



## GREEN CONSTITUTIONALISM: EXPANDING THE RIGHT TO A HEALTHY ENVIRONMENT THROUGH JUDICIAL INNOVATION

---

Kashish Varshney\*

### ABSTRACT

*India's environmental law is evolving each year. In India, this shift has been catalysed not merely by legislative enactments but by bold judicial innovations that have expanded the scope of Article 21 to include the right to a healthy environment. It is extensively employed as a true basis for developing the jurisprudence. The responsibilities of both the government and the people to safeguard and enhance the environment have emerged as the highest constitutional obligation. Through doctrines like the Polluter Pays Principle, the Precautionary Principle, and the Public Trust Doctrine, the Indian judiciary has emerged as a proactive guardian of ecological integrity. This article examines the development of environmental law in India, the function of the National Green Tribunal, and the impact of global environmental legislation and events like the Stockholm Declaration and the Rio Summit. It explores legal frameworks, landmark judgments, and environmental rights, arguing that green constitutionalism is both a legal requirement and a moral obligation in the contemporary era.*

**Keywords:** Green Constitutionalism, Judicial Innovation, Article 21, Environmental Rights, Precautionary Principle.

### INTRODUCTION

“The environment is where we all meet, where we all have a mutual interest; it is the one thing all of us share.”<sup>1</sup> Environmental degradation has emerged as one of the most pressing challenges of the 21<sup>st</sup> century. From climate change to biodiversity loss, the threats are systemic and global. The right to a healthy environment under Article 21 of the Constitution of India, the mandate on the state and the citizen to protect and improve the environment and the

---

\*BA LLB (HONS.), FOURTH YEAR, BARKATULLAH UNIVERSITY, BHOPAL.

<sup>1</sup> Lady Bird Johnson, *A White House Diary* (Holt, Rinehart and Winston 1970) 9 October 1967.

emphasis on the concept of sustainable development continue to have their sway in judicial review of environmental judicial decision-making. On 28 July 2022, the United Nations General Assembly proclaimed that every individual on the planet has a right to a healthy environment. “The resolution adopted at the UN headquarters in New York City conveys that no one can strip us of nature, clean air and water, or a stable climate away from us – at least, not without a fight,” stated Inger Andersen, Executive Director of the UN Environment Programme (UNEP).<sup>2</sup>

## THE INDIAN CONSTITUTIONAL FRAMEWORK AND ENVIRONMENT PROTECTION

Initially, our constitution didn’t have any explicit provisions for environmental protection. Though it was indirectly implicit in the Preamble and Directive Principles of State Policy. With time, through judicial innovation and various legal developments, the responsibility to protect the environment became more recognised. Today, the constitutional provision is that the environment must be maintained and protected, and every citizen has the right to live in a healthy environment.

The Directive Principles of State Policy, Fundamental Duties, and Fundamental Rights section of the Indian Constitution contains specific provisions for environmental protection. Recent judicial activism has contributed to the Constitution’s lack of a particular clause recognising the basic right to a healthy and clean environment. The Stockholm Conference, the growing awareness of the environmental issue, and the global movement for environmental conservation in the 1970s led the Indian government to pass the 42<sup>nd</sup> Amendment to the Indian Constitution in 1976. Direct environmental protection provisions were added to the Constitution by an amendment.

## DIRECTIVE PRINCIPLES OF STATE POLICY

**Article 48A:** According to the article, “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.”<sup>3</sup> In the case of *Sher Singh v. State of Himachal Pradesh*, the National Green Tribunal concluded that Indian citizens

---

<sup>2</sup> UNEP < <https://www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right> > accessed 11 August 2025

<sup>3</sup> Constitution of India 1950, art 48A

have the right to a wholesome, clean and decent environment, derived from Article 48A of the Constitution (which requires the state to protect and improve the environment).<sup>4</sup>

**Fundamental Duties: Article 51A(g):** According to the article, it shall be the duty of every citizen of India, “to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.”<sup>5</sup> In *Sher Singh v. State of Himachal Pradesh*, the National Green Tribunal concluded that Article 51A (requiring a citizen to protect and improve the natural environment).<sup>6</sup>

**Fundamental Rights:** The right to a clean environment is one of the implied Fundamental Rights under Part III, as established by the judiciary.

**Article 21: Right to Life:** The Supreme Court has examined Article 21, which states that “no person shall be deprived of his life and personal liberty except according to procedure established by law.”<sup>7</sup> The court has repeatedly ruled that this article inherently guarantees the right to a healthy, clean environment, free from the threat of disease and infection. In the *Dehradun Quarrying Case*,<sup>8</sup> the Supreme Court declared that the right to a healthy environment is a natural outcome of Article 21. Additionally, the Supreme Court ruled in *Subhash Kumar v. the State of Bihar*<sup>9</sup> Article 21 includes the right to clean water and air, and is qualified as a fundamental right.

## JUDICIAL INNOVATION AND ENVIRONMENTAL JURISPRUDENCE

The judiciary has played a pivotal role in promoting environmental protection in India. Over the past few decades, several landmark judgments have illustrated how courts have interpreted fundamental rights to include environmental issues. The emergence of Public Interest Litigation (PIL) has been particularly revolutionary, allowing individuals and organisations, particularly those lacking the means to access the Supreme Court, to seek justice on behalf of affected communities. This framework has empowered NGOs and civil society groups to advocate for environmental sustainability and legal accountability. As a result, numerous cases

---

<sup>4</sup> Climate change litigation databases <<https://climatecasechart.com/non-us-case/sher-singh-v-state-of-himachal-pradesh/>> accessed 14 August 2025

<sup>5</sup> Constitution of India 1950, art 51A(g)

<sup>6</sup> Climate change litigation databases <<https://climatecasechart.com/non-us-case/sher-singh-v-state-of-himachal-pradesh/>> accessed 14 August 2025

<sup>7</sup> Constitution of India 1950, art 21

<sup>8</sup> *Rural Litigation and Entitlement v. State of Uttar Pradesh & Ors* AIR [1985] SC 652.

<sup>9</sup> *Subhash Kumar v. State of Bihar* AIR [1991] SC 420.

have been brought before the courts, leading to significant judgments that highlight the judiciary's commitment to safeguarding the environment.

**M.C. Mehta v. Kamal Nath & Ors:**<sup>10</sup> A landmark judgment, particularly with the evolution of the Public Trust Doctrine. The case arose when Span Motels Pvt. Ltd., linked to then-Environment Minister Kamal Nath, was found to have encroached upon forest land along the Beas River to construct a luxury resort. In a bid to protect the property from seasonal flooding, the company illegally diverted the river's natural course using heavy machinery, resulting in significant ecological degradation and contributing to the devastating 1995 flood. The Supreme Court's response was clear and courageous: it declared that rivers, forests, and other natural resources are not private property; they belong to all of us. Through the Public Trust Doctrine, the Court reminded the government that it is a guardian, not a landlord, of nature. It also held that polluters must pay for the harm they cause, recognising environmental damage as a civil wrong against society. This judgment gave real meaning to Article 21 of the Constitution, affirming that the right to life includes the right to a healthy environment. More than a legal precedent, this case is a call to conscience, urging us to protect what sustains us, and to hold even the powerful accountable when they harm the earth we all share.

**Indian Council for Enviro-Legal Action v. Union of India:**<sup>11</sup> Another landmark case in Indian environmental jurisprudence. Filed as a Public Interest Litigation (PIL), the case addressed severe pollution caused by chemical factories in Bichhri village, Rajasthan. These industries had been illegally producing toxic substances like H-acid and oleum and dumping untreated waste, which led to widespread contamination of soil and groundwater. The Court held the polluting industries accountable under the Polluter Pays Principle, ordering them to compensate affected communities and remediate the damage. It emphasised that the right to a clean environment is part of the Right to Life under Article 21 and reinforced the judiciary's role in enforcing environmental laws when executive agencies fail to act. The judgment became a cornerstone for environmental accountability and sustainable development in India.

**Vellore Citizens Welfare Forum v. Union of India:**<sup>12</sup> The Supreme Court judgment in this case stands as a watershed moment in Indian environmental jurisprudence. The case arose from a PIL, which was filed against the pollution caused by tanneries in Tamil Nadu, which were

---

<sup>10</sup> M.C. Mehta v. Kamal Nath and Ors AIR [1996] SC 711.

<sup>11</sup> Indian Council for Enviro-Legal Action v. Union of India and Ors. AIR [1996] SC 1446.

<sup>12</sup> Vellore Citizens Welfare Forum v. Union of India and Others AIR [1996] SC 2715.

discharging untreated effluents into open lands and into the main river, a key water source. Over 35,000 hectares of agricultural land were rendered unfit for cultivation, and 350 out of 467 wells were found to be chemically contaminated. Out of 584 tanneries, only 443 had applied for operational consent, indicating large-scale regulatory non-compliance. The issue was whether industries, especially tanneries, should be allowed to operate at the cost of environmental degradation and the health and life of the public? The Hon'ble Supreme Court of India invoked the principles of sustainable development, the precautionary principle, and the polluter pays principle, marking their formal incorporation into Indian law. It held that industries causing ecological harm must bear the cost of restoration and compensate affected communities. The judgment also emphasised that environmental rights are intrinsic to the right to life under Article 21 of the Constitution, and reaffirmed the State's duty under Articles 48A and 51A(g) to protect and improve the environment.

**Municipal Council, Ratlam v. Shri Vardhichand & Ors:**<sup>13</sup> In this case, the residents of Ratlam Municipality were tormented by the stench and foul smell coming from open drains and public excretion nearby. The slum dwellers approached the sub-divisional magistrate under Section 133 of the CrPC. It is the duty of the municipality to construct drain pipes to allow the flow of water to wash the filth and stop the stench. The municipality pleaded paucity of funds as the reason for not carrying out its duty properly. The magistrate gave directions to the municipality to draft a plan within six months for removing the nuisance. The High Court approved the order of the Magistrate, and the Municipality further appealed in the Supreme Court. The issue was whether a court can compel a statutory body to carry out its duty towards the community by constructing sanitation facilities. In this case, Justice Krishna Iyer upheld the order of the High Court and directed the Municipality to take immediate action within its statutory powers to construct a sufficient number of public toilets, provide a water supply, provide scavenging services, construct drains, and provide basic amenities to the public. The Hon'ble Supreme Court also accepted the use of Section 133 CrPC for the removal of public nuisance. A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances.

---

<sup>13</sup> Municipal Council, Ratlam v. Shri Vardhichand & Ors AIR [1980] SC 1622

## EVOLUTION OF JUDICIAL DOCTRINES

The Indian judiciary has been instrumental in shaping environmental law through the development of transformative doctrines that go beyond statutory interpretation. The Polluter Pays Principle, the Precautionary Principle, and the Public Trust Doctrine, each of which has been judicially crafted and applied to expand the constitutional right to a healthy environment.

**Polluter Pays Principle:** The Polluter Pays Principle, in layman's terms, simply states that the person who is causing the environmental degradation should be made to pay for it. Firmly established in the Indian Council for Enviro-Legal Action v. Union of India,<sup>14</sup> where the Supreme Court held that polluters must bear the cost of remedying environmental damage, irrespective of fault.

**Precautionary Principle:** The precautionary principle includes a set of precautionary measures that must be taken in case an activity poses a potential threat to human health or the environment, even if it is not scientifically established. Vellore Citizens Welfare Forum<sup>15</sup> case in which the Supreme Court established the precautionary principle for the very first time.

**Public Trust Doctrine:** This principle states that certain resources like the air, water, sea, forests, rivers, ponds, lakes, and mountains can never be subject to private ownership. Such resources are a gift of nature to mankind as a whole, and they should be available to all irrespective of any type of discrimination.

## EVOLUTION AND ROLE OF THE NATIONAL GREEN TRIBUNAL

The National Green Tribunal (NGT), established under the National Green Tribunal Act of 2010, represents a significant institutional innovation in India's environmental governance framework. It is designed as a specialised judicial body. India becomes the third country in the world to set up a specialised environmental tribunal, only after Australia and New Zealand. It protects the environment and gives fast justice in environmental cases.

The NGT has played a critical role in operationalising the principles laid down by the Supreme Court. It has adjudicated cases involving air and water pollution, deforestation, waste management, and biodiversity conservation. Moreover, the NGT has been proactive in suo

---

<sup>14</sup> Indian Council for Enviro-Legal Action v. Union of India AIR [1996] SC 1446

<sup>15</sup> Vellore Citizens Welfare Forum v. Union of India & Ors AIR [1996] SC 2715

motu actions, responding to media reports and public grievances. Its interventions in cases like the Yamuna floodplain encroachment, Sterlite Copper pollution in Tamil Nadu, and air quality crisis in Delhi demonstrate its commitment to environmental justice. NGT decisions can be challenged only in the Supreme Court, but now, NGT decisions have been challenged in various High Courts under Article 226. Other High Courts, like the Bombay High Court, have also started entertaining appeals against the NGT orders and have asserted the superiority of a High Court over the NGT. It says that the High Courts are a constitutional body, while the NGT is a statutory body. The NGT has no means for effectively supervising and implementing its orders. It has no methods to reverse its orders if they are found unworkable or require modifications.

Despite this, the NGT remains a vital forum for environmental protection, bridging the gap between constitutional ideals and administrative enforcement.

## **INTERNATIONAL ENVIRONMENTAL LAW AND GLOBAL CONFERENCES**

The evolution of green constitutionalism in India has been deeply influenced by international environmental law and global declarations. The *United Nations Conference on the Human Environment* (more popularly known as the Stockholm Conference), held in Stockholm, Sweden, in 1972, was the first step towards putting environmental concerns on the global agenda. This conference resulted in the Stockholm Declaration containing twenty-six principles “to inspire and guide the peoples of the world in the preservation and enhancement of the human environment.” This conference also resulted in the setting up of the United Nations Environment Programme (UNEP), a new UN machinery to catalyze the development and coordination of environmental focus in the programs of other organisations.

The *Rio Declaration on Environment and Development*, held in 1992, further advanced this vision and, like its predecessor, the Stockholm Declaration, laid out the principles to guide environmental protection and development activities. Agenda 21, a forty-chapter document, contained the blueprint of action in the 21<sup>st</sup> century in a number of development-related sectors. Two binding legal document instruments were adopted on climate change and biodiversity- the UN Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (CBD). The Forest Principles were also adopted, though they were not legally binding.



Further, *the United Nations World Summit for Social Development* was held in March 1995, in Copenhagen, which brought 'people' to the centre of development. Governments of different nations met and discussed three core socio-economic issues that were essential for development. They are the eradication of poverty, promotion of full employment, and fostering of social integration.

These international instruments have not only influenced judicial innovation but have also legitimised the expansion of environmental rights within a constitutional framework.

### **STATUTORY FRAMEWORKS FOR ENVIRONMENTAL PROTECTION IN INDIA**

India's laws for protecting the environment are built on a strong legal foundation that aims to keep nature safe and healthy for everyone. The Environment Protection Act of 1986 gives the central government the power to take action against pollution. Other important laws include the Water Act (1974) and the Air Act (1981), which help control pollution in rivers and the air. The Forest Conservation Act (1980) and Wildlife Protection Act (1972) work to protect forests and animals, showing that nature and people are deeply connected. But what makes these laws truly powerful is how the courts have used the Constitution to give them deeper meaning.

### **CONCLUSION**

To conclude, the environment is all our surroundings, and India's environmental law is growing year by year, not only through the statutory provisions but mainly through judicial innovation. India's constitutional framework also talks about environmental protection as a fundamental right, especially under Article 21, through the fundamental duties and even through the directive principles of state policy; judicial innovation in environmental jurisprudence has played a crucial role. Numerous cases have been brought before the courts, leading to significant judgments that highlight the judiciary's dedication to safeguarding our environment. The incorporation of the various international conferences and declarations, like the Stockholm Conference, the Rio Declaration, and others, into our Constitution and the making of different statutory acts and provisions for incorporation. These principles show India's attitude towards safeguarding the environment. Despite all the efforts made, the challenge persists: the weak enforcement of environmental laws, the corruption, and the lack of coordination between the Central and state authorities. Another important aspect is the relationship between the protection of the environment and the development of the country, infrastructure, and industrial projects. Frequently, they override ecological concerns. The courts attempt to balance



development and sustainability, but economic pressure and political interest often tip the scales towards short-term growth. Despite the rise of public interest litigation, environmental governance remains limited. The Indian judiciary has said that living in a clean and healthy environment is a fundamental right. This idea is called green constitutionalism. It means that protecting nature is not just a rule, but a promise made by the Constitution. In today's world, where pollution and climate change affect everyone, this legal approach helps ensure that both people and the planet are treated with care and respect. Green constitutionalism is no longer a theoretical aspiration; it is a lived reality shaped by judicial courage and constitutional imagination.