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Constitution and legal provisions regarding environmental protection in India: An overview

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Abstract

In the twenty-first century, the right to a clean and healthy environment has become an essential part of fundamental human rights. This right, which is based on the ideas of equality, dignity, and life itself, highlights how essential it is to preserve ecosystems and natural resources for human survival and well-being. Human rights discourse has historically concentrated on civil, political, social, and economic rights; however, environmental rights have become essential to maintaining sustainability and justice in light of the growing global issues of pollution, deforestation, climate change, and biodiversity loss. The judiciary has construed Article 21 of the Indian Constitution, which protects the right to life and personal liberty, broadly to encompass the right to an environment free from pollution. Important rulings like *MC Mehta v. Union of India* (1987) and *Subhash Kumar vs State of Bihar* (1991) reaffirmed the importance of environmental preservation to the right to life. This viewpoint is further supported by international agreements including the Stockholm Declaration (1972), the Rio Declaration (1992), and the UN General Assembly's 2022 affirmation of the right to a clean, healthy, and sustainable environment as a universal human right. These events demonstrate the widespread agreement that environmental rights are essential to preserving human existence and are no longer optional. States, businesses, and individuals are all subject to obligations as a result of this right's acknowledgment. Enacting and upholding environmental regulations, encouraging sustainable development, and guaranteeing fair access to natural resources are all mandated by governments. In keeping with the idea of intergenerational justice, citizens also have an obligation to safeguard the environment for current and future generations. Furthermore, environmental justice movements have connected environmental rights to more general issues of social and economic justice by exposing the disproportionate effects of environmental degradation on disadvantaged and underprivileged people. However, there are a number of obstacles in the way of effectively implementing the right to a clean environment. Progress is still being hampered by fast industrialization, a lack of awareness, a lack of enforcement of environmental regulations, and competing demands for ecological sustainability and economic expansion. Furthermore, cross-border international collaboration is necessary to address global environmental problems such ecological imbalances, transboundary pollution, and growing greenhouse gas emissions. The right to a clean environment is a basic human right that is necessary for progress, enjoyment of life, and health. It is not just an environmental issue. Strong legal interpretation, legislative action, innovative policy, and active public participation are all necessary for the recognition and operationalization of this right. To guarantee that environmental rights are adequately safeguarded as fundamental human rights, judicial action, international collaboration, and sustainable practices must all be combined. Therefore, the right to a clean environment guarantees that ecological existence is not sacrificed for growth, embodying the inescapable bond between humans and nature.

Keywords: Article 21 (India), Article 21 of the Indian constitution, right to life, human dignity, sustainable development, polluter pays principle, precautionary principle, intergenerational equity, triple planetary crisis, clean air, safe water, healthy food, non-toxic environments, healthy ecosystems, biodiversity loss, and un general assembly resolution

Introduction

A growing number of nations and legal systems support the right to a clean environment, which was confirmed as a fundamental human right by the UN General Assembly in 2022. Human existence is based on the environment. In addition to being necessary for survival, clean air, safe water, fertile land, and balanced ecosystems are also necessary for a respectable and healthy existence.

These needs have been threatened in recent decades by environmental deterioration, fast industrialization, climate change, and unsustainable resource extraction, which has led to serious questions regarding the interplay between human rights and the environment. Because of this, the right to a healthy and clean environment is now acknowledged as a basic human right both internationally and in other jurisdictions.

Human rights discourse has historically focused on social and economic rights like health, education, and employment, as well as civil and political rights like equality, liberty, and freedom of speech. Nonetheless, it is becoming clearer and clearer that without a healthy environment, none of these rights can be effectively exercised. For example, the right to health cannot be realized if ecosystems are damaged by industrial waste or climate-related disasters, and the right to life is compromised in the absence of clean air or safe drinking water. Because of this connection, environmental rights are now central to modern human rights frameworks.

Article 21 ^[1] of the Indian Constitution, which protects the right to life and personal liberty, has been judicially interpreted to include the right to a clean environment. The Indian judiciary has broadened the application of Article 21 to acknowledge environmental protection as an essential component of the right to life through seminal judgments including *M.C. Mehta v. Union of India* ^[2], *Subhash Kumar v. State of Bihar* ^[3], and *Vellore Citizens Welfare Forum v. Union of India* ^[4]. The growing realization that a life of dignity is impossible without a pollution-free environment is reflected in this judicial activism.

International environmental law and human rights treaties have affected the acceptance of environmental rights on a global scale. The first to state clearly that a healthy environment is necessary for human well-being was the Stockholm Declaration of 1972 ^[5]. Later, intergenerational equity and sustainable development were highlighted in the 1992 Rio Declaration ^[6]. A significant turning point in international human rights legislation was reached more recently in 2022 when the UN General Assembly publicly acknowledged the right to a clean, healthy, and sustainable environment as a universal human right.

Several actors are obligated to maintain the environment as a fundamental human right. States must control industrial activity, establish and implement environmental regulations, and guarantee fair access to natural resources. Businesses and sectors of the economy need to embrace sustainable practices, reduce pollution, and honour environmental boundaries. For the benefit of current and future generations, citizens also have an obligation to preserve, safeguard, and advance environmental integrity. By guaranteeing that development in the present does not jeopardize the life and dignity of future generations, this shared duty embodies the intergenerational equity principle. The successful implementation of the right to a clean environment is hampered by a number of issues, notwithstanding its increasing acceptance. Ecological norms are frequently violated as a result of conflicts between environmental sustainability and economic development. Implementation is made more difficult by weak enforcement mechanisms, a lack of public knowledge, corruption, and international problems like climate change and transboundary pollution. Environmental justice is a critical issue since vulnerable groups are disproportionately

impacted by environmental degradation.

Therefore, it is not just a legal development but also a moral and existential need that the right to a clean environment be recognized as a fundamental human right. It highlights how humans and nature are inextricably linked and how important it is to preserve the environment for everyone's survival, well-being, and dignity. To make this right a lived reality, it is imperative to strengthen legislative frameworks, improve international cooperation, and encourage citizen participation.

- **What is the Meaning of clean environment:** Clean environments promote the physical and mental well-being of living things and aid in the prevention of disease. They are safe, healthy, and devoid of waste, pollution, and dangerous materials. They are distinguished by pure water, clean air, and well-kept areas. In order to promote general health, biodiversity, and a higher standard of living for all, it also entails appropriate waste management and the removal of pests that spread disease ^[7].
- **Historical Evolution of Environmental Rights:** Ancient conservation techniques preceded the development of resource protection laws during the colonial era, and the post-Stockholm Conference (1972) period greatly influenced the evolution of environmental rights by fostering global awareness and the creation of contemporary environmental law and the idea of a "right to a healthy environment" through judicial activism and international agreements such as the Paris Agreement. Modern environmental rights place more emphasis on ecological balance, human welfare, and the relationship between environmental and human health than its early forms, which were more concerned with public health and resource control ^[8].

Constitutional Right of Clean and Healthy Environment

- **According to Article 19 (1) (g) of the Indian Constitution:** Every citizen has the basic right to engage in any employment, trade, or business. Reasonable limitations apply to this. A citizen cannot do business if it poses a health risk to the public or society. Therefore, there are built-in environmental protection measures in this. The Supreme Court noted that if environmental protection and the right to freedom of trade and occupation conflict, the courts must strike a balance between environmental interests and the fundamental right to engage in any occupation when resolving the liquor trade case in *Cooverjee B. Bharucha vs. Excise Commissioner, Ajmer* ^[9].
- **Article 21:** The right to a clean and healthy environment is enshrined as a basic right in Article 21 (Right to Life) of the Indian Constitution. "No one shall be deprived of his life or personal liberty except according to procedures established by law," it declares. The Constitution (Forty-second Amendment) Act of 1976 established Articles 48A and 51 A (g), giving environmental protection constitutional status ^[10].
- **Article 47:** The right to a healthy environment has also been attempted to be provided for by Article 47, which declares that the "State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties". ^[11].

- **Article 48-A** ^[12] **According to this article:** "The State will work to preserve the nation's woods and wildlife as well as to protect and enhance the environment. The State must adhere to its rules while drafting laws, even when directive principles are not legally binding.
- **According to Article 51A (G)** ^[13]: It is everyone's responsibility to conserve and preserve the environment. According to the statement, "Every Indian citizen has a responsibility to preserve and enhance the country's natural environment, which includes forests, lakes, rivers, and wildlife, as well as to show compassion for all living things".

The Indian Constitution's Articles 32 ^[14] and 226 ^[15] permit anybody to file a Public Interest Litigation in the Supreme Court in the event that basic rights are violated.

Environmental Protection Laws in India

- **The Wildlife (Protection) Act 1972:** The animals (Protection) Act was passed by the Indian Parliament to preserve and conserve animals. In order to maintain ecological and environmental security, it offers protection to wild animals, birds, and plant species ^[16].
- **Water (Prevention and Control of Pollution) Act, 1974:** This Act was first introduced in 1974 with the goal of preventing and controlling water pollution by encouraging rivers and streams to be clean. Additionally, it guarantees the preservation and restoration of the establishment's water wholesomeness. To safeguard both human and marine life, the Water (Prevention and Control of Pollution) Act forbids the release of wastewater into bodies of water. In addition, the act permits the creation of organizations like the State Pollution Control Board (SPCB) and the Central Pollution Control Board (CPCB), and it grants them authority to take the necessary steps to prevent water contamination.
- **Air (Prevention and Control of Pollution) Act, 1981:** Protecting the environment from the damaging effects of air pollution is the main goal of the Air (Prevention and Control of Pollution) Act. Air pollution is defined as "the presence in the atmosphere of any air pollutant" under Section 2(b) of this act. "Any solid, liquid, or gaseous substance present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment" is another definition of an air pollutant found in Section 2(a). The SPCB and CPCB are tasked with carrying out the requirements of this Act. Additionally, the act gives state governments the authority to designate any region as an air pollution control area within the state ^[17].
- **The Environment (Protection) Act, 1986:** The conservation and enhancement of the environment is the main goal of the Environment (conservation) Act. The Act gives the Centre the authority to manage hazardous waste, regulate the locations of industries, and safeguard the health and welfare of the general public in order to avoid and control environmental problems. The Water Act of 1974 set a framework for the coordination of State and Central authorities, and this Act serves as an umbrella law to start that process ^[18].
- **The National Green Tribunal Act, 2010:** The National Green Tribunal Act of 2010 created the National Green Tribunal to expeditiously settle matters pertaining to natural resource conservation and environmental preservation and protection. This Act was passed in accordance with Article 21 of the Indian Constitution, which outlines the right to a healthy and clean environment ^[19]. The Forest (Conservation) Act of 1980 limits the state's authority to de-reserve forests and use forestland for uses other than forestry.
- **The Environmental Protection and Enhancement Act of 1986:** Addresses environmental protection, enhancement, and related issues. It offers a structure for coordinating state and federal authorities set up under By establishing guidelines for emissions and discharges, controlling industrial locations, managing hazardous waste, and safeguarding public health and welfare, the central government is authorized to take the necessary actions to preserve and enhance the quality of the environment under the Water (Prevention and Control) Act of 1974 and the Air (Prevention and Control) Act of 1981.
- **The National Environment Appellate Authority Act, 1997:** It created a national environmental appellate body to consider challenges on the limitation of regions where any industry, process, or class of industries, operations, or procedures that were either prohibited by the Environment (Protection) Act of 1986 or would be permitted to proceed subject to specific safeguards ^[20].
- **Factories Act, 1948 and Amendment in 1987:** The Act includes a detailed list of 29 industry groups with hazardous processes, which are described as an activity or process where, absent extra caution, raw materials utilized in or The intermediate or final products, wastes, effluents, or by-products would ^[21]. Cause material impairment to health of the persons engaged, Result in the pollution of the general environment.
- **Act of 1995, the National Environment Tribunal:** The legislation establishes a national environment tribunal for efficient and effective enforcement of environmental laws and stipulates severe culpability for damages resulting from any accident involving the handling of any hazardous material. Prompt resolution of claims resulting from such accidents and offers relief and compensation for environmental, property, and human damages as well as for issues related or incidental to them ^[22].
- **Role of Judiciary:** The judiciary has a significant role in environmental preservation. The judiciary's important role in interpreting an individual's fundamental rights is demonstrated by the seminal rulings over the last few decades. In addition, people who couldn't go to the Supreme Court to defend their rights benefited from the advent of Public Interest Litigation. In order to assist those who are unable to pay court fees, the PIL concept encouraged a variety of people, non-governmental organizations, and other relevant groups to contact the court. This allowed for the listing of numerous cases and the delivery of rulings pertaining to sustainability and environmental protection. The judiciary's role in environmental preservation is shown by a number of important rulings. Two of the Supreme Court's most significant landmark

rulings pertaining to environmental preservation and protection are listed here.

Case-Indian Council for Enviro-Legal Action v. UOI ^[23]

The Rajasthan district of Udaipur contains the tiny village of Bichhri. When Hindustan Agro Chemicals Limited began manufacturing specific chemicals like Oleum and Single Super Phosphate, its environmental problems emerged. Silver Chemicals (Respondent No 5), another sister company of Hindustan Agro Chemicals, started producing "H" acid in a plant inside the same complex. The production of this acid produces massive amounts of extremely toxic effluents that contaminate the land, water, and everything else that comes into contact with it. The water was no longer suitable for irrigating the land or for drinking by animals. The residents' primary source of income, farming, was rendered unfeasible due to the contaminated soil. Technical data was attached by the petitioner, and more evidence was provided to bolster the petition's assertions.

The Central Government will examine whether treating the chemical industry as a distinct category would not be acceptable given the experience acquired. Given that the chemical industry is the primary source of environmental pollution, it is imperative that its establishment and operations be examined more closely. For this reason, it is not appropriate to distinguish between huge and small industries, or even between large and medium-sized industries.

Case-MC Mehta v. Kamal Nath & Ors ^[24]

The Supreme Court took notice of a story that said, "Kamal Nath dares the mighty Beas to keep his dreams afloat," and was published in the "Indian Express." An ambitious project on the banks of Beas called "Span Club" was the source of the issue. The club stands in for Kamal Nath's ambition of owning a home on the Beas River in the shadow of the Zaskar hills, which are covered in snow. When Mr. Kamal Nath was Minister of Environment and Forests, the club was revived after infringing on 27.12 bighas of property, including significant forest land that was eventually leased to the business. The primary argument was that the river's path was being changed to protect the motel from flooding in the future. In its report, the inspection team claimed that Span Motels failed to hire a flood control expert and that improperly completed work could cause future landslides and floods. According to a Supreme Court ruling, the public has no reason to oppose the public trust doctrine's expansion to encompass all ecosystems that use our natural resources. It is not and should not be possible to turn resources intended for public use into private property. "In Indian Council for Environ-Legal Action v. Union of India, this Court ruled that the Polluter Pays principle is a sound principle." When someone pollutes the environment, they have to pay to undo the harm they have created. According to our discussion in this ruling, the public trust doctrine is a component of national law.

Case-Municipal Council, Ratlam vs Shri Vardhichand & ORS ^[25]

It was among the first instances that helped broaden the scope of environmental protection. Residents of a municipality in Ratlam submitted a petition in this matter, claiming that the municipality is not building adequate

sewers, which causes stench and stink from the excretion of surrounding slum-dwellers. According to the Supreme Court, citizens have the right to use their right to a healthy environment against the government. It forced the town to provide adequate drainage and sanitary systems and recognized the negative impacts that the deteriorating environment had on the impoverished.

Case-Rural Litigation and Entitlement Kendra v. State of UP ^[26]

Residents of the Doon valley petitioned Rural Litigation and Entitlement Kendra in 1987 to halt limestone quarrying in the Mussorie valley. It was claimed that the biological and environmental equilibrium of the valley is being upset by these quarrying operations. The SC issued an order to halt quarrying operations in the valley, which the Environment Protection Act subsequently designated as an environmentally sensitive region.

Case-FK Hussain vs Union of India and ORS, 1990 ^[27]

The Kerala High Court has noted that the right to clean air and water is a characteristic of the right to life, acknowledging that the right to health is a component of the right to live under Article 21.

Some International Recognition

- **General Assembly of the United Nations (UNGA):** With 161 countries voting in favour, the UNGA adopted a resolution on July 28, 2022, acknowledging that everyone has a universal human right to a clean, healthy, and sustainable environment ^[28].
- **Legal precedent:** This acknowledgement, which came after previous actions by the UN Human Rights Council, illustrates the growing international agreement regarding the connection between human well-being and environmental quality ^[29].
- **International Court of Justice (ICJ):** Citing the need to act with reasonable diligence, the ICJ has also upheld nations' responsibility to safeguard the environment from pollution, especially those caused by greenhouse gas emissions.

Environmental Principles

- **Intergenerational Equity:** It asserts that as all generations share the planet, its resources need to be used responsibly and for everyone's benefit.
- **The Polluter Pays Principle:** This idea holds that the person who pollutes should pay for whatever harm they bring to the environment
- **Precautionary Principle:** It asserts that actions must be made to foresee and stop the causes of environmental deterioration, even in the absence of scientific proof. The state has a social duty to safeguard the populace from any conceivable danger.

The public trust doctrine holds that resources such as air, water, sea, and forests are so vital to the public that it would be unreasonable to give them private ownership. It imposes an obligation on the state to safeguard these resources for the good of all and to forbid their commercial usage. Sustainable development, which says that the government should aim to balance environmental protection with development.

Challenges in Realization of Environmental Rights

Lack of political will, conflicts between development and the environment, corruption, limited enforcement resources, and low public knowledge are some of the obstacles to the realization of environmental rights. The intricacy of environmental legislation, the challenge of identifying polluters, inadequate environmental effect assessments, and socioeconomic considerations that contradict environmental rules are further obstacles.

- **Poor implementation laws:** Laws by themselves are insufficient to safeguard the environment; effective enforcement is required to meet our goals. The concepts, philosophies, and regulations of the highest law of the land serve as the foundation for environmental laws. Nonetheless, it has been noted that laws typically fall short of offering a comprehensive answer to environmental problems. The numerous incidents demonstrate the national and state governments' incapacity to fully enforce the law. On the other side, the general population disregards the need for ecological system balance, and they are unable to comprehend how particular activities affect the environment. Despite these laws, the environment as a whole suffers from a lack of protection in the true sense: rivers are still choked, wildlife is still in danger, deforestation is still occurring in some places, the air is severely polluted in some states, and water bodies are still being adulterated by untreated industrial effluents [30].
- **Constant conflict between development and environment:** Global growth and development have accelerated due to the changing times. However, the environment frequently loses priority in this process of industrialization and modernization. Humans frequently overuse the environment to obtain more resources than are necessary. Although the Stockholm Declaration of 1972 outlined 26 principles that address humanity's obligation to move toward sustainable development, the ongoing tension between environmental preservation and development renders this unattainable. The idea of intergenerational equity, which requires the present generation to use environmental resources in a way that allows the next generation to benefit from them as well, has somewhat inconveniently fallen into the background [31].
- **Technology and environment:** The modern age has been greatly influenced and contributed to by science and technology. The flip side of the coin, however, demonstrates its significant environmental impact. The numerous companies that have emerged in recent years use cutting-edge technology that produces a variety of wastes and have a wide range of environmental effects, some of which are irreplaceable. Sludge, poisonous air emissions, trade, or household effluents are only a few examples of the new environmental threats that accompany every new invention [32].
- **Difficulty in ascertainment of polluter:** The underlying principles, such as the polluter pays principle and the precautionary principle, hold developers and industrialists accountable for their actions that pollute the environment. They are required to take preventative measures both before and during the course of their operations, or they must make amends by paying to repair the harm they have caused.

Additionally, it has been noted that the pollution may be the consequence of a series of actions rather than an immediate effect. Because of this, it has become more and more difficult for the courts to determine who or what individuals are truly to blame for the damage and are subject to punishment [33].

- **Difficulty in ascertainment of risk and environment impact:** Developers and industrialists must identify the types of activities they will engage in in order to avoid causing irreparable harm to the environment. Only through appropriate data gathering, study, and analysis can this determination be made. Even if it is unclear whether the risk is real or not, appropriate precautions must be implemented as soon as a potential damage risk is identified. However, the government is unable to determine the risks associated with a certain activity prior to the establishment of the industry for that activity due to the absence of specific laws. Such inactions further contribute to environmental degradation since delayed risk identification makes some issues unsolvable or prohibitively expensive. It is also a common occurrence for some businesses that engage in activities that are inherently dangerous to remain silent and purposefully avoid disclosing such incidents, leaving the public and government totally ignorant of the risks and potential harmful effects on the environment, human life, and limbs [34].
- **Lack of awareness and sensitisation regarding environment and environmental laws-**The general public's maximal knowledge and sensitization regarding their immediate surroundings, pollution control, and environmental protection is at the centre of environmental studies and legislation. Measures taken for the process of such awareness and sensitization are far behind schedule. Because of this, the general public is ignorant of their rights and responsibilities with regard to the environment, and the government cannot effectively safeguard the environment on its own. Both the government and the general public always have an obligation to be aware of the potential harm that their activities may cause to the environment. The environment is more at risk as a result of a lack of awareness and sensitization [35].

Conclusion

A critical first step in balancing ecological sustainability and human dignity is the acknowledgement of the right to a clean environment as a fundamental human right. A healthy environment is not only a goal; it is a requirement for equality, liberty, and the pleasure of life. Other rights become meaningless and ineffective in the absence of clean air, safe water, and uncontaminated land. This interconnectedness is becoming more widely recognized in national constitutions and international frameworks, emphasizing the responsibility of nations, communities, and individuals to protect the environment. In order to ensure intergenerational justice, judicial interpretations and legislative actions have broadened the definition of human rights to include environmental protection. In the end, the protection of nature is only one aspect of the right to a clean environment; another is the protection of mankind. The basis for equitable justice, sustainable growth, and a healthy future for everybody is strengthened when this right is ingrained in moral and legal consciousness.

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