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# TOPIC: ENVIRONMENT AND CONSTITUTION- A STEP TOWARDS CONSERVATION OF NATURAL RESOURCES.

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## I. ABSTRACT:

Environmental law is a comparatively new branch of domestic and international law. As such, the law is under the process of being moulded though it has some fairly well established concepts and principles. In this process of moulding, both judiciary and legislature has a vital role to play.

Legislature, through 42nd Constitutional amendment, 1976 inserted articles 48(A) and 51(A) in the Constitution. The insertion of these two articles is significant since they enlarged the scope of constitution and obligated the State as well as citizens to take steps for environmental protection. The terminology used in these two articles is also significant. The use of words '*protect and improve'* suggests that the State and citizens should not only protect the degradation of environment but also take positive steps for its betterment.

Supreme Court has played a pivotal role in environmental protection through its landmark judgments. In ***Subhash Kumar v. State of Bihar*** (1991), court held under article 21, right to life also includes right to wholesome environment. Thereby, the court included the right to wholesome environment as a fundamental right. Further, the court has enunciated many doctrines such as public trust doctrine, polluter pays principle, precautionary principle, etc. through its landmark judgement and has rigorously implemented them in a plethora of cases.

However, lack of executive action has led to continued degradation of the environment and it is extremely difficult to manage development and environmental protection. The difficulty further increases in case of a country like India which is a developing country and yet to industrialize to its full potential.

The object of this paper is to analyse the constitutional scheme of environmental laws in India and the role of Indian Judiciary in shaping the environmental law. The scope of this paper shall be limited to a brief analysis of the effectiveness of environmental laws in India.

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## II. INTRODUCTION:

*"You cannot protect the environment unless you empower people, you inform them, and you help them understand that these resources are their own, that they must protect them."*

***Professor Wangari Mathaai***

In the pre-independence era, there was hardly any legislation which dealt exclusively with environmental protection. Sec 268-279 of Indian Penal Code, 1860 and sec 133 of Code of Criminal Procedure, 1973 were the only prominent legal provisions which dealt with environmental protection and that too, quite indirectly. Even after independence, for several decades, there was a lacuna in the field of environmental protection until India had to fulfil its obligation as a signatory State of Stockholm Declaration, 1972. Thereafter, a series of legislations were enacted including the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the National Environment Tribunal Act, 1995, the Wildlife (Protection) Act, 1972 and the Forest (Conservation) Act, 1980.

42nd Constitutional Amendment inserted articles 48A and 51A(g), thereby obligating the State as well as citizens to take steps for environmental protection. However, these provisions in the Constitution are unenforceable as they were either incorporated in Fundamental Duties or in Directive Principles of State Policy. Then the Apex court did a commendable job by reading the Directive Principles of State Policy along with Article 21 and made them enforceable as a fundamental right. Article 21 currently includes right to wholesome environment[1] and ecological balance.[2]

## III. ENVIRONMENT PROTECTION:

[1] Subhash Kumar v State of Bihar, AIR 1991 SC 420
[2] M.C. Mehta v Kamal Nath & Ors., 1997 (1) SCC 388

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India has an elaborate legal framework with over 200 laws relating to environment protection.[3] The Environment Protection Act, 1986 was enacted under the article 253 of the Constitution with a view to implementing the decisions taken in the Stockholm Conference, 1972. It is a general legislation for environmental protection meant to fill the lacunae and uncovered gaps in the area of environmental hazards. In ***Rural Litigation and Entitlement Kendra and Ors. v. State of Uttar Pradesh and Ors.,***[4] a complete ban and closing of mining operations carried on in the Mussoorie hills was held to be sustainable by deriving support from the fundamental duty as enshrined in Article 51-A(g) of the Constitution. The Court held that preservation of the environment and keeping the ecological balance unaffected is a task which not only Governments but also every citizen must undertake. It is a social obligation of the State as well as of the individuals.

**Precautionary Principle**

Precautionary Principle requires that the government authorities should take necessary '*precautions*' and anticipate, prevent and attack the causes of environmental pollution. This principle was developed by the reading the environmental laws in consonance with art. 21, 47,48A and 51A(g). This principle was explained in the case of ***Vellore Citizens Welfare Forum v Union of India***[5]. "*Precautionary principle*" - in the context of the municipal law - means:

(i) Environmental measures - by the State Government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The "Onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign.[6]

[3] Bajaj R., CITES and the wildlife trade in India, New Delhi: Centre for Environmental Law, WWF – India, 182 (1996)
[4] [1987]1SCR641
[5] AIR 1996 SC 2715
[6] Ibid

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Court held that this principle is a part of the law of the land and also a part of environmental law of this country.

**Polluter pays principle**

According to Polluter Pays principle, the polluter must bear the remedial or clean-up costs. He must bear the costs required in restoring the environment. This principle is an extension of the rule of strict liability as enunciated in the case of ***Rylands v. Fletcher***[7]. According to the rule of strict liability, a person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes must keep it in at his peril and if he does not do so is prima facie answerable for all the damage which is the natural consequence of its escape.[8] This rule has been extended to a variety of cases including cases of environmental pollution also. In *Oleum Gas leak case*[9], this principle was applied developed into a more stringent rule i.e. the rule of absolute liability. The court held that where an enterprise is engaged in hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting. the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions operate to the tortuous principle of strict liability.

Polluter Pays principle was explained in the case of ***Indian Council for Enviro Legal Action v Union of India***[10]:-

*"The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because*

[7] 1868, LR 3 HL. 330
[8] Ibid
[9] [1987]1SCR819
[10] AIR 1996 SC 1446

*the effect of this would be to shift the financial burden of the pollution incident to the taxpayer.*[11]"

## IV. FOREST PROTECTION:

Primary legislation dealing with conservation of forests is the Forest Conservation Act, 1980. Unlike The Indian Forests Act, 1927, which was an *'industry friendly'* act, Forest Conservation Act was enacted for conservation of forests and checking conversion of forest land for non-forest purposes. Supreme Court has used Public Interest Litigation (PIL) as an effective tool in dealing with cases relating to conservation of forests.

In ***The Goa Foundation v. The Conservator of Forests***[12], petitioners filed a PIL which was entertained by the High Court under Art. 226 of the Constitution. They contended that the developmental activities are carried out in an area designated as forest and no prior permission of central government was taken before doing so. Court observed that the object of the act is to prevent any further deforestation which causes ecological imbalance and leads to environmental degradation. Court allowed the petition and ordered removal of developmental work on grounds that it caused environmental degradation.

## V. PREVENTION OF WATER AND AIR POLLUTION:

The primary legislation for controlling water pollution is The Water (Prevention and Control of Pollution) Act, 1974. This act was enacted under art. 252(1) of Constitution which empowers central government to frame laws for the states if two or more states agree. Since water is a subject under state list[13], central government could not have framed this statute without the consent of states.

Fresh water is a valuable resource and pollution of water directly affects human health. In the words of Justice Kuldip Singh, *"it is the Constitutional and statutory provisions to protect a*

[11] Ibid
[12] 1999 (2) BomCR 695
[13] Entry 17, List II, Seventh Schedule.

*persons right to fresh air, clean water and pollution free environment, but the source of the right is the inalienable common law right of clean environment"*[14]. Right to life under art. 21 of the Constitution includes right to access to fresh water and air since life is inextricably connected to water and air.

In Indian ***Council for Enviro-Legal Action v. Union of India***[15], Court took cognizance of the woes of people living in the vicinity of chemical plants. Court interpreted Water Act, Air Act and Environment Protection Act along with articles 21, 32, 48A and 51A of the Constitution and directed government to recover the expenses of remedial in case the industry fails to take any remedial action.

On similar lines, Courts have condemned air pollution caused by industries. Highlighting the importance of access to pollution free environment, Andhra Pradesh High Court observed that, *"the enjoyment of life and its attainment and fulfilment guaranteed by Article 21 of the constitution embraces the protection and preservation of nature's gift without which life cannot be enjoyed fruitfully. The slow poisoning of the atmosphere caused by the environmental pollution and spoliation should be regarded as amounting to violation of Article 21 of the constitution of India"*[16]

**Constitutional Challenges**- Sec 33 of Water Act, which empowers pollution control boards to issue a restraining order apprehending pollution of water, has been frequently challenged to be *ultra vires* to the Constitution on grounds that it violates fundamental right to trade and commerce guaranteed under art. 19(1)(g). On similar grounds, sec 24 of the act, which prohibits the use of stream or well for disposal of polluting matter, has been challenged. However, Court has rejected this contention and observed that though an individual has a fundamental right to trade and commerce, this does not mean that he is free to pollute the source of supply of water to other citizens, and thereby cause harm to the interest of the general public.[17]

[14] Supra note 5
[15] Supra note 10
[16] ILR (2001) 2 AP 186
[17] Aggrawal Textile Industries V State of Rajasthan,

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## VI. PROTECTION OF COASTAL ECOSYSTEM:

State has an obligation under art. 48(A) of the Constitution to protect and improve the environment. Court read art. 48(A) along with art. 21 and The Environment (Protection) Act, 1986 and extended the obligation of government to protect coastal ecosystem as well.[18] Further, State also a duty to publish the Coastal Zone Management Plan since a citizen has a right to information protected by the constitution.

In ***Kaloor Joseph vs State of Kerala***[19], Court observed that State cannot refuse the right of the citizen to have access to the Coastal Zone Management Plan. Right of a citizen is the right to know protected by the Constitution of India. State cannot refuse to make available the plan in the offices of the Local Authorities and the Public Libraries. Court directed the Government to give sufficient publicity to the Management Plan prepared by the State so as to enable the public know whether there are any deficiencies in that plan and to ensure that the Coastal Zone Management Plan was properly implemented and not violated by anyone.

## VII. WILDLIFE PROTECTION:

The Wildlife Protection Act, 1986 is a comprehensive legislation that deals with the protection of wild animals, birds and plants. According to this act, *"wild life*" includes any animal, bees, butterflies, crustacea, fish and moths; and aquatic or land vegetation which form part of any habitat.[20] Therefore, this legislation protects all flora and fauna.

Another legislation which deals with the protection of animals in Prevention of Cruelty to Animals Act, 1960. The object of this act is to prevent the infliction of unnecessary pain or suffering on animals and for that purpose to amend the law relating to the prevention of cruelty to animals. According to this act, *"animal"* means any living creature other than a human being.[21]

[18] S. Jagannath v. Union of India, AIR 1997 SC 811
[19] O.P.No. 20278 of 1997, dated 2nd June, 1998
[20] Sec 2(37), The Wildlife (Protection) Act, 1972 (53 of 1972)
[21] Sec 2(e), Prevention of Cruelty to Animals Act, 1960 (59 of 1960)

In ***State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Others***[22], court observed that:-

"*By enacting Clause (g) in Article 51-A and giving it the status of a fundamental duty, one of the objects sought to be achieved by the Parliament is to ensure that the spirit and message of Articles 48 and 48A is honoured as a fundamental duty of every citizen. The Parliament availed the opportunity provided by the Constitution (Forty-second Amendment) Act, 1976 to improve the manifestation of objects contained in Article 48 and 48-A. While Article 48-A speaks of "environment", Article 51A(g) employs the expression "the natural environment" and includes therein "forests, lakes, rivers and wild life". While Article 48 provides for "cows and calves and other milch and draught cattle", Article 51-A(g) enjoins it as a fundamental duty of every citizen "to have compassion for living creatures", which in its wider fold embraces the category of cattle spoken of specifically in Article 48.*"

In ***AIIMS Students' Union v. AIIMS and Ors***.[23], Court made it clear that fundamental duties, though not enforceable by writ of the court, yet provide valuable guidance and aid to interpretation and resolution of constitutional and legal issues. In case of doubt, peoples' wish as expressed through Article 51-A can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the courts. The fundamental duties must be given their full meaning as expected by the enactment of the Forty-second Amendment. The Court further held that the State is, in a sense, *'all the citizens placed together*' and, therefore, though Article 51A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is, collectively speaking, the duty of the State.

**Doctrine of Parens Patriae-** Court has a duty under the doctrine of *parens patriae* to take care of the rights of animals, since they are unable to take care of themselves as against human beings. Court explained this doctrine in the case of action of *Animal Welfare Board of India v. A. Nagaraja and ors.(Jallikattu case*).[24] Court observed that the provisions of the act cannot be read alone but

[22](2005) 8 SCC 534
[23]AIR 2001 SC 3262
[24](2014) 7 SCC 547

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have be understood and read along with Article 51A(g) of the Constitution which cast fundamental duties on every citizen to have "*compassion for living creatures*". Parliament, by incorporating Article 51A(g), has again reiterated and re-emphasised the fundamental duties on human beings towards every living creature. The court further observed that Prevention of Cruelty to Animals Act is a welfare legislation which has to be construed bearing in mind the purpose and object of the Act and the Directive Principles of State Policy. In the matters of welfare legislation, the provisions of law should be liberally construed in favour of the weak and infirm.[25]

## VIII. DILUTING THE LOCUS STANDI:

Honourable Supreme Court has done a commendable job when it comes to diluting the locus standi. Through the development of public interest litigation, Supreme Court has liberalized the procedure and requirement of *locus standi* has been relaxed. This has come to aid of NGO's, public spirited people and advocates where they can voice their concerns on behalf of a large segment of people. The underlying principle of public interest litigation was to give relief to the poor and vulnerable sections of the society. However, in practice, public interest litigation has evolved beyond these parameters and it has entered into domain of general public issues including environmental pollution and government inaction. Emphasizing the need of Public Interest Litigation, Justice P.N. Bhagwati observed:

*"Whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such wrong or public injury."*[26]

In certain cases, Court has taken suo moto cognizance of a matter on the basis of a news report. For instance, in ***M.C. Mehta v. Kamalnath***[27], Court took notice of the news item published in

[25] Ibid
[26] S.P. Gupta v. Union of India, AIR 1982 SC 149
[27] 1997 (1) SCC 388

"Indian Express" (25th Feb, 1996). On the basis of this report, court conducted an enquiry and quashed the lease of a resort which disrupted the natural flow of river Beas and caused environmental degradation.

Through the effective use of PIL, Supreme Court has dealt with the variety of issues including forest conservation, preservation of wildlife, protecting the rights of tribal people and thus balancing the symbiotic relationship between the forest dwellers and the goal of forest conservation.[28]

The Supreme Court has given adequate importance to Directive Principles of State Policy while interpreting environmental laws. According to Supreme Court, *"Directive principles were no longer left to be dead letters in the constitution, but were now being recognized for their indispensible nature in the process of governance."*[29]

**Creation of Epistolary Jurisdiction-** In the process of liberalizing the *locus standi*, Supreme Court has informally created a new kind of jurisdiction known as "*epistolary jurisdiction*." It is derived from the word "*epistles*" which means letters. This type of jurisdiction is invoked by writing letters to court. This type of jurisdiction particularly helped NGO's and poor people who did not have sufficient means to hire a lawyer.

In ***Mahesh R. Desai v. Union of India,***[30] a journalist wrote a letter to Supreme Court complaining about the coastline being sullied by unplanned development. The Court treated the letter as a petition and requested court's legal aid committee to appoint a lawyer for the petition.

## IX. ROLE OF INTERNATIONAL LAW:

International law requires a State to carry out its obligations undertaken by it by ratifying international conventions and treaties. However, it does not govern the procedure through which

[28] Samatha v. State of AP, AIR 1997 SC 3297
[29] Tamil Nadu Freedom Fighters v. The Government of Tamil Nadu, 1992 1 MLJ 582
[30] Writ Petition No. 989 of 1988

international law can be incorporated into municipal law. India follows the dualist theory for the implementation of international law at domestic level[31]. International treaties do not automatically become a part of domestic unless a legislation has been enacted by the Parliament for the implementation of international law in India.

According to art. 51(c) of the Constitution, the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized peoples with one another. According to art. 253 of the Constitution, Parliament has the power to make any law for implementing any treaty, agreement or convention. However, in the absence of any domestic law on a particular field, courts may look upon International Conventions. For instance, in ***Vishakha v. State of Rajasthan***[32], there was no law to check the evils of sexual harassment of women at workplace. Therefore, court referred CEDAW for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 19(1)(g) and 21 of the Constitution.

Courts can also look upon an international convention in to enlarge the scope of fundamental rights if they are not contrary to the domestic law. It is almost accepted proposition of law that the rule of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the Courts of Law.[33]

India is also a signatory state to Ramsar Convention on Wetlands. It is an international treaty for the conservation and sustainable use of wetlands. Under this convention, India is obligated to preserve wetlands by declaring them as Ramsar sites. Parliament has, without enacting any domestic legislation, fulfilled its obligation under this convention.

**Hard law and Soft law**- Hard laws are the actual binding legal principles of the international law. It gives binding responsibilities as well as rights. They are enforceable in a Court of law. On the

[31] Jolly Jeorge Vs. Bank of Cochin, AIR 1980 SC 470
[32] AIR 1997 SC 3011
[33] Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715

contrary, soft are the non-binding principles of international law which are not *per se* enforceable in a Court of law. Though soft law is not binding, courts have looked upon the binding facets of international law for interpretation of statutes.

**Public trust doctrine**- Supreme Court has brought this doctrine into our legal system by referring to the judgement of Supreme Court of California in the case ***National Audubon Society v. Superior Court***[34]. This doctrine was, for the first time, invoked in India in the case of ***M.C. Mehta v. State of Kamalnath***[35]. According to this doctrine, certain common properties such as rivers, sea-shore, forests, etc. are held in trusteeship by the government for free and unimpeded use by the general public and they must not be given to private bodies. The State is a trustee to of all natural resources which are meant for public use and enjoyment and it has a legal duty to protect these resources. Relying upon this doctrine, court quashed the lease of the resort on grounds that it disrupted the natural flow of river Beas and caused environmental degradation.

## X. CONCLUSION:

The Constitution of India is a living document since it accepts the necessity of modifications according to the needs of the society and has enough flexibility of interpretations. It responds to experience and it is not only legislature which has the power over the Constitution but it is also open to judiciary to interpret the Constitution according to the needs of the society. Judiciary has enough powers to uphold the fundamental values of the Constitution. Among all the provisions of the Constitution, Art. 21 has proved to be the most fertile provision to mean more than mere physical existence: it '*includes right to live with human dignity and all that goes along with it.*'[36]

The Environmental laws in India are well within the constitutional framework and they enlarge the scope of Constitution. Judiciary has done its job and fulfilled its obligation towards the citizens. There are enough environmental laws in India to make it pollution-free. However, where we

[34] 33 Cal. 3d 419
[35] Supra note 27
[36] Francis Coralie v Union Territory of Delhi, AIR 1981 SC 746

actually fail is in the implementation of these laws. It has been rightly said that no matter how excellent a law may be, it is useless unless administered properly.