

## ENVIRONMENTAL PROTECTION AND CONSTITUTIONAL REMEDIES

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### Abstract

Our constitution is not an inert but has grown and evolved over the years. In the Indian scenario, environment protection, hasn't been raised only to the status of fundamental law of the land, but it has been webbed with human rights approach and is now taken into account as a well-established fact that it is the basic human right of all individual, to live in a pollution less environment with a complete human dignity. The fundamental duties imposes a duty on all the citizens to protect the environment. The Directive principles further are directed towards the ideals of building a welfare state. Healthy environment is one of the most essential element of a welfare state. Article 47 states that the State shall regard to the raising of the level of nutrition and the enrichment of the standard of living of its people and the improvement of public health which includes the protection and improvement of environment as a part of their primary duties. Article 48-A of the constitution states that the state shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Part III guarantees fundamental rights which are essential for the development of an individual. The paper meticulously deals in the remedies under Article 36 and 226 and also forms a notion for all the readers that knowledge of these provisions is very essential to bring greater public participation, environmental awareness amongst the masses.

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**Keywords:** environment, fundamental duties, protection, public health, awareness

### **Introduction**

Environment is the wellbeing of life on earth like water, air and soil. It also determines the presence, of development and improvement of humanity and all the human activities. The concept of ecological protection and preservation is never a new concept . It has been rooted to many ancient civilizations. Ancient texts highlights that it is dharma of each individual in the society is to protect nature and the very term ‘nature’ includes land, water, trees and animals which are of great importance to us. In the ‘Atharva Veda’, the ancient Hindu Scepters stated “What of these I dig out let that quickly grow over”.<sup>3</sup> In India, the concern for environmental protection has not only raised the status of fundamental law of the land, but also wedded along with human rights approach and it is well established that, it has become the basic human right of all individual to live in pollution free environment with full human dignity. In view of all the constitutional provisions and other statutory provisions contained in various laws in relation to environment protection, the Supreme Court has held that the essential feature of “sustainable development” such as the “precautionary principle” and the “polluter pays principle” are part of the environmental law of the country.[\(Friends of the Earth 1972\)](#)<sup>4</sup> Moreover, according to the Indian pattern of legislature to make numerous legislations as opposed to addressing the reason for failure and disappointment, and passing new bills consistently is a well known thing . Therefore, there arises a need for a comprehensive analysis of the protection of the environment. When our constitution was drafted, initially it did not contain any specific provisions for environment and even the word “Environment” did not find any place in the constitution, there are certain provisions which has direct bearing on the environment such as improvement of public health , organisation of agricultural and animal husbandry on modern and scientific lines disfigurement and protection of natural monuments from spoliation and disfigurement<sup>5</sup>. The way to environment for protections and many constitutional remedies took place with the international treaties that India has signed into. The Helsinki conference sowed seeds for the need of laws and statutory bodies for environmental protection. The judicial intervention in many cases have made an important role in the interpretation of various provisions of constitution to address

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<sup>3</sup> MC Mehta, GROWTH OF ENVIRONMENTAL JURISPRUDENCE IN INDIA, p.71, 1999.

<sup>4</sup> Vellore Citizens Welfare Forum v. Union of India (1996) 5 SCC 647 at 659-660.

<sup>5</sup> Article 49 “It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be”.

the importance of pollution free environment to the citizens. India was a contracting party by ratifying treaties.

**Aim of the study :**

To recognise the remedies available in our constitution.

**OBJECTIVE**

- To know the constitutional provisions available for environmental protection
- To analyse the different statutes such as the environmental act, water act, air act.
- To understand the tortious and strict liability

**RESEARCH METHODOLOGY**

The data used in this non-empirical study is the secondary data for analysis and the information was collected through online articles, journals, government reports and various websites.

**LIMITATIONS OF THE STUDY**

- The paper is restricted to a secondary means of research, conducted only by means of internet sources and the books.
- A primary way of research could not be adopted for the same due to the nature of the topic

**International agreements**

The objectives of all the international agreements can be achieved only if all of the relevant countries become parties to the treaties. India is a signatory to most of the international treaties and the agreements relating to its regional and sometimes even to all the environmental issues globally. India has played a vital role since 1972 UN Conference on Human Environment at Stockholm (conference) in 1992 UN Conference on Environment and Development at Rio de Janeiro and also in the Earth summit Plus 5 of 1997 at New York. ([United Nations 1993](#)) India is therefore under an obligation to translate and transform the contents and decisions of all the international conferences, treaties & agreements into the stream of its national laws. Article 51 (c) states that “the state shall endeavour to force respect

for international law and treaty obligations in the dealings of organised people and organised countries with one another.” Article 253 of the Constitution enables the parliament “to make any laws for the whole or any part of the territory of India in order to implement any treaty, agreement or convention with any other country or countries or any decision made by any international conference, association or other body.”[\(B. and Sreya 2013\)](#) Entries number 13 and 14 of the Union list includes items on which parliament can make laws and provides “participation in international conferences, associations and other bodies implementing the decisions made there at.”<sup>6</sup> and “entering into any treaty and agreement with any foreign countries and implementing of treaties, agreements and conventions with foreign countries.”<sup>7</sup> Thus, Article 253 is read along with entries 13 & 14 of the Union list, we can conclude that the parliament can pass or make any law inclusive of laws on environmental protection and the it cannot be challenged before the courts on the ground that the Parliament lacks legislative competency to do.<sup>8</sup> These provisions served as a potent weapons in the armoury of the courts to uphold any parliamentary legislation if its of pursuance of Article 253 read with entries 13 & 14 of the Union list. The Parliament has made use of its power to enact Air (Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986.[\(1999\)](#) Preambles of both the laws clearly indicate that that these laws were enacted to implement the decisions reached out at the United Nations Conference on Human Environment held at Stockholm in 1972.[\(Friends of the Earth 1972\)](#)

## Legislation

Under the Indian system, governmental powers are divided between the Union government and the State government. Part XI of the Constitution governs the legislative and the administrative relations between the union and the states. Parliament is entitled with the power to legislate for the entire country, and the State Legislatures are empowered to enforce laws for their respective states.

Article 246 of the Constitution splits the matters of concern between legislation, the union and the states.<sup>9</sup> The union list (List I) in the VII schedule to the Constitution contains subjects over which parliament has absolute powers to legislate . [\(Bhatia 2001\)](#) This also includes

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<sup>6</sup> Entry No.13 of the Union List in the VII Schedule to the Constitution.

<sup>7</sup> Entry No.14 of the Union List in the VII Schedule to the Constitution.

<sup>8</sup> P.S. Jaswal and Nishtha Jaswal, Environmental Law, 39-40 (Allahabad Law Agency, Haryana, 3 Edn., 2009).

<sup>9</sup> Article 246

(1) Notwithstanding anything in clauses ( 2 ) and ( 3 ), parliament has exclusive power to make laws.

defence, foreign affairs, atomic energy, inter-state transportation etc. The state legislature has got absolute powers to legislate on the state list (List II) in matters like sanitation, public health, agriculture etc. The concurrent list is where both the union and states has divided powers in making laws in matters such as protection of wildlife, factories, mines etc. The parliament is also empowered to legislate in the 'national interest' on matters enumerated in the State List.<sup>10</sup> Thus the Water (prevention and pollution) Act was enacted by the parliament in the year 1974.<sup>11</sup> When any project is proposed by the states if it has impact on the environment the centre has the power to disprove such projects. This has often led to a conflict between the state and the centre. This conflict is resolved by the Environmental Impact Assessment (EIA) which has to make an effort to anticipate measures and weigh the socio-economic and ecosystem changes as well as the positive and negative impact it has on environment as a result of the proposed project. This EIA was recognised in the seventh five year plan. ([Manoj and Prasannakumar 2002](#))

### **Fundamental duties**

The 42<sup>nd</sup> Amendment in 1976 added a new part IV- A that deals with Fundamental Duties in the Constitution of India. Article 51-A of this part have enlisted 11 fundamental duties. This part was added on the recommendations made by the Swarn Singh Committee with the efforts in bringing the Constitution of India in line with Article 29(1) of the Universal Declaration of Human Rights. The intention behind it was to make the citizens and the State to shoulder their responsibilities to protect the Constitutional order as their moral duty. Rights and duties are very important elements of Law. They correlated to each other in such a way that one cannot be conceived without the other.

A right is always against someone upon whom they correlative duty is imposed.<sup>12</sup> ([Manoj and Prasannakumar 2002](#); [Kumar 2012](#)) Article 51-A (g) specifically denotes the fundamental duties with respect to environment that: "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and Wildlife and to have compassion for living creatures". The interrelationship between Articles 48, 48-A and

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<sup>10</sup> Article 249 Power of Parliament to legislate with respect to a matter in the State List in the national interest (1) Notwithstanding anything in the foregoing provisions of this Chapter

<sup>11</sup> Shyam Divan and Armin Rosencranz, Environmental Law and Policy in India, 43 (Oxford University Press New Delhi 2<sup>nd</sup> Edn 2003)

<sup>12</sup> Dr. Sukanta K. Nanda, Environmental Law, 78 (Central Law Publication: Allahabad, 1<sup>st</sup> edn 2001)

51-A (g) of the constitution has been explained by the Supreme Court in the *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*.<sup>13</sup>

In *L. K. Koolwal v. State of Rajasthan and Ors*<sup>14</sup> High Court held that under Article 226 and highlighted that, Municipality had failed to discharge its “primary duty” resulting in the sanitation problem in Jaipur which is very hazardous and imposes a threat to life of the citizens of Jaipur. The Court explained the scope of Article 51-A “We can call Article 51-A ordinarily as the duty of the citizens, but it is in fact that it is the right of the citizens as it creates the right in favour of citizens to move to the court to see whether the State performs its duties faithfully or not as well as the obligatory and primary duties are performed in accordance with the law of the land. Omissions are brought to the notice of the court by the citizens and thus , Article 51-A gives right to the citizens to move the court for the enforcement of the duty caste on the state, instrumentalities, agencies, departments, local bodies and statutory authorities created under the particular law of the state.[\(Agrawal and Singh 2016\)](#)

In *Goa Foundation v. State of Goa* <sup>15</sup> The question of locus standi was examined by the within the premises of the fundamental duties under the constitution of India. In this case the petitioner was a society registered under the law relating to registration of societies and their members were citizens of India having fundamental duty under Article 51-A to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The question before the Court was that whether such a society has also got the same duty.

The Court gave answer to the question in an affirmative and held that such a society has same duty. On the basis of this the petitioner society was able to have a locus standi to move to Court in order to prevent ecological degradation, and to formulate and implement the programme for rehabilitation of environment and to restore ecological balance. The state has also got certain duties to be performed towards environmental protection it was held, In *Hamid Khan v. State of Madhya Pradesh*<sup>16</sup> negligence on part of the state government in not taking necessary measures for treatment of water ,before supplying drinking water from

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<sup>13</sup> AIR (2005) 8 SCC 534

<sup>14</sup> AIR 1988 Raj 2.

<sup>15</sup> AIR 2001 Bom 318 at 319

<sup>16</sup> AIR 1997 MP 191.

hand-pumps has resulted in colossal damage to the people, the Court held that the State responsible and has failed to perform its primary responsibility. ([Fredericks 1988](#))

With the aim of providing better protection to the environment, the Constitution was amended in the year 1976 and Article 48-A was inserted to the Constitution which reads: “The State shall endeavour to protect and improve the environment and safeguard the forests and wild life of the country”. This Article uses the word ‘Environment’ in a wider meaning which affects all the living being including flora and fauna and influences the conditions of their lives. Water and air are among the most essential factors which support the life of the citizens. Many evolutionary years have passed and the society is still dependant on water and it will continue to do, thus proving the necessity and its vitality for the existence of the mankind. Hence, it becomes the utmost duty and responsibility of the State to protect the water and all the water resources within whole environment from all the activities. So if we interpret the Article, this imposes a need for the state to adopt protection policy for the improvement of the environment.

### **Right to live in a healthy environment**

The right to live in healthy environment as a part of Article 21 was witnessed in the case of Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P.<sup>17</sup> A group of citizens wrote to the Supreme Court against the mining which deprives the Mussoori Hills of trees and the forest cover and accelerated soil erosion that was resulting in landslides and blockage of the underground water channels which had fed a number of rivers and springs in the valley. The Court considered this letter as writ petition under Article 32 of the Constitution. In the first place the Court had appointed an expert committee in order to advise the bench on any technical issues arising. On the basis of the report of the committee, the Court has ordered the closure of the lime- stone quarries damaging the Mussoorie hills. The court stated that , the disturbance of ecology and pollution of water, air and environment by quarrying operation indeed affects the life of the person and thus involves the violation of right to life and personal liberty under Article-21 of the Constitution. Article 21 guarantees the right to life, a life of dignity, to be lived in a proper environment, free of danger of disease

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<sup>17</sup> AIR 1985 SC 652 (popularly known as Doon Valley Case)

and infection. It is a important fact that there exists a close link between life and environment. Right to life would become meaningless ,if there is no healthy environment.<sup>18</sup>

Sterility Industries lets Vs Union of India and Ors.<sup>19</sup> There was a huge agitation of the people Tamil Nadu recently where they demanded the closure of sterlite copper smelting plants in Thoothukudi. The plant had created tremendous impact on the health of the public by air and water pollution it has caused over the years. There was an increase of diseases like cancer, asthma etc. The court held that closure of these plants because under Article 21 right to clean environment is a right guaranteed under this article.

In M.C.Mehta vs Union of India.Ors.<sup>20</sup> The principles where laid down for any approval of environmental clearance. The principles involved the water act and the air act I order to make a clearance, authorities must consider all these factors while approving a project.

### **Judicial remedies**

There are two kinds of remedies available for environmental protection in India they are statutory law and torturous remedies. Writ petition can also be filed under Article 32 in Supreme Court and Article 226 in the High Court.

#### Tortious liability

- Damage

The polluter pay principle was used in the judgment of the M.C Mehta oleum gas case. The principle is derived from Ancient Greek philosophy where the one who spoils the water intentionally will have to compensate the damages as well as pay to clean the stream. In the Oleum gas case the court gave judgement that the polluters liability or compensation would depend on their ability to pay, thus by applying this principle the defender is made both to clean up the pollution caused as well to punish the polluter.

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<sup>18</sup> P.S. Jaswal and Nishtha Jaswal, Environmental Law, 48 (Allahabad Law Agency: Haryana, 3<sup>rd</sup> Edn 2009)

<sup>19</sup> Sterlite Industries vs Union of India Ors[(2009) 6 SCC 141]

<sup>20</sup>M.C.Mehta vs Union of India Ors.[(1996) 5 SCC 647]



- Injunction

It is the order of the court to stop the work temporarily or permanently if in case of any environmental damage. It also includes closure of any Industry that causes environmental problems. It is done to prevent the happenings of continuous wrong.

- Nuisance : It is of two types where public nuisance and private nuisance. It is usually a hindrance of enjoyment of the inherent rights. Anything that causes hindrance to the citizens of India from enjoying their right to clean air and water is also nuisance.

### **Strict liability**

In the case Rylands v. Fletcher by Blackburn J. If any person holds any item that is likely to be of mischief he will take the responsibility of the damages it causes if once it is escaped. The doctrine of strict liability has considerable utility in environmental pollution cases especially cases dealing with the harm caused by the leakage of hazardous substances. ([Sebert 1966](#))

### **Recommendations**

There are various measures that have been taken by the government to protect and prevent environmental pollution. But how far it is effective remains a big question mark. Thus there should be more stringent measures that has to be taken to control pollution. The state government plays a vital role in the part of protecting environment. All the state governments should adopt a lot of schemes to make our environment a better place to live in. It is individuals rights o live in pollution free environment with full human dignity. In view of all the constitutional provisions and other statutory provisions contained in various laws in relation to environment protection, the Supreme Court has held that the essential feature of “sustainable development” such as the “precautionary principle” and the “polluter pays principle” are part of the environmental law of the country. Moreover, according to the Indian pattern of legislature to make numerous legislations as opposed to addressing the reason for failure and disappointment, and passing new bills consistently is a well known thing .

Therefore, there arises a need for a comprehensive analysis of the protection of the environment.

### **Conclusion**

In this study the constitutional provisions and the related cases have been presented. It shows the active role of the Supreme Court and the High Courts. In the last decade, the courts exhibited its legal scholarship in the development of environmental jurisprudence. The role of higher judiciary is also witnessed a major transitions. The Court has done its job, fulfilled the obligation and has performed its duty. It is our submission, that judiciary is not the only effective form to resolve environmental problem which can be effectively solved only through public awareness and political will rather than judicial will. Further, the environmental issues are complex and need to dwell on points of scientific and technical relevance. The Courts in such situations find it difficult to form its own independent opinion and take recourse to the help of expert committees which is a long and time consuming exercise. Accordingly, there is an urgent need that citizens as well as the State must sit up and take notice of environmental degradation and take appropriate steps to improve it.

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