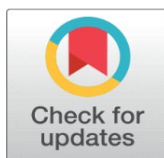
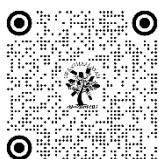


JUDICIAL ACTIVISM IN STRENGTHENING ENVIRONMENTAL PROTECTION LAWS IN INDIA

Gurprem Monga ¹¹ Bachelor of Science (B.Sc. Non-Med), Bachelor of Laws (LL.B.), Master of Laws (LL.M.), Criminology, India**DOI**[10.29121/shodhkosh.v5.i5.2024.6155](https://doi.org/10.29121/shodhkosh.v5.i5.2024.6155)

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ABSTRACT

India, a country with diverse ecological provinces and rich biodiversity has realized the quintessential importance of environmental conservation. In recent decades, there has emerged a substantive legal framework to conserve its natural heritage besides fighting pollution and promoting sustainable development. Though cumbersome to implement, these environmental protection laws unequivocally articulate the commitment to ensure a safe environment for future generations. The 1972 Stockholm Conference is considered a turning point in raising global awareness about environmental degradation. In 1974, India's environmental policy was significantly improved by passing the Water (Prevention and Control of Pollution) Act. The act immediately vested powers in state and central boards for pollution control to frame rules regarding waste disposal into water bodies and exercise control over such activities. Next came the Air (Prevention and Control of Pollution) Act of 1981 which extended similar regulatory mechanisms to deal with air quality as well as vehicular and industrial emissions. These two acts also formed the basis of national legislation for pollution control. But the Bhopal Gas Disaster of 1984 spoke painfully about how flimsy was the existing legal framework concerning dangerous goods and industrial accidents. As an immediate and direct follow-up to this tragic incident, a comprehensively framed Environment (Protection) Act was enacted in 1986. The EPA is a comprehensive legislation relating to matters of preservation, improvement, and environment and incidental matters thereto. In it, the central government has been empowered to take all such measures as deem fit for the purpose of protection and improvement of the quality of environment by setting standards, regulating industrial activities, and conducting Environmental Impact Assessment (EIA). Some of these will show just how far environmental clearance for development projects has come since then with regulations such as the Hazardous Waste (Management and Handling) Rules, Coastal Regulation Zone (CRZ) Notification, Environmental Impact Assessment Notification being spearheaded substantially by this very EPA.

Keywords: Judicial, Activism, Environmental, Protection, Laws

1. INTRODUCTION

India's environmental laws cover pollution control as well as the preservation of forests and wildlife. The Forest (Conservation) Act of 1980, which mandates prior central government approval for such activities, was passed to stop the indiscriminate diversion of forest land for non-forest purposes. This Act aims to protect the forest cover and ecological balance. Furthermore, wild animals, birds, and plants, as well as objects associated with, incidental to, or supplemental to these, are protected under the Wildlife (Protection) Act of 1972 (as amended later). By creating protected areas like national parks and wildlife sanctuaries, banning the hunting of particular animals, and regulating the trade in wildlife products, it plays a critical role in the protection of biodiversity. (Divan, 2021)

India is increasingly committing itself to renewable energy and climate change action over the past several years. Examples of policies implemented within the country that offer some optimism as to the political will to tackle climate issues include its National Action Plan on Climate Change (NAPCC), as well as the growth of solar and wind energy. While India unfortunately does not have an individual climate change law, the establishment of a National Green Tribunal

(NGT) in 2010 was significant as it allowed for expedited adjudication of disputes in relation to environmental and forest matters. NGT has been instrumental in developing environmental law through its impactful judgments and holding polluters accountable.

However, many challenges remain. In many areas of the law, poor implementation, lengthy delays in court, poor public environmental awareness, corruption, and continued conflict between development and environment objectives often act as limitations to the enforcement of laws. In cities across the country, air and water pollution is commonplace. It is common - and usually undetected - for mineral extraction to be illegally mined or forest land to be converted into cultivation land, and many companies do not even adhere to adequate environmental standards. With the continuing state of overpopulation and industrialisation, India is significantly under pressure, especially from a resource perspective. This makes enforcement challenging. (Upadhyay, 2021)

The Water (Prevention and Control of Pollution) Act 1974 is significant legislation that helps to protect India's water supply. This Act was introduced due to rising water pollution and provided a legal framework for the management, prevention, and control of water pollution.

The process of passing The Act was done in accordance with Article 252 of the Constitution which allows Parliament to make a law with respect to a matter in the State List, if two or more States consent to it. As a result, the Central Government through this law gave national status to the control of water pollution. The Act takes a holistic approach towards water pollution by implementing a regulatory framework on both a federal and state level.

The Act requires industries using water, prior to issuing a consent to operate by the SPCB, to demonstrate that it has appropriate systems and processes to treat its wastewater to particular standards. The SPCB can also require the industries to cease water pollution and can involve the legal system to charge them for not complying with the standard of the Act.

The Act recognizes the need for public participation in environmental protection. It provides a space for citizens to seek justice against polluters, and in turn, courts can hear their claims. This has greatly enhanced transparency and accountability in environmental governance.

At the same time, the Water Act faces certain problems. SPCBs receive notable criticism for failing to enforce violations, which is attributed to lack of resources, lack of staffing and no political will. In addition, the overarching penalties in the Water Act are viewed as weak and do not act as inhibitors of violations. The Act solely addresses pollution issues for "point source" pollution from industries, so therefore it has little to no effect on combating "non-point source" pollution from urban and rural runoff. (Kothari, 2020)

2. LITERATURE REVIEW

Agarwal et al. (2021): The Water (Prevention and Control of Pollution) Act of 1974 was a success toward a more viable and environmentally aware India. It essentially initiated the appropriate groundwork to support a legal regime for the control of water pollution.

Nanda et al. (2019): Although we have redeveloped aspects of environmental governance at present, we still need to work on enforcement, raising penalties, and emerging problems like water pollution. This needs to be done to serve the twenty-first century. In India, judicial activism surrounding environmental protection legislation, protecting the environment from lawmakers and government, has been necessary when dealing with the delays.

Krishna et al. (2022): The judiciary has been at the forefront of these developments, reframing constitutional provisions in new ways to bring environmental justice and to foster our natural resources. This development has in turn made the courts significant stakeholders in the preservation of the environment and in making significant modifications to Indian law.

Ray et al. (2020): The basis of judicial activism on environmental issues in India is grounded in the Constitution. Article 21 provides for the Right to Life and Personal Liberty and has become a key part of the law on environmental protection. The Supreme Court presented Article 21 consistently by interpreting the "right to life" as containing the right to live in a clean and healthy environment. This, in essence, recognised environmental protection as a fundamental human right.

Anderson et al. (2021): The Directive Principles may not be actionable, but the courts have artfully made use of them to inform the interpretations, at times of other statutes, and also to hold the state to its obligations regarding the

environment. Article 51-A(g) notes that it is the fundamental duty of every citizen "to protect and improve the natural environment."

Mahbulul et al. (2021): The judiciary has reinforced this duty, reminding us that we all have a duty to care for our surroundings. The transition from the norm of locus standi, or the right to bring an action in court, by using the Public Interest Litigation (PIL) procedure has been significant in developing judicial activism because it allowed any person or group, concerned about a community or the quality of the environment, to bring a petition on behalf of the community or environment, even if they do not have a stake in it.

Rosencranz et al. (2021): The judiciary now has more access to consider a variety of environmental questions which, prior to this relaxation of the locus standi rules, may not have reached the courts at all.

3. JUDICIAL ACTIVISM IN STRENGTHENING ENVIRONMENTAL PROTECTION LAWS IN INDIA

Article 21 of Indian Constitution states: "No person shall be deprived of his life or personal liberty except according to procedure established by law." Article 21 protects people by accentuating not only the right to live a meaningful life but also a right to live a life of freedom and dignity free from economic and social deprivation. Article 21 is an integral part of any democratic society and is beyond a legal provision. Over the course of time, judicial interpretation has been the most dynamic part of the Indian Constitution and has often been relied on to expand meaning. Article 21 has turned from a narrow simple negative right into a wide range of unenumerated fundamental rights.

Initially, position taken by the judiciary regarding Article 21, particularly, in *A.K. Gopalan v. State of Madras*, [1950] SC 88, was a strict and narrow interpretation of "procedure established by law." The Supreme Court held that the legislature can pass any law and because a legislature may make unreasonable, or irrational law, would simply count as a "procedure established by law." That is, the deprivation of someone's liberty or life could be permissible by arbitrary law and thus treated the law as valid. This narrow view of Article 21 was largely framed by the doctrine of parliamentary supremacy and the early state of Indian constitutional law.

A significant shift happened with the landmark case of *Maneka Gandhi v. Union of India* (1978). The Supreme Court rejected the Gopalan precedent in this landmark ruling and utilized the term, "due process of law", in the jurisprudence of Indian constitutional law. The court stated that the "procedure established by law" must be fair, just, and reasonable (rather than arbitrary, irrational, or oppressive). By recognizing a component of substantial due process in Article 21, the decision allowed the courts to consider not only whether there was a statute, but also whether it permitted fairness and what type of procedure was set out. This enlarged the ambit of Article 21 to include numerous rights.

Similarly, "personal liberty" is also interpreted broadly to mean more than just the absence of physical restraint. The right to personal liberty encompasses many rights which are essential to develop and maintain a person's happiness and well-being. Personal liberty includes the right to travel abroad, the right to know, the right to reputation, and the right to choose a life partner. The judiciary has proclaimed often that personal liberty is a basic right belonging to each person with reasonable restrictions limiting their liberty by a fair judicial system.

Article 21's expansive nature is also illustrated in its application to contemporary concerns. For instance, the emergence of technology has led to the recognition of the right to privacy as a fundamental right under Article 21, even though it is not explicitly stated. In taking steps to ensure privacy is maintained, the Supreme Court has endorsed privacy as being integral to life and individual liberty. In the landmark case *Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors.* (2017), held that privacy is essential for the enjoyment of personal freedom and dignity in the digital era.

Article 21 represents far more than a constitutional provision. It is adaptable to societal needs. The Indian judiciary's expansive interpretation has made it a powerful instrument for social justice and the promotion of human rights. Its application reminds us that state power is not absolute and that everyone must be able to live freely and with dignity, supported by a legal system that is fair and just. Article 21 is important because it is the canvas upon which fundamental rights are painted. In this way, it is very important to support the constitutional values of equality, liberty, and fraternity in India.

Article 48-A states, "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country." The Constitution was amended to add in 1976 in the 42nd Amendment Act. This amendment was a significant turning point in India's constitutional history because it imposed a duty on the state to protect the environment. Environmental issues existed earlier, but did not, in a legal sense, have constitutional backing. Article 48-

A hinted at the gradual growing of global awareness of environmental degradation and a realization in India that sustainable development was dependent on a healthy environment.

In this manner, environmental protection is not merely a choice, but an essential goal which the state must engage in. In its eminent domain role, Article 48-A guides the decision-making of legislators and forces them to consider some conscious approach to environment-related factors in their decisions regarding all aspects of governance; for example, in areas such as industry, agriculture, waste management, urban planning and such. That is where Article 48-A supports other articles found in the Directive Principles of State Policy which affirmed social and economic justice, by recognizing that environmental health is a critical element for overall social goals. In this manner, environmental conservation is also a social justice issue, since the impact of a polluted environment has disproportionately weighted consequences on the poor and marginalized.

The significance of Article 48-A is not simply academic, however. Article 48-A has provided the bedrock for many Indian environmental laws and some judicial decisions. Examples of laws supported by Article 48-A range from the Wildlife (Protection) Act of 1972, The Water (Prevention and Control of Pollution) Act of 1974, the Air (Prevention and Control of Pollution) Act of 1981 and the Environment (Protection) Act of 1986. The Indian judiciary, most notably the Supreme Court, have frequently invoked Article 48-A, sometimes alongside Article 21, as grounds to broadly interpret and expand environmental rights, going so far as to assert that the "right to a wholesome environment" is a fundamental right subject to court intervention. The pro-active role of courts in the period since the introduction of Article 48-A has been significant in responding to pressures from government and private industry on their environmental obligations.

At the same time, the utility of Article 48-A is not without challenges. The Directive Principles of State Policy, like Article 48-A are not justiciable, so citizens cannot directly implement the directive principles in court. The non-justiciable nature of directive principles and the politicisation of the environment often leads to a discrepancy between the aspirational nature of the Constitution and observable realities. Pressures from economic development, rapid industrialization, an increasing population, and poor enforcement usually take precedence over environmental concerns. In nations like India that are still developing, and given the common competing objectives of a 'developmental' priority, development will always take precedence over conservation, and in that battle, conservation will often find itself at the back of the line. It is also possible that the eventual success (e.g., proper environmental governance) could be hindered by negative factors such as corruption, a lack of finance, and not fully engaged public discourse.

Article 48-A, an innovative provision within the Indian Constitution, illustrates the nation's will to engage in the protection of the environment and its natural heritage. There are limits to this sort of engagement because Article 48-A is non-justifiable in law, however, the state had a strong moral and constitutional obligation in this circumstance because these rights fall within the Directive Principles of State Policy. Article 48-A has certainly assisted India's environmental laws and policies and has provided a framework for legislators and the judiciary to achieve a sustainable, healthy, and clean future. The principles in Article 48-A will continue to be relevant when imagining the development of India that works toward the goal of ecological balance and a planet that is ultimately livable for our children.

4. FINDINGS AND DISCUSSION

The constitution's inclusion of Fundamental Duties involved a shift in constitutional thinking - from primarily rights to a more balanced view of rights and duties. The Swaran Singh Committee, which recommended the constitution's Fundamental Duties, expressed that, "while citizens exercise their rights, they should be conscious of their duties towards the nation and the society of which they are a part of." Article 51-A(g) raises the ever-pressing issue of environmental degradation which has become worse since the Article's introduction. Article 51-A(g) ensures that responsibility for the environment is now the responsibility of all of us rather than only the state. You can't leave environmental protection solely to the state. It is a communal responsibility with each of us contributing in our own way.

To fully understand Article 51-A(g), we will analyze it. The phrase "protect and improve the natural environment" requires not just passive protection but also for people to protect and improve the environment while protecting it from harm. The explicit mentioning of "forests, lakes, rivers and wildlife" illustrates the complex nature of ecosystems requiring attention and the different forms of biodiversity in these ecosystems. These natural resources are critical to the survival of the planet. The inclusion of "compassion for living creatures" shifts the responsibility from environmental

protection to ethical responsibility of all living creatures. This mirrors values in ancient India that respected all life, as well as the notion of Vasudhaiva Kutumbakam, or "the world is one family".

The significance of Article 51-A(g) is evident today. India faces extreme environmental problems with deforestation, water pollution, air pollution, biodiversity loss etc. This fundamental duty serves to guide personal action. It calls for individuals to adopt sustainable ways of living, contribute to environmental protection, engage in conservation initiatives and take responsibility along with both themselves and the government for the health of the ecosystem. While courts cannot compel taxpayers to perform their fundamental duties, courts still fulfill the role of a moral guide and reminder for civic duties of community members about environmental responsibility. Courts often rely on such Duties to interpret environmental statutes, such as 51-A(g), and in practice, the scope of Article 21 as the right to life has been interpreted by courts to include the right to live in a healthy environment.

The Indian judiciary has created important environmental concepts as a result of landmark ruling:

- The Polluter Pays Principle from cases like *Vellore Citizens Welfare Forum v. Union of India*, dictating that polluters are responsible for the costs of cleanup efforts, as well as costs for environmental damage, placing the burden of the polluter's wrongdoing on the company at fault, rather than the public.
- The Precautionary Principle, which originated with the same Vellore case, states that actions should be taken if an environmental threat may cause harm, even without scientific certainty about that harm. It promotes pre-emptive action to protect the environment and others, to ensure damage is prevented.
- The Doctrine of Public Trust was recognised in cases like *M.C. Mehta v. Kamal Nath* and based on natural resources, such as rivers, forests and even air, being held in trust for public benefit it prevents the government from wasting, disposing of, or privatising these natural resources for private benefits.
- Absolute liability is based on cases of hazardous activities, first famously recognised in the *Oleum Gas Leak case* (*M.C. Mehta v. Union of India*) which creates strict liability for companies involved in hazardous activities.

The role of the courts was important to the creation and function of the National Green Tribunal (NGT) a specialist and semi-judicial body with the purpose to resolve environmental issues expediently. Even with successful outcomes, these instances of judicial activism in environmental matters have challenges with long timelines to resolve disputes, difficulty with enforcement of decisions made by a court, and the use of authoritative powers by the judiciary to facilitate actions or evaluation better fitted in the executive or legislative branch of government.

However, it is evident that judicial activism has greatly empowered India's environmental laws. By amplifying those that are not being heard, and granting the environment legal standing, the judiciary has forced governments and corporations to reckon with environmental protection law. With such extensive environmental jurisprudence, every Indian citizen now has a right to a clean environment with standing to enforce it.

Nevertheless, the non-justiciable character of Fundamental Duties causes problems with implementation. Much of the effectiveness of the constitutionally mandated duties relies on public education, awareness, and voluntary compliance. The spirit of the enforcement of Article 51-A(g) does not lay solely in holding governments and corporations accountable, but rather in seeking to continually educate citizens. This ought to be undertaken within the scope of implementing several environmental education programs in schools, and providing opportunities for citizens to engage with sustainable steps from a young age. Fundamental duties will only be functional and turned into action in the constitution with government policy, civil society, and communities are engaged in fulfilling their duties. If citizens were able to understand and internalize this duty, citizen engagement could result in grassroots referendums, sustainable accounts of consumption, and a broader public environmental narrative.

The real spirit of Article 51-A(g) of the Indian Constitution is far more comprehensive than a legalistic duty. It represents a powerful moral statement and engagement. It encourages individual citizens to take action and be responsible for preserving the environment and caring for all sentient beings. This basic function is a significant reminder of the ways that human activity directly affects how the planet will weather our turbulent ecological times. By acknowledging this function and committing to it, individuals act collectively to re-vision a sustainable future, and ensure India's natural heritage is carried forward and improved for future generations.

5. CONCLUSION

India has made considerable progress toward developing a solid legal framework for protecting the environment. India has a great variety of laws specific to air and water pollution, to general laws like the EPA, laws regarding forest and wildlife preservation laws and various other approaches to environmental monitoring and protection. The National Green Tribunal strengthens these efforts, as it engenders appropriate forms of enforcement. However, we must generate additional mechanisms of public participation, implement technology to control pollution, and generate strong political commitment to this union between economic growth and environmental sustainability, to apply these laws wherever they overlap and interact. Until we enact these changes to environmental protection in India, the protection and preservation of India's natural heritage remains out of reach.

CONFLICT OF INTERESTS

None.

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