrelevant ones. In cases where appropriate, the court may indeed opt for a decisive course of action, although the extent of this will depend on the specific circumstances at hand. Importantly, the court retains

³⁸ Constitution (Forty-Second Amendment) Act, 1976 (India).

³⁹ India Const. art. 48A.

⁴⁰ India Const. arts. 48A & 51A(g).

⁴¹ India Const. art. 37.

⁴² *Shri Sachidanand Pandey v. State of West Bengal*, (1987) 2 S.C.C. 295 (India).

the authority to issue necessary directives. However, when the matter involves a careful weighing of relevant considerations, the court may justifiably defer to the decisions made by the concerned authorities.⁴³

The observations made by the Supreme Court clearly indicate that, in certain situations, judges can take proactive measures, mandating other organs of the State, specifically the legislature and executive, to fulfill their statutory obligations to protect and improve the environment. Nonetheless, if the government has thoughtfully considered various relevant factors and reached a prudent decision, the court may refrain from intervening, provided there is no evidence of mala fides.⁴⁴

In the case of *T. Damodhar Rao v. S.O. Municipal Corporation, Hyderabad, (1987)*⁴⁵ the Court emphasized that Articles 48-A and 51-A(g) underscore the fundamental reality that protecting the environment is not just a “duty” of every citizen; it is an absolute “obligation” of the State and all its organs, including the Courts.

In *Kinkri Devi v. State, (1988)*⁴⁶ the Himachal Pradesh High Court affirmed that Articles 48-A and 51-A(g) indicate that the State has a constitutional mandate, while citizens are equally compelled to not only protect the environment but also to enhance it and safeguard our natural resources. This encompasses forests, flora and fauna, rivers, lakes, and all water resources across the nation. Neglecting or failing to fulfill this duty constitutes a breach of fundamental law, binding every citizen to uphold their responsibility. The Court, therefore, cannot stand idly by; it must actively ensure the realization of the constitutional objective of environmental protection and improvement in India. To this end, the Court is empowered to intervene decisively by issuing appropriate writs, orders, and directions.

6. FUNDAMENTAL RIGHTS AND ENVIRONMENTAL PROTECTION

Principle 1 of the Stockholm Declaration is closely connected to Articles 14, 19, and 21 of the Indian Constitution, which address equality, freedom of expression, and the right to life and personal liberty. This trio is often referred to as the golden triangle of the Constitution.

⁴³ *Dahanu Taluka Environment Protection Group v Bombay Suburban Electricity Supply Co Ltd* (1991) 2 SCC 539 (India).

⁴⁴ *Id.*

⁴⁵ *T Damodhar Rao v S.O. Municipal Corporation, Hyderabad* AIR 1987 AP 171(India).

⁴⁶ *Kinkri Devi v State* AIR 1988 HP 4 (India).

Importantly, fundamental rights can exist even if not explicitly stated in Part III.⁴⁷

While the Constitution doesn't specifically mention the right to a healthy environment, the judiciary has affirmed that this right falls under Article 21, which encompasses the right to life. The Indian judiciary has been instrumental in transformative constitutionalism for environmental protection. Numerous public interest litigations under Articles 32 and 226 have prompted the Supreme Court and High Courts to actively safeguard the environment, significantly advancing a human rights approach in this domain.⁴⁸

(i) **Right to equality** – Article 14 of the Constitution deals with the right to equality and provides.⁴⁹

“The state shall not deny to any person right to equality before the law or equal protection of the laws within the territory of India”.

Article 14 unequivocally underscores the right to equality and firmly rejects any arbitrary government actions that undermine this principle. This is especially crucial in urban development, where authorities often grant construction permissions without thoroughly considering public interest or environmental impacts.

In the landmark case of *Bangalore Medical Trust v. B. S. Muddappa*, (1991)⁵⁰ the Supreme Court addressed the inappropriate allotment of land designated for a public park for the construction of a hospital. Residents rightfully challenged this decision, highlighting its violation of constitutional environmental protections. While the development authority argued it had the discretion to determine land use, this reasoning fell short. The Supreme Court boldly dismissed the appeal, emphasizing the vital importance of public parks and open spaces in urban environments. It asserted that any action that compromises individual freedoms and human dignity, as enshrined in Article 14, is fundamentally at odds with the right to equality. The Court also reaffirmed the supremacy of the rule of law, declaring that actions that violate legal standards are illegal, regardless of executive orders.

⁴⁷ *United Nations Conference on the Human Environment (Stockholm Declaration)*, Principle 1 (1972); India Const. arts. 14, 19 & 21.

⁴⁸ *India Const.* arts. 21, 32 & 226; see also *Subhash Kumar v. State of Bihar*, A.I.R. 1991 S.C. 420 (India).

⁴⁹ *India Const.* art. 14.

⁵⁰ *Bangalore Medical Trust v. B.S. Muddappa*, (1991) 4 S.C.C. 54 (India).

In the case of *Ivory Traders and Manufacturing Association v. Union of India, (1997)*⁵¹, the Delhi High Court upheld a prohibition on the trade of imported ivory and related products, which was challenged on the grounds of validity. The court reasoned that this ban did not infringe upon Article 14 of the Constitution, affirming that it was neither unreasonable nor arbitrary.

Similarly, in *Moulana Mufti Syed Md. Noorur Rehman Barkati v. State of West Bengal, (1999)*,⁵² a restriction was instituted on the use of microphones. This action was necessitated by directives from the Central Pollution Control Board and the State Pollution Control Board. Notably, such formal restrictions had not been imposed in other regions of India. The court emphasized that the enforcement of fundamental rights under Article 19(1)(a) within West Bengal did not constitute discrimination under Article 14, as it had not been uniformly applied across the country.

Additionally, the provisions of Article 14 may serve as a basis to challenge governmental actions granting permissions for mining and similar activities that possess significant environmental impacts, particularly if such permissions are issued without proper justification.

(ii) Right to life – Right to live in a Healthy Environment. – Article 21 stated that⁵³ “no person shall be deprived his life or personal liberty except the procedure established by Law”.

The scope of Article 21 was fundamentally expanded following the landmark case of *Kesavananda Bharati vs. State of Kerala, (1973)*⁵⁴. In this pivotal judgment, the Supreme Court decisively recognized that personal liberty extends beyond mere physical restraint or coercion. The ambit of Article 21 now encompasses the undeniable right to live in a healthy, pollution-free environment, which is firmly established as a fundamental right for all citizens of India.

The recognition of the right to a healthy environment as an integral part of Article 21 first emerged in the notable case of *Rural Litigation and Environmental Kendra v. State of Uttar*

⁵¹ *Ivory Traders and Manufacturers Association v. Union of India*, 1997 S.C.C. OnLine Del. 358 (India).

⁵² *Moulana Mufti Syed Md Noorur Rehman Barkati v. State of West Bengal*, 1999 S.C.C. OnLine Cal. 334 (India).

⁵³ *India Const.* art. 21.

⁵⁴ *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225 (India).

Pradesh, (1985)⁵⁵, widely referred to as the Doon Valley case. Here, the Rural Litigation and Environmental Kendra of Dehradun, alongside a proactive group of citizens, bravely challenged harmful mining practices occurring in the Mussoorie Hills. These destructive activities not only led to deforestation but also triggered severe soil erosion, landslides, and the blockage of essential underground water channels that sustain numerous rivers and springs in the valley. The Supreme Court mandated the registry to treat this significant appeal as a writ petition under Article 32 of the Indian Constitution. The Court unequivocally held that the degradation of ecology and the pollution of air and water due to quarrying operations directly threaten people's lives, thereby violating their right to life and personal liberty as enshrined in Article 21.

It is noteworthy that during this case, the Supreme Court made no specific reference to Article 48A, which aims to safeguard the environment, nor did it delineate particular fundamental rights infringed. Nevertheless, the exercise of jurisdiction under Article 32 presupposes an infringement of fundamental rights, setting a clear precedent in environmental law.

In **M.C. Mehta v. Union of India, (1987)**⁵⁶, known popularly as the Oleum Gas Leak case, the Supreme Court further solidified its stance, declaring that the right to live in a pollution-free environment is an essential component of the fundamental right to life under Article 21.

A landmark ruling from the Andhra Pradesh High Court in the monumental case of **T. Damodhar Rao v. S.O. Municipal Corporation of Hyderabad (1987)**,⁵⁷ reinforced this perspective.

The court boldly observed that the right to life, as articulated in Article 21, includes the protection and preservation of natural resources, which are indispensable for enjoying life. It asserted that the violent extermination of life constitutes a violation of Article 21, and similarly, the insidious poisoning of the atmosphere due to environmental pollution must also be regarded as a grave infringement.

In **L.K. Koolwal v. State, (1988)**,⁵⁸ the Rajasthan High Court made a compelling argument that maintaining health, sanitation, and environmental integrity falls squarely within the scope of

⁵⁵ *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*, A.I.R. 1985 S.C. 652 (India).

⁵⁶ *MC Mehta v Union of India* AIR 1987 SC 1086 (India).

⁵⁷ *T Damodhar Rao v S O Municipal Corporation, Hyderabad* 1987 SCC Online AP 96 (India).

⁵⁸ *LK Koolwal v State* AIR 1988 Raj 2 (India).

Article 21. The court recognized that neglecting these vital aspects poses significant hazards that adversely affect citizens' lives.

In *Subhas Kumar v. State of Bihar, (1991)*,⁵⁹ the Supreme Court declared unequivocally that the right to life under Article 21 encompasses the right to enjoy pollution-free water and air. Any threat to this quality of life is a lamentable breach of legal rights, empowering citizens to seek justice under Article 32 against water or air pollution.

Furthermore, in *M.C. Mehta v. Union of India, (1992)*,⁶⁰ the Supreme Court addressed the urgent issue of environmental pollution stemming from stone-crushing activities in and around Delhi, Faridabad, and Ballabgarh. The Court acknowledged that while environmental changes are an inevitable byproduct of industrial development, the degradation of environmental quality cannot be permitted to extend to levels that jeopardize public health. Expressing a strong commitment to environmental protection, the Court confirmed that every citizen possesses the unequivocal right to fresh air and a pollution-free environment. As a result, the Supreme Court deemed this pollution a violation of Article 21, ordering an immediate halt to the operations of the stone-crushing units in the affected areas, while also directing the government to rehabilitate these facilities within a six-month timeframe.

In the case of *Indian Council for Enviro-Legal Action v. Union of India, (1996)*,⁶¹ commonly known as the H-Acid case, a public interest litigation was initiated by an environmental organization seeking accountability from the industrial units responsible for pollution. This case further underscores the growing commitment to uphold the right to a healthy environment as an intrinsic part of fundamental rights in India.

The Supreme Court has clearly stated that if it determines the government and relevant authorities fail to act as required by law and their inaction jeopardizes the right to life of any citizen or group within the country, it must intervene decisively. The Court firmly rejected the notion that private corporate bodies could escape accountability under Article 12 of the Indian Constitution, asserting that a writ petition under Article 32 can indeed be brought against them. When industries operate in blatant disregard of the law to the detriment of the lives and liberties

⁵⁹ *Subhash Kumar v State of Bihar* AIR 1991 SC 420 (India).

⁶⁰ *MC Mehta v Union of India* (1992) 3 SCC 256 (India).

⁶¹ *Indian Council for Enviro-Legal Action v Union of India* (1996) 3 SCC 212 (India).

of nearby citizens, the Supreme Court possesses the authority to step in and safeguard the fundamental rights of individuals.

In the landmark case of *Vellore Citizen's Welfare Forum v. Union of India, (1996)*,⁶² commonly known as the T.N. Tanneries case, the 'Vellore Citizens Welfare Forum' filed a Public Interest Litigation (PIL) under Article 32 of the Constitution. They raised concerns about severe environmental degradation and water pollution resulting from the unchecked discharge of untreated effluents by tanneries and other harmful industries into the Palar River in Tamil Nadu, a vital source of drinking water for residents. Furthermore, harmful chemicals contaminated nearby agricultural lands and public spaces, leading to alarming findings by the Tamil Nadu Agricultural University Research Centre, Vellore, which indicated that around 35,000 hectares of farmland had become entirely or partially infertile and unsuitable for cultivation.

The Supreme Court decisively ruled that, in light of the constitutional provisions contained in Articles 21, 47, 48-A, and 51-A(g), along with statutory measures provided by the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, and the Environmental (Protection) Act, 1986, principles such as the “precautionary principle” and the “polluter pays principle” form a core part of India's environmental law. The Court's assertiveness underscores its commitment to upholding environmental protection and the rights of citizens. In the well-known *Taj Mahal Case, (1997)*,⁶³ several industries near the Taj Trapezium Zone were using coke and coal as industrial fuels. These industries were ordered to relocate to an alternative area in Delhi, as outlined in the Agra Master Plan. The court also specified the rights and responsibilities of the workers in these industries, emphasizing the principle of sustainable development.

(iii) Right to Livelihood - Judicial activism has significantly broadened the interpretation of Article 21 of the Indian Constitution to include the right to livelihood as part of the right to life. In *Pradeep Krishna v. Union of India, (1996)*,⁶⁴ the Madhya Pradesh government allowed villagers and tribals to collect Tendu leaves from areas near national parks, preserving their traditional rights. Despite challenges from social action litigation focused on ecological concerns, the Supreme Court upheld the order, emphasizing the need for environmental

⁶² *Vellore Citizens Welfare Forum v Union of India* (1996) 5 SCC 647 (India).

⁶³ *MC Mehta v Union of India* (1997) 2 SCC 353 (India).

⁶⁴ *Pradeep Krishna v Union of India*, AIR 1996 SC 1045 (India).

protection alongside community rights. This case exemplifies a judicial approach that harmonizes livelihoods with sustainable development.

(iv) Fundamental Freedom of Speech and Expression - Article 19(1)(a) guarantees every citizen the right to freedom of speech and expression. Numerous environmental cases have emerged in India through public interest litigations, where citizens seek to protect their right to a healthy environment. The media, as the fourth pillar of democracy, plays a crucial role in raising awareness and facilitating public discourse on environmental issues.

In *P.A. Jacob v. The Superintendent of Police, Kottayam, (1993)*⁶⁵ the Kerala High Court clarified that this freedom does not extend to unrestricted use of loudspeakers, allowing for necessary regulations against noise pollution.

(v) Freedom to Carry on Trade or Business - Article 19(1)(g) allows citizens to engage in any profession or trade, though reasonable restrictions for public interest can be imposed. Environmental concerns justify such restrictions.

In the notable case of *M.C. Mehta v. Union of India, (1988)*⁶⁶ (the Ganga Pollution case), the court ordered tanneries polluting the Ganga to establish effluent treatment plants within six months. Failure to comply resulted in their closure, prioritizing public health and ecological integrity over economic interests. This case reinforces the bedrock belief that environmental protection is critical for the public good and underscores the judiciary's role in enforcing reasonable restrictions on trade to safeguard it.

7. IMPLEMENTATION OF VARIOUS PRINCIPLES OF SUSTAINABLE DEVELOPMENT THROUGH THE JUDICIARY SYSTEM OF INDIA

The concept of sustainable development was established at the United Nations Conference on Environment and Development in Rio de Janeiro in 1992, a landmark moment uniting over 100 Heads of State and representatives from 178 national governments alongside civil society.⁶⁷ This initiative aimed to confront the pressing issues of environmental degradation highlighted by the Brundtland Commission in its 1987 report, *Our Common Future*. The

⁶⁵ *P.A. Jacob v The Superintendent of Police, Kottayam*, AIR 1993 Ker 1 (India).

⁶⁶ *M.C. Mehta v Union of India* (Ganga Pollution case), AIR 1988 SC 1037 (India).

⁶⁷ *United Nations Conference on Environment and Development, Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26 (Vol. I) (1992).

Brundtland Report warned that unchecked human activity poses severe risks to our planet and ecosystems, signaling a need for responsible growth. Influential works like Rachel Carson's *Silent Spring* (1962) and Garret Hardin's *Tragedy of the Commons* (1968) laid the groundwork for these concerns.⁶⁸ Sustainable development gained further recognition at the 1972 UN Conference on the Human Environment in Stockholm, establishing key principles advocating for the preservation of renewable resources and ensuring environmental policies support developing nations. The concept was famously defined in the Brundtland report as development that meets current needs without compromising future generations. This vision emphasizes that economic progress should go hand in hand with environmental stewardship. The Rio Summit marked a commitment from global leaders to this cause, followed by the 2002 World Summit on Sustainable Development in Johannesburg, which evaluated progress and produced vital commitments in sustainable consumption, water, and energy. Ultimately, the principles of sustainable development inspire collective action for a resilient planet now and for future generations.

- 1) Inter- Generation Equity;
- 2) Use and Conservation of Natural Resources;
- 3) Environmental Protection;
- 4) The Precautionary Principle;
- 5) The Polluter pays Principle;
- 6) Obligation to Assist and Cooperation;
- 7) Eradication of Poverty;
- 8) Financial Assistance to the Developing Countries.

Now, we will confidently delve into the application of these principles in the context of the Indian Judiciary System.

⁶⁸ Garrett Hardin, *The Tragedy of the Commons*, 162 Science 1243 (1968).

In the landmark case of *Mc Mehta vs Union of India, (1987)*,⁶⁹ commonly referred to as the oleum gas leakage case, the Supreme Court of India unequivocally asserted that the right to live in a pollution-free environment is an integral part of Article 21, which guarantees the right to life and personal liberty. Similarly, in the *Vellore Citizens Welfare Forum vs Union of India (1996)*,⁷⁰ the Tamil Nadu tanneries case), the Supreme Court established the significance of the “precautionary principle” and the “polluter pays principle,” both of which are foundational to Sustainable Development and can be derived from various constitutional provisions under Article 21 of the Indian Constitution.

When discussing the essentials of the fundamental right enshrined in Article 21, the Apex Court of India has recognized several core principles aimed at protecting the environment. These include:

i) Polluter Pays Principle

The essence of this principle is straightforward: “If you make a mess, it is your duty to clean it up.” The polluter is unequivocally liable for any environmental damage caused. This responsibility extends not only to compensating victims of pollution but also to rectifying environmental degradation. Importantly, the polluter pays principle emphasizes a curative approach rather than focusing solely on fault. First articulated in 1972 through the OECD Guiding Principles concerning International Economic Aspects of Environmental Policies, this principle found robust application in the *Vellore Citizens Welfare Forum v. Union of India*⁷¹ case. Furthermore, in *M.C. Mehta v. Union of India (1996)*⁷² (Calcutta Tanneries Case), the court-mandated the relocation of industries found to be polluting and required them to pay 25% of the land cost. Industries that failed to comply faced closure, reaffirming the court's earlier directives from the Vellore Citizens case.

In *Indian Council for Environmental Legal Action v. Union of India, (1996)*,⁷³ the Supreme Court explicitly applied the polluter pays principle for the first time. The case involved severe pollution caused by the production of 'H' acid from multiple industries in a Rajasthan village.

⁶⁹ *M.C. Mehta v Union of India* (Oleum Gas Leak Case), AIR 1987 SC 965 (India).

⁷⁰ *Vellore Citizens' Welfare Forum v Union of India*, AIR 1996 SC 2715 (India).

⁷¹ *Vellore Citizens Welfare Forum v Union of India* (1996) 5 SCC 647 (India).

⁷² *M.C. Mehta v Union of India* (1996) 3 SCC 212 (Calcutta Tanneries Case), (India).

⁷³ *Indian Council for Environmental Legal Action v Union of India* (1996) 3 SCC 212 (India).

The court ruled that these polluting industries bear absolute liability to compensate the affected villagers and must take necessary measures to remove pollutants from the environment.

ii) Precautionary Principle

Principle 15 of the Rio Declaration makes it crystal clear that to safeguard the environment, the precautionary principle must be applied. This principle asserts that when facing a significant threat or potentially irreversible damage to the environment, the absence of total scientific certainty should not be used as an excuse to delay the implementation of cost-effective protective measures.⁷⁴

In the *M.C. Mehta v. Union case, (1997)*,⁷⁵ popularly known as the Taj Mahal Case, the court advanced the precautionary principle decisively. Following public interest litigation alleging that pollution was degrading the iconic marble of the Taj Mahal, the court sought expert technical advice. Based on the findings, the court recognized the monument's international significance and directed industries in the Taj Trapezium Zone (TTZ) to shift from coke/coal to natural gas as their fuel source. Should they fail to make the necessary changes, they were ordered to cease operations and relocate outside Delhi, with the assurance of incentives for those who complied.

In essence, the Indian Judiciary has firmly integrated these environmental principles into its legal framework, ensuring that the right to a healthy environment is safeguarded for all citizens.

In *Vellore Citizens Welfare Forum v. Union of India, (1996)*⁷⁶ The Supreme Court accepted the concept of the "Precautionary Principle" as part of the environmental law of the Country. In this case, precautionary principles are applied in the context of the Indian judicial system.

- (I) Environmental measures by the State Government and the statutory authorities must anticipate, prevent, and attack the cause of environmental degradation.
- (II) Where there are threats of serious and irreversible damage, lack of Scientific certainty should not be used as a reason for postponing measures

⁷⁴Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/26 (Vol. I), Principle 15 (1992).

⁷⁵ *M.C. Mehta v. Union of India* (Taj Trapezium Case), (1997) 2 S.C.C. 353 (India).

⁷⁶ *Vellore Citizens' Welfare Forum v. Union of India*, supra note 72.

to prevent environmental degradation.

- (III) The onus of proof is on the actor or the developer to show that his action is environmentally benign.

iii) Doctrine of Public Trust

The public trust doctrine is founded on the principle that certain essential resources necessary for the fulfilment of basic human needs—including air, water, and forests—possess significant value to society as a whole. Therefore, it is considered unreasonable and unjust to allow these vital resources to be subject to private ownership. As these resources are regarded as natural gifts, it is the responsibility of the government to ensure their availability to every individual, irrespective of social status. This doctrine imposes an obligation on the government to safeguard these resources for public benefit rather than permitting their exploitation for private economic gain. Consequently, the utilization of these resources for commercial purposes is prohibited. To promote the beneficial and optimal use of these resources, the state authorities are required to engage in proactive measures. Moreover, citizens are entitled to question the government regarding any ineffectiveness in resource management. The state, recognized as a trustee, bears a legal obligation to protect natural resources.⁷⁷

In the case of *MC Mehta vs. Kamal Nath, (1996)*,⁷⁸ the Himachal Pradesh government made an erroneous decision by granting a lease of riparian forest land to a private company operating a motel alongside the Beas River for commercial activities. The motel's management obstructed the river's natural flow by blocking its spill channel, resulting in pollution due to various constructions in the riverbed and along its banks. This matter was presented to the court through public interest litigation.

The court elucidated the scope and implications of the public trust doctrine, reaffirming that resources such as air, water, and forests are of great significance to the populace and should not be subjected to private ownership. The court subsequently directed the motel authorities to pay compensation for the restoration of the environmental and ecological integrity of the area.

⁷⁷ Joseph L. Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 Mich. L. Rev. 471 (1970).

⁷⁸ *M.C. Mehta v. Kamal Nath*, (1997) 1 S.C.C. 388 (India).

Additionally, it mandated that the motel management refrain from discharging untreated effluents into the river and from encroaching on any part of it.

8. CONCLUSION

This article discusses the important roles of individuals and the state in promoting environmental constitutionalism in India. Landmark judgments have greatly advanced environmental protection, while both internal political dynamics and external engagements, such as the Stockholm Conference led by Prime Minister Indira Gandhi, have raised awareness about environmental duties. The 1976 constitutional amendment was a significant milestone, introducing explicit environmental duties into the Constitution, which previously lacked direct references to the environment. This amendment provided essential legal frameworks to address environmental challenges. The Preamble's principles of democracy and socialism are closely tied to environmental protection, emphasizing the state's responsibility to safeguard natural resources for the public good. Furthermore, the relationship between rights and duties is crucial, as citizens have the right to a healthy environment alongside the responsibility to protect it. The Supreme Court's pivotal judgments have clarified these concepts and promoted sustainable development in India, reinforcing that fundamental rights must be upheld while allowing for reasonable restrictions when necessary.

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