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ENVIRONMENTAL EMERGENCY: A PERSPECTIVE ON HORIZONTAL APPLICATION OF FUNDAMENTAL RIGHTS

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ABSTRACT

This paper examines the trajectory of Indian environmental jurisprudence from its roots in ancient Vedic ethics to its contemporary articulation as a facet of the fundamental right to life under Article 21 of the Constitution. It argues that Indian civilisational thought, grounded in Vedic and Puranic literature, envisaged an ethic of harmony between humanity and nature long before the emergence of modern environmental law, and that this ethic finds a functional, if largely unacknowledged, continuity in present-day statutory and judicial responses to ecological degradation. The paper traces the international origins of environmental consciousness in the Stockholm Declaration of 1972 and the Brundtland Commission's articulation of sustainable development, before examining the domestic response through the Environment (Protection) Act 1986, the Water and Air Acts, and the common law of nuisance, negligence, and strict and absolute liability. It further analyses the judicially coined concept of 'Environmental Emergency' developed by the National Green Tribunal, and undertakes a study of the Environment Impact Assessment regime,

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culminating in the Supreme Court's 2025 decision in Vanashakti v Union of India striking down the ex post facto environmental clearance regime. Throughout, the paper foregrounds the horizontal application of fundamental rights the extension of Articles 14, 19(1)(g) and 21 to disputes between private polluters and affected citizens as the unifying doctrinal thread of Indian environmental law. It concludes that the recognition of a clean environment as a human right is not a modern judicial innovation but the constitutional crystallisation of an ethic Indian society has long recognised, and that the horizontal extension of fundamental rights remains indispensable to enforcing that ethic against private industrial and developmental excess.

Keywords: *Environmental Emergency, Horizontal Application of Fundamental Rights, Sustainable Development, Environment Impact Assessment, Ancient Indian Environmental Ethics, Absolute Liability.*

I. INTRODUCTION

‘The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.’

— Principle 2, Stockholm Declaration 1972, UN Doc A/CONF.48/14/Rev.1

ईशा वास्यमिदं सर्वं यत्किंच जगत्यां जगत् । तेन त्यक्तेन भुञ्जीथा मा गृधः कस्यस्विद् धनम् ॥

ईशोपनिषद्

The whole universe, together with its creatures, belongs to the Lord, that is, to Nature. Implicit in this thought is that no creature is superior to any other, and that a human being should not exercise absolute dominion over nature. One is enjoined to enjoy the bounties of nature without succumbing to greed, and without encroaching upon the rights of other species. This age-old environmental ethic of Indian civilisation, of living in harmony with nature, is today almost a forgotten inheritance. The worship of nature as deity and the reverence of the earth as mother reflect a conservation ethic transmitted through Indian history, culture, religion and Vedic philosophy. In recent decades, however, this philosophy has yielded to a western model premised on the

domination of nature, resulting in the exploitation, rather than sustainable utilisation, of natural resources and in the generation of inherently dangerous and hazardous industrial by-products. Scientific and technological progress has fostered in humanity a sense of supremacy over nature and even of being its 'co-creator', this competitive posture towards the natural world has driven mankind, in dealing carelessly with hazardous substances, towards a trajectory of self-destruction. One of the more significant doctrinal responses to this trajectory is the standard the Supreme Court of India has termed absolute liability: where an enterprise is engaged in a hazardous or inherently dangerous activity, it owes 'an absolute and non-delegable duty to the community' to prevent harm, a liability 'not subject to any of the exceptions' recognised under the rule in *Rylands v Fletcher*.² Literature had long warned of the darker consequences of the Industrial Revolution, but the full magnitude of that warning has only recently become apparent.³ Unprecedented harm has, over the last few decades, been visited upon representative samples of the natural environment, the felling of forests for projects such as the Sardar Sarovar Dam, the rising incidence of landslides in Uttarakhand and Himachal Pradesh, and the unchecked expansion of construction in ecologically fragile hill regions each stand as a form of slow-motion catastrophe for human settlements in those areas, a concern that first crystallised in the Chipko Andolan. Many species of flora and fauna have already disappeared, and many more stand at the edge of extinction. Prompt and decisive measures are accordingly required of humanity, occupying as it does the apex of the trophic food chain.

The *Stockholm Declaration of 1972*,⁴ cautioned that the natural resources of the earth, including air, water, land, flora and fauna, and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.⁵ The Indian conception of *Vasudhaiva Kutumbakam* — the whole world as one family — similarly counsels an accommodation of all humanity irrespective of difference; for the majority of the world's indigenous peoples, nature is regarded as a mother who

² *M.C. Mehta v Union of India* (1987) 1 SCC 395, [31] (the Oleum Gas Leak case) (Bhagwati CJ); *Union Carbide Corp v Union of India* (1991) 4 SCC 584; *Charan Lal Sahu v Union of India* (1990) 1 SCC 613.

³ See generally Rachel Carson, *Silent Spring* (Houghton Mifflin 1962); George Perkins Marsh, *Man and Nature* (Charles Scribner 1864).

⁴ United Nations, Declaration of the United Nations Conference on the Human Environment (Stockholm, 16 June 1972) UN Doc A/CONF.48/14/Rev.1, also known as the Magna Carta on Human Environment.

⁵ This, in effect, recognised the principle of inter-generational equity and called for the adoption of appropriate administrative and legislative measures to protect the environment.

nurtures her children impartially. With the successive waves of industrialisation across the world, however, it has become increasingly difficult for nature to reconcile the escalating demands of human development with the transgression of the natural rights of animal and plant life. The expedition to preserve the environment gathered institutional momentum with the Stockholm Conference of 1972, which in turn led to the establishment of the Brundtland Commission,⁶ whose report addressed at length the interlinkage between environmental protection and sustainable development.

In its contemporary sense, the environment may be understood as the source of the wellbeing and vital energy of the biotic and abiotic constituents of the universe. As classical economic theory suggests, a rise in population coupled with the exploitation of resources compels nature to undertake remedial adjustments in order to restore ecological equilibrium. The love of nature is, in this sense, not a modern phenomenon but one coeval with humanity itself; as Plato observed, man is the measure of all things, and just as man loves and is in turn nourished by nature, so too does he serve society and is protected by it in return, nature and society being thus interdependent, and man's duty towards them correspondingly inherent. At the same time, rapid economic development and technological advancement have intensified humanity's impact upon the natural environment, contributing to environmental degradation and ecological imbalance. As the ecologist Edward Goldsmith observed, it is by now apparent that the environment is becoming progressively less capable of sustaining the mounting impact of economic development.

The dismal state of India's environment is well documented. Official assessments record alarmingly high mortality attributable to indoor and ambient air pollution, dangerously elevated levels of suspended particulate matter across most of India's metropolitan cities, and benzene concentrations in Delhi that substantially exceed European Union standards, the resulting public health expenditure runs into thousands of crores of rupees annually.⁷ A committee constituted by the Union Ministry of Environment observed that environmental health policy remains 'almost non-existent' in India, with health concerns rarely integrated into developmental planning; the reasons range from vehicular and industrial emissions to the burning of low-grade fuel and waste,

⁶ World Commission on Environment and Development, *Our Common Future* (Oxford University Press 1987).

⁷ Chandrika Mago, 'Are We Inhaling Disease and Death' *Times of India* (New Delhi, 11 October 2000) 1; see also the (then unpublished) report of the Committee on Environment and Health headed by the Director, Industrial Toxicology Research Centre, constituted by the Ministry of Environment and Forests.

while domestic sewage and untreated industrial effluent continue to poison major water sources, and ambient noise levels in most metropolitan cities routinely exceed statutory limits.

The United Nations Conference on the Human Environment at Stockholm accordingly declared 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, and he bears a solemn responsibility to protect and improve the environment for present and future generations’.⁸ The Rio de Janeiro Earth Summit of 1992 reaffirmed that human beings are entitled to a healthy and productive life in harmony with nature. Together, these declarations impose upon humanity a duty to reconcile its expanding developmental aspirations with the imperative of ecological preservation. The *Brundtland Commission’s report*, *Our Common Future*, together with the domestic N.D. Tiwari Committee report of 1980, proposed a range of administrative and legal strategies towards this end, strategies which this paper examines in the specifically Indian context of the horizontal application of fundamental rights to environmental disputes.

II. ANCIENT INDIAN ENVIRONMENTAL ETHICS

The contemporary discourse against environmental pollution and ecological imbalance reflects a growing consciousness of what may be termed the five ‘Es’ — ecology, economics, energy, employment and equity. Of these, ecology⁹ occupies a foundational position, concerning as it does the basic life-supporting systems of land, water, flora, fauna and atmosphere. Environmental management, correspondingly, extends beyond ecology to encompass energy, land-use planning, forestry, population control, sanitation, industrial process design and agriculture, in short, an interdisciplinary field drawing upon physiology, genetics, chemistry, geology, physics, engineering, geography, economics, political science, sociology and psychology alike. Since air, water and land are the representative samples of the natural environment, and since geophysical, atmospheric and hydrological systems determine the character of the biosphere, including its biota and its human inhabitants, any excessive disturbance of the natural environment inflicts damage upon humanity in turn. It is accordingly necessary to understand the principles of moral conduct that ought to

⁸ Stockholm Declaration 1972 (n 4), Principle 1 (quoted verbatim).

⁹ The term ‘ecology’ derives from the Greek *oikos*, meaning ‘a place to live’. It is commonly understood as the study of the relationship of an organism, or group of organisms, to its environment. See E.P. Odum, *Fundamentals of Ecology* (3rd edn, W.B. Saunders 1971).

govern human interaction with the components of the environment, principles that may collectively be termed environmental ethics.¹⁰

A. Environmental ethics in olden times

Since Vedic times, the guiding ethic of Indian social life was to live in harmony with nature. Sages and teachers who dwelt in the forests expressed this ethic in the Vedas, Upanishads, Smritis and Dharma texts, each of which counselled a worshipful attitude towards plants, trees, the earth, the sky, air and water, and towards animal life, treating their protection as a sacred duty. Hindu religious tradition thus enshrined a deep respect for nature, environmental harmony and conservation, instructing man to revere the presence of divinity within it - trees, animals such as the cow, hills, mountains and rivers were accordingly worshipped as embodiments of this reverence.

A survey of the Vedas, Upanishads, Smritis, Puranas, the Ramayana, the Mahabharata, the Bhagavad Gita and allied literature, together with associated social, moral and political codes, reveals a number of recurring principles said to have governed daily life:

- Respect for nature as the source of all life;
- The maintenance of harmony with nature and the protection of the natural environment;
- The utilisation of natural resources only to the extent necessary to satisfy human need;
- The recognition of divinity as present within all living and non-living objects, such that man, though himself a creation of that divinity, possesses no special privilege over other creatures but rather heightened obligations towards them;
- The observance of ahimsa parmo dharmah, non-violence being regarded as the highest duty, extending compassion to trees, animals, birds and aquatic life alike, such that violence (himsa) was regarded as sin;
- The interpretation of drought, flood, storm, earthquake and volcanic eruption as manifestations of divine displeasure; and
- The observance of purity of thought, expression and physical cleanliness of the surrounding environment.

¹⁰ Ethics may broadly be understood as 'the science that deals with morals, moral correctness'. See Oxford Advanced Learner's Dictionary (4th edn, Oxford University Press 1989) 430.

All life, human and non-human, including trees was thus regarded as of equal value and possessed of an equal right to existence, reflecting a clearly ingrained principle of the sanctity of life. Numerous hymns of the Rigveda and Atharvaveda¹¹ are devoted to the praise of Surya (the Sun), Vayu Devta (the deity of air), Agni Devta (the deity of fire), Varuna Devta (the deity of water), Prithvi Mata (Mother Earth) and Vanya Devi (the deity of the forest); the cutting of trees and the pollution of air, water and land were accordingly regarded as sinful, elements of nature being revered as gods and goddesses whose purity it was every person's duty to protect. Hindu society similarly considered it improper to cast refuse upon a public highway, and the Rigveda, the Manusmriti,¹² and the Charaka Samhita,¹³ each emphasised the purity and medicinal value of water, giving rise to a code of conduct (maryada) aimed at keeping water clean and wholesome. Trees and plants were similarly regarded as indispensable to human life, revered as bestowers of good and as protectors from evil, and considered the abode of various deities. The Rigveda devotes an entire hymn to the healing properties of trees;¹⁴ the following associations between particular trees and deities are illustrative:

Tree	Associated Deity
Lotus	Lakshmi (Goddess of Wealth)
Vata (Banyan)	Brahma (Creator of the Universe)
Ashoka	Buddha, Indra
Kadamba	Krishna
Palasha	Brahma, Gandharva
Neem	Sitala, Manasa
Fig	Vishnu, Rudra
Mango	Lakshmi, Govardhan
Pipal	Vishnu, Krishna

Trees were thus worshipped as Vriksha Devta, offered water, flowers, sweets and sacred threads, and the planting of a tree was regarded as an act of religious merit; the Matsya Purana equates the planting of a single tree with the merit of raising ten children, while the Varaha Purana declares

¹¹ Rigveda VII.42.2; the Rigveda and Atharvaveda are counted among the principal Hindu scriptures.

¹² Manusmriti IV.56.

¹³ Charaka Samhita, Sutrasthana XXVII.213, 215; Charaka Samhita, Vimanasthana III.6(1).

¹⁴ Rigveda X.97.

that one who plants a pipal, a neem, a ber, ten flowering plants or creepers, two pomegranates, two orange trees and five mango trees shall not go to hell.¹⁵ The felling of trees and the destruction of flora were, correspondingly, regarded as sinful acts. The Manusmriti, regarded as the first systematic treatise on Hindu law,¹⁶ prescribed specific punishments for the destruction of trees and plants, while the Charaka Samhita characterised the destruction of forests as among the most dangerous acts a nation or its people could commit, observing that vegetation bears a direct relationship to the wellbeing of society and that the destruction of forests and the pollution of the natural environment give rise to disease that only the restoration of Nature's medicinal properties can cure.¹⁷

*'The air which is devoid of the virtues of season, full of moisture, gusty, hard, icy-cool, hot, dry, harmful, roaring, colliding from two or three sides, foul-smelling, oily, full of dirt, smoke, sand and steam, creates disease in the body and is polluted.'*¹⁸

The *Charaka Samhita* likewise prohibits the use of unwholesome water. Taken together, this body of literature demonstrates that the Hindu reverence for trees and plants rested partly upon utilitarian considerations and partly upon religious duty and mythology. Over time, trees and plants acquired the character of religious entities in their own right; it is a matter of some doctrinal continuity that contemporary Indian courts have, in evolving jurisprudence, come to recognise trees and rivers as juristic persons possessed of enforceable rights.

III. ENVIRONMENTAL EMERGENCY: A JUDICIAL AND LEGISLATIVE APPROACH

An 'Environmental Emergency', in its judicially coined sense, refers to a situation in which the concentration of particulate matter of a diameter of ten micrometres or less (PM10), or of two-and-a-half micrometres or less (PM2.5), in a cubic metre of ambient air exceeds five hundred micrograms or three hundred micrograms respectively. The expression was coined by the Principal Bench of the National Green Tribunal, New Delhi, in its order dated 10 November 2016 in

¹⁵ Varaha Purana 172.39.

¹⁶ Manusmriti XI.64–65; IV.56.

¹⁷ Charaka Samhita, Vimanasthana III.11.

¹⁸ Charaka Samhita, Sutrasthana III.6(1).

Vardhaman Kaushik v Union of India,¹⁹ a matter heard alongside *Sanjay Kulshreshtha v Union of India*, *Supreme Court Women Lawyers Association v Union of India*, *Omesh Saigal v Government of NCT of Delhi* and *Diya Kapur v Union of India*. The Supreme Court has since considered a cognate matter in *Tsunami on Roads (Registered NGO)* through *Dr Sanjay Kulshreshtha v Union of India*.²⁰

The Supreme Court has repeatedly observed that the United Nations Conference on the Human Environment at Stockholm created a global awareness of the need for environmental protection,²¹ and that the concept of ‘sustainable development’, first articulated at Stockholm, has since been accepted as a part of customary international law. The World Commission on Environment and Development, chaired by Gro Harlem Brundtland, was tasked with formulating a global agenda for change, and produced its report, *Our Common Future*, in 1987, warning that human activity was placing life-threatening pressure upon the planetary system, ranging from environmental degradation to the risk of nuclear catastrophe, and that the number, scale and impact of natural and human-induced disasters were mounting steadily. The Commission cautioned that the risk of irreversible damage to natural systems, whether regionally through acidification, desertification and deforestation, or globally through ozone depletion and climate change, was becoming increasingly significant, and recommended institutional and legal change across six priority areas: addressing pollution at source; managing its effects; assessing global risks; enabling informed choice; providing appropriate legal means; and investing in the future.

The Report's most enduring contribution was its definition of sustainable development as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’²². Read together with the concepts of the ‘Polluter Pays’ principle and the Precautionary Principle, which the Report likewise introduced, sustainable development requires that priority be accorded to the essential needs of the world's poor, and that developing and developed States alike pursue strategies of population stabilisation, the integration of environmental and economic decision-making, and poverty alleviation, so as to reduce pressure

¹⁹ *Vardhaman Kaushik v Union of India*, Original Application No 21 of 2014, order dated 10 November 2016 (NGT).

²⁰ *Tsunami on Roads (Registered NGO) v Union of India*, Writ Petition (Civil) Diary No 39633 of 2024.

²¹ *Rural Litigation and Entitlement Kendra v State of UP* 1986 Supp SCC 517; *Vellore Citizens Welfare Forum v Union of India* (1996) 5 SCC 647; *M.C. Mehta v Kamal Nath* (2000) 6 SCC 213.

²² *Our Common Future* (n 6) ch 2, 43 (quoted verbatim), as extracted in *Vellore Citizens Welfare Forum v Union of India* (1996) 5 SCC 647, 2720 (Kuldip Singh J).

upon natural resources. In its broadest sense, the strategy of sustainable development seeks to promote harmony among human beings and between humanity and nature, through effective citizen participation in decision-making and the adoption of production systems that respect the ecological base of development.

IV. ENVIRONMENTAL POLLUTION AND ITS CONTROL UNDER STATUTORY LAWS: THE HORIZONTAL APPLICATION OF FUNDAMENTAL RIGHTS

The principal statutory instruments presently applicable to environmental pollution in India include the following:

- the Environment (Protection) Act 1986;²³
- the Water (Prevention and Control of Pollution) Act 1974;²⁴
- the Air (Prevention and Control of Pollution) Act 1981;²⁵
- the law of noise pollution, addressed indirectly under the foregoing statutes in the absence of a dedicated enactment;²⁶
- the general law of tort;
- the Bharatiya Nyaya Sanhita 2023;
- the Bharatiya Nagarik Suraksha Sanhita 2023;
- the Factories Act 1948;
- the Public Liability Insurance Act 1991; and
- the National Environment Tribunal Act 1995.

As Saghir Ahmed J observed in *M.C. Mehta v Kamal Nath*,²⁷ pollution is, by its very nature, a civil wrong committed against the community as a whole, so that a person guilty of causing

²³Section 2(a) of the Act defines 'environment' to include air, water and land and the interrelationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organisms and property.

²⁴Although water is a State subject under the Constitution, the Act was enacted by Parliament at the request of several States under article 252(1) of the Constitution, and covers rivers, watercourses, inland, natural, artificial and subterranean water and tidal waters.

²⁵Section 2(d) defines air pollution as the presence of any air pollutant in the atmosphere, and defines an 'air pollutant' to include any solid, liquid or gaseous substance, including noise, present in a concentration injurious to human beings, other living creatures, plants, property or the environment. See *Krishna Gopal v State of MP* 1986 Cri LJ 398 (MP); *Ajeet Mehta v State of Rajasthan* 1990 Cri LJ 1956; *M.K. Sharma v Bharat Electronics Ltd* (1987) 3 SCC 231.

²⁶*Church of God (Full Gospel) in India v KKR Majestic Colony Welfare Association* (2000) 7 SCC 282.

²⁷*M.C. Mehta v Kamal Nath* (2000) 6 SCC 213. A motel in that case discharged untreated effluent into the river Beas and interfered with its natural flow; it was directed to pay compensation and was held liable to 'pollution fine', illustrating the horizontal application of the fundamental right to environment.

pollution must pay damages for the restoration of the environment and ecology, and may in addition be held liable in exemplary damages so as to deter future violations.

A. The law of tort and environmental pollution

The deepest doctrinal roots of modern environmental law are commonly traced to the common law principles of nuisance,²⁸ which, together with the torts of negligence, and the principles of strict and absolute liability, together constitute the principal common law heads of relief for environmental pollution.

Nuisance covers a wide array of polluting activity, and denotes an unlawful interference with the use and enjoyment of land or property, or of some right connected with it, whether through the escape of water, smoke, fumes, gas, noise, heat, vibration, electricity, disease germs or otherwise. In *Dhannalal v Chittar Singh*,²⁹ the Madhya Pradesh High Court held that constant noise, if abnormal or unusual, is actionable where it interferes with another's physical comfort, and that the person causing the nuisance may be restrained by injunction notwithstanding that the offending activity is otherwise conducted in accordance with municipal or statutory rules. The focal enquiry in the law of nuisance is whether there has been a material interference with the ordinary comfort of human existence, assessed by reference to the degree and duration of the interference, the character of the locality, and the manner in which the property is used.

As early as 1862, the *Court of Exchequer Chamber*, in *Bamford v Turnley*,³⁰ held that anything which lessens the comfort, or endangers the health or safety, of a neighbour is capable of amounting to an actionable nuisance; smoke and smell arising from the burning of bricks was accordingly found actionable, as was, in *St Helen's Smelting Co v Tipping*,³¹ the physical injury caused to shrubs and trees by vapour discharged from smelting works, again illustrating the horizontal extension of environmental relief between private parties. In the Ganga Pollution case, *M.C. Mehta v Union of India*,³² the Supreme Court held that the pollution of the river Ganga through the discharge of untreated tannery effluent and municipal waste constituted a public nuisance, widespread in range and indiscriminate in effect, such that any member of the affected

²⁸R.W.M. Dias and W.V.H. Rogers, *Winfield and Jolowicz on Tort* (12th edn, Sweet & Maxwell 1984) 377.

²⁹*Dhannalal v Chittar Singh* AIR 1959 MP 240.

³⁰*Bamford v Turnley* (1862) 3 B & S 66, (1862) 10 WR 803.

³¹*St Helen's Smelting Co v Tipping* (1865) 11 HL Cas 642.

³²*M.C. Mehta v Union of India* (1988) 1 SCC 471.

community could invoke the Court's jurisdiction through public interest litigation; the Court accordingly issued detailed directions to the Kanpur Municipal Corporation to arrest the discharge of industrial and municipal waste into the river. Similarly, in *Lakshmipathy v State*,³³ the Karnataka High Court held that air, water, land and noise nuisance caused by industrial activity were hazardous, and that industries could not be permitted to operate while degrading the quality of the environment.

The exposure of unwilling residents of a locality to disastrous levels of noise likewise amounts to a noise nuisance,³⁴ a principle extended to noise arising from mining operations,³⁵ and courts have entertained public interest litigation even where air or noise pollution is merely apprehended.³⁶ Noise pollution, sometimes described as a slow agent of death, has accordingly been recognised as a nuisance contaminating the environment, and courts have on several occasions called for the strict enforcement of noise standards through a comprehensive and independent statutory code, particularly given the health hazards posed by the unregulated use of loudspeakers and explosives.³⁷

V. ENVIRONMENT IMPACT ASSESSMENT: A LEGISLATIVE APPROACH

Land remains the sole, primordial and finite resource available for human survival, and admits of no redemption once despoiled; yet mega-projects in the energy, mining, industrial and infrastructural sectors routinely bulldoze environmental conservation and disturb an already precarious ecological balance. The procedure for Environment Impact Assessment (EIA) under the Environment (Protection) Act 1986 has had a chequered history in India: mass movements in the hills, deserts and coastal regions demanding its stringent implementation were for long dismissed as anti-development, and even as foreign-funded conspiracies against a rising India. The Union Government sought to resolve these controversies through a 2017 notification and a 2021 office memorandum permitting ex post facto, that is, retrospective, environmental clearance for ongoing, expanding or completed projects. On 16 May 2025, the Supreme Court, in *Vanashakti v*

³³ *Lakshmipathy v State* AIR 1992 Kant 57.

³⁴ *M.C. Mehta v Union of India* (1996) 8 SCC 462.

³⁵ *Ved Kaur Chandel v State of HP* AIR 1999 HP 59.

³⁶ *P.A. Jacob v Superintendent of Police, Kottayam* AIR 1993 Ker 1.

³⁷ *Bijayanand Patra v District Magistrate, Cuttack* AIR 1999 Ori 70; affirmed AIR 2000 SC 70.

Union of India,³⁸ struck down this notification and the accompanying office memorandum as arbitrary, illegal and ultra vires the Environment (Protection) Act 1986 and articles 21 and 14 of the Constitution.

The first half of the 1970s marks a period of renaissance in global environmental history. Rachel Carson's *Silent Spring*, on chemical pollution and human health, was followed by the catastrophic Santa Barbara oil spill in California, in which the world witnessed, for the first time, clear ocean water coated in crude oil and beaches littered with dead marine life. The moral outrage this generated against irresponsible laissez-faire industrialisation was reinforced by the Club of Rome's report, *Limits to Growth*,³⁹ which crystallised into a global movement on 22 May 1970, later commemorated as Earth Day; the Report's warnings as to the finitude of oil, coal and mineral resources persuaded governments that the unregulated consumption of natural resources by industry could no longer continue unchecked, prompting the United Nations to convene the Stockholm Conference on the Human Environment in 1972.⁴⁰ Within India, the first Chipko movement paralleled these international developments, as grassroots leaders such as Chandi Prasad Bhatt, Sunderlal Bahuguna and Gaura Devi resisted rampant tree-felling by contractors in the Garhwal Himalayas; the opening day of the Stockholm Conference, 5 June, was declared the world's first Environment Day by the United Nations.

The National Committee on Environmental Planning and Coordination, established in 1972, drew its personnel principally from the Department of Science and Technology and accordingly offered no genuinely independent assessment of environmental impact. Prime Minister Indira Gandhi is credited with attaching considerable urgency to environmental conservation, going so far as to acknowledge the possibility of error in decision-making in order to forestall environmentally destructive projects such as the Tehri Dam and the Silent Valley project; she directed the Tiwari Committee of the Planning Commission to establish a Department of Environment within the Department of Science and Technology, subsequently elevated into a full-fledged Ministry of Environment and Forests. By 1994, a comprehensive EIA notification had been issued,

³⁸ *Vanashakti v Union of India* 2025 SCC OnLine SC 1139 (Oka and Bhuyan JJ). See also 'The Supreme Court on the Ex Post Facto Environment Impact Assessment' (SCC Online Blog, 5 June 2025) <<https://www.scconline.com/blog/post/2025/06/05/the-supreme-court-on-the-ex-post-facto-environment-impact-assessment/>> accessed 18 August 2026.

³⁹ Donella H. Meadows and others, *The Limits to Growth* (Universe Books 1972).

⁴⁰ Stockholm Declaration 1972 (n 4).

subsequently amended in 1997 and again in 2006 to render the process more transparent and constitutionally aligned. This trajectory, however, was reversed in 2017, when environmental clearance came increasingly to be perceived as an obstruction to mega-projects rather than a precondition of their sanction.

By notification dated 14 March 2017,⁴¹ the Ministry of Environment, Forest and Climate Change purported to appraise and regularise projects that had commenced or were under implementation without prior environmental clearance under the 2006 EIA Notification, offering violators a one-time window of six months within which to seek regularisation. Although the notification did not itself employ the expression 'ex post facto', it plainly contemplated a scheme of amnesty for violators. The National Green Tribunal, by its order dated 24 May 2021,⁴² directed the Ministry to formulate a standard operating procedure for the grant of clearance to such violating projects, and a 2021 office memorandum was accordingly issued setting out that procedure together with a list of exempted industries. Together, the 2017 notification and the 2021 office memorandum inaugurated a period in which the grant of ex post facto environmental clearance threatened to displace the requirement of prior clearance altogether.

In *Vanashakti*, the Supreme Court explained that an ex post facto approval connotes, variously, an approval having retrospective effect or force, one issued in respect of a thing already done, or one that is retroactive in the sense of affecting something that has already occurred.⁴³ The Court held that this concept was fundamentally at odds with the 1994 EIA Notification, which prohibited the expansion, modernisation or establishment of any Schedule I activity absent prior environmental clearance, and amounted to a derogation of the foundational principles of environmental jurisprudence. Environmental clearance, the Court emphasised, cannot be treated as a mechanical exercise, since the principles of due diligence and reasonable care are indispensable to environmental conservation; a retrospective clearance, being incapable of a careful application of mind to the likely consequences of an already-undertaken activity, compromises the essential stages of public hearing, screening, scoping and appraisal that together constitute a reasoned decision-making process.⁴⁴

⁴¹ Ministry of Environment, Forest and Climate Change, Notification No S.O. 804(E), 14 March 2017.

⁴² *Tanaji Balasaheb Gambhire v Chief Secretary, State of Maharashtra* 2021 SCC OnLine NGT 1688.

⁴³ *Vanashakti v Union of India* (n 42) [28].

⁴⁴ *Common Cause v Union of India* (2017) 9 SCC 499.

The 2017 notification stood in direct conflict with the Supreme Court's earlier ruling in *M.C. Mehta v Union of India*,⁴⁵ which had disallowed the expansion or modernisation of any activity absent prior clearance, and was likewise found to be at variance with *Common Cause v Union of India* and *Alembic Pharmaceuticals Ltd v Rohit Prajapati*.⁴⁶ Invoking the maxim *ignorantia juris non excusat*, the Court observed that those who had proceeded without prior clearance were neither illiterate nor impoverished, such that compliance with the 1994 Notification was non-negotiable for the long-term protection of the environment. The Court accordingly declared the 2017 notification illegal and struck it down, restraining the Union from issuing any further circular, order, memorandum or notification providing for ex post facto environmental clearance in any form, and reaffirming that environmental protection is not merely a statutory obligation but a constitutional duty flowing from Article 21, such that there can be no genuine development at the cost of environmental conservation.

A further illustration of judicial engagement with the EIA regime is found in *IL&FS Tamil Nadu Power Company Ltd v T Muruganandam*,⁴⁷ where the Supreme Court, noting that the appellant's power plant supplied electricity to approximately forty lakh households in an energy-deficient State, permitted the plant to continue operating notwithstanding partial non-compliance with certain conditions attached to its environmental clearance, subject to a direction that the outstanding conditions be complied with within a stipulated period. On the ancillary question whether an appeal lies to the National Green Tribunal against a corrigendum imposing additional conditions upon an environmental clearance, the Court held that such an appeal is maintainable, but is confined to the corrigendum itself where the original clearance has either not been challenged or has already been affirmed by the Tribunal.

VI. CONCLUSION

The environmental statutes enacted by Parliament and the State legislatures rest upon the recognition of a clean environment as a human, and indeed a fundamental, right. Since a clean environment is essential to human survival, and since that survival cannot be secured without ecological balance, this right inheres in all persons, and any defilement or degradation of the

⁴⁵ *M.C. Mehta v Union of India* (2004) 12 SCC 118.

⁴⁶ *Alembic Pharmaceuticals Ltd v Rohit Prajapati* (2020) 17 SCC 157.

⁴⁷ *IL&FS Tamil Nadu Power Company Ltd v T Muruganandam*, Civil Appeal Nos 1811–1812 of 2015, decided 18 February 2023 (SC).

natural environment amounts to a violation of the human right to a clean environment.⁴⁸ The Stockholm Declaration of 1972 had itself proclaimed 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’⁴⁹.

Although the fundamental rights chapter of the Constitution, comprising articles 12 to 35, makes no express reference to the environment or to ecological balance, the Supreme Court and the various High Courts have, through successive pronouncements, given a fuller and more finely textured meaning to environmental disputes by grounding them in the rights to equality under articles 14 to 18, to life and personal liberty under article 21, and to the freedom of trade and commerce under article 19(1)(g).⁵⁰ In doing so, the courts have effected a horizontal application of fundamental rights, extending constitutional guarantees ordinarily enforceable only against the State to disputes between private polluters and the citizens affected by their conduct — whether through the imposition of exemplary damages upon a private motel discharging effluent into a river, the injunction of a private brick-kiln for the nuisance its smoke occasions, or the invalidation of an executive scheme that would have permitted private industry to regularise unauthorised environmental harm after the fact. This extension is not a departure from, but a constitutional continuation of, the ancient Indian ethic of reverence for and harmony with nature traced in this paper: the recognition of a clean environment as a fundamental right restores, in modern constitutional idiom, the very obligation of careful stewardship that Vedic and Puranic literature once expressed in the register of the sacred. The horizontal application of fundamental rights accordingly remains an indispensable doctrinal tool for enforcing that obligation against private industrial and developmental excess, and its continued and principled deployment, as most recently demonstrated in the striking down of the ex post facto clearance regime in *Vanashakti*, offers the most credible assurance that India's constitutional commitment to environmental protection will not remain merely declaratory.

⁴⁸See R.P. Mishra, 'Ecological Balance as a Human Right' in *Environmental Law in India* (1996) 20–26.

⁴⁹ Stockholm Declaration 1972 (n 4), Principle 1 (quoted verbatim).

⁵⁰ Illustratively, the Polluter Pays principle and the right to fair compensation, as derived in *M.C. Mehta v Kamal Nath* (n 41), and the principle of absolute liability, as derived in *M.C. Mehta v Union of India* (n 3).