

A Critical Legal Analysis: The Right to Healthy Environment

Sairee Ghosh

5 Yr B.A. LL.B. (Calcutta University), LL.M. (Pursuing) (Vidyasagar University)

ABSTRACT:

The worrying pace of global warming, in particular, raises concerns regarding the impact on the existence of forthcoming populations.¹

Healthful living is essential to mankind because it fosters the development of an individual's physique, mind, and intelligence. It seems imperative that a healthy environment be recognized by the Constitution as a Fundamental Right. Consequently, including an innovative and proactive body of Jurisprudence as well as an underlying Constitutional Structure into a State's Legal System is vital. A prime instance would be the advancement and prosperity of Indian Jurisdiction. The robust Constitutional Foundation in India enables the country's highest Court to construct innovative case law on environmental health as an extension of Fundamental Rights. As a result, the Indian Sovereignty serves as the point precedent for this action.²

I have to acquire the ability to embrace our Right to a Healthy Environment properly and judiciously, so that it becomes our heritage. This study aims to illustrate the significance of utilizing the notion of ecological preservation when implementing the Right to a Healthy Environment. It analyzes the legal recognition by India and it proclaims that the Right to a Healthy Environment is recognized as a Fundamental Right by the Constitution of India. Additionally, it outlines global commitments. It further elaborates the interaction among the Environmental Rights and International Human Rights. So to initiate the study, the approach of autonomous empirical study was accomplished.

KEYWORDS: Sustainability, Environmental Pollution, Constitution of India, Healthy Environment.

INTRODUCTION:

One of the crucial liberties that every citizen should have is the right to a healthy environment. This right is ubiquitous and has grown more contentious and debated in the last century as efforts to address the ecological challenges that worldwide faces have been made.³

The Universal Declaration of Human Rights and the United Nations Charter, which guarantee liberty and equal treatment for all without distinction, are two of the most significant documents we deal with. A significant occasion in the realm of environmental law was the 1972 Stockholm UN Conference on the Environment, which addressed "a fundamental right to equality, freedom, and good surroundings in a setting that allows it to live in wealth and decency."⁴

¹ Researchgate; <https://www.researchgate.net> (last visited on October 1, 2024)

² Sciencedirect; <https://pdf.sciencedirectassets.com> (last visited on October 1, 2024)

³ Researchgate; <https://www.researchgate.net> (last visited on October 1, 2024)

⁴ ibid

A "Healthy Environment" encompasses considerably more than that; it also includes stability and, most importantly, the absence of contamination, which have "Fundamental Significance." There are several grounds for this categorization, including the assertion that this right serves as a foundation for the appropriate usage of additional fundamental liberties including the Right to Health Protection, the Right to Physical and Mental Integrity, and above all the Right to Life.⁵

This study aims to illustrate the core statutory principles of the Right to a Healthy Environment that encourages individuals' healthy growth. While discussing improvement, we as a society ought to take into account the foreseeable future in addition to the present years to come. The idea of conservation, which permeates all spheres of endeavor from environmentalism to commerce, emerges in these circumstances, where human impulses to preserve and use natural resources to ensure that subsequent generations have access to them, grows stronger.

Commencement of the Scheme

The 1970s can be considered the beginning of the Right to a Healthy Environment. The idea of a "Right to a Healthy Environment" was gaining wider acceptance in the subsequent phase of the century, and "Green Movements" begun to acquire momentum. To quote a statement made at the first United Nations Conference on the Environment in Stockholm in 1972, men have the "Basic Right to Freedom, Equality and suitable conditions of living, in a setting of a caliber that permits a life of honor and prosperity". Preserving and enhancing the environment for today and in the years to come is a significant responsibility.⁶

Though nothing was done from an administrative and judicial standpoint which is said to be the most efficient and feasible approach to handle environmental issues this set the stage for the formation of important environmental organizations.⁷

The International Covenant of Economic, Social, and Cultural Rights implementation in 1976 marked the beginning of the legal basis for the creation of a right related to environmental protection. According to Article 12 of that document, the States Parties to the current Covenant acknowledge that every individual has the right to the best possible level of psychological and physical well-being.⁸

ENVIRONMENTAL CONTEXT

The Indian constitution is not a static document; rather, it is a dynamic one that changes and develops throughout time. The constitution's particular environmental protection clauses are also a product of the basic law of the land's dynamic character and expansion prospective. Our Constitution's Preamble guarantees both human dignity and a socialist framework of society. This entails an adequate degree of life and an unpolluted environment. The Environment (Protection) Act of 1986 states that the environment encompasses "land, water, and air as well as the relationships that exist between these elements and people, other living things, plants, microorganisms, and property."⁹

When the Indian Constitution was ratified in 1950, it had measures pertaining to environmental preservation in Articles 39, 42, 47, 48, and 49. Later, in 1976, the 42nd Constitutional Amendment took effect, including Articles 48 A and 51A (g), which specifically addressed environmental protection.¹⁰

⁵ ibid

⁶ Legalserviceindia; <https://www.legalserviceindia.com> (last visited on October 2, 2024)

⁷ ibid

⁸ OHCHR; <https://www.ohchr.org/en> (last visited on October 2, 2024)

⁹ Press Information Bureau; <https://pib.gov.in> (last visited on October 2, 2024)

¹⁰ TheDailyGuardian; <https://theguardian.com> (last visited on October 2, 2024)

Articles 48 A and 51A (g) were included as a proactive measure following the 1972 Stockholm Conference. The UNEP was established in December 1972 to unify international efforts to protect the environment and advance resilience.¹¹

According to Article 51-A (g), "every Indian citizen possesses a responsibility to preserve and enhance the beauty of nature, including forests, lakes, rivers, and wildlife, and exhibit empathy for all organisms."¹²

The 1968 request from Sweden that the UN convene a global summit to study environmental issues and determine which ones needed global collaboration to resolve is where the Stockholm Conference got its start.¹³

Since the Indian Constitution's Article 21 guarantees everyone the right to live in a pollution-free environment, several laws have been passed with the goal of giving everyone access to a clean and healthy environment.¹⁴

In accordance with the Indian Constitution, the Directive principles aimed to create an egalitarian society. According to Article 47, one of the State's main responsibilities is to enhance public health and raise the standard of life and nourishment of its citizens.¹⁵

The organizational structure of farming and grazing is covered in Article 48. It gives the State instructions on how to arrange agricultural and animal husbandry according to contemporary, scientific principles. It should specifically take action to protect and enhance the breeds and outlaw the killing of cows, calves, and other the dairy product and draught animals. The state should attempt to maintain and develop biodiversity and to conserve its forest ecosystem and wild life, according to Article 48-A of the constitution.¹⁶

According to the Atharvaveda, "Man's paradise is on earth; this earthly world is the loveliest home of all; it has the blessings of nature's treasures; live in an enchanting spirit." In order to increase public engagement, environmental awareness, environmental education, and public sensitization to safeguard the environment and ecology, it is imperative that people are aware of the constitutional provisions pertaining to environmental protection.¹⁷

Environmental Policy: Pre Stockholm Period (Prior to 1972)

Although infrastructure development was the primary objective of legislation during this time, environmental policy was not given the attention it needed. A number of regulations implemented to conserve forests, prevent uncontrolled settlement expansion, along with safeguarding mineral resources and mining.¹⁸

Wild Birds and Animals Protection Act, 1912

Killing, capturing, selling, or purchasing any untamed creature or bird included in the agenda has become illegal.¹⁹

Indian Forest Act, 1927

It created the guidelines and process for creating and safeguarding village forests, protected forests, and

¹¹ ibid

¹² Press Information Bureau; <https://pib.gov.in> (last visited on October 2, 2024)

¹³ TheDailyGuardian; <https://theguardian.com> (last visited on October 2, 2024)

¹⁴ ibid

¹⁵ Press Information Bureau; <https://pib.gov.in> (last visited on October 2, 2024)

¹⁶ ibid

¹⁷ ibid

¹⁸ iPleader; <https://blog.ipleaders.in> (last visited on October 3, 2024)

¹⁹ ibid

reserved forests.²⁰

The Factories Acts, 1948

To lessen its negative environmental consequences, it placed a strong emphasis on treating hazardous gases, liquid pollutants, and solid debris produced throughout the production process before it is finally disposed of.²¹

The Mines and Minerals (Regulation and Development) Act, 1957

The Union assumed the oversight of mineral extraction and mining administration to prevent unauthorized use of its abundant natural resources.²²

Environmental Policy: Post Stockholm Period (After 1972)

The 1972 Stockholm Conference had a significant impact on India's ecological policy paradigm. **The National Council for Environmental Policy and Planning** was established in 1972 underneath the Development of Science and Technology as an advisory organization to handle sustainable development problems following the Stockholm Conference. In 1985, this Council became the **Ministry of Environment and Forests (MoEF)**.

The Conference had great influence on the Constitution that the Constitution was amended to incorporate the maintenance and safeguarding of the environment.²³

GLOBAL COMMITMENTS

Development has been hampered by the slow adoption of rights-oriented strategies to solve the global problem. At the Rio Earth Summit in 1992, states committed to preventing harmful human-induced changes with the Earth's climate system by negotiating the UN Framework Convention on Climate Change (UNFCCC). Countries agreed to create a UN Convention to Combat Desertification and finished the UN Convention on Biodiversity (CBD) at the same session.²⁴

Minimal promises made under any of these global ecological treaties have been kept over thirty decades later. Coal, gas, and oil burning have all increased dramatically. People emitted greater carbon dioxide between 1990 and 2023 than they had in the 240 years prior, starting with the Industrial Revolution.

Since 1992, the world's releases of greenhouse gases have increased by over 65%. With an estimated 2.7 degrees Celsius of warming on the horizon, mankind is far from fulfilling the commitments made in the Paris Agreement. This would have caused disastrous consequences for the protection of human rights, particularly the right to a healthy environment.²⁵

International environmental politics was the main topic of the inaugural United Nations conference on human rights (UNCHE), held in Stockholm in 1972. This meeting put ecological preservation on the world policy and legal agenda and signaled the start of global efforts to do it. Some of the thoughts and ideas presented in this conference are found in the conceptions and ideas of nearly all global summits and conventions today. Its salient characteristics were:

- It connected sustainable growth and environmental preservation.
- The Declaration of Human Rights and an initiative were the results of the gathering.

²⁰ iKanoon; <https://indiankanoon.org> (last visited on October 3, 2024)

²¹ AdvocateKhoj; <https://www.advocatekhoj.com> (last visited on October 3, 2024)

²² iKanoon; <https://indiankanoon.org> (last visited on October 3, 2024)

²³ iPleader; <https://blog.ipleaders.in> (last visited on October 3, 2024)

²⁴ OHCHR; <https://www.ohchr.org> (last visited on October 4, 2024)

²⁵ ibid

- The 26 guiding principles of the Declaration are regarded as the cornerstone of contemporary international environmental law.
- On a regional and worldwide scale, it helped to establish international environmental organizations.
- The United Nations Environment Programme (UNEP) was established on this date.
- According to the Declaration, everyone has the right to a hygienic and safe environment.²⁶
The World Commission on Environment and Development (WCED), often called the Brundtland Commission, was founded by the UN in 1983 with the purpose of bringing nations together to work toward the shared objective of a healthy environment.
- The commission's final product was the Brundtland report, titled "Our Common Future," which was published in 1987.²⁷

Many states have chosen to give law constitutional significance, despite the fact that this right has been consecrated in numerous international accords and has taken significant places alongside other rights like the right to life.²⁸

There are no explicit legal or constitutional provisions in Malaysia pertaining to the right to a healthy environment. According to Article 5(1) of the Federal Constitution of Malaysia, the right to life is the only clause that could provide for the right to a healthy environment. The right to life under Article 5(1) was construed by the Court of Appellate in *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor*²⁹ in 1997 to include all aspects that are essential to life itself and those that contribute to life quality. According to the wide interpretation offered, it should cover the right to a healthy environment since only then can one truly enjoy life.³⁰

The enshrinement of this right in national laws is viewed differently by the states of the European Federation, and there are three primary approaches that guide it: fundamental entronement, which is the most popular method of incorporating the idea of a healthy environment into national legislation, statutory entronement, and legal entronement.

In order to provide a general idea of how to tackle the issue, we will use the first category to show the constitutional provisions of several European governments.

According to Portugal's 2005 Constitutional Amendment, "everyone has the right to a healthy and ecologically harmonious living environment and simultaneously have the duty to preserve it."³¹

An additional illustration is provided by the 1992 amendment to the Spanish Constitution, which states that "everyone has the right to embrace an environment suitable for the flourishing of their individuality and have the responsibility to maintain it."

The European Court of Human Rights has paved the way for the defense of human rights against environmental pollution with its ruling in the 1994 case of *López-Ostra v. Spain*³². The ruling in this case demonstrated both jurisprudential versatility and an ethical ambition of having environmental infringements recognized as human rights infringements, strengthening the constitutional safeguards of

²⁶ iPleader; <https://blog.iplayers.in> (last visited on October 4, 2024)

²⁷ ibid

²⁸ Researchgate; <https://www.researchgate.net> (last visited on October 4, 2024)

²⁹ *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLJ 261

³⁰ Sciencedirect; <https://www.sciencedirect.com> (last visited on October 4, 2024)

³¹ Researchgate; <https://www.researchgate.net> (last visited on October 4, 2024)

³² *López-Ostra v. Spain*, no. 16798/90, decision of 9 December 1994

pollution victims and providing them with the option to file an action prior to the ECHR by citing article 8 with regard to each source of pollution.³³

According to Turkey's constitution, "every individual has the right to dwell in a peaceful and healthy environment." Improving the environment and preventing contamination are the responsibilities of the government and the people.³⁴

The plaintiffs in the 2005 *Taski and Others v. Turkey*³⁵ lawsuit cited the potential for cyanide buildup from the adjacent gold mine, which might last for ten years, as a violation of their right to a healthy environment. The Court demonstrated in this case that the state had violated the terms of article 8 of the Convention since extreme environmental pollution can have a detrimental effect on people's health and prohibit people from relishing their dwellings, which in turn affects their personal as well as family lives.³⁶

There are numerous examples in this vein, including Bulgaria, Russia, Hungary, the Republic of Moldova, and Sweden. However, the Greek Constitution's clause that "the preservation of both the cultural and the natural environment entails a state commitment and a right enjoyed by every person" is, in our opinion, one of the most wide-ranging. In the framework of the doctrine of sustainability, the State must take specific, proactive, or oppressive measures to protect it.³⁷

The European Court emphasized that in the case of *Kyrtatos v. Greece*,³⁸ where the plaintiffs claimed, based on this statutory document, that the urban constructions in the southeast of a Greek island cause the environment in which they live to be destroyed, the existence of an adverse impact provoked on an individual's private or personal life is the crucial component allowing one to assess whether, under the context of a case, the breaches brought to the environment represent an infringement of among the rights guaranteed by the provisions of paragraph (1) of article 8. According to article 8, paragraph 2 of the Conventions, neither article 8 nor any additional provisions specifically ensures the general preservation of the ecosystem as such. In this instance, the plaintiffs failed to assert a sufficient amount of harm to be taken into account.³⁹

Another type of legislative adoption includes Denmark as a prime instance. Denmark is governed by the "Environmental Protection Act of 1997," a law that aims "to foster the safeguarding of biodiversity and the ecosystem, to the shielding of the environment, and to the safeguarding of the ecology, thereby facilitating equitable improvements in the framework of human existence and maintaining the diversity of flora and fauna."⁴⁰

A few of governments also have judicial acceptance, including Belgium, where courts provide comprehensive safeguards for individual rights under environmental law.⁴¹

Italy, where there are harsh consequences for noncompliance with safeguarding and preserving the environment requirements.⁴²

³³ Sciencedirect; <https://www.sciencedirect.com> (last visited on October 15, 2024)

³⁴ Researchgate; <https://www.researchgate.net> (last visited on October 15, 2024)

³⁵ *Taski and Others v. Turkey*, [2006] 42 EHRR 50

³⁶ Researchgate; <https://www.researchgate.net> (last visited on October 15, 2024)

³⁷ *ibid*

³⁸ *Kyrtatos v. Greece*, no. 41666/1998, decision of 22nd May, 2003

³⁹ Sciencedirect; <https://www.sciencedirect.com> (last visited on October 15, 2024)

⁴⁰ Researchgate; <https://www.researchgate.net> (last visited on October 15, 2024)

⁴¹ *ibid*

⁴² *ibid*

The *Giacomelli v. Italy*⁴³ case of 2006 also invokes identical clause from the *Taski and others v. Turkey* case. In this case, the plaintiff claims that a garbage depository installation near Brescia is causing phonic and olfactory pollution, which poses a long-term risk to her health and property. In the case, the Court determined that a home is where both personal and familial life takes place and that, in accordance with Article 8, a person has the right to demand respect for their home, which includes both the right to property and the right to peacefully enjoy that area.⁴⁴

Statutory Recognition by India

Since a lot of individuals entrepreneurial motivations go beyond environmental care, the Indian Parliament has passed legislation enshrining sustainability as a fundamental right and duty. If a person has not been denied exposure to a healthy source for livelihood or denied any fundamental rights, then that person is considered to lead a healthy lifestyle.

Our constitution is one among the few in the world with clear environmental protection clauses in order to accomplish the same goal. Even while it is clear that when the constitution was being drafted, lawmakers did not give any consideration to environmental protection, car emissions, or the rights associated with a clean environment, these issues were included in response to popular demand in 1976 with the passage of the 42nd Amendment.⁴⁵

The Indian constitution contains explicit provisions for environmental preservation and protection under the Directive Principles of State Policy & Fundamental Duties. It was quite appropriate for the central government to be based on fundamental rights. Part III of the Constitution contains broader constitutional provisions that have aided the concept of the Right to a Healthy Environment.⁴⁶

In addition, **Jayanthi Natarajan**, a former Environment Union Minister, argued in 2012 for the protection of the right to a healthy environment as a basic right.

The Indian constitution's preamble, which guarantees socioeconomic justice, is reflected in the affirmation of the right to a healthy environment as a basic freedom.⁴⁷

Part III of the Indian Constitution protects fundamental rights that are inalienable to all people simply by virtue of their humanity and are necessary for each person's growth. Individual development and the realization of their fullest abilities are not feasible without the right to an environment. This section's articles 21, 14, and 19 have been applied to safeguard the environment.⁴⁸

Article 21 of the Constitution states that "no individual shall be deprived of his life or individual liberty unless pursuant to procedure imposed by law." Occasionally, since the Supreme Court's ruling in **Maneka Gandhi vs. Union of India**⁴⁹, Article 21 has been interpreted liberally. The Fundamental Right to Life is guaranteed under Article 21. There is an intrinsic right to an environment free from the threat of disease and infection. One essential component of the Right to Live with Human Dignity is the Right to a Healthy Environment.⁵⁰

In the matter of **Rural Litigation and Entitlement Kendra vs. State**⁵¹, (often referred to as the **Dehradun Quarrying matter**), the Right to Live in a Healthy Environment as guaranteed by Article 21

⁴³ *Giacomelli v. Italy*, no. 59909/00, decision of 2nd November 2006

⁴⁴ Sciencedirect; <https://www.sciencedirect.com> (last visited on October 15, 2024)

⁴⁵ Legal Service India; <https://www.legalserviceindia.com> (last visited on October 17, 2024)

⁴⁶ *ibid*

⁴⁷ *ibid*

⁴⁸ Press Information Bureau; <https://pib.gov.in> (last visited on October 17, 2024)

⁴⁹ *Maneka Gandhi vs. Union of India* (AIR 1978 SC 597)

⁵⁰ Press Information Bureau; <https://pib.gov.in> (last visited on October 18, 2024)

⁵¹ *Rural Litigation and Entitlement Kendra vs. State*, AIR 1988 SC 2187

of the Constitution was initially acknowledged. The Supreme Court ordered the Cessation of Excavation (Illegal Mining) under the Environment (Protection) Act, 1986, in what is the first case of its sort in India that deals with environmental and societal crises.⁵²

The Supreme Court ruled in **M.C. Mehta vs. Union of India**⁵³, that the Right to Live in a Pollution-Free Environment is a Fundamental Right guaranteed by Article 21 of the Constitution.⁵⁴

Too much noise pollutes the environment. The Right to a Pleasant Environment and the Right to Live in Peace are guaranteed under Article 19(1)(a) of the Indian Constitution, as well as Article 21. The Kerala High Court ruled in **PA Jacob vs. The Superintendent of Police Kottayam**⁵⁵, that the use of loud speakers or sound amplifiers is not protected by article 19(1)(a) of the Right to Free Speech. Thus, under article 19(1)(a) of the Constitution, noise pollution brought on by loud speakers can be reduced.

According to Article 19(1)(g) of the Indian Constitution, every citizen has the basic right to engage in any employment, trade, or business. Reasonable limitations apply to this. The Supreme Court noted that if environmental protection and the right to freedom of trade and occupation conflict, the courts must strike a healthy equilibrium between environmental concerns and the fundamental right to engage in any occupation when resolving the liquor trade case in **Cooverjee B. Bharucha vs. Excise commissioner**^{56, 57}.

Environmental litigation surged as a result of Public Interest Litigation under Articles 32 and 226 of the Indian Constitution. The shuttering of limestone quarrying operations in the Dehradun region (Dehradun Quarrying case,⁵⁸ AIR 1985 SC 652), the setting up of protective measures at a chlorine facility in Delhi (M.C. Mehta V. Union of India⁵⁹, AIR 1988 SC 1037), and other significant environmental lawsuits have been determined by the Supreme Court. The Court noted in **Vellore Citizens Welfare Forum vs. Union of India**⁶⁰ that "the Polluter Pays Principle" and "the Precautionary Principle" are crucial components of "Sustainable Development."⁶¹

The constitution also gives Panchayats the authority to implement policies at the local and village levels, including forestry, water management, soil conservation, and protection of Sustainability and the advancement of Environmental Principles.⁶²

CONSTITUTIONAL LEGISLATIONS FOR THE RIGHT TO A HEALTHY ENVIRONMENT

There were no provisions for environmental conservation or maintenance in the 1950 Indian Constitution. Conversely, Articles 48A and 51A (g) were added by the Constitution (Forty-Second Amendment) Act, 1976, giving environmental protection fundamental significance.⁶³

⁵² Press Information Bureau; <https://pib.gov.in> (last visited on October 18, 2024)

⁵³ M.C. Mehta vs. Union of India, AIR 1987 SC 1086,

⁵⁴ Press Information Bureau; <https://pib.gov.in> (last visited on October 18, 2024)

⁵⁵ PA Jacob vs. The Superintendent of Police Kottayam, AIR 1993 Ker 1

⁵⁶ Cooverjee B. Bharucha vs. Excise Commissioner, Ajmer (1954, SC 220)

⁵⁷ Press Information Bureau; <https://pib.gov.in> (last visited on 2024)

⁵⁸ Rural Litigation and Entitlement Kendra vs. State, AIR 1985 SC 652

⁵⁹ M.C. Mehta V. Union of India, AIR 1988 SC 1037

⁶⁰ Vellore Citizens Welfare Forum vs. Union of India, (1996) 5 SCC 647

⁶¹ Press Information Bureau; <https://pib.gov.in> (last visited on October 18, 2024)

⁶² *ibid*

⁶³ iPleader; <https://blog.ipleaders.in> (last visited on October 18, 2024)

DIRECTIVE PRINCIPLES OF STATE POLICY

Article 48-A

It provides that "The State shall seek to shield and develop the ecology and to preserve the forestry and biodiversity of the country." The State must adhere to its provisions while drafting legislation, even when directive principles may not be legally binding.⁶⁴

Article 47

The Right to a Healthy Environment has been additionally attempted to be provided for by Article 47, which declares that the "State shall prioritize the enhancement of the standards of nourishment and prevailing standard lifestyle of its residents and the advancement of the public's wellness as among its foremost responsibilities."⁶⁵

FUNDAMENTAL DUTIES

Article 51 A(g) states that "It shall be the responsibility for each citizens of India to safeguard and foster the beauty of nature including forests, lakes, rivers, and wildlife and demonstrate empathy for living species." This means that every citizen has an obligation to uphold and safeguard the environment.⁶⁶

FUNDAMENTAL RIGHTS

In addressing the issue of noise nuisance, the Supreme Court has used **Article 19(1) of the Constitution**, which addresses freedom of speech and expression. It has been said that using loudspeakers or amplifiers is not part of the right to free speech and expression. It is forbidden to utilize this privilege to harm other people.⁶⁷

"No individual shall be bereft of his existence or personal liberty unless according to procedure imposed by law," reads **Article 21 of the Constitution**, which addresses the protection of life and personal liberty. The state has a negative obligation to refrain from taking any action that would deny someone their life or personal freedom.⁶⁸

To protect this and other essential rights The Constitution's Article 32 gives the Supreme Court the authority to intervene whenever fundamental rights are violated. Judiciary has interpreted Article 21 in the broadest sense possible, arguing that the right to life encompasses more than just "animal existence"; it also refers to a life with "human dignity." It was determined that the right to life includes all essential and fundamental rights for a certain standard of living, including the right to food and shelter, and other necessities, free from environmental risks and pollution.⁶⁹

Environmental protection has repeatedly been brought up by **Public Interest Litigation (PIL)** under **Articles 32 and 226 of the Constitution**.⁷⁰

PENAL MEASURES

There are sections in the **Indian Penal Code, 1860** that define a number of offenses related to public disturbance.

⁶⁴ AdvocateKhoj; <https://www.advocatekhoj.com> (last visited on October 20, 2024)

⁶⁵ ibid

⁶⁶ iPleader; <https://blog.ipleaders.in> (last visited on October 20, 2024)

⁶⁷ AdvocateKhoj; <https://www.advocatekhoj.com> (last visited on October 20, 2024)

⁶⁸ iPleader; <https://blog.ipleaders.in> (last visited on October 20, 2024)

⁶⁹ ibid

⁷⁰ AdvocateKhoj; <https://www.advocatekhoj.com> (last visited on October 20, 2024)

Section 268 of the Indian Penal Code covers public nuisance.⁷¹

The **Indian Penal Code's Sections 269 to 271** addresses careless behavior that might result in the spread of diseases that could endanger people's lives. Under these provisions, certain actions are criminal.⁷²

Water contamination is outlined in **Section 277 of the Indian Penal Code**. It renders contaminating an open-access springs or reservoir's water illegal and carries a jail sentence, fine, or both.⁷³

Air pollution is discussed in **Section 278 of the IPC**. The law stipulates that anybody who willfully contaminates the air at a location to make it harmful to the health of those living there, conducting business nearby, or crossing a public road faces a punishment of up to five hundred rupees.⁷⁴

According to **Section 290 of the IPC**, public nuisances are criminal and have specific penalties.⁷⁵

Following taken into account any relevant proof, the magistrate may act promptly to remove any public nuisance that the police may have reported to it, according to **Section 133 of the Criminal Procedure Code of 1973**.⁷⁶

ENVIRONMENT PROTECTION LAWS

The 1972 Stockholm Conference had a significant impact on India's environmental policy decisions. Since then, a number of significant laws have been passed. To address the issue of environmental contamination, numerous subsequent Acts were enacted.⁷⁷

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

Maintaining the country's water's purity and encouraging stream and river cleansing are the goals of the Act. As a result, the State Pollution Control Board (SPCB) and Central Pollution Control Board (CPCB) were established. It forbids the release of wastewater into bodies of water above a specific threshold. The most recent amendment was made in 2003.⁷⁸

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

The Water Act established committees to carry out the Act's provisions, which include preventing, controlling, and abetting air pollution, empowering the State Government to designate any region or regions within the State as air pollution control zones after collaborating with SPCBs, and requiring SPCBs' authorization before developing or functioning an industrial facility in a pollution control area.⁷⁹

The Environment (Protection) Act, 1986

The regrettable Bhopal Gas Disaster in 1984 led to the passage of this Act. It is regarded as a unified law to enable CPCBs and SPCBs integrate their operations under different laws and to close the gaps in the current legislation.

The Act gives the Center the authority to take any action it thinks is required, including maintaining the precise spot of industries, managing hazardous waste, protecting the public's health and welfare, and

⁷¹ IndianKanoon; <https://indiankanoon.org> (last visited on October 21, 2024)

⁷² iPleader; <https://blog.ipleaders.in> (last visited on October 21, 2024)

⁷³ IndianKanoon; <https://indiankanoon.org> (last visited on October 21, 2024)

⁷⁴ iPleader; <https://blog.ipleaders.in> (last visited on October 21, 2024)

⁷⁵ IndianKanoon; <https://indiankanoon.org> (last visited on October 21, 2024)

⁷⁶ iPleader; <https://blog.ipleaders.in> (last visited on October 21, 2024)

⁷⁷ ibid

⁷⁸ Central Pollution Control Board (CPCB); <https://cpcb.nic.in/water-pollution> (last visited on October 22, 2024)

⁷⁹ Textbook; <https://testbook.com> (last visited on October 22, 2024)

establishing standards for the emissions and discharges of pollutants into the atmosphere by anyone operating an industry or activity.⁸⁰

The National Green Tribunal Act, 2010

Because of this, the National Green Tribunal (NGT) was established to expedite the resolution of issues pertaining to environmental preservation and protection. As stated in Schedule I of the NGT Act, the Act envisions the creation of NGT to address all environmental regulations pertaining to air and water pollution, the Environment Protection Act, the Forest Conservation Act, and the Biodiversity Act.⁸¹ In order to accomplish the goal of environmental preservation, some policies were also developed. A few of them are⁸²:-

- National Environment Policy, 2004
- Marine Fishing Policy, 2004
- National Environment Policy, 2006
- 11th 5 Year Plan (2007-2012)
- National Wetland Conservation Programme.

PRINCIPLES BY INDIAN JUDICIARY

In order to resolve conflicts concerning environmental matters, the judiciary has adopted some of the ideas found in International Environmental Law. These guidelines are:-

Polluter Pays Principle

The Guiding Principles for International Economic Aspects of Environmental Policies, originally published in 1972 by the Organization for Economic Cooperation and Development (OECD), pioneered this concept. According to this, the polluter should pay for any harm they create to the environment.⁸³

Vellore Citizen's Welfare Forum v. Union of India, 1996⁸⁴

According to the court's interpretation, the polluter bears full responsibility for paying for the repair of the natural environment that has been harmed by the polluter's actions, in addition to compensating the victims for their injuries.⁸⁵

Precautionary Principle

The Rio Declaration of 1992 embraced the precautionary principle (Principle 15). It asserts that actions must be made to foresee and stop the underlying factors of environmental damage regardless of the dearth of rigorous proof. The state has a social duty to safeguard the populace from any conceivable danger.⁸⁶

AP Control Pollution Board v. Prof. M. V. Nayadu, 1999⁸⁷

The court ruled that taking preventative measures to safeguard the environment is preferable to waiting for the problem to arise. Even in the absence of scientific proof of the possible environmental impact, action must be taken.⁸⁸

⁸⁰ IndiaCode; <https://www.indiacode.nic.in> (last visited on October 22, 2024)

⁸¹ iPleader; <https://blog.ipleaders.in> (last visited on October 22, 2024)

⁸² ibid

⁸³ ibid

⁸⁴ Vellore Citizen's Welfare Forum v. Union of India, AIR 1996 (5) SCC 647

⁸⁵ IndianKanoon; <https://indiankanoon.org> (last visited on October 22, 2024)

⁸⁶ iPleader; <https://blog.ipleaders.in> (last visited on October 22, 2024)

⁸⁷ AP Control Pollution Board v. Prof. M. V. Nayadu, 1999 (2) SCC 718

⁸⁸ IndianKanoon; <https://indiankanoon.org> (last visited on October 22, 2024)

Inter-Generational Equity

This concept states that the state has a duty to protect the ecosystem and its biodiversity for the betterment of both the current and future generations. It asserts that as Earth belongs to all generations; its resources need to be exploited responsibly and for everyone's benefit. It serves as Sustainable Development's cornerstone. The right to a clean environment is a communal right that is equally available to current and future generations, in addition to being an individual right.⁸⁹

G. Sundarrajan v. Union Of India, 2013⁹⁰

According to the SC, CSR and sustainable development are intertwined pairs that are included into the intergenerational equity principles, which are not only eco-centric but also human-centric. It is the responsibility of the corporation to examine the current and future environmental consequences of its thermal expansion projects.⁹¹

Public Trust Doctrine

This asserts that resources such as air, water, sea, and forests are so vital to the society ecosystem that it would seem unreasonable to make them privately owned. It imposes an obligation on the state to safeguard these resources for the good of all and to forbid their commercial usage. The state is the trustee with a legal obligation to safeguard these resources, and the general public is the beneficiary.⁹²

M.C. Mehta v. Kamal Nath,⁹³

In one instance, an effort was made to reroute the river's flow in order to facilitate a motel's business operations. According to the ruling, the State is the custodian of all natural resources, which may only be utilized for the general welfare of the populace and cannot be used for profit.⁹⁴

Sustainable Development Principle

In 1972, it had been initially presented at the Stockholm Conference. According to it, the government needs to make an effort to reconcile environmental preservation with growth.⁹⁵

State of Himachal Pradesh v. Ganesh Wood Products, 1995⁹⁶

A forest-based enterprise was declared unconstitutional by the Supreme Court, which acknowledged the importance of the intergenerational fairness principle for sustainable development and natural resource protection.⁹⁷

INTERNATIONAL HUMAN RIGHTS AND THE ENVIRONMENT RIGHTS

While certain ecological problems have been addressed through the application of human rights, these aspects are unlikely to be sufficiently protected by them. In this regard, the European Court of Human Rights has ruled time and again that "no liberty to environment conservation" falls within the dignity and liberties protected by the European Convention on Human Rights since it does not contain a right to a healthy environment.⁹⁸

⁸⁹ iPleader; <https://blog.ipleaders.in> (last visited on October 23, 2024)

⁹⁰ G. Sundarrajan v. UOI, (2013) 6 SCC 620

⁹¹ IndianKanoon; <https://indiankanoon.org> (last visited on October 23, 2024)

⁹² iPleader; <https://blog.ipleaders.in> (last visited on October 23, 2024)

⁹³ M.C. Mehta v. Kamal Nath, 1996 SC 711

⁹⁴ IndianKanoon; <https://indiankanoon.org> (last visited on October 23, 2024)

⁹⁵ iPleader; <https://blog.ipleaders.in> (last visited on October 23, 2024)

⁹⁶ State of Himachal Pradesh v. Ganesh Wood Products, 1995 (6) SCC 363

⁹⁷ IndianKanoon; <https://indiankanoon.org> (last visited on October 23, 2024)

⁹⁸ OHCHR; <https://www.ohchr.org> (last visited on October 25, 2024)

The UN General Assembly and Human Rights Council have finally approved measures acknowledging the human right to a healthy, sustainable, and clean environment following centuries of discussion.⁹⁹

The environment and human rights are inextricably linked: although a clean, safe, healthy, and resilient environment is necessary for us to exercise our human rights, a polluted, dangerous, or otherwise harmful environment may infringe those rights.¹⁰⁰

This privilege has been mentioned in the research of the UN Working Group on People of African Descent, the UN Committee on the Rights of the Child, the UN Committee on Economic, Social, and Cultural Rights, and the UN Committee on the Elimination of All Forms of Discrimination against Women.¹⁰¹

By means of international conventions, laws, and statutes, over 80 per cent of UN Member States (161 out of 193) presently explicitly acknowledge the right to a healthy environment.¹⁰²

CASE HISTORIES

In the case **People United for Better Living in Calcutta v. State of W.B.**¹⁰³, the court noted that: "Although it appears that in an impoverished nation there shall have to be advancements, but these advancements shall have to be in most adjacent feasible coherence with the surroundings, which would result in total destruction, nevertheless, however, may not be felt in present but at a later date of time, but then it would be too late in the day, however, to manage and enhance the environment."¹⁰⁴

In **Municipal Council, Ratlam v. Shri. Vardhichand & Ors**¹⁰⁵, It was among the initial instances that helped broaden the scope of environmental preservation. In the instant case, the citizens of a municipality in Ratlam submitted an appeal, claiming that the municipality is not building adequate drains, which causes smell and stink from the defecation of neighboring slumberers. The Supreme Court ruled that the right to a healthy environment is part of the right to life, and that citizens have the right to use this right against the government. It forced the town to provide adequate drainage and sanitary systems and recognized the negative impacts that the deteriorating environment had on the impoverished.¹⁰⁶

The initial thorough judicial reading of Article 21 regarding the establishment of the Right to a Healthy Environment as a necessary component of the Right to Life and Personal Liberty in 1985 was acknowledged and upheld by the Supreme Court in the case of **Rural Litigation and Entitlement Kendra and Ors. v. State of UP**^{107, 108}.

In **F. K. Hussain v. Union of India and Ors.**¹⁰⁹, The Kerela High Court has noted that the right to fresh air and water are characteristics of the right to life, acknowledging that the right to health is a component of the right to live under Article 21.¹¹⁰

⁹⁹ ibid

¹⁰⁰ GenevaEnvironmentNetwork; <https://genevaenvironmentnetwork.org> (last visited on October 25, 2024)

¹⁰¹ OHCHR; <https://www.ohchr.org> (last visited on October 25, 2024)

¹⁰² ibid

¹⁰³ People United for Better Living in Calcutta v. State of W.B., 1993 (1) CLJ 105

¹⁰⁴ Legal Service India; <https://www.legalserviceindia.com> (last visited on October 28, 2024)

¹⁰⁵ Municipal Council, Ratlam v. Shri. Vardhichand & Ors, 1980 SCC (4) 162

¹⁰⁶ IndianKanoon; <https://indiankanoon.org> (last visited on October 28, 2024)

¹⁰⁷ Rural Litigation and Entitlement Kendra and Ors. v. State of UP, 1985 AIR 652

¹⁰⁸ Legal Service India; <https://www.legalserviceindia.com> (last visited on October 28, 2024)

¹⁰⁹ F. K. Hussain v. Union of India and Ors., AIR 1990 Kerela 321

¹¹⁰ IndianKanoon; <https://indiankanoon.org> (last visited on October 28, 2024)

The Court defined the ways to tackle the Right to a Healthy Environment as an integral part of Article 21 in the **Subhash Kumar v. State of Bihar**¹¹¹ case. Since the word "life" in the aforementioned Article was interpreted widely in this instance, the court chose to expand its meaning to include environmental protection.¹¹²

In **Rural Litigation and Entitlement Kendra v. State of U.P.**¹¹³, On behalf of the people of the Doon valley, Rural Litigation and Entitlement Kendra filed a petition in 1987 to halt the limestone mining in the Mussorie valley. It was claimed that the biological and geological equilibrium of the valley is being upset by these excavation operations. Following a ruling by the Supreme Court, the Environment Protection Act was used to halt the quarrying operations in the valley, which were later determined to be ecologically sensitive.¹¹⁴

M.C. MEHTA V. UNION OF INDIA, 1986¹¹⁵

An important ruling in the sphere of environmental advocacy was rendered in the Shriram Gas Leak Case. In this case, the Supreme Court attempted to restore public trust in the legal system by correcting the error made in the Bhopal Gas Tragedy Case a year prior.¹¹⁶

Facts of the Case

A privately held business, Shriram Food and Fertilizer Industry was a division of Delhi Cloth Mills Limited and produced oleum gas and caustic chlorine.

Since the Shriram Food and Fertilizer Industry were located in a highly populated neighborhood of Delhi, a public interest attorney M.C. Mehta filed a writ application under Articles 21 and 32 of the Indian Constitution in the Supreme Court to have it closed.

A significant petroleum gas leak occurred from one of the Shriram Food and Fertilizer Limited operations in the center of Delhi between December 4 and 6, 1985, though the petition was still unresolved. This led to one fatality and multiple medical emergencies.¹¹⁷

On December 7 and 24, respectively, the Inspector of Factories and the Assistant Commissioner of Factories issued orders to close the factory in accordance with the Factories Act (1948).

In response, Shriram filed a writ petition (No. 26 of 1986) to overturn the two rulings and temporarily reopen its caustic chlorine facility, which produces hard oil, soap, glycerin, and other products.

Along with M.C. Mehta's first appeal, the Delhi Legal Aid and Advice Board and the Delhi Bar Association filed a reimbursement request on behalf of the gas leak victims, arguing that the shuttered institution should not be permitted to reopen.¹¹⁸

Judgments

The verdict was handed down on December 19, 1986.

The Supreme Court declined to rule on whether Shriram Industries was required to pay compensation under Article 21. Within two months of the judgment date, they ordered the Delhi Legal Aid and Advise

¹¹¹ Subhash Kumar v. State of Bihar, AIR 1991 SC 420

¹¹² Legal Service India; <https://www.legalserviceindia.com> (last visited on October 28, 2024)

¹¹³ Rural Litigation and Entitlement Kendra v. State of U.P., 1989AIR 594

¹¹⁴ IndianKanoon; <https://indiankanoon.org> (last visited on October 28, 2024)

¹¹⁵ M.C. Mehta v. Union of India, AIR 1987 SC 965

¹¹⁶ iPleader; <https://blog.ipleaders.in> (last visited on October 29, 2024)

¹¹⁷ ibid

¹¹⁸ ibid

Board to file a thorough action before the competent court on behalf of all persons who claimed to have been harmed by this incidence.¹¹⁹

Additionally, it said that in order to have a deterrent impact, the compensation sum need to be commensurate with the extent of the harm done to residents and ought to be linked to the Shriram industry's capabilities.¹²⁰

The court further directed Shriram to adhere to all of the Manmohan Singh and Nilay Choudhury Committees' instructions and cautioned him that the facility would be shut down immediately if he didn't.¹²¹

BHOPAL GAS TRAGEDY, 1984

Union Carbide Corporation v. Union of India¹²²

Facts of the Case

The Bhopal Gas Leak Tragedy, which happened at midnight on December 2, 1984, when lethal chemical fumes from the appellant's factory leaked, was a major industrial catastrophe that immediately claimed 2,600 lives and left tens of thousands of Bhopal's innocent residents physically impacted in different ways. According to the numbers provided by the Union of India in its modified plaint, the aforementioned calamity caused 2,660 people to die in agony and agonizing pain, and between 30,000 and 40,000 people to suffer severe injuries.¹²³

Judgments

In its ruling dated February 14, 1989, the Court ordered that all civil and criminal procedures be terminated and that the claims in the complaint be settled for 470 million US dollars. The pressing need for immediate relief was the primary factor driving the settlement's conclusion. For many victims, the urgent issues of just surviving far outweighed considerations of quality and the nuances of legal concepts.¹²⁴

Anyone with an objective perspective would not overlook the time-consuming prospect of the litigation's journey through the various courts, both in India and later in the United States, given the complexity and the legal question involved in the current case, which involves damages sought on behalf of the victims of a mass disaster. This Court believed that providing the victims with urgent remedy was a compelling legal and humanitarian responsibility. The Court did not rely on any prohibited grounds in doing so. This Court's actions were a continuation of earlier initiatives.¹²⁵

The Settlement offers were reviewed on the premises that the Government had the only legislative capacity to symbolize and act on behalf of the victims and neither counsel had any objection as to this. Additionally, the **Bhopal Gas Leak Disaster (Registration and Processing of Claims) Act 1985** was cited as the basis for the ruling. Even while these matters are crucial, the demands of providing immediate relief to tens of millions of suffering victims could not wait until these issues are settled in the proper course of legal processes.¹²⁶

¹¹⁹ iPleader; <https://blog.ipleaders.in> (last visited on October 29, 2024)

¹²⁰ ibid

¹²¹ ibid

¹²² Union Carbide Corporation v. Union of India, 1989 SCC (2) 540

¹²³ IndianKanoon; <https://indiankanoon.org> (last visited on October 29, 2024)

¹²⁴ ibid

¹²⁵ ibid

¹²⁶ ibid

CONCLUSION AND RECOMMENDATIONS

Although the main concern of this paper is the notion that every individual has an inherent Right to a Healthy Environment, and it is crucial to take the implications of that right into account. Maintaining the balance between these two granted rights is one of the Government's most significant duties. Needless to emphasize, industries are the primary source of pollution.

As mentioned earlier, because of the Supreme Court's many, in-depth interpretations, Article 21 is the sole Fundamental Right that implicitly protects the Fundamental Right to a Healthy Environment.

Nevertheless, an unambiguous foundation on the preceding right is of vital significance because of Res Integra issues, including whether it is possible or not to create a Pollution-Free Environment. For its inhabitants to guarantee a healthy environment, a nation cannot exhaust its potential or the other way around, since development is essential for emerging nations like India. Given that both are essential to the welfare of both present and future generations, it is important to uphold both the right to development and the right to a healthy environment.¹²⁷

Many influential groups are fighting opposing it in our societies. The mining and commercialization of natural resources is the driving force behind the demand for more financial development on a global scale. Many people who depend on natural assets such as forests, rivers, and coastlines are already left out. The rights granted to these similarly underprivileged people are often ignored by the organizations seeking to make money off of these resources.¹²⁸

Thus, it provides a more lucid legal framework for Human Rights bodies at the local, state, and federal levels to evaluate these claims. We can opt to bring up our issues with a regional Human Rights Tribunal, a Global Human Rights organization, or our Nation's National Human Rights Commission.¹²⁹

REFERENCES

1. Researchgate; <https://www.researchgate.net>
2. Sciencedirect; <https://pdf.sciencedirectassets.com>
3. Legalserviceindia; <https://www.legalserviceindia.com>
4. OHCHR; <https://www.ohchr.org/en>
5. Press Information Bureau; <https://pib.gov.in>
6. TheDailyGuardian; <https://theguardian.com>
7. iPleader; <https://blog.ipleaders.in>
8. iKanoon; <https://indiankanoon.org>
9. AdvocateKhoj; <https://www.advocatekhoj.com>
10. Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor [1996] 1 MLJ 261
11. López-Ostra v. Spain, no. 16798/90, decision of 9 December 1994
12. Taski and Others v. Turkey, [2006] 42 EHRR 50
13. Kyrtatos v. Greece, no. 41666/1998, decision of 22nd May, 2003
14. Giacomelli v. Italy, no. 59909/00, decision of 2nd November 2006
15. Maneka Gandhi vs. Union of India (AIR 1978 SC 597)
16. Rural Litigation and Entitlement Kendra vs. State, AIR 1988 SC 2187
17. M.C. Mehta vs. Union of India, AIR 1987 SC 1086,

¹²⁷ Legal Service India; <https://www.legalserviceindia.com> (last visited on October 30, 2024)

¹²⁸ *ibid*

¹²⁹ *ibid*

18. PA Jacob vs. The Superintendent of Police Kottayam, AIR 1993 Ker 1
19. Cooverjee B. Bharucha vs. Excise Commissioner, Ajmer (1954, SC 220)
20. Rural Litigation and Entitlement Kendra vs. State, AIR 1985 SC 652
21. M.C. Mehta V. Union of India, AIR 1988 SC 1037
22. Vellore Citizens Welfare Forum vs. Union of India, (1996) 5 SCC 647
23. Central Pollution Control Board (CPCB); <https://cpcb.nic.in/water-pollution>
24. Textbook; <https://testbook.com>
25. IndiaCode; <https://www.indiacode.nic.in>
26. Vellore Citizen's Welfare Forum v. Union of India, AIR 1996 (5) SCC 647
27. AP Control Pollution Board v. Prof. M. V. Nayadu, 1999 (2) SCC 718
28. G. Sundarrajan v. UOI, (2013) 6 SCC 620
29. M.C. Mehta v. Kamal Nath, 1996 SC 711
30. State of Himachal Pradesh v. Ganesh Wood Products, 1995 (6) SCC 363
31. GenevaEnvironmentNetwork; <https://genevaenvironmentnetwork.org>
32. People United for Better Living in Calcutta v. State of W.B., 1993 (1) CLJ 105
33. Municipal Council, Ratlam v. Shri. Vardhichand & Ors, 1980 SCC (4) 162
34. Rural Litigation and Entitlement Kendra and Ors. v. State of UP, 1985 AIR 652
35. F. K. Hussain v. Union of India and Ors., AIR 1990 Kerala 321
36. Subhash Kumar v. State of Bihar, AIR 1991 SC 420
37. Rural Litigation and Entitlement Kendra v. State of U.P., 1989 AIR 594
38. M.C. Mehta v. Union of India, AIR 1987 SC 965
39. LawBhoomi; <https://lawbhoomi.com>
40. Union Carbide Corporation v. Union of India, 1989 SCC (2) 540