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DOI:

[10.1093/jel/eqac010](https://doi.org/10.1093/jel/eqac010)

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*Document Version*

Publisher's PDF, also known as Version of record

*Citation for published version (Harvard):*

Bhullar, L 2022, 'Environmental Constitutionalism and Duties of Individuals in India', *Journal of Environmental Law*, pp. 1-20. <https://doi.org/10.1093/jel/eqac010>

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# Environmental Constitutionalism and Duties of Individuals in India

Lovleen Bhullar\*

## ABSTRACT

Environmental constitutionalism encompasses rights as well as duties of the State and individuals. However, environmental duties of individuals are seldom discussed in detail. What is their contribution to environmental constitutionalism? This article examines the origin and design, as well as judicial adjudication of the fundamental environmental duty of citizens in the Constitution of India to answer this question. It finds that internal and external factors influence the constitutional origin and design of this duty. The constitution drafters viewed this duty as distinct from the duties of the State. However, judicial practice concerning the nature, scope and content of the duty, as well as its implementation and enforcement evidences a dynamic and symbiotic relationship between constitutional environmental rights and duties. The right-holders corresponding to the duty of citizens may include the environment and future generations. These findings provide a framework for the examination of individual environmental duties in other constitutions.

KEYWORDS: citizen, duties, environmental constitutionalism, India, individual

## 1. INTRODUCTION

Environmental constitutionalism is concerned with constitutional protection of the environment.<sup>1</sup> It is a broad concept encompassing rights as well as duties of the State and individuals.<sup>2</sup> Several national constitutions incorporate environmental rights, environmental duties of the State and environmental duties of individuals (or citizens, persons, etc.).<sup>3</sup> The literature on environmental constitutionalism identifies a symbiotic relationship between environmental rights, on the one hand, and environmental duties of the State and individuals on the other.<sup>4</sup> However, there is an overwhelming focus on environmental rights and duties of the State. Scholars

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1 See David R Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (UBC Press 2012) 3; James R May and Erin Daly, *Global Environmental Constitutionalism* (Cambridge University Press 2014) 3.

2 See Louis J Kotzé, 'The Conceptual Contours of Environmental Constitutionalism' (2015) 21 *Widener Law Review* 187, 187. See also Louis J Kotzé, 'Arguing Global Environmental Constitutionalism' (2012) 1(1) *Transnational Environmental Law* 199.

3 See, for example, May and Daly (n 1) Appendix A, B and C.

4 *ibid* 73 and 76.

mention individual environmental duties briefly, but they find it hard to discern their legal significance;<sup>5</sup> the duties appear to be ‘symbolic, hortatory and educational’.<sup>6</sup> It is also observed that ‘courts have so far failed to engage these sorts of provisions’,<sup>7</sup> raising the issue of justiciability. What then is the contribution of duties of individuals to environmental constitutionalism?

Constitutional law scholars have shed light on judicial enforcement/review or justiciability of constitutional rights,<sup>8</sup> and the structural features and practical functions of the constitutional duties of the State.<sup>9</sup> Environmental rights and the duties of the State feature in these discussions. Weis briefly mentions ‘obligations on individuals to promote environmental values or “civic duty” provisions’.<sup>10</sup> However, environmental duties of individuals and their relationship with environmental rights and the environmental duties of the State remain largely unexamined. International human rights law recognises individual duties or responsibilities,<sup>11</sup> but remains primarily concerned with individual rights and the corresponding obligations of the State. While some scholars highlight the need for a history of duties,<sup>12</sup> others fear that an excessive reliance on duties could undermine rights.<sup>13</sup> They are concerned that the government may rely on certain individual duties to limit or deny human rights,<sup>14</sup> or offset its own duties to the individual.<sup>15</sup> This is a greater concern in countries with weak or non-existent rights protections.

This article examines the legal significance of constitutional environmental duties of individuals and their contribution to environmental constitutionalism as well as associated interpretive, implementation and enforcement challenges. For this purpose, it focuses on India, a jurisdiction where the rights-based approach does not form the sole basis of environmental constitutionalism. Following a constitutional amendment in 1976, the Constitution of India 1950 (the Constitution) became one of the first constitutions in the world to set out the fundamental environmental duty of citizens,<sup>16</sup> and the environmental duty of the State<sup>17</sup> as one of the Directive Principles of State Policy (DPSP). This article applies a framework comprising (1)

5 See Carl Bruch, Wole Coker and Chris VanArsdale, ‘Constitutional Environmental Law: Giving Force to Fundamental Principles in Africa’ (2001) 26(1) *Columbia Journal of Environmental Law* 131, 156. See also Boyd (n 1) 68; May and Daly (n 1) 73.

6 Boyd (n 1) 68.

7 May and Daly (n 1) 73.

8 See, for example, Craig Scott and Patrick Macklem, ‘Constitutional Ropes of Sand or Justiciable Guarantees? Social Rights in a New South African Constitution’ (1991) 141(1) *The University of Pennsylvania Law Review* 1; Mark Tushnet, *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law* (Princeton University Press 2008).

9 See, for example, Lael K Weis, ‘Constitutional Directive Principles’ (2017) 37 *Oxford Journal of Legal Studies* 916; Tarunabh Khaitan, ‘Constitutional Directives: Morally-Committed Political Constitutionalism’ (2019) 82(4) *Modern Law Review* 603.

10 Lael K Weis, ‘Environmental Constitutionalism: Aspiration or Transformation’ (2018) 16(3) *I-CON* 836.

11 See Universal Declaration of Human Rights 1948, Article 29; International Covenant on Economic, Social and Cultural Rights 1966, Preamble; International Covenant on Civil and Political Rights, Preamble. See also International Council on Human Rights Policy, *Taking Duties Seriously: Individual Duties in International Human Rights Law – A Commentary* (ICHRP 1999); Ben Saul, ‘In the Shadow of Human Rights: Human Duties, Obligations, and Responsibilities’ (2001) 32(3) *Columbia Human Rights Law Review* 565.

12 Jordan J Paust, ‘The Other Side of Right: Private Duties Under Human Rights Law’ (1992) 5 *Harvard Human Rights Journal* 51; Samuel Moyn, ‘Rights vs. Duties: Reclaiming Civic Balance’ (Boston Review, 16 May 2016) <<https://bostonreview.net/articles/samuel-moyn-rights-duties/>> accessed 14 June 2022.

13 See, for example, Hugh Breakey, ‘Positive Duties and Human Rights: Challenges, Opportunities and Conceptual Necessities’ (2015) 63 *Political Studies* 1198.

14 Fernando Berdion Del Valle and Kathryn Sikkink, ‘(Re)discovering Duties: Individual Responsibilities in the Age of Rights’ (2017) 26(1) *Minnesota Journal of International Law* 189, 195 and 236.

15 John H Knox, ‘Horizontal Human Rights Law’ (2008) 102(1) *American Journal of International Law* 1, 2.

16 The term ‘individual’ is used in human rights law; domestic constitutions include the environmental duty of ‘all’, ‘citizen’, ‘everyone’, ‘inhabitants’ ‘people’ or ‘person’ although there are a few references to ‘individual’. See May and Daly (n 1) Appendix B. The Constitution of India 1950, Part IVA explicitly refers to citizens as duty-bearers, and therefore, this article uses the term ‘fundamental environmental duty of citizens’.

17 The Constitution of India 1950, Part IV, Article 36 reads: ‘In this Part, unless the context otherwise requires, “the State” has the same meaning as Part III.’ The Constitution of India 1950, Part III, Article 12 reads: ‘In this Part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.’

the origin of the constitutional environmental duty of individuals, (2) the constitutional design of this duty and (3) related judicial practice to study the fundamental environmental duty of citizens in India. The research methods used to apply the framework represent another original contribution of this article. For the first two components of the framework, two sources of constitutional history, that is, the 1947 Constituent Assembly Debates<sup>18</sup> and the debates preceding the Constitution (42nd Amendment) Act, 1976, in the *Lok Sabha* (House of the People or the Lower House of Parliament of India) and the *Rajya Sabha* (Council of States or the Upper House of Parliament of India), were examined. A doctrinal analysis of decisions of the Supreme Court of India and High Courts at the State/Union Territory level (together, the judiciary) was undertaken to shed light on the third component of the framework.<sup>19</sup>

The article proceeds as follows. Section 2 discusses the historical context including the internal and external factors leading to incorporation of the fundamental environmental duty of citizens in the Constitution of India. Then it relies on constitutional design to examine the relationship between environmental duties and rights.<sup>20</sup> Section 3 explores judicial practice concerning the fundamental environmental duty of citizens. It focuses on the relationship between constitutional environmental duties and constitutional rights, the relationship between constitutional environmental duties themselves including identification of the State as a duty-bearer, and the expansion of the category of corresponding right-holders to encompass the environment and future generations. Section 4 considers implementation and enforcement of the substantive and procedural dimensions of the fundamental environmental duty of citizens with reference to constitutional design and judicial practice. Some concluding remarks follow.

## 2. ORIGIN AND DESIGN OF THE CONSTITUTIONAL ENVIRONMENTAL DUTY

The first step towards assessing the contribution of the duties of individuals to environmental constitutionalism is to examine their constitutional origin and design. Different internal and external factors lead to the emergence of environmental provisions in domestic constitutions and influence their design. Internal factors may include the domestic historical, economic, social, political and cultural context. External factors encompass developments relating to environmental law and policy frameworks as well as judicial practice at the international level and/or in other jurisdictions. An examination of these factors can shed light on the nature and scope of constitutional environmental duties of individuals. In addition, constitutional (environmental) rights and duties do not exist and operate in isolation from each other. An examination of the design of these constitutional provisions sheds light on the links between them.

### 2.1 Origin

The Constitution of India 1950 as originally enacted did not set out any duties of citizens. In 1947, Sir BN Rau, the Constituent Assembly's constitutional adviser, prepared and submitted a Draft Constitution to the Drafting Committee. Chapter XI of this draft included a section on the Duties of Citizenship, but it was dropped.<sup>21</sup> During the Constituent Assembly Debates

18 The Constituent Assembly Debates are a record of the debates and proceedings in the Constituent Assembly of India, which sat from 9 December 1946 to 24 January 1950 and drafted the Constitution of India.

19 The Indian legal system is partly grounded in common law and includes case law based on precedent. This article also refers to comments or observations in court decisions that are *obiter dicta*, that is, they are said in passing. They are not essential to the decision and do not form part of the *ratio decidendi*.

20 In this article, 'fundamental environmental duty' refers to the constitutional environmental duty of citizens of India and 'constitutional environmental duties' to the duties of the State and citizens of India collectively.

21 Kalyani Ramnath, "We the People": Seamless Webs and Social Revolution in India's Constituent Assembly Debates' (2012) 32(1) South Asia Research 57, 58.

(1948–49), a few members proposed the insertion of duties (or obligations or responsibilities) of citizens in the Constitution.<sup>22</sup> Other members argued that every right implies and includes a duty,<sup>23</sup> taking performance of duties by citizens for granted.<sup>24</sup> Almost two decades later, in 1969, the Supreme Court acknowledged the existence of constitutional duties of citizens, and identified Part IV of the Constitution, which sets out DPSP, as their source. The Court observed:

It is a fallacy to think that under our Constitution there are only rights and no duties... The provisions of Part IV enable the legislatures and the Government to impose various duties on the citizens. The provisions therein are deliberately made elastic because the duties to be imposed on the citizen depend on the extent to which the directive principles are implemented.<sup>25</sup>

In other words, the legislature can impose binding statutory duties on citizens and the executive can set out duties of citizens in binding and non-binding instruments. Why then was the Constitution amended to include specific duties of citizens? Del Valle and Sikkink observe that ‘many regimes with troubled records of supporting human rights include a particular emphasis on duties of individuals in their national constitutions, often seeking to balance the rights of individuals with the necessities of the state or the community as mediated through the state.’<sup>26</sup> The Prime Minister of India Mrs Indira Gandhi had a state of emergency declared across the country from June 1975 to March 1977 based on imminent internal and external threats to the country. Curbing of civil liberties was one of the main features of this controversial period in post-Independence India. The ruling Congress party felt the need and necessity for inclusion of fundamental duties in the Constitution as a balance to rights.<sup>27</sup>

On 26 February 1976, Congress President DK Barooah appointed a committee under the Chairmanship of former Defence Minister Sardar Swaran Singh ‘to study the question of amendment of the Constitution in the light of the experience gained of its working...’<sup>28</sup> On 29 May 1976, when the All India Congress Committee (AICC) met to discuss the first batch of the Committee’s proposals, Dr Karan Singh, the Union Minister of Health and Family Planning, proposed that the Constitution should also include certain fundamental duties and obligations of citizens as a balance to their rights. Accordingly, the AICC’s resolution suggested that the Committee should ‘formulate some proposals for inclusion in the Constitution of certain fundamental duties and obligations which every citizen owes to the nation.’<sup>29</sup> This suggestion did not include a fundamental environmental duty.

The Committee studied the duties of citizens in other constitutions in the background of conditions in India. It also examined the objectives enshrined in the Preamble of the Constitution including the amendments proposed by the Committee itself, and Part III (on fundamental rights) and Part IV (DPSP) of the Constitution. Finally, it proposed the inclusion of eight

22 *Constituent Assembly Debates*, Vol VII, No 52, 9 November 1948 (Renuka Ray) column 57; *Constituent Assembly Debates*, Vol VII, No 56, 19 November 1948 (Prof KT Shah) column 57; *Constituent Assembly Debates*, Vol VII, No 60, 25 November 1948 (VS Sarwate) column 63; *Constituent Assembly Debates*, Vol VII, No 70, 9 December 1948 (NG Ranga) column 131; *Constituent Assembly Debates*, Vol XI, No 163, 23 November 1949 (Nandkishore Das) column 126; *Constituent Assembly Debates*, Vol XI, No 164, 24 November 1949 (Ammu Swaminathan) column 211.

23 *Constituent Assembly Debates*, Vol XI, No 164, 24 November 1949 (G Durgabai) column 91; *Constituent Assembly Debates*, Vol XI, No 165, 25 November 1949 (B Pattabi Sitaramayya) column 178.

24 *Lok Sabha Debates*, Eighteenth Session, Fifth Series, Vol LXV, No 1, 25 October 1976 (K Hanumanthaiya) column 92; *Lok Sabha Debates*, Eighteenth Session, Fifth Series, Vol LXV, No 3, 27 October 1976 (Dr VKRV Rao) column 21–22.

25 *Chandra Bhavan Boarding and Lodging Bangalore v The State of Mysore and Another* (1969) 3 SCC 84 [13].

26 Del Valle and Sikkink (n 14) 202.

27 M Laxmikanth, *Indian Polity* (5th edn McGraw-Hill Education 2017).

28 Udai R Ghai, *Indian Political System: A Study in Government & Politics* (New Academic Publishing 2009) 167.

29 GG Mirchandani, *Subverting the Constitution in India* (South Asia Books 1977) 141.

fundamental duties in the Constitution.<sup>30</sup> The fundamental environmental duty of citizens was absent from this list. The AICC considered the Committee's recommendations, accepted some of them and added a few other duties including the fundamental environmental duty. As a result, clause 11 of the Constitution (44th) Amendment Bill, 1976 (the Bill) proposed the insertion of a new Part IVA in the Constitution on fundamental duties of citizens including the duty 'to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.'

The Law Minister Mr HR Gokhale introduced the Bill in the *Lok Sabha* on 1 September 1976, and the *Lok Sabha* passed the Bill including clause 11 in its original form on 2 November 1976 and sent it to the *Rajya Sabha* for concurrence. Article 51A(g) was not discussed in much detail in the *Rajya Sabha*. One member expressed a reservation to the second component of the fundamental environmental duty, that is, to have compassion for living creatures.<sup>31</sup> More generally, although there was some opposition to the very inclusion of fundamental duties of citizens in the Constitution,<sup>32</sup> the *Rajya Sabha* adopted all the amendments made by the *Lok Sabha* and passed the Bill on 11 November 1976. After ratification by the States and the President's assent, the Bill was notified in the Official Gazette as the Constitution (42nd Amendment) Act, 1976. Part IVA of the Constitution (Article 51A) now sets out 10 fundamental duties, including the fundamental environmental duty of every citizen of India.

Following this brief account of the events leading to the insertion of fundamental duties of citizens in the Constitution, we now turn to focus on the internal and external factors that influenced the inclusion of the fundamental environmental duty of citizens specifically. In a talk delivered before the commencement of the *Lok Sabha* debate on the Bill, Dr VKRV Rao, a leading scholar and member of the *Lok Sabha*, suggested some additions to the list of fundamental duties proposed by the Committee.<sup>33</sup> These additions included 'the human being's duty to nature and environment by avoiding spoliation, pollution, and ecological imbalance'. Dr Rao acknowledged that 'this is a duty to nature and, I suppose, to the environment, rather than to fellow-men'. In other words, this would be a different type of fundamental duty. At the same time, he observed: 'But we all know that this is becoming increasingly important for the preservation of human life and happiness in the modern world.' In response, Mr Swaran Singh clarified that the Committee did not intend for the proposed list of fundamental duties to be exhaustive.<sup>34</sup> Yet, there was no debate to incorporate additional fundamental duties including a fundamental environmental duty in the Bill. How then did the environmental duty form a part of the Bill and later the Constitution?

O'Gorman observes that while domestic political crisis can result in constitutional amendments, incorporation of constitutional environmental provisions may have nothing to do with the cause of the discontent.<sup>35</sup> Court decisions<sup>36</sup> as well as some scholars<sup>37</sup> recognise the United Nations Conference on the Human Environment held in Stockholm in June 1972

30 'Swaran Singh Committee Recommends New Chapter on Fundamental Duties in the Constitution' (*India Today*, 15 July 1976) <[www.indiatoday.in/magazine/indiascope/story/19760715-swaran-singh-committee-recommends-new-chapter-on-fundamental-duties-in-the-constitution-819235-2015-04-09](http://www.indiatoday.in/magazine/indiascope/story/19760715-swaran-singh-committee-recommends-new-chapter-on-fundamental-duties-in-the-constitution-819235-2015-04-09)> accessed 14 June 2022.

31 *Rajya Sabha Debates*, Session No 098, 9 November 1976 (Krishnarao Narayan Dhulap) column 209.

32 *Rajya Sabha Debates*, Session No 098, Part 2, 5 November 1976 (CK Daphtary) column 28.

33 VKRV Rao, 'Fundamental Duties and Directive Principles Under the Proposed Amendments to the Constitution' (1976) 3(4) *India International Centre Quarterly* 266, 271.

34 Swaran Singh, 'Concluding Remarks' (1976) 3(4) *India International Centre Quarterly* 278, 279.

35 Roderic O'Gorman, 'Environmental Constitutionalism: A Comparative Study' (2017) 6(3) *Transnational Environmental Law* 435, 442–43.

36 See, for example, *Essar Oil Limited v Halar Utkarsh Samiti and Others* (2004) 2 SCC 392. See also *Ishwar Singh v State of Haryana and Others* AIR 1996 Punjab & Haryana 30.

37 See Bhaskar Kumar Chakravarty, 'Environmentalism: Indian Constitution and Judiciary' (2006) 48(1) *Journal of Indian Law Institute* 99, 100.

(the Stockholm conference), as the inspiration for Article 51A(g) of the Constitution.<sup>38</sup> In particular, the fundamental environmental duty resembles the latter part of Principle 1 of the Stockholm Declaration, the key output of the conference, which reads as follows:

Man has the fundamental right to freedom, equality and adequate conditions of life in an environmental 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.<sup>39</sup>

Mrs Indira Gandhi was the only head of a state to attend this international environmental conference.<sup>40</sup> Four years later, the constitutional amendment of 1976 led to the insertion of the duty of citizens to protect and improve the natural environment in the Constitution of India. In other words, a charismatic political leader (internal factor) and their participation in an international environmental conference as well as the latter's non-binding outcome (external factor) influenced the incorporation of the fundamental environmental duty in the Constitution of India.

## 2.2 Constitutional Design and Relationship Among Constitutional Environmental Provisions

Environmental constitutionalism encompasses different constitutional provisions. Whether and to what extent constitutional environmental duties of individuals contribute to the ultimate objective of environmental constitutionalism, on their own or together with environmental rights and the duties of the State, partly depends on the design of these constitutional provisions. This exploration of constitutional design sets the stage for an examination of judicial practice concerning the constitutional environmental duty of individuals in Sections 3 and 4.

Often rights and duties are said to be in a correlative relationship.<sup>41</sup> When the 1976 Bill was introduced in the *Lok Sabha*, Mrs Indira Gandhi shared the following rationale for the inclusion of fundamental duties in the Constitution:

The chapter on duties has been introduced not to smother rights but to establish a democratic balance. Our Constitution was notable for highlighting Directive Principles along with Fundamental Rights. Neither can flower and bear fruit without the performance of duties. The asymmetry of one-sided stress on rights will be rectified.<sup>42</sup>

Several *Lok Sabha* members also welcomed the insertion of Part IVA in the Constitution drawing on the correlation between rights and duties.<sup>43</sup> But what was the constitutional right related to the fundamental environmental duty of citizens? At the time, the Constitution did not guarantee a right to environment or any other socio-economic right for that matter. Part III of the

38 Parliament has used its power under Article 253 of the Constitution (to make laws to implement India's international obligations and any decision made at an international conference, etc.) read with Entry 13 of List I of the Seventh Schedule to enact the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986. The preambles to both laws refer to the need to implement decisions made at the Stockholm conference.

39 Declaration of the United Nations Conference on the Human Environment, *Report of the United Nations Conference on the Human Environment* (Stockholm, 5–16 June 1972), UN Doc A/CONF.48.14.Rev1/Corr1 (15 December 1972) Principle 1.

40 Michael H Fisher, *An Environmental History of India: From Earliest Times to the Twenty-First Century* (Cambridge University Press 2018) 195; Jairam Ramesh, *Indira Gandhi – A Life in Nature* (Simon & Schuster India 2017) 134–9.

41 See, for example, Wesley N Hohfeld, 'Fundamental Legal Conceptions, as Applied in Judicial Reasoning' (1917) 26(8) *Yale Law Journal* 710.

42 *Lok Sabha Debates*, Eighteenth Session, Fifth Series, Vol. LXXV, No. 3, 27 October 1976 (Indira Gandhi) column 143.

43 *Lok Sabha Debates*, Eighteenth Session, Fifth Series, Vol LXXV, No 1, 25 October 1976 (HR Gokhale) column 59, (K Hanumanthaiya) column 101, (Dinesh Chandra Goswami) column 123-124 and (Priya Ranjan Das Munshi) column 175; *Lok Sabha Debates*, Eighteenth Session, Fifth Series, Vol LXXV, No 3, 27 October 1976 (PK Deo) column 14, (Dr VKRV Rao) column 22, (Mukul Banerjee) column 104, (Indira Gandhi) column 143, (Inder J Malhotra) column 201, (YS Mahajan) column 246, (K Ramakrishna Reddy) column 277.

Constitution set out civil and political rights as fundamental rights, while Part IV incorporated socio-economic goals or guarantees as DPSP. In other words, the fundamental environmental duty did not correlate with a constitutional environmental right.

The fundamental environmental duty mirrors the latter part of Principle 1 of the Stockholm Declaration (see Section 2.1). Interestingly, Principle 1 also proclaimed that '[b]oth aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself'. This provision influenced the incorporation of environmental rights in some domestic constitutions.<sup>44</sup> However, neither this formulation of the right to environment nor a variation thereof made its way into the Constitution of India. An explanation is the political context leading to the 1976 constitutional amendment, that is, the intent to curb civil liberties during the internal emergency. Explicit incorporation of the fundamental environmental duty in the Constitution preceded implicit recognition of a constitutional right to environment by the judiciary and a combined reading of the constitutional environmental right and duties by the judiciary for the development of environmental rights litigation in India (see Section 3.1 below). External and internal factors do not operate in isolation; the former is considered selectively in the context of the latter.

During the *Lok Sabha* debate preceding the 1976 constitutional amendment, some members suggested that the Constitution should include fundamental duties of the State and bureaucrats in addition to the fundamental duties of citizens.<sup>45</sup> The counterview was that 'the fundamental duty of the Government is to implement the Directive Principles'.<sup>46</sup> Notably, in addition to Part IVA, the Constitution (42nd Amendment) Act, 1976 inserted Article 48A in Part IV of the Constitution on DPSP. Article 48A states that '[t]he State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country'. The fundamental environmental duty of citizens is worded slightly differently: 'to protect and improve the natural environment including forests, lakes, rivers and wildlife'. The 1976 constitutional amendment also shifted two entries, namely 'forests' and 'protection of wild animals and birds' from the control of state governments (Seventh Schedule, List II of the Constitution) to joint control of state governments and the Central Government (Seventh Schedule, List III of the Constitution). This means that both can enact laws in respect of these entries. The constitutional environmental duties of the State and citizens explicitly refer to forests and wildlife, the subjects of these two constitutional entries. However, the nature of the duties is different, and the fundamental environmental duty includes an illustrative list of elements of the natural environment. In other words, the Constitution distinguishes between the environmental duties of the State and citizens.

The arrangement of constitutional provisions also sheds light on the relationship between constitutional environmental duties of the State and citizens. Although there was some discussion of Article 48A in the parliamentary debate preceding the 1976 constitutional amendment, there was no specific discussion of the object and purpose of inserting constitutional environmental duties. During the parliamentary debate, Dr VKRV Rao suggested that the fundamental duties should come in between the fundamental rights and DPSP so that 'everybody will know that fundamental rights and fundamental duties go together and they form a very

44 See, for example, M Pallemerts, 'The Human Right to the Environment as a Substantive Right' in M Dejeant-Pons and M Pallemerts (eds), *Human Rights and the Environment: Compendium of Instruments and Other International Texts on Individual and Collective Rights relating to the Environment in the International and European Framework* (Council of Europe Publishing 2002) 11–12.

45 *Lok Sabha Debates*, Eighteenth Session, Fifth Series, Vol LXV, No 3, 27 October 1976 (Shyam Sunder Mohapatra) column 286; *Lok Sabha Debates*, Eighteenth Session, Fifth Series, Vol LXV, No 5, 29 October 1976 (Vibhuti Mishra) column 126–130.

46 *Lok Sabha Debates*, Eighteenth Session, Fifth Series, Vol LXV, No 3, 27 October 1976 (PK Deo) column 14. See also *Lok Sabha Debates*, Eighteenth Session, Fifth Series, Vol LXV, No 4, 28 October 1976 (Bhogendra Jha) column 151; *Lok Sabha Debates*, Eighteenth Session, Fifth Series, Vol LXV, No 5, 29 October 1976 (Dharnidhar Das) column 17.



good introduction to the DPSP which follow, because, duties have a great deal to do with the Directive Principles.<sup>47</sup> Similarly, a member of the *Rajya Sabha* commented that fundamental duties of citizens enrich DPSP and give them a new emphasis, which will further strengthen the State to handle problems.<sup>48</sup> Evidently, this suggestion was not accepted—the order of appearance of these constitutional provisions is fundamental rights (Part III), DPSP (Part IV) and fundamental duties (Part IVA).

This section examined the rationale for, and the process leading to, the inclusion of fundamental duties of citizens generally and the fundamental environmental duty specifically in the Constitution. A combination of internal and external factors was instrumental in this process. This section also considered constitutional history and design to clarify the relationship between constitutional environmental rights and duties. These findings provide the basis for an examination of judicial practice in respect of constitutional environmental duties of individuals.

### 3. JUDICIAL ENGAGEMENT WITH THE CONSTITUTIONAL ENVIRONMENTAL DUTY

Judicial engagement with constitutional environmental duties of individuals can influence the contribution of these duties to environmental constitutionalism and the objective of environmental protection. This section examines judicial practice concerning the fundamental environmental duty of citizens in India to shed light on these aspects. It finds that the judiciary relies on constitutional environmental duties of citizens and the State to read a right to environment into the constitutional right to life, or to restrict the scope of other constitutional rights. The judiciary also links constitutional environmental duties of citizens and the State in a departure from the constitutional origin and design of these provisions. Finally, the judiciary expands the scope of the fundamental environmental duty of citizens itself, expressly or by implication, in at least two ways: the duty-bearers include citizens as well as the State, and the corresponding right-holders include the environment and future generations.

#### 3.1 Relationship Between Constitutional Environmental Provisions

As highlighted in the introduction, scholarly engagement with constitutional environmental duties of individuals is limited. In a departure, Bruch, Coker and VanArsdale focus on features of countries—‘limited budgets and a priority on development’—to explain the necessity for the judiciary’s ‘foresight and creativity’ to give meaning to constitutional environmental provisions including the duty of individuals.<sup>49</sup> In fact, the Indian judiciary has relied on constitutional environmental duties of citizens and the State while exercising its writ jurisdiction in a number of cases concerning non-realisation or violation of fundamental rights ‘to pass strong and wide-reaching orders and directions.’<sup>50</sup> These orders expand the scope of the fundamental right to life, interpret or restrict fundamental rights, and interpret other constitutional rights and/or domestic legislation. This is akin to judicial reliance on constitutional duties of the State as an interpretive aid.<sup>51</sup> Rosencranz and Rustomjee interpret this trend as an understanding of constitutional environmental duties as ‘living provisions embodying a constitutional commitment to protect the environment, and not as mere bland policy statements.’<sup>52</sup>

47 *Lok Sabha Debates*, Eighteenth Session, Fifth Series, Vol LXV, No 3, 27 October 1976 (Dr VKRV Rao) column 22–23.

48 *Rajya Sabha Debates*, Session No 0098, 11 November 1976 (KK Madhavan) column 85.

49 Bruch, Coker and VanArsdale (n 5) 157.

50 Armin Rosencranz and Shiraz Rustomjee, ‘Citizens’ Right to a Healthful Environment’ (1995) 25(6) *Environmental Policy and Law* 324, 327.

51 See Khaitan (n 9) 630–631; Weis (n 10) 844.

52 Rosencranz and Rustomjee (n 50) 328.

The judiciary has read a right to environment into Article 21 of the Constitution of India, which guarantees the fundamental right to life to every person and expanded the scope of this constitutional provision as well as the catalogue of constitutional rights. In 1987, the High Court of Andhra Pradesh extended the scope of the fundamental right to life to ‘protection and preservation of nature’s gifts.’<sup>53</sup> A decade later, the Supreme Court referred to ‘the constitutional mandate to protect and improve the environment’ and recognised a person’s right to clean water and pollution-free environment.<sup>54</sup> This innovative judicial interpretation is based on a harmonious reading of Article 21 with DPSP (particularly the constitutional environmental duty of the State set out in Article 48A) and the fundamental environmental duty of citizens. In other words, the fundamental right to life and the constitutional environmental duties of citizens and the State have strengthened environmental constitutionalism in India by providing the basis for the recognition of a constitutional environmental right.

This is an interesting development given the alleged purpose of introducing fundamental duties in the Constitution, that is, to curb fundamental rights. Moreover, while the Constitution guarantees the fundamental right to life to every person, fundamental duties are confined to ‘every citizen of India.’ Subsequently, however, the Court observed that constitutional environmental duties of citizens and the State ‘have to be considered in the light of Article 21 of the Constitution.’<sup>55</sup> The mandatory nature of this order (‘have to be’) means that a narrow interpretation of the fundamental right to life can limit the scope of environmental constitutionalism including the contribution of the fundamental environmental duty of citizens to the development of environmental rights and environmental law in India.

The judiciary also relies on constitutional environmental duties of citizens and the State to determine the scope, purpose and limits of other fundamental rights guaranteed in the Constitution. The Supreme Court held that these duties ‘are to be kept in mind in understanding the scope and purport of the fundamental rights.’<sup>56</sup> Subsequently, the Bombay High Court considered the fundamental environmental duty of citizens while interpreting the scope and purport of the freedom of religion guaranteed under Article 25 of the Constitution.<sup>57</sup> The Supreme Court also acknowledged the significant role of the fundamental environmental duty ‘for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition.’<sup>58</sup> The High Court of Gujarat observed that the fundamental right to carry on trade or business could not be asserted without any regard to the fundamental environmental duty.<sup>59</sup> The court relied on the duty in addition to reasonable restrictions placed on the fundamental right under the Constitution. Subsequently, the judiciary referred to the duty while testing the reasonableness of restrictions imposed by legislation on the fundamental right to carry on any occupation, trade or business guaranteed under Article 19(1)(g) of the Constitution.<sup>60</sup> Here, the judiciary’s approach shifted from the expansion of constitutional rights to restricting them, reflecting the original rationale for insertion of fundamental duties in the Constitution through the 1976 constitutional amendment.

53 See *T Damodhar Rao and Others v The Special Officer, Municipal Corporation of Hyderabad and Others* AIR 1987 Andhra Pradesh 171 [24].

54 *Vellore Citizens’ Welfare Forum v Union of India and Others* (1996) 5 SCC 647 [13] & [16].

55 *MC Mehta v Kamal Nath and Others* (2000) 6 SCC 213 [8].

56 *Intellectuals Forum, Tirupathi v State of Andhra Pradesh and Others* (2006) 3 SCC 549 [82].

57 See *Campaign against Manual Scavenging v State of Maharashtra and Others* 2015 SCC OnLine Bombay 3834; *Rajesh Madhukar Pandit and Others v Nashik Municipal Corporation and Others* PIL No 176 of 2012 (Bombay High Court, 18 December 2018) <<https://indiankanoon.org/doc/77305325/>> accessed 14 June 2022.

58 *State of Gujarat v Mirzapur Moti Kureshi Kassab Jamat and Others* (2005) 8 SCC 534 [58].

59 *M/s Abhilash Textile and Others v The Rajkot Municipal Corporation* AIR 1988 Gujarat 57 [7].

60 *Mirzapur Moti* (n 58). See also *State of West Bengal and Others v Sanjeevani Projects (P) Ltd and Others* 2005 SCC OnLine Cal 563 (Calcutta High Court).

The judiciary does not rely on constitutional environmental duties of individuals only as a facilitative and interpretive device. Although constitutional history and design reveal no correlation between Part III (on fundamental rights) and Part IV (DPSP), the judiciary tends to interpret DPSP as the source of the duties of the State corresponding to the right to the environment read into the fundamental right to life. Related to this, the judiciary implicitly identifies positive and negative characteristics of the fundamental environmental duty of citizens, which also reflects its understanding of the duties of the State corresponding to rights.<sup>61</sup>

In some cases, the fundamental environmental duty of citizens is negative; it requires non-interference. According to the High Court of Gujarat, the discharge of effluents from the petitioners' factories on public road and/or in the public drainage system ran contrary to the constitutional duty to protect the natural environment.<sup>62</sup> The High Court of Rajasthan held that '[a]ny person who disturbs the ecological balance or degrades, pollutes and tinkers with the gifts of the nature such as air, water, river, sea and other elements of the nature...' breaches their fundamental environmental duty.<sup>63</sup> In these two cases, the High Courts invoked the fundamental environmental duty to strengthen their directions to the statutory authorities in writ petitions alleging the violation of a fundamental right. Notably, the fundamental environmental duty was also a statutory duty under a local government law in the first case, and under the Environment (Protection) Act, 1986 (EPA) and the Water (Prevention and Control of Pollution) Act, 1974 (WPCPA) in the second case.

These cases relate to the first component of the fundamental environmental duty, that is, protection and improvement of the environment. The second component of this duty is to have compassion for living creatures. Based on a conjoint reading of these two components, the Bombay High Court imposed a negative duty on the devotees/pilgrims visiting a city for a religious ceremony not to create dirt and pollute or destroy the environment by open defaecation in open spaces and on the banks of a river.<sup>64</sup> This is another illustration of the duty of non-interference.

In some other cases, the fundamental environmental duty was held to be both positive and negative in nature. The Supreme Court observed that every citizen must undertake the constitutional duty to preserve the environment and to keep ecological balance unaffected.<sup>65</sup> High Courts have extended the scope of the fundamental duty to preserve and safeguard the rivers and lakes and all the other water resources of the country,<sup>66</sup> and to maintain a hygienic environment.<sup>67</sup> Arguably, it is easier to perform the less resource-intensive negative duty to keep ecological balance unaffected and to maintain hygienic environment than the positive duty to preserve and safeguard the environment.

### 3.2 Relationship Between Constitutional Environmental Duties

Constitutional origin and design clearly distinguish environmental duties of the State (Part IV) from those of citizens (Part IVA), but the judiciary conflates the two. For instance, the High Court of Himachal Pradesh noted the similar nature of constitutional environmental duties of citizens and the State.<sup>68</sup> Later, the Supreme Court observed that Parliament inserted Article 51A

61 On socio-economic rights and duties, see generally Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (OUP 2008).

62 *M/s Abhilash Textile* (n 59) [7].

63 See *Vijay Singh Puniya v State of Rajasthan and Others* AIR 2004 Rajasthan 1 [31]. See also *MC Mehta v Kamal Nath* (n 55).

64 See *Campaign against Manual Scavenging* (n 57) [18].

65 See *Rural Litigation and Entitlement Kendra and Others v State of Uttar Pradesh and Others* 1986 Supp (1) SCC 517 [20].

66 *Kinkri Devi and Another v State of Himachal Pradesh and Others* AIR 1988 Himachal Pradesh 4 [6].

67 *Virender Gaur and Others v State of Haryana and Others* (1995) 2 SCC 577 [7].

68 *Kinkri Devi* (n 66) [6].

(g) ‘to ensure that the spirit and message of Articles 48 and 48A is honoured as a fundamental duty of every citizen’, and ‘to improve the manifestation of objects contained in Article 48 and 48A’.<sup>69</sup> The Court clarified that ‘[w]hile Article 48A speaks of “environment”, Article 51A(g) employs the expression “the natural environment” and includes therein “forests, lakes, rivers and wild life”’.<sup>70</sup> More recently, some High Courts observed that the fundamental environmental duty of citizens corresponds to the duty of the State as set out in DPSP.<sup>71</sup> Although the judiciary does not offer any further explanation for these observations, these decisions continue to influence judicial adjudication of the fundamental environmental duty.

Part IVA of the Constitution sets out the fundamental duties of citizens. Article 5 of the Constitution defines a citizen as a natural person. In other words, individuals are the duty-bearers. Part IV of the Constitution sets out DPSP, which is described as the fundamental duty of the State (see Section 2.2). However, the judiciary identifies the State as a bearer of the fundamental duties of citizens as distinct from the DPSP. In *AIIMS Students Union v AIIMS and Others*, the Supreme Court provided the following rationale:

State is, all the citizens placed together and hence though Article 51-A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is the collective duty of the State.<sup>72</sup>

Article 12 of the Constitution defines the ‘State’ as the legislature and the executive, that is, the political organs of the government. According to the judiciary, however, the State includes the members of the three organs of government, that is, the legislature, the executive and the judiciary.<sup>73</sup> The judiciary then held that the State should observe the fundamental (environmental) duties,<sup>74</sup> and it identified the substantive dimensions of this duty as applicable to a particular category of citizens. Parliament can implement its fundamental environmental duty by enacting appropriate legislation, and the Executive by implementing such legislation. In these cases, the fundamental environmental duty is invoked in conjunction with the fundamental right to life and Article 48A, and the judiciary relies on provisions of existing environmental legislation enacted pursuant to Article 48A.

The Supreme Court held that it is the duty of the State to apply the principles laid down in Article 51A (g) in making laws.<sup>75</sup> This interpretation echoes the language of Article 37 of the Constitution, which provides that ‘it shall be the duty of the State to apply these principles in making laws’. Of course, Article 37 only applies to DPSP and Article 51A does not include any such language. No such intent is evident from the parliamentary debate preceding the 1976 constitutional amendment either. Nevertheless, in several cases, the judiciary observed that the legislature has enacted several environmental laws to give effect to constitutional environmental duties.<sup>76</sup>

<sup>69</sup> *Mirzapur Moti* (n 58) [51].

<sup>70</sup> *ibid.*

<sup>71</sup> See, for example, *Dattatraya Hari Mane and Others v State of Maharashtra and Others* 2014 SCC OnLine Bombay 1657; *In Re: Kaziranga National Park v Union of India and Others* PIL No 66 of 2012 (Gauhati High Court, 9 October 2015) <<https://www.casemine.com/judgement/in/Sac5e37f4a93261a1a76190d>> accessed 14 June 2022.

<sup>72</sup> (2002) 1 SCC 428 [58]. See also *Jitendra Singh v Ministry of Environment and Others* Civil Appeal No 5109 of 2019 (Supreme Court of India, 25 November 2019) [18] <<https://indiankanoon.org/doc/36215757/>> accessed 14 June 2022.

<sup>73</sup> *MC Mehta v State of TN and Others* (1996) 6 SCC 756 [16].

<sup>74</sup> *Sanjeevani Projects* (n 60) [16.4]. See also *M Velu v State of Tamil Nadu* (2010) SCC OnLine Madras 2376; *Navi Mumbai Environment Preservation Society and Others v Ministry of Environment and Forests and Others* (2019) 1 Bombay Cases Reporter 39.

<sup>75</sup> *Intellectuals Forum* (n 56).

<sup>76</sup> See *Animal and Environment Legal Defence Fund v Union of India and Others* (1997) 3 SCC 549; *TN Godavarman Thirumulpad v Union of India and Others* (2012) 3 SCC 277. See also *Halar Utikarsh Samiti and Another v State of Gujarat and Others* (2001) 2 Gujarat Law Reporter 964.

The judiciary's understanding of the executive as a duty-bearer extends from the State as a construct to individual citizens who are representatives of the State. The High Court of Delhi identified the duty of the executive (through officers of the concerned Ministries) to 'implement statutory provisions, which have a direct nexus with fundamental duties.'<sup>77</sup> The Bombay High Court held that the fundamental duty of every citizen is the collective duty of the State Government to protect lakes,<sup>78</sup> and that this duty binds public bodies, which are constituted by citizens.<sup>79</sup> More specifically, High Courts identified officers of concerned ministers,<sup>80</sup> urban development authorities<sup>81</sup> and urban local bodies such as municipal corporations<sup>82</sup> as duty-bearers.

The underlying rationale for extending the fundamental environmental duty of citizens to the State appears to be to ensure the implementation of non-justiciable DPSP through legislation. This is another example of judicial creativity to operationalise the constitutional environmental right and the constitutional environmental duty of the State. Another reason is that litigants invoke the writ jurisdiction of the Supreme Court and High Courts in respect of fundamental rights to raise environmental issues. These cases might involve the fundamental environmental duty of citizens, but the primary respondents are the State and its instrumentalities.

### 3.3 The Environment and Future Generations as Corresponding Right-holders

Neither the parliamentary debate preceding the 1976 constitutional amendment nor the Constitution specifies to whom the fundamental duties of citizens are owed. According to some scholars, citizens, as individuals, owe the fundamental duties to other citizens, society and the State.<sup>83</sup> This can be viewed as an application of the environmental principle of intra-generational equity. The Indian judiciary has expanded the scope of the right-holders to whom the fundamental duty is owed to include the environment and future generations explicitly or by implication. The former is relevant for the right of the environment or nature, while the latter operationalises the principle of inter-generational equity. The duty to the environment or to nature and an emphasis on an entire generation of citizens rather than individuals also represent collective dimensions of this duty.

As Section 3.1 demonstrates, the judiciary tends to view constitutional environmental duties through the lens of domestic environmental laws. These laws are inherently anthropocentric. They focus on the instrumental value of the environment (for human beings) rather than its intrinsic value. Similarly, the constitutional right to environment often places emphasis on the instrumental value of the environment.<sup>84</sup> Further, in a frequently cited decision, after referring to Article 48A and Article 51A(g) of the Constitution, the Supreme Court observed that it is the duty of every citizen to maintain hygienic environment because '[t]he word "environment" is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance".<sup>85</sup> The Court appears to have overlooked the fact that while Article 48A refers to the 'environment', Article 51A(g) explicitly uses the term 'natural environment'.

Interestingly, during the debate preceding the 1976 amendment, a suggestion was made in the *Rajya Sabha* to include a separate 'duty of every citizen to maintain cleanliness and

77 *People for Animals v Union of India and Others* 2002 (65) Delhi Reported Judgments 168 [13].

78 *Edwin Bretto and Another v State of Maharashtra and Others* 2016 SCC OnLine Bombay 3975 [15].

79 *Bombay Environmental Action Group and Another v State of Maharashtra and Others* PIL No 87 of 2006 (Bombay High Court, 17 September 2018) [44] <<https://indiankanoon.org/doc/69425638/>> accessed 14 June 2022.

80 *People for Animals* (n 77).

81 *DD Vyas and Others v Ghaziabad Development Authority* AIR 1993 Allahabad 57 [16].

82 See, for example, *Nagrik Chetna Manch v State of Maharashtra and Another* (2016) 2 Maharashtra Law Journal 215.

83 See, for example, Justice Kurian Joseph, 'Fundamental Duties in the Indian Constitution' in Supreme Court of India, *The Constitution at 67* (Supreme Court of India 2017) 7.

84 See O'Gorman (n 35) 440.

85 *Virender Gaur* (n 67).

hygienic and sanitary conditions in the environment.’<sup>86</sup> This suggestion was not accepted and Article 51A only refers to the natural environment. It appears that lawmakers intended to maintain the distinction between different aspects of the environment. In fact, in a talk delivered before the commencement of the *Lok Sabha* debate on the 1976 Bill, while acknowledging the instrumental value of the environment for human beings, Dr VKRV Rao suggested the addition of a different type of fundamental duty of citizens—to the environment rather than to other human beings. In addition, a retired Supreme Court judge notes that the purpose of this constitutional duty is to ‘remind the citizens of their responsibility towards the environment.’<sup>87</sup>

In recent years, the judiciary has started recognising the intrinsic value of some components of the environment. The Uttarakhand High Court recognised a right of the environment (specifically, a right of rivers and glaciers) while referring to the fundamental environmental duty.<sup>88</sup> In one case, the court referred to ‘the fundamental duty of all the citizens to preserve and conserve the nature in its pristine glory.’<sup>89</sup> Thus, the fundamental environmental duty of citizens presents an opportunity to challenge the binary framing of vertical duties between individuals and the State and horizontal duties among individuals to incorporate our duties to the environment.

The inter-generational aspect of environmental protection also highlights the importance of the constitutional environmental duty of individuals.<sup>90</sup> The basis of the principle of inter-generational equity is that the present generation of human beings is entitled to use and benefit from the natural environment while holding it in trust for future generations.<sup>91</sup> Principle 1 of the Stockholm Declaration, which influenced the incorporation of the fundamental environmental duty in the Constitution of India, incorporates the principle of inter-generational equity implicitly. It states: ‘Man bears a solemn responsibility to protect and improve the environment for present and future generations.’ However, the fundamental environmental duty of citizens, as set out in the Constitution of India, does not refer to present and future generations.

Yet the Supreme Court relies on the principle of inter-generational equity implicitly to identify positive and negative duties to conserve, develop and preserve natural resources of the present generation. In one case, the Court recognised the duty of every generation to develop and conserve the natural resources of the nation for all succeeding generations.<sup>92</sup> In another case, it referred to the ‘accepted social principle that all human beings have a... duty of ensuring that resources are conserved and preserved in such a way that present and future generations are aware of them equally.’<sup>93</sup> In a third case, the Court imposed a specific positive obligation on every right-holder to use water and associated natural ecosystems in a manner that does not impair or diminish the long-term interest and enjoyment of future generations.<sup>94</sup> Although the Court does not explicitly mention the fundamental environmental duty of citizens, references to the present generation encompass citizens and the duties identified by the Court include the fundamental environmental duty of citizens.

86 See *Rajya Sabha Debates*, Session No 098, Part 2, 5 November 1976 (Rathnabai Sreenivasa Rao) column 168.

87 Joseph (n 83).

88 *Mohd Salim v State of Uttarakhand and Others* WP (PIL) No 126 of 2014 (High Court of Uttarakhand) 2017 SCC Online Utt 367; *Lalit Miglani v State of Uttarakhand and Others* 2017 SCC OnLine Utt 392 (High Court of Uttarakhand).

89 *Lalit Miglani* (n 88) [39].

90 Boyd (n 1) 289.

91 See Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (UN University 1989).

92 *State of Tamil Nadu v M/s Hind Stone and Others* (1981) 2 SCC 205. See also *State of Meghalaya v All Dimas Students Union, Dima-Hasao Committee and Others* (2019) SCC Online Supreme Court 822.

93 *Intellectuals Forum* (n 56) [84].

94 *Fomento Resorts and Hotels Limited and Another v Minguel Martins and Others* (2009) 3 SCC 571.

Some High Courts have explicitly identified the fundamental environmental duty of citizens to future generations.<sup>95</sup> In a case concerning illegal mining, the High Court of Rajasthan read the fundamental environmental duty of citizens together with the constitutional environmental right and the constitutional environmental duty of the State to breathe life into the principle of inter-generational equity. According to the court:

Articles 21, 48A and 51A (g) echo the principle of inter-generational equity. They create right of the unborn to the preservation of ecology for his survival.<sup>96</sup>

The judiciary recognises the fundamental environmental duty of citizens of the present generation to future generations, but it does not require enforcement of this duty. Rather, the judiciary relies on this duty as the justification for State actions restricting the enjoyment of certain constitutional rights of the present generation. At the same time, mechanisms for implementation and enforcement of the constitutional environmental duty of individuals can play a pivotal role in determining its contribution to environmental constitutionalism. The next section focuses on this aspect.

#### 4. IMPLEMENTATION AND ENFORCEMENT OF THE CONSTITUTIONAL ENVIRONMENTAL DUTY

The legal significance of constitutional environmental provisions depends on whether the constitution includes a provision to put them into practice (implementation) and/or address non-compliance (enforcement). Judicial enforcement or justiciability of the constitutional environmental duty of individuals describes whether this duty is capable of being settled by law or the action of a court. This section examines constitutional design and judicial practice in India in respect of implementation and enforcement of the substantive and procedural dimensions of the fundamental duties of citizens generally and the fundamental environmental duty specifically.

##### 4.1 Constitutional Design

The issue of implementation and enforcement of the fundamental duties of citizens was considered from the very inception of the proposal to introduce this provision in the Constitution of India. In fact, there were attempts to ensure implementation of the fundamental duties before the 1976 constitutional amendment. While proposing the inclusion of certain fundamental duties of citizens in the Constitution, the Committee recommended the enactment of a law imposing penalty or punishment for their non-compliance.<sup>97</sup> The parliamentary debate preceding the 1976 constitutional amendment considered this suggestion,<sup>98</sup> but finally, Part IVA of the Constitution did not include an enforcement provision. Even the Chairman of the Committee admitted that he 'had considerable doubts even when we made the recommendation about possible ways of enforcing the duties'.<sup>99</sup> In any case, the Committee did not intend for the proposed

95 See, for example, *Dr T Patanjali Sastry, President, Environment Centre v Chairman, Andhra Pradesh State Pollution Control Board and Others* 2001 (5) Andhra Law Times 315; *Patiram Chandel v State of MP and Others* AIR 2004 Madhya Pradesh 122 [16].

96 *Ashwani Chobisa v Union of India and Others* (2005) 1 Rajasthan Law Weekly 389 [24].

97 Swaran Singh Committee Report on Constitutional Reforms (1976) cited in Mirchandani (n 29) 142.

98 *Lok Sabha Debates*, Eighteenth Session, Fifth Series, Vol LXV, No 1, 25 October 1976 (Indrajit Gupta) column 83; *Lok Sabha Debates*, Eighteenth Session, Fifth Series, Vol LXV, No 2, 26 October 1976 (Ebrahim Sulaiman Sait) column 154; *Lok Sabha Debates*, Eighteenth Session, Fifth Series, Vol LXV, No 3, 27 October 1976 (Dr VKR.V Rao) column 22 and 24; *Lok Sabha Debates*, Eighteenth Session, Fifth Series, Vol LXV, No 5, 29 October 1976 (Swaran Singh Sodhi) column 132-133. See also *Rajya Sabha Debates*, 11 November 1976 (Kota Punnaiah) column 44.

99 Singh (n 34) 281.

list of fundamental duties to be exhaustive, and it would be difficult to seek enforcement of a non-exhaustive list of fundamental duties.

Scholars are divided on the issue of enforcement of the fundamental duties of citizens. Seervai interpreted the object and purpose of the fundamental duties to conclude that they are non-enforceable. He observed that Part IVA:

has been enacted under the mistaken belief that if Arts 14 to 32 confer fundamental rights on citizens, and Arts 38 to 51 impose “duties” on the State, Fundamental Duties ought to be imposed on citizens... The newly added Chapter IVA is not law and, a fortiori, not supreme law... if fundamental duties are disregarded, nothing happens....<sup>100</sup>

In contrast, Dam refers to the absence of a specific provision restricting the enforceability of Part IVA (as in the case of DPSP in Part IV) to argue that they are directly enforceable.<sup>101</sup> He also relies on the use of the terms ‘fundamental’ and ‘shall’ to highlight the constitutional significance and mandatory nature of the fundamental duties of citizens. Writing immediately after the 1976 constitutional amendment, Kogekar noted that the effect of Part IVA would be primarily psychological.<sup>102</sup> He added that ‘the duties are worded in such general terms that they will not be capable of being enforced through the courts or where they are couched in specific terms they are already subjected to penalties for non-compliance’.<sup>103</sup>

In fact, in 1999, the report of a government-appointed committee identified the existence of legal provisions for implementation of some of the fundamental duties.<sup>104</sup> In other words, these fundamental duties can be implemented through legislation. The 1999 report does not mention domestic environmental laws, but the EPA and the WPCPA impose certain duties on person(s) to prevent or control environmental pollution and/or maintain or improve environmental quality. According to section 2(42) of the General Clauses Act, 1897, the term ‘person’ includes natural persons as well as legal persons, that is, any company or association or body of individuals, whether incorporated or not. Statutory duties to protect and improve the environment are also included in central laws as well as state-level laws. Persons who are citizens of India perform their fundamental duty to protect and improve the environment by discharging those statutory duties. Persons who are not citizens of India are also subject to those statutory duties. Therefore, the fundamental environmental duty can be viewed as a hybrid. It is worded in general terms as an aspiration or a declaration, but domestic legislation incorporates some of its components and envisages remedies for non-performance.

At the same time, the willingness and ability of individuals to discharge their constitutional environmental duties will depend, among other factors, on knowledge of their existence and the adverse consequences of non-performance. In other words, access to education and information is a key procedural dimension of constitutional environmental duties of individuals. In the parliamentary debate preceding the 1976 constitutional amendment, some *Lok Sabha* members emphasised the duty of the State to provide access to education for implementation of

100 HM Seervai, *Constitutional Law of India – A Critical Commentary Vol. 2* (4th edn, NM Tripathi Pvt Ltd 1999) 2020.

101 Shubhankar Dam, ‘Strikes through the Prism of Duties: Is There a Duty to Strike Under the Indian Constitution?’ (2004) 5(1) *Asia-Pacific Journal of Human Rights and Law* 68, 69–70.

102 SV Kogekar, ‘Constitution Amendment Bill’ (1976) 11(42) *Economic & Political Weekly* 1659, 1660. Mrs Indra Gandhi made a similar observation. See ‘Record number of Congress delegates attends two-day session of AICC in Delhi’ (*India Today*, 15 June 1976) <[www.indiatoday.in/magazine/indiascope/story/19760615-record-number-of-congress-delegates-at-tends-two-day-session-of-aicc-in-delhi-819192-2015-04-08](http://www.indiatoday.in/magazine/indiascope/story/19760615-record-number-of-congress-delegates-at-tends-two-day-session-of-aicc-in-delhi-819192-2015-04-08)> accessed 14 June 2022.

103 Kogekar (n 102).

104 See Government of India, Ministry of Human Resource Development, Department of Education, *Fundamental Duties of Citizens Volume I*, Report of the Committee set up by the Government of India to Operationalize the Suggestions to Teach Fundamental Duties to the Citizens of the Country 13 (31 October 1999).



fundamental duties by citizens.<sup>105</sup> Dr VKRV Rao highlighted the role of the formal and non-formal educational system in making 'Fundamental Duties a part of social consciousness and their observance a routine part of everyday life and conduct on the part of the people.'<sup>106</sup> Swaran Singh, the Chairman of the Committee that proposed the initial list of fundamental duties, supported Dr Rao's idea of mobilisation of other means 'to impress upon the people the importance of these duties and the importance of adhering to these duties.'<sup>107</sup> When the *Rajya Sabha* was considering the 1976 Bill, some members suggested that fundamental duties should form part of school education.<sup>108</sup> Further, Principle 19 of the Stockholm Declaration, which influenced the incorporation of the fundamental environmental duty in the Constitution, highlights information about the environment for all as a key procedural dimension of man's responsibility to protect and improve the environment. However, the Constitution does not include any reference to education about the fundamental duties.

## 4.2 Judicial Practice

The consequences of non-realisation or violation of constitutional rights or non-performance of constitutional duties partly depend on whether a legal instrument provides for their justiciability or enforcement by the judiciary. Articles 32 and 226 of the Constitution of India empower the Supreme Court and High Courts, respectively, to issue directions, orders and writs to enforce fundamental rights. In contrast, according to Article 37 of the Constitution, DPSP (including Article 48A) are not enforceable by any court, and the Constitution is silent in respect of judicial enforcement of the fundamental environmental duties of citizens. Writing about constitutional duties of the State, Khaitan observes: 'Ultimately it is not the structure or the content of a norm that determines its contra-judicative character, but whether the practice of that jurisdiction treats its duties as judicially enforceable or not.'<sup>109</sup> Judicial practice relating to the fundamental environmental duty of the citizens of India sheds light on its enforcement.

In *Sachidanand Pandey and Another v State of West Bengal and Others*, the Supreme Court held that the judiciary is bound to bear in mind the constitutional environmental duties of the State and citizens '[w]henever a problem of ecology' is brought before it.<sup>110</sup> It observed:

When the court is called upon to give effect to the Directive Principle and the fundamental duty, the court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority. The least that the court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the court may go further, but how much further must depend on the circumstances of the case. The court may always give necessary directions. However the court will not attempt to nicely balance relevant considerations.<sup>111</sup>

Put differently, these constitutional environmental duties 'are to be kept in mind' in understanding the laws enacted by the legislature.<sup>112</sup> Subsequently, the Bombay High Court referred to the

<sup>105</sup> See, for example, *Lok Sabha Debates*, Eighteenth Session, Fifth Series, Vol LXV, No 1, 25 October 1976 (HR Gokhale) column 59 and (Indrajit Gupta) column 83; *Lok Sabha Debates*, Eighteenth Session, Fifth Series, Vol LXV, No 3, 27 October 1976 (Dr VKRV Rao) column 24 and (Inder J Malhotra) columns 202 and 278; *Lok Sabha Debates*, Eighteenth Session, Fifth Series, Vol LXV, No 5, 29 October 1976 (Dr Kailas) column 139.

<sup>106</sup> Rao (n 33) 274.

<sup>107</sup> Singh (n 34) 281.

<sup>108</sup> *Rajya Sabha Debates*, Session No 098, Part 1, 5 November 1976 (Leela Damodara Menon) column 118-119; (Rathnabai Sreenivasa Rao) column 169; *Rajya Sabha Debates*, Session No 098, 8 November 1976 (Saraswati Pradhan) column 181.

<sup>109</sup> Khaitan (n 9) 622.

<sup>110</sup> (1987) 2 SCC 295 [4]. See also *Forum for a Better Hyderabad v Government of Andhra Pradesh and Others* 2001 (4) Andhra Law Times 275 [16].

<sup>111</sup> *ibid.*

<sup>112</sup> *Intellectuals Forum* (n 56).

Supreme Court's observation in *Sachidanand Pandey* and held that the fundamental duties of citizens can be used for 'interpreting ambiguous statutes.'<sup>113</sup>

Constitutional environmental duties also play a significant role when the judiciary is 'faced with the question of testing the constitutional validity of any statutory provision or an executive act.'<sup>114</sup> In a case challenging the constitutional validity of an order issued by a state government on the ground that it is inconsistent with constitutional environmental duties, the Court observed that 'our interpretation must, unless the expression or the context conveys otherwise, subserve and advance the abovementioned constitutional objectives.'<sup>115</sup> In another case challenging the constitutional validity of an amendment to the Wild Life (Protection) Act, 1972, prohibiting trade in imported ivory, the Court observed that statutory provisions must be considered and amendments carried out 'keeping in view' the fundamental environmental duty and that the principles of Parts IV and IVA of the Constitution must be 'given its full effect.'<sup>116</sup> These cases illustrate two recurring themes in judicial practice concerning the fundamental environmental duty of citizens: (1) the cases concern environmental legislation and (2) the judiciary combines the discussion of constitutional environmental duties of citizens and the State.

Can courts address non-implementation of the constitutional environmental duty of individuals itself? Bruch, Coker and VanArsdale note: 'Where such [individual environmental] duties exist, private citizens and groups are constitutionally bound to protect the environment and, at least theoretically, could be held liable for a breach of this duty.'<sup>117</sup> Until recently, judicial practice in India did not evidence such an approach. Soon after the 1976 constitutional amendment, the High Court of Rajasthan observed that a petitioner could not file a writ petition for enforcement of fundamental duties.<sup>118</sup> According to the Calcutta High Court, fundamental duties 'cannot be enforced through writs. They can only be promoted by constitutional methods.'<sup>119</sup> However, the court did not specify the constitutional methods. In respect of the fundamental environmental duty specifically, the High Court of Himachal Pradesh acknowledged that 'neglect or failure ... to perform the duty is nothing short of a betrayal of the fundamental law which the State and, indeed, every Indian, high or low, is bound to uphold and maintain.'<sup>120</sup> This fundamental law is the Constitution, but the court did not identify any consequences of this betrayal. The High Court of Andhra Pradesh simply noted that citizens should be conscious of their fundamental duty to preserve forests and ecology.<sup>121</sup> These decisions suggest that there are no legal consequences in case of failure to discharge the fundamental environmental duty by citizens.

A few cases address the consequences of non-enforcement or non-performance of the fundamental environmental duty of citizens itself with reference to domestic environmental legislation and the principles of environmental law. The High Court of Meghalaya referred to the failure of encroachers on the riverbank and the river basin to discharge the fundamental environmental duty and ordered their eviction. The court also ordered punishment in accordance with statutory provisions for citizens discharging effluents from private latrines or dumping solid wastes into the river.<sup>122</sup> Here, the judiciary's ability to address non-implementation was linked to the existence of statutory provisions. What will happen in the absence of statutory

113 *Sanjeevani Projects* (n 60) [16.4].

114 *Mirzapur Moti* (n 60) [58].

115 *Pradeep Krishen v Union of India and Others* (1996) 8 SCC 599 [15].

116 *Indian Handicrafts Emporium and Others v Union of India and Others* (2003) 7 SCC 589 [52].

117 Bruch, Coker and VanArsdale (n 5) 158-159.

118 *Vijay Mehta v State of Rajasthan* AIR 1980 Rajasthan 207 [5].

119 *Sanjeevani Projects* (n 60) [16.4].

120 *Kinkri Devi* (n 66) [6].

121 See *Gatlameedi Pothanna and Others v Divisional Forest Officer, Nirmal, Adilabad District* 1998 (3) Andhra Law Times 660.

122 *The Principal, St Anthony's College v State of Meghalaya and Others* Writ Petition (Civil) No 294 of 2012 (High Court of Meghalaya, 17 April 2014) <<https://indiankanoon.org/doc/63908935/>> accessed 14 June 2022.

provisions? Further, as discussed in Section 3.1, the Constitution does not set out any consequences of non-performance of the fundamental environmental duty by citizens. However, the High Court of Rajasthan invoked the polluter pays principle and held that courts can impose damages on the polluter to enforce the fundamental right to life and compel discharge of the fundamental environmental duty.<sup>123</sup> This is another instance of judiciary creativity to read environmental principles with constitutional environmental provisions to achieve the objective of environmental protection.

A noteworthy feature of these cases is that the judiciary does more than quote the fundamental environmental duty of citizens to 'lend further support to their decisions'.<sup>124</sup> However, even in these cases, the duty is often read together with the DPSP and/or fundamental rights. This suggests that the judiciary does not consider this duty to be independently enforceable, thus implicitly reflecting constitutional design that is, justiciable fundamental rights and non-justiciable DPSP and fundamental duties of citizens.

In contrast to the substantive dimensions of the constitutional environmental duty of individuals, judicial engagement with its procedural dimension is more direct and extensive, as in the case of the right to environment.<sup>125</sup> This procedural dimension includes access to information, public participation in decision-making and access to justice.

Judicial practice in relation to the fundamental environmental duty of citizens in India fosters environmental education. After referring to Article 51A (g) of the Constitution, the Supreme Court recognised the duty of the State to impart education about the fundamental environmental duty specifically and the environment generally to students in educational institutions.<sup>126</sup> The Court also recognised the duty of the State to educate the public about the environment by organising annual keep the city/town/village clean week throughout India,<sup>127</sup> and producing short information films to be shown in cinema halls and making and broadcasting/exhibiting programmes on the national radio and television channels.<sup>128</sup> Bruch, Coker and VanArsdale refer to these two cases and observe:

...the Indian Supreme Court found that in order for the constitutional provision imposing a duty upon citizens to achieve real significance, the court needed to interpret the provision as extending correlative duties to the government, media and educational system. The court opined that imposing a constitutional duty on ordinary citizens to protect the environment is in vain if the citizens are not knowledgeable about the subject matter.<sup>129</sup>

The Supreme Court also recognises the need to create awareness of laws and of the statutory obligations of citizens as a mechanism to facilitate compliance,<sup>130</sup> and for environmental awareness to ensure 'people's voluntary participation in environmental management'.<sup>131</sup> The former implicitly recognises the incorporation of certain aspects of the fundamental environmental duty in domestic environmental laws. The latter echoes the view that 'environmental

123 *Vijay Singh Puniya* (n 63) [4].

124 Government of India, Department of Legal Affairs, Report of the National Commission to Review the Working of the Constitution Vol 1 (2002) para 3.37.3.

125 See Dinah Shelton, 'Human Rights, Environmental Rights, and the Right to Environment' (1991) 28 *Stanford Journal of International Law* 103; Erin Daly, 'Constitutional Protection for Environmental Rights: The Benefits of Environmental Process' (2012) 17(2) *International Journal of Peace Studies* 71, 76–77.

126 *MC Mehta v Union of India and Others* (1988) 1 SCC 471. See also *MC Mehta v Union of India and Others* (1992) 1 SCC 358.

127 *MC Mehta* (1988) (n 126).

128 *MC Mehta* (1992) (n 126).

129 Bruch, Coker and VanArsdale (n 5) 158.

130 *MC Mehta and Others v Union of India and Others (Stone crushers case)* (1992) 3 SCC 256.

131 *Karnataka Industrial Areas Development Board v Sri C Kenchappa and Others* (2006) 5 SCC 371 [67].

management goes to the heart of public participation in decision-making.<sup>132</sup> Similarly, the Bombay High Court has directed urban local bodies to prepare and implement comprehensive awareness programmes to ensure performance of the fundamental environmental duty by citizens, and to display appeals to members of the public to perform their fundamental duty to maintain pollution-free river.<sup>133</sup>

In addition to access to education and information, the judiciary has linked the positive fundamental duty of citizens and the procedural right of access to judicial remedies. Citizens can perform their fundamental environmental duty by drawing the judiciary's attention to cases of environmental pollution resulting from the action or inaction of the State.<sup>134</sup> Indeed, public interest environmental litigation initiated by individual citizens and communities has played an important role in the development of environmental jurisprudence in India.

## 5. CONCLUSION

This article examined the contribution of the environmental duty of individuals to environmental constitutionalism with reference to India, a jurisdiction where the constitution sets out environmental duties explicitly and there is a rich history of public interest environmental litigation. Using a framework comprising the origin of the duty, its constitutional design and relevant judicial practice, this article offered a comprehensive account of the fundamental environmental duty of citizens in the Constitution of India and arrived at several important findings.

First, internal factors such as political unrest and a charismatic political leader and/or external factors such as a country's participation in international conferences can influence the origin or the incorporation of individual (environmental) duties in a constitution as well as their constitutional design. The participation of Prime Minister of India in the Stockholm conferences led to the incorporation of the fundamental environmental duty in the Constitution of India, but domestic factors including the Emergency provided the overarching rationale. These external and internal factors may also restrict or expand the nature, scope and content of the duties.

Second, the judiciary may not adhere to the origin and constitutional design of the environmental duty in all cases. This has implications for judicial interpretation of the relationship between constitutional environmental duties and rights generally and the nature, scope and content of the constitutional environmental duties of individuals specifically. The fundamental environmental duty of the citizens of India does not flow from a constitutional environmental right. In fact, the Constitution does not guarantee the latter. However, judicial invocation and interpretation of the fundamental environmental duty is premised on a right-duty correlative model leading to a similar interpretation of the substantive and procedural dimensions of the constitutional environmental right and duties.

Third, there may be variance between the origin and design of constitutional duties of individuals and the State, on the one hand, and judicial practice with respect to these duties on the other. The parliamentary debate preceding the 1976 constitutional amendment distinguished these two constitutional environmental duties, and these duties are included in different parts of the Constitution. However, the judiciary conflates constitutional environmental duties of citizens and the State. In fact, it relies on the discharge of the constitutional environmental duty of the State to determine the scope of the fundamental environmental duty of citizens and to operationalise it in several cases.

<sup>132</sup> Janusz Symonides, 'Human Right to a Clean, Balanced and Protected Environment' (1992) 20 *International Journal of Legal Information* 24.

<sup>133</sup> *Dattatraya Hari Mane* (n 71); *Rajesh Madhukar Pandit* (n 57).

<sup>134</sup> See *Rural Litigation and Entitlement Kendra* (n 65). See also *LK Koolwal v State of Rajasthan and Others* AIR 1988 Rajasthan 2; *MK Janardhanam v The District Collector and Others* 2003 (1) *Law Weekly* 262 (Madras).

Finally, the constitution may be silent in respect of enforceability of the duties of individuals, but courts may invoke these duties as an interpretive/facilitative tool to achieve certain objectives including environmental protection and the development of domestic environmental jurisprudence. The parliamentary debate preceding the 1976 constitutional amendment, and the absence of a constitutional provision for enforcement of the fundamental duties of citizens suggests that these duties are viewed as non-enforceable aspirational goals. However, the judiciary has developed environmental constitutionalism in India, including recognition of the constitutional environmental right, based on a combined reading of constitutional environmental duties of citizens and the State with the constitutional right to life. It has also relied on the fundamental environmental duty of citizens to incorporate environmental principles such as the polluter pays principle and the principle of inter-generational equity in domestic environmental jurisprudence. At the same time, the judiciary recognises the non-enforceable nature of the fundamental environmental duty of citizens, as envisaged in the Constitution, as this duty is hardly ever invoked in isolation.

This article adds to the limited scholarship on constitutional environmental duties, constitutional duties and duties of individuals; in other words, its findings lie at the intersection of three different but interconnected branches of law—environmental law, constitutional law and human rights law. These findings can also be used to examine the contribution of individual duties to environmental constitutionalism in other jurisdictions, their relationship with other constitutional environmental provisions, as well as other constitutional duties of individuals or citizens in India (eg, the duty to provide opportunities for education) and elsewhere.

This article also set the stage for a more nuanced understanding of constitutional duties and social or moral responsibilities of individuals. This is imperative considering recent developments. The first is growing interest in individual responsibilities as part of the solution to the environmental and climate crisis. Constitutional environmental duties of individuals can promote environmental citizenship, but we must consider the link between their origin, design and implementation and enforcement, and their scope and limits. The Indian Citizenship Act, 1955 sets out different ways for acquisition of Indian citizenship, confirming the non-universal nature of the fundamental environmental duty of the citizens of India. The interplay between constitutional environmental rights and duties of citizens on the one hand and notions of caste, class, gender and indigeneity on the other raises concerns of rights entitlements and fulfilment of duties. Similarly, the pro-business stance of governments and human rights-related obligations of corporations, some of whom are domestic corporations made up of citizens/individuals who are constitutional duty-bearers merit further attention. Related to this, the explicit inclusion of an individual duties-based approach and silence on rights in some government policies<sup>135</sup> raises concerns about the creation of a hierarchy between rights and duties, performance of duties or responsibilities by citizens becoming a pre-condition for discharge of the State's constitutional or statutory duties corresponding to rights, and dilution of the State's accountability for its duties. This is a serious issue particularly in developing countries such as India where most right-holders depend on the State for the realisation of rights and performance of duties.

135 See Philippe Cullet, 'The Right to Sanitation – Multiple Dimensions and Challenges' in Philippe Cullet, Sujith Koonan and Lovleen Bhullar (eds), *Right to Sanitation in India: Critical Perspectives* (OUP 2019) 95–98.