



ENVIRONMENTAL PROTECTION UNDER INDIAN CONSTITUTION

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ABSTRACT

Indian Constitution is not only a living document and but growing and evolving with the time. The evolving nature and growth of the Indian Constitution is the result of the specific provisions relating to the environmental protection in the Constitution itself. It is the basic human right of every individual to live in a pollution free environment and therefore issue of environment protection is directly connected with the basic human right of every individual which raised the status of Indian Constitution.

KEYWORDS: Indian Constitution , environmental protection , basic human right.

INTRODUCTION

The preamble of the Indian Constitution provides for the socialist pattern of the society which promotes environmental protection and dignity of an individual. The Chapter on fundamental duties under the Indian Constitution clearly imposes duty on every citizen of India to protect environment. It has been explicitly given under Article 51-A (g) of Indian Constitution that "It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes rivers and wild life and to have compassion for living creatures."¹ The Directive Principles of the State Policy under Indian Constitution provides for the ideals of building of welfare state. Article 48-A directs the State to take steps for the organization of agriculture and animal husbandry. Article 47 directly imposes a primary duty on the State to improve the level of nutrition, standard of living of its people and public health. Part III of the Indian Constitution guarantees fundamental rights to every individual which are essential for the full fledged development of every individual. Right to healthy environment is also one of the rights without which full-fledged development of an individual is not possible. Thus various Articles of Part III of Indian Constitution deal with the environment protection.

In perspective of the different arrangements identifying with the ecological security under Indian Constitution and different laws, the Supreme Court of India has held that the fundamental element of maintainable advancement, for example, the "preparatory standards" and furthermore the "polluter pay's rule" are likewise part of the natural law of the nation.

¹ Dr. J. N. Pandey, "Constitutional Law of India", (2015), p. 466.

II. PREAMBLE OF INDIAN CONSTITUTION:

The preamble of Indian Constitution establishes that our country is based on the "Socialistic"² pattern of the society. According to this socialistic pattern of the society the State pays more attention to social problem than individual's problem. Pollution is considered as one of the biggest social problem, therefore, the basic idea behind the concept of socialism is to promote "decent standard of living for all" which is possible only in a pollution free environment. Environmental pollution which has emerged as one of the biggest social problems is being regarded as a real problem affecting the society at large and thus state is under an obligation to fulfill the basic aim of socialism, that is, to provide decent standard of living to all which can be possible from a pollution free environment.³ This objective finds its place in Part IV of the Indian Constitution which deals with the directive principle of the State Policy.

The Preamble further provides for justice, liberty and equality. These objectives of the preamble clearly reflected in Part III of the Indian Constitution which deals with the fundamental rights. The concept of justice here means and includes the 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 matter when discussing about socio-economic or socio-political scene of the country.⁴

The Preamble further declares India to be a "Democratic Republic". In a democratic set up, people have the right to participate in government decision. They also have the right to know and access to information of government policies which is very important for the success of the environment policies.⁵

III. FUNDAMENTAL RIGHTS:

Stockholm Declaration is known as *magna carta* of our environment. Guideline 1 of the Stockholm Declaration gave that man has the basic appropriate to opportunity, correspondence and sufficient states of life, in a domain of value that allows a real existence of pride and prosperity, and he bears a serious duty to ensure and enhance the earth for present and future age. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.⁶ This principle 1 of Stockholm Declaration is reflected in our Constitution under Articles 14, 19 and 21 dealing with the Right to Equality, Freedom of Expression and Right to life and Personal Liberty.

Right to Equality is guaranteed under Art.14 of the Indian Constitution to all persons without any discrimination. This principle of equality indicates that any action of the State relating to the environment must not infringe upon the right to equality enshrined in the Article 14 of the Indian Constitution. There are various examples where the State under its discretionary powers has given permission to construction works without consideration the public interest and environmental impact. Therefore, Judiciary in various judgments has struck down arbitrary official permissions in the environmental matters on the basis that it is violative of Article 14 of Constitution. Article 14 can also be invoked where the permission for mining and other activities without considering the environmental impact is given by the State and such permission can

² The Constitution of India 1949: "We, The People of India, Having Solemnly Resolved to Constitute India into a Sovereign, Socialist, Secular, Democratic, Republic and To Secure to all its Citizens: Justice, Social, Economic and Political; Liberty of Thought, Expression, Belief, Faith and Worship; Equality of Status and of Opportunity; and to Promote among them all Fraternity Assuring the Dignity of the Individual and the Unity and Integrity of the Nation; In Our Constituent Assembly this Twenty Sixth Day of November 1949, Do Hereby Adopt, enact and Give to Ourselves this Constitution.

³ Dr. Sukanta K. Nanda, "Environmental Laws", (2007), p.77

⁴ Ibid.

⁵ P. S. Jaswal and Nistha Jaswal, "Environmental Law", (2009).

⁶ Declaration of the United Nations Conference on the Human Environment, www.un-documents.net , accessed on 03/11/2018.

be challenged as violation of Art. 14. The Judiciary, however, has also applied Article 14 to justify the State actions and Government policies in respect of environmental rights.

Article 19 (1) (a) has guaranteed the freedom of speech and expression to every citizen of India. People has exercised this fundamental right to speech and expression by filing Public Interest Litigations or by filing petitions in the court and highlight the violation of the rights of the people to live in a healthy environment. Right to know includes in the freedom of speech and expression and therefore the public has right to know the government policies relating to the environmental protection and healthy environment. Article 19 (1) (g) ensures the privilege to rehearse any calling, or to continue any occupation, exchange or business. But, this right is not absolute and the State can impose reasonable restriction in the interest of general public on the exercise of this right. Along these lines, nobody can rehearse any calling or to continue any occupation, exchange or business which is dangerous.

Article 21 ensures the privilege to life and individual freedom. This fundamental right to life includes the right to live with dignity and right to health. Therefore everyone has right to live in a healthy environment which is free from any disease, infection and danger. The Supreme Court, in *M.C. Mehta v. Union of India*,⁷ has impliedly treated the right to live in pollution free environment as a part of the fundamental right of life under Article 21 of the Constitution. Thus the fundamental rights guaranteed under Art. 14, 19 and 21 can be invoked for creating pollution free environment.

IV. DIRECTIVE PRINCIPLES:

The Directive Principles of State Policy are incorporated under part IV of the Indian Constitution. These directive principles are directions to the State toward the building of ideal welfare state. In the case of *State of Kerala v. N. M. Thomas*,⁸ Supreme Court has observed that directive principles form the fundamental features and the social conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles.

Article 37 of the Indian Constitution provides that directive principles contained in Part IV shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. Thus, the court cannot compel the State to make the laws for giving an implementation to these directive principles. Be that as it may, on account of *M.C. Mehta v. Association of India*, the court saw that Articles 39(e), 47 and 48-A without anyone else and by and large cast an obligation on the state to anchor the wellbeing of the general population or to, enhance general wellbeing and to secure and enhance nature.

Article 47 of the Indian Constitution provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of health as its primary duties. Under this article improvement of public health is considered as a primary duty of the State. Improvement of public health and raising of the level of nutrition are not possible without the protection and improvement of environment. Article 48-A is incorporated under the Indian Constitution by way of 42nd Constitutional Amendment Act, 1976, which deals with the conservation and improvement of the environment. This Article specifically provides that "The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country". This article imposes a duty upon the State to make efforts for the protection and improvement of environment of the country as well as to provide safeguard to the forests and wildlife of the country.

Thus, the specific provisions relating to the environment under Part IV of the Indian Constitutions indicate that directive principles are not only pious obligation or show pieces but they are fundamental in the governance in the country and part and parcel of the supreme law of the land which are mandatory for the State to implement.

⁷ A.I.R. 1987 SC. 1086.

⁸ S.C.C. 310 at 379, 1976 (2)

V. FUNDAMENTAL DUTIES:

The new Part IV-A was incorporated under the Indian Constitution by 42nd Constitution Amendment Act, 1976, which consist of only one Article 51-A. This Article provides for the ten fundamental duties for citizens of India. The duties incorporated in the Indian Constitution are statutory duties and are enforceable by the law. It means the Central or State government have power to pass the laws for the enforcement of these fundamental duties and also power to provide penalties in case of failure to fulfill these duties.

Article 51-A (g) provides that "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes rivers and wild life, and to have compassion for living creature."

On account of *M.C. Mehta (2) v. Association of India*, the Supreme Court has seen that under Article 51-A (g) it is the obligation of the Central Government to present obligatory instructing of exercises in any event for one hour in seven days on assurance and enhancement of indigenous habitat in all the instructive organizations of the nation. The Court additionally coordinated to the Central Government to get reading material composed regarding the matter and disseminate those books to all instructive establishment of the nation free of expense. It stressed on the consciousness of cleanliness of environment for which it suggested the desirability of organizing the 'keep the city clean week', 'keep the town clean week' and 'keep the village clean week' once in a year in every city, town and village of the country.

Article 51-A (j) further provides that "It shall be the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher level of endeavor and achievements." This article indicates that protection of environment is one of the dimensions of achievements. The protection of the environment is a constitutional priority and therefore endeavor and achievements in environmental protection has the concern of every citizen of India.

VI. INTERNATIONAL ENVIRONMENTAL AGREEMENT AND INDIAN CONSTITUTION:

The objectives of the international agreements can be effectively achieved only if all the relevant countries are made compulsory parties to them with strict implementation of these agreements. India is a contracting party or signatory to the number of international treaties and agreements relating to regional or sometimes global environmental issued. India, as a signatory of various international agreements and treaties, is under obligation to translate the contents and decision of the international agreements, treaties and conferences in the stream of its national laws.

Article 51 (c) provides that "the State shall endeavor to foster respect for international law and treaty obligations in the dealings of organized people with one another." Article 253 of the Indian Constitution empowers the parliament "to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body." Entries number 13 and 14 of the Union list includes the subject matter on which parliament can make laws provides "participation in international conference, associations and other bodies, implementing of decisions made thereat"⁹ and "entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries"¹⁰. Article 253 and Entries Number 13 and 14 of the union list empowers the parliament to make the laws on the subject matter not only in the union list but also in the State list and parliament cannot be challenged on the ground that it has no power to make laws on the subject matter in the State list. Thus, laws can be passed by the parliament to give an implementation to the international treaty, agreement and conferences for the protection of environment.

In order to give an implementation to the international agreements, Indian parliament has passed the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986. The precludes of these institutions expresses that these Acts were ordered to offer usage to the choices taken in the United Nations Conference on Human Environment held at Stockholm in 1972.

⁹ Entry No. 13 of the Union List in the VII Schedule to the Constitution.

¹⁰ Entry No. 14 of the Union List in the VII Schedule to the Constitution.

In Vellore Citizens Welfare Forum v. Association of India , the Supreme Court has seen that it is right around an acknowledged recommendation of law that the tenets of standard International Law which are not in opposition to the Municipal Law will be esteemed to have been joined in the residential law and will be trailed by the official courtrooms.

VII. CONCLUSION:

The Constitution of India embodies the framework of environmental protection and preservation which is essential for the enforcement of fundamental right to health and right to live in healthy environment. The provisions relating the environmental protection have been given under Articles 14, 19 and 21 of part III, under articles of 39, 47 and 48-A under the part IV, under Article 51-A under part IV-A and under article 253, 51-C, Entries 13 and 14 of the Constitution.

From the perusal of the various judgments, it is evident that the Indian Judiciary has not only resolved the environment problems but has also played leading role regarding the environmental education and environmental awareness in general public.

Nevertheless, Environmental awareness, environmental education and public participation for the environmental protection is the need of the day. There is, therefore, urgent need that citizens as well as the State must take the cognizance of environmental degradation and to take immediate appropriate steps for the protection and improvement of environment.

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