

CONSTITUTIONAL FRAMEWORKS FOR ENHANCING ENVIRONMENTAL SUSTAINABILITY: COMPARATIVE ANALYSIS AND POLICY IMPLICATIONS

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ABSTRACT

This research paper explores the role of constitutional eco-protection mechanisms in advancing environmental sustainability. It examines the constitutional framework for environmental protection, the impact of judicial review on environmental justice, legislative powers for enacting environmental regulations, enforcement mechanisms, international law implications, and the importance of citizen participation in environmental governance. By analysing these key aspects, the paper aims to provide insights into how constitutional provisions can effectively safeguard the environment for future generations.

Keywords: Constitutional Frameworks, Environmental Sustainability, Policy Implications, Governance, Socioeconomic Impact, International treaties.

1.) INTRODUCTION

In an era marked by escalating environmental crises and the urgent need for sustainable development, the role of constitutional eco-protection mechanisms in advancing environmental sustainability has become increasingly significant. The incorporation of environmental rights and principles into national constitutions serves as a powerful tool to ensure the preservation of our planet and the well-being of current and future generations. A combination of legal frameworks and constitutional provisions plays a pivotal role in shaping environmental policies, enforcing regulations, and holding accountable those who harm the environment. Moreover, the intersection of constitutional eco-protection mechanisms with international law underscores the global nature of environmental challenges and the need for transboundary cooperation in addressing them. Empowering citizens to participate in environmental governance and advocate for eco-friendly policies, can pave the way for a more sustainable and resilient future. This paper delves into the intricacies of constitutional eco-protection mechanisms, aiming to shed light on their crucial role in advancing

2.) CONSTITUTIONAL FRAMEWORK FOR ENVIRONMENTAL PROTECTION

Constitutional provisions play a critical role in laying the groundwork for environmental protection laws. By embedding environmental rights and principles directly into a nation's foundational document, constitutions create a strong legal basis for safeguarding the

environment. This approach is evident around the world. Ecuador's constitution, for instance, grants nature itself legal rights, while Brazil guarantees its citizens the right to a healthy environment. These enshrined rights empower individuals and environmental groups to hold governments accountable for environmental damage. Constitutional frameworks for environmental protection foster a culture of environmental responsibility¹. The constitutional framework for environmental protection lays the foundation for safeguarding the natural environment and promoting sustainable development. This framework typically includes provisions that recognize and protect environmental rights, principles, and responsibilities within a country's constitution. These provisions may establish the state's duty to conserve and protect the environment for present and future generations, as well as outline the rights of individuals to a clean and healthy environment.

To understand the constitutional framework for environmental protection, one must first examine the specific provisions related to environmental issues within the constitution. This could involve identifying articles or clauses that address environmental rights, principles, and responsibilities, as well as the powers granted to government bodies to enforce environmental regulations. Furthermore, it is essential to analyse how these constitutional provisions are interpreted and applied by the judiciary. Judicial review plays a crucial role in ensuring the enforcement of environmental laws and holding government agencies and private entities accountable for environmental harm. Courts may rely on constitutional provisions to adjudicate environmental cases, protect the rights of affected communities, and uphold environmental justice.²

Overall, the constitutional framework for environmental protection serves as a cornerstone for advancing environmental sustainability and ensuring the responsible stewardship of our planet's resources. By examining and strengthening these constitutional provisions, countries can better address environmental challenges and work towards a more sustainable future. *Article 21* of the constitution provides for the fundamental right of life. Right to life includes the right to have a dignified life and the bare necessities of life like food, shelter, clean water, and clothes. The right to live extends to having a decent and clean environment in which individuals can live safely without any threat to their lives. An environment shall be free from diseases and all sorts of infections.

In the case of *Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh*³, where the petitioner along with the other citizens wrote to the supreme court expressing their views against the progressive mining which denuded the Mussoorie hills of trees and forests and soil erosion. This led to having an adverse effect on the environment and resulted in landslides along with blockage of underground water channels.

In *L.K Koolwal v. State of Rajasthan and Ors*⁴, Rajasthan High Court held that maintaining the quality of the environment, sanitation and health is covered under the purview of Article 21 of the Constitution. Because non-compliance to do so can adversely affect the lives of many citizens and slow poisoning along with reducing the life of a citizen.

¹ It paves the way for sustainable development practices by ensuring that environmental considerations are a core part of decision-making processes.

² M.C. Mehta v. UOI (2018)

³ AIR 1985 Supreme Court 652

⁴ AIR1988RAJ2

In *Bangalore Medical Trust v. B.S Muddappa*⁵, an improvement scheme was prepared by the City Improvement Board of Bangalore for the purpose of extending the city. A low-level park was to be developed for which an area was kept under this scheme. But under the direction of the chief minister the area kept for the low-level park was to be converted into the civic amenity site where the hospital was to be constructed. As soon as the construction began, the residents moved to the high court.

3.) INTERPRETATION AND APPLICATION OF CONSTITUTIONAL PROVISIONS FOR ENVIRONMENTAL PROTECTION:

Courts have interpreted and applied constitutional provisions to protect the environment and ensure environmental justice for affected communities. This includes interpreting the right to a clean and healthy environment as a fundamental right, imposing obligations on the government to conserve and protect the environment, and ensuring that environmental policies adhere to constitutional principles. Courts have also intervened to prevent environmental degradation, enforce environmental laws, and provide remedies for environmental harm. Courts, interpreting constitutional provisions guaranteeing a healthy environment or ecological rights, can order corrective actions or halt harmful projects. For instance, a court might require a stricter pollution control plan for a factory, ensuring a community's right to clean air.

Through the interpretation and application of constitutional provisions, courts have played a significant role in advancing environmental justice and promoting sustainable environmental practices. Article 19(6) of the Constitution lays down the reasonable restriction to this fundamental right to avoid the environmental hazards.

The purpose is to avoid the ecological imbalance and degradation of the atmosphere in the name of carrying on a trade, business, occupation or carrying on any profession. Thus, in the name of business or profession, one cannot cause harm to the environment.

In *M.C Mehta v. Union of India*⁶, certain tanneries were discharging effluents in the holy river Ganga which was causing water pollution. Further, no primary treatment plant was being set up despite the constant reminders. It was held by the court to stop the tanneries from working because the effluents drained were ten times more noxious as compared to the ordinary sewage water which flows into the river.

In *S. Jagannath v. Union of India*⁷, sea beaches and sea coasts were the gifts of nature, by the Hon'ble Supreme Court and any such activity which pollutes these natural resources or the gift of nature cannot be permitted to function. In this case, a shrimp farming culture industry by modern method causing degradation to the ecosystem, discharge of polluting effluents, polluting the potable ground-water and depletion of the plantation. All these activities were held to be violative of constitutional provisions and other legislation dealing with environmental matters, by the court.

4.) LEGISLATIVE POWERS AND ENVIRONMENTAL REGULATIONS

⁵ 1991 AIR SCW 2082

⁶ AIR 1988 SC 1037

⁷ 1997 AIR SCW 635

The effectiveness of this system hinges on the legislature's ability to translate environmental goals into workable laws. Balancing economic development with environmental protection is a constant challenge, and public pressure can play a crucial role in steering legislative priorities towards a sustainable future. Constitution empower legislatures to enact environmental laws. These laws translate broad environmental principles into specific regulations targeting pollution, waste, and resource use. Parliaments set standards, and permitting procedures, and enforce compliance, shaping a legal framework for environmental sustainability. These laws establish environmental standards, permitting procedures for activities with potential ecological impact, and enforcement mechanisms with penalties for non-compliance.

- ***The Precautionary Principle:*** This principle emphasizes taking a proactive approach to environmental protection. Even if scientific certainty about the potential harm of an activity is lacking, action should be taken to prevent environmental degradation. The burden of proof often falls on the actor to demonstrate their activity is safe, not the other way around.
- ***The Polluter Pays Principle:*** This principle holds that those who cause pollution should bear the costs of preventing, reducing, and cleaning up the pollution they generate. This encourages polluters to adopt cleaner technologies and practices.
- ***Sustainable Development:*** This principle aims to balance economic growth with environmental protection and social equity. It recognizes the need to meet the needs of the present without compromising the ability of future generations to meet their own needs.
- ***Public Participation:*** This principle emphasizes the importance of involving the public in environmental decision-making. This can include public hearings, environmental impact assessments, and access to information.
- ***Intergenerational Equity:*** This principle ensures that the use of resources today does not come at the expense of future generations. It emphasizes the need to preserve a healthy environment for future inhabitants of the planet.
- ***The Public Trust Doctrine:*** This principle recognizes that certain environmental resources, such as air, water, and wildlife, are held in trust by the government for the benefit of the public. The government has a responsibility to manage these resources for the benefit of current and future generations.
- ***Sovereignty and Responsibility:*** This principle applies more to international environmental law. It acknowledges that countries have control over their own resources, but also a responsibility to avoid environmental harm to other countries.

In essence, the legislative powers vested in parliaments or congresses are pivotal in shaping environmental governance and facilitating the transition towards sustainable and ecologically responsible practices⁸. The effectiveness of this system hinges on the legislature's ability to translate environmental goals into workable laws. Balancing economic development with environmental protection is a constant challenge, and public pressure can play a crucial role in steering legislative priorities towards a sustainable future.

⁸ Introducing the Parliamentary Observatory on Climate Change and Just Transition: For better environmental governance and transparency, CEPAL 28 September 2023

5.) ENFORCEMENT MECHANISMS AND COMPLIANCE

Enforcing environmental laws and ensuring compliance with constitutional eco-protection measures require a multi-faceted approach involving government agencies, courts, and civil society. Government agencies are often tasked with monitoring and enforcing environmental regulations through inspections, issuing permits, and imposing penalties for non-compliance. They play a crucial role in implementing and overseeing environmental laws, ensuring that businesses and individuals adhere to prescribed environmental standards.

Courts serve as arbiters in environmental law enforcement, adjudicating disputes related to environmental violations and holding polluters accountable. Judicial remedies, such as injunctions and monetary sanctions, are utilized to deter non-compliance and provide redress for environmental harm. Additionally, civil society and environmental advocacy groups contribute to enforcement efforts by raising awareness, initiating legal actions, and pressuring authorities to uphold environmental laws. Effective enforcement mechanisms also encompass public participation, transparency, and access to justice, empowering communities to report violations and participate in decision-making processes. Ultimately, a combination of regulatory oversight, legal recourse, and public engagement is essential for ensuring robust enforcement and compliance with environmental laws, thereby advancing constitutional eco-protection measures and environmental sustainability.

Government Agencies:

Environmental Protection Agencies (EPAs) or designated bodies are responsible for monitoring compliance.

These agencies conduct inspections, assess environmental impact, and investigate potential violations.

Enforcement Tools:

- *Administrative Sanctions:* Fines, permit suspensions, or corrective action orders can be imposed for non-compliance.
- *Civil Lawsuits:* Governments or affected individuals can sue polluters for environmental damage.
- *Criminal Charges:* In severe cases, individuals or corporations may face criminal prosecution for environmental crimes.

Compliance Promotion:

- *Public Education:* Raising awareness about environmental laws and their benefits encourages voluntary compliance.
- *Incentive Programs:* Tax breaks or subsidies can be offered for businesses adopting sustainable practices.
- *Technology:* Monitoring systems and data analysis can help identify potential violations and improve enforcement efficiency.

6.) CITIZEN PARTICIPATION IN ENVIRONMENTAL GOVERNANCE

Citizen participation plays a vital role in environmental governance, fostering transparency, accountability, and sustainability. Mechanisms for public consultation, access to information, and participation in decision-making processes enable citizens to contribute to environmental policies, express concerns, and advocate for sustainable practices. Constitutional provisions can empower citizens by recognizing the right to a healthy environment, guaranteeing access

to environmental information, and establishing avenues for public engagement in environmental decision-making.

Empowering citizens through constitutional provisions enhances environmental governance, as it ensures that the concerns and perspectives of communities are integrated into environmental policies and decision-making processes. This inclusive approach not only promotes environmental justice but also strengthens the implementation and enforcement of environmental regulations. Ultimately, citizen participation serves as a cornerstone of effective environmental governance, fostering a sense of ownership and collective responsibility for environmental protection and sustainability.

Citizen participation is a cornerstone of effective environmental governance. It empowers individuals and communities to be active stewards of their environment. Investing in citizen participation mechanisms fosters a sense of environmental responsibility and paves the way for a more sustainable future.

Mechanisms for Public Engagement:

- *Public Consultation:* Governments should hold open forums and hearings on environmental policies and projects, allowing citizens to voice concerns and offer solutions.
- *Access to Information:* Constitutional guarantees of access to environmental information empower citizens to hold authorities accountable and make informed decisions.
- *Decision-Making Participation:* Mechanisms like petitions and citizen advisory boards can provide avenues for citizens to influence environmental policymaking.

Constitutional Empowerment:

- *Environmental Rights:* Constitutions enshrining environmental rights as fundamental freedoms provide a legal basis for citizen lawsuits and advocacy efforts.
- *Standing Provisions:* Constitutional provisions granting legal standing to citizens affected by environmental degradation enable them to challenge harmful projects in court.

Benefits of Citizen Participation:

- *Improved Decision-Making:* Public input can lead to more informed and comprehensive environmental policies.
- *Increased Transparency:* Citizen Involvement fosters accountability and reduces opportunities for environmental injustice.
- *Enhanced Ownership:* Empowered citizens are more likely to support and comply with environmental regulations.

Part IV-A of the constitution addresses Fundamental Duties, with Article 51-A(g) focusing on the obligation of citizens to safeguard and enhance the natural environment, encompassing forests, rivers, lakes, wildlife, and demonstrating compassion towards all living beings. Like the state's responsibility, it is incumbent upon every citizen not only to protect the environment but also to undertake sufficient measures aimed at its improvement.

In *Kinkeri Devi v. State*⁹, Himachal High Court that in Article 48-A and Article 51-A(g) it was held that it is both constitutional pointer to the state and the constitutional duty of the citizens

⁹ AIR1988HP4

not only protect the environment but also improve it and to preserve and safeguard the forests, the flora and the fauna, the rivers and the lakes and all other water resources of the country.

In *L.K Koolwal v. State of Rajasthan and Ors*, the municipality of Jaipur was being negligent in carrying on its basic duty of maintaining the hygiene of the state. This caused acute sanitation problem thereby leading to have hazardous effects on the lives of the people of the state. Mr Koolwal along with other residents moved an application under Article 226 of the Indian constitution before the high court highlighting the gross negligence of the municipality.

In another case of *Goa Foundation v. State of Goa*, the petitioner was a society registered under the rules relating to registration of societies and its members were the citizens of India who had a fundamental duty to protect and improve the environment, lakes, forests, rivers and have compassion for living creatures as laid down under article 51-A. The question of whether the society had locus standi to move to the court or not was raised before the court.¹⁰

¹⁰ 'International Cooperation is the Key to Solving Sustainability Problems' by Richard Mathew, May 17 2021