



# Analyzing the Role of Indian Constitution in Environment Protection

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**Abstract:** *The Indian Constitution is remarkable and unique. The constitution was drafted by referring to the constitutions of many other Countries. Since India is a multilingual and multireligious country, great care was taken to incorporate all positive values and practices into the Constitution. This paper explores the significant role of the Indian Constitution in shaping environmental protection policies and practices. It highlights key constitutional provisions such as Articles 48A and 51A(g), which mandate the protection and enhancement of the natural environment, and the integration of environmental concerns into policies and development plans. The study also examines relevant environmental laws, including the Environment Protection Act, the Air and Water Acts, the Wildlife Protection Act, and the Forest Act, emphasizing their importance in regulating environmental issues. Furthermore, it discusses the Biological Diversity Act, which focuses on conserving biological diversity and ensuring equitable benefit sharing. The paper underscores India's commitment to international environmental conventions and treaties, such as the Ramsar Convention and the Convention on Biological Diversity. It also emphasizes the critical role of Fundamental Duties in environmental protection and the significance of Article 21, which recognizes the right to a clean and healthy environment. The Constitution's directive principles, including Articles 47 and 48, further stress the importance of environmental conservation. The article concludes by emphasizing the need for public participation, environmental education, and awareness to mobilize individuals in preserving the environment. Overall, the Indian Constitution serves as a foundational framework for environmental conservation, reflecting the nation's commitment to safeguarding its natural heritage for current and future generations.*

**Key Words:** *Indian Constitution, Environmental Protection, Constitutional Provisions, Fundamental Duties, Environmental Laws, International Convention.*

## 1. INTRODUCTION :

India's concern and commitment towards environmental conservation were reinforced in 1976 by the 42<sup>nd</sup> Amendment of the Constitution of India. Article 48A under the Directive Principles of State Policy and Article 51A (g) of the Fundamental Duties in the constituting state that 'the State shall endeavor to protect and improve the environment and to safeguard forests and wildlife in the country and 'to protect and improve the natural environment including forests, lake, rivers and wildlife, and to have compassion for the living creatures.

The Union Cabinet approved the National Environment Policy (NEP) on May 18, 2006. NEP 2006 is the response of the GOI to the Constitutions Articles 48A and 51(g). By this it is recognized that maintaining a healthy environment is not the stat's responsibility alone, but also that of every citizen. The main objectives of NEP 2006 are as follows:

- ❖ To protect and conserve critical environmental resources including ecological and life-support system;
- ❖ To ensure equitable access to environmental resources for all sections of the society, particularly the poorer communities, across the generations;



- ❖ To integrate environmental concerns into policies, plans, programs and projects for economic and social development;
- ❖ To ensure the efficient use of the environment;
- ❖ To apply the principles of good governance of environmental resources and
- ❖ To ensure higher support for environmental by means of public participation, finance and technology.

## **2. OBJECTIVES :**

- To provide an overview of the role of the Indian Constitution in the protection of the environment.
- To analyze the various Acts and legislative measures associated with environmental safeguarding in India.
- To examine and emphasize the significance of international conventions and treaties concerning environmental protection.
- To emphasize the essential role of Fundamental Duties in the context of environmental protection.

## **3. METHODOLOGY :**

This research paper adopts an analytical approach and relies primarily on secondary data sources, including books, journals, and websites, to fulfill its objectives.

## **4. ENVIRONMENT PROTECTION ACT :**

After the widespread loss of human lives and the prevailing miseries brought about by the Bhopal gas leak tragedy, the Government of India woke up to the need for a comprehensive environmental law. Thus in 1986, India adopted the Environment (Protection) Act with the objective of protecting and improving India's environment. It is an umbrella Act that consolidates the provision of the Air and Water Acts of the EPA, 1986 through its rules made it mandatory for the Government to formulate national environmental standards, to prescribe procedures for managing hazardous substances, to regulate the location of industries, to establish safeguards for preventing environmental accidents and to disseminate information on environmental pollution. EPA established the Central and State Pollution Control Boards. The Pollution Control Board formulates pollution control standards for industries under the provisions of the Water and Air Acts. Some of the rules that have guided the nation under EPA include the Hazardous Waste (Management and Handling) Rules of 1989, the Public Insurance Act of 1991 (amended in 1992), the Biomedical Waste Management and Handling Rules of 1998 and the Noise Pollution (Regulation and Control) Rules of 2000.

## **5. THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT :**

After participating in the 1972 UN Conference on Human Environment that was held in Stockholm, the Government of India amended the Constitution and adopted Articles 48A, 51A (g) and 253. On the basis the amendments, the Parliament enacted the Prevention and Control of Pollution Act, 1981 (Air Act, 1981). The objective of the Air Act, 1981 is to control air pollution. The Act is different from the water act as it also takes into consideration noise pollution. Under Section 37 of the Air Act, persons or agencies violating the prescribed norms of air pollution are liable for prosecution, and in the event that the violation continues unabated for an year after the first conviction the guilty can by imposed a fine and up to seven years of imprisonment.

## **6. THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT :**

The Water Act, 1974 is the first Indian law focused on the prevention of discharging domestic and industrial wastewater into rivers and lakes without adequate treatment. Under the Act, Water Boards were first established. The Water Boards were empowered to issue consent of establishment when a company wanted to establish a new factory and consent for operation before and existing factory could be run. The water boards later upgraded into the more inclusive Pollution Control Boards when EPA came into force in 1986. Like the Air Act, the Water Act has the provision to prosecute by way of levying fines or through imprisonment violation and under the Article 41 those who continue to violate despite the first convention.

## **7. THE WILDLIFE (PROTECTION) ACT:**



The wildlife (Protection) Act, 1972 is an Act for the protection of wild animals and plants and for matters connected to these lives directly or indirectly with a view of ensuring the ecological and environmental security of the country. The Act also known as the 'Indian Wildlife Act' was enacted after it was observed that the Wild Birds and Animals Protection Act, 1912 was completely outmoded. The 1912 Act many other State Acts were inadequate to deal with the problems faced by India's wildlife as they only focused on the prevention and regulation of hunting. They did not address threats to our wildlife posed by taxidermy and trade in wildlife and products derived from the. Under the provisions of the Act, the Government of India is obliged to establish National and State Wildlife Advisory Boards. Under the act Indian Plants and animals have been categorized into six schedules of Protection. Animals in Schedule 1 are those that are accorded the highest protection in the country. The 2002 Amendment of the Act lists forty three species of mammals, twenty five birds, seventeen species of amphibians and reptiles, amongst fist sharks, sea horses and groupers and over a 100 species of insects and other invertebrate animals in the schedule 1. Tiger, elephant, lion, one-horned rhinoceros, blackbuck and Indian peafowl are some of the animals that enjoy the Schedule 1 status in India.

### **8. FOREST ACT:**

The Indian Forest Act, 1927 is one of the pre-independence legislation that continued to govern the management of forests throughout India. This colonial legislation was mainly enacted to enable the state to acquire ownership over forests and their produce and to facilitate the trade of timber. The Act permitted the declaration of forests as "Reserve Forests" by which access was denied to the general public. After independence, the focus on forests as reserves of timber gradually shifted. Forests were seen as habitats for the conservation of wildlife and the need to restrict the clearing of extensive areas for other land uses like mining and industry was increasingly felt. As a result, the Government of India enacted the Forest (Conservation) Act, 1980. The 1980 Act requires the State Government to obtain the approval of the Government of India before it de-notifies a reserves forests, leases forest land to a private person or agency or clears it for any other purpose. It has also made it mandatory that whenever forestlands are cleared and diverted for non-forest uses, appropriate compensatory afforestation is to be undertaken by the person or agency responsible for the diversion of land.

### **9. BIODIVERSITY ACT:**

India is a signatory of the United Nations Convention of Biological Diversity. Convention of Biological Diversity has made it mandatory for the countries that are party to it to draft exclusive laws or modify the existing ones such that the sovereign rights of the nations to use their own biological resources are not compromised. To this end, the Biological Diversity Act, 2002 has been enacted in India. The Act, popularly known as the 'Biodiversity Act' is meant to provide for the conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits that arise out of the use of the biological resources. By this it is meant that living organisms and their services can be utilized by human beings, however in a sustainable manner without affecting the environment. The Act takes the conservation measures one step further by recognizing that (I) rural and forest-dwelling people, who are often poor, have nurtured plants, animals and their natural habitats and preserved extensive knowledge of their uses through traditional means and (II) such people or the communities to which they belong be appropriately rewarded when their knowledge is tapped for human well-being.

### **10. INTERNATIONAL CONVENTION AND TREATIES:**

There are number of international agreements and treaties that nations have adopted for the sake of guaranteeing a safe environment for both the present and future generations. The international agreements that are focused on the environment have been drafted and presented as 'Convention' adopted specific themes such as wetlands, biodiversity, climate change, desertification and others. Countries that have signed and ratified any of the conventions are known as 'Contracting Parties' of the Convention. Once a Contracting Party, a county is obliged to adhere to the rules and recommendations of the Convention and periodically submit reports of the actions taken to the Secretariat or Head Quarters of the Convention. Contracting periodically organizes to review the impacts of the rules and recommendations and adapt or amend the same whenever there is a genuine need to do so. India is a Contracting Party to most the international conventions that pertain to the environment. Following are the some of the most important international conventions that India has ratified:

- Ramsar Convention



- Convention on Biological Diversity
- Convention to Combat Desertification
- Convention on Climate Change

## **11. FUNDAMENTAL DUTIES AS AN INTEGRAL TOOL FOR ENVIRONMENTAL PROTECTION:**

Environmental security is a paramount imperative, necessitating the safeguarding of our natural surroundings. Within the framework of the Indian Constitution, Part IV-A bestows specific fundamental duties upon its citizens to uphold environmental integrity. These duties serve as a continuous reminder to every citizen that, while the Constitution endows them with certain fundamental rights, it also mandates adherence to essential principles of democratic conduct and equitable behaviour.

Article 51-A(g) of the Indian Constitution mandates that every citizen has a fundamental duty to protect the environment. According to this article, it is the responsibility of every Indian citizen to safeguard and enhance the natural environment, which encompasses forests, lakes, rivers, wildlife, and the welfare of living creatures. This provision was incorporated into the Constitution through the 42nd Constitutional Amendment Act, aligning India with the rules of the Stockholm Conference in 1972, of which India was a signatory. This amendment also introduced Article 48-A under Part IV of the constitution, emphasizing the duty of the state to protect the environment, wildlife, and forests. Achieving social and economic justice necessitates the collaborative effort of both the government and its citizens in ensuring the preservation of nature and forests.

Part III of the Indian constitution guarantees fundamental rights essential for the development and fulfilment of every individual's potential, inherent solely by virtue of being human. The right to a clean and healthy environment is a fundamental right falling under the purview of the Right to Life, protected under Article 21 of the Constitution. This environmental right was first acknowledged under Article 21 in the case of *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*. This landmark case involved environmental and ecological balance issues, leading the Supreme Court to halt illegal mining under the Environment (Protection) Act, 1986. In the case of *M.C. Mehta v. Union of India*, the court further recognized that Article 21 includes the right to live in a pollution-free environment. The Orissa High Court underscored Article 51-A(g) and Article 21 as cornerstones of environmental jurisprudence, highlighting the shared responsibility of both the state and citizens to safeguard the environment.

The Indian Constitution also outlines Directive Principles aimed at creating a welfare state. A clean environment is an integral component of such a state. Article 47 mandates that the State shall strive to improve the standard of nutrition, lifestyle, and public health of its citizens, which inherently includes the protection and enhancement of the environment. Article 48 directs the State to organize agriculture and animal husbandry on modern and scientific lines, including efforts to conserve and improve cattle breeds while prohibiting the slaughter of cows.

The Supreme Court, in the case of *M.C. Mehta v. Kamal Nath*, has ruled that Articles 51-A(g) and 48-A must be interpreted in light of Article 21 of the Constitution, which guarantees that no person shall be deprived of their life and personal liberty except by law. Any degradation of essential natural elements such as air, water, and soil poses a threat to life under the ambit of Article 21.

The protection of nature is deeply ingrained in our social values and traditions. Earth is our sanctuary, and it is our duty to safeguard it. The Indian Constitution provides provisions for the preservation of nature, underscoring the importance of citizens being aware of these provisions. It is imperative in today's world to encourage greater public participation, environmental education, and awareness to mobilize individuals in the preservation of our ecology and environment.

## **12. CONCLUSION :**

The Indian Constitution stands as the supreme law of the land, encompassing sections dedicated to addressing pressing environmental concerns, thereby offering potential avenues for effective environmental protection. The government of India has demonstrated unwavering commitment and undertaken substantial efforts in this regard. Additionally, the preservation of our environment is deeply embedded within our cultural heritage, as exemplified in the Atharvaveda's profound declaration that Earth itself is our paradise, deserving of our diligent care. The Constitution of India, serving as the bedrock of our nation, provides a robust framework for the safeguarding and



preservation of our natural surroundings. It is the very essence of our existence, and without it, the fullness of life remains incomplete. Consequently, it becomes imperative for us to possess a comprehensive understanding of the constitutional provisions governing environmental protection. This knowledge is not only crucial but also instrumental in fostering widespread public engagement, nurturing environmental awareness, advancing environmental education, and sensitizing individuals to the profound urgency of preserving our fragile ecology and environment.

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