

# AN EXAMINATION OF THE RIGHT TO A CLEAN, HEALTHY ENVIRONMENT HUMAN RIGHTS AND THE CONSTITUTION

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## ABSTRACT:

Freedom, equality, and the opportunity to lead a life with acceptable conditions are fundamental rights that belong to man. It's possible that a book like "Connecting Human Rights and the Atmosphere" may be a helpful source book that explores the unexplored region that exists between environmental legislation and human rights laws. The purpose of this paper is to have a discussion about the laws that are stated in the Indian Constitution that make sure the rights to measure in an environment that is highly healthy and free from pollution. In the Republic of India, the priority of environmental protection has not only been elevated to the status of organic law of the land, but it has also been married with the right of each individual to live in a pollution-free environment with full human dignity. Both of these developments took place recently. As a rider to balance the ecological imbalance, Articles 14, 21, 47, and 48(A) defend the right of the people to measure in a healthy atmosphere. It is the duty of every subject of the Republic of India to protect and improve the natural atmosphere as well as forests, lakes, rivers, and wildlife and to have compassion for living creatures, as stated in Article 51-A (g), which focuses specifically on basic obligations in relation to the environment.

**Keywords:** *Fundamental Rights, Environment Law, Right to Life, Fundamental Duties*

## INTRODUCTION:

As a result of recent advances in science and technology, the dynamic that previously existed between humans and their atmosphere is currently going through a period of dramatic transformation. In India, various laws are passed from time to time in order to safeguard the environment, as well as the flora and fauna inside it. The Indian Constitution is the first constitution in the world to include specific provisions for the conservation and improvement of the environment. In India, in view of the various constitutional provisions and different statutory provisions contained in various laws with reference to atmosphere protection, the Supreme Court has commanded that the essential feature of "sustainable development" equivalent to the "Precautionary Principle" and also the "Polluter Pays Principle" area unit a part of Environmental law of the Country. This is the case despite the fact that there are numerous constitutional provisions and various statutory provisions contained in various laws with reference to atmosphere protection. The examination of the constitutional obligations that are binding on both citizens and the state is therefore the purpose of this research.

## Historical Overview:

The environment is defined by the Environment Protection Act of 1986 as "the interrelationship that exists

among and between water, air, and land, and people in general, alternative living creatures, plants, small organisms, and property." This definition states that the environment "includes water, air, and land as well as the interrelationship that exists among and between water, air, and land."

The term "environment" refers to not only the physical and biological features of a place, but also the social, economic, cultural, religious, and a number of other related aspects as well. Therefore, the environment is the coming together of the many different forces that surround an organism and that move not only with the organism but conjointly among themselves. It proposes that the accumulation of all of the external conditions and effects that touch life and the development of organs of people, animals, and plants in general.

### **Policy and Laws in Ancient India:**

During ancient times in India, the practise of sacred writing was fundamentally focused on the conservation and enhancement of the natural environment. The protection of the natural world became an essential tenet of the faith, one that was ingrained not only in the routine activities of the people but also in their folklore, works of art, cultural practises, and religious beliefs. In Hindu theology, woodlands, trees, and the preservation of life all occupy a place of significant significance.

### **Policy and Laws in British India:**

Around the year 1860, Great Britain had established itself as the leader in deforestation, causing widespread destruction not only to its own woodlands but also to those in Ireland, South Africa, and the north of the United States. to harvest timber for the sake of construction, farming, and iron production. At the beginning of the nineteenth century, the dominions launched a vicious assault against the forests that were found on the subcontinent. The colonial government's focus on maximising revenue from its land holdings contributed significantly to the clearing of forest land.

In the year 1864, the Imperial Forest Department was established with the support of specialists from European nation, which at the time was the top European nation in terms of forest management. Maria Magdalene von Losch Brandish, the first inspector-general of forests, had a background in life science and recognised the extraordinary challenge of monitoring deforestation and establishing legal mechanisms to claim and safeguard state administration over forests. it had been his twin sense that the railway well-grooved the crucial watershed with relation to the water management in India; the requirement was felt to begin an applicable department, and for its effective functioning legislation was needed to curtail the antecedently untouched access enjoyed by the agricultural communities. it had been his twin sense that the railway well-grooved the crucial watershed with relation to the water management in China; it had been his twin sense that the railway well-grooved the crucial watershed with

### **Policy and Laws post-independence of India:**

When it was first ratified in 1950, the Indian Constitution did not make the protection of the natural environment or the prevention and control of pollution fundamentally obligatory provisions (until 1976 Amendment). Article 372(1) of the initial text of the constitution has incorporated the previously existing laws into the current system and provides that despite the repeal of enactment spoken about in article 397 by this constitution, but subjected to the other provisions of the constitution, all laws that were

operative immediately before the commencement of the constitution shall remained operative until they were changed, repealed, or amended by a competent general assembly or another compliant body. This provision is included in the constitution despite the fact that article 397 As a direct consequence of this, even after five decades of independence. The superfluity of such legislation is still in effect despite the fact that no significant adjustments have been made to them.

### **The Principles on environment:**

New laws are enacted, and different regulations and guidelines are issued, all with the goal of preserving and bettering the natural world. The Indian government, acting through the Ministry of Environment and Forests, has adopted nationwide comprehensive laws, and this ministry is in charge of their administration.

The Stockholm Declaration from 1972 asserts that "Man has the fundamental right to freedom, equality, and adequate conditions of life, in a nursing environment of sufficient quality to allow a lifetime of dignity and well-being, and he bears a solemn responsibility to safeguard and improve the surroundings for giftand future generations..." This declaration was written in Sweden's capital city of Stockholm. The fact that this is the case demonstrates that it has been acknowledged on a global scale that one of a person's fundamental rights is the right to live in an environment that is free from contamination. In addition, this right imposes upon a person the responsibility to protect the environment for future generations.

The "Precautionary principle" and the "Polluter Pays Principle" have both been deemed fundamental components of "sustainable development" by the Supreme Court of the United States. These concepts are included in the environmental legislation passed in the country.

According to the "Precautionary Principle," the absence of data does not constitute sufficient justification for the absence of management measures. On the other hand, management strategies need to be developed in order to ensure the preservation of the available resources. It is important that the presumptions and methods that were utilised in the process of determining the scientific basis of the management be presented.

The following are the fundamental components that make up the precautionary principle:

1. Environmental actions taken by the government and other statutory authorities should anticipate, stop, and address the causes of the destruction of the environment.
2. The absence of scientific confidence cannot be used as a justification for putting an end to life in order to prevent further environmental damage if there was previously a risk of significant and permanent harm.
3. The "Onus of Proof" lies on the shoulders of the actor or the developer to demonstrate that the action they are taking is not harmful to the environment.
4. The suspicion of an actual risk should not be the only thing that triggers the duties associated with taking precautions; anxiety or the potential for risk should do so as well.

The Supreme Court of the United States came to the conclusion that any "auto-policy" formulated by the government should, as a result, unavoidably change to conform to the constitutional principles as well as the predominating statutory duties that are placed upon the government by the Environmental Protection Agency. The policy on automobiles should incorporate "precautionary principles" and come up with suggested recommendations in order to strike a balance between the requirements of transportation and the need to protect the environment.

In the 1970s, when people all over the world began to recognise the significance of the environment and the need to conserve it, the concept of "polluter pays" came into being. The Organization for Economic Cooperation and Development (OECD) did, in fact, play a role in its subsequent promotion (OECD). According to the court's interpretation of the "polluter pays" concept, an entity's legal responsibility for causing damage to the environment must cover not only the cost of compensating those who have been harmed by pollution but also the cost of repairing the damage caused to the environment.

To put it another way, the polluter ought to be the one to pay the cost of pollution because the polluter is the one who is responsible for pollution. The idea stipulates that the financial burden of avoiding or repairing damage brought on by pollution should be borne by the entities or activities that bring about the pollution in the first place.

It is important to highlight that the concept of "absolute culpability," which was established by the highest court in the country in the Sriram Gas Leak Case, was the progenitor of the polluter-pays principle.

### **Sustainable Development**

It is necessary that growth be integrated with the surrounding environment in order to achieve sustainable development, which means that development must be balanced with environmental thought. In order for development to be considered property, it must first acquire both economic and ecological property. It is a technique of development in which the exploitation of resources, the direction of investment, the orientation of technological advancement, and the orientation of changes to institutional structures are all brought into harmony. Additionally, sustainable development implies that local control is exercised over the utilisation of resources, and it is the only route that can sustainably promote socioeconomic success in a democratic manner.

There may be a connection between this idea and the concept of "eco-development." It is a means of developing in a way that is good for the environment, of positively managing the environment in order to accommodate human edges. Let's say we prohibit the felling of trees in reserve forests but we do enable the rural poor and tribal communities to harvest minor forest products. We also encourage the development of community or common lands for the rural sustenance needs of industries, cities, and villages. These are the components of what are known as the "new development strategies." Therefore, the ecodevelopmental component covers a variety of various development tactics, such as the use of biogas, an alternative to natural resources, social biology, local irrigation, and the utilisation of waste to prevent pollution.

### **OBJECTIVES**

1. To study examination of the right to a clean, healthy environment
2. To study constitution and human rights

**Vellore citizens Case:**

In a decision that will go down in history as a landmark, the Supreme Court of India accepted the concept of property development as a concept of equalisation. At the same time, the court overturned the long-held belief that development and environmental protection cannot coexist. The apex court controlled the read that property development has currently come back to be accepted as "a viable conception to eradicate economic condition and improve the standard of human life while living within the carrying capability." As a result, the amount of pollution that is produced as a direct result of development need to be proportional to the capacity of our system to accommodate it.

**Facts** - During the time period in question, a number of tanneries located inside the state of Tamil Nadu were discharging wastewater that had not been treated into agricultural fields, roadsides, and rivers as open lands. The untreated effluent is eventually discharged into the river that provides the greatest amount of water to the city's residents as part of the city's public water system. The standards that were outlined by the pollution control panel were the subject of extensive directives that were issued by the Supreme Court.

**Observations**

Both the "precautionary principle" and the "polluter pays principle" are recognised by the Supreme Court of the United States as constituting an integral aspect of the environmental law of the country. These core values are necessary components for what is referred to as "Sustainable Development." The phrase "precautionary principle" refers to the following in the context of municipal law: (i) Environmental measures by the regime and also the statutory authorities – should anticipate, forestall, and attack the explanation for the environmental degradation. [Citizens] have a duty under the law to protect the environment. (ii) In situations where there is a risk of significant and irreparable damage, the absence of conclusive evidence from scientific research must not be used as an excuse to delay taking action to halt the degradation of the environment. (iii) The "burden of proof" lies on the actor or industrialist to demonstrate that the action they are taking is not harmful to the environment.

**Decision:** - The Supreme Court issued an order directing the Central government to establish an authority in accordance with Section 3 of the Environment Act of 1986 and to confer on the aforementioned authority all of the powers necessary to reduce the amount of pollution caused by tanneries and other polluting industries located within the state of the province. The preventative and polluter-pays ideas are going to be put into practise by the authority, which will be led by a retired judge from the High Court. The authority should justify the compensation by citing it under two different categories: one for preserving the ecological, and another for the payment to the people.

**Constitutional Provisions for Healthy and Safe Environment**

In order to maintain a healthy environment that is also free from pollution, India's constitution includes the following provisions: The human rights approach to protecting the environment is reflected



throughout the Indian Constitution in the form of a number of different constitutional obligations. Not only has the protection of the environment in Asia been given the status of an organic law of the land, but it is also dedicated with the right of each individual to live in a healthy and pollution free environment with full human dignity. In other words, environmental protection has been elevated to the status of a priority. The Constitution of the Asian nation places an obligation on both the state and its citizens to preserve and enhance the natural environment. The Indian legal system, most notably in the area of environmental law, went through a transition throughout the course of the last twenty years of the previous century, and new frontiers of social justice were mapped out during this time.

The Directive Principles of State Policy and Fundamental Duties chapters of the Indian Constitution both have particular provisions for establishing protection, while the Indian Constitution also contains specific measures for setting protection. According to the rendition, the Constitution does not contain a provision that recognises the fundamental right to conduct a measurement in an environment that is free from contamination and conducive to good health. In the Constitution, the right to equality is protected by Article 14, which states that it is a constitutional guarantee. On the territory of an Asian nation, the State may not deny anyone the right to equality before the law or equal protection under the laws in any way, shape, or form. The right to equality may also be violated by decisions made by the government that have a terrible impact on the environment. This is especially true in situations in which permissions are unconditionally granted, such as for construction that is in contrast to development rules or for mining without an adequate appreciation of the environmentally damaging consequences. Environmentally conscious groups have resorted to requiring legal actions in accordance with Article fourteen in order to contest the constitutional legality of the absolutely official sanctions that are imposed in these kinds of cases.

Article 21: The right to life and the right to liberty as fundamental rights are both protected by Article 21. It says that nobody shall be deprived of their life or their personal liberty unless in accordance with the procedure that has been established by law. The enjoyment of life and the accomplishment of its goals, in addition to their right to life with human dignity, are all encompassed within its sphere; the protection and preservation of the environment from pollution of air and water, as well as sanitation, is essential, but this does not mean that life can't be enjoyed. Any agreements or activities that would result in environmental pollution ought to be considered to be in violation of Article twenty one. [Citation needed] Therefore, a sanitary environment might be an essential component of the right to a healthy existence, and it might be impossible to evaluate human dignity in the absence of a kind and healthy surrounding environment. Therefore, the conservation of the environment has developed into an issue that is of severe concern for the continued existence of humans.

Article 47: Article 47 of the Constitution is considered to be of additional vital importance because it imposes the first duty on the State to supply the general public with improved health, raised levels of nutrition, and ultimately improved normal standards of living. This provision is considered to be particularly important because it places this duty on the State. Only by providing a secure and monitored environment in which to conduct the measurements will we be able to guarantee the public's health. Because of this, the people who wrote our Constitution were able to be more conscious of the issues surrounding the environment.

Article 48-A: Protection and improvement of setting and safeguarding of forests and wild life The state

shall make every effort to protect and improve the setting of the country as well as to safeguard its forests and wild life. Article 48-B: Protection and improvement of setting and safeguarding of forests and wild life

Article 51(A) of the Constitution of Asian nation states that the Constitution (Forty-Second Amendment) Act, 1976 added a replacement half IV-A dealing with fundamental Duties to the constitution. It is the responsibility of every citizen of an Asian nation to preserve and improve the natural environment, including its forests, lakes, rivers, and wildlife, as well as to have compassion for other forms of life, as stated in Article 51-A(g), which focuses specifically on the fundamental obligation that is associated with the setting.

### **Other Legislation for Healthy and Safety Environment**

The people who are eligible to vote in this country have a fundamental right to an environment that is pure, free of filth, and beneficial. Article 48A of the constitution of an Asian nation requires that the state is under a Constitutional obligation to protect and enhance the environment, as well as to safeguard the forest and wildlife inside the nation. This constitutional obligation was included into the constitution of the nation. Article 51A within the Constitution was added by the forty second amendment to the Constitution by the Parliament with the aim of sensitising the voters of their responsibility. This required a subject to protect and improve the natural environment together with the forests, lakes, rivers, and wildlife and to have compassion for living creatures. This was done with the objective of sensitising the voters of their responsibility. The legislative intent and spirit enshrined in Articles 48A and 51A (g) of the Constitution call attention to their location within the term of 'environment' as outlined in the Environment (Protection) Act, 1986. The primary goal of the numerous laws that the general assembly has passed, such as the Air (Prevention and management of Pollution) Act, 1981, the Water (Prevention and management of Pollution) Act, 1974 and therefore the life (Protection) Act, 1972, the Forest (Conservation) Act, 1980, the Indian Forest Act, 1927 and therefore the Biological Diversity Act, 2002, is to give wider scope to the laws that are in place for the protection and improvement of the environment. It is true that half III of the Constitution, which deals with fundamental Rights, does not particularly devote any article to the preservation of the environment or the atmosphere in and of itself. However, as a result of the passing of new legislation and the proclamation of new judgements by the Supreme Court of Asian country, Article twenty one of the Constitution has been expanded to include the right to live in a sanitary and healthy environment within its ambit. The risk of potential harm to the environment and human health that could be caused by development ought to be taken into consideration by slightly tipping the scales in favour of the environment and within the context of the greater public interest.

### **Relevant case laws**

The current state of industrial development is responsible for the problem of ecological imbalance that exists throughout the planet. Industries in general, and particularly hazardous industries in particular, pose a persistent risk to the surrounding environment. The highest court in an Asian nation attempted to evolve the right of the people to measure in healthy environments as a rider in an effort to balance the ecological imbalance. In the case of R.L. & E. Kendra, Dehradun vs. State of Uttar Pradesh, which was the first time the environment and ecological imbalance were brought up in front of the court, the court ordered the closure of sedimentary rock quarries.

Article 21 guarantees all individuals the right to life, which incorporates the right to continue existing. In *Olga Tellis v. City Municipal Corporation*, a case brought by pavement dwellers to resist eviction from their environment by the BMC, the Supreme Court argued that the right to living is born out of the right to life because no one will live while not the suggests that of living. The court reasoned that the right to living is born out of the right to life because no one will live while not the suggests that of living.

## CONCLUSION:

The fundamental right of man is to have appropriate living conditions, which should ideally take place in an environment that is free of pollution. In a society based on equality, where people are given the opportunity to live their entire lives with dignity and happiness, and where there is a solemn obligation to protect and enhance the society for the benefit of present and future generations. It is possible that a sourcebook that analyses the uncharted region that exists between environmental and human rights legislation is required, and it may be called "Connecting Human Rights and Setting." There is a possibility that the Constitution of the Republic of India is both extensive and skillfully written, and that it contains numerous detailed clauses.

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