INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 7 | Issue 2

2025

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Environmental Protection as a Fundamental Duty: Constitutional Mandate and Ground Reality

AMAN SHARMA[1]

ABSTRACT

Environmental protection has emerged as a critical concern globally, with nations striving to balance development and ecological sustainability. In India, the Constitution enshrines environmental protection as both a directive for the State and a duty for its citizens. The 42nd Amendment Act of 1976 introduced Article 48A, directing the State to protect and improve the environment, and Article 51A(g), mandating citizens to safeguard the natural environment and exhibit compassion for living creatures. These provisions underscore the constitutional commitment to environmental conservation.

Judicial interpretations have further reinforced this commitment. The Supreme Court, through landmark judgments, has expanded the scope of Article 21, recognizing the right to a clean and healthy environment as intrinsic to the right to life. Cases like M.C. Mehta v. Union of India and Subhash Kumar v. State of Bihar have set precedents in environmental jurisprudence, emphasizing the State's responsibility and citizens' role in environmental protection.

Despite these constitutional mandates and judicial pronouncements, the ground reality presents challenges. Environmental degradation persists due to factors like industrial pollution, deforestation, and inadequate enforcement of environmental laws. Public awareness and participation, though growing, remain insufficient to effect significant change. This article delves into the constitutional provisions related to environmental protection, analyzes judicial interpretations, assesses the current environmental scenario in India, and explores the gap between constitutional ideals and practical implementation. It aims to provide a comprehensive understanding of environmental protection as a fundamental duty and the realities that influence its actualization.

***Keywords**: Environmental Protection, Fundamental Duty, Indian Constitution, Judicial Interpretation, Environmental Law.*

I. INTRODUCTION

Environmental protection has emerged as a paramount concern in the 21st century, as the world grapples with the consequences of rapid industrialization, urbanization, and climate change. In India, the significance of preserving the environment is deeply rooted in its constitutional framework, which mandates both the State and its citizens to safeguard natural resources. The

[1] Author is a LL.M. Student at School of Law, GD Goenka University, Haryana, India.

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Indian Constitution, through various provisions, underscores the importance of environmental conservation, reflecting the nation's commitment to sustainable development.

The 42nd Amendment to the Constitution in 1976 marked a significant milestone by introducing Article 48A and Article 51A(g). Article 48A, under the Directive Principles of State Policy, directs the State to "endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country." Simultaneously, Article 51A(g) imposes a fundamental duty on every citizen "to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures." These provisions collectively emphasize that environmental protection is not solely the responsibility of the government but a shared duty of all citizens.

The judiciary has played a pivotal role in interpreting and reinforcing these constitutional mandates. Through landmark judgments, the Supreme Court of India has expanded the scope of Article 21, which guarantees the right to life, to include the right to a clean and healthy environment. Cases such as M.C. Mehta v. Union of India and Subhash Kumar v. State of Bihar have set significant precedents, asserting that environmental degradation infringes upon the fundamental rights of individuals.

Despite these robust constitutional provisions and judicial interventions, the practical implementation of environmental protection measures faces numerous challenges. India continues to grapple with issues such as air and water pollution, deforestation, loss of biodiversity, and inadequate waste management. Rapid industrialization and urban expansion often occur at the expense of environmental sustainability, leading to conflicts between development and conservation. One of the primary challenges is the enforcement of environmental laws and regulations. While India has a comprehensive legal framework addressing various aspects of environmental protection, the effectiveness of these laws is often hindered by factors such as lack of awareness, insufficient resources, bureaucratic inefficiencies, and corruption. Additionally, the informal sector, which plays a significant role in waste management, often operates outside the purview of regulatory mechanisms, leading to unregulated and environmentally harmful practices.

Public participation and awareness are crucial components in the successful implementation of environmental protection measures. However, there exists a gap between the constitutional duty imposed on citizens and their actual engagement in environmental conservation activities. Educational initiatives, community involvement, and awareness campaigns are essential to bridge this gap and foster a culture of environmental responsibility among the populace.

Furthermore, the role of industries and corporations in environmental degradation cannot be overlooked. While economic growth is vital for national development, it is imperative that industrial activities align with environmental sustainability goals. Corporate social responsibility, adherence to environmental standards, and the adoption of green technologies are essential steps towards mitigating the environmental impact of industrialization.

In recent years, there have been notable initiatives aimed at enhancing environmental protection in India. The National Green Tribunal (NGT), established in 2010, serves as a specialized judicial body to handle environmental disputes and ensure the effective enforcement of environmental laws. Additionally, various government programs and policies have been introduced to address specific environmental issues, such as the National Clean Air Programme (NCAP) and the Swachh Bharat Abhiyan. Despite these efforts, the gap between constitutional mandates and ground realities persists. Addressing this disparity requires a multifaceted approach involving legal reforms, institutional strengthening, public engagement, and the integration of environmental considerations into all aspects of policy-making and development planning. It is imperative to recognize that environmental protection is not an isolated objective but an integral component of sustainable development and the overall well-being of society.

II. CONSTITUTIONAL MANDATE FOR ENVIRONMENTAL PROTECTION

The Indian Constitution, a living document reflecting the nation's aspirations and values, embeds environmental protection within its framework, emphasizing the symbiotic relationship between development and ecological preservation. This commitment is articulated through various provisions that delineate the responsibilities of both the State and its citizens towards the environment.

Directive Principles of State Policy

The Directive Principles of State Policy (DPSP), enshrined in Part IV of the Constitution, serve as guiding principles for governance, aiming to establish a just and equitable society. Among these, Article 48A, introduced by the 42nd Amendment Act of 1976, specifically addresses environmental concerns: "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country." This provision underscores the State's obligation to prioritize environmental conservation, recognizing its integral role in the nation's sustainable development. Although the DPSPs are non-justiciable, they establish a foundational framework that informs and inspires legislative and executive actions aimed at environmental preservation.

Fundamental Duties

Complementing the State's responsibilities, the Constitution imposes duties on citizens through the Fundamental Duties outlined in Part IV-A. Article 51A(g), also introduced by the 42nd Amendment, articulates: "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." This clause emphasizes the collective responsibility of individuals in environmental stewardship, highlighting that ecological well-being is a shared endeavor between the State and its citizens. While Fundamental Duties are not enforceable by law, they serve as moral imperatives, fostering a culture of environmental consciousness and encouraging proactive participation in conservation efforts.

Fundamental Rights and Environmental Protection

The interplay between Fundamental Rights and environmental protection is pivotal in India's constitutional landscape. Article 21, which guarantees the right to life and personal liberty, has been expansively interpreted by the judiciary to encompass the right to a clean and healthy environment. This interpretation aligns with the understanding that a wholesome environment is essential for the realization of the right to life. The Supreme Court of India has been instrumental in reinforcing this perspective. In the landmark case of Subhash Kumar v. State of Bihar (1991), the Court held that the right to life includes the right to enjoy pollution-free water and air, essential for the full enjoyment of life. Such judicial pronouncements have effectively elevated environmental protection to the status of a fundamental right, thereby empowering citizens to seek legal remedies against environmental degradation.

Legislative Competence and Environmental Governance

The Constitution delineates the distribution of legislative powers between the Union and the States through three lists in the Seventh Schedule: the Union List, the State List, and the Concurrent List. Environmental matters, due to their multifaceted nature, find relevance across these lists. Notably, the 42nd Amendment Act of 1976 transferred forests and wildlife from the State List to the Concurrent List, enabling both the Union and State governments to legislate on these subjects.

This shift underscores the recognition of environmental issues as matters of national importance, necessitating coordinated efforts across different levels of government. It facilitates the formulation of comprehensive policies and laws that address environmental challenges uniformly across the country, while still allowing for region-specific considerations.

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Integration of International Environmental Principles

India's constitutional provisions for environmental protection are in harmony with international environmental principles and commitments. The Stockholm Declaration of 1972, a seminal global environmental accord, influenced the incorporation of Articles 48A and 51A(g) into the Indian Constitution. This alignment signifies India's dedication to global environmental standards and its proactive approach in integrating international norms into domestic law. Furthermore, the judiciary has embraced principles such as sustainable development, the precautionary principle, and the polluter pays principle, embedding them within India's environmental jurisprudence. These principles guide judicial reasoning and have been instrumental in shaping decisions that balance developmental objectives with ecological sustainability.

Judicial Activism and Environmental Protection

The Indian judiciary has played a proactive role in environmental protection, often stepping in to fill legislative and executive voids. Through Public Interest Litigations (PILs), courts have addressed environmental grievances, expanding the scope of Fundamental Rights to include environmental concerns. In M.C. Mehta v. Union of India, the Supreme Court underscored the necessity of a clean environment as integral to the right to life, leading to significant policy changes and stricter environmental regulations. This judicial activism has not only provided immediate remedies in specific cases but has also set precedents that influence broader environmental governance, ensuring that environmental considerations are embedded within the country's developmental paradigm.

Challenges in Implementation

Despite robust constitutional provisions, the practical implementation of environmental mandates faces several challenges. These include:

- **Enforcement Gaps**: While laws exist, their enforcement is often inconsistent due to bureaucratic inefficiencies, lack of resources, and sometimes, political interference.
- **Public Awareness**: There remains a gap in public awareness regarding environmental duties and rights, leading to inadequate community participation in conservation efforts.
- **Conflicting Interests**: The pursuit of economic development sometimes conflicts with environmental conservation, leading to policy decisions that may favor short-term economic gains over long-term ecological sustainability.

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- **Judicial Overreach Concerns**: While judicial activism has been beneficial, it occasionally raises concerns about the separation of powers, with critiques about the judiciary encroaching upon the domains of the executive and legislature.

III. JUDICIAL INTERPRETATIONS AND ENVIRONMENTAL JURISPRUDENCE

The Indian judiciary has played a pivotal role in interpreting constitutional mandates related to environmental protection, thereby shaping the country's environmental jurisprudence. Through a series of landmark judgments, the courts have not only expanded the scope of environmental rights but have also introduced and reinforced key environmental principles.

Expansion of Article 21: Right to a Healthy Environment

Article 21 of the Indian Constitution guarantees the right to life and personal liberty. The judiciary has expansively interpreted this provision to include the right to a clean and healthy environment.

- **Subhash Kumar v. State of Bihar (1991):** The Supreme Court held that the right to life encompasses the right to enjoy pollution-free water and air, essential for the full enjoyment of life. This judgment established that environmental degradation directly infringes upon the fundamental right to life.
- **M.C. Mehta v. Union of India (1988):** In the context of the Ganga Pollution case, the Court emphasized that environmental pollution and industrial hazards infringe upon the right to a wholesome environment, which is implicit in the right to life under Article 21.

Introduction of Environmental Principles

The Indian judiciary has been instrumental in introducing and applying several environmental principles that have become foundational to environmental law in India.

- **Polluter Pays Principle:** This principle holds that the polluting party is responsible for the costs of managing pollution to prevent damage to human health or the environment.
    - *Indian Council for Enviro-Legal Action v. Union of India (1996):* The Supreme Court applied the Polluter Pays Principle, directing industries responsible for environmental degradation to compensate affected individuals and restore the environment.
- **Precautionary Principle:** This principle advocates for preventive action in the face of uncertainty to avoid potential environmental harm.

- *Vellore Citizens Welfare Forum v. Union of India (1996):* The Court recognized the Precautionary Principle as essential to environmental law, emphasizing that lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

- **Public Trust Doctrine:** This doctrine posits that certain natural resources are held in trust by the government for public use and cannot be appropriated for private ownership.
  - *M.C. Mehta v. Kamal Nath (1997):* The Supreme Court applied the Public Trust Doctrine, ruling that the government holds natural resources in trust for the public and cannot transfer them for private use if it adversely affects the environment.

Balancing Development and Environmental Protection

The judiciary has often been called upon to balance developmental needs with environmental protection, ensuring sustainable development.

- **Narmada Bachao Andolan v. Union of India (2000):** In addressing the construction of the Sardar Sarovar Dam, the Supreme Court upheld the project's continuation, emphasizing that sustainable development requires a balance between environmental protection and developmental activities.

Role of the National Green Tribunal (NGT)

Established in 2010, the NGT has adjudicated numerous environmental cases, reinforcing principles like the Polluter Pays Principle and ensuring accountability for environmental damage.

- **Srinagar Bandh Aapda Sangharsh Samiti v. Alaknanda Hydro Power Co. Ltd. (2013):** The NGT held a power company liable for damages caused during the 2013 Uttarakhand floods, applying the principle of "No Fault Liability" and emphasizing the importance of holding polluters accountable.

IV. CHALLENGES AND THE WAY FORWARD

Despite progressive judgments, challenges remain in the effective implementation of environmental laws. Issues such as enforcement gaps, public awareness, and conflicting interests between development and conservation persist. The judiciary continues to play a crucial role in interpreting environmental laws and principles, ensuring that development does not come at the expense of environmental integrity. Through its proactive stance, the Indian

judiciary has significantly contributed to the evolution of environmental jurisprudence, emphasizing the importance of a clean and healthy environment as a fundamental right.

Legislative Framework Supporting Environmental Protection

India's commitment to environmental protection is enshrined not only in its Constitution but also in a comprehensive legislative framework. Over the decades, the Parliament has enacted a series of laws addressing various aspects of environmental conservation, pollution control, biodiversity preservation, and sustainable resource management. This framework reflects the nation's evolving understanding of environmental challenges and its dedication to addressing them through legal mechanisms.

The Environment (Protection) Act, 1986

Enacted in the aftermath of the Bhopal Gas Tragedy, the Environment (Protection) Act of 1986 serves as an umbrella legislation for environmental protection in India. It grants the central government broad powers to regulate and control industrial pollution, set environmental quality standards, and enforce compliance. The Act empowers authorities to close, prohibit, or regulate industries and operations that pose environmental risks.

The Air (Prevention and Control of Pollution) Act, 1981

This Act aims to prevent, control, and abate air pollution. It led to the establishment of the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs), which are responsible for monitoring air quality and enforcing standards. The Act empowers these boards to set emission standards for industries and vehicles, ensuring that air pollution is kept within permissible limits.

The Water (Prevention and Control of Pollution) Act, 1974

As one of the earliest environmental legislations in India, this Act focuses on preventing and controlling water pollution. It provides for the establishment of pollution control boards at the central and state levels, tasked with monitoring water quality and enforcing standards. The Act prohibits the discharge of pollutants into water bodies beyond prescribed limits and mandates the treatment of industrial effluents.

The Wildlife (Protection) Act, 1972

This Act provides for the protection of wild animals, birds, and plants, and aims to ensure the ecological and environmental security of the country. It establishes protected areas such as national parks and wildlife sanctuaries and regulates hunting, poaching, and trade in wildlife. The Act has been instrumental in conserving India's rich biodiversity and protecting

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endangered species.

The Forest (Conservation) Act, 1980

Enacted to curb deforestation and conserve forests, this Act restricts the de-reservation of forests or use of forest land for non-forest purposes without prior approval from the central government. It aims to prevent the indiscriminate diversion of forest land and ensures that any such diversion is compensated through afforestation and other measures.

The Biological Diversity Act, 2002

This Act was enacted to fulfill India's obligations under the Convention on Biological Diversity. It aims to conserve biological diversity, promote sustainable use of its components, and ensure fair and equitable sharing of benefits arising from the use of biological resources. The Act established the National Biodiversity Authority (NBA) and State Biodiversity Boards (SBBs) to oversee its implementation.

The National Green Tribunal Act, 2010

Recognizing the need for a specialized body to handle environmental disputes, the National Green Tribunal (NGT) was established under this Act. The NGT is tasked with expeditiously resolving cases related to environmental protection and conservation of forests and natural resources. It applies principles such as sustainable development, the precautionary principle, and the polluter pays principle in its judgments.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

Commonly known as the Forest Rights Act, this legislation recognizes the rights of forest-dwelling communities to land and resources. It seeks to correct historical injustices faced by these communities by granting them legal rights to occupy and use forest land for livelihood purposes. The Act also empowers communities to protect and conserve forests, thereby integrating traditional knowledge with conservation efforts.

The National Forest Policy, 1988

While not a legislative Act, the National Forest Policy of 1988 provides a framework for forest conservation and management in India. It emphasizes the ecological role of forests, the need for afforestation, and the involvement of local communities in forest management. The policy led to the introduction of the Joint Forest Management (JFM) program, promoting collaborative efforts between forest departments and local communities.

Recent Developments and Challenges

In recent years, India has introduced policies to address emerging environmental challenges. For instance, the government implemented a ban on single-use plastics to combat plastic pollution. However, this move has faced challenges, particularly from industries and informal workers who rely on plastic production and recycling. Similarly, the introduction of new e-waste policies has led to disputes between the government and electronics manufacturers. Companies have raised concerns about increased compliance costs and potential impacts on business operations.

V. CONCLUSION

India's legislative framework for environmental protection is comprehensive, addressing various facets of environmental conservation and sustainable development. While these laws provide a robust foundation, effective implementation and enforcement remain critical challenges. Continuous evaluation, public participation, and integration of traditional knowledge are essential to ensure that these laws effectively safeguard the environment for future generations.

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