

Constitutional Recognition of Environmental Rights and Duties: Advancing Environmental Constitutionalism and Intergenerational Justice

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Abstract

This paper undertakes a doctrinal legal analysis of the evolution of reservation in India, tracing its transformation from a colonial administrative device to a structured constitutional doctrine. Using primary sources including constitutional provisions, amendments, and Supreme Court jurisprudence, it maps a continuous dialogue between legislature and judiciary in shaping affirmative action. Beginning with G.O. 613 in the Madras Presidency, the study shows how early experiments informed Articles 15(4) and 16(4), while the decision in Champakam Dorairajan prompted constitutional correction. It examines the judicial construction of limits through M.R. Balaji and the doctrinal consolidation in Indra Sawhney, including the creamy layer and the fifty percent ceiling. Subsequent developments, such as Nagaraj, amendments, and expansion into education and promotions, reveal increasing complexity. The paper further analyses the shift toward economic criteria under the 103rd Amendment and its validation in Janhit Abhiyan, highlighting tensions with equality principles. It argues that reservation has evolved into a dynamic constitutional grammar balancing formal equality, substantive justice, and institutional integrity, while remaining a contested instrument in India's transformative constitutionalism today. The study concludes that future trajectories will depend on judicial calibration, empirical justification, and political commitment to inclusive representation, particularly amid emerging debates on intersectionality, sub classification, and federal variations in implementing reservation policies across diverse regions.

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1. INTRODUCTION

The environmental degradation has become one of the most burning issues of the twenty first century. The high rates of industrialization, urbanization, climate change, deforestation, pollution and unsustainable use of natural resources have posed a great challenge to the ecological balance as well as human life. These predicaments are no longer limited to discussions in the environmental circles but they have now migrated to the sphere of constitutional law and human rights, and governance. The increasing awareness of the fact that the environment cannot be afforded without environmental protection which is the key to the enjoyment of basic human rights has seen the emergence of environmental constitutionalism concept.

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Environmental constitutionalism entails integration of environmental rights, responsibilities and precautions into constitutional provisions and in consequence environmental protection is accorded utmost legal status. Intergenerational justice is closely related to this concept as it puts a focus on the fairness between the current and the future generations in the utilization and the conservation of natural resources. The current generation is a custodian of the environment and has a moral and legal responsibility of ensuring that the environment is maintained to be used by the future generation. In India, the Constitution does not clearly identify the right to a clean and healthy environment as a constitutional right, but it has been interpreted by the judiciary that Article 21 has been extended

to encompass the protection of the environment. At the same time, constitutional obligations of the State and citizens in the Articles 48A and 51A(g) demonstrate the collective responsibility in the conservation of the environment. This paper looks at the recognition of the constitutional power of environmental rights and environmental responsibilities, evaluates how environmental constitutionalism in India has developed over the years and the role of environmental constitutionalism in substantiating intergenerational justice.

2. CONCEPTUAL FOUNDATIONS OF ENVIRONMENTAL JURISPRUDENCE: RIGHTS, DUTIES AND CONSTITUTIONALISM

The environmental rights have increasingly become one of the aspects of the modern human rights discourse. These rights are fundamentally based on the acknowledgement of the fact that clean, healthy and sustainable environment is not just desirable, but crucial to the achievement of human dignity and human wellbeing. Basic needs in life like the right to life, health, food, water, and shelter cannot be enjoyed in an environment with severe degradation. Environmental protection as Shelton² conclusively contends is a precondition to successful realization of civil, political, economic, social, and cultural rights. Without the integrity of the ecology, human rights protection may turn into a formality and not a reality. Environmental rights go hand in hand with the environmental responsibilities that bring about a sense of responsibility in the constitutional and legal provisions. Although rights enable people to demand protection, the duties set on the State and the private actors provide equal responsibilities to protect the environment and enhance the quality thereof. These responsibilities underline the importance of collective responsibility because environmental protection could not be based only on the rights of the individuals. Environmental stewardship is no longer an objective policy goal but a legal requirement that is provided by the constitution as accountable to environmental duties. Constitutional systems make governments, industries, and citizens enact binding commitments inducing proactive environmental management and ecological planning over the long term as opposed to responsive regulation. Environmental constitutionalism is a combination of environmental rights and responsibilities in constitutional governance. It is a paradigm shift where environmental protection is no longer considered as a secondary statutory issue but a constitutional value. Bosselmann argues that environmental constitutionalism entrenches the concept of sustainability in the normative framework of constitutions and therefore enhances accountability, judicial review, and institutional accountability¹. Legislative and executive activity can be interrogated by constitutional courts using the mandated environmental provisions, whereby executive and legislative acts endangering ecological integrity are reviewed. The constitutional elevation also strengthens democratic governance since at the highest level of law, the issues of the environment are incorporated in the decision making processes. Environmental constitutionalism is based on intergenerational justice. It is aware that the effects of environmental degradation by the current generations create long-term and in most cases irreversible costs to future generations with no representation in the contemporary political and legal procedures. The environmental disasters like climate change, loss of biodiversity and massive pollution go way beyond the temporal realities. According to Weiss (1990)³, intergenerational equity demands that every generation should

become a trustee of the Earth, in order to conserve the natural and cultural resources of the planet to future generations. Constitutional systems must thus protect the current interests as well as the rights of the yet to be born generations. In this regard, environmental constitutionalism works as a moral and a legal system. It links human rights to the ecological sustainability and the fact that environmental protection is crucial to the justice between generations. By recognizing the environmental rights and obligations in the constitution, environmental protection turns out to be a long term and collective responsibility, covering the current endeavors and preserving the future interests of the future.

3. CONSTITUTIONAL RECOGNITION OF ENVIRONMENTAL RIGHTS AND DUTIES IN INDIA

Indian Constitution has a unique and comprehensive approach to environmental protection, in which environmental issues have been incorporated in primary rights, directive principles of the state policy and fundamental duties. Instead of simply looking at environmental protection within the frame of statutory law only, the constitutional approach to the issue demonstrates the dynamic approach to the ecological preservation as a significant part of the social justice and good governance. This combined framework has ensured that the environmental rights and responsibilities grow dynamically via the judicial interpretation and constitutional values. The environmental rights have been given a center stage by the article 21 of the Constitution of India that provides the right to life and personal liberty. The Supreme Court has always used the word life to refer to something beyond the simple survival of the animal, but to the right to live with dignity under a healthy environment. One of the recent important breakthroughs in the environmental jurisprudence of India is the concept of a fundamental right against the negative impacts of the climate change that has been acknowledged by the courts. In 2024-2025, the Supreme Court recognized that the principal direct threat to human life, health, and equality is climate change. This right is based on Article 21, because climate change effects undermine the enjoyment of the right to life and human dignity and Article 14, since vulnerable and marginalized communities disproportionately bear the negative effects of climate impacts. The acknowledgment of climate protection as a constitutional issue helped the Court to broaden the rights of the environment to meet the modern challenges of the ecological situation and strengthen the obligation of the State adherence to climate-resistance and equitable policies¹¹. This has been a significant move towards enhancing environmental constitutionalism in India. To be added to this judiciary enlargement of fundamental rights comes Articles 48 A, which was added by the forty-second Constitutional Amendment Act, 1976. This is a requirement that guides the State in the protection and the betterment of the environment and the safeguarding of the forests and wildlife. Article 48A although non-justiciable in nature, acts as an important constitutional requirement upon and directing legislative and executive action. This principle of directive has often been used by the courts to interpret the environmental laws in a purposive manner and to justify active state intervention in environmental regulations⁵. The environmental responsibilities are also strengthened by the provision of Article 51A(g) where all citizens have a fundamental duty of preserving and bettering the natural environment, forest, lake, rivers, and wild life. This is a provision that is based on the constitutional appreciation that environmental protection is not necessarily the right of the

State but a collective duty of society as a whole. The Indian system enhances civic responsibility and shared contribution towards environmental conservation by constitutionalizing environmental responsibility Baxi⁴.

4. INTERGENERATIONAL JUSTICE AS A TOOL OF ENVIRONMENTAL CONSTITUTIONALISM

Intergenerational justice plays a leading role in the environmental constitutionalism as it deals with the ethical and legal obligation of the current generations to the future ones. This idea was logically developed by Edith Brown Weiss (1989)⁹, who came up with the principle of intergenerational equity, which states that each generation is a trustee of the Earth and has the duty to preserve its natural and cultural resources to descendants. This belief is based on the fact that the future generations have the right to inherit a planet that is not worse than the one that is currently being experienced by the current generation. The major threats to this entitlement are environmental degradation, climate change, deforestation and loss of biodiversity since the effects of these phenomena are long term and the most cases irreversible. Intergenerational justice on an ethical basis has come to be gradually transposed into the logic of law especially in constitutional systems. The damage done to the environment today often takes decades to be felt, and it is often seen that the ions of damage tend to impact the future generation more than any other political or decision-making body in the present times. Environmental constitutionalism addresses this disproportion by making states consider the concept of sustainability and ensuring that ecological factors are included in the governance system and legal interpretation¹. In this way, constitutional law is transformed into the mechanism of safeguarding the interests of the future generations. Intergenerational justice has been identified by the courts as being especially acute in the case of environmental adjudication. According to the decision in the case of *Yadram v. state of Rajasthan and Ors.* (2025), the court restated that natural resources belong to the State on behalf of both the current and future generations and that the idea of intergenerational equity has to guide the management of the environment. The court stressed that developmental operations leading to permanent ecological degradation infringe the constitutional guarantees in Articles 21, 48A and 51A(g) of the Indian Constitution in the instances where they infringe the rights as envisaged under the Articles 21, 48A and 51A(g) of the constitution. Through the express association of sustainable development with the concept of intergenerational responsibility, the court enhanced environmental constitutionalism as a prospective doctrine and not a remedial doctrine. Environmental constitutionalism has also been constantly developing by extending the doctrines of its foundation to the modern ecological challenges. Recently the Public Trust Doctrine has been applied by the courts to artificial lakes and other artificial water bodies on the basis that these water bodies serve essential ecological purposes, such as ground water recharge and ecological balancing. The courts have believed that they should protect the environmental rights of the future generations in order to limit the State to allow encroachment or commercial exploitation. This cultivates constitutional obligations in Articles 21, 48A and 51A(g) since it puts the long term sustainability of the ecology over the short term developmental interests. Environmental constitutionalism offers viable ways of implementing intergenerational justice. Certain tools like the environmental impact assessment, judicial review of administrative action, and the involvement of the people in the environmental decision making are helpful

to ensure that the long term ecological implications are taken into account with the short term economic gains. Nevertheless, it is difficult to implement due to the conflicting priorities in development, institutional constraints, and political forces. Even so, the increasing judicial focus on intergenerational justice shows a changing constitutional devotion to sustainability and long-term environmental care.

5. INTERNATIONAL PERSPECTIVES OF ENVIRONMENTAL CONSTITUTIONALISM

Environmental constitutionalism is a major trend in the cases of the global law, as a consequence of the ever-increasing ecological crises, and it can be seen as an indication of the growing awareness of ecological protection as a constituent of constitutional law. In jurisdictions, there is a growing recognition of the environment as a basic issue associated with human rights, sustainable development, and equity among generations, both by constitutions and constitutional courts. Whereas certain nations have taken the explicit provisions of the constitution, others such as India have established environmental constitutionalism by the vibrant interpretation of the judiciary. Environmental protection in India has taken place mostly in the form of judicial innovation but not through express constitutional guarantees. The Supreme Court has broadened the rights of Article 21 by understanding the right to life to mean climate change, the right to a clean and healthy environment. The Court has eased the conventional locus standi rules through public interest litigation (PIL) to allow non-profit civil society organizations and the affected communities to seek remedies to environmental pollution⁵. Relatively, there are a number of constitutions that specifically appreciate the rights of the environment. The right to a non-harmful environment to health or well-being and sustainable development is guaranteed in the Constitution of South Africa, thus, the right to an environmental protection is explicitly connected with human dignity and socio-economic justice (Constitution of South Africa, 1996)⁷. Article 112 of the Constitution of Norway takes a proactive role in respecting the rights of the environment and making the State liable towards the future generations to protect the environment (Constitution of Norway, 1814, as amended)⁶. This trend is further strengthened by the recent international developments. The right to a clean, healthy, and sustainable environment was declared by the United Nations General Assembly in 2022 as a universal human right, marking a radical change in the way the international environmental policy is handled (UNGA, 2022). Another form of constitutionalism has also been developed by constitutional courts in other countries like Colombia and Germany who appreciate the rights of future generations and place a heavier burden upon States to reduce climate change¹⁴.

6. CHALLENGES IN THE ENFORCEMENT OF ENVIRONMENTAL RIGHTS AND DUTIES AND THE WAY FORWARD

Although there has been development in the constitutional interpretation process in the country and the continuity of judicial activism, the efficient implementation of the environmental rights and responsibilities in India is marred with structural and practical challenges. One of the main issues is that there is continuous conflict between economic growth and environmental protection. Massive infrastructure and industrial developments like mining, dams, highways, and urban growth are often explained by the notion of development, and ecological sustainability and the rights of the people affected are often relegated to a secondary place. This growth

based model has helped to deforest, to destroy biodiversity, to pollute and to dislocate vulnerable populations which has weakened the constitutional vision of sustainable development⁵. These are further worsened by institutional weaknesses. In many cases environmental regulatory bodies do not have sufficient technical skills, economic resources and power to enforce. Despite the National Green Tribunal (NGT) being established to deliver environmental justice of a specialized and expedited nature, the tribunal has not been efficient due to appointment delays, overlaps of jurisdictions, lack of consistent adherence to its orders, and inaccessibility by the marginalized communities Gill⁹. Also, the involvement of the masses is low. The idea of protection of environment is still seen by many as a duty of the state although Article 51A(g) has put a basic responsibility to the citizens to safeguard the environment. Little environmental knowledge and social participation undermine the presence of community control and accountability in making environmental decisions Kothari¹⁰. These issues need a thorough and prospective solution based upon national reform and international best practice. The right to clean and healthy environment should be explicitly acknowledged in the constitution, which would give it more clarity and normative power, and less reliance on judicial discretion should be used to an excessive degree. It is also important to enhance the environmental institutions by building capacity, scientific skills and transparent management. The judicial activism has to be balanced by courts through expert bodies, credible environmental impact assessments as well as precautionary principles. On the global front, the latest changes like the 2022 United Nations General Assembly resolution to declare a clean, healthy, and sustainable environment as a human right highlight a global trend toward obtaining greater environmental responsibility (UNGA, 2022)¹³. Long-term environmental planning is also necessary, as comparative constitutional jurisprudence in such jurisdictions as Germany and Colombia, where climate responsibility and intergenerational equity are prioritized¹.

Environmental citizenship and shared responsibility can be improved by increasing the involvement of the public, the availability of environmental information and environmental education. The sustainable development strategies and precautionary regulation are vital in enhancing the integration of intergenerational justice in the policymaking process; therefore, to provide environmental justice to the present and future generations.

7. CONCLUSION

The constitutional acknowledgment of the rights and the environmental responsibilities is a transformative methods of environmental protection. In India, the judicial interpretation has been used to expand the constitutional provisions to protect the interest of the environment and sustainable development. Environmental constitutionalism offers a normative system that incorporates rights and responsibilities, development and conservation, and present and future interest. The core of this framework is intergenerational justice, which implies that environmental protection is more than an immediate duty but a constitutional duty to the future generations. Although these issues remain, the enhancement of the constitutional obligation, governance, and citizen involvement can make environmental constitutionalism an effective means of promoting environmental justice and sustainability in the long-term.

Conflict of Interest

Conflict of interest declared none.

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