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# THE RIGHT TO A CLEAN ENVIRONMENT AS A FUNDAMENTAL RIGHT: SCOPE AND LIMITATIONS

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## ABSTRACT

This research investigates the progressive recognition of the right to a clean and healthy environment as an implicit fundamental right under Article 21 of the Indian Constitution. It delves into constitutional mandates, statutory frameworks, landmark judicial pronouncements, and international legal influences that have collectively shaped India's environmental jurisprudence. The study critically evaluates the breadth, effectiveness, and practical enforceability of environmental rights in India, highlighting key challenges such as tensions between environmental protection and developmental imperatives, institutional inadequacies, and the lack of an explicit constitutional guarantee. Drawing on comparative perspectives from jurisdictions such as South Africa, Ecuador, and the European Court of Human Rights, the paper advocates for reforms including constitutional amendments to explicitly recognize environmental rights, institutional strengthening, and enhanced public engagement. Ultimately, the study seeks to determine whether India's existing legal and policy framework effectively harmonizes environmental sustainability with the goals of economic and social development.

**Keywords:** Right to Environment, Article 21, Environmental Justice, Sustainable Development, Judicial Interpretation

## Introduction

### Background

Environmental degradation poses a grave threat to human health, biodiversity, and the sustainability of life on Earth. Industrialisation, urbanisation, deforestation, and unregulated exploitation of natural resources have led to air and water pollution, climate change, and loss of ecosystems, affecting basic human needs like clean air, potable water, and safe habitation. In this context, the right to a clean and healthy environment has emerged globally as a critical component of the right to life and dignity. The United Nations Human Rights Council recently recognised the human right to a clean, healthy, and sustainable environment as a standalone right, reinforcing its foundational role in realising other human rights.<sup>1</sup>

### Evolution of Environmental Jurisprudence in India

In India, the right to a clean environment has not been expressly enshrined in the Constitution but has been judicially read into Article 21, which guarantees the right to life and personal liberty.<sup>2</sup> Beginning with *Rural Litigation and Entitlement Kendra v State of Uttar Pradesh*, the Supreme Court established that ecological balance and environmental preservation are integral to the enjoyment of fundamental rights.<sup>3</sup> Subsequent decisions like *Subhash Kumar v State of Bihar* and *M.C. Mehta v Union of India* solidified this link, declaring that the right to pollution-free water and air is part of Article 21.<sup>4</sup> These developments mark a significant evolution in environmental jurisprudence in India, where judicial interpretation has bridged the legislative gaps in environmental protection.

### Objective of the Study

This study aims to examine the recognition, scope, and limitations of the right to a clean environment as a fundamental right under Indian constitutional law. It analyses how judicial creativity has expanded environmental rights within Article 21 and investigates whether this

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<sup>1</sup> UNHRC, *Resolution on the Human Right to a Clean, Healthy and Sustainable Environment*, A/HRC/48/L.23 (2021).

<sup>2</sup> Constitution of India 1950, art 21.

<sup>3</sup> *Rural Litigation and Entitlement Kendra v State of Uttar Pradesh* AIR 1985 SC 652.

<sup>4</sup> *Subhash Kumar v State of Bihar* AIR 1991 SC 420; *M.C. Mehta v Union of India* AIR 1987 SC 965.

expansion has been consistent, enforceable, and balanced against other constitutional priorities, such as economic development.

## Research Questions

This research is guided by the following questions:

- How has the judiciary expanded Article 21 to include the right to a clean environment?
- What are the legal and practical limitations of recognising this right?
- What role does the state play in balancing the right to development with the right to environmental protection?

## Methodology

The research adopts a **doctrinal legal research method**, relying primarily on case law analysis, statutory interpretation, and constitutional provisions. It involves a detailed study of landmark judicial decisions, constitutional articles (especially Articles 21, 48A, and 51A(g)), relevant legislation such as the Environment Protection Act, 1986, and international environmental law instruments. The study also includes a **comparative legal analysis** of environmental rights jurisprudence in other jurisdictions (e.g., South Africa and Latin America) to place Indian developments in a global context.

## Constitutional and Legal Framework

### Article 21 and the Right to Life

Article 21 of the Constitution of India guarantees the right to life and personal liberty. Over the decades, the Indian judiciary has interpreted this article expansively to include the right to a clean and healthy environment as intrinsic to the right to life. In *Subhash Kumar v State of Bihar*, the Supreme Court explicitly held that the right to life includes the right to enjoy pollution-free water and air.<sup>5</sup> Similarly, in the *M.C. Mehta* cases, the Court reinforced that environmental degradation directly violates Article 21, as it impacts the quality and dignity of

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<sup>5</sup> *Subhash Kumar v State of Bihar* AIR 1991 SC 420

life.<sup>6</sup> This jurisprudential development illustrates how environmental concerns have been constitutionally elevated, even in the absence of an express right to the environment.

### **Article 48A and Article 51A(g)**

Although the right to a clean environment is not a fundamental right per se, Articles 48A and 51A(g) of the Constitution lay down a constitutional obligation for environmental protection. Article 48A, introduced by the 42nd Amendment, directs the State to protect and improve the environment. Article 51A(g), one of the Fundamental Duties, obligates every citizen to protect the natural environment, including forests, lakes, rivers, and wildlife. While these provisions are not enforceable in court, they serve as vital interpretative tools in reading environmental rights into Article 21, forming a constitutional ethic of environmental responsibility.

### **Relevant Environmental Statutes**

#### **a) Environment (Protection) Act, 1986**

Enacted in the wake of the Bhopal Gas Tragedy, this umbrella legislation empowers the central government to take measures to protect and improve the environment and regulate hazardous substances. It provides a legal foundation for environmental standards, monitoring, and enforcement mechanisms.

#### **b) Water (Prevention and Control of Pollution) Act, 1974**

This Act aims to prevent and control water pollution and maintain or restore the wholesomeness of water. It establishes central and state pollution control boards and provides them with enforcement powers.

#### **c) Air (Prevention and Control of Pollution) Act, 1981**

Designed to control air pollution, this Act authorises pollution control boards to set air quality standards and regulate emissions from industrial and vehicular sources.

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<sup>6</sup> *M.C. Mehta v Union of India* AIR 1987 SC 1086.

#### **d) National Green Tribunal Act, 2010**

The Act established the National Green Tribunal (NGT) to provide effective and expeditious adjudication of environmental disputes. The NGT has the power to enforce legal rights relating to the environment and provide relief and compensation to victims of pollution and environmental damage.<sup>7</sup>

Together, these constitutional and statutory provisions form the backbone of India's environmental legal framework. The Supreme Court's interpretation of Article 21 in consonance with Articles 48A and 51A(g), and the enactment of comprehensive environmental laws, has laid the groundwork for recognising a clean environment as an enforceable right in India. However, the enforceability often depends on judicial activism and institutional implementation.

### **Judicial Interpretation and Expansion**

#### **Landmark Cases**

Indian environmental jurisprudence has been largely shaped by judicial activism, where the Supreme Court has consistently interpreted Article 21 to include the right to a clean and healthy environment.

#### **Subhash Kumar v State of Bihar (1991)**

In this landmark case, the Supreme Court explicitly recognised the **right to pollution-free water and air** as part of the right to life under Article 21. The petitioner challenged industrial pollution in the Bokaro River caused by coal washeries. The Court held that any act that pollutes water sources and endangers human health violates Article 21.<sup>8</sup>

#### **M.C. Mehta v Union of India (1986–1997 series)**

This extensive series of cases revolutionised environmental governance in India:

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<sup>7</sup> National Green Tribunal Act 2010.

<sup>8</sup> *Subhash Kumar v State of Bihar* AIR 1991 SC 420.

- In the **Ganga pollution case**, the Court ordered closure of tanneries discharging untreated effluents.
- In the **Oleum Gas Leak case**, it evolved the concept of **absolute liability** for hazardous industries.<sup>9</sup> In the **Taj Trapezium case**, the Court ordered relocation of polluting industries to protect the Taj Mahal from acid rain damage caused by industrial emissions.

### **Vellore Citizens Welfare Forum v Union of India (1996)**

This case is significant for formally introducing the **Polluter Pays Principle** and **Precautionary Principle** into Indian environmental law. The Court stated that sustainable development is a constitutional requirement and laid down guidelines for industrial compliance with environmental norms.<sup>10</sup>

### **T.N. Godavarman Thirumulpad v Union of India (1996 onwards)**

This continuing mandamus case started as a forest preservation petition and evolved into a comprehensive monitoring mechanism for forest conservation. The Court interpreted the term "forest" broadly and banned non-forest activities in forest areas without prior approval, reinforcing judicial oversight over environmental matters.<sup>11</sup>

### **Development of Doctrines**

Over time, the Indian judiciary has developed several environmental principles that guide legal interpretation and policy:

#### **Polluter Pays Principle**

This principle mandates that the polluter must bear the cost of environmental damage, including compensation for affected people and restoration of degraded ecosystems. It was

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<sup>9</sup> *M.C. Mehta v Union of India* AIR 1987 SC 1086.

<sup>10</sup> *Vellore Citizens Welfare Forum v Union of India* AIR 1996 SC 2715.

<sup>11</sup> *T.N. Godavarman Thirumulpad v Union of India* (1997) 2 SCC 267.

affirmed in *Vellore Citizens Welfare Forum v Union of India* and further reiterated in *Indian Council for Enviro-Legal Action v Union of India*.

### **Precautionary Principle**

The principle advocates preventive action in the face of scientific uncertainty. The burden of proof lies on the developer to show that their activity is environmentally benign. It has become a cornerstone in environmental clearance processes.

### **Sustainable Development**

The Court in *Narmada Bachao Andolan v Union of India* stressed the need to balance environmental protection with developmental needs, asserting that development must not compromise the ability of future generations to meet their needs.

The Indian judiciary has been pivotal in interpreting constitutional provisions to incorporate environmental rights and responsibilities. Through creative jurisprudence and the development of global environmental doctrines, the Supreme Court has created a rights-based framework for environmental protection in India.

### **International Influence on Indian Jurisprudence**

Indian environmental law and judicial interpretation have been significantly influenced by evolving international environmental norms and soft law instruments. Although India follows a dualist approach, where international treaties must be legislated into domestic law, the Supreme Court has frequently relied on international declarations to interpret constitutional rights, especially under Article 21.

### **Stockholm Declaration (1972)**

The **United Nations Conference on the Human Environment**, held in Stockholm in 1972, was the first global conference to recognise the link between the environment and human well-being. **Principle 1** of the Stockholm Declaration stated that "*Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits*

*a life of dignity and well-being.*"<sup>12</sup> This declaration deeply influenced India's post-Emergency environmental jurisprudence. The 42nd Constitutional Amendment (1976), which introduced **Articles 48A and 51A(g)**, directly reflected these global commitments.

### **Rio Declaration (1992)**

The **Rio Declaration on Environment and Development** reinforced global environmental principles such as sustainable development, the precautionary principle, and the polluter pays principle. Indian courts have repeatedly cited these principles in major decisions.

In *Vellore Citizens Welfare Forum v Union of India*, the Supreme Court acknowledged both the **precautionary principle** and **polluter pays principle** as essential features of Indian environmental law, deriving authority from international environmental declarations such as the Rio Declaration.<sup>13</sup>

### **Paris Agreement and India's Commitments**

Under the **Paris Agreement (2015)**, India has committed to reducing its emission intensity by 33–35% by 2030 (compared to 2005 levels) and to increasing its non-fossil fuel energy capacity. These commitments, although non-justiciable, influence policy decisions that courts often consider in balancing developmental goals with environmental protection. For example, the National Green Tribunal (NGT) has referred to India's Nationally Determined Contributions (NDCs) when ruling on issues like coal usage and renewable energy promotion.

### **Role of International Law in Interpreting Article 21**

Indian courts have adopted a progressive approach by incorporating international environmental norms even when not directly legislated. In *People's Union for Civil Liberties v Union of India*, the Supreme Court held that **international covenants not inconsistent with fundamental rights and in harmony with their spirit can be read into domestic law**.<sup>14</sup> This jurisprudential openness has allowed principles from global instruments like the Stockholm

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<sup>12</sup> United Nations Conference on the Human Environment, *Stockholm Declaration* (1972) UN Doc A/CONF.48/14/Rev.1.

<sup>13</sup> *Vellore Citizens Welfare Forum v Union of India* AIR 1996 SC 2715.

<sup>14</sup> *People's Union for Civil Liberties v Union of India* (2005) 2 SCC 436



and Rio Declarations to inform interpretations of **Article 21**—expanding its scope to include environmental rights.<sup>15</sup>

International declarations and treaties, though not binding unless incorporated by legislation, have strongly shaped Indian environmental jurisprudence. The judiciary's reliance on global norms has helped fill legislative gaps and align domestic environmental protection with global sustainable development goals.

### **Scope of the Right to a Clean Environment**

The recognition of a clean environment as part of the right to life under Article 21 has widened significantly due to judicial interpretation, legislative developments, and international influence. This section outlines how environmental rights have evolved to include broader human rights dimensions, mechanisms for justice, and emerging issues such as climate change and biodiversity.

### **Recognising Environmental Rights as Human Rights**

Environmental rights are increasingly acknowledged as a subset of human rights. The right to a clean and healthy environment is not only crucial for survival but also for living a life with dignity and well-being. Indian courts have consistently held that environmental degradation infringes upon the right to life. In *M.C. Mehta v Kamal Nath*, the Supreme Court ruled that natural resources are part of the public trust and their misuse violates fundamental rights.<sup>16</sup> The growing international consensus, such as the **UN General Assembly Resolution (2022)** recognising the right to a clean, healthy, and sustainable environment as a human right, adds moral and normative weight to this view.

### **Environmental Justice and Access to Remedies**

Access to justice is central to the enforcement of environmental rights. The concept of **environmental justice** includes equitable access to environmental resources and the ability to seek remedies for environmental harm. The Supreme Court in *Indian Council for Enviro-Legal Action v Union of India* directed industries to compensate affected communities under the

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<sup>15</sup> Constitution of India 1950, art 21.

<sup>16</sup> *M.C. Mehta v Kamal Nath* (1997) 1 SCC 388.

**Polluter Pays Principle**, thus ensuring redress and accountability.<sup>17</sup> Legal aid, public interest litigation (PIL), and judicial activism have played a crucial role in enabling affected individuals and communities to seek justice.

### **Role of the National Green Tribunal (NGT)**

Established under the **National Green Tribunal Act, 2010**, the NGT has significantly strengthened the enforcement of environmental rights in India. It provides a dedicated forum for the expeditious resolution of environmental disputes and enforces key principles such as **sustainable development**, **precautionary principle**, and **polluter pays**. In *Almitra H Patel v Union of India*, the NGT passed extensive directions regarding solid waste management, underlining its proactive role in addressing urban environmental degradation.<sup>18</sup>

### **Expanding Scope to Include Climate Change, Noise Pollution, and Biodiversity**

Indian environmental jurisprudence has expanded beyond conventional pollution concerns to embrace issues like:

- **Climate change**, where courts and the NGT have taken cognisance of carbon emissions, forest diversion, and energy policy;
- **Noise pollution**, particularly under the right to life and public nuisance laws, as seen in *In Re: Noise Pollution – Implementation of the Laws for Restricting Use of Loudspeakers*;<sup>19</sup> **Biodiversity**, protected under the **Biological Diversity Act, 2002** and integrated into judicial directions regarding conservation of forests and endangered species.

The scope of the right to a clean environment is dynamic and evolving. It encompasses not only protection from environmental harm but also proactive measures to ensure ecological balance, justice, and sustainability. Courts, statutory bodies like the NGT, and international developments together are driving this holistic expansion.

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<sup>17</sup> *Indian Council for Enviro-Legal Action v Union of India* (1996) 3 SCC 212.

<sup>18</sup> *Almitra H Patel v Union of India* (2018) SCC OnLine NGT 1265.

<sup>19</sup> *In Re: Noise Pollution – Implementation of the Laws for Restricting Use of Loudspeakers* (2005) 5 SCC 733.

## Limitations and Challenges

Despite progressive judicial interpretation and legislative measures, the realisation of the right to a clean environment in India faces numerous legal, institutional, and structural hurdles. These limitations undermine the effectiveness of environmental protection and raise concerns about enforcement, balance, and constitutional adequacy.

### Conflict between Development and Environment

The tension between economic development and environmental conservation is one of the foremost challenges. Infrastructure projects such as mining, dam construction, and highway expansion often lead to deforestation, displacement, and ecological imbalance. In *Narmada Bachao Andolan v Union of India*, the Supreme Court upheld the construction of the Sardar Sarovar Dam despite environmental and social concerns, citing the need for development.<sup>20</sup> This reflects the difficulty in balancing competing priorities.

### Lack of Enforceability of Directive Principles

Articles like 48A, which mandate the State to protect the environment, fall under the **Directive Principles of State Policy (DPSP)**, which are non-justiciable. While courts may use DPSPs for interpretation, their lack of direct enforceability limits their impact. The absence of a binding obligation often results in environmental interests being subordinated to economic or political considerations.

### Weak Implementation of Environmental Laws

India has a comprehensive legal framework (e.g., Environment Protection Act, Air and Water Acts), implementation remains a challenge due to institutional inefficiency, lack of political will, and corruption. In *T.N. Godavarman Thirumulpad v Union of India*, the Court repeatedly intervened due to non-compliance with forest conservation laws.<sup>21</sup> Regulatory authorities often lack adequate manpower, technical expertise, and independence.

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<sup>20</sup> *Narmada Bachao Andolan v Union of India* (2000) 10 SCC 664.

<sup>21</sup> *T.N. Godavarman Thirumulpad v Union of India* (1997) 2 SCC 267.

## Judicial Overreach vs. Judicial Activism

While judicial activism has played a pivotal role in developing environmental law, critics argue that excessive intervention, especially in administrative matters, risks **judicial overreach**. The National Green Tribunal, and sometimes even the Supreme Court, have faced criticism for issuing sweeping orders without sufficient scientific basis or public consultation, as seen in some NGT bans (e.g., on firecrackers) which were challenged for lack of evidence and stakeholder hearing.<sup>22</sup>

## Absence of a Standalone Constitutional Right to Environment

India does not explicitly recognise the **right to a clean environment** as a standalone fundamental right. Instead, it is derived from **Article 21** through judicial interpretation. This reliance on interpretation makes the right vulnerable to dilution or inconsistent application. Unlike countries that have explicitly constitutionalised environmental rights (e.g., South Africa, Norway), India still lacks a clear textual guarantee in its Constitution.

While India's environmental jurisprudence is celebrated for its breadth and innovation, it continues to be constrained by institutional weakness, legal ambiguity, and competing priorities. Addressing these limitations requires legislative clarity, stronger enforcement, and a more balanced approach to development and ecological sustainability.

## Comparative Perspective

Studying how other jurisdictions constitutionally protect environmental rights offers valuable insights into strengthening India's environmental framework. Various countries and international bodies have explicitly recognised environmental rights, demonstrating diverse constitutional, legislative, and judicial approaches.

## Environmental Rights in Other Jurisdictions

### *South Africa*

South Africa's Constitution is one of the few in the world that explicitly recognises the **right to a clean environment**. **Section 24** of the **Constitution of the Republic of South Africa**,

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<sup>22</sup> *Arjun Gopal v Union of India* (2020) SCC OnLine SC 846.

1996 provides that everyone has the right “to an environment that is not harmful to their health or well-being” and “to have the environment protected, for the benefit of present and future generations.” This clear textual commitment has allowed courts to actively enforce environmental rights, such as in *Fuel Retailers Association v Director-General: Environmental Management*, where sustainable development was emphasised as a constitutional imperative.<sup>23</sup> **Latin America (Ecuador and Bolivia)**

Countries like Ecuador and Bolivia have gone further by recognising “**rights of nature**”. Article 71 of Ecuador’s 2008 Constitution grants nature the right to “exist, persist, maintain and regenerate its vital cycles.” In *Wheeler v Director of the Provincial Government of Loja*, the Ecuadorian Constitutional Court upheld the rights of the Vilcabamba River, marking a paradigm shift from anthropocentric to ecocentric jurisprudence.<sup>24</sup> **Europe (European Court of Human Rights - ECHR)**

While the **European Convention on Human Rights** does not explicitly guarantee a right to a clean environment, the **European Court of Human Rights (ECHR)** has interpreted Articles **2 (Right to Life)** and **8 (Right to Private and Family Life)** to include protection from serious environmental harm. In *Lopez Ostra v Spain*, the Court held that severe environmental pollution interfering with well-being violated Article 8.<sup>25</sup>

### **Lessons for India**

India’s reliance on judicial interpretation of **Article 21** for environmental protection leaves the right legally uncertain and vulnerable to inconsistency. In contrast, jurisdictions like South Africa and Ecuador show that **explicit constitutional recognition** strengthens enforcement and accountability. India can also learn from Latin America’s shift towards **biocentric rights**, which emphasises ecological balance beyond human interests. Further, the ECHR model illustrates how **judicial innovation** within a non-environmental framework can still provide effective remedies.

These comparative models highlight the importance of:

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<sup>23</sup> *Fuel Retailers Association of SA v Director-General: Environmental Management* (2007) ZACC 13.

<sup>24</sup> *Wheeler v Director of the Provincial Government of Loja* (2011) Constitutional Court of Ecuador Judgment No. 11121-2011-0010.

<sup>25</sup> *Lopez Ostra v Spain* (1994) 20 EHRR 277.

- Constitutional clarity
- Rights of nature
- Strong enforcement institutions
- Integrating international norms into domestic law

Environmental protection in India, though firmly established in judicial reasoning, still faces systemic, legal, and philosophical limitations. The journey from an implied right under Article 21 to a fully realised environmental right remains incomplete without broader legal reform and institutional strengthening.

### Summary of Findings

This research has shown that India's environmental jurisprudence, largely driven by the judiciary, has successfully expanded the ambit of **Article 21** to include the right to a clean and healthy environment. However, the absence of an **explicit constitutional guarantee**, the non-enforceability of **Directive Principles**, and **institutional weaknesses** continue to hinder its effective implementation. While PILs and the **National Green Tribunal** have been instrumental in shaping environmental outcomes, inconsistency and over-dependence on judicial will remain concerns.

### Need for Constitutional Amendment or Express Recognition

An **express constitutional provision** recognising the right to a clean environment, similar to **Section 24 of South Africa's Constitution**, would provide stronger legal footing and reduce reliance on judicial interpretation. This could take the form of a new Article or an amendment to Article 21. It would also help in making environmental rights **justiciable** and enforceable in a manner akin to other fundamental rights.<sup>26</sup>

### Strengthening Environmental Institutions (like NGT)

The **National Green Tribunal (NGT)** must be equipped with greater resources, independent experts, and enforcement mechanisms. As noted in *Techi Tagi Tara v Rajendra Singh Bhandari*,

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<sup>26</sup> Constitution of the Republic of South Africa 1996, s 24.

the NGT's capacity is often hampered by lack of technical and judicial personnel.<sup>27</sup> Strengthening statutory bodies and ensuring their autonomy from political or industrial influence is essential for effective environmental adjudication.

### **Balancing Economic Growth and Environmental Protection**

India's path to sustainable development must involve a careful **balancing act** between environmental protection and economic growth. Courts have stressed this in cases like *Vellore Citizens' Welfare Forum v Union of India*, where the doctrine of **sustainable development** was explicitly adopted.<sup>28</sup> Environmental Impact Assessments (EIA), public hearings, and precautionary measures must be strictly enforced before clearing developmental projects.

### **Public Participation and Environmental Awareness**

Environmental protection cannot succeed without **public engagement and awareness**. Citizen involvement in policy-making, impact assessments, and conservation projects fosters accountability. The Court in *Centre for Social Justice v Union of India* noted the importance of informed citizenry in environmental governance.<sup>29</sup> Educational institutions, civil society, and media must play an active role in shaping environmental consciousness.

The right to a clean environment, though evolving, must be strengthened through **constitutional amendment, robust institutional frameworks, and active civic engagement**. India's environmental future depends not only on judicial leadership but also on proactive state policy, legislative clarity, and community participation.

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<sup>27</sup> *Techi Tagi Tara v Rajendra Singh Bhandari* (2018) 11 SCC 734.

<sup>28</sup> *Vellore Citizens' Welfare Forum v Union of India* (1996) 5 SCC 647.

<sup>29</sup> *Centre for Social Justice v Union of India* (2018) SCC OnLine SC 669.

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