

Indian Legal System Vis-a-Vis Environmental Protection

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Abstract - No constitution deals with the matter such as environmental protection. Because generally any constitution contains only the rules of laws in relation to the power, structure, allocation and manner of exercise. Besides, Indian Constitution is already a massive document and conciseness is the character of an ideal Constitution. Hence from the point of view of the principles of the constitutional law as well as the length of the Constitution, it was impossible to have any such provision safeguarding the healthy environment. Therefore, till the subsequent amendments the constitutional text of India was without any specific provision for the protection and promotion of the environment.

1. INTRODUCTION:-

Environmental protection had become a matter of prodigious concern for human rights and the right to live with pride. The word, environment, was a broad spectrum in nature, which included in its ambit hygiene and ecological balance too, hence the State had the duty to maintain hygienic environment to ensure public health. Any act causing environmental, ecological, water, and air pollution should be regarded as violation of the right to life with dignity set forth by Article 21. It was impossible to live with dignity without hygienic environment. Hence, it should be considered *constitutional imperative* of state governments and municipal authorities to protect and safeguard the environment. Citing cases where the Supreme Court refuted the opposition between development and ecology and stressed sustainable development, Supreme Court Judge Kurian Joseph¹ said the National Green Tribunal was set up for this very purpose of effective and expeditious disposal of cases related to the environment and forests. The Constitution of India is not a neutral but a lively and active document that has advanced over time. Special provisions in Indian Constitution regarding environmental protection are the result of the ever-evolving trend of the Constitution and the possibility of increasing the fundamental law on land². The preamble of our constitution ensures the socialist ways of society and the dignity of each person. Better standard and polluting environment is built within the constitution.

1 "The Hindu" July 8, 2017.

2. Pooja P Verdhan, "Asst. Director (Media & Comm.) PIB Indore"

According to the Environment (Protection) Act 1986, water, air and land and interconnection in environment, including air contained, water and land, other living things, trees, microbe and property etc. are included in the environment. Under the fundamental duties of Indian Constitution every citizen is expected to contribute to keep the environment safe. Article 51A (g) says that it will be the duty of every Indian to protect and promote all kinds of natural environment related to forest, ponds, rivers, wildlife. At the same time every citizen must have compassion towards all living beings. In general, no constitution deals with the matter such as environmental protection. Because generally any constitution contains only the rules of laws in relation to the power, structure, allocation and manner of exercise. Besides, Indian Constitution is already a massive document and conciseness is the character of an ideal Constitution. Hence from the point of view of the principles of the constitutional law as well as the length of the Constitution, it was impossible to have any such provision safeguarding the healthy environment. Therefore, till the subsequent amendments the constitutional text of India, was without any specific provision for the protection and promotion of the environment. However the seeds of such provision could be seen in Article 47 of the constitution which command the State to upgrade the standard of living and public health. To fulfill this constitutional goal, its necessary that the State should provide pollution free environment. The United Nations Conference on Human Environment held in June, 1972 at Stockholm placed the issue of the protection of biosphere on the official agenda of international policy and law³.

2. AGENDA ON UN CONFERENCE ON HUMAN ENVIRONMENT:-

The agenda of the conference consisted of the following:-

- i. Planning and management of human settlements for environmental quality,
 - ii. Environmental aspects of natural resources management.
 - iii. Identifications and control of pollutants and nuisances of broad international significance.
 - iv. Educational, Information, Social and cultural aspects of environmental issues.
3. Mr. Günther Handl, Eberhard Deutsch Prof. of Public International Law, Tulane University Law School
- v. Development and environment.
 - vi. International Organizational implications of action proposals.

The Stockholm Conference agendas, proclamations, principles and subsequent global, environment protection efforts shows the words realization of the need to preserve and protect the natural environment. The Conference acclaimed means of fundamental right to adequate conditions of life in an environment of a quality that permitted a life of dignity and well-being.

In United Nations Conference on Human Environment, at Stockholm the then Prime Minister of India Mrs. Indira Gandhi while displaying the nation's commitment to the protection of environment said, "The natural resources of the earth, including the air, water, land flora and fauna and especially representative sample of the nature ecosystem must be safeguard for the benefits of present and future generations through careful planning or management, as appropriate. Therefore conservation of nature including wildlife must receive importance in planning for economic development"⁴. To comply with the principles of the Stockholm Declarations adopted by the International Conference on Human Environment, the Government of India, by the Constitution 42nd Amendment Act, 1976 made the express provision for the protection and promotion of the environment, by the introduction of Article 48-A and 51-A(g) which form the part of Directive Principles of State Policy and the Fundamental Duties respectively.

3. CONSTITUTIONAL AMENDMENTS FOR PROTECTION AND PROMOTION OF ENVIRONMENT:

(1) **Article 48 A:** By the Constitution (42nd Amendment) Act, Section 10 .e.f. 3.1.1977). Protection and improvement of environment and safeguarding of forests and wild life:-"The State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country".

(2) **Fundamental Duty(I) Article 51-A(g) :** By Constitution (42nd Amendment) Act, 1976. Section 11 (w.e.f. 3.1.1977)"It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures". Thus the Indian Constitution makes two fold provisions:-4 Dr. Suresh Mane Indian Constitution Specialist & Writer,

(a) On the one hand, it gives direction to State for the protection and improvement of environment.

(b) On the other hand the citizens owe a constitutional duty to protect and improve natural environment.

In protecting the natural environment Article 48-A is of immense importance today. Because with the activist approach of judiciary in India the legal value of Directive Principles jurisprudence has constantly grown up in the Indian Constitutional set-up. Hence the above provisions are of pivotal significance. The Government of India to accelerate the pace for environment protection. Further amended the constitutional text by making the following changes.

1. **Seventh Schedule of the Constitution:** (I) In the Concurrent List, 42nd Amendment Inserted. (a) Entry 17-A, providing for forests. (b) Entry 17-B, for the protection of wild animals and birds. (c) Entry 20-A, providing for population control and family planning.
2. **Eleventh Schedule of the Constitution:** (1) This new schedule is added by the Constitution⁵ which received assent of the President on 20.4.1993. This schedule has out of 29 entries, 8 entries (2,3,6,7,11,12,15 and 29) providing for environmental protection and conservation Twelfth Schedule of the Constitution. (1) The entry number 8 of this schedule added to the constitutional text by the 74th Amendment Act,1992, which received the assent of the President on 20.4.1993 provide for the Urban Local bodies, with the function of environment and promotion of ecological aspects to them. Due to the above changes the division of legislative power between the Union and the

States is spelt out in the following three of the 7th Schedule of the constitution. List I (UNION LIST) Entries.52. Industries.53. Regulation and development of oil fields and mineral oil/resources.54.Regulation of mines and mineral development.56.Regulation and development of inter -State rivers and river valleys.57.Fishing and fisheries beyond territorial waters. List II (State List)Entries6. Public health and sanitation 14.Agriculture protection against pest and prevention of plant diseases 18.Land.colonization .etc. 21. Fisheries. 23. Regulation of Mines and Mineral development subject to the provisions of 24. Industries subject to the provisions of List III (Common or Concurrent List) Entries17-A Forests.17-B Protection and wild animals and birds.20. Economic and social planning.20-A Population control and family planning. The Eleventh Schedule, added to the Constitution by the constitution 73rd Amendment Act, 19925. 73rd Amendment Act, 1992 assign the functions of soil conservation, water management, social and form forestry, drinking water, fuel and fodder, etc. to the Panchayats with a view to environmental management.

3. **The 12th Schedule of the Constitution** added by 74th Amendment Act, 1992 commands the Urban local bodies such as municipalities to perform the functions of Protection of environment and promotion of ecological aspects. The constitutional changes effected in the 7th Schedule by the 42nd Amendment Act, 1976 is a milestone steps, in the direction of the protection of environment. Because the subject of forests originally was in the State list as entry 19, this resulted into no uniform policy by the State so as to protect the forests. By placing the item forest now in the concurrent list by the entry 17-A, along with the State, Parliament has acquired a law making power. Because of the above change, in order to have a uniform policy in the forest management the Government of India in the year 1980 set up the Ministry of Environment and Forests. By virtue of this change Parliament also enacted, the central legislation i.e. Forest Conservation Act, 1980, which was amended in 1988. The government also adopted the new National Forest Policy in 1988 with a twin object, one to protect the forests and another to consider the needs of the forest dwellers. Similarly, the insertion of the entry 17-B in the concurrent list the Parliament has been empowered to enact a law with a view to protection of wild animals and birds. Although, we had a comprehensive legislation in the form of Wildlife Protection Act of 1972 the 42nd Amendment has considered the wildlife along with forests. India has also formulated National Action plan for the Protection of wild life. The new entry 20 A in the concurrent list empowers the Parliament to regulate the population explosion one, of the prime cause of the environmental pollution. By these changes, legally and constitutionally it has become possible to take a uniform action in the matters of proper management of the environment.

4. **Fundamental Rights:** - The judiciary's dynamic interpretation of fundamental rights have regulated into the rights to healthy environment from the following Articles:

- (i) Article 14: "Within the territory of India, State shall not refuse to any person equality before the law or the equal protection of the laws".
- (ii) Article 19 (6) : State is empowered to make any law imposing in the interests of the general public, reasonable restrictions on the exercise of freedom to practice any profession, or to carry on any occupation, trade or business guaranteed by (1) (g).
- (iii) Article 21 : "No person shall be deprived of his life or personal liberty except according to procedure established by law".

5. Right Environment: The importation of the due process* clause *by the activist approach of the Supreme Court in **Maneka Gandhi's case**⁶ has revolutionized the sphere and scope of the expression right to life embodied in Article 21 of the Constitution. The right to live in healthy environment is one more important characteristic of article 21. This right connotes that the enjoyment of life and its attainment and fulfillment guaranteed by Article 21 holds the protection and preservation of nature's gift without which life cannot be enjoyed. The Supreme Court of India, in 1980, indirectly envisaged this right in a colossal judgment in the case of **Ratlam Municipality V/s. Vardichand**⁷. In this case the Bench of Justice V. R. Krishna Iyer and Justice O. Chinnappa Reddy held the neglect of sanitation of the town of Ratlam by Municipal Council Health hazard. The Court observed: "Even as human rights under Part III of the Constitution have respected by the State regardless its provision. Decency and dignity race and non-negotiable facts of human rights are first charge on local self governing bodies". The Courts decision was founded on its earlier decision in **Govind V. Shanti Swarup**⁸, where Section 133 of the code of Criminal procedure was used by the Court to preserve the environment in the interest of "health. safety and convenience of public a large". In the judgment the Supreme Court has no-where referred to Article 21 of the Constitution. But it is crystal clear that, the judgment is based on the right to live with decency and dignity as provided in the right to life. The Court continued its hidden approach of not referring to Article 21 directly, in another landmark case. **Rural litigation and Entitlement Kendra V. State of Uttar Pradesh** (AIR 1985 SC p52) although the Court has successfully read Article 21 in Article 48-A of the Part N of the Constitution. In this case, the Apex Court converted a letter into written petition alleging that the operation of unauthorized and illegal, mining in the Mussorie-Dehradun belt affected the ecology of the areas and led to environment disorder. The Bench consisting of Chief Justice P.N.Bhagwati (as he then was), Justice A.N. Sen and Justice Ranganath Misra ordered closing down of mining operations on the ground that lime stone quarries operation causing ecological imbalance and a hazard to healthy environment. The prominent feature of this decision is that, the Court converted a letter in the writ petition under Article 32, without referring to any article from the chapter on fundamental rights. From the jurists' process, it could be submitted that Court restrained itself from invoking Article 21 directly, but as a part of fundamental right, regarded the right to live in healthy environment.

6. AIR 1978 SC 597
 7. AIR 1980 SC 1622
 8. AIR 1957 SC 1943

In **M. C. Mehta V. Shriram Food and Fertilizer Industries and Union of India** (Oleum Gas Leak Case -I) (AIR 1987 SC 1965) 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 restarting plant subject to certain tough conditions laid down in the order. But the prominent development is that the Court held that any enterprise engaged in any hazardous or inherently dangerous industry which could pose a threat to public health owed an absolute duty to the community to ensure that no harm resulted to anyone. Here again Court made no reference to Article 21.

But in **III Oleum Gas Leak Case, M. C. Mehta V/s. Union of India** (AIR 1987 SC 1086), Chief Justice P. N. Bhagwati (as he then was) speaking for the Court clearly treated the rights to live in a healthy environment as fundamental right under Article 21 of the Constitution. This case came before the Apex Courts Judges Bench by a reference made by a Bench of three Judges. On 4th and 6th December, there was leakage of Oleum Gas from one of the units of Shriram Food and Fertilizer Industries which resulted in death of one person and affected the health of large number of people. On behalf of affected people, application for compensation came up for hearing.

The claim of Article 21 against a private corporation engaged in an activity which has potential to effect the life and health of the people was vehemently argued by counsel for the applicants. On the other hand, counsel for Shriram opposed subjecting Shriram to the discipline of Article 21. In the judgment Chief Justice P. N. Bhagwati (as he then was) speaking for the Court observed: "These applications for compensation are the enforcement of the fundamental rights to life enshrined in Article 21 of the Constitution and while dealing with such applications, we cannot adopt a hyper technical approach which would defeat that ends of justice ...If this Court is prepared to accept a letter complaining of violation of the fundamental rights of an individual or a class of individuals who cannot approach the Court for justice, there is no reason why these applications for compensation which have been made for the enforcement of the fundamental right of persons affected by oleum gas leak under Article 21 should not be entertained". (AIR 1987 SC 1089).

In the judgment, the Chief Justice 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.

The learned Chief Justice observed : "We in India cannot hold our hands back and one venture to evolve a new principle of liability which English Courts have not done. We have to develop our law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because, it has not been so done England (AIR 1988 SC 1089)"⁹.

The significant feature of this litigation is that the Court decided the important issues of liability and quantum of compensation without making a decision on the issue of

assumption of jurisdiction in a writ petition for orders against Shriram Enterprises on the ground of violation of Article 21 of the Constitution. The judgment of the Supreme Court had an impact on the various High Court Judgments (AIR 1987A.P.171). In the case of **Subhash Kumar V. State of Bihar** (AIR 1991 SC 424) the petitioner by way of public interest litigation, filed a petition for ensuring enjoyment of pollution free water and air. Justice K. N. Singh and Justice N. D. Ojha held: "*Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has a right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be determined to the quality of life*" (AIR 1991 SC 424).

Since 1980 there is a substantial growth in the case law in environment. In 1987, the Apex Court delivered 13 judgments on the issue. Among the judges, Justice Ranganath Mishra (as he then was), Justice P. N. Bhagwati as judge and then as a Chief Justice, and Justice G. L. Oza decided the maximum cases. Though the Apex Court favoured the balanced approach between the environmental protection and development process. Bhagwati's last judgment on the eve of his retirement in M. C. Mehta's case has opened new horizons in the development of environmental law and also administration of environmental justice (J.I.L.I. Vol.35.Part I.1993). Any social process of change must be backed by the social sanction. If it is not then, no Court, no law, no Constitution can enforce it. If it is therefore although now we find some constitutional provisions protecting the ecological balance it calls for the social sanction through the observance of the constitutional morality, which we lack today, as a national morality. Hence Constitutional directives or decisions fail to produce a desired result.

It is also now being suggested that the Constitution of India must provide a new Article i.e. Article 21-A stating that, all persons shall have the right to clean and livable environment, throughout the territory of India subject to any law imposing reasonable restriction in the interest of general public¹⁰. However with due respect to the above views it is humbly submitted that it would be better if such matters are left to the specific legislation or judicial laws rather than accumulating everything in the constitutional text. After all sanctify of the document called as the fundamental law of the land, the constitution must be upheld so as to distinguish it from any other ordinary legislation. Besides, the exploration of the different

9. Chief Justice P. N. Bhagwati

10. C. M. Jariwala, Indian Law Institute International Conference Souvenir, 1994, P.72

Dimensions of the Article 21 are ongoing process. The new horizons of article 21 are coming up from case to case.

In the ultimate analysis of the problem of environmental pollution and its solution it is submitted that, no doubt, the legal, constitutional measures are necessary in the process of management of the proper and better environment. But it is not the complete solution. The ever lasting solution is that it calls for inner feeling of the people for the protection of environment, the environmental value system, the people's movement rather than a legal movement. Hence, it calls for the mass education and awareness. This aspect has been very rightly upheld by the summit Court in the case of M.C. Mehta V. Union of India (AIR 1992 SC 382). The people joint conscience should wake up before the matter slips out of the hands. Each country now must seriously strive for maintaining ecological balance; otherwise tomorrow will be too late.



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