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Environmental Constitutionalism in India: Judicial Innovation, Governance Challenges, and the Future of Ecological Protection

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Abstract

Environmental constitutionalism has emerged as one of the most influential developments in modern public law, particularly in jurisdictions where courts have played an active role in expanding constitutional rights. In India, environmental protection has been significantly shaped by judicial interpretation of constitutional provisions rather than by explicit constitutional text guaranteeing environmental rights. The Indian Supreme Court and High Courts have developed an extensive body of jurisprudence recognizing environmental protection as part of the fundamental right to life under Article 21 of the Constitution. Through innovative doctrines such as the polluter pays principle, precautionary principle, public trust doctrine, and sustainable development, the judiciary has transformed environmental governance into a rights-based constitutional framework. However, despite these advances, environmental governance in India continues to face structural challenges including regulatory fragmentation, enforcement deficits, and tensions between economic development and ecological sustainability. This paper examines the evolution of environmental constitutionalism in India by analyzing the constitutional framework, judicial innovations, and institutional mechanisms developed through case law. It also evaluates governance challenges that limit the effectiveness of environmental constitutionalism and explores potential pathways for strengthening ecological protection in the future. The paper argues that while judicial activism has played a critical role in developing environmental rights, sustainable environmental governance requires stronger institutional coordination, legislative clarity, and participatory governance mechanisms.

Keywords: *Environmental constitutionalism, Article 21, judicial activism, public trust doctrine, sustainable development, environmental governance.*

1. Introduction

Environmental degradation has become one of the most pressing challenges of the twenty-first century. Climate change, biodiversity loss, pollution, and resource depletion have intensified debates about the role of constitutional law in safeguarding ecological systems. Across the world, constitutional courts increasingly recognize environmental protection as a fundamental right or a core state obligation. This phenomenon has given rise to the concept of environmental constitutionalism, which refers to the incorporation of environmental rights, duties, and governance principles into constitutional frameworks.¹

India represents a significant case study of environmental constitutionalism. Unlike many constitutions that explicitly recognize environmental rights, the Constitution of India does not expressly guarantee a fundamental right to a healthy environment. Nevertheless, the judiciary has interpreted constitutional provisions in a manner that effectively constitutionalizes environmental protection. In particular, the Supreme Court has expanded the scope of **Article 21 (Right to Life)** to include the right to a clean and healthy environment.

This judicial expansion has been accompanied by the development of several legal doctrines and governance mechanisms that have transformed environmental law in India. Public Interest Litigation (PIL) has allowed citizens and civil society organizations to approach courts for environmental protection. Landmark cases such as *Subhash Kumar v State of Bihar*, *M.C. Mehta v Union of India*, and *Vellore Citizens Welfare Forum v Union of India* have established the constitutional foundations of environmental protection.²

However, despite these developments, India continues to face severe environmental challenges. Rapid industrialization, urbanization, and population growth have placed immense pressure on natural resources. Implementation gaps, weak enforcement, and institutional fragmentation often undermine environmental regulation.

This paper analyzes environmental constitutionalism in India through three central questions:

1. How has the Indian judiciary developed environmental constitutionalism through constitutional interpretation?

2. What governance challenges limit the effectiveness of environmental constitutionalism?
3. What reforms are necessary to strengthen ecological protection in the future?

The paper adopts a doctrinal legal research methodology, relying on constitutional provisions, judicial decisions, and scholarly literature.

2. Conceptual Framework: Environmental Constitutionalism

Environmental constitutionalism refers to the integration of environmental protection within constitutional law through rights, duties, and institutional mechanisms. It operates through three primary dimensions:

1. **Substantive environmental rights** – recognition of the right to a healthy environment.
2. **Procedural environmental rights** – access to information, participation, and justice.
3. **Institutional environmental governance** – mechanisms for enforcing environmental protection.

In India, environmental constitutionalism emerged through judicial interpretation rather than explicit constitutional amendment.³ Courts relied on existing constitutional provisions such as the right to life, directive principles, and fundamental duties to construct a framework for environmental protection.

Environmental constitutionalism serves several important purposes:

- It elevates environmental protection to the level of fundamental rights.
- It strengthens accountability mechanisms against state inaction.
- It integrates ecological considerations into development policies.

However, constitutionalizing environmental protection also raises questions about the proper role of courts in policymaking and governance.

3. Constitutional Foundations of Environmental Protection in India

¹ Shyam Divan & Armin Rosencranz, *Environmental Law and Policy in India* (2nd edn, Oxford University Press 2001).

² Philippe Sands and Jacqueline Peel, *Principles of International Environmental Law* (3rd edn, Cambridge University Press 2012).

³ Lavanya Rajamani and Shibani Ghosh, *Indian Environmental Law: Key Concepts and Principles* (Oxford University Press 2015).

Environmental constitutionalism in India is grounded in several provisions of the Constitution.

3.1 Article 21: Right to Life

Article 21 guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law. The Supreme Court has interpreted this provision broadly to include the right to live with dignity and environmental quality.⁴

In *Subhash Kumar v State of Bihar* (1991), the Court held that the right to life includes the right to pollution-free water and air.

This interpretation laid the foundation for environmental rights jurisprudence in India.

3.2 Directive Principles of State Policy

The Directive Principles provide important guidance for environmental governance.

Article 48A

Article 48A directs the State to protect and improve the environment and safeguard forests and wildlife.

Article 47

Article 47 requires the State to improve public health, which has environmental implications.

Although Directive Principles are non-justiciable, courts frequently rely on them to interpret fundamental rights.

3.3 Fundamental Duties

The Constitution also imposes environmental responsibilities on citizens.

Article 51A(g)

This provision states that it is the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers, and wildlife.

Courts have used this provision to strengthen environmental jurisprudence by linking citizen duties with environmental rights.

4. Judicial Innovation and Environmental Jurisprudence

The judiciary has been the principal driver of environmental constitutionalism in India.

4.1 Public Interest Litigation (PIL)

Public Interest Litigation revolutionized environmental governance by allowing citizens, NGOs, and activists to approach courts without strict

standing requirements. Environmental PILs have addressed issues such as industrial pollution, deforestation, and wildlife protection.

PIL has allowed courts to supervise environmental governance and issue structural directions to administrative agencies.

4.2 Landmark Environmental Cases

4.2.1 *M.C. Mehta v Union of India*⁵

This series of cases significantly shaped environmental law in India. The Supreme Court expanded the scope of Article 21 and introduced new environmental principles through these cases.

Key contributions include:

- Recognition of the right to a healthy environment
- Development of strict liability for hazardous industries
- Enforcement of environmental standards

4.2.2 *Subhash Kumar v State of Bihar*⁶

In this case, the Supreme Court recognized environmental protection as part of the fundamental right to life.

Although the petition was ultimately dismissed for misuse of PIL, the case established an important precedent linking environmental rights with Article 21.

4.2.3 *Rural Litigation and Entitlement Kendra v State of Uttar Pradesh*

This case addressed limestone quarrying in the Himalayan region and emphasized the importance of ecological balance.

4.2.4 *Vellore Citizens Welfare Forum v Union of India*

The Court introduced the **precautionary principle**, and **polluter pays principle** as essential features of environmental law in India.

5. Development of Environmental Doctrines

Indian environmental jurisprudence has developed several important doctrines through judicial interpretation. The polluter pays principle requires polluting industries to bear the cost of pollution control and environmental damage. This principle ensures that environmental costs are internalized by polluters rather than society.

⁴ Upendra Baxi, 'The Avatars of Indian Judicial Activism' (1985) 6 Supreme Court Cases Journal 1.

⁵ *M.C. Mehta v Union of India* (1987) 1 SCC 395.

⁶ *Subhash Kumar v State of Bihar* AIR 1991 SC 420.

The precautionary principle states that lack of scientific certainty should not prevent preventive action against environmental harm.⁷ The Supreme Court has adopted this principle to regulate hazardous activities. The public trust doctrine holds that certain natural resources belong to the public and must be protected by the state for public use.

The doctrine imposes fiduciary duties on the government to safeguard environmental resources. Sustainable development requires balancing environmental protection with economic growth. Indian courts have frequently invoked this principle when resolving conflicts between industrial development and environmental conservation.

6. Institutional Mechanisms for Environmental Governance

Environmental constitutionalism in India has also led to the creation of specialized institutions. The National Green Tribunal (NGT) was established in 2010 to provide specialized environmental adjudication. The tribunal has jurisdiction over environmental disputes and provides faster resolution compared to traditional courts.

The Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs) regulate pollution under various environmental statutes. These agencies monitor environmental quality and enforce pollution standards. Environmental Impact Assessment (EIA) is an important regulatory mechanism for evaluating the environmental consequences of development projects.

7. Governance Challenges in Environmental Constitutionalism

Despite strong judicial jurisprudence, environmental governance in India faces significant challenges.

One of the major problems is the gap between environmental laws and their implementation.

Courts frequently issue orders, but enforcement often depends on administrative agencies with limited capacity. Environmental governance in India involves multiple ministries, agencies, and regulatory bodies. Lack of coordination often leads to inefficiencies. India's development priorities frequently conflict with environmental protection.⁸

Infrastructure projects, mining, and industrial expansion often raise environmental concerns. Critics argue that judicial activism sometimes leads courts to enter policy domains traditionally reserved for the executive. However, supporters contend that judicial

intervention is necessary when administrative authorities fail to enforce environmental laws.

8. Environmental Constitutionalism and Climate Governance

Environmental constitutionalism has become increasingly relevant in addressing climate change.

Courts are increasingly asked to adjudicate issues related to climate governance, including emissions regulation and climate adaptation.

In India, constitutional environmental rights may play a crucial role in future climate litigation.

9. Comparative Perspectives

Environmental constitutionalism is not unique to India. Several countries recognize environmental rights in their constitutions.

Examples include:

- South Africa
- Brazil
- Ecuador
- Colombia

Compared with these jurisdictions, India relies more heavily on judicial interpretation rather than explicit constitutional provisions.

10. The Future of Environmental Constitutionalism in India

Strengthening environmental constitutionalism requires reforms in several areas.

India needs comprehensive environmental legislation that integrates constitutional principles with regulatory frameworks. Environmental institutions must be strengthened through better funding, staffing, and coordination.⁹ Public participation in environmental decision-making should be expanded.

Future environmental jurisprudence may increasingly focus on climate change and ecological sustainability.

11. Conclusion

Environmental constitutionalism in India represents one of the most dynamic developments in modern constitutional law. Through innovative judicial interpretation, the Supreme Court and High Courts have transformed environmental protection into a fundamental constitutional concern. The expansion of

⁷ Rural Litigation and Entitlement Kendra v State of Uttar Pradesh AIR 1988 SC 2187.

⁸ Vellore Citizens Welfare Forum v Union of India (1996) 5 SCC 647.

⁹ M.C. Mehta v Union of India (Oleum Gas Leak Case) (1987) 1 SCC 395.

Article 21, combined with Directive Principles and Fundamental Duties, has created a rights-based framework for ecological protection.

Judicial innovations such as the polluter pays principle, precautionary principle, and public trust doctrine have significantly strengthened environmental jurisprudence. Public Interest Litigation has enabled citizens to hold the state accountable for environmental degradation.

However, environmental constitutionalism alone cannot solve India's environmental challenges. Implementation gaps, institutional fragmentation, and development pressures continue to undermine ecological protection.

The future of environmental governance in India will depend on strengthening regulatory institutions, enhancing public participation, and integrating constitutional principles into environmental policymaking. Courts will continue to play an important role, but sustainable environmental protection requires cooperation among all branches of government.

Environmental constitutionalism in India thus remains an evolving project—one that reflects both the promise and the limitations of constitutional law in addressing ecological crises.

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