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**EMERGING CHALLENGES AND THE**  
**CONSTITUTION'S ADAPTATIONS**  
**Climate Change And Environmental Justice:**  
**Integrating Environment Values Into The Constitution**

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**ABSTRACT**

This Article herein discusses about the Theme of Emerging challenges and the constitutional adaptations with the sub theme of the Climate Change and Environmental Justice: Integrating Environment Values into the Constitution. The drastic change in the environment leads to the climatic change were caused by the huge development of the industrializations and rapid urbanization, automobile development in our Nation.

It is not fair by submitting only by way of increasing the amount of vehicles would cause the Air Pollution. The above said Industrial development in the Nation would also leads to various environmental issues in which it may causes the huge Air and Water Pollutions and Environmental degradation. Through these unstandardized developments in the nation's causes the global warming, which made an International issues between the nations.

By developing the green patent which would made an identification of climate change and provides the prevention measures. This IPR System is weren't bogus and would sustainable in legal process. There were many International Agreements and Declarations with the Indian Constitution and mainly the U.N Framework Convention on Climate Change, 1992. There were the Vienna Convention on the Protection of Ozone Layer, 1985 and the Montreal Protocol, 1987 it was based on the protection of the Environmental changes. The Author and Co-author discussed about the "Doctrine of Absolute Liability" with the landmark judgments and the Constitutional Provisions which were specified for the environmental protections, the specified Articles of 19(1)(g), 21, 48-A, 51-A(g), 253 of the Indian Constitution. By this Article the

Author and Co-author submits that by emerging only the constitutional provisions and by integrating the environmental values into the Constitution the World peace may attain.

**KEYWORDS:** Climate change, International Convention, Indian Constitution, Indian Regulations.

## 1. INTRODUCTION:

The article herein discusses about the theme of emerging of challenges and the constitutional adaptations with the sub theme of environmental values and into the constitution. The drastic changes in the environment lead to climatic change which caused by the huge development of industrializations and rabid urbanization, automobile development in nation.

In this article we have briefly expressed the views of the climatic change and then environmental justice through the constitutional provisions of India and some of international agreement declarations.

## 2. DOCTRINE OF ABSOLUTE LIABILITY:

The Principle of Absolute liability makes the individual absolutely liable for damage caused by the escape of a hazardous substance without any exceptions irrespective of the individual's intent in causing such damage or harm.

In the case of **MC Mehta Vs. Union of India**,<sup>1</sup> (The Oleum Gas Leak Case) which took place between, one year after the Bhopal Gas tragedy. Mehta argued that Shriram Industries, which was situated in a densely populated area in Delhi, should be closed after it leaked petroleum gas on 4th and 6th December.

### Facts of the Case-

- M.C. Mehta filed a writ petition for the closure of Shriram Food and Fertiliser Industry, arguing that its location posed a significant risk to public safety.
- The Assistant Commissioner of Factories and the Inspector of Factories issued two orders to shut down the plant under the Factories Act (1948) on 7th and 24th December.

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<sup>1</sup> AIR 1987 SC 965

**Judgment:**

The court acknowledged the role of these hazardous industries in economic development and job creation. For instance, these industries produce chlorine, which is used for water disinfection. The court's final decision was to relocate such factories to less populated areas to minimize the risk to human life. The court also recommended that the government develop a national policy for the location of such hazardous plants and ensure that they do not pose a risk to the community.

### 3. ENVIRONMENT AND CONSTITUTION OF INDIA:

To protect and improve the environment is a constitutional mandate. It is the commitment for country wedded into ideas of welfare state. The Indian constitution contains is specific provisions for environment protection under the chapter of Directive Principles of State Policy and Fundamental Duties in Part IV and IVA respectively.

**Constitutional provisions:**

- ◆ Article 19(1)(g)
- ◆ Article 21
- ◆ Article 48-A
- ◆ Article 51-A(g)
- ◆ Article 253

**Article 19(1)(g):**

This article provides that "to practice any profession, or to carry on any occupation, trade or business." Although it has some restrictions provided under article 19(6) of the Indian Constitution, which states that

“(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions.”

As noted above while carrying a business, trade or occupation if it is affects the environment, the State can impose restriction either by passing legislation or by judicial decision. As in the recent judgment of **Vedanta Limited vs The State of Tamil Nadu & Ors**,<sup>2</sup> The Supreme Court dismissed an appeal by Vedanta Sterlite to reopen its Thoothukudi copper plant closed six years

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<sup>2</sup> 2024 INSC 175

ago on grounds of pollution, endorsing the public's right to health over sheer industry gains. Article 21 of the Constitution empowered the High Court to direct the plant to be closed if it was found to be polluting the environment. Here, the right granted under Article 19(1)(g) was restricted under the grounds provided in Article 19(6) because it pollutes the environment and hazardous to the public health.

**Article 21:**

Article 21 of constitution of India provides for the right to life and personal liberty. It states that "no person shall be deprived of his life or personal liberty except for the procedure of law".

**CASE LAW: Rural Litigation & Entitlement Kendra Vs State of Uttar Pradesh,<sup>3</sup>****FACT:**

Rural litigation and entitlement Kendra filed a petition in the Supreme Court of India regarding the operation of limestone quarries in the Mussoorie Hill range, India. It is stated that quarries caused hazard to healthy environment and affected the perennial water springs. The Honorable Supreme court appointed an extent the Bhargav committee for the purpose of inspecting the limestone quarries. The committee divided all the limestone queries into three categories.

According to the grade of adverse impact of mining operations such as:

Category A: the least as the adverse impact.

Category B: Had little more of adverse impact.

Category C: Director to close down.

**Judgement:**

Supreme Court decided that Category C quarries should not be allowed to operate and their number of quarries listed in Category B should not operate as well. Category A was divided into two groups according to the location situated inside the outside the city of Mussoorie the situated outside the city where allowed to operate and those within the city the Honorable supreme court appointed another expert committee too examine the possibility whether to operate or not.

The workman employed in those closed quarries will be left with no work there for it emphasize that afforestation and soil conservation programs would have to be taken up in the closed quarries

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<sup>3</sup> 1989 AIR 594 1989 SCC Supl.

and Government of India should provide employment to these workmen.

Further, in the case of **Subhash Kumar v State of Bihar**,<sup>4</sup> again the apex court held that the right to get pollution free water and air is a fundamental right under Article 21.

#### CASE LAW: **MC Mehta Vs Union of India**,<sup>5</sup>

The Taj Mahal, one of India's most iconic Mughal structures, is situated within the Taj Trapezium zone, a 10,400 sq. km area designed to protect it from pollution. After noticing the discolouration of the Taj Mahal's white marble during a visit in 1984, Mehta filed a petition in the Supreme Court.

#### **Facts of the case-**

- The petitioner identified pollution as the primary cause of the yellowing of the marble. Acid rain, caused by the emission of pollutant gases like sulphur dioxide and oxygen, was damaging the monument.
- Consequently, the petitioner called for measures to protect the monument.
- In response, the Central Board for Prevention and Control of Water published "Inventory and Assessment of Pollution Emission in and Around Agra-Mathura Region".
- The report confirmed high levels of pollution and recommended measures to mitigate them.
- Among the proposed measures were the closure of thermal power stations and a reduction in Sulfur Dioxide emissions by 50%.

#### **Judgment-**

The Supreme Court noted that the degradation of the Taj Mahal was influenced by socio-economic factors as well as chemical pollutants. The court ordered 292 industries to switch to safer fuels like propane instead of coke/coal or face relocation. The Gas Authority of India Limited was tasked with overseeing the transition to gas. The court also recognized the fundamental rights of the workers in these industries and ordered compensation for lost wages during relocation.

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<sup>4</sup> 1991 AIR 420 1991 SCR (1) 5 1991 SCC (1) 598 JT 1991 (1) 77 1991 SCALE (1)8

<sup>5</sup> 1987 AIR 1086, 1987 SCR (1) 819

**Article 48-A:**

The Protection and improvement and safeguarding of forest and wildlife. This game shell Indigo to protect and to improve the environmental and safeguard forest and wildlife of the country.

**Article 51-A (g):**

It states that "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;"

**CASE LAW: State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Ors.,<sup>6</sup>**

Court held that by enacting Article 51A(g) and giving it the status of a fundamental duty, one of the objects sought to be achieved by Parliament is to ensure that the spirit and message of **Articles 48 and 48A** are honored as a fundamental duty of every citizen. Article 51-A(g), therefore, enjoins that it was a fundamental duty of every citizen "to have compassion for living creatures", which means concern for suffering, sympathy, kindness etc.,

**Article 253:**

It provides that legislation for giving effect to international agreements-

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

Some important conventions are

- A) United Nations Framework Conventions on Climate Change ,1992
- B) The Vienna convention for the protection of ozone layer,1985
- C) Montreal protocol,1987

**A) UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC)**

This convention done at New York on ninth day of May one thousand nine hundred and ninety-two and it has 26 Articles and II Annexes. India ratified the United Nations Framework Convention on Climate Change (UNFCCC) in 1993 and the Kyoto Protocol in 2002.

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<sup>6</sup> MANU/SC/1352/2005

**AIM:**

To preventing the dangerous human interference with the Climate system.

**MATTERS DISCUSSED:**

Article 2 of UNFCCC deals its objective as “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.”

Article 3 of UNFCCC deals 5 principles of

- 1) The parties should protect the climate system for the benefit of present and future generations of humankind; developed countries should take the lead combating in climate change and adverse effects.
- 2) Developing countries like India would have to bear a disproportionate or abnormal burden under the convention, should be given full consideration.
- 3) The parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Taking into accounts that the policies and measures to ensure the global benefits at lowest possible costs.
- 4) Policy and measures should be integrated with national development programs, taking into account that the economic development for adopting measures to address climate change.
- 5) The party should to cooperative promote a supportive and open international economic system would not lead to arbitrary and justifiable discrimination or disguised restriction on international trade.

Article 4 of UNFCCC deals commitments like

- a) Formulate, implement, publish and update regional programs to mitigate climate change by addressing and through anthropogenic emissions.
- b) Promote sustainable management and cooperative the conservation and enhancement, including biomass, forest, oceans as well as coastal and marine ecosystem.
- c) Develop and elaborate integrated plans for coastal zone management, water resources and agriculture.
- d) Promote and corporate socio- economic and legal information related to climate system

and climate change.

- e) Promote and corporate education, training and public awareness related to climate change including that of non-governmental organizations and article 6 of UNFCCC deals it clearly.

Article 11 deals that financial mechanisms said that the financial mechanism shall have an equitable and balance the representation of all parties within the transparent system of governance.

As we seen in above, our team prefer to insert the financial provisions in part-XII chapter I to the Indian Constitution for Allocation of funds to the environment protections schemes for every financial year.

#### **B) VIENNA CONVENTION FOR THE PROTECTION ON OZONE LAYER,1985**

The Vienna convention for the protection of ozone layer is an international environmental agreement signed in 1985 in Vienna, Austria. The treaty was signed to reduce the production of Chlorofluorocarbons. The treaty was signed on 22 march 1985 in Vienna, Austria.

##### **OFFICIAL LANGUAGES:**

The official languages of Vienna convention are Arabic, Chinese, English, French, Russian and Spanish.

##### **RATIFIERS:**

The treaty has been ratified by 197 States, including the Holy See, Niue and the Cook Islands.

##### **OBJECTIVES:**

The main objectives of Vienna convention for the protection of ozone layers are to observe, research and exchange information on the effects of human activities on ozone layer and to adopt measures to combat those activities responsible for ozone depletion.

#### **C) MONTREAL PROTOCOL,1987**

The Montreal Protocol is an international treaty designed to protect the ozone layer by phasing out the production of numerous substances that are responsible for ozone depletion. It was agreed on 16th September 1987, and entered into force on First January 1989.

The Montreal protocol is signed by 197 countries - The first treaty in the history of United Nations to achieve universal ratification and is considered by many as most successful environmental global action.

In 1995, the United Nations named September 16, the International day for “The protection of ozone layer”, also known as world ozone day.

India became a Signatory to the Montreal Protocol in 1992. India mainly manufactured and utilized 7 of the 20 Substances controlled under the protocol. These are CFC-11, CFC113, CFC-12, Halon-1301, Halon-1211, carbon tetrachloride, Methyl Bromide and methyl chloroform.

#### 4. MITIGATION OF CLIMATE CHANGE:

Climate change mitigation means reducing the net release of greenhouse gas emissions that are warming our planet. The Sixth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) highlights the urgency of needed climate actions: global emissions will have to decline by 43% from 2019 by 2030, and rapidly decrease to net-zero by 2050 if we are to stay within the safety limits established by the Paris Agreement.

However, the 2023 NDC Synthesis Report prepared by the **United Nations Framework Convention on Climate Change (UNFCCC)** Secretariat shows that while countries have increased individual levels of ambition to reduce emissions, the combined impact still falls short of the emission reduction cuts necessary to meet the Paris Agreement goals.

Achieving net-zero objectives will require a whole-of-economy and whole-of-government strategy, across all sectors and actors. Rapid emissions decline from power generation, transportation, and from the industrial sector will have to be coupled with significant transformations in the way we manage land, forests, coastlines, and wetlands, which currently account for about a quarter of global carbon emissions.

The 2023 UN Climate Change Conference took place Nov. 30 to Dec. 12, 2023 in Dubai, UAE. The GEF-8 climate change mitigation strategy aims to support developing countries to make transformational shifts towards net-zero greenhouse gas emissions and climate-resilient development pathways, by supporting the objectives of the UNFCCC and the Paris Agreement.

Within the evolving landscape of climate finance, the strategy is designed to be as complementary as possible to other sources of climate finance. This is evident for instance through the collaboration with the Green Climate Fund, with which we have established a Long-Term Vision for Complementarity, Coherence and Collaboration.

#### 4.1. CLIMATE CHANGE MITIGATION PROGRAMS:

Owing to the integrated nature of GEF support, climate change mitigation benefits are also generated through programmatic approaches at a regional and global level. These include programs such as:

- a. GEF Global Program to Support Electric Mobility
- b. GEF Africa Minigrids Program
- c. GEF Global Cleantech Innovation Programme
- d. GEF-8 Integrated Programs

#### CASE LAW: **Ridhima Pandey v. Union of India,**<sup>7</sup>

Ridhima Pandey, a nine-year-old from the Uttarakhand region, is the named plaintiff in a climate change case filed in March 2017 with the National Green Tribunal of India. Plaintiff's petition argues that the Public Trust Doctrine, India's commitments under the **Paris Agreement**, and India's existing environmental laws and climate-related policies oblige greater action to mitigate climate change. It also argues that the term "environment," as used in the Environment (Protection) Act 1986, necessarily encompasses the climate. As climate was an inherent part of the environment, she asserted that safeguarding the environment and protecting forests was critical to addressing climate change.

The petition notes that India is the third-largest national emitter of greenhouse gases (behind China and the U.S.) and among those countries that are most susceptible to adverse climate change impacts.

On January 15, 2019, the National Green Tribunal dismissed the case, reasoning that the climate change is already covered in the process of impact assessments under the Environment Protection Act of 1986, and therefore, "There is no reason to presume that Paris Agreement and other international protocols are not reflected in the policies of the Government of India or are not taken into consideration in granting environment clearances."

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<sup>7</sup> 2019 O.A. NO.187/2019

## 5. POLICIES AND COMMITTEES:

For the purpose of protecting the Natural environment and controlling the climate change the courts has judicially interpreted to ensure these things by constituting committees and make policies, Such as

### A) T.S.R. Subramanian Committee:

It is the high-level committee constituted in August 2014 under the chairmanship of Subramanian by the Ministry of Environment, Forests And Climate Change (MoEF & CC).

**Aim:** The committee was established to review environmental laws in the country such as Environment Protection Act, 1986, Forest Conservation Act, 1980 and to bring them in line with the then required needs.

### Major Recommendations:

#### 1) Constitution of Environmental Management Authority:

Under ‘Environmental Laws (Management) Act’ (ELMA)—National Environmental Management Authority (NEMA) and State Environmental Management Authority (SEMA)—to be constituted to evaluate project clearance in a time bound manner, providing for single-window clearance. The existing Central Pollution Control Board and the State Pollution Control Boards, are proposed to be integrated into NEMA and SEMA once the new bodies come into existence.

#### 2) Merging of laws:

To accelerate the environmental decision-making process, a “fast track” procedure for “linear” projects (roads, railways and transmission lines), power and mining projects and for “projects of national importance.” The Air Act and the Water Act is to be subsumed within the Environment Protection Act.

#### 3) Appellate mechanism:

An appellate mechanism will be set up to hear against the decisions of NEMA/SEMA or MoEF & CC, in respect of project clearance, prescribing a three-month deadline to dispose appeals.

4) Accessing environmental reconstruction cost:

An “environmental reconstruction cost” should be assessed for each project on the basis of the damage caused by it to the environment and this should be added into the cost of the project. This cost has to be recovered as a cess or duty from the project proponent during the life of the project.

5) National Environment Research institute:

It proposed a National Environment Research institute “on the lines of the Indian Council of Forestry Research and Education” to bring in the application of high-end technology in environment governance.

6) Indian Environment Service

It proposed an Indian Environment Service to recruit qualified and skilled human resource in the environment sector.

**B) National Committee on Environmental Planning and Coordination**

(NCEPC) – It is the Advisory Body has also played an important role in the formulation of various legislative measures, such as the Wildlife Protection Act of 1972, the Water (Prevention and Control of Pollution) Act of 1974.

**C) Tiwari Committee (1980):**

The Government of India set up a committee in January 1980 under the Chairmanship of Shri. N.D. Tiwari, then Deputy Chairman of the Planning Commission to review the existing environmental legislation and recommend legislative measures and administrative machinery for environmental protection. The committee stressed the need for the proper management of the country’s natural resources of land, forest and water in order to conserve the nation’s ecological bases.

**D) National Environment Policy, 2006:**

The National Conservation Strategy and Policy Statement on Environment and Development, 1992 was one of the first attempts of the Government of India to develop a policy framework for environmental protection. The National Forest Policy, 1988 and the Policy Statement for Abatement of Pollution, 1992 are some other policy frameworks that advocate effective environmental management at the national level.

However, a need was felt to bring together the guiding principles of all these documents and develop a comprehensive national environmental policy. Consequently, the National Environment Policy was put together after widespread consultation and was approved by the Union Cabinet on 18th May 2006. The National Environment Policy, 2006 (NEP, 2006) does not displace earlier policies but builds upon them.

### **Objectives of the National Environment Policy, 2006**

Following are the objectives that were kept in mind while framing the National Environment Policy, 2006 by Government of India.

1. Conservation of Critical Environmental Resources – To protect and conserve critical ecological systems and resources, and invaluable natural and man-made heritage, which are essential for life-support, livelihoods, economic growth, and a broad conception of human well-being.
2. Intergenerational Equity – To ensure judicious use of environmental resources to meet the needs and aspirations of the present and future generations.
3. Integration of Environmental Concerns in Economic and Social Development – To integrate environmental concerns into policies, plans, programs and projects for economic and social development.
4. Efficiency in Environmental Resource Use – To ensure efficient use of environmental resources in the sense of the reduction in their use per unit of economic output, to minimize adverse environmental impacts.
5. Environmental Governance – To apply the principles of good governance (transparency, rationality, accountability, reduction in time and costs, participation, and regulatory independence) to the management and regulation of the use of environmental resources.
6. Enhancement of Resources for Environmental Conservation – To ensure higher resource flows, comprising finance, technology, management skills, traditional knowledge and social capital for environmental conservation through mutually beneficial multi stakeholder partnerships between local communities, public agencies, the academic and research community, investors, and multilateral and bilateral development partners.

## 7. CONCLUSION:

India that is Bharat has so many natural resources in it. Constitution of India inserts provisions into DPSP and Fundamental Duties to the Government and to the citizens of India for the purpose of protecting the Natural environment and controlling the climate change.

At present we have seeing mean temperature level during summer is about 100 degree 110 degree is inevitable one. In these emerging period, we need to control and reduce the temperature, not only for future generation but also present generation. Not only to expecting the government to took measures and execute the whole, the individual residents solely responsible to took initiative from today. Most of them goes in wrong path to escape from the heat using the Air Conditioners, Refrigerators which emitting chlorofluorocarbon which affects the atmosphere on environment and is the reason to drastic increase of the temperature and which results to climate change.

We should make resolution to constitute a healthy environment. For that purpose we should plant more trees as so far and know behind reasons of planting of trees. Not as a simple statement, we make awareness about the effects of greenhouse gas and values of lively good gases like oxygen.

-GO GREEN, BREATHE CLEAN-

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