

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 3

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com.

Constitutional Provisions and Jurisprudence Relating to Right to a Healthy Environment

SUSAN BAISIL¹

ABSTRACT

Environmental Jurisprudence has achieved a lot in India due to the efforts of the Courts as well as due to the concerted efforts of various individual citizens to enforce fundamental rights in the direction of environment protection and development. Apart from the changes in the Constitution, a vast number of enactments have also contributed towards creating a clean and healthy environment. This paper analyses the history and evolution of environmental jurisprudence and the importance of the constitutional provisions in the development and furtherance of the object of environmental jurisprudence. The implications of the Bhopal Gas Tragedy were far reaching which alerted the Government as well as the public authorities towards the risks attached with rapid industrialization. The need of today is effective governance which is free from corruption and unnecessary complications which go with it. India achieved a great and far reaching leap with the insertion of the provision related to environment protection with the 42nd Amendment. The areas covered under the Directive Principles for environment protection has been a step forward for the country. The directive principles and fundamental rights are supplementary and complimentary, in the sense that they go hand in hand with each other to preserve the environment. This paper seeks to bring forth the major role the Courts have had to play in protecting the environment by invoking necessary provisions of legislative enactments, especially when the need of the hour demanded the protection of our environment.

“Earth provides enough to satisfy every man’s needs but not every man’s greed.”

-Mahatma Gandhi

I. INTRODUCTION

The environment with all of its resources is not something we have inherited from the generation preceding us but what we have borrowed from the generations to come after us. Even in Ancient India, there was great significance of forests, trees and biological

¹Author is a student at Sree Narayana Guru College of Legal Studies, Kollam, Kerala, India.

diversity². The Vedas place the environment as the essence of the Vedic Culture and regard it with great value which is to be protected and safeguarded. There is emphasis laid on the development of the environment by the Vedas. Kautilya's Arthashastra also provided a detailed perspective on the preservation of the environment which is evidence of the significance of the environment even in that era.

In the past few decades, the country has in response to the increasing number of ecological emergencies, responded with a legal regime in attempting to improve the status of environment protection. India's Constitution, which is the highest expression of people values added in its 42nd Amendment, the obligation of the State to preserve as well as improve upon the existing environment and to provide safeguards for the forest and wildlife. The insertion of Article 48-A in the Constitution meant that the people in the country were becoming more aware of the importance of the preservation of the environment. But even though the constitution has provided for the protection of the environment by the state, it has done so in an unenforceable section of the Constitution.

Article 37 expressly makes Part IV of the Constitution unenforceable and not capable of being acted upon by taking recourse to Courts³. This makes for a unique situation where even though the Constitution is providing commanding obligations upon the State, these are not enforceable in the Courts. That said, the environmental jurisprudence which has evolved in our country to protect and improve the environment has not been short of praise. The environmental jurisprudence includes in its ambit all the provisions of the Constitution which are in consonance with the objective of Environmental Protection. Parliament through the 42nd Amendment added certain provisions which aided the Court to further the object of protecting and improving the natural environment. It also added fundamental duties which mention as one of the duties of the citizen to endeavour to conserve and take steps for the betterment of the environment⁴.

Environmental Jurisprudence embraces all the aspects of the Constitution which are relevant to environmental development. The higher judiciary in a number of cases recognized the right to live in a healthy environment as an essential fundamental right. The right conferred to reside in a clean environment has not been recognized until recently, even though it has been

²Dr. Renu Talwar, 'Environment Conservation in Ancient India', available at [www.iosrjournals.org/iosrjhss/papers/Vol.%2012%Issue 9/Version-11/A2109110104.pdf](http://www.iosrjournals.org/iosrjhss/papers/Vol.%2012%Issue%209/Version-11/A2109110104.pdf)

³ Kyle Burns, Constitutions & the Environment: Comparative Approaches to Environmental Protection and the Struggle to Translate Rights into Enforcement, available at harvardelr.com/2016/11/14/constitutions-the-environment-comparative-approaches-to-protection-and-the-struggle-to-translate-rights-into-enforcement/

⁴ The Constitution (Forty Second-Amendment Act) 1976, available at legislative.gov.in/constitution-forty-second-amendment-act-1976

there for over a century or so with it being mentioned in several judicial pronouncements. The Stockholm Declaration articulated the need for the right to live in a healthy environment in the first principle itself⁵. The right to a clean and healthy environment means that everybody has a right to pollution-free air, clean water, healthy soil which goes hand in hand with preservation of biodiversity and ecological components⁶. In order to achieve this, the ambit of certain fundamental rights such as Article 21 has been increased to include within its scope the right to stay in a healthy environment. The right to a clean environment has to be included in substantive law to make it more likely to be implemented. There is a need for procedural safeguards as well to ensure that the contraventions of this right can be addressed and remedied. The ecologic hardships are not exclusive to India but are a problem worldwide and thus we are addressing the same.

II. CONSTITUTIONAL PROVISIONS

The Preamble which reflects the intention of the makers of the Constitution states that there should be justice granted to the 'nation' which is the country as well the people. A right to sustainable development which is complementary to the right to a healthy environment is also being accepted as a basic human right which is essential to the right to life. It is worthy to be mentioned that India's Supreme Court was one of the earliest Courts in the world which recognized the right to a clean environment as being a fragment of the right to life as provided under Part III of the Constitution.

Even before the 42nd amendment was brought into force, there were provisions which protected the environment and wildlife. Article 48 provided for the endeavour of the State to prohibit the slaughter of cows and calves and take the protective steps with regard to animal husbandry and agriculture when the Constitution was made. This is pointing to the fact that even though there was no express mention of the term environment in written terms, the framers of the Constitution still had in mind the necessity for the protection of our natural resources.

There are several Constitutional provisions which aid the legal system to further the motive of environmental protection. For instance, it is implied under the provisions of Article 19(1)(g) of the Indian Constitution, which gives a fundamental right to citizens to practice any profession or to carry on any occupation, trade or business, that the right granted under the respective Article is subject to certain restrictions. These restrictions include the

⁵ Declaration of the United Nations Conference on the Human Development, available at legal.un.org/avl/ha/dunce.html

⁶ David. R. Boyd, *The Right to a Healthy Environment Revitalizing Canadas Constitution*, 2012

prevention to carry on any business activity which would be hazardous to the society. It can therefore be noted that environment safeguards are implicit in this provision⁷.

Article 19(1)(g) is to be viewed in the perspective of having reasonable restrictions attached to it. The right given to citizens is thus to be practiced with partial or complete prohibition in cases which would prove to be detrimental to the environment and these restrictions are to be imposed by the state. It is important to be noted that the restrictions imposed must be for the public interest and must not be arbitrary in nature⁸.

Article 32 of the Constitution does not serve a singular purpose of conferring power on the apex court to issue directions or orders to enforce the fundamental rights but also casts an obligation on the Court to act as a redressal mechanism for the protection of fundamental rights of the people. The Supreme Court has even constituted an exclusive bench known as the forest bench for issuing directions in the matter of the environment. The bench issues directions for the preservation of the environment ecology⁹.

Even Article 226 has been construed liberally for persons to take recourse in the case of the infringement of their rights with respect to the environment. It is always open for any person to bring forth a petition under Article 226 of the Constitution for the preservation of free air and upkeep of the environment. Article 21 is now invoked as the right to live in a hazardous free and a pollution free environment and has become inalienable to the Right to Life under the Constitution. In light of the language framed in Article 253, Parliament has also been granted a power encompassing a wide area where it can implement legislation on subjects which have been addressed at the international conferences.

Another aspect from the viewpoint of the development of the environment is the role the media has to play in order to bring awareness among the people and mould public opinion. An important example of this is the Tehri Dam Project where the usage of freedom of speech and expression as guaranteed under Section 19(g) obliged the Government to conduct Environmental Impact Assessment in a proper manner and take into account all the safeguards put in the project and review them more than once¹⁰.

⁷ Pooja P. Vardhan, Environmental Protection under Constitutional Framework of India, pib.nic.in/newsite/PrintRelease.aspx?relid+105411

⁸ Constitutional Provisions for the Protection of Environment with relevant case laws, <https://www.indianbarassociation.org/wp-content/uploads/2013/02/uploads/2013/02/environmental-law-article.pdf>

⁹ Shreemanshu Kumar Dash, Writ of Continuing Mandamus in matters of PILs: A Step towards Development of Environmental Jurisprudence, www.iosrjournals.org/iosr-jhss/papers/Vol%2022%20Issue8/Version-9/E2208092635.pdf

¹⁰ JT 1990(4) SC 519

There should be undertaken a harmonious relationship between the movement for economic growth which is prosperous to the nation and the efforts towards maintaining an eco-friendly environment. Even though these directive principles are not enforceable, they are sought after by the citizens of this country, thereby establishing a strong case in favour of environment maintenance over industrialization where such industrialization has an adverse impact.

The constitutional directive to improve the condition of the environment in the country is not alone in undertaking the responsibility of the future of environmental jurisprudence as there are in existence several other relevant acts which have been passed for this purpose itself such as the Water Act, the Environment Act and the Air Act¹¹. The judgments and provisions of our Constitution have come to form what can be called the bedrock on which the future of environment protection and sustainability depends upon¹². The states are to apply the guidelines enshrined in the Directive Principles as well as in the Fundamental Duties while passing legislation and these principles are also to be kept in mind in interpreting the ambit of Article 14, 19 and 21.

III. ENVIRONMENTAL JURISPRUDENCE

There can be no doubt about the fact that the right to a clean environment is one of the primary ingredients of a right to a healthy life. The higher courts have developed a sort of environmental jurisprudence by consistently referring to the essential provisions of the Constitution and providing safeguards wherever industrialization has imposed a threat to the environment.

The Supreme Court has been taking a pro-active approach in undertaking various strategies and exercises to ensure the enforcement of fundamental rights and has also been taking steps for improvement of the environment. The innovative measures taken by the Court can be observed by noticing the different kinds of orders passed as well as directions issued by the Supreme Court from time to time. The sphere of litigation has increased over time in relation to environmental jurisprudence. There is significant importance attached to the change of stance by the Court from only protecting private interests and deliberating over them to bringing larger matters into the centre stage which were in the interest of the general public and passing orders in that sphere as well.

In *M.C. Mehta v. Union of India*¹³, which is one the most celebrated judgments with regard to

¹¹ AIR 1996 SC 2715

¹² Praveen Bhargav, The Constitutional Imperatives in the Protection of Wildlife, www.conservationindia.org/resources/the-constitutional-imperatives-in-protection-of-wildlife

¹³ 1987 SCR(1) 819

environment protection, the principle of absolute liability was laid down. It was the first time where the Court expressly stated that the Corporations undertaking hazardous activity would only be allowed to conduct the activity when a condition is imposed upon them to indemnify everyone who suffers due to such activity. The liability to indemnify would be imposed on these corporations regardless of whether such activity is carried on carefully or not.

Moreover, the Court observed that the Corporation was involved in activity which was bordering on invading the rights to life and liberty of a huge number of persons. The enforcement of these rights is essential for the legislative framework to have an effect on the existing condition of the environment. The use of legislation can be pointless when the intended purpose is not achieved and the rights are not enforced in the Courts of today. The inter dependence of the guarantee of human rights with the fundamental rights as enacted in the Constitution has also been laid down by the Court. People's right to a clean environment is inherent in our Constitution. There has been slow progress from favouring corporations in the matter of the environment degradation to imposing conditions and liabilities on them with the developing judicial decisions of the Court. The Courts have been instrumental in developing an awareness among the people of the various issues faced by the environment as well as awaking the executive by inculcating a sense of urgency in the State to take steps necessary for facing environmental crisis¹⁴.

In the case of *Cooverjee B Bharucha v. Excise Commission*¹⁵, the Supreme Court held that in the event of a clash between protection of the environment and right to freedom of trade, it would be upon the courts to maintain a balance of interest between the environment and fundamental rights.

Keeping in mind the Constitutional provisions, the Supreme Court has enunciated the Precautionary principle and polluter pay principle as fundamental to the part of environment legislation in the country. In the *Vellore Citizens Forum, Petitioner v Union of India and other*¹⁶, the Court enunciated the polluter pays principle and precautionary principle with respect to tanneries which were causing pollution by discharging untreated effluents into the land. The indemnification of families was also ordered by the Court which was to be undertaken by the Authority created for this purpose. The new rule which was established was that the onus of proving whether the project is not having any adverse impact on the

¹⁴ Atrayee De & Vedant Madhok, Constitutional Provisions and Environment Protection in India: A Legal Insight, https://www.researchgate.net/publication/311922823_CONSTITUTIONAL_PROVISIONS_AND_ENVIRONMENT_PROTECTION_IN_INDIA_A_LEGAL_INSIGHT

¹⁵ 1954 AIR 220

¹⁶ 1996 (5) SCC 647

environment is on the industrialist who wishes to change the status quo. This rule has now started to become accepted as part of the environment law.

Article 51(A)(g) is a boon to the citizens of this country where a person can approach the Tribunal at any time to file a complaint against any undesirable activity by any individual or organization which leads to environment degradation. Any person can report their grievance to the Tribunal and remedy of the same would be available if there is a valid claim.

In *Intellectual Forum, Tirupati v. State of A.P & Ors*¹⁷, there was a complaint in response to the systematic destruction of the environment by taking away of the tank bed land by the housing board for urban development. These tanks were useful for irrigation purposes as wells as for improving the ground water table of the land and the people living around the tanks had a vested interest in them. The Court directed to the State to abstain from doing any act which would violate the right of the community itself. The Court also gave instructions to stop any further constructions from taking place and to construct a rain water harvesting unit with all the ground water being recharged to the ground water. This goes to show that environmental jurisprudence has taken a step forward in restricting certain activities by the State as well as authorities which hinder access to the basic needs of the people. The conscience of the Courts in the role which they are to play in the protection of the environment has increased in the past few years. The Court has even recognized the fundamental duties of Authorities in some cases where they have failed miserably in securing environmental preservation when it was their responsibility to do so. The Court observed in the case of *D.D Vyas and Others v. Ghaziabad Development Authority*¹⁸ that the Authorities were negligent of the duty imposed upon them by Article 51-A(g) and should have created the space which was left open for years into a wholesome park with shrubs and greenery. The Court is not to set aside the directive principles and fundamental duties when there is a need of the hour to give effect to these provisions and shift the burden on the policy making authorities.

The ambit of Article 51-A (g) was elucidated in the judgment of the Rajasthan High Court in *L.K Koolwal v State. Mr Koolwal*¹⁹ had approached the Court by invoking Article 226 and brought to the notice of the Court that the Municipality had been unable to carry out its primary duty which caused a huge sanitation problem in Jaipur. Allowing the petition, the Court observed that Article 51-A is not merely a duty of citizens but confers right upon them

¹⁷ (2006) 3 SCC 598

¹⁸ AIR 1993 All 57

¹⁹ AIR 1988 Raj 2

to approach the Court to make sure that the State is performing its obligations and duties.

In the case of *Goa Foundation v. State of Goa*²⁰, The Court held that even a society registered under the relevant enactment has locus standi in the matter of carrying out the fundamental duties and moving the court for upholding the same.

In the CNG case, the Court upheld the Directive Principle of State Policy and stated that Articles 47, 48(A) and 39 together impose an obligation upon the State to safeguard the health of the people, take measures to improve the health of the citizens and for betterment of the environment.

A different perspective was also taken by the Court when it enunciated that as water is one of the essentials of sustenance and life, therefore clean water would be implicit in the Right to life as enshrined in Article 21.

IV. EFFORTS FOR A BETTER ENVIRONMENT

Public Interest Litigation was started with the aim to establish safeguards for preserving human rights for people who did not have the means and devices to protect themselves. It has now brought within its scope the protection of the environment along with certain other objects. That is not to say that the Courts have started to neglect their responsibility of granting justice in accordance with legislative enactments. The higher judiciary has an enormous obligation which is bestowed upon it by the Constitution to preserve the rights of the citizens of this country²¹.

Writs such as mandamus are issued for proper enforcement of the rights enshrined in Part III of the Constitution. Mandamus is an order to a public authority to perform a public duty which is inherent in its office. The advantage of having writs in India is that the Court can use them according to the particular circumstances of the case and mould them in accordance with the changing conditions.

Even provisions of the Constitution related to International Agreements such as Article 253 contribute to giving effect to legislation protecting the environment. The Article states that Parliament has the authority to enact any law for the whole or any part of the territory of India for giving effect to any agreement or treaty with any country or any decision arrived at any international conference. The Ministry of Environment and Forests have passed legislation which comprehensively approaches the matter of the environment and its protection. The National Green Tribunal has been established with the objective of deposing

²⁰ AIR 2001 Bom 318

²¹ (2002) 104 BOMLR 434

of cases in relation to the environment and preservation of forests effectively. The enforcement of legal rights as well as compensating aggrieved persons has also been one of the purposes of bringing the NGT into existence.

When the Constitution first came into being, there was no mention of the word environment in it but with the increasing environment concerns the Legislature realized the importance of such provisions in the Constitution. A lot has been achieved by the provisions of the Constitution as well as the environmental jurisprudence undertaken by the Court, but there is still much to be done. The country has got a wide range of environmental law and enactments which are covering major aspects of environment protection.

V. CONCLUSION

There were various environmental legislations which were present before Independence of the Nation. However, the push necessary for putting a well-defined legislation came only after the Stockholm Conference by setting up in 1972, the National Council for Environmental Policy and Planning. This body was given the authority to create another body to deal with environment related issues. The crux of the legislation enacted must be that the goal of environment protection and environment development should commonly be towards environment sustainable development. The move towards enhancing social justice through environmental jurisprudence has been an issue which the Courts have consistently sought to achieve. The consciousness of the judiciary in the matter of environment has increased with the alarming rate of environmental crises happening in the country and it continues to develop jurisprudence to preserve our natural environment. In meeting the millennium development goals, India has shown significant progress. One of the examples of this progress is that the area covered by forest land has increased from 21.5% to 22.8% in fifteen years²². If these efforts are continued simultaneously by the legislative, executive and judiciary towards environment development, the future generation will not have to give up the right to a healthy environment. The contribution of activists such as Medha Patkar towards Environment Justice in India by mobilizing marches against harmful industrial projects is not to be disregarded. Over the years, activists have brought to public attention several projects which would have degraded the environment to a large extent if it wasn't for the alertness and efforts of such activists. In the end, the Court needs to maintain a balance between economic development and environment sustainability to achieve a positive environmental impact in the future.

²² Anita Nath, India's Progress Towards Achieving the Millenium Development Goals, <http://www.ncbi.nlm.nih.gov/pmc/articles/pmc/articles/PMC3180952/>