

ISSUES AND CHALLENGES OF ENVIRONMENT UNDER THE CONSTITUTION OF INDIA: AN OVERVIEW

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ABSTRACT

Environment is a subject of concurrent list .So both the government has power to enact law. Environment is mentioned in the preamble and part III, IV of the Indian constitution. Right to get free Air and live in the pollution free environment is a fundamental right which is guaranteed in the Constitution of India as a Fundamental Right. Whereas part IV of the Constitution speaks about that the duty of the state to provide pure Air to Its Citizen. Environmental issues have drawn the attention of common people as environment degradation and pollution have assumed global dimension and are even threatening the very existence and survival of mankind. It may be natural and manmade. Number of legislation is implemented in Indian on the subject of environmental Law. Series of decision of Apex court of India are available in the matter of environment but these are not issues less.

The study is discussing the number of legal issues on the matter of environment under the constitutional perspective. The paper is also discussed relevant case laws of the constitution.

INTRODUCTION

Environmental law is a developing branch of law in India. This growth is conspicuous by the remarkable activism on the part of the judiciary and legislature in the later part of 20th century. series of legislation has been passed by the parliament in the end of 20th century. The important role of the citizen is to protect and improve the environment .Apart from the constitutional mandate to protect and improve the environment there are lots of legislation³ on the subject but more relevant enactments for our purpose are the Water (prevention & control of pollution) Act 1974, the air (prevention & control of pollution) Act 1981, the environment (

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³ Eg. Indian forest Act 1927, the factory Act 1948, Atomic energy Act 1952 etc & environmental (protection) Act 1986 etc.

protection) Act 1986, public liabilities insurance Act etc. The new laws always framed to meet new challenges. The law generated a plethora of rules and regulations a facilitated delegation of powers from the central government to the various agencies through the length and breadth of the country.

The Indian Constitution has mentioned so many articles to protect and preserve the environment. Part III and IV of the Indian constitution deals very crucially as a Fundamental Rights and Directive principles of State policy. In dealing with the environmental cases, the courts discovered new dimensions for healthy environment under the right to life in Articles 21 of the Constitution. Besides two parts of the Constitution part IV-A and Part IX also deals the matter of environment under Article 51A (g) of the Indian Constitution. Article 51A (g) provides that the duty of the citizen to protect and preserve the environment includes forest.

Environmental Issues under Fundamental Rights:

Environmental values or rights may become constitutional either explicitly by amending the constitution or implicitly by interpreting the existing Constitution language to include environmental protection. In India the higher judiciary has interpreted the existing constitutional provisions like Right to life guaranteed under Article 21 of the Constitution which means include Right to live in a healthy environment. The court has intervened by writs, orders and directions in appropriate cases and recognised the constitutional right to a healthy environment. The supreme Court of India has been mentioned in the case of Rural litigation Entitlement Kendra V/S State OF Uttar Pradesh⁴ that the right of people to live in a healthy environment with minimal disturbance to ecological balance shall be safeguarded. In this case the supreme court of India evolved a new right to environment right of people to live in a healthy environment it did not mention. Though the supreme court of India did not clearly explicitly recognise the right to healthy environment. It has indirectly approved in many M.C.Mehta Cases. The Supreme Court in none of these cases declared explicitly that a right to clean and healthy environment is continued in the compendium of unremunerated rights under article 21.⁵ Even in this case the court did not specifically declare the existence of the right to

⁴ Air 1985, Sc652

⁵ 1st M.C.Mehta case, AIR 1987

clean and healthy environment under Article 21 of Constitution.⁶ It is evident that the court has used Article 32 which is provision to enforce fundamental rights for the purpose of protecting the lives of people their health and ecology.⁷ Article 14 of the Indian Constitution says that the right to equality before the law and protects a person against arbitrary or unreasonable state actions. Article 14 prohibits arbitrariness because every arbitrary action violates the principle of equality enshrined in it. Article 14 has been invoked in the case of *Kinkri Devi V/S State*⁸; in this case the court held that the government of Himachal Pradesh arbitrarily granted the permission for mining activities without adequate consideration of environmental impact which amounts to violation of Article 14. The court pronounced against directed renewal of the mining leases and directed closure of mines which caused grave pollution.⁹ In the year of 1999 the court directed to the Karnataka state government to immediately formulate a policy regulating carrying on stone crushing business. The state also directed to identify the safer zones and shift existing crushers to safer zones. Those who are does not fall in safer zones were ordered to be closed down.¹⁰

Article 19 (1) (g) of the Indian constitution confers fundamental right on every citizen to practice any profession or to carry on any occupation, trade or business. This is subject to reasonable restrictions. A citizen cannot carry on business activity, if it is health hazards to the society or general public. Thus safeguards for environment protection are inherent in this. The Supreme Court, while deciding the matter relating to carrying on trade of liquor in *Cooverjee B. Barouche Vs Excise commissioner*,¹¹ Ajmer observed that, if there is clash between environmental protection and right to freedom of trade and occupation, the courts have to balance environmental interests with the fundamental rights to carry on any occupations. In the case of *AP Gunnies merchants Association, Hyderabad V. Govt. of AP*¹²; in this case the Andhra Pradesh High Court held that the right to carry business in old Gunny bags was not absolute rights and restriction could be imposed to avoid environmental pollution. Article 21 of the constitution of India guarantees all persons a fundamental right to life and personal liberty. According to Article 21 of the constitution,

⁶ 3rd M.C.Mehta case 1987,SC1086

⁷ All the cases of M.C.Mehta

⁸ AIR 1988

⁹ *Rural litigation and Entitlement Kendra, Dehradun V/S State of UP*, AIR 1985

¹⁰ *Obayya Pujari V. Member Secretary KSPCB, Bangalore*, AIR 1999, Kant 157
11. AIR 1954

¹² AIR 2001 AP 453

“no person shall be deprived of his life or personal liberty except according to procedure established by law”. Article 21 has received liberal interpretation from time to time after the decision of the Supreme Court in **Maneka Gandhi vs. Union of India**¹³. **Article 21 guarantees fundamental right to life. Right to environment**, free of danger of disease and infection is inherent in it. Right to healthy environment is important attribute of right to live with human dignity. The right to live in a healthy environment as part of Article 21 of the Constitution was first recognized in the case of Rural Litigation and Entitlement Kendra vs. State¹⁴ (Popularly known as **Dehradun Quarrying Case**). It is the first case of this kind in India, involving issues relating to environment and ecological balance in which Supreme Court directed to stop the excavation (illegal mining) under the Environment (Protection) Act, 1986. In *M.C. Mehta vs. Union of India*¹⁵ the Supreme Court treated the right to live in pollution free environment as a part of fundamental right to life under Article 21 of the Constitution.

Excessive noise creates pollution in the society. The constitution of India under Article 19 (1) (a) read with Article 21 of the constitution guarantees right to decent environment and right to live peacefully. In *PA Jacob vs. The Superintendent of Police Kottayam*,¹⁶ the Kerala High Court held that freedom of speech under article 19 (1)(a) does not include freedom to use loud speakers or sound amplifiers. Thus, noise pollution caused by the loud speakers can be controlled under article 19 (1) (a) of the constitution.

Public Interest Litigation under Article 32 and 226 of the constitution of India resulted in a wave of environmental litigation. The leading environmental cases decided by the Supreme Court include case of closure of limestone quarries in the Dehradun region (Dehradun Quarrying case), the installation of safeguard at a chlorine plant in Delhi¹⁷ etc. though the supreme court of India and High Courts have consistently held that right to live in a clean and healthy environment is a fundamental right guaranteed by Article 21 of the constitution. Remedies for enforcement of fundamental right to live in a clean and healthy environment are provided under Article 32 and 226 of the constitution of India.

¹³ AIR1978 Sc

¹⁴ AIR 1985

¹⁵ 1992,3SCC 254

¹⁶ AIR 1993Ker 1

¹⁷ M.C Mehta V.Union of India

Hence victims of pollution or any public spirited individual or organisation may approach the Supreme Court for remedy under Article 32 of the constitution of India.

In *Vellore Citizens Welfare Forum vs. Union of India*¹⁸ (1996) the Court observed that “the Precautionary Principle” and “the Polluter Pays Principle” are essential features of “Sustainable Development.” At local and village level also, Panchayats have been empowered under the constitution to take measures such as soil conservation, water management, forestry and protection of the environment and promotion of ecological aspect.

Provision under Part IV of the Constitution:

Part IV of the Indian constitution deals with directive principles of state policy these directive principles represent the socio economic goals which the nation is expected to achieve it. The directive principle form the fundamental features and social conscience of the constitution enjoins upon the state to implement these directive principles .it was clearly stated in the case of state of Kerala *V.N.M.Thomas*¹⁹ in this case the court held that these principles are designed to guide the destiny of the nation by obligating three wings of the state,i.e legislature ,judiciary and executive to implement these principles. The Directive principles under the Indian constitution directed towards ideals of building welfare state. Healthy environment is also one of the elements of welfare state. **Article 47** 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 public health as among its primary duties. The improvement of public health also includes the protection and improvement of environment without which public health cannot be assured. **Article 48** deals with organization of agriculture and animal husbandry. It directs the State to take steps to organize agriculture and animal husbandry on modern and scientific lines. In particular, it should take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle.

Article 48 -A of the constitution says that “the state shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. In *M.C.Mehta*

¹⁸ AIR1996

¹⁹ 1976 2SCC310at 379

(II) V.Union of India²⁰ in this case the Supreme Court relying on article 48-A gave direction to the Central and the State Government and various local bodies and boards under the various statutes to take appropriate steps for the prevention and control of pollution of water. T

Provision under fundamental duties of the Indian Constitution

This chapter clearly stated about the duty on every citizen to protect environment. Article 51-A (g), says 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. There is a catena of cases where Article 51-A-(g) has been considered along with Article 48-A as implicit in Article 21 of the Constitution.

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. Parliament’s use of Article 253 to enact Air Act and Environment Act confirms this view. These Acts were enacted to implement the decisions reached at Stockholm declaration.

Conclusion:

We are certain beyond a reasonable doubt, however, that the problem of human-caused climate change is real, serious, and immediate, and that this problem poses significant risks: to our ability to thrive and build a better future, to national security, to human health and food production, and to the interconnected web of living systems... From studies of changes in temperature and sea level over the last million years, we know that the climate system has tipping points. Our proximity to these tipping points is uncertain. We know, however, that rapid warming of the planet increases the risk of crossing climatic points of no return, possibly setting in motion large-scale ocean circulation changes, the loss of major ice sheets, and species

²⁰ 1988 1SCC 471

extinction.²¹ Researcher has analyzed many constitutional provisions and discusses different case laws in this paper. Right to live with a healthy environment is a fundamental right and the state has an absolute duty to provide pollution free environment to its citizen. The Government of India has enacted so many policies to protect the environment but due to less implementation it was not properly worked out. Pollution control board is working in to stop the environment pollution. Besides the pollution control board village panchayat and Municipality has also work to reduce the environmental pollution but till date not properly reduced .Most of Indian people are illiterate and not aware about the pollution so they are living in the polluted environment. Building toilets in rural India was one of the major promises Prime Minister Narendra Modi made during his speech from the Red Fort ramparts in his first Independence Day address last year. The government has since moved with alacrity, claiming to have constructed around 80 lakh countryside toilets across India under Modi's ambitious Swachh Bharat mission. But a random assessment of the campaign by Mail Today shows that the ambitious move is plagued by crippling problems that threaten to offset the hopes among large swathes of population that seek hygienic living.²² I suggest to the government for enactment of stringent laws to protect the environment and harsher punishment for environment polluter.

²¹ Responsiblescientists.org

²² www.dailymail.co.uk/artcle/sharma.neetu