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## **The Right to Breathe: A Critical Analysis of Judicial Intervention in India's Air Crisis.**

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**“The Greatest Threat to our planet is the belief that someone else will save it”**

**Robert Swan**

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### **Abstract**

Clean air is most important for human existence as every individual depends on it throughout his life. The air pollution is one of the most important problems which is faced by public and different health concern in India. Judicial interpretation has played important role in recognising access to clean air as an integral part of the right to life guaranteed under Article 21 of constitution. The right of clean and healthy environment is most significant constitutional development of modern India. Indian judiciary is playing vital role in environmental governance. This paper critically analyses the evolution of the ‘right to breathe’ and the role of various constitutional provisions and legislations to determine whether the judiciary alone can effectively solve India’s air pollution crisis.

### **1.Introduction**

India is experiencing severe levels of air pollution despite having various statutory provisions and constitutional framework for protection of environment. Major metropolitan cities such as Delhi, Mumbai, Kolkata, Kanpur and Lucknow, frequently record air quality levels that exceed national and international safety standards. Due to administrative failure the judiciary has interpreted the protection of the environment as an important feature of the right to life guaranteed under Article 21Judicial intervention has transformed air pollution through innovative doctrines and continued monitoring and supervision. The ‘right to breathe’ reflects a jurisprudential shift from traditional notions of regulation to a right based approach.

### **2. Meaning and Scope of the Right to Breathe**

The concept of the "right to breathe" has developed through judicial interpretation rather than constitutional wording. This right has been judicially recognized as an essential part of the right to life guaranteed under Article 21which extends beyond mere physical survival. It includes the right to live in an environment where air quality will never threaten human health or dignity. The Supreme Court has consistently emphasized that life under Article 21 signifies more than animal existence. Judicial interpretation has expanded its scope over the years and held that the enjoyment of life includes environmental protection as a constitutional necessity rather than a matter of policy alone. Therefore, access to clean air is a constitutional entitlement.

### **3. International Origins: The Stockholm Conference and Environmental Consciousness**

Modern environmental governance gained international recognition during the landmark United Nations Conference on the Human Environment held in Stockholm, Sweden, from June 5 to16, 1972. This was the first global conference to place environmental protection as an international concern. The Conference adopted the Stockholm Declaration consisting twenty-six principles that emphasized the relationship between environmental conservation, human welfare, and sustainable development which are closely interconnected and also encouraged nations to adopt policies to balance economic progress and environment responsibility.<sup>2</sup>

India's participation in the Conference significantly influenced development of environmental laws and policies. Following Stockholm, Parliament enacted several environmental statutes, including the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, and eventually the Environment (Protection) Act, 1986. The Forty-Second Constitutional Amendment introduced Articles 48A and 51A(g), which reflected the growing environmental consciousness inspired by Stockholm.

#### **4. Constitutional Framework for Environmental Protection**

##### **4.1 Article 21: Right to Life and Personal Liberty.**

Article 21 guarantees that "no person shall be deprived of his life or personal liberty except according to procedure established by law"<sup>3</sup> Over the years, the Supreme court has interpreted this provision in a progressive manner. A significant turning point came in **Maneka Gandhi v. Union of India (1978)**<sup>4</sup>, wherein the Supreme Court adopted a purposive approach toward fundamental rights and held that the right to life should receive a liberal interpretation rather than a narrow one. Subsequently, environmental rights were incorporated into article 21. In **Subhash Kumar v. State of Bihar (1991)**<sup>5</sup>, the Court held that the right to life includes the right to enjoy pollution-free air and water and it is enforceable legal right rather than merely environment aspiration.

The constitutional journey from "right to life" to "right to breathe" represents one of the most important developments in Indian law.

##### **4.2 Article 48A**

Article 48A, incorporated under the Directive Principles of State Policy, places the obligation on the State to protect and improve the environment and safeguard forests and wildlife. These principles are not directly enforceable in courts, as they serve as guidelines for policymaking and environmental governance.

##### **4.3 Article 51A(g)**

Article 51A(g) imposes a fundamental duty on every citizen to protect and improve the natural environment. It encourages individuals to conserve natural resources and compassion towards living beings,<sup>6</sup>

#### **5. Present Legislative Framework**

India has enacted several statutory measures to regulate pollution and preserve environment.

##### **5.1~ Air (Prevention and Control of Pollution) Act, 1981**<sup>7</sup>

The Air Act was enacted to prevent, control and reduce pollution. It established the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs), which are responsible for regulating emissions and monitoring air quality.

##### **5.2~ Environment (Protection) Act, 1986**<sup>8</sup>

This Act was enacted after the Bhopal Gas Disaster. The Act is umbrella legislation empowering the Central Government to implement environmental safeguards owing to its broad scope.

##### **5.3~ National Green Tribunal Act, 2010**<sup>9</sup>

The Act established the National Green Tribunal (NGT), a specialized environmental adjudicatory body created to provide effective and speedy environmental justice combined with scientific knowledge and legal expertise.

##### **5.4~ Noise Pollution (Regulation and Control) Rules, 2000**<sup>10</sup>

These Rules were introduced to regulate ambient noise standards and restrictions on loudspeakers, industrial activities, firecrackers, and other sources. They prescribe permissible noise limits for different zones and reduce noise pollution.

## 6. Environmental Activism

Judicial activism has played crucial role in environmental jurisprudence. Public Interest Litigation (PIL) has emerged as an important mechanism through which citizens and social organizations obtain judicial remedies. There is an emergence of "Green Constitutionalism" wherein constitutional principles are applied to protect the environment.

### 7. Landmark Judicial Interventions

#### 7.1 M.C. Mehta v. Union of India (Oleum Gas Leak Case), AIR 1987 SC 1086. <sup>11</sup>

This case arose after the leakage of oleum gas from a hazardous industrial unit in Delhi, exposing the public to serious health hazards. The Supreme Court introduced the doctrine of '**Absolute Liability**,' holding that enterprises engaged in hazardous activities bear an absolute and complete responsibility toward society and are liable for harm irrespective of fault. It expanded the scope of Article 21 and strengthened environmental accountability.

#### 7.2 M.C. Mehta v. Union of India (Taj Trapezium Case), (1997).<sup>12</sup>

The Supreme Court examined the harmful impact of industrial emissions on the Taj Mahal. It is a monument of immense historical significance. The Court directed industries to adopt cleaner fuels or relocate outside the Taj Trapezium Zone (TTZ). It applied the **precautionary principle** for protection of cultural Heritage.

#### 7.3 M.C. Mehta v. Union of India (Delhi Vehicular Pollution Case).<sup>13</sup>

Recognising that vehicular emissions were a major contributor to Delhi's worsening air quality, Court ordered the conversion of Delhi's public transport system to Compressed Natural Gas (CNG), strengthening emission standards and reducing vehicular pollution. This litigation pioneered the doctrine of '**Continuing Mandamus**', allowing long-term judicial supervision until complete compliance is achieved.

#### 7.4 Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715 .<sup>14</sup>

This case involved severe environmental pollution caused by the leather tanning industry in Tamil Nadu. The Supreme Court recognized that development should not take place at the cost of environmental degradation. The Court recognized the **Precautionary Principle** and **Polluter Pays Principle** as part of Indian environmental law.

#### 7.5 Indian Council for Enviro-Legal Action v. Union of India.<sup>15</sup>

In this case, several industries were found to be responsible for causing extensive environmental pollution through the discharge of hazardous substances. The Court imposed extensive liability upon industries responsible for environmental degradation and reinforced the **Polluter Pays Principle** and emphasised that those responsible for pollution cannot transfer the cost of restoration to society or the government.

#### 7.6 A.P. Pollution Control Board v. Prof. M.V. Nayudu .<sup>16</sup>

The Court recognized the need for scientific expertise in environmental adjudication and advocated specialized environmental tribunals. This decision significantly influenced the establishment of the National Green Tribunal, India's specialized adjudicatory body.

## **8. Noise Pollution Jurisprudence: Expanding the Right to Breathe**

Environmental rights extend beyond visible pollutants to include protection against excessive noise. Noise was incorporated within the regulatory framework of air pollution through legislative amendments and environmental rules.

### **8.1 Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association (2000).<sup>17</sup>**

The Supreme Court held that religious freedom cannot justify excessive noise that infringes on the rights of others. The Court emphasized that public health and peaceful living take precedence over the unrestricted use of loudspeakers or other sound-amplifying devices.

### **8.2 In Re: Noise Pollution (2005).<sup>18</sup>**

This landmark judgment recognized freedom from excessive noise as a component of Article 21. The Court observed that the rights to sleep, peace, and tranquillity are essential aspects of human dignity and directed the strict regulation of loudspeakers and firecrackers. Recent judicial decisions continue to reaffirm that loudspeaker use is not an essential religious practice and must remain subject to environmental regulations.

## **9. Suggestions and Recommendations**

Although the judiciary has played an important role in environmental protection, coordinated efforts are required from the government, regulatory authorities, industries, and citizens.

First, pollution control boards should be provided with financial resources, technical expertise, and enforcement powers for strict compliance.

Second scientific research and expert consultation should be part of environmental policy making and adjudication. Coordination among Union government, State government and local authorities is necessary.

Public participation must be encouraged through awareness programs, community involvement, and environmental education to protect natural resources. Continuous monitoring of air quality, modern technologies, and transparent public reporting can improve accountability. Greater investment in renewable energy environment-friendly public transport should be prioritized.

Significantly, regional environmental courts would ensure quicker resolutions for environmental disputes.

Finally stricter enforcement of noise pollution including effective control of unnecessary honking, excessive use of loudspeakers, firecrackers is essential for protecting public health.

## **10. Conclusion**

The recognition of right to breathe is an integral part of constitutional right to life. The Supreme Court has transformed environmental protection from a policy objective into an enforceable fundamental right. Landmark judgements have introduced important legal principles that have strengthened environmental governance in India. However, the continuing severity of India's air pollution crisis shows us that solely relying on judicial intervention is inadequate.

Sustainable environmental governance depends on effective legislation, efficient administration, responsible industrial practices, and active public participation.

Therefore, the "right to breathe" remains both a constitutional promise and an unfinished democratic project.

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