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A CRITICAL OVERHAUL OF ENVIRONMENTAL PROTECTION AND THE CONSTITUTION OF INDIA

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Abstract

Everything that surrounds and influences living organisms is considered part of the environment. Our environment consists of the air, water, and land surrounding and directly affecting us. The current study investigates the history of environmental protection in India, as it is said that Indian culture is based on ecological preservation. India's Constitution requires the State and citizenry to conserve and enhance the environment. The Constitution of India, recognised as the paramount legal authority of the nation, delineates numerous rights, responsibilities, and principles that every individual is mandated to adhere to. B.R. Ambedkar said, "*The Constitution is not merely an attorney's tool; it serves as an instrument of Existence, with its essence encapsulating the spirit of the Century.*" A significant portion of constitutional provisions encompasses a compilation of fundamental or inherent rights universally applicable to all individuals. These rights are meticulously crafted to impose limitations on the powers wielded by the Sovereign over its citizens and to uphold its duty to safeguard their dignity as human beings. Such rights are typically regarded as essential for the functioning of a just society. Part III of the Indian Constitution articulates the fundamental rights that citizens of the nation are entitled to exercise, while certain rights are accessible to all individuals irrespective of their nationality; these encompass the fundamental right to life, personal liberty, and equality before the law. This article examines environmental challenges in India and outlines in-depth constitutional measures for ecological preservation. In addition, the current article contains detailed observations on India's judicial approach and government environmental protection measures. The report emphasises the necessity of education in preserving and safeguarding the ecology.

Introduction

The existence of life on this planet is contingent upon the harmonious interplay between the environment and its constituents. Homo sapiens exhibit a profound interaction with the natural world. This relationship between humans and nature is characterised by its intrinsic closeness. Humans occupy a central position in discourses surrounding sustainable development, as they possess an inherent right to a healthy and fulfilling existence in concert with the natural environment. It is noteworthy to reflect upon how the Earth's natural resources remained dormant for millions of years. Nevertheless, since the onset of the Industrial Revolution, vast quantities of these resources have been extracted within a span of merely a few centuries at unprecedented rates, with the resultant waste from such exploitation directly contaminating the environment (air, water, and land) and significantly disrupting its natural processes. Pollution has been a recognised phenomenon for an extensive period—at least since the advent of human use of fire thousands of years ago—however, it was not

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until the onset of the Industrial Revolution in the 19th century that it escalated to genuinely global dimensions. The ecosystem and all forms of life are confronted with severe threats from the rapid proliferation of air, water, and various other forms of pollution, alongside global warming and deforestation. The deterioration of the environment, driven by many human activities, adversely affects the health of all living entities, including humans, flora, and fauna. Environmental protection has been ascribed to fundamental importance, as a healthy environment is essential for promoting human health, and every individual is entitled to such an environment. The preservation of the environment safeguards the health of every individual, and a healthy populace, in turn, fosters environmental sustainability, which is critically needed. To inhabit an environment that offers a pollution-free atmosphere is not merely a fundamental human right but also serves to uphold human dignity. The principle of sustainable development represents one approach that, if adhered to, can fulfil the fundamental human right to a life of dignity.[1]

The accelerated escalation of global warming, deforestation, and atmospheric, aquatic, and other pollution forms is a significant peril to the environment and its constituent organisms. The deterioration of the ecological system, engendered by many activities undertaken by individuals, is profoundly harmful to the well-being of all living entities, encompassing humans, flora, and fauna. Environmental protection has been granted fundamental significance, as it is imperative for promoting human health, ensuring the availability of a salubrious environment, and conferring a right to a healthy environment for all individuals. The preservation of the environment safeguards the well-being of each person, while healthy individuals, in turn, facilitate the advancement of the environment, which is an urgent necessity at present. Residing in an environment that offers a pollution-free atmosphere is not merely a fundamental human right but also serves to augment human dignity. The principle of sustainable development represents one such framework that, if adhered to, can actualise the fundamental human right to a life of dignity. Legal frameworks function as mechanisms for regulating human behaviour and ensuring the orderly operation of society. Given that the term 'Environment' is absent from the Indian Constitution, it has become imperative to incorporate provisions within the constitution, as it serves as the supreme law of the land; such incorporation would consequently prove beneficial in safeguarding the environment from exploitation.[2] The conservation of the environment constitutes an integral facet of our cultural ethos and traditions; furthermore, a healthy environment serves as a fundamental component of a welfare state. Throughout history, people have worshipped nature, including the Sun, Moon, Earth, Air, and Water, to appreciate the planet's ability to maintain life. This deep respect for nature is founded on the fundamental idea that existence is a single, constant, and regular phenomenon and that even little changes in one area of the environment are likely to influence others. The right to life encompasses a clean and safe environment, including access to clean drinking water, noise-free surroundings, and unpolluted air.[3]

Environmental pollution has surfaced as one of the most significant social challenges impacting society with enduring repercussions. Our nation is presently obligated to realise the foundational objective of socialism, which is to furnish a dignified standard of living for all, achievable solely through a pollution-free environment. Under the preamble of our Constitution, the nation is predicated on a "Socialistic" framework of society, wherein the

[1] Anjai Krishna, An Analytical Study on the Protection and Conservation of Environment under Indian Constitution, Vol.9 Issue 6, IJL, 54-59 (2023) https://www.lawjournals.org/assets/archives/2023/vol9issue6/9203-1700023067682.pdf

[2] Pooja Kapur, Constitutional Provisions for Environmental Protection in India, iPleaders (October 3, 2024, 10:32 AM) https://blog.ipleaders.in/constitution-environment-provisions/

[3] Pandit, Mahi, Constitutional Recognition of Environmental Protection in India (March 23, 2023). Available at SSRN: https://ssrn.com/abstract=4506392 or http://dx.doi.org/10.2139/ssrn.4506392

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state prioritises social issues. Initially, the Constitution of India lacked explicit provisions for environmental protection. However, the burgeoning global awareness regarding environmental conservation during the 1970s, exemplified by the Stockholm Conference and the escalating recognition of the environmental crisis, compelled the Indian Government to enact the 42nd Amendment to the Constitution in 1976. The Environment (Protection) Act of 1986 delineates the environment as "*Water, air, and land and the interrelationship which exists among and between air, water and land and human beings, other living creatures, plants, micro-organisms, and property.*" The fundamental duties enshrined in the Indian Constitution unequivocally mandate every citizen to safeguard the environment. Comprehending constitutional provisions about environmental protection is imperative in contemporary discourse to foster enhanced public participation and environmental consciousness that engenders a commitment to preserving ecosystems and the environment. Consequently, due to the constitutional framework, Panchayats have been endowed with the authority to implement measures such as soil conservation, water management, afforestation, biodiversity conservation, pollution control, and promoting ecological considerations at the local level. Nevertheless, our nation is now earnestly endeavouring towards notably sustainable development and preserving ecological equilibrium in light of the degradation of natural resources and the environment, exacerbated by population growth and urbanisation.[4] The concept of environmental conservation is an enduring principle that has been deeply embedded within the cultural fabric of India since antiquity. A comprehensive understanding of the contemporary legal framework governing ecological preservation and resource conservation necessitates an examination of the historical Indian traditions and practices related to the environment. To cultivate a profound reverence for nature among the populace, the Vedas personified various natural elements as deities, encompassing the sun, water, rivers, fauna, and more.[5] The evolution of environmental protection has been categorised into four distinct phases:

1. It can be posited that awareness of environmental issues was present even during the pre-Vedic Indus Valley Civilization, which thrived in northern India approximately 5,000 years ago, with archaeological findings substantiating this assertion. Building homes, thoroughfares, wells, and other infrastructures illustrates a commitment to hygiene and sanitation. The Vedic civilisation placed considerable emphasis on the importance of cleanliness. Numerous prescriptions concerning the maintenance of water quality are found in the Charak Samhita, a medical treatise dating back to between 900 and 600 BC. The ethical considerations regarding nature conservation were relevant to the general populace, sovereigns, and rulers, as delineated in the Arthashastra, an ancient manuscript focusing on statecraft, economic policy, and military strategy. Several punitive measures were proposed for the acts of deforestation, forest degradation, and the killing of wildlife.
2. The Mughal emperors perceived forests primarily as venues for hunting. The history of medieval India, dominated by Muslim rulers, witnessed significant advancements in environmental legislation only during the reign of

[4] Deepa P, Indian Constitutional Approach on Environmental Protection, ResearchGate (October 3, 2024, 11:06 AM) https://www.researchgate.net/publication/351846573_Indian_Constitutional_Approach_on_Environmental_Protection

[5] Dr. Satish Kumar Mishra, Pooja, Dr. Rang Nath Singh, Dr. Girish Chandra Rai, & Dr. Munish Swaroop, A Study on Constitutional Perspective & Environment Protection in India, Vol.14 Issue 7, INT-JECS, 2333, 2334-2335 (2022) https://www.researchgate.net/publication/370635644_A_STUDY_ON_CONSTITUTIONAL_PERSPECTIVE_AND_ENVIRONMENTAL_PROTECTION_IN_INDIA

Mughal Emperor Akbar. During Akbar's rule, hunting or shikar was strictly limited to the royal family. Nonetheless, due to the rulers' predominant focus on warfare, religious expansion, and the consolidation of empires, little progress was achieved during the medieval period regarding environmental protection and resource conservation. There were no prohibitions against the felling of other trees or the hunting of animals, save for the "royal trees" that received royal patronage and could not be felled without compensation. Throughout this epoch, the extent of forested areas gradually diminished.

3. The Merchant Shipping Act 1858 addressed mitigating oil pollution in maritime environments. Notable legislative measures for environmental protection, such as The Fisheries Act of 1897, The Bengal Smoke Nuisance Act of 1905, and The Bombay Smoke Nuisance Act of 1912, were implemented. The Shore Nuisance (Bombay and Kolaba) Act of 1853 imposed restrictions on seawater contamination.

4. The Indian Constitution adopted in 1950 did not encompass environmentalism provisions or pollution mitigation and management. The Stockholm Declaration of 1972 significantly highlighted the necessity for the Indian government to acknowledge the broader perspective of environmental conservation. In India, the Central Government enacted comprehensive ecological legislation, notably:

    - The Ministry of Environment and Forests (MoEF) was instituted in 1985 after establishing the National Council for Environmental Policy and Planning in 1972.
    - The Wildlife (Protection) Act of 1972 aimed to implement modern and systematic wildlife management practices. The Water (Prevention and Control of Pollution) Act of 1974 necessitates the establishment of pollution control boards at both the national and state levels to serve as guardians of pollution control and prevention initiatives.
    - The Forest (Conservation) Act 1980 aimed to curtail deforestation, redirect forested land away from non-forestry uses, and promote social forestry initiatives. The Air (Prevention and Control of Pollution) Act of 1981 sought to mitigate air pollution by establishing control boards.
    - The Environment (Protection) Act of 1986 serves as a legislative instrument designed to address legal deficiencies and provides the nation with a singular emphasis on environmental conservation.
    - The Public Liability Insurance Act of 1991 requires the provision of insurance to assist individuals adversely affected by incidents arising from the handling of hazardous materials by offering immediate compensation.
    - Enacted in 2002, the Biological Diversity Act represents a pivotal legislative framework to preserve biodiversity near local communities.
    - The National Environment Policy of 2006 delineates objectives focused on the conservation of vital ecological resources, intergenerational equity, the safeguarding of livelihoods for marginalised populations, the integration of environmental

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considerations into economic and social development, the prudent utilisation of ecological resources, and the execution of strategies for environmental preservation.[6]

Constitutional Provisions Regarding Environmental Protection

India's Constitution establishes a unique federal system. The act emphasises fundamental rights for freedom fighters and establishes Directive Principles of State Policy for legislators to consider. Part XI of the Constitution governs legislative relations and specifies which issues the Union and State governments can regulate. This section discusses environmental provisions in the constitution. The Preamble of the Indian Constitution begins with "We the People" and outlines the aims and objectives of the Constitution. It proclaims India as a Sovereign Socialist Secular Democratic Republic and is considered a crucial insight for the creators of the Constitution. Although the terms "Secular" and "Socialist" were incorporated later by the 42nd Amendment, the Constitution inherently possessed a secular and socialist foundation from the very start.[7] Several sections within the Constitution specifically address the socialist and secular aspects of the nation, particularly Part IV, which emphasises the Socialist governance model. At the same time, Part III delineates the secular nature of the country. The term Socialist, when read alongside Part IV, indicates that the Constitution established a welfare government based on a socialistic framework aimed primarily at the people's well-being. Social welfare cannot be achieved if individuals are compelled to exist in unhealthy living conditions that threaten their health and safety. Including the "Democratic Republic" further underscores that the government's purpose is to serve the masses and that citizens are entitled to engage in governance. This suggests that the government should strive to provide, among other necessities, a clean environment suitable for human habitation. The Preamble also aspires to attain social, economic, and political justice. In a country where the wealthy and powerful devastate the environment through unrestrained industrial practices and illegal mining without concern for ecological impact, causing irreversible damage to both the environment and the populace, it cannot be regarded as a nation exemplifying a welfare state or offering social and economic justice. Therefore, the Preamble addresses the principles of socialism while advocating for economic, political, and social justice. Thus, although the Preamble does not explicitly mention environmental matters, its broad language sufficiently encompasses the concepts of environmental protection and the need for a clean environment, as implied within its text.

Obligation of state and environmental protection

Article 39(b) of the Constitution of India[8] states that the government shall direct its policies to ensure the ownership and control of the community's material resources are distributed in a way that promotes the common good. The term "material resources of the community" has been interpreted to include resources held by private individuals, not solely those already possessed by the state. Authorities must adhere to the law and regulate their actions for the benefit of their constituents. Article 47[9] Imposes an obligation on the government to prioritise the improvement of its citizens' nutrition levels and living standards. Furthermore, the primary responsibility of the government is to enhance public health. The state is required to prohibit the use of harmful substances, such as alcohol and narcotics, except for medical purposes. The term 'responsibility' can be understood to mean that the state must implement necessary, appropriate, and effective measures to elevate

[6] Surbhi Kumari, Protection of Environment under the Indian Constitution, Law Bhoomi (October 4, 2024 12:37 PM) https://lawbhoomi.com/protection-of-environment-under-the-indian-constitution/
[7] Re Berubari Union, AIR 1960 SC 845
[8] The Constitution of India, 1949, Art.39(b)
[9] The Constitution of India, 1949, Art.47

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the living standards, health, and environmental awareness of all individuals. Development initiatives should not be left to individuals, as this could harm society. Consequently, the government must closely monitor these programs and activities. In the Municipal Council Ratlam v. Vardhichand case,[10] the Supreme Court ruled that Article 47 establishes the vital principle of governance that improving public health is one of the government's top priorities. In 1976, the Indian Constitution was amended, adding Article 48-A[11] To enhance provisions for environmental preservation and protection. According to this article, the government is responsible for protecting the country's forests and wildlife and maintaining and improving the environment. Various definitions of 'environment' have been presented in this article. In addition to serving as a protector, the government must undertake necessary actions to enhance the environment. The Madras High Court in MK Janardhanam v. District Collector, Tiruvallur[12] asserted that the terms used in Articles 48A and 51A[13]—'protect and improve'—suggests that the phrase anticipates affirmative governmental action to enhance environmental quality rather than merely preserving it in its degraded state.

According to Article 49,[14] the State has an obligation "*to safeguard every monument, site, or object of artistic or historical significance that has been declared by or under legislation enacted by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal, or export, as applicable.*" Article 37[15] states that the State must endeavour to "*promote adherence to the international law treaty obligations.*" Most crucially, Article 37 asserts that the directive principles outlined in PART IV of the Indian Constitution are "fundamental in the governance of the country and it shall be the responsibility of the State to incorporate these principles when formulating laws." Throughout these articles, the term 'State' is utilised, and it is essential to understand the definition of the word 'State.' The architects of the Indian Constitution also opted to use the exact definition of 'State' as articulated in Article 12[16] for Part IV. This was intended to empower the judiciary to interpret it broadly and to encompass all State agencies and instruments within the definition of 'State.' The purpose was to direct all state agencies and instrumentalities to apply the directive principles when creating laws. The Supreme Court in MC Mehta v. Union of India[17] determined that "*these directive principles (Articles 39 (b), 47, and 48A) impose a duty on the State, both individually and collectively, to create conditions that enhance the overall health standards within the country and to safeguard and improve the natural environment.*" The expansive interpretation of 'State' provided by the Supreme Court aims to broaden the scope of fundamental rights and the directive principles of State policy. Consequently, fulfilling the obligations outlined in Part IV of the Indian Constitution has become essential for all 'authorities' defined under Article 12. To meet their fundamental responsibilities, the Union and State legislatures have enacted a variety of laws focused on the preservation and enhancement of the natural environment, as well as the protection of forests and wildlife. At both the union and state levels, the executive branch has established enough rules to effectively implement the legislation enacted by the legislatures to sustain and improve the natural environment and protect forests and wildlife to fulfill their constitutional responsibilities. To uphold its constitutional obligations, the judiciary has historically been ready to issue 'appropriate' orders, 'directions,' and 'writs' against those accountable for ecological disruption and pollution. In Rural Litigation and Entitlement Kendra v. State of

[10] 1979 3 SCC 327
[11] The Constitution of India, 1949, Art.48A
[12] 2003 1 LW 262
[13] The Constitution of India, 1949, Art.51A
[14] The Constitution of India, 1949, Art.49
[15] The Constitution of India, 1949, Art.37
[16] The Constitution of India, 1949, Art.12
[17] (2002) 4 SCC 356

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Uttar Pradesh,[18] the Supreme Court decided that certain limestone quarries should be closed due to their significant pollution and adverse effects on the safety and health of the local population. In a related ruling, the Supreme Court in M.C. Mehta v. Union of India[19] directed a company that produces hazardous chemicals and gases that pose risks to the health and lives of its employees and nearby residents to implement all necessary safety measures before reopening the facility. In the case concerning pollution from industries in Delhi, the Supreme Court ordered the relocation of 168 hazardous industries operating in Delhi due to the threats they posed to the environment. The Supreme Court of India adjudicated in the case of S Jagannath v. Union of India[20] that the establishment of shrimp aquaculture farms in designated restricted zones and ecologically sensitive coastal regions exert detrimental effects on the environment, coastal biodiversity, and economic stability and, consequently, such operations cannot be permitted to continue. The judiciary has rendered numerous contributions towards the conservation of forest ecosystems and wildlife, as well as the protection and enhancement of environmental integrity, in addition to the considerations.

Obligation of the citizen and environmental protection

The state's duty to safeguard the environment reflects its citizens' rights. Rights and responsibilities are two interconnected ideas. These concepts are dependent on each other. Suppose citizens are entitled to a decent quality of life and a healthy environment. In that case, they must also commit to protecting it by refraining from actions that threaten human society and other forms of life. Before the 42nd Amendment to the Constitution, the focus was predominantly on rights rather than duties. The supreme law prioritised rights over responsibilities. Nevertheless, the framers of the Constitution recognised that both the government and its citizens share the obligation to protect the environment. Moreover, people began to ignore their obligations in favour of asserting their rights. As a result, the Constitution (Forty Second) Amendment Act of 1976 introduced Part IV-A. This section outlines Fundamental Duties, with Article 51-A (g)[21] explicitly highlighting the fundamental duty of citizens to protect and enhance the natural environment, which encompasses forests, rivers, lakes, and wildlife, and to show compassion towards all living beings. Like the state, it is incumbent upon every citizen to safeguard the environment and engage in actions that contribute to its improvement. Nature has gifted us with resources and a clean environment, making it the duty of individuals to conserve these resources for future generations. The principle of intergenerational equity is crucial to ensure the preservation of the environment through the sustainable use of natural resources.

In the case of Vijay Singh Puniya v. State of Rajasthan,[22] the Rajasthan High Court remarked: "*Anyone who disrupts the ecological equilibrium or harms, pollutes, and manipulates the gifts provided by nature, such as air, water, rivers, seas, and other natural elements, not only infringes upon the fundamental right protected under Article 21 of the Constitution but also violates the fundamental duty to safeguard the environment as outlined in Article 51A(g).*" This comment arose in response to a writ petition against dyeing and printing industries discharging effluents and polluting the essential water sources required for drinking and agriculture. In the matter of LK Koolwal v. State of Rajasthan and Ors,[23] The municipality of Jaipur failed in its essential responsibility of maintaining the state's hygienic standards. Consequently, residents faced threats to their safety, leading to an urgent public health crisis. To highlight the municipality's gross neglect, Mr. Koolwal and other residents applied to the high

[18] 1985 (2) SCC 431
[19] 1986 (2) SCC 176
[20] 1997 (2) SCC 87
[21] The Constitution of India, 1949, Art.51A(g)
[22] AIR 2003 RAJ 286
[23] AIR 1988 RAJ 2

court under Article 226 of the Indian Constitution.[24] While clarifying the precise application of Article 51A in this case, the court stated that it was designed to grant citizens the legal ability to petition the court to examine governmental actions to ensure compliance with the nation's fundamental laws. Citizens can initiate legal proceedings to confirm that the state fulfils its duties and that its departments, municipal organisations, etc., function correctly. A failure to uphold hygiene and sanitation standards contaminates the environment and gradually affects the lives of living beings. This undermines the citizens' fundamental right to life, as Article 21 of the Constitution[25] guarantees the right to a reasonable standard of living and a clean, safe environment. Therefore, it is appropriate for citizens to defend their fundamental right to life against infringement. The court consequently directed the municipality to eliminate all the waste material threatening the health and lives of the community.

In the M.K. Janardhanam case, the Madras High Court commended the petitioner for his contributions. "*According to Article 51A(g), it is the fundamental duty of every citizen in this nation to protect and enhance the natural environment, including forests, lakes, rivers, all water resources, and wildlife, and to show kindness towards living creatures. The petitioner deserves praise for fulfilling his constitutional responsibility by alerting this Court, even at personal risk, to the shocking violations against natural resources committed by unscrupulous individuals.*" In a separate case, Goa Foundation v. the State of Goa,[26] the petitioner was an organisation registered under regulations governing the registration of societies, comprised of Indian citizens who were obligated to protect and enhance the environment, including lakes, forests, and rivers, and to show kindness to living beings as outlined in Article 51-A—the issue of whether the society had the standing to bring the matter before the court was presented. The court answered this question in the affirmative, reaffirming that the society shared the same fundamental duty. The petitioner was recognised as having the standing to approach the court to prevent ecological degradation and formulate and implement policies to restore the environment and maintain ecological balance.

Fundamental Rights and Environmental Protection

The essence of Principle 1 of the Stockholm Declaration is mirrored in Articles 14,[27] 19,[28] and 21 of our constitution, which pertain to the right to equality, freedom of speech, and the right to life and personal liberty, respectively. The Permanent People's Tribunal regards the anti-humanitarian consequences of industrial and environmental hazards not as an unavoidable aspect of the present industrial framework but as a widespread and intentional infringement of the most basic human rights. Among these rights, the right to life, health, expression, association, and access to justice are especially critical. Part III of the Indian Constitution, which addresses fundamental rights, encompasses all these entitlements. A constitutional provision is not fixed; it is continuously developing and evolving. Consequently, it cannot be subjected to a narrow, pedantic, or syllogistic interpretation. The intention behind fundamental rights is to benefit future generations. Part III and IV provisions relate to fundamental rights; directive principles are supplementary and mutually reinforcing. Part III of the Constitution includes several essential rights that are not explicitly enumerated, and judicial activism in India has significantly influenced the interpretation of these rights. One such right is environmental protection. The judiciary has interpreted various aspects of Part III, which pertains to fundamental rights, to

[24] The Constitution of India, Art.226
[25] The Constitution of India, Art.21
[26] AIR 2001 Bom 318
[27] The Constitution of India, 1949, Art.14
[28] The Constitution of India, 1949, Art.19

encompass the right to live in a healthy environment, even when specific provisions are primarily found in the sections addressing Directive Principles and Fundamental Duties. Therefore, the judiciary in India has fostered the Human Rights perspective for environmental protection.[29]

Right to live in a clean and healthy environment in India

In India, the higher judiciary has interpreted the constitutional provisions, specifically "*the right to life*" stated in Article 21, to encompass the right to exist in a healthy environment. The right to life comprises the right to live with dignity and access necessities such as food, shelter, clean water, and clothing. The right to life involves the capability to live in a safe and decent environment, free from threats to one's existence. An environment should be devoid of all viruses and diseases. Consequently, the courts have intervened by issuing writs, orders, and directions in suitable cases, recognising the constitutional entitlement to a healthy environment. This aspect of Article 21 was extensively discussed in the case of Rural Litigation and Entitlement Kendra, Dehradun, where the petitioner and other citizens wrote to the Supreme Court to voice their opposition to mining activities that stripped the Mussoorie hills of trees and forests, leading to soil erosion. Such activities resulted in landslides and disrupted subsurface water routes, adversely affecting the ecosystem. The Hon'ble Supreme Court directed the registrar to treat this letter as a writ filed under Article 32 of the Constitution.[30] The Supreme Court appointed an expert committee to assist the Honourable Court with specific technical issues related to this matter. Following the expert committee's findings, the court ordered the cessation of the limestone quarries, citing violations of the right to life and personal liberty. Quarrying activities lead to ecological degradation, alongside air and water pollution, which severely affects the quality of life for individuals.

In Subash Kumar vs State of Bihar,[31] the Supreme Court emphasised that "*the right to live is a fundamental right under Article 21 of the Constitution, including the right to enjoy pollution-free water and air for a complete quality of life. If anything jeopardises or diminishes that quality of life in contravention of laws, a citizen has the right to seek remedy under Article 32 of the Constitution to eliminate pollution in water or air that could harm the quality of life.*" In the case of Virandar Gaur v. the State of Haryana, the Supreme Court, after *accepting, reaffirming, and implementing principle 1 of the Stockholm Declaration, stated that "Article 21 safeguards the right to life as a fundamental right. The enjoyment of life and its scope, including the right to live with dignity, involves protecting and preserving the environment, ecological balance, and the absence of air and water pollution, as well as sanitation, without which life cannot be fully enjoyed. Any actions or behaviours contrary to this would lead to environmental pollution. Environmental, ecological, air, and water pollution, among others, should be considered as violations of Article 21. Consequently, a hygienic environment is a crucial component of the right to a healthy life, and it would be impossible to maintain human dignity without a humane and healthy environment*." In Vellore Citizens' Welfare Forum v. Union of India,[32] the Supreme Court determined that "*The constitutional and statutory provisions safeguard a person's right to fresh air, clean water, and a pollution-free environment; however, this right is fundamentally derived from the inalienable common law entitlement to a clean environment. Our legal framework, rooted in British common law, recognises the right to a pollution-free environment as an integral part of the basic jurisprudence of our nation*." The Supreme Court, in TN Godavarman Thirumalpad vs Union of India,[33] stated that the right to life guaranteed by Article 21 of the Indian Constitution includes the right to an

[29] Anjali Krishna, Supra Note 3
[30] The Constitution of India, 1949, Art.32
[31] 1991 (1) SCC 598
[32] 1996 (5) SCC 647
[33] 2014 (6) SCC 150

environment that is adequate for health and well-being. This case involved allegations that mining activities negatively impacted the flora and fauna in and around Kudremukh National Park, part of the Western Ghats. In the case of State of MP vs Kedia Leather & Liquor Ltd.,[34] the apex court asserted, "*Environmental, ecological, air, and water pollution constitute a violation of the right to life guaranteed by Article 21 of the Indian Constitution. A hygienic environment is a fundamental aspect of a healthy life. The right to live with dignity becomes illusory without a humane and healthy environment.*" In Narmada Bachao Andolan v. Union of India and Others,[35] the Supreme Court remarked, "*Water is essential for human survival and constitutes part of the right to life and human rights as outlined in Article 21 of the Indian Constitution… It is concerning that even after half a century of independence, access to water for basic drinking needs is not available to all citizens, which violates the human rights resolution of the UNO and Article 21 of the Indian Constitution.*"

Right to freedom and expression

Article 19(1)(a)[36] Part III of the Constitution explicitly enshrines the right to free speech and expression as an essential fundamental right. A considerable number of cases have been presented before the judiciary as Public Interest Litigation (PIL), wherein individuals have exercised their freedom of speech and expression through written correspondence to the court or by submitting petitions, thereby illuminating the infringement of the populace's right to inhabit a healthy environment in various respects. In the Indian context, the media has played a pivotal role in influencing public perception regarding environmental matters. Consequently, Article 19(1)(a) also encompasses press freedom.

Right to Equality

The Indian Constitution guarantees the Right to Equality under Article 14. This fundamental right cannot be infringed upon because it implicitly requires the state to act reasonably in its environmental protection efforts. The judiciary has firmly opposed arbitrary actions where state authorities misuse their powers. Utilising discretionary powers without considering the public's interests infringes upon the fundamental right to equality of the populace. In the Bangalore Medical Trust v. BS Muddappa case,[37] the City Improvement Board of Bangalore developed an improvement strategy to expand the city. Part of the land was set aside in this plan to create a low-level park. However, the chief minister instructed that the designated area for the park be converted into a municipal site for the construction of a hospital. Once construction commenced, residents filed a petition with the high court. The High Court granted the residents' request. However, during an appeal to the Supreme Court, the appellant contended that allocating sites is purely discretionary and that the development authority can designate the site for a hospital instead of a park. Therefore, the appellant argued that the change in land use was justified. The Supreme Court rejected the appeal, emphasising the importance of parks and open spaces in the development of urban areas. The respected court further stated that open spaces, recreational areas, playgrounds, and ecological preservation are critical concerns for the overall progress of society. It is necessary to maintain open spaces for the public's benefit, and thus, they cannot be sold or leased to private entities solely for profit.

"Judicial Activism" & Environmental Protection & Role of Public Interest Litigation in Environmental Protection

The notion of Judicial Activism began to coalesce during the mid-20th century, as judicial bodies commenced a more assertive engagement in addressing societal challenges through their interpretation of constitutional

[34] 2003 (7) SCC 389
[35] 2000 (10) SCC 664
[36] The Constitution of India, 1949, Art.19(1)(a)
[37] 1991 (4) SCC 54

provisions and prevailing statutes. The decade of the 1980s heralded a notable proliferation of Judicial Activism within the domain of environmental jurisprudence as courts increasingly championed the cause of environmental stewardship. This paradigm shift was propelled by a burgeoning consciousness of environmental concerns and the perceived inadequacies of the legislative and executive branches in effectively tackling such matters. Judicial Activism has been instrumental in augmenting the faltering processes related to environmental governance. The incorporation of law enforcement mechanisms in India has been significant. By assuming this proactive mantle, the judiciary has expanded the purview of constitutional rights, notably under Article 21 of the Constitution, to encompass the right to a wholesome environment. The recognition of such rights by the judiciary has empowered it to intervene in domains where both legislative and executive branches have exhibited profound failures in safeguarding environmental integrity. A particular emphasis should be placed on the Environment Protection Act, whose enforcement has predominantly relied on judicial intervention, with courts frequently stepping in to ensure stringent compliance with its stipulations when governmental agencies have become dormant or ineffective.[38] While Judicial Activism has occasionally demonstrated effectiveness, it raises concerns regarding judicial overreach and the gradual usurpation of powers traditionally allocated to the legislature. Some contend that although Judicial Activism was warranted in specific contexts, its extension to such an extent as to enable the courts to assume responsibilities that should rightly belong to the legislature and executive is inappropriate. This situation engenders critical inquiries on the equilibrium of powers within a democratic framework and the legitimate boundaries of judicial intervention.[39]

The Supreme Court and High Courts in India have repeatedly affirmed that the "*right to live in a clean and healthy environment*" is a fundamental right protected by Article 21 of the Indian Constitution. Articles 32[40] and 226 provide the means for enforcing the basic "right to live in a clean and healthy environment." These articles empower the Supreme Court and High Courts to issue any direction, order, or writ, such as habeas corpus, mandamus, prohibition, quo warranto, and certiorari, as deemed appropriate. While specific statutes typically govern environmental law, in India, environmental law jurisprudence has primarily been developed through writ jurisdiction. Due to judicial activism and the concept of Public Interest Litigation within writ jurisdiction, procedural jurisdiction has evolved, which is vital in advancing and promoting environmental jurisprudence from a Human Rights standpoint. This legal avenue is preferred over tort claims or public nuisance actions because it is faster, more cost-effective, and provides a direct path to the higher judiciary, which minimises the chances of further appeals. The relaxed standards of locus standi and the recognition of epistolary jurisdiction by the Supreme Court and High Courts have further facilitated public involvement in environmental protection matters. The remedy under writ jurisdiction allows the court to determine suitable relief by issuing relevant orders, directives, or writs. Consequently, the higher judiciary has instructed municipalities to establish proper drainage systems to ensure public health and maintain cleanliness and environmental standards. It has permitted hazardous factories to resume operations based on technical safety assessments. The court has ordered the relocation of industries away from residential neighbourhoods. The court appointed A special panel to evaluate the availability of technology to manage vehicle emissions. It has mandated the relocation of stone-crushing operations outside urban areas. The court also directed rehabilitating slum

[38] Dr. Priyanka Singh, Judicial Activism and Environmental Law: A Constitutional Review of The Environment Protection Act's Implementation, Vol.XII Issue IX, IJCRT, 747-752 (2024) https://www.ijcrt.org/papers/IJCRT2409308.pdf
[39] Ibid

[40] The Constitution of India, 1949, Art.32

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residents and designated hawking areas within large cities. In the case of Tarun Bharat Sangh, Alwar v. Union of India & Ors,[41] the Supreme Court instructed the state government, particularly the police, to offer protection to environmental activists against any threats from vested interests and to ensure that these activists are not subjected to intimidation or obstruction in their work. The court further supported environmentalists by granting them rewards and discouraged using writ jurisdiction for personal vendettas or rivalries. The judiciary has taken a careful approach, limiting its intervention in speculative concerns about environmental pollution, mainly when the government has made decisions based on relevant facts and careful consideration without outside influences. Nonetheless, the court consistently issued directives for strict adherence to the Environment (Protection) Act 1986. The court has ensured compliance with its orders by imposing costs on parties for failing to comply. It has frequently appointed monitoring committees to verify that court orders are appropriately followed. Additionally, the court utilised affidavits, commissions, and expert panels and took judicial notice to establish the factual context. In the case of Sachidanand Pandey v. State of West Bengal,[42] the Supreme Court emphasised that whenever a biological issue is presented to the court, it must consider Article 48A and Article 51A(g). Over the years, the expansive interpretations of Article 21 by the Supreme Court have formed the foundation of environmental law. The Supreme Court determined that the Right to Life under Article 21 of the Indian Constitution holds a crucial position in environmental jurisprudence, even extending to the right to have clean water and air free from pollution to ensure a better quality of life. In Cooverjee B. Bharucha v. Excise Commissioner, Ajmer,[43] the Supreme Court ruled that, in situations where there is a clash between environmental protection and the right to freedom of trade and occupation, the courts must balance environmental concerns with the essential rights to engage in any form of employment.

Public Interest Litigation (PIL) arises from Judicial Activism and serves as a tool to bring public concerns before the courts within a legal and constitutional framework. The idea of Public Interest Litigation was introduced into India's legal system in the 1980s, thanks to the initiatives of Justice P.N. Bhagwati and Justice V.R. Krishna Iyer; this movement has significantly impacted environmental issues. Activism is crucial for fostering participatory public justice. Consequently, a conscientious citizen should be allowed to approach the courts for the public's welfare. PIL has been instrumental in influencing environmental laws and policies in India.[44] The key advancement concerning 'PIL' is the relaxation of locus standi requirements. As public interest litigation gained traction, the Supreme Court modified the traditional locus standi rule when filing such litigations. Traditionally, the locus standi rule allows only those who have had their legal rights or legally protected interests violated to seek judicial redress. The Apex Court has developed a broader principle that permits public interest litigation to be initiated by 'public-spirited individuals' to protect the constitutional and other legal rights of those who cannot approach the court for assistance due to poverty or social and economic disadvantages. Consequently, any public member can file a public interest litigation acting in good faith on behalf of others to assert fundamental rights or other legal rights. The Indian judiciary, transcending established norms for filing petitions and technical procedural rules, has not only eased the strict application of locus standi but has also acted 'pro-bono-publico,' which includes accepting letters as petitions, and in some instances, the courts have taken suo moto cognisance of news articles and recognised them as

[41] AIR 1992 SC 514
[42] AIR 1987 SC 1109
[43] AIR 1954 SC 220

[44] Priyanshi Jain, Environmental Activism & Supreme Court of India: Tracing the Transformative Approach, Academike Lawoctopus (February 15, 2025, 10:26 PM) https://www.lawctopus.com/academike/environmental-activism-supreme-court-of-india-tracing-the-transformative-approach/

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petitions.[45] The momentum for environmental protection in India has been significantly driven by PILs filed by environmental activists, NGOs, and engaged citizens. The judiciary's involvement in environmental issues has broadened the interpretation of the constitutional right to life, which now encompasses the right to a clean and healthy environment. The Indian judiciary has used public interest litigation to support environmental protection in numerous cases. Both the Supreme Court and High Courts have moved past their hesitations about allowing individuals not directly affected to file petitions on behalf of the underprivileged and uninformed. The fundamental principle behind PIL is that access to justice should not be denied to those in need due to their lack of knowledge or financial resources. In PIL, a socially conscious individual or organisation can file petitions on behalf of those who are poor and lack awareness.[46] This shift has led to a surge of environmental litigation, which has been presented through public interest petitions. These cases have been initiated by individuals, non-profit organisations, or through letters/petitions addressed to judges. Advocate M.C. Mehta has gained international recognition for his contributions to environmental protection. Supreme Court Chief Justice Ranganath Mishra instructed the government to incorporate environmental studies in the educational curriculum at all levels. This represents a highly positive and crucial result of public interest litigation. Environmental-conscious judges, including Justice Krishna Iyer, Justice Bhagwati, Justice Kuldeep Singh, and Justice Ranganath Mishra, consistently advocate for environmental protection. Dedicated Green Benches have been established in some High Courts specifically to address environmental issues. The significance of public interest litigation can be easily illustrated through leading cases in the realm of environmental law discussed below:

In the case of K.M. Chinnappa v. Union of India,[47] the Supreme Court determined that "*sustainable development is fundamentally a strategy and policy for ongoing economic and social progress that does not harm the environment and natural resources critical for further development and continued activity*." When evaluating developmental actions, it is essential to consider current needs and the future's ability to meet desires and necessities. The future should not be ignored in the context of present considerations. We are responsible for considering future needs and requirements, and thus, the future must be acknowledged when assessing the present. The Supreme Court underscored the importance of the Doctrine of Sustainable Development in the Indian Council for Environment - Legal Action v. Union of India[48] case, often referred to as the Coastal Zone Protection case. The court remarked that while economic growth should not occur at the cost of ecological balance or lead to significant environmental degradation and violations, protecting the environment and ecology should not obstruct other developments, including economic growth. Development and the environment must coexist; this implies that development cannot occur without properly considering environmental safeguards.

The Supreme Court, in the case of MC Mehta v. Kamal Nath and Others,[49] determined that the public trust doctrine is incorporated into Indian law. The Public Trust Doctrine is fundamentally based on the notion that specific natural resources, such as air, sea, water, and forests, hold significant value for the collective populace, and it would be entirely unreasonable to allow private ownership of these resources. As a natural gift, these resources should remain accessible to everyone, regardless of their social standing. This doctrine obligates the Government to safeguard these resources for

[45] Baljit Kaur, Role of Public Interest Litigations in Environment Protection in India, Vol.VI Issue I, JETIR, 254, 255-256 (2019) https://www.jetir.org/papers/JETIR1901H99.pdf
[46] Prof. Vijay Oak, Role of PIL in Environmental Protection in India, Legal Service India (February 15, 2025) https://www.legalserviceindia.com/articles/peiln.htm
[47] AIR 2003 SC 724
[48] (1996)5 SCC 281
[49] (1997) 1 SCC 388

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the general public's benefit rather than allowing their exploitation for private gain or commercial activities. In this case, the Supreme Court annulled the lease that the state government had granted to a private company for the riparian forest land that housed a motel on the banks of the Beas River. The hotel's operations disrupted the natural flow of the river. The Court cancelled the previous approval of the Ministry of Environment and Forest and concluded that the government had violated the public trust doctrine. In the subsequent case of M.C. Mehta v. Kamal Nath and Others[50] (2000) 6 SCC 213, the Supreme Court assessed the damages not based on the claims presented by any of the parties involved but instead through an evaluation conducted by the court, considering the deterrent implications of those damages. The Court ruled that Articles 48A and 51A(g) must be interpreted in conjunction with Article 21 of the Constitution, asserting that any disruption to essential environmental elements, such as air, water, and soil—which are critical for 'life'—would pose a threat to 'life' as defined under Article 21. The Court stated that if those rights are infringed upon due to environmental disruption, it has the authority to grant damages to restore ecological equilibrium and the individuals impacted by that disruption.

In the case of Him Privesh Environment Protection Society v. State of Himachal Pradesh through Secretary Industries and Ors.[51] in 2010, the High Court of Himachal Pradesh faced petitions contesting an industrial entity's establishment of a cement factory in District Solan, claiming that the plant was constructed in clear violation of environmental regulations, including EIA Notifications. The facility cleared a vast forest area and appropriated land from surrounding villages without conducting a proper public hearing. Aware that issuing an order for closure or demolition of the cement plant would severely affect the livelihoods of thousands of innocent people, the High Court applied the 'polluter pays' principle and levied damages of Rs.100 crore on the Cement Plant owner, equating to 25% of the overall project cost. The Cement Plant owner challenged this ruling in the Supreme Court, but the appeal was rejected in 2013. In the case of Karuna Society for Animals and Nature v. Union of India,[52] a petition was submitted to the Supreme Court requesting orders to ban plastic bag use, sale, and disposal in all municipalities and Municipal Corporations nationwide. The petitioners argued that cattle were consuming plastic bags, which negatively affected their digestive systems, leading to their deaths.

A key development by the courts was the substantial modification of the traditional standing rule, allowing the underprivileged and marginalised to be represented by volunteers and specific NGOs, even if they were not directly affected by the issue raised. This concept of 'representative standing' has played a crucial role in the emancipation of bonded labourers and has improved conditions for women residing in protective shelters. Any individual, collective of social activists, or NGO concerned can send a regular letter to the High Court or Supreme Court to alert them about situations where the fundamental rights of disadvantaged groups are infringed upon. Once the court receives the letter and treats it as a writ petition, it may order an investigation, appoint commissions if needed, facilitate legal aid, and issue necessary orders for remedy after reviewing the case. Legal experts in India have praised this practice of utilising 'epistolary jurisdiction.' Concerning environmental law in India, social action litigation has become pivotal in infringing fundamental rights. Consequently, Social Action Litigation has presented the courts in India with various matters to resolve, including deforestation due to mining, the impact of industrialisation and its waste, river pollution, groundwater depletion, vehicular air pollution, environmental concerns surrounding dams and other large-scale development initiatives, gas leaks, urban

[50] (2000) 6 SCC 213
[51] HP CWPIL No.15 of 2009
[52] (2016) 14 SCC 303

planning challenges, and the preservation of designated parks and sanctuaries.

Conclusion

This research investigates the personal environmental responsibilities within India's environmental constitutionalism framework. The Constitution outlines environmental obligations bolstered by a robust tradition of public interest litigation. The study emphasises significant findings regarding the origins of these duties, the Constitution's design, and the judiciary's practices. Political changes and international conferences impact the incorporation of environmental responsibilities, exemplified by the 1976 Amendment, which was influenced by India's involvement in the Stockholm Conference. Judicial interpretations of these responsibilities differ, affecting their extent and relation to constitutional rights. Although the Constitution does not explicitly establish an environmental right, courts associate environmental duties with the right to life, forming a reciprocal model of rights and obligations. The judiciary also intertwines individual and state environmental responsibilities, interpreting citizen obligations and considering governmental duties. Even though these duties are not directly enforceable, courts utilise them to bolster environmental protection and uphold legal principles such as the polluter pays doctrine, rendering them vital to India's environmental jurisprudence. India's dedication to environmental preservation has progressed, with the 42nd Amendment incorporating it into Directive Principles and Fundamental Duties. Judicial activism, primarily through Public Interest Litigations (PILs), has enhanced environmental rights anchored in Article 21, upholding the right to a clean environment. Legal principles like public trust and the polluter pay doctrine ensure accountability. Nonetheless, weak enforcement, industrial growth, deforestation, and limited public involvement pose challenges. There is a necessity for more substantial policy implementation, improved judicial efficiency, community engagement, and sustainable development. Prioritising environmental education, more stringent penalties, and corporate accountability is also crucial. In summary, environmental protection is a collective duty that necessitates legal reforms, rigorous enforcement, and increased public awareness for a sustainable future.