

An Indian constitutional obligation for environmental protection: An appraisal

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Abstract

The problem of environmental pollution has become one of the greatest concerns to everyone in the world. These problems have attracted the attention of a wide cross section of people of all over the world during the recent part. We must take care of the nature then only nature will care for us. In the constitution of India we have enough legislation for the protection of the environment. It is clearly mention in Indian constitution that it is the duty of government of the state to protect and improve the environment and to safe guard the forest and wild life of the country. In the directive principles of state policy as well as the fundamental rights it is clearly stated that it is a duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life. It is the universal truth that we must take care of the nature than only nature will care for us.

Keywords: Indian constitution, environmental protection, fundamental rights

Introduction

The 20th century has brought about a revolution in the field of science and technology. It has witnessed a radical change in the methods of industrial and agricultural production. Civilization has, thus, reached its culmination. But, yet man has failed to draw a balance between development and environment protection. Uncontrolled and unrestricted industries have posed a serious threat to the entire society. The environment which could have promoted the full growth of life and society has created various problems instead. Ecological imbalance is one of the biggest reasons for environment pollution. Ozone Layer, a powerful safeguard against the harmful and deadly sunrays is getting leaked day by day due to this ecological imbalance. This results entry of deadly sun rays into the earth and it affected the Greenhouse atmosphere of earth. The temperature of earth is increasing gradually and surely. Glaciers are melted rapidly. Sea and Ocean level increasing leading to destruction and annihilation of many small country and islands of the world. Constitution of India is the supreme law of the country. It contains various provisions to protect the environment.

Constitutional Provisions to protect environment:-

India got freedom in 1947. The constitution of India came into force on 26th January; 1950. It rests firmly on the principles of liberty, equality, fraternity and justice. The preamble of the constitution declares India to be a sovereign, socialist, secular, Democratic Republic. The term 'socialist' has been inserted in the preamble by the constitution 42nd Amendment Act, 1976. The term 'socialist' has not been defined in the constitution. According to Hon'ble Supreme Court, "the principal aim of socialism is to eliminate inequality of income and status and standards of life and to provide a decent standard of life to the working people" ^[1]. India's socialism is a democratic socialism ^[2]. Democratic Socialism aims to end poverty, ignorance, disease and inequality of opportunity. ^[3] The Constitution has explicitly declared that India will be organized as a social welfare State, *i.e.*, a state which renders social services to the people and promotes their general welfare ^[4]. The Indian

Constitution is one of the few in the world that contains specific provisions on environment protection. ^[5]

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 48A and 51A (g). The relevant constitutional provisions for the protection and preservation of environment are discussed as herein under:

(A) Article 48A- The states responsibility with regard to environmental protection has been laid down under Article 48A of our Constitution. As per this Article- "lithe state shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country"

(B) Article 48 (A) (g) - Environmental protection is a fundamental duty of every citizen of this country under this Article. This Article was also incorporated by the Constitution (42nd amendment) Act. According to this Article-lilt shall be the duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wild life and to have compassion for living creatures".

(C) Federal system of Government that is the distribution of legislative powers and related provisions or environment protection:

(i) Seventh Schedule of the Constitutions (Article 246)

List -I (Union List)

- Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.
- Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.
- Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

- Regulation and development of inter-State rivers and river Valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
- Fishing and fisheries beyond territorial waters. ^[6]

List II (State List)

- Public health and sanitation; hospitals and dispensaries;
- Agricultures, including agricultural education and research, protection against pests and prevention of planned disease.
- Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; Land improvement and agricultural loans; colonization.
- Fisheries.
- Regulation of Mines and mineral development subject to the provisions of list I with respect to regulation and development under the control of the union.
- Industries subject to the provisions of List I. ^[7]

List III (Concurrent List)

- Forests,
- Protection of wild animals and birds,
- Economic and social planning,
- Population control and family planning. ^[8]

(ii) Eleventh Schedule of the Constitution (Article 243-G)

This schedule was inserted by the Constitution (73rd Amendment) Act, 1992 (w.e.f. 24-04-1993). This schedule contains the following entries which are related to the protection of environment and its conservation:

- Land improvement, implementation of land reforms, land consolidation and soil conservation.
- Minor irrigation, water management and water shed development,
- Fisheries.
- Social Forestry and Farm Forestry.
- Minor Forest Produce.
- Drinking water.
- Fuel and Fodder.
- Non-Conventional energy sources;
- Maintenance of community assets.

(iii) Twelfth Schedule of the Constitution (Art.243-w)

This new schedule was added by the Constitution (Seventy-fourth Amendment) Act, 1992 w.e.f. 01-06-1993. The relevant entries which are effective for environment protection are as below:

- Urban planning including town planning;
- Regulation of land use and construction of buildings;
- Water supply for domestic industrial and commercial purpose;
- Public health, sanitation conservancy and solid waste management;
- Urban forestry, protection of the environment and promotion of the ecological aspects.

(D) Article 47:- This is one of the Directive Principle of State Policy which aims at raising standard of living and public health of people. Again, public health of people cannot be

achieved without good environment. However, this Article says- "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the State shall endeavor to bring about prohibition of the consumption except for medical purposes of intoxicating drinks and of drugs which are -injurious to health".

(F) Article 39 and (f):- Certain principles of policy to be followed by the State.

(i) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(ii) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

(G) Fundamental Rights

(i) Article 14:- This Article says that "State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". The right to equality guaranteed in Article 14 of the Constitution may also be infringed by government decisions that have an impact on the environment.

(ii) Article 15 (2) (b):- As per this article - "No citizen shall, on grounds only of religion, race, cast, sex, place of birth or any of them be subjected to any disability, liability, restrictions or condition with regard to: the use of wells, bathing ghats, roads and places of public resorts, maintained wholly or partly out of State funds or dedicate to the use of general public'. This article prohibits discrimination on the ground of sex, race, religion, cast, place of birth etc. in using public places the public places are part and parcel of the human environment and these should be available to all public without any discrimination.

(iii) Article 21:- According to Article 21 of the Constitution, "No person shall be deprived of his life or personal liberty except according to procedure established by law". Article 21 is one of the most important provisions of the Indian Constitution and occupies a unique place as a Fundamental Right for the people of India. It protects the life and personal liberty. It envisages and aims that no person shall be deprived of his life or personal liberty except to a procedure established the law. Here, the term 'right to life' includes right to health, right to food and right to pollution free environment. This article guarantees right to live with, human dignity. Right to live in pollution free environment is only possible when then environment protection is given priority and steps are being taken: order to provide sustainable development to the coming generations. so, the state has got a duty to protect environment and the inaction on the part of the state in this regard will tantamount to infringement of the right to life of the people of India, guaranteed under Article 21 of the Constitution of india.

(iv) Article 24:- Article 24 of the Constitution deals with exploitation of child labour. It says that" No child below the

age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment". This provision is surely in the interest of public health and hence part of the environment.

So, in various judicial decision Hon'ble Supreme Court of India, in its interpretation of Article 21, has developed the emergence of an environmental jurisprudence in India.

Conclusion

Environmental pollution is one of the biggest problems the world face today. It poses a serious threat not only to the environment but also to the end mankind. It is becoming an increasingly worse problem that needs to be talk care of as soon as possible not only for the environmental protection but for protection of mankind.

Realizing the devastating consequences of environment pollution, various provisions were incorporated in the Indian constitution for the protection of, environment. Primarily, Indian constitution makes two fold provisions. On the one and, it gives directive to the State for the protection and improvement of environment. On the other hand the citizens owe a constitutional duty to protect and improve natural environment. There are enough provisions in the Indian constitutions to protect the environment. Government has also taken various steps or the protection of environment.

Reference

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