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# The Constitution's Green Promise: Environmental Constitutionalism and Intergenerational Justice

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R. SARAN\* AND K. RAJESH KUMAR\*\*

## ABSTRACT

*As the global climate crisis intensifies, traditional legislative and policy frameworks often struggle to provide long-term ecological protection. Environmental constitutionalism has emerged in response as a legal paradigm that embeds fundamental environmental rights and duties directly in national constitutions. This paper examines how constitutionalising environmental protection serves as a mechanism for enforcing intergenerational justice, the ethical and legal obligation to safeguard planetary health for future generations. Through comparative constitutional design and landmark judicial precedent, the study explores how courts and framers transform abstract concepts, among them the public trust doctrine, the right to a healthy environment and the rights of nature, into enforceable legal duties. It evaluates the structural tensions inherent in that movement, particularly the difficulty of balancing immediate socio-economic development against long-term ecological stewardship, and the procedural obstacles to standing on behalf of unborn generations. The paper argues that environmental constitutionalism raises ecological protection from a matter of political discretion to a rights-based imperative, and that anchoring intergenerational equity in supreme law creates enduring guardrails against short-term political incentives. It concludes with recommendations for framers and jurists seeking to design resilient constitutional frameworks capable of fulfilling the Constitution's green promise.*

**Keywords:** *environmental constitutionalism, intergenerational justice, sustainable development, right to a healthy environment, fundamental rights, directive principles, fundamental duties*

## I. INTRODUCTION

The debate on India's environmental history has centred largely on forests, wildlife and forest-dwelling communities, and has been confined for the most part to the precolonial and colonial periods. The environmental history of independent India has not attracted the same attention, although its problems have become more complex: population growth, urbanisation, the spread

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\* Author is a Student at S. Thangapazham Law College, Vasudevanallur, Tenkasi, Tamil Nadu, India.

\*\* Author is a Faculty of Law at S. Thangapazham Law College, Vasudevanallur, Tenkasi, Tamil Nadu, India.

of slums, agricultural expansion, the heavy application of fertilisers and pesticides, the extension of irrigation, large-scale groundwater extraction, the popularity of water-intensive crops, and the growth of water-polluting and air-polluting industry.

The Green Revolution significantly increased agricultural production and expanded the use of irrigation, chemical fertilisers and pesticides. Scholars and environmental studies have also identified adverse ecological consequences in certain regions, including soil degradation, groundwater depletion and deterioration in water quality associated with intensive agricultural practices. Those consequences illustrate the need to balance agricultural development against long-term environmental sustainability.

Constitutions are documents built for perpetuity. By embedding environmental care in the foundational legal architecture of the State, courts and citizens gain legal remedies with which to challenge harmful government action, to address climate change, and to protect the interests of future generations.

## **II. HYPOTHESIS**

- Environmental protection has evolved from being absent in the Constitution to becoming a constitutional obligation, through judicial interpretation and constitutional amendment.
- The principle of intergenerational justice requires the present generation to conserve natural resources for the benefit of future generations.

## **III. CONSTITUTIONAL RECOGNITION OF ENVIRONMENTAL RIGHTS**

When the Constitution of India came into force on 26 January 1950 it contained no provision directed to environmental protection. Only Article 47, among the Directive Principles of State Policy, addressed the subject obliquely, requiring the State to 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.

Article 21, guaranteeing that no person shall be deprived of life or personal liberty except according to procedure established by law, was read narrowly in that period and offered little assistance in addressing environmental harm.

### A. The Stockholm Conference, 1972

Environmental awareness in India grew after the Prime Minister attended the United Nations Conference on the Human Environment at Stockholm in 1972.<sup>1</sup> The Conference adopted two resolutions that are treated as foundational in environmental law.

- Human rights and the environment: every person has the right to freedom, equality and adequate conditions of life in an environment permitting dignity and well-being.
- Responsibility: humankind bears a responsibility to protect and improve the environment for present and future generations.

### B. The Forty-second Amendment

The Constitution (Forty-second Amendment) Act, 1976 is the watershed that formally established environmental constitutionalism in India.<sup>2</sup> Prompted in large part by the momentum of the Stockholm Declaration, the amendment embedded environmental governance in the constitutional framework, creating a dual structure of State obligation and citizen duty.

**State obligation, Part IV.** Article 48A provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Forests, under Entry 17A, and the protection of wild animals and birds, under Entry 17B, were moved from the State List to the Concurrent List, allowing both Parliament and the State legislatures to legislate on these subjects and permitting better national coordination.

**Citizen's responsibility, Part IVA.** Article 51A(g) makes it the duty of every citizen of India to protect and improve the natural environment, including forests, lakes, rivers and wild life, and to have compassion for living creatures. The provision creates a framework of constitutional ethics in which environmental stewardship is a civic responsibility.

In *M.C. Mehta v. Union of India* the Supreme Court held that the Union Government must make environmental education a compulsory subject in educational institutions, reasoning from Article 51A(g) that citizens cannot discharge the duty it imposes without environmental awareness.<sup>3</sup> In *L.K. Koolwal v. State of Rajasthan* the High Court held that the fundamental duties carry a reciprocal right: a citizen who owes a duty to protect the environment may correspondingly demand that municipal bodies keep the city clean.<sup>4</sup>

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<sup>1</sup> Declaration of the United Nations Conference on the Human Environment, June 16, 1972, U.N. Doc. A/CONF.48/14/Rev.1 (1973) [hereinafter Stockholm Declaration].

<sup>2</sup> The Constitution (Forty-second Amendment) Act, 1976 (India).

<sup>3</sup> *M.C. Mehta v. Union of India*, (1992) 1 SCC 358 (India) (directing that environmental education be made a compulsory subject).

<sup>4</sup> *L.K. Koolwal v. State of Rajasthan*, A.I.R. 1988 Raj. 2 (India).

### C. The right to livelihood

The right to livelihood is an integral part of the right to life under Article 21, and is particularly relevant where displacement follows from development or from environmental decisions. In *Olga Tellis v. Bombay Municipal Corporation* the Supreme Court held that deprivation of livelihood amounts to deprivation of life unless effected through a just and fair procedure.<sup>5</sup> The State is not obliged to provide employment, but it may not evict persons in a manner that destroys their means of livelihood without due process. The Court directed rehabilitation, alternative accommodation and the provision of basic amenities.

### D. The right to equality

Article 14 protects against arbitrary State action and has frequently been invoked to challenge environmentally harmful government decisions. Permissions for construction, mining or industrial activity granted arbitrarily and without regard to environmental impact may be struck down under it.

## IV. INTERGENERATIONAL JUSTICE

Intergenerational justice is a normative principle asserting that the present generation owes duties to those who follow, in environmental protection, resource management and ecological integrity. Hans Jonas argued that technological advance carries ecological responsibilities extending beyond the lifetime of those who exercise it.<sup>6</sup>

The World Commission on Environment and Development defined sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.<sup>7</sup> Intergenerational justice is therefore a cornerstone of sustainable development, linking legal obligation to ethical responsibility.

*Vellore Citizens' Welfare Forum v. Union of India* is among the leading Indian authorities on sustainable development.<sup>8</sup> The case concerned pollution caused by tanneries in Tamil Nadu, and the Supreme Court recognised intergenerational equity as one of the principles of sustainable development: development must not destroy the environmental resources on which future generations will depend.

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<sup>5</sup> *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545 (India).

<sup>6</sup> HANS JONAS, *The Imperative of Responsibility: In Search of an Ethics for the Technological Age* (University of Chicago Press 1984).

<sup>7</sup> WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *Our Common Future* 43 (Oxford University Press 1987).

<sup>8</sup> *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647 (India).

### A. The principle rests on two assumptions

- That natural resources are finite, and the environment cannot sustain unlimited exploitation.
- That there is a moral obligation to future human beings, so that just governance includes safeguarding the interests of those yet to be born.

In *T.N. Godavarman Thirumulpad v. Union of India* the Supreme Court stated that intergenerational equity and sustainable development are firmly embedded in Indian constitutional jurisprudence and are integral to the fundamental rights under Article 21, so that the present generation bears a constitutional responsibility to protect forests and natural resources for those who come after.<sup>9</sup> In the *Goa Foundation* litigation the Court has repeatedly applied sustainable development and intergenerational equity to the exploitation of natural resources, and to mining in particular, treating sustainable development as a principle that balances development against environmental protection.<sup>10</sup>

## V. CRITICAL ANALYSIS

Indian environmental constitutionalism has moved from an initial omission in 1950 to a judged and constitutionally entrenched paradigm. Its theoretical strengths are considerable, but so are its institutional bottlenecks, its doctrinal tensions and the gap between principle and implementation. The public trust doctrine treats air, water and forests as public assets that government may not freely alienate to private commercial interests. An excessive focus on distant future generations can nonetheless sideline the urgent environmental justice claims of marginalised and indigenous communities living with pollution today.

### A. The doctrinal shift: from executive discretion to constitutional mandate

The principal achievement of Indian environmental law is the judicial expansion of Article 21. By reading a right to a wholesome and clean environment into the right to life in *Subhash Kumar v. State of Bihar*, the Supreme Court converted environmental quality from a legislative aspiration into a fundamental right.<sup>11</sup>

### B. Core tensions and institutional limitations

**The development and environment dilemma.** In a developing State, intergenerational justice frequently collides with immediate intragenerational equity. Strict environmental mandates can

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<sup>9</sup> *T.N. Godavarman Thirumulpad v. Union of India*, (2012) 4 SCC 362 (India).

<sup>10</sup> *Goa Foundation v. State of Goa* (India). The manuscript cites the Goa Foundation litigation generally and gives no report reference; see the editorial note.

<sup>11</sup> *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598 (India).

restrict the infrastructure, mining and industrial projects on which present poverty alleviation depends.

**Livelihood against preservation.** As *Olga Tellis* shows, environmental enforcement often falls on vulnerable groups: forest dwellers, informal urban workers and small farmers. Balancing the right to a clean environment against the right to livelihood, both located in Article 21, remains a genuine conflict in judicial practice. In *Virender Gaur v. State of Haryana* the Court held that a hygienic environment is an integral facet of the right to a healthy life under Article 21, and recognised the duty of the State to take measures to protect and improve it.<sup>12</sup>

**The enforcement deficit.** The judiciary has established advanced principles, among them the precautionary principle, the polluter-pays principle and the public trust doctrine, but a gap remains between judicial statement and executive execution. The higher courts issue sweeping environmental directions while lacking the administrative machinery to monitor long-term compliance, which encourages forum shopping and continuous litigation.

**Standing and the representation of unborn generations.** Intergenerational justice requires that someone have standing on behalf of those who cannot advocate for themselves. Relaxed rules of standing in public interest litigation allow non-governmental organisations and citizens to act as guardians for future generations. Without explicit constitutional recognition of the rights of future generations, or of the rights of nature, that representation depends on the disposition of individual judges rather than on a predictable statutory mechanism.

### C. Proposals for reform

Part III might be amended to insert an express fundamental right to a clean, safe and ecologically balanced environment, rather than leaving the matter to judicial interpretation of Article 21. An autonomous constitutional body, on the model of the Comptroller and Auditor General, could be charged with conducting intergenerational impact assessments of major infrastructure and legislative proposals.

A further reform would be the transition from an anthropocentric framework, which protects nature for human use alone, to ecocentric legal personhood for critical ecosystems such as major river basins and biosphere reserves, giving them rights independent of human utility. The *Vellore* Court had already recognised sustainable development, the precautionary principle and the polluter-pays principle as principles of Indian environmental law, and had referred to the expanded reading of Article 21.<sup>13</sup>

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<sup>12</sup> *Virender Gaur v. State of Haryana*, (1995) 2 SCC 577 (India).

<sup>13</sup> *Vellore Citizens' Welfare Forum*, *supra* note 8.

The National Green Tribunal could be strengthened with broader suo motu powers, regional benches and dedicated scientific execution units, so as to close the gap between judicial orders and implementation on the ground. In *Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India* the Supreme Court held that environmental disputes within the Tribunal's jurisdiction should ordinarily be brought before it rather than before the civil courts, recognising it as the specialised forum for environmental disputes and for compensation for environmental damage.<sup>14</sup>

## VI. RECENT JUDICIAL DEVELOPMENTS

Building on Parts III, IV and IVA, the jurisprudence on environmental constitutionalism and intergenerational justice has shifted in recent years. The courts have moved from interpreting a passive right to a clean environment towards establishing actionable constitutional duties in the face of climate change.

In *M.K. Ranjitsinh v. Union of India* the Supreme Court anchored climate change mitigation in the ethics of intergenerational equity, holding that present State action must not foreclose a liveable planet for future generations.<sup>15</sup> The case arose from a conflict between local biodiversity protection, in the form of safeguarding the critically endangered Great Indian Bustard from overhead power lines, and the macro-level transition to renewable energy. It illustrates the constitutional balance required where two ecological priorities, species protection and national decarbonisation, compete with one another.

### A. Ex post facto environmental clearances

A central question in Indian environmental constitutionalism is whether administrative processes may grant retrospective environmental clearance to projects operating without a prior environmental impact assessment. In *Common Cause v. Union of India* the Supreme Court held that environmental clearance must be obtained before the relevant project or activity commences, observing that clearance granted after the activity has begun may cause irreparable environmental degradation.<sup>16</sup>

The Court has since revisited the question, following earlier rulings in *Alembic Pharmaceuticals* and *Vanashakti* which treated ex post facto clearances as alien to environmental jurisprudence. In doing so it has defined its mandate as one of striking a constitutional balance between an existential right to a healthy environment and an aspirational claim to development. While

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<sup>14</sup> *Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India*, (2012) 8 SCC 326 (India).

<sup>15</sup> *M.K. Ranjitsinh v. Union of India*, W.P. (C) No. 838 of 2019, 2024 INSC 280 (Mar. 21, 2024) (India).

<sup>16</sup> *Common Cause v. Union of India*, (2017) 9 SCC 499 (India).

striking down administrative office memoranda that granted automatic post facto amnesty, the Court acknowledged the power of the Union Government under section 3 of the Environment (Protection) Act, 1986 to frame restricted statutory amnesty schemes where a larger public interest requires it.

### **B. Fragile ecosystems and the public trust doctrine**

The judiciary continues to apply the public trust doctrine to protect particularly vulnerable ecosystems from permanent degradation. In the Aravalli proceedings the Supreme Court has reiterated that ecologically fragile mountain ranges and ridge lines serve as barriers against desertification, and that permitting unchecked mining or the expansion of real estate violates the obligation owed to future generations. In 2024 the Court noted that different States were applying different definitions of the Aravalli hills and ranges and directed steps towards a uniform definition involving Delhi, Haryana, Rajasthan and Gujarat.<sup>17</sup>

Courts have also required ecological carrying-capacity studies for Himalayan towns affected by land subsidence, Joshimath among them, and by unchecked tourism, establishing that immediate economic gain cannot override systemic ecological collapse. The environmental consequences of hydroelectric development in the Himalaya became a matter of serious judicial and public concern after the Uttarakhand floods of 2013, and the proceedings that followed emphasised environmental impact assessment, ecological carrying capacity and precaution in the approval and operation of projects in fragile mountain ecosystems.<sup>18</sup>

## **VII. THE DIRECTIVE PRINCIPLES AND THE ENVIRONMENT**

Environmental protection is not merely a policy objective but a constitutional obligation owed to the present and to future generations, in which the Fundamental Rights, the Directive Principles and the Fundamental Duties operate together.

Article 39(b) directs the State to distribute the ownership and control of the material resources of the community so as to serve the common good. Those resources include natural resources, even where privately held.

Article 47 imposes a duty on the State to raise the standard of living and to improve public health. In *Municipal Council, Ratlam v. Vardhichand* the Supreme Court held that the

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<sup>17</sup> *In re Aravalli Hills and Ranges* (India). The manuscript refers to continuing Supreme Court proceedings of 2024 and gives no case or order number; see the editorial note.

<sup>18</sup> *Alaknanda Hydro Power Co. Ltd. v. Anuj Joshi*, (2014) 1 SCC 769 (India) (Civil Appeal No. 6736 of 2013, decided Aug. 13, 2013).

improvement of public health is a paramount duty of governance which the State cannot ignore.<sup>19</sup>

Article 48 directs the State to preserve and improve breeds of cattle and to prohibit the slaughter of milch and draught cattle, and Article 48A strengthens the obligation by requiring the State expressly to protect and improve the environment. In *M.K. Janardhanam v. District Collector, Tiruvallur* the Madras High Court held that the words “protect and improve” require affirmative State action to enhance environmental quality.<sup>20</sup>

Article 49 requires the State to protect monuments and objects of national importance from destruction, disfigurement and removal, which contributes to environmental and cultural conservation alike. Heritage does not belong to the present generation alone; it is a legacy to be preserved so that those who follow may learn from it. In *Rajeev Mankotia v. Secretary to the President of India* the Supreme Court directed the Government to protect and preserve the building in question as a historical monument, emphasising that historical monuments preserve India’s cultural and historical heritage, its architecture, craftsmanship and traditions, and that such heritage must be preserved for posterity.<sup>21</sup>

## VIII. CONCLUSION

Environmental constitutionalism represents a shift in governance, embedding environmental protection within the core values of constitutional law. By recognising environmental rights as an extension of the right to life and dignity, and environmental duties as a shared civic responsibility, a constitution creates a balanced framework of entitlement and obligation. That framework is essential to intergenerational justice, because it ensures that present development does not compromise the ecological inheritance of those who follow.

Constitutional provisions, supported by judicial interpretation, strengthen environmental accountability, promote sustainable development and legitimise State intervention against environmental degradation. The recognition of duties upon citizens reinforces a collective stewardship of natural resources and moves environmental protection beyond State-centric regulation. Intergenerational justice adds an ethical and legal dimension by recognising that natural resources are held in trust: the present generation must use them responsibly without compromising the ability of future generations to meet their own needs. As climate change, biodiversity loss, pollution and resource depletion intensify, constitutional values must continue

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<sup>19</sup> *Municipal Council, Ratlam v. Vardhichand*, (1980) 4 SCC 162 (India).

<sup>20</sup> *M.K. Janardhanam v. District Collector, Tiruvallur* (Madras High Court) (India). The manuscript gives no report reference; see the editorial note.

<sup>21</sup> *Rajeev Mankotia v. Secretary to the President of India*, (1997) 10 SCC 441 (India).

to guide policy, legislation and judicial action. The Constitution's green promise is not an aspiration but a continuing commitment to ecological integrity, sustainable development and a healthy environment for the present and the future alike.

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