

Right to Clean Environment as an Implicit Fundamental Right under Article 21: Judicial Trends and Analysis

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Abstract

The right to a clean and healthy environment has emerged as a fundamental human right, increasingly recognized by international bodies, national constitutions, and judicial pronouncements. This research paper explores the conceptual, legal, and judicial foundations of this right, focusing on international human rights law and Indian constitutional jurisprudence. It analyzes how courts, especially the Indian judiciary, have interpreted the right to life under Article 21 of the Constitution to include environmental protection. Through an examination of environmental principles, landmark judgments, and legislative measures, the paper assesses the progress made and the challenges that persist in the enforcement and realization of environmental rights. Comparative perspectives, global developments, and future reforms are also discussed to provide a holistic understanding of the issue. The study delves into international human rights instruments such as the Stockholm Declaration (1972), Rio Declaration (1992), and recent developments at COP summits, while also critically analyzing the judicial interpretation of Article 21 of the Indian Constitution. Indian courts, particularly the Supreme Court, have played a transformative role by reading the right to a healthy environment into the ambit of the right to life, thereby expanding constitutional jurisprudence. The paper further examines the interplay between environmental law, sustainable development, and environmental justice, highlighting landmark judgments like *Subhash Kumar v. State of Bihar*, *M.C. Mehta* cases, and *Vellore Citizens Welfare Forum v. Union of India*. Through this, it evaluates how environmental concerns have been embedded into the broader legal framework for the protection of human dignity.

Introduction

The environment is not merely a passive backdrop to human activity; it is an essential component of life itself. A clean and healthy environment underpins the realization of several human rights, including the rights to health, life, water, and livelihood. The increasing industrialization, urbanization, and unsustainable exploitation of natural resources have led to environmental degradation, threatening the ecological balance. This scenario has prompted the global community and national governments to recognize environmental protection as a legal and moral imperative.

In India, although the Constitution does not explicitly mention the right to a clean environment as a fundamental right, judicial interpretations have broadened the scope of Article 21, which guarantees the right to life, to include the right to live in a pollution-free environment. This paper critically examines the legal, constitutional, and jurisprudential developments concerning environmental rights in India and abroad. **Historical Background and Evolution of Environmental Rights** The concept of environmental rights is relatively new in the domain of legal studies. Traditional legal systems largely focused on the exploitation of natural resources without adequate concern for sustainability or ecological health. The emergence of environmental consciousness in the 20th century, particularly post-World War II, marked a turning point. The 1972 United Nations Conference on the Human Environment held in Stockholm was a watershed moment. It issued the Stockholm Declaration, which asserted that both aspects of man's environment—natural and man-made—are essential to his well-being and enjoyment of basic human rights. Principle 1 of the declaration affirms that "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being." Subsequent international instruments such as the Rio Declaration (1992), the Kyoto Protocol (1997), and the Paris Agreement (2015) have

emphasized the interlinkage between sustainable development and environmental protection. These developments have slowly shaped the concept of a right to a clean and healthy environment as part of customary international law.

Environment in International Human Rights Law Although international human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) do not expressly mention environmental rights, their provisions have been interpreted to include such rights. For instance, the right to health under Article 12 of ICESCR includes the improvement of all aspects of environmental and industrial hygiene.

The United Nations Human Rights Council has recognized the relationship between environmental degradation and the enjoyment of human rights. In 2021, the UN General Assembly adopted a historic resolution recognizing access to a clean, healthy and sustainable environment as a universal human right. The work of the Special Rapporteur on Human Rights and the Environment has further highlighted the obligations of states to respect, protect, and fulfill environmental rights. In regional contexts, documents like the African Charter on Human and Peoples' Rights and the Aarhus Convention in Europe have explicitly recognized environmental rights. These developments signify a growing consensus in international law regarding the importance of environmental protection as an essential aspect of human rights.

Role of United Nations and International Agencies The United Nations and its affiliated agencies have played a pivotal role in mainstreaming environmental concerns into global governance. The establishment of the United Nations Environment Programme (UNEP) in 1972 signaled the beginning of concerted international efforts to address environmental degradation. UNEP has been instrumental in conducting scientific assessments, providing technical assistance, and facilitating international cooperation. The Intergovernmental Panel on Climate Change (IPCC), co-established by UNEP and the World Meteorological Organization (WMO), has been influential in shaping climate change discourse through its periodic assessment reports. Other UN agencies like the World Health Organization (WHO) and the United Nations Development Programme (UNDP) have also addressed environmental issues within their mandates. The WHO focuses on the health implications of environmental degradation, while the UNDP promotes sustainable development initiatives worldwide. Moreover, the United Nations Framework Convention on Climate Change (UNFCCC) and its associated instruments (Kyoto Protocol, Paris Agreement) have become central to the global climate governance framework. These instruments underscore the collective responsibility of the international community to safeguard the environment for present and future generations.

Constitutional Framework for Environmental Protection in India The Indian Constitution originally did not contain any express provision for environmental protection. However, significant amendments and judicial interpretation have since established a robust constitutional framework. The 42nd Amendment Act, 1976, was a landmark step, inserting Article 48A (Directive Principles of State Policy) and Article 51A(g) (Fundamental Duties), both of which stress the need for environmental protection. Article 48A reads: "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country." Article 51A(g) imposes a duty on every citizen to "protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures." Though not justiciable, these provisions guide the legislative and judicial action. The Supreme Court has also interpreted Article 21—the right to life—to include the right to a clean and healthy environment, thus making environmental protection a fundamental right.

Directive Principles and Fundamental Duties Directive Principles of State Policy (Part IV) and Fundamental Duties (Part IVA) reflect the Indian State's commitment to environmental protection. Although not legally enforceable, the judiciary often invokes them to interpret the scope of fundamental rights. In *L.K. Koolwal v. State of Rajasthan* (AIR 1988 Raj 2), the

Rajasthan High Court emphasized that citizens have a duty to maintain cleanliness and support state efforts in environmental management. The courts have integrated these principles with justiciable parts of the Constitution to create enforceable rights and duties. Through various judgments, Article 51A(g) has been interpreted not only as a moral duty but as a participatory legal obligation to protect the environment. Expansive Interpretation of Article 21 of the Indian Constitution provides that "No person shall be deprived of his life or personal liberty except according to procedure established by law." The Supreme Court has interpreted "life" to include the right to live with dignity, which encompasses a pollution-free environment. In *Subhash Kumar v. State of Bihar* (AIR 1991 SC 420), the Court held that the right to life includes the right to enjoyment of pollution-free water and air. This interpretation was further strengthened in *Virendra Gaur v. State of Haryana* (1995) 2 SCC 577, where the Court ruled that environmental, ecological, and pollution-free habitat is integral to Article 21. Such expansive readings have enabled the judiciary to proactively enforce environmental rights, even in the absence of specific legislation. Judicial Activism in Environmental Jurisprudence The Indian judiciary, especially the Supreme Court and various High Courts, has been at the forefront of developing environmental jurisprudence. Using instruments like Public Interest Litigation (PIL), courts have entertained petitions on a wide range of environmental issues—from air and water pollution to forest conservation and waste management. A notable case is *M.C. Mehta v. Union of India*, which led to several landmark rulings including the Taj Trapezium case, Ganga pollution cases, and vehicle emission controls. The Court laid down the "Polluter Pays" and "Precautionary Principle" in *Vellore Citizens Welfare Forum v. Union of India* (1996). The judiciary's intervention has filled the gaps left by executive inaction and legislative delay. However, critics argue that excessive judicial activism may encroach upon the domain of the legislature. Analysis of Landmark Judgments Several landmark decisions have shaped India's environmental jurisprudence:

M.C. Mehta v. Union of India (1987–2001): This series of judgments addressed river pollution, vehicular emissions, and industrial hazards.

Indian Council for Enviro-Legal Action v. Union of India (1996): Recognized the "Polluter Pays" principle.

Vellore Citizens Welfare Forum v. Union of India (1996): Laid down "Precautionary Principle" and "Sustainable Development."

T.N. Godavarman Thirumulpad v. Union of India (1996 onwards): Revolutionized forest conservation policies.

Narmada Bachao Andolan v. Union of India (2000): Balanced environmental concerns with developmental needs.

These rulings underscore the judiciary's transformative role in ensuring environmental protection and setting legal precedents that influence legislation and governance.

Environmental Legislation in India India has a comprehensive legal framework for environmental protection, consisting of both pre- and post-independence legislation. The key statutes include:

The Environment (Protection) Act, 1986: Enacted after the Bhopal Gas Tragedy, this umbrella legislation empowers the central government to take measures to protect and improve the environment.

The Water (Prevention and Control of Pollution) Act, 1974: Aims to prevent and control water pollution and maintain or restore the wholesomeness of water.

The Air (Prevention and Control of Pollution) Act, 1981: Provides for the prevention, control, and abatement of air pollution.

The Wildlife Protection Act, 1972: Protects wildlife and their habitats.

The Forest (Conservation) Act, 1980: Regulates deforestation and conserves forests.

Other important laws include the National Green Tribunal Act, 2010, and various rules under the Environment (Protection) Act, such as E-Waste Rules, Plastic Waste Rules, and Biomedical Waste Management Rules.

Principles of Environmental Law in India Several principles of environmental law have gained recognition through judicial pronouncements and have guided both policy-making and enforcement. These include:

Precautionary Principle: When an activity raises threats of harm to the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established. **Polluter Pays Principle:** The polluter should bear the cost of managing pollution to prevent damage to human health or the environment.

Sustainable Development: Development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

Public Trust Doctrine: Certain resources like air, sea, waters, and forests are held in trust by the government for the free and unimpeded use of the general public.

These principles were highlighted in cases such as *Vellore Citizens Welfare Forum v. Union of India* and *M.C. Mehta v. Kamal Nath*.

Right to Environment as a Human Right The right to a healthy environment has increasingly been recognized as a component of fundamental human rights. It intersects with rights such as: **Right to Life and Health:** Environmental degradation directly impacts public health, making environmental quality a precondition for these rights.

Right to Water and Food: Access to clean water and unpolluted food sources is essential for survival and well-being.

Right to Livelihood: Millions depend on natural resources for their livelihood. Environmental harm can result in displacement, unemployment, and social disruption.

The Indian judiciary has repeatedly held that environmental protection is essential for the enjoyment of fundamental rights, particularly under Article 21.

Role of Public Interest Litigation (PIL) PIL has revolutionized environmental litigation in India. It allows individuals or groups to approach the courts on behalf of those whose rights have been violated but who may not have the means to seek legal redress themselves.

Conclusion The right to a clean and healthy environment is not only a human right but a fundamental necessity for the survival and well-being of current and future generations. The development of constitutional jurisprudence in India has been progressive, with the judiciary taking an active role in interpreting Article 21 to include environmental concerns. Legislative efforts and judicial activism have together contributed to the evolution of a robust environmental jurisprudence. However, the effectiveness of these measures often depends on implementation, enforcement, and active public participation.

The increasing environmental degradation, climate change challenges, and biodiversity loss necessitate a more integrated, participatory, and rights-based approach to environmental protection. The Indian experience, enriched by judicial innovation and civil society engagement, provides a strong foundation for future development in this critical area.

References: -

1. The Constitution of India, 1950.
2. The Environment (Protection) Act, 1986.
3. The Water (Prevention and Control of Pollution) Act, 1974.
4. The Air (Prevention and Control of Pollution) Act, 1981.
5. The National Green Tribunal Act, 2010.
6. *M.C. Mehta v. Union of India*, AIR 1987 SC 1086.
7. *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715.
8. *Indian Council for Enviro-Legal Action v. Union of India*, AIR 1996 SC 1446.
9. *Rural Litigation and Entitlement Kendra v. State of U.P.*, AIR 1985 SC 652.

10. Shyam Divan and Armin Rosencranz, Environmental Law and Policy in India (Oxford University Press).
11. Leelakrishnan, P. Environmental Law in India (LexisNexis, 2019).
12. United Nations Human Rights Council, Resolution A/HRC/RES/48/13 (2021).
13. World Commission on Environment and Development, "Our Common Future" (Brundtland Report, 1987).
14. UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development.

