



JURISPRUDENTIAL CONCEPT OF ENVIRONMENTAL PROTECTION UNDER INDIAN CONSTITUTION

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Abstract-- Our constitution is not an inert but has grown and evolved over the years. In the Indian scenario, environment protection, has not only been raised to the status of fundamental law of the land, but it has also been webbed with Human Rights approach and is now considered as a well-established fact that it is the basic Human Right of every individual, to live in a pollution free environment with complete human dignity. The fundamental duties impose a duty on all the citizens to protect the environment. The Directive principles further are directed towards the ideals of building a welfare state. Healthy environment is one of the most essential elements of a welfare state. It is to the credit of the courts in India, particularly the higher judiciary that a truly strident march has been made in India in the protection of the environment. This article concentrates on constitutional mandate on responsibility of state, role of citizens and role of judiciary in environment protection. In fact, it would not be an exaggeration to say that the development of environment law in India is inextricably intertwined with the growth and development of the judicial institution in the country. But to preserve and protect the environment it is also very necessary to bring greater public participation, environment awareness and education.

INTRODUCTION

Today environment protection is evolved as an important subject in India with increase in Industrialization and human needs. Protection of environment basic means to protect natural environment by government, organizations, and individuals and to conserve natural resources. It is also a part of our culture and traditions to protect the environment like in India, citizens treat river Ganga as Maa Ganga which is depicted as a goddess. There was a famous Chipko Movement which started by local women against deforestation project by hugged with trees as a form of protest because they considered nature as god and worth protecting so religion play an important role. And our constitution of India also provides various provisions for the protection of the environment. But to preserve and protect the environment it is also very necessary to bring greater public participation, environment awareness and education. The environment may be defined as "a sum total of all the living and non-living elements and their effects which influence human life".¹ The term "Environment" includes Water, air and land and human beings, other living creatures, plants, micro-organism and property.² While all living or biotic elements are animals, plants, forests, fisheries, and birds, etc. The non-living or abiotic elements include water, land, sunlight, rocks, and air, etc. our constitution of India has so many mandates to protect the environment.

ENVIRONMENT LAW AND CONSTITUTIONAL PROVISION IN INDIA.

It is the mandate of the Constitution to protect and improve the Environment. It is a commitment for a country wedded to the ideas of a welfare State. The Indian Constitution contains specific provisions

¹<https://www.education.vic.gov.au/school/teachers/teachingresources/discipline/science/continuum/Pages/environment.aspx> last seen on 11 July 2021.

² Section 2(a) of the Indian Environment (Protection) Act, 1986.



for environment protection under the chapters of Directive Principles of State Policy and Fundamental Duties. The absence of a specific provision in the Constitution recognizing the fundamental right to clean and wholesome environment has been set off by judicial activism in the recent times. The Constitutional mandates to protect and improve the Environments are as follows

THE PREAMBLE AND ENVIRONMENT PROTECTION MANDATE

The Preamble of Constitution begins with “**we the people of India solemnly resolve to constitute India into a socialist country**”. This indicates that Indian Constitution affords us with the socialist pattern of society. Its aiming at dealing with and solving social problems first, rather than concentrating on individual problems. Here, what is in the interest of the public is of utmost importance. The basic aim of Preamble is socialism and it is the responsibility of the state to fulfill this by taking stringent measures to make the environment free from all forms of pollution. The obligation of the state further includes providing not only a pollution free environment but also a decent standard of living to all living beings. The state has the duty to comply with all the provisions and since India is declared to be the **Democratic Republic**, the citizens of this country hold a very essential right to have looked upon the conduct of the state and provisions being taken by the government from time to time to restore the environment.

LEGISLATIVE POWERS AND MATTERS OF ENVIRONMENTAL PROTECTION

The legislative, administrative and financial relations between the central and the state government are specifically dealt in with the part XI of the Constitution. The power to make rules for the whole country is with the Parliament of the country, while for that of the state lies with the state government of every state. In an instance of passing state laws subsequent to the central laws, for it to prevail, requires a Presidential assent first as in accordance with *Article 254*. In the situation of national emergency, Parliament has the power to legislate the state subjects also. The division of these legislative powers is essential to make provisions which can deal with environmental problems. There are various projects taken up by the state to develop the environment but they might pose a serious threat to the environment. In such circumstances there is always a conflict between development and environment protection and such matters are dealt through the **Environment Impact Assessment (EIA)**. This has also been recognized by the planning commission.

INTERNATIONAL ENVIRONMENTAL AGREEMENTS

Not only municipal laws but also international agreements dealing with environmental protection have been made and India has been a signatory to it. Due to **Stockholm declaration in 1972**, it was held that the world has one environment. India being a signatory to such international pacts is under an obligation to translate those provisions and follow them in the country. This has been clearly stated in *Article 51(c)* of the Indian constitution that state shall foster respect for international law and the obligations of the treaties. Another essential provision dealing in protecting the environment is Article 253 of the Constitution which empowers the Parliament of our country to make laws which can be applicable to the whole or any territory of the country for implementing any agreement or convention signed with the other country or countries. Parliament can further legislate to implement decisions taken at any conference on an international level. Any provision made in the context of environmental protection in accordance with *Article 253* read with articles 13 and 14 cannot be questioned before the court of law on the grounds of no legislative competence. By using this power, it is pertinent to know



that Parliament has enacted **Air(Prevention and Control of Pollution) Act 1981³, and Environment Protection Act, 1986⁴**. It has been clearly stated in the Preamble of these acts that the purpose of their enactment was to implement the decisions taken at the United Nations Conference on the Human Environment, held at Stockholm in the year 1972.

In *Vellore Citizens' Welfare Forum v. Union of India*⁵, the Supreme Court held that it is essential to incorporate the international customary laws in the municipal laws, provided they are not contrary to them. It is an accepted principle of law. Thus, it was considered essential to follow international laws by the domestic courts of law.

RESPONSIBILITY OF STATE IN ENVIRONMENTAL PROTECTION

The state authorities are under the obligation to follow the law and regularize the conduct for the benefit of the people who have elected them. Article 47 puts an obligation on the state that it shall regard the raising level of nutrition and standard of living of its people. Also, the primary duty of the state shall be to improve public health. It is the responsibility of the state to prohibit except for medicinal purposes, the consumption of alcohol and drugs which can be injurious to the health of the living beings and pose a great threat to their lives. There have been various reasons due to which level of pollution in the environment is constantly increasing. In the case of *Hamid Khan v. State of Madhya Pradesh*⁶, the state was negligent to supply water from the hand pumps, colossal damage was caused to the citizens, which affected their health massively. Hence, due to this gross negligence on the part of the state, it was held that the state failed to perform its basic duty.

In the year 1976, the constitution was amended. With this amendment, *Article 48-A*⁷, "The State shall Endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.". The word "Environment" has been interpreted widely in this article. The state shall not only play a role of being protectionists but also enact adequate measures for improvement of the environment. Every natural resource is interconnected with other natural resources of this country. Forests are directly linked with providing pollution-free air, helps in reducing global warming and is also connected with water resources. They help in maintaining the ecological balance. Thus, this resource is crucial and hence, its protection is equally important to avoid atmospheric pollution. Hence, the specific insertion of this section is justified.

ROLE OF CITIZENS IN ENVIRONMENTAL PROTECTION

It is not only the duty of state to protect the Environment, in the same time it is basically the rights of the citizens. The concept of rights and duties respectively, co-exist. They are interconnected. If citizens have the right to a decent standard of living and a pollution free environment, then at the same time they are obliged to protect it and not carry on activities which prove to be dangerous for the society at large and all other living beings.

The concept of rights was quite prevalent in comparison to the concept of duties prior to the 42nd amendment of the constitution. Thus, part IV-A was inserted by The Constitution (Forty Second) Amendment Act, 1976. Article 51-A (g) which deals with Fundamental Duties of the citizens states: "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes,

³ Act No. 14 of 1981

⁴ Act No. 29 of 1986)

⁵ AIR 1996SC 2715.

⁶ AIR 1997 MP 191.

⁷ The Constitution (Forty-second amendment) Act, 1976



rivers and wildlife and to have compassion for living creatures.” it is the duty of all the citizens of not only protecting the environment but also taking measures which are adequate enough to improve the environment.

Nature has gifted us with the resources and a pollution free environment and thus, this casts a duty upon the citizens to keep these resources in the same condition for the future generations. Hence, the principle of intergenerational equity plays a major role in environmental protection by sustainable use of natural resources.

In *Kinkeri Devi v. State*⁸, Himachal High Court that in Article 48-A and Article 51-A(g), it was held that it is both constitutional pointer to the state and the constitutional duty of the citizens not only protect the environment but also improve it and to preserve and safeguard the forests, the flora and the fauna, the rivers and the lakes and all other water resources of the country.

In *L.K Koolwal v. State of Rajasthan and Ors*⁹, the municipality of Jaipur was being negligent in carrying on its basic duty of maintaining the hygiene of the state. This caused acute sanitation problem thereby leading to the hazardous effects on the lives of the people of the state. Mr Koolwal along with other residents moved an application under *article 226* of the Indian constitution before the high court highlighting the gross negligence of the municipality.

While dealing with scope of Article 51-A in this case the court explained that this article is not only a duty but is a right created in favour of the citizens to have the locus standing to move to the court to have a check on the conduct of the state activities, whether the authorities are performing their duties or not in accordance with the fundamental law of the land. The right to move to the court is granted to citizens for the proper enforcement of the state's duties and of their relevant departments, local bodies etc.

In another case of *Goa Foundation v. the State of Goa*¹⁰, the petitioner was a society registered under the rules relating to registration of societies and its members were the citizens of India who had a fundamental duty to protect and improve the environment, lakes, forests, rivers and have compassion for living creatures as laid down under *article 51-A*. Petitioner was held to have a locus standi to move to the court to not only prevent degradation of our ecology but also form and implement provisions for the purpose of rehabilitating the ecology thereby maintaining ecological balance.

RIGHT TO LIFE AND ENVIRONMENT PROTECTION

Article 21 of the constitution provides for the fundamental right of life. It states that “no person shall be deprived of his right to life or personal liberty except in accordance with procedures established by law”. The words “except in accordance with procedures established by law” can be interpreted to mean that this provision is subject to exception and is regulated by law which varies from case to case. After *Menaka Gandhi case*¹¹ the Supreme Court widely interpreted the concept of right to life in positive manner, Right to life includes the right to have a dignified life and also the bare necessities of life like food, shelter, clean water and clothes. The right to live extends to having a decent and clean environment in which individuals can live safely without any threat to their lives. An environment shall be free from diseases and all sorts of infections.

⁸ AIR 1988 HP 4.

⁹ AIR 1988 RAJ 2.

¹⁰ 29 March, 2016

¹¹ *Menaka Gandhi v. Union of India*, AIR 1978 SC P. 619.



This is crucial because the right to life can be fulfilled only when one lives in a clean, safe and disease-free environment, otherwise granting such right would prove to be meaningless. This aspect of Article 21 has been evidently discussed in the case of **Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh**¹², where the petitioner along with the other citizens wrote to the Supreme Court expressing their views against the progressive mining which denuded the Mussoorie hills of trees and forests and soil erosion. This lead to having an adverse effect on the environment and resulted in landslides along with blockage of underground water channels. The registry was ordered by the Hon'ble Supreme Court to consider this letter as a writ filed under Article 32 of the Constitution.

In **L.K Koolwal v. State of Rajasthan and Ors**¹³, Rajasthan High Court held that maintaining the quality of the environment, sanitation and health is covered under the purview of Article 21 of the Constitution. Because non-compliance to do so can adversely affect the lives of many citizens and slow poisoning along with reducing the life of a citizen.

In **Charan Lal Sahu v. Union of India**¹⁴, it was held that the duty of the state is to take adequate and effective steps for the enforcement and protection of Constitutional rights guaranteed under Article 21, 48-A and 51-A(g).

In **M.C Mehta v. Union of India**¹⁵, due to stone crushing activities in and around Delhi was causing a huge problem of pollution in the environment. The court was conscious of the inevitable consequences and the ecological problems caused due to the industrial activities in the country. In the name of environmental development, it cannot be permitted to degrade the quality of the ecology and increase different forms of pollution to the extent that it becomes a health hazard to the lives of all the citizens. It was further held that citizens have a right to fresh air and have a pollution-free environment in which they live. In the famous Taj Mahal Case, ample of industries near **Taj Trapezium Zone** were using coke and coal as an industrial fuel. These industries were ordered to be relocated to an alternative site as provided under Agra Master Plan. The rights and duties of the workmen in the industries were also specified by the court following the principle of sustainable development.

RIGHT TO EQUALITY AND ENVIRONMENTAL PROTECTION

Equality before the law and equal protection of the law has been granted under Article 14 of the Constitution. This fundamental right impliedly casts a duty upon the state to be fair while taking actions in regard to environmental protection and thus, cannot infringe article 14. In cases of exercise of arbitrary powers on behalf of the state authorities, the judiciary has played a strict role in disallowing the arbitrary sanction. Use of discretionary powers without measuring the interest of the public violates the fundamental right of equality of the people.

In **Bangalore Medical Trust V. B.S Muddappa**¹⁶, an improvement scheme was prepared by the City Improvement Board of Bangalore for the purpose of extending the city. A low-level park was to be developed for which an area was kept under this scheme. But under the direction of the chief minister the area kept for the low-level park was to be converted into the civic amenity site where the hospital was to be constructed. As soon as the construction began, the residents moved to the high court. The petition moved in by the residents was allowed by the high court. But in appeal to the supreme court,

¹² AIR 1998 SC 2187.

¹³ Id

¹⁴ AIR 1990 SC 1480.

¹⁵ AIR 1999 SC 3192.

¹⁶ AIR 1991 SC 1902.



By explaining the importance of open spaces and parks in the development of urban areas, the supreme court rejected the appeal. The Hon'ble court further stated that the open spaces, recreation, playing grounds and protection of ecology are the matters of vital importance in the interest of public and crucial for the development. Keeping open spaces for the interest of the public is justified cannot be sold or given on lease to any private person solely for the sake of monetary gains.

FREEDOM OF SPEECH AND EXPRESSION AND ENVIRONMENT (Article 19(1) (a))

Right of speech and expression is a fundamental right expressly mentioned in *Article 19(1)(a)* of Part III of the Constitution. There have been a number of cases where people have approached the court through the way of speech and expressing themselves by writing letters like that in the case of *Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh*¹⁷ where they have expressed the violation of their right to have a clean and safe environment and a right to livelihood. In India, the media has been playing a crucial role in moulding the perception of people in issues relating to the environment. Thus, *Article 19(1)(a)* is interpreted to include the freedom of the press as well.

FREEDOM OF TRADE AND COMMERCE AND ENVIRONMENTAL PROTECTION

All the citizens of India have a fundamental right to carry on any profession or business, trade or commerce at any place within the territory of India under Article 19 (1)(g) of the Constitution. But this is not an absolute right and thus, has reasonable restrictions to it. Article 19(6) of the Constitution lays down the reasonable restriction to this fundamental right to avoid the environmental hazards. The purpose is to avoid the ecological imbalance and degradation of the atmosphere in the name of carrying on a trade, business, occupation or carrying on any profession. Thus, in the name of business or profession, one cannot cause harm to the environment.

In *M.C Mehta v. Union of India*¹⁸, certain tanneries were discharging effluents in the holy river Ganga which was causing water pollution. Further, no primary treatment plant was being set up despite the constant reminders. It was held by the court to stop the tanneries from working because the effluents drained were ten times more noxious as compared to the ordinary sewage water which flows into the river. The court ordered while directing tanneries to be stopped from working which have failed to take necessary steps as required for the primary treatment of effluents from the industries. The court while passing this order contended that, though the court is conscious about the unemployment that might usher due to the closure of the tanneries but **health, life and ecology holds greater importance in the eyes of law.**

In *M.C Mehta v. Union of India*¹⁹, it was directed by the Supreme Court that the industries who did not comply or adhere to, with the prior direction of the Hon'ble court regarding the installation of air pollution controlling system should be closed. In this case, the supreme court laid down its greater emphasis on Article 19(6) of the Constitution.

In *S. Jagannath v. Union of India*²⁰, sea beaches and sea coasts were considered to be the gifts of nature, by the Hon'ble Supreme Court and any such activity which pollutes these natural resources or the gift of nature cannot be permitted to function. In this case, a shrimp farming culture industry by modern method causing degradation to the ecosystem, discharge of polluting effluents, pollutes the

¹⁷ AIR 1988 SC 2187

¹⁸ AIR 1988 SC 1037

¹⁹ 1996 (1) SCALE 29 (SP). (258).

²⁰ AIR 1997 SC 811.



potable ground-water and depletion of the plantation. All of these activities were held to be violative of constitutional provisions and other legislation dealing with environmental matters, by the court. The court further held that before the installation of any such industry in a fragile coastal area it is essential for them to necessarily pass the strict environmental test. In other words, reasonable restrictions can be laid in accordance with **Article 19(6)** of the Constitution.

ROLE OF THE JUDICIARY IN ENVIRONMENTAL PROTECTION

While incorporating the important features to the fundamental right provided in Article 21, certain principles were ascertained by the supreme court to be necessarily ensured for the protection of the atmosphere, which are as follows-

POLLUTER PAYS PRINCIPLE

The basic concept behind this principle is that “if you make a mess, it becomes your duty to clean it up”. The polluter pays principle does not lay emphasis on the ‘fault’ rather on the curative approach to repair the ecological damage caused by any person or group of persons. This principle was for the first time referred to in the year 1972 in the OECD Guiding Principles concerning International Economic Aspects of Environmental Policies. Further, this principle was also applied in the case of *Vellore Citizens Welfare Forum v. Union of India*²¹. In *M.C Mehta v. Union of India and Ors(Calcutta Tanneries Case)*²², the polluter pays principle was applied where industries were directed to be relocated and these industries were ordered to pay 25% of the cost of the land. The industries which did not pay the cost of the land and did not comply with the direction of the court were further directed to be closed. The Hon’ble court again restored to the directions which were earlier given in the *Vellore Citizens Welfare Forum v. Union of India*²³.

PRECAUTIONARY PRINCIPLE

Principle 15 of the Rio Declaration enshrines the precautionary principle. According to this principle. In order to protect the environment, it is essential to apply the precautionary principle. This principle means that where there is a chance of great threat or irreversible damage to the environment, lack of full scientific certainty cannot be taken as a reason of not issuing the cost-effective methods. In *M.C Mehta v. Union*²⁴ (*Taj Mahal case*), was another judgment of the court adopted the precautionary principle. In this case, public interest litigation was filed alleging the degradation of Taj Mahal due to environmental pollution. Court referred the case to the expert committee to seek technical on the matter. The industries located in the **Taj Trapezium Zone (TTZ)** were using coke/coal as the industrial fuel, thus emitting effluents. It was held by the court that, the Taj apart from being a cultural heritage, is also an industry by itself and thus, it was directed to all the industries operating in TTZ to use natural gas as a substitute for coke/coal as an industrial fuel and if they cannot be restored to it for any reason, they must stop functioning and they may relocate themselves as per directions of the. The industries on the relocation in new areas were to be given the incentives.

²¹ AIR 1996SC 2715.

²² 1997 (2) SCC 411.

²³ Ibid 15..

²⁴ AIR, 1997 SC 734.

THE DOCTRINE OF PUBLIC TRUST

This doctrine rests on the principle that certain resources which are required for fulfilling the basic amenities of life like air, water etc hold great importance to the people at large that it would be completely unjustified to make these resources available to the private ownership. Since these resources are the gift of nature that is why they should be made freely available to every individual of the society irrespective of the status in life. The doctrine obliges the government to protect resources for public use rather than being exploited by a private person for making economic gains. Thus, commercial use of natural resources is completely prohibited under this doctrine. In *M.C Mehta v. Kamal Nath*²⁵, the state government granted a lease of riparian forest land to a private company having a mote located at the bank of river Beas, for commercial purposes. The hotel management was intervening with the natural flow of the river by blocking the natural spill channel of the river. This was questioned before the court through public interest litigation. The court explained the scope of public trust doctrine and observed that the doctrine rests on the primary principle that certain resources like air, water, sea and forests have great importance to people and it would be unjustified to make them subject to the private ownership.

SUSTAINABLE DEVELOPMENT

The term sustainable development was for the first time used at the Cocoyoc declaration. Thereafter it received further impetus through the Stockholm declaration where it was held that the world has just one environment and the man is both the creator and moulder of the environment. Further, in the Brundt land report, the definition of sustainable development was given according to which it is the optimum utilization of resources for both the present and future generations. Thus, intergenerational equity is a must. Resources have to be protected for both the present and future generations.

CONCLUSION

In our Constitution, there are various provisions, Acts for the protection of the environment. But after this, our India faces high percentage of environment degradation. Today our India deal with various problems like pollution, global warming, ozone depletion, scarcity of proper water, food and health facilities. There were various environmental disasters like Bhopal Gas Tragedy, Ganga Pollution Case. There is no strict implementation of laws regarding environment protection. Most of the Indians are not educated to preserve the environment. So, there is an emergency need to protect the environment otherwise we human destroy ourselves by our own hand. This can be done by implementing laws with strict punishment, by planting trees, promoting green energy, raising awareness toward environment welfare. In earlier times, the word "environment" was not specifically mentioned in the Constitution and no specific provisions were laid down in the Constitution to deal with the environmental hazards and to regulate the activities of the people who thereby were contributing a huge part in degrading the quality of the environment in the name of exercising their fundamental rights. The constitution is the supreme law of the land. Thus, inserting the clauses to specifically deal with the environmental issues would prove to be beneficial for the environment.

42nd Amendment to the Indian Constitution proved the words **democratic, socialist and republic used in the Preamble** to the Constitution and its connection with the protection of the environment. Followed by duties of the state to protect the environment as being an authority elected by the people they are obliged to work for the people. Then the concept of rights and duties has been dealt with,

²⁵ 1997 (11) SCC 312.



wherein the right of a citizen to have a healthy environment has been mentioned and also the duties of citizens towards the environment in which they live to protect and preserve it. A number of landmark cases have been mentioned to make the concept even clearer and how these plentoras of judgments have clearly mentioned the importance to protect this environment. It can also be concluded that the Supreme Court has played a major role in laying down the environmental jurisprudence. To have a healthy environment is so essential because a healthy environment promotes good health of the greater number which leads to less diversion of resources or spending of the huge amount of money on the treatment of the people.

REFERENCE

- [1] Shyam Divanand and Armin Roseneranz's 'ENVIRONMENTAL LAW AND POLICY IN INDIA- CASES, MATERIALS AND STATUTES' 2nd Edition, OXFORD INDIA, PAPERBACKS ,2005.
- [2] Dr. H.N. Tiwari, "Environmental Law" Allahabad Law agency.
- [3] Dr. S.C. Tripathi, "Environmental Law" Central Law Publication, 2017.
- [4] <http://www.legalserviceindia.com/legal/article-3906-constitutional-provisions-for-protection-of- environment.html>
- [5] <http://lawtimesjournal.in/constitutional-provisions-relating-to-environment-law/>
- [6] <https://www.education.vic.gov.au/school/teachers/teachingresources/discipline/science/continuum/Pages/environment.aspx>