

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 5

2023

© 2023 *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 the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Right to Clean Environment: A Constitutional and Legislative Perspective

ANISHA KAR¹

ABSTRACT

The right to life has been recently viewed in different perspectives which includes, the right to survive as a species, quality of life, the right to live with dignity and the right to livelihood. But with the growing concern over environmental degradation which is affecting life all over the globe, many countries have recognised the right to clean environment as a part of right to life. In light of this, the Supreme Court of India has interpreted the right to life under article 21 as including the right to a clean environment. All these have been analysed with reference to Article 48-A and 51A (g) and various Acts relating to protection and conservation of environment. However, despite having constitutional provisions and legislative enactments, our environment is degrading day after day. Further, many emerging issues are also posing challenges to our environment. So here in this paper an analysis of constitutional provisions and various Acts in light of international conventions would be made to see how environmental issues have been dealt with. Further, an analysis of the lapses in enforcement of these laws would be made by analysing various cases. The paper also attempts to provide possible solutions/ suggestions to mitigate the environmental problems.

Keywords: *Clean environment, Constitutional provisions, Enforcement, Legislative Actions, Right to life, Right to livelihood.*

I. INTRODUCTION

The Constitution of India is one of the written document in the entire world to have separate and specific provisions on environmental protection. Chapter IV of the Constitution dealing with the Directive Principles of State Policy, as well as the chapter on fundamental obligations, state unequivocally that the State is committed to protecting and developing the environment. The Judiciary of India has in consonance with these provisions created a doctrinal web to protect human rights relating to clean environment and ensure environmental justice, as well as to remind people of their basic obligation to preserve the environment, as outlined in the Constitution of the Republic of India's fundamental rights and fundamental duties. The purpose

¹ Author is an Advocate at Orissa High Court, India.

of this article is to assess the Indian Constitution's environmental protection provisions, as well as the judiciary's significant role in interpreting these laws for environmental justice.

When the Constitution was developed and passed by the Constituent Assembly, this notion of a right to a healthy environment was not included. Government health, hygiene, agriculture, soil, water, and fisheries, for example, are issues on which the state might impose rules. On the other hand, nuclear energy, oil fields and resources, interstate rivers and valleys, and fisheries are among the things on the Union List for which only Parliament has legislative authority. The Preamble makes it clear that socio-economic fairness is at the heart of the document as it is a cornerstone of the Republic of India's Preamble. In order to achieve environmental justice, the Indian court has expanded the scope of the Fundamental Rights.²

The notion of environmental protection was not taken seriously by the founding authors of the constitution. When the constitution was first written, there were no specific provisions for the same. India has been dealing with environmental pollution for decades, but the need for environmental protection was not felt by the constitution-makers at the time. However, the situation has changed with the rise of modernization, and industrialization as pollution in India has become extremely serious.³ Approximately 70% of India's population is directly dependent on land-based vocations. People also depend on forests, wetlands, and marine ecosystems, for their basic subsistence needs such as water, food, fuel, shelter, fodder, and medicine. Given the intimate interconnectedness of humans and their environment, it's not surprising that society's culture is heavily influenced by its surroundings.

The phrase 'Life' included in Article 21 has been crucial in the judiciary's interpretation of environmental justice rules. Several statutes have been enacted to protect the environment against pollution, and administrative machinery has been put in place to carry out these statutes.⁴ The power-sharing arrangement between the centre and the states, on the other hand, allowed each government to implement the required environmental measures.

As per the Constitution, both the Parliament and the legislatures of states have the authority to create laws within their respective domains. The Supreme Court has the power to assess the constitutionality of all these laws. If a bill passed by Parliament or state legislatures violates any

²Shruti Jain, *Concept of Social Justice under Indian Constitution*, LAWYERSCLUB INDIA <http://www.lawyersclubindia.com/articles/Concept-Of-Social-Justice-Under-Indian-Constitution-3685.asp>.

³Arjun Jain, *25 Years of Reforms: Liberalisation Is Significant, but We Still Have an Exit Problem, Says Arun Jaitley*, THE ECONOMIC TIMES, (Jul. 21, 2016), <https://economictimes.indiatimes.com/news/economy/policy/25-years-of-reforms-liberalisation-is-significant-but-we-still-have-an-exit-problem-says-arun-jaitley/articleshow/53309906.cms?from=mdr>.

⁴Aditya Batra, *Environmental Justice - Right to Water* <http://www.legalservicesindia.com/article/1011/environmental-justice-right-to-water.html>.

provision of the Constitution, the Supreme Court can declare the law illegal or ultra vires. However, despite this, the founding fathers intended the Constitution to be flexible, which could adapt to changing circumstances rather than a rigid government structure.⁵

The Supreme Court's judicial interpretation of Article 21, as well as its activism, has played a crucial role in discussing the reasons for its inventiveness and defends its role in safeguarding citizens' right to clean environment/ right to life when the legislative and executive branches failed to do so. According to the tenor of the wording used in Article 21, the right is accessible not just to the citizens, but also to anybody who is not a citizen of India. They, too, have a right to "Life" in this country, as in *Chairman, Railway Board v. Chandrima Das*.⁶

II. THE TRADITIONAL APPROACH OF THE SUPREME COURT

It's impossible to know how far rights have progressed without first understanding the usual method. In the case of *A. K. Gopalan v. Union of India*⁷, the customary understanding of Article 21 was that a judicial process might strip an individual of his/her right to life. As a result, the first interpretation of this rule was restricted. The state had to prove that the interference with an individual's right to life is provided in line with the legal process.

It didn't matter whether the legislation was just and reasonable. Furthermore, in the case of *Gopalan*, the Court refused to apply the substantive content of Article 21's guarantee of due process of law, arguing that the requirements of due process had been met as long as the laws on preventive detention had been duly enacted in accordance with Article 22's procedures. The verdict of the Constitutional Bench of Seven Judges in the case of *Maneka Gandhi* (which overruled the case of *Gopalan*) constituted the beginning point for a remarkable legal growth in individual human rights cases. The Supreme Court's ruling in this case was that the legal process for depriving a man of his right to life must be just, reasonable, and fair. In the case of *Maneka Gandhi*⁸ the new interpretation of Article 21 has ushered in a new era of broadening the scope of the right to life and personal liberty. Multiple factors that may or may not have been foreseen by the constitution's founding fathers were included in the vast dimension given to this right today. The word "law-based process" is the same as the US Constitution's Fifth Amendment. Even though the word "due" isn't defined in Article 21, the Supreme Court has construed it in a variety of ways in its countless cases.⁹

⁵Bhavnani-Laksha.pdf, <http://jurip.org/wp-content/uploads/2017/05/Bhavnani-Laksha.pdf>.

⁶*Chairman, Railway Board v. Chandrima Das*, AIR 2000 SC 998.

⁷*A. K. Gopalan v. Union of India*, AIR 1950 SC 27.

⁸*Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

⁹Dr. Gyanendra Kumar Sahu, *An overview of article 21 of the Indian constitution*, 3 INTERNATIONAL JOURNAL OF LAW 98-100.

The reach of Article 21 has been broadened as a result of the broader perspective of Article 21 in the wake of Maneka Gandhi. The following are some of the Supreme Court's significant decisions:

- **Article 21 includes the right to education-**

Education rights are regarded as a man's third eye, without which no one can live properly, humanely, or with dignity. Previously, educational rights were enshrined in state policy. However, in the cases of *Mohini Jain v. State of Karnataka*¹⁰ and *Unni Krishna v. State of Andhra Pradesh*,¹¹ the Supreme Court concluded that education rights are derived directly from the right to life and hence constitute basic rights. Courts previously regarded Article 21 as granting the right to education, but in 2002, Article 21A¹² was added into the Constitution, making the right to education a basic right.

- **Article 21 includes the right to privacy-**

The issue was addressed for the first time in the case of *Kharak Singh v. Uttar Pradesh*.¹³ Justice Subba Rao, writing for the minority, noted that privacy is the outcome of personal freedom of expressions. This minority decision set the door for further progress. The Supreme Court said in *R. Rajgopal v. State of Tamil Nadu*¹⁴ held that the right to privacy is nothing more than the right to be left alone and is implied in Article 21 of the Constitution, which guarantees the right to life and liberty. The Supreme Court recognised privacy as a constitutionally protected right in India in the landmark decision of *Puttaswamy v. Union of India*.¹⁵ It is a constitutionally protected right, just like other rights, granted in Part 3 of the Constitution.¹⁶

- **Article 21 includes right to livelihood-**

This right is derived from the right to life since no one can survive without the means of subsistence. Individuals might easily be deprived of their livelihoods if the right is not recognised as a component of the right to life. The loss of livelihood would not only deprive life of its functional purpose and meaning, but it would also make it difficult to live. The

¹⁰*Mohini Jain v. State of Karnataka*, AIR 1992 SC 1858.

¹¹*Unni Krishna v. State of Andhra Pradesh*, AIR 1993 SC 2178.

¹²Eighty-Sixth Amendment Act, 2002, Gazette of India, pt. II, sec. I (Dec. 12, 2002).

¹³*Kharak Singh v. Uttar Pradesh*, 1963 AIR 1295.

¹⁴*R. Rajgopal v. State of Tamil Nadu*, AIR 1995 SC 264.

¹⁵*Puttaswamy v. Union of India*, (2017) 10 SCC 1.

¹⁶Krishnadas Rajagopal, *Right to Privacy Is "Intrinsic to Life and Liberty," Rules SC*, THE HINDU (Aug. 24, 2017), <https://www.thehindu.com/news/national/privacy-is-a-fundamental-right-under-article-21-rules-supreme-court/article19551224.ece>.

Supreme Court ruled in *Olga Tellis v. Bombay Municipal Corporation*¹⁷ that the "right to life and personal freedom" protected by Article 21 includes the "right to live with dignity," which includes the right to livelihood.

- **Article 21 includes right to a speedy trial-**

Speedy trial is a basic right inherent in the protection of life and personal freedom entrenched in Art. 21, and any accused person denied this right has the right to approach the Court in order to vindicate that right. It was held in *Hussainara Khatoon (I) v. Home Secretary, State of Bihar*¹⁸ that speedy trial is a basic right implied in the guarantee of life and private freedom enshrined in Art. 21, and that any accused who has been denied of this right is entitled to reach out to the Supreme Court pursuant to Art. 32 for the purpose of implementing such right and fulfilling its constitutional duty.

- **Imposing capital punishment is no violation of Article 21-**

The constitutionality of the death penalty has been questioned in various cases before the Apex Court. In the case of *Jagmohan Singh v. State of Uttar Pradesh*,¹⁹ the Apex court ruled that the right to life cannot be denied under the law unless it is in the public interest. The Apex Court, however, concluded in *Bachan Singh v. State of Punjab*²⁰ that the death sentence is an alternative punishment for murder only in "rarest to rare" circumstances under Article 302 of the IPC.

- **Delay in executing the death sentence is a violation of Article 21-**

In the case of *Vatheeswaran v. State of Tamil Nadu*,²¹ the Supreme Court adopted a new theory that states that delaying the execution of the death sentence for two years is unjust, unfair, and irrational, and that it violates Article 21 of the Constitution. In such a situation, the offender is entitled to life in prison instead of the death sentence. In the case of *Triveniben v. State of Gujarat*,²² the Apex Court ruled that the death penalty should not be carried out beyond a certain period of time.

- **Article 21 includes the right to free legal aid-**

¹⁷*Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 5.

¹⁸*Hussainara Khatoon (I) v. Home Secretary, State of Bihar*, (1980) 1 SCC 81.

¹⁹*Jagmohan Singh v. State of Uttar Pradesh*, (1980) 1 SCC 81.

²⁰*Bachan Singh v. State of Punjab*, AIR 1980 SC 898.

²¹*Vatheeswaran v. State of Tamil Nadu*, AIR 1983 SC 261.

²²*Triveniben v. State of Gujarat*, AIR 1989 SC 1335.

In the case of *M.H Hoskot v. State of Maharashtra*,²³ the Hon'ble Supreme Court applied Article 39a and concluded that, under Article 21, a prisoner who is indigent or has a legal impairment shall be provided with free legal assistance where the interests of justice necessitate it.

- **Article 21 includes the right to health and medical care-**

In Article 21 and the DPSP, the State is obligated to protect the individual's life. The Supreme Court held in *Parmanand Katara v. Union of India*²⁴ that it is mandatory on part of the doctors in legal cases to provide immediate assistance to victims, whether they are criminals or innocent people, rather than waiting for legal formalities to be completed, and that the preservation of life is of the utmost importance. In the case of *Paschim Bangal Khet Mazdoor Samiti v. State of West Bengal*,²⁵ the Apex Court ordered compensation for the suffering of victims made worse by services provided by public hospitals.

- **Right to life under Article 21 does not include the right to die-**

Man's life is priceless. The Supreme Court, in its opinion, has undergone significant transformation. When deciding on the validity of Sec.309 of the I.P.C., the Court overruled the earlier view taken in *P Rathinam's case*,²⁶ arguing that the "right to life" does not include the "right to die" and that the "extinction of life" is not included in the "protection of life," and thus is not in violation of Article 21 of the Constitution.

- **Article 21 guarantees freedom from police atrocities-**

The Supreme Court of India has showed concern in cases of prisoner maltreatment. In the case of *Prem Shankar v. Delhi Administration*,²⁷ it found that handcuffing is prima facie inhumane, and that the procedure should only be used as a last resort since there are alternative means to assure safety. In the case of *D. K. Basu v. State of West Bengal*,²⁸ it declared that any kind of torture or cruel, inhuman, or humiliating treatment during an investigation, interrogation, or otherwise violates Article 21 of the Constitution. In the case of *Sheela Barse v. State of Maharashtra*,²⁹ it had ordered jail personnel to protect women's rights against torture, abuse, etc., during police detention.

- **Article 21 includes the right to a healthy environment-**

²³*M.H Hoskot v. State of Maharashtra*, AIR 1978 SC 1548.

²⁴*Parmanand Katara v. Union of India*, AIR 1989 SC 2039.

²⁵*Paschim Bangal Khet Mazdoor Samiti v. State of West Bengal*, AIR 1996 SC 2426.

²⁶*P. Rathinam v. Union of India*, AIR 1994 SC 1844.

²⁷*Prem Shankar v. Delhi Administration*, AIR 1980 SC 1535.

²⁸*D.K. Basu v. State of West Bengal*, AIR 1997 SC 610.

²⁹*Sheela Barse v. State of Maharashtra*, AIR 1983 SC 378.

It was in the case of *Subhash Kumar v. State of Bihar*,³⁰ that the Apex Court of India ruled that the right to life is a basic right that encompasses the rights to clean water and clean air for the full enjoyment of life. If anything endangers or damages that quality of life in violation of the law, a citizen may use Art. 32 to have the contamination of water or air that may be harmful to life removed. When it comes to the emission of industrial pollutants into rivers, the Court has said that Article 21 encompasses "the enjoyment of pollutant-free water and air for the full enjoyment of life."

- **Article 21 includes Right to claim Compensation-**

The Hon'ble Supreme Court has displayed a dynamic and active involvement in compensating jurisprudence. In the case of *Nilabati Behera v. State of Orissa*,³¹ it upheld the right to compensation as a basic fundamental right under Article 21 for the first time. The Court had already given the victim compensation at its discretion. In addition, the petitioner in the case of *Rudal Shah v. State of Bihar*,³² who has been detained in jail for 14 years despite his order for acquittal, has been awarded Rs 35000/-. In *Chairman Railway Board v. Chandrima Das*, where the railway staff had raped a Bangladeshi woman, the Central Government was ordered to compensate the victim under Article 21 of the Constitution.

III. ARTICLE 21 OF THE CONSTITUTION: AN ENVIRONMENTAL INTERPRETATION

According to the Article 'No one should be deprived of his life or personal liberty unless in accordance with the law'. In India, the right to a dignified life and the right to a livelihood have been deemed constitutional rights. The right to a clean environment, have been added to Article 21 by the Supreme Court through its judicial interpretation and activism.

There was a discharge of industrial pollutants into a river in the case of *Subhash Kumar v. State of Bihar*, and the Hon'ble Court emphasised through its judgement that article 21 includes the right to enjoyment of pollution-free water and air for the full enjoyment of life. If anything endangers a citizen's quality of life, he or she may launch a lawsuit under Art. 32 to have the contamination of water or air removed.

The Court established a new concept in the case of *M.C. Mehta v. Union of India*,³³ which dealt with vehicular pollution in Delhi, holding that it is the government's responsibility to ensure that the air does not become tarnished due to vehicular pollution. It directed that heavy, medium,

³⁰*Subhash Kumar v. State of Bihar*, 1991 AIR 420, 1991 SCR (1) 5.

³¹*Nilabati Behera v. State of Orissa*, AIR 1993 SC 1960.

³²*Rudal Shah v. State of Bihar*, AIR 1983 SC 1086.

³³*M.C. Mehta v. Union of India*, (1991) 2 SCC 353.

and light-goods vehicles not conforming to Euro II norms or not using low sulphur/ benzene fuel and plying on Inter-State routes were to be penalised. The Court further established a new concept in this case, stating that an enterprise's liability for a disaster resulting from the storage or use of hazardous materials from their factories is 'absolute and cannot be delegated.' The enterprises will be held liable regardless of whether they took proper precautions or not.

In *Ratlam Municipality v. Vardicha*,³⁴ where pollution was caused by private polluters and unplanned urban development, the Apex Court concluded that a pollution-free environment is part of Art. 21. Similarly in *T Damodar Rao and Ors. v. Supreme Court of India*,³⁴ the protection of 'life' under article 21 was the main draw for the High Courts. In this case a park was ordered to be transformed into a residential area, and the court ruled that this was in violation of Art. 21 since Chaudhary J said that "protection and preservation of nature's gift without which life cannot be enjoyed" is a component of Art. 21.

The majority of environmental lawsuits include dangerous gas pollution, garbage disposal, and other issues. The 'Bhopal Gas Accident (*Union Carbide Corporation v. Union of India*)³⁵ was a worldwide industrial disaster that occurred in 1984. The Union Carbide India Ltd, an Indian corporation was a subsidiary of Union Carbide Corporation, USA, was established in Bhopal. A large release of methyl isocyanide from this factory occurred killing over 3000 people, injuring many more. The whole area was engulfed in a thick cloud of black smoke from a dangerous chemical gas. However, by the time a similar incident occurred in Delhi, the Court was unable to draw any decision.

The Oleum Gas Leakage³⁶ was the name given to the other occurrence. In this case, a leak of oleum gas from the Shriram Foods and Fertilizer Industries facility engulfed areas of Delhi in yellow smoke. Although the gas was not as poisonous/toxic and damaging as that of Bhopal, it had negative consequences for the individuals who lived in the area. People suffered a variety of ailments as a result of the catastrophe. Although this occurrence occurred a long time ago, the consequences are still recognised. Mothers who were pregnant at the time gave birth to children who were disabled or who had terrible ailments. The sole rule of 'absolute liability' was created in this case, which states that the business will be accountable regardless of the fact that it was an act of God, such as an earthquake or flood, or an act of terrorism. It was held that an enterprise engaged in a hazardous or inherently dangerous industry that poses a potential threat to the health and safety of those working in it and people living in the surrounding areas, owes

³⁴*Ratlam Municipality v. Vardicha*, (1980) 4 SCC 162.

³⁵*Union Carbide Corporation v. Union of India*, (1989) 1 SCC 674.

³⁶*MC Mehta v. Union of India*, (1987) 4 SCC 463.

an absolute and non-delegated duty to the community to ensure that no one is harmed as a result of the nature of the activity it has undertaken. It was further held that such enterprises would be subjected to liability. If a person is unable to live his or her life correctly, or if his or her health is not in ideal condition, his or her existence cannot be described as dignified. For the sake of profit, such businesses ignore the consequences of their actions, and the outcome is visible to all of us.

The 'Ganga Pollution case'³⁷ is another important decision that reinforced the position that the right to a healthy environment is an element of life under Article 21. In this lawsuit, a writ was filed alleging that factories, namely tanneries on the river's banks and populous districts of Kanpur and Calcutta, were releasing extremely hazardous trade effluents/pollutants into the Ganges. As a consequence, the water in the river could not be utilised for drinking or for other use by the people. The Court ruled that "the polluting tanneries must be closed down, even if it means job loss and income loss, since the protection of life, health, and the environment are more essential than anything else." It's not only about the lives of those who are impacted; it's also about the lives of the animals that drink this water. They can't go to court, but that doesn't imply their lives are meaningless. As a result, water pollution issues (particularly the discharge of hazardous waste into rivers) must be addressed with vigour. Then there's the matter of smoking. Individuals smoke after learning about the dangers of smoking. When smokers smoke, these dangerous compounds mingle with the air we breathe, resulting in a variety of devastating illnesses, including cancer.

The argument was made in *Murli S. Deora v. Union of India*³⁸ that although smoking is harmful to one's health and may impair the health of those who smoke, there is no reason why the health of passive smokers should be harmed as well. Because Art. 21 provides that no one should be deprived of their life, it was decided that prohibiting smoking in public places would be in the best interests of people, and that those who do not smoke cannot be forced to passively smoke as a result of the actions of smokers.

In *Rural Litigation and Environment Kendra, Dehradun v. State of Uttar Pradesh*,³⁹ representatives of the Kendra, wrote to the Supreme Court contending that illegal limestone mining in the Mussorie-Dehradun region was causing environmental degradation, and the court treated the letter as a public interest petition under Article 32 of the Constitution.

³⁷*MC Mehta v. Union of India*, (1987) 4 SCC 463.

³⁸*Murli S. Deora v. Union of India*, (2001) 8 SCC 765.

³⁹*Rural Litigation and Environment Kendra, Dehradun v. State of Uttar Pradesh*, 1989 AIR 594.

As a result, the court ordered that many limestone quarries be closed. The Indian Constitution did not have any direct or explicit provisions on environmental protection when it was first established. Perhaps the authors of the Indian Constitution thought it was a minor concern at the time. However, it only comprised a few Directives to the State on public health, agricultural, and animal husbandry issues. Besides, these were not and still are not enforceable in court. Some of the DPSP, such as Article 39(b), Article 47, Article 48, and Article 49, individually and jointly place an obligation on the State to establish circumstances to raise the country's general health level, as well as to safeguard and develop the natural environment. Later, two explicit clauses, Article 48-A and Article 51-A (g), were added, imposing a responsibility on the state as well as its residents to safeguard and maintain the environment.

IV. NATIONAL GREEN TRIBUNAL – THE GUARDIAN OF ENVIRONMENT

It was formed in 2010 under Article 21, which provides the right to a healthy environment to all Indian citizens. Following Australia and New Zealand, India is the third nation to implement such a system. The tribunal is a unique quasi-judicial body made up of judges and environmental specialists that will expedite the resolution of disputes.

The higher judiciary is overburdened with cases and has a big backlog. It is understandable that effective environmental pollution prevention and environmental complaints should be resolved in a timely way, which is not achievable under the current court administration. As a result, there was a pressing need for an alternate venue to handle environmental disputes quickly. The Constitutional Courts frequently underlined the need for a specialist judicial body to deal with complicated environmental issues, prompting the establishment of India's Environmental Court. The Supreme Court of India, in its verdict, underlined the problems encountered by courts in adjudicating on environmental issues, which sparked the creation of Environmental Courts.

After an extensive discussion of the views of jurists from various countries, the Hon'ble Court issued a judgement referring to the need for the establishment of an environmental court that would benefit from expert advice of notable environmental scientists, as part of the judicial process. The Supreme Court further said that since environmental matters need the evaluation of scientific evidence, it would be preferable to establish "environmental courts on a regional basis with a professional judge and two specialists, bearing in mind the skills necessary for such adjudication." The Supreme Court said in, *Indian Council for Enviro-Legal Action v. Union of*

India⁴⁰ that an environmental court vested with both Civil and Criminal jurisdiction should be set up to tackle the matters relating to degradation of environment quickly.

The court in *Charan Lal Sahu v. Union of India*,⁴¹ stated that under the current civil law, damages are determined by civil courts after a long drawn-out litigation. This long drawn process defeats the very purpose of awarding compensation/damages. In order to counter the problem, avoid delay, and provide immediate relief to the victims, the law should stress on the establishment of a tribunal governed by special procedures for determining the amount of compensation to be granted to victims of industrial disasters. All civil disputes involving environmental concerns and questions related to the application of legislation specified in Schedule I of the National Green Tribunal Act are heard by the National Green Tribunal. The following were among them:

- The Water (Prevention and Control of Pollution) Cess Act, 1947
- The Forest (Conservation) Act, 1980
- The Air (Prevention and Control of Pollution) Act, 1981
- The Water (Prevention and Control of Pollution) Act, 1947
- The Environment (Protection) Act, 1991
- The Public Liability Insurance Act, 1991
- The Biological Diversity Act, 2002

This legislation gives the Tribunal, jurisdiction over all civil matters involving a serious issue pertaining to the environment. This includes matter relating to the enforcement of any environmental legal right that arises from the execution of the enactments listed in Schedule I. It establishes a six-month time limit for the Tribunal to consider petitions for adjudication of a dispute filed under this provision. Further, it also allows the Tribunal to allow applications to be submitted within a subsequent sixty-day period provided it is satisfied that the application was prohibited from being filed within the specified time due to adequate reason.

V. POLLUTER PAYS PRINCIPLE

The idea makes it mandatory for people who cause pollution to pay for the expenses of removing it in order to avoid harm to both human beings and the environment. An industry generating a potentially dangerous output, for example, is normally responsible for its safe

⁴⁰Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212.

⁴¹Charan Lal Sahu v. Union of India, (1989) SCR Supl. (2) 597.

disposal. It is one of the principles chosen for long-term environmental protection in the Rio Declaration of 1992.⁴²

The polluter pays premise goes beyond absolute culpability. Regardless of whether the individual used reasonable care or not, the concept of absolute responsibility is applied, making him accountable to pay others who have suffered as a result of his inherently harmful action. The polluter pays concept broadens the scope of a offender's culpability to include the cost of environmental harm. The concept broadens the scope of the absolute responsibility principle. The significance of this notion is that it is feasible to repair environmental harm, which is critical for long-term growth. The polluter is responsible for the expenses of the harm to the environment as well as the costs of reversing the damage to the individual victims.

Despite the fact that the concept has the ability to preserve the environment, it was not included in Indian law until 1996, when it was used in the Enviro-Legal Action case. In this judgement, the Court upheld and expanded on the notion of unlimited liability established in the Oleum Gas Leak case. "The polluter pays principle mandates that the financial expenses of preventing or eradicating pollution-related harm be borne by the enterprises that generate pollution or produce the items that cause pollution," the court said. In the case of Vellore Citizens Welfare Forum v. Union of India,⁴³ another Bench confirmed the above-mentioned verdict on the principle and the rationale for invoking it. The adoption of the polluter pays concept was supported in these circumstances by the constitutional mandate, statute requirements, and customary international law.

VI. ABSOLUTE LIABILITY

In the case of *M.C. Mehta v. Union of India*,⁴⁴ the Hon'ble Apex Court relied on the absolute responsibility concept established in *Ryland v. Fletcher*⁴⁵ to acknowledge the notion of "Absolute Liability." The defendants in this case hired independent contractors to construct a reservoir on their property. Contractors discovered abandoned mines while excavating, but neglected to properly close them. Water had been poured into the reservoir. As a result, the water inundated the plaintiff's mines, which were close to the plaintiff's land. The plaintiff was successful in getting a judgement in the Liverpool Assizes. The defendant was found guilty by the Chamber of the Court of Exchequer, which upheld the House of Lords' ruling. In this

⁴²Justin Elliot, *What Is the Polluter Pays Principle?*, GRANTHAM RESEARCH INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT, <http://www.lse.ac.uk/GranthamInstitute/faqs/what-is-the-polluter-pays-principle/>.

⁴³*Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715.

⁴⁴*M.C. Mehta v. Union of India*, (1987) 4 SCC 463.

⁴⁵*Ryland v. Fletcher*, (1868) LR 3 HL 330.

instance, the argument was that if a person knows he has brought something harmful that has the potential to cause damage if it escapes, even if there was no carelessness on his side. The conclusion is that culpability arises not as a result of that person's wrongdoing, but rather as a result of that hazardous object escaping and causing harm.⁴⁶

VII. CONCLUSION

The Supreme Court of India is India's most revered public institution, held in high regard by both the well-to-do and the uneducated. Trust in the Court is a major factor in its ability to function effectively as a final arbiter of justice. In the absence of military leadership, the Court has no authority over the military. It's not a purse-holder. Its strength resides in its ability to influence public opinion and mould it, and its ability to dominate the people hearts and minds. Environmental protection is now a matter of national importance, and the court has exclusive jurisdiction over it.

New for the National Green Tribunal is its harsh penalty for anyone who do not follow the court's order. Execution of the court's order is possible because of this. Current law allows for central government influence and control in court proceedings that should be avoided by providing the tribunal complete power over the decision-making process itself.

Article 21 has now become a daily reality for certain marginalised persons, largely as a result of the Supreme Court's broad reading of the law. Revolutions for social justice are always nonviolent, and this was no exception. In truth, the judge was leading a revolution. As a result of this judicial renaissance, India's environmental justice landscape has been transformed. While it is true that India's legal system is constrained in many ways, it has matured through time to become a beacon of hope for mankind.

Using Article 21 as a starting point, the law's provisions may be applied more widely. In line with sections 32 and 226 of the Constitution, the court must also achieve the fundamental goal of socio-economic justice. Even though the Supreme Court's verdict on this constitutional clause has been postponed, millions of Indians have come to believe in it because of these people's amicable choices. All of us should be proud of the emergence of this neo-Indian constitutionalist school of thought.

⁴⁶DR. R.K. BANGIA, LAW OF TORTS(Allahabad Law Agency 2018).