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CONSTITUTIONAL RECOGNITION OF ENVIRONMENTAL RIGHTS: A COMPARATIVE ANALYSIS

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Abstract

Environmental degradation is one of the most unrelenting issues confronting the planet today. A nation's Constitution has a crucial role to play in response to environmental problems like pollution, biodiversity loss, global warming, and climate change. The Constitution, the supreme law of a nation, mirrors a nation's soul, reflecting and upholding the community's most profound and most treasured ideals. Thus, constitutional recognition of environmental rights is imperative. The author argues that many nations lack explicit constitutional provisions guaranteeing a fundamental right to a healthy environment and imposing a duty on both citizens and the state to conserve the environment and ensure the implementation of such environmental provisions. In this article, the author advocates for constitutional recognition of environmental provisions and emphasises that the constitutional recognition of environmental rights provides a recourse for enforcing and implementing such provisions, thereby ensuring environmental protection.

The article acquaints the reader with the environmental provisions enshrined in the Constitution of India on environmental protection and the promotion of a clean and healthy environment. The Supreme Court of India has espoused a pragmatic and proactive approach in interpreting constitutional environmental provisions, evincing immense solicitude and sensitivity towards environmental concerns. The pivotal role of the judiciary in shaping the environmental law of India and in advancing environmental jurisprudence has been highlighted. The article elucidates the concept of environmental constitutionalism and underscores the significance of environmental rights and duties of

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the State and the individuals globally in addressing environmental crises. The article further explores the influence of international environmental law on environmental policies and constitutional frameworks worldwide.

The article presents a comparative analysis of the constitutional provisions and the environmental policy of India, the UK, and the USA. It reviews the scope within which environmental rights are presently protected under the Constitutions of India, the UK, and the USA and explicates their enforceability. Emphasising the impact of environmental rights in safeguarding both our planet and humanity, the role of higher courts of these nations in interpreting constitutional environmental provisions and mitigating environmental issues has been illuminated. Furthermore, the author provides insights into systems established by the Constitutions of the three countries, shedding light on the broader landscape of environmental governance and legal frameworks.

***Keywords**: environmental rights, constitutional recognition, comparative analysis, environmental concerns, international environmental law*

Introduction

In the words of Albert Einstein, *"The environment is everything that isn't me."* In this sense, the environment signifies virtually anything and everything in our surroundings and is the key to the existence of life on Earth. Keeping this in view, man must endeavour to protect and preserve the environment. In stark contrast, man is in conflict with the environment because of his ravenous need for resources and his ambition to dominate nature. Environmental pollution is a problem that predates the mod. Man has reduced nature's capacity for self-stabilisation by recklessly and brazenly exploiting its resources out of a desire for boundless pleasure and comfort. Most of the developmental endeavours of man have caused a death blow to the environment, slowly but steadily.

Constitutions of more than 100 nations recognise the right to live in a healthy and sustainable environment.[2] However, there is no internationally recognised enforceable right to a healthy environment. Environmental rights refer to *"any proclamation of a human right to*

[2] UN Environment Programme, 'What are your environmental rights?'<https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what-0> accessed 10 March 2024.

environmental conditions of a specified quality."[3]In response to environmental problems like pollution, biodiversity loss, global warming, climate change, etc., Constitutions have a vital role to play. About 88 nations have a constitutional right to a healthy environment, while 65 nations have incorporated environmental protection in their constitutions.[4] The constitutional recognition of environmental rights in India is an outcome of the synergy of the evolving nature of the Constitution of India and the proactive stance of the judiciary, shaping the environmental jurisprudence of India.[5]

Most nations have legal frameworks delineating environmental rights that envisage conservation of the environment. Nevertheless, several nations do not have explicit constitutional environmental provisions guaranteeing a fundamental right to a healthy environment or imposing a duty on the citizens or the State machinery to conserve the environment and ensuring the implementation of such environmental provisions. Environmental rights serve as a powerful weapon in the fight for the protection of the environment and humans. Constitutional recognition of environmental provisions provides a recourse for enforcement and implementation of such provisions and thus ensures environmental protection and conservation.

The Indian Constitutional Vision of Environmental Protection

The Constitution of India is among the few countries in the world that incorporates clearly defined provisions dedicated to environmental protection and conservation. The Indian Constitution embodies the foundation for environmental conservation and preservation. Parts IV and IV A on Directive Principles of State Policy and Fundamental Duties reflect the national commitment to environmental protection and enhancement. The right to a healthy environment is a fundamental right with a well-developed legal and constitutional framework in India wherein Articles 21, 48A, and 51A(g) are instrumental.

[3] UN Environment Programme, '*What are environment rights?* 'https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what accessed 10 March 2024.

[4] UN Environment Programme, 'Dramatic growth in laws to protect environment, but widespread failure to enforce, finds report' (*UNEP*, 24 January 2019) <https://www.unep.org/news-and-stories/press-release/dramatic-growth-laws-protect-environment-widespread-failure-enforce#:~:text=The%20report%20details%20the%20many,environmental%20protection%20in%20their%20constitutions> accessed 10 March 2024.

[5] Normawati Binti Hashim, 'Constitutional Recognition of Right to Healthy Environment: The Way Forward' (2013) 105 Procedia Soc Behav Sci <https://www.sciencedirect.com/science/article/pii/S1877042813043966?ref=pdf_download&fr=RR-2&rr=76147bccbe5d5297> accessed 10 March 2024.

The constitutional foundation of environmental rights has been elucidated below:

a) The Preamble

The term "Socialist" in the Preamble of the Constitution of India, when read in consonance with Part IV of the Constitution, indicates that the Constitution adopted a welfare state on a socialistic pattern, with the primary goal of human welfare. While the Preamble does not expressly address the environment, the language of the Preamble is broad enough to encompass environmental protection and a clean environment.

b) Directive Principles of State Policy (DPSP)

Prior to the 42nd Amendment, there was no specific provision in Part IV dealing with the environment. However, when read in conjunction with Article 37, the rules embodied in Articles 38, 47, and 50 reveal the cause of environmental conservation. Article 37 envisages the application of the DPSP by the State in formulating laws.[6] Article 38 aims to improve people's well-being by requiring the government to pursue social, economic, and political justice,[7] thereby, imposing a duty on the State to protect and preserve the environment.[8] Article 47 imposes the chief responsibility of improving public health on the state.[9] Though Article 47 does not expressly state the state's duty to protect the environment and promote a clean environment, it implies so as a clean environment is an indispensable factor for improving public health. Article 51 aims to promote environmental protection in accordance with international law and treaty obligations.[10]

The Constitution (Forty-second Amendment) Act, 1976[11] introduced an express provision pertaining to environmental protection in the form of Article 48A in Part IV of the Constitution, which states that: "*The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.*"[12]

The inclusion of an express provision in the Constitution made it obligatory for the government '*to protect the environment and promote clean environment'*.[13]

[6] Constitution of India, art. 37.
[7] Constitution of India, Preamble.
[8] Constitution of India, art. 38.
[9]Constitution of India, art. 47.
[10] Constitution of India, art. 51.
[11] Constitution (Forty-second Amendment) Act 1976.
[12] Constitution of India, art. 48A, amended by the Constitution (Forty-second Amendment) Act 1976.
[13] ibid.

c) Fundamental Duties

Article 51A(g) imposes the duty to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.[14]

While bearing in mind the enforcement of the fundamental duty enshrined in Article 51A(g) of Article 48A, the Supreme Court observed in ***Shri Sachidanand Pandey v. State of West Bengal***[15] that the court cannot be indifferent on the grounds that urgencies are a matter of policy and cannot leave the matter.

d) Fundamental Rights

One of the paramount fundamental rights provided in Part III of the Constitution of India is Article 21. Drawing inspiration from Justice Field's observation in ***Munn v. Illinois,***[16] where it was held that life is much more than mere animal existence, in ***Francis Coralie v. Union Territory of Delhi***,[17] the Hon'ble Supreme Court of India held that the right to life includes the right to live with human dignity.

With the broad interpretation of the terms "life" and "personal liberty," the right to live in a clean and unpolluted environment has been accepted as a basic right guaranteed by Article 21. The resurrection of many of the non-justiciable Directive Principles included in Part IV of the Constitution as enforceable fundamental rights using the magic wand of judicial activism granted by Article 21 is the most notable feature of the enlargement of Article 21.[18] The Apex Court's liberal stance in ***Maneka Gandhi v. Union of India***[19] serves as the foundation for expanding the scope of fundamental rights to include the right to a healthy environment. The right to a healthy environment is an essential aspect of the right to live with dignity. The right to live in a healthy environment was primarily established as a constitutional right in the case of ***Rural Litigation and Entitlement Kendra v. State of UP.***[20] This decision was the first case of its kind in India involving environmental and ecological concerns wherein the Supreme Court halted excavation in accordance with the Environment (Protection) Act, 1986.

[14] Constitution of India, art. 51A(g), amended by the Constitution (Forty-second Amendment) Act 1976.
[15] *Shri Sachidanand Pandey v State of West Bengal* AIR 1987 SC 1109.
[16] *Munn v Illinois* 94 U.S. 113 (1876).
[17] *Francis Coralie v Union Territory of Delhi* AIR 1981 SC 746.
[18] Uday U Lalit, 'Environmental Conservation and Protection: Role and Contribution of Constitutional Courts' (*SCC Online*, 2021) <https://www.scconline.com/Members/SearchResult.aspx> accessed 10 March 2024.
[19] *Maneka Gandhi v Union of India*AIR 1978 SC 597.
[20] *Rural Litigation and Entitlement Kendra v State of UP* AIR 1985 SC 652.

In ***M.C. Mehta v. Union of India,***[21] the Supreme Court observed that *"The right to live in a pollution-free environment is a part of the fundamental right to life under Article 21 of the Constitution of India."* Article 19(1)(a) of the Constitution of India, read with Article 21, guarantees the right to a healthy and decent environment and the right to live peacefully.[22] ***In PA Jacob v. The Superintendent of Police Kottayam***,[23] the Kerala High Court stated that *"freedom of speech under article 19(1)(a) does not include the freedom to use loudspeakers or sound amplifiers, implying that noise pollution induced by loudspeakers is within the purview of Article 19(1)(a)."* Article 19(1)(g) guarantees every citizen the fundamental right *to practise any profession or carry on any occupation, trade, or business.*[24] This freedom is subject to reasonable restrictions. A citizen cannot conduct business if it poses a health risk to society or the general public.[25] Therefore, environmental safeguards are built into this. In ***Cooverjee B. Bharucha v. Excise Commissioner, Ajmer,***[26] the Supreme Court observed that *"if there is a conflict between environmental protection and the right to freedom of trade and occupation, courts must balance environmental interests with the fundamental right to carry on any occupation."*[27]

Public Interest Litigation under Articles 32 and 226 of the Indian Constitution triggered a flood of environmental litigation. The Supreme Court's leading decisions in the environmental field include the closure of limestone quarries in the Dehradun region, popularly known as the Dehradun Quarrying case,[28] the installation of safeguards at a chlorine plant in Delhi in the ***M.C. Mehta v. Union of India,***[29] and others. In ***Vellore Citizens Welfare Forum v. Union of India,***[30]the Supreme Court held that 'the Precautionary Principle' and 'the Polluter Pays Principle' are essential components of Sustainable Development.

[21]*MC Mehta v Union of India* AIR 1987 SC 1086.
[22] Pooja, P. Vardhan, 'Environment Protection under Constitutional Framework of India' (*Press Information Bureau, Government of India*, 4 June 2014), <https://pib.gov.in/newsite/printrelease.aspx?relid=105411> accessed 10 March 2024.
[23]*PA Jacob v The Superintendent of Police Kottayam* AIR 1993 Ker 1.
[24] Constitution of India, art. 19(1)(g).
[25] ibid.
[26]*Cooverjee B Bharucha v Excise Commissioner Ajmer* AIR 1954 SC 220.
[27] ibid.
[28]*Rural Litigation and Entitlement Kendra* (n 18).
[29]*M C Mehta v Union of India* AIR 1988 SC 1037.
[30]*Vellore Citizens Welfare Forum v Union of India* (1996) 5 SCC 647.

e) Distribution of Legislative Powers between the Union and the States

Part XI of the Constitution addresses the legislative ties between the Union and the States. Whereas Article 246 gives the Union and the State's legislative power, Schedule VII allocates legislative issues between the Union and the States. The environment is not explicitly mentioned in the lists in the Seventh Schedule. Union has exclusive competence to make laws on subjects not enumerated in any of the lists, according to Article 248 read with entry 97 of List I. The Constitution (Forty-Second Amendment) Act of 1976 added entries 17A and 17B to the Concurrent List relating to Forests and Wildlife Protection.

Article 253 of Part XI of the Constitution of India reads as follows:

> *"Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."*[31]

To meet its obligations under international conventions and treaties like the Stockholm Declaration of 1972, the Parliament has passed the Environment (Protection) Act of 1986 and the Air (Prevention and Control of Pollution) Act of 1981in furtherance of Article 253 read in combination with Union List Entry 13.

Judicial Activism Vis-À-Vis Environmental Protection in India

When interpreting constitutional provisions dealing with environmental protection, the Indian judiciary has displayed sensitivity to environmental issues by adopting a practical and activist approach.[32] This constitutional mandate has been enhanced by a set of principles devised by the Supreme Court aimed at the advancement of environmental jurisprudence. The following are some of the fundamental principles that the court has formulated:

1) Every individual has the right to a healthy environment, which is a component of the right to life guaranteed by Article 21 of the Constitution of India.[33]
2) Law enforcement agencies are required to strictly enforce environmental laws. Government agencies may not use non-availability of funds, inadequacy of staff, or other inadequacies to justify failing to meet their environmental obligations.[34]

[31] Constitution of India, art. 253.
[32] Shalmoli Choudhuri, 'A Comparative Analysis of Environmental Judicial Activism in India and the U.S.' (2013) NLSR 8(8) <https://nslr.in/wp-content/uploads/2019/03/NSLR-Vol-8-No-8.pdf> accessed 13 March 2024.
[33] *Rural Litigation and Entitlement Kendra* (n 18).

3) The 'polluter pays' principle mandates that polluters pay for corrective or cleanup costs in addition to sums owed to compensate the victims of pollution.[35]
4) According to the 'precautionary principle,' the government must prevent and reduce pollution. Additionally, the developer or industrialist must prove that their behaviour is environmentally friendly per the principle.[36]
5) Strict action should be taken against contumacious defaulters and individuals who engage in industrial or development activity for profit while disregarding environmental laws.[37]
6) The authority granted is only to advance environmental protection and not to defeat the purpose of the law.[38]
7) The responsibility of preserving the environment[39] is not only a duty for the government but also for the individuals as stated in Article 51A(g).[40]

The Supreme Court professed in ***B.L. Wadehra v. Union of India***[41] that the right to a clean environment and protection against environmental pollution are basic rights inherent in Article 21 read with Article 48A. The petitioner in the case of ***M.C. Mehta v. Kamal Nath***[42] contended that a person violates a fundamental right protected by Article 21 of the Constitution if they interfere with the ecological balance. The Supreme Court agreed with the petitioner's contention and decided that under Article 21 of the constitution, any disruption of the fundamental elements of the environment—such as the air, water, and soil—that are necessary for 'life' would be dangerous to 'life.' The Apex Court further observed that the Public Trust Doctrine and the Polluter Pays concept would apply under these circumstances.

In ***Subash Kumar v. State of Bihar,***[43]Apex Court held that the right to live is a fundamental right under Article 21 of the constitution, and it includes the right to clean water and air for the full enjoyment of life. If anything endangers or impairs that quality of life in violation of

[34]*B L Wadhera v Union of India* AIR 1996 (2) SCC 594.
[35]*Andhra Pradesh Pollution Control Board v M V Nayadu* 2001 (2) SCC 62.
[36]*Vellore Citizen's Welfare Forum v Union of India* AIR 1996 SC 2715.
[37] Pooja P Vardhan, 'Environment Protection under Constitutional Framework of India' (*Press Information Bureau, Government of India 4 June 2014)* <https://pib.gov.in/newsite/printrelease.aspx?relid=105411> accessed 12 March 2024.
[38]*M C Mehta v Union of India* AIR 1997 SC 734.
[39]*Rural Litigation and Entitlement Kendra* (n 18).
[40] Constitution of India, art. 51A(g).
[41]*B L Wadehra v Union of India* AIR 1996 SC 2969.
[42]*M C Mehta v Kamal Nath* AIR 2000 SC 1997.
[43]*Subash Kumar v State of Bihar*AIR 1991 SC 420.

the law, a citizen has the right to invoke Article 32 of the constitution to remove the pollution of water or air that may be harmful to one's quality of life.

The courts have unequivocally determined that the right to live in a clean environment is an implied fundamental right encompassed in the right to life and personal liberty guaranteed by Article 21. Furthermore, the judiciary has issued directives, including orders to shut down certain industrial operations, in some circumstances to prevent and restore ecological balance.

Unravelling the threads of Environmental Constitutionalism

The natural environment is currently facing a significant threat due to the presence of conventional forms of pollution and waste. These factors are causing extensive damage to our waters, land, and air, resulting in a drastic reduction in global forest coverage and contributing to the loss of biodiversity worldwide. This issue is further exacerbated by the imminent danger of climate change, which not only impacts our way of life but also poses a threat to our survival as a species. To address these challenges, legal systems around the world have been actively implementing a wide range of laws, establishing rights, and imposing responsibilities on both governments and the private sector. The aim is to safeguard us from our own destructive tendencies. Today, there are over 500 international treaties and nearly 100 constitutional provisions that explicitly or implicitly recognise the right of every individual to a clean and safe environment.[44]

The rise of environmental constitutionalism, which involves the inclusion of environmental rights, obligations, principles, mechanisms, and processes in domestic and regional constitutions, represents a significant and impactful response to the challenges posed by worldwide environmental issues. Nations across the globe are incorporating environmental values into their constitutions, and judicial systems are increasingly recognising and defending the rights of the environment to safeguard ecosystems, forests, oceans, rivers, and human societies.[45]

The fact that we are in an environmental crisis is no longer news. Pollution, desertification, deforestation, and other threats make finding clean water, harvesting nutritious food, and even breathing clean air more difficult for billions of people worldwide. The rest of the world's population will increasingly find itself at the mercy of a less stable climate in the

[44] Erin Daly and James R May, *Implementing Environmental Constitutionalism: Current Global Challenges* (Cambridge University Press 2018).

[45] Roderic O Gorman, 'Environmental Constitutionalism: A Comparative Study' (2017) 6(3) TEL CUP <https://www.cambridge.org/core/journals/transnational-environmental-law/article/abs/environmental-constitutionalism-a-comparative-study/4601872DEA28B1DF159114E1584AE8AC> accessed 13 March 2024.

coming decades, rather than centuries or millennia, resulting in more severe storms, more frequent droughts, more intermittent fires, and so on. Because changes in human behaviour can control much of the change in the climate and natural environment, the law has attempted to manage the relationship between people and the environment.

Environmental constitutionalism, which entails the incorporation of substantive and procedural environmental rights, responsibilities, and remedies into the constitution to protect the natural environment, can be an important tool for managing this relationship. Environmental constitutionalism has sprung up all over the world, arising from all legal cultures and manifesting in a variety of ways in response to a growing awareness of the fragility of our natural environment and the critical need to preserve what we have.

If a law is to be effective, it must not only establish behavioural norms but also allow for their implementation in practice. Environmental law has found a place in over 500 international treaties, many of the world's constitutions, and countless laws, regulations, and local ordinances around the world. Nonetheless, compliance with these legal requirements lags far behind. Constitutionalism is critical to the implementation of environmental standards. Most constitutions address environmental issues, and almost no constitution is adopted or meaningfully amended without some mention of the environment. Approximately half of the world's constitutions, including nearly every modern constitution, guarantee the right to a healthy environment. Some constitutions go where international law does not, for example, by establishing enforceable natural rights and obligations to address the causes and effects of climate change. Other international environmental obligations include making sustainable development or public trust a national prerogative, mandating a certain level of forest cover, protecting biodiversity, and mandating the use of renewable energy. Approximately two-thirds impose a duty on government and even private citizens to protect the environment[46] or identify environmental protection as a national policy priority.

Constitutions are the only legal instruments that typically have corresponding institutions dedicated to their implementation such as independent and impartial tribunals concerned with both asserting fundamental, enduring national values, and ensuring that the law is applied for the benefit of the people. Other domestic laws are accompanied by judicial bodies with the authority to enforce the law, but only constitutional courts have the ultimate authority within the nation, backed up by the greatest power to compel compliance and the greatest legitimacy

[46] ibid.

to make their opinions matter. Environmental constitutionalism has good intentions: a constitutional right is a state's commitment to limit its own authority to advance a transcendent value.

The implementation of environmental constitutionalism faces numerous challenges. Many constitutions are greenwashed[47] in the sense that the environmental provisions are beautifully drafted, but the country's judicial structure is unlikely to allow them to be implemented. A constitutionally recognised right to a healthy environment must also be framed in a way that it can be implemented without the labor and political will of legislative or regulatory implementation.[48] However, even well-written, self-executing provisions are ineffective unless the courts are accessible and welcoming to those seeking to assert their rights. Courts animate and implement constitutional guarantees, ensuring their continued relevance.

Navigating Global Green: International Environmental Law

International environmental law has rapidly evolved over the past 40 years or so, as environmental menaces have become more palpable, and their assessment and management have grown in complexity. Fewer than a dozen multilateral agreements existed in 1972, and most nations lacked environmental legislation. However, today, there are countless bilateral and multilateral environmental agreements, and every nation has at least one environmental legislation or set of laws.[49] Along with States, numerous other actors influence the creation, application, and observance of international environmental law. International environmental law is a subset of public international law, which was developed by States for States in order to resolve potential interstate conflicts with respect to environmental issues.

Multilateral Environmental Agreement ("MEA") refers to a variety of international agreements that are used by States to formally pledge their support for the accomplishment of specific environmental objectives.[50] The Vienna Convention on the Law of Treaties of 1969 defines a 'treaty' as *"an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or*

[47] United Nations Climate Action, 'Greenwashing – the deceptive tactics behind environmental claims' <https://www.un.org/en/climatechange/science/climate-issues/greenwashing> accessed 13 March 2024.
[48] Lael K Weis, 'Environmental Constitutionalism: Aspiration or Transformation?' (2018) 16(3) Int J Const Law <https://academic.oup.com/icon/article/16/3/836/5165825> accessed 13 March 2024.
[49] Edith Weiss Brown, 'The Evolution of International Environmental Law' (2011) Georgetown University Law Center, <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2684&context=facpub> accessed 13 March 2024.
[50] European Commission, *Environmental cooperation with other countries,* <https://ec.europa.eu/environment/international_issues/agreements_en.htm> accessed 13 March 2024.

more related instruments and whatever its particular designation."[51] Only those nations that have agreed to the terms of an MEA are bound by them. Although multilateral environmental agreements of various kinds have existed for about a century, they have gained traction in recent years, especially following the Stockholm Conference in 1972. In response to the seriousness of environmental issues, there has been an increase in Multilateral Environmental Agreements. Growing awareness that environmental issues more often affect the entire world. Consequently, solutions and tools to address them should be international. Analysing the international legal breakthroughs in the second half of the nineteenth century is crucial when examining the emergence of contemporary international environmental law. Particularly following the Stockholm Conference in 1972, international law has influenced and moulded the course of environmental law in India, the United Kingdom, the United States, and many other countries. The Stockholm Conference culminated in the adoption of the Stockholm Declaration by the member nations. This document laid the groundwork for the further development of principles of international environmental law.[52]

Principle 21 of the Stockholm Declaration states that *"States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."*[53] It imposes a fundamental obligation that was later acknowledged by the International Court of Justice as an element of international law. The United Nations Environment Programme ("UNEP"), the first international intergovernmental organisation devoted to environmental preservation was founded in Nairobi, Kenya as a result of the Stockholm Conference.

In June 1992, nations gathered in Rio de Janeiro, Brazil, to commemorate the twentieth anniversary of the Stockholm Conference. Brazil's hosting of the Conference was a significant statement that environmental and development issues affected all nations, regardless of their level of economic development. The World Commission on Environment

[51] United Nations Treat Collection, 'Definition of key terms used in the UN Treaty Collection' <https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml#:~:text=The%201969%20Vienna%20Convention%20defines,and%20whatever%20its%20particular%20designation%22> accessed 13 March 2024.

[52] Pamela Chasek, 'Stockholm and the Birth of Environmental Diplomacy' (*International Institute for Sustainable Development*, 10 September 2010) <https://www.iisd.org/articles/deep-dive/stockholm-and-birth-environmental-diplomacy> accessed 13 March 2024.

[53] Declaration of the United Nations Conference on the Human Environment 1972, principle 21.

and Development, (Brundtland Commission) was established by the UN General Assembly to produce a report for the Rio Conference called Our Common Future, which regarded the idea of sustainable development as the guiding principle of global environmental policy.[54] After ensuring that sustainable development was the guiding paradigm, states formally ratified it.Multilateral Environmental Agreements appeared to be sectoral until the early 1990s in that they only addressed environmental protection or conservation and did not include any specific sustainability approaches.[55]

The United Nations Conference on Environment and Development, also known as the Earth Summit or Rio Conference, was held in June 1992 and gave rise to the later multilateral environmental agreements. Here, governments all over the world started to recognise connections between environmental issues and development, as well as the interaction between society and ecological issues. The UN Framework Convention on Climate Change, addresses climate and the atmosphere while recognising the wider effects of climate change on ecosystems, food production, and sustainable development. Similarly, the Convention on Biological Diversity seeks to creatively integrate agriculture, forestry, fishery, land use, and nature conservation. The UN Convention to Combat Desertification was adopted in 1994 with the objectives of preventing desertification, reducing the effects of drought, and fostering sustainable land management. These three conventions are collectively referred to as 'The Rio Conventions.'

More recent international environmental agreements have been negotiated under the aegis of existing conventions. This is true of both the 1997 Kyoto Protocol and the 2015 Paris Agreement, which were signed as part of the UN Framework Convention on Climate Change to enhance and expand efforts to combat climate change. It also pertains to the agreements outlined in the Nagoya Protocol of 2010 and the Cartagena Protocol of 2000, both of which are part of the Convention on Biological Diversity.[56]

Enforceability of Environmental Provisions in National Constitutions

[54] Pamela Chasek, 'The Legacies of the Stockholm Conference' (*International Institute for Sustainable Development*, 1 June 2022),<https://www.iisd.org/articles/deep-dive/stockholm-conference-legacy> 13 March 2024.
[55] Kyle Burns, 'Constitutions & the Environment: Comparative Approaches to Environmental Protection and the Struggle to Translate Rights into Enforcement', (2016) 47(2) Harv Environ Law Rev <https://harvardelr.com/2016/11/14/constitutions-the-environment-comparative-approaches-to-environmental-protection-and-the-struggle-to-translate-rights-into-enforcement/> accessed 13 March 2024.
[56] UN Environment Programme, 'Global Multilateral Environmental Agreements (MEAs)' <https://www.unep.org/explore-topics/oceans-seas/what-we-do/working-regional-seas/partners/global-multilateral> accessed 13 March 2024.

In order to ensure responsibility in the event that rights are violated or obligations are not met, constitutional provisions must be enforceable. A precise and succinct definition of enforceability is the capacity of an individual, group, or other body to approach the legal system to address a constitutional issue. The authorisation or limitation of legal remedies frequently relates to more significant portions of the Constitution, but it also pertains to environmental concerns. In Canada, the Charter ensures that anybody who believes their constitutional rights have been violated or disregarded has the right to file a lawsuit in court.[57] Most constitutional provisions imparting the right to live in a healthy environment and the State's duty to safeguard and preserve the environment are, prima facie, enforceable.[58]

The enforceability of constitutional provisions is affected by both internal and external influences. Internal elements are explicit promises or constraints in a constitution's language. External elements include legal, social, political, economic, and cultural aspects. A lack of financial resources is an external factor that may function as a de facto impediment to enforcement for poor areas, which are likely to bear a disproportionate amount of the pollution burden. The judiciary of a country may be exceedingly conservative, or it may be unfamiliar with judicial review of government action. Another aspect that may limit the enforcement of the government's duty to safeguard the environment in many developing countries is progressive implementation. Where a constitution incorporates this government obligation but expressly states that it is conditional on the availability of financial resources and other national priorities, a court is less likely to enforce the duty by substituting its policy judgement for that of the government.

It is vital to note that there can be major disparities between what is enforceable on paper and what is enforceable in practice. For example, there is no specific right to a healthy environment in the Indian Constitution, and the government's duty to protect the environment (Article 48A) is expressly unenforceable. However, courts in India have consistently and drastically interpreted the directive concept of environmental protection as legally binding, creating a corpus of jurisprudence that interprets the directive principle as legally binding.[59]

[57] Government of Canada, 'The rights and freedoms the Charter protects' <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/rfcp-cdlp.html> accessed 13 March 2024.
[58] R K Kohli, 'Constitutional Provisions relating to Environment Protection in India' *Ministry of Human Resources Development*, 2017) <https://www.shivajicollege.ac.in/sPanel/uploads/econtent/abff7abe108cb9996992f15088341247.pdf accessed 13 March 2024.

[59] ibid.

Judicial interpretation of Article 21 in landmark cases have paved the way for the inclusion of the right to a healthy and wholesome environment as a fundamental right under Article 21. Indian jurisprudence exemplifies the unpredictability of constitutional law and serves as a powerful aide-mémoire not to rely on abstract assumptions about the enforceability of constitutional provisions.

Constitutional Stance of the United Kingdom on Environmental Protection

The snowballing environmental crisis in India can be attributed to the country's progress and industrialisation, which began in the early 1960s. Incidentally, pollution was a problem in the United Kingdom ("UK") as well in the early 1960s.[60] People continue to recall the dreadful 1954 London Smog. The United Kingdom formulated liberal environmental policies and laws in the late 1980s and early 1990s, building on a history of pollution management that dates back to the Alkali Act of 1863 and the founding of the Alkali Inspectorate in the same year. Established in 2010, the Environmental Permitting (England and Wales) Regulations ("EPR") are an essential component of environmental legislation.

EPR provides a single permitting process for waste operations and industrial activities in England and Wales. Licensed businesses that are subject to regulation are required to apply for an environmental permit from the Environment Agency in England or Natural Resources Wales and abide by its regulations. In 2013, all of the Regulations' provisions were aligned with the EU Industrial Emissions Directive, and in 2015, enforcement undertakings were introduced.[61]

The environment is defined in Section 1 of the UK Environmental Protection Act 1990 as *"all or any of the following media, namely, the air, water, and land; and the medium of air includes the air within buildings and the air within other natural or manmade structures above or below ground."*

The increased worldwide mobility has alleviated part of the context problem, nations have been inspired by the ideas of other nations in the domains of law and establishments. Both India and the United Kingdom have formally recognised this. This is demonstrated by the

[60] Govind Narayan Sinha, 'A Comparative Study of the Environmental Laws of India and the UK with Special Reference to their Enforcement' (*University of Birmingham Research Archive*, 2003) <https://core.ac.uk/download/pdf/1631095.pdf.> accessed 13 March 2024.
[61] European Union, 'Industrial Emissions Directive' <https://environment.ec.europa.eu/topics/industrial-emissions-and-safety/industrial-emissions-directive_en> accessed 13 March 2024.

fact that the Indian Constitution borrows substantially from British traditions, ideas, and common law concepts.[62]

In the true sense of the word, the United Kingdom has no constitution. The above statement refers to the fact that the UK has an unwritten or uncodified Constitution. As a result, discussing constitutional rights pertaining to the environment is not technically correct. However, there are several provisions in English Law that confer on individuals, environmental rights. Because the United Kingdom lacks a properly codified constitution, either for human rights or environmental rights, there is no such safeguarding legal structure. Instead, there is an uncodified constitution made up of fragmentary laws as well as unwritten customs and traditions that may or may not have legal standing. Britain follows the theory of parliamentary sovereignty and lacks a codified Constitution, therefore parliament can pass or revoke any law with a mere majority of one.

In comparison to other European countries, environmental protection ideals are not given much precedence in the United Kingdom. In relation to countries such as the Netherlands and Scandinavia, the United Kingdom has relatively low waste recycling rates while also facing a higher number of environmental cases before the European Court of Justice (ECJ). On the other hand, the UK was far from the worst offender when it came to failing to meet EU environmental obligations. Recycling rates in the UK are improving significantly. Critics may argue that environmental issues are not important enough to warrant inclusion in a document with potentially constitutional implications. They may argue that environmental safeguards are already abundantly provided for in primary and secondary legal sources.

Environmental rights in a Bill of Rights could serve as a catalyst for filing complaints with international courts.[63] For instance, in ***Taşking v. Turkey,***[64]the European Court of Human Rights determined that the Turkish constitution's right to live in a healthy and balanced environment constituted a civil right for the European Court of Human Rights.[65] Incorporating environmental rights into a Bill of Rights may facilitate so-called norm

[6262] Govind Narayan Sinha, 'A Comparative Study of the Environmental Laws of India and the UK with Special Reference to their Enforcement' (*University of Birmingham Research Archive*, 2003) <https://core.ac.uk/download/pdf/1631095.pdf.> accessed 13 March 2024.

[63] Ole W Pederson, 'A Bill of Rights, Environmental Rights and the UK Constitution' (*Newcastle Law School*, 7 September 2010) <https://www.academia.edu/3649122/A_Bill_of_Rights_Environmental_Rights_and_the_UK_Constitution> accessed 13 March 2024.

[64]*Taskin and Ors v Turkey* (2006) 42 EHRR 50.

[65] United Nations Environment Programme, 'Tasking and Others v. Turkey' (*UNEP*, 2004) <https://leap.unep.org/countries/eu/national-case-law/tasking-and-others-v-turkey accessed 13 March 2024.

cascades, creating reputational incentives that may eventually shift public perceptions and encourage more environmentally responsible behaviour. Any environmental rights provisions in a Bill of Rights could provide guidance in the formulation of general environmental policies, as well as serve as a catalyst for future environmental initiatives and developments. The inclusion of environmental rights in a British Bill of Rights would have a significant symbolic impact, potentially leading to increased official recognition of environmental issues.[66] To put it another way, the inclusion of environmental rights in a Bill of Rights indicates that environmental issues are taken seriously.

The UK Environment Act, 2021: A Post Brexit Development

The major legislation governing environmental protection in the United Kingdom is the Environment Act, 2021. Following Britain's exit from the European Union (EU), the Environment Act serves as the country's new framework for environmental protection. The Act grants new authority to set binding goals for waste reduction, biodiversity, water quality, and air quality.[67] The Act also created the Office for Environmental Protection (OEP), a new environmental watchdog that will monitor environmental laws' adherence and hold the government and other public entities accountable.[68] George Eustice, Secretary of State for Environment, stated that the Environment Act would deliver the most ambitious environmental programme of any country on earth.[69]

However, the Act was characterised by certain criticisms. It was deficient in crucial information needed for a consultee response that was fully informed. In terms of the required consultation period, it was not Additionally, despite being intended by Parliament to play a critical role in guiding government policies that affect the environment, including these significant long-term environmental targets, the policy statement on environmental principles required by the Act was still under development and unfinished.

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[66] Balfour-Lynn Harry and William Sue, 'The Right to a Healthy Environment in the United Kingdom: Supporting the Proposal for a new Protocol to the European Convention on Human Rights, Environmental Rights Recognition Project' (Environmental Rights Recognition Project, 2021) <https://www.kcl.ac.uk/legal-clinic/assets/briefing-paper-environmental-rights-recognition-project.pdf> accessed 13 March 2024.

[67] Local Government Association, 'Get in on the Act: The Environment Act 2021' (*LGA*, 10 May 2022) <https://www.local.gov.uk/publications/get-act-environment-act-2021> accessed 13 March 2024.

[68] David Wright and Kathryn Oldfield, 'The new watchdog: the Office for Environmental Protection' (Kennedys Law, 6 April 2022) <https://kennedyslaw.com/en/thought-leadership/article/the-new-watchdog-the-office-for-environmental-protection/> accessed 13 March 2024.

[69] Darren Abrams, 'The UK's Environment Act 2021: A vehicle to "deliver the most ambitious environmental programme of any country on earth"' (Steptoe, 2 December 2021) <https://www.steptoe.com/en/news-publications/the-uks-environment-act-2021-a-vehicle-to-deliver-the-most-ambitious-environmental-programme-of-any-country-on-earth.html> accessed 13 March 2024.

Constitutional Insights into Environmental Rights in the USA

"The natural resources of the nation are the heritage of present and future generations. The right of each person to clean and healthful air and water, and to the protection of the other natural resources of the nation, shall not be infringed upon by any person."[70]

—Proposed Amendment to the U.S. Constitution (1996)

In the United States of America ("US"), the period between 1970 and 1980 came to be known as the environmental decade, which began on January 1, 1970, with the enactment of the National Environmental Policy Act ("NEPA"), signed by President Richard Nixon. The Council on Environmental Quality was established by NEPA to oversee the environmental impact of federal actions. The Council laid the groundwork for the creation of the Environmental Protection Agency (EPA), which came into effect on December 2, 1970. NEPA established a comprehensive US national environmental policy and established the requirement for "major federal actions significantly affecting the quality of the environment" to prepare an environmental impact statement. NEPA has been regarded as the world's 'environmental Magna Carta.'[71]

President Nixon spent the next three years devoting the time and resources required to repair the environmental damage caused by the previous administration. Within two years of Richard Nixon's presidency, Congress passed two critical pieces of legislation governing the EPA, namely, the Clean Air Act, 1970 and the Clean Water Act, 1972. The Clean Air Act of 1970 requires the EPA to set criteria for the types of hazardous toxic air pollutants that can be emitted into the 'ambient air' from factories, automobiles, and trucks.[72] The EPA is directed by the Clean Water Act of 1972 to establish guidelines for what contaminants can be discharged into lakes, streams, and rivers, and it requires polluters to obtain permits to do so.

Article I, Section 8, Clause 3 of the United States Constitution states that *"The Congress shall have power…to regulate commerce with foreign nations, and among the several states, and with the Indian tribes;"*[73] This is referred to as the Commerce Clause. Every major post-

[70] J B Ruhl, 'An Environmental Rights Amendment: Good Message, Bad Idea' (1997) 11(3) NR&E <https://www.jstor.org/stable/40923656> accessed 13 March 2024.
[71] Emily Hampton, *NEPA: The Magna Carta of Environmental Law*, (*NRDC Land & Wildlife*, 26 July 2013), <https://www.nrdc.org/experts/amanda-jahshan/nepa-magna-carta-environmental-law> accessed 13 March 2024.
[72] W Kepner, 'EPA and a Brief History of Environmental Law in the United States' (*US EPA*, 15 June 2016) <https://cfpub.epa.gov/si/si_public_record_report.cfm?Lab=NERL&dirEntryId=319430>accessed 13 March 2024.
[73] United States Constitution, art. I, s 8(3).

1970 environmental law of the United States relies on this Constitutional power, the Commerce Clause in Article I, Section 8, to limit air and water pollution and protect endangered species. The United States has long recognised the link between human rights and environmental protection, as well as the importance of advancing environmental justice. The country has a long history of promoting environmental protection and the belief that everyone deserves to live in a healthy environment.[74] A healthy environment promotes people's well-being and dignity, as well as the full enjoyment of all human rights.

The US Constitution does not contain any explicit provisions relating to environmental protection. There is no explicit right to a clean environment in the United States Constitution.[75] Besides, efforts to persuade judges to find an implied right have failed. In 2015, in the renowned ***Juliana v. United States***[76] case, the plaintiffs claimed that the federal government infringed on their constitutional rights by releasing hazardous carbon dioxide levels. In March 2016, pre-trial hearings were held before U.S. Magistrate Judge Thomas Coffin. The United States Department of Justice contended that there was *"no constitutional right to a pollution-free environment,"*[77] and that the judicial system was not the appropriate platform for enacting such changes. Judge Coffin determined that, while the case was 'unprecedented,' it had enough merit to continue. Judge Aiken upheld Coffin's decision in November 2016, ruling that the "*right to a climate system capable of sustaining human life"* was a fundamental right, like gay marriage, as held in the recent Supreme Court case ***Obergefell v. Hodges.***[78] The decision by Judge Aiken that there might be a constitutional right to a healthy environment was the first of its kind from a federal court.[79] A Ninth Circuit panel dismissed the case in January 2020, claiming that the plaintiffs lacked standing to seek

[74] Edward Heartney, 'Explanation of Position on the Right to a Clean, Healthy, and Sustainable Environment Resolution' (*United States Mission to the United Nations*, 28 July 2022) <https://usun.usmission.gov/explanation-of-position-on-the-right-to-a-clean-healthy-and-sustainable-environment-resolution/> accessed 13 March 2024.
[75] Constitutional Law Foundation, 'Preamble: relevance to Environmental Law Does the United States Constitution Provide Environmental Protection?' <https://www.conlaw.org/prearg4.htm.> accessed 13 March 2024.
[76] *Juliana v United States* 947 F.3d 1159 (9th Cir. 2020).
[77] Jeff Todd, 'A Fighting Stance in Environmental Justice Litigation' (2020) 50(3) Environmental Law <https://www.jstor.org/stable/27007691> accessed 13 March 2024.
[78] *Obergefell v Hodges* 576 U.S. 644 (2015).
[79] Bradford C Mank, 'Does the Evolving Concept of Due Process in Obergefell Justify Judicial Regulation of Greenhouse Gases and Climate Change?: Juliana v. United States' (*George Washington University*, 2018) <https://www.law.gwu.edu/sites/g/files/zaxdzs2351/f/downloads/JulianaDueProcessObergefellClimateChangeMank2017.pdf> accessed 13 March 2024.

an injunction.[80] The appeal was denied by the Ninth Circuit *en banc* on February 10, 2021, with no written dissents.

In June 2023, the plaintiffs submitted a revised complaint, once again asserting that the government's neglect in addressing climate change infringes upon their rights as protected by the Fifth and Ninth Amendments, as well as the public trust doctrine.[81] The updated complaint requests the court to grant an injunction for vital relief and to declare the national energy system and Section 201 of the Energy Policy Act, which imposes fewer restrictions on specific natural gas imports and exports, as unconstitutional.[82] In December 2023, Judge Aiken ruled in favour of the plaintiffs, effectively ending the Department of Justice ("DOJ")'s attempts to dismiss the case and allowing the young plaintiffs to proceed with the trial.[83]

However, Constitutions of six states of the United States, namely, Hawaii, Illinois, Massachusetts, Montana, Pennsylvania, and Rhode Island, include provisions containing explicit environmental rights. Several other states' constitutions include language about environmental protection, but without explicitly establishing any rights. Most of these provisions were passed during the environmental decade (1970s), but they received little attention until a 2013 decision by the Pennsylvania Supreme Court in***Robinson Township v. Commonwealth of Pennsylvania.***[84] In ***Held v. State of Montana***,[85] the 16 young plaintiffs claimed that the state's energy and environmental policies harmed them by encouraging the usage of fossil fuels, which increased greenhouse gas emissions and exacerbated climate change. The court determined that the state's actions violated plaintiffs' rights under a provision of the state constitution that states that *"all persons... have certain inalienable rights. They include the right to a healthy and clean environment."*[86]

[80] Harvard Law Review, 'Juliana v. United States, (*Harvard Law Review*, 10 March 2022), <https://harvardlawreview.org/2021/03/juliana-v-united-states/> accessed 13 March 2024.
[81] League of Women Voters, 'Juliana v. United States' (*LWV*, 29 December 2023) <https://www.lwv.org/legal-center/juliana-v-united-states-0> accessed 13 March 2024.
[82] Samuel Buckberry Joyce, 'Climate Injunctions: The Power of Courts to Award Structural Relief Against Federal Agencies' 2023 42(2) ELJ <https://law.stanford.edu/wp-content/uploads/2023/05/Joyce_final-1.pdf> accessed 13 March 2024.
[83] Our Children's Trust Youth v. Gov, 'Juliana V. United States' <https://www.ourchildrenstrust.org/juliana-v-us#:~:text=Current%20Status&text=On%20December%2029%2C%202023%2C%20U.S.,Aiken%20on%20January%2019%2C%202024.> accessed 13 March 2024.
[84]*Robinson Township v Commonwealth of Pennsylvania* 83 A.3d 901 (2013).
[85]*Held v Montana* No CDV 2020 307 1st Dist Ct Mont.
[86] Matthew Grabianski, 'What Held v. Montana immediately offers for Constitutional Environmental Rights' (*The Georgetown Environmental Law Review*, 16 November 2023) <https://www.law.georgetown.edu/environmental-law-review/blog/what-held-v-montana-immediately-offers-for-constitutional-environmental-rights/> accessed 13 March 2024.

In the absence of constitutional framing, grounding, and oversight, environmental protection and justice are easily subverted by the whims of a political system where the desire for political power and misguided ideologies frequently overwhelm the greater good; where an activist court has complete freedom to deny even the most basic of fundamental rights and protections, such as the right to drink clean water, breathe clean air, and enjoy a liveable climate. Environmental rights must be elevated to the highest constitutional standing at the state and federal levels to ensure necessary environmental protection, environmental justice, and a secure future for all future generations who will inherit the earth.

Conclusion

A clean, healthy, and wholesome environment is vital for a human being to live a quality life as it facilitates the physical, mental, and intellectual development of an individual. The right to a healthy environment is an essential component of the right to life, in the absence of which, it would be impossible to sustain an acceptable quality of life or even life itself. The right to live in a healthy environment is an inalienable human right, which is recognised by all nations. However, all nations do not acknowledge this right formally, thereby denying it constitutional recognition. Formal acknowledgment of environmental rights in the Constitution of a nation provides an individual the means to seek its enforcement in the event of its violation. Moreover, both the individuals and the State, have a duty to protect and conserve the environment. Following the example of India, this duty must be given the status of a fundamental duty.

Through judicial pronouncements, the right to live in a clean, healthy, and wholesome environment has been deemed a constitutionally recognised right under Article 21 of the Constitution of India. The comprehensive constitutional mechanism in place in India enables the Supreme Court to craft innovative case laws regarding a healthy environment as an element of constitutional rights. Other constitutional environmental provision, though unenforceable, have been construed in a manner so as to give environmental protection eminence and vigour.

Unlike India, the Constitutions of the UK and the USA do not have express provisions conferring environmental rights or obligations either on the citizens or the State. Nevertheless, both nations have an environmental policy and various environmental legislations aimed at environmental protection and conservation. The need for providing the right to a healthy environment constitutional recognition has been realised in the UK as well

as the USA and there is a consensus that environmental constitutional provisions ought to be introduced.

The right to a healthy environment should indeed be considered as a fundamental right, and the constitutional provisions as well as the court's authority must be construed broadly and liberally to facilitate the same. This would ensure that the public could receive the best protection possible and warrant their enforceability. The path forward for achieving recognition of the Right to a Healthy Environment as a Fundamental Right is through a dynamic legal system and constitutional framework. Constitutional provisions aimed at environmental protection and enhancement are a need of the hour.

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