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## Constitutional provisions and judicial activism for the protection of the environment

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### Abstract

The word Environment is derived from the French word “Environ” which means “surrounding”. Our surrounding includes biotic factors like human beings, plants, animals, microbes, etc and abiotic factors such as light, air, water, soil, etc. The Environment Protection Act 1986 defines Environment under section 2(a) as “Environment includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.” Besides the physical and biological aspect, the “environment” clasps the social, economic, cultural, religious, ideological, and aesthetic and several other aspects as well. According to a study conducted by Down to Earth organisation in 2014 they reported, “13 of the world's 20 worst polluted cities are in India, Air pollution is the fifth largest killer in India. Though coal accounts for 59% of power generation, it is responsible for 68.5% of carbon emissions; 7,322 million litres of sewage from cities go untreated into the Ganga every day.”

Environment protection is a fragment of our cultural values, civilisation, heritage and traditions. In Atharvaveda, it has been said that “Man’s paradise is on earth; this living world is the beloved place of all; It has the blessings of nature’s bounties; live in a lovely spirit”. Earth is our nirvana and it is our duty to protect our nirvana. The constitution of India incorporates the framework of protection and preservation of nature without which life cannot be relished. The knowledge of constitutional provisions regarding environment protection is need of the day to bring greater public participation, environmental awareness, and environmental education and sensitize the people to preserve ecology and environment.

**Keywords:** Constitution, environment, PIL, judicial activism, Supreme Court, pollution

### Introduction

“This universe is the creation of the supreme power and is meant for the benefit of all; individual species must therefore learn to enjoy its benefits by regarding themselves as a part of the system in close relationship with other species; let not any one species encroach upon the rights of others.” - Isho Upanishad

The Constitution of India came into force on the 26<sup>th</sup> January 1950; it is a living social document. When our constitution was drafted it did not contain any specific provisions on environment and even the word “Environment” did not find a place in the constitution; there are certain provisions which to great extent had direct bearing on the environment such as improvement of public health <sup>[5]</sup>, organization of agricultural and animal husbandry on modern and scientific lines <sup>[6]</sup> and protection of natural monuments from spoliation, disfigurement etc. <sup>[7]</sup>.

The then Prime Minister Mrs. Indira Gandhi, at the Stockholm Conference in 1972, asserted distress about the degradation of the environment and eco-imbances. She also emphasized that pollution, population and poverty are inter-related problems and there must be an integrated approach to deal with them <sup>[8]</sup>. India was also one of the signatories of the Stockholm Declaration which is known as Magna Carta on human environment. Based upon the Stockholm conference, the Indian parliament passed the forty second amendment to the constitution in the year 1976 <sup>[9]</sup> and incorporated specially two Articles relating to protection and improvement of environment where in the Constitution of India obligates the “State” as well as “Citizens” to “Protect and Improve” the environment <sup>[10]</sup>. Our current Prime Minister Mr. Narendra Modi has also initiated various programs like Swachh Bharat Abhiyan, Clean Ganga Mission, and National Air Quality Index (NAQI), Toilets before Temples, Mount Everest Ascent, and Water Conservation for the protection of Green India <sup>[11]</sup>.

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## I. Before the 42<sup>nd</sup> Amendment

At that time the grundnorm did not contain any specific provision dealing directly with the environment. Only provision which was of some significance was Article 47 of the Directive Principles of State Policy which intended to raise of level of nutrition and standard of living <sup>[12]</sup>. Preamble of the Constitution, which is the key to open the minds of framers of the constitution, reflects the deep-rooted concern of the framers for the protection of the environment when the constitution was framed. It guarantees inter alia, the dignity of the individual in a socialist, democratic republic. The preamble <sup>[13]</sup> of our Constitution provides that our country is based on “Socialistic” pattern of society, where the State pays more attention to the social problems than on any individual problems <sup>[14]</sup>. Environmental pollution which has emerged as one of the biggest social problems is being regarded as a real problem affecting the society at large and thus state is under an obligation to fulfil the basic aim of socialism, that is, to provide decent standard of living to all which can be possible from a pollution free environment <sup>[15]</sup>. So, the citizens have the right to know and access to information of government policies which is very important for the success of the environment policies <sup>[16]</sup>.

## II. After the 42<sup>nd</sup> Amendment

The 42<sup>nd</sup> amendment to the Constitution was brought about in the year 1974 makes it the responsibility of the State Government to protect and improve the environment and to safeguard the forests and wildlife of the country <sup>[17]</sup>. The latter, under Fundamental Duties, makes it the fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures <sup>[18]</sup>. In the case of Sachidanand Pandey v. State of West Bengal, the Supreme Court held that, “Whenever a problem of ecology is brought before the court, it is bound to keep Article 51A (g) in mind when deciding the case <sup>[19]</sup>.”

Article 21 of the constitution of India provides for the right to life and personal liberty. It states that “no person shall be deprived of his life or personal liberty except according to procedure established by law.” The Constitution does not contain a specific provision which deals with the right to clean, wholesome and pollution free environment. This lacuna has however, been set off by judicial activism as a result attained the status of a fundamental right under Article 21 of the Constitution. Life is not construed in Article 21 of the Constitution merely the physical act of breathing. It does not connote mere animal existence <sup>[20]</sup>. It has a much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc. It is the sole article in the Constitution that has received the widest possible interpretation <sup>[21]</sup>. Judicial Chronology is full of landmark decisions, which tackled and initiated upon that Right to life far exceeds mere breathing and walking and developed Environment Jurisprudence. Judiciary plays the pivotal role in the protection of environment. One of the fundamental developments in the Indian Judiciary is the Public Interest Litigation (PIL) or Social Interest Litigation (SIL) as known as modern or new jurisprudence and is called “Jurisprudence of Masses”. Writ petitions in the form of PILs have been accepted by the High Court’s under Article 20, Article 47, Article 32 is right to constitutional remedies

and Article 226 (Power of High Courts to issue certain writs) of the Indian Constitution <sup>[22]</sup>. The PILs got constitutional sanction in the 42<sup>nd</sup> Constitution Amendment Act 1974, which introduced Article 39-A in the Indian Constitution to provide equal justice and free legal aid.

**Role of judicial dynamism and interpretation of constitution:** In *M.C Mehta v. Union of India* <sup>[23]</sup>, the Apex Court observed that, “Right to live in a pollution free environment is a facet of Article 21 of the Constitution.” In *F.K. Hussain v. Union of India*, the Kerala High Court held that, “The right to life is much more than the right to mere animal existence and its attributes are manifold, as life itself. The right to sweet water and the right to free air are the attributes of the right to life and these are the basic elements which sustain life <sup>[24]</sup>.” The Supreme Court again held that, “the Right to live includes the right to enjoyment of pollution free water and air for full enjoyment of life” in the case of *Subhash Kumar v. State of Bihar* <sup>[25]</sup>. Supreme Court of India in case of *Rural Litigation and Entitlement Kendra, Dehradun Vs State of UP* held that the protection and safeguarding the rights of the people to live in healthy environment has to be done even if it has some economical cost <sup>[26]</sup>.

The Supreme Court of India, during its extensive and open interpretation of Constitutional provisions had subsumed some important principles, which were necessary to ensure atmosphere for Right to live in healthy environment.

### 1. Polluter Pays Principal

“If anyone intentionally spoils the water of another ... let him not only pay damages, but purify the stream or cistern which contains the water...” – Plato <sup>[27]</sup>. It sponsors a remedial methodology which is concerned with repairing natural harm. It is a rule in international environmental law where the polluting party pays for the harm or damage done to the natural environment. *Vellore Citizen’s Welfare Forum v. Union of India*, “The Supreme Court has declared that the polluter pays principle is an essential feature of the sustainable development <sup>[28]</sup>.”

### 2. Precautionary Principle

The Supreme Court of India, in *Vellore Citizens Forum Case*, developed the following three concepts for the precautionary principle <sup>[29]</sup>:

- Environmental measures must anticipate, prevent and attack the causes of environmental degradation.
- Lack of scientific certainty should not be used as a reason for postponing measures.
- Onus of proof is on the actor to show that his action is benign.

### 3. Public Trust Doctrine

The Public Trust Doctrine primarily rests on the principle that certain resources like air, water, sea and the forests have such a great importance to people as a whole that it would be wholly unjustified to make them a subject of private ownership. *M.C.Mehta V. Kamal Nath and Others*, “The public trust doctrine, as discussed by court in this judgment is a part of the law of the land <sup>[30]</sup>.”

### 4. Doctrine of Sustainable Development

The World commission on Environment and Development (WCED) in its report prominently known as the ‘Brundtland

Report' named after the Chairman of the Commission Ms. GH Brundtland highlights the concept of sustainable development<sup>[31]</sup>. As per Brundtland Report, Sustainable development means "development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. There is a need for the courts to strike a balance between development and environment<sup>[32]</sup>." Rural Litigation and Entitlement Kendra v. State of UP, The court for the first time dealt with the issue relating to the environment and development; and held that, it is always to be remembered that these are the permanent assets of mankind and or not intended to be exhausted in one generation<sup>[33]</sup>. Vellore Citizen's Welfare Forum, In this case, the Supreme Court observed that sustainable development has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco- system<sup>[34]</sup>.

### 5. Fundamental right of Water

In Narmada Bachao Andolan V. Union of India and Ors., the Supreme Court of India upheld that "Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India<sup>[35]</sup>."

### 6. Compensation to Victim of Environmental degradation

In Delhi gas Leak case "no fault" liability standard (absolute liability) was introduced for industries engaged in hazardous activities which have brought about radical changes in the liability and compensation laws in India. The power of the Supreme Court to grant remedial relief for a proved infringement of a fundamental right includes the power to award compensation<sup>[37]</sup>.

### 7. Right to a wholesome environment

In Charan Lal Sahu V. Union of India, the Supreme Court had said that, "the right to life guaranteed by Article 21 of the Constitution includes the right to a wholesome environment. The Court resorted to the Constitutional mandates under Articles 48A and 51A(g) to support this reasoning and went to the extent of stating that environmental pollution would be a violation of the fundamental right to life and personal liberty as enshrined in Article 21 of the Constitution<sup>[38]</sup>."

### 8. Compensatory Jurisprudence

In Union Carbide Corporation V. Union Of India<sup>[39]</sup>, "Where an enterprise is occupied with an inherently dangerous or a hazardous activity and harm results to anybody by virtue of a mishap in the operation of such dangerous or naturally unsafe movement. Coming about, for instance, in getaway of poisonous gas, the enterprise is strictly and completely obligated to repay every one of the individuals who are influenced by the accident and such risk is not subject to any exemptions." Accordingly, Supreme Court introduced Absolute Liability without any exemption in the Bhopal Gas Tragedy case Judgment<sup>[40]</sup>.

### 9. In Ratlam Municipal Council V. Vardhichand

The Apex Court observed that, "Environmental damage will be considered as Public Nuisance and duty is cast upon

public authorities to help mitigate the effect of nuisance through Public Interest Litigation as strong medium<sup>[41]</sup>."

### 10. In Murli Deora V. Union of India

It has also been held that non-smokers have a right to be protected against the adverse effects of passive smoking, thus justifying a ban on smoking in public places<sup>[42]</sup>.

### Conclusion

"The right to live in a healthy environment as part of Article 21 of the Constitution was first recognized in the case of Rural Litigation and Entitlement Kendra vs. State<sup>[43]</sup>. It is the first case of this kind in India, involving issues relating to environment and ecological balance in which Supreme Court directed to stop the excavation (illegal mining) under the Environment (Protection) Act, 1986. In M.C. Mehta vs. Union of India, AIR 1987 SC 1086 the Supreme Court treated the right to live in pollution free environment as a part of fundamental right to life under Article 21 of the Constitution. Excessive noise creates pollution in the society. The constitution of India under Article 19 (1) (a) read with Article 21 of the constitution guarantees right to decent environment and right to live peacefully. In PA Jacob vs. The Superintendent of Police Kottayam, AIR 1993 Ker 1, the Kerala High Court held that freedom of speech under article 19 (1)(a) does not include freedom to use loud speakers or sound amplifiers. Thus, noise pollution caused by the loud speakers can be controlled under article 19 (1) (a) of the constitution." – Report of Press Information Bureau, Government of India; Environment Protection under Constitutional Framework of India<sup>[44]</sup>.

Article 19 (1) (g) of the Indian constitution confers fundamental right on every citizen to practice any profession or to carry on any occupation, trade or business. This is subject to reasonable restrictions. A citizen cannot carry on business activity, if it is health hazards to the society or general public<sup>[45]</sup>. Thus safeguards for environment protection are inherent in this. The Supreme Court, while deciding the matter relating to carrying on trade of liquor in Cooverjee B. Bharucha Vs Excise commissioner, Ajmer<sup>[46]</sup> observed that, if there is clash between environmental protection and right to freedom of trade and occupation, the courts have to balance environmental interests with the fundamental rights to carry on any occupations. In Ivory Traders Association V. Union of India, "Prohibition on Ivory trade were upheld in the interest of biodiversity<sup>[46]</sup>."

Public Interest Litigation under Article 32 and 226 of the constitution of India resulted in a wave of environmental litigation. The leading environmental cases decided by the Supreme Court includes case of closure of limestone quarries in the Dehradun region (Dehradun Quarrying case, AIR 1985 SC 652), the installation of safeguard at a chlorine plant in Delhi (M.C. Mehta V. Union of India, AIR 1988 SC 1037) etc.<sup>[47]</sup>. In Vellore Citizens Welfare Forum vs. Union of India (1996) 5 SCC 647, the Court observed that "the Precautionary Principle" and "the Polluter Pays Principle" are essential features of "Sustainable Development<sup>[48]</sup>." After the decentralisation of Panchayati Raj by the 73<sup>rd</sup> Constitutional (Amendment) Act, 1992 and 9<sup>th</sup> Five- Year- Plan, at local and village level also, Panchayats have been empowered under the constitution to take measures such as soil conservation, water management, forestry and protection of the environment and promotion of

ecological aspect<sup>[49]</sup>. Environment protection is part of our cultural values and traditions<sup>[50]</sup>.

Collaborative action by government, the community and individuals could combat climate change and environmental degradation. There cannot be a perpetual division between haves and have-nots in the name of environmental pollution. “Environmental problems are really social problems...they begin with the people as the cause and end with the people as the victim.” - E. Hillary

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