

**PROTECTION OF ENVIRONMENT AND CONSTITUTION OF INDIA**

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**ABSTRACT:**

In India, we have seen serious man-made environmental disasters in which many people have died, one of which was the Bhopal Gas Tragedy in 1984. Since then, environmental sustainability has been a relevant topic to focus on. The Indian Constitution includes various provisions for environmental conservation in order to ensure a safe and pollution-free environment. The Indian Constitution has various provisions for environmental conservation in order to provide a sustainable and pollution-free environment, and it is the duty of the state and individuals to preserve the natural environment of the country, so why do we have such a high rate of environmental degradation? India must address a host of issues, including population growth, food and water shortages, health care, and hunger. India has one of the world's largest slum communities, and observing the slum areas reveals a very poor environmental atmosphere. In this article, we will address a number of cases, including *M.C. Mehta v Union of India* and other environmental cases, such as the Ganga river pollution case.

**KEYWORDS:** Constitutional obligations, environment, Article, pollution, disaster, atmosphere.

**RESEARCH QUESTION:** Whether the environment in India is duly protected by the constitutional provisions.

**INTRODUCTION:**

In India, environmental protection has not only been raised to the level of a constitutional law, but it has also been mingled with a human rights approach, and it is now widely accepted and essential that it is every individual's basic human right to live in a clean and pollution-free environment while upholding human dignity. The Supreme Court has ruled that fundamental elements of "sustainable development," such as the "precautionary clause" and the "polluter pays principle," are included in the country's environmental law, citing several constitutional clauses and other legal requirements contained in various

environmental laws.<sup>1</sup>

There were no explicit environmental provisions in India's constitution when it was written, and the word "climate" was not even mentioned. Those provisions, such as improving environmental welfare, organising agriculture and animal husbandry along modern and scientific lines, and protecting natural monuments from spoliation, had a significant impact on the environment.

### **Aim of the study:**

To ensure that the Constitution's environmental protection provisions are upheld, To compare the terms of the Environmental Protection Act of 1986, To provide a structure for successfully implementing an environmental protection policy, To examine case law in the field of environmental law in order to decide if the constitutional remedy is appropriate.

## **HISTORY OF ENVIRONMENTAL LAW IN INDIA**

Environmental law in India is divided into four phases, which we will discuss in this article. The Classical, Colonial, British, and Post-Independence periods of Indian history will be studied to see how people maintained the environment and what practises were common at the time.

### **During the Ancient Indian Period:**

In Hindu dogma, forests, wildlife, and trees were revered and held in high regard. Trees, plants, and animals are defined in the Vedas, Upanishads, and Puranas, as well as their importance to humans.

It is mentioned in some of the "Rig Veda's" concepts about the climate, increasing fertility, and improving human life by living in harmony with nature. Trees are regarded as groves of several gods and goddesses in the "Atharva Veda."

The "Yajur Veda" tells us that we cannot mistreat or regulate nature or animals, but must instead learn to live in harmony with them by treating them with respect and compassion. The Hindu group was well aware of the environmental consequences of deforestation and animal hunting.

The "Yajnavalkya Smriti" prohibited tree cutting and levied a punishment. The "Charak Samhita" includes various directions about how to use and preserve water. There was also a

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<sup>1</sup><http://www.indianbarassociation.org/wp-content/uploads/2013/02/environmental-law-article.pdf>

shared love and kindness relationship between animals and humans. The killing of birds and animals was forbidden in ancient Hindu scriptures.

### **During the Medieval Indian Period:**

During the mediaeval era, the Mughals' rule was instrumental in environmental conservation and protection. Many gardens, fruit orchards, and green parks were established around the Mughal palaces, central and provincial headquarters, public places, and river banks and valleys during their reign. During the summers, they used to spend their vacations at these locations. Apart from the empire's administrative staff, the "Mohtasib" was entrusted with the task of pollution control. Despite not doing anything to preserve the trees, the Mughal Empire was regarded as a great nature lover. For the Mughal emperors, the forests were merely a hunting ground; for their governors, they were revenue-generating and finance-friendly properties. A few tree species were given special treatment and were dubbed "royal trees," with cutting restrictions. The rest of the trees, on the other hand, could be cut down without restriction.

The empire just saw the forest as a source of revenue or valuable resources. The right to use the forest's natural resources did not imply that anyone could use or misuse them without consequence. Rather, the resources were efficiently controlled thanks to a complex set of rules and regulations incorporated into the local communities sociocultural and economic activities.

### **During the British Raj in India:**

The mining of natural resources was already underway when the British took possession of India. There was no attention given to forest protection. The British exploited India's forest wealth to their full potential. The demand for increased military, British Navy, local building, and export trade, among other things, was the cause.

The British attempted to manage and exploit the forest in 1806 by appointing a commission to investigate whether teak wood was available in Malabar and Travancore in order to preserve it, but they failed because wealth for the British was deemed more important. They appointed the first Forest Inspector General in 1864.

The Forest Act of 1865 granted the British government exclusive power over the forest. The act helped forest administration by reserving forest near citizens and enforcing penalties on those who

violated the Act's provisions. The British Government issued its first Forest Policy on October 19, 1884, with the following goals.

1. To improve the people's well-being in the country;
2. To safeguard the country's ecological and climatic conditions; and
3. To meet the needs of the people.

This strategy also provided recommendations for categorising forests into various categories, such as tropical, temperate, and boreal.

1. The woods, which were important for climatic and physical preservation; 1. The forests, which were mostly used for commercial purposes and contained expensive timber;
2. Minor woods, which included a lesser variety of wood; and
3. The woods that had no useful materials and were named after them.

#### **During the Post Independence period of India:**

During the post-independence era, governments' policies and attitudes toward environmental protection underwent significant changes. The Indian Constitution, which went into effect on January 6, 1950, had just a few clauses relating to environmental management.

“It is the responsibility of the state to secure the possession and management of the fabric resources of the society are thus distributed as best to subserve the common good,” according to Article 39(b).

“The State shall regard the raising of the degree of nutrition and the commonplace of living of its inhabitants, as well as the improvement of public health as among its primary duties,” according to Article 47.

“The State shall endeavour to plan agriculture and husbandry on trendy and scientific lines, and shall take measures for protecting and upholding breeds, prohibiting the slaughter of cows and calves, and alternative sustenance and draught cows,” according to Article 48.

“It shall be the responsibility of the State to preserve each monument or place or item of creative or historic interest, declared to be of national significance,

from spoliation, disfigurement, destruction, demolition, disposal, or export because the case may be of national importance," according to Article 49."<sup>2</sup>

The above-mentioned articles demonstrate that the COI was not environmentally negligent, despite the fact that the term "environment" was not explicitly used in the Constitution; the aim of the higher-level articles is to preserve natural resources and protect the natural environment.

In 1950, Van Mahotsav, a national tree-planting competition, was founded with the aim of raising public awareness about the importance of forests to human well-being. The National Forest Policy was established in 1952 with the goal of ensuring proper management of the country's forests and optimising the benefits of those forests.

The Pitambar Pant Committee on Human Environment was charged with preparing a report on the condition of the environment for presentation at the UN Conference on Human Environment Command in Stockholm, Sweden, in 1972.

#### **CONSTITUTIONAL PROVISIONS IN PROTECTION OF ENVIRONMENT**

Environmental security has not only been elevated to the level of a fundamental law of the land in India, but it has also been mingled with a human rights approach, and it is now well known that it is every individual's basic human right to live in a pollution-free and clean environment while preserving full human dignity. The Supreme Court has held that the basic features of "sustainable growth," such as the "precautionary principle" and the "polluter pays principle," are part of the country's environmental law, based on various constitutional provisions and other legislative provisions found in various laws relating to environmental protection.

Our constitution did not have any clear provisions on the environment, and even the word "environment" did not appear in the document; however, there are some provisions that have a direct effect on the environment, such as improving public health, organising agricultural and animal husbandry on modern and scientific lines, and protecting natural resources.

#### **Preamble of the Constitution and Environmental Law:**

Our Constitution's preamble declares that our country is founded on a "Socialistic" social model, in which the state is more concerned with social issues than with individual issues.

<sup>2</sup>Jain, M.P (2003). Indian Constitutional Law. (5<sup>th</sup> ed). New Delhi, Wadha and company Nagpur

Environmental pollution, which has arisen as one of the most serious social issues, is now recognised as a real issue in society at large, and the state is obligated to fulfil the basic goal of socialism, namely, to provide a basic and decent standard of life for everyone, which can be achieved only in a pollution-free and clean environment.

Justice, social, economic, and political freedoms are among the rights and freedoms that the people of India aim to protect for all citizens, according to the preamble. Environmental justice is also a part of justice. Although the word "climate" is not specifically specified, we may interpret it to include environmental justice.

#### **Article 48A and 51A(1)(g):**

The Indian government passed the 42nd Amendment to the Constitution, which made a modification to these articles in order to protect the environment. The amendment added Article 48A and Article 51A (1) (g) to the Indian Constitution, focusing on environmental conservation.

In addition to the Directive Principles of State Policy, Article 48A was attached. "The State shall endeavour to conserve and develop the environment, as well as to safeguard the country's forests and wildlife," it says.

The article goes on to say that it is the state's responsibility to preserve the natural environment and enhance it by various restoration and conservation strategies in order to mitigate pollution already present. It also states that it is the state's responsibility to protect the forest and wildlife that surrounds the country.

#### **Article 51A(1)(g)**

is a duty assigned to Indian people in addition to their Fundamental Duties. "To conserve and enhance the natural world, including forests, lakes, rivers, and animals, as well as to have respect for living creatures," it says."<sup>3</sup>

The Article is identical to Article 48A, with the exception that the obligation is placed on Indian citizens as a Fundamental Duty. Once each national owes a constitutional duty to protect the environment (Art.51A), the nation should be able to enlist the court's assistance in enforcing that duty against State agencies.. The Court gave the administration six month to wash up the complete town, and laid-off the plea of lack of funds and employees

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<sup>3</sup>Maneka Gandhi v Union of India AIR 1978 SC 597

**Article246:**

The subject areas of legislation are divided between the Union and the States under Article 246 of the Constitution. Defense, international relations, atomic energy, interstate transportation, shipping, air trafficking, oilfields, mining, and interstate rivers are all on the Union List (List I). Public health and sanitation, agriculture, water supplies, drainage and emptying, and fishing are all on the State List (List II).

Forests, habitat protection, mines and minerals, production not covered by the Union List, population control, and factories are all on the concurrent list (List III) (under which each State and the Union will legislate). From an environmental standpoint, the distribution of regulatory authority is critical; some environmental concerns, such as sanitation and waste disposal, are best handled at the local level; others, such as pollution and wildlife conservation, are better addressed by uniform national legislation.

**Article253:**

Article 253 of the Constitution empowers Parliament to pass laws to carry out India's international obligations, as well as any call made at a global meeting, organisation, or other body.<sup>4</sup> Despite everything in this chapter's preceding clauses, Parliament has the power to make any law for the whole or any part of India's territory for the purpose of enacting any treaty, agreement, or convention with another country or countries. Since there was no clear entry in the 7th seventh that requires Parliament to pass detailed environmental laws, the Tiwari Committee recommended a new entry on "environmental protection" to be added within the concurrent list to be updated by the centre to enact on environmental subjects in 1980. The suggestion, on the other hand, was to take parliament into account.

**Article14andArticle19(1)(g):**

“It is the obligation of the State to treat all persons equally or equally protected before the law within the jurisdiction of India,” says Article 14. Government actions that have an effect on the climate can also breach the right to equality. Many environmental activists use Article 14 to challenge arbitrary municipal approval for construction that violates planning laws in order to

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<sup>4</sup>M.C. Mehta v Union of India (2004)6 SCC 588

prove the denial of the right to equality.<sup>5</sup>

### **Article21:**

“Everyone has the right to life and personal liberty, unless the law limits or clashes with that right.”

Though elucidating the value of the "right to life" under Art. 21, the Supreme Court held in *Maneka Gandhi v Union of India* that the right to life is not limited to mere animal nature, but also requires the right to live with basic human dignity.

In the *Ganga Pollution Case*, Justice Singh justified the closure of polluting tanneries by observing: "We are conscious that closure of tanneries may bring jobs, revenue loss, yet life." People put a higher priority on health and the environment.

### **IMPACTOFTHECONSTITUTIONALPROVISIONS**

Following the 42nd Amendment to the Constitution, Article 48A and 51A (1) (g) were added to the Indian Constitution, concentrating on environmental security. Even after so many amendments and implementations, we can see that the administration, as well as the citizens, are less concerned about environmental protection.<sup>6</sup> There is no obligation that laws relating to environmental protection be followed. We are still a developing world, and poverty still exists in many areas. People are under-educated when it comes to environmental protection and preservation. There could be a stronger incentive to follow and protect the environment if the legislation imposes severe penalties on those that pollute the environment. We'll go over the effect of constitutional protections on environmental protection through a number of case studies and approaches or policies.

### **TheBhopalGasTragedyCase:**

The Bhopal disaster has raised several legal issues, including parent companies' responsibility for their subordinates' actions, transnational companies' liabilities for unsafe practises, the transfer of unsafe technology, and relevant liability principles. Bhopal was a watershed moment for judicial creativity in the area of emerging corporate liability standards.

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<sup>5</sup>Ibid

<sup>6</sup><https://www.lawctopus.com/academike/religious-freedom-environment-protection/>

On December 3, 1984, highly toxic alkyl radical isocyanides (MIC), which had been produced and stored in Union Carbide's Bhopal facility, were released into the atmosphere, killing over three thousand people and seriously injuring over two hundred thousand others.

The Bhopal Gas Tragedy (Processing of Claims) Act, 1985 was enacted by Congress to ensure that claims resulting from the Bhopal disaster were handled efficiently, effectively, equitably, and to the benefit of the claimants.

### **TheTajMahalCase:**

The Supreme Court ruled in the Taj Mahal case (M C Mehta V. Union of India, AIR 1997, SC 734) that coal and coke-based industries in Taj Trapezium (TTZ) that were harming Taj should either switch to gas or be relocated outside TTZ..The Supreme Court once again ordered the Forest Department to protect the plants planted around Taj, stating: "It is the responsibility of the Divisional Forest Officer to see if water is being given to plants." The Union Government's responsibility is to provide funds.

Funding is also arranged with the Uttar Pradesh government, but in any case where funds are needed, the officer is instructed to envision plants that do not need watering.

The Court ordered that 292 factories in the city that are already up and running switch to gas as an industrial fuel within a fixed time frame, or stop using coke/coal and relocate. From April 30, 1997, factories that have not applied for gas or been relocated must avoid using coke/coal. This is a condition of the city programme, as well as the benefit that is typically extended to new industrial units.

The advent of Public Interest judicial proceedings within the field of environmental law has had a significant impact on the incorporation of international environmental law standards into the Indian legal system. In fact, in the Indian context, the implementation and re-interpretation of international legal standards indicates a greater concern with hazardous industries. In M C Mehta v Union of India, the Supreme Court builds on the principle of strict liability developed in the Rylands v Fletcher's case in English law to establish a principle of absolute liability, in which a company engaged in a hazardous operation is "absolutely liable" to pay for any damage caused by that activity. "A individual will be strict liable when he carries or accumulates on his land something likely to cause harm if it escapes, and damage occurs as a natural consequence of its escape," according to the English common law principle of strict liability. However, in creating an absolute liability standard, the Court contends that such liability is not subject to any of the rule's exceptions.

**M.C.MehtavUnionofIndia(Vehicularpollutioncase):**

In M.C. Mehta vs. Union of Asian Nations, a question about traffic pollution in Old Delhi came up for discussion in the light of Articles 47 and 48 of the Constitution (Vehicular Pollution Case). It was mandated that the government ensure that the air was not polluted as a result of transportation emissions. The Supreme Court has reiterated that a safe environment is a constitutional right. stated that the right to clean the air came from Art twenty one, which quoted the right to life. Due to the introduction of the leadless hydrocarbon bid in Old Delhi, this case has become a significant landmark. As ordered by the courts, previous industrial vehicles were phased out over a five-year period. Old Delhi owes its enviable air quality to the efforts made to conserve it.

**CONCLUSION:**

We have seen in this paper that the ecosystem has been preserved since India's ancient time. The 42nd Amendment to the Constitution is largely concerned with environmental conservation. Following the amendment, it is the state's and citizens' responsibility to protect and develop the environment. Connecting Human Rights and the Environment is a useful resource that delves into the uncharted terrain that exists between environmental and human rights law. Human beings can ensure fundamental equality and decent living standards in an atmosphere that allows for a lifetime of dignity and well-being.

People who damage or kill the natural environment aren't only breaking the rule against nature; they're also breaking human rights.. Indeed, it appears that health will be the issue that bridges the divide between environmental conservation and human rights. The enhancement of the connection between human rights and the environment will change the integration of human rights values into an environmental context, such as anti-discrimination criteria, the need for social participation, and so on.

## BIBLIOGRAPHY:

### Books:

1. S.Shanthkumar's, *Introduction to Environmental Law*, Second Edition Reprint 2010, Lexis Nexis, Nagpur, 2010.
2. S.C. Shastri, *Environmental Law*, Fifth Edition, Eastern Book Company.
3. C.P.R. Environmental Education Centre, *Environmental Laws of India an Introduction*.

### E-sources:

1. [www.slideshare.net](http://www.slideshare.net)
2. [www.cprindia.org](http://www.cprindia.org)
3. [www.indiankanoon.com](http://www.indiankanoon.com)

### Journals:

1. Mrs.N.Kayalvizhi, *Environmental Law Training Program for Representatives of NGO's in Tamil Nadu*, Dr.Ambedkar Government Law College & CEERAN National Law School of India University Bangalore, Resource Material 2002
2. Indian Bar Association, *Constitutional Provisions for the protection of environment with relevant case laws*.
3. Shodhganga, *The Indian Constitution and Environmental Protection*.