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# **THE CONSTITUTIONAL CONTOURS OF INTERGENERATIONAL AND INTRAGENERATIONAL EQUITY IN INDIAN ENVIRONMENTAL LAW**

AUTHORED BY - \*MEHAKPREET KAUR<sup>1</sup>

## **ABSTRACT**

Changes in the climate, increasing pollution, depletion of ozone layer, rise in the sea level, melting of the ice on the glaciers and such like adverse climatic conditions is affecting every person on this earth. It is for this reason that saving planet Earth for the present as well for future generations has become a matter of concern for all the nations around the world. This concern can be best answered through the principles of Intergenerational and Intragenerational Equity. These principles of environmental law are related to conservation of natural resources. The principle of Intergenerational Equity provides that there should be equity in distribution of natural resources between different generations. On the other hand, Intragenerational equity tries to create a balance in the distribution of natural resources amongst the members of the same generation. These principles form the basis of the concept of Sustainable Development in Environment law. This article provides a detailed understanding of the principles of Intergenerational and Intragenerational Equity in Indian Context. It tries to explain how the Constitutional provisions support these principles. These principles, though find no direct reference, are indirectly covered within the scope of various provisions of the Indian Constitution. The Preamble, Fundamental rights, Directive Principles of State Policy and Fundamental Duties can be interpreted to extend support to these principles. The Judiciary has interpreted various constitutional provisions to support the claims of the present generation for preservation and conservation of natural resources. At the same time an effort has been made to preserve the environment for future generations by allowing the present generations to file Litigation on the behalf of and for the benefit of future generations. It was due to the activism on the part of the Indian judiciary and the efforts of public spirited people like M.C. Mehta and NGO's working for preservation and conservation of environment, that these principles have become an integral part of the environmental jurisprudence of the country.

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**KEYWORDS:** Environment, Intergenerational Equity, Intragenerational Equity, Sustainable Development, Environment law.

## 1. INTRODUCTION

From birth till death man is surrounded by an object called environment. The word 'Environment' is derived from the French word 'environer' which means to 'encircle', 'surround' or 'encase'. So, environment means all that encircles or surrounds the living beings. E. J. Ross defines the environment as "an external force which influences us".<sup>2</sup> The term 'Environment' as defined under the Environment (Protection) Act, 1986 includes-

- Water, air and land, and
- the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property.<sup>3</sup>

Thus, the environment consists of both Biotic (living) as well as Abiotic (non-living) components.

However, nowadays a lot of changes are visible in the components of the environment. These changes are due to the activities of mankind and their adverse effects. The activities such as deforestation, urbanization, vehicle pollution, poor disposal of industrial and sewage waste etc., have caused a lot of damage to the environment and have led to Extreme climatic conditions, irregular rainfall patterns, lowering of the groundwater tables, melting of ice on the glaciers. These things were not common at the time of our grandparents. At their time, there used to be a clean and green environment, regular monsoon cycles, clean water in wells and rivers. These changes in our surroundings are indicative of how our environment is getting degraded over a period of time. The understanding of the effect of the environmental changes on the past, present and future generations is dealt with under the concept of Intergenerational and Intragenerational Equity.<sup>4</sup> It tries to create a balance in the use of limited natural resources by present generations in such a manner that these resources are made available to present as well as future generations.

These equitable principles form a basis for the concept of sustainable development. Sustainable development is a process in which development can be sustained for generations. It means

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<sup>2</sup> Meena Sharma, ENVIRONMENTAL STUDIES, 15-16 (2017).

<sup>3</sup> Sec. 2(a), Environment (Protection) Act, 1986

<sup>4</sup> Jitender Loura, *Principle of Intergenerational and Intragenerational Equity under International Environmental Law*, (2017), available at <http://data.conferenceworld.in/SGTB/P01-06.pdf> (last visited on February 20, 2023).

improving the quality of human life while at the same time living in harmony with nature.<sup>5</sup> It involves using the earth's resources in such a manner that the needs of the present generation are met without compromising with the ability of future generations to meet their own needs.<sup>6</sup> It tries to create a balance between development and environment, by emphasizing on regulated and restricted development taking into account the environmental concerns. Therefore it can be said that the concept of sustainable development gets its equitable basis from the principles of Intergenerational and Intragenerational equity.

## 2. MEANING

The principles of Intergenerational and Intragenerational Equity have the same basis and are often used together, however they are different in terms of their area of operation. Intergenerational equity tries to create balance between present and future generations whereas Intragenerational equity tries to balance the use of resources by the people of the present generation amongst themselves. An expansive understanding of the meaning and concept of these terms is given below:

### 2.1 Intergenerational Equity

The term 'Intergenerational Equity' in its literal sense implies equity among two different generations. It provides that natural resources must be equitably distributed between present and future generations. It signifies the 'right' of each generation to benefit from cultural and natural inheritance of past generations as well as the 'obligation' to preserve such heritage for future generations.<sup>7</sup>

This concept views the human community in a partnership with all generations. It stipulates that we, the human species, hold the natural environment of our planet in common with all members of our species: past generations, present generations, and future generations. Being members of the present generation, we are both the beneficiaries as well as the trustees. As beneficiaries we are entitled to benefit from the use of natural resources which we have inherited from our past generations and as trustees have the duty to hold and maintain the quality of the natural system for future generations.<sup>8</sup> Intergenerational Equity is framed of three

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<sup>5</sup> Gurdip Singh, ENVIRONMENTAL LAW, 27 (2016).

<sup>6</sup> P.S Jaswal and Nishtha Jaswal, ENVIRONMENTAL LAW, 97 (2013).

<sup>7</sup> *Id.*, at 120.

<sup>8</sup> Gurdip Singh, *supra* note 4, at 30.

principles:

- Conservation of options - This principle requires each generation to conserve the diversity of natural and cultural resources, so that the future generations are able to exercise the options available in the use of resources.
- Conservation of quality - This principle requires each generation to pass on the natural resources to future generations without further deteriorating their quality.
- Conservation of access - This principle recognises the equitable right of future generations to have access to the legacy of past generations.<sup>9</sup>

These principles, on one hand, recognise the right of each generation to use Earth's resources and on other hand constrain the actions of present generations in doing so. Thus, Intergenerational Equity requires fixing of rights and obligations of each generation to ensure effective and efficient management of resources.

## 2.2. Intragenerational Equity

The term Intragenerational Equity refers to equity within the same generation. It ensures equal distribution of natural resources amongst people of the same generation. It is a condition precedent to achievement of Intergenerational Equity<sup>10</sup>, as resources could be passed to future generations only if there is a fair distribution of resources within the present generation.

Intragenerational Equity tries to address the growing imbalance in distribution of resources between developed and developing nations, between haves and have nots, between rich and poor. It emphasizes poverty reduction, as poor people with no or lesser resources are found to place greater stress on the environment for their survival. It provides for equity in distribution of resources among the human beings of the present generation, both, domestically and globally.

## 3. INTERNATIONAL PERSPECTIVE

At International level, the origin of the principles of Intergenerational and Intragenerational equity can be traced back to 1945, when the States after World War II began to express their concern for the welfare of future generations. This was reflected in the opening words of the Preamble to the UN Charter<sup>11</sup>, Universal Declaration of Human Rights of 1948, International

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<sup>9</sup> *Id.*, at 32-33.

<sup>10</sup> *Id.*, at 34-35.

<sup>11</sup> "We, the people of the United Nations, are determined to save succeeding generations from the scourge of

Covenants on civil and political rights of 1966 and other Human Rights documents.<sup>12</sup>

However, the concern for welfare of present and future generations in terms of their natural environment was highlighted in the Preamble and Principles of the Stockholm Declaration of 1972. The first principle of the Stockholm Declaration fixes the responsibility of man to protect and improve the environment for the present and future generations and the second principle provides for safeguarding the natural resources through careful planning and management for the benefit of present and future generations. These principles have been recognised in several International Covenants and treaties.<sup>13</sup>

Further these principles find reference in the United Nations Brundtland Report of 1987. The Brundtland Commission defined Sustainable Development, stating that it is a development which not only meets the needs of the present generation but also ensures that the ability of future generations to meet their own needs is not compromised. The definition given by Brundtland Commission uses the expression "ability of future generations" which reflects the principle of Intergenerational Equity. The Report also recognises the inequalities between countries and asserts that the future cannot be equal if there are inequalities in the present, thereby supporting the concept of Intragenerational Equity.<sup>14</sup> Similarly the third principle of the Rio Declaration of 1992 supports the concept of Intergenerational Equity by stating that the development process must be carried on keeping in view the environmental needs of present and future generations. Thus, having their base in International instruments, the principles of Intergenerational and Intragenerational Equity have become an integral part of International Environment Law.

#### 4. INDIAN PERSPECTIVE

Though the concern for the Environment is of recent origin at International level, it has always been a part of our Indian culture. The roots of Environment Protection in India can be traced back to 321 and 300 B.C., when protection of nature was considered the dharma (duty) of each individual. People worshiped the objects of nature and had deep concern for protection and preservation of the environment. The religious heritage of India taught the people "to live in

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war...."

<sup>12</sup> Gurdip Singh, *supra* note 4, at 31.

<sup>13</sup> P.S Jaswal, *supra* note 5, at 120-121.

<sup>14</sup> Gurdip Singh, *supra* note 4, at 35.

harmony with nature" so that it could be preserved for future generations.<sup>15</sup> At that time there were no laws to protect the environment, still the environment was at its best. It was only in the British Era that various statutory provisions were enacted to protect the environment. Different legislations such as the Indian Easement Act, 1882; The Indian Fisheries Act, 1897; The Indian Forest Act, 1927 etc. were enacted. Although the purpose of these legislations were to allow the British government to have control of Indian resources, still they worked for protection of the environment. After the independence of India, the concern for protection of the environment for present as well as for future generations can be found in the provisions of the Indian Constitution and in the decisions of the Indian judiciary.

The Constitution of India nowhere provides for the term Intergenerational and Intragenerational Equity. However, the fundamentals of Equity and Fairness reflected in the Preamble, Fundamental Rights, Directive Principles of State Policy and Fundamental Duties in our Constitution, indirectly extends support to these principles. These provisions provide a ground for laying the foundation of these principles on the Indian soil.

#### **4.1 The Preamble to the Indian Constitution**

The Preamble to the Indian Constitution declares that India shall have a 'socialistic' pattern of society, where the state shall have the duty to provide a decent standard of life to the people. This decency in the living standard can be ensured only if there is equality in distribution of resources amongst different sections of society. In the Environment context, equal distribution of natural resources prevents the over-exploitation of these resources by few, leading to their preservation for future generations.

#### **4.2 Fundamental Rights**

The fundamental Rights like Right to Equality, Right to live of endangered species, Right to live in pollution free and healthy environment supports the idea of environment conservation for present as well as future generations.

Right to Equality in Article 14 guarantees all persons equal access to the natural resources without any discrimination. Any action of the government which arbitrarily interferes with the right of people to have access to natural resources can be struck down for violating this

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<sup>15</sup> P.S Jaswal, *supra* note 5, at 5-8.

Fundamental Right. For instance, in the case of *Bangalore Medical Trust v. B.S.Muddappa*<sup>16</sup>, the attempt of the state government to convert a public park site into a nursing home was discarded by the Supreme Court by holding such an act arbitrary and violative of Article 14.<sup>17</sup> Article 14 also recognises the right of future generations to have equal access to the resources which the present generation have inherited from their forefathers. The decision of the Supreme Court in *M.C. Mehta v. Union Of India & Ors (The Taj Trapezium case)*<sup>18</sup> to relocate the industries to protect aesthetic beauty of the historical monument of Taj Mahal shows an indirect reference to the principle of Intergenerational equity, by preserving the World Heritage for the future generations.

Similarly Article 15 prohibits discrimination on the use of public places like wells, tanks, bathing ghats, roads etc., which are maintained wholly or partly out of State funds. These resources belong to the general public and equal access to these is necessary for upholding the principle of Intragenerational Equity.

The Freedom of Speech and expression under Article 19(1)(a) allows the present generation to raise their voice for protection and preservation of natural resources not for themselves but also for the future generations. By filing Public Interest Litigants (PILs), the concerns related to Environment can be highlighted and effective remedies could be sought. The various PILs filed by M.C. Mehta in the cases like *Oleum Gas Leakage case*<sup>19</sup>; *Ganga Pollution Case*<sup>20</sup>; *CNG Case*<sup>21</sup> etc., have brought revolution in the matters related to Environment.

The restrictions imposed in Article 19(6) on freedom of Trade under Article 19(1)(g) helps in preventing the damage to the natural resources by present generations for monetary gains. The Supreme Court in the landmark case of *M.C. Mehta v. Kamal Nath*<sup>22</sup> made it clear that if a hotel is discharging untreated effluent into the river Beas, thereby disturbing the aquatic life and causing water pollution, it cannot be permitted to work.<sup>23</sup>

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<sup>16</sup> *Bangalore Medical Trust v. B.S.Muddappa* (1991) 4 SCC 54 (Supreme Court of India).

<sup>17</sup> P.S Jaswal, *supra* note 5, at 76.

<sup>18</sup> *M.C. Mehta v. Union Of India & Ors* 1987 AIR 1086 (Supreme Court of India).

<sup>19</sup> *M.C. Mehta v. Union Of India* (1987) 1 SCC 395 (Supreme Court of India).

<sup>20</sup> *M.C. Mehta v. Union Of India* (1988) 1 SCC 471 (Supreme Court of India).

<sup>21</sup> *M.C. Mehta v. Union Of India* (2002) 4 SCC 356 (Supreme Court of India).

<sup>22</sup> *M.C. Mehta v. Kamal Nath* (2000) 6 SCC 213 (Supreme Court of India).

<sup>23</sup> S.C.Shastri, ENVIRONMENTAL LAW, 61 (2021).

Further Right to Life under Article 21 of the Indian Constitution supports the idea of the right of the present as well future generations to live in a healthy and pollution free environment. It is for this reason that the Indian Judiciary has recognised this right in various judgments like *Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P* <sup>24</sup>; *M.C.Mehta v. Union of India (Oleum Gas Leakage case)* <sup>25</sup>; *T. Damodhar Rao v. S.O. Municipal Corporation, Hyderabad* <sup>26</sup>; *L.K.Koolwal v. State of Rajasthan*<sup>27</sup>; *Murli S. Deora v. Union of India* <sup>28</sup> etc.

Article 21 not only protects human rights but protects the right to live of the endangered species of animals. Animals being a part of our natural environment needs to be preserved for future generations. The right to life of endangered species has been recognised in the case of *Centre for Environmental Law, World Wide Fund- India v. Union of India* <sup>29</sup> which was filed for protection and saving of Asiatic lions which have been declared as endangered species.<sup>30</sup>

Equal access to Education to all the children in the country is a fundamental right protected under Article 21A. This Fundamental Right will indirectly contribute to Intergenerational and Intragenerational Equity, as only the educated citizens can think of conservation of resources both for present as well as future generations.

Article 32 which is the heart of the Indian Constitution is the essential fundamental right which allows a person to move to the Supreme Court for enforcement of other fundamental rights. Similar remedy can be availed from High courts under Article 226. Through Judicial activism and Public Interest Litigation, this fundamental right has contributed to the development of the environmental jurisprudence in India. Only having a right to live in a pollution free and clean environment is of no use if we do not have machinery for enforcement of this right and this machinery is provided by Article 32 and 226. Therefore in order to ensure the application of

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<sup>24</sup> *Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P* AIR 1985 SC 652 (Supreme Court of India). The case relates to mining in the Doon Valley causing landslides near Mussoorie Hills.

<sup>25</sup> *M.C. Mehta v. Union Of India* (1987) 1 SCC 395 (Supreme Court of India). This case relates to leakage of Oleum Gas from Shriram Food and Fertilizer Corporation, New Delhi.

<sup>26</sup> *T. Damodhar Rao v. S.O. Municipal Corporation, Hyderabad* AIR 1987 AP 171 (Andhra Pradesh High Court). The case relates to acquisition of land kept for recreational purposes for building housing colonies in the city of Hyderabad.

<sup>27</sup> *L.K.Koolwal v. State of Rajasthan* AIR 1988 Raj 2 (Rajasthan High Court). The case relates to the acute sanitation problem in Jaipur.

<sup>28</sup> *Murli S. Deora v. Union of India* (2001) 8 SCC 765 (Supreme Court of India). The case relates to the ban on smoking at public places.

<sup>29</sup> *Centre for Environmental Law, World Wide Fund-India v. Union of India* (2013) 8 SCC 234 (Supreme Court of India).

<sup>30</sup> S.C.Shastri, *supra* note 22, at 57.

the principle of Intergenerational and Intragenerational Equity, this right is a must.

### 4.3 Directive Principles of State Policy

Most of the Directive Principles of State Policy enshrined in Part IV of the Indian Constitution support the principle of Intergenerational and Intragenerational Equity in one way or another. Especially the Directives given in Article 38, 39, 47, 48-A and 49 of the Indian Constitution.

Articles 38 provides that the state shall endeavor to minimize inequalities amongst the people in terms of their income, status and opportunity. Reduction of inequalities will lead to equal distribution of resources, thereby upholding the principle of Intragenerational Equity. Similarly Article 39 provides for equal distribution of material resources so that there is no concentration of wealth in the hands of few.

Article 47 provides that the state shall try to improve the public health by raising the nutritional level and standard of living of the people. This can be made possible only by improving the environment, which will not only benefit the present generations but will also pass on good health to the future generations.

Article 48-A provides for protection and improvement of the environment and safeguard of forests and wildlife and Article 49 obligates the state to protect monuments and places and objects of national importance. This Directive ensures conservation of natural and cultural heritage for present as well as future generations.

These Directives have been used by the Courts to fix the duty of the state for preservation of the environment. The Supreme Court in *M.C. Mehta v. Union of India (CNG Case)*<sup>31</sup> observed that air pollution caused by vehicular pollution in Delhi affects the health of people and directed all the commercial vehicles to switch to CNG fuel. Referring to Directive Principles in Article 39, 47 and 48-A, the court observed that the state has the duty to secure the health of the people and improve the environment.

### 4.4 Fundamental Duties

The fundamental duties were added by the Constitution (42nd Amendment) Act, 1976. Out of these 11 duties, Article 51-A(g) and 51-A(j) specifically deals with the duty of the present

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<sup>31</sup> M.C. Mehta v. Union of India (2002) 4 SCC 356 (Supreme Court of India).

generation to protect the environment. Article 51-A(g) provides that every citizen of India shall protect and improve the natural environment including forests, lakes, wildlife etc. Further Article 51-A(j) provides that the citizens shall strive towards excellence in all spheres, so that the nation constantly rises to higher levels of endeavor and achievement. To take the nation to higher levels of achievement it is necessary that the natural resources are distributed equally amongst the present generation, thereby supporting the idea of Intragenerational Equity. These fundamental duties along with the Directive Principles have been referred to by the Judiciary in various judgments to support the claim for protection of the environment from degradation.<sup>32</sup> For instance in *Suo Moto v. State of Karnataka*<sup>33</sup>, the Karnataka High Court took suo Moto action on the press report as to the mysterious death of elephants in Mysore forest area. The Court referred to the fundamental duty under Article 51-A (g) to impress upon the public at large as to their role and contribution for protection and conservation of wild animals to ensure ecological security of the country.<sup>34</sup>

## 5. CONCLUSION

From above it can be concluded that the two Principles of International Environment law namely Intergenerational and Intragenerational Equity are necessary for protecting the interest of present as well as future generations. Therefore, it becomes the duty of every state to adopt these principles within its municipal law. In Indian context it can be said that these principles are already a part of our Municipal law. They can be referred from the provisions of the Indian Constitution. Though these are not directly mentioned in our Constitution, their essence can be gathered from the Preamble, Fundamental Rights, Directive Principles of State Policy, Fundamental Duties. Further the Indian Judiciary has also played an important role in interpreting these principles as a part of Article 21 of the Indian Constitution.<sup>35</sup> The Judiciary has referred to these principles in a number of cases, directly and indirectly, to support the claims related to the environment. Therefore, it can be said the concern for conservation and preservation of Environment for present as well future generations is an integral part of our legal system, having its base within the Constitution of India.

<sup>32</sup> *Goa Foundation v. State of Goa* AIR 2001 Bomb. 318 (Bombay High Court); *Sitaram Chhaparia v. State of Bihar* AIR 2002 Pat. 134 (Patna High Court); *L.K. Koolwal v. State* AIR 1988 Raj 2 (Rajasthan High Court).

<sup>33</sup> *Suo Moto v. State of Karnataka* 2010 SCC Kar 1792 (Karnataka High Court).

<sup>34</sup> *Gurdip Singh*, *supra* note 4, at 95-96.

<sup>35</sup> *Glanrock Estate (P) Ltd v. State of Tamil Nadu* (2010) 10 SCC 96 (Supreme Court of India).