

## Constitutional Right to Live in A Healthy Environment: A Catalyst Towards Sustainable Future

Saima Ghani<sup>1\*</sup>, Dr. Monica Narang<sup>2</sup>, Dr. Rekha Verma<sup>3</sup>

### ABSTRACT

The consciousness for the need to preserve the quality of human environment gained momentum particularly after the adoption of United Nations Conference on the Environment in Stockholm. Consequently, the member countries concentrated on institutionalised environmental crisis management at domestic level. India also moulded its new environmental policy and enacted new legislations for the prevention and control of pollution and protection of environment. During the same time, the judiciary has also played an important role in interpreting the laws in such manner which not only helped in protecting environment but also in promoting sustainable development. In spite of legislative efforts and activist attitude shown on the part of judiciary, environmental pollution is raising its ugly head in varying proportions. The newly released Environmental Performance Index (EPI) 2022 ranks India at the bottom position among 180 countries. Though the report has been rebutted by the Union Environmental Ministry for the use of 'biased metrics and biased weights' but at the same time we cannot turn blind eye towards deteriorating air quality, biodiversity loss and rapidly rising greenhouse gas emissions. At this juncture, it is imperative to locate the sutures that allow environmental harms to go unabated without any responsibility and accountability. Whether statutory laws alone can hold the delinquents accountable and inculcate the values of responsibility towards Mother Nature or there is an urgent need to constitutionalize environmental rights to improve their implementation, accountability and reduction in environmental injustices. Therefore, in the present article, an effort has been made by researchers to analyse constitutional approach towards environmental protection, and how constitutionalizing the right to clean environment can act as a powerful catalyst for augmenting progress towards a sustainable, inclusive and resilient future.

**Keywords:** *Constitution of India, Right to Healthy Environment, Stockholm Declaration, Indian Judiciary, Sustainability*

**T**he consciousness for the need to preserve the quality of human environment gained momentum particularly after the adoption of United Nations Conference on the Environment in Stockholm. The Stockholm declaration placed environmental issues at the

<sup>1</sup> LL.M, Amity Institute of Advanced Legal Studies, Noida

<sup>2</sup> Sr. Assistant Professor, The Law School, University of Jammu

<sup>3</sup> Assistant Professor, Amity Law School, Noida, Amity University

\*Corresponding Author

**Received: January 14, 2022; Revision Received: February 20, 2022; Accepted: March 25, 2022**

## Constitutional Right to Live in A Healthy Environment: A Catalyst Towards Sustainable Future

forefront of International concerns and marked the initiation of a dialogue between industrialized and developing nations on the link between economic growth, the pollution of air, water, and oceans and the well-being of people around the world.<sup>4</sup> Consequently, the member countries concentrated on institutionalised environmental crisis management at domestic level. India also moulded its new environmental policy and enacted new legislations for the prevention and control of pollution and protection of environment. During the same time, the judiciary has also played an important role in interpreting the laws in such manner which not only helped in protecting environment but also in promoting sustainable development. In spite of legislative efforts and activist attitude shown on the part of judiciary, environmental pollution is raising its ugly head in varying proportions. Among the major environmental issues, exposure to air pollution is now an almost inescapable part of today's life. The situation is particularly alarming for India where a cursory glance at WHO data reveals that 13 out of 20 of the most polluted cities are in India. Further, India has set ambient air quality standards for several pollutants as a part of National Ambient Air Quality Programme. But unfortunately the air-quality monitoring carried out in at least 263 cities shows that the majority of them do not meet such standards. The severity of the problem can be gauged while going through the main findings of the paper published in Lancet Planetary Health in 2020 which documented 1.7 million deaths attributable to only air pollution in India in 2019.<sup>5</sup> The newly released Environmental Performance Index (EPI) 2022 ranks India at the bottom position among 180 countries. Though the report has been rebutted by the Union Environmental Ministry for the use of 'biased metrics and biased weights' but at the same time we cannot turn blind eye towards deteriorating air quality and rapidly rising greenhouse gas emissions.<sup>6</sup> At this juncture, it is imperative to locate the sutures that allow environmental harms to go unabated without any responsibility and accountability. Whether statutory laws alone can hold the delinquents accountable and inculcate the values of responsibility towards Mother Nature or there is an urgent need to constitutionalize environmental rights to improve their implementation, accountability and reduction in environmental injustices. In the present article, therefore, an effort has been made to analyse constitutional approach towards environmental protection, and how constitutionalizing the right to clean environment act as a powerful catalyst for augmenting progress towards a sustainable, inclusive and resilient future.

### Environmental Protection and Indian Constitution

A thorough analysis of resolutionary and promissory aspects of the Preamble to Indian Constitution viz., socialism and Justice is sufficient to reach the conclusion that the saplings for constitutional protection regarding environment has long been envisioned by the framers of the constitution. Nevertheless, the framers of Indian Constitution did not pay much attention towards the protection of environment since environmental crisis was not a serious problem at that time as we find it today. In the entire debate one finds hardly any reference to balance ecosystem with the

1. United Nations Conference on the Environment, 5-16 June 1972, Stockholm, *available at*: <https://www.un.org/en/conferences/environment/stockholm1972> (last visited on September 18, 2019).
2. India State-Level Disease Burden Initiative Air Pollution Collaborators. Health and Economic Impact of Air Pollution in the States of India: The Global Burden of Disease Study 2019. Lancet Planetary Health. 22 December 2020, *available at*: [http://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(20\)30298-9/fulltext](http://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(20)30298-9/fulltext) (last visited on March 9, 2021).
3. India opposes environmental index ranking, *available at*: <https://www.thehindu.com/sci-tech/energy-and-environment/india-protests-lowest-ranking-in-environmental-index/article65507536.ece> (last visited on June 9, 2022).

## Constitutional Right to Live in A Healthy Environment: A Catalyst Towards Sustainable Future

development process.<sup>7</sup> However, there are some directives related to the environment under part IV of the Constitution. For instance improvement of public health<sup>8</sup> which obviously includes environmental hygiene, organisation of agricultural and animal husbandry on modern and scientific lines,<sup>9</sup> and protection of national monuments etc.<sup>10</sup> It shall be the duty of the state to apply these principles in moulding their policies and in enacting the laws.<sup>11</sup>

### *The Constitution Forty-Second Amendment Act and The Environment*

It was the Constitution (Forty-Second Amendment) Act, 1976 which explicitly provides for the protection of environment by inclusion of Articles 48-A and 51-A. Thus, environmental protection is a subject matter of both Directive Principles of State Policy and Fundamental Duties. This emphasises the importance given by the Constitution to the problem of environment protection.

Article 48-A directs the state to mould its policies to protect and improve the environment, which runs thus:

*“The state shall endeavor to protect and improve environment and to safeguard the forests and wild life of the country.”*

Article 51-A clause [g] provides that it is the obligation of every citizen:

*“to protect and improve natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.”*

While Article 48-A use the expression 'environment', Article 51-A (g) uses the expression 'natural environment'. Further, the former provision requires the *state* to safeguard the *forests and wild life of the country* in the context of protection and improvement of environment, the later provision imposes a duty on the citizen to protect and improve, *inter alia, forests, lakes, rivers and wildlife*. Both provisions underline the importance of forests, wild life, lakes and rivers in the context of environment, as they are the essential components of the concept of environment. In brief, both provisions imposed a new constitutional obligation on the part of state and citizens to adopt not only the protectionist policy but also to provide for the improvement of quality of environment. Above all, they suggest the need for collaboration between the State and the citizens for creating a more ecologically sound order.

Although the principles under Articles 48A and 51A (g) have traditionally been viewed as being incapable of enforcement in exercise of writ jurisdiction, courts have increasingly relied upon them while issuing writs and directions, to protect the environment against industrial pollution. Indeed the Supreme Court held that whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48-A and 51A (g).<sup>12</sup> In *Rural Litigation and Entitlement Kendra*

---

4. P. Leelakrishnan (ed.), *Law and Environment* 1 (Eastern Book Co., Lucknow, 1992).

5. The Constitution of India, art. 47.

6. *Id.*, Article 48.

7. *Id.*, Article 49.

8. *Id.*, Article 37.

9. *Sachidananda Pandey v. State of West Bengal*, the Supreme Court held that ‘when the court is called upon to give effect to the directive principles and the fundamental duty, the court is not to shrug its shoulders and

## Constitutional Right to Live in A Healthy Environment: A Catalyst Towards Sustainable Future

*v. State of UP*, the apex court also observed that protection of environment is not only a duty of the state under Article 48-A, but the citizens of India are also duty bound to protect the environment under Article 51-A (g) of the Constitution.<sup>13</sup> The Rajasthan High Court in *L.K. Koolwal Case*<sup>14</sup> observed that no doubt it is the duty of the citizen to protect the environment under Article 51-A (g) but this Article also creates a right in the favour of the citizen to move to the court for the enforcement of the same.

The impact of Article 48A and 51A(g) of the Constitution was considered in detail by the Supreme Court in the case of *Intellectuals Forum v. State of A.P.*<sup>15</sup> wherein the court observed that the aforesaid articles are not only fundamental in the governance of the country but also it shall be the duty of the State to apply these principles in making laws. Moreover, these two articles are to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the constitution including Articles 14, 19 and 21 of the constitution and also various laws enacted by Parliament and the State Legislatures.

### *Legislative Power*

The 42nd Amendment Act also made certain changes in the Seventh Schedule to the Constitution. In the Concurrent List after entry 17, entry 17A was inserted which provided for 'forests'. Prior to this, forests' was a subject included in List II, entry 19. As there was no uniform policy followed by the state in respect of the protection of forests, this subject was transferred to List III.

The subject of protection of wild animals and birds was also transferred from List II, entry 20 and inserted in List III, entry 178.

Further, the Amendment Act for the first time introduced a new entry 20A in List III after entry 20. Entry 20A deals with population control and family planning. Today the greatest pollutant is people. The enormous increase in population is mainly responsible for the modern environmental problems. The situation is going to be worse in the light of projected estimates by United Nations that the world populations will reach 9.2 billion by 2050 much beyond the human carrying capacity of the earth.<sup>16</sup>

Moreover, by way of Constitutional 73rd<sup>17</sup> and 74<sup>th</sup><sup>18</sup> Amendment, eleventh and twelfth schedule were added to the Constitution that gives Panchayats and Municipalities respectively wider powers

---

say that priorities are a matter of policy and so it is a matter for the policymaking authority. The least that the court may do is to examine whether appropriate cases, the court may go further, but how much further will depend on the circumstances of the case. The court may always give necessary directions. However the court will not attempt to nice balance of relevant considerations the court may feel justifies in resigning itself to acceptance of the decision of the concerned authority. AIR 1987 SC 1109

10. AIR 1987 SC 359

11. *L.K. Koolwal v. State of Rajasthan and Ors*, AIR 1988 Raj 2

12. (2006) 3 SCC 549

13. Population and Environment: A Global Challenge, *available at*: <https://www.science.org.au/curious/earth-environment/population-environment> (last visited on March 9, 2021).

14. 73<sup>rd</sup> Amendment Act, 1992. Received the assent of President on 20.04.1993.

15. 74<sup>th</sup> Amendment Act, 1993. Received the assent of President on 20.04.1993.

## Constitutional Right to Live in A Healthy Environment: A Catalyst Towards Sustainable Future

linked with environmental protection and conservation. The matters which are related to environment in the eleventh Schedule includes oil conservation, water management, watershed development, social forestry and farm forestry, drinking water, fuel and fodder, non-conventional resources, and maintenance of community assets whereas the matters which are related to environment in the twelfth Schedule includes Urban planning including town planning regulation of land use water supply; public health, sanitation, conservancy and solid waste management, urban forestry, protection of the environment and promotion of ecological aspects; provision of urban amenities such as park grounds; cremation grounds and electric crematoriums; prevention of cruelty to animals regulation slaughter houses and tanneries.<sup>19</sup>

Due to the above changes the division of legislative power between the Union and the States is spelt out in the following three lists of the Seventh Schedule of the Constitution.

### List I (Union List)

Entries: 52. Industries; 53. Regulation and development of oil fields and mineral oil/resources; 54. Regulation of mines and mineral development; 56. Regulation and development of inter-State rivers and river valleys; 57. Fishing and fisheries beyond territorial waters; 38 Environmental Laws and Policies.

### List II (State List)

Entries: 6. Public Health and Sanitation; 14. Agriculture Protection against pest and prevention of plant diseases; 18. Land colonisation; 21. Fisheries; 23. Regulation of Mines and Mineral development subject to the provisions of the Act; 24. Industries subject to the provisions of the Act.

### List III (Common or Concurrent List)

Entries: 17- Forests; 17-B- Protection and Wild Animals and Birds; 20.- Economic and Social Planning; 20-A- Population Control and Family Planning.

Thus it is evident that the Constitution imposes the duty to protect and preserve the environment in all the three tiers of governance i.e. Central, State and Local.

### *Part III of the Constitution*

Part III of the Constitution provides fundamental rights. Many fundamental rights have an implied correlation to environmental protection. It is, however, important to mention at this juncture that such interpretation to the constitutional provisions touching the environmental perspectives is possible only due to the activist attitude shown by Judiciary in the last few decades.

### Article 14

Article 14 of the Constitution guarantees to every person the right not to be denied equality before the law or the equal protection of the laws. The possibility of infringement of this Article by a government decision having impact on the environment cannot be ruled out. Article 14 strikes at

---

16. Laws and Policies pertaining to Environment, *available at:* [http://awsassets.wfindia.org/downloads/course\\_2\\_block\\_1\\_final.pdf](http://awsassets.wfindia.org/downloads/course_2_block_1_final.pdf) (last visited on May 27, 2022).

## Constitutional Right to Live in A Healthy Environment: A Catalyst Towards Sustainable Future

arbitrariness because an action that is arbitrary must necessarily involve a negation of equality.<sup>20</sup> Thus, permission for contractions that is contrary to town planning regulation by the municipal authority may be challenged. Similarly, Article 14 may be invoked to challenge governmental sanction of projects having adverse impact on the natural environment and where such sanctions involve arbitrary considerations

### Article 19

Excessive noise creates pollution in the society. The constitution of India under Article 19 (1) (a) read with Article 21 of the constitution guarantees right to decent environment and right to live peacefully. In *PA Jacob vs. The Superintendent of Police Kottayam*<sup>21</sup>, the Kerala High Court held that freedom of speech under article 19 (1)(a) does not include freedom to use loud speakers or sound amplifiers. Thus, noise pollution caused by the loud speakers can be controlled under article 19 (1) (a) of the constitution.

Article 19(1) (g) of the Constitution guarantees to all citizens of India, the right to practice any profession or to carry on any occupation or trade or business. The freedom however, is not absolute. The aggrieved industrialist may resort to Article 19 in case his trade and business interests are affected by the action of governmental agencies in the name of the environmental protection. Courts will then need to balance environmental interests with the fundamental right it carries on any occupation, trade or business guaranteed in Article 19(1) (g). The Supreme Court, while deciding the matter relating to carrying on trade of liquor in *Cooverjee B. Bharucha v. Excise Commissioner*<sup>22</sup>, observed that, if there is clash between environmental protection and right to freedom of trade and occupation, the courts have to balance environmental interests with the fundamental rights to carry on any occupations.

Similarly various standards have been prescribed by the Government for the discharge of different pollutants. An industry may challenge a very stringent standard which cannot be complied with, despite best efforts by available technology or if it is otherwise unreasonable.

In the case of *Vellore Citizens Forum*<sup>23</sup>, the Supreme Court held that the Industries which were charged for causing pollution are of vital importance for the country economy but it cannot be allowed to continue at the cost of ecology. So every industry shall prove before the court that they are conducting their affair in an area of demarcated guidelines and in an eco friendly manner. Similarly in the Kanpur Tanneries Case, tanneries in Kanpur were directed by the Supreme Court to put up treatment plant so that the Ganga is not polluted and if they do not obey the orders they will have to close the industry.

### Article 21

The High Courts and Supreme Court of India have read the right to wholesome environment as a part of the right to life guaranteed by Article 21 of the constitution of India.

---

17. *Ajay Hasia v. Khalid Mujib Sheravardi*, AIR 1981 SC 487

18. AIR 1993 Ker 1

19. 1954 SCR 873

20. *Vellore Citizens' Welfare Forum v. Union of India & Ors.*, 1996 AIR 2715.

## Constitutional Right to Live in A Healthy Environment: A Catalyst Towards Sustainable Future

The right to live in a healthy environment as part of Article 21 of the Constitution was first recognized in the case of *Rural Litigation and Entitlement Kendra v. State of U.P.*<sup>24</sup> It is the first case of this kind in India, involving issues relating to environment and ecological balance in which Supreme Court directed to stop the excavation (illegal mining) under the Environment (Protection) Act, 1986.

Even in *Subash Kumar v. State of Bihar*<sup>25</sup>, a case in which the Supreme Court rejected a PIL petition, the Court reiterated that right to life under Article 21 includes the right to enjoyment of pollution free water and air.

The Supreme Court in *A. P. State Pollution Control Board v. M. V. Nayudu*<sup>26</sup> observed that:

“Environmental concern .....are, in our view, of equal importance as human right. In fact both are to be traced to Art. 21 which deals with the fundamental right to Life and Liberty. While Environmental aspect concern life, human rights aspect concern liberty”.

In *In re Noise Pollution Case*<sup>27</sup>, the Supreme Court held that Article 21’s fundamental right included the right to protection from noise pollution. The Court observed that the Article 21 right to protection of life guaranteed the right to live with dignity, including “all the aspects of life which go to make a person’s life meaningful, complete and worth living.”

Protecting the right to a clean and pollution-free environment, the National Green Tribunal in a case *Tribunal on its own Motion v. Ministry of Environment, Forest and Climate Change & Others*<sup>28</sup> orderd ban on firecrackers from November 2020 to cities with air quality under the ‘poor and above’ category. The ban was, however, absolute in the capital of Delhi due to the pre-existing pollution crisis and rising number of COVID-19 cases. In cities categorised under the ‘moderately polluted’ air quality, the NGT restricted the use of firecrackers to only green crackers and for duration of up to two hours during festivities. The ban was further extended by the NGT until there was an improvement in the COVID-19 situation.

While incorporating the important features to the fundamental right provided in Article 21, certain principles were ascertained by the supreme court to be necessarily ensured for the protection of the atmosphere viz., Polluter Pays Principle, Precautionary Principle, Doctrine of Public Trust, and principle of Sustainable Development.

---

21. *Supra* note 10.

22. AIR 1991 SC 420

23. 1999 (2) SCC 718

24. In this case, petitioner, Mittal, requested that the Supreme Court order the government to enforce and review noise pollution laws, which prohibited the use of loud speakers during night hours, except during religious holidays. In *Re Noise Pollution Restricting Use of Loudspeakers*, (2005) 1 SCR Supp. 624.

25. Original Application No. 249/2020. Judgment dated 01.12.206 of National Green Tribunal, Principal Bench, New Delhi.



## Constitutional Right to Live in A Healthy Environment: A Catalyst Towards Sustainable Future

### Article 32

One of the most innovative parts of the Constitution is that the Writ Jurisdiction is conferred on the Supreme Court under Article 32. Under this provision, the courts have the power to issue any direction or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever is appropriate. This has paved way for one of the most effective and dynamic mechanisms for the protection of environment, that is, Public Interest Litigations.

One of the earliest environmental PIL case is *Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh*,<sup>29</sup> in which a non-governmental organization initiated a PIL through a letter to the Indian Supreme Court, documenting the adverse effects of illegal limestone quarrying in the Mussorie-Dehradun area. The letter alleged a violation of mining laws by the state of Uttar Pradesh, arguing that illegal mining caused deforestation and run off to the detriment of villages and villagers living in the hills, as well as caused hazardous conditions to people and animals in the forest region, resulting from roads constructed for quarrying operations.

Public interest litigants have successfully invoked the Supreme Court's Article 32 jurisdiction to address numerous environmental problems, including pollution of the River Ganga, pollution of the Taj Mahal, air pollution in the Delhi metropolitan area, water pollution from effluents released by tanneries, and ecologically detrimental diversion of a river. Access to courts via a PIL action, however, is not unlimited, as courts will only consider bona fide public interest petitions. In *Subhash Kumar v. State of Bihar*,<sup>30</sup> a petitioner brought a PIL action, claiming that Tata Iron and Steel Company was releasing untreated sludge/slurry effluents into the river Bokaro, which not only created a public health threat but also rendered the water unusable for a variety of purposes, such as drinking and irrigation. The petitioner argued that the controlling administrative agency, the State of Bihar Water Pollution Control Board, had failed to regulate the pollution under the Water Pollution Act, and that it had permitted several entities to collect the sludge water in exchange for a fee. The petitioner sought interim relief from the pollution, as well as an order permitting the petitioner to collect the sludge. In rejecting the petition, the Supreme Court held that it would only accept PIL petitions filed by persons "genuinely interested in the protection of society on behalf of the community . . . not to satisfy . . . personal grudge and enmity."

### Article 253

Another essential provision dealing in protecting the environment is Article 253 of the Constitution which empowers the Parliament of our country to make laws which can be applicable to the whole or any territory of the country for implementing any agreement or convention signed with the other country or countries. Parliament can further legislate to implement decisions taken at any conference on an international level. Any provision made in the context of environmental protection in accordance with Art. 253 read with articles 13 and 14 cannot be questioned before the court of law on the grounds of no legislative competence.

With the use of this power, it is pertinent to mention that Parliament has enacted Air (Prevention and Control of Pollution) Act 1981, and Environment Protection Act, 1986. It has been clearly

---

26. *Supra* note 10.

27. *Supra* note 22.



## Constitutional Right to Live in A Healthy Environment: A Catalyst Towards Sustainable Future

stated in the Preamble of these acts that the purpose of their enactment was to implement the decisions taken at the United Nations Conference on the Human Environment, held at Stockholm in the year 1972.

### Constitutional Right to live in a Healthy Environment

While international law plays a vital role in establishing norms and offering a court of last resort for human rights violations, the reality is that most of the action to protect and fulfil rights occurs at the national level. Within countries, a constitution is the supreme law, as all laws, regulations, and policies must be consistent with it. A constitution protects human rights, sets forth the obligations of the state, and restricts government powers. On a deeper level, constitutions reflect the most deeply held and cherished values of a society. As a judge once stated, “ a constitution is a mirror of a nation’s soul.”<sup>31</sup>

Portugal (in 1976) and Spain (1978) were the first countries to include the right to a healthy environment in their constitutions. Article 66 of the Portugal’s Constitution states “Everyone has the right to a healthy and ecologically balanced environment and the duty to defend it.”<sup>32</sup> Since the mid-seventies, ninety-five countries have granted constitutional status to this right. Constitutional law experts observe that recognition of environmental rights has grown more rapidly over the past fifty years than any other human right.

Despite this progress, there is an ongoing debate about the scope and potential utility of the right to a healthy environment. Supporters argue that the potential benefits of constitutional environmental rights include:

- stronger environmental laws and policies;
- improved implementation and enforcement;
- greater citizen participation in environmental decision-making;
- increased accountability;
- reduction in environmental injustices;
- a level playing field with social and economic rights; and
- better environmental performance.

In 78 out of 95 nations, environmental laws were strengthened after the right to a healthy environment gained constitutional status. Laws were amended to specifically focus on environmental rights, as well as access to environmental information, participation in decision-making, and access to justice. This includes all surveyed nations in Eastern Europe (19 out of 19); almost all nations in Western Europe (8/9), Latin America and the Caribbean (16/18), and Asia (12/14); and a clear majority in Africa (23/35).<sup>33</sup>

---

<sup>31</sup> *State v. Acheson* 1991 2 SA 805 (Namibia)

<sup>32</sup> Constitution of Portugal, 1976. In R. Wolfrum and R. Grote, *Constitutions of the Countries of the World*. G.H. Flanz, ed. emeritus. New York: Oceana Law, 2012.

30. The Effectiveness of Constitutional Environmental Rights, *available at*: <https://environment.yale.edu/content/documents/00003438/Boyd-Effectiveness-of-Constitutional-Environmental-Rights.docx?1389969747> (last visited on June 3, 2022).

## Constitutional Right to Live in A Healthy Environment: A Catalyst Towards Sustainable Future

In some nations, the constitutional right to a healthy environment has become a unifying principle, permeating the entire body of environmental law and policy. This is most clearly the case in Argentina, where the reform of the constitution in 1994 to include the right to a healthy environment “triggered the need for a new generation of environmental legislation.” After 1994, Argentina passed a new comprehensive environmental law (which “sought to make the constitution a reality”), a law governing access to environmental information, and minimum standard laws on issues ranging from industrial waste to clean water. The national constitution also caused a cascade effect, as provincial constitutions were amended to incorporate the right to a healthy environment, and provincial environmental laws altered to identify the right as a guiding principle. The constitutional right to a healthy environment also had a comprehensive effect on environmental law in other countries including Portugal, Costa Rica, Brazil, Colombia, South Africa, and the Philippines.<sup>34</sup>

Finally, constitutional recognition of the right to a healthy environment can have a systematic effect on the exercise of discretion by legislators, judges, and public authorities, pushing countless decisions in a more sustainable direction.

### The Way Forward

The above discussion succinctly reveals the role of Stockholm Conference major and initiatives by Indian Judiciary towards generation of a new fundamental right to wholesome environment, and importation of international norms of third generation collective rights for sustainable development into Indian law. But on the contrary looking at the recent events wherein the Supreme Court has expressed divergent opinions on whether preservation of the environment should take a backseat when other rights are at stake, in the course of just four days, may lead one to presume that the court has shifted its approach from environmental rights to other rights. On March 25, 2022, Justice Banerjee observed in a judgment that industrial units, which provided livelihood to several thousand of workers and contributed to the nation’s economy, should not be closed for not getting prior environmental clearance. The case concerned a industrial unit in Haryana that employed 8,000 workers but had not got prior environmental clearance for operations. However, in the course of four days, a bench led by Justice Khanwilkar tipped the scale in favour of the environment. He said the environment must prevail over other rights. It was the court’s constant vigil that had seen a resurgence of the forest cover. It is only because of the strict interpretation and exposition by this court that the forest cover is increasing.<sup>35</sup> Such divergence is not in good taste when in the past the courts have nudged the bureaucracy to introduce new laws e.g., in Mussoorie case and Yamuna Case, and played the role of a public educator and super administrator in matters concerning environment. Thus, constitutional recognition of the right to a healthy environment can have a systematic effect on the exercise of discretion by legislators, judges, and public authorities, pushing countless decisions in a more sustainable direction.

---

31. *Ibid.*

32. Environment or other rights: Supreme Court differs in 4 days, *available at*: <https://www.thehindu.com/news/national/environment-or-other-rights-supreme-court-differs-in-4-days/article65271269.ece> (last visited on June 9, 2022).

## Constitutional Right to Live in A Healthy Environment: A Catalyst Towards Sustainable Future

### ***Acknowledgments***

The authors profoundly appreciate all the people who have successfully contributed to ensuring this paper in place. Their contributions are acknowledged however their names cannot be mentioned.

### ***Conflict of Interest***

The author declared no conflict of interest.

***How to cite this article:*** S. Ghani, M. Narang , R. Verma. (2022). Constitutional Right to Live in A Healthy Environment: A Catalyst Towards Sustainable Future. *International Journal of Social Impact*, 7(1), 74-84. DIP: 18.02.009/20220701, DOI: 10.25215/2455/0701009