

# Environment Protection and Health Under Constitutional Framework of India

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**Abstract:** *The constitution of India is not an inert but a living document which evolves and grows with time. Healthy environment is vital to human life as it allows a person to grow physically, mentally and intellectually healthy. Hence, it is vital that a healthy environment attained constitutional recognition as part of the fundamental right. Therefore, it is essential for a state to adopt an active and dynamic jurisprudence and constitutional framework into its legal system. The environment is everything around us—the air we breathe the water we drink and use, and the food we consume. Our interactions with the environment are complex and are not always healthy. Environmental health laws and policies are created to regulate and safeguard our environment."The Environmental Law System is an organized way of using all of the laws in our legal system to minimize, prevent, punish, or remedy the consequences of actions which damage or threaten the environment, public health and safety."*

**Keywords:** Environmental Protection, Constitution of India, Health

## I. INTRODUCTION

A rapid increase in global warming, deforestation, air, water and other forms of pollution is posing a great threat to the environment and its living beings. The degradation of the environment through a plethora of activities carried on by individuals is detrimental to the health of all the living beings, including human beings, plants and animals. Fundamental status has been given to the concept of protecting the environment as it is essential to promote human health to have a healthy environment and affords a right to a healthy environment to all. Preserving the environment protects the health of every individual and a healthy individual promotes the development of the environment which is the need of the hour.

## IMPORTANCE OF ENVIRONMENTAL LAW

Environmental laws play a huge part in protecting humans, animals, resources, and habitats. Without these laws, there would be no regulations concerning pollution, contamination, hunting, or even response to disasters. Environmental law works to protect land, air, water, and soil, negligence of these laws results in various punishments like fines, community service, and in some extreme cases, imprisonment. Without these environmental laws, the government would not be able to punish those who treat the environment poorly. Environmental law and legislation are central in protecting our current and future generations as well as the different plants and animals in the greater ecosystem that we live in. Environmental law ensures that individuals and governments, cooperates and do not cause harm to the environment or its ecosystems.

## PROVISIONS IN INDIAN CONSTITUTION

Law acts as a means of regularizing the human conduct and provides the smooth functioning of society. Since the word 'Environment' did not find its existence in the Indian Constitution, it became essential to insert provisions in the constitution as it is the supreme law of the land and such insertion thus, would prove to be fruitful to protect the environment from exploitation. In India, the 42<sup>nd</sup> Amendment Act, 1976 is the resultant of the Stockholm Declaration, 1972. The Parliament of India has passed a historic constitutional amendment in 1976 which enshrined two new articles i.e. Article 48A and 51A (g) to protect and improve the environment. Apart from these two articles, some of the fundamental rights (such as Articles 14, 19, 21, and 32) incorporated in Part III of the Constitution act as a savior for the environment.

**Directive Principles of State Policy (Part IV) Article 48A:** Protection and improvement of environment and safeguarding of forests and wildlife The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

In *T.N. Godavarman Thirumulpad v. Union of India*,<sup>1</sup> The Chhattisgarh government plead that the State did not have enough money to save Wild Buffalo- an endangered species. The Court rejected the plea of and directed that because it is the duty of the State under Article 48-A of the Constitution to take immediate steps to ensure the protection of the endangered species from extinction.

**Fundamental duties (Part IV A) Article 51 (A) (g):** To protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.

In *Kinkeri Devi v. State*,<sup>2</sup> The Himachal High Court held that under Articles 48-A and 51-A (g), both State and citizens have constitutional duty to not only protect the environment but also, improve, preserve, and safeguard the natural environment including forests, lakes, rivers, flora, and fauna, etc. of the country.

**Article 14 and Article 19(1)(g):** Article 14 states: "It is the duty of the State to treat all person equal or equal protection before the law within the territory of India". The right to equality may also be violated by government decisions having an impact on the environment. In order to prove the denial of the right to equality many environmental groups often seek to Article 14 to quash arbitrary municipal permission for construction that are violating the development regulations.

**Article 21:** "Every person shall be given the right to life and personal liberty unless restricted by the law or conflicting the law." In *Maneka Gandhi v Union of India*, the Supreme Court while elucidating on the importance of the „right to life“ under Art. 21 held that the right to life is not confined to mere animal existence, but extends to the right to live with the basic human dignity (Bhagwati J.) Similarly while interpreting Art.21 in Ganga Pollution Case as discussed before, Justice Singh justified the closure of polluting tanneries observed: "we are conscious that closure of tanneries may bring unemployment, loss of revenue, but life. Health and ecology have greater importance to the people." (Shanthakumar 2007)

Apart from the constitutional mandate to protect and improve the environmental conditions, there are a series<sup>3</sup> of legislations are available on the subject but more relevant legislations for our purpose are the **Forest [Conservation] Act**, 1980; the **Water [Prevention and Control of Pollution] Act**, 1974; the **Wildlife [Protection] Act**, 1972; the **Environment [Protection] Act**, 1986; the **Air [Prevention and Control of Pollution] Act**, 1981; the **National Environment Tribunal Act**, 1995; the **National Green Tribunal Act**, 2010; the **Biological Diversity Act**, 2002 and the **Hazardous Wastes [Management and Handling] Amendment Rules**, 2003 etc.

## DOCTRINE AND PRINCIPLES EVOLVED BY THE COURTS

The doctrines evolved by courts are a significant contribution to the environmental jurisprudence in India. Article 253 of the Constitution of India indicates the procedure on how decisions made at international conventions and conferences are incorporated into the legal system. The formulation and application of the doctrines in the judicial process for environmental protection are remarkable milestones in the path of environmental law in India.

**Public Trust Doctrine** Indian legal system is essentially based on common law, and includes the public trust doctrine as part of its jurisprudence. The state is a guardian of natural resources, and natural resources are available for public for their enjoyment by nature and it cannot be changed into private property. The state is under a legal duty to protect the natural resources. In *M.C. Mehta v. Kamal Nath*<sup>3</sup>, the Supreme Court applied this doctrine for the first time in India to an environmental problem. According to the Supreme Court, the public trust doctrine primarily rests on the principle that certain resources like air, sea waters and forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership.

<sup>1</sup>(2012) 3 SCC 277

<sup>2</sup>AIR 1988 HP 4

<sup>3</sup>(1997) 1 SCC 388

**Doctrine of Sustainable Development** Environmental pollution and degradation is a serious problem nowadays. Judiciary to being a social institution has a significant role to play in the redressal of this problem. The progress of a society lies in industrialization and financial stability. But, industrialization is contrary to the concept of preservation of environment. These are two conflicting interests and their harmonization is a major challenge before the judicial system of a country. The judiciary, in different pronouncements, has pointed out that there will be adverse effects on the country's economic and social condition, if industries are ordered to stop production. Unemployment and poverty may sweep the country and lead it towards degeneration and destruction. At the same time, polluting industries impend the stability of the environment. The judiciary was, therefore, of the opinion that the pollution limit should be within the sustainable capacity of the environment.

In *Vellore Citizens Welfare Forum v. Union of India*<sup>4</sup>, the Supreme Court opined, the traditional concept that development and ecology are opposed to each other, is no longer acceptable, sustainable development is the answer. Sustainable Development means to fulfil the need of present generation without compromising the needs of future generation. Sustainable development is a balancing concept between ecology and development.

**Polluter Pays Principle:** The countries moving towards the industrial development had to face the serious problems of giving adequate compensation to the victims of pollution and environmental hazards. That the polluter must pay for the damage caused by him is a salutary principle evolved very early in Europe when that continent was haunted by a new spectre, that of unprecedented pollution. In *M.C. Mehta v. Union of India*<sup>5</sup>, a petition was filed under Article 32 of the Constitution of India, seeking closure of a factory engaged in manufacturing of hazardous products. While the case was pending, oleum gas leaking out from the factory injured several persons. The significance of the case lies in its formulation of the general principle of liability of industries engaged in hazardous and inherently dangerous activity.

**Precautionary Principle** The precautionary principle says that if any action or project has some possible risk which can cause harm to public and environment and the person who is taking that action has knowledge about those risk, that in the absence of scientific measures that action or project is harmful, then the burden of proof lies on those persons who are taking that action that it is not harmful. The Precautionary principle says that there is a social responsibility to protect the public from any kind of harm, in case when scientific investigation point towards a risk. These protections can be relaxed in the case when person taking action can prove with sound evidence that no harm will result. In *Vijayanagar Education Trust v. Karnataka State Pollution Control Board, Karnataka*<sup>6</sup> the Karnataka High Court accepted that the precautionary doctrine is now part and parcel of the Constitutional mandate for the protection and improvement of the environment. The court referred to *Nayudu cases*<sup>7</sup> which laid down that the burden to prove the benign nature of the project is on the developer if it is found that there are uncertain and non-negligible risks

## II. CONCLUSION

In conclusion, the right to a healthy environment is a fundamental human right that is essential for the enjoyment of other human rights such as the right to life, health, and development. The degradation of the environment poses a significant threat to human health, the economy, and the planet as a whole. There is no deficiency of available legislations on environmental protection in India but enforcement of these legislations has been far from satisfactory. There is urgent need for the effective, successful and well-organized enforcement of the Constitutional mandate and other environmental legislations or laws in India. A positive approach on the part of everyone in society is essential for effective, speedy and efficient enforcement of these legislations.

## III. RECOMMENDATION

Associating human rights and condition is an important sourcebook that investigates the unfamiliar region that lies amongst natural and human rights enactment. People can guarantee basic uniformity and satisfactory states of life in an

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<sup>4</sup>AIR 1996 SC 2715

<sup>5</sup>1987 SCR (1) 819

<sup>6</sup>AIR 2002 Kant 123

<sup>7</sup>Andhra Pradesh Pollution Control Board v. MV Nayudu, AIR 1999 SC 812

condition that allows an existence of poise and prosperity. There is a pressing need to figure laws remembering the way that the individuals who dirty or crush the common habitat are not simply carrying out a wrongdoing against nature, but rather are abusing human rights also. Without a doubt, wellbeing has appeared to be the subject that extensions holes between the two fields of natural security and human rights. The progression of the connection between human rights and condition would empower fuse of human rights standards inside an ecological degree, for example, anti-discrimination principles, the requirement for social investment and the assurance of powerless gatherings.