



## ENVIRONMENT PROTECTION vis a vis CONSTITUTIONAL PROVISIONS AND JUDICIAL ACTIVISM

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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. <sup>1</sup>*

*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."<sup>2</sup> 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".<sup>3</sup> 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."<sup>4</sup>*

**Keywords:** Environment, Pollution, Public Interest Litigation, Judicial Activism.

### Introduction:

The Constitution of India 1950; it is a living social document. When it 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

<sup>1</sup> Concept of Environment - Dr. V.K.Maheshwari

<sup>2</sup> [www.downtoearth.org.in/coverage/environment-day-green-agenda-for-new-government-44556](http://www.downtoearth.org.in/coverage/environment-day-green-agenda-for-new-government-44556)

<sup>3</sup> The text is the fourth Veda, but has been a late addition to the Vedic scriptures of Hinduism.

<sup>4</sup> Press Information Bureau – Constitutional Framework and Environment  
[pib.nic.in/newsite/PrintRelease.aspx?relid=105411](http://pib.nic.in/newsite/PrintRelease.aspx?relid=105411)

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-imbalances. 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, National Air Quality Index (NAQI), Toilets Before Temples, Mount Everest Ascent, Water Conservation for the protection of Green India.<sup>11</sup>

Prior to 42<sup>nd</sup> Amendment, the grandmom 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 raising 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

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<sup>5</sup> Article 47 “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 and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health”

<sup>6</sup> Article 48 “The State shall endeavour to organise .....cows and calves and other milch and draught cattle”.

<sup>7</sup> Article 49 “It shall be the obligation of the State .....as the case may be”.

<sup>8</sup> [www.theguardian.com/global-development-professionals-network/2014/may/06/indira-gandhi-india-climate-change](http://www.theguardian.com/global-development-professionals-network/2014/may/06/indira-gandhi-india-climate-change)

<sup>9</sup> The Constitution (42nd Amendment) Act, 1976 received the assent of President of India on December 16, 1976.

<sup>10</sup> Article 48-A “Protection and improvement of environment and safeguarding of forests and wild life

<sup>11</sup> Ministry of Environment, Forests and Climate Change, Government of India

<sup>12</sup> Dr. P.S. Jaiswal on Environment Law

<sup>13</sup> The Constitution of India 1949 Preamble: “We, The People of India, Having Solemnly Resolved ..... Give to Ourselves this Constitution

<sup>14</sup> Available at: <https://sol.du.ac.in/mod/book/view.php?id=1180&chapterid=755>

<sup>15</sup> Dr. Sukanta K. Nanda, Environmental Law, 65 (Central Law Publication: Allahabad, 1st Edn., 2007).

and access to information of government policies which is very important for the success of the environment policies.<sup>16</sup>

Post 42<sup>nd</sup> Amendment 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>

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. 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.

**Judicial Dynamism in Interpretation of Constitution:** Right to live in a pollution free environment is a facet of Article 21 of the Constitution,<sup>23</sup> right to life is much more than the right to mere animal existence and its attributes are manifold, as life itself, 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> Right to live includes the right to enjoyment of pollution free

<sup>16</sup> P. S. Jaswal and Nishtha Jaswal, *Environmental Law*, 37 (Allahabad Law Agency: Haryana, 3rd Edn., 2009)

<sup>17</sup> 42<sup>nd</sup> Constitutional Amendment Act, 1976

<sup>18</sup> Article 51 A (g) Constitution of India

<sup>19</sup> 1987 AIR 1109

<sup>20</sup> *Maneka Gandhi v. Union of India*, 1978 AIR 597

<sup>21</sup> Dariusz Adamski, 'How wide is "the widest possible"? Judicial interpretation of the exceptions to the right of access to official documents revisited' (2009) 46 *Common Market Law Review*, Issue 2, pp. 521–549

<sup>22</sup> *Bachan Singh vs State of Punjab*, AIR 1981 SC 1325: State shall secure that the operation of legal system promotes justice... and ensure that the opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

<sup>23</sup> *M.C Mehta v. Union of India* 1987 SCR (1) 819

<sup>24</sup> *F.K. Hussain v. Union of India* AIR Ker 321

water and air for full enjoyment of life,<sup>25</sup> 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> was laid by Court during its extensive and open interpretation of Constitutional provisions had subsumed some important principles.

1. Polluter Pays Principal & Precautionary Principle<sup>27</sup>
2. Public Trust Doctrine<sup>28</sup>
3. Doctrine of Sustainable Development: Brundtland Report.<sup>29</sup>
4. Fundamental right of Water<sup>30</sup>
5. Compensation to Victim of Environmental degradation<sup>31</sup>
6. Right to a wholesome environment<sup>32</sup>
7. Compensatory Jurisprudence & Absolute Liability<sup>33</sup>
8. “Environmental damage a Public Nuisance<sup>34</sup>
9. Ban on smoking in public places.<sup>35</sup>

**Conclusion & Suggestion:** “Thus right to live in a healthy environment as part of Article 21 of the Constitution was recognized.<sup>36</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 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. 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>37</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>38</sup> Thus safeguards for environment protection are inherent in

<sup>25</sup> *Subhash Kumar v. State of Bihar* 1991 AIR 420, 1991 SCR (1) 5

<sup>26</sup> *Rural Litigation and Entitlement Kendra, Dehradun Vs State of UP* 1989 AIR 594

<sup>27</sup> *Vellore Citizen's Welfare Forum v. Union of India* 1996 (5) SCC 647

<sup>28</sup> *M.C.Mehta v. Kamal Nath and Others* , 1997 (1) SCC 388

<sup>29</sup> [www.un-documents.net/our-common-future.pdf](http://www.un-documents.net/our-common-future.pdf)

<sup>30</sup> *Narmada Bachao Andolan v. Union of India and Ors* 1989 AIR 894

<sup>31</sup> *Delhi gas Leak case* 1987 SCR (1)819

<sup>32</sup> *Charan Lal Sahu v. Union of India* 1988 AIR 107

<sup>33</sup> *Union Carbide Corporation v. Union Of India* 1990 AIR 273

<sup>34</sup> *Ratlam Municipal Council v. Vardhichand* 1980 AIR 1622

<sup>35</sup> *Murli Deora v. Union of India* (2001) 8 SCC 765

<sup>36</sup> *Rural Litigation and Entitlement Kendra vs. State* AIR 1988 SC 2187 ( *Dehradun Quarrying Case*).

<sup>37</sup> *PA Jacob vs. The Superintendent of Police Kottayam in Special Service and Features - Environment Protection under Constitutional Framework of India*

<sup>38</sup> *M.C. Mehta v. Union of India* (1988)

this. The Supreme Court in deciding the matter relating to carrying on trade of liquor in<sup>39</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. It upheld “Prohibition on Ivory trade were upheld in the interest of biodiversity.”<sup>40</sup>

Public Interest Litigation under Article 32 and 226 of the constitution of India resulted in a wave of environmental litigation. The closure of limestone quarries, installation of safeguard at a chlorine plant,<sup>41</sup> “Precautionary Principle” and “the Polluter Pays Principle” are laid as essential features of “Sustainable Development by the Court.”<sup>42</sup> Panchayats too 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>43</sup> Environment protection being part of our cultural values and traditions.<sup>44</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.

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<sup>39</sup> *Cooverjee B. Bharucha Vs Excise commissioner, Ajmer* (1954, SC 220)

<sup>40</sup> *Ivory Traders Association V. Union of India*, Civil Writ Petn. No. 1016 of 1992 with C.W.P. Nos. 1272, 1631, 1749 and 1303 of 1992 and 1964 of 1993

<sup>41</sup> *Dehradun Quarrying case*, AIR 1985 SC 652 and *M.C. Mehta V. Union of India*, AIR 1988 SC 1037

<sup>42</sup> *Vellore Citizens Welfare Forum vs. Union of India* (1996) 5 SCC 647

<sup>43</sup> [lawmin.nic.in/olwing/coi/coi-english/Const.Pock%202Pg.Rom8Fsss\(13\).pdf](http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%202Pg.Rom8Fsss(13).pdf)

<sup>44</sup> [indiacode.nic.in/coiweb/amend/amend73.htm](http://indiacode.nic.in/coiweb/amend/amend73.htm)