

CONSTITUTIONAL PROVISIONS FOR THE PROTECTION OF ENVIRONMENT IN INDIA

by

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ABSTRACT

Environment is the surroundings where we live in. It is necessary that we should conserve, protect or preserve the environment. Human beings are social animals. Basically it is the human right of every individual to live in a pollution free healthy environment. The Constitution of India provides various provisions which are essential and helpful for the protection of environment. As per the Hohfeld analysis of Jural Relatives, if you have Right then, you will have a corresponding Duty. Rights and duties are very important elements of Law. They correlated to each other in such a way that one cannot be conceived without the other. A right is always against someone upon whom the correlative duty is imposed. But as the time passes the citizens became conscious about their rights and thereby neglected their duties. Constitution of India has provided certain fundamental rights and fundamental duties to the citizens of India. The intention behind it was that the citizens and the State would shoulder the responsibility to protect the Constitutional order as their moral duty. In this paper, an attempt has been made to briefly outline the laws provided under the Constitution of India which are mainly relevant to protect and improve the environment.

Key words: Environment, protection, rights, duties, Constitution

INTRODUCTION-

In India, the concern for environmental protection has been mounted to the status of fundamental law of the land and it is also linked with human rights making it as the basic human right of every individual to live in a pollution free environment with full human dignity. It is apparent that there is abundant of constitutional and legislative provisions on environment protection. Still, the conservation, protection and improvement of human environment are major issues in India.

When our Constitution was drafted it did not contain any specific provisions on environment and even the word “Environment” did not find a place in the Constitution; but there are certain provisions which to great extent had direct bearing on the improvement of environment. The preamble of our Constitution provides that our country is based on “Socialistic” pattern of society, where the State pays more attention to the social problems than on any individual problems. The preamble further declares that, the great rights and freedoms which the people of India intended to secure all citizens include justice, social, economic and political. Justice also includes environmental justice. Although the particular word ‘environment’ does not find a place here, we can very well interpret this to include environmental justice. Environment as a subject matter has entered in our day to-day life in such a way that we cannot ignore deliberations on environmental matters when discussing about socio-economic or socio-political scene of the country.

CONSTITUTIONAL PROVISIONS-

The Indian judiciary has developed a doctrinal web to protect the human rights of people and to uphold the cause of environmental justice by taking refuge to fundamental rights, fundamental duties and directive principles of state policy as provided under the Constitution of India to remind people and State of their pious obligation of protecting the nature.

The judicial interpretations of these various fundamental rights have widened their scope and they proved effective in achieving environmental justice in India.

Article 14-

It provides Right to equality which states that the State shall not deny to any person equality before law and equal protection of laws within the territory of India. No arbitrary discretionary actions can be taken by the state authorities. It indicates that any action of the State relating to environment must not infringe upon the right to equality as enshrined in Article 14 of the Indian Constitution. The Stockholm Declaration, 1972 also recognized this

principle of equality in environmental management. Principle 1 of the Declaration states, “man has the fundamental right to freedom, equality and adequate conditions of life, in environment of a quality that permits a life of dignity and well being.”

Article 19-

The growing problem of balancing the right to development and right to clean and healthy environment is given under Article 19 (1) (g) of the Indian Constitution guaranteed freedom of trade and commerce but at the same time it states that this right is subject to reasonable restriction. Some of the industries or trades are carried in manners which endanger vegetation cover, animals, aquatic life and human health. Any business or trade which is offensive to flora and fauna or human beings cannot be permitted to be carried on in the name of fundamental right. Right to freedom of profession, trade and occupation is subject to the condition that it should not be a cause for the pollution of environment.

Article 21-

Any activity which pollutes the environment and makes it unhealthy, hazardous to human health and flora and fauna, is violative of right to wholesome and living environment which is violative of right guaranteed in Article 21 of the Indian Constitution. Right to get pollution free environment is a fundamental right included under right to life.

Article 32 and 226 of the Indian Constitution also grant wide remedial powers to the Supreme and High Courts in constitutional cases. Specifically, Article 32 provides that the Supreme Court has the power to issue” directions or orders or writs” to enforce constitutional fundamental rights. Under Article 226 of the Constitution of India, any citizen can invoke the High Court’s jurisdiction for the vindication of fundamental rights. Pollution free environment is recognised as a fundamental right under Article 21 and it is the duty of the state to provide a pollution free environment to the citizens and writ jurisdiction can be invoked only if the right is infringed by the state.

Article 39 of the Constitution envisages the distribution and management of material resources which includes natural and man-made resources in such a manner that their concentration and monopoly over their use should not give rise to ecological imbalance and health hazards

Article 42 of the Constitution empowers State to make provisions for securing just and human conditions of work and for maternity relief. The State is directed to secure just and human conditions of work which can be achieved in clean environment.

Article 47-

It provides that the State shall regard to the raising of the level of nutrition and the improvement of public health as among its primary duties and the standard of living of its people and in particular the state shall endeavour to bring about prohibition of the consumption except for the medical purposes of intoxicating drinks and of drugs which are injurious to health. It's the duty of the state to improve public health. Article 47 calls upon the State to perform the basic duty to look after the health of the citizen and also take necessary and effective steps to improve their standard of living and also raise the level of nutrition. Improvement of public health forms the core of environment because due to various environmental hazards it is the health of the general people which comes under severe threat. In order to protect the health the framers of the Constitution gave emphasis on the improvement of public health which is more vital for the existence of the mankind.

Article 48 provides for the security of cows and calves and other cattle which help in maintaining ecological balance.

Article 48 A deals specifically with environment protection which was inserted by 42nd Constitutional amendment. It's the duty of state to protect and improve environment, safeguard forest and wild life.

Article 49 provides that it shall be the obligation of the State to protect every monument or place or object of historic interest, declared by or under law made by parliament to be of national importance from spoliation, distraction, removal and disposal or export as the case may be.

Article 51 A(g) of the Constitution specially deals with fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and, wild life and to have compassion for living creatures. It is therefore contended that the aspects of environment, ecology, forest and wildlife are required to be dealt with separately and distinctly from welfare activities of the State and the State was under the constitutional obligation to discharge these duties.

Article 246 of the Constitution divides the subject areas of legislation between the Union and the States. The Union List (List I) includes defence, foreign affairs, atomic energy, interstate transportation, shipping, air trafficking, oilfields, mines and inter-state rivers. The State List (List II) includes public health and sanitation, agriculture, water supplies, irrigation and drainage, fisheries. The Concurrent list (List III) (under which both State and the Union can legislate) includes forests, protection of wildlife, mines and minerals and development not covered in the Union List, population control and factories. From an environmental

standpoint, the allocation of legislative authority is an important one – some environmental problem such as sanitation and waste disposal, are best tackled at the local level; others, like water pollution and wildlife protection, are better regulated uniform national laws.

Article 253 states that Parliament has power to make any law for the whole or any part of the country for implementing any treaty, agreement or convention with any other country. In simple words this Article suggests that in the wake of Stockholm Conference of 1972, Parliament has the power to legislate on all matters linked to the preservation of natural environment.

In the present times several factors account for the pollution hazards which is going beyond control. The pollution of water and air spoils the nature very well and affect our health. Therefore, taking into consideration, the Constitution very aptly recognized the right to health and casts a responsibility upon the State making it obligatory to work for improving the health of the citizens. The inter-relationship between environmental degradation and many of India's serious problems is often over-looked. It is necessary to stress on the relationship between destruction of environment on one hand and social as well as health problems on the other. It is especially the poor and illiterate who is most exposed to environmental pollution.

Stages in Environmental Protection-

The social mechanism of environmental protection can be characterized by a three stage approach-

- In the first stage law mainly national Constitutions, laws with a large environmental scope and major intentional declaration or treaties defines the environmental values to be preserved and protected.
- In the second stage environmental policy determines the objectives and strategies which should be used in order to ensure the respect of environmental values, taking into account the prevailing economic, social and cultural situation.
- In the third stage legal instruments are used to reach the objectives fixed by the environmental policy. The content of such instruments can be economic, political, social or educational.

JUDICIAL DECISIONS-

For the first time in *Ratlam Municipality v. Vardhichand and Others*¹, the Supreme Court thought in this regard. The Court observed that the grievous failure of local authorities to provide the basic amenity of public convenience drives the miserable slum-dwellers to ease in the streets, on the sly for a time, and openly thereafter, because under Nature's pressure, bashfulness becomes a luxury and dignity a difficult art. Court held that decency and dignity are facets of human rights and Article 21 allows the people of India to enjoy life with decency and dignity.

In 1983, the Supreme Court first implied that environmental rights could be addressed as fundamental rights. In *Rural Litigation and Entitlement, Dehradun v. State of Uttar Pradesh*², the plaintiff wrote the Supreme Court alleging that illegal limestone mining was damaging the ecosystems in the Dehradun region. In return, the Court treated the letter as a writ petition under Article 32 of the Indian Constitution. Although the Court's decision did not state that fundamental rights had been violated, exercise of Article 32 jurisdiction presupposed the infringement of a fundamental right.

In *Indian Council for Enviro-legal Action v. Union of India*³ remedial action was sought for the malady that gripped the villagers of Bichiri where the chemical industries for manufacture of toxic 'H' acid were located. Although the respondents stopped producing the toxic material, they did not comply with various orders of the court in completely removing the sludge or storing them in a safe place. The court held that the damage caused by the untreated highly toxic wastes resulting from the production of 'H' acid and the continued discharge of highly toxic effluent from sulphuric acid plant flowing through the sludge-is indescribable. It has inflicted untold miseries upon the villages and long lasting damage to the soil, to the underground water and to the environment of they are in general and the water in the wells in that area is not fit for consumption either by human beings or cattle. It has seriously affected the productivity of the land. Since the environmental damage to the village was enormous, the Supreme Court categorically fixed the responsibility on the errant industry and asked the Central Government to recover, in case the industry failed to take effective remedial action, the expenses for the action.

¹ 1980 AIR 1622

² 1989 AIR 594

³ Writ Petition (C) No.967 OF 1989

In ***T.N. Godavarman Thirumalpad v. Union of India and Ors***⁴, a three-Judge Bench of the Court read Article 48-A and Article 51-A together as laying down the foundation for a jurisprudence of environmental protection and held that "*Today, the State and the citizens are under a fundamental obligation to protect and improve the environment, including forests, lakes, rivers, wild life and to have compassion for living creatures*".

In ***State of W.B. and Ors.v. Sujit Kumar Rana***⁵, Articles 48 and 51-A (g) of the Constitution were read together and this Court expressed that these provisions have to be kept in mind while interpreting statutory provisions. It is thus clear that faced with the question of testing the constitutional validity of any statutory provision or an executive act, or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the Directive Principles of State Policy and Fundamental Duties as enshrined in Article 51-A of the Constitution play a significant role.

In ***M. C. Mehta Vs. Shriram Food and Fertilizer Industries and Union of India***⁶ or ***Oleum Gas Leak Case-I*** petitioner filed the writ against the oleum gas leakage and for closing down one of the units of Shriram food and Fertilizers industries belonging to Delhi Cloth Mills Ltd. The Court allowed to restart plant subject to certain stringent conditions laid down in the order. But the Court held that enterprise engaged in any hazardous or inherently dangerous industry which could pose a threat to public health and absolute duty to the community to ensure that no harm resulted to anyone.

In ***III Oleum Gas Leak Case, M. C . Mehta Vs. Union of India***⁷, Justice P. N. Bhagwati speaking for the Court clearly treated the rights to live in a healthy environment as fundamental right under Article 21 of the Constitution. In the judgment he stressed on the need to develop a law recognizing the rule of strict and absolute liability in cases of hazardous or dangerous industries operating at the cost of environment and the human life. M. C. Mehta's case becomes an eye opener in the development of environmental law and also administration of environmental justice.

⁴ Writ Petition (Civil) No. 202 OF 1995

⁵ Appeal (crl.) 453 of 1997

⁶ AIR 1987 SC 1965

⁷ AIR 1997 SC 1086

CONCLUSION-

As of now there are various amendments to the Constitution of India and through landmark decisions various step had taken for environmental protection. But in spite of these legislations, rules and regulations, protection and preservation of the environment is still a serious issue. Time and again environmental pollution has emerged as one of the biggest social problems which need to be given proper attention. We have many Central and State legislations which deal with environmental issues and it is difficulties in enforcement. There is a need to have a comprehensive and an incorporated law on environmental protection for significant enforcement. Pollution Control Boards do have sufficient powers to take stringent action against the violators; they should be given sufficient powers to give punishment. In every district, Environment Courts should be opened for the effective and well-organized enforcement of these legislations. Judiciary can and does play a role of catalyst and thereby speed up and gear up the process, but it has to be initiated by and from the public. Last but not least, it is not only the duty of the government but the citizens' that *suo moto* they should take initiative to protect, preserve, conserve the environment. Therefore, there is a need for an effectual and efficient enforcement of the constitutional mandate and the other environmental legislations for the protection of the environment and keeping ecological balance unaffected.