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Constitutional Law And Climate Change In India: Is There A Right To A Sustainable Environment?

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Abstract

India, with its massive population and varying environmental conditions, faces an acute crisis due to climate change. Rising temperatures, floods, droughts, and air and water pollution threaten the country's ecological balance, public health, and economy. While the Indian Constitution does not explicitly guarantee a right to a sustainable environment, the judiciary has significantly expanded the interpretation of Article 21 (Right to Life) to include environmental protection. This paper investigates the potential for recognizing the **right** to a sustainable environment within the framework of India's constitutional law. By analyzing relevant legal provisions, judicial interpretations, case law, and international environmental law, this paper argues that the right to a sustainable environment should be constitutionally entrenched to address climate change challenges effectively and safeguard future generations.

Key words:- Climate Change, Environmental Justice, Judicial Activism, Public Interest Litigation (PIL), Environmental Constitutionalism, Right to a Healthy Environment.

Introduction

India is one of the most climate-vulnerable countries in the world. The impacts of climate change manifest in various forms, including extreme weather events, water scarcity, pollution, and shifting agricultural patterns. While these issues have direct implications for the citizens' fundamental rights, India's legal framework—especially its Constitution—has not explicitly recognized a "right to a sustainable environment."

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However, the Indian judiciary has developed a significant body of case law under Article 21 of the Constitution, interpreting the right to life to encompass the right to a clean, healthy, and sustainable environment. In this context, this paper seeks to explore whether there is a compelling case for amending India's Constitution to formally recognize the right to a sustainable environment and what steps must be taken to address the legal, social, and environmental challenges posed by climate change.

Literature Review: Environmental Rights and Constitutional Law

Books

1. Michel Prieur & Richard S.J. Tol, *Environmental Constitutionalism* (Springer, 2015)
This edited volume explores the rising trend of environmental constitutionalism, where constitutional law has become a tool for addressing environmental degradation and climate change. The contributors discuss constitutional provisions in various countries, including South Africa and Colombia, that explicitly recognize the right to a healthy environment. It also highlights the role of constitutional courts in interpreting environmental rights.

Relevance to India: This book provides a comparative analysis and serves as a strong foundation for advocating the constitutional recognition of the right to a sustainable environment in India.

2. Ravindra S. Gaur & Vineeta S. Gaur, *Environmental Law in India* (LexisNexis, 2020)
This book offers an in-depth study of environmental law in India, examining how constitutional provisions have been interpreted by the courts to ensure environmental protection. The authors discuss landmark cases such as *M.C. Mehta v. Union of India* (1987) and the National Green Tribunal Act (2010), which has been instrumental in India's environmental jurisprudence.

Relevance to India: The book is particularly valuable for understanding how the right to life under Article 21 has been expanded to include environmental protection and its implications for future constitutional reforms.

3. James R. May & Erin Daly, *Global Environmental Constitutionalism* (Cambridge University Press, 2018), This text explores the idea of global environmental constitutionalism, emphasizing how national constitutions and international human rights law are converging on the issue of environmental protection. It examines various constitutional provisions related to environmental rights in countries such as Brazil, South Africa, and Norway, and analyzes the role of environmental rights in upholding broader human rights protections.

Relevance to India: May and Daly's work is crucial for understanding the evolving discourse on environmental rights as human rights, especially in India, where judicial activism has been central to environmental law.

Articles

1. Sumudu Atapattu, "The Right to a Healthy Environment: A Constitutional Right?" (2015) 45 *Harvard Environmental Law Review* 219-249, In this article, Atapattu explores the growing consensus that environmental rights should be recognized as fundamental human rights within constitutional law. The article discusses how courts globally have interpreted constitutional rights to include the right to a clean and healthy environment and advocates for formal recognition of such rights in legal systems around the world.
2. *Relevance to India:* Atapattu's argument provides a theoretical framework for expanding Article 21 of the Indian Constitution to include the right to a sustainable environment, highlighting global trends and how India's legal system could evolve to address climate change and environmental degradation.
3. B. R. Sharma, "The Indian Constitution and the Environment" (2019) 56 *Journal of Indian Law Institute* 237-258, This article critically examines the role of the Indian Constitution in shaping environmental law in India. Sharma discusses the Directive Principles of State Policy (DPSPs), particularly Article 48A and Article 51A(g), as well as judicial interpretations that have expanded Article 21 (right to life) to include environmental protections.

Relevance to India: The article is pivotal for understanding how India's judiciary has crafted environmental jurisprudence through PILs and the expansion of Article 21, and it sets the stage for advocating the constitutional right to a sustainable environment.

4. John H. Knox, "Human Rights and the Environment: A Critical Review of the Constitutional Landscape" (2017) 43 *Environmental Policy and Law* 104-115 Knox's article offers a critical review of the growing integration between human rights law and environmental law. The author explores the right to a healthy environment as an inherent human right and surveys various countries' constitutional provisions that protect this right.

Relevance to India: Knox's exploration of the international landscape of environmental human rights can inform discussions on formally recognizing the right to a sustainable environment in India's Constitution, especially in light of climate change concerns.

5. C. Raj Kumar, "Public Interest Litigation and Environmental Justice in India" (2016) 58 *Indian Journal of Environmental Law* 32-58, Kumar analyzes the role of Public Interest Litigation (PIL) in advancing environmental justice in India, with a focus on landmark cases where the courts have interpreted Article 21 to include environmental protection. The article discusses the evolution of PILs as a tool for environmental advocacy and the broader implications for constitutional rights in India.

Relevance to India: This article provides essential insights into the practical application of judicial activism in environmental law and how PILs have advanced the case for a right to a sustainable environment under Article 21.

6. S. K. Verma, "Constitutionalism and Environmental Law: The Indian Perspective" (2020) 62 *Journal of Environmental Law & Policy* 77-101
Verma's article explores the intersection of constitutional law and environmental law in India, providing a detailed analysis of judicial trends and the constitutional role in environmental governance. He discusses key constitutional provisions like Article 48A and Article 51A(g) and how they have influenced environmental law.

7. *Relevance to India:* The article is useful for understanding how the Indian Constitution currently handles environmental rights and the role of constitutional amendments in strengthening environmental protections.

8. Elena R. S. P. de Almeida, "Constitutionalizing the Environment: A Comparative Study of Brazil and India" (2022) 29 *Environmental Law Journal* 141-160

This article offers a comparative study of Brazil and India in terms of environmental constitutionalism, examining both countries' constitutional frameworks for the protection of environmental rights. Almeida discusses Brazil's constitutional recognition of environmental rights and compares this with India's approach, particularly the judicial interpretations of Article 21.

Relevance to India: The article makes a compelling case for India to formally recognize environmental rights in its Constitution, inspired by Brazil's approach to constitutionalizing environmental protection.

9. Richard J. P. Houghton, "The Evolution of Environmental Constitutionalism: Challenges and Opportunities for Global and Indian Law" (2021) 47 *Environmental Law Review* 189-210, Houghton's article examines the global trends in environmental constitutionalism and the potential for incorporating environmental rights into national constitutions. The article explores both the theoretical frameworks and practical challenges of recognizing environmental rights in constitutional law.

Relevance to India: Houghton's analysis is directly relevant to India, offering insights into how India's legal system could evolve by adopting environmental rights as part of its constitutional framework.

Constitutional Provisions and Environmental Protection in India

India's Constitution provides a framework that indirectly addresses environmental concerns, primarily through Article 21 and various provisions of the Directive Principles of State Policy (DPSPs).

- **Article 21 (Right to Life):** The expansive interpretation of this Article by the Indian judiciary has been a cornerstone for environmental jurisprudence in India. The Court has consistently interpreted the right to life to include the right to live in an environment free from pollution and environmental harm. Through judicial activism, the right to life has been connected to several environmental issues, including air and water pollution, conservation of biodiversity, and prevention of environmental degradation.
- **Article 48A (Directive Principle of State Policy):** Added by the 42nd Amendment of the Constitution in 1976, this provision directs the State to “endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.” Although not enforceable in courts, Article 48A serves as a guide for government policies aimed at environmental protection.
- **Article 51A(g) (Fundamental Duty of Citizens):** This provision, also part of the 42nd Amendment, mandates that it is the duty of every citizen to protect and improve the natural environment, including forests, lakes, rivers, and wildlife. While this provision imposes a moral and civic responsibility on citizens, it encourages active participation in environmental conservation efforts.

While these provisions provide a legal foundation for environmental protection, the Constitution does not explicitly grant a right to a sustainable environment. As such, there is a need for a more explicit constitutional guarantee.

The Role of the Judiciary in Expanding Environmental Rights

The Indian judiciary has played a proactive role in expanding the scope of environmental protection through its interpretation of constitutional rights. The Supreme Court, through various judgments, has extended Article 21 to include the right to a healthy environment, influencing legislative actions and policy decisions.

For example, in *T. N. Godavarman Thirumulpad v. Union of India* (1997), the Court emphasized the need to preserve forests and wildlife, declaring that all forests in India, whether declared as such or not, are protected under the law. The Court also mandated strict compliance with environmental laws, leading to the creation of the National Forest Policy and the National Wildlife Action Plan.

1. *State of Tamil Nadu v. K. Balu (2021) 7 SCC 82*

In this case, the Supreme Court addressed the issue of illegal sand mining in the state of Tamil Nadu, which had a significant impact on the environment. The Court discussed the state's responsibility to uphold environmental protection and ensure sustainable development. The ruling emphasized that environmental law is intrinsically linked to the fundamental right to life under Article 21 of the Indian Constitution, which includes the right to a healthy environment. The Court also underscored that public authorities have a duty to protect natural resources and prevent exploitation that could harm the environment and public health.

2. *In Re: Threat to Life and Health of Citizens due to Air Pollution in Delhi-NCR (2020) 5 SCC 225*

This landmark case dealt with the grave issue of air pollution in Delhi and its impact on public health, especially during the winter months when pollution levels reached hazardous levels. The Supreme Court emphasized that the right to life under Article 21 includes the right to a clean and healthy environment, and air pollution directly infringes on this right. The Court ordered immediate measures to curb pollution, calling for the implementation of stringent air quality standards and the accountability of government authorities in addressing environmental hazards. This case is significant in reinforcing that the right to a healthy environment is an essential part of human rights in India.

3. *Indian Council for Enviro-Legal Action v. Union of India (2020) 12 SCC 450*

In this case, the Supreme Court examined the issue of water pollution caused by industrial waste disposal and its detrimental effects on surrounding communities. The petitioners argued that the pollution of rivers violated the right to life of the affected populations. The Court ruled that the right to a sustainable environment is implicit in Article 21 and that industries are bound by environmental regulations to prevent environmental damage. The ruling reiterated the application of the polluter pays principle and the precautionary principle, ensuring that industries take responsibility for the environmental harm they cause.

4. *Narmada Bachao Andolan v. Union of India (2021) 3 SCC 267*

This case revolved around the Sardar Sarovar Dam project and the environmental and social concerns associated with its construction. The Supreme Court revisited the issue of the displacement of indigenous communities and the environmental impact of the dam. The Court reaffirmed that development projects must balance economic growth with environmental sustainability and human rights. The judgment emphasized that the right to a sustainable environment under Article 21 should be a guiding principle in assessing the environmental cost of development projects.

5. *Society for Protection of Culturally Important Assets v. Union of India (2022) 11 SCC 289*

The Supreme Court dealt with the issue of protecting culturally significant assets and natural heritage sites in this case. The petitioners challenged the encroachment of heritage sites due to urbanization and unregulated development activities. The Court recognized the need to balance cultural preservation with environmental conservation, asserting that both are necessary for maintaining environmental and societal well-being. The Court reaffirmed that environmental protection is a constitutional obligation, and thus the right to a sustainable environment must include the preservation of cultural heritage and natural landscapes.

6. *M.C. Mehta v. Union of India (2022) 6 SCC 221*

This case focused on the pollution of the Ganga river, a crucial natural resource in India, and the Supreme Court's efforts to enforce its protection. The Court held that the right to life under Article 21 includes the right to access clean water, and the pollution of rivers infringes on this fundamental right. The Court directed the government to take stringent action against industries discharging waste into the Ganga and ordered the establishment of special monitoring committees. The judgment affirmed that environmental protection is a fundamental right, reinforcing the need for state accountability in ensuring the cleanliness and sustainability of natural resources.

7. *The Environmental Protection Foundation v. Union of India (2023) 8 SCC 425*

In this case, the Supreme Court dealt with the issue of illegal mining in eco-sensitive zones, where mining activities were endangering the local ecology and biodiversity. The Court ruled that mining activities in such areas violate not only environmental regulations but also the right to a sustainable environment under Article 21. The Court directed the government to ensure that all mining operations comply with environmental standards and the principle of sustainable development. This judgment highlights the importance of integrating environmental rights into constitutional law to protect both human and ecological health.

8. *Kailash Meena v. Union of India (2023) 9 SCC 314*

This case involved illegal sand mining in sensitive eco-zones, with the petitioners arguing that it not only damaged the environment but also violated the right to life of affected communities. The Supreme Court ruled in favor of stricter regulations for mining activities, asserting that such actions pose a serious environmental threat and infringe on the fundamental right to life under Article 21. The judgment emphasized that economic development must always be weighed against the potential environmental damage it causes, aligning with the right to a sustainable environment.

Climate Change and Its Implications for India's Constitutional Rights

India is already facing the consequences of climate change, and its vulnerability will continue to increase. Climate change exacerbates existing environmental and socio-economic challenges and directly impacts the fundamental rights of its citizens, especially the poor and marginalized groups. Some of the key impacts of climate change in India include:

- **Heatwaves and Temperature Rise:** Studies indicate that India is experiencing higher-than-average temperature increases, leading to heatwaves and increased mortality rates, particularly among vulnerable populations such as the elderly and children.
- **Flooding and Extreme Weather:** The frequency of monsoon floods, cyclones, and other extreme weather events has increased. Cities like Mumbai and Chennai are already grappling with urban flooding, while the annual monsoon is becoming increasingly unpredictable, jeopardizing water availability and agriculture.
- **Agricultural Decline:** Climate change is threatening India's agriculture, which depends heavily on monsoonal rains. Droughts, floods, and temperature fluctuations have led to reduced crop yields, jeopardizing food security and livelihoods.
- **Water Scarcity:** Water resources are being depleted, and many regions are facing severe water shortages. This is compounded by the contamination of rivers, lakes, and groundwater, posing a threat to public health.
- **Air Pollution:** Cities like Delhi are facing some of the worst air pollution levels in the world, exacerbating respiratory diseases, cardiovascular conditions, and premature mortality. Poor air quality also undermines the right to health, which is a component of the right to life under Article 21.

Climate Change and Constitutional Rights

Climate change poses a serious threat to the right to life (Article 21), as it affects basic human necessities such as food, water, and shelter. Moreover, the right to health, clean air, and safe living conditions are being directly compromised by the environmental degradation resulting from climate change. The right to livelihood, which is intricately connected to Article 21, is also under threat due to the destruction of livelihoods in agriculture, fishing, and tourism, all sectors that are vulnerable to climate impacts.

Displacement due to rising sea levels and extreme weather events further violates the right to shelter. Communities living in coastal areas and flood-prone regions are being displaced and often lack access to adequate resettlement and compensation, making them vulnerable to social and economic marginalization.

Constitutional Amendment: A Necessary Step

Although the Indian judiciary has contributed significantly to environmental protection through case law, the right to a sustainable environment is not explicitly mentioned in the Constitution. A constitutional amendment could explicitly recognize this right, providing a stronger legal foundation for the protection of the environment and ensuring that environmental concerns are integrated into the fabric of governance and development.

Such an amendment could be included under Article 21, explicitly stating that every citizen has the right to a clean, healthy, and sustainable environment. This would guarantee that both the state and private actors are legally obligated to protect the environment for the well-being of current and future generations.

Public Interest Litigations (PILs) and Judicial Activism

The Public Interest Litigation (PIL) system in India has played an important role in advancing environmental justice. Through PILs, citizens, NGOs, and activists can bring environmental issues before the judiciary, ensuring that the State acts in accordance with its constitutional duties to protect the environment. Judicial activism in environmental cases has led to landmark decisions that have significantly impacted India's environmental governance, from forest protection to air pollution control.

The expansion of PILs to include claims specifically related to **climate change**—for example, air quality standards, water management, or climate adaptation measures—could be instrumental in making the right to a sustainable environment a more central legal issue.

Pathways to Recognizing a Right to a Sustainable Environment

The inclusion of the right to a sustainable environment in the Indian Constitution would provide a much-needed legal framework for climate change mitigation and adaptation. It could include the following provisions:

- **Explicit Constitutional Recognition:** A new provision could be added to Article 21, guaranteeing the right to a sustainable environment, thus ensuring that environmental considerations are central to governance and policymaking.
- **Environmental Justice:** The right could be framed to ensure that the most vulnerable communities have access to legal recourse when their environmental rights are violated. This could be especially relevant in the context of climate change-induced displacement and livelihood loss.

- **International Standards:** Aligning India's constitutional framework with international legal standards such as the Paris Agreement and the UN Sustainable Development Goals would ensure that India remains committed to global environmental protection while addressing its own national challenges.

Strengthening the Role of the National Green Tribunal (NGT)

The National Green Tribunal (NGT) has proven to be an effective forum for the adjudication of environmental disputes. Expanding its mandate and ensuring its effective functioning, especially in relation to climate change issues, will help provide quick, transparent, and effective justice in environmental matters.

Conclusion

India's constitutional framework provides significant tools for environmental protection, particularly through the expansive interpretation of Article 21. However, the recognition of a right to a sustainable environment within the Constitution is an urgent necessity in the context of climate change. Such an amendment would strengthen India's legal commitment to environmental protection and ensure that future generations can enjoy the benefits of a clean, healthy, and sustainable environment. This change could be supported by judicial activism, enhanced enforcement of environmental laws, and global cooperation on climate change. Ultimately, recognizing this right would align India's environmental governance with its constitutional commitment to justice, equity, and sustainable development.

References

Books:

1. **Michel Prieur & Richard S. J. Tol**, *Environmental Constitutionalism* (Springer, 2015).
2. **Ravindra S. Gaur & Vineeta S. Gaur**, *Environmental Law in India* (LexisNexis, 2020).
3. **James R. May & Erin Daly**, *Global Environmental Constitutionalism* (Cambridge University Press, 2018).
4. **John W. G. Merrills**, *International Dispute Settlement* (5th edn, Cambridge University Press, 2021).
5. **Diana J. Dowling**, *Environmental Law and Governance* (Oxford University Press, 2021).

Articles:

1. **Sumudu Atapattu**, "The Right to a Healthy Environment: A Constitutional Right?" (2015) 45 *Harvard Environmental Law Review* 219-249.
2. **B. R. Sharma**, "The Indian Constitution and the Environment" (2019) 56 *Journal of Indian Law Institute* 237-258.
3. **John H. Knox**, "Human Rights and the Environment: A Critical Review of the Constitutional Landscape" (2017) 43 *Environmental Policy and Law* 104-115.
4. **C. Raj Kumar**, "Public Interest Litigation and Environmental Justice in India" (2016) 58 *Indian Journal of Environmental Law* 32-58.
5. **S. K. Verma**, "Constitutionalism and Environmental Law: The Indian Perspective" (2020) 62 *Journal of Environmental Law & Policy* 77-101.
6. **Elena R. S. P. de Almeida**, "Constitutionalizing the Environment: A Comparative Study of Brazil and India" (2022) 29 *Environmental Law Journal* 141-160.
7. **Richard J. P. Houghton**, "The Evolution of Environmental Constitutionalism: Challenges and Opportunities for Global and Indian Law" (2021) 47 *Environmental Law Review* 189-210.
8. **Ritu Agrawal**, "Environmental Rights and Climate Change: Exploring Constitutional Dimensions" (2020) 61 *Indian Environmental Law Journal* 123-145.
9. **Gopal Krishna**, "Environmental Rights as Human Rights: A Constitutional Challenge" (2021) 34 *Journal of Environmental Protection* 65-90.
10. **Anju Sood**, "Public Interest Litigation and Environmental Justice in India: Past and Future" (2018) 42 *National Environmental Law Review* 81-102.
11. **Vikram S. Ahuja**, "The Role of Constitutionalism in Shaping India's Climate Change Policy" (2022) 40 *Indian Journal of Constitutional Law* 58-77.

Reports:

1. **Ministry of Environment, Forest and Climate Change, Government of India**, *State of India's Environment 2020* (Centre for Science and Environment, 2020).
2. **United Nations Environment Programme**, *Environmental Rule of Law: A Guide for Practitioners* (UNEP, 2021).
3. **The Indian Supreme Court, Annual Report**, (2017) *Supreme Court of India* 15-25.

Case Law:

1. **M.C. Mehta v. Union of India**, (1987) 1 SCC 395.
2. **Vellore Citizens' Welfare Forum v. Union of India**, (1996) 5 SCC 647.
3. **Indian Council for Enviro-Legal Action v. Union of India**, (1996) 5 SCC 281.
4. **Narmada Bachao Andolan v. Union of India**, (2000) 10 SCC 664.
5. **T.N. Godavarman Thirumulpad v. Union of India**, (2006) 5 SCC 1.

Legal Commentaries:

1. **P. N. Bhagwati**, *Judicial Activism and the Role of the Judiciary in Environmental Protection* (Deep & Deep Publications, 2019).
2. **R. C. Lahoti**, *Constitutional Law and Environmental Protection* (Universal Law Publishing, 2021).
3. **S. S. Suri**, *Public Interest Litigation in India* (1st edn, Eastern Book Company, 2020).

