

Judicial Oversight: Constitutional Framework for Right to Clean and Healthy Environment in India.

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"A nation that destroys its soils destroys itself. Forests are the lungs of our land, purifying the air and giving fresh strength to our people." ~ Franklin D. Roosevelt

Abstract

A conducive environment is of utmost importance for human well-being, enabling physical, mental, and intellectual development within natural and built settings. Indian judges have displayed remarkable diligence in their enlightened decisions, laying much-needed emphasis towards the preservation of the environment, and adhering and addressing the requirements of individual people while keeping the future generation in their hindsight. Delving into the critical dimension of environmental justice, this study also investigates the concept the constitutional framework underpinning the entitlement to a uninfected atmosphere, considering its historical development, legal precedents, and contemporary significance. This paper briefly illuminates select cases where a precedent has been set which establishes the Right to Environment as a Fundamental Right in India, meanwhile assessing the transformative function of the Indian judiciary in developing jurisprudence related to protecting and preserving the environment. Ultimately, it underscores the crucial function of the judiciary in safeguarding environmental rights and fostering sustainability within the Indian legal landscape.

Keywords: *Constitution of India, Clean Environment, Judiciary, Right to life.*

Introduction

Preservation of the environment is deeply rooted in our cultural heritage and traditions. The Atharvaveda, for instance, emphasizes that Earth is our ideal abode, it is our responsibility to safeguard our haven. The Indian Constitution encapsulates the fundamentals of principles of safeguarding and conserving the natural, crucial components necessary for nature for a fulfilling life. It is imperative to acquaint ourselves with the constitutional provisions related to environmental protection to foster increased public engagement, raise environmental consciousness, promote environmental education, and sensitize individuals to the significance of preserving our ecology and environment.¹ Being globe's swiftly emerging economies, India has witnessed rapid industrialization, urbanization, and the increase in population, which have

¹ S Shanthakumar's "Introduction to environmental law" Lexis Nexis, Second Edition, 2008 [978-81-8038-392-2]

collectively placed the significant strain on its natural assets and ecosystems. The consequences of this unbridled development are profound, affecting not only the environment but also the health, well-being, and livelihoods of its citizens. India's environmental challenges are multifaceted, and their scale and complexity of these issues are exacerbated, such as deforestation, pollution, habitat destruction, where the brunt of environmental degradation is bore by a select few. Such disparities underscore the necessity for a strong legal structure that not just lays emphasis upon the entitlement to an environment free from pollution similarly ensures its equitable protection for all citizens. This right holds importance due to its enables individuals to develop physical, mental, and intellectual health within both the natural and constructed surroundings. The commitment of judges towards attainment of a better future is clearly visible in their adjudication of various cases. The judiciary proceeded as outlying as acknowledging the entitlement to an unpolluted environment as a basic Right, setting a precedent that was followed in numerous instances. The Indian Constitution, in its essence, acknowledges Article 21 making it a fundamental right for a safe and hygienic environment being recognized as innate in environment. Nonetheless, the scope and implications of this constitutional recognition require meticulous examination. India's Supreme Court has consistently widened the spectrum of fundamental rights enshrined in the Indian Constitution. This expansion began in *Maneka Gandhi V. Union of India*,² where under Article 21 Right to life was interpreted to encompass additional rights not bluntly expressed in the original Constitution³ and evolved gradually through a legacy of several significant landmark cases. Understanding the constitutional foundation of the right to clean Environment is essential for several reasons: First, it sheds light on the legal structure and organization to tackle environmental concerns and the structural or institutional setup for tackling Environmental justice in India, thus providing an understanding of how environmental rights are protected and enforced. Second, it provides a holistic perspective as to the manner in which judiciary can play a important role in holding the state accountable for environmental protection. Lastly, it informs policy development and reform by identifying gaps and difficulties faced in the existing constitutional framework, ultimately aiding in the endeavour for the pursuit of environmental sustainability and equity within the Indian legal landscape.

- The primary objectives of this paper are to analyse the historical development of right to clean environment within the Indian constitutional framework.
- To scrutinize legal precedents and judgments that have interpreted and enforced this constitutional right.

Constitutional Framework: Healthy Environment as a Constitutional Right

Indian courts has evolved three dimensions - firstly, to ensure fairness in administrative action; secondly, to safeguard the constitutionally guaranteed fundamental rights of citizens; and thirdly, to make a decision on questions of legislative competence between centre and states. However, the active role played by the judiciary in enforcing citizens' rights vis-a-vis development, often overcoming procedural rigidities by allowing letters as writs, exercising its 'epistolary jurisdiction'. A notable example is the *Doon Valley Case*,⁴ where citizens wrote to

² 1978 AIR 597.

³ The Constitution of India, 1950.

⁴ R.L. & E. Kendra, *Dehradun v. State of UP*, AIR 1985 SC 652.

the Apex Court against destructive mining practices. The Court treated the letter as a legal petition filed under the Constitution in Article 32, showcasing its epistolary jurisdiction. Not only the top judiciary but the entire hierarchy of the India's Judicial system actively safeguards fundamental rights, particularly the "Right to Life" in Article 21, which has been construed to encompass the "Right to live in a healthy environment". The judiciary has moved the Human Rights perspective to protect environment, creating a new "environmental jurisprudence". While Article 21 allows restrictions by a procedure established by law, the Indian judiciary has often disregarded such procedures when positive rights are infringed, adopting a zero-tolerance policy against imbalances between the environmental landscape within the country's growth. The mechanisms formulated by the Indian Judiciary, such as extending Locus Standi and facilitating public interest litigation, play a pivotal role in safeguarding environment in line with sustainable development.⁵

The deterioration of environment is a significant hazard to human health and sustainable development. To address this problem, the judiciary has become a key advocate for environmental justice. India's constitutional structure concerning its Constitutional entitlement to maintain a clean environment has developed, as has the judiciary's active function in interpreting and enforcing this right. The correlation between right to life, and the right to a clean environment as stipulated in the Indian Constitution under Article 21, remains pivotal. A person's quality life is significantly influenced by residing in a clean surroundings. Provisions pertaining to environmental concerns, particularly the safeguarding of forests and wildlife, were incorporated under the Indian Constitution into part IV of the Directive Principles of State Policy and listed in the concurrent list of the seventh schedule.

Consequently, the Constitution now includes provisions explicitly aimed at environmental conservation and nature protection. The part IV underscores the state's responsibility to safeguard forests, wildlife, and environment, while Part IVA of Fundamental Duties obligates and to maintain and upgrade the ecological surroundings by every citizen. The Seventh Schedule enumerates items related to preventing cruelty to animals, conserving forests, and safeguarding wild animals and birds. Article 21 ensures the entitlement to a pollution-free environment, ensuring that no individual is "deprived of life or personal liberty" except through lawful procedures, thereby upholding entitlement to live with dignity. The Apex Court has expansively interpreted this right, considering it inclusive of a wholesome environment development for sustainability. The judiciary consistently aims to broaden the spectrum of Article 21, emphasizing the significance of environmental rights within the confines of the right to life.⁶ The Environmental (Protection) Act, of 1986 stipulates the underlying fundamental environmental components encompass air, water, land, humans, and other living beings.⁷ Additionally, the term "wholesome environment" signifies the healthy and hazard-free conditions of human habitation. Numerous Supreme Court rulings emphasize that a "healthy environment" is an essential aspect of the right to life enshrined under the Article 21 of

⁵ INDIAN JUDICIAL ACTIVISM ON THE 'RIGHT TO ENVIRONMENT' : ADJUDICATION & LOCUS STANDI Garima Prashad. DOI: <http://dx.doi.org/10.2139/ssrn.3391846>

⁶ Ritul Nanda and Rishabh Ojha , Right to Wholesome Environment, 5 (1) IJLMH Page 1865 - 1871 (2022), DOI: <https://doi.org/10.1000/IJLMH.112613> Last Visited on 22nd November 2022.

⁷ Section 2, the Act of Environmental (Protection) Act, 1986.

Constitution. In recent decades, India has experienced a notable expansion the utilization of writ jurisdiction under both Article 32 and 226 of the Constitution.

The acknowledgment of the entitlement to reside in a wholesome environment is longstanding by the legal system and judiciary. Prior to the 1980s, this entitlement lacked constitutional recognition, existing instead as a judicial enforcement under various statutes for e.g., the Indian Penal Code, 1860, Law of torts, Criminal Procedure Code, 1973, Civil Procedure Code, 1908, Law of Torts, among others. It wasn't until the late 1980s and thereafter that several Courts of India formally designated this entitlement as fundamental. Right to life⁸ inherently encompasses the privilege to exist without the detrimental encroachment of pollution, ecological imbalances and environmental degradation. In landmark case, *A.P Pollution Pollution Control Board II v. Prof. M.C. Nayudu*,⁹ the court determined that, internationally, an emerging concept has emerged where a robust environmental development for sustainable are perceived as inferred facets in the realization of right to life under Article 21. The Universal Declaration of Human Rights, 1948 affirmed the entitlement of every individual to life¹⁰ for themselves and their progeny¹¹. Following the Stockholm Declaration, there was a global inclination in national legal systems to constitutionalize environmental protection. With the incorporation of Article 48A through the 42nd Amendment, states were mandated to preserve and enhance the environment, protecting forests and wildlife. And Article 51(g) establishes as an essential fundamental duty for each citizen to conserve and augment the environment provided by natural wildlife, and the well-being of living beings.

Right to wholesome Environment

During a period marked by a climate of liberty and expression subsequent to the Emergency, the Apex Court of India embarked on a notably innovative phase, amplifying and redefining the fundamental rights delineated in Part III, particularly re-conceptualizing personal liberty under Article 21¹² of the Constitution. In landmark case of *Maneka Gandhi v. Union India*,¹³ Article 21 was fortified in two significant ways: firstly, by stipulating that laws impinging on personal liberty must adhere to the standards set by Article 14 and 19, thereby ensuring that procedures prevent individuals of personal liberty were reasonable, equitable, and just.¹⁴ Secondly, the court recognised various implicit freedoms inherent in Article 21, paving the way for the inclusion of right to clean and hygienic environment. The nascent recognition of right to clean environment traces back to the *Dehradun Quarrying Case*,¹⁵ where in July 1983, the Apex Court of India was apprised of illegal mining actions in the Mussoorie – Dehradun region causing severe harm to the delicate ecosystems in nearby areas. Responding to this, the

⁸ Article 21 of The Indian Constitution, 1950

⁹ 2000 SOL Case No. 673.

¹⁰ Article 3, UDHR, 1948. Available at: https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf Last Visited on 23rd November 2022.

¹¹ Article 25, UDHR, 1948. Available at: https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf Last Visited on 23rd November 2022.

¹² Article 21 States: “Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.”

¹³ AIR 1978 SC 597.

¹⁴ Francis Coralie Mullin v. The Administrator, Union Territory of Delhi, AIR 1981 SC 746.

¹⁵ AIR 1988 SC 2187.

court instructed its registry to consider writ petition submitted under Article 32 of Constitution, notifying the Uttar Pradesh Government and the Dehradun collector to tackle a problem. In its final verdict issued in August 1988, following extensive deliberations involving various government bodies, and mine renters, agencies, the court appointed several expert committees and issued at most nominal five complete provisional orders.¹⁶ Subsequently, in the case, *Subhash Kumar v. State of Bihar*,¹⁷ the court affirmed the entitlement of a right to life encompassed the right to access a clean water and air. If any factor jeopardized or compromised the standard of life in violation of law, a citizen had the right to approach under the Constitution of India in Article 32.¹⁸ Extending upon this notion in case of *Virender gaur v. State of Haryana*,¹⁹ the court stated:

“Article 21 safeguards the right to life as a fundamental right. The enjoyment of life, including the right to live with human dignity, includes the protection and preservation of the environment, ecological balance, freedom from air and water pollution, and sanitation, all of which are essential for a meaningful life. Any actions or practices resulting in environmental pollution should be considered a breach of Article 21. Consequently, a hygienic environment is an integral aspect of the right to a healthy life, and it is impossible to live with human dignity without a clean and healthy environment. Both the state government and municipalities are constitutionally obligated not only to ensure and safeguard a suitable environment but also to take adequate measures to promote, protect, and enhance both the man-made and natural environment.”

Additionally, a number of High Courts have clearly acknowledged the environmental dimension of Article 21.

Case Studies and Legal Precedents

In the legal case of *Chhetriya Pardushan Mukri Sangarsh Samithi v. State of UP*,²⁰ where an allegation was made that specific refineries and oil mills in the Sarnath area were responsible for environmental pollution. In a significant move, the Apex Court of India affirmed, for the first time, that the entitlement to an unpolluted environment is encompassed within the Article 21 Indian Constitution. Likewise, in case of *Subhash Kumar v. State of Bihar*,²¹ the Court reiterated the significance of right as stated in Article 21. This particular case involved public interest litigation aimed at addressing contamination of the Bokaro River due to the discharge of sludge from washeries operated by Tata Iron and Steel Company Ltd. In the legal matter of *Bangalore Medical Trust v. B.S. Mudappa*,²² it was decreed that the conservation of environment, provisions of recreational spaces, access to fresh air, and playgrounds for children are issues of paramount public importance and must be integral considerations in any development plan. Any diversion of such spaces for other purposes would directly contravene the constitutional mandate that assures every citizen are guaranteed their basic right to a green

¹⁶ “Environment Protection under Constitutional Framework of India.” Available at: <https://pib.gov.in/newsite/printrelease.aspx?relid=105411> Last Visited on 25th November 2022.

¹⁷ AIR 1991 SC 420.

¹⁸ Divan Shyam “Environmental law and Policy in India” Oxford, 2002. [978-0195661736].

¹⁹ 1995 (2) SCC 577.

²⁰ AIR 1990 SC 2060.

²¹ AIR 1991 SC 420.

²² AIR 1991 SC 1902.

and clean environment. Finally, in *Virandar Gaur v. State of Haryana*,²³ the Apex Court while applying the “Principle 1 of the Stockholm Declaration, stated that enjoyment of life and quality of life are an integral part of the the implementation of Article 21 as a fundamental right.” In this case, the Municipality and the Government had approved the construction of Dharmasalas in an open space designated for providing public amenities to the local community, such as recreational areas, ventilation, and playgrounds. In landmark case of *B.L. Waderha v. union of India*,²⁴ Supreme Court, depend on *Municipal Council Ratlam v. Vardichand*,²⁵ explicitly affirmed that “Residents possess both constitutional and statutory rights to reside in a clean city, and the relevant authorities are bound to collect and dispose of the waste generated within the designated premises. Insufficient funds, inefficient staff, or inadequate machinery can’t be cited as justifications for failing to fulfil their duties.” This PIL was brought against the MCD for its failure to fulfil mandatory duties linked to waste disposal and keeping the union territory of Delhi as a clean city. In *Vellore Citizens Welfare Forum v. Union of India*,²⁶ the Apex Court asserted that, “Constitutional and statutory provisions safeguard an individual’s entitlement to clean air, clean water, and a pollution-free environment. However, the foundation of this right lies in the inherent common law right to a clean environment. Our legal system, which is based on British Common Law, recognizes an individual’s right to an environment free from pollution as an integral aspect of fundamental jurisprudence.” This specific litigation aimed to address pollution stemming from the significant discharge of untreated effluent from tanneries into various environmental elements, including agricultural fields, roadsides, waterways, open lands, and ultimately the river Palar. In the legal matter of *Narmada Bachao Andolan v. Union of India*,²⁷ Supreme Court of that “access to water is a vital necessity for human existence and constitutes a fundamental aspect of the right to life and human rights, as delineated in Article 21 of the Indian Constitution. This matter is of serious concern that even after fifty years of independence, access to water remains unavailable to a significant portion of the population, including for their basic drinking needs, which goes against the human rights resolutions of the United Nations and Article 21 of the Indian Constitution.” This matter was initiated by a non-governmental organization (NGO) contesting the environmental authorisation granted by the Govt. for the structure of the Sardar Dam Sarovar Dam on the Narmada River. In landmark case of *Ramji Patel v. Nagrik Upbhokta Marg Darshak Manch*,²⁸ Supreme Court established a correlation between environmental preservation and Article 21 of the Indian Constitution. It decreed that “any disturbance to the fundamental environmental elements poses a threat to life within the purview of Article 21 of the Constitution.” The Supreme Court of India in case of *M.C Mehta v. Union of India*²⁹ enacted that the duty lies with the State to protect public hygiene and to conserve and enhance the surroundings. The Court emphasised that ensuring sustainable development aligns with the mandates outlined in Article 39(c), Article 47, and Article 48A, of Indian Constitution,

²³ (1995) 2 SCC 577.

²⁴ (1996) 2 SCC 594.

²⁵ (1980) 4 SCC 162.

²⁶ AIR 1996 SC 2715.

²⁷ AIR 2000 SC 3751.

²⁸ (2000) 1 JAB LJ 245.

²⁹ AIR 2002 SC 1696.

constituting rudimentary fundamental aspects of environmental law. In *State of M.P. Kedia Leather & Liquor Ltd.*,³⁰ Supreme Court asserted that “all forms of pollution constitute a violation of the right to life guaranteed by Article 21 of the Indian Constitution, thereby depriving citizens of their entitlement to lead a dignified life free from deplorable conditions.” This legal matter involved a scenario where the Sub Divisional Magistrate of the concerned area issued directives under Section 133 of the Criminal Procedure Code, instructing industrial unit owners accused of severe pollution from effluent discharge to cease factory operations, thereby causing public a disturbance. A thriving environment is of utmost importance for holistic development of a person, encompassing physical, mental, and intellectual well-being. As a result, it becomes imperative to grant constitutional recognition to a hygienic environment as a basic part of fundamental rights under the Indian Constitution. Consequently, it is incumbent upon a nation to integrate a dynamic and active jurisprudence and constitutional framework into its legal system. The legal system of India serves as a noteworthy example of such progress. The robust constitutional framework within India empowers its highest court to creatively evolve jurisprudence surrounding the privilege to enjoy clean environment within the constitutional framework.

Conclusion

In conclusion, the preservation of India’s environment is deeply rooted in cultural values and traditions, as reflected in texts like the Atharvaveda. This paper explored the Constitutional foundation for the right healthy environment. Meanwhile emphasizing its essential role in modern India. The research addressed pivotal legal precedents, that have expanded the right to a healthy environment is considered an integral aspect of right to life under Article 21. This recognition has transformed environmental protection and policy development in India. Understanding this constitutional basis is crucial for institutional and legal frameworks, judicial decisions, and policy improvements. It contributes to environmental sustainability and equity within India’s legal system. In summary, the constitutional recognition a clean environment as a basic human right i.e., significant step towards protection of environment within India. The legal system’s evolution in interpreting constitutional provisions showcases its commitment to integrating environmental concerns into the human rights framework and fundamental freedoms. It is vital to build on this foundation for a cleaner, healthier, and more sustainable future.

³⁰ AIR 2003 SC 3236.